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ONE HUNDRED TWELFTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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September 27, 2012

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Mr. Secretary:

The Committee on Oversight and Government Reform continues to conduct oversight of the disparate treatment afforded hourly, unionized Delphi employees and salaried, non-unionized employees during the course of the General Motors (GM) bankruptcy and taxpayer-financed bailout. We have written to you multiple times on this matter and have yet to receive a sufficient response.¹ Accordingly, we write to renew and reiterate our previous requests.

When the Treasury Department bailed out GM with \$50 billion of taxpayer money, it preserved GM's pledge to "top-up" the pensions for unionized Delphi workers while not similarly honoring the pension obligations owed to Delphi's non-unionized workers.² As a result, Delphi's unionized retirees were made whole while salaried, non-unionized retirees saw their pensions reduced significantly.³ Delphi salaried retirees were also not included in negotiations among the Department, the Pension Benefit Guaranty Corporation (PBGC), GM, Delphi, and the United Auto Workers that ultimately led to the decision to terminate Delphi's pension fund.⁴

¹ See Letter from Darrell Issa, Jim Jordan, Dan Burton, & Michael R. Turner, H. Comm. on Oversight & Gov't Reform, to Timothy Geithner, U.S. Dep't of the Treasury (Aug. 8, 2011); Letter from Darrell Issa, Dan Burton, Michael R. Turner, & Jim Jordan, H. Comm. on Oversight & Gov't Reform, to Timothy Geithner, U.S. Dep't of the Treasury (Jan. 13, 2010).

² See U.S. Gov't Accountability Office, Key Events Leading to the Termination of the Delphi Defined Benefit Plans (Mar. 30, 2011).

³ See "Lasting Implications of the General Motors Bailout": Hearing before the H. Subcomm. on Regulatory Affairs, Stimulus Oversight & Gov't Spending of the H. Comm. on Oversight & Gov't Reform, 112th Cong. (2011).

⁴ See *id.*

Despite our repeated requests for all responsive documents and communications, the Treasury Department has only proffered a limited number of documents, many of which were already publicly available. Documents recently made public under the Freedom of Information Act, however, demonstrate that the Treasury Department was “the driving force” behind the decision to terminate the pensions of Delphi’s salaried employees.⁵ Although the Treasury Department has maintained that PBGC alone made the decision to terminate the pensions of Delphi’s salaried employees, these documents appear to indicate that Treasury Department officials and members of President Obama’s Auto Task Force played a large role in this decision.⁶

According to one estimate, the Treasury Department’s preferential treatment of union interests during the GM bailout cost American taxpayers over \$26 billion.⁷ Given the substantial cost incurred by the Administration in implementing this decision, the American people have a right to fully understand the process that led to it. In order to assist the Committee in completing its examination of this important issue, please provide the following information:

All records and communications between the U.S. Department of the Treasury and the President’s Automotive Task Force, the United Auto Workers, the Pension Benefits Guaranty Corporation, GM, Delphi Corporation and Holding, or any other public official, referring or relating to retirement or pension benefits for GM or Delphi Corporation employees, between November 1, 2008, and September 19, 2012.

Our earlier letters are attached for your reference. If the Department does not produce all the requested material by October 9, 2012, the Committee will be forced to consider use of compulsory process.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

⁵ See Matthew Boyle, *Emails: Geithner, Treasury Drove Cutoff of Non-union Delphi Workers’ Pensions*, Daily Caller, Aug. 7, 2012.

⁶ *Id.*

⁷ See James Sherk & Todd Zywicki, *Sherk and Zywicki: Obama’s United Auto Workers Bailout*, Wall St. J., June 13, 2012.

The Honorable Timothy Geithner
September 27, 2012
Page 3

If you have any questions, please contact Tyler Grimm or David Brewer of the Committee staff at 202-225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Michael R. Turner
Member of Congress

Enclosures

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

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LAWRENCE J. BRADY
STAFF DIRECTOR

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

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August 8, 2011

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

On January 13, 2010, we requested documents related to the decision to “top up” the pensions of hourly Delphi workers in the midst of the General Motors bankruptcy and bailout while leaving salaried, non-unionized employees with only the modified retirement plans underwritten by the Pension Benefit Guaranty Corporation.¹

On April 21, 2010, former Treasury employee Ron Bloom responded that Treasury was in the midst of “compiling this information and hope[s] to transmit responsive documents ... as soon as possible.”² This letter was followed months later by a letter from Treasury’s General Counsel, George Madison, denying our request for information.³ Mr. Madison cited “pending litigation” to justify Treasury’s refusal to cooperate with our investigation, even though the litigation in question⁴ was initiated months before Mr. Bloom’s letter promising cooperation.

¹ Letter from Reps. Darrell Issa, Dan Burton, Michael Turner, and Jim Jordan to Timothy Geithner, Secretary, U.S. Department of the Treasury (January 13, 2010).

² Letter from Ron Bloom, Senior Advisor to the Secretary, U.S. Department of the Treasury, to Rep. Darrell Issa (April 21, 2010).

³ Letter from George W. Madison, General Counsel, U.S. Department of the Treasury, to Reps. Darrell Issa, Dan Burton, Michael Turner, and Jim Jordan (July 8, 2010).

⁴ Complaint of Dennis Black, Black et al v. Pension Benefit Guaranty Corporation, No. 2:09 cv 13616 (6th Cir. Sept. 14, 2009).

The American people have a right to know what role their tax dollars played in this remarkable instance of inequity. The pendency of litigation does not give rise to a privilege to withhold documents from Congress. The U.S. Supreme Court has rejected the position that pending lawsuits are a basis to withhold information from a Congressional committee.⁵ The court held that such lawsuits do not “operat[e] to divest [Congress] of further power to investigate the actual administration of the land laws [T]he authority of [Congress], directly or through its committees, to require pertinent disclosures in aid of its own constitutional power is not abridged because the information sought to be elicited may also be of use in such suits.”⁶

Therefore, we are writing now to renew our previous request. Please provide the following information:

All records and communications between the U.S. Department of the Treasury and the President’s Automotive Task Force, the United Auto Workers, the Pension Benefit Guaranty Corporation, GM, Delphi Corporation and Holding, any Member of Congress or other public official, referring or relating to retirement or pension benefits for GM or Delphi Corporation employees, between November 1, 2008 and July 27, 2011.

Our original letter is attached for your reference. We hope that the Committee will not have to resort to compulsory processes to acquire this information.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at “any time” investigate “any matter” as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee’s request.

Please deliver all of the requested documents to 2157 Rayburn House Office Building as soon as possible, but no later than 5:00 pm on Monday, August 22, 2011.

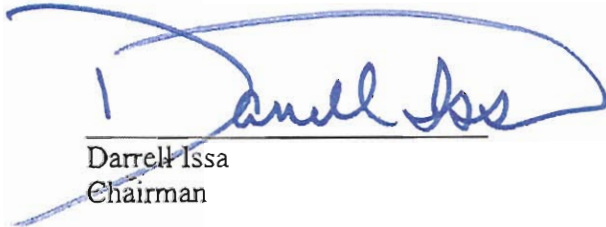
⁵ *Sinclair v. United States*, 279 U.S. 263 (1929).

⁶ *Id.*

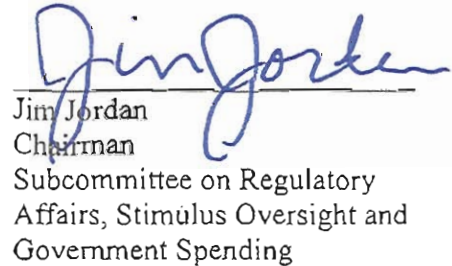
The Honorable Timothy Geithner
August 8, 2011
Page 3

To facilitate delivery and review, we prefer that the records be delivered in electronic format. If you have any questions regarding this request, please contact Tyler Grimm with the Committee staff at (202) 225-5074.

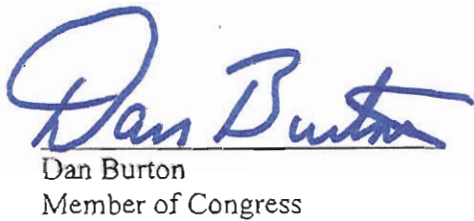
Sincerely,



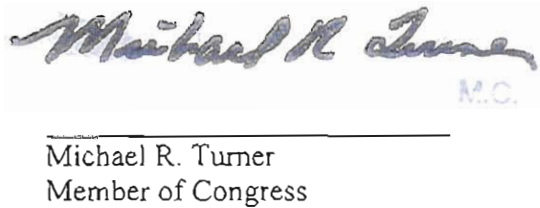
Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Regulatory
Affairs, Stimulus Oversight and
Government Spending



Dan Burton
Member of Congress



Michael R. Turner
Member of Congress

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Dennis Kucinich, Ranking Member
Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending

EDOLPHUS TOWNS, NEW YORK,
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BLAINE LUETKEMEYER, MISSOURI
ANH "JOSEPH" CAO, LOUISIANA

January 13, 2009

The Honorable Timothy Geithner
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner:

On October 6, 2009, four years after filing for Chapter 11 bankruptcy, Delphi Corporation exited bankruptcy as Delphi Holdings. Under the modified restructuring plan, facilitated by the Obama Administration and approved by the U.S. District Bankruptcy Court for the Southern District of New York, the Pension Benefit Guaranty Corporation (PBGC) took over the Delphi pensions and GM agreed to supplement hourly retiree pension payments. PBGC assumed \$6.2 billion in liabilities for six Delphi pension plans covering 70,000 employees and retirees. In addition to acquiring four U.S. steering component plants under the modified restructuring, GM agreed to use money from its own pension funds to supplement the 46,000 Delphi hourly unionized employees' pension payments to make up for the 30 to 70 percent cut in benefits resulting from the PBGC's takeover of the Delphi pension plans. This unprecedented agreement was not extended to the 21,000 salaried workers and retirees.

Recently, when questioned on the disparate treatment of Delphi employees and retirees, GM explained that it agreed to supplement Delphi union employees and retirees because it had promised to do so in 1999. It did not supplement Delphi non-union employees and retirees because it "isn't something that GM has any control over" and "GM doesn't have the legal obligation nor does it have the money to re-fund those pensions."¹

The explanations offered by GM are insufficient. After receiving over \$53 billion in assistance from the Treasury, the American people became the single largest GM stockholder. They deserve a complete explanation for the disparate treatment of Delphi

¹ Walsh, Mary Williams, *For Delphi Pensioners, the Union Label Helps*, The New York Times, October 27, 2009. Available at <http://www.nytimes.com/2009/10/27/business/27delphi.html?pagewanted=print>.

The Honorable Timothy Geithner
January 13, 2010
Page 2

employees and GM's use of taxpayer dollars. To better understand how these decisions were made, we are writing to request the following documents:

All records and communications between the U.S. Department of the Treasury and the President's Automotive Task Force, the United Auto Workers, the Pension Benefit Guaranty Corporation, GM, Delphi Corporation and Holding, any Member of Congress or other public official, referring or relating to retirement or pension benefits for GM or Delphi Corporation employees, between November 1, 2008 and November 1, 2009.

The Committee on Oversight and Government Reform is the main investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, it has authority to investigate the subjects within the Committee's legislative jurisdiction as well as "any matter" within the jurisdiction of the other standing House Committees. This broad jurisdiction includes the oversight of Executive Branch operations and administrative functions.

We request that you provide these documents to the Committee as soon as possible, but in no case later than **5:00 p.m., Wednesday, January 27, 2009**. You can submit the documents to Room B-350A, Rayburn House Office Building.

If you have any questions or comments please contact Marvin Kaplan, Counsel, at (202) 225-5074.

Sincerely,



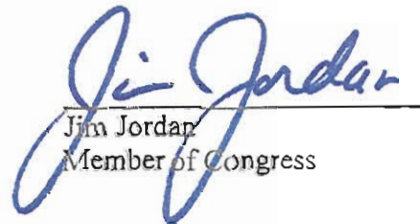
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Dan Burton
Member of Congress



Michael R. Turner
Member of Congress



Jim Jordan
Member of Congress