

DAVE CAMP, MICHIGAN,
CHAIRMAN

WALLY HERGER, CALIFORNIA
SAM JOHNSON, TEXAS
KEVIN BRADY, TEXAS
PAUL RYAN, WISCONSIN
DEVIN NUNES, CALIFORNIA
PATRICK J. TIBERI, OHIO
DAVID G. REICHERT, WASHINGTON
CHARLES W. BOUSTANY, JR., LOUISIANA
PETER J. ROSKAM, ILLINOIS
JIM GERLACH, PENNSYLVANIA
TOM PRICE, GEORGIA
VERN BUCHANAN, FLORIDA
ADRIAN SMITH, NEBRASKA
AARON SCHOCK, ILLINOIS
LYNN JENKINS, KANSAS
ERIK PAULSEN, MINNESOTA
KENNY MARCHANT, TEXAS
RICK BERG, NORTH DAKOTA
DIANE BLACK, TENNESSEE
TOM REED, NEW YORK

JENNIFER SAFAVIAN,
STAFF DIRECTOR

Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

1102 LONGWORTH HOUSE OFFICE BUILDING
(202) 225-3625

Washington, DC 20515-6348

<http://waysandmeans.house.gov>

SANDER M. LEVIN, MICHIGAN, RANKING MEMBER
CHARLES B. RANGEL, NEW YORK
FORTNEY PETE STARK, CALIFORNIA
JIM MCDERMOTT, WASHINGTON
JOHN LEWIS, GEORGIA
RICHARD E. NEAL, MASSACHUSETTS
XAVIER BECERRA, CALIFORNIA
LLOYD DOGGETT, TEXAS
MIKE THOMPSON, CALIFORNIA
JOHN B. LARSON, CONNECTICUT
EARL BLUMENAUER, OREGON
RON KIND, WISCONSIN
BILL PASCRELL, JR., NEW JERSEY
SHELLEY BERKLEY, NEVADA
JOSEPH CROWLEY, NEW YORK

JANICE MAYES,
MINORITY CHIEF COUNSEL

October 3, 2012

The Honorable Timothy Geithner
Secretary
United States Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Geithner,

On August 13, 2012, I requested information about the decision to treat some Delphi pension beneficiaries differently than others. Despite the Administration's early commitment to provide "an unprecedented level of openness in Government," the Department of Treasury's (Treasury) response of September 7, 2012, was incomplete and inadequate.

While the request sought all records created in 2009 that related to Delphi or General Motors' (GM) interest in Delphi, documents were clearly withheld from the Committee without explanation. For example, Treasury failed to produce an unredacted e-mail correspondence between Treasury and the White House that appears to discuss the treatment of Delphi pensions. Second, third parties provided materials involving Treasury that were not included in Treasury's own production. Specifically, Committee staff is in possession of e-mails between Treasury and GM officials about Delphi, and other e-mails between the Pension Benefit Guarantee Corporation (PBGC) and Treasury that were not produced by your Department. Third, an examination of 60 e-mails between a senior career official at PBGC and an appointee of your Task Force on the Auto Industry shows references to 34 phone conversations and 11 in-person meetings. However, not a single corresponding meeting note, hand-written or electronic, has been produced.

For its part, in testimony before Congress, Treasury has represented that it merely acquiesced to GM's "commercially reasonable and necessary" decision to honor the "top-up" agreements to fully fund the union pensions.¹ However, given the limited production received, questions remain about whether political considerations affected the disparate treatment of union and non-union pensions. In fact, documents from non-Treasury sources appear to show Treasury, GM, Delphi and PBGC explored and debated a full range of options. For example, on February 10, 2009, a senior career official at PBGC e-mailed Treasury officials, "Delphi has proposed that

¹ See, e.g., Statement of Matthew Feldman to the House Oversight and Government Reform Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of July 10, 2012.

GM take on the pension liabilities for the Hourly *and* Salaried plans...GM has stated that it cannot assume responsibility for either the previously-agreed-to Hourly plan...or the Delphi's Salaried plan."² (Emphasis added.) Some documents show discussions about GM assuming both plans, while other documents reveal the plan to "top-up" only the union plans.

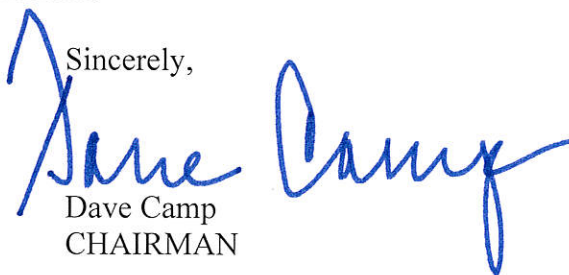
Treasury's production, however, does not contain contemporaneous communications showing how the discussion of terminating both plans moved to the option of funding (or assuming) both, to funding just one.

Treasury has also represented that it "did not authorize, approve, or consent to the PBGC's determination to terminate either pension plan," and "played an advisory role only."³ However, e-mails produced to the Committee show Treasury officials were heavily involved in the decision through the convening of meetings, providing comments on draft settlement agreements and PBGC proposals, and conferring with GM and Delphi officials apart from PBGC. Due to Treasury's failure to comply with the document request, the full extent and propriety of Treasury's involvement is impossible to determine.

Seven weeks have passed since my August 13, 2012 request, yet Treasury has failed to fully explain its role in determining the fate of Delphi pensioners. My request was straightforward, seeking documents that likely have already been collected pursuant to Freedom of Information Act (FOIA) requests and Delphi-related civil litigation. As you are aware, responses to Congressional requests are not limited by FOIA exemptions or common law privileges, thus all documents should have been produced without redaction or limitation. I likewise requested a certification affirming that a diligent search had been performed and that all responsive documents were produced or described on a privilege log.⁴ To date, neither a certification nor a privilege log has been provided. Without Treasury's production of the remaining documents in a timely fashion, I am left to conclude that the Department has chosen to deliberately hide documents from Congress and the American people.

I ask that you provide a complete production of all documents requested, without redaction, relevant to the Delphi hourly and salaried pensions or identify documents withheld in a privilege log. These documents should be provided no later than October 12, 2012. Additionally, I ask that you immediately make available to my investigative team Treasury officials involved in and with knowledge of Delphi pension discussions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dave Camp", is written over the typed name and title.

Dave Camp
CHAIRMAN

² PBGC produced the e-mail referenced. A diligent search of Treasury records produced suggests that its copy of the e-mail was withheld.

³ Letter from Alastair M. Fitzpayne, Assistant Secretary for Legislative Affairs, Department of the Treasury, to Dave Camp, Chairman, House Committee on Ways and Means (Sept. 7, 2012).

⁴ Attempts by Committee staff to confirm whether the Treasury Department plans to update their response have gone unanswered.