PBGC
Protecting America's Pensions
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

November 9, 2011

The Honorable Michael R. Turner
U.S. House of Representatives
2454 Rayburn House Office Building
Washington, DC 20515

Re: Responses to Questions Regarding the Treatment of Delphi Salaried Retiree Pensions

Dear Representative Turner:

At the Regulatory Affairs, Stimulus Oversight & Government Spending Subcommittee's (House Oversight & Government Reform) June 22 hearing on the "Lasting Implications of the General Motors Bailout," you asked me to provide PBGC's responses to 30 questions related to the treatment of Delphi Salaried Retirees Pensions. Please find below responses to these questions.

1. **The administrative record produced by the Pension Benefit Guaranty Corporation ("PBGC") indicates that PBGC staff discussed the Delphi pension plans with officials from the Treasury Department and the Auto Task Force before the plan was finalized to cut the pension plans. At what date did PBGC first notify parties regarding planned cuts to the Delphi pension plans?**

Answer: PBGC's administrative record documents the basis for the agency's decision to initiate termination of the Delphi Salaried Plan, the Delphi Hourly Plan, and four smaller Delphi pension plans (collectively, "Delphi Pension Plans"). The guarantee limits established by Congress and implementing regulations resulted in the benefit reductions applied to the Delphi Pension Plans. Neither the Treasury Department nor the Auto Task Force had a role in authorizing, approving or consenting to the termination of the Delphi Salaried Plan, or in determining the level of benefit reductions applied to that plan.

The Treasury Secretary serves as a member of the PBGC Board of Directors ("PBGC Board"), along with the Secretaries of the Department of Labor and the Department of Commerce. In that role, each Secretary is supported and advised by a designated PBGC Board representative ("Board Representative"). PBGC periodically informed the PBGC Board of matters involving the Delphi Pension Plans, including their potential impact on PBGC, plan participants and estimates of benefit reductions resulting from large unfunded benefits that exceeded PBGC's statutory guarantee limits. In February 2009 and again in June 2009, PBGC provided estimates of the unfunded status of the Delphi

Pension Plans to the Auto Task Force. Those estimates also showed large unfunded pension benefits that exceeded the legal guarantee limits.

Following termination and trusteeship of the Delphi Pension Plans, PBGC provided its Board with additional information on estimated benefit reductions for retired Delphi Pension Plan participants. Specifically, in advance of a February 23, 2010 meeting of PBGC's Board, PBGC sent a memorandum to the PBGC Board that included estimates of the number of Delphi Pension Plan participants that would have their benefits reduced to the guarantee limit. PBGC began notifying participants of these estimated reductions by letters sent January through March 2010.

2. **In what manner did PBGC notify parties about the cuts to the Delphi Salaried Retiree pension plans?**

Answer: See Answer to Question 1.

3. **Does the Treasury Department acknowledge that they knew about the Delphi Salaried Retiree pension cuts prior to final administrative action from PBGC to implement any cuts to those pensions?**

Answer: This question is directed to the Treasury Department. As noted in the Answer to Question 1, PBGC kept the PBGC Board periodically informed of matters involving Delphi Pension Plans, including their potential impact on PBGC, plan participants and estimates of benefit reductions resulting from large unfunded benefits that exceeded the guarantee limits under ERISA. In addition, PBGC provided estimates of the unfunded status of the Delphi Pension Plans to the Auto Task Force in February 2009 and again in June 2009.

4. **With what frequency did these discussions occur, and at what level?**

Answer: See Answer to Question 1.

5. **Did the Treasury Department initiate the discussions with the PBGC regarding the Delphi Salaried Pension plans?**

Answer: No. Neither the Treasury Department nor the Auto Task Force had a role in authorizing, approving or consenting to the termination of the Delphi Salaried Plan. See Also Answer to Question 7.

6. **Is the Treasury Department consulted in PBGC pension fund plan settlement negotiations?**

Answer: This question is directed to the Treasury Department. PBGC notes that attorneys for the Auto Task Force participated along with PBGC, GM, Delphi, and Delphi's debtor-in-possession lenders in telephone conferences during which the terms of the PBGC settlements were negotiated.

7. **Did the Treasury Department authorize, approve, or consent to the PBGC terminating the Delphi Salaried workers pension plans?**

   Answer: No. PBGC made the decision to initiate termination of the Delphi Pension Plans. The Treasury Department played no role in that decision.

8. **Does the Treasury Department deny it had the authority to disapprove of the cuts to the Delphi Salaried Retiree pension plans?**

   Answer: This question is directed to the Treasury Department. See Answers to Questions 7, 9, 14, and 15.

9. **What authority does the PBGC have to prevent the cuts to the Delphi Salaried Retiree pension plans?**

   Answer: The pension benefit guarantee limits were established by Congress and are set forth in Title IV of the Employee Retirement Income Security Act of 1974 and implementing regulations. PBGC may not legally pay benefits above those limits. See 29 U.S.C. § 1322 and 29 C.F.R. Part 4022. See also Answer to Question 15.

10. **In the discourse between the Treasury, the PBGC and any other parties, what role did the Treasury Department play in the decision to terminate the pension plan of the Delphi Salaried workers?**

    Answer: The Treasury Department played no role in that decision. PBGC made the decision to initiate termination of the Delphi Pension Plans.

11. **What was the position of the Treasury Department in any of those discussions and the reasoning behind any decision to force only the Delphi Salaried workers to undergo substantial cuts in their pensions?**

    Answer: This question is directed to the Treasury Department. However, as described above, benefit reductions are not discretionary as the guarantee limits were established by Congress and implementing regulations. The PBGC Board had no involvement in the process of reducing benefits.

12. **It was decided that certain hourly retirees and other union workers whose pensions were cut by the PBGC would have those pensions "topped-up" by the new GM. What role did the Treasury Department have in that decision?**

    Answer: This question is directed to the Treasury Department. In 2009, in connection with the bankruptcy proceedings of General Motors Corporation ("Old GM"), General Motors Co. ("New GM") assumed certain commitments into which Old GM had entered, including the top-up agreements with three unions entered into in 1999 and extended in 2007. Those agreements provided that, in the event that benefits under the Delphi Hourly Plan were frozen or the plan was terminated, Old GM would cover any shortfall below the level of benefits promised. Old GM did not enter top-up agreements with any other unions, nor did it enter into an agreement with participants in the Delphi Salaried Plan.

13. **How much is the "topping-up" costing New GM?**

Answer: This question is directed to New GM.

14. **The Secretary of the Treasury sits as one of three board members of the PBGC. Did the Secretary of the Treasury take any action to prevent the cuts to the Delphi Salaried Retiree pension plans?**

Answer: The Treasury Secretary had no role in authorizing, approving or consenting to the termination of the Delphi Salaried Plan, or in determining the level of benefit reductions applied to those plans. As provided in section 4002 of ERISA, 29 U.S.C. § 1302, members of the PBGC Board set policy for PBGC. The Board is not involved in day-to-day operations and, specifically, is not involved in decisions on individual cases.

15. **The Secretary of the Treasury sits as one of three board members of the PBGC. Did the Secretary affirmatively consent and/or approve of cuts to the Delphi Salaried Retiree pension plans?**

Answer: The estimated reductions to Delphi participants' benefits resulted from statutory limits on the amount of benefits that PBGC may guarantee and PBGC's long-standing regulations implementing these limits, which were promulgated pursuant to notice and comment procedures. See 29 U.S.C. § 1322, and 29 C.F.R. Part 4022. Neither the Treasury Secretary nor the Board had any involvement in the process of reducing benefits or effecting PBGC's implementation of the guarantee limits.

16. **The Secretary of the Treasury sits as one of three board members of the PBGC. Why did the Secretary not exercise any authority to prevent the cuts to the Delphi Salaried retiree pension plans?**

Answer: See Answer to Question 15.

17. **Did the PBGC vote on the cuts to these plans, and what was the Treasury Secretary's vote?**

Answer: No. The PBGC Board does not vote on benefit reductions. As noted above, reductions are calculated in accordance with the statute and regulations cited in the Answer to Question 9. As a result, the PBGC Board is not involved in this process. See also Answers to Questions 1, 8, 11, 15, and 19.

18. **The Secretary of the Treasury sits as one of three PBGC board members. What does PBGC see as the Secretary's responsibilities to the PBGC as a board member?**

Answer: As noted above, the Treasury Secretary serves as a member of the PBGC Board, along with the Secretaries of the Department of Labor (as Chairman) and the Department of Commerce. ERISA provides for the PBGC Board to set policy for PBGC and for the PBGC Director to administer the agency subject to such policy. PBGC's bylaws, published at 29 CFR Part 4002, set forth the roles and responsibilities of the members of the PBGC Board. These include approval of regulations, review and approval of the investment policy, approval of the annual management report and ERISA-required reports, approval of any policy matter that would have a significant impact on the pension insurance program or its stakeholders, and review of inspector general reports to the Board of Directors. As noted in our Answer to Question14, the Board of Directors is not involved in day-to-day operations and, specifically, is not involved in decisions on individual cases.

19. **Please describe the actual conflicts and potential conflicts between the Secretary's duties as a PBGC board member and the Treasury Department's duties as the majority owner of New GM?**

Answer: We are not aware of any conflicts. As reported by GAO, to the extent interested parties may perceive tension between these roles:

> "Treasury established a protective barrier between the Treasury officials (beneath the Secretary level) who make policy-related decisions with respect to investments in the automakers and the Treasury officials who are responsible for regulating pensions and overseeing the PBGC. In theory, this barrier prevents Treasury in its role as owner from interacting with Treasury in its role as pension regulator or overseers of PBGC. Treasury officials stated that, in the management of its investment in GM and Chrysler, the Treasury auto team does not communicate with the IRS or PBGC."[1]

20. **How does the Secretary prevent conflicts between those two roles?**

Answer: See Answer to Question 19.

[1] Troubled Asset Relief Program, GAO 10-492 (April 2010).

21. **After the Treasury Department's increased involvement in General Motor's operations, General Motors seemed to reverse its position with respect to assuming the obligations of Delphi's pension plan for salaried workers. Please describe the role of PBGC in that decision?**

Answer: General Motors consistently maintained that it would not assume the Delphi Salaried Plan. PBGC had no role in that decision.

22. **Please provide and describe any communications between PBGC and all other relevant parties, including, but not limited to GM, new GM, Treasury, and the Auto Task Force, with respect to General Motors' position of assuming the obligations of Delphi's pension plan for salaried workers.**

Answer: On January 30, 2009, PBGC met with Delphi executives and representatives at their request. At that meeting, Delphi expressed its hope that it could persuade GM to assume the Delphi Salaried Plan. PBGC asked to be kept informed of any proposal from GM. Neither Delphi nor GM ever advised PBGC of any such proposal. Though Delphi continued to state its hope of GM assumption publicly through the spring of 2009, no one from Old GM, the Treasury Department, or the Auto Task Force ever communicated to PBGC that GM had any intention of assuming the Delphi Salaried Plan.

23. **By the time the PBGC initiated termination proceedings against Delphi's pension plans, the PBGC held approximately $200 million in liens against Delphi foreign assets, and estimated that there were approximately $2.4 billion in Delphi foreign assets that the PBGC could potentially assert liens against. The PBGC ultimately released these liens as part of settlement agreements with New GM and Delphi, in exchange for payments by New GM which did not include Delphi Salaried Retirees pension plans. What role did PBGC play in approving and/or crafting this settlement?**

Answer: When the Delphi Salaried Plan was terminated, PBGC had perfected $195.9 million in liens for the benefit of the Salaried Plan due to Delphi's failure to make statutorily required minimum funding contributions. That was the largest lien amount that PBGC could assert under law, because a secured interest exists only to the extent there is a debt. PBGC participated in extended negotiations over the terms of the settlement of its liens and claims against Delphi and its bankrupt domestic and non-bankrupt foreign subsidiaries during the weeks preceding the signing of the agreements. PBGC approved the agreements and signed them as a party. In negotiating the settlement, PBGC sought to protect its economic interests and obtain the best outcome for the pension insurance program and its stakeholders, including the participants in the terminating Delphi Pension Plans. In fact, the amount of PBGC's total recoveries in the settlements greatly exceeded the amount of the Delphi Salaried Plan liens; therefore, those liens have been effectively paid off and the Delphi Salaried Plan assets were increased by $195.9 million as a result of the settlements.

24. **When did PBGC make the Department of Treasury aware of its belief that there were $2.4 billion in foreign Delphi assets upon which the PBGC could assert liens?**

Answer: PBGC did not discuss its assessment of the value of Delphi's foreign assets with the Treasury Department. The fact that as of June 15, 2009, PBGC had perfected $195.9 million in liens on behalf of the Delphi Salaried Plan was publicly available from PBGC lien filings with the D.C. Recorder of Deeds. The $195.9 million represented the full amount of the liens that PBGC could assert under law on behalf of the Delphi Salaried Plan at the time of its termination.

25. **Had the PBGC refused to remove the liens, would the Treasury Department have been willing to permit New GM to assume sponsorship of the Salaried pension plan?**

Answer: This question is directed to the Treasury Department. See Answer to Question 22.

26. **Did the Treasury Department (or the Auto Task Force) take part in negotiations with the PBGC in an attempt to have the PBGC release its liens against Delphi Assets? And in what manner?**

Answer: This question is directed to the Treasury Department. PBGC notes that attorneys for the Auto Task Force participated along with PBGC, GM, Delphi, and Delphi's debtor-in-possession lenders in telephone conferences during which the terms of the PBGC settlements were negotiated.

27. **When the Treasury Department communicated with the PBGC regarding the negotiation of a settlement agreement and the release of the PBGC's liens, did the Treasury Department take any measures to ensure that the PBGC would not give undue weight to the negotiation position of GM and/or the Treasury Department due to political considerations?**

Answer: This question is directed to the Treasury Department. See Answers to Questions 23 and 24.

28. **Salaried Delphi retirees have made requests under the Freedom of Information Act to PBGC regarding their involvement in the termination of the Salaried pension plan. These requests have so far been ignored. Can you explain why PBGC has refused to comply with these requests?**

Answer: PBGC has responded to each FOIA request made on behalf of the Delphi Salaried Retirees Association (DSRA) by DSRA's counsel and has produced over 8,000 pages of records. Attached hereto is a chart of each document production, which includes documents produced to this Committee as well. PBGC has withheld some documents under FOIA exemptions, including Exemption 6 protecting the personal privacy of participants, and Exemption 5, which protects from disclosure documents that would not be producible in litigation.

29. **The United Auto Workers has stated that Delphi Salaried Retirees should be treated with "fairness and equity." Additionally, the UAW stated in a letter dated January 15, 2010 that it supports providing the same "top-ups" to the Salaried workers as a matter of "fairness and equity" that were provided to the other Delphi workers. Does PBGC agree?**

Answer: PBGC treats all pension participants fairly and equitably in accordance with applicable law. PBGC is not a party to the "top-up" agreements between GM and its unions.

30. **Please provide and describe PBGC's plan for restoring Delphi salaried retirees' pensions and benefits.**

Answer: Under 29 U.S.C. § 1347, Congress gave PBGC the power to restore a pension plan terminated under 29 U.S.C. § 1341 or § 1342 to its pre-termination status if the Agency determines such action would be appropriate and consistent with its duties under Title IV of ERISA.

Prior to termination, the Delphi Salaried Plan was sponsored by Delphi. Post bankruptcy, Delphi is a liquidating entity known as DPH Holdings Corp. PBGC therefore cannot restore the Delphi Salaried Plan to its pre-termination status; DPH Holdings Corp. is in no position to reassume responsibility for operating and funding the Salaried Plan.

Sincerely,

Vincent K. Snowbarger

Vincent K. Snowbarger
Deputy Director for Operations

Attachment

FOIA Disclosures to Miller Chevalier for DSRA, and Congress

FOIA Case Number	Requester	Received Date	Response Date	Number of Pages	Complete Date	Released Document Type	Requested Records Description
2009-4392	Miller & Chevalier (DSRA)	9/24/09	10/16/09	5,037	10/16/09	Administrative Record	Administrative Record
2009-4451	Miller & Chevalier (DSRA)	9/28/09	11/10/09	0	11/10/09	Responsive records contained plan participant data. Information witheld in its entirety under (b)(6)	Documents not included in the administrative Record
2010-0179	Miller & Chevalier (DSRA)	10/20/09	Multiple Releases: 1/18/10 1/28/10 4/9/10	Total: 1,030 232 378 420	4/9/10	Email discussing the GM/PBGC Waiver and Release Agreement & Delphi/PBGC Settlement Agreement (reviewed over 10, 000 pages)	Correspondence to and from PBG discussing the GM/PBGC Waiver and Release Agreement & Delphi/PBGC Settlement Agreement
2010-3821	Miller & Chevalier (DSRA)	6/30/10	Multiple Releases: 7/28/10 8/24/10 9/22/10 11/4/10	Total: 4,085 420 1,610 1,202 853	11/4/10	Actuarial and financial Information; PBGC memorandums; email correspondence; Delphi evaluation reports; Liens information	Actuarial and financial Information; PBGC memorandums; email correspondence; Delphi evaluation reports; Liens information
2011-1101	Miller & Chevalier (DSRA)	12/8/10	1st partial: 01/31/2011 2nd & Final: 02/23/2011	876	2/23/11	Liens filed by OCC in connection with the Delphi salaried plan, recommendation, calculation, and email communications concerning the liens	Liens filed by OCC in connection with the Delphi salaried plan, recommendation, calculation, and email communications concerning the liens
2011-1102	Miller & Chevalier (DSRA)	12/8/10	1st partial 01/31/2011 2nd partial 02/23/2011 Final 4/14/2011	Provided a CD containing 2,480 pages 311 pages 0	4/14/11	PBGC Operation Manual for various departments	PBGC Operation Manual for various departments
2011-0690	Congressional: Commitee On Oversight & Government Reform	11/23/10	1st partial: 02/23/2010 2nd & Final: 04/01/2010	Total: 5,712	12/8/10	communications between PBGC and Delphi, GM, Treasury/Auto Task Force, United Auto Workers and any other public official (all internal communications were excluded) for the time period of November 1, 2008 and November 1, 2009	communications between PBGC and Delphi, GM, Treasury/Auto Task Force, United Auto Workers and any other public official (all internal communications were excluded) for the time period of November 1, 2008 and November 1, 2009 .