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U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

WRITTEN TESTIMONY SUBMITTED BY

THE HONORABLE CHRISTY ROMERO

SPECIAL INSPECTOR GENERAL

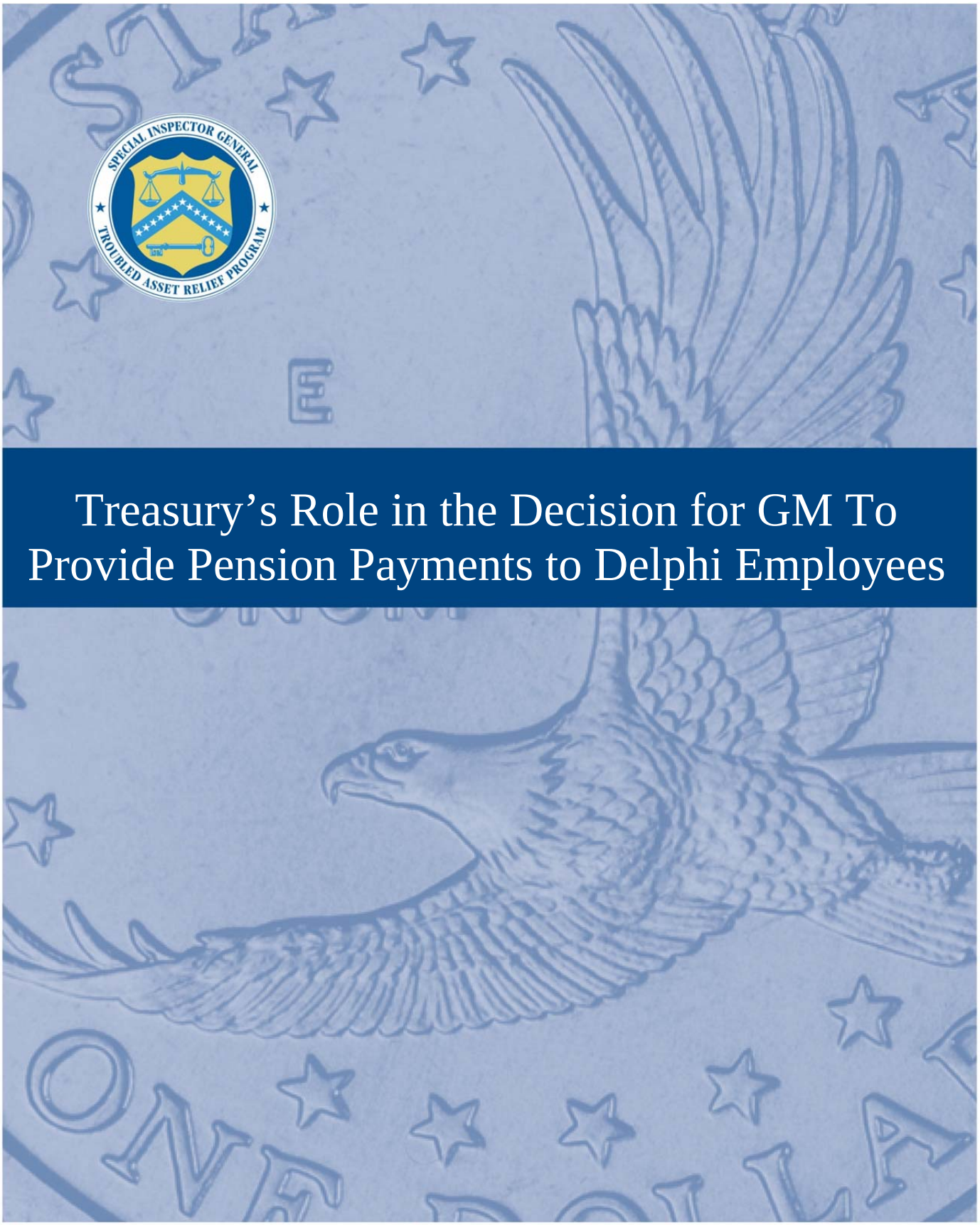
FOR THE TROUBLED ASSET RELIEF PROGRAM

(SIGTARP)

BEFORE THE
U.S. HOUSE COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
SUBCOMMITTEE ON GOVERNMENT OPERATIONS

September 11, 2013

Chairman Mica, Ranking Member Connolly and members of the subcommittee, I am honored to present the Office of the Special Inspector General for the Troubled Asset Relief Program's ("SIGTARP") August 15, 2013 audit report "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees." Please accept the full contents of the audit as my submitted written testimony for the hearing. I am happy to answer any questions you may have.



Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees

Special Inspector General for the Troubled Asset Relief Program

SIGTARP 13-003

August 15, 2013

OFFICE OF THE SPECIAL INSPECTOR GENERAL
FOR THE TROUBLED ASSET RELIEF PROGRAM
1801 L STREET, NW, 4TH FLOOR
WASHINGTON, D.C. 20220

August 15, 2013

MEMORANDUM FOR: The Honorable Jacob J. Lew – Secretary of the Treasury

FROM: The Honorable Christy L. Romero – Special Inspector General for the Troubled Asset Relief Program

SUBJECT: Treasury's Role in the Decision for GM To Provide Pension Payments to Delphi Employees (SIGTARP 13-003)

We are providing this report for your information and use. It discusses the U.S. Department of the Treasury's ("Treasury") role in the decision for the General Motors Corporation to top up the pension payments of certain Delphi Corporation hourly employees.

The Office of the Special Inspector General for the Troubled Asset Relief Program conducted this audit (engagement code 024), under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended.

We considered comments from the Department of the Treasury when preparing the report. Treasury's comments are addressed in the report, where applicable, and a copy of Treasury's response is included in the Management Comments section in Appendix D.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact me or Mr. Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation (Bruce.Gimbel@treasury.gov / 202-927-8978).

Summary

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings – the Presidential Task Force on the Auto Industry ("Auto Task Force"). The Auto Task Force delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team led by Steven Rattner. GM's bankruptcy would be one of the largest and fastest bankruptcies in our nation's history. A new company, "New GM," emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities. One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees paid an hourly wage and represented by certain unions, and who had worked in GM's automobile parts division that was spun off into Delphi Corporation ("Delphi"). The four Treasury Auto Team officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

What SIGTARP Found

The existence of Treasury's Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. The four Treasury Auto Team officials played a direct role in GM's decisions and operations up to and through GM's bankruptcy. As GM's only lender and later GM's largest investor, Treasury's Auto Team had significant leverage and influence on GM's decisions leading up to and through the bankruptcy, first exerted by replacing GM's then-chief executive officer ("CEO") Rick Wagoner with Treasury's choice, Fritz Henderson. According to Mr. Henderson, this sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations. After Treasury rejected GM's restructuring plan, GM developed a new plan with significant influence and leverage from the Auto Team. One GM official said, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP loan agreement, in practice, it was more than advisory. The TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that right. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence GM to make decisions in areas that did not require Treasury's consent, in line with Treasury's preferences. Auto Team officials told SIGTARP that they "had to carefully manage GM," that "we, the Government, were ultimately holding the purse strings" and "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how they conveyed their preference, given that ultimately GM could do its own thing, the official said, "Well they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring toward bankruptcy, first through replacing the CEO who opposed bankruptcy, second by "highly" suggesting to GM that they felt "pretty strongly" that a "Section 363" bankruptcy was the best approach. Third, although CEO Henderson hoped to avoid bankruptcy through a bond exchange, the Auto Team, who opposed the exchange, communicated to GM their preference for 90% bondholder participation, a "very high" level of acceptance making bankruptcy more likely. When the exchange

failed, Treasury agreed to fund GM's bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Neither Treasury nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeline was not realistic, with its lawyer telling the Auto Team that it was "impossibly aggressive. It's never been done." Treasury had leverage to set a timeframe that did not seem realistic to GM, and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. One Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. GM's then-chief financial officer ("CFO") Ray Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." An Auto Team official stated, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW").

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy (which had to be before a June 1, 2009, bond payment due date) and the Auto Team actively negotiated and made the overall deal. The UAW understood that GM could not walk away from the May 18-19 negotiations and had to reach an agreement to be able to survive, and those same facts put pressure on GM. GM only had a couple of weeks to come to agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation. The UAW came to the negotiations with a "hit list" of priority items including the top-up. The top-ups were never discussed in the negotiations.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, it would have been Treasury's decision as the buyer to assume or reject the top-up liability. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM. GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that

New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the UAW collective bargaining agreement with the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring the top-up, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included it on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger UAW agreement, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of a strike, they were also concerned with the UAW prolonging the bankruptcy, calling not having an agreement like "shooting yourself in the head." Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure," adding "it was not a ridiculous request, and one that we could have honored and needed to honor." CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation of the top-up, "the focus was on getting the deal done," and that if the top-up was not assumed, "it would have been 'mission impossible.'"

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE") and the United Steelworkers of America ("USW"). Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.

Lessons Learned

GM did not fail and the broader systemic consequences of a GM failure that Treasury feared were avoided. There are two important lessons to be learned from the role that Treasury played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. The Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government

and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor with one Auto Team official telling SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when no other private investor would lend or invest the money that GM needed, according to GM's then CFO. Concerned about too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority TARP debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though the Auto Team tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were new agreements with the UAW and bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to bankruptcy or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in

the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

What SIGTARP Recommended

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Treasury provided an official written response, which is reproduced in full in Appendix D. A discussion of this response and SIGTARP's response can be found in the Management Comments and SIGTARP's Response section of this report.

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Introduction

General Motors Corporation's ("GM") bankruptcy was one of the largest and fastest bankruptcies in our nation's history. Having already invested $19.4 billion in GM under two Administrations through the Troubled Asset Relief Program ("TARP"), in June of 2009, the U.S. Department of the Treasury ("Treasury") loaned GM an additional $30.1 billion from TARP to fund GM's bankruptcy, and conditioned the money on the bankruptcy ending in 40 days. In exchange for its combined $49.5 billion TARP investment, Treasury would become the majority (61%) owner of a new company that would emerge from GM's bankruptcy ("New GM"), purchasing substantially all of GM's assets, and leaving behind many of its liabilities with the old company ("Old GM"). One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions.

With the first TARP injection in GM, Treasury assigned responsibility for overseeing GM's restructuring to a "President's Designee" that was later formed, in February 2009 – the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to a group of Treasury officials known as the Auto Team ("Auto Team"). The existence of the Auto Team and the role they would play with GM and Chrysler Group LLC ("Chrysler") sharply contrasted with the role played by Treasury officials under other TARP programs. The auto bailout was the only TARP program with a President's Designee responsible for the restructuring of the TARP recipient. Auto Team officials would play a direct role in the decisions and operations of GM until the Auto Team disbanded in the summer of 2009, soon after both automakers' bankruptcies.

Senator Roger Wicker and Congressman John Boehner sent a letter to the Government Accountability Office ("GAO") requesting a review of five questions related to the decision that GM would top up pension payments for Delphi hourly employees beyond what the Pension Benefit Guaranty Corporation ("PBGC"), a Government-backed insurer of pensions, would pay if the pension plans were terminated, but not top up pension payments for Delphi salaried employees and related to PBGC's termination of the Delphi pensions. Former Congressman Christopher J. Lee also requested that SIGTARP work with GAO and that SIGTARP issue a separate report from GAO on one of the five questions. Congressman Michael R. Turner also requested that SIGTARP conduct a similar review after Congressman Lee left office. GAO and SIGTARP coordinated,

dividing the work into two parts that each office would address. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. To avoid duplicating GAO's work, SIGTARP did not review PBGC's decisions. The objectives of SIGTARP's audit were to determine:

- Treasury's role in the decision for GM to top up (pay the full cost of pensions less any PBGC payout) the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

In December 2011, GAO issued a report that included the statement, "GM and Treasury officials stated that Treasury's role was advisory concerning GM's decisions not to take on additional Delphi pension liabilities but to honor the top-up agreements with some unions."[1] A GAO official subsequently testified before Congress in July 2012, that "the court filings, Treasury officials, PBGC officials, GM officials stated that Treasury only played an advisory role. I would note, however, in conducting our work, we coordinated with SIGTARP, and our report focused on a broad range of things, including PBGC issues, the events leading to the termination in Treasury's role. But we did not conduct an investigation, as SIGTARP is doing, and we did not interview the former [Treasury Auto Team] officials here today."[2]

SIGTARP conducted the audit from December 2010 through August 2013, in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States.[3] SIGTARP's work was significantly prolonged by the refusal of four key former Treasury Auto Team officials working on GM's restructuring to be interviewed by SIGTARP.[4] In July 2012, Congress held a hearing on the former Treasury officials' refusals to be interviewed. In the weeks prior to the hearing, the leader of the Auto Team, Steven Rattner, agreed to be interviewed by SIGTARP. At the Congressional hearing, SIGTARP learned for the first time that the other three former Treasury officials – Ron Bloom, Harry Wilson, and Matthew Feldman – had told Congress

[1] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[2] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.

[3] For a discussion of the audit's scope and methodology, see Appendix A.

[4] Three former Treasury Auto Team officials all include their roles in GM's restructuring in their professional biographies. Ron Bloom's biography states that "he helped lead the restructuring of GM and Chrysler, and then led Treasury's oversight of the companies thereafter." Harry Wilson's biography states that "he worked as one of the four leaders of the Auto Task Force, responsible for the Treasury's role in the restructuring of GM and Chrysler. Mr. Wilson led a team that was responsible for the business and financial work of the Task Force and also led a team overseeing the financial and operational restructuring of GM, the largest in American history." Matthew Feldman's biography states that he served as Chief Legal Advisor to the Auto Task Force "assembled to help develop the overall strategy to restructure and recapitalize General Motors Corporation and Chrysler LLC, a strategy which resulted in the groundbreaking legal proceedings that implemented a comprehensive financial solution for both companies. The Auto Team conducted complex negotiations with all major constituents of both companies, including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline."

that they would agree to a SIGTARP interview. Those interviews served as a turning point in SIGTARP's work because SIGTARP could not fully determine Treasury's role without interviewing the Treasury officials involved. The former Treasury officials made it clear to SIGTARP that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring, which is what this report covers. SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

Background

According to testimony from Auto Team official Ron Bloom, in 2008, the U.S. auto industry lost 50% of its sales volume and over 400,000 jobs. Ray Young, GM executive vice president and chief financial officer ("CFO") in 2008 and 2009, told SIGTARP that in March 2008 GM started looking to identify sources of financing. Young told SIGTARP that by late 2008, it became clear that there was no source of financing and no parties were interested in investing in GM. In November 2008, GM sought Government financial support. In December 2008, Treasury, under the Bush Administration, announced TARP's Automotive Industry Financing Program with the stated goal to prevent a significant disruption to the American automotive industry that would pose a systemic risk to financial market stability and have a negative effect on the U.S. economy.

On December 31, 2008, Treasury provided $13.4 billion in TARP funds in a TARP loan to GM through the Automotive Industry Financing Program, and on January 2, 2009, Treasury provided $4 billion to Chrysler. Treasury's Loan and Security Agreement ("TARP loan agreement") required GM and Chrysler to each submit by February 17, 2009, for review and approval by the President's Designee a restructuring plan showing how they would use the TARP funds to achieve "long-term viability," which was defined as "positive net present value, taking into account all current and future costs, and can fully repay the government loan."

In summary, the TARP loan agreement with GM also laid out three conditions that needed to be met for GM to achieve and sustain long-term viability and that needed to be approved by Treasury by March 31, 2009: (1) GM was required to establish an agreement with the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"), which represented nearly all of GM's union employees, as well as an estimated 500,000 retirees, that would include reduced labor costs; (2) as part of the new agreement with the UAW, the UAW would agree that at least 50% of the approximately $20 billion obligation GM had to the UAW retiree health care trust, called the Voluntary Employee Beneficiary Association plan ("VEBA"), had to be funded with GM stock; and (3) GM would commence a voluntary offer to have its bondholders who held approximately $27 billion in debt exchange their debt for GM stock. President George W. Bush said that ensuring viability would require "meaningful concessions from all involved in the automotive industry."

On February 15, 2009, President Barack Obama convened the Auto Task Force and named Treasury Secretary Timothy F. Geithner and National Economic Council Director Dr. Lawrence Summers to serve as co-chairs.[5] Treasury created the Auto Team and the Auto Task Force delegated to it the responsibility of evaluating the auto companies' restructuring plans and negotiating the terms of

[5] The Auto Task Force had 21 members including several cabinet-level officials from across the Executive Branch.

any further assistance. Leading the Auto Team was Steven Rattner, co-founder of Quadrangle Group, a private equity firm. Ron Bloom, a former investment banker and former head of collective bargaining for the United Steelworkers of America ("USW"), served as his deputy and then the head of the Auto Team after Mr. Rattner left Treasury in July 2009. With a staff of 15 people, the other key members of the Auto Team who worked on GM's restructuring with Mr. Rattner and Mr. Bloom included Matthew Feldman, who told SIGTARP that he was brought in to be the bankruptcy lawyer for Treasury, and Harry Wilson, a former member of the hedge fund management firm Silver Point Capital. Mr. Bloom told SIGTARP that Dr. Summers and Secretary Geithner gave the Auto Team a fair amount of authority, but major decisions went to Dr. Summers and Secretary Geithner.[6]

These Auto Team officials told SIGTARP that they were directed by Treasury and the Administration to act in a "commercially reasonable" manner. There were no policies and procedures defining commercially reasonable; it was subject to interpretation.[7] Auto Team leader Rattner told SIGTARP that he interpreted the commercially reasonable approach as "if we would be doing this in the private sector and spending money on it." Auto Team official Wilson testified in a deposition that "our test had to be what a commercial buyer would do" adding, "We had a fiduciary duty to use taxpayer dollars in the most appropriate way." Auto Team official Bloom told SIGTARP that he interpreted the commercially reasonable approach as a way to "minimize taxpayer investment consistent with getting the job done and creating a viable enterprise."

Treasury's definition of long-term viability focused on GM repaying taxpayers. Auto Team officials Harry Wilson and Matthew Feldman told SIGTARP that they each believed it would take five years for GM to repay TARP. Auto Team leader Rattner told SIGTARP that the Auto Team spent a lot of time on this issue with Dr. Summers who wanted to exit as soon as possible. Auto Team Leader Rattner said the Auto Team did not know what that actually meant, but that it generally would take five to eight years to divest when a government takes a position. Former Secretary Geithner told SIGTARP that Treasury could not have a plan for how long it would own GM stock. More than four years later, GM has not fully repaid taxpayers and remains in TARP.[8]

GM's restructuring plan, submitted to Treasury in February 2009, did not plan for bankruptcy; instead it detailed the risks GM would face if it filed bankruptcy. GM's plan identified eight "key risks." One risk was that Delphi, GM's former

[6] When asked what authority was designated to the Auto Team related to GM's restructuring and what remained with Dr. Summers and him, Secretary Geithner told SIGTARP that he and Dr. Summers would sign off on consequential strategic decisions. Mr. Rattner told SIGTARP that he met with Dr. Summers and Secretary Geithner regularly, but he had little interaction or communication with the rest of the Auto Task Force.

[7] There were generally defined principles in a report from the Administration for GM to achieve greater profitability, strengthen its balance sheet, increase its competitiveness, and develop fuel-efficient cars.

[8] As of June 13, 2013, there is $9.87 billion outstanding on Treasury's TARP investment in GM. For that, Treasury owns 13.8% of GM common stock.

subsidiary and largest parts supplier, which had been in bankruptcy since 2005, had been unable to raise financing to exit bankruptcy and had underfunded the pension plans of employees who had worked at Delphi when it was part of GM.[9] GM's restructuring plan stated, "If Delphi is unsuccessful in addressing its underfunded pension plans and raising exit financing, it would represent a significant risk to the Company's revised plan."

Prior to Delphi's spinoff in 1999, all of its employees were covered by GM's pension plans, but GM had funded these pension plans at different levels. At the time of the spinoff, GM had fully funded (at 123%) the expected payments needed to cover the pension plan of Delphi salaried employees, but had underfunded (at 69%) the pension plan of Delphi hourly employees. In 1999, Delphi's three largest unions representing hourly employees negotiated pension benefit guarantees that, if Delphi could not fund its pensions, GM would "top up," or increase, pension benefit payments of the unions' hourly retirees to their full benefit levels under certain conditions (called "pension benefit guarantees," or "top-up agreements"). The three unions were the UAW, the International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers ("IUE"),[10] and the USW.[11] At the time, Delphi's salaried employees were not represented by a union or organized as a group or association, and they did not negotiate or receive top-up agreements.[12]

[9] Delphi was GM's largest supplier of automotive systems, components, and parts, and GM was Delphi's largest customer with annual purchases that ranged from approximately $6.5 billion to $10.2 billion from 2005 through 2008. The purpose of the spinoff, according to GM and Delphi executives, was to enable Delphi to establish a more competitive labor cost structure and to allow Delphi to manufacture and sell parts to other automakers.

[10] Effective October 1, 2000, the International Union of Electronic Workers merged with Communication Workers of America ("CWA"), becoming the IUE-CWA Industrial Division.

[11] When Delphi was spun off, unions represented about 95% of all Delphi hourly employees. The largest Delphi union in the U.S. was UAW, which represented roughly 72% of the hourly workforce. The other large unions were IUE and USW, which represented 24% and 4% of Delphi's unionized hourly workforce in the U.S., respectively. GM entered into a memorandum of understanding to extend the agreements with each of the unions – UAW, IUE, and USW – when they were set to expire in 2007. Through the memorandum of understanding, GM agreed effectively to extend the benefit guarantees indefinitely.

[12] Despite the fact that GM had fully funded the salaried pension plans when it spun off Delphi in 1999, by 2001, funding levels for both salaried and hourly pension plans were below 100%. From 2001 to 2005, Delphi suffered losses and the company filed for bankruptcy in October 2005. According to Delphi officials interviewed by SIGTARP, Delphi remained committed to funding the hourly and salaried pension plans in the early stages of Delphi's bankruptcy process between 2005 and 2007 and tried to preserve the plans. However, with the economic downturn in 2008, Delphi struggled to maintain the pension plans. According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities.

Treasury Plans for GM's Bankruptcy, Replaces GM's CEO, and Rejects GM's Restructuring Plan

On February 17, 2009, the day they received GM's restructuring plan, the Auto Team sent a memo to Auto Task Force chairs Dr. Summers and Secretary Geithner with "first-blush impressions" of the auto companies' restructuring plans. As for GM, the memo listed four risks: (1) underfunding of pension plans; (2) foreign subsidiaries; (3) "GM's plan includes funding to purchase certain Delphi assets, but Delphi will require other funding to exit bankruptcy, address its pension liabilities and continue operations," and the "failure of Delphi to reorganize successfully will jeopardize GM's restructuring plan"; and (4) GM's plan to reduce its dealer base versus foreign automakers' dealer bases in North America. Secretary Geithner told SIGTARP that he had no recollection of costs related to Delphi or Delphi pension top-up issues and that the Auto Team could work through Delphi issues on its own. Auto Team leader Rattner told SIGTARP that there were no significant meetings between him and Dr. Summers or Secretary Geithner related to the Delphi pensions.[13]

Before and after GM submitted its restructuring plan in mid-February 2009, Treasury's Auto Team was assessing the need for GM to file bankruptcy. In his book *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), Mr. Rattner stated that he thought bankruptcy was inevitable in December 2008, before he formally started at Treasury. Mr. Rattner stated in *Overhaul* that negotiations with unions, debt holders, and others to meet the conditions in the TARP loan agreement had "absolutely no chance of success." Internal Treasury documents indicate that most of the restructuring options under consideration by the Auto Team in February 2009 involved some form of bankruptcy. A February 2009 analysis conducted for the Auto Team by their financial consultant indicated that an out-of-court settlement had a low chance of success and that a prearranged bankruptcy had a moderate to high chance of success.

In his book *Overhaul*, Auto Team leader Rattner described briefing Secretary Geithner on February 11, 2009, on restructuring options, nearly all of which included bankruptcy. He recounted that Secretary Geithner thought bankruptcy was probably inevitable and said, "We need to put foam on the runway." An Auto Team official also told SIGTARP that when he started at Treasury, Secretary Geithner said the team should look at their role as laying "foam on the runway" during this tumultuous time, which the Auto Team official interpreted as looking for ways to soften the blow in the event of bankruptcy. Auto Team official Feldman, a bankruptcy lawyer who had key responsibility for GM bankruptcy planning, told SIGTARP, "By the end of February and beginning of

[13] An internal Treasury briefing agenda for a July 7, 2009, meeting with Dr. Summers and Secretary Geithner says "PBGC/pension," but Mr. Rattner did not recall the briefing. Secretary Geithner told SIGTARP he did not recall any discussions or briefings related to Delphi pensions.

March, I didn't know how GM would do in bankruptcy but couldn't see forward without bankruptcy."

The Auto Team worked independent of GM to prepare for a GM bankruptcy under Section 363 of the bankruptcy code. An Auto Team official testified in a deposition that 363 was selected because of speed, certainty, and the ability to leave behind liabilities that a commercial buyer would not want in the new company. Auto Team leader Rattner described the 363 sale in *Overhaul* as "the fastest possible bankruptcy," but he stated that they thought it would still take 6 to 15 months. Auto Team leader Rattner wrote in *Overhaul* that in March 2009, Auto Team official Feldman made a critical discovery to shorten GM's bankruptcy. Feldman determined that the "marketing period" typically used to identify potential asset purchasers in a 363 bankruptcy sale could be eliminated where there is only one source of financing available, which, in this instance, was the Government.

Mr. Rattner recounted in *Overhaul* that on March 19, 2009, while planning for bankruptcy, the Auto Team discovered that GM had a $1 billion payment to bondholders coming due June 1, 2009, but if Treasury allowed GM to make the payment, it would be awarding 100 cents on the dollar to bondholders who were only entitled to pennies.[14] Auto Team officials told SIGTARP that the upcoming payment would drive the date of GM's bankruptcy. Despite the Auto Team's bankruptcy planning, then-GM president and chief operating officer ("COO") Frederick "Fritz" Henderson told SIGTARP that bankruptcy was not discussed when GM met with Treasury in March 2009.

What followed was the Auto Team's direct involvement in the decisions affecting GM. Treasury's Auto Team used their financial leverage as GM's only lender to significantly influence the decisions GM made during the time period leading up to and through GM's bankruptcy.

Treasury's Auto Team Replaces GM's CEO

It was increasingly clear to the Auto Team that GM, under the leadership of then-chief executive officer ("CEO") Rick Wagoner, was unwilling to move toward bankruptcy. CEO Wagoner had been vocally and adamantly opposed to putting GM into bankruptcy and had done little to no planning for the possibility of bankruptcy. CEO Wagoner did not believe that the company could survive in bankruptcy because consumers would not purchase cars from an automaker in bankruptcy as there would be no guarantee that the company would be able to fulfill its long-term warranty obligations. CEO Wagoner believed that customers would view this as an unnecessary risk and avoid it by purchasing another

[14] Mr. Rattner stated in *Overhaul* that he told the *Detroit Free Press* that "bankruptcy is not our goal," while "all the while we were preparing for it." That interview took place March 16, 2009.

automaker's automobiles. He was concerned that a lack of consumer confidence would hurt sales needed for the company to continue to exist.

The Auto Team disagreed with Wagoner's view and believed that bankruptcy was the only path remaining for GM to succeed. On March 27, 2009, Auto Team leader Rattner called CEO Wagoner and GM then-president and COO Henderson to separate meetings. Mr. Henderson told SIGTARP that he felt Mr. Rattner was interviewing him. He was correct. Later that day, at Mr. Rattner's request, Wagoner resigned and Mr. Rattner asked Mr. Henderson to serve as CEO. Henderson told SIGTARP that GM's Board of Directors was upset by the replacement of Mr. Wagoner and felt that their authority to appoint the CEO had been usurped by Treasury. Mr. Henderson described his appointment as CEO as a "principal source of friction" between the board and Treasury. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Treasury's Auto Team Rejects GM's Restructuring Plan

Three days later, on March 30, 2009, Treasury rejected GM's restructuring plan as not viable, stating in its Viability Determination Fact Sheet, "Their best chance at success may well require utilizing the bankruptcy code in a quick and surgical way." Treasury also stated in its Viability Determination that although GM had made meaningful progress in its turnaround plan over the last few years, the progress had been "far too slow." Treasury's Viability Determination stated that the deadline had nearly passed for the three TARP-required conditions: (1) establishing a new agreement with UAW to reduce labor costs; (2) obtaining all necessary approvals for changes to the VEBA retiree health care trust, which included UAW's approval; and (3) commencing an offer to bondholders to exchange debt for equity. The Auto Team viewed these conditions as a floor, not a ceiling. Treasury also indicated other "key factors" for GM's viability, such as reducing the number of brands and dealerships, and reducing the cash cost of legacy liabilities, including employee pensions and health care costs. These were key areas of focus for Treasury's Auto Team.[15]

Additionally, in its Viability Determination, Treasury stated that GM needed a "substantially more aggressive restructuring plan" to make GM viable, gave GM until June 1 to resubmit the plan, and gave GM an additional $6 billion in TARP funds – enough working capital to continue operations over the following 60 days. GM's then-CFO Young told SIGTARP that GM executives did not know how they would obtain the financing to restructure the company and they

[15] SIGTARP previously reported on the termination of dealerships in its audit, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," released 7/19/2010.

did not know how they could shed the liabilities required by the TARP loan agreement, calling the situation "dire."

An Auto Team official told SIGTARP that broader economic considerations served as the catalyst for Treasury to offer GM the opportunity to develop a new restructuring plan. The Auto Team official told SIGTARP that GM's success or failure had "broader economic ramifications." According to that member and other Auto Team officials, the Auto Team was concerned that GM's collapse could have a cascading effect throughout the interconnected American automotive industry by causing automotive parts manufacturers and auto dealerships to fail, which could then threaten the stability of American automakers during an economic crisis. When announcing the additional TARP funds, President Obama stated, "We cannot, and must not, and we will not let our auto industry simply vanish."

Treasury's Auto Team and GM Develop a New GM Restructuring Plan

With only 60 days of funding from TARP, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement. Under the TARP loan agreement, Treasury had the right to approve or prohibit transactions over $100 million that were not in the ordinary course of GM's business or any increase in pension obligations. An Auto Team official stated in a deposition, "Obviously, under 100 million we didn't have any say, and we didn't have any ability to be asked for our consent or to stop it or do anything else." While this statement describes Treasury's legal rights, SIGTARP found that Treasury's Auto Team had significant influence over GM's decisions, even in the areas where Treasury's consent was not required under the TARP loan agreement. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Then-CEO Henderson told SIGTARP that the Auto Team was concerned about how to deleverage the company's balance sheet, and that they wanted to start from ground zero and build GM back up, restructuring everything. Then-CEO Henderson told SIGTARP, "The Auto Team from Day 1 looked at everything in detail. The Auto Team was uncomfortable with the balance sheet. Harry Wilson and the Auto Team were taking apart the plan step by step and rebuilding it step by step in Detroit."

An Auto Team official told SIGTARP the Auto Team's review was "very deep and very thorough." The same Auto Team official told SIGTARP that the Auto Team provided "direction not decisions. We were skeptical on all decisions. We had to approve the decisions, show us the data." The official told SIGTARP, "It wasn't a fight. It was a debate. We didn't involve ourselves in any day-to-day decisions." The Auto Team official told SIGTARP that he would have a call every evening at 10 p.m. with GM's then-CFO Young. The Auto Team official told SIGTARP, "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking."

Rather than merely providing advice, the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions. An Auto Team official told SIGTARP that Treasury was GM's largest lender and investor, GM's "only lifeline." Another Auto Team official testified before Congress, "While Treasury was closely involved in pressing GM management for the major changes needed to make the company profitable, we were very careful to never get involved in the specific decisions on plant closures, dealer closures, or the like. We would agree with GM on the broad strokes, which was to create a world-class auto business, and the key components of that, and they would make

the detailed decisions that needed to be made to implement those broad strokes."[16] As SIGTARP has previously reported, in its Dealership Audit,[17] in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines. Instead of gradually reducing its network by approximately 300 dealerships per year through 2014, as GM had proposed in the plan submitted to Treasury, GM responded to the Auto Team's direction by terminating the ability of 1,454 dealerships to acquire new GM vehicles and giving them until October 2010 to wind down operations. Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

As an Auto Team official explained to SIGTARP, Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. Another Auto Team official told SIGTARP that there were no instances where the Auto Team "crammed" a decision on GM, "but we were investing a lot of money, and we had the opportunity to disagree." This same Auto Team official told SIGTARP that the Auto Team did not impose ultimatums on GM. As this official told SIGTARP, "GM realized that there was no other available source of money."

An Auto Team official told SIGTARP that the Auto Team's approach with GM was to "push them" and to "question them." Another Auto Team official told SIGTARP the Auto Team "pushed GM toward making the changes necessary to become a viable company." A GM official told SIGTARP, "They [the Auto Team] were pushing us to be tougher and take more significant actions other than what we would have done on our own volition." When one Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Then-CFO Young told SIGTARP that the Auto Team was "being hard on GM and scrutinizing how much money GM needed." Mr. Young told SIGTARP that the Auto Team "was persistently pressing GM executives to cut costs." An Auto Team official told SIGTARP, "We thought GM could be viable on its own if it could reduce costs and liabilities." Auto Team leader Rattner told SIGTARP that GM officials had been too generous in the past and the Auto Team had to dial

[16] Hearing before the Subcommittee on TARP, Financial Services and Bailouts of Public and Private Programs of the Committee on Oversight and Government Reform, 7/10/2012.

[17] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce their Dealership Networks," 7/19/2010.

them back. The Auto Team specifically pressed GM to be less generous in relation to Delphi and pensions.

Cutting Costs Related to Delphi

Auto Team leader Rattner told SIGTARP that Delphi was an example of where the Auto Team was less generous than GM. According to one of the Auto Team members, Messrs. Matt Feldman and Harry Wilson took the lead on Delphi issues. Mr. Wilson testified before Congress, "Delphi was bleeding approximately $150 million in cash per month. GM was supporting Delphi because Delphi was the sole supplier for certain critical GM parts, so a Delphi liquidation would have shut down all of General Motors. This was an unsustainable proposition, both for GM, and for the American taxpayer." Mr. Wilson's view, according to an email he wrote, was that they would look to eliminate all obligations, given the staggering cost of supporting Delphi.

A GM official told SIGTARP the Auto Team's reaction was that Delphi was costly to GM, and that GM should not be assuming more liabilities than necessary. That same GM official told SIGTARP, "We did not have the leverage to tell them to pound sand." For example, in March 2009, Delphi wanted an additional $150 million from GM for operating costs and for GM to purchase Delphi's global steering business. Because this was above the $100 million threshold, Treasury's consent was required under the TARP loan agreement. The Auto Team did not consent. An Auto Team official told SIGTARP that Delphi was identified as a risk, but that "obviously we would continue to urge GM, you know, don't be irresponsible about it, be tough. Give as little as you have to, but try to help get Delphi done…you can't write a blank check." Auto Team leader Rattner told SIGTARP that GM would have continued to squander a huge amount of dollars on Delphi.

Cutting Pension Costs

According to Auto Team leader Rattner, pensions were another area where the Auto Team "encouraged" GM to cut costs. GM had a pay-as-you-go pension plan for salaried employees that was not funded and GM salaried employees and retirees wanted their full pensions, but Mr. Rattner told SIGTARP that the Auto Team wanted cuts to those benefits.

In addition to pension issues relating to GM employees, between February and May 2009, GM and the Auto Team officials discussed and analyzed GM's liabilities related to Delphi's pensions. GM officials told SIGTARP that GM needed PBGC to release liens on Delphi assets so Delphi could successfully emerge from bankruptcy.[18] According to one GM official interviewed by

[18] PBGC held liens on certain Delphi assets that, according to a Delphi official, an investor or purchaser of Delphi would want free and clear title.

SIGTARP, "Ultimately to get Delphi out of bankruptcy, we needed the [pension] plans to be terminated." PBGC officials told SIGTARP that PBGC advocated that GM go beyond the top-ups and take back (assume the full cost) of both Delphi's hourly and salaried pension plans. The Auto Team and GM identified at least three options: (1) for New GM to agree to the top-up for the Delphi hourly employees consistent with the preexisting agreements (full cost of pensions less PBGC payout) (at a projected cost of approximately $1-1.5 billion for the UAW, IUE, and USW hourly employees); (2) for New GM to take back (assume) all of Delphi's pension plans, paying all obligations under the plans without a payout from PBGC (at a projected cost of $5.4 billion); and (3) for New GM to take on no obligation to top up or take back any Delphi pension plans (zero cost).[19]

GM took the position that Treasury's consent was required. A PBGC email received by Auto Team officials stated, "In discussions with Delphi and directly with PBGC, GM has stated that it cannot assume responsibility for either the previously agreed-to hourly plan pension obligations or the Delphi's salaried plan pension obligations, as doing so would represent taking on additional pension obligations in violation of the pension covenant in GM's TARP loan." A February 2009 PBGC document stated, "Delphi believes that GM, in refusing to discuss further pension plan assumptions, may be looking to the to-be-appointed car czar [Rattner] to mandate that GM assume Delphi pensions as part of GM's continued use of TARP money."[20]

Auto Team official Feldman negotiated with PBGC on behalf of GM, which contributed to an expectation that the presence of Treasury could potentially change the outcome. Mr. Rattner told SIGTARP that having the Auto Team work directly with PBGC was viewed as more efficient because it was Government to Government. Additionally, at least one GM official told SIGTARP that GM thought there was some benefit to Treasury taking the lead on dealing with the PBGC because it was "Government agency to Government agency" and Treasury would get a better deal for GM. The presence of Treasury as a Government agency created expectations on PBGC's part that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what would have normally occurred in PBGC's negotiations with a private company and potentially save PBGC billions of dollars. A PBGC official told SIGTARP when discussing the likelihood of GM's absorption of the Delphi pension plans that "as [Treasury] got involved, we were more hopeful." In a deposition, Mr. Feldman stated that the PBGC "asked us whether we would force General Motors to take the plan on." If GM were to assume the full cost of the Delphi hourly plan, it would require Treasury's approval. There was a split

[19] This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

[20] Later, an April 17, 2009, PBGC document makes it clear that Delphi wanted the pension plans to be transferred to GM ("with support from Treasury") but that "GM contends it cannot afford the Plans, and that covenants in the Treasury loan agreement prevent GM from taking on new pension liabilities."

within the Auto Team on whether GM should assume the Delphi hourly plan, with Mr. Feldman in favor of GM assuming the hourly plan (which would go beyond the top-up), and Mr. Wilson not in favor of assuming it. The PBGC official told SIGTARP, "As it relates to the possibility of GM sucking up the hourly plan…I knew what GM's position was. It didn't have to do anything with GM. If there was any possibility that it was going to happen, it was going to come from Treasury. It would be Treasury folks because they had the right of refusal and could dictate what was going to happen."

Delphi salaried retirees and Delphi officials also hoped Treasury's presence would make a difference in whether GM would take on obligations for Delphi pensions. Treasury's Auto Team met with representatives from the Delphi salaried retirees on more than one occasion. During those meetings, the salaried retirees asked the Auto Team to consider fairness in making their pensions whole. The Auto Team also met with Delphi officials. Delphi's then-CFO John Sheehan told SIGTARP that from his perspective, GM was deferring decision making on all subjects. He also told SIGTARP, "GM wasn't in a position to dictate. Harry [Wilson] and Matt [Feldman] were the decision makers and the drivers on how this would all occur – in my view."

Treasury's Role in the Decision for GM To File Bankruptcy

SIGTARP found that Treasury's Auto Team directed GM's restructuring efforts toward bankruptcy. An Auto Team official told SIGTARP, "We didn't decide to file a bankruptcy. We decided to support a bankruptcy." That same Auto Team official told SIGTARP that GM decided to file bankruptcy and GM came to the conclusion that it could not reorganize without bankruptcy, and the question for Treasury was "do we support a GM filing or not?" While it is technically true that GM had to decide to file bankruptcy, it was the Auto Team that took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy.

GM and Treasury's Auto Team had different approaches as to how to proceed in order to create a sustainable GM. GM's executives continued to prefer a restructuring of the company outside of the bankruptcy process, while the Auto Team preferred bankruptcy. According to Auto Team leader Rattner in *Overhaul*, the Auto Team had already determined that there was no alternative to bankruptcy before rejecting GM's restructuring plan on March 30, 2009. The Auto Team's March 27, 2009, replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. Mr. Henderson told SIGTARP that his view on bankruptcy for GM was different than Wagoner's. Once Treasury replaced Mr. Wagoner with Mr. Henderson as CEO, there was a greater willingness by GM to consider bankruptcy. On April 1, 2009, as one of his first acts as the new CEO, Mr. Henderson told GM employees that bankruptcy was likely. However, despite that statement, Mr. Henderson told SIGTARP that his preferred approach was to restructure GM by completing a voluntary bond exchange – an offer proposed to bondholders to convert their debt to equity – hoping to avoid bankruptcy.

Auto Team officials first raised the prospect of an expedited bankruptcy with GM during the first week of April 2009, according to then-CFO Young. In his interview with SIGTARP, Young said the Auto Team "highly suggested" and felt "pretty strongly" that a Section 363 bankruptcy was the "best approach" because it would be quicker to complete than a normal bankruptcy that could take 9 to 12 months. Then-CEO Henderson told SIGTARP the Auto Team began to outline the 363 process for GM, with GM's 363 planning being similar to what the Auto Team was doing with Chrysler, but Chrysler was much simpler.[21] Then-CEO Henderson told SIGTARP that Treasury's view was that speed had real power, and that to do a deal in a commercial and fast way could only be accomplished with a 363 sale.

[21] Chrysler filed a 363 bankruptcy on April 30, 2009.

Then-CFO Young told SIGTARP that GM thought of bankruptcy as "Plan B." Then-CEO Henderson described "Plan A" as the bond exchange. CFO Young told SIGTARP that with the right terms on the bond exchange, GM was hoping to reduce its liabilities enough to avoid bankruptcy. An Auto Team official told SIGTARP that the Auto Team did not support the bond exchange and felt that a bond exchange alone was unlikely to restructure GM's balance sheet sufficiently to make GM viable. In fact, at least one Auto Team official told SIGTARP that he opposed GM's decision to proceed with the bond exchange. This same Auto Team official told SIGTARP that by the third week of April it was clear that GM needed to be shepherded through a prepackaged bankruptcy. The Auto Team also directed GM's restructuring efforts toward bankruptcy by discussing with GM their preference that 90% of bondholders participate in the bond exchange, which commenced on April 27, 2009. Henderson told SIGTARP that Treasury set the "level of acceptance" of the bond exchange "very high," making bankruptcy more likely.

Then-CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. GM would need to file bankruptcy by June 1, 2009, when a $1 billion bond payment came due. GM's then-CFO Young told SIGTARP that Treasury did not want to loan GM $1 billion to make this payment.

Treasury Agreed To Fund GM's Bankruptcy with $30.1 Billion from TARP, but Only for 40 Days

Treasury determined that GM would need $30 billion, but the Auto Team was concerned about giving the TARP funds in a loan that would be too much debt on GM's balance sheet, so the Auto Team proposed to senior Treasury officials that Treasury fund GM's bankruptcy with a loan that would convert to common stock ownership in New GM – the purchaser of Old GM's assets in bankruptcy. This would mean that the Government would have a substantial ownership interest in a private company. According to Rattner in *Overhaul*, the Auto Team discussed it with Lawrence Summers on May 11, 2009. Dr. Summers, Secretary Geithner, and ultimately President Obama approved an additional $30.1 billion in a TARP loan (in the form of a debtor-in-possession ("DIP") loan) that, when combined with the $19.4 billion in prior TARP injections, totaled $49.5 billion in TARP funds in GM. The TARP investment in GM would convert to 61% Government ownership of common stock in New GM.

Treasury conditioned the TARP financing on GM exiting bankruptcy in 40 days, a requirement created by the Auto Team. The TARP loan, effective on June 1, 2009, provided that the loan would default if GM failed to obtain certain bankruptcy court orders acceptable to Treasury by July 10, 2009 (40 days later). Auto Team leader Rattner has referred to GM's bankruptcy as a "quick-rinse bankruptcy." A quick-rinse bankruptcy is structured to move through legal proceedings faster than the average bankruptcy. Mr. Rattner recounted in *Overhaul* that GM hired prominent bankruptcy attorney Harvey Miller, who told Auto Team official Wilson that the timeline was "impossibly aggressive" and that "it's never been done before." GM's then-CFO Young told SIGTARP that although GM agreed that a drawn-out bankruptcy would negatively impact consumers' perceptions about GM, GM thought it would take at least two to three months to complete bankruptcy and the 40 days did not seem realistic.

SIGTARP found that Treasury conditioned giving GM $30.1 billion in TARP funds on a quick-rinse bankruptcy that would end in 40 days because Auto Team officials thought it was the best way to save the American automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. As one Auto Team official explained to SIGTARP, consumers might be cautious about buying cars from a bankrupt automaker. He told SIGTARP that "…one of the things you worry about when you buy a car is getting the car serviced." Therefore, in a lengthy bankruptcy, GM would run the risk of consumers saying, "The heck with it, I'll buy someone else's car," the Auto Team official told SIGTARP. Once the decision to have GM go into bankruptcy was made, the same Auto Team official

told SIGTARP, "It was in our interest to try to expedite the bankruptcy, if we could," given the risk of "getting in and getting stuck" in bankruptcy. Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed within the 40 days, GM risked losing its only source of financing. GM also risked losing its purchaser in bankruptcy, given that Treasury would become the majority owner of New GM. Treasury viewed the 40-day timeframe as a real deadline. One Auto Team official told SIGTARP that Treasury was willing to "walk away" rather than put in "a huge amount more. We advocated and put in a $30 billion DIP. If you let people believe you would have done anything, that number could have been multiples of that." That same Auto Team official said they tried to be "commercial." Another Auto Team official testified in a deposition that if the 40-day timeframe was not met, "We expect the company to liquidate" but "[GM] is always free to try to find alternative forms of financing."

"Cherry-picking" Assets and Liabilities

Although Treasury, through its Auto Team, had significant leverage and influence on GM's decisions and operations before the decision to file bankruptcy, Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. SIGTARP found that with their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. Then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." Another Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation.

As explained by an Auto Team official in a deposition, the 363 bankruptcy sale allowed New GM and the Auto Team to assume Old GM's assets and "cherry-pick" the liabilities that a "commercial buyer" would want and New GM would need. As that Auto Team official stated in a deposition, "It is up to the purchaser to exclude or assume liabilities." The Auto Team official further testified in the deposition, "It is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on. This same Auto Team official told SIGTARP that "our general perspective, and in general the right way to do a 363 sale as a buyer, is to assume all assets unless explicitly excluded, and to reject all – to leave behind all liabilities unless explicitly assumed." GM's then-CFO Young told SIGTARP that GM and the

Auto Team went down GM's balance sheet (including pensions and the supplier base), going over some line items in great detail.

Without policies, procedures, or guidelines interpreting how to make commercially reasonable decisions, Treasury's Auto Team made some decisions on which liabilities New GM would assume that were not commercially necessary, but the Auto Team called the decision "commercial" because it could factor into public relations and the image of New GM. One Auto Team official testified in a deposition that the Auto Team requested that GM identify "politically sensitive" liabilities. Then-CFO Young told SIGTARP that this exercise was about identifying liabilities that might present a public relations challenge if New GM did not assume them. He also told SIGTARP that assuming these liabilities conflicted with taking a strictly commercial approach because GM could operate without them. For example, the Auto Team official testified in the deposition that the Auto Team concluded that it was not commercially necessary for New GM to assume product liabilities. However, New GM assumed those liabilities because, according to the Auto Team official, failure to assume them would impact consumers' confidence in GM's products, which the Auto Team official said was a commercial basis.

In another instance, broader considerations, rather than just a commercially reasonable approach, were weighed by the Auto Team when they considered the possible closure of GM's headquarters in Detroit.[22] According to an Auto Team official, GM and the Auto Team considered moving GM's headquarters out of Detroit to its Technical Center located outside of the city because the move would consolidate GM's management operations and save money. According to Mr. Rattner's account in *Overhaul*, around May 2009, CEO Henderson told Mr. Rattner that the move would cut GM's costs and, therefore, Mr. Rattner initially supported the initiative. Nevertheless, Rattner wrote in *Overhaul* that White House and Treasury officials expressed concern about the economic impact of the move on the city of Detroit, and they retained the Detroit location.

Deals with Major Stakeholders Before Bankruptcy

According to an Auto Team official, as the buyer, Treasury determined which assets to buy and which liabilities to take on. The Auto Team established a hierarchy of importance of stakeholders and issues that had to be completed prior to GM's bankruptcy filing to ensure its success. Two liabilities that Treasury had already decided to assume were a new collective bargaining agreement with GM's union, the UAW, and an agreement with GM's bondholders. A quick-rinse bankruptcy necessitates that major stakeholders negotiate and reach consensus prior to the proceeding in order to prevent objections being filed in court by essential parties, which could delay the process. An Auto Team official told

[22] An Auto Team official told SIGTARP that the decision to retain GM's headquarters in Detroit was impacted by broader considerations.

SIGTARP that the two important stakeholders were the bondholders and the UAW. The only question was the terms of those liabilities for New GM.

An Auto Team official told SIGTARP that the strength of the negotiating parties during GM's bankruptcy and throughout labor negotiations was dictated by the leverage each group held. The looming June 1 bond payment and the 40-day time constraint on the bankruptcy limited the time for negotiation and sent a powerful message to GM and the major stakeholders. With no indication that Treasury would extend the 40 days, GM and its major stakeholders were required to reach a deal prior to bankruptcy or risk GM running out of funding and having to liquidate. Auto Team leader Rattner stated in *Overhaul* that the 40-day deadline was the financial equivalent of "putting a gun to the heads of the bankruptcy judge, GM's stakeholders, and of course Team Auto itself."

Negotiations took place on May 18-19 at Treasury headquarters and at the offices of Treasury's lawyers in Washington, D.C. According to one Auto Team official, the UAW and the bondholders were kept "in the dark" during "parallel negotiations" as deals were negotiated. According to Auto Team official Feldman's professional biography, "The Auto Team conducted complex negotiations with all major constituents of both companies [GM and Chrysler], including Fiat SpA (which now runs Chrysler), the United Auto Workers and major creditors of both auto makers under a compressed timeline." Another Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. Mr. Wilson told SIGTARP that he and Mr. Bloom "set the tenor" for the talks with the UAW, while he and Mr. Feldman "set the tone" for the talks with bondholders.

Treasury's Role in Pre-Bankruptcy Deal with GM's Bondholders

SIGTARP found that Treasury made a deal with the bondholders prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. An Auto Team official told SIGTARP that establishing a deal with the bondholders would eliminate a major risk of delay in bankruptcy court. Auto Team officials told SIGTARP that GM's bondholders had the leverage to object to and prolong GM's bankruptcy. At the time of GM's bankruptcy, bondholders held approximately $27.2 billion of GM's unsecured debt, which, according to a GM public filing, "comprise[d] substantially all of Old GM's debt and a significant majority of the total unsecured claims against Old GM." An Auto Team official explained that the bonds were owned by millions of people around the world, some bonds were 100 years old, and without a settlement before bankruptcy, it would have been painstakingly difficult to try to solicit each bondholder to approve any bankruptcy plans, which would have taken at least nine months.

Mr. Feldman, who had primary responsibility within the Auto Team for negotiating with the bondholders, told SIGTARP he worked with representatives

of GM's bondholders to reach the agreement that would reduce GM's indebtedness and clear the path for GM's quick-rinse bankruptcy, but he would not have given them everything simply to get a deal. Auto Team leader Rattner stated in *Overhaul*, "We valued the package at about 12 to 15 cents on the dollar, more than what they deserved (zero)..." CEO Henderson explained to SIGTARP that in the bankruptcy, Treasury was senior to the bondholders and the VEBA trust. If GM's bondholders agreed not to oppose GM's bankruptcy, Treasury would provide additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.[23] CEO Henderson told SIGTARP that Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. When asked whether GM was authorized to negotiate with bondholders for a larger slice of equity (stock), an Auto Team official testified in a deposition that, for matters about what capital (stock in New GM) Treasury would be willing to extend, the only one with authority was Treasury.

Treasury's Role in Pre-Bankruptcy Deal with UAW, Which Included New GM Assuming the Top-Up of Pensions

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW. The UAW had extensive leverage representing approximately 50,000 GM employees at the time of GM's restructuring – 99% of GM's unionized workforce (according to one Auto Team official). Other Delphi and GM executives, as well as Government and UAW officials, corroborated in separate interviews with SIGTARP that UAW had significant leverage due to the threat of a labor disruption. One GM official told SIGTARP, "You couldn't run this play without the agreement of the UAW." Another GM official told SIGTARP, "All you need is one missing part and it stops production. They had significant leverage… We needed the cooperation and enthusiasm of the UAW."

In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement, and the upcoming deadline for GM to file bankruptcy, gave the UAW additional leverage. The UAW understood that GM had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009, GM only had a few weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW prolonging the bankruptcy beyond 40 days, which could lead to GM liquidating. An Auto

[23] Under the proposal, New GM would issue to Old GM 10% of the common equity of New GM and warrants to purchase an additional 15% of the equity of New GM.

Team official told SIGTARP that UAW was a very major constituency that could slow down and potentially block the entire sale. The time constraint of Treasury's financing was well known to the UAW and helped give it a bargaining advantage. An Auto Team official told SIGTARP the Auto Team had "a strong preference" that GM have "a deal in place with the UAW" prior to its bankruptcy filing, adding, "And we made that known to both sides."

The Negotiations

At the May 18-19, 2009 negotiations at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C., GM's CEO Henderson and UAW's President Ron Gettelfinger sat at opposite sides of a table, with Treasury's Auto Team at the end of the table. The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee (top-up) for the former GM employees at Delphi represented by UAW. The same UAW official who had been involved in the 1999 negotiation for the top-up (and an extension of that agreement when it was scheduled to expire in 2007) was negotiating with GM in 2009.[24] That UAW official told SIGTARP that the top-up agreement had been strongly bargained for in 1999. Auto Team leader Rattner told SIGTARP the item on the term sheet showed that it was something that was important to the UAW. Mr. Rattner told SIGTARP that "the top-up was an integral item on the list of needs for the UAW." Another Auto Team official told SIGTARP that the UAW made it clear that it cared about the "Delphi matter" and so the UAW put out these "key terms" that it "expected to be part of the overall deal."

GM's then-CFO Young told SIGTARP that the UAW negotiations were only focused on those aspects of the GM-UAW relationship that were discussed in the TARP loan agreement. These were new labor costs and changing the UAW's health care trust (the VEBA) funding to be at least 50% in GM stock. An Auto Team official told SIGTARP that the 2008 TARP loan agreement gave Treasury leverage to get the UAW to the bargaining table, with Treasury's leverage as the only source of capital. Another Auto Team official told SIGTARP, "Since this was a financial matter that would eventually affect the interest of taxpayers, we had quite strong views." This same Auto Team official explained to SIGTARP that the consideration provided to the VEBA would impact the value of

[24] GM was significantly dependent on the automotive parts produced by Delphi and agreed in 2007 to assume Delphi's hourly pension plan in two tranches to help Delphi resolve its pension liability problem and facilitate its exit from bankruptcy. The initial agreement between GM and Delphi was entered into in 2007, but was "amended and restated" in September 2008. In September 2008, GM assumed the first tranche of Delphi's hourly plan participants amounting to $2.1 billion in pension liabilities. Those Delphi hourly employees whose pensions were transferred were no longer part of Delphi's hourly pension plan. GM was due to assume the second tranche, estimated at between $3.2 billion and $3.5 billion if Delphi substantially consummated its planned bankruptcy reorganization. However, because the reorganization was not consummated, the transfer did not occur. Afterward, Delphi froze and ceased funding the hourly pension plan in November 2008. Delphi froze and ceased to fund the Delphi salaried pension plan in September 2008.

Treasury's equity, "which was really what the taxpayers were going to get back for the money they put in."

Late in the negotiations, CEO Henderson broached the topic of pensions, as reported by Auto Team leader Rattner in *Overhaul*. Mr. Rattner wrote that such changes would be worth billions of dollars to GM, but that when CEO Henderson raised it, UAW's President Gettelfinger said, "We aren't going to sit in this room if pensions are on your list." Moreover, no person SIGTARP interviewed could recall any discussion of the top-up agreement at the negotiations. UAW's then-General Counsel Dan Sherrick confirmed that negotiations focused only on "big ticket items" and that "other prior agreements," including the top-up agreement, were not negotiated. Then-CEO Henderson told SIGTARP that the pressure to finish negotiations resulted in no negotiations that he could recall related to the top-up agreement.

Then-CEO Henderson told SIGTARP that the meetings with the UAW did not initially go well, and UAW turned down a Treasury-backed proposal at 11 p.m. the second day. Auto Team leader Rattner stated in *Overhaul* that the UAW rejected the proposal at 3 a.m. At the end of two days, the UAW left the negotiations at an impasse. The UAW had leverage because it knew and understood from Treasury's public statements that Treasury was committed to reorganizing GM and not letting GM fail. An Auto Team official said, "I think they thought their leverage was they knew we would prefer all things equal to reorganize GM." One GM official told SIGTARP that, when the Federal Government came into the picture, it clearly changed the dynamics because the terms of the TARP loan agreement were clearly understood by the unions and GM needed the money. According to CEO Henderson, UAW President Gettelfinger later called Auto Team official Bloom and "the deal got done." CEO Henderson thought that Mr. Bloom sweetened the deal with warrants (options to purchase stock). Auto Team leader Rattner stated in *Overhaul* that Mr. Bloom talked to Mr. Gettelfinger the next day (May 20, 2009), and two hours later, the UAW accepted the overall deal on the collective bargaining agreement.

The Deal with UAW

Consistent with Treasury's Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The top-up was never discussed in the negotiation where both GM and Treasury were present and actively negotiating. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included under the Master Sale and Purchase Agreement selling assets to New GM.[25] GM could

[25] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry

not agree to the new collective bargaining agreement (that included the top-up) on its own without Treasury's approval. The decision that New GM would honor the top-up was a joint decision by Treasury and GM, with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Mr. Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Fritz Henderson told SIGTARP that GM knew about the top-up, but that "the focus was on getting the deal done." He told SIGTARP that if the pension benefit guarantee was not assumed by New GM, there would have been a strike, and "we needed a workforce."[26] However, the pressure on GM was not only the threat of a strike, but the risk that the UAW would prolong the bankruptcy. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by New GM, it would have been "mission impossible." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long time and would have had a negative impact on the survival of GM. CEO Henderson told SIGTARP that he sought advice from bankruptcy attorney Harvey Miller regarding GM's ability to seek modifications to pensions in bankruptcy and was told that to do so would have extended GM's bankruptcy for at least six months. GM believed this was not a risk that GM could afford to take because Treasury had given no indication that it would extend financing beyond 40 days.

Treasury had the power to object to New GM taking over the top-up obligation as part of the larger agreement with the UAW, but like GM, had no desire to blow up the larger deal. Although Mr. Rattner told SIGTARP, "Left to our own devices, we would have not done the top-up," he said that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy.[27] When asked whether they could have been tougher on the UAW, an Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept" and "You do need employees to say yes and bondholders to say yes. No one thought they [GM] could survive an 18-month bankruptcy." In an interview with SIGTARP, another Auto Team official called UAW the "big dog"

employees. GM would also be allowed to use stock to replace debt for the VEBA health care trust and other concessions.

[26] UAW officials told SIGTARP that the top-up was a priority and if New GM had not honored the top-up agreement, the UAW would have objected to the bankruptcy sale and "they would have had a workforce stoppage." A UAW official indicated to SIGTARP that the threat of a strike was real.

[27] An Auto Team official told SIGTARP that Treasury assumed it would have ownership in the company and "we had to ask ourselves what is the value of an ownership stake in GM that is not making automobiles…If they don't come to work in the morning, it's tricky to make cars."

because the union represented most of GM's workforce and a failure to establish an agreement with UAW could have resulted in GM's liquidation, which the Auto Team did not want. The Auto Team official told SIGTARP, "I don't know what would have happened" and that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM.

GM Completes Bankruptcy in 40 Days Without Agreeing To Top Up Any Other Delphi Employee

During bankruptcy, the existing General Motors Corporation, Old GM, sold substantially all of its assets to a wholly new company, New GM, which emerged from GM's bankruptcy on July 10, 2009, with most of the company's debt and liabilities remaining with Old GM.[28] An Auto Team official told SIGTARP the quick-rinse bankruptcy was consistent with the Auto Team's commercially reasonable approach. However, GM CEO Henderson said to SIGTARP that, according to an assessment performed prior to the bankruptcy, Treasury overpaid for GM. GM's financial advisor determined that Treasury agreed to purchase New GM at more than New GM's "Enterprise Value." Auto Team leader Rattner acknowledged in a statement made to the press in December 2011 that Treasury may have overpaid. He reportedly stated, "We put more cash into GM than we probably needed to – and we knew this. It's part of why GM is so well-capitalized today."[29]

GM and Treasury had agreed that New GM would assume the liability for the top-up of pensions of UAW hourly retirees at Delphi. Treasury informed PBGC of the decision to top up rather than take back the full cost of the Delphi hourly pensions. According to a PBGC official, an Auto Team official notified PBGC, saying "We've done the math, and the liability associated with assumption is greater than the top-up."[30] According to an internal Treasury memorandum, on June 30, 2009, an Auto Team official informed PBGC that Treasury would not be able to provide financing support to GM in an amount sufficient to allow the continuation of Delphi's hourly pension plan, but that it was anticipated that GM's pension benefit guarantees to the hourly employees would be preserved. Treasury and GM did not agree to top up the pensions of any other Delphi retiree in GM's bankruptcy. However, after GM's bankruptcy, New GM decided to top up the pensions of certain Delphi "splinter unions" that had filed an objection to Delphi's bankruptcy.

Delphi Salaried Retirees

SIGTARP found that Delphi's salaried retirees had no leverage, other than what they hoped to be political leverage and that Treasury, as a Government agency,

[28] On June 1, 2009, GM filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 1101-1174) and conducted a court-supervised asset sale (under 11 U.S.C. § 363), in which substantially all of the operating assets of the company were sold to General Motors Company, or New GM, and most of the company's debt and liabilities remained in the possession of Motors Liquidation Company, or Old GM, which is being addressed in bankruptcy court. New GM emerged from GM's bankruptcy on July 10, 2009.

[29] *The Detroit News*, "Rattner: Bailout a 'Success,'" 12/16/2011.

[30] An Auto Team official told SIGTARP that he wanted to include the Delphi hourly employees because he believed that it would help push the Delphi bankruptcy through more quickly. He told SIGTARP that when he attempted to get consensus from GM, GM pushed back and did not want to absorb this liability.

would provide them with a top-up. Delphi salaried retirees had no active employees at GM, a critical difference between them and the UAW. They were not creditors in GM's bankruptcy because they did not have a preexisting agreement with GM to provide the pension benefit guarantee as did the UAW and other unions. In 1999, the salaried workers were not organized and did not negotiate a top-up agreement because their pensions had been fully funded by GM. Aware that they did not negotiate a top-up agreement with GM, representatives of Delphi's salaried employees told SIGTARP that there should have been consistent treatment and that they would have no problem if nobody got a top-up.

GM had taken the position in February and March 2009 that it had no preexisting obligation to the salaried employees and that the TARP loan agreement prohibited it from increasing its pension benefits without Treasury's consent, and therefore GM alone could not authorize benefits for the salaried retirees. GM's then-CEO Henderson told SIGTARP that Treasury's consent would have been necessary. When asked whether Treasury's consent was necessary to top up the salaried workers, a GM executive told SIGTARP that ultimately Treasury had to agree. The cost was also over the $100 million threshold requiring Treasury's consent.

A Delphi salaried retiree told SIGTARP, "Unlike the UAW, the only leverage we had was political. The UAW had leverage because they were building parts." Therefore, Delphi salaried retirees have pushed for action to protect their pensions by appealing to the President, members of Congress, and Treasury officials for assistance. On June 6, 2009, after a Congressman sent a letter to the President and the Auto Team appealing on behalf of the Delphi salaried retirees, GM briefly considered what, if anything, could be done to top up the pensions of Delphi's salaried retirees. On June 6, 2009, Delphi salaried retirees forwarded to then-GM CEO Fritz Henderson an email with the subject, "Congressman Lee Makes Direct Appeal to President Obama Demanding Fairness for Delphi Salaried Retirees." Immediately, CEO Henderson got in touch with Mr. Rattner, forwarding him the email. Mr. Rattner promptly emailed other members of the Auto Team and Advisor to the President Brian Deese, saying that he had had a long conversation with CEO Henderson on this and other matters. He wrote, "With respect to the Delphi retirees, [then-GM Treasurer] Walter Borst is apparently preparing some kind of proposal for how to do something for them that is defensible. Fritz seems relaxed/ambivalent. We should be hearing more about this over the next 24 hours."

Auto Team leader Rattner told SIGTARP that GM came to the Auto Team because "GM wanted to do something for the [Delphi] salaried retirees." Mr. Rattner discussed it with then-GM CEO Henderson. Although Mr. Rattner could not remember the specifics of the conversation, he told SIGTARP that he thought there was nothing defensible from a commercial standpoint that could be done for the Delphi salaried retirees. Mr. Rattner told SIGTARP, "We didn't

think there was anything defensible. We felt bad, but we didn't think it was justifiable."

GM's then-CEO Henderson told SIGTARP that he asked then-GM Treasurer Borst if there was anything that could be done for the Delphi salaried retirees. CEO Henderson told SIGTARP that Treasurer Borst told him that nothing could be done and the salaried plan was well funded when Delphi was spun off. Treasurer Borst told SIGTARP he informed CEO Henderson that GM was unable to take action. Treasurer Borst told SIGTARP, "We didn't have a benefit guarantee agreement [with the salaried retirees] like the one the hourlies had." According to CEO Henderson, the salaried plan had been fully funded at the time of the spinoff and that there was no preexisting agreement to provide the salaried retirees with a pension benefit guarantee. CEO Henderson told SIGTARP that Mr. Borst had explained that if GM found a way to fund the top-up during GM's bankruptcy, it would be as if GM had funded the plan twice. As CEO Henderson expressed to SIGTARP, "It was terrible for those who lost their benefits," but he explained that from a commercial standpoint GM had already fully funded Delphi's salaried pensions at the time of Delphi's spinoff and there was no basis to do so again. According to a Treasury document, it was estimated that Delphi salaried retirees would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

The presence of the Government changed the Delphi salaried retirees' expectations. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise." He continued, "It is wrong of our Government to take funds from everyone and give it to the few." After the decision was made not to provide a top-up for salaried employees, the President read a letter from a Delphi salaried retiree and asked his advisors for information. Lawrence Summers prepared a briefing memo to the President in August 2009; however, there was no further action.

Although Delphi salaried retirees had asked Auto Team official Bloom to consider preserving the pensions out of fairness, Auto Team official Bloom told SIGTARP that GM "did not provide a top-up to the salaried guys because I think [GM] concluded there was not a commercially reasonable reason to do it." Mr. Bloom added that GM's automotive parts suppliers "received a hundred cents on the dollar," the UAW's retirees received a number "less than a hundred, but more than the bondholders," and some got less than the bondholders. Mr. Bloom told SIGTARP that they could not make everyone whole and "That's not to say that people didn't lose a lot or [were] hurt or were treated in a way that – sort of in a human way you would say that's unfair. I don't think that anybody thinks bankruptcy is fair. It is what it is, though."

Delphi Hourly Employees Represented by Smaller Unions

SIGTARP found that although in GM's bankruptcy, GM did not assume the other top-up agreements for Delphi IUE and USW hourly employees because those unions did not have leverage, subsequently GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive. Then-CEO Henderson told SIGTARP that GM did not assume the IUE/USW pension benefit guarantees in GM's bankruptcy because there were no active IUE or USW employees at GM.[31] According to a representative of both unions, the IUE and USW knew that they had little chance of succeeding in holding up or affecting GM's bankruptcy. GM did not have any discussions with these unions prior to filing for bankruptcy. Although the unions filed objections in GM's bankruptcy, the GM bankruptcy judge dismissed their objections.[32]

From approximately July 10 to July 22, 2009, GM was negotiating with the IUE and USW, which had filed objections in Delphi's bankruptcy, had active workers at Delphi, and had told GM in the case of the IUE that representatives had asked that union to file for strike authorization.[33] Then-CEO Henderson told SIGTARP that after GM's 363 sale, there were residual issues with the IUE because the Auto Team had given parameters to GM to reduce by two-thirds post-employment benefits such as health care and pensions. Then-CEO Henderson told SIGTARP that GM had proposed a 62% reduction in employment benefits, but Mr. Rattner told them it had to be two-thirds. Given that these negotiations took place after New GM emerged from GM's bankruptcy, the Auto Team was not involved in the same way they had been, leading up to and through the bankruptcy.[34]

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[31] "They are just dramatically less relevant," Auto Team official Bloom told SIGTARP. "They didn't have nearly the same footprint and the drama that UAW had, the overwhelming majority of General Motors employees." Bloom told SIGTARP that as to those two unions, given his prior employment with USW, he made a conscious decision not to involve himself.

[32] The court ruled that New GM needed "a properly motivated work force" to succeed, which required that it "enter into satisfactory agreements with the UAW." In commenting on the other unions, the bankruptcy judge ruled, "And the Purchaser is not similarly motivated, in triaging its expenditures, to assume obligations for retirees of unions whose members, with little in the way of exception, no longer work for GM."

[33] An IUE official told SIGTARP that the union was prepared for a protracted conflict if GM had decided not to uphold IUE's top-up agreement: "Without a doubt, it would have been fought on the factory floors and in the district courts."

[34] Following the bankruptcy sale from Old GM to New GM on July 10, 2009, the Auto Team told SIGTARP that they began to shift from active daily contact with GM to a less hands-on approach. Members of the Auto Team indicated that Lawrence Summers was the principal advocate for a quick withdrawal of Government involvement in GM, an approach that was also strongly supported by Secretary Geithner. Nevertheless, Auto Team members acknowledged to SIGTARP that there were outstanding issues relating to GM that remained after the bankruptcy and for which the Auto Team still had some level of involvement. As Mr. Rattner said to SIGTARP regarding continued involvement, "We agreed with Larry Summers that there were some loose ends that we had not finished." Another Auto Team official described it as "clean up" telling SIGTARP, "While they were out, there was still stuff that needed to get finalized and implemented, *etc*…And then largely, although there was a bit of a transition period, largely we then moved into a monitoring role." Steven Rattner was one of the first to depart in late July 2009.

In July 2009, internal Government emails between the Auto Team and Advisor to the President Brian Deese discussed GM's need to address issues with Delphi's "splinter unions." Auto Team officials did not recall details related to the emails.[35] When Senator Charles Schumer took a position that GM should assume the Delphi salaried retiree pensions, Mr. Deese emailed Mr. Rattner this "may complicate the optics of doing anything for the splinters." Other emails from Mr. Deese stated, "We will continue to face intense scrutiny on this issue. The politics of terminations is quite intense" and "we need to work on a clear rationale for the outcomes we're moving toward, as well as an explanation of respective roles." Mr. Rattner emailed members of the Auto Team that he had spoken with Fritz Henderson about "our logic on the splinters, which he [Henderson] was fine with. [Auto Team Analyst] Sadiq [Malik] should speak to Janice [Uhlig][36] about the details, particularly how the reallocation of the $417mm would work." [37] Auto Team member Feldman emailed members of the Auto Team about health care/pension benefit changes for IUE and USW employees, and Mr. Deese responded that the company's organizing principle was parity between GM salaried and non-UAW hourlies. Mr. Deese referenced a discussion about health care costs and the "credible fairness arguments to augment the hourlies' recovery based on the pension disparity, but that for all the reasons we discussed that would not be possible. However, I think the logic of that conclusion strongly counsels in favor of bringing the top-up through. Otherwise, we're moving in the opposite direction from a position that we all agreed was itself on the edge of fairness."

In the emails from middle to late July 2009, Mr. Feldman told the Auto Team and Mr. Deese, "GM had separately concluded that as part of reaching a resolution with the splinters they needed to be prepared to honor the top-up." Mr. Deese later emailed the Auto Team that he told an IUE official that "this is GM's negotiation," that they should only engage in discussions if there is a "risk that GM would go substantially beyond what we had discussed with them," to which Mr. Feldman replied, "I continue to think we should stay out. We have given GM our input but this is up to GM." CEO Henderson told SIGTARP that the input Treasury gave was the two-thirds reduction.

[35] Mr. Deese may have been emailing about this matter because Mr. Bloom sent the splinter unions to Mr. Deese because of Mr. Bloom's prior employment with the USW. Also, the splinter unions met with the President on July 13, 2009, but pensions were not discussed. SIGTARP was unable to interview Mr. Deese about these emails and these events because the Administration declined to make him available for an interview because until just recently he was an advisor to the President. The Administration cited what it referred to as a long-standing practice. The Administration also did not grant SIGTARP's request for an interview with Dr. Summers, although White House Counsel advised SIGTARP that they contacted Dr. Summers and that he indicated to them that he had no specific recollection of, or involvement in, the issue of the Delphi pensions. Dr. Summers is not a current employee of the Administration.

[36] Janice Uhlig was a GM health care finance executive involved in the benefit analysis for GM.

[37] The $417 million figure related to health care costs related to the two-thirds reduction in certain costs for GM that Mr. Rattner had set for GM as a guideline during the GM bankruptcy.

Although the meaning of these Government emails is unclear, GM officials told SIGTARP that they did not know the views of Treasury or the White House. GM Associate General Counsel Frank Jaworski told SIGTARP that Mr. Feldman asked for updates on the progress of negotiations but did not express any views of the White House or Treasury. He told SIGTARP that there were no constraints or limitations placed by Treasury during the talks with the unions. Then-CEO Henderson told SIGTARP that he did not remember talking to anyone in the Administration about the top-up or that anyone put limitations or constraints on the negotiations. He told SIGTARP that he did not recall any suggestion that GM provide the top-up, or anyone at Treasury or the Administration (such as Mr. Deese) wanting GM to provide the top-up. CEO Henderson told SIGTARP that there was no pressure to provide the top-up from the Administration or Treasury.

On September 10, 2009, as part of a larger settlement agreement that also addressed retiree health care, New GM agreed to honor IUE's and USW's Delphi top-up agreements at an estimated cost of $350 million. CEO Henderson told SIGTARP that providing the top-up was necessary "to get the deal done," saying there was a clear inference that IUE could strike at Delphi, which would have shut down GM.[38] GM's then-CFO Young told SIGTARP, "If Delphi shut down, we shut down."[39] Then-CEO Henderson and another GM executive told SIGTARP that although Treasury knew about these top-ups and did not oppose them, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

[38] One GM official told SIGTARP that the unions got the agreement because liquidation of Delphi would have been a disaster for GM.

[39] GM's former CFO Young told SIGTARP that if the Delphi bankruptcy had gone on longer, it would have been difficult for GM and GM would have had to develop an alternative means to obtain parts. Delphi exited bankruptcy in October 2009.

Conclusion

The U.S. Department of the Treasury's ("Treasury") injection of Troubled Asset Relief Program ("TARP") funds in General Motors Corporation ("GM") and Chrysler Group LLC ("Chrysler") was the only bailout with a President's Designee overseeing the companies' restructurings. With the first TARP injection of $13.4 billion in December 2008, Treasury assigned responsibility over GM's restructuring to the President's Designee. In February 2009, the President designated the Presidential Task Force on the Auto Industry ("Auto Task Force"), which delegated the responsibility for GM's restructuring to four primary officials who were part of an Auto Team ("Auto Team"), three of whom worked at Treasury from February 2009 to the summer of 2009,[40] led by Steven Rattner, who was called the "car czar."[41] The existence of the Auto Team and the role these Treasury officials played sharply contrasted with the role played by Treasury officials under other TARP programs. These four Auto Team officials played a direct role in GM's decisions and operations up to and through one of the largest and fastest bankruptcies in our nation's history. A new company referred to as New GM emerged from GM's bankruptcy in July 2009, with Treasury owning 61% of its common stock on behalf of taxpayers. New GM purchased substantially all of GM's assets while leaving behind many of its liabilities.

One of the liabilities that New GM agreed to honor related to the pensions of certain former GM employees who had worked in its automobile parts division Delphi Corporation ("Delphi"), when GM spun off Delphi into an independent company in 1999. The agreement ran to Delphi employees who were paid an hourly wage (an "hourly employee") and were represented by certain unions. Delphi employees who were paid a salary (a "salaried employee") did not have an agreement for GM to pay anything toward their pensions after the 1999 spinoff. Delphi, which was GM's largest supplier of parts, had been in bankruptcy since 2005 and did not have enough money to fund its pensions. When interviewed by SIGTARP, the four Treasury Auto Team officials made it clear that the decisions made and Treasury's role related to Delphi pensions had to be viewed in the broader context of GM's restructuring.

As GM's only lender and later GM's largest investor, Treasury, through its Auto Team, had significant leverage and influence on GM's decisions leading up to and through the bankruptcy. Before and after GM submitted its restructuring plan to Treasury, the Auto Team had been assessing bankruptcy, and in February was planning (but not discussing with GM) a GM bankruptcy that would sell assets to a buyer, leaving behind many of its liabilities. The Auto Team believed this type of bankruptcy (called a "363 sale" for a section of the bankruptcy code) would be quicker than a normal 9 to 12 months bankruptcy. They were also planning this

[40] The fourth primary official continued to work on the Auto Team until the fall of 2011.

[41] The Auto Task Force was co-chaired by former Treasury Secretary Timothy Geithner and former National Economic Council Director Lawrence Summers.

type of bankruptcy for Chrysler. The Auto Team first exerted their significant influence on GM by replacing GM's CEO Rick Wagoner (who adamantly opposed bankruptcy) with Treasury's choice, Fritz Henderson, a move that GM's Board of Directors viewed as Treasury usurping their power. Mr. Henderson told SIGTARP that the Auto Team's decision to replace Mr. Wagoner with their selection sent a message to GM executives and was an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations.

Importantly, three days later, on March 30, 2009, Treasury rejected GM's restructuring plan that did not plan for bankruptcy, required a new plan signaling that GM may need bankruptcy, and injected $6 billion in TARP funds in GM – enough financial support to last 60 days. With only 60 days of funding, GM developed a new restructuring plan with significant influence and leverage from Treasury's Auto Team. The December 2008 TARP loan agreement gave Treasury the explicit right to approve transactions over $100 million and new pension obligations, but the Auto Team's influence went far beyond that legal right. One GM official told SIGTARP, "Ultimately it was that GM is not in control. And GM is totally dependent."

Although the Auto Team's role was supposed to be advisory for matters not requiring Treasury's consent under the TARP Loan Agreement, in practice it was more than advisory. SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent. One Auto Team official described Treasury as GM's "only lifeline." The Auto Team exerted the influence that came with that position. According to numerous interviews of Auto Team and GM officials, the Auto Team "was persistently pressing" and "pushed" GM to take more significant actions than GM would have done on its own, actions in line with Treasury's preferences. As SIGTARP previously reported in its prior audit, in response to the Auto Team's rejection of GM's restructuring plan and its explicit comment that GM's "pace" of dealership closings was too slow and an obstacle to its viability, GM substantially accelerated its dealership termination timelines.[42] Although the Auto Team did not tell GM which dealerships to close, GM made the decision to accelerate the dealership closings with significant Treasury influence.

An Auto Team official told SIGTARP that "There was a feeling that the Auto Team had to carefully manage GM, which would have given away Treasury's money without blinking." Another Auto Team official explained to SIGTARP that Treasury did not want to start running the company, but when dealing with taxpayer resources, "We, the Government, were ultimately holding that purse string," and Treasury reserved the right to tell GM that they would not back them. A third Auto Team official told SIGTARP that they did not cram down decisions

[42] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

on GM, "but we were investing a lot of money, and we had the opportunity to disagree." There was no need for ultimatums. As one Auto Team official told SIGTARP, "GM realized that there was no other available source of money." When an Auto Team official was asked by SIGTARP how the Auto Team conveyed their preference or nudged GM to see things the way the Auto Team saw them, given that ultimately GM could do its own thing, the Auto Team official said, "Well, they could, but then they couldn't exist. I mean, as I said, as the lender we had a fair amount of leverage."

Driven by broader concerns about the auto industry, Treasury's Auto Team directed GM's restructuring efforts toward filing for bankruptcy. The Auto Team took steps to signal to GM their strong preference for bankruptcy and bring significant influence over GM's decision to file bankruptcy. The Auto Team's replacement of GM CEO Wagoner, who did not favor bankruptcy, and the choice of Mr. Henderson as CEO, signaled the Auto Team's preference for bankruptcy and directed GM's restructuring efforts toward bankruptcy. GM CEO Henderson was open to bankruptcy but only as "Plan B." He hoped to avoid bankruptcy by getting bondholders to exchange their debt for GM stock. Despite the exchange being a condition under the TARP loan agreement, Treasury's Auto Team did not believe that the bond exchange alone would make GM viable and asserted their leverage as the primary financial support of GM. In the first week of April 2009, the Auto Team "highly suggested" to GM that they felt "pretty strongly" that a Section 363 bankruptcy was the "best approach." The Auto Team opposed GM's decision to proceed with the bond exchange and communicated to GM their preference that 90% of the bondholders participate in the exchange, a "level of acceptance" that was "very high," making bankruptcy more likely, according to then-CEO Henderson. CEO Henderson told SIGTARP that it was not clear that bankruptcy was the only option until the bond exchange failed. With a $1 billion bond payment coming due June 1, 2009, which Treasury would not fund, GM asked Treasury to fund GM's bankruptcy. Having already invested $19.4 billion in TARP funds and out of concern that a GM failure could have a cascading effect throughout the automobile industry by causing related companies to fail, Treasury agreed to fund GM's bankruptcy with a $30.1 billion TARP loan. Not wanting the TARP debt on GM's balance sheet, Treasury decided that its combined $49.5 billion in TARP loans would convert to 61% ownership of common stock in New GM, the purchaser in bankruptcy.

Treasury's Auto Team created a condition on funding GM's bankruptcy that would serve as pressure on GM and would drive pre-bankruptcy negotiations and decisions. Treasury conditioned giving GM $30.1 billion in TARP funds on a "quick-rinse bankruptcy" that would end in 40 days because Auto Team officials thought that was the best way to save the automobile industry, concerned that GM could not survive a lengthy bankruptcy and GM's failure would have broader systemic consequences. Treasury Auto Team officials deemed speed as essential and were concerned that if GM's bankruptcy was prolonged, consumers would stop purchasing GM's automobiles, and GM would likely fail. Neither Treasury

nor GM believed that the company could survive a lengthy bankruptcy; however, GM thought that the 40-day timeframe was not realistic. GM's bankruptcy lawyer told the Auto Team that the timeline was "impossibly aggressive. It's never been done." Treasury had leverage to set conditions on TARP funds, even if it was a timeframe that did not seem realistic to GM and had never been done before. If GM's bankruptcy was not completed in time, GM risked losing its only source of financing and its purchaser in bankruptcy.

Treasury's influence over GM deepened after Treasury decided to fund GM's bankruptcy and become the majority owner of New GM. With their leverage as the purchaser of GM's assets in bankruptcy, Treasury's Auto Team had significant influence on GM to make specific decisions that were in keeping with Treasury's preferences. GM's then-CFO Young told SIGTARP, "We put forward recommendations, but at the end of the day, the purchaser [Treasury] makes the final decision." One Auto Team official told SIGTARP that "We approve technically everything because we don't have to do the DIP [debtor-in-possession bankruptcy loan]. But no, not in the micro. I mean it wasn't, you know you bring us this, we approve this, we approve that. It was bring us a plan and we do a DIP or we don't do a DIP." One Auto Team official testified in a deposition that the leverage Treasury had with Old GM was that Treasury was the only buyer for GM's assets. That same Auto Team official called Treasury's leverage "considerable" because the alternative was "catastrophic," adding that he meant liquidation. One reason why the Auto Team had chosen a 363 bankruptcy sale was the ability to "cherry-pick" assets and liabilities that New GM would take on. An Auto Team official stated in a deposition, "it is my understanding that as the buyer, we get to determine which assets are, you know, assets we would buy and which liabilities" we would take on.

A quick-rinse bankruptcy requires consensus with major stakeholders, and Treasury used its significant financial leverage to get GM to reach agreement with the two stakeholders that Treasury believed could hold up GM's bankruptcy – the bondholders and the International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America ("UAW"). The 2008 TARP loan agreement required new agreements with both of these groups. Treasury made a deal with the bondholders in the weeks prior to GM filing bankruptcy because of the bondholders' leverage to object to and prolong the bankruptcy. The Auto Team was actively involved in the negotiations out of concern that the bondholders were a major risk of delaying the bankruptcy if they objected. Treasury was in a position to provide bondholders with a better recovery than under the bond exchange. This was because Treasury would own most of the equity of New GM, and, according to Henderson, equity was something only Treasury could provide. In exchange for the bondholders agreeing not to oppose the bankruptcy, Treasury gave additional consideration to Old GM during the bankruptcy proceeding, to the benefit of GM's bondholders.

Treasury's requirement in the December 2008 TARP loan agreement that GM reach a new deal with the UAW, Treasury's conditioning TARP funds on a 40-day quick-rinse bankruptcy, and UAW's leverage to stall the bankruptcy or strike pressured GM on "getting the deal done" with the UAW and resulted in New GM taking on the liability to top up the pensions of UAW's members who had worked at Delphi at the time of its 1999 spinoff from GM, increasing their pension benefit payments to their full benefit level.[43] Members of the Auto Team were actively involved in the negotiations with UAW that took place on May 18-19, 2009, at Treasury's offices and at the offices of Treasury's lawyers in Washington, D.C. One Auto Team official testified in a deposition that Treasury represented the owners of New GM in the negotiations. GM and Auto Team officials were concerned that the UAW, referred to as "the big dog" by an Auto Team official, represented 99% of GM's unionized employees and could stop production with a strike. In addition to the traditional strike leverage, the requirement in the TARP loan agreement for a new collective bargaining agreement and the Auto Team's 40-day timeframe for bankruptcy gave the UAW additional leverage. An Auto Team official told SIGTARP that the UAW was a very major constituency that could slow down and potentially block the entire sale. The Auto Team made it very clear to GM and the UAW that it was essential that they reach an agreement with UAW prior to GM's bankruptcy filing. The UAW understood that GM could not walk away from negotiations and had to reach an agreement with it to be able to survive, and those same facts put pressure on GM. Given the need for GM to file bankruptcy by June 1, 2009 when a $1 billion bond payment came due, GM only had a couple of weeks to come to an agreement with the UAW, and if they did not come to agreement, GM risked the UAW objecting to and prolonging the bankruptcy beyond 40 days, which GM believed would lead to liquidation.

The UAW came to the negotiations with a "hit list" of priority items that included New GM assuming the pension benefit guarantee ("top-up") for the former GM employees at Delphi represented by UAW. Since February 2009, the Auto Team had been analyzing options concerning the top-ups of Delphi employees and had been negotiating with the Pension Benefit Guaranty Corporation ("PBGC"), the Government entity that insures pensions. The May 2009 UAW negotiations only focused on those aspects that were discussed in the TARP loan agreement, which included GM funding retiree health care costs using New GM stock, with Treasury as the majority owner of New GM. According to Mr. Rattner's book, *Overhaul: An Insider's Account of the Obama Administration's Emergency Rescue of the Auto Industry* ("*Overhaul*"), when GM's CEO raised pensions, the UAW's president reportedly said, "We aren't going to sit in this room if pensions are on your list." At the end of two days, the UAW left the negotiations at an impasse. The UAW president called Auto Team official Ron Bloom the next day, and they made the overall deal for a new collective bargaining agreement. The

[43] Delphi was GM's largest supplier of auto parts and had been in bankruptcy since 2005.

top-up was never discussed in the negotiations where both GM and Treasury were present and actively negotiating.

The Auto Team's role in the decision to top up the pensions of Delphi's UAW workers was not advisory. Consistent with the Auto Team's practice, as with any liability, it would have been Treasury's decision as the buyer to assume or reject the liability to top up the pensions of Delphi hourly UAW employees. The Auto Team made it clear to GM that they wanted an agreement with the UAW prior to bankruptcy and the Auto Team actively negotiated and made the overall deal. Although the top-up was previously a separate written agreement, the top-up was now included as one of the obligations in the overall new collective bargaining agreement with the UAW, which was included in the Master Sale and Purchase Agreement selling assets to New GM.[44] GM could not decide on its own to agree to the new collective bargaining agreement that included the top-up because Treasury's consent was required under the TARP loan agreement and Treasury was the purchaser in bankruptcy. The decision that New GM would honor the top-up was a joint decision by Treasury and GM with Treasury deciding to approve the collective bargaining agreement with the UAW that included the top-up.

Even though the top-up was never discussed in the negotiations with the UAW, it became a foregone conclusion that it would be included in the new UAW collective bargaining agreement. Auto Team leader Rattner told SIGTARP that GM had the option of honoring or not honoring its pension benefit guarantees in bankruptcy, but GM needed UAW workers and UAW's consent was necessary for the bankruptcy. Auto Team leader Rattner and another Auto Team official told SIGTARP that, because the UAW included the top-up on their list, it was clear that the UAW expected the top-up to be part of the overall deal. Treasury had the power to object to New GM taking on the top-up obligation as part of the larger agreement with the UAW, but had no desire to blow up the larger deal. Although the Auto Team was concerned about the threat of the strike, they were also concerned with the UAW prolonging the bankruptcy. An Auto Team official told SIGTARP that not having an agreement with UAW would have been like "shooting yourself in the head," adding that it could have resulted in the liquidation of GM. Auto Team leader Rattner told SIGTARP that getting more on pensions "was a game of chicken we didn't want to play. We were under incredible time pressure." Auto Team leader Rattner told SIGTARP, "It was not a ridiculous request. And one that we could have honored and needed to honor."

Then-GM CEO Henderson told SIGTARP that the pressure to finish the negotiations resulted in no negotiation on the top-up, and although GM knew about the top-up, "the focus was on getting the deal done." CEO Henderson told SIGTARP that renegotiating the pensions in bankruptcy would have taken a long

[44] According to the UAW, it made a number of concessions in the negotiation including: elimination of performance bonuses and cost of living adjustments, reduced holidays, scaled-back overtime rules, and frozen wages for new entry employees. GM would be allowed to use stock to replace debt for the VEBA health care trust, and other concessions.

time – a risk that GM did not believe it could afford to take because Treasury had given no indication that it would extend financing beyond 40 days. CEO Henderson told SIGTARP that if the pension benefit guarantee with the UAW was not assumed by GM, it would have been "mission impossible."

Treasury's Auto Team and GM did not agree to top up the pensions of other former GM employees at Delphi, which did not have active employees at GM, and therefore had no leverage to hold up GM's bankruptcy. This included Delphi employees who were paid a salary and employees who were paid an hourly wage who were members of the IUE and USW unions. These two groups of employees had pension plans that had become underfunded. Although the hourly employees at these unions had a preexisting top-up agreement, there were no discussions regarding the top-up agreement with GM and these unions prior to GM's bankruptcy. Although in GM's bankruptcy New GM did not assume the other top-up agreements with Delphi IUE and USW employees because those unions did not have leverage, subsequently New GM agreed to top up the smaller unions because of the leverage those unions had to prolong Delphi's bankruptcy or strike, which GM believed would significantly impact its ability to survive.[45]

Delphi's salaried retirees had no leverage, other than what they hoped would be political leverage and that Treasury, as a Government agency, would provide them with a top-up. The Delphi salaried employees were not represented when Delphi was spun off. GM had fully funded (at 123%) the expected payments needed to cover the salaried employees' pension plan at the time of Delphi's spinoff and there was no top-up agreement in place. They did not have active employees at GM and were not creditors in GM's bankruptcy. They sought to use their only tool, political pressure, to improve their position in the hopes that Treasury would provide them with the same treatment as Delphi UAW employees. GM officials took the position with PBGC and Delphi, and confirmed in SIGTARP interviews, that GM did not believe it had the ability to provide a top-up for the salaried employees on its own because the TARP loan agreement prohibited GM from increasing pension benefits without Treasury's consent. The cost was also over the $100 million threshold requiring Treasury's consent. According to a Treasury document, it was estimated that Delphi salaried retirees' would lose approximately $440 million in pension benefits. A top-up would be expected to cost an equivalent amount.

[45] The interconnectedness of Delphi to GM provided the IUE and USW hourly employees leverage in Delphi's bankruptcy where these employees filed objections to the bankruptcy and threatened to strike. New GM began negotiations with the IUE and USW shortly after its emergence from GM's bankruptcy in an effort to resolve remaining issues. As part of a larger settlement, New GM agreed to top up the pensions of these workers at an estimated cost of $350 million. GM executives believed that a shutdown at Delphi could shut GM down. Given that these negotiations took place after New GM emerged from GM's bankruptcy and the Auto Team was disbanding, the Auto Team was not involved in the same way they had been leading up to and through the bankruptcy. According to then-CEO Henderson, GM did not seek Treasury's consent because the TARP loan agreement prohibiting GM from taking on new pension liabilities was between Treasury and Old GM, not New GM.

Ultimately, GM did not fail and the broader systemic consequences of a GM failure that Treasury had feared were avoided. There are two important lessons to be learned from the role that Treasury's Auto Team played.

First, the Auto Team's deep involvement and significant influence on GM's decisions leading up to and through GM's bankruptcy led to expectations that Treasury would not act as a private investor, but as the Government. PBGC had an expectation that decisions on what obligations GM would take on related to the Delphi pensions would proceed differently than what might have normally occurred, and could potentially have saved PBGC billions of dollars with Treasury involved. Also contributing to this expectation was the fact that the Auto Team negotiated with PBGC on behalf of GM related to what GM would pay on the pensions. Delphi and its workers, who had been former GM employees, also had the expectation that the Government would ensure that GM treat the pensions of all former GM employees at Delphi the same out of fairness. Also contributing to this expectation was the fact that TARP funds were being used, and that GM had taken the position with Delphi (and PBGC) that taking on additional pension obligations violated the TARP loan agreement and required Treasury's consent. A PBGC document stated that Delphi believed GM may be looking to the "car czar" to mandate that GM assume Delphi pensions as part of GM's use of TARP funds. One former Delphi salaried employee told SIGTARP that Treasury "cannot throw off the mantle of Government and make themselves into a commercial enterprise" and "it is wrong of our Government to take funds from everyone and give it to the few." However, Auto Team officials attempted to view top-ups as a private investor. An Auto Team official told SIGTARP that the Government could not make everyone whole, saying, "I don't think that anybody thinks bankruptcy is fair."

Treasury's Auto Team did not always act as a private investor and at times acted as the Government to prevent GM from failing, concerned about financial stability in the auto industry. Although the Auto Team tried to view issues through a "commercially reasonable" lens like a private investor, they often did not act as a private investor, nor should they have. Without policies or procedures to define commercial reasonableness, Treasury used commercial reasonableness as a justification for all of its actions, even when those actions were based on other concerns. For example, Treasury decided not to move GM's headquarters to save costs out of concerns over the impact on the city of Detroit. Treasury made other decisions based on broader concerns about the interconnectedness of the auto industry. No private investor holds the responsibility Treasury has to protect taxpayers and to promote financial stability in the economy. Treasury made the TARP injections in GM when, according to GM's then CFO, no other private investor would lend or invest the money that GM needed. Concerned that the TARP loans would be too much debt on GM's balance sheet, Treasury funded GM's bankruptcy and converted what would be higher priority debt to a lower priority equity ownership in New GM and, according to GM, paid more than GM's "Enterprise Value." Treasury's Auto Team took these actions based on

concerns of the consequences of a GM failure on other companies in the American automotive industry, concerns not held by private investors. Even though Treasury, through the Auto Team, tried to act as a private investor, they had considerations that no private investor would ever have had, blurring the lines between Treasury's role as the investor and as the Government.

Second, the additional leverage Treasury gave to certain stakeholders, such as the UAW, contributed to criticism of the disparate treatment between Delphi salaried and union employees. One Auto Team official told SIGTARP that the strength of the negotiating parties was dictated by the leverage they held, but SIGTARP found that additional leverage was given by Treasury. The Auto Team established a hierarchy of importance of stakeholders and issues that Auto Team officials believed had to be completed prior to GM's bankruptcy filing to ensure a successful quick-rinse bankruptcy that would be completed in 40 days. Treasury did not view the non-UAW Delphi hourly employees or the Delphi salaried employees as having leverage because they did not have current employees at GM and therefore could not hold up GM's bankruptcy.

Two liabilities that the Auto Team had already decided to assume in bankruptcy were a new agreement with the UAW and an agreement with the bondholders. The UAW had leverage because it knew and understood from Treasury that it was committed to reorganize GM and not let GM fail. Moreover, Treasury's 40-day bankruptcy condition gave the UAW and bondholders additional leverage to threaten to hold up GM's bankruptcy. They may have been able to obtain more concessions than in a traditional bankruptcy where the issues may be litigated. An Auto Team official told SIGTARP, "We had to negotiate a deal that the UAW and bondholders would accept." With Treasury's dictate of a 40-day bankruptcy and no indication that Treasury would extend that timeframe, GM officials were under pressure, believing they had to reach agreements with the bondholders and UAW prior to a June 1 bankruptcy filing or risk losing Treasury's funding and liquidating.

It is very difficult for Treasury to act as only a private investor and still fulfill its greater governmental responsibilities. Treasury entered the TARP investments as the Government, and must continue to act as the Government the whole time it holds these investments, protecting taxpayers' investment and fulfilling Treasury's responsibility to promote financial stability in the economy. An important lesson Government officials should learn from the Government's unprecedented TARP intervention into private companies is that the actions and decisions taken must represent the overarching responsibilities the Government owes to the American public.

Management Comments and SIGTARP's Response

Treasury provided an official written response in a letter dated August 9, 2013. (Full text in Appendix D). In its response, Treasury noted: (1) that the decision to top up pensions of certain hourly Delphi retirees, but not for salaried Delphi retirees, had sound commercial reasons; (2) that Treasury does not believe that the facts support the conclusions regarding the decision-making process and Treasury states that the report is based on interviews of the former Treasury [Auto Team] officials done without Treasury being present; and (3) Treasury was not given the executive summary of the report and therefore Treasury does not think they received the full draft report prior to publication.

The report highlights the multiple factors which affected the decision-making process leading up to and through the GM bankruptcy and Treasury's role in the decision to top up certain Delphi retirees. As the report makes clear, the consideration of commercial reasonableness was only one factor driving the decisions. The report's conclusions are well-supported. SIGTARP has a rigorous quality control system designed to ensure that audits are performed and reports are issued in accordance with professional standards and legal and regulatory requirements. SIGTARP's system of quality control was recently reviewed as part of the Council of the Inspectors General on Integrity and Efficiency external peer review program and assigned the highest rating. SIGTARP provided Treasury with a complete draft of the report including the conclusion. The executive summary is typically drafted after receiving Treasury's response, and is a summary of the conclusion provided to Treasury, with no new information. Therefore, Treasury was missing no information in the report.

Appendix A – Objectives, Scope, and Methodology

SIGTARP performed this audit under the authority of Public Law 110-343, as amended, which also incorporates the duties and responsibilities of inspectors general under the Inspector General Act of 1978, as amended. We initiated this audit as part of our continuing oversight of TARP and in response to a request from former Congressman Christopher J. Lee in a letter dated August 3, 2010. We later received an additional request to conduct the audit by Congressman Michael R. Turner on March 3, 2011. The requesters asked SIGTARP to conduct a review related to GM's decision to top up certain Delphi hourly retirees' pension benefits. In response, the audit's objectives were to review:

- Treasury's role in the decision for GM to top up the pension plan; and
- whether the Administration or the Auto Task Force pressured GM to provide additional funding for the plan.

The audit engagement was announced in November 2010 and we conducted our audit work from December 2010 through August 2013 in Washington, D.C., New York, N.Y., San Antonio, Texas, Chicago, Ill., Pittsburgh, Pa., and Detroit, Mich. This audit was conducted in coordination with GAO to avoid excessive duplication of efforts. GAO reviewed PBGC's termination of Delphi's hourly and salaried pension plans and other PBGC issues. The objectives of SIGTARP's audit did not involve a review of PBGC's termination of the Delphi pension plans.

SIGTARP interviewed current and former officials from GM, Delphi, UAW, IUE, USW, the Delphi Salaried Retirees Association, PBGC, and Treasury. In addition to testimonial evidence, SIGTARP reviewed documents concerning the Auto Team, GM, Delphi, UAW, IUE, USW, PBGC, and the Administration, including emails, contracts, calendar appointments, letters, memorandums, written policies, procedures, guiding principles, press releases, public announcements, and written analyses. SIGTARP also reviewed court documents, including depositions and motions, filed in the GM and Delphi bankruptcies and in litigation brought by the Delphi Salaried Retirees Association.

SIGTARP makes no recommendations in this report. Although Treasury remains invested in GM, and TARP's Automotive Industry Financing Program is ongoing, the subject matter of this report concerns specific actions taken by Treasury's Auto Team during 2008 and 2009 that are unlikely to occur again because the Auto Team disbanded.

SIGTARP conducted this audit in accordance with generally accepted government auditing standards as prescribed by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for findings and conclusions based on the audit objectives. SIGTARP believes that the evidence obtained provides a reasonable basis for the findings and conclusions based on the audit objectives.

Limitations on Data

SIGTARP generally relied upon Treasury to identify and provide relevant documentation, including email communications and other Treasury records. To the extent that the documentation provided to SIGTARP by Treasury did not reflect a comprehensive response to SIGTARP's documentation requests, SIGTARP's review may have been limited.

Use of Computer-Processed Data

SIGTARP did not use any computer-processed data to complete this audit.

Internal Controls

SIGTARP did not perform an assessment of internal controls because such an assessment was not relevant to accomplishing the audit's objectives.

Prior Coverage

SIGTARP previously performed an audit related to Treasury's Automotive Industry Financing Program and GM's restructuring, titled "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks."[46] The audit reviewed, among other things, the role the Auto Team played in GM and Chrysler's decision-making process regarding auto dealership closings.

GAO has issued two related reports. In March 2011, GAO issued a report outlining the timeline leading to the Delphi pension top-ups and in November 2011 GAO issued a testimony statement based on the March 2011 timeline.[47] In December 2011, GAO issued a report that addressed PBGC's termination of Delphi's hourly and salaried pension plans.[48] In July 2012, GAO issued an additional testimony statement.[49]

[46] SIGTARP-10-008, "Factors Affecting the Decisions of General Motors and Chrysler to Reduce Their Dealership Networks," 7/19/2010.

[47] GAO-11-373R, "Key Events Leading to the Termination of the Delphi Defined Benefit Plans," 3/30/2011. GAO also published a testimony based on its March 2011 report, GAO-12-234T.

[48] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011.

[49] GAO also published a testimony based on its March 2011 and December 2011 reports, GAO-12-909T.

Appendix B – Acronyms and Abbreviations

Acronym or Abbreviation	Definition
Auto Task Force	Presidential Task Force on the Auto Industry
Auto Team	a group of Treasury officials responsible for overseeing GM's restructuring, who reported to the Auto Task Force
CEO	chief executive officer
CFO	chief financial officer
Chrysler	Chrysler Group LLC
COO	chief operating officer
Delphi	Delphi Corporation
DIP	debtor in possession
GAO	Government Accountability Office
GM	General Motors Corporation
IUE	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers
New GM	General Motors Company – name of the company after GM's bankruptcy was completed in July 2009
Old GM	General Motors Corporation
PBGC	Pension Benefit Guaranty Corporation
SIGTARP	Office of the Special Inspector General for the Troubled Asset Relief Program
TARP	Troubled Asset Relief Program
TARP loan agreement	Treasury's Loan and Security Agreement
Treasury	U.S. Department of the Treasury
UAW	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
USW	United Steelworkers of America
VEBA	Voluntary Employee Beneficiary Association plan

Appendix C – Audit Team Members

This audit was conducted and the report was prepared under the direction of Bruce S. Gimbel, Acting Assistant Deputy Special Inspector General for Audit and Evaluation, Office of the Special Inspector General for the Troubled Asset Relief Program.

Staff members who conducted the audit and contributed to the report include Simon Galed, Jonathan Lebruto, Eric Mader, John Poirier, and Samuel Withers.

Appendix D – Management Comments

ASSISTANT SECRETARY

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 9, 2013

Christy L. Romero
Special Inspector General
for the Troubled Asset Relief Program
United States Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Re: Response to SIGTARP's Draft Report: "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees"

Dear Ms. Romero:

Thank you for the opportunity to review the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) draft report of June 28, 2013 titled "Treasury's Role in GM's Decision To Provide Pension Payments to Delphi Employees." This letter provides Treasury's official response to the report.

The report makes clear that GM's decision to provide supplemental pension benefits, or "top-ups," to certain Delphi hourly retirees, but not to do so for salaried retirees, was driven by sound commercial reasons. The draft report highlights a number of important facts in this regard that we have previously noted. Specifically, the report confirms:

- In 1999 GM spun off Delphi, an important auto parts supplier, into a separate company.
- At that time, the Delphi hourly pension plan was underfunded, whereas the Delphi salaried plan was fully funded.
- Also at that time, certain Delphi hourly employees negotiated for, and GM agreed to provide, pension top-up benefit guarantees so that those hourly employees were entitled to full pension benefits regardless of whether Delphi could fund them.
- Delphi salaried employees did not negotiate for, nor did they ever receive similar top-up benefit guarantees from GM.
- Following the 1999 spin off, the participants in the Delphi salaried pension plan no longer worked for, nor had any other connection to, GM.
- The UAW, which represented many of the participants in the Delphi hourly pension plan,

represented the vast majority of GM's workforce in 2009 when GM was trying to complete a restructuring.

- GM negotiated a new collective bargaining agreement with the UAW as part of that restructuring in which the UAW agreed to a number of wage and benefit concessions.

Therefore, GM treated the participants in the Delphi hourly and salaried pension plans differently because they were differently situated:

- GM honored the 1999 contractual obligation to certain Delphi hourly employees who were represented by the UAW for sound commercial reasons—to achieve overall labor cost reductions and ensure that it had a properly motivated workforce.

- In contrast, GM never had a contractual obligation to top-up the salaried retirees' pension benefits and there was no valid commercial justification for granting one in 2009. Topping up the salaried pension plan would have been equivalent, as SIGTARP highlights, to GM paying for the salaried pension plan twice.

Nevertheless, the report makes a number of judgments and characterizations, particularly with regard to the decision-making process, that we do not believe to be supported by the facts stated above, or any others in the report. In this regard, much of the report is based upon interviews with individuals where no Treasury representative was present. Several of the former Treasury officials that you interviewed have told us that certain quotes attributed to them in the report are inaccurate or taken out of context, and that the report's characterizations of the decision making process are inconsistent with their recollections of what happened. Lastly, Treasury was not given the full draft report prior to publication—the executive summary was omitted, for example.

While the bankruptcies of GM and Delphi have required painful sacrifices from all stakeholders, including the employees and retirees of each company, this Administration – as well the prior Administration – made the right choice to support the American auto industry. The actions taken brought needed stability to the auto industry and helped save more than a million American jobs. In addition, all three U.S. auto manufacturers are now operating at a profit – something that had not occurred since prior to the financial crisis in 2004 – and the auto industry is now putting thousands of Americans back to work, reversing some of the employment declines in years past.

Thank you once again for the opportunity to review and comment on the report. We look forward to continue working with you in the future.

Sincerely,

Timothy G. Massad
Assistant Secretary for Financial Stability

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SIGTARP Hotline

If you are aware of fraud, waste, abuse, mismanagement, or misrepresentations associated with the Troubled Asset Relief Program, please contact the SIGTARP Hotline.

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By Fax: (202) 622-4559

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1801 L Street., NW, 3rd Floor
Washington, D.C. 20220

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Bio for Christy Romero

Christy L. Romero is Special Inspector General for the Office of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP).

Ms. Romero was nominated as Special Inspector General by President Barack Obama on February 1, 2012; confirmed by the United States Senate on March 29, 2012; and sworn into office on April 9, 2012.

Prior to being sworn into office, Ms. Romero was Deputy Special Inspector General at SIGTARP, a position she had held since February 2011. Between 2009 and 2011, Ms. Romero served as the Chief of Staff of SIGTARP. From July 2010 through September 2010, she served as Acting Deputy Special Inspector General, and from March 2011 through October 2011, she served as Acting Special Inspector General.

Ms. Romero joined SIGTARP from the U.S. Securities and Exchange Commission (SEC), where, from December 2007 through August 2009, she served as counsel to SEC Chairman Mary Schapiro and Chairman Christopher Cox. From 2003 through 2007, as an attorney in the SEC Division of Enforcement, she investigated financial fraud, insider trading, and other violations of the securities laws.

Prior to joining the SEC, Ms. Romero was a litigator specializing in financial restructuring at the law firms of Akin Gump Strauss Hauer & Feld; Snell & Wilmer; and Jenner & Block. She also clerked for the Honorable Robert C. Jones, United States Bankruptcy Judge for the District of Nevada, and for the Ninth Circuit Bankruptcy Appellate Panel.