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MINORITY CHIEF COUNSEL

August 13, 2012

The Honorable Joshua Gotbaum
Director
Pension Benefit Guaranty Corporation
1200 K Street, N.W.
Washington, D.C. 20005

Dear Director Gotbaum:

As Chairman of the House Committee on Ways and Means, I am writing to request documents relating to your agency's involvement in the decision to fully fund and protect the pension benefits of unionized retirees from Delphi, but not those of salaried retirees of the same company.

As General Motors Company's (GM) primary lender in bankruptcy, the Department of the Treasury (Treasury) played a significant role in helping GM resolve the Delphi bankruptcy. Treasury has claimed in testimony and court filings that it had no substantial role in the decision to deny 20,000 salaried retirees of Delphi the full pension they were promised and worked hard to earn. However, documents obtained from the Pension Benefit Guaranty Corporation (PBGC) pursuant to the Freedom of Information Act (FOIA) and recently published raise questions about the full extent of Treasury's involvement in the decisions that ultimately picked winners and losers among Delphi's retirees. Due to the apparent unfairness of this outcome, and in keeping with the Administration's public commitment to transparency, it is imperative that PBGC make plain whether political concerns affected decision-making in this matter.

Pursuant to the attached instructions, please provide the records described below by no later than September 7, 2012. Public logs of FOIA requests made to PBGC reveal that documents related to Delphi pensions have been requested and produced, albeit with content redacted or withheld based on exemptions provided under FOIA; Congressional requests are not limited by FOIA exemptions or common law privileges. Given that the PBGC has already undertaken similar searches for responsive documents in this matter, it should be able to produce all documents sought here without limitation or delay. For the period of January 1 through December 31, 2009 provide:

All records, including but not limited to electronic mail to or from PBGC, the Departments of Treasury, Labor and Commerce, and the Executive Office of the President of the United States that relate to:

1. Delphi; and/or
2. GM's interest in Delphi.

If you have any questions, please contact Committee staff at (202) 225-5522.

Sincerely,

Dave Camp
Chairman
Committee on Ways and Means

Attachment

House Committee on Ways & Means
Document Production Instructions

1. In complying with this request, you shall produce all responsive records that are in your possession, custody, or control.

2. Records responsive to the request shall not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.

3. In the event that any entity, organization or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request shall be read also to include them under that alternative identification.

4. Each record produced shall be produced in a form that renders the record capable of being copied.

5. When you produce records, you shall identify the paragraph or clause in the Committee's request to which the records respond.

6. Records produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when this request was issued. To the extent that records were not stored with file labels, dividers, or identifying markers, they shall be organized into separate folders by subject matter prior to production.

7. Each folder and box shall be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, shall be provided in an accompanying index.

8. It is not a proper basis to refuse to produce a record that any other person or entity also possesses a non-identical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer back-up tape), you shall consult with Committee staff to determine the appropriate format in which to produce the information. Documents produced in electronic format shall be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Records produced in an electronic format shall also be produced in a searchable format.

10. In the event that a record is withheld on any basis, you shall provide the following information concerning the document: (a) the reason the record is not being produced; (b) the type of record; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other. Note that Congressional requests are not limited by FOIA exemptions or common law privileges.

11. If any record responsive to this request was, but no longer is, in your possession, custody, or control, you shall identify the record (stating its date, author, subject and recipients) and explain the circumstances by which the record ceased to be in your possession, custody, or control.

12. If a date or other descriptive detail set forth in this request referring to a record is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you shall produce all records which would be responsive as if the date or other descriptive detail were correct.

13. This request is continuing in nature and applies to any newly-discovered record. Any record not produced because it has not been located or discovered by the return date shall be produced immediately upon location or discovery subsequent thereto.

14. All records shall be bates-stamped sequentially and produced sequentially.

15. Records shall be delivered to 1136 Longworth House Office Building. You shall consult with Committee staff regarding the method of delivery prior to sending any material.

16. Upon completion of the document production, you shall submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all records in your possession, custody, or control which reasonably could contain responsive documents; and (2) all records located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

Definitions

1. The term "records" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, whether classified or unclassified, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone calls, meeting or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "records in your possession, custody, or control" means (a) records that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) records that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) records that you have placed in the temporary possession, custody, or control of any third party.

3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.

4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is in any manner whatsoever pertinent to that subject.