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Report to Congressional Requesters

December 2011

DELPHI PENSION PLANS

GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits

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Highlights

Highlights of GAO-12-168, a report to congressional requesters

Why GAO Did This Study

The Pension Benefit Guaranty Corporation (PBGC) terminated the underfunded six qualified defined benefit (DB) plans of the Delphi Corporation, a former subsidiary of General Motors (GM), in July 2009. Given questions about how PBGC came to terminate the plans, whether treatment for certain Delphi workers was preferential, and the role of the U.S. Department of the Treasury (Treasury) in these outcomes, GAO was asked to answer the following questions:

(1) What precipitated PBGC's decision to terminate Delphi's plans and what was Treasury's role, if any?

(2) What actions did PBGC take to secure Delphi domestic and foreign assets as part of its recovery process?

(3) Why will certain Delphi employees receive reduced pension benefits and others will not?

(4) What information was communicated to employees about the termination of their plans?

GAO issued a timeline of key events leading to the plans' termination in March 2011 (GAO-11-373R). To examine the issues more fully for this report, GAO analyzed additional information from PBGC, Treasury, GM, Delphi, and Delphi employee groups and unions, and interviewed representatives from those organizations. For comparison purposes, GAO also reviewed the termination and recovery processes for all ten firms with the largest termination claims from plans trusteed by PBGC.

Treasury's comments generally agreed with GAO's findings and conclusions.

View GAO-12-168. For more information, contact Barbara Bovbjerg at 202-512-7215 or bovbjergb@gao.gov.

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What GAO Found

As a result of the termination of Delphi's pension plans in July 2009 and statutory benefit limits, many Delphi retirees will receive less from PBGC than their full benefit promised by Delphi. However, some of those experiencing statutory reductions will still receive their full benefits because of union agreements with GM. With respect to PBGC's role in the process, the steps taken to terminate the plans and reduce some benefits according to statutory limits are consistent with PBGC's usual actions when terminating large plans.

- PBGC's decision to terminate the plans was ultimately precipitated by the apparent lack of a viable sponsor, impending foreclosure on Delphi's assets, and the prospect of increased losses for PBGC and the plans that would occur upon liquidation. Similar factors were often at play in PBGC's decisions to terminate other large plans we reviewed.
- PBGC used its authority under the law to file liens and negotiate recoveries of corporate assets on behalf of Delphi's plans. Although PBGC ultimately recovered only about 6 percent of the total unfunded benefit liabilities in these plans, this ratio falls within the range of recovery ratios for other large terminated plans we reviewed.
- Among the Delphi plan participants PBGC had reviewed as of June 2011, just under half of both hourly and salaried plan participants received reductions in their promised benefits due to the application of statutory benefit limits. While initial estimates indicate a higher proportion of Delphi retirees have been subject to the guarantee limits compared with retirees of most other large terminated plans, PBGC expects Delphi's higher proportion to decline once all benefit calculations are finalized.
- Delphi sent required communications to employees concerning deteriorating plan funding, and PBGC sent communications concerning plan termination and its impact on participants' benefits.

However, the role that GM played in the process was more unusual. Some Delphi hourly plan participants are protected from benefit losses caused by statutory limits because GM agreed to "top up" potential benefit losses for certain Delphi union employees. These agreements were renewed and upheld at numerous points in Delphi's history, including by the "new GM" established in July 2009. Because of these agreements, about 60 percent of the participants in the hourly plan will have any statutory reductions in their benefits restored by GM. Other hourly employees, as well as all employees in Delphi's salaried plan and the other smaller plans. were never covered by comparable top-up agreements.

Although acknowledging the significant role Treasury played in GM's restructuring, 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. Similarly, PBGC officials stated that PBGC independently made the decision to terminate the plans. Still, in response to a prior GAO recommendation, Treasury revised its reporting policy to increase transparency on its activities related to the auto industry. GAO believes that the most effective means of addressing concerns about Treasury's multiple roles regarding pensions is also through such increased transparency.

Contents

Letter		1
	Background	3
	Threat of Increased Losses Led PBGC to Terminate Delphi Pension Plans	10
	PBGC Pursued Claims on Delphi's Assets, Resulting in between $600 Million and $650 Million in Recoveries	21
	Many Delphi Retirees Are Subject to Benefit Reductions and Only Certain Hourly Retirees Are Protected by Union Agreements with GM	28
	Both Delphi and PBGC Provided Delphi Employees with Information	35
	Concluding Observations	38
	Agency Comments and Our Evaluation	39
Appendix I	Single-Employer Firms with the Largest PBGC Claims for Terminated Plans (1975 through 2011)	41
Appendix II	Number and Percentage Delphi Retirees with Reductions in ERISA Benefits Due to Guaranteed Benefit Limits (as of June 1, 2011)	42
Appendix III	Allocation of Plan Assets and Recoveries to Unfunded Nonguaranteed Benefits	43
Appendix IV	Comments from the Department of the Treasury	48
Appendix V	GAO Contact and Staff Acknowledgments	50
Related GAO Products		51
Tables		
	Table 1: Terminated Delphi Defined Benefit Plans, as of July 31, 2009	6

Table 2: Types of Guaranteed Benefit Limits under ERISA 7
Table 3: Number and Percentage of Delphi Retirees Subject to Reductions in Estimated Benefits Due to ERISA Limits (as of June 1, 2011) 29
Table 4: Allocation Priority Categories (PC) 44
Table 5: Comparison of Allocation of Plan Assets and Recoveries among Plans of Firms with 10 Largest Claims 45

Figures

Figure 1: Who Is Bearing the Cost of Delphi Pension Plans' Unfunded Liabilities 20
Figure 2: PBGC Asset Recoveries in Delphi's Bankruptcy 25
Figure 3: Distribution of Asset Recoveries by PBGC in Delphi's Bankruptcy 27
Figure 4: Number of Delphi Employees Covered by GM Top-Ups, by Plan 34
Figure 5: Status of Benefits for Participants from Delphi's Hourly and Salaried Plans (as of June 2011) 35

Abbreviations

AIFP	Automotive Industry Financing Program
DB	defined benefit plan
DIP	debtor-in-possession
DSRA	Delphi Salaried Retiree Association
ERISA	Employee Retirement Income Security Act of 1974
GM	General Motors
IUE	International Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, AFL-CIO
MSR	mutually satisfactory retirement
PBGC	Pension Benefit Guaranty Corporation
UAW	International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America
USWA	United Steelworkers of America

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United States Government Accountability Office
Washington, DC 20548

December 15, 2011

Congressional Requesters

The Pension Benefit Guaranty Corporation (PBGC), the government corporation that insures private-sector defined benefit (DB) plans, terminated the six plans of Delphi Corporation (Delphi) in July 2009.[1] The plans were estimated to be underfunded by a combined $7.2 billion at termination, of which PBGC expects to cover about $6 billion.

Since the termination, there has been controversy over different pension benefit outcomes for certain unionized and non-unionized Delphi retirees. Further, the involvement of the U.S. Department of the Treasury (Treasury) in the bankruptcy of General Motors (GM), Delphi's former parent company, raised questions for some regarding the role that Treasury played in PBGC's decision to terminate Delphi's pension plans and the resulting outcomes for Delphi plan participants. Given these concerns, you asked us to answer the following questions:

1. What precipitated PBGC's decision to terminate the plans and what was Treasury's role, if any?

2. What actions did PBGC take to secure Delphi domestic and foreign assets as part of its recovery process?

3. Why will certain Delphi employees receive reduced pension benefits and others will not?

4. What information was communicated to employees about the termination of their plans?

In March 2011, we issued a report providing a timeline of key events related to the Delphi plan terminations in which we provided information about some of these issues.[2] To address the issues more fully for this

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[1]A DB plan promises a benefit that is generally based on an employee's years of service and, often, compensation as well. The employer is generally responsible for funding all or most of the benefit, investing and managing plan assets, and bearing the investment risk.

[2]GAO, *Key Events Leading to the Termination of the Delphi Defined Benefit Plans*, GAO-11-373R (Washington, D.C.: Mar. 30, 2011).

report, we conducted additional analysis of PBGC documents, such as benefit estimates, actuarial reports, internal documents on the termination decision and on asset recovery, and reports from PBGC's Office of Inspector General. We also conducted follow-up interviews with PBGC officials to clarify information from the documents. To explore further Treasury's role in the termination of Delphi's pension plans, we reviewed publicly available documents, such as Treasury officials' depositions and other legal documents, including those related to pending litigation,[3] and conducted additional interviews of GM, Delphi, and the Delphi Salaried Retiree Association (DSRA). We reviewed relevant e-mails provided by PBGC and DSRA.[4] We also interviewed union, GM, Delphi, and DSRA officials to obtain their perspectives on plan termination, asset recovery, benefit determination, and communications, as well as analyzed additional documents related to these issues from these groups, including data from GM about benefit guarantees they have paid or expect to pay to former Delphi employees.

To provide benchmarks and comparative examples, we also gathered data about other terminated plans from PBGC's list of firms with the ten biggest termination claims in PBGC's history. (Delphi is number two on this list, behind United Airlines.)[5] For example, to provide context for how PBGC pursued recoveries for Delphi, we reviewed the recovery process for all nine of the other firms on this list, and identified the allocation of recoveries across priority groups for all plans with more than 5,000 participants (18 of the 29 plans these firms sponsored). We did not examine PBGC's actions to date to value Delphi's assets, as this effort is

[3]Delphi Salaried retirees are in litigation against PBGC regarding termination of Delphi's pension plans. Black v. PBGC, No. 2:09-cv-13616 (Bankr. E.D. Mich. filed Nov. 5, 2009). In September 2011, the court dismissed the retirees' claims against Treasury and Treasury officials. Order Granting Defendant United States Department of the Treasury, Presidential Task Force on the Auto Industry, Timothy F. Geithner, Steven L. Rattner, and Ron. A. Bloom's Reviewed Motion to Dismiss, No. 09-13616 (E.D. Mich. Sept. 1, 2011). It is GAO policy to avoid taking a position or addressing claims that are currently in litigation. This review was structured to avoid influencing or interfering with the litigation and this report does not address the legal issues involved in the litigation.

[4]The Special Inspector General for the Troubled Asset Relief Program (SIGTARP) is conducting an audit of Treasury's role in GM's decision to provide top-ups for certain hourly workers, including whether the Administration or Treasury pressured GM to provide additional funding for the hourly plan. SIGTARP has not announced when it expects to complete this audit.

[5]See appendix I for a summary description of PBGC's 10 largest terminations.

still ongoing. PBGC's Office of Inspector General has recently reported on deficiencies in PBGC's efforts to value assets for two other firms on the top-10 list: National Steel and United Airlines.[6] According to the Inspector General's office, the contractor identified as having conducted the valuation of assets for both the National Steel and United Airlines terminations is not the contractor conducting the valuation of assets for Delphi.

We conducted this work between April 2011 and December 2011 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We found the data from PBGC and GM sufficiently reliable for the purpose of helping us answer our research questions, and we believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Delphi-GM History

Delphi was a global supplier of mobile electronics and transportation systems that began as part of GM and was spun off as an independent company in 1999.[7] At that time, Delphi established two pension plans, with assets and liabilities transferred from their GM counterparts: the Delphi Hourly-Rate Employees Pension Plan (hourly plan) and the Delphi Retirement Program for Salaried Employees (salaried plan). When Delphi was spun off from GM in 1999, GM was required to collectively bargain with the affected unions—including International Union, United Automobile, Aerospace, and Agricultural Implement Workers of America (UAW); the International Union of Electronic, Electrical, Salaried, Machine

[6]PBGC Office of Inspector General Evaluation Report, *PBGC's Plan Asset Audit of National Steel Pension Plans Was Seriously Flawed* (OIG Eval-2011-10/PA-09-66-1, Washington, D.C.: Mar. 30, 2011); "Letter to Chairman Miller of The Committee on Education and Labor Regarding PBGC Termination of United Airlines Pension Plans" (LTR-2010-10, Washington, D.C.: Jul. 20, 2010); and *PBGC Processing of Terminated United Airlines Pension Plans Was Seriously Deficient,* (OIG, Eval-2012-05/PA-10-72, Washington, D.C: Nov. 30, 2011).

[7]For a more detailed treatment of this history, see GAO-11-373R.

and Furniture Workers, AFL-CIO (IUE);[8] and the United Steelworkers of America (USWA); as well as other "splinter" unions.[9] As a result of these negotiations, GM agreed to provide a retirement benefit supplement (referred to as "top-ups") to "covered employees" with UAW, IUE, or USWA (but not the splinter unions), should the Delphi hourly plan be frozen or terminated.[10] Covered employees included those who had been represented by these unions as GM workers and now as Delphi workers with no break in employment or seniority as of May 28, 1999. Salaried employees and hourly employees not in the three unions were not covered by top-up agreements.

Over the period 2001 to 2005, Delphi suffered large losses, and the company filed for Chapter 11 bankruptcy in October 2005, although it continued to operate.[11] Beginning in the fall of 2008, economic conditions deteriorated throughout the auto industry, affecting both Delphi and GM. GM's deteriorating financial condition in the fall of 2008 led the company to seek assistance from Treasury through the Automotive Industry

[8]Effective October 1, 2000, IUE merged with the Communications Workers of America to become the Industrial Division of CWA (IUE-CWA); for the purposes of this report, we continue to refer to this entity as the IUE.

[9]The splinter unions include the International Association of Machinists and Aerospace Workers; International Brotherhood of Electrical Workers; Michigan Regional Council of Carpenters, Local 687 and Interior Systems, Local 1045; International Brotherhood of Painters and Allied Trades of the United States and Canada, Sign & Display Union Local 59; International Brotherhood of Teamsters; International Brotherhood of Boilermakers; International Union of Operating Engineers; and United Catering Restaurant Bar & Hotel Workers.

[10]The top-up agreements were originally set to expire in October 2007. In June 2007, GM, Delphi, and UAW entered into a memorandum of understanding (MOU) extending the GM benefit guarantee for Delphi UAW workers, which would be enforceable if benefit accruals for future credited service in the Delphi hourly plan were frozen and if the plan were terminated. On August 5, 2007, GM and Delphi entered into a MOU with Delphi IUE, and on August 16, 2007, with Delphi USWA, providing the same top-up guarantee as the Delphi UAW MOU.

[11]Failing entities choose to go through Chapter 11 of the Bankruptcy Code when they hope to reorganize and stay in business rather than liquidate and go out of business. 11 U.S.C. §§ 1101-1174.

Financing Program (AIFP).[12] As a condition of receiving this assistance, GM was required to develop a restructuring plan to identify how the company planned to achieve and sustain long-term financial viability. In April and May 2009, Treasury worked with GM to develop a restructuring plan through the Presidential Task Force on the Auto Industry and its staff. On June 1, 2009, GM filed for bankruptcy and sought the approval of the bankruptcy court for the sale of substantially all of the company's assets to a new entity ("new GM").[13] After the sale of the assets in July 2009, new GM began operating with substantially less debt and Treasury received 60.8 percent equity and $2.1 billion in preferred stock in the new GM, and a $6.7 billion GM debt obligation.

Soon after, PBGC terminated Delphi's six DB plans (Delphi having acquired four more since the spin-off from GM), effective July 31, 2009, with almost 70,000 participants (see table 1). According to PBGC, as of the termination date, the Delphi plans were underfunded by approximately $7.2 billion, of which PBGC insurance would cover an estimated $6.0 billion. In October 2009, after 4 years in bankruptcy, Delphi completed its reorganization when Delphi Automotive LLP ("new" Delphi), a United Kingdom limited partnership, purchased most of Delphi's assets and GM purchased 4 other Delphi sites. "Old" Delphi became DPH Holdings Corp., an entity set up to sell or dispose of any remaining assets.

[12] In December 2008, Treasury established AIFP under the Troubled Asset Relief Program (TARP) to help stabilize the U.S. automotive industry and avoid disruptions that would pose systemic risk to the nation's economy. TARP was authorized under the Emergency Economic Stabilization Act of 2008 (EESA), Pub. L. No. 110-343 div. A, 122 Stat. 3765 (codified as amended at 12 U.S.C. §§ 5201-5261). EESA originally authorized Treasury to purchase or guarantee up to $700 billion in troubled assets. § 115(a), 122 Stat. 3780. The Public-Private Investment Program Improvement and Oversight Act of 2009 amended EESA to reduce the maximum allowable amount of outstanding troubled assets under EESA by almost $1.3 billion, from $700 billion to $698.741 billion. Pub. L. No. 111-22, § 402, § 402(f), 123 Stat. 1656, 1658. EESA requires that the appropriate committees of Congress be notified in writing when the Secretary of the Treasury, after consultation with the Chairman of the Board of Governors of the Federal Reserve System, determines that it is necessary to purchase other financial instruments to promote financial market stability. § 3(9)(B), 122 Stat. 3767 (codified at 12 U.S.C. § 5202(9)(B)).

[13] Throughout this report, in cases where a distinction is important, we refer to the pre-bankruptcy entity as "old GM" and the new one that purchased its operating assets as "new GM." Prior to bankruptcy, old GM's legal name was General Motors Corporation. The legal name of the new entity created in July 2009 was General Motors Company. As of October 19, 2009, General Motors Company became General Motors LLC.

Table 1: Terminated Delphi Defined Benefit Plans, as of July 31, 2009

Plan	Number of participants
Delphi Hourly-Rate Employees Pension Plan (hourly plan)	47,176
Delphi Retirement Program For Salaried Employees (salaried plan)	20,203
Packard-Hughes Interconnect Non-Bargaining Retirement Plan	1,383
ASEC Manufacturing Retirement Program	533
Packard-Hughes Interconnect Bargaining Retirement Plan	165
Delphi Mechatronic Systems Retirement Program	148

Source: Pension Benefit Guaranty Corporation (PBGC).

ERISA Guarantee Limits, Benefit Determination

PBGC was created as a government corporation by the Employee Retirement Income Security Act of 1974 (ERISA)[14] to help insure the retirement income of U.S. workers with private-sector defined benefit plans. Under PBGC's single-employer insurance program, if a company's pension plan has inadequate funds to pay all promised benefits, plan sponsors meeting certain criteria can seek to terminate a plan through a "distress" termination.[15] Under certain circumstances, PBGC may also decide to terminate an underfunded plan.[16] In all these situations, PBGC is generally appointed trustee of the plan, as provided under ERISA, and assumes responsibility for paying benefits to the participants.

PBGC pays participants' benefits only up to certain limits set forth by ERISA and related regulations. Participants whose benefits under the plan would otherwise exceed these statutory limits may have their benefits reduced to the guaranteed amount, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either in part or

[14]Pub. L. No. 93-406, 88 Stat. 829 (codified, as amended, at 29 U.S.C. §§ 1001-1461).

[15]At least one of the following criteria must be present in order for PBGC to approve a distress termination: (1) liquidation in bankruptcy (Chapter 7) or insolvency proceedings; (2) reorganization in bankruptcy (Chapter 11); (3) inability to pay debts while in business without terminating a plan; or (4) unreasonably, burdensome pension costs caused solely by a decline in workers covered by the plan. 29 U.S.C. § 1341(c)(2)(B).

[16]29 U.S.C. § 1342(a).

in full. These guarantee limits include the phase-in limit, the accrued-at-normal limit, and the maximum limit, as illustrated in table 2.[17]

Table 2: Types of Guaranteed Benefit Limits under ERISA

Maximum limit[a]	Phase-in limit[b]	Accrued-at-normal limit[c]
• The guaranteed benefit cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. • In 2009 (the year Delphi's plans were terminated), the maximum was $54,000 per year for a person retiring at age 65 and with no survivor benefit (that is, a single-life annuity). • The maximum is lower for those retiring under age 65 or with a survivor benefit.	• The guaranteed benefit cannot include any benefit increase implemented through a plan amendment that was made within 1 year of the date of the plan termination. • For benefit improvements that became effective more than 1 year but less than 5 years prior to the plan's termination, the guaranteed amount is the larger of 20 percent of the benefit increase or $20 per month of the increase for each full year the increase was in effect.	• The monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. • The portion of any combined early retirement benefit and supplemental benefit that exceeds the normal retirement age straight life annuity is not guaranteed.

Source: ERISA, PBGC's implementing regulations, and related documents.

[a]29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2011).

[b]29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2011).

[c]29 C.F.R. § 4022.21 (2011).

Determining participants' benefit amounts following plan termination is a complex process. It begins with PBGC gathering extensive data on plans and individuals' work and personnel histories, and determining who is eligible for benefits under a plan, which can be more complicated if the company or plan has a history of mergers or elaborate structure or is missing data. It requires understanding plan provisions that vary from plan to plan and can be voluminous, applying the ERISA guarantee limits to each individual's benefit, valuing plan assets and liabilities, and determining which participants may receive additional benefits from any assets PBGC may recover from the sponsor. Final determination of benefits can take years, especially in a large, complex plan.[18] If the participant is already retired, or retires before the process is complete,

[17]For more details on how these limits affected Delphi participant benefits, see appendix II.

[18]For more information on PBGC benefit determination, see GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments* (GAO-09-716; Washington, D.C.: Aug. 2009).

PBGC makes payments to the retiree initially based on an estimate of the final benefit amount. Once the process is complete, PBGC notifies each participant of the final benefit amount through a "benefit determination letter."

PBGC Finances and Governance

As of September 30, 2011, PBGC insured the benefits of about 44 million workers and retirees in more than 27,000 private DB plans. PBGC receives no funds from general tax revenue and is financed by premiums paid by DB plan sponsors, investment income, and assets that PBGC acquires when it assumes control of a plan.[19] As of the end of fiscal year 2011, PBGC had terminated and trusteed a total of 4,300 plans, and its net accumulated financial deficit totaled $26 billion.[20] Additionally, at fiscal year-end, PBGC's estimate of total plan underfunding in plans sponsored by financially risky single-employer program companies totaled approximately $227 billion, up significantly from $170 billion the year before.

PBGC is governed by a three-member board of directors consisting of the Secretaries of the Treasury, Labor, and Commerce, who are responsible for establishing and overseeing the policies of the agency.[21] According to PBGC, PBGC's director is responsible for managing PBGC's day-to-day operations, including, according to PBGC, such decisions as whether and when to terminate particular pension plans.[22] We designated PBGC's single-employer pension insurance program as "high risk" in 2003, including it on our list of major programs that need urgent attention and transformation.[23] In 2007 and 2008, we reported that PBGC's board had

[19]29 U.S.C. § 1305.

[20]PBGC's net accumulated financial deficit equals the total liabilities of the single employer program and the financial assistance unlikely to be repaid from the multiemployer program, less total assets in both programs.

[21]29 U.S.C. § 1302(d) and (f) and 29 C.F.R. § 4002.3 (2011).

[22]ERISA specifies that in carrying out PBGC's functions, PBGC is to be administered by its director. 29 U.S.C. § 1302(a).

[23]*GAO, Pension Benefit Guaranty Corporation Single-Employer Insurance Program: Long-Term Vulnerabilities Warrant 'High Risk' Designation,* GAO-03-1050SP (Washington, D.C.: July 2003).

limited time and resources to fulfill its responsibilities.[24] The program, along with PBGC's other insurance program, remains high risk due to an ongoing threat of losses from the terminations of underfunded plans.

Treasury's Multiple Roles

In previous reports, we also have examined the challenges posed to Treasury due to its multiple roles as a private pension regulator[25] and a GM shareholder, as well as having its Secretary serve on the PBGC board.[26] In its role on PBGC's board and as a pension regulator, Treasury has an interest in protecting the viability of private defined benefit pension plans and the retirement incomes of plan participants. But as a GM shareholder, Treasury has an interest in the financial well-being of GM. Recognizing the potential for interested parties to perceive possible conflicts, we reported that Treasury has taken several steps to mitigate this risk. For example, the department adopted core principles to guide its oversight of its investments under TARP and limit its involvement in day-to-day operations of companies. The department also has taken steps to establish a protective barrier between Treasury officials who make policy-related decisions with respect to investments in the automakers and the Treasury officials who are responsible for regulating pensions or overseeing the operations of PBGC. Nevertheless, we noted that the tensions inherent in Treasury's multiple roles remained.[27] In one previous report, we concluded that Treasury's investment in the auto companies created an enhanced need for transparency, and we recommended that

[24]GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight,* GAO-07-808 (Washington, D.C.: July 2007); GAO, *Pension Benefit Guaranty Corporation: Need for Improved Oversight Persists,* GAO-08-1062 (Washington, D.C.: September 2008).

[25]The Internal Revenue Service (IRS), within Treasury, oversees the tax qualified status of pension plans. 26 U.S.C. § 401(a).

[26]See GAO, *Troubled Asset Relief Program: Automaker Pension Funding and Multiple Federal Roles Pose Challenges for the Future*, GAO-10-492, (Washington, D.C.: April 6, 2010); GAO, *Troubled Asset Relief Program: The U.S. Government Role as Shareholder in AIG, Citigroup, Chrysler, and General Motors and Preliminary Views on its Investment Management Activities*, GAO-10-325T (Washington, D.C.: Dec. 16, 2009); GAO, *Troubled Asset Relief Program: Status of Efforts to Address Transparency and Accountability Issues*, GAO-09-296 (Washington, D.C.: Jan. 30, 2009); and GAO, *Troubled Asset Relief Program: Additional Actions Needed to Better Ensure Accountability, Integrity, and Transparency*, GAO-09-161 (Washington, D.C.: Dec. 2, 2008).

[27]For more on this topic, see GAO-10-492, pp. 42-45.

Treasury should regularly communicate to Congress about TARP activities to ensure accountability and provide added assurances that the taxpayers' investment is being appropriately safeguarded.[28] In a subsequent report, we reiterated this recommendation, and noted that by providing a more complete picture of the companies' financial performance, Treasury also could help mitigate potential or perceived tensions in its multiple roles.[29] Although Treasury had initially expressed concerns about disclosing proprietary information in a competitive market, it agreed to provide information on its oversight of the companies' performance that balances the need for transparency with the need to protect certain proprietary business information.[30]

Threat of Increased Losses Led PBGC to Terminate Delphi Pension Plans

PBGC's decision to terminate the Delphi DB plans was precipitated by Delphi's inability to fund or maintain its plans and by the threat of increased losses from Delphi's impending loan default and possible liquidation. Treasury, as GM's primary lender in bankruptcy, played a significant role in helping GM resolve the Delphi bankruptcy to arrive at the "best resolution" from GM's perspective.[31] However, with regard to GM's decisions regarding the assumption of Delphi's plans and top-up agreements, Treasury played an advisory role only, according to GM and Treasury officials. Similarly, according to PBGC officials, PBGC independently decided to terminate the Delphi plans. The documents we reviewed, including GM and Delphi SEC filings and PBGC internal records, are consistent with these statements.

[28]GAO, *Troubled Asset Relief Program: Continued Stewardship Needed as Treasury Develops Strategies for Monitoring and Divesting Financial Interests in Chrysler and GM*, GAO-10-151 (Washington, D.C.: Nov. 2, 2009). Specifically, we recommended that Treasury report to Congress on how it planned to assess and monitor GM's and Chrysler's performance to help ensure the companies are on track to repay their loans and to return to profitability.

[29]GAO-10-492.

[30]Because of Treasury's concerns about disclosing proprietary information in a competitive market, Treasury responded to our recommendation by providing GAO, as a congressional oversight body, with information on how it was using sensitive business information to oversee the companies' performance. This approach was consistent with our recommendation that noted the need for transparency to be balanced with protecting certain propriety information.

[31]Deposition of Matthew Feldman, Black v. PBGC, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

PBGC Initially Focused on Delphi or Another Company Continuing the Plans

PBGC officials said the agency would have preferred to have Delphi emerge from bankruptcy and continue to sponsor the plans rather than terminate them. Delphi had announced in March 2006 that a key objective in restructuring was to continue to sponsor both the hourly and salaried DB plans. Therefore, PBGC's activities were focused on allowing the plans to continue after Delphi exited bankruptcy and having a reorganized Delphi continue to fund the plans. While PBGC has authority under ERISA to involuntarily terminate a plan that fails to meet certain conditions,[32] PBGC officials said that they hoped that avoiding termination would save both the agency and plan participants from potential losses from unfunded plan benefits.

The vision was not realized, however. The Delphi bankruptcy court confirmed Delphi's reorganization plan in January 2008, but on April 4, 2008, Delphi's investors retracted an offer that would have executed the plan and prevented the termination of its pension plans. Delphi also negotiated with GM, Delphi's former parent company, to assume Delphi's hourly plan, but these efforts were only partially successful. Under a change to an agreement initially negotiated between the companies in 2007, GM would assume the hourly plan in two phases; this would reduce Delphi's overall pension liabilities and make it more attractive to investors, while Delphi would continue sponsoring the salaried plan. After making some changes to the agreement, the first phase occurred in September 2008, transferring approximately $2.1 billion in net liabilities from Delphi to GM. However, the second phase, in which GM would have absorbed substantially all of the remaining hourly plan liabilities, was conditional on Delphi successfully reorganizing.[33] In July 2009, after Delphi's attempts to reorganize failed, and with GM in its own bankruptcy, GM decided not to take on the remaining liabilities of Delphi's hourly plan. According to representatives of GM, after it was clear Delphi would not be able to reorganize, Delphi asked GM to take the salaried plan as well; however, GM declined.

[32]Under ERISA, PBGC has authority to involuntarily terminate a plan that fails to meet minimum funding standards, will be unable to pay benefits due, failed to make quarterly contributions, or is reasonably expected to increase long term losses to PBGC if not terminated. 29 U.S.C. § 1342(a).

[33]Delphi also agreed that the reorganized Delphi would provide GM with up to a $2.055 billion administrative claim.

Lack of a Willing Sponsor and the Risk of Additional Losses Prompted PBGC to Terminate

By 2009, PBGC determined that the economic decline and the collapse of the U.S. auto industry had diminished the likelihood that Delphi, GM, or another company would be able and willing to sponsor Delphi's plans. Moreover, it became apparent to PBGC officials that PBGC's potential losses could grow if it waited. Delphi net sales, already on a steady decline since 2003, had fallen 50 percent between 2008 and 2009, and funding for Delphi's plans had been eroding since 2007.[34] Delphi's largest customer, GM, amidst the lowest per-capita vehicle sales in 50 years, requested financial assistance from the U.S. government in December 2008. These conditions diminished the likelihood that Delphi would be able to continue operating and maintain its pension plans.

According to PBGC officials, the likelihood that Delphi would default on its debtor-in-possession (DIP) loan, and the potential impact on PBGC recoveries, moved them in April 2009 to decide to terminate the Delphi plans. Delphi's SEC filing that month stated that Delphi's short-term loan from its DIP lenders was due to expire, and that extension of the loan was conditional on Delphi (1) delivering the lenders terms, agreed to by Treasury and GM; and (2) finalizing GM's contributions to the resolution of Delphi's bankruptcy. The filing noted that failure to meet these terms would trigger a requirement that Delphi make a $117 million repayment obligation on April 20. With Delphi unlikely to make this payment, it was possible that the lenders would foreclose on Delphi assets held as collateral. Foreclosure would have threatened PBGC's ability to recover Delphi Corporation assets on behalf of its plans, which would in turn have increased PBGC's and Delphi plan participant losses from plan termination. With a deteriorating auto industry and no foreseeable sponsor for the Delphi plans, and with potential recoveries threatened, PBGC concluded that the agency's long-run loss would increase if the plans were not terminated.

Ultimately, however, PBGC postponed termination. The urgency to terminate in April, was reduced after Delphi's DIP lenders offered PBGC a 5-business day notice prior to foreclosing, fearing, according to PBGC,

[34]Different estimates, done on different dates and using different methodologies intended for different purposes, measured varying degrees of funding in Delphi's salaried plan. According to Delphi, the salaried plan was 53.7 percent funded as of year-end 2008 and was still 53.7 percent funded as of the date of plan termination on July 31, 2009. DSRA, based on an actuarial evaluation by Watson Wyatt, reported the salaried plan was 85.6 percent funded as of October 1, 2008. PBGC measured salaried plan funding at 48 percent as of termination on July 31, 2009.

that termination of Delphi's pension plans would reduce Delphi's value. In a June 1, 2009, press release, Delphi stated that the hourly plan would "be addressed" by GM and that PBGC "may" terminate the salaried and four smaller plans. According to Treasury, PBGC later confirmed that GM was not an alternative sponsor for the Delphi hourly plan. On June 30, 2009, a meeting took place between PBGC and Treasury to discuss the Delphi plans; according to PBGC, Treasury informed PBGC officials that GM would not assume the remaining Delphi hourly pension liabilities. Finally, on July 15, 2009, Delphi's DIP lenders gave PBGC a notice of foreclosure under the April agreement. With no willing and viable sponsor, PBGC officials expected the plans would be abandoned with no sponsor to pay benefits as they came due. On July 22, 2009, PBGC announced that Delphi's plans would be terminated. The termination date was set to be July 31, 2009, and PBGC officially became the trustee of the plans on August 10, 2009. Delphi's claim was the second largest in PBGC's history, following United Airlines as the largest.

Our examination of PBGC termination decisions for nine of its ten largest insurance claims (Delphi's being the tenth) shows the agency making assessments similar to those it made for the Delphi pension plans. In each case, we found that PBGC evaluated the future viability of the plans when making such decisions. For example, PBGC considered the likelihood of the company securing investment or more generally exiting bankruptcy as the plan's sponsor, or, alternatively, of an asset purchaser assuming the plan. PBGC also assessed future plan funding. For example, staff recommended termination of Weirton Steel's plan expecting that plan funding would soon decline. Weirton Steel, pursuing two tracks to exit bankruptcy, both of which assumed plan termination, filed an emergency motion seeking court approval to lay off 175 management employees, which would have triggered additional benefits totaling up to $270 million. PBGC expected the layoffs to significantly reduce the funding of Weirton's already underfunded pension plan and terminated the pension plan before the plan's funding was affected.

Treasury Was Involved as GM Determined How Best to Resolve the Delphi Bankruptcy

As GM's primary lender in bankruptcy, Treasury played a significant role in helping GM resolve the Delphi bankruptcy in terms of GM's interests. Treasury's guiding principle was to see the bankruptcy resolved with the least possible amount of investment by GM while still preserving GM's supply chain. However, with regard to GM decisions about the Delphi pension plans—their sponsorship and the decision to honor existing top-up agreements—court filings and statements from GM and Treasury officials support that Treasury deferred to GM's business judgment.

According to Treasury officials, Treasury agreed with GM's assessment that the company could not afford the potential costs of sponsoring the Delphi hourly plan. With regard to the top-ups, Treasury officials said that while Treasury did not explicitly approve or disprove of GM's agreement to honor previously negotiated top-up agreements with some unions, it agreed that GM had solid commercial reasons to enter into such agreement. Similarly, PBGC officials have maintained that their agency's decision to terminate the Delphi plans was made independent of input from Treasury.

Decisions Related to Plan Sponsorship

From Treasury's initial discussions about Delphi's pensions with PBGC in April 2009 until after GM's bankruptcy filing on June 1, 2009, Treasury had anticipated that Delphi's salaried pension plan would be terminated by PBGC, but that GM would assume the remaining portion of Delphi's hourly plan, as called for in phase 2 of the September 2008 agreement. With respect to the salaried plan, according to Treasury officials, Treasury agreed with GM's rationale not to assume the now underfunded Delphi salaried plan, since that plan had been fully funded when GM transferred it to Delphi in 1999.[35] With respect to the hourly plan, however, a Treasury official's deposition indicates that Treasury thought it was reasonable for GM to assume the Delphi hourly plan for UAW-represented workers, given the UAW's continuing role with the new GM and the fact that the hourly plan, which covered both the UAW and other union-represented workers, had not been fully funded at the time the plan was transferred from GM to Delphi in 1999.[36]

According to our review of the records, Treasury was involved in discussions with PBGC and GM prior to GM's bankruptcy filing, on how to address Delphi's pensions. Specifically, according to the Treasury official's deposition, initial discussions with PBGC, GM, and Treasury in

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[35]According to data provided by Delphi, based on a fair market valuation of plan assets the Delphi salaried plan was 108.8 percent funded as of year-end 1998 and 122.7 percent funded as of year-end 1999. ("Fully funded" means that as of a particular date, plan assets equal or exceed the relevant measure of plan obligations.) However, for the typical pension plan invested in a mix of stocks and bonds, measures of funded status can be highly volatile, so that a plan that is fully funded on one date could be substantially less than fully funded on a subsequent date

[36]According to the deposition, Treasury was not focused on the other unions' plans at this time but was concerned about UAW because of UAW's role for new GM. According to data from Delphi, the hourly plan was 69.1 percent funded as of year-end 1999, measuring assets on a fair market value basis.

April and May 2009 centered on trying to reach an agreement under which, among other things, the Delphi salaried plan would be terminated and GM would assume the hourly pension plan. According to the deposition, as of May 28, 2009, there was a general agreement with PBGC that, if GM had been willing to take on the hourly plan, the salaried plan would be terminated and PBGC would have an administrative claim on the Delphi bankruptcy. In exchange, PBGC would release the liens on Delphi's foreign assets and have an unsecured claim for an undefined amount. According to PBGC officials, there were discussions in April and May 2009 around the topic of how to deal with Delphi's pension plans in light of the collapse of the auto market and growing concerns about Delphi's inability to maintain its pension plans and imminent liquidation, as well as GM's own financial difficulties and impending bankruptcy. However, PBGC officials told us that at this time, they had not reached any agreement with GM or Delphi regarding the future of the Delphi pension plans or settlement of PBGC liens and other claims that might arise from the termination of one or more of Delphi's pension plans.

According to court filings, GM officials first informed Treasury that they had concerns about taking on the hourly plan and had not built the cost of doing so into its restructuring plan on June 3, 2009—shortly after GM's bankruptcy filing. In June 2009, GM developed and provided Treasury with an assessment of the costs of Delphi's pensions, which explained that the restructuring plan did not assume the transfer of remaining Delphi hourly or salaried plans. The assessment also stated that, subject to certain conditions, GM was obligated to absorb the second transfer of Delphi's hourly plan but did not expect Delphi to meet those conditions.[37] GM also noted that it was not obligated to absorb Delphi's salaried plans. After reviewing GM's calculations and engaging in discussions with GM's pension team, Treasury agreed with GM's assessment that taking on the Delphi hourly plan was a "3 billion dollar liability that General Motors could not afford."[38] In a legal brief, Treasury has asserted that the department

[37]The assessment added that the since the first transfer in September 2008, the unfunded liability for the remainder of Delphi's hourly plan had increased from $1.5 billion to approximately $3.2 to 3.5 billion as of March 31, 2009

[38]Upon termination in July 2009, PBGC calculated that the hourly plan underfunding totaled $4.4 billion.

did not dictate what should be done with the Delphi pensions and that Treasury agreed with GM's decisions.[39]

According to PBGC, Treasury did not play an active role in PBGC's decision to terminate the Delphi plans, although the Secretary of the Treasury is one of PBGC's three PBGC board members. Specifically, according to PBGC officials, PBGC's director informed the board of PBGC's decision to seek termination of the Delphi plans, gave the board advance notice of its subsequent implementation of that decision, and routinely kept the board informed of the agency's actions in the Delphi bankruptcy case, consistent with PBGC's practice in other large cases. The law gives the board responsibility to establish and oversee PBGC policies,[40] but according to PBGC, the board decides broad policy issues that may arise from cases without getting involved directly in those cases. For their part, Treasury officials acknowledged that the department had multiple roles in this process by virtue of its roles in PBGC oversight and in managing the U.S. investment in new GM, but noted that Treasury does not communicate with PBGC about its GM investment activities.[41] Moreover, in response to questions from Congress, the Treasury Secretary stated that Treasury did not make the decision to terminate Delphi's pension plans.[42]

Decisions Related to Top-Up Agreements

Although GM decided not to assume the second installment of Delphi's hourly plan, it did decide to honor existing top-up agreements for commercial reasons that Treasury found reasonable. As noted in a Treasury official's deposition, during GM's bankruptcy process, GM was prepared to honor the obligation of providing top-ups to Delphi UAW retirees, while the situation was less clear regarding comparable agreements with IUE and USWA. GM officials told us that the company agreed to honor the top-up agreement with the UAW during its restructuring because of its dependence on the union, whose members

[39]Mot. Def. U.S. Dep't Treas,., Pres. Task Force on Auto Indus., Timothy F. Geithner, Steven L. Rattner, Ron. A. Bloom, Dis., or Alt. Summ. J. at 24, Black v. PBGC, No. 2:09-cv-13616-AJT-DAS (E.D. Mich. Feb. 16, 2010).

[40]29 U.S.C. § 1302(d) and (f).

[41]GAO-10-492.

[42]The Federal Bailout of AIG: Hearing before the House Committee on Oversight and Government Reform, 111th Cong. (2010) (answers to questions for the record from Timothy Geithner, Secretary of the Treasury).

made up a substantial part of GM's workforce. GM agreed to provide top-ups to the Delphi UAW retirees as part of GM's master sale and purchase agreement, to which Treasury gave its approval.[43] The agreement did not include top-ups for IUE and USWA-represented employees, nor for the splinter unions or the salaried employees, who had no previous top-up agreements with GM.

While new GM maintained that it was not obligated to provide top-ups to Delphi IUE and USWA retirees, it did have reason to want to resolve Delphi's bankruptcy, given GM's reliance on Delphi for parts.[44] Moreover, IUE and USWA, which still represented part of Delphi's workforce, needed to give their consent to finalize the sale of assets in Delphi's bankruptcy. According to a GM official's court declaration, a prolonged cessation in the supply of parts from Delphi to GM would have had a "devastating effect on GM, its ability to reorganize, and the communities that depend on employment by GM and its community of parts

[43]In re General Motors Corp, 407 B.R. 463, 481 (Bankr. S.D.N.Y. 2009) (Decision on debtor's motion for approval of (1) sale of assets to Vehicle Acquisitions Holdings LLC; (2) assumption and assignment of related executory contracts; and (3) entry into UAW retiree settlement agreement). The master sale and purchase agreement outlined, among other things, the assets being sold by old GM to new GM and the liabilities being assumed by new GM from old GM.

[44]According to a July 2009 declaration of a GM official, since the spin-off from GM, Delphi was GM's largest component parts supplier, accounting for approximately 11.3 percent of GM's North American purchases and 9.6 percent of GM's global purchases in 2008. Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain assets of Delphi Corp., (II) Related agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof, at 4, In re General Motors Corp., No. 09-50026 (Bankr. S.D.N.Y. July 8, 2009).

suppliers."[45] According to a Treasury official's deposition, Treasury was kept apprised of GM's ongoing bargaining with IUE and USWA on a variety of issues, including the top-ups.[46] Additionally, according to Treasury officials, Treasury's consent for transactions greater than $100 million, which had been required prior to GM's bankruptcy, was not required of new GM and therefore, was not required when the settlement agreement was signed, 2 months after new GM began operations. Negotiations resulted in an agreement, on September 10, 2009, between new GM, old GM, IUE, and USWA that, among other things, honored the top-ups to the retirees of Delphi who were represented by these unions and who were covered by the 1999 top-up agreements. According to the agreement, the parties entered into it after consideration of the factual and legal arguments regarding these issues, as well as the costs, risks, and delays associated with litigating these issues.

Although Treasury officials said that Treasury did not explicitly approve or disapprove of GM providing top-ups to the Delphi UAW, USWA, and IUE retirees, Treasury did subsequently comment on GM's decision. In a legal brief, Treasury stated that GM had solid commercial reasons for providing the top-ups.[47] Specifically, Treasury stated that its aim in negotiating the details of GM's reorganization plan was to ensure that new GM would assume only those liabilities of old GM that were "commercially

[45]Declaration of Randall L. Pappal in Support of Debtors' Motion for Entry of Order Approving (I) Master Disposition Agreement for Purchase of Certain assets of Delphi Corp., (II) Related agreements, (III) Assumption and Assignment of Executory Contracts, (IV) Agreement with PBGC, and (V) Entry into Alternative Transaction in Lieu Thereof at 4, In re General Motors Corp., No.09-50026 (Bankr. S.D.N.Y. July 8, 2009). The declaration stated that Delphi was a sole-source, just-in-time supplier of many critical parts to GM, including parts that are used in almost every GM product line in North America and identified several ways that a cessation of parts delivery by Delphi could affect GM, including that (1) most parts that Delphi manufactures for GM are not readily available from an alternate source, and while GM could accelerate efforts to resource Delphi parts in the event of a supply interruption, the sheer magnitude of the parts to be resourced and revalidation required would take at least several months to achieve; (2) because GM operates on a just-in-time inventory delivery system, GM plants relying on just-in-time shipments may run out of inventory of such parts and have to shut down within a matter of days, if Delphi ever ceased shipping even a small fraction of production parts to GM; and (3) the shutdown of GM plants as a result of termination of deliveries of affected parts from Delphi could idle tens of thousands of GM workers, significantly decrease GM's revenues, and increase GM's costs to expedite resourcing efforts.

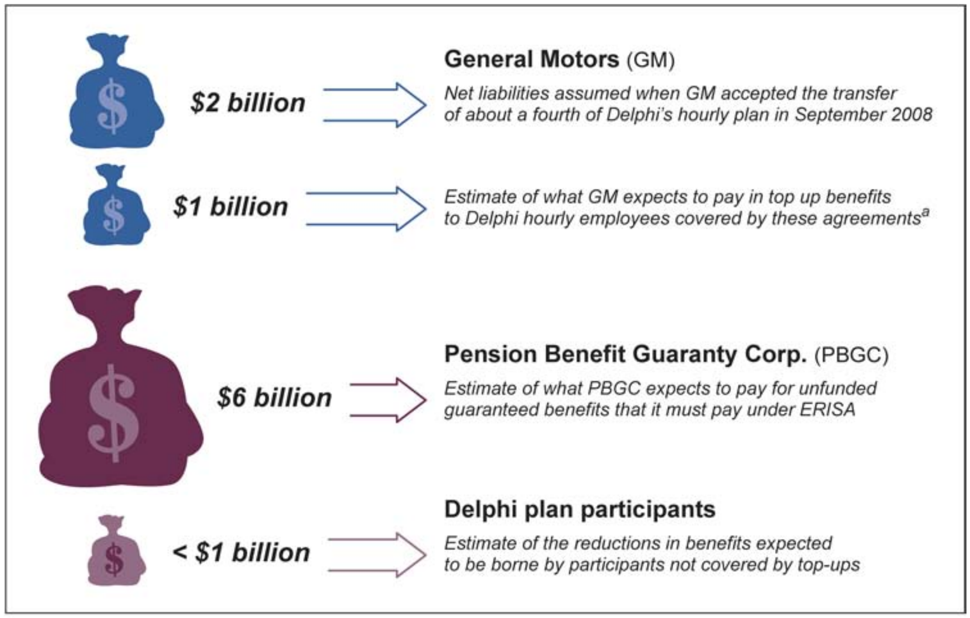
[46]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

[47]Mot. Def. U.S. Dep't Treas. at 28.

necessary" in order for new GM to operate. Treasury noted in the brief that because of new GM's dependence on the UAW workforce and the costs, risks, and delays associated with litigating USWA's and IUE's claims related to the Delphi bankruptcy, new GM had solid commercial reasons to agree to provide the top-ups to the Delphi UAW, USWA, and IUE retirees. Additionally, Treasury officials noted that, unlike the hourly plan, the salaried plan was fully funded at the time GM transferred it to Delphi, and that because GM was never obligated to provide top-ups to the salaried or other retirees not represented by UAW, IUE, and USWA.

As a result of GM's decisions to pay top-up benefits to those participants covered by the agreements and to take back a portion of the Delphi hourly plan in September 2008, GM will bear some of the costs of Delphi's unfunded pension liabilities (see fig. 1). Retirees who experience benefit reductions that are not topped up by GM will also bear a portion of the cost through their reduced benefits. However, PBGC will bear the biggest burden—about $6 billion in unfunded guaranteed benefits across all six of Delphi's DB plans.

Figure 1: Who Is Bearing the Cost of Delphi Pension Plans' Unfunded Liabilities



Sources: GAO analysis of PBGC and GM data.

[a]GM estimated the cost for top-up benefits in December 2010. GM's top-up estimate is higher than PBGC's estimate for the hourly plan's total amount of unfunded nonguaranteed benefits because GM will pay some benefits not included in PBGC's calculations. For example, unlike PBGC's estimate, GM's estimate includes obligations to provide up to 7 years of accrued benefits for certain employees covered under the top-up agreement who were not eligible to retire as of the plan termination date, but who became (or will become) eligible to retire under a normal or voluntary retirement during this 7-year window. In addition, GM's estimate includes obligations to provide covered employees who retired under the mutually satisfactory retirement (MSR) option, for which GM will pay the difference between the PBGC deferred vested pension benefit and the Delphi MSR benefit amount.

PBGC Pursued Claims on Delphi's Assets, Resulting in between $600 Million and $650 Million in Recoveries

PBGC took actions during Delphi's bankruptcy to protect plan funding and recover assets from Delphi, eventually recovering between $600 and $650 million against the $7.2 billion in total unfunded plan benefits. PBGC negotiated value for its claims and liens with Delphi and GM, releasing them for a settlement generating cash and other recoveries. The process for distributing these recoveries is laid out in ERISA,[48] PBGC regulations,[49] policies, and procedures. Because of the large gap between plan assets and liabilities in Delphi's plans relative to PBGC's recoveries, its recoveries are expected to have only a modest impact on the benefits of only some participants.

PBGC Pursued Statutory Claims Arising against Delphi's Assets

Upon the termination and trusteeship of an underfunded single-employer plan, PBGC generally takes control of all plan assets, but PBGC also has authority to recover additional money from company assets outside of its pension plans. ERISA provides that when underfunded single-employer plan is terminated, the plan sponsor and other entities under common control (the controlled group)[50] are "jointly and severally"[51] liable to PBGC for any unpaid premiums[52] and the amount of any unfunded benefit liability.[53] In addition, a plan sponsor is required under ERISA to periodically make certain minimum contributions to its plan,[54] and—along with other members of the controlled group—is liable to a plan for any required contributions not made by the date due.[55]

[48]29 U.S.C. § 1344.

[49]See 29 C.F.R. pt. 4044 (2011).

[50]The controlled group consists of the plan sponsor and other entities under common control, determined generally as prescribed under 26 U.S.C. § 1563(a), 29 U.S.C. § 1301(a)(14), and 26 C.F.R. § 1.414(b)-1 (2011).

[51]Joint and several liability is when a creditor may sue one or more of the parties separately, or sue all of them.

[52]29 U.S.C. §1307(c).

[53]29 U.S.C. § 1362(a).

[54]29 U.S.C. §§ 1082 and 1083.

[55]29 U.S.C. § 1082(b)(1) and (2).

ERISA imposes a lien that can only be officially filed ("perfected")[56] by PBGC on behalf of a plan in the amount of the aggregate missed contribution payments, when the total of those missed payments exceeds $1 million.[57] PBGC first filed liens on behalf of the Delphi plans, for missed required contributions of $75,177,000, in March 2006.[58] From 2006 to 2009, PBGC filed liens on behalf of the Delphi plans in response to Delphi's failing to contribute to its plans in the amounts required by statutory minimum funding standards. As of the termination of the Delphi plans in July 2009, PBGC held $195.9 million in perfected liens on behalf of the salaried plan and a combined $9.2 million on behalf of Delphi's smaller pension plans, for a total of $205 million in secured claims. PBGC officials told us they filed these liens for missed contributions only on the assets of Delphi's foreign subsidiaries because Delphi's domestic assets were shielded from PBGC liens by the automatic stay in Delphi's bankruptcy.[59] In addition, prior to the transfer of $2.1 billion in net liabilities to GM's hourly plan, PBGC also held liens on behalf of Delphi's hourly plan, reflecting missed required contributions to that plan. However, according to PBGC, the transfer of a portion of Delphi's hourly plan in September 2008 eliminated the hourly plan's accumulated funding deficiency, eliminating the legal basis for any liens for missed contributions up to that point in time. Following the transfer, the contribution due to Delphi's hourly plan for the final plan year was $194 million. However, according to PBGC officials, because no quarterly contributions were due, that final $194 million catch-up payment was not due until June 15, 2010, well after the plan was terminated, and therefore, a lien did not arise.

[56]A lien is perfected by filing it as prescribed in the relevant jurisdiction. Perfecting a lien provides constructive notice of its existence to all third parties and gives it priority over any later-perfected liens. In a bankruptcy, a properly perfected lien becomes a secured claim; an unperfected lien is treated the same as a general unsecured claims. All creditors with secured claims must receive payment in full (or up to the total value of their security) before those with general unsecured claims receive any payment at all.

[57]29 U.S.C. § 1083(k).

[58]The Internal Revenue Code requires single employer plan sponsors to make a certain amount of periodic contributions to their DB plans and maintain minimum funding standards. 26 U.S.C. § 412.

[59]Filing for bankruptcy operates as an automatic stay barring anyone from, among other things, perfecting or enforcing liens against the filing party. 11 U.S.C. § 362(a)(4).

ERISA also establishes a lien on behalf of PBGC in the amount of any unfunded benefit liability as of the plan's termination date, up to an amount not in excess of 30 percent of the controlled group's net worth[60] However, when a firm is in bankruptcy—as was the case with Delphi—PBGC is barred from perfecting a lien under this provision. According to PBGC officials, although liens could have arisen under this provision on Delphi's foreign controlled group members after the Delphi plans were terminated, they concluded that PBGC could maximize recoveries by achieving a settlement prior to termination, in part because they were concerned about the potential breakup of Delphi's controlled group and the impact this would have on recoveries.

PBGC Negotiated the Value of Its Claims with Delphi and GM

According to information from PBGC, in May 2009, PBGC, Delphi, GM and Treasury met to discuss the status of negotiations surrounding Delphi's bankruptcy, including the pension plans. Treasury participated in those negotiations as the facilitator between GM and PBGC regarding Delphi pension issues.[61]According to a GM official's court declaration, neither GM nor presumably any other potential purchaser was willing to purchase Delphi's assets while they were subject to the threat of liens PBGC held on behalf of the underfunded Delphi plans. Therefore, GM's obligations to Delphi were conditioned upon PBGC agreeing to remove these liens on Delphi's assets. During the negotiations, GM recognized that it might be necessary for it to make a cash payment to the PBGC or assume some portion of Delphi's unfunded pension liabilities. GM noted it would only make such a payment if necessary to help Delphi's reorganization and the payment was clearly outweighed by the benefits GM would receive from Delphi's reorganization. GM also noted that any contributions under an agreement with PBGC would be subject to Treasury's consent if funds in a restricted escrow account, over which Treasury held approval rights, would be used for such contributions.[62]

[60]29 U.S.C. § 1368.

[61]Deposition of Treasury Official, No. 04-44481 (RDD) (S.D. N.Y. July 21, 2009).

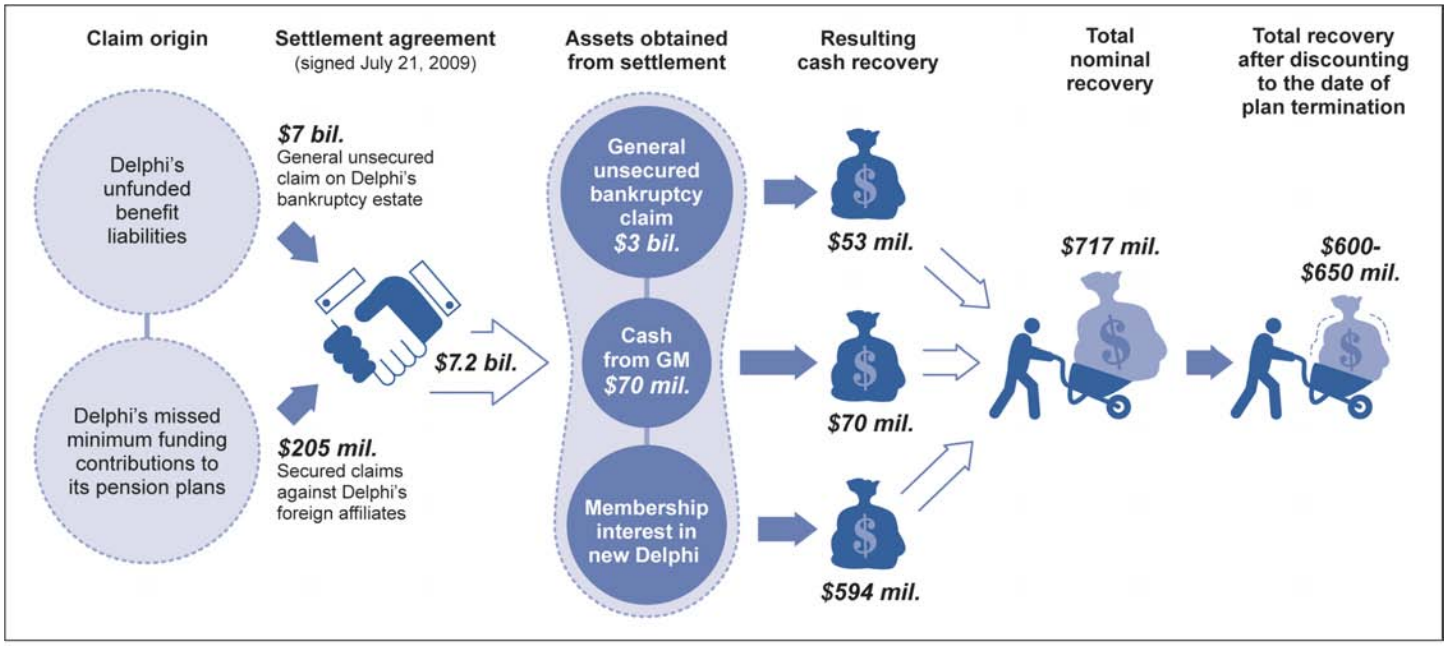
[62]Of the $30.1 billion that Treasury provided to GM at its bankruptcy filing, $16.4 billion was held in escrow to be accessed by GM on an as-needed basis with the consent of Treasury. In October 2009, Treasury approved GM's request for approximately $3 billion from this account for transactions related to the resolution of the Delphi bankruptcy. According to GM, this amount included the $70 million payment that GM made as part of its agreement with PBGC.

PBGC and Delphi reached an agreement on July 21, 2009, and PBGC announced it was terminating Delphi's plans the following day. PBGC received a membership interest in new Delphi, which gave it rights to some of the initial profit distributions from post-bankruptcy Delphi. PBGC actuaries valued the interest at $500 to $600 million. GM also paid PBGC $70 million in cash. In exchange, PBGC released $205 million in liens on Delphi's foreign assets (which PBGC considered worth substantial negotiating leverage in maximizing recoveries) and released Delphi controlled group members from any potential future PBGC claim that might arise against them under any circumstances. PBGC also settled with Delphi and received a $3 billion general unsecured claim in Delphi's bankruptcy in exchange for releasing all of its other claims in the case (see fig. 2).

In March 2011, PBGC redeemed its membership interest from new Delphi for $594 million. Soon after, in April 2011, PBGC sold its remaining $3 billion general unsecured claim against old Delphi to Credit Suisse Loan Funding, LLC for $53 million—roughly 2 cents on the dollar. Together, PBGC's recoveries of Delphi Corporation assets totaled approximately $717 million—or an estimated $600 million to $650 million when discounted to its value as of the date of plan termination, as required under ERISA.[63] Based on these values, recovery ratios for Delphi's hourly and salaried plans are estimated to ultimately be just over 6 percent.

[63] 29 U.S.C. § 1362(b)(1).

Figure 2: PBGC Asset Recoveries in Delphi's Bankruptcy



Sources: PBGC and court documents.

The recovery ratios in Delphi's case are comparable to those we found in the nine other companies on PBGC's top-10 list of largest claims, although the circumstances surrounding each recovery process are unique. As it did in Delphi's case, PBGC had claims on non-debtor corporate subsidiaries in recovery efforts against three other large terminations we examined: Weirton Steel, Bethlehem Steel, and National Steel. Also, as it did with Delphi, PBGC entered into a negotiated settlement agreement with eight of the other nine companies on PBGC's top-10 list of largest claims.[64]

We reviewed documents for the 29 plans across these nine firms, and found that the recovery ratios ranged from 0 percent to 38.5 percent.

[64]The companies we reviewed, 5 airlines and 4 steel companies and Delphi, are single-employer pension plan firms with the 10 highest claims on PBGC from 1975 through 2010. Among them they sponsored a total of 35 DB plans. See appendix III for a summary of PBGC recoveries for terminated plans of these firms. In addition to these terminations we also reviewed the terminations of the Collins & Aikman Corporation and Hayes Lemmerz International, Inc., because as it did in Delphi's case, PBGC filed liens on foreign subsidiaries of those companies.

Recovery ratios appeared to vary by industry for the other nine companies, all of which are airlines or steel companies. Of the 13 terminated steel plans we reviewed, 9 had PBGC recovery ratios less than 3 percent, and of the 11 large airline plans we reviewed, 8 had recovery ratios over 8 percent. We also found that PBGC generally achieved higher recovery ratios for plans of companies that were in a position to emerge from bankruptcy after their plans' termination than those of companies positioned to sell their assets or liquidate.

We also sought to compare PBGC's recovery efforts against Delphi with other terminations involving companies with foreign assets. In response to our request for cases involving foreign liens, PBGC did not identify any of the firms involving their 10 largest claims,[65] but instead provided two other case examples. In one case, Hayes Lemmerz International, Inc., PBGC entered into a settlement (along with the other creditors) for claims on the company's foreign subsidiaries to recover funds on behalf of the company's pension plan. PBGC's claims in this case total $113.1 million, and expected recoveries total $21.7 million, about 19 cents per dollar claimed. In the other case, Collins & Aikman Corporation, the company's Canadian and Mexican subsidiaries represented a potentially large portion of the net worth in the controlled group. As in Delphi's case, PBGC terminated the Collins & Aikman's pension plan when it expected that these foreign assets would leave the controlled group and reduce PBGC recoveries. PBGC's claims in this case total $225.2 million, and recoveries total $8.7 million, a recovery ratio of less than 4 percent.[66]

Recoveries Will Result in Minimal Benefit Increases beyond Guaranteed Benefit Amounts

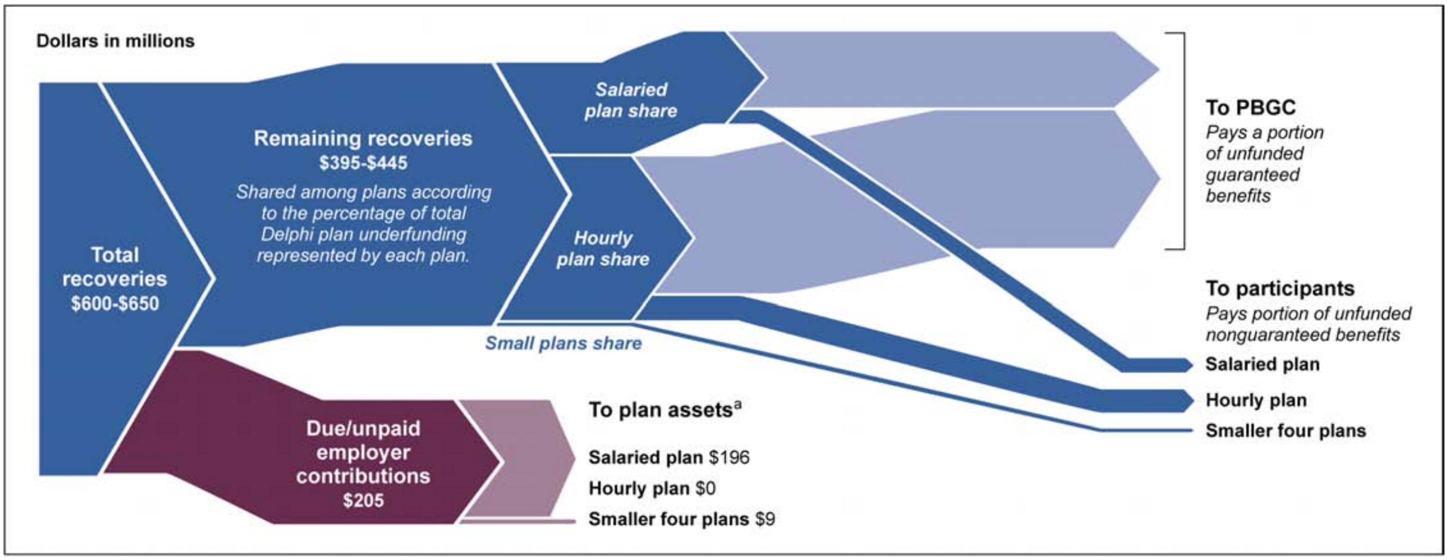
A fraction of PBGC's $600 million to $650 million in recoveries will go to increase participant benefits beyond the level already guaranteed by PBGC, with the rest offsetting PBGC's payment of unfunded guaranteed benefits. Recoveries of due and unpaid employer contributions are allocated back to the pension plans to which they are owed. Based on the liens for missed contributions to the Delphi plans, PBGC will allocate

[65]One of the companies on the top-10 list, Delta Airlines, did have foreign subsidiaries in its controlled group and not in bankruptcy, but according to PBGC officials, these subsidiaries were relatively small and could not provide PBGC substantial recoveries. Therefore, PBGC did not file foreign liens in that case.

[66]As others have noted, PBGC's authority to recover on liens abroad is not without some constraints. Allan E. Reznick and A. Owen Glist, Pension Benefit Guaranty Corp.—Controlled Group Claims Abroad, 235 N.Y. L.J. No. 33 (2006).

$195.9 million of its recoveries to the salaried plan, and $9.2 million to the smaller plans from its recoveries (see fig. 3).

Figure 3: Distribution of Asset Recoveries by PBGC in Delphi's Bankruptcy



Source: GAO analysis of PBGC documents, court documents, and interviews with PBGC officials.

[a]Plan assets distributed to unfunded guaranteed and nonguaranteed benefits, but under different rules than asset recoveries.

The remaining recoveries, estimated to be between $395 and $445 million, are allocated among the plans proportionally according to each plan's percentage of total remaining unfunded benefit liabilities.[67] The money allocated to each plan is then split between PBGC (to offset its cost of paying unfunded guaranteed benefits) and participants (to pay a portion of unfunded benefits beyond ERISA's guarantee limits). For plans with more than $20 million in unfunded benefit liabilities, as in the case of Delphi's hourly and salaried plans, the percentage of participants' nonguaranteed benefits PBGC pays depends on the percentage of the plans' unfunded benefit liability PBGC is able to recover.[68] Remaining

[67]29 U.S.C. §§ 1322(c) and 1344(f).

[68]29 U.S.C. § 1344(f)(2)(C). For plans with less than $20 million in unfunded benefit liabilities, the split between PBGC and participant benefits is determined by PBGC's small plan recovery ratio, an average of PBGC's recoveries over a 5-year period (29 U.S.C. 1344(f)(2)(A)). In 2009, this ratio was set at 3.85 percent.

recoveries go to offset PBGC's loss for paying guaranteed benefits. With recoveries of about 6 percent of unfunded liabilities for both Delphi's hourly and salaried plans, PBGC would pay about 6 percent of all participant unfunded nonguaranteed plan benefits, which are those benefits funded neither by plan assets nor guaranteed by PBGC. PBGC officials said it is too early in the benefit determination process to develop an accurate estimate of total unfunded, non-guaranteed benefits, but at this point, PBGC expects that recoveries will slightly increase benefits for some participants across Delphi's plans.

Many Delphi Retirees Are Subject to Benefit Reductions and Only Certain Hourly Retirees Are Protected by Union Agreements with GM

The benefits provided by PBGC must comply with the limits on guaranteed benefits under ERISA, and as a result, the amount guaranteed and paid by PBGC to some Delphi retirees will be less than the amounts promised by Delphi. However, some Delphi hourly plan participants avoided these reductions because they were transferred into GM's plan prior to PBGC's termination of the Delphi plan. Some of the other hourly plan participants who will receive less from PBGC than the amount promised by Delphi will have their losses covered by GM because of top-up agreements originally negotiated when Delphi was spun off from GM. These participants will receive additional payments from GM resulting in their receiving, in total, their full promised benefits. But most Delphi employees are not covered by these top-up agreements—including about 40 percent of the participants in the hourly plan, and all the participants in the salaried and other four smaller plans. PBGC's data showed that, as a result of the ERISA limits, PBGC has had to reduce benefits for just under half of salaried and hourly plan participants already retired and receiving pension payments, according to information collected by DSRA.

ERISA Limits Result in Reductions in Benefits for Many Retirees

As of June 2011, after reviewing the benefits promised to and being paid to the vast majority of Delphi hourly and salaried participants already retired, PBGC data indicate that just under half required reductions in their estimated benefit in order to comply with ERISA limits (see table 3).[69] According to the data, 48 percent of hourly retirees and 45 percent of the salaried retirees had their estimated benefits reduced because of

[69]When PBGC becomes trustee of a terminated plan, it pays participants already retired and receiving pension payments estimated benefits until it can determine the correct benefits participants should receive under ERISA.

guarantee limits.[70] Like those affected by other large terminations, Delphi participants who had retired early or had accrued higher benefits were likely to have their benefits reduced due to ERISA limits. For example, retirees in both plans frequently had benefit reductions because of ERISA's accrued-at-normal limit, which can eliminate or substantially reduce any early retirement supplemental benefits.[71] Only salaried retirees had a high proportion of retirees receiving reductions because of ERISA's maximum limit, with 26 percent of them exceeding this limit compared with 2 percent of hourly retirees.[72] Even after applying the ERISA limits, PBGC expects to pay about $6 billion of the $7.2 billion in unfunded benefits promised to Delphi participants, as these benefits fall under the limits and thus are guaranteed.

Table 3: Number and Percentage of Delphi Retirees Subject to Reductions in Estimated Benefits Due to ERISA Limits (as of June 1, 2011)

Delphi plan[a]	Number of participants	Number of participants with benefits reviewed by PBGC as of June 1, 2011[b]	Number with reductions in benefits	Percent reviewed with reductions[b]	Percent reviewed with no reductions[b]
Hourly plan	47,176	28,051	13,368	48	52
Salaried plan	20,203	8,273	3,714	45	55

Source: GAO analysis of PBGC data.

[a]In addition to the hourly and salaried plans, Delphi also has four other small plans. (See appendix II for estimated benefit reductions for all Delphi plans.)

[b]According to PBGC officials, as of June 2011, they had not yet reviewed the benefit amounts for about 2,000 of the 30,000 hourly plan participants already receiving payment, but had reviewed the benefit amounts for all other salaried plan participants already receiving payments. These rates are also subject to change as PBGC determines the impact of plan asset recoveries on retirees' benefits and as more workers retire and receive estimated reductions and final benefit determinations over the next year or more.

[70]The proportion of Delphi retirees who have had their benefits reduced by each of ERISA's benefit limits as of June 2011 is provided in appendix II.

[71]Under ERISA, the accrued-at-normal limit permits little if any early retirement or supplemental benefits to be paid. It provides for benefits to be paid at the plan's normal retirement age, which is 65 years old, as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors). 29 C.F.R. § 4022.21 (2011).

[72]ERISA's maximum limit guarantees payment of benefits up to a federal statutory maximum (29 U.S.C. § 1322(b)(3)), adjusted annually, based on the year the plan terminates. 29 C.F.R. § 4022.23 (2011). When Delphi's plans terminated in 2009, the maximum limit was $54,000 per year for a person retiring at age 65 and with no survivor benefit. The maximum is actuarially lower for those retiring under age 65 or with a survivor benefit.

Based on PBGC's reviews as of June 2011, a higher proportion of Delphi retirees have been subject to the guarantee limits compared with retirees of most other large plans terminated and trusteed by PBGC. While PBGC does not systematically track the number of participants affected by guaranteed benefit limits, a study it conducted in 2008 using a sample of large plans showed that ERISA benefit limits resulted in 16 percent of participants receiving reductions. It also found that the steel and airline plans, which tend to allow early retirement and have generous benefits, had a higher percentage of participants experiencing reductions, at 21 percent for steel plans and 22 percent for airline plans. Although certain plans for pilots have had 60 percent of participants receiving reductions, Delphi's current rates of 45 percent of salaried plan participants and 48 percent of hourly plan participants are higher than most. However, over time, the proportion of Delphi retirees with benefit reductions is likely to decline. According to PBGC, many participants from the salaried plan who were not eligible to retire as of the termination date were not entitled under the plan to benefit supplements or benefit payments larger than ERISA's maximum limit. Also, some workers eligible for these benefits may choose to wait longer to retire to try to avoid or mitigate the amount of benefit reductions.

Recoveries can also mitigate possible benefit losses that have not been guaranteed by PBGC. As PBGC is still in the early stages of valuing the plan, it has not fully determined the extent to which recoveries will impact participants' unfunded nonguaranteed benefits. According to a PBGC official, preliminary estimates suggest that PBGC recoveries allocated to Delphi participants' benefits will lessen the extent of benefit reductions for some participants with benefits at the top of the statutory allocation priority category 3—that is, those who were retired (or were eligible to retire) at least 3 years prior to the date of plan termination for the salaried plan.[73] Most of the other large plans we reviewed had sufficient assets and recoveries to partially or fully fund this priority category. (See app. III for the allocation of plan assets and recoveries to the priority categories for other large terminations we reviewed.)

[73]For terminated underfunded plans, ERISA establishes a detailed process for allocating plan assets and PBGC recoveries to participants' benefits based on six priority categories. For further details, see appendix III. As discussed in the prior section, the recoveries allocated to participants for unfunded and nonguaranteed benefits do not include any of the recoveries for "due and unpaid employer contributions," which are allocated back to the pension plans to which they were owed and allocated with plan assets rather than recoveries.

As for the magnitude of benefit reductions, PBGC could not provide summary information on the range of retirees' losses. However, according to DSRA officials, information they collected indicates that salaried retirees under 65 years of age were at risk for "significant pension reductions." DSRA requested information on losses from approximately 4,000 salaried retirees who may have received reductions in benefits as of the first quarter of 2010. The 1,703 who responded (or about 8 percent of all salaried plan participants) reported losses in benefits ranging from 5 percent to 60 percent, with more than 90 percent having losses of 10 percent to 40 percent.[74] Our review of a small judgmental sample of reductions for seven salaried retirees showed a range of pension losses from 12 percent to 40 percent. The salaried retiree who had a 12 percent drop in pension benefits lost $349 per month (a decline from $2,944.25 to $2,595.15 per month) due to the loss of a substantial portion of his early retirement supplemental benefit. The salaried retiree who had a 40 percent drop in pension benefits lost $1,490.67 per month (a decline from $3,732.63 to $2,241.96 per month) due to the loss of benefits in excess of the maximum limit based on his age at retirement and his annuity that provided survivor benefits.

Agreements between GM and Unions Protect Certain Hourly Retirees from Benefit Loss

Agreements negotiated between GM and various Delphi unions have protected certain participants in Delphi's hourly plan from benefit loss due to termination of their underfunded plan. These agreements include the arrangement that resulted in the transfer of 14,413 (about 22 percent) of Delphi's hourly plan participants back to GM's hourly plan in September 2008, as well as the provision of pension top-ups covering reductions in benefits resulting from the application of ERISA limits.[75] But most Delphi employees are not protected by these agreements—including a substantial portion of hourly plan participants and all the participants in the salaried plan and other smaller Delphi pension plans.

In 2007 and 2008, as part of Delphi's bankruptcy and restructuring plan at the time, GM and Delphi negotiated agreements to transfer the Delphi hourly plan participants' pensions back into GM's hourly plan in two

[74]We could not verify the accuracy of information collected by DSRA nor could we perform any statistical analyses to determine the significance of the results.

[75]For a summary and timeline of events surrounding the creation of the union agreements and the termination of Delphi plans, see GAO-11-373R.

installments.[76] The unions participated in developing the criteria to select the pensions to be transferred in the first installment, which took place in September 2008.[77] In this transfer, the pensions of about 24 percent (14,413 of 60,905) of Delphi's hourly plan participants were transferred to GM's hourly plan, which assumed the associated $2.1 billion in net liabilities for these pensions.[78] As a result, those Delphi plan participants whose pensions were transferred were no longer part of Delphi's plan and were therefore protected from any benefit loss resulting from Delphi's subsequent plan termination.

Furthermore, top-up agreements covering certain hourly workers will protect these workers, but not others, from potential losses due to the benefit limits in ERISA. In June and August of 2007, GM agreed with UAW, IUE, and USWA to extend the top-up agreements originally negotiated in 1999 after Delphi's spinoff from GM. In November 2008, Delphi froze its hourly plan, ceasing the accrual of additional benefits under the plan and triggering the top-up agreement for covered participants.[79] GM negotiated and maintained the top-up agreements with the UAW during its bankruptcy and restructuring, as did new GM with the IUE and USWA in September 2009. As a result, certain covered hourly employees will receive their full promised benefits despite the plan freeze and subsequent termination, even if their benefits exceed the guaranteed

[76]On September 6, 2007, GM and Delphi signed the first Global Settlement Agreement that laid out their plans to transfer pensions from Delphi's hourly plan to GM's hourly plan. The plans for the second pension transfer are included in Section 2.03 of the Global Settlement Agreement between Delphi and GM, dated September 12, 2008.

[77]The criteria and order of Delphi hourly pensions to be transferred was based on 2007 negotiations between the Unions, Delphi, and GM and contained in paragraph 22(b) of the Term Sheet (Attachment B) to the UAW-Delphi-GM Memorandum of Understanding – Delphi Restructuring, dated June 22, 2007 (and comparable agreements for the IUE-CWA and USWA). The UAW-Delphi-GM Implementation Agreement, dated September 26, 2008 (and comparable agreements for the IUE-CWA and USWA), supplemented this information to include additional criteria.

[78]The second installment never took place because Delphi could not meet the agreed upon conditions for the transfer. For more information about the Delphi reorganization efforts, see GAO-11-373R.

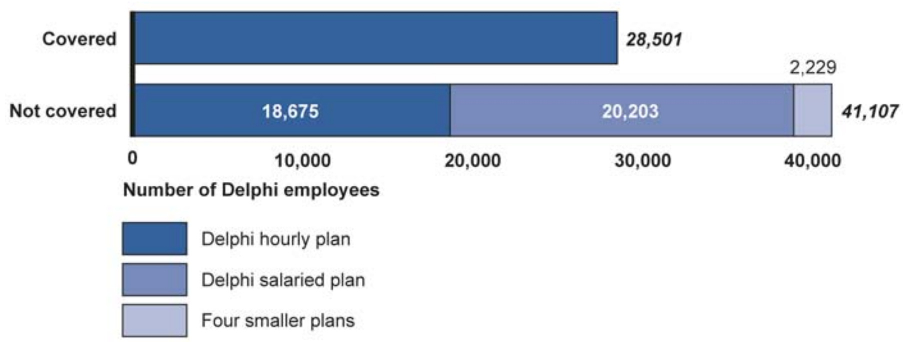
[79]In September 2008, Delphi also froze its salaried plan and three smaller qualified DB plans to limit all future benefit accruals. For more information on types of freezes and their effects, see: GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, GAO-08-817 (Washington, D.C.: Jul. 21, 2008).

benefit limits under ERISA. According to data provided by GM, about 60 percent of the participants in Delphi's hourly plan as of the date of plan termination are potentially covered by GM top-ups if there is any reductions in their promised benefits. As of June 2011, GM reported that it had paid $221.9 million to 12,638 Delphi retirees and dependents under these top-up agreements.

As indicated in figure 4, however, most Delphi employees are not covered by these top-up agreements. No participants in Delphi's salaried plan or other four smaller plans are covered. In addition, about 40 percent of Delphi hourly plan participants are also not covered, including anyone who never was qualified because they were not members of the unions securing these agreements, were not members of the GM hourly plan prior to the spinoff, or lost their qualification because they had a break in their employment or otherwise lost their seniority. Participants who would otherwise be covered, but do not meet the retirement criteria of the plan, also will not be provided top-ups, according to GM officials.[80]

[80]Pension plans include retirement eligibility criteria that must be met to receive normal or early retirement benefits. For instance, a Delphi hourly plan participant must generally be of certain age and have sufficient number of credited years of service to retire. For example, to get a normal retirement, a participant needs to be 65 years old. To get an early retirement, a participant generally needs to be at least 60 years old with 10 years of service, have 30 years of credited service, or meet the rule-of-85 (i.e., be at least 55 years of age, but not age 60, and have the total of his an age and years of credited service total at least 85).

Figure 4: Number of Delphi Employees Covered by GM Top-Ups, by Plan



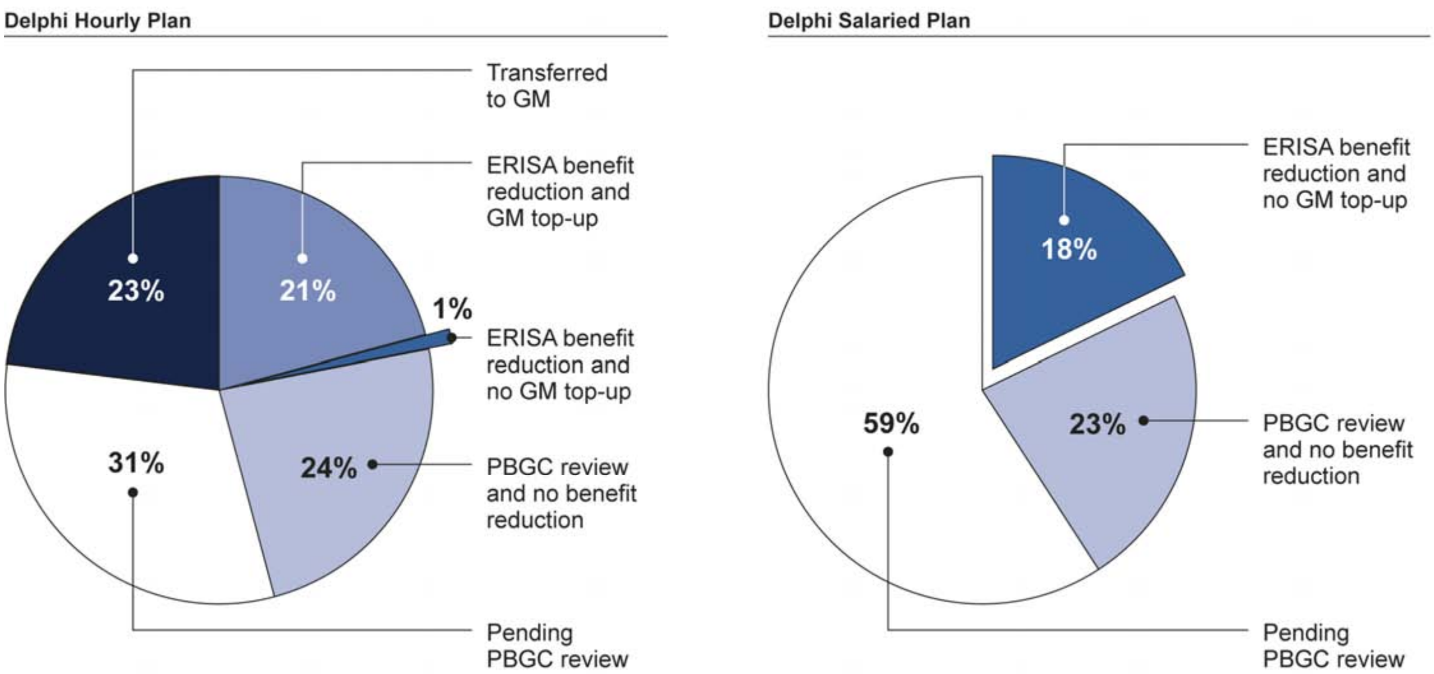
Sources: GAO analysis of PBGC and GM data.

Note: Delphi hourly plan participants who were not protected by top-up agreements include all those who were not members affiliated with UAW, IUE, or USWA and were not previously employed by GM prior to the Delphi spin-off.

PBGC will reduce the benefits of all participants in the terminated pension plans whose promised benefits exceed ERISA's guaranteed benefit limits. Because of the GM top-up, certain hourly plan participants will have any pension benefit reduced because of statutory limits paid to them by GM. The combination of the GM top-ups and the 2008 partial plan transfer of Delphi's hourly plan participants to GM have resulted in a much higher percentage of salaried plan participants ultimately facing benefit reductions than hourly plan participants. Based on the status of PBGC's benefit reviews as of June 2011, 18 percent of the salaried plan participants have had their benefits reduced, while only 1 percent of the hourly plan participants had reductions that will not be topped up by GM.[81] (See fig. 5.) However, the percentage of hourly participants with reductions not topped up by GM is expected to rise over time, as more of this group have their benefits reviewed by PBGC. According to PBGC officials, no other underfunded pension plan terminated and trusteed by PBGC has had a top-up agreement with a parent company comparable to these agreements between Delphi and GM.

[81]The 18 percent of salaried plan participants with benefit reductions and no top-ups represent 45 percent of the retirees with reductions. The 1 percent of hourly plan participants with reductions and no top-ups represent 5 percent of the hourly retirees reviewed by PBGC with reductions.

Figure 5: Status of Benefits for Participants from Delphi's Hourly and Salaried Plans (as of June 2011)



Sources: GAO analysis of PBGC and GM data.

Both Delphi and PBGC Provided Delphi Employees with Information

In the course of the Delphi bankruptcy and the termination of its pension plans, Delphi employees were notified by Delphi and subsequently by PBGC of certain facts, as required by law—namely, of Delphi's intention to defer pension plan contributions and to subsequently freeze the plans, and of PBGC's intention to terminate and trustee the plans, and subsequently the effects, when calculated, on individual employee pensions. Through their unions, hourly employees received additional information, while salaried employees had no formal representative through which to receive additional information until they formed DSRA.

Delphi Notified Pension Holders as Required and also Communicated with Employee Representatives

Delphi notified both hourly and salaried employees in 2006 that it had failed to make the minimally-required contribution to their pension plans due at that time and that the plans were underfunded by $4.3 billion as of December 2004.[82] Later in 2006, it also notified its employees, as required, that the company had requested a funding waiver for plan year 2006 from the IRS.[83] This notification also included legally required information such as a description of the extent to which the plan is funded. Similarly, in 2007, Delphi notified the hourly employees of another waiver request to defer hourly plan contributions for plan year 2007. Subsequently, as required, in October 2008, Delphi notified representatives of the unions, UAW, IUE, and USWA, that the hourly plan would be frozen as of the end of November 2008 and that participants would, consequently, cease accruing additional pension benefits.[84] In addition, as required, in August of 2008, Delphi also notified salaried employees that their plan would be frozen as of the end of September.

Prior to the termination, Delphi employees did not receive regular information from Delphi as to the actual funding status of their plans. Under a new federal requirement, such reporting would have been first required of Delphi by January 1, 2010—several months after PBGC had terminated and trusteed the plans.[85] However, Delphi noted that it provided its employees with summary plan descriptions, as required.[86] The example summary plan descriptions we obtained for the salaried and hourly plans included information about PBGC's pension insurance program and how pension payments could be reduced if the plan terminates without enough money to pay all benefits, based on the guarantee limits in ERISA and PBGC regulations.

[82]ERISA requires plan sponsors to notify employees when the sponsor requests a waiver from annual plan funding from the IRS (29 U.S.C. § 1082(c)(6)); and to notify employees and unions if the sponsor freezes the plan (29 U.S.C. § 1054(h)).

[83]The Delphi hourly and salaried plan year was from the beginning of October to the end of September of the following calendar year.

[84]The splinter unions, IBEW, IAM, and IUOE were also notified in October 2008 that their members' benefits would be frozen as of the end of November 2008.

[85]Pension Protection Act of 2006, Pub. L. No. 109-280, § 501(a), 120 Stat. 780, 936-39. (codified at 29 U.S.C. § 1021(f)) and Employee Benefits Security Administration, Field Assistance Bulletin No. 2009-01 at 2 (Feb. 10, 2009).

[86]29 U.S.C. § 1022 and 29 C.F.R. § 2520.102-3(m)(1)-(3) (2011).

PBGC Communicated with Delphi Employees

In a July 2009 PBGC press release, PBGC announced the Delphi employee pension plans were terminated and the underfunded status of the plans. Following termination, PBGC notified Delphi employees of its role as statutory trustee of the plans, as required by ERISA.[87] Based on official Delphi notices to employees we reviewed, this press release from PBGC constituted the first time that employees were apprised of the fact that the plans were severely underfunded since the notice from Delphi in 2006. Following termination in July, PBGC sent Delphi employees letters notifying them that if they were eligible and applied to PBGC to begin payments, it would begin paying estimated benefits. It also has a toll-free telephone number that allows any participant to call PBGC directly with questions. PBGC sent Delphi employees a welcome packet and a video describing PBGC's role as trustee. The agency also spoke regularly with representatives of DSRA. PBGC met, as well, with union representatives of UAW, IUE, and USWA to answer their questions.

As of October 2011, PBGC sent benefit determination letters, informing participants of their benefits, to about 10,600 hourly employees and to about 50 salaried employees. According to PBGC, letters to many salaried employees had been delayed due to coordination with several insurers contracted by Delphi to provide annuities.

Delphi Employees also Received Information through Their Employee Representatives

As representatives of hourly employees in collective bargaining over wages and benefits, the three major unions with whom we spoke—UAW, IUE, and USWA—said that they kept their members apprised of changes to their benefits and prior agreements, through briefings, letters, and through the process of ratification. In addition, their members were apprised by GM in January 2010 that the company would honor the top-up agreements. On the other hand, Delphi's salaried employees had no such union membership or agreement with GM, and received their information exclusively from Delphi until just before termination in February 2009, when they formed DSRA.

[87] 29 U.S.C. § 1342(d)(2).

Concluding Observations

The termination of Delphi's pension plans culminated from a complicated and intertwined set of events involving Delphi, GM, various unions, and Treasury, as well as PBGC. That some participants will not get the full benefits promised to them by their employer is not unusual when companies go bankrupt and leave their plans with large unfunded liabilities. At the same time, the role that GM and Treasury played in the events leading up to termination caused the process to be unusual in several respects. Beginning with negotiations related to Delphi's spin-off in 1999, GM—although no longer the sponsor of the Delphi plans—agreed to top up the benefits of certain union workers should the Delphi hourly plan be frozen or terminated, and maintained these top-up agreements at various points over the next decade. In addition, after Delphi filed for bankruptcy, GM agreed to take back all or part of Delphi's hourly plan under certain conditions, and actually took back the pensions of nearly a fourth of Delphi hourly plan's participants in 2008. PBGC officials noted they have not seen these types of agreements in any other plan terminations to date. Then, with GM's own financial condition deteriorating, Treasury's role as a shareholder led some to question the role Treasury might also be playing with respect to GM's decisions regarding Delphi and its pension plans. As we have reported previously, Treasury's multiple roles in situations involving the auto industry and workers' pensions may create potential tensions and challenges. On behalf of the U.S. taxpayer, Treasury has an interest in safeguarding taxpayer investment, while also—through the Secretary of the Treasury's role on PBGC's board—protecting the financial viability of workers' pension plans. Although Treasury has established policies to separate these interests, and various parties told us that Treasury did not play an active role in decisions regarding Delphi's plans, potential tensions due to these multiple roles remain. In our prior work on the automakers' pension plans, we concluded that the best way for Treasury to mitigate these tensions is through more open reporting to Congress and the public on its activities. In response to a previous recommendation, Treasury implemented a revised reporting policy, attempting to balance concerns about publicly disclosing proprietary information in a competitive market with the need for greater transparency. We believe that the most effective means of addressing concerns about Treasury's different roles is for Treasury to continue to be as transparent as possible about its activities.

Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from the Department of the Treasury (see appendix IV). Treasury's comments generally agree with the findings and concluding observations in our report, emphasizing that Treasury did not authorize, approve, or consent to the termination of the Delphi salaried plan, and that PBGC independently decided - not the PBGC board or Treasury - to terminate the Delphi pensions. We continue to believe that Treasury's multiple roles in situations involving the auto industry and workers' pensions may create the appearance of potential tensions and challenges, and that the most effective means of addressing these concerns is for Treasury to continue to be as transparent as possible about its activities.

In addition, Treasury, PBGC, and the Department of Labor, all provided technical comments that we incorporated as appropriate. We also provided certain segments of the draft to Delphi, GM, DSRA, UAW, IUE, and USWA. We received technical comments on these segments from GM and USWA, and have incorporated these where appropriate, as well.

We are sending copies of this report to the appropriate congressional committees, the Director of PBGC, the Secretary of Labor, the Secretary of Treasury, the Secretary of Commerce, and other interested parties. The report also is available at no charge on GAO's Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact Barbara Bovbjerg at (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix V.

Barbara D. Bovbjerg
Managing Director
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List of Requesters

The Honorable John A. Boehner
Speaker of the House of Representatives

The Honorable Roger F. Wicker
United States Senate

The Honorable Spencer T. Bachus
Chairman, Committee on Financial Services
House of Representatives

The Honorable Mike Pence
The Honorable Michael R. Turner
House of Representatives

Appendix I: Single-Employer Firms with the Largest PBGC Claims for Terminated Plans (1975 through 2011)

Top-10 firms	Number of plans	Fiscal year(s) of plan termination(s)	Claims (by firm)	Vested participants	Average claim per vested participant	Percent of total claims
1. United Airlines	4	2005	$7,441,450,992	123,957	$60,033	16.3
2. Delphi	6	2009	6,108,491,551	69,042	88,475	13.4
3. Bethlehem Steel	1	2003	3,654,380,116	91,312	40,021	8.0
4. US Airways	4	2003, 2005	2,751,534,173	55,770	49,337	6.0
5. LTV Steel[a]	6	2002, 2003, 2004	2,134,985,884	83,094	25,694	4.7
6. Delta Air Lines	1	2006	1,641,083,525	13,291	123,473	3.6
7. National Steel	7	2003	1,275,628,286	33,737	37,811	2.8
8. Pan American Air	3	1991, 1992	841,082,434	31,999	26,285	1.8
9. Trans World Airlines	2	2001	668,377,106	32,263	20,717	1.5
10. Weirton Steel	1	2004	640,480,970	9,410	68,064	1.4
Top-10 total	**35**		**$27,157,495,038**	**543,875**	**$49,933**	**59.6**
All other total	**4,257**		**$18,390,580,981**	**935,125**	**$19,666**	**40.4**
Total	**4,292**		**$45,548,076,019**	**1,479,000**	**$30,797**	**100.0**

Source: PBGC, Pension Insurance Data Book 2009 and 2011 PBGC Annual Report.

Note: Cumulative plans include 10 multiemployer plans trusteed by PBGC before 1980. PBGC has not trusteed any multiemployer plans since 1980. The Multiemployer Pension Plan Amendments Act of 1980 changed PBGC's responsibility from trusteeship of troubled multiemployer plans to providing financial assistance (loans) to insolvent plans. Pub. L. No. 96-364, 94 Stat. 1208.

[a]Does not include 1986 termination of a Republic Steel plan sponsored by LTV.

Appendix II: Number and Percentage Delphi Retirees with Reductions in ERISA Benefits Due to Guaranteed Benefit Limits (as of June 1, 2011)

					Accrued-at-normal limit[c]		Maximum limit[d]		Phase-in limit[e]	
Plan	Total number of participants (as of termination)	Number of participants reviewed by PBGC as of June 2011	Number with reduction(s) in PBGC estimated benefit[a]	Percentage reviewed with reduction[b]	Number	Percentage reduced	Number	Percentage reduced	Number	Percentage reduced
Delphi Hourly Plan[f]					11,619	41.42	472	1.68	352	1.25
Delphi Salaried Plan	20,203	8,273	3,714	45	2,323	28.08	2,174	26.28	0	0
Packard-Hughes Interconnect Non-Bargaining Retirement Plan (PHI_NBU)	1,383	240	30	13	3	10.00	1	3.33	26	86.67
Packard-Hughes Interconnect Bargaining Retirement Plan (PHI_BU)	165	80	62	78	0	0	1	1.61	61	98.39
ASEC Manufacturing Retirement Program (ASEC)	533	126	6	5	0	0	4	66.67	0	0
Delphi Mechatronic Systems Retirement Program (DMS)	148	12	3	25	3	100.00	1	33.33	0	0

Source: GAO analysis of PBGC data.

[a]Retirees may have more than one type of reduction; therefore, the number of retirees with reductions and the number of reductions may not be the same for each plan.

[b]These rates are subject to change as more workers retire and receive early estimated reductions and final benefit determination letters from PBGC over the next year or more.

[c]Accrued-at-normal limit: The monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. The portion of any combined early retirement benefit and supplemental benefit that exceeds the normal retirement age straight life annuity is not guaranteed under this provision. 29 C.F.R. § 4022.21 (2011).

[d]Maximum limit: The guaranteed benefit cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. In 2009, the maximum was $54,000 per year for a person who begins to receive benefits from PBGC at age 65 and with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2011).

[e]Phase-in limit: The guaranteed benefit cannot include any benefit increase that was made within 1 year of the date of the plan termination. For benefit improvements that became effective more than 1 year but less than 5 years prior to the plan's termination, the guaranteed amount is the larger of 20 percent of the benefit increase or $20 per month of the increase for each full year the increase was in effect. 29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2011).

[f]PBGC also found that 1,567 hourly retirees should have their benefits reduced because it determined that they were not eligible for the "mutually satisfactory retirement," which is a type of early retirement under the Hourly Plan.

[g]As of June 2011, PBGC still had about 2,000 of the 30,000 Hourly Plan retirees awaiting review.

Appendix III Allocation of Plan Assets and Recoveries to Unfunded Nonguaranteed Benefits

Upon the termination of a single-employer plan, plan assets are identified, valued, and then allocated to participant benefits, in accordance with the requirement of section 4044 of ERISA. Codified at 29 U.S.C. § 1344. In addition to plan assets, a portion of monies from company assets that PBGC recovers for unfunded benefit liabilities are allocated to participant benefits, in accordance with section 4022(c) of ERISA.29 U.S.C. § 1322(c).

Plan assets available to pay for benefits under the plan are allocated to participant benefits according to six priority categories, as described in table 4. Assets are allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets are allocated to the next lower priority category. This process is repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated. Most private sector defined benefit plans do not require or allow participant contributions, so there are rarely any benefits in priority categories 1 and 2. Thus, in most trusteed plans, asset allocation begins with the benefits in priority category 3, that is, the benefits of those retired or eligible to retire 3 years before the plan terminated. However, it should be noted that assets are allocated based on retirement eligibility, not retirement status, and that many participants have benefits in more than one category. Table 5 provides the allocation of plan assets and recoveries to priority categories among plans that had 5,000 or more participants for the 10 firms with the largest claims.

Table 4: Allocation Priority Categories (PC)

Priority Category	Definition
PC-1	Accrued benefits derived from voluntary employee contributions. (According to PBGC, such benefits are "extremely rare" among private sector defined benefit plans.)
PC-2	Accrued benefits derived from mandatory employee contributions. (According to PBGC, such benefits are "quite uncommon" among private sector defined benefit plans.)
PC-3	Annuity benefits that have been in pay status for at least 3 years before the plan's termination date, or could have been in pay status for at least 3 years before the plan's termination date had the participant chosen to retire at his or her earliest possible retirement date; however, benefits subject to the phase-in limitation (that is, benefit increases made within the last 5 years) are excluded. These benefits can be either guaranteed or nonguaranteed.
PC-4	Other guaranteed benefits and certain nonguaranteed benefits. The nonguaranteed benefits are those that are subject to the aggregate benefits limitation for participants in more than one plan that has been terminated with insufficient funds or are subject to special provisions applicable to substantial owners (that is, those owning more than 10 percent of the company).
PC-5	Other vested nonguaranteed benefits that a participant is entitled to under the plan; however, benefits that result solely due to the termination of the plan—which are deemed "forfeitable"—are excluded.
PC-6	All other benefits under the plan. This category includes nonvested benefits and "grow-in" benefits, which are benefits that are provided in some situations where the company continues to operate after the plan is terminated.

Source: PBGC.

Table 5: Comparison of Allocation of Plan Assets and Recoveries among Plans of Firms with 10 Largest Claims

	Present value[b] (millions of dollars)					Allocations, by priority category[f]							
		Unfunded benefit liabilities				Percent of liabilities funded by assets				Percent of unfunded nonguaranteed benefits funded by recoveries			
Firm/ plans[a]	Plan assets	Unfunded guaranteed benefits[c]	Unfunded non-guaranteed benefits	Total[d]	Recovery ratio (percent)[e]	PC3	PC4[g]	PC5	PC6	PC3	PC4[g]	PC5	PC6
United Airlines													
Ground Employees plan	1,309	1,978	796	2,774	12.88	97	0	0	0	100	Not calculated	13	0
Management, administrative and public contact plan	1,651	1,644	670	2,313	12.75	100	1	0	0	Not applicable[h]	100	37	0
Flight attendant plan	1,427	1,644	256	1,901	13.23	69	0	0	0	100	Not calculated	100	9
Pilots plan	2,846	1,376	1,381	2,757	12.98	81	0	0	0	56	0	0	0
Delphi *(based on early estimates, calculations not yet finalized)*													
Hourly plan	*3,700*	*4,000*	*400*	*4,400*	*6.3*	*(allocations not yet determined)*				*(allocations not yet determined)*			
Salaried plan	*2,400*	*2,200*	*400*	*2,600*	*6.3*	*(allocations not yet determined)*				*(allocations not yet determined)*			
Bethlehem Steel													
Bethlehem Steel plan	3,533	3,693	835	4,529	1.11	60	0	0	0	5	0	0	0
US Airways													
Plan for pilots	1,193	552	1,692	2,244	0.00	100	Not calculated	0	0	Not applicable[h]	Not calculated	0	0
Employees of IAM & AW[i]	560	749	24	774	8.27	77	0	0	0	93	Not calculated	0	0
Flight attendants plan	420	647	36	683	0.00	100	Not calculated	0	0	Not applicable[h]	Not calculated	0	0
Certain employees plan	895	685	16	701	4.39	100	7	0	0	Not applicable[h]	Not calculated	6	0

	Present value[b] (millions of dollars)					Allocations, by priority category[f]							
		Unfunded benefit liabilities				Percent of liabilities funded by assets				Percent of unfunded nonguaranteed benefits funded by recoveries			
Firm/ plans[a]	Plan assets	Unfunded guaranteed benefits[c]	Unfunded non-guaranteed benefits	Total[d]	Recovery ratio (percent)[e]	PC3	PC4[g]	PC5	PC6	PC3	PC4[g]	PC5	PC6
LTV Steel													
Hourly plan	1,697	1,681	672	2,353	1.97	66	0	0	0	100	Not calculated	1	0
Salary plan	384	302	66	367	2.12	65	0	0	0	100	Not calculated	0	NA
Delta Air Lines													
Pilots plan	1,985	799	1,769	2,568	38.51	93	0	0	0	100	Not calculated	34	0
National Steel													
Hourly plan	482	471	149	620	0	77	0	0	0	0	0	0	0
Weirton retirement program	313	190	1	192	7.86	73	0	0	0	0	Not calculated	8	0
Corporation retirement program	303	291	73	364	0.	69	0	0	0	0	0	0	0
Pan American World Airways													
Cooperative retirement income plan	301	703	13	715	12.01	52	0	0	0	32	0	0	0
Trans World Airlines													
Plan for employees	736	460	4	464	4.94	100	Not calculated	0	0	Not applicable[h]	Not calculated	25	0
Weirton Steel													
Retirement plan	540	637	205	842	0	71	0	0	0	0	0	0	0

Source: GAO analysis of PBGC data

[a]Of the 35 plans associated with the 10 largest claims, this table includes the 20 plans with 5,000 or more participants. Of the 15 remaining plans (including the 4 smaller Delphi plans): (1) 5 plans had unfunded nonguaranteed benefits that exceeded $20 million and the participants' portion of recoveries should be allocated using each plan's actual recovery ratio, (2) 9 plans had unfunded nonguaranteed benefits of less than $20 million and the participants' portion of recoveries should be allocated using the Small Plan Average Recovery Ratio (SPARR), and (3) 1plan did not have information on allocation of recoveries.

[b]The present value is the actuarial value of benefits calculated as of the date of plan termination.

[c]The ERISA guaranteed benefits are equal to the plan assets and the unfunded guaranteed benefits.

[d]The total unfunded benefit liabilities are equal to the unfunded guaranteed benefits and the unfunded nonguaranteed benefits. This total may be slightly higher or lower than the sum of these preceding columns due to rounding.

[e]For plans with unfunded nonguaranteed benefits exceeding $20 million, the recovery ratio is the actual recovered amount (under section 4022(c) of ERISA) divided by the unfunded nonguaranteed benefits. In other cases, the ratio is an average of PBGC's recoveries over a 5-year period.

[f]In most cases, plans had no participants in either the PC1 or PC2 categories, therefore, we did not include these categories in the table. However, four of our plans did have participants in these categories: the US Airways Flight attendants plan, the Weirton retirement program plan, the Trans World Airlines plan for its employees, and the National Steel corporation retirement program. All these plans had sufficient plan assets to cover 100 percent of the unfunded PC2 benefits.

[g]The funded percentage was not calculated for the PC4 category in some plans. According to PBGC officials, this may have been because it was obvious that assets were insufficient so that calculating the funded status was unnecessary.

[h]Not applicable because PC3 benefits were 100 percent funded by plan assets.

[i]IAM & AW stands for the International Association of Machinists and Aerospace Workers.

Appendix IV: Comments from the Department of the Treasury

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

December 8, 2011

Barbara D. Bovbjerg
Managing Director
Education, Workforce, and
Income Security Issues
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

RE: Response to GAO's Draft Report: "Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits"

Dear Ms. Bovbjerg:

I am writing in response to your draft report entitled, *Delphi Pension Plans: GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits*," dated November 23, 2011. The Department of the Treasury ("Treasury") appreciates the Government Accountability Office's ("GAO") review of the events leading to the termination of Delphi's pension plans, GM's decision to assume pension benefit "top-up" agreements with certain hourly pension plan participants, and Treasury's role in the process. This letter provides Treasury's official response to the GAO draft report.

As you describe in the draft report, the events surrounding GM's decision to assume the top-up agreements stemmed from negotiations between GM, Delphi, and various unions that took place more than a decade ago, in the context of GM spinning off Delphi into a separate company. As a result of those negotiations, certain participants in the Delphi hourly plan received pension benefit guarantees. As the draft report notes, at the time of the spin-off, in 1999, the Delphi hourly plan was underfunded, whereas the Delphi salaried plan was fully funded.

The draft report concludes that GAO's work corroborates statements by Treasury, GM, and PBGC that "PBGC independently decided to terminate the Delphi plans" and that "consistent with its usual practice, Treasury did not play an active role" in PBGC's termination decisions. In addition, the draft report concludes that Treasury only "played an advisory role in GM's decisions regarding the Delphi pensions" including "the decision to honor existing top-up agreements with some unions." We agree – Treasury did not authorize, approve, or consent to the termination of the Delphi salaried plan.

The draft report also raises the "potential or perceived tensions" between Treasury's "multiple roles", both as a member of the PBGC board and as a common stockholder in GM, and states that "the appearance of a possible conflict could still arise". However, the draft report recognizes that "Treasury has established policies designed to separate these interests". Specifically, the report finds that PBGC independently decided – not the PBGC board or

Treasury – to terminate the Delphi pensions. The draft report also found that although the Secretary sits on the board of PBGC, the board sets broad policy, and is not involved in the PBGCs' day-to-day operations, including decisions about terminating a pension plan. Furthermore, the draft report notes that "in the management of its investment in new GM", Treasury's auto team does not communicate with PBGC.

We recognize that the bankruptcy of Delphi has been extremely difficult and challenging for all its employees, and we are acutely aware of the significant hardships that the entire United States automobile industry has faced in recent years. We appreciate the opportunity to respond to your draft report. We look forward to continuing to work with you and your team as we move forward.

Sincerely,

Timothy G. Massad
Assistant Secretary for Financial Stability

2

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

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Staff Acknowledgments

In addition, Margie K. Shields, Assistant Director; Mark M. Glickman, Analyst-in-Charge; James Bennett; Susan Bernstein; A. Nicole Clowers; Julie DeVault; Heather Krause; Edward Leslie; Kathy Leslie; Sheila McCoy; Edda Emmanuelli-Perez; Bryan Rogowski; Raymond Sendejas; and Craig Winslow made significant contributions to this report.

Related GAO Products

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Key Events Leading to the Termination of the Delphi Defined Benefit Plans. GAO-11-373R. Washington, D.C.: March 30, 2011.

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