



Delphi Corporation: Pension Plans and Bankruptcy

John J. Topoleski
Analyst in Income Security

November 9, 2011

Congressional Research Service

7-5700

www.crs.gov

R42076

Summary

The Delphi Corporation is a parts and components supplier to auto makers that was created in 1999 as a spin-off from General Motors (GM). In May 2009, the pension plans of Delphi were terminated and responsibility for the payment of benefits to plan participants was turned over to the Pension Benefit Guaranty Corporation (PBGC), which is a government-run corporation that insures private pension benefits for workers in defined benefit (DB) pension plans. Although most workers in pension plans that are terminated by the PBGC receive their promised benefits, some workers may receive less than their full benefit. The PBGC may not pay an individual more than a statutory maximum benefit.

In 1999, GM and some unions representing Delphi workers negotiated an agreement as part of the spin-off. GM agreed to provide the workers covered by the agreements the difference between the benefits earned under the plan and the maximum that the PBGC would pay if the pension plans were terminated. Some union workers and the non-union-salaried employees of Delphi did not have such a “top-off” agreement. Some contend that GM honored the top-off agreement under pressure from the Presidential Task Force on the Auto Industry and that the Delphi pension plans were terminated to facilitate restructuring in the auto industry. A group of former Delphi salaried employees has filed a lawsuit against the PBGC.

This report provides background on Delphi Corporation, relevant pension law, the role of the PBGC, and a description of major events at Delphi since 1999. This report will be updated as activity warrants.

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Introduction

The economic downturn that began in December 2007 had a significant impact on U.S. manufacturing in general and automobile manufacturing in particular. The automotive industry underwent major restructuring in 2008 and 2009. To facilitate the restructuring, the U.S. government provided two U.S. automakers—General Motors (GM) and Chrysler—with financial assistance. In addition, on February 20, 2009, the Obama Administration announced the creation of the Presidential Task Force on the Auto Industry.¹ The task force was a Cabinet level group, which was led by Secretary of the Treasury Timothy Geithner and the Director of the National Economic Council, in the Office of the President, Larry Summers; it consisted of Cabinet and other executive branch officials. The Task Force was to “discuss recently submitted restructuring plans from Chrysler LLC and General Motors Corporation” and “to conduct additional analysis and form initial recommendations in their [members of the Task Force’s] areas of expertise.”²

U.S. automakers deal with an extensive network of parts suppliers and components makers. These companies faced financial difficulties as a result of the setbacks in the automotive industry. Companies in the automotive supply chain were also a concern of some policy makers during the restructuring.

Delphi Corporation is a “Tier 1” supplier that provides parts and components directly to vehicle manufacturers; GM is Delphi’s largest customer.³ In 2005, Delphi declared bankruptcy. As part of Delphi’s reorganization, GM agreed to assist Delphi by assuming some of the company’s pension liabilities. GM declared bankruptcy on June 1, 2009, and in July 2009, GM announced that it would not assume any of Delphi’s pension liabilities. The Pension Benefit Guaranty Corporation (PBGC) assumed responsibility for Delphi’s defined benefit (DB) pension plans.

Once the PBGC assumed responsibility, some Delphi retirees may have seen their pension benefits reduced if their monthly benefit was larger than the statutory maximum benefit that the PBGC may pay. Some union workers whose pensions have been reduced by the PBGC may be receiving supplemental “top-off” benefits provided by GM. GM negotiated agreements with some of the unions who represent some Delphi workers to provide supplemental benefit if the pensions are transferred to the PBGC. GM honored these “top-off” agreements when Delphi’s pensions were terminated.

In September 2009, a group of current and future salaried employees filed a lawsuit against the PBGC seeking restoration of their pension benefits and claiming that the Delphi pensions were wrongly terminated. The case has not yet been resolved.

¹ More information on the restructuring of the automotive industry is available in CRS Report R40003, *U.S. Motor Vehicle Industry: Federal Financial Assistance and Restructuring*, coordinated by Bill Canis.

² See The White House, Office of the Press Secretary, *Geithner*, “Summers Convene Official Designees to Presidential Task Force on the Auto Industry,” press release, February 20, 2009, available at <http://www.whitehouse.gov/the-press-office/geithner-summers-convene-official-designees-presidential-task-force-auto-industry>.

³ Tier 1 suppliers provide parts and components directly to an automobile supplier. Tier 2 suppliers provide parts and components to Tier 1 suppliers.

Background on Delphi Corporation

Prior to 1989, GM directly owned many of the makers of parts and components for GM automobiles. In 1989, GM combined many of these suppliers into one subsidiary company (Automotive Components Group, or ACG). ACG was renamed “Delphi” in 1995. In 1999, GM sold (or “spun-off”) Delphi by conducting an Initial Public Offering (IPO) of Delphi common stock. Since 1999, Delphi has been a separate publicly owned corporation, although GM continued to be Delphi’s largest customer.

Delphi workers who had been participants in the GM pension plans were transferred to newly formed Delphi pension plans. Workers who had accumulated benefits in GM pension plans had their benefit obligations transferred to Delphi plans. According to GM, GM transferred assets sufficient to cover these benefit obligations.

Delphi’s workforce consisted of hourly employees and salaried employees. In general, the hourly workers were union members whereas the salaried workers were not. The groups of workers had separate benefit plans. To win their approval for the spin-off, GM made agreements with the unions to protect certain post-retirement health and pension benefits.⁴ Because they were non-union and therefore not subject to collective bargaining procedures, GM did not need the salaried workers’ approval for the spin-off and salaried workers did not receive any benefit guarantees.

Background on Pension Benefits

About half of the U.S. workforce participates in one or more employer-sponsored pension plans. The two kinds of pension plans are defined contribution (DC) and defined benefit (DB) pension plans.

In DC plans, contributions from individual employees—and often their employers—are placed in tax-advantaged accounts that accrue investment returns. The accounts are then used as a source of retirement income. In DC plans, individual employees usually direct the investment decisions in their own accounts and bear the risk for investment losses. These DC plans are known as 401(k), 403(b), or 457 plans, based on the appropriate sections of the tax code. Employees are responsible for most of the decisions affecting their individual accounts.

DB pensions are employer-funded pension plans through which employees accrue monthly benefits using a formula based on a combination of the number of years of service and salary. For example, a plan might offer a benefit of 1.5% multiplied by the number of years of an employee’s service multiplied by the average of the employee’s highest five years of salary. So a worker who was employed for 30 years and averaged \$50,000 for the final five years of employment would receive a benefit of \$22,500 per year or \$1,875 per month.⁵ Employers are responsible for ensuring that there are sufficient funds in DB pension plans to pay for current and future benefit payments.

⁴ Federal law required that pension plans be subject to collective bargaining if the participants are union members.

⁵ The yearly benefit would be calculated as follows: $(1.5\% \times 30 \times \$50,000 = \$22,500)$.

Employee Retirement Income Security Act

The Employee Retirement Income Security Act (ERISA; P.L. 93-406) protects the interests of participants in qualified employee benefit plans.⁶ ERISA requires that benefit plans be operated solely in the interest of the participants and beneficiaries and for the exclusive purpose of providing benefits to participants and their beneficiaries.⁷ Among other provisions, ERISA protects workers' pensions by establishing vesting requirements (how long a person has to work to be entitled to benefits); funding requirements (how much the employer must set aside to pay for current and future benefit obligations); and pension insurance (which will pay participant benefits in case of the plan sponsor's bankruptcy). Under ERISA, participants in DB plans do not own the plan assets, but have a claim on the amount of their vested benefits. Pension plan sponsors may not reduce workers' vested pension benefits.

Pension Benefit Guaranty Corporation

ERISA established a government corporation to insure the pension benefits of workers in private sector DB plans. When an insured DB pension plan has insufficient funds and cannot pay all of the promised benefits to the workers, the plan may be "terminated" and the retirees receive their benefits from the Pension Benefit Guaranty Corporation (PBGC). Not all underfunded pension plans are trusted by the PBGC.⁸ The PBGC pays the pension benefits to which workers are entitled, up to limits established by law (29 U.S.C. 1322). The PBGC does not pay benefits for unpredictable contingent events or for a portion of benefits increased in the five years prior to termination.⁹ The benefits to retirees paid by PBGC do not come from taxpayer funding, and the benefit obligations of the PBGC are not obligations of the United States.¹⁰ To pay for its benefit obligations, the PBGC collects insurance premiums from employers that sponsor insured pension plans, receives funds from pension plans it takes over, and earns money from investments.¹¹

⁶ A plan is qualified if it meets Internal Revenue Code requirements with respect to plan participation, vesting of benefits, and distribution of benefits. See 26 U.S.C. 401(a). Qualified plans are eligible for favorable tax treatment, such as deferred taxes on contributions and earnings.

⁷ See 29 U.S.C. 1104.

⁸ In FY2009, the PBGC insured about 27,900 DB pension plans covering 33.6 million people. In FY2009, the single-employer program took in 144 newly terminated pension plans and had about 201,000 new participants. Further information on the PBGC is available in CRS Report 95-118, *Pension Benefit Guaranty Corporation (PBGC): A Fact Sheet*, by John J. Topoleski. Further information on pension plan terminations is available in CRS Report RS22624, *The Pension Benefit Guaranty Corporation and Single-Employer Plan Terminations*, by Jennifer Staman and Erika K. Lunder.

⁹ Shutdown benefits are an example of an unpredictable contingent event. Shutdown benefits are found in large unionized companies in the auto, steel, and tire and rubber industries. A company might agree to provide increased pension benefits to employees in the case of plant closing or shutdown.

¹⁰ See 29 U.S.C. 1302(g)(2).

¹¹ Because the PBGC assumes responsibility for DB pension plans that do not have enough assets to cover their future benefit obligations, the PBGC itself has assets less than its benefit obligations. The deficit in the PBGC's single-employer program was \$21.1 billion at the end of FY2009. The PBGC is on the Government Accountability Office's list of government operations that it identifies as "high risk." For more information see GAO Report GAO-09-271, *High Risk Series: An Update*, available at <http://www.gao.gov/new.items/d09271.pdf>.

PBGC Maximum Guarantee

The maximum guarantee for a pension that was terminated in 2009 is \$4,500 per month (\$54,000 per year) for retirees who begin receiving pensions at the age of 65. The amounts are reduced so that retirees receive “actuarially neutral” pension benefits if they choose benefits in a form other than straight life annuity or if they begin receiving benefits before the age of 65.¹² For example, the maximum benefit for individuals who retire at 65 years old and choose a Joint and 50% Survivor Annuity benefit is \$4,050 per month (\$48,600 per year). For retirees that choose to receive single life annuity benefits at 55 years old, the maximum benefit is \$2,025 per month (\$24,300 per year). The PBGC reported in 2006 that 84% of retirees who receive benefits from the PBGC are paid the full benefit amount they earned under their retirement plan.¹³

Major Events of Delphi Pension Plans Since 1999

Pension Benefits and the Delphi Spin-Off

As part of the spin-off in 1999, GM continued to pay the pension benefits to workers who retired prior to October 1, 2000. The pension benefits of workers who retired on or after October 1, 2000, became the obligations of the various Delphi pension plans.

GM also entered into Benefit Guarantee Agreements with three unions representing its hourly employees: the United Auto Workers (UAW); the International Union (IUE-CWA); and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers Union (USW). These agreements obligated GM in the event of a termination of the Delphi hourly pension plans to supplement the benefits for workers who received the statutory maximum benefit from the PBGC. GM agreed to pay each covered employee the difference between the benefit received from the PBGC and the benefit the individual would have received had the plan not been terminated.

Salaried employees did not have similar agreements in place. This is most likely because the agreement of salaried employees was not necessary to complete the spin-off.

Delphi Bankruptcy and Pension Plan Terminations

Delphi filed for bankruptcy in October 2005. As part of the bankruptcy reorganization plan, GM agreed to the transfer of up to \$3.4 billion of liabilities from the Delphi Hourly Plan to the GM Hourly-Rate Employees Pension Plan. On September 29, 2008, Delphi transferred liabilities of approximately \$2.6 billion and assets of approximately \$0.5 billion from the Delphi Hourly Plan to the GM Hourly-Rate Employees Pension Plan.

¹² A change in the form of a pension benefit is actuarially neutral if the present discounted value of the benefit after the change is equal to the present discounted value of the benefit before the change. Actuarially neutral pension benefits are reduced for early retirement or for including a spousal benefit and are increased for delayed retirement.

¹³ See the 2006 edition of Pension Benefit Guaranty Corporation’s Pension Insurance Data Book, available at <http://www.pbgc.gov/docs/2006databook.pdf>.

On June 1, 2009, GM filed for bankruptcy. It subsequently received U.S. government financial assistance to assist with its reorganization.¹⁴ In July 2009, GM advised Delphi that it would not assume the Hourly Plan and would not transfer additional liabilities from Delphi to the GM pension plans. Because GM declined to assume additional liabilities from the Delphi pension plans, the PBGC terminated the Delphi pension plans, effective July 31, 2009.

GM announced that it would fulfill its obligations to the Hourly Plan retirees by supplementing the pension benefits of those retirees who were receiving the maximum benefit from the PBGC. According to GM,

[a]s a result of bargaining at the time of the spin-off, General Motors Corporation did agree to supplement pension benefits for certain limited groups of hourly employees and retirees in the event that the Delphi hourly pension plan was terminated. As with other union agreements that it has assumed from the old GM, General Motors Company will honor these commitments.¹⁵

Termination of Delphi Pension Plans

ERISA provides for three types of single-employer pension plan terminations: standard, distress, and involuntary. The plan administrator initiates a standard or distress termination, whereas the PBGC initiates an involuntary termination.¹⁶ The Delphi pension plans were subject to an involuntary termination. Under 29 U.S.C. 1342(a), the PBGC may initiate involuntary termination proceedings if one of the following criteria is met:

- the plan has not met the minimum funding requirements or the plan has been notified by the Treasury Secretary that a notice of deficiency concerning the initial tax on a funding deficiency has been mailed;
- the plan will not be able to pay benefits when due;
- a distribution of at least \$10,000 has been made to a participant who is a substantial owner of the sponsoring company and, immediately after the distribution, the plan has unfunded nonforfeitable benefits; or
- the long-run loss to the PBGC “may reasonably be expected to increase unreasonably if the plan is not terminated.”

The PBGC indicated that the Delphi plans met several of the criteria for termination. Delphi had not made required contributions to the pension plans in the previous four years and the plan had assets to pay for only half of its benefit obligations.

¹⁴ For more information on the 2009 events in the U.S. automobile industry, see CRS Report R41154, *The U.S. Motor Vehicle Industry: A Review of Recent Domestic and International Developments*, by Bill Canis and Brent D. Yacobucci.

¹⁵ GM statement is available on PBGC’s website at <http://www.pbgc.gov/FAQ/delphifaq.html>.

¹⁶ More information on pension plan terminations is available in CRS Report RS22624, *The Pension Benefit Guaranty Corporation and Single-Employer Plan Terminations*, by Jennifer Staman and Erika K. Lunder.

The PBGC has assumed responsibility for the following pension plans sponsored by Delphi:

- Delphi Hourly-Rate Employees Pension Plan—approximately 47,176 participants,
- Delphi Retirement Program For Salaried Employees—approximately 20,203 participants,
- Packard-Hughes Interconnect Non-Bargaining Retirement Plan—approximately 1,383 participants,
- ASEC Manufacturing Retirement Program—approximately 533 participants,
- Packard-Hughes Interconnect Bargaining Retirement Plan—approximately 165 participants, and
- Delphi Mechatronic Systems Retirement Program—approximately 148 participants.

On September 14, 2009, the Delphi Salaried Retiree Association (DSRA) filed a lawsuit against, among others, the PBGC, the U.S. Treasury Department, and the Presidential Task Force on the Auto Industry.¹⁷ Some of the DSRA's claims include

- the termination of the Delphi Retirement Program for Salaried Employees was in violation of the Due Process Clause of the Fifth Amendment to the U.S. Constitution;
- the termination of the Delphi Retirement Program for Salaried Employees was in violation of ERISA; and
- the agreement between GM and the unions representing hourly employees to “top-off” the hourly employees’ pensions was a violation of the Equal Protection Clause of the Fifth Amendment to the U.S. Constitution. The DSRA says that GM, acting as a government actor owing to the U.S. Treasury’s role in the GM bankruptcy, unfairly discriminated against the salaried employees “solely on the basis of their choice not to associate with a union.” The DSRA feels that GM’s bankruptcy in June 2009 voided the 1999 “top-up” agreements and that GM renegotiated and provided the “top-up” to the unions’ pension plans for political motivations.

The DSRA sought a preliminary injunction to prevent the PBGC from reducing the payments to the pension plan participants while the case is pending. On January 26, 2010, the court ruled that the PBGC could reduce the payments. The DSRA subsequently claimed that the PBGC has violated the terms of that ruling. On September 9, 2011, the U.S. district court dismissed the claims against the U.S. Treasury. The PBGC remains a defendant in the case.

The DSRA submitted an affidavit from a pension actuary stating that the PBGC miscalculated the benefit obligations of the Delphi plans and that the pension plan for salaried employees was 86.52% underfunded and that it is rare for pension plans with this amount of underfunding to

¹⁷ See Dennis Black, Charles Cunningham, Kenneth Hollis, and the Delphi Retiree Association, Plaintiffs v. The Pension Benefit Guarantee Corporation, The U.S. Presidential Task Force on the Auto Industry, Timothy Geithner, Steven Rathner, Ron Bloom, and [John] Does 1-50, and General Motors Company, Case No. 2:09-cv-13616, filed in United States District Court for the Eastern District of Michigan Southern Division.

require termination.¹⁸ According to PBGC estimates, at time of termination the plans for the Delphi Salaried Employees had \$2.4 billion in assets and liabilities of \$5 billion. The PBGC indicated that it expected to be responsible for about \$2.2 billion of the plan's estimated \$2.6 billion in underfunding.¹⁹

The Delphi court case remains ongoing.

Delphi emerged from bankruptcy in October 2009 after a group of Delphi's lenders purchased most of Delphi's assets. In addition, GM purchased Delphi's steering business and four manufacturing facilities located in three states (Indiana, Michigan, and New York).²⁰ Delphi reported \$13.8 billion in sales in 2010.²¹ For comparison purposes, the company reported \$26.9 billion in revenue in 2005.²²

On March 31, 2011, the PBGC announced that it had redeemed the PBGC's stake in Delphi for \$594 million. The PBGC acquired the stake in Delphi as part of the pension plan termination proceedings. The PBGC indicated that it did not know how this action would affect Delphi retirees' benefits, as the PBGC is continuing the process for determining final benefit amounts for Delphi retirees. The PBGC has indicated that final determinations on benefits will be completed in 2013.²³

Legislation and Congressional Hearings

As of November 2, 2011, no legislation has been introduced in the 112th Congress with regard to Delphi Corporation. The following legislation was introduced in the 111th Congress with regard to Delphi Corporation:

- Senator Roger Wicker introduced S. 3526 on June 23, 2010, and Representative Christopher Lee introduced H.R. 6046 on July 30, 2010. These identical bills would have required the Government Accountability Office (GAO) to evaluate the propriety of assistance provided to General Motors Corporation under the Troubled Asset Relief Program.
- Representative Tim Ryan introduced H.R. 3455 on July 31, 2009, and Senator Sherrod Brown introduced S. 1663 on September 11, 2009. These identical bills would have provided up to \$3 billion from the Emergency Economic

¹⁸ The affidavit stated that the average underfunding for the 100 largest pension plans was 81.7% in 2009. See the Declaration of Jim Degrandis filed in Case No. 2:09-cv-13616 (mentioned in footnote 17).

¹⁹ See PBGC, "PBGC To Assume Delphi Pension Plans," press release, July 22, 2009, available at <http://www.pbgc.gov/news/press/releases/pr09-48.html>.

²⁰ See "After 4 Years, Delphi Exits Bankruptcy With Sale of Assets to Lenders and G.M.," NY Times, October 6, 2009, available at <http://www.nytimes.com/2009/10/07/business/07delphi.html>.

²¹ See Delphi Automotive LLP 2010 Consolidated Financial States, available at <http://delphi.com/pdf/about/financials/2010-Year-End-Financial-Statement.pdf>.

²² See Delphi Reports Fourth Quarter and Calendar Year 2005 Financial Results, available at http://delphi.com/news/pressReleases/pressReleases_2006/pr_2006_07_11_002/.

²³ See Testimony of Deputy Director Vincent K. Snowbarger, Operations Pension Benefit Guaranty Corporation, before the Subcommittee on Regulatory Affairs, Stimulus Oversight and Government Spending Committee on Oversight and Government Reform, U.S. House of Representatives, June 22, 2011, available at http://oversight.house.gov/images/stories/Testimony/6-22-11_Snowbarger_Reg_Affairs_Testimony.pdf.

Stabilization Act of 2008 (P.L. 110-343) to fund a Voluntary Employees' Beneficiary Association (VEBA) for former employees of Delphi or General Motors whose health care coverage was discharged as a result of the companies' bankruptcy. This bill would not have provided any pension benefits to any former Delphi employees. No further action was taken on either bill.

- Representative John Boehner introduced H.Res. 591 on June 26, 2009. Among other provisions, this resolution would have requested that President Obama transmit to the House of Representatives details of the role of the Presidential Task Force on the Auto Industry in any aspect relating to the levels of and reductions in the benefits of General Motors' and Delphi Corporation's employees and retirees. The resolution was reported favorably to the House by the Committee on Financial Services on July 24, 2009.

The following congressional hearings have been or are to be held in the 112th Congress with regard to Delphi Corporation:

- The Regulatory Affairs, Stimulus Oversight, and Government Spending Subcommittee of the House Committee on Oversight and Government Reform held a hearing on June 22, 2011, entitled "Lasting Implications of the General Motors Bailout."
- The House Committee on Oversight and Government Reform will hold a field hearing in Dayton, Ohio, on November 14, 2011, entitled, "Delphi Pension Fallout: Federal Government Picked Winners and Losers, So Who Won and Who Lost?"

The following congressional hearings were held in the 111th Congress with regard to Delphi Corporation:

- The Health, Employment, Labor, and Pensions Subcommittee of the House Education and Labor Committee held a hearing on December 2, 2009, entitled "Examining the Delphi Bankruptcy's Impact on Workers and Retirees."
- The Senate Health, Education, Labor and Pensions (HELP) Committee held a hearing on October 29, 2009, entitled "Pensions in Peril: Helping Workers Preserve Retirement Security through a Recession." Bruce Gump, Chairman of Delphi Salaried Retirees Association provided testimony.
- The Financial Services Oversight and Investigations Subcommittee of the House Financial Services Committee held a field hearing on July 13, 2010, in Canfield, Ohio, entitled "After the Financial Crisis: Ongoing Challenges Facing Delphi Retirees."

Author Contact Information

John J. Topoleski
Analyst in Income Security
jtopoleski@crs.loc.gov, 7-2290