Written Testimony of Harry Wilson, Former Senior Advisor to the Secretary of the Treasury
Before the House Subcommittee on Government Operations

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Chairman Mica, Ranking Member Connolly and members of the Subcommittee, thank you for the opportunity to testify before you today. I am here to report, at your request, on the government's efforts in 2009 to avoid a catastrophic collapse of the U.S. automotive industry and specifically the recent SIGTARP report entitled, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees."

My testimony today is in my capacity as a former Treasury official. I left Treasury in early August 2009, so that is the limit of my direct knowledge.

First, some brief background on myself. I have spent the vast majority of my career in the private sector, working at some of the best financial firms in the country, with a focus on fixing troubled businesses.

As the late 2008 financial crisis deepened, and the Bush and then Obama administrations began to intervene through TARP, I felt it was critical that Treasury had people with the restructuring skills that I had in order to maximize the prospects for success and minimize the cost to taxpayers.

So though I am a lifelong Republican, I joined the Auto Team in early March 2009 and focused primarily on the General Motors rescue. After General Motors exited bankruptcy, I wrapped up my work and left the Treasury. I currently run a turnaround and transformation firm I founded, The MAEVA Group, LLC.

Let me turn to the subject of today's hearing, the recent SIGTARP report. I would like to provide comments in several respects.

First, I believe the body of the report makes clear that General Motors management acted in a commercially reasonable manner in determining how they would treat various groups of Delphi retirees.

General Motors had a choice. Option A, they could choose to not provide any funding at all for Delphi's underfunded pension plans. Option B, they could choose to fully fund ("top up") or even assume all of Delphi's underfunded pension plans. Or, Option C, they could choose to fund/"top up" only the plans they needed to preserve the viability of GM's own reorganization process.

As the SIGTARP report clearly shows, Option A was not a viable option. GM's CEO at the time, Fritz Henderson, indicated that if the pension benefit guarantee with the UAW was not assumed by New GM, there would have been a strike and thus it was "mission impossible."[1]

GM management believed there was no commercial justification for Option B, which would have involved assuming or "topping up" the pensions of nearly 70,000 salaried and hourly pensioners,[2] a majority (20,203 salaried, 18,675 hourly and 2,209 retirees in smaller plans)[3] of whom GM had never committed to support after the 1999 Delphi spin-off[4] (with the salaried plan being substantially overfunded at the time of the spin-off)[5] and who had no ongoing commercial relationship with General Motors. At Delphi itself, none of the prospective investors in Delphi had indicated a willingness to maintain its pension funds.[6] Unfortunately, there was no contractual or market-based support for Option B.

That left only Option C, the path GM ultimately pursued, where they agreed to assume existing "top up" agreements only in cases where they felt they needed to in order to successfully emerge from bankruptcy and operate successfully thereafter.

The record clearly supports these facts.

However, I need to disagree with, and correct for the record, several incorrect characterizations made in the summary and conclusion sections of the SIGTARP report.

First, the report makes several points criticizing the commercial approach which the Auto Team was tasked to utilize. For example, SIGTARP implies the Auto Team worked too closely with GM management in developing a viable plan for GM's restructuring.[7] However, the facts at the time and the results since repudiate this criticism. When the Auto Team was first formed, GM had already failed multiple times to develop a viable plan on its own and the Treasury, and thus the American taxpayer, was funding multi-billion dollar monthly losses. Time was of the essence. In that spirit, the Auto Team worked closely with GM management as they developed their revised viability plan, offering real-time feedback (rather than waiting weeks for a new plan and squandering precious time at great cost) and helping speed along a process that would

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[1] SIGTARP 13-003, "Treasury's Role in the Decision for GM to Provide Pension Payments to Delphi Employees," 7/15/2013, p. 25. Similar comments from multiple GM officials on p. 22 and from UAW officials on page 25. While one Delphi salaried retiree acknowledged the UAW's leverage on page 28, representatives of Delphi's salaried retirees told SIGTARP that "they would have no problem if nobody got a top-up" – but what if the logical extension of that position led to the liquidation of General Motors and Delphi?

[2] GAO-12-168, "GM Agreements with Unions Give Rise to Unique Differences in Participant Benefits," 12/15/2011, p. 6.

[3] GAO-12-168, p. 34.

[4] GAO-12-168, p. 19.

[5] GAO-12-168, p. 14.

[6] SIGTARP 13-003, p. 6: "According to the Delphi officials, various investors expressed interest in Delphi, but none wanted to purchase or invest in Delphi if it retained its pension liabilities."

[7] SIGTARP 13-003, pp. 9 (Wagoner resignation "an early indicator that Treasury, as the main investor in GM, would have significant influence over GM's decisions and operations"), 11 ("Treasury's influence and leverage over GM went beyond Treasury's rights under the TARP loan agreement"), 34 ("SIGTARP found that the Auto Team used their leverage as GM's largest lender to influence and set the parameters for GM to make decisions in areas that did not require Treasury consent").

normally take months and would have cost tens of billions of dollars more than it did. Counter to SIGTARP's assertion that such work, among other similar examples, was "not advisory in nature," this was exactly the type of work which the Auto Team had been created to do: determine if there was a path to viability for General Motors and, if so, work with management to achieve that path.

The commercial success of General Motors since this work was completed in 2009 is beyond dispute. Just last week, a Bloomberg article on the resurgence of the American auto industry stated, "Detroit has come full circle, from bankruptcy to boom . . . Those fatter profits come from trimmer companies that radically restructured operations, shed debts and overhauled their lineups . . . [John Casesa, senior managing director at Guggenheim Partners LLC, added,]'It's a fundamentally different industry.'"[8]

SIGTARP also argues that Treasury inadvertently created negotiating leverage for the UAW due to its aggressive timeline for the restructuring process.[9] Nothing could be further from the truth. The UAW had enormous leverage because they represented nearly 100% of the GM hourly workers with the skills to manufacture cars, and they were prepared to use that clout to press certain key issues. Nothing else in the restructuring process provided them any additional leverage, nor did they need more. The enormous time pressure that GM's operating losses and impending maturities placed on the overall restructuring process had an impact on all stakeholders – from Treasury to management to investors to the UAW -- and pressed each stakeholder similarly towards the eventual deal.

Furthermore, the SIGTARP report is silent on what viable alternatives (if any) there might have been to the path GM pursued. Like all choices in the real world, all of the difficult decisions made during the auto rescues were about a series of trade-offs. For example, SIGTARP implies that the Auto Team should not have established such an aggressive restructuring timeline.[10] However, all industry commentators, GM management and the Auto Team itself were universally convinced that GM could not survive a prolonged bankruptcy; as a result, there was no viable procedural alternative to a very rapid Section 363 sale. Moreover, Section 363 sales like this have been done at times in the past for exactly these reasons, where the business could not sustain a prolonged bankruptcy process.

Similarly, SIGTARP implies that Treasury could have reversed the decision by GM management to honor the UAW top-up,[11] while citing throughout the report uncontradicted testimony from GM, the UAW and the Auto Team that such an action would likely have led to a UAW strike and thus the shuttering of General Motors! This striking inconsistency is not explained adequately in the report and is thus an unfair assertion.

In reality, neither GM management nor Treasury had a practical alternative, unfortunately, to the course that was followed with the Delphi retirees.

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[8] Bloomberg News, "American Auto Profits Showing Signs of Beating 1990s' Best: Cars," by Keith Naughton and Craig Trudell, 9/5/2013.
[9] SIGTARP 13-003, Summary and p. 37.
[10] SIGTARP 13-003, Summary and p. 36.
[11] SIGTARP 13-003, p. 38.

This is not to say that these choices were at all satisfactory. Sadly, the costs inherent in a restructuring as difficult as General Motors' are massive and tragic: reduced pensions, uncompensated product liability victims, billions of investor dollars lost, tens of thousands of lost jobs and, importantly, the moral hazard resulting from such government intervention. In a better world, none of these difficult and painful actions would have been necessary; however, it is equally clear that, for General Motors and its interaction with Delphi in 2009, there was not a viable alternative path available to it, and far greater costs and tragedies were avoided as a result of the work that was done by a large group of people at both companies, their many advisors, the Bush and Obama Administrations and the US Treasury.

I look forward to discussing these issues with you today.