

**JOINT HEARING ON PENSION TENSION:  
DOES THE PENSION BENEFIT GUARANTY  
CORPORATION DELIVER FOR RETIREES**

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**JOINT HEARING**  
BEFORE THE  
**SPECIAL COMMITTEE ON AGING**  
AND THE  
**COMMITTEE ON SMALL BUSINESS**  
**UNITED STATES SENATE**  
ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

WASHINGTON, DC

SEPTEMBER 21, 2000

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**THURSDAY, SEPTEMBER 21, 2000**

U.S. SENATE,  
SPECIAL COMMITTEE ON AGING,  
AND THE COMMITTEE ON SMALL BUSINESS,  
*Washington, DC.*

The committee met jointly, pursuant to notice, at 8 a.m., in room SD-562, Dirksen Senate Office Building, Hon. Charles Grassley (Chairman of the Committee) presiding.

Present: Senators Grassley, Breaux and Bond.

**OPENING STATEMENT OF SENATOR CHARLES GRASSLEY,  
CHAIRMAN**

The CHAIRMAN. Thank you all for coming. And as everybody who observes Congress to any great extent, and that is probably a large—like I was about to say, there is unusual things happening. [Laughter.]

And the most unusual is that we are meeting at 8 in the morning. And you can see that even the mechanical aspects of Congress do not operate very well at 8 o'clock in the morning. This is necessary because Senator Breaux and I are members of the Senate Finance Committee. And a meeting that was scheduled for yesterday at 10 o'clock was postponed to today at 10 o'clock, which interfered with our hearing. And so we called this at 8 o'clock in the morning to be able to accommodate all of our responsibilities for today.

So those of you who have come out early, we thank you very much for doing that, particularly those who had to come, members of this committee, as well as our witnesses.

I thank Senator Bond, Chairman of the Committee on Small Business, and I thank the ranking members of both committees, Senator Breaux and Senator Kerry, for their support of this oversight hearing, and I thank my fellow members on both sides of the aisle for taking time out of their busy schedule at the end of the session to attend this hearing and also a second thank you for accommodating us by starting at 8 in the morning, for a second time, and I think they deserve it to thank our witnesses for being here today and again earlier than usual.

Your testimony as witnesses will assist the committee greatly in determining how best to address the matters that are raised by you and by our investigators. I appreciate everyone's cooperation in

permitting me to start so early, and I have explained why we are here, and I would appreciate members who normally are not ranking member or chairmen who I would defer to give statements, that today we will pass up those statements as a matter of time. So only Senator Breaux and I, and Senator Kerry and Senator Bond will have statements.

There's been a lot of discussion throughout the 106th Congress about retirement income security. It has been a theme of my chairmanship of this committee. As this Congress comes to a close, we continue to work to pass legislation to help Americans create secure retirement. Next week, the Senate is going to debate the Comprehensive Pension Reform bill as an example. But what if you do not have a secure retirement or what if you will only receive a small pension from the Social Security Administration and your company's pension makes all of the difference in the world then to the quality of life you have in retirement.

Imagine retiring and applying to receive your pension benefit from a company that you worked for very early in your career, and you find that that plan has gone bankrupt. Imagine collecting a pension check for a decade only to receive notice stating that you have been overpaid for several years. Now you owe several thousand dollars, and your monthly pension will be reduced drastically. Imagine receiving an IRS notice that you underpaid your taxes because of the lump sum you received as a result of somebody's miscalculation. Now that individual faces higher taxes and a 20-percent penalty.

Imagine receiving a \$473,000 check by mistake, as did the mother of one of today's witnesses. A copy of the check sent to the PBGC to return the mistaken money is demonstrated over here on this chart at my right. But the problem did not end there. Next, you will hear from the IRS because they get involved wanting taxes and penalties on a \$470,000 mistake, and that is evidenced here by the letter from the IRS.

This hearing then focuses upon the Pension Benefit Guaranty Corporation, the PBGC, as we will refer to it. It is a wholly owned Government corporation that manages \$19 billion. The PBGC's core mission is to provide timely and accurate benefits to millions of Americans who are covered by private sector-defined benefit plans. Today, we will examine how effectively the PBGC has carried out its missions.

We are going to hear a lot about the Corporation's benefit determination process. To simplify this discussion, I have over here another chart that we prepared, which reflects an overview of the Corporation's benefit process. I plan to leave this chart up throughout the hearing for any witnesses who may wish to refer to it. The chart shows seven stages of the benefit determination process. We are primarily concerned with five stages, which are numbered on the chart.

Today, we will hear various statistics about the length of time it takes the corporation to process final benefit determinations, and it is important to keep in mind four dates: The date of plan determination, and that is called Stage One; date of trustee is reflected, also, at Stage One; the date of actuarial valuation reflected in

Stage Three; and the date of the initial or final determination letter is sent, and that is at Stage Four.

Regardless of the dates used to analyze the efficiency of the Corporation's benefit process, it is important for us to keep one simple fact in mind: A retiring individual needs to know the amount of his or her retirement at the earliest possible date, preferably right after plan determination. Let me be clear that I recognize many people are satisfied with the Corporation's management. I am thankful for that. I further recognize that the Corporation has a difficult job in assessing plan records from bankrupt companies in calculating benefits.

However, other people have had less satisfactory experiences, and we will hear from some of those stories today. Our purpose is not to embarrass anybody, but to focus on how we can continue to improve delivery of this vital service to millions of Americans. The committee has learned that it takes the corporation approximately 6 years from the date that a retirement plan terminates to determine the amount of a person's retirement benefit. Remember that that is an average time. From the chart to my right, you can see that some determinations might take as long as 15 to 20 years, and that is Chart No. D. That is a very long time for someone to wait before they know what their retirement is going to be.

It is true that the Corporation does an excellent job of ensuring that people's payments continue through the determination process. The problem, however, arises with the uncertainty people can face from year to year. People need to know, as quickly as possible, the amount of their monthly retirement check. I believe that a corporation chartered by Congress can do much, much better. I intend to see that this situation improves dramatically.

The hearing will cover two additional topics that are directly related to the benefits determination process: contract management and computer security. The Corporation's contract management is important to this discussion because more than one-half of the Corporation's 1,300 employees are contract employees located in 12 offices. These contract employees process the bulk of the Corporation's benefit determinations.

Today, I and Senator Bond are releasing a General Accounting Office report on the Corporation's contract practices. In addition, the Corporation's Inspector General will discuss five reports that he has conducted on the length of time it takes the Corporation to process benefit determinations. The Inspector General will also discuss his computer penetration study that hacked into the Corporation's computer system and demonstrated its lack of security. The Corporation has reported to our two committees monthly and has made great strides to ensure that its computer system is more secure.

[The prepared statement of Senator Grassley follows:]

PREPARED STATEMENT OF SENATOR CHARLES GRASSLEY

I want to begin by thanking Senator Bond, Chairman of the Committee on Small Business, as well as the Ranking Members of both committees, Senator Breaux and Senator Kerry, for their support on this oversight hearing. I want to thank my fellow Members, on both sides of the aisle, for taking time out of their busy schedules at the end of the session to attend this important hearing. In addition, I want to

thank the witnesses for being here today. Your testimony today will assist the Committee greatly in determining how best to address the matters you raise.

I appreciate everyone's cooperation in permitting me to start the hearing earlier today. I have been called to a Finance Committee mark-up on important legislation beginning at 10 a.m. Therefore, I want to try to complete this hearing by 10 a.m. today.

There has been a lot of discussion throughout the 106th Congress about retirement income security. It has been a theme for me in my chairmanship of the Aging Committee. As this Congress comes to a close we continue to work to pass legislation to help Americans create a secure retirement. (Next week, the Senate will debate the comprehensive pension reform bill that I cosponsored.)

But what if you don't have a secure retirement? Or, what if you will only receive a small pension from the Social Security Administration and your company's pension makes all the difference? Imagine retiring and applying to receive your pension benefits from a company that you worked for early in your career. You find it has since gone bankrupt. Imagine collecting a pension check for a decade only to receive a notice stating that you have been overpaid all these years. Now you owe several thousand dollars and your monthly pension will be reduced drastically. Imagine receiving an IRS notice that you underpaid your taxes because of the lump sum you received as a result of somebody's miscalculation. Now you face higher taxes and 20 percent penalties. Imagine receiving a \$473,000 check by mistake, as did the mother of one of today's witnesses. But, the problem didn't end there. Next, you will hear how the IRS got involved, wanting taxes and penalties on the \$473,000 mistake.

This hearing focuses on the Pension Benefit Guaranty Corporation, or PBGC, which is a wholly-owned government corporation that manages \$19 billion. PBGC's core mission is to provide timely and accurate benefits to millions of people who are covered by private sector defined benefit plans. Today we will examine how effectively PBGC has carried out its mission.

We are going to hear a lot about PBGC's benefit determination process. To simplify this discussion, we have prepared the next chart which reflects an *Overview of PBGC's Benefit Process*. I plan to leave this chart up throughout the hearing for any of the witnesses who may wish to refer to it. The chart shows seven stages of the benefit determination process. We're primarily concerned with five stages, which are numbered on the chart. Today we will hear various statistics about the length of time it takes PBGC to process final benefit determinations. It is important to keep in mind four key dates:

- date of plan termination (reflected at Stage I);
- date of trusteeship (reflected at Stage I);
- date of actuarial valuation (reflected at Stage III); and
- date on which the initial (or final determination) letter is sent (at Stage IV).

Regardless of the dates used to analyze the efficiency of PBGC's benefit process, it is important for us to keep one simple fact in mind—a retiring individual needs to know the amount of his or her retirement at the earliest possible date—preferably right after plan termination.

Let me be clear that I recognize many people are satisfied with PBGC. I am thankful for that. I further recognize that PBGC has a difficult job in accessing plan records from bankrupt companies and calculating the benefit. However, other people have had less satisfactory experiences. We will hear some of those stories today. Our purpose is not to embarrass an agency but to focus on how we can continue to improve the delivery of this vital service to millions of Americans.

The Committee has learned that it takes PBGC approximately 6 years from the date that a retirement plan terminates to determine the amount of a person's retirement benefit. Remember—that's the average time. From the chart to my right, you can see that some determinations take from 15 to 20 years!! That's a very long time for someone to wait before they know what their retirement income will be.

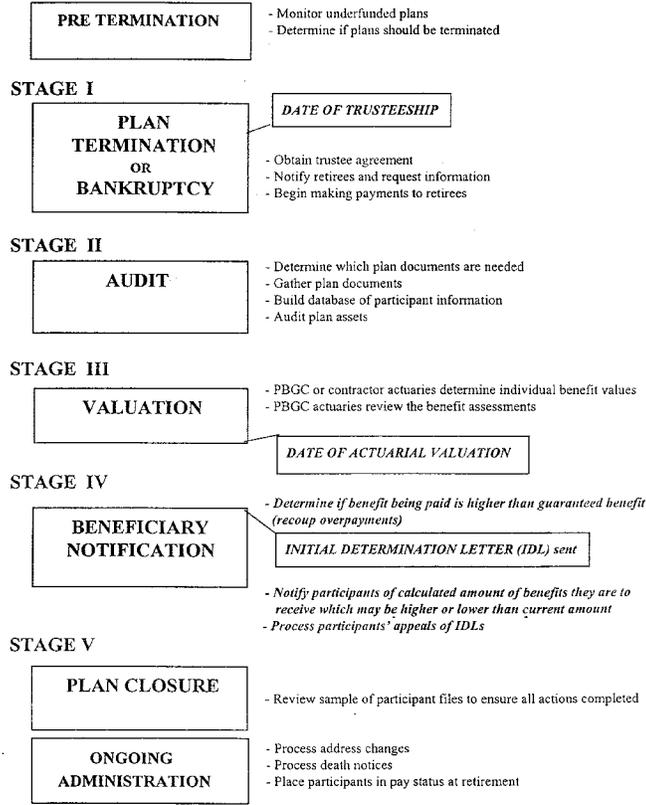
It is true that PBGC does an excellent job of ensuring that people's payments continue throughout the determination process. The problem arises with the uncertainty people can face for years and years. People need to know as quickly as possible the amount of their monthly retirement check. I believe that a corporation, chartered by Congress, can do much, much better. I intend to see that this situation improves dramatically.

The hearing will cover two additional topics that are directly related to the benefits determination process: contract management and computer security. PBGC's contract management is important to this discussion because more than one-half of PBGC's 1,300 employees are contract employees located in 12 offices. These contract employees process the bulk of PBGC's benefit determinations. Today, Senator Bond

and I are releasing a GAO report on PBGC's contract practices. In addition PBGC's Inspector General will discuss five reports he has conducted on the length of time it takes PBGC to process benefit determinations. The Inspector General will also discuss his computer penetration study that hacked into PBGC's computer system and demonstrated its lack of security. PBGC has reported to our two Committees monthly and has made great strides to ensure that its computer system is secure.

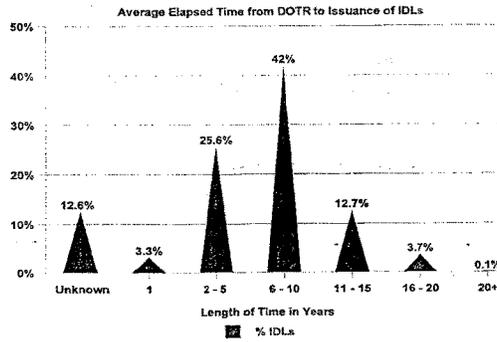
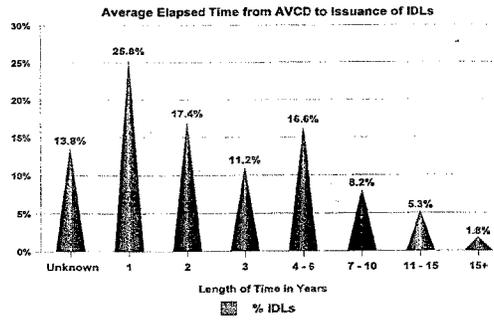
[Charts on Overview of PBGC]

**OVERVIEW OF PBGC's BENEFIT PROCESS**



SOURCE: Derived from "PBGC: Management of Contracting Activities Needs Improvement," GAO/HEHS-00-130, Figure 1.

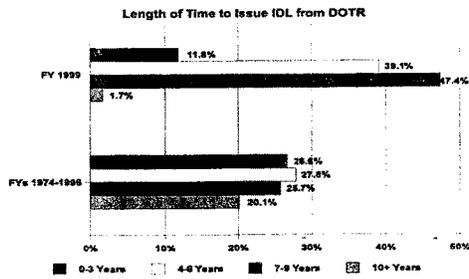
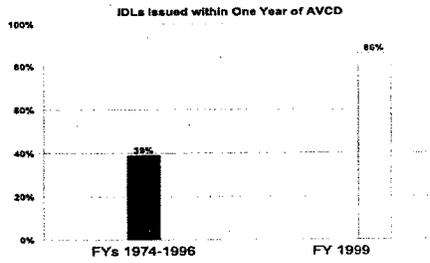
ACTUARIAL VALUATION COMPLETION DATE  
versus  
DATE OF TRUSTEESHIP



IDLs Initial Determination Letters  
AVCD Actuarial Valuation Completion Date  
DOTR Date of Trusteeship

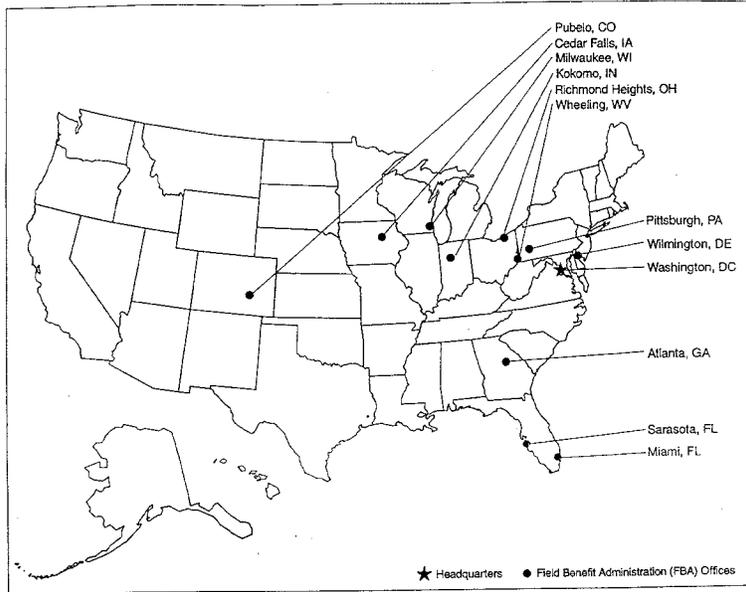
SOURCE: "The Length of Time It Has Taken PBGC to Issue Initial Determination Letters," PBGC OIG, 99-3-23128-2

### Fiscal Year 1999: An Update on PBGC's Issuance of Initial Determination Letters

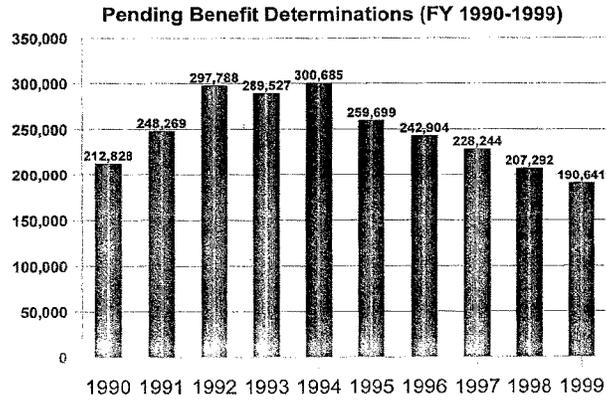


SOURCE: "Update on the Length of Time It Has Taken PBGC to Issue Initial Determination Letters," PBGC OIG 2000-4/23140-1

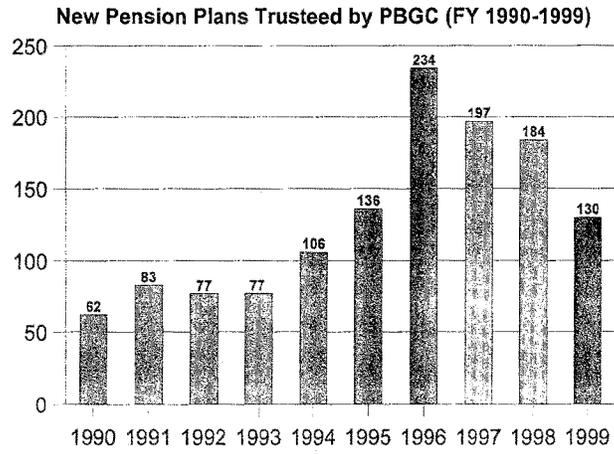
PBGC Contractor Operated Field Office Locations



SOURCE: "PBGC: Management of Contracting Activities Needs Improvement" GAO/HEHS-00-130



SOURCE: "PBGC: Management of Contracting Activities Needs Improvement," GAO/HEHS-00-130



SOURCE: "PBGC: Management of Contracting Activities Needs Improvement" GAO/HEHS-00-130

I now would refer to Senator Breaux, the distinguished ranking minority member of this Committee on Aging.

**STATEMENT OF SENATOR JOHN B. BREAUX**

Senator BREAUX. Thank you, Mr. Chairman. I am delighted to join with you in participating in this hearing. I am glad the charts have cleared up how the Agency operates. I am not sure it is totally clear yet. Today, after reading that chart, it looks like how Congress operates, which is not very clear at all. [Laughter.]

But I think it is important that we look at the agencies that we have jurisdiction over, particularly in the area of retirement security. The average American probably has never heard of a corporation called the Pension Benefit Guaranty Corporation. Most Americans would not be able to tell you what that Agency does. But for millions of Americans who rely on the Pension Benefit Guaranty Corporation for a check every month, they certainly understand it and know how important it is to their daily lives. They are dependent on it.

In my own State of Louisiana, as an example, there are 302 plans, I think, that pay premiums to cover over a half a million participants just in my State of Louisiana. This is a corporation that manages millions and millions of dollars and serves a very critical purpose for a large number of Americans. And I think, therefore, it is appropriate and proper that this committee, in particular, which has taken the leadership I think in so many areas dealing with retirement and pension benefits and issues of particular concern to the elderly in our country, that it is appropriate that we have this oversight committee.

I think the executive director, Mr. Strauss, would be the first to admit that any agency in Government, indeed, can always do better than they have. And what we look for is a trend line of improving performance in serving the American public. I think it is important for this Agency, this Corporation, to know that Congress is looking at their operations and want to ensure that the movement is in the right direction in order to continue to improve services. And I think over the past years there has been an improvement in the quality of the services to the American people. This is an issue that is far too important to take lightly. Pensions are the life blood of many families in America. So we have to continue to do a better job than we did in the previous year.

There has been some concern about the tardiness in coming up with a final determination of what the actual benefits would be on a month-to-month basis, and we need to do better in that area. I do note, however, that I don't think we've ever missed any payments, and people have always been able to depend on that pension check. And in most cases, the initial determination and the final determination are actually very close to being the same thing. Americans can depend on getting their pension from the Pension Guaranty Corporation.

Customer services is a priority. I mean, this Agency, as we and the Congress, work for the American people. I have reviewed Mr. Strauss's testimony. I have been impressed that a person who is executive director has actually spent such an incredible amount of time in personally meeting with people who use this Corporation

and depend on it. I think that is admirable. Too often, in Washington, people who run agencies have a disconnect with the people that they serve. It is very important to reestablish that, and I think they have done that.

There has also been about 21 years of budget shortfalls in this Agency, which has been very disturbing. And it is good to note that over the last four consecutive years we have had a surplus. I think that is a major and very positive indication of movement in the right direction, as well as a downturn in the number of pending benefit determinations that are still pending and have been going down in each of the last 5 years.

So there is progress that is being made. Is it a perfect Agency? No. Is there a perfect Agency in Washington? No. I mean, everybody can stand improvement, and that is what we are looking for here today. And I look forward to all of our witnesses and their recommendations.

Thank you, Mr. Chairman.

The CHAIRMAN. I will try to accommodate Senator Bond or Senator Kerry if they are under tight schedules when they show up, if they want to make statements, because they have to go to another committee meeting. Both staff can inform them that I am willing to do that to help them. Because we need to conclude the hearing at 10 a.m. to attend the Finance Committee mark-up, as I have already suggested, I thank the Inspector General for his preparation to provide an introductory overview of the PBGC. And in the interest of time, I want to dispense with that opening and make it a part of the record.

Now, I introduce the panel, and I will introduce the entire panel, and then we will start with Mr. Parks and end with Mr. Strauss.

Thomas A. Parks is a constituent of mine from Cedar Rapids, IA. And he has come here under extreme circumstances because he has been with a friend who is ill in Alaska, and we appreciate very much your taking time out of your schedule to come.

Now, we have another person, Dr. Wilde, who evidently because of plane problems may not be able to get here. He happens to be from Dale City, CA, but is now in Chicago, it is my understanding. He is going to, if he gets here, will testify on behalf of his mother, Dorothy Jasco. If he does not come, we will be able to put his statement in the record.

Then we have Bonne McHenry, a former contract employee of the Corporation, PBGC. She is from Merrimack, NH. Then, we have the Inspector General of the Corporation, Wayne Robert Poll. Thank you for coming.

And Barbara Bovbjerg, Associate Director of Income Security at the General Accounting Office. Thank you.

Robert H. Hast, Assistant Comptroller General for Special Investigations at the General Accounting Office.

And then David Strauss, our Executive Director of the Pension Benefit Guaranty Corporation. Thank you.

Now, we will start with Mr. Parks.

**STATEMENT OF THOMAS A. PARKS, CEDAR RAPIDS, IA**

Mr. PARKS. Thank you, Senator. Let me also preface my remarks that I have no interest in negatively complicating the lives of anyone at the Pension Benefit Guaranty Corporation. My sole motivation is to illuminate past problems with and within the PBGC, based on my experience, so as to hopefully benefit what I suspect are probably thousands of retirees highly dependent upon the PBGC.

That philosophy was enunciated in my letter to the PBGC of April 3, 1996, after approximately 4½ years had elapsed before my situation was finally resolved in August 2000. That final determination, incidently, came after approximately 8 years after the PBGC became involved in this plan. In that 1996 letter, I stated:

“My experience suggests to me that problems of this nature reflect much greater problems at the top. This does not necessarily mean at the supervisory level, it may be a funding issue or something comparable and equally difficult to resolve.”

“For that reason alone, I am writing to you to ask that my unanswered letters be answered and my case resolved with rational expediency and that you allow me the benefit of your insight into the overall question before I take this matter up with others who I am reasonably certain will act.”

To that April 1996 letter I attached an earlier fax to the PBGC in which I recited a litany of mistakes, some of which involve my receiving, without explanation, a substantial check drawn on a bank other than that which the PBGC had indicated would be transmitting funds and against a company pension plan unrelated to me in any way. Subsequently, I received another check duplicating the amount of the first check, drawn upon the correct PBGC bank. I returned these funds to the PBGC via a certified check.

Like other communications with the PBGC, these received no clarifying response. Instead, in April 1996, I received a request for documents that duplicated documents first supplied November 27, 1995. Subsequently, I received a surprising telephone inquiry from the PBGC asking if I could illuminate the cause of errors that were obviously internal to them and about which I was understandably uninformed. My response simply reiterated details previously supplied.

Following months of frustrating absence of any closure on questions and issues put before the PBGC, in January 1997, I requested the assistance of Congressman Jim Leach. In my judgment, the initial response to the Congressman's office was evasive and of little assistance, except to confirm that some undefined action was in progress. Subsequently, in a letter dated February 3, 1997, a full 5 years after the applicable pension plan had been terminated with the PBGC's involvement and 1½ years after my retirement and filing for benefits, the PBGC confirmed their appointment as trustee, which had actually happened 6 months previously.

The PBGC then, in February 1997, proceeded to send auditors to my former employer's office to audit materials readily available from Aetna from 1992 forward. Nothing further was heard from them until 8 months later, when they telephoned my employer's former plan administrator, asking questions previously answered many times and suggesting that they had “misplaced”—their

words—applicable files and were “temporarily stymied.” Consequently, on November 12, 1997, I requested assistance from the office of Senator Charles Grassley and provided that office with a detailed recap of pertinent communications with the PBGC extending from September 1991, over 6 years. That communication and attachments are included herewith as a matter of record.

The PBGC, in December 1997, responded to Senator Grassley, stating, among other things, that “our processing schedule calls for final benefits to be calculated by the end of 1998,” which actually did not occur until August 2000. In this response, the PBGC expressed concern over the length of the process and further stated that their problems resolution officer had been asked to monitor my case to ensure that it stays on track.

I regret having to add to this litany of problems the fact that the final determination letter, ultimately received on August 14, 2000, was found to be incorrect and was superseded by what I presume is the ultimate final determination letter, dated August 18, 2000. In all fairness, I must add that this error was found by the PBGC without input from me and that they acted quickly to make the necessary corrections.

This quick action suggestions or appears to suggest some internal improvements have taken place, but this appearance of improvement is so recent that I am hesitant to rely upon it.

The fact remains that eight long years were consumed in the process between when the PBGC first became involved and their final determination of my case. During much of this time, I was uncertain as to benefits due me and aware that, upon final determination, I might have a partial repayment obligation rather than an increase in the monthly interim payment being received. Those interim payments began at \$1,006 in May 1996 and were provisionally adjusted upwards to \$1,257 in February 1998. In their final determination letter, the PBGC advised that my final entitlement would be increased by 83 cents.

Your attention is drawn to Attachment 1 to my November 12, 1997, letter to Senator Charles Grassley. That attachment, dated June 4, 1992, authored by my former employer’s pension plan administrator, states that upon my retirement my benefit payment will be \$1,257.88, only a nickel variance from the number determined by the PBGC to be applicable after 8 years of expended resources.

When one compares the years and resources consumed to arrive at such an insignificant change, it is difficult to make a positive statement, even given that I do have an appreciation for fiscal and accounting procedures which might justify such a modest adjustment. The 1992 estimate authored by my former employer’s plan administrator was not mere speculation. It was predicated upon the facts that Aetna’s actuaries had monitored and reported upon the applicable plan for benefits for many years. Additionally, in compliance with Department of Labor requirements, the company’s plan numbers and Aetna’s numbers had been audited and verified annually by auditors such as Price Waterhouse and Arthur Anderson.

The PBGC’s refusal to work with this certified data and thus save years of expensive efforts, only to essentially arrive at an

identical conclusion, appears to reflect that other situations possibly surfaced unsatisfactory detail. However, to consequently adopt an attitude that one rule or experience fits all is tunnel vision, causing corporate and human misery best avoided by working with more commonly accepted business practices. My decades of experience working for and operating small businesses dictates a strong position opposing such waste.

I have also held management positions in Fortune 500 companies and can attest that their ability and resources to deal with such problems are more in tune with these bureaucratic procedures, which have the potential of crushing small businesses. In most cases, where one rule or procedure is assumed applicable to all businesses, small or large, the small company operates at a distinct disadvantage.

In summary, the delays and absence of communication over many years perpetuated uncertainties and prolonged determination of benefits to which I was, and am, entitled. I am fortunate that my financial survival was not at stake, but I suspect that many others suffering this treatment are injured or at least highly insecure.

As I reflect upon this experience, I am led to speculate that the root problem is or was a lack of adequate resources to cope with a crescendo of plan failures during the 1990's. If that is the case, the fault rests not with line personnel, but rather with top management or funding sources or both for having failed to recognize the magnitude of the needs.

Thank you very much.

[The prepared statement of Mr. Parks follows:]

17

**TESTIMONY OF**

**THOMAS PARKS**

**before the**

**SPECIAL COMMITTEE ON AGING**

**SEPTEMBER 21, 2000**

**Statement of Thomas Parks**

Let me open by enunciating that I have no interest in attacking individuals nor in negatively complicating the lives of anyone at the Pension Benefit Guaranty Corporation (PBGC). My sole motivation is to illuminate perceived indicators of past problems with and within the PBGC, so as to hopefully benefit what I suspect are probably thousands of retirees highly dependent upon the PBGC functioning more expediently.

That philosophy was enunciated in my letter to the PBGC of April 3, 1996, after which approximately four and a half years elapsed before my situation was finally resolved in August 2000. That "final determination", incidentally, came after approximately eight years after the PBGC was made aware of their need to become involved. In that April 1996 letter I stated:

"My experience suggests to me that problems of this nature reflect much greater problems "at the top". This does not necessarily mean at the supervisory level, it may be a funding issue or something comparable and equally difficult to resolve.

For that reason alone I am writing to you to ask that (1) my unanswered letters be answered and my "case" resolved with rational expediency and (2) that you allow me the benefit of your insight into the overall question before I take this matter up with others who I'm reasonably certain will act."

To that April 1996 I attached a April 3, 1996, fax to the PBGC in which I recited a litany of mistakes, some of which involved my receiving without explanation a substantial check drawn on a bank other than that which the PBGC had indicated would be transmitting funds and against a company pension plan unrelated to me in any way. Subsequently, I received another check duplicating the amount of the first check, drawn upon the correct PBGC bank. I returned these funds to the PBGC via a certified check.

Like other communications with the PBGC, these received no clarifying response. Instead, on April 8, 1996 I received a request for documents that duplicated documents first supplied November 27, 1995. Subsequently (May 30) I received a surprising telephone inquiry from the PBGC asking if I could illuminate the cause of errors that were obviously internal to PBGC and about which I was understandably uninformed. My May 30, 1996 response simply reiterated details previously supplied.

Following months of a frustrating absence of any closure on questions and issues put before the PBGC, in January 1997 I requested the assistance of Congressman Jim Leach. In my judgement, the initial response to the Congressman's office was evasive and of little assistance, except to confirm that some undefined action was in progress. Subsequently, in a letter dated February 3, 1997, a full five years after the applicable pension plan been terminated with the PBGC's involvement and one and a half years after my retirement and filing for benefits, the PBGC confirmed their appointment as Trustee (which had actually happened six months previously).

The PBGC then (February 1997) proceeded to send auditors to my former employer's office to audit materials readily available from Aetna from 1992 forward. Nothing further was heard from the PBGC until nearly eight months later, when the PBGC telephoned my employer's former Plan Administrator, asking questions previously answered many times and suggesting that the PBGC had "misplaced" applicable files and were "temporarily stymied".

Consequently, on November 12, 1997, I requested assistance from the Office of Senator Charles Grassley and provided that office with a detailed recap of pertinent communications with the PBGC extending from September 1991 (six years). That communication and attachments are included herewith as a matter of record.

The PBGC on December 19, 1997, responded to Senator Grassley, stating among other things, that "our processing schedule calls for final benefits to be calculated by the end of 1998", which actually did not occur until August 2000. In this response the PBGC expressed concern over the "length of this process" and further stated that their Problems Resolution Officer had been asked to monitor my case "to ensure that it stays on track".

I regret having to add to this litany of problems the fact that the "final determination" letter ultimately received on August 14, 2000 was found to be incorrect and was superceded by what I presume is the ultimate final determination letter dated August 18, 2000. In all fairness I must add that this error was found by the PBGC without input from me and that they acted quickly to make the necessary corrections.

This quick action appears to suggest that some internal improvements have taken place within the PBGC, but this appearance of improvement is so recent that I am hesitant to rely upon that impression.

The fact remains that eight long years were consumed in the process between when the PBGC first became involved and their final determination of my case (number 149030). During much of this time I was uncertain as to benefits due me and aware that upon "final determination" I might have a partial repayment obligation rather than an increase in the monthly interim payment being received. These interim payments began at \$1006 in May 1996 and were provisionally adjusted upwards to \$1257 in February 1998. In their "final determination" letter the PBGC advised that my final entitlement would be increased by \$0.83 to \$1257.83.

Your attention is drawn to Attachment 1 to my November 12, 1997 letter to Senator Charles Grassley. That attachment, dated June 4, 1992, authored by my former employer's Pension Plan Administrator, states that upon my retirement my benefit payment will be \$1257.88, only \$0.05 variance from the number determined by the PBGC to be applicable, after years of expended resources.

When one compares the years and resources consumed to arrive at such an insignificant change, it is difficult to make a positive comment, even given that I do have an appreciation for fiscal and

accounting procedures which might justify such a modest adjustment. The 1992 estimate authored by my former employer's Plan Administrator was not mere speculation. It was predicated upon the facts that Aetna's actuaries had monitored and reported upon the applicable plan benefits for many years. Additionally, in compliance with Department of Labor requirements, the company's plan numbers and Aetnas had been audited and verified annually by auditors such as Price Waterhouse and Arthur Anderson.

The PBGC's refusal to work with this certified data and thus save years of expensive efforts, only to essentially arrive at an identical conclusion, appears to reflect that other situations possibly surfaced unsatisfactory detail. However, to consequently adopt an attitude that "one rule or experience fits all" is tunnel vision causing corporate and human misery best avoided by working with more commonly accepted business practices. My decades of experience working for and operating small businesses dictates a strong position opposing waste.

I have also held management positions in Fortune 500 companies and can attest that their ability and resources to deal with such problems are more in tune with these bureaucratic procedures, which have the potential of crushing small businesses. In most cases where one rule or procedure is assumed applicable to all businesses, small or large, the small company operates at a distinct disadvantage.

In summary, the delays and absence of communication over many years perpetuated uncertainties and prolonged determination of benefits to which I am entitled. I am fortunate that my financial survival was not at stake, but I suspect that many others suffering this treatment are greatly injured or, at best, highly insecure.

As I reflect upon this experience I am led to speculate that the root problem is or was a lack of adequate resources to cope with a crescendo of plan failures during the 1990's. If that is the case, the fault rests not with line personnel but, rather, with top management or funding sources, or both, for having failed to recognize the magnitude of the needs.

The CHAIRMAN. Thank you, Mr. Parks.  
Now, Ms. McHenry.

**STATEMENT OF BONNE McHENRY, FORMER PENSION BENEFIT GUARANTY CORPORATION CONTRACT EMPLOYEE, MERRIMACK, NH**

Ms. McHENRY. I, Bonne Ann McHenry, respectfully submit the following testimony on September 21, 2000, before the Senate Special Committee on Aging and the Senate Committee on Small Business.

I worked for Integrated Management Resources Group, Incorporated, IMRG, as a Senior Pension Administrator for the Atlanta PBGC office. My testimony is based on my experiences and observations. Since I was a member of the Pan American Cooperative Retirement Income Plan—Pan Am CRIP—team for most of this time, I would like to address the process, timeliness and accuracy of the issuance of these Initial Determination Letters.

An Initial Determination Letter, IDL, is a communication to a participation in a PBGC-administered defined benefit pension plan that states the amount of his or her benefit at normal retirement age. If the participant is already receiving a pension, an IDL confirms or refutes the amount that is being paid. An IDL is the most important document that the participant will receive from the PBGC because a participant who disagrees with PBGC's determination cannot appeal PBGC's decision until an IDL is issued. In other words, PBGC prevents participants from appealing any disputed benefit amount by simply failing or refusing to issue an Initial Determination Letter.

Those participants who believe they are entitled to a higher benefit, must put their financial future on hold because the major source of income from their pensions is uncertain. If a participant does not respond to his or her IDL within 45 days, the right to appeal is lost. The Pan American World Airways Cooperative Retirement Income Plan was frozen on December 31, 1983, and the company filed bankruptcy and this plan was retroactively terminated on July 31, 1991.

In my view, and based upon my experience, there was no justification for the delays in providing IDLs to the Pan Am participants. When I began working at the Atlanta PBGC office, over 7 years after PBGC assumed responsibility for this plan, the majority of the 20,000 participants in the CRIP plan had not yet received an Initial Determination Letter, yet I was able to look at a stand-alone PC screen connected to the Pan Am data base and see the work and salary history, as well as the calculated accrued benefit/IDL information for most Pan Am employees. Neither PBGC nor IMRG expressed concern for the impact of their poor management on participants. In my opinion, it should not have taken PBGC so long to issue IDLs.

PBGC did not appear to take particular care with regard to accuracy, did not make the best use of both Pan Am's records and its own technology. Although the calculations for those who were receiving benefits had already been scanned into the PBGC IPS system and could have been used to verify benefit amounts, options chosen and spousal information, the PBGC sent out IDLs with in-

correct benefit amounts, inaccurate options chosen, wrong name or “unknown” for spouse’s name. The IDLs were issued with incorrect Social Security numbers. IDLs were sent to former Pan Am employees who are already being paid by CIGNA, Prudential, or Johnson Controls. IDLs were sent to people who had never worked for Pan Am. Letters were sent to retirees with the language, “Due to unresolved issues, we cannot determine the amount of your benefit at this time.”

When the PBGC office in Washington issued these IDLs in batches, it used its automated letter system called ALG. As a result, there were spelling and grammar mistakes and dates in fields were benefit amounts should be and vice versa. In every instance where I talked to someone who had received one of the above letters, I could almost always verify what the correct information should have been using the records that had been imaged or the Pan Am data base.

Participants who elected the level income option, which drops down at the Social Security retirement age of 65, were incorrectly paid the same initial amount long after age 65, leading them to believe they were entitled to this amount, when they were given IDLs which recouped this overpayment, leaving them with little or no pension. Others were put into pay by PBGC with estimated benefits and then told to repay the difference when they were issued their IDLs for lower amounts. In my experience, there were far too many mistakes.

IDLs were not sent to all participants who have a lump sum cash-out value between \$3,500 and \$5,000, notifying them that these funds are eligible to be rolled over into Individual Retirement Accounts. There are probably thousands of these participants. I could look them up on the PBGC data base under their respective CRIP groups: IUFA, flight attendants; TWU, mechanics; IBT, Teamsters; and management. Those who were called in were given IDLs and lump sums on a case-by-case basis. There were thousands of IDLs omitted.

PBGC sent participants IDLs that gave them only 45.2 percent of their benefits at age 55—or 50, if they were a flight attendant. This caused concern among the Atlanta administrators because we were given plan documents, and IUFA, TWU and IBT pamphlets that stated that the Pan Am early retirement percentage was 79 percent for those who met certain service requirements. Participants who lost this additional 33.8 percent of their benefit were extremely upset. I could not get an explanation for this discrepancy between Pan Am policy and PBGC practice. A benefit of \$300 a month was reduced by PBGC to only \$135.60 a month, instead of the \$237 a month that would have been paid by Pan Am.

I believe that those who met the Pan Am service requirements should have received 79 percent of their pension at early retirement.

Since the Pan Am participants who were hired after December 31, 1983, were not eligible for any pension benefit, their records should have been deleted from the IDL data base. These extraneous records triggered error messages on reports and were of no use, other than to confuse the process.

As you can imagine, the incorrect IDLs generated an extremely high volume of calls. Those of us who tried to answer questions about these letters often could not even view a copy of what had been sent. Batches of these IDLs disappeared and were not scanned. No record exists except for the mailed original. In my opinion, PBGC issued IDLs regardless of quality, solely to meet the court-ordered deadline.

IMRG was not prepared to manage payroll, benefits and screening of candidates for employment or the training of existing employees in a reliable or responsible manner. I saw Myrna Cooks on-site only twice in a year-and-a-half. In my experience, she did not show any knowledge of or concern for either her employees or the work in progress. Myrna did not return our phone calls or respond to our e-mails. She kept more than 20 percent of the hourly wage she was receiving from PBGC.

When I began work on the first day of Myrna's contract, I was the only new employee. The rest of the office had been employed by Office Specialists and continued with IMRG.

I am not sure whether I should—

The CHAIRMAN. How much do you have left?

Ms. MCHENRY. I have about three pages.

The CHAIRMAN. Would you maybe make two or three points that you have yet to make, please, because I think your testimony is very important.

Ms. MCHENRY. The only real concern of management was that they not be embarrassed. There was no leadership. IMRG's management had no interest in ensuring that the work was completed in a timely and competent manner.

The working conditions became so bad that employees banded together and sent an e-mail to David Strauss, the Executive Director of PBGC. We tried to address work-related issues, as well as the low morale. Barbara Mitchell was asked to send this compilation of our grievances because we felt that she would not be retaliated against. Barbara, herself a retiree from Pan Am, was an extremely knowledgeable and hardworking employee. She had worked for Office Specialists since 1992. Barbara and I both spoke to Joe Grant on the phone.

When David Strauss, Joe Grant and Bennie Hagans came to Atlanta and met with the Pan Am CRIP team, there was an emphasis on open communication and bringing forward problems and issues. Administrators were then told by Bennie Hagans and Francis Emmanuel, the Manager, after David Strauss and Joe Grant had left, that all communications with Washington had to go through the Atlanta management. Employees were forbidden to communicate with PBGC directly or bring up issues at the weekly video conferences without prior clearance from Atlanta managers. This was a gag order.

When Barbara expressed concern that she would be fired for being a spokesperson and telling what she knew, Joe Grant assured her that this would not happen. Barbara was fired shortly afterwards on November 8, 1999. She has been seeking redress from the Inspector General's Office since this time and has heard no decision.

IMRG did not provide a defined benefit pension plan for its employees. There was a 401(k) plan for employee contributions only. I find it disheartening that David Strauss gives talks around our Nation promoting defined benefit plans and then PBGC gives a contract to IMRG which has none. This means that contract employees who are poorly and inconsistently paid, not well trained and have no pension plan, are expected to give good customer service to those who do. I believe that PBGC knows how poorly the Atlanta office is run and that thousands, if not millions, of dollars have been wasted as a result of not confronting the poor management that exists.

In my opinion, pensioners of bankrupt companies should not be caught between an inefficient, incompetent bureaucracy and an inferior, covetous contractor.

[The prepared statement of Ms. McHenry follows:]

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**TESTIMONY OF**  
**BONNE ANN MCHENRY**  
**before the**  
**SPECIAL COMMITTEE ON AGING**  
**&**  
**COMMITTEE ON SMALL BUSINESS**  
**SEPTEMBER 21, 2000**

**TESTIMONY OF BONNE ANN MCHENRY**

I, Bonne Ann McHenry, respectfully submit the following testimony on September 21, 2000, before the Senate Special Committee on Aging and the Senate Committee on Small Business.

I worked for Integrated Management Resources Group, Inc. (IMRG) as a Senior Pension Administrator for the Atlanta PBGC office. The Pension Benefit Guaranty Corporation awarded the Atlanta contract to Myrna Cooks of IMRG beginning October 1, 1998. This contract includes the administration of the Pan American World Airways pension plans and the implementation of the benefit amounts stated in the Initial Determination Letters sent to Participants by the PBGC. I began working for IMRG on October 1, 1998 and left in March of 2000. My testimony is based on my experiences and observations during this time. Since I was a member of the Pan American Co-operative Retirement Income Plan (Pan Am CRIP) team for most of this time, I would like to address the process, timeliness, and accuracy of the issuance of these Initial Determination Letters.

**THE PROCESS:**

An Initial Determination Letter (IDL) is a communication to a Participant in a PBGC administered defined benefit pension plan that states the amount of his or her benefit at Normal Retirement Age. If the Participant is already receiving a pension, an IDL confirms or refutes the amount that is being paid. An IDL is the most important document that the Participant will receive from the PBGC, because a Participant who disagrees with PBGC's determination **cannot appeal** PBGC's decision until an IDL is issued. In other words, PBGC prevents Participants from appealing any disputed benefit amount by simply failing or refusing to issue an Initial Determination Letter. Those Participants who believe they are entitled to a higher benefit must put their financial future on hold because the major source of income from their pensions is uncertain. If a Participant does not respond to his or her IDL within 45 days, the right to appeal is lost! The Pan American World Airways Co-operative Retirement Income Plan (CRIP) was frozen on 12/31/1983 and the company filed bankruptcy and this Plan was retroactively terminated on 07/31/1991.

**TIMELINESS:**

In my view and based upon my experience, there was no justification for the delays in providing IDLs to the Pan Am Participants. When I began working at the Atlanta PBGC office - over seven years after PBGC assumed responsibility for this Plan - the majority of the 20,000 Participants in the CRIP Plan had not yet received an Initial Determination Letter. Yet I was able to look at a stand-alone PC screen, connected to the Pan Am database, and see the work and salary history, as well as the calculated accrued benefit/IDL information for most Pan Am employees. Neither PBGC nor IMRG expressed concern for the impact of their poor management on Participants. In my opinion, **it should not have taken PBGC so long to issue IDLs.**

**ACCURACY:**

PBGC did not appear to take particular care with regard to accuracy. It did not make the best use of both Pan Am's records and its own technology. Although the calculations for those who were receiving benefits had already been scanned into the PBGC IPS system and could have been used to verify benefit amounts, options chosen, and spousal information, the PBGC sent out IDLs with incorrect benefit amounts, inaccurate options chosen, wrong name or "UNKNOWN" for spouse's name. IDLs were issued with incorrect social security numbers. IDLs were sent to former Pan Am employees who are already being paid by CIGNA, Prudential, or Johnson Controls. IDLs were sent to people who had never worked for Pan Am. Letters were sent to retirees with the language, "due to unresolved issues we cannot determine the amount of your benefit at this time".

When the PBGC office in Washington issued these IDLs in batches, it used its automated letter system called ALG. As a result, there were spelling and grammar mistakes and dates in fields where benefit amounts should be and vice versa. In every instance where I talked to someone who had received one of the above letters, I could almost always verify what the correct information should have been, using the records that had been imaged or the Pan Am database.

Participants who elected the Level Income Option, which drops down at the Social Security Retirement Age of 65, were incorrectly paid the same initial amount long after age 65, leading them to believe they were entitled to this amount. Then they were given IDLs which "recouped" this overpayment, leaving them with little or no pension. Others were put into pay by PBGC with "estimated" benefits and then told to repay the difference when they were issued their IDLs for lower amounts. In my experience there were **far too many mistakes**.

IDLs were not sent to all Participants who have a Lump Sum Cash Out value between \$3,500 and \$5,000; notifying them that these funds are eligible to be rolled-over into Individual Retirement Accounts. There are probably thousands of these Participants. I could look them up on the PBGC database under their respective CRIP groups: IUFA - Flight Attendants; TWU - Mechanics; IBT - Teamsters; and Management. Those who called in were given IDLs and Lump Sums on a case-by-case basis. **There were thousands of IDLs omitted.**

PBGC sent Participants IDLs that give them only 45.2% of their benefits at age 55 (or 50 if they were a Flight Attendant). This caused concern among the Atlanta administrators because we were given plan documents and IUFA, TWU, and IBT pamphlets that stated that the Pan Am early retirement percentage was 79% for those who met certain service requirements. Participants who lost this additional 33.8% of their benefit were extremely upset. I could not get an explanation for this discrepancy between Pan Am policy and PBGC practice. A benefit of \$300.00 a month was reduced by PBGC to only \$135.60 a month instead of the \$237.00 a month that would have been paid by Pan Am.

I believe that those who met the Pan Am service requirements should have received 79% of their benefit at early retirement.

Since Pan Am employees who were hired after 12/31/1983 were not eligible for any pension benefit, their records should have been deleted from the IDL database. These extraneous records triggered error messages on reports and were of no use other than to confuse the process.

As you can imagine, the incorrect IDLs generated an extremely high volume of calls. Those of us, who tried to answer questions about these letters, often could not even view a copy of what had been sent. Batches of these IDLs disappeared and were not scanned. No record exists except for the mailed original. In my opinion, **PBGC issued IDLs, regardless of quality, solely to meet the Court-ordered deadline.**

#### **THE ROLE OF THE ATLANTA OFFICE:**

The role of the Atlanta Office with regard to the Pan Am CRIP plan was to take calls that were transferred from the Customer Service Center in Washington. The letters of the Participants' last names were assigned among the administrators. These employees would respond to calls by answering benefit questions, sending out tax withholding forms, electronic direct deposit forms, or benefit estimates and applications for retirement. Administrators also responded to mail and processed retirement applications. In addition, employees assisted in researching eligibility for those not already on our data system. Administrators corrected IDLs and answered Appeals that questioned calculations.

#### **THE CONTRACTOR:**

IMRG was **not prepared** to manage payroll, benefits, the screening of candidates for employment or the training of existing employees in a reliable or responsible manner. I saw Myrna Cooks "on site" only twice in a year and a half. In my experience, she did not show any knowledge of or concern for either her employees or the work in progress. There were late and/or incorrect paychecks. After establishing paydays on the 15th and 30th (with one week of salary withheld) IMRG announced that it needed to withhold an additional week of earnings. Paydays were then rearranged to accommodate this plan. Those employees who had due dates for rent, mortgage, car payments, utilities, etc. experienced personal hardships. (There was only one payday in September of 1999.) Myrna did not return our phone calls or respond to our e-mails. She kept more than twenty percent of the hourly wage she was receiving from PBGC. When I began work on the first day of Myrna's Contract, I was the only "new" employee. The rest of the office had been employed by Office Specialists and continued with IMRG. Some of these employees had their hourly wages reduced by IMRG. I was paid only 62.5% of the hourly rate I was promised by IMRG when I agreed to have my credentials included in the IMRG Contract Proposal. I was told to "take it or leave it". Positions remained unfilled for long periods of time. When the Pan Am CRIP Manager resigned, her position remained unfilled for months. Although the Contract called for 60+ employees, there were never more than 43. The turnover rate was about 25%. Employees were not given their reviews for the first year of their employment until months after that contract year ended. I received a 70 cent raise.

The office hours were from 7 AM until 5:15 PM. Employees could arrive between 7 and 8:30

and work 8 hours - plus 45 minutes for lunch. Overtime was very difficult to obtain even though the need for it was apparent. I often worked many more hours than I was paid in order to be sure that Participants who had applied for their pensions were paid as soon as possible. I was asked to change my time on the time sheets to comply with the eight hours a day allowed. I was discouraged from working additional hours. Later, Francis Emmanuel, the Manager, stated that we were prohibited from being in the office unless a Supervisor was present.

However, the office rules did not apply to everyone. Shawn Simpson-Oates, the Assistant Manager in charge of personnel, was generally not in the office before 9:30 or 10 AM. She also left early on many occasions. I was told that she was pursuing a career in real estate even when in the office. When I showed my supervisor evidence that an employee was not processing applications for **months after they were received**, she shrugged her shoulders. I asked if I could bring this to the attention of Shawn Simpson-Oates. Shawn responded with comments like: "How dare you criticize another employee when you've worked here for such a short time. You're not a manager." Both Francis and Shawn told me, "It's none of your business!" Since this employee was frequently away from her desk, her understandably upset customers were transferred to me. The instances of this were so numerous and occurred over such a long period of time that it became just another management issue that was ignored. I was amazed by the lack of responsiveness to problems that needed to be resolved. **There was no leadership! IMRG's management had no interest in insuring that the work was completed in a timely and competent manner!**

The only real concern of management was that they not be embarrassed. The only reason that employees were ever disciplined was that they "rocked the boat". The result of speaking out and challenging the way things were done - **or not done** - was a note of reprimand in one's file. Generally the note was regarding something one had done that could be interpreted as "insubordination"; but in reality even the innocent complaint was deemed such an act. This management technique was used to threaten or intimidate employees and perpetuate an atmosphere of fear and distrust. Francis and Shawn reprimanded messengers so many times that employees stopped communicating problems to them.

Finally the working conditions became so bad that the employees banded together and sent an e-mail to David Strauss, the Executive Director of PBGC. We tried to address the work-related issues as well as the low morale.

Barbara Mitchell was asked to send this compilation of our grievances because we felt that she would not be retaliated against. Barbara, herself a retiree from Pan Am, was an extremely knowledgeable and hard-working employee. She had worked for Office Specialists since 1992. Barbara and I both spoke to Joe Grant on the phone. When David Strauss, Joe Grant, and Bennie Hagans came to Atlanta and met with the Pan Am CRIP team, there was an emphasis on open communication and bringing forward problems and issues. Administrators were then told by Bennie Hagans and Francis (after David Strauss and Joe Grant had left) that all communications with Washington had to go through the Atlanta management. **Employees were forbidden to communicate with PBGC directly** or bring up issues at the weekly video-conferences without prior clearance from Atlanta managers. This was a "gag" order. When

Barbara expressed concern that she would be fired for being the spokesperson and telling what she knew, Joe Grant assured her that this would not happen. Barbara was fired shortly afterwards on November 8, 1999. She has been seeking redress from the Inspector General's office since this time and **has heard no decision.**

IMRG did not provide a defined benefit pension plan for its employees. There was a 401(k) plan for employee contributions only. I find it disheartening that David Strauss gives talks around our nation, promoting defined benefit plans and then PBGC gives a contract to IMRG, which has none. This means that contract employees who are poorly and inconsistently paid, not well trained, and have no pension plan are expected to give Good Customer Service to those who do. I believe that PBGC knows how poorly the Atlanta office is run and that thousands, if not millions of dollars have been wasted as a result of not confronting the poor management that exists.

**In my opinion pensioners of bankrupt companies should not be caught between an inefficient, incompetent bureaucracy and an inferior, covetous contractor!**

The CHAIRMAN. Thank you, Ms. McHenry.  
Mr. Poll.

**STATEMENT OF WAYNE ROBERT POLL, INSPECTOR GENERAL,  
PENSION BENEFIT GUARANTY CORPORATION, WASH-  
INGTON, DC**

Mr. POLL. Good morning, Mr. Chairman and members of the committee. My office has been working with your committees over the past several years, and I appreciate this opportunity to discuss some of that work today. Today, I will be discussing computer security and the benefit determination process.

During the past 5 years, we have performed a wide range of security reviews over information technology resources. These reviews have clearly pointed out that PBGC lacks a comprehensive IT security program. Without an effective and proactive IT security program, PBGC is exposed to risks. For example, someone with unauthorized access may modify, destroy and disclose sensitive information. To determine how vulnerable the Agency was to these risks, we conducted tests of the security environment. This is referred to as network penetration testing.

We were glad to discover and report to PBGC that we were unable to penetrate its information systems using the Internet. However, we were able to access systems through both dial-in from remote locations and unauthorized access inside the Agency. This test revealed flaws in the security over computer resources and in employees' awareness of their security responsibilities.

For example, during our testing, we obtained the highest security access and were able to create, delete and modify data and deny service to critical networks/systems. We were able to achieve a systems administrator level of access without being detected. These tests demonstrate that PBGC did not have an effective program that defined, implemented and enforced security strategy.

Further, security standards for new systems need to be defined earlier in the development process to ensure that there is appropriate security before the system is placed into production. Then, PBGC needs to oversee the systems development process to ensure that contractors are complying with the improved system's design.

In addition, in fiscal year 1997, Chairman Grassley, you asked my office to address certain questions regarding initial benefit determinations or IDLs. We looked at the efficiency and effectiveness of the benefit determination process and identified key areas of improvement. Our report included findings that PBGC could not attest that IDLs had been issued to all participants. We also completed two reviews on the length of time it had taken the Agency to issue IDLs. Our review revealed that PBGC continued to issue approximately one-half of the IDLs more than 7 years after it became trustee.

We also looked at how long it took PBGC to issue the IDLs after it had determined participants' benefit amounts. We found improvement. In our first report, we noted that only 35 percent of the IDLs were issued within one year of PBGC completing its evaluation. Our follow-on report noted that approximately 80 percent of the IDLs were issued within a comparable 1-year period. In these two reports, we identified problems in the IDL data maintained in

a data base called PRISM. Information in PRISM is used to pay benefits and answer participant questions. We found that the PRISM contained duplicate, incomplete and erroneous data, which this called into question the reliability of the data that PBGC used to report its operational performance.

Our evaluation of whether participants are impacted by the delay in IDL issuance revealed that there is a gap between how participants and PBGC view delayed IDLs. We asked Agency management, "How are participants impacted by your delay in issuing IDLs?" PBGC's answer focused on the payment of estimated benefits. They suggested that a delayed IDL was very little impact because the participants are receiving their estimated monthly checks. Some participants, however, stated that they were financially or emotionally harmed by delayed IDLs. Participants also reported economic hardship, such as the possibility of having to repay PBGC's overpayment benefit amount.

Finally, as stated in our report on the appeals process, we found that PBGC's assertions regarding appeals of IDLs were fairly presented. Notably, in fiscal year 1997, approximately one-half of the appeal decisions were favorable to the appellants.

In conclusion, Mr. Chairman, over the years, my office has issued multiple reports commenting on weaknesses relating to PBGC's benefit determination process. The common theme of these reports is that there are systematic weaknesses in controlling participant information. More timely and reliable information would enable PBGC to better perform the benefit determination process and issue IDLs in a timely manner.

I thank you for this opportunity to discuss our audit work and would be glad to answer your questions.

[The prepared statement of Mr. Poll follows:]



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

To Be Delivered:  
September 21, 2000

**TESTIMONY OF WAYNE ROBERT POLL  
INSPECTOR GENERAL  
PENSION BENEFIT GUARANTY CORPORATION**

**BEFORE THE**

**SENATE SPECIAL COMMITTEE ON AGING**

**AND**

**SENATE COMMITTEE ON SMALL BUSINESS**

Good morning, Mr. Chairmen and Members of the Committees. I thank you for the invitation to discuss audit work that my office has conducted during the past two years concerning:

- the security of PBGC's computer systems, and
- PBGC's process of determining participants' pension benefits and the timeliness of the notification of that benefit amount.

Prior to addressing these specific topics, let me first give you a brief overview of our agency. PBGC is a government corporation created under Title IV of the Employee Retirement Income Security Act (ERISA) of 1974. Under ERISA, PBGC is charged to:

- Encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants;
- Provide for the timely and uninterrupted payment of pension benefits to participant and beneficiaries under plans covered under Title IV; and
- Maintain premiums at the lowest level consistent with carrying out its obligations.

PBGC was created to insure certain defined benefit pension plans. Premiums are paid by plan sponsors (employers) to PBGC. Then, if a plan terminates without enough assets to pay the participants' benefits, PBGC becomes the trustee of the plan and pays pension benefits to the participants.

Not all employee benefit plans are covered by PBGC's termination insurance program. To be covered, a plan must be a tax-qualified, defined benefit plan, or a qualifiable plan, that is maintained by an employer or employee organization for employees engaged in commerce or activities affecting commerce.

Unlike other Executive Branch agencies that rely on general tax revenues to finance their programs and administrative expenses, PBGC is self-financed. To fund its operations, PBGC relies upon premium income from plan sponsors, assets of the plans that are terminated and trusteed, employer liability payments it collects, and investment income.

**COMPUTER SECURITY ISSUES**

Over the past five years, the OIG has engaged an independent public accounting firm, PricewaterhouseCoopers, to perform general control and application control reviews of PBGC Information Technology (IT) systems in support of the annual audit opinion on PBGC financial statements. Based on control and security issues raised in these reviews, detailed technical reviews were also conducted last year to review PBGC network security and IT security policies and procedures. These reviews clearly pointed out significant weaknesses in the IT security program protecting PBGC operations and mission integrity. The weaknesses can be categorized in three areas:

1. IT security policies and procedures;
2. Network and distributed system security architecture; and
3. Oversight of security controls implemented in systems developed by third party contractors.

I will highlight the testing performed, the weaknesses identified, the impacts of such weaknesses, and the corrective action that the Corporation is pursuing to address these weaknesses.

**1. EVALUATION OF PBGC'S SECURITY POLICIES, PROCEDURES, AND STANDARDS (2000-9/23137-4)**

Last year, my office, assisted by PricewaterhouseCoopers, performed an evaluation of the IT security policies, procedures, and standards documented in PBGC's *Automated Information Systems Security Plan (AISSP)*. The objectives of this review were to: (1) evaluate the adequacy of PBGC security policies, procedures, and standards, (2) compare them with Federal Government and private sector security standards and leading practices, and (3) identify gaps and weaknesses.

**Findings and Impact**

Our review revealed that PBGC security policies, procedures, and standards were not current and could be improved by incorporating Federal guidelines (such as NIST 800-18, OMB A-130) and private industry practices. For example, we found that:

1. PBGC lacks a single entity-wide security policy, and associated procedures and standards.
2. Security standards over new systems development need to be incorporated within the Systems Development Life Cycle (SDLC) methodology that is currently being developed.
3. The AISSP does not establish the risks and controls over the technology infrastructure at PBGC, and does not comply with NIST and OMB Guidance for developing minimum security plan standards for major applications and general support systems.
4. PBGC lacks policies to address Internet and Intranet security.
5. PBGC lacks Security Plans for distributed system to implement and enforce controls over various client server architectures such as Windows NT, UNIX and Oracle, in compliance with Federal guidelines such as NIST 800-18 and OMB A-130.

The absence of a comprehensive entity-wide security management program makes PBGC vulnerable to unauthorized access by external and internal individuals. It could also lead to the modification, loss, or disclosure of sensitive information; denial

of critical services; the loss of trust fund resources; and the compromise of private beneficiary information stored in PBGC automated systems.

**Suggested Actions**

We recommended that PBGC management re-evaluate its overall security architecture and develop an entity-wide security plan that promotes the strengthening of distributed systems security and one that complies with appropriate guidance such as the OMB and NIST standards.

**2. SUMMARY OF PENETRATION STUDY 1999 (2000-3/23137-3)**

To assess the security of computer networks at PBGC, we conducted a technical review of network security architecture at PBGC last year. We engaged PricewaterhouseCoopers to perform network security penetration testing and detailed diagnostic security reviews of key network devices. Our review focused on: (1) identifying technical vulnerabilities in the PBGC network security environment, (2) comparing PBGC security practices with leading practices observed elsewhere in government and the private sector, and (3) developing recommendations for corrective actions and improvements.

The network penetration testing consisted of the use of computer "hacker" tools and techniques, and security tools, in a methodical test of security measures protecting network systems. Such testing identifies technical security vulnerabilities and procedural weaknesses, security awareness among users, and staff adherence to policies and procedures. The penetration testing team conducted the following tests at PBGC:

- Attempting penetration of PBGC systems from the Internet to determine whether infrastructure and data processing devices are at risk from unauthorized intrusion or abuse from Hackers via the Internet.
- Attempting penetration of PBGC systems via telephone modems and dial-in remote access systems to determine if the network is at risk to unauthorized intrusion or abuse via telephone access.
- Attempting internal penetration of PBGC systems as an insider with physical access to the network infrastructure, to determine if PBGC systems are vulnerable to misuse by a malicious insider.
- Attempting penetration of PBGC systems as an outsider through physical means, i.e., attempting to circumvent or exploit weaknesses in the physical security protection of network systems at PBGC. Activities included attempts to enter the building during and after business hours without authorization, locating open office areas or communications closets, and connecting to the network through available network ports.
- Attempting to obtain information through social engineering for access to PBGC systems. The term "social engineering" describes the use of duplicity and social skills to gain sensitive system information from unaware PBGC employees. The team's attempts included contacting help desk and other PBGC staff with fabricated stories and requests for network information, accounts, and passwords.

**Findings and Impact**

The penetration testing team was able to obtain extensive unauthorized access to key PBGC systems, including privileges to modify and create data, modify system operating parameters, execute system administration utilities, and create users within production databases and operating systems. Weaknesses in several areas were exploited to gain access, including dial-in modems, physical security, user awareness, and internal technical configuration. Specifically, we reported:

1. The team was able to gain access to internal PBGC network systems through a dial-in telephone line by exploiting a modem identified through the use of a Hacker war-dialing program. The system was running remote access software that was not password protected, enabling the team to connect to the network as an administrator, and providing a path for our team to access PBGC system files containing sensitive system information.
2. The team was able to circumvent the access controls on Wide Area Networking (WAN) devices within the PBGC network. The penetration team was able to then use the WAN devices as a conduit into the PBGC network, and had access to exploit PBGC production financial database systems.
3. The team accessed the PBGC financial systems with a default username and password and then exploited an operating system level vulnerability to gain administrative access to the system. Once administrative access was attained on one system, the team was able to gain access to the other production systems as an administrator. With administrator level access obtained, the penetration team could view and modify data and system files on the production servers.
4. Simulating an unauthorized user with physical access to the PBGC building, the team was able to connect to PBGC systems and gain high-level privileges (administrator access), including access to the PBGC electronic mail server. The penetration team was then able to masquerade as PBGC users, administer network servers, create and modify data, and access sensitive electronic mail messages. Eventually, the team was able to gain the highest level of access on the production databases. With this level of access the penetration team could modify, create, and destroy user accounts and data within the PBGC production financial databases.
5. After completion of the technical testing efforts, the team conducted physical penetration and social engineering tests of PBGC security controls. This testing found PBGC systems vulnerable to unauthorized access and abuse by insiders and outsiders due to physical security vulnerabilities and lack of security awareness among PBGC staff.
6. The penetration testing team's technical and non-technical activities went undetected and unreported for the duration of the testing.
7. Of note, the team was not able to gain unauthorized access to PBGC systems via the Internet--attempts to penetrate the PBGC Internet Firewall, web servers, and other Internet systems were unsuccessful. Access via dial-in lines was limited to the one exploited modem found.

The level of access gained through the penetration testing, and the vulnerabilities found in the specific diagnostic reviews (reported below) gave the testing team the ability to:

- Create, delete, or modify PBGC data, including financial and payment information;
- Read, delete, and modify privacy act information on PBGC beneficiaries;
- Modify PBGC network system configurations;
- Access PBGC employee network accounts, including administrator accounts on PBGC systems; and
- Deny service on critical PBGC network systems.

The technical reviews demonstrated that PBGC did not have an effective Information Systems Security Architecture -- an entity-wide program that defines, implements, and enforces security strategy. An Information Systems Security Architecture should include formal policy, management structure, technical measures, user education, and monitoring and testing. The absence of an effective entity-wide security architecture left PBGC systems vulnerable to malicious external attacks as well as insidious insider mischief and fraud.

#### **Recommended Actions**

As a result of these reviews, the OIG team recommended that PBGC define and enhance its Information Systems Security Architecture. This architecture is the entity-wide program that establishes strategy and implements security through technical platform standards, user and administrator security training, monitoring, and response. As part of the development and implementation of Information Systems Security Architecture at PBGC, it was recommended that PBGC develop a corrective action plan to enhance the network security environment and address the following specific items:

1. Adherence to and enforcement of a common password policy for PBGC information systems resources.
2. Evaluation of the PBGC network configuration to determine if traffic between PBGC division networks should be restricted and controlled.
3. Development of technical security implementation guides for information systems within PBGC that instruct and inform administrators of security standards and vulnerabilities associated with their systems.
4. Detailed security reviews of PBGC system configurations.
5. Development of a methodology to periodically check PBGC systems to assess vulnerabilities within the PBGC network.
6. Development of a methodology to ensure that high level (privileged) access to systems is restricted to necessary users only.
7. Development of an Intrusion Management program to detect, repel, respond to, and investigate intrusion attempts into PBGC system.
8. The development and implementation of an organizational information security policy that addresses security configurations and standards, policy and procedures, user education, and enforcement of security policies.

9. The creation of an Information Systems Security Officer position that reports to the CIO or other senior PBGC management official.
10. Development of security awareness programs for PBGC information system users and administrators.

**Status of Follow-up Actions**

In response to the findings presented, PBGC management has developed both high-level and detailed corrective action plans to address the weaknesses identified. PBGC is required to report on its actions monthly to these Committees and complete its corrective actions by September 30, 2000. The OIG team is currently reviewing the progress made in implementing corrective actions and evaluating the actions being taken. We will report the results of our review to you. We have also informed PBGC that we will conduct a follow-up network penetration test to validate the effectiveness of the corrective actions taken by PBGC.

**3. SECURITY REVIEW 1999 (2000-2/23137-2)**

Concurrent with the Penetration Study, we conducted diagnostic security reviews consisting of detailed technical reviews of the security configuration and operation of specific network devices. The OIG team conducted diagnostic security reviews of key UNIX and Windows NT servers, the Internet firewall, Internet Web servers, and overall security architecture on the PBGC network. The team utilized commercial security testing software, PricewaterhouseCoopers' proprietary programs and methodologies, and common Hacker tools and techniques to methodically test security measures protecting to systems under review.

**Findings and Impact**

The diagnostic security reviews conducted found numerous technical security weaknesses in UNIX, Windows NT, and Oracle systems; the Internet Firewall; routers; Internet Web servers; and network architecture at PBGC, including the following:

1. Poor password procedures.
2. Trust relationships between systems that can be exploited to compromise other systems once one platform has been compromised.
3. Unnecessary services available on multiple platforms, increasing the potential of vulnerabilities.
4. No review or monitoring of key system logs.
5. Guest and default accounts enabled, which allows users to log into the network without an authorized account.
6. The latest software updates from systems vendors, many of which address security weaknesses, were not implemented.
7. There was no system for intrusion detection to proactively identify suspicious activity.
8. User access controls were weak, e.g., dormant accounts, weak passwords, excessive access rights for users, and multiple administrators were found on servers.

9. The doors to the LAN closets were not installed correctly, enabling the locks to be easily bypassed.
10. Security awareness among the cleaning and guard staff was below desired levels.
11. Security cameras and alarms were inactive, or not installed, on many access points to sensitive computer resources.
12. Active computer sessions were found without password protection after business hours.
13. Access controls to the PBGC computer facility were in need of strengthening--the team accessed the computer facility through a back door using a credit card to open the lock. The team also gained access to PBGC work areas both during and after normal work hours by following PBGC staff and building cleaning staff through locked doors.

**Suggested Improvements**

As a result of this review, the OIG team made the following high-level recommendations to PBGC:

1. Using appropriate risk assessment techniques, PBGC should establish the level of acceptable business risk, identify the resources needed to achieve that desired level of security, and implement steps for enhancing the organization's security posture.
2. After determining the acceptable level of risk, PBGC should develop a security Policy that defines the organizational security strategy, based on the level of acceptable risk and the PBGC business model.
3. PBGC should use the policy to create a Security Model to define general security standards, information classification methodologies, data ownership, and other PBGC specific requirements for security controls.
4. PBGC should create Technical Guidelines and Standards for each platform and operating system, that specify the granular technical settings required for compliance with the Security policy.
5. PBGC should develop and implement programs for user awareness and education, and enforcement of security standards.
6. PBGC should create an Information Systems Security Officer position to drive the development, implementation, and enforcement of information systems security policy, standards and guidelines.

In addition, the OIG team provided PBGC with 76 detailed technical recommendations for improving security of UNIX, Windows NT, and Oracle systems; the PBGC internet firewall and web servers; physical security; and PBGC IT security policies and procedures.

**4. AUDIT OF PBGC'S FISCAL YEARS 1999 AND 1998  
FINANCIAL STATEMENTS, REPORT ON INTERNAL CONTROL  
(2000-7/23138-2)**

The PwC IT audit team, in support of the financial audit, performed a number of reviews of key financial systems that comprise the core financial system for PBGC. The purpose of these reviews was to evaluate the controls that were implemented within these application systems to ensure that transactions were valid, properly authorized, and completely and accurately processed and reported. Included in the scope of this testing was the evaluation of controls implemented by third party vendors that perform the majority of the tasks related to new application systems development and on-going application system maintenance.

**Findings and Impact**

As a result of the tests, in the Report on Internal Control in PBGC's Financial Statements, the first reportable condition dealt with the problems in systems design and control. Among other issues, we found that:

1. PBGC lacked specific criteria to adequately manage and monitor its systems development projects that are outsourced to third party vendors. In addition, the policies for monitoring vendors did not address the roles and responsibilities of PBGC in overseeing the service provider in areas related to security, capacity planning, back-up and recovery, and intrusion detection. Testing in these areas over the past several years revealed a lack of adequate monitoring of the service provider activity resulting in inadequate logical access controls and the initial design of front-end edits related to certain PBGC applications. Although PBGC is reducing its dependency on third party providers, contractor activities still require management and monitoring.
2. PBGC lacks a structured approach for new systems development to ensure that controls are implemented. For example, certain controls are needed over the design, development, and modification of application software to ensure that all programs and program modifications are properly authorized, tested, and approved. Such controls also help prevent security features from being inadvertently or deliberately turned off and processing irregularities or malicious code from being introduced. In addition, PBGC lacks a structured approach to ensure that operational and financial management controls continue to be effective once systems are implemented.

PBGC continues to be vulnerable to weak security mechanisms that may be implemented by the third party providers into current and future systems development efforts.

**Recommended Actions**

Although PBGC has made progress in this area by including the third party provider oversight and monitoring controls into the development framework of its Systems Development Life Cycle methodology (currently in draft), it needs to finalize this methodology and implement it uniformly across the corporation. This will help ensure that the system development methodology is used consistently in the development of business systems applications, including the identification and implementation of security controls, with appropriate oversight from PBGC management.

### **THE BENEFIT DETERMINATION PROCESS**

Under the single-employer insurance program, PBGC is liable to pay guaranteed benefits to participants if their underfunded plan terminates. ERISA sets out certain criteria for PBGC to terminate underfunded plans. Further, ERISA requires that a trustee be appointed for these terminated plans. In practice, PBGC routinely becomes trustee either by voluntary agreement or court order. Upon trusteeship, PBGC assumes responsibility for managing the remaining assets of the terminated plan and for paying benefits.

In its role as guarantor of benefits, PBGC gathers information needed to identify eligible plan participants, verify their entitlement, determine their benefits and value the benefits payable. After the plan is valued and each individual participant's benefit is calculated, an Initial Determination Letter (IDL) is prepared. An IDL is a notification to participants, and any other persons as required, of PBGC's official decision regarding entitlement to, amount and other conditions of a benefit. The IDL is generated as a result of the benefit determination process managed by the Insurance Operations Department (IOD). According to IOD's procedures manual, there are several processes that must be completed before IDLs can be provided to participants. PBGC categorizes these benefit determination processes as: pre-termination, initial trusteeship, audit, and valuation. After these processes are completed, PBGC issues the IDLs during the notification process. The final process is case closure.

Over the years, my office has issued multiple reports commenting on weaknesses related to PBGC's benefit determination process (see Table 1 for a chronology of reports from 1993 to current). The common theme in these reports is that PBGC has significant problems with participant data. This is data that is used to determine individual benefits and value PBGC liability. Throughout the years, the specific weaknesses have changed but each problem is attributable to weaknesses in control over participant data.

The sustained problems with participant data have contributed to the delay in participants receiving IDLs from PBGC. In August of 1997, the Honorable Charles E. Grassley, Chairman of the Special Committee on Aging, United States Senate, asked the OIG to address certain questions regarding IDLs. In his letter, Senator Grassley stated that "...PBGC often takes unreasonable periods of time to issue IDLs." Thus, the OIG was asked to conduct a multi-year review of PBGC's IDL process to include the following:

- An evaluation of the efficiency and effectiveness of PBGC's process to issue IDLs;
- The length of time it takes PBGC to issue an IDL;
- The effect of such delays upon individuals awaiting IDLs; and
- The number of appeals filed yearly, the number of appeals pending at the end of each fiscal year and the number of appeals granted in favor of the participant or upholding the PBGC's initial determination.

We contracted with an independent public accounting firm to assist us in conducting our reviews. Four publicly available reports were issued in 1998 and 1999. Subsequently, the OIG conducted follow-on audit work on the length of time it takes for PBGC to issue an IDL to analyze data from FYs 1998 and 1999. This analysis was reported in a fifth report issued in March, 2000.

Below are summaries of the five reports the OIG issued related to IDL issuance and the benefit determination process.

**1. IMPROVEMENTS ARE NEEDED TO ACHIEVE BETTER EFFICIENCY AND EFFECTIVENESS IN PBGC'S BENEFIT DETERMINATION PROCESS (99-2/23128-1)**

Starting in Fiscal Year (FY) 1995, most of IOD was reorganized from a functional alignment to one more aligned by process. It was intended that this reorganization would lead to more efficient and effective processing of terminated plans. Eight Trusteeship Processing Divisions (TPD) are responsible for most of the benefit determination processes. Multi-functional teams that include an auditor, pension law specialist, pension benefit administrator, and actuary are formed within each of the TPDs. A specific team is responsible for processing a particular plan. In addition, other IOD divisions and PBGC departments such as the Office of the General Counsel, provide assistance and support.

PBGC uses contractors, including actuarial firms and field benefit administrators (FBAs), to assist with the processing. The FBAs perform the ongoing administration of the plans with PBGC oversight.

**Findings and Impact**

We identified opportunities to improve the efficiency and effectiveness in seven key areas:

1. IOD lacks a timeliness standard in the performance measures for the benefit determination process. Implementation of a timeliness standard, and the consistent and accurate capture of data, would provide PBGC significant information to measure its performance outcome of issuing IDLs within 3-5 years of plan trusteehip. (See footnote below on performance measures.)
2. PBGC cannot ensure, and we could not verify, that all IDLs have been issued to participants. To review this issue, we selected a sample of 60 terminated pension plans representing approximately 87,000 IDLs. We found that there was not an IDL in PBGC's imaged records for all participants in our sample. When requested, PBGC could not provide an imaged or paper copy for 59 out of 177 IDLs. If an IDL was not issued, then PBGC would not be in compliance with its regulations. Further, the participant would be denied due process and the right to challenge PBGC's benefit computation. We expect that PBGC would take reasonable steps to identify participants in plans already processed to ensure that all IDLs have been issued.
3. PBGC cannot accurately account for its universe of IDLs yet to be issued due to PRISM data integrity issues. In addition, we found that the controls in place to ensure the accuracy of the manual count of IDLs issued were weak. Without strong controls, IDLs may be miscounted and workload and related accomplishments may be misstated.
4. PBGC should eliminate redundant activities that are performed repeatedly through out the benefit determination process. Duplicate processing results in process inefficiencies such as increased processing time and costs. Our review identified three activities -- Actuarial Peer Reviews, Controlled Group and Net Worth Audits, and Plan Assets Reconciliation -- with the potential for elimination because they are redundant.

5. PBGC needs to gather participant information earlier than when it becomes trustee. The benefit determination process is dependent upon obtaining essential plan data and participant records. Obtaining the records earlier may avoid some of the difficult and time-consuming reconstruction of plan records. This, in turn, will enable PBGC to perform the activities in the benefit determination process and issue IDLs in a more timely manner.
6. IOD developed a core curriculum to provide uniform knowledge and guidance about the benefit determination process, but did not make it mandatory. By not using the core curriculum, IOD may be placing PBGC "at risk" by not having human resources prepared to consistently and accurately process terminated pension plans. In addition, it may be a waste of government resources to design a core curriculum and not follow through in delivering the training to IOD personnel.
7. IOD needs to strengthen compliance over its time accounting system that captures, accumulates and tracks employee time spent on benefit processing tasks. Knowing how much time required is required to accomplish each activity within the process would enable management to project resource needs, to formulate operational plans, and to manage the benefit determination process more efficiently and effectively.

#### **Recommended Actions**

We recommended improvements to key areas that would enhance the efficiency and effectiveness of the benefit determination process:

- Establish timeliness performance measures for the principle activities of the benefit determination process.
- Establish an annual goal for closing plans to complete the benefit determination process.
- Take reasonable steps to identify whether there are participants who have not received an IDL.
- Institute quality control reviews to ensure that current control procedures relating to IDL issuance are working properly.
- Take steps to determine whether the universe of IDLs is based on reliable IDL data.
- Strengthen control procedures to ensure that the manual compilation of IDLs issued that PBGC uses to support the accomplishment of its strategic goals is accurate and complete.
- Review actuarial peer reviews, controlled group and net worth audits, and the reconciliation of plan assets to determine whether redundant activities exist.
- Determine whether the redundant activities identified should be eliminated.
- Develop and implement policies and procedures based on ERISA section 4003 authority to ensure that plan records essential to the benefit determination process are obtained at the earliest possible time.

- Establish a policy requiring that IOD's core curriculum training is mandatory.
- Enforce compliance with IOD time accounting requirements.

**Status of Follow-up Actions**

Of the 11 recommendations made, PBGC reported that it has completed action on eight. The OIG concurs that two of the recommendations are closed, however, six are under review. PBGC has reported that it has not initiated action on the three remaining recommendations.

**2. THE LENGTH OF TIME IT HAS TAKEN PBGC TO ISSUE INITIAL DETERMINATION LETTERS (99-3/23128-2)**

To respond to the question of how long it has taken PBGC to issue IDLs, we selected a sample of 60 terminated pension plans which represents approximately 96,000 participants and approximately 87,000 IDLs. This sample included IDLs issued between 1974 and 1996. Using the sample data provided by PBGC, we selected the Date of Trusteeship (DOTR) and the Actuarial Valuation Completion Date (AVCD) to calculate historical average lengths of time taken by PBGC to issue IDLs to participants. The DOTR was selected because PBGC uses this date to calculate and subsequently report the average length of time it takes to issue IDLs to participants.<sup>1</sup> The AVCD date was selected because at this point in the benefit determination process the analysis of participant information has been completed, and each participant's final benefit amount has been determined.

**Findings and Impact**

We compared IDL issuance dates against the DOTR and the AVCD dates to determine PBGC's average length of time to issue IDLs. From this information, we constructed an aging analysis that yielded the following historical information:

1. A majority of IDLs were issued more than five years after DOTR.  
For example,
  - 26% were issued between 2 and 5 years;
  - 42% were issued between 6 and 10 years; and
  - 16% were issued between 11 and 20 years.
2. A majority of IDLs were issued more than one year after the AVCD.  
For example,
  - 26% were issued within 1 year;
  - 29% were issued between 2-3 years; and
  - 17% were issued between 4-6 years.

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<sup>1</sup> One of PBGC's performance outcomes is to provide accurate IDLs to participants within 3-5 years of plan trusteeship. In order to measure performance against the goal, PBGC has begun publishing statistics regarding timeliness of IDL issuance. The published length of time is expressed in terms of a Fiscal Year (FY) average. The FY average is calculated by summing the length of time elapsed between DOTR and date of issuance for all IDLs issued during the particular FY. The resulting total is then divided by the number of IDLs issued for the FY.

In this review, we also identified data reliability problems with two PBGC information systems -- the Participant Record Information System (PRISM) and the Image Processing System (IPS). PBGC uses information from PRISM for a variety of operational purposes, i.e., to pay benefits, to answer participants' questions about their benefit calculations, and to determine budgetary requirements. Specifically, we identified from sample data that:

1. PRISM contained duplicate, incomplete and erroneous data. For example, we compared individual IDL dates in PRISM to the IDL dates in source documents maintained in IPS. Our testing results showed that imaged documents for 59 out of 177 IDLs (33%) were missing in IPS and could not be located by PBGC. Another test revealed that the IDL issuance date recorded in PRISM differed from the actual date printed on the IDL in 37 out of 177 instances (21%).
2. The AVCD dates recorded in PBGC databases were not accurate. We tested 25 of the 60 plans to determine the accuracy of the DOTR and AVCD dates recorded in PBGC databases, as compared to source documents. For the 25 plans, the DOTR agreed to the source documentation without exception. However, for the AVCD, only nine dates agreed with the supporting documentation.

Without reliable data, PBGC remains at risk to meet its expectations regarding its targeted reduction in the length of time that it takes to issue an IDL and may impact upon the quality of the individual benefit calculations.

#### **Suggestions for Improvement**

This report did not contain recommendations, however, the OIG suggested that PBGC should improve its IDL data reliability by conducting a self-review of its processing controls for capturing, maintaining, and reporting IDL data and, where applicable, use its data clean-up initiative to address identified data reliability issues.

#### **3. UPDATE ON THE LENGTH OF TIME IT HAS TAKEN PBGC TO ISSUE INITIAL DETERMINATION LETTERS (2000-4/23140-1)**

PBGC felt that the prior report did not fairly portray the status of current, and improved, operations because it analyzed IDLs issued between 1974 and 1996. To fulfill our commitment to monitor the timeliness of PBGC's IDL issuance, we reviewed IDLs that were issued between FYs 1994 and 1999, and issued an updated report.

#### **Findings and Impact**

Our review showed mixed improvement. We found:

1. PBGC significantly improved in the length of time to issue an IDL after the actuarial valuation process is completed. In our report 99-3/23128-2, we found that only 39% of the IDLs were issued within one year of the Actuarial Valuation Completion Date. During FY 1999, we noted that approximately 86% of IDLs were issued within a comparable one year period.
2. PBGC had reduced the number of IDLs that took 10 or more years to issue after DOTR from about 20% for FYs 1974 through 1996, to fewer than 2% in FY 1999.
3. PBGC continues to issue approximately one-half of the IDLs more than seven years after DOTR (51.9% in FY 1998 and 49.1% in FY 1999).

4. PBGC's assertion that the average age of IDLs issued after DOTR was 5.39 years in FY 1998 and 5.7 years in FY 1999 is substantially correct.
5. We noted that the average age of IDLs is virtually the same as reported in a 1994 OIG report (5.5 years).

In addition, we noted that PBGC uses a standard averaging method that, when applied, tends to mask the number of IDLs that take longer to process.

We again reviewed data reliability issues in the Participant Records Information Systems Management (PRISM) and PBGC's electronic recordkeeping system, IPS. There was improvement in number of IDLs missing from IPS: 26.3% of our sample from FYs 1974-1996, and only 4.8% for FY 1998. Data reliability of PRISM continues to be a concern:

1. PRISM IDL issuance data does not match the IDL numbers in PBGC's database.
2. PBGC did not use the number of IDLs it publicly reported as issued to compute the yearly average length of time for IDL issuance.

Both of these PRISM data issues call into question the reliability of PBGC's reporting of the numbers of IDLs issued each year and the length of time to issue them.

**Suggestions for Improvement**

The OIG suggested that "PBGC periodically report actual issuance IDL data, . . . , to provide the detailed information that support the yearly IDL issuance average PBGC already publishes." We also continued to suggest that PBGC "conduct a self-study of its processing controls for capturing, maintaining and reporting IDL data."

**4. PENSION PLAN PARTICIPANTS IMPACTED BY DELAYS IN INITIAL DETERMINATION LETTER ISSUANCE (99-1/23128-3)**

PBGC recognizes that it needs to decrease the time between when the plan is terminated and trustee and when the IDL is issued. Senior PBGC management officials, however, state that the impact of delayed IDLs is mitigated by several factors:

- a participant who retires receives estimated monthly benefit payments and deferred vested participants can receive an estimated calculation until PBGC completes the plan valuation and calculates the final benefit;
- if an overpayment occurs because the estimated payment is greater than the final benefit amount, PBGC's policy is to: (a) recoup the overpayment from on-going benefits at only 10% of the monthly benefit until the overage is paid, and (b) if the participant dies before the IDL is issued, not seek recoupment from the estate; and
- if an underpayment occurs because the estimated payment is less than the final benefit amount, the participant, or the estate of a deceased participant, is paid the underpaid amount in a lump sum with interest.

**Findings and Impact**

Information from participants, who had participated in PBGC-sponsored meetings and surveys, and submitted correspondence to PBGC, indicate that they are affected in many different ways by PBGC's delay in issuing IDLs. Some participants stated that delayed IDLs result in:

1. their inability to plan for the financial future;
2. estimated benefit payments continuing for a long time, and if PBGC determines that the estimate was too high, participants are told that they owe PBGC significant amounts of money; and
3. a low confidence level in PBGC because:
  - PBGC's estimated benefit payments reduced their monthly payments with no explanation or calculation formula, and no ability to appeal;
  - PBGC stated that they would issue IDLs within a particular timeframe, and it hasn't done so; and
  - PBGC's Customer Service Standards don't address the issuance of timely IDLs.

Our evaluation revealed that there is a gap between PBGC's perception of the impact and the perception of those who are waiting for their IDLs. Intermittently during our review, we asked PBGC management: What is the affect on plan participants of PBGC's delay in issuing IDLs? Consistently, PBGC management focused on the immediate financial impact of PBGC terminating and trusteeing the plan. Because PBGC was sending monthly benefits to the participants (its first statutory mission), PBGC perceived there was little impact. Many participants strongly disagreed.

**5. AUDIT OF PBGC'S RESPONSE TO CERTAIN QUESTIONS  
CONCERNING APPEALS OF PBGC INITIAL  
DETERMINATIONS OF PENSION BENEFITS (98-10/23131)**

In this multi-year review of the appeals process, we audited PBGC's response to certain questions concerning the number of: (1) participants who appealed their IDLs, (2) appeals pending at the end of each fiscal year, and (3) appeal decisions granted in favor of the participant or upholding PBGC's initial decision.

Based on our audit, we concluded that PBGC's assertions regarding the number of appeals pending at FY-end 1995, and of appeals docketed and closed for FYs 1996 and 1997 were fairly presented.

At the time of our audit, PBGC did not maintain statistical information tracking whether appeals decisions were favorable or unfavorable to appellants. However, PBGC was in the process of implementing a new system that would permit them to report this information. PBGC advanced their timetable for implementation to categorize their closed appeals for FY 1997 using the favorable or unfavorable outcome criteria. We tested PBGC's analysis and concluded that PBGC's assertions were fairly presented. We found that, in FY 1997, approximately one-half of appeals decisions were favorable to appellants (461 out of 927).

\* \* \*

Thank you, Mr. Chairmen. This concludes my formal testimony. I would be glad to answer your questions on our work.

**TABLE 1**  
**Chronology of OIG Reports Impacting**  
**the Benefit Determination Process**

<b>Report Date and Number</b>	<b>Key issue impacting benefit determination process</b>
September 1993 OIG 93-6/23069-1	The report found that PBGC did not ensure that adequate support for both financial and non-financial participant data was maintained.
May 1994 OIG 94-6/23079-1	The report found the continuing participant data noted above.
September 1994 OIG 94-8/23088	The report identified difficulties in locating plan and participant files, and that documentation maintained in files was inconsistent.
March 1995 OIG 95-5/23083-1	The report noted the continuing problem that adequate support for participant data was not maintained.
March 1995 OIG 95-1/23087	The report reviewed and mapped PBGC's Benefit Determination Process, and contained 8 findings and suggestions for improvement.
March 1996 OIG 96-4/23093-2	The report noted the continuing failure to maintain adequate documentation to support the participant data.
March 1997 OIG 97-4/23110-2	The report noted the continuing participant data maintenance issue cited above.
September 1997 OIG 97-23/23110-3	The report found that participant data maintained in the automated system did not agree with the supporting documentation maintained in the manual files.
September 1998 OIG 98-10/23131	The report concluded that PBGC's assertions concerning the number of appeals of IDLs pending at FY-end 1995, and those docketed, closed, and pending for FYs 1996 & 1997 were substantially correct.
March 1999 OIG 99-1/23128-3	The report highlighted that there was a gap between PBGC's perception of the impact of delays in issuing IDLs and the perception of those waiting for their IDLs.
March 1999 OIG 99-2/23128-1	The report reviewed the efficiency and effectiveness of the benefit determination process, identified opportunities for improvement, with seven findings and 11 recommendations.
March 1999 OIG 99-3/23128-2	The report reviewed the length of time that it has historically taken PBGC to issue IDLs, and suggested that PBGC improve its IDL data reliability by conducting a self-review of its processing controls.
March 1999 OIG 99-7/23132-2	The report identified problems with participant records such as missing support documentation, duplicate records and erroneously created records.
March 2000 OIG 2000-7/23138-2	The report found problems with the Participant Record Information System Management (PRISM), including data integrity and data processing, as well as control deficiencies in authorization, monitoring, and segregation of duties.
March 2000 OIG 2000-4/23140-1	This updated report on OIG 99-3/23128-2 concerning the length of time it has taken PBGC to issue IDLs, found mixed improvement. We suggested that PBGC periodically report actual issuance IDL data.

The CHAIRMAN. Thank you, Mr. Poll.  
Now, Ms. Bovbjerg.

**STATEMENT OF BARBARA D. BOVBJERG, ASSOCIATE  
DIRECTOR, EDUCATION, WORKFORCE, AND INCOME SECUR-  
ITY ISSUES, HEALTH, EDUCATION, AND HUMAN SERVICES  
DIVISION, U.S. GENERAL ACCOUNTING OFFICE, WASH-  
INGTON, DC**

Ms. BOVBJERG. Thank you, Mr. Chairman. Mr. Chairman, Senator Breaux, I am pleased to be here today to discuss the Pension Benefit Guaranty Corporation's management of its contracting responsibilities.

The Corporation relies heavily on contractors to perform its functions, spending over 60 percent of its operating budget on contracting. In fact, contractors comprise half the PBGC workforce and staff all of its field operations.

Today, I would like to focus my remarks on three aspects of PBGC's contract management, the basis for PBGC's decision to use contractors, the contractor selection process and monitoring contractor performance. My testimony summarizes results of work we have done over the past year at PBGC headquarters and at field locations, and this work is discussed in more detail in our report released today by both committees.

First, the decision to use contractors. PBGC's contracting decisions have been heavily influenced by rapidly increasing workloads. In the mid-eighties, bankruptcies at LTV Steel, Pan American Airlines, and other large corporations more than doubled the number of pension beneficiaries under PBGC administration. Rather than request new Federal hiring authority during what was then a period of Federal downsizing, the Corporation moved quickly to bring in contract help. Over time, PBGC continued to use contractors to address a growing backlog of work.

Although the outlook for PBGC workloads has changed over time, the Corporation continues to rely heavily on contractors. Use of contractors in the past, indeed, helped PBGC address a growing workload, but today things look different. Improvements in plan funding, changes in pension law and a declining number of defined benefit plans all suggest changes in PBGC's future workload. Accompanying changes in staffing levels and organizational structure may be warranted and should be considered in the Agency's planning efforts. However, PBGC lacks a blueprint for organizing its contractor and Federal staff to meet current and future needs cost-effectively and risks being unprepared for a changing future pension environment. We believe that this must change.

My second point deals with contractor selection. In our review of PBGC's most recent field services procurements, we identified weaknesses that could affect competition which, in turn, could cause PBGC to pay too much for these services. While PBGC competed operations at four field locations in 1997, it continued its practice of making sole-source awards in seven other field locations. PBGC asserts that the incumbent contractors are uniquely qualified, but we found no indication that the Agency conducted the outreach or market research necessary to assure that, indeed, no other providers would qualify.

And in the four field locations where the procurements were competed, we found other weaknesses that may have affected competition. PBGC consolidated requirements for three geographically remote contractor offices into a single procurement and excluded the services for the fourth office from the consolidation. Corporation staff stated that requiring the successful offeror to perform at all three locations would not restrict competition, but simultaneously acknowledged that the fourth site was kept separate so that the incumbent contractor could compete. PBGC did not provide a sound rationale for structuring the procurement this way, and in the end, incumbent contractors won these bids. PBGC could have done more to ensure competition in these instances, and by extension, ensure more cost-effective contracts.

I just give these as examples of our findings. We have detailed several more concerns with contractor selection in our report. In addition, we also obtained information that involved possible improprieties and referred it for investigation, an investigation which is the subject of Mr. Hast's statement today.

Finally, let me turn to contract monitoring. In recent years, PBGC has taken actions to better oversee its contractors in field locations. However, we identified several key management weaknesses, including a lack of centrally compiled field location data that we feel is necessary to truly monitor performance, deficiencies in field office quality reviews and an organizational alignment that could affect the objectivity of contract review. Such weaknesses left uncorrected could affect the Corporation's ability to monitor and hold contractors accountable for their performance.

In our report, we have recommended a number of actions that, based on our work, we believe would improve PBGC's use of contractors. The Corporation has said it agrees with most of our recommendations and plans to act in several areas to improve contract management. And, indeed, absent meaningful action, PBGC risks being unprepared for future workloads, risks contracts that cost too much for too little and ultimately risks a deterioration of service to plan participants.

Mr. Chairman, that concludes my statement. I ask that my written statement be submitted to the record, please, and I would be happy to answer any questions.

[The prepared statement of Ms. Bovbjerg follows:]

United States General Accounting Office

**GAO**

Testimony

Before the Senate Special Committee on Aging and the  
Committee on Small Business, United States Senate

For Release on Delivery  
Expected at 9:30 a.m.  
Thursday, September 21,  
2000

**PENSION BENEFIT  
GUARANTY  
CORPORATION**

**Contract Management  
Needs Improvement**

Statement of Barbara D. Bovbjerg, Associate Director  
Education, Workforce, and Income Security Issues  
Health, Education, and Human Services Division



Mr. Chairman and Members of the Committees:

I am pleased to be here today to discuss the Pension Benefit Guaranty Corporation's (PBGC) management of its contracting responsibilities. PBGC is a self-financing government corporation that insures defined benefit pension plans and assumes administration of those plans that either terminate or become insolvent. In fiscal year 1999, about 215,000 retirees received over \$902 million in benefit payments from PBGC. To service its workloads, PBGC relies heavily on the services of contractors whose employees account for almost half of its workforce. In fiscal year 1999, about \$100 million of PBGC's \$160 million budget was used to pay for contracting and related expenses.<sup>1</sup>

Due to the number of contractors involved in supporting PBGC's mission, you asked us to (1) determine the basis for PBGC's decisions regarding the use of contractors versus government personnel to its address its workloads, (2) assess PBGC's processes and procedures for selecting contractors, and (3) determine how effective PBGC has been in monitoring the performance of its contractors. Today I will discuss the findings of our report, which was released today, and the broader management issues that could affect PBGC's ability to efficiently and cost effectively serve the needs of pension plan participants. Additional operational issues pertaining to PBGC's day-to-day management of specific contracts are discussed in more detail in our full report.<sup>2</sup>

In summary, our work shows that PBGC's contracting decisions and its organizational field structure have been heavily influenced by the need to service rapidly increasing workloads within existing federal staffing limitations. Because PBGC's focus was on obtaining needed staff quickly, it has not linked its contracting decisions to workload trends or strategic planning considerations and could be unprepared for future work environment changes. We also identified weaknesses in PBGC's procurement planning and execution processes. In particular, PBGC's consolidation of three formerly separate field office services procurements was not supported by a sound business rationale and may have limited competition. For several other field office procurements, PBGC should have done more to stimulate competition by conducting market research to identify additional potential offerors. In reviewing several other contracts we identified additional weaknesses, including the need for PBGC to better document its basis for contractor awards and use more fixed-price rather than labor-hour contracts, which carry more cost and quality assurance risks. We also identified contractor oversight problems, including a lack of centralized data essential to monitoring contractor performance and deficiencies in PBGC's quality assurance review process.

In response to our review and report recommendations, PBGC plans to act in several areas to better manage its contracting activities and ensure that competition and oversight

<sup>1</sup> This figure includes about \$80 million in personnel costs, \$15 million in office rents, and \$5 million in travel.

<sup>2</sup> Pension Benefit Guaranty Corporation: Contracting Management Needs Improvement (GAO/HEHS-00-130, Sept. 18, 2000).

are strengthened. It is important that PBGC sustain its efforts and fully implement those actions to address the problems we identified. I will also note that during our review, we obtained other information and documents regarding PBGC's procurements that appeared to involve possible improprieties. Accordingly, we referred this information to our Office of Special Investigations (OSI); the results of OSI's investigation are being reported separately.<sup>3</sup>

#### BACKGROUND

The Employee Retirement Income Security Act of 1974 created PBGC as a self-financing, nonprofit, wholly owned government corporation.<sup>4</sup> PBGC protects participants in private pension plans from losing promised benefits due to the termination of underfunded plans. PBGC's work is performed at its Washington, D.C., headquarters, and at 11 contract office locations throughout the country. PBGC's primary responsibilities are to collect premiums from sponsors of defined benefit pension plans to insure against default and to assume administration of plans that terminate or become insolvent. In the event of plan default, PBGC assumes control of plan assets, calculates benefit amounts, and pays pension plan beneficiaries.

Over the years, PBGC's workloads have grown significantly. In fiscal year 1975, PBGC administered three pension plans with a total of 400 participants. By last year, PBGC had assumed responsibility for more than 2,700 pension plans with a total of more than 500,000 participants. To address its workloads in fiscal year 1999, PBGC relied on 754 federal employees<sup>5</sup> and 680 staff employed by contractors. A total of 240 contractor employees are located at PBGC's 11 field benefit administration (FBA) offices. PBGC's procurement activities pertaining to benefit processing and administration services are not bound by the Federal Acquisition Regulation (FAR). However, as a matter of policy, PBGC voluntarily abides by FAR in procuring all goods and services.

PBGC is self-financing in that it receives no general revenues. Its operating budget is financed by insurance premiums paid by plan sponsors and trust assets.<sup>6</sup> Although it does not receive general revenues, the portion of its budget allocated to administrative expenses has been subject to a statutory limitation since 1985. The Congress revised this limitation in 1989 and in 1992 to provide PBGC more flexibility to address the rapid and

<sup>3</sup> Pension Benefit Guaranty Corporation: Initial Results of Investigation Into Improper Influence of Contract Awards (GAO/T-OSI-00-17, Sept. 21, 2000).

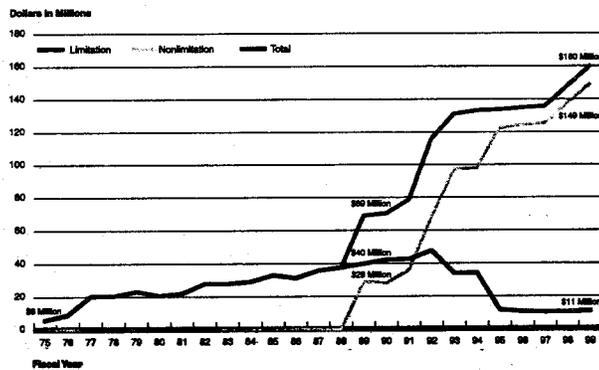
<sup>4</sup> A wholly owned government corporation is generally defined as a corporation pursuing a government mission assigned in its enabling statute, typically financed in part by appropriations, with assets owned by the government and controlled by board members or an administrator appointed by the President or department secretary. The Congress sometimes exempts these corporations from key management laws to provide greater flexibility than federal agencies typically have in hiring employees, paying salaries/benefits, disclosing information publicly, and procuring goods and services.

<sup>5</sup> Full time equivalent federal staff ceiling for fiscal year 1999.

<sup>6</sup> Trust assets include assets acquired from terminated plans, investment returns on the assets, and recoveries from employers responsible for underfunded terminated plans.

often unexpected workload increases that followed several large pension plan failures. The revisions exempted from limitation all expenses incurred by PBGC in connection with the termination and management of pension plans, and provided PBGC with the discretion to determine which functions and activities qualified as nonlimitation expenses. Over time, PBGC has expanded the range of activities and functions classified as nonlimitation expenses, and currently uses these resources to fund nearly all contractor positions and related costs. This has resulted in a steep increase in PBGC's nonlimitation budget—which is primarily subject to review and approval by the Office of Management and Budget (OMB) rather than the Congress—from \$29 million in fiscal year 1989 to \$149 million in fiscal year 1999. During the same period, PBGC's limitation budget, which receives both OMB and congressional review and approval, decreased from \$40 million to \$11 million. By fiscal year 1999, only 75 federal employees were funded out of the limitation budget while the remaining 1,359 federal and contractor employees were funded out of the non-limitation budget (see fig.1).

**Figure 1: PBGC Limitation/Nonlimitation Budget, Fiscal Years 1975-1999**



**PBGC CONTRACTING DECISIONS REFLECT PAST SHORT-TERM NEEDS**

PBGC's contracting decisions and its organizational structure have been heavily influenced by the need to service dramatic and often unexpected workload increases while adhering to staffing limitations. Beginning in the mid-1980s, several large unexpected bankruptcies—including those of LTV Steel, Wheeling Pittsburgh Steel, Eastern Airlines, and Pan American Airlines—contributed to more than doubling the number of PBGC pension plan participants from 170,000 to nearly 400,000. Rather than

repeatedly seeking significant increases in federal staff during a period of government downsizing, PBGC turned increasingly to contractors to provide services. More specifically, PBGC often entered into sole-source contracts with existing pension office administrators from the insolvent companies to take advantage of their familiarity with plan provisions as well as their office's physical proximity to plan records and participants.<sup>7</sup> Over the years, 11 field office contractors have remained with PBGC to perform benefit administration services for other insolvent plans as they were terminated and trustee. Staffing at these offices has also nearly doubled in the last 5 years. Thus, with no apparent linkage to agency strategic planning or an assessment of how PBGC should be organized for maximum efficiency, these offices have become PBGC's field structure.

Because PBGC's focus was on obtaining needed staff quickly, it has not performed a comprehensive analysis of the costs and benefits of using contractors versus federal employees to service its workloads. Nor has PBGC taken actions to reassess its contracting and organizational structure needs against projected future workload changes. In the absence of such activities, PBGC has operated for many years without reasonable assurance that it has a cost beneficial mix of federal and contractor employees.

Potential changes in PBGC's workloads attributable in part to increased productivity, economic trends, changes in pension laws, and enhanced plan funding suggest that PBGC should reexamine its approach to the acquisition of contract services and better link its activities to long-term strategic planning. For example, PBGC has reduced its inventory of pending benefit determinations from a high of 300,000 in fiscal year 1994 to about 190,000 in fiscal year 1999. PBGC expects to eliminate this backlog and reach a working inventory of 120,000 cases in less than 5 years (see fig. 2).

As PBGC moves into an era of more real-time processing of benefits, changes in staffing levels and its organizational structure may be necessary. Several other factors may also affect PBGC's future workloads, including the corporation's improved ability to target underfunded plans and get them to improve their financial positions, thereby averting plan failures. The universe of defined pension plans insured by PBGC has also decreased dramatically in recent years. This has been accompanied by a decrease in the number of active plan participants—those currently earning pension accruals, and considered by PBGC to be a better measure of future workloads. Finally, the number of new plans taken over by PBGC each year has also steadily decreased (see fig. 3). If the above trends continue, PBGC's exposure to future pension plan failures and accompanying workloads should be reduced.

<sup>7</sup> A sole-source contract is entered into or proposed to be entered into after soliciting and negotiating with only one source.

Figure 2: Pending Benefit Determinations, Fiscal Years 1990-1999

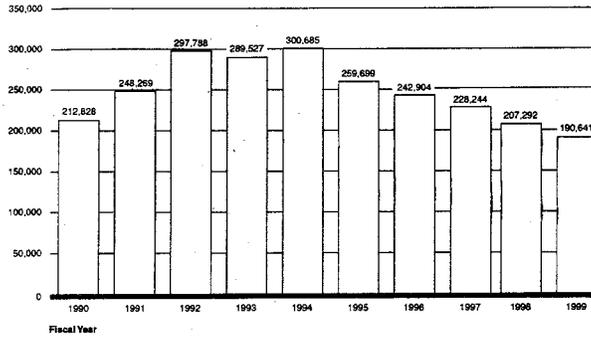
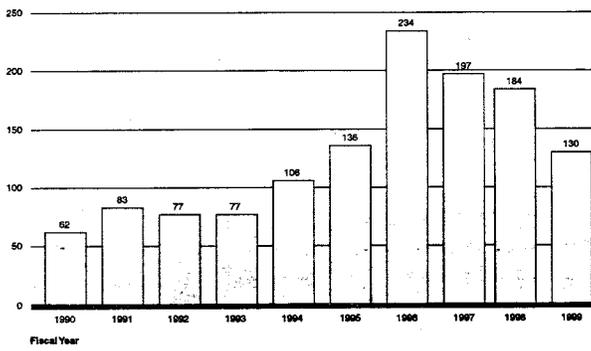


Figure 3: New Pension Plans Truited by PBGC, Fiscal Years 1990-1999



Our prior work on human capital planning suggests that planning strategies should be linked to current and future human capital needs, including the size of the workforce and its deployment across the organization. Staff deployment should also be linked to

mission accomplishment and provide for efficient, effective, and economical operations.<sup>8</sup> In the absence of such analyses, PBGC lacks a blueprint as to how it should organize its contractors and federal staff to cost effectively meet the needs of current and future pension plan participants. PBGC is also giving inadequate consideration to the longer-term effects of its contracting decisions. For example, last year, PBGC initiated a policy change to allow all contract field offices to perform ongoing administration for their closed plans.<sup>9</sup> Prior to this change, ongoing administration—which generally involves routine maintenance for plans in which all final benefit determinations have been issued—for hundreds of closed plans was consolidated primarily at two designated field offices. An official at one of the largest field offices told us that, without the new ongoing administration workloads or a significant influx of new plans, the office would likely have insufficient work in the future to continue operations.

During our review, PBGC management acknowledged that it had not focused on the long-term effects of allowing more contractor offices to perform routine maintenance services. However, they assured us that PBGC would continue to transfer closed plans to the two designated ongoing administration offices in all but very limited circumstances. Despite these assurances, we are concerned that this policy change was made without sufficient analysis of future workload trends and has the potential to unnecessarily perpetuate the existence of some field office contracts if the influx of new plans trusted by PBGC levels off in the future.

In responding to our recommendation, PBGC also agreed that a strategic workforce planning study is necessary and said it intends to engage an independent outside organization to conduct such a review within the next year. We believe this type of analysis and the contingency planning that should flow from it is a positive first step toward positioning PBGC to make systematic and orderly changes to its future workforce and organization while still meeting the needs of recipients.

#### PBGC'S PROCUREMENT PRACTICES HAVE WEAKNESSES

Our review of PBGC's most recent FBA services procurements identified weaknesses in its procurement planning and execution processes that could affect competition and result in PBGC's paying too much for procured services. Specifically, PBGC lacked a sound business rationale to support its approach for consolidating procurements for services at three field office locations and may have limited competition. PBGC also should have done more to stimulate competition for its other field office services procurements. In reviewing several other contracts, we identified additional weaknesses, which are discussed below.

<sup>8</sup> Human Capital: A Self-Assessment Checklist for Agency Leaders (GAO/GGD-99-179, Sept. 1999).

<sup>9</sup> Prior to the revision, ongoing administration was allowed only for plans with 10,000 or more participants or plans requiring special expertise.

Procurements for Benefit Administration  
Services Were Not Consistently Structured

As noted previously, PBGC currently has 11 contracts for FBA services requirements. The first competitive procurement for these services occurred in 1997, when PBGC competed the requirements for services at four field offices—Miami, Atlanta, Wheeling, and Wilmington. Together, these contracts totaled about \$71 million. At that time, a single large contractor—Office Specialists, Inc.—was incumbent at the Miami, Atlanta, and Wheeling offices. A second contractor—Benefit Services Unlimited—was incumbent at the Wilmington office. Rather than compete the services for each of these offices separately, PBGC consolidated the Miami, Atlanta, and Wheeling service requirements into a single procurement. The services for the Wilmington location were excluded from the consolidated procurement and competed separately. These procurement actions resulted in PBGC awarding the \$47 million, three-site contract to Office Specialists, Inc., and the \$24 million Wilmington contract to Benefit Services Unlimited, leaving the incumbent contractors in place for all four locations.<sup>10</sup>

PBGC's Procurement Director indicated that a factor in PBGC's decision to consolidate the Miami, Atlanta, and Wheeling field office services requirements was the existence of qualified staff already working at the three locations. He also stated that requiring the successful offeror to perform at all three locations would not tend to restrict competition. However, he acknowledged that the services for the Wilmington site were excluded from the consolidated procurement so that the incumbent contractor would not be precluded from competing.

In general, federal procurements are to be conducted using full and open competition and solicitations are permitted to contain restrictive conditions only to the extent necessary to satisfy the needs of an agency. Because consolidated procurements combine separate requirements into one award, they have the potential to restrict competition by excluding potential competitors that can furnish only a portion of the requirement. Therefore, consolidated procurements must be based upon sound business reasons supporting the conclusion that the government's overall needs can be most effectively provided through such an approach. In sum, PBGC's reasons for combining requirements should have been balanced against the possible restriction of competition.

Based on our work, we believe PBGC's conduct of these procurements showed weaknesses in its procurement planning and execution practices. In particular, PBGC did not provide a sound business rationale for why the consolidation of the Miami, Atlanta, and Wheeling requirements was necessary to meet its needs. Nor did it establish that the combination supported any plans or goals of the corporation. In addition, PBGC's explanation for combining the three requirements and its explanation for excluding the fourth were inconsistent in contending that the consolidated procurement would not tend to affect competition, while acknowledging that a four-site procurement that included the Wilmington location would have affected the smaller contractor's ability to compete.

<sup>10</sup> These figures represent the total contract costs over a term of 4 years.

Although PBGC did receive several offers for these contracts, our work also showed that two additional companies were interested in competing to provide services at one of the three offices for which services were consolidated. PBGC rejected the first company's proposal because it offered to provide services for the Atlanta location only. Managers of the second company—a current field office contractor—told us that they would have competed for services at a single location had that option been available. However, this contractor decided not to submit an offer due to the size of the combined workload and potential management difficulties associated with a multisite contract. Thus, PBGC's conduct of these procurements may have limited competition. Consequently, PBGC risked paying too much for contracted services and receiving inferior performance.

Competition for Sole-Source Benefit  
Administration Services Contracts  
Could Be Improved

PBGC also should have done more to stimulate competition for its remaining sole-source field office procurements. While PBGC competed four of its field office services requirements in 1997, it continued its practice of making sole-source awards for its seven other field office contracts. PBGC's rationale for continuing this practice was that the incumbent contractors, as former pension plan administrators of companies from which their primary plans emanated, were uniquely qualified to perform the work because of their knowledge of the primary plan.<sup>11</sup>

In reviewing the procurement files for the Pueblo, Sarasota, and Cleveland offices, we confirmed that the principals/owners were former benefit administrators for the primary plans under administration, and were still servicing these plans. However, over several years, these contractors had made considerable progress toward completing work on their primary plans and had assumed benefit administration responsibility for numerous additional pension plans beyond their original area of expertise. In fact, one contract office had a total of 15 additional trustee plans from various companies and thousands of new participants under its administration.

When a contracting entity uses noncompetitive procedures, it must execute a written justification that includes sufficient facts and rationale to justify its use of those procedures. The justification must also include a description of any market survey conducted—or why one was not conducted—and a statement of actions the agency may take to remove barriers to competition in the future. For those contract files we reviewed, PBGC's written justification notes that no statements of interest were received from other potential offerors in response to its Commerce Business Daily (CBD) notice of its intent to award the sole-source contracts. It also notes that PBGC was unaware of any specific barriers to competition that could be overcome with respect to this requirement.

<sup>11</sup> The primary plan is defined by PBGC as the original plan for which the contract was initiated. For example, the initial contract for the Pueblo, Colorado, office was let in the early 1990s to service CF&I Steel. The principal/owner was a former pension benefit administrator at CF&I Steel.

Although PBGC published a CBD notice of these awards, we found no indication that PBGC ever acted to enhance competition by conducting outreach or market research activities to identify other potential offerors capable of performing the required services. In prior work, we have reported that such activities have been effective in stimulating competition.<sup>12</sup> Even though, procedurally, the CBD notice may serve the purpose of a market survey, PBGC should have done more to monitor the marketplace and foster competition through outreach efforts. PBGC's actions in continuing to award these contracts noncompetitively for almost a decade could have affected its ability to obtain the best value for the services procured.

Consistent with our recommendations, PBGC now plans to separately compete 10 field office services requirements next year. It has also agreed that additional outreach and market research efforts could enhance its competitive processes.

Additional Observations on  
PBGC Contractor Selection  
Practices

Our review of PBGC's contracting practices also identified other management and operational weaknesses associated with contracts let by the chief financial officer (CFO) component, which is the second-largest user of contractor services at PBGC. For example, PBGC should have more fully documented its basis for awarding an \$18 million information resources management contract for systems engineering and a \$1.5 million investment management contract. PBGC's internal guidance at the time of the procurements provided for the establishment of a technical evaluation panel to assess contractor proposals and make selection recommendations to the Procurement Director. Each panel member was required to identify and document the strengths and weaknesses of all proposals reviewed. To assist in their analysis, members could, but were not required to, prepare individual scoresheets to document how they rated each proposal.

The procurement files we reviewed included the technical scores for the offerors under consideration as well as a final selection recommendation from the panel chairperson. However, they did not include a complete set of individual panel members' scoresheets documenting their review and rationale for arriving at a particular score. For the investment management contract, only two of seven panel members submitted individual scoresheets and some analysis of the specific strengths and weaknesses of proposals. With only the final numeric scores, the record lacked information concerning the panel's basis for determining contractor qualifications and issuing its final selection recommendations. Thus, we could not determine whether final award decisions were based on a thorough assessment of each offeror's proposal by all members.

<sup>12</sup> Contract Management: Few Competing Proposals for Large DOD Information Technology Orders (GAO/NSIAD-00-56, Mar. 20, 2000).

We also reviewed five contracts for premium compliance audit services. For these contracts, audit firms perform reviews of companies that pay insurance premiums to PBGC to ensure that premium amounts paid are correct. In fiscal year 1999, PBGC received \$925 million in premium collection income from pension plan sponsors.

Our analysis of these contracts showed that PBGC should give stronger consideration to using fixed-price contracts rather than labor-hour contracts for these services. Fixed-price contracts generally involve a firm price for performing a particular service, regardless of how long it takes. Labor-hour contracts provide for payment of contractors at hourly rates for performing agreed-upon tasks. Labor-hour contracts also generally require detailed reviews of the hours charged by contract staff and close monitoring to ensure that quality and timeliness requirements are met. Otherwise, an organization risks paying a higher price than it would under a fixed-price arrangement, as well as receiving poor performance. As of June 2000, about 60 percent of PBGC's active contracts involve labor hour pricing.

When acquiring services that previously have been provided by contract, the Office of Federal Procurement Policy notes that agencies should rely on the experience gained to facilitate the use of fixed-price contracts for such services. Prior to entering into the current contracts in 1997, the incumbents performed similar work for PBGC under purchase order agreements. Thus, PBGC had actual experience in pricing these contracts. Based on this information, PBGC calculated a potential fixed price of between \$3,400 and \$8,000 for each audit completed. A fixed-price contract was originally solicited by PBGC and the five firms submitted offers. However, PBGC later made a determination that a labor-hour payment arrangement would be more effective to accommodate the variable level of effort needed to complete the audits.

Our review showed that, after the contracts were awarded, PBGC experienced performance problems with several of the contractors. PBGC subsequently opted, after 15 months, not to continue its relationship with two of the firms. Documents we obtained showed that PBGC paid one of these contractors \$210,000 to complete three audits—about \$70,000 per audit—which resulted in \$2,000 in additional collections. In contrast, PBGC's highest-producing contractor performing similar services completed 27 audits with \$1.3 million in additional collections at an average cost of \$6,600 per plan. Thus, PBGC could have paid much less than \$210,000 under the fixed-price arrangement originally proposed.<sup>13</sup> In addition, a second contractor has been referred to PBGC's OIG for investigation of potential contract billing irregularities. In light of the performance issues surrounding these contracts, and the fact that PBGC had a basis to award them as fixed-price contracts, PBGC should give stronger consideration to using fixed prices in similar situations.

<sup>13</sup> Based on proposal of about \$4,000 per plan audit.

CONTRACT OVERSIGHT  
PRACTICES NEED IMPROVEMENT

Contract oversight primarily involves monitoring performance. In recent years, PBGC has taken actions to better support its field office contractors. For example, in 1993, PBGC reorganized its benefit administration operations to implement team case processing so that auditors, actuaries, and benefit administrators in both headquarters and the field are deployed in teams to process benefits. This replaced sequential processing, in which cases were handed off between various components as discrete tasks were completed. PBGC has also made significant investments in automation and centralized several functions previously handled by the field offices to allow staff to focus primarily on processing benefit determinations. However, we identified several key management weaknesses that could affect PBGC's ability to monitor and hold contractors accountable for performance.

PBGC Does Not Centrally Compile and Monitor  
Automated Data on FBA Office Performance

In order to undertake a comparative analysis of field office productivity, we requested data from PBGC to document the range of activities and volume of work processed by these offices. However, field office data essential to overseeing and managing performance are not centrally compiled and monitored by PBGC. Instead, PBGC generally compiles data on work processed by each office—such as final benefit determinations—on a plan-specific basis. This information is then included in the productivity data for PBGC's eight headquarters processing divisions. Thus, a field office with 30 pension plans could report to several processing divisions and its workload outputs would be included within the productivity totals of each of those divisions. As a result, PBGC lacks centralized field office performance data and reports necessary for quickly providing top management with a "snapshot" of office productivity as pension plans move through the various stages. The comingling of data, and the fact that field office productivity is reported on a plan-specific basis, make it difficult for PBGC to ensure that its contract field offices are performing efficiently and effectively.

Individual offices maintain internal productivity information to assist in managing their workloads, such as the number of benefit determinations processed, death notices recorded, address changes completed, plans closed out, and so forth. However, the extent and detail of data vary among the offices. We believe that—if uniformly compiled and monitored—additional automated data would provide PBGC with information needed to compare office productivity and performance over time, monitor a specific office's performance against prior months and years, more quickly determine work progress, and identify and track workload backlogs. Field-office-specific data would also allow PBGC to evaluate the effects of special management initiatives on other workloads, such as a recent PBGC mandate to complete all pre-1994 pending benefit determinations by the end of fiscal year 1999. PBGC's Office of Inspector General (OIG) has reported that PBGC's emphasis on processing benefit determinations may have caused final plan closings to receive less priority. The OIG also concluded that completing this step was

important because it allowed PBGC to ensure that all final benefit determinations for a plan were issued. Because no field-office-specific data on plan closures are centrally compiled or monitored by PBGC, it lacks information that top management could use to assess the effect of this directive on other workloads.

PBGC has agreed, as we recommended, to develop additional performance information for its field office contractors. These steps should provide PBGC with better management information to establish more meaningful future field office performance goals and measures.

Performance Review Process  
For Field Offices May Not Adequately Ensure  
Work Quality

PBGC requires its field office contractors to undergo regular performance reviews to help ensure that proper internal controls are in place and that workloads are processed in a complete, accurate, and timely manner. However, our analysis identified continuing weaknesses in the review process that may affect PBGC's ability to manage contractor performance.

In 1995, its OIG reported that PBGC's performance reviews were not performed in accordance with government auditing standards and often resulted in flawed recommendations. This report also concluded that PBGC seemed to excuse poor field office performance. Our review identified continuing problems. PBGC's procedural manual states that the reviews are based on government auditing standards and that review team members are required to meet general standards for independence, qualifications, due professional care, and quality control. Despite these requirements, key headquarters staff and managers told us that the reviews had limited impact on improving field office performance because management often did not support efforts to identify weaknesses and hold the offices accountable for negative findings. Others noted that team leaders and members often lacked sufficient training and expertise to perform the reviews.

We also obtained an internal Management Report prepared by PBGC last year affirming that the reviews continued to show weaknesses in meeting auditing standards and could facilitate internal control weaknesses and poor product quality. The report specifically noted that some components rotated experienced personnel out of the review function each year, and assigned individuals with insufficient experience and training to lead roles. In fact, out of 22 field office reviews completed by PBGC, nearly one-third were led by individuals who had never before participated in a review. The report also cited frequent instances of poor quality control and of reports and work papers being returned for significant additional development, even though they had been reviewed and approved by team supervisors. It also concluded that resources devoted to reviews may be insufficient to ensure quality. Citing feedback from various review teams, the report also pointed out that "corners would be cut" when PBGC's work priorities dictated.

PBGC should act quickly to address the weaknesses in its performance reviews of field office contractors. An effective quality control system is particularly important, considering that PBGC recently completed its initiative to issue final benefit determinations for plans trusteed prior to 1994. During our field visits, contractor management commonly referred to this initiative as a major undertaking with tight time frames. Individuals from several offices also noted that pressure to process this workload may have negatively affected the accuracy of benefit calculations and quality of notices sent to participants. Thus, it is important that PBGC have an adequate review process in place to detect errors resulting from this effort.

We have recommended that PBGC take action to strengthen its performance review process to better ensure that its contractors meet quality and accuracy requirements. PBGC has agreed to strengthen its quality assurance processes, by ensuring that trained and experienced staff are assigned to the reviews and taking other actions.

Individuals Responsible for Contractor Oversight Lack Sufficient Guidance

Primary responsibility for oversight of PBGC's contracts lies with more than 69 contracting officer's technical representatives located throughout PBGC and five contract specialists within the Procurement Department. Despite the importance of these individuals to monitoring and ensuring contractor performance, we found that PBGC has not developed a comprehensive set of policies and procedures to guide them in their day-to-day activities. The Procurement Department maintains a limited policy and procedure manual which serves as the primary guide to contractor selection and oversight. However, the Director often supplements this document with ad-hoc directives, e-mails, and standalone memorandums to address contracting issues and problems as they arise. Because PBGC has never compiled these informal policy clarifications and directives into its departmental manual, it lacks a comprehensive set of standard operating procedures to guide staff in addressing common contract oversight problems.

During our review, staff involved in contract oversight management expressed a need for additional policy and procedural guidance and training beyond what is currently provided by PBGC. In the absence of more specific procedures, some staff have chosen to rely on their own judgment or on advice from coworkers for policy and procedural interpretations and spend significant time seeking guidance for issues such as when contracts should receive legal review or what to do with pension files after plans are closed. We also found that staff and managers sometimes received conflicting directions, which could ultimately lead to inconsistent administration practices and to contractor performance problems.

Organizational Placement of Review Function Could  
Have Contract Management Implications

Our work also shows that the independence and objectivity of PBGC's Contracts and Controls Review Department (CCRD) could be negatively affected by its position in PBGC's organizational structure.

The CCRD was established by PBGC's deputy executive director and CFO in 1994 to perform contract cost audits and internal control reviews of PBGC's departments and programs. Auditing standards require the audit organization and individual auditors to be organizationally independent. However, because the director of CCRD reports directly to the CFO, any internal reviews of departments and programs located under this component cannot be considered independent. CCRD management told us that any reports or reviews of departments under the CFO must disclose the fact that CCRD is not considered independent. While we agree that such a disclosure is necessary, we are concerned that the objectivity of this department's reviews could still be in question because of the current reporting relationship. More importantly, we are concerned that the potential exists for management to influence the scope of audits or affect CCRD's ability to make independent judgments as to which CFO departments and programs should be reviewed. As we recommended, PBGC said it would examine the issue of CCRD organizational placement as part of its larger workforce planning study to be completed next year.

CONCLUSIONS

Contractors have played a significant role in PBGC's ability to serve plan participants and reduce the backlog of pending benefit determinations from a high of about 300,000 in fiscal year 1994 to about 190,000 in fiscal year 1999. However, despite projected changes in future workloads, PBGC still has not taken steps to reassess its contracting and organizational structure needs. Current trends show that PBGC should act soon to respond to a potentially different future work environment. In response to our report, PBGC plans to undertake a strategic workforce planning study. Such an effort should include analyses of its staffing needs, skill levels, and organizational structure relative to current and future workloads. This type of contingency planning should allow PBGC to make systematic and orderly changes to its workforce as needed in the future while still meeting the needs of plan participants.

Our work also confirmed that PBGC should do more to encourage competition in the procurement of services. Without consistent efforts to monitor the marketplace and to stimulate competition, it is difficult for PBGC to ensure that it obtains the best value for services it procures. Moreover, without more effective contract oversight, PBGC cannot be sure that its contractors are held accountable for meeting performance requirements.

As noted earlier, PBGC's budget structure provides the corporation with substantial flexibility to address workload pressures by utilizing funds that are not directly subject to review and approval by the Congress. The absence of this means of oversight over PBGC's budget eliminates one of the Congress' ordinary methods of ensuring that PBGC

sufficiently administers trust fund assets while meeting the needs of pension plan participants. Under the current budget arrangement, it is particularly important that PBGC implement the planned corrective actions we have noted in our testimony today. Absent meaningful action, PBGC risks paying too much for required services, contractor performance problems, and ultimately, a deterioration of service to plan participants. Furthermore, inaction may also call for the Congress to strengthen its oversight role by reassessing and redefining the range of activities and functions treated as nonlimitation expenses.

This concludes my prepared statement. I will be happy to respond to any questions you or other Members of the Committees may have.

GAO CONTACTS AND STAFF  
ACKNOWLEDGEMENTS

For information regarding this testimony, please contact Barbara Bovbjerg at (202) 512-7215 or Dan Bertoni at (202) 512-5988. Individuals who made key contributions to this testimony include Jeff Bernstein and Elizabeth O'Toole.

(207112)

United States General Accounting Office

**GAO**

Report to the Chairman, Senate Special  
Committee on Aging; and the Chairman,  
Committee on Small Business, United  
States Senate

September 2000

**PENSION BENEFIT  
GUARANTY  
CORPORATION**

**Contracting  
Management Needs  
Improvement**



GAO/HEHS-00-130

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**Abbreviations**

CBD	Commerce Business Daily
CCRD	Contracts and Controls Review Department
CFO	chief financial officer
COTR	contracting officer's technical representative
ERISA	Employee Retirement Income Security Act of 1974
FAR	Federal Acquisition Regulation
FBA	field benefit administration
FTE	full-time equivalent
GPRA	Government Performance and Results Act of 1993
IOD	Insurance Operations Division
IRM	information resources management
OIG	Office of Inspector General
OMB	Office of Management and Budget
PBGC	Pension Benefit Guaranty Corporation
TPD	Trusteeship Processing Division



United States General Accounting Office  
Washington, D.C. 20548

Health, Education, and  
Human Services Division

B-282936

September 18, 2000

The Honorable Charles E. Grassley  
Chairman, Senate Special Committee on Aging  
United States Senate

The Honorable Christopher S. Bond  
Chairman, Committee on Small Business  
United States Senate

The Pension Benefit Guaranty Corporation (PBGC) insures the benefits of 43 million participants from default of their employer-sponsored defined benefit pension plans.<sup>1</sup> Established in 1974 as a self-financing government corporation, PBGC's primary responsibility is to collect premiums from the sponsors of defined benefit pension plans and assume administration of underfunded plans that either terminate or become insolvent. In the event of plan termination, PBGC assumes control of plan assets, calculates benefit amounts, and pays recipients a guaranteed benefit. In fiscal year 1999, about 215,000 retirees received over \$902 million in benefit payments from PBGC. PBGC's work is performed at its Washington, D.C., headquarters and 11 contract office locations throughout the country, known as field benefit administration (FBA) offices.

To carry out its operations, PBGC relies heavily on the services of contractors whose headquarters and field employees account for almost half of the workforce involved in processing PBGC's workloads. In fiscal year 1999, about \$100 million of PBGC's \$160 million budget was used to pay for contracting and related expenses.<sup>2</sup> Due to the number of contractors involved in supporting PBGC's mission, you requested that we review and assess the effectiveness of PBGC's contracting activities. Accordingly, we agreed to (1) determine the basis for PBGC's decisions regarding the use of contractors versus government personnel to address its workloads, (2) assess PBGC's processes and procedures for selecting

<sup>1</sup> Defined benefit plans pay specific retirement benefits, generally based on years of service, earnings, or both; the sponsoring company is responsible for ensuring that plan assets are sufficient to pay liabilities.

<sup>2</sup> Figure includes about \$80 million in personnel costs, \$15 million in office rents, and \$5 million in travel.

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contractors, and (3) determine how effective PBGC has been in monitoring the performance of its contractors.

To do our work, we conducted more than 70 in-depth interviews of PBGC staff and managers, as well as contractors and their employees. We also reviewed key performance data, internal documents, and the documentation regarding 15 procurements whose estimated value totaled over \$197 million.<sup>3</sup> We conducted our work at PBGC headquarters and six contractor-operated field locations between June 1999 and May 2000 in accordance with generally accepted government auditing standards. Additional information on our scope and methodology is presented in app. I.

### Results in Brief

PBGC contracting decisions and its organizational field structure have been heavily influenced by the need to service rapidly increasing workloads within existing federal staffing limitations. Faced with a significant influx of large pension plan failures beginning in the mid-1980s, PBGC chose to contract for services rather than seeking additional federal staff during a period of government downsizing. Over time, PBGC continued contracting for services to address a backlog of hundreds of thousands of pending benefit determinations which peaked at more than 300,000 in fiscal year 1994. Because PBGC's focus was on obtaining necessary services quickly, it has not adequately linked its contracting decisions to longer-term strategic planning considerations. More recently, PBGC management has acknowledged the need to better link its decisions to contract for services and its staffing allocations to future workload trends. However, PBGC's actions to date have been limited, despite automated enhancements that have made work processes more efficient, a projected leveling-off in workloads over the next several years, and a steady decrease in the total universe of defined benefit pension plans and active plan participants nationwide. Thus, PBGC cannot be assured that it has a cost-beneficial mix of contractor and federal employees, as federal policy requires, and risks being unprepared for future workload changes as defined benefit pension plans and participants decline.

We also identified weaknesses in PBGC's procurement planning and execution processes. For example, in its first competitive procurement of

<sup>3</sup>Total dollar amount includes base year plus option years for the contracts reviewed.

FBA office services, PBGC's consolidation of requirements for three geographically remote contractor offices into a single procurement and exclusion of the services for a fourth office from the consolidation were not supported by a business rationale and may have limited competition. In procuring management services for several other FBA office contracts, PBGC should have done more to stimulate competition by conducting outreach and market research activities to identify additional potential offerors. In reviewing several other contracts, we also could not assess the basis for PBGC's award decisions because procurement documentation was incomplete. We also identified areas where PBGC should consider using fixed-price rather than labor-hour contracts, which require considerable management oversight and carry more cost and quality assurance risks to the agency. Without more effective acquisition planning and procurement practices, PBGC risks paying too much for contracted services and receiving inferior performance.

Finally, we identified weaknesses in PBGC's contractor oversight activities. PBGC has taken a number of actions to improve its management of contractors, including automating and centralizing several functions previously handled in the field locations to allow contractors and their staff to focus primarily on processing benefit determinations. However, PBGC does not centrally compile FBA-specific data essential for monitoring the performance of contractors in field locations. We also identified weaknesses in PBGC's quality assurance review process for these field offices, and in its policies and procedural guidance for PBGC employees responsible for monitoring contracts. Furthermore, we are concerned that the current organizational placement of PBGC's Contracts and Controls Review Department (CCRD)—which provides audit and internal review services to PBGC related to contracting—may affect its independence. At present, this office is located within the PBGC component that is the second-largest user of contracted services and reports to its head.

The broader management issues and day-to-day operational weaknesses that we identified in PBGC's contracting practices could affect its ability to efficiently and cost-effectively serve the financial needs of millions of pension plan participants. Accordingly, we are making several recommendations that focus on the need for PBGC to manage its longer-term contracting needs more strategically and take action to address specific operational and procedural weaknesses identified in our review of its contracts. In commenting on this report, PBGC generally agreed with all of our recommendations and cited actions it has taken or will take to implement them.

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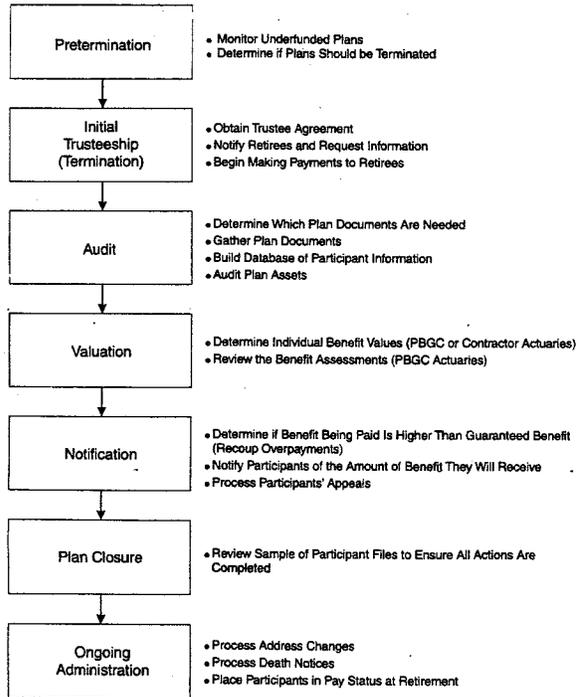
## Background

The Employee Retirement Income Security Act of 1974 (ERISA) created PBGC as a self-financing, nonprofit, wholly owned government corporation.<sup>4</sup> PBGC protects participants in private pension plans from losing promised benefits due to the termination of underfunded plans. PBGC's primary responsibility is to collect premiums from the sponsors of defined benefit pension plans to insure against default and to assume administration of plans that become insolvent. In the event of plan default, PBGC assumes control of plan assets, calculates benefit amounts commonly referred to as initial determination letters, and pays recipients. (See plan processing flow chart, fig. 1.)

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<sup>4</sup> A wholly owned government corporation is generally defined as a corporation pursuing a government mission assigned in its enabling statute, typically financed at least in part by appropriations, with assets owned by the government and controlled by board members or an administrator appointed by the President or department secretary. The Congress sometimes exempts these corporations from key management laws to provide greater flexibility than federal agencies typically have in hiring employees, paying salaries/benefits, disclosing information publicly, and procuring goods and services.

Figure 1: Overview of Plan Processing at PBGC



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Generally, pension plans under PBGC's administration, in which final benefit determinations have not yet been issued, are considered active plans. When all benefit determinations are issued and participant appeals are resolved, plans are then closed and moved to ongoing administration where they generally require limited maintenance to reflect participants' marital changes, address changes, deaths, and so forth.<sup>5</sup>

In 1992, we placed PBGC on our list of federal programs at high risk because a large and growing imbalance between its assets and liabilities threatened PBGC's long-term financial viability.<sup>6</sup> Through the mid-1990s, the Congress' primary concern and our work at PBGC focused mainly on PBGC's financial condition. To address PBGC's financial problems, the Congress passed the Retirement Protection Act in 1994, which strengthened minimum funding requirements for plans and increased premiums paid to PBGC by underfunded plans. In addition, PBGC improved administration of its insurance programs. Consequently, we removed PBGC from our high-risk list in 1995.<sup>7</sup>

Over the years, PBGC's workloads have grown significantly. In fiscal year 1975, PBGC administered three pension plans with a total of 400 participants. By fiscal year 1999, PBGC had trusteeed more than 2,700 pension plans with a total of more than 500,000 participants. (See figs. 2 and 3 for the number of pension plans and participants by fiscal year.)

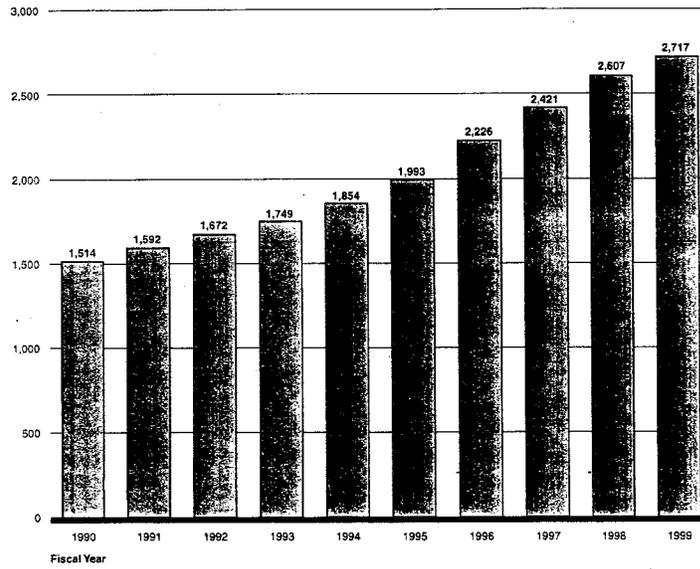
<sup>5</sup> Both federal staff and contractors perform ongoing administration for closed plans.

<sup>6</sup> *High-Risk Series: Pension Benefit Guaranty Corporation* (GAO/HR-93-5, Dec. 1992).

<sup>7</sup> *High-Risk Series: An Overview* (GAO/HR-95-1, Feb. 1995).

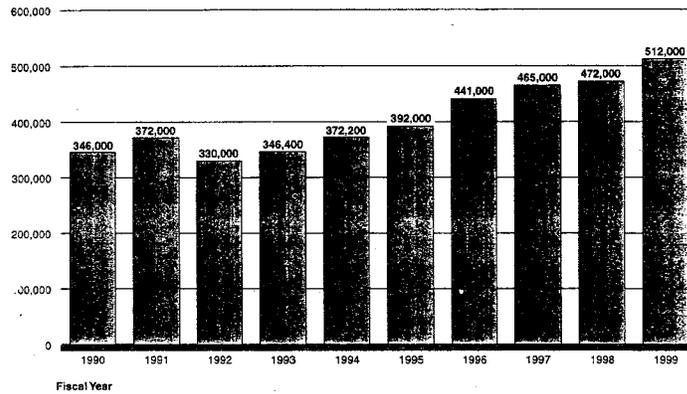
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Figure 2: Cumulative Number of Pension Plans Administered by PBGC, Fiscal Years 1990-1999



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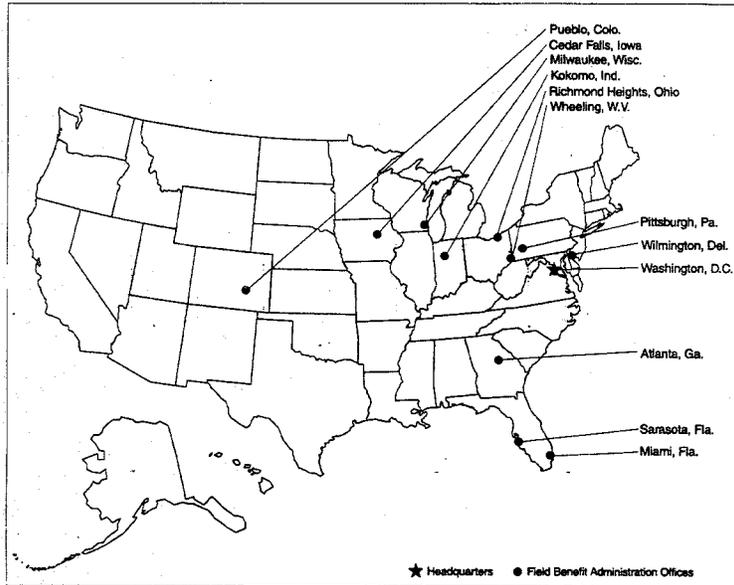
Figure 3: Cumulative Number of Participants in Pension Plans Administered by PBGC, Fiscal Years 1990-1999



To service its workloads, in fiscal year 1999 PBGC relied on 754 federal employees<sup>8</sup> and 680 staff employed by contractors. A total of 240 contractor employees are located at PBGC's 11 contract field offices. (See fig. 4 for a map of PBGC's contractor-operated field offices.)

<sup>8</sup> This figure represents full time equivalent (FTE) federal staff ceiling in fiscal year 1999.

Figure 4: PBGC Contractor-Operated Field Office Locations



These offices are primarily responsible for processing and administering trustee plans. PBGC's Insurance Operations Division (IOD) has oversight responsibility for these offices and uses the services of an additional 227 contractor employees in the Washington, D.C., headquarters. Many of these "in-house" contractor employees are located throughout eight Trusteeship

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Processing Divisions (TPD) and perform work similar to the field office contractors. In some of these areas, they work alongside federal employees performing the same benefit processing and administration functions. PBGC also relies on 213 additional employees from firms under contract to provide actuarial, legal, audit, investment management, and information resource services. (See app. II for a breakdown of the number of contract employees used by each PBGC department.)

Although not required to do so in all cases, PBGC follows the regulations governing contracting by federal agencies. PBGC's procurement activities, which include benefit processing and administration services, are not bound by the Federal Acquisition Regulation (FAR).<sup>9</sup> The FAR applies only to the contracting of goods and services with appropriated funds for the use of the United States.<sup>10</sup> Plan assets, which were privately established and maintained, are not considered appropriated funds. As a matter of policy, however, PBGC voluntarily abides by the FAR in procuring all goods and services.

Although it is a wholly owned government corporation, PBGC is self-financing in that it receives no general revenues. PBGC's operating budget is financed by funds from insurance premiums paid by plan sponsors and trust assets.<sup>11</sup> In fiscal year 1999, PBGC's total operating budget was \$160 million. Although PBGC does not receive general revenues, the portion of its budget allocated to administrative expenses has been subject to a statutory limitation since 1985. The Congress revised this limitation in 1989 and again in 1992 to provide PBGC more flexibility to address the rapid and often unexpected workload increases that followed several large pension plan failures. These revisions exempted from any limitation all expenses incurred by PBGC in connection with the termination and management of pension plans<sup>12</sup> and provided PBGC with discretion to determine which functions and activities qualified as nonlimitation expenses.

<sup>9</sup> See *Matter of Pension Benefit Guaranty Corporation's Use of Contingent Fee Arrangement With Outside Counsel*, B-223146 (Oct. 7, 1986).

<sup>10</sup> 48 C.F.R. 1.104 (applicability of FAR) and 2.101 (definition of acquisition) (1999).

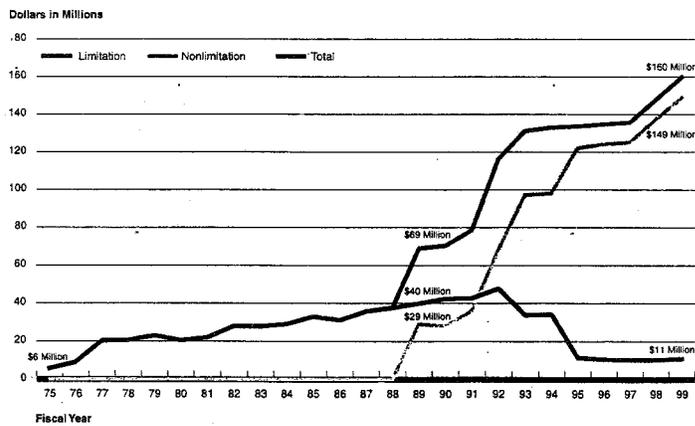
<sup>11</sup> Trust assets include assets acquired from terminated plans, investment returns on the assets, and recoveries from employers responsible for underfunded terminated plans.

<sup>12</sup> Activities not subject to limitation include all expenses in connection with the termination of plans for the acquisition, protection, management, and investment of trust assets; and for the administration of benefits.

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Over the years, PBGC has expanded the range of activities and functions classified as nonlimitation expenses, and currently uses these resources to fund nearly all contractor positions and related costs. This has resulted in a steep increase in PBGC's nonlimitation budget, from \$29 million in fiscal year 1989 to \$149 million in fiscal year 1999. During the same period, PBGC's limitation budget decreased from \$40 million to \$11 million. Thus, by fiscal year 1999, only 75 federal employees were funded out of PBGC's limitation budget, which receives shared Office of Management and Budget (OMB) and congressional review and approval. The remaining 1,359 federal and contractor employees were funded out of PBGC's nonlimitation budget, which is primarily subject to review and approval by OMB rather than the Congress (see fig. 5).

Figure 5: PBGC Limitation/Nonlimitation Budget, Fiscal Years 1975-1999



### PBGC Contracting Decisions Reflect Short-Term Needs of the Past

Because PBGC's contracting decisions and its organizational field structure have been heavily influenced by the need to service dramatic and often unexpected workload increases, while adhering to staffing limitations, decisions to contract for services have not been integrated into PBGC's strategic planning considerations. However, potential changes in the future work environment require PBGC to reassess its staffing, contracting, and organizational structure needs to best serve current and future pension plan participants.

### Decisions to Contract for Services Driven By Prior Workload Pressures

From the mid-1980s to the early 1990s, several large and unexpected bankruptcies—including LTV Steel, Wheeling Pittsburgh Steel, Eastern Airlines, and Pan American Airlines—contributed to more than doubling the number of PBGC pension plan participants from 170,000 to nearly 400,000. In addition to needing help to service the benefit administration needs of thousands of new participants, PBGC found itself in need of additional legal counsel and investment advisor services. Rather than continually seeking significant increases in federal staff during a time of government downsizing, PBGC increasingly turned to contractors to provide services.<sup>13</sup> Over time, this emphasis on contracting for services continued as PBGC focused on addressing a backlog of pending benefit determinations, which peaked at over 300,000 in fiscal year 1994.

More specifically, PBGC often quickly entered into sole-source contracts with pension office administrators from the insolvent companies to take advantage of their familiarity with plan provisions as well as their office's physical proximity to plan records and participants.<sup>14</sup> Over the years, 11 field office contractors have remained with PBGC to perform benefit administration services for other insolvent plans as they were terminated and trustee. Thus, with no linkage to agency strategic planning or assessment of how PBGC should be organized for maximum efficiency, these offices have become PBGC's field office structure.

<sup>13</sup> Between 1988 and 1992, FTE allocations remained relatively stable at an average of 540. In fiscal year 1993, PBGC requested and received an additional 117 FTEs. During this same period, budget dollars used for contracting grew from \$11 million to \$79 million.

<sup>14</sup> A sole-source contract is entered into or proposed to be entered into after soliciting and negotiating with only one source.

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Because PBGC's focus was on obtaining needed staff quickly, it did not perform a comprehensive analysis of the costs of using contractors versus federal employees to service its workloads. Nor has PBGC taken actions to reassess its contracting and staffing needs against projected future workload changes or to determine how its field structure should be organized for optimal performance in the longer term. PBGC completed a limited cost/benefit analysis in 1994 which allowed PBGC to obtain additional federal staff. However, this analysis was limited in the range and types of positions reviewed and was never used by PBGC for longer-term strategic planning purposes. In the absence of such activities, PBGC has operated for many years without reasonable assurance that it has a cost-effective mix of contractors and federal employees.<sup>15</sup> In fact, PBGC could not provide data on the total number of contract employees performing services for PBGC or a description of how they were deployed across various PBGC components for the years prior to fiscal year 1995.

**Potential Work Environment Changes Require PBGC to Better Link Contracting Activities to its Strategic Plans**

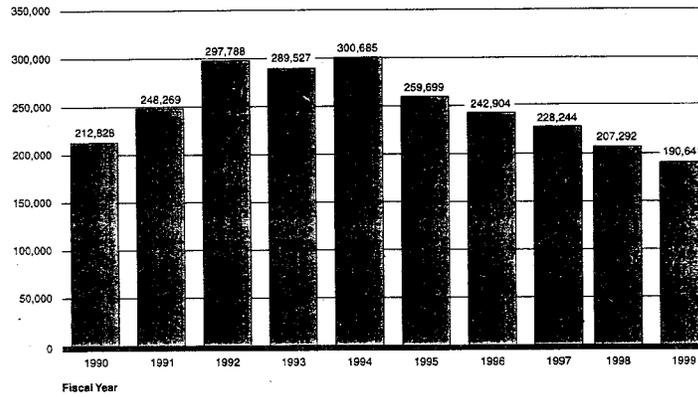
As a matter of policy, the government is expected to rely upon the private sector to provide services if they can be obtained more economically from a commercial source.<sup>16</sup> However, potential changes in future workloads attributable in part to increased PBGC productivity, economic trends, changes in pension laws, and enhanced plan funding suggest that PBGC should reassess its approach to the acquisition of contract services and better link its activities to long-term strategic plans. For example, at the time of our review, PBGC had reduced its backlog of pending benefit determinations from a high of more than 300,000 in fiscal year 1994 to about 190,000. PBGC expects to eliminate the backlog and reach a working inventory of about 120,000 pending determinations in less than 5 years. As PBGC moves into an era of more real-time processing of benefit determinations, reassessment of staffing levels and its organizational structure may be necessary. (See fig. 6 for the number of pending benefit determinations remaining each year.)

<sup>15</sup> In July 1999, shortly after the start of our review, PBGC completed a limited cost comparison update of some contract and federal staff positions related to benefit administration services. This effort showed that FBA contractors were generally less costly than most comparable federal staff. However, the manager responsible for this analysis was uncertain how this information would be integrated into future strategic planning decisions.

<sup>16</sup> OMB Circular No. A-76 (Aug. 4, 1983, revised 1999).

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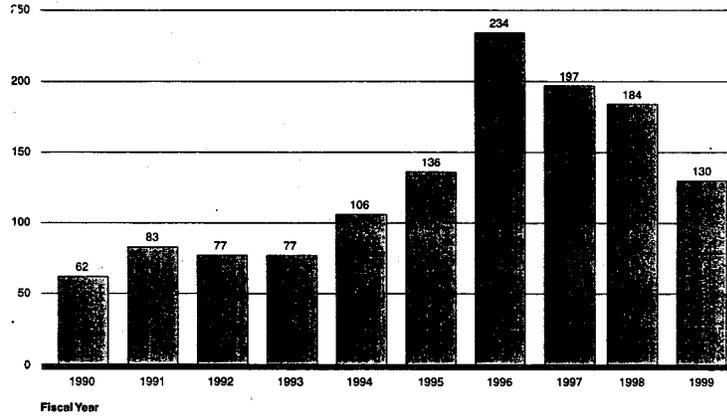
Figure 6: Pending Benefit Determinations, Fiscal Years 1990-1999



PBGC has also improved its ability to target companies that pose the greatest risk to PBGC and to get underfunded plans to improve their financial positions, thereby averting major crises. If pension plans are adequately funded, PBGC is less likely to assume trusteeship and associated benefit administration workloads. In fact, the data show that the number of new pension plans taken over by PBGC each year has steadily decreased and PBGC has not assumed any large and potentially disruptive plans in several years. (See fig. 7 for the number of new plans trusteesd by PBGC each year.)

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Figure 7: New Pension Plans Truited by PBGC, Fiscal Years 1990-1999



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In addition, the universe of defined benefit pension plans insured by PBGC has decreased dramatically from a peak of 112,000 in 1985 to about 40,000 in 1999. This has been accompanied by a decrease in the number of active plan participants—those currently earning pension accruals and a better measure of future workloads—from 27 million in 1988 to 23 million in 1996.<sup>17</sup> If these trends continue, PBGC's exposure to future pension plan failures should be reduced. PBGC expects workloads to remain at about 40,000 to 50,000 new participants per year.

Sound management practices dictate that organizations should periodically engage in strategic planning and analyses to better position themselves to meet future challenges. Our prior work on human capital planning suggests that planning strategies should be linked to current and future human capital needs, including the size of the workforce; its deployment across the organization; and the knowledge, skills, and abilities needed by agencies to pursue a shared vision. Staff deployment, both geographically and organizationally, should also be made to enhance mission accomplishment and provide for efficient, effective, and economical operations.<sup>18</sup> In addition, the Government Performance and Results Act of 1993 (GPRA) requires that federal agencies pursue performance-based management through sound strategic planning.<sup>19</sup> To comply with GPRA, PBGC has developed a fiscal year 2000-2004 strategic plan and an annual performance plan to guide its operations. While these plans acknowledge future work environment challenges, they do not detail what those challenges will be and how staffing, contracting, and organizational structure decisions will facilitate accomplishment of PBGC's strategic goals and objectives. Thus, PBGC still lacks a blueprint for organizing its contractors and federal staff to cost-effectively meet the needs of current and future plan participants.

<sup>17</sup> Most recent data available on number of active participants.

<sup>18</sup> *Human Capital: A Self-Assessment Checklist for Agency Leaders* (GAO/GGD-99-179, Sept. 1999).

<sup>19</sup> GPRA requires federal agencies to implement results-oriented management reforms, such as conducting strategic planning, establishing program goals and objectives, measuring progress in meeting those goals, and reporting publicly on that progress. PBGC is subject to the requirements of GPRA.

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PBGC officials have acknowledged the need to better assess PBGC's future workloads and how its staffing levels and contractor mix will support those workloads. However, PBGC's actions to date on this initiative have been limited and it is still giving inadequate consideration to the longer-term impacts of its decisions regarding the use of contractors. For example, PBGC initiated a policy change in fiscal year 1999 allowing contract field offices to perform ongoing administration for all of their closed plans, regardless of plan size.<sup>20</sup> Prior to this policy change, ongoing administration for hundreds of plans had been consolidated primarily at two designated field offices. As plans were closed, they were transferred to these two locations for servicing. Under the policy change, all 11 field offices are permitted to administer their closed plans, in addition to performing benefit administration tasks on their active plans.

Several offices we visited were in the process of closing plans that had represented a significant portion of their business for many years. An official at one of the largest offices told us that, without ongoing administration responsibilities or a significant influx of new plans, the office would likely have insufficient work to continue operations. PBGC's chief operating officer, who has ultimate responsibility for field office oversight, told us that the decision to allow all these offices to administer their closed plans was based on the assumption that they were best qualified to address participant inquiries. However, he acknowledged that PBGC's focus has been on addressing benefit determination backlogs rather than on the long-term effects of allowing them to perform routine plan maintenance activities. We are concerned that PBGC's ongoing administration decision was made without sufficient analysis of future workload trends and staffing considerations and could unnecessarily perpetuate the existence of some field office contracts if the influx of new plans trustee by PBGC levels off over the next several years as expected.

### Weaknesses Identified in PBGC'S Procurement Practices

Our review of PBGC's most recent field benefit administration services procurements identified weaknesses in its procurement planning and execution processes which could affect competition. Specifically, PBGC lacked a sound business rationale to support its approach for contracting for services at four field office locations. PBGC also should have done more to stimulate competition for its other field office services

<sup>20</sup> Prior to the revision, ongoing administration was allowed only for plans with 10,000 or more participants, or plans requiring special expertise.

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procurements. In reviewing several non-FBA contracts, we identified additional weaknesses in PBGC's procurement practices, as described below.

**Procurements for Benefit Administration Services Were Not Consistently Structured**

As noted previously, PBGC currently has 11 contracts for FBA services requirements. PBGC's first competitive procurement for these services occurred in 1997, when it solicited offers for four offices' service requirements—a total value of about \$71 million. We reviewed these procurements and found that the underlying procurement approach was not supported by a sound business rationale. (See app. I, table 1, for specific information on the contracts reviewed.) Such weaknesses in PBGC's procurement planning and execution processes could negatively affect competition. As a result, the agency risks paying too much for contracted services and receiving inferior performance.

Prior to 1997, procurements for all field office services were conducted on a sole-source basis because of PBGC's view that only one responsible source was capable of performing the work in each location. According to PBGC's Procurement Director, the decision to open some field office services requirements to competition was influenced by concerns expressed by PBGC's Office of Inspector General (OIG). The OIG had reported that some of PBGC's contracts may have been awarded under "less than full competition in inappropriate circumstances." In response, PBGC competed the requirements for services at those field locations having the largest contract dollar-values—Miami, Atlanta, Wheeling, and Wilmington. At that time, a single large contractor—Office Specialists, Inc.—was incumbent at the Miami, Atlanta, and Wheeling offices. A second contractor—Benefit Services Unlimited—was incumbent at the Wilmington office. However, rather than compete the services for these three offices separately, PBGC consolidated the Miami, Atlanta, and Wheeling service requirements into a single procurement. The services for the Wilmington location were excluded from the consolidated procurement and competed separately. These procurement actions resulted in PBGC's award of a \$47 million, three-site contract to Office Specialists, Inc., and the award of a \$24 million Wilmington contract to Benefit Services Unlimited, leaving the incumbent contractors in place for all four locations.<sup>23</sup>

<sup>23</sup> These figures represent the total contract costs over a term of 4 years.

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PBGC's procurement director stated that PBGC competed the four largest field office requirements because they represented most of PBGC's FBA contract budget. He also said he believed these large, high-dollar contracts would attract competition. At our request, the procurement director provided a written explanation of the procedures used in conducting these four acquisitions. He stated that, based on the knowledge he and the director of the Insurance Operations Division have of the "availability of benefit administration firms that specialize in defined benefit pension plans terminated in accordance with ERISA," PBGC was certain that the employees already working at the sites for which the services requirements were combined constituted "the only labor pool . . . qualified" to perform the services. The Procurement Director further stated that out of five proposals received in response to the solicitation, four were found to be technically acceptable.<sup>22</sup> These four offerors also proposed using the same group of employees already working at the three sites. In view of "PBGC's knowledge of this rather specialized marketplace," the Procurement Director stated that requiring the successful offeror to perform at the Miami, Wheeling, and Atlanta sites would not tend to restrict competition among responsible firms. However, the procurement director acknowledged that the services for the Wilmington site were not included in the consolidated procurement because to do so would have precluded the incumbent from competing for the work.

Absent legal authority that permits the contracting entity to do otherwise, federal procurements are generally to be conducted using full and open competition. As such, solicitations are permitted to contain restrictive provisions only to the extent necessary to satisfy the needs of an agency. Because consolidated procurements combine separate requirements into one award, they have the potential for restricting competition by excluding potential competitors that can furnish only a portion of the requirement. Therefore, consolidated procurements must be reasonably necessary to satisfy the government's need. The decision to consolidate the requirements must also be based upon sound business reasons, supporting the conclusion that the government's overall needs can be most effectively provided through a consolidated procurement approach. In sum, PBGC's

<sup>22</sup> The fifth offeror's proposal offered to provide services only for the Atlanta office. In addition, a contractor at one of the other FBA offices stated that it would have competed to provide services at one of the three offices for which services were consolidated. This contractor said it did not compete in the procurement because of the size of the combined workload and potential management difficulties associated with a multisite contract.

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reasons for combining requirements must be balanced against the possible restriction of competition.

Although PBGC did receive five proposals in response to the combined solicitation, it did not provide a sound business rationale as to why the consolidation of the Miami, Atlanta, and Wheeling requirements was necessary to meet PBGC's needs. PBGC did not establish that the combination supported any program plan or goal of PBGC. In fact, PBGC's explanation for combining the three requirements and its explanation for excluding the fourth are inconsistent. PBGC's conduct of these procurements showed weaknesses in its procurement planning practices. Consequently, competition may have been limited and PBGC risks paying too much for contracted services and receiving inferior performance.

#### Competition for Sole-Source Benefit Administration Services Contracts Could Be Improved

Although PBGC competed four field office services requirements in 1997, it continued its practice of making sole-source awards for the seven remaining field office contracts. Our review showed that PBGC should have done more to stimulate competition for these procurements.

PBGC's rationale for continuing to make sole-source awards was that the incumbent contractors, as former pension plan administrators of companies from which their primary plans emanated, were uniquely qualified to perform the work because of their knowledge of the primary plans.<sup>23</sup> Even though PBGC published a notice of these awards in the Commerce Business Daily (CBD), we found no indication that PBGC ever acted to stimulate competition by conducting outreach or market research activities to identify other offerors capable of performing the required services. In prior work, we have reported that such activities have been effective in stimulating competition.<sup>24</sup>

Our review of the contract files for the Pueblo, Sarasota, and Cleveland offices confirmed that the principals/owners were former benefit administrators for the primary plans under administration and were still

<sup>23</sup> The primary plan is defined by PBGC as the original plan for which the contract was initiated. For example, the initial contract for the Pueblo, Colorado, office was let in the early 1990s to service CF&I Steel. The principal/owner was a former pension benefit administrator at CF&I Steel.

<sup>24</sup> *Contract Management: Few Competing Proposals for Large DOD Information Technology Orders* (GAO/NSIAD-00-56, Mar 20, 2000).

servicing their primary pension plans. However, at the time of these procurements, these contractors had 6 years of service with PBGC and had made considerable progress toward completing the work on their primary plans. They also had assumed benefit administration responsibility for numerous additional pension plans not associated with the plans they originally administered. For example, one sole-source office contractor listed a total of 15 additional trustee plans from various companies and thousands of new participants under its administration.

PBGC's procurement director told us that the decision to continue awarding sole-source contracts for these seven offices was based primarily on his knowledge of the marketplace and a belief that few companies other than the incumbents possessed the expertise to service pension workloads at these locations. However, PBGC acknowledged that it conducted no outreach or market research activities to identify other potential offerors.

When a contracting entity uses noncompetitive procedures, it must execute a written justification that includes sufficient facts and rationale to justify its use of those procedures. The justification must also include a description of any market survey conducted—or an explanation of why a market survey was not conducted—and a statement of actions the agency may take to remove barriers to competition in the future. For those contract files we reviewed, PBGC's justification for the procurement states that it received no statements of interest from other potential offerors in response to its CBD notice. Concerning its actions to overcome barriers to competition, the justification states:

The PBGC is presently unaware of any specific barriers to competition that could be overcome with respect to this requirement. Further, PBGC will continue to form and disseminate its requirements in a manner which will reach the widest range of potential sources.

Even though, procedurally, the CBD notice may serve the purpose of a market survey, PBGC should do more to stimulate competition. PBGC's justification, along with its actions in continuing to award these contracts noncompetitively for almost a decade, indicates an absence of intent to do otherwise. Given the amount of time this practice has continued, PBGC should make greater efforts in the future to stimulate competition for these requirements.

PBGC's procurement director acknowledged that PBGC should reassess its sole-source field office contracts as more offices close out their primary plans and continue to take on additional work beyond their original area of

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expertise. This reassessment could result in additional competitive field office procurements in the future. However, he noted that this reassessment would be unlikely prior to fiscal year 2001, when the current field office contracts are due to expire.

**Additional Observations on PBGC Contractor Selection Practices**

In addition to the above findings, our review of PBGC's contracting practices identified other management and operational weaknesses associated with contracts let by the chief financial officer (CFO) component, the second largest user of contractors' staff at PBGC (see app. II). These weaknesses pertain to the need for PBGC to better document the results of technical evaluations of proposals, and its use of fixed-price rather than labor-hour payment arrangements for some contracts.

**For Some Contracts, PBGC's Basis For Contractor Selection Is Not Fully Documented**

Our review of two CFO component contracts found that PBGC should have more fully documented its basis for awarding an \$18 million information resources management (IRM) contract for systems engineering and a \$1.5 million investment management contract. PBGC's internal guidance at the time of the procurements provided for the establishment of a Technical Evaluation Panel to assess contractor proposals and make selection recommendations to the procurement director. This guidance required that, in evaluating proposals, the panel chairperson and each member identify and record the strengths and weaknesses of each proposal under review. While it was not specifically required, panel members could also prepare individual score sheets for each offeror's proposal.

The procurement files we reviewed included the technical scores for the offerors under consideration as well as a selection recommendation from the panel chairperson. However, they did not include a complete set of individual panel members' scoresheets documenting their review and rationale for arriving at a particular score. For the investment management contract, we found that only two of seven panel members submitted individual scoresheets and some analysis of the specific strengths and weaknesses of competing proposals. With only the final numeric scores to go by, the record lacked information concerning the panels' bases for determining contractor qualifications and issuing its final selection recommendations. Thus, it was not possible to determine whether final award decisions were based on a thorough assessment of each offeror's proposal by all panel members.

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Opportunities Identified for  
Alternative Contract Payment  
Arrangements

We reviewed five additional CFO component contracts for premium compliance audit services and found that PBGC should give stronger consideration to using fixed-price contracts rather than labor-hour contracts for these services.<sup>25</sup> For these contracts, audit firms perform reviews of companies that pay insurance premiums to PBGC. The reviews primarily involve examining, testing, and validating required asset and liability information related to the calculation of premium levels and ensuring that premiums paid by covered pension plans are correct. The collection of pension plan premiums is a major source of income to PBGC.<sup>26</sup>

As of June 2000, about 60 percent of PBGC's active contracts involved labor-hour pricing, under which contractors are paid at an established hourly rate for performing agreed-upon tasks. In general, labor-hour contracts require detailed reviews of the hours charged by contract staff and close monitoring by the contracting entity to ensure that quality and timeliness requirements are met. Otherwise, the contracting entity risks paying a higher price than it would under a fixed-price arrangement, as well as receiving poor performance. Accordingly, in its best practices guide for performance-based service contracting, the Office of Federal Procurement Policy encourages the increased use of fixed-price contracts and incentives to promote optimal performance.<sup>27</sup>

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<sup>25</sup> Fixed-price type contracts generally provide for a firm price or, in appropriate cases, an adjustable price for performing a particular service, regardless of how long it takes to complete the service. These contracts generally have some type of target or ceiling price that can be revised only in limited circumstances. Labor-hour contracts provide for payment of contractors at hourly rates for performing agreed-upon tasks.

<sup>26</sup> Total premium collection income was \$925 million in fiscal year 1999.

<sup>27</sup> The Office of Federal Procurement Policy's primary responsibilities include prescribing governmentwide procurement policies that must be followed by the executive agencies and ensuring agency action in maintaining the FAR.

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When acquiring services that previously have been provided by contract, agencies should rely on the experience gained to facilitate the use of fixed-price contracts for such services. Prior to entering into the current contracts in 1997, the incumbents performed similar work for PBGC under purchase order agreements. Thus, PBGC had actual experience in pricing similar services that could have served as a basis for estimating future contract costs. Based on this information, the contracting officer's technical representative (COTR) responsible for oversight of the firms calculated a potential fixed price of between \$3,400 and \$8,000 to be paid to the contractors for each audit completed.<sup>28</sup> A fixed-price contract for these audits was originally proposed by PBGC and the five firms submitted offers. However, following a meeting between PBGC component management and the contractors, PBGC made a determination that a labor-hour payment arrangement would be more effective to accommodate the variable level of effort needed to complete the audits.

The procurement files showed that, after the contracts were awarded, PBGC experienced performance problems with several of the contractors. Within the last 2 years, PBGC also opted not to continue its 15-month relationship with two of the firms. Documents we examined showed that PBGC paid one of these contractors \$210,000 to complete three audits—about \$70,000 per audit—which resulted in \$2,000 in additional collections. In contrast, PBGC's highest-producing contractor performing similar services completed 27 audits with \$1.3 million in additional collections at an average cost of \$6,600 per plan. This indicates that PBGC could have paid much less than \$210,000 to the above contractor under the fixed-price arrangement originally proposed, in which firms were paid on a per-audit basis.<sup>29</sup> In addition, a second contractor has been referred to PBGC's OIG by the former COTR for investigation of potential contract billing irregularities. In light of the performance issues surrounding these contracts, and the fact that PBGC has some basis to award them as fixed-price contracts, PBGC should give stronger consideration to using fixed prices in similar situations.

<sup>28</sup> The COTR is appointed by PBGC management to provide assistance with awarding and administering contracts to ensure that work progresses satisfactorily.

<sup>29</sup> Based on COTR's proposal of about \$4,000 per plan audit.

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**PBGC's Contract Oversight Practices Need Improvement**

Contract oversight primarily involves monitoring performance. In recent years, PBGC has taken actions to improve its contract oversight role and better support its contractors who perform field benefit administration services. However, we identified several key management weaknesses that could affect PBGC's ability to monitor and hold contractors accountable for performance. These include a lack of FBA-specific data necessary for monitoring performance, deficiencies in PBGC's field office quality reviews, insufficient policy guidance for PBGC staff responsible for managing contractors, and current organizational alignments that could affect the independence and objectivity of PBGC's contracts review component. In addition to these broader contract management issues, our review of the contract files identified specific operational deficiencies pertaining to PBGC's oversight of its premium compliance audit and IRM contracts.

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**PBGC Has Taken Steps to Better Manage Contractor Workloads and Performance**

Our analysis showed that PBGC uses various tools to monitor contractor performance. For example, all of the FBA offices we visited received a performance review by PBGC in the last year. As required by its contract's statement of work, each office also used PBGC workplans to guide its daily activities and submitted monthly status reports to PBGC to document progress made. Field office managers also reported regular communication with their assigned COTR at PBGC.

We also found that PBGC has taken steps to improve benefit processing and administration and to better support field office contractors in servicing their workloads. For example, in 1993, PBGC reorganized its benefit administration operations to implement team case processing so that auditors, actuaries, and benefit administrators in both headquarters and the field are arranged in teams to process benefits. This replaced sequential processing, in which cases were handed off between various components as discrete tasks were completed. Over the last several years, PBGC also made significant investments in automation and centralized several functions previously handled by the field offices to allow staff to focus primarily on processing benefit determinations. For example, field offices now have the capacity to automatically generate mass letters and notices to recipients, rather than use manual processes. In addition, responsibilities for addressing participant telephone inquiries and for processing mailed documents into PBGC's databases are now centralized in PBGC headquarters.

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Our interviews with field office managers showed a general agreement that the reorganization was effective in terms of expediting pension plan processing and improving organizational communications. Most of the managers and staff also noted that PBGC's automation investments have improved office productivity and overall customer service.

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**PBGC Does Not Centrally Compile and Monitor Automated Data on FBA Office Performance**

Our analysis and field visits showed that PBGC does not compile and centrally monitor FBA-specific performance data that are essential to overseeing and managing performance. In the absence of such data, PBGC may lack critical information to ensure that work is progressing as required and quality goals are met.

In order to undertake a comparative analysis of field office productivity, we requested data from PBGC to document the range of activities and volume of work processed by these offices. We found that field office data are not centrally compiled and monitored by PBGC. Instead, PBGC generally compiles data on work processed by each office—such as final benefit determinations—on a plan-specific basis. This information is then included in the productivity data for PBGC's eight TPDs in Washington. These divisions have primary responsibility for pension plan administration and oversee the activities of field offices assigned to their plans. Under the current organization, a field office with 30 pension plans could report to several processing divisions and its workload outputs would be included within the productivity totals of each of those divisions. As a result, PBGC lacks centralized field office performance data and reports necessary for quickly providing top management with a "snapshot" of office productivity as pension plans move through the various stages. Due to the commingling of data, along with the fact that field office productivity is reported on a plan-specific basis, it may be difficult for PBGC to ensure that its contract field offices are performing efficiently and effectively.

Individual offices do, however, maintain internal productivity information to assist in managing their workloads. Such information includes the number of benefit determinations processed, death notices recorded, address changes completed, pension databases built, documents scanned, and pension plans closed out. Some offices also compiled manual data on backlogged workloads. However, the extent and detail of these data varied among the offices. The offices we visited also reported their activities to PBGC via monthly status reports to their assigned COFR, as required by their contracts. However, the content of these reports also varied. Thus, the monthly status reports are not an adequate substitute for automated and

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centrally monitored field office performance data. We believe that—if uniformly compiled and monitored—additional automated data would provide PBGC with information needed to compare office productivity and performance over time, monitor a specific office's performance against prior months and years, more quickly determine work progress, and identify and track workload backlogs.

FBA-specific data may also allow PBGC to evaluate the impacts of special management initiatives on other workloads, such as a recent PBGC mandate to complete all pre-1994 pending benefit determinations by the end of fiscal year 1999. For example, PBGC's OIG reported that PBGC's emphasis on processing benefit determinations may have caused final plan closings to receive less priority. The OIG also concluded that completing this step was important because it allowed PBGC to ensure that all final benefit determinations for a plan were issued. Because PBGC does not centrally compile and monitor FBA-specific data on plan closures, it lacks valuable information for top management to assess the effect of this recent directive on other workloads.

PBGC officials responsible for overseeing the field offices acknowledged that FBA-specific data were not centrally compiled or used by management to assess and monitor individual office performance. They generally agreed that compiling such information would better support upper management's need to quickly assess PBGC's progress in meeting processing targets. One high-level official also told us that, in prior years, the lack of comprehensive field office performance data impeded PBGC's efforts to obtain OMB approval for additional resources. Some managers cautioned that using such data for comparison purposes was difficult because offices are not always in the same stage of operations. For example, one office may be processing more benefit determinations in a given month, while another may be processing recipient death notices. Thus, their outputs would be different. However, these officials also acknowledged the value of using such data for intraoffice comparisons—that is, comparing an office's performance against its prior months or years to evaluate trends in office productivity and identify any emerging performance issues. We believe that such data may also provide PBGC with better management information to establish more meaningful future FBA office performance goals.

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**Performance Review  
Process for FBA Offices  
May Not Adequately Ensure  
Work Quality**

PBGC requires its FBA offices to undergo regular performance reviews to ensure that proper internal controls are in place and that workloads are processed in a complete, accurate, and timely manner. The reviews include steps to assess the management of field office operations and verify participant information files to ensure that information is accurately documented and benefit computations are accurate. However, our analysis identified continuing weaknesses in the review process, which may affect PBGC's ability to manage contractor performance. In 1995, PBGC's OIG reported that its performance reviews were not in accordance with generally accepted government audit standards as had been claimed by management. The OIG also concluded that the reviews often resulted in flawed recommendations, seemed to excuse poor field office performance, and posed a risk to PBGC decision-making. In response to these findings, PBGC agreed to reassess its audit standards, to improve documentation and followup on prior recommendations, and to hold its field office contractors accountable for identified problems.

Our review identified continuing problems with PBGC's performance review process. PBGC's procedural manual for these reviews states that they are based on government auditing standards. As such, review team members are required to meet general standards for independence, qualifications, due professional care, and quality control. Despite these requirements, key headquarters staff and managers told us that the reviews had a limited impact on improving field office performance, because management often did not support efforts to identify weaknesses and hold the offices accountable for negative findings. Others noted that team leaders and members often lacked sufficient training and expertise to perform the reviews. We also obtained an internal management report prepared by PBGC last year assessing the effectiveness of the review process. This document noted that the reviews continued to show weaknesses in meeting auditing standards which could facilitate internal control weaknesses and poor product quality. The report especially highlighted deficiencies in the area of personnel qualifications and due professional care.<sup>30</sup> For example, the report noted that it was the practice of some components to rotate experienced personnel out of the review function each year, and assign lead roles to individuals who had never completed such reviews or received training in applying the standards and

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<sup>30</sup> Under generally accepted government auditing standards, due professional care means using sound judgment in establishing the scope, selecting the methodology, choosing tests and procedures for the audit, and evaluating and reporting audit results.

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procedures. In fact, of 22 field office reviews completed by PBGC, nearly one-third were led by individuals who had never before participated in a review.

In regard to the issue of due professional care, the management study also cited frequent instances of poor quality control and of reports and work papers being returned for significant additional development, even though they had been reviewed and approved by team supervisors. Finally, the study noted that resources devoted to the reviews may be insufficient to ensure that a quality review is conducted. Citing feedback from various review teams, the report pointed out that "corners would be cut" when PBGC's work priorities dictated.

A PBGC official responsible for field office quality assurance acknowledged that training and qualifications for review team members remain a concern. However, this individual stated that PBGC now places a greater emphasis on reviewer training and on ensuring adherence to accepted auditing standards. Our review showed that PBGC does provide and encourage field office reviewer training. However, PBGC still does not require team leaders or members to meet minimum professional education credit requirements. At the time of our review, PBGC also had not reached any conclusions as to whether a system of permanent review team leaders would be more efficient than the current process of rotating less-experienced staff into that role.

PBGC should act quickly to address the weaknesses in its performance reviews of field office contractors. An effective quality control system is particularly important, considering that PBGC recently completed its initiative to issue final benefit determinations for plans trustee prior to 1994. During our field visits, contractor management commonly referred to this directive as a major undertaking with tight time frames. Individuals from several offices also noted that pressure to process this workload may have negatively affected the accuracy of benefit calculations and quality of notices sent to participants. Thus, it is important that PBGC have an adequate review process in place to detect errors resulting from this effort.

#### Individuals Responsible for Contractor Oversight Lack Sufficient Guidance

Primary responsibility for oversight of PBGC's contracts lies with more than 69 COTRs located throughout PBGC and five contract specialists within the Procurement Department. In its best practices guide for contract administration, the Office of Federal Procurement Policy states that problems often arise when contracting officials allocate more time to

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awarding contracts than to administering them. In addition, unclear roles and responsibilities of individuals responsible for contract administration are also cited as sources of problems. Contracting entities should pay attention to adequately supporting the individuals responsible for monitoring and ensuring contractor performance.

Despite the importance of effective contract oversight, we found that PBGC has not developed a comprehensive set of policies and procedures to guide COTRs and contract specialists in their day-to-day activities. The Procurement Department maintains a limited policy and procedure manual, which serves as the primary guide to contractor selection and oversight. However, the director often supplements this document with ad hoc directives, e-mails, and other standalone memorandums to address contracting issues and problems as they arise. Because PBGC has never compiled these informal policy clarifications and directives into its departmental manual, PBGC lacks a comprehensive set of standard operating procedures to guide staff in addressing common contract oversight problems.

During our review, staff involved in contract oversight management expressed a common need for additional policy and procedural guidance and training beyond what is currently provided by PBGC. In the absence of more specific procedures, some COTRs and contract specialists have chosen to rely on their own judgment or on advice from coworkers for policy and procedural interpretations. Due to the decentralized nature of PBGC's directives, staff may also spend significant time seeking guidance for issues such as when contracts should receive legal review or what to do with pension files after plans are closed. Furthermore, staff and managers may receive conflicting directions, which could ultimately lead to inconsistent administration practices and contractor performance problems. During our review, we identified two separate internal guidance documents used by PBGC to clarify COTR responsibilities. These documents included disparate information regarding the COTRs' responsibility to provide monthly status reports to management on the progress of work. In reviewing the contract files for 6 of the 11 FBAs, we found that the COTRs were regularly completing these reports while COTRs for several other non-FBA contracts were not.

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**Organizational Placement of CCRD Could Have Contract Management Implications**

Our analysis shows that the independence and objectivity of PBGC's CCRD could be negatively affected by its position in PBGC's organizational structure.

Established by PBGC's Deputy Executive Director and CFO in 1994, CCRD performs contract cost audits and internal control reviews of PBGC's departments and programs. Auditing standards require that the audit organization and individual auditors should be organizationally independent in all matters relating to audit work. However, because the director of CCRD reports directly to the CFO, any internal reviews of departments and programs located under this component cannot be considered independent. CCRD management told us that any reports or reviews of departments under the CFO must disclose the fact that CCRD is not considered independent under generally accepted government auditing standards. While we agree that such a disclosure is necessary, we are concerned that the objectivity of this department's reviews could still be in question due to the current reporting relationship. More importantly, we are concerned that the potential exists for management to influence the scope of audits or affect CCRD's ability to make independent judgments as to which CFO departments and programs should be reviewed. The former Director of CCRD told us that the department's current location within PBGC was not ideal. He also suggested that stronger organizational independence could facilitate more effective internal reviews of all of PBGC's departments and programs.

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**Management and Oversight Issues Identified in Several Contracts Reviewed**

In addition to the broader contract management issues noted above, we identified specific weaknesses in PBGC's oversight of five premium compliance audit contracts and one IRM systems engineering contract.

We found that none of the premium compliance audit contractors submitted the required monthly COTR status reports, which are essential to documenting work status and identifying performance problems early in the process. In addition, despite the fact that the compliance audit contractors were performing similar services for PBGC, their reports on the progress of audits differed in terms of format, data provided, and comprehensiveness. The contractors also used various means, other than written reports, to document the final results of their reviews. In fact, it was common for no signed reports to be issued. Instead, contractors' work papers often served as their final report product.

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As noted earlier, PBGC has experienced performance problems with some of the firms working under these contracts. Weaknesses in PBGC's oversight and management of these contracts may have affected its ability to monitor work progress and ensure the quality of the reviews. The total value of the five contracts we reviewed was about \$7.5 million; however, their importance is much more significant because annual insurance premiums paid by covered plans are a primary source of PBGC's income. Thus, ensuring proper payment of premiums is crucial. Current data show that additional collections resulting from these reviews are down from more than \$2 million in FY 1999 to about \$7,000 as of May 2000. It is important that PBGC maintain adequate contractor oversight practices to ensure the performance of the firms responsible for auditing pension plan premiums.

Our review of the IRM systems engineering contract also identified oversight problems. Over the course of several years, this \$18 million contract has involved 73 contract modifications and 70 task orders for related work beyond the original contract agreement. PBGC's contract specifically requires the contractor to develop a project workplan for each additional task order, specifying the work to be completed, how it will be done, and the timeframes for completion. Our review showed that this document was prepared for only 1 of the 70 task orders. We identified contractor-provided reports specifying the work to be completed under some task orders, but these reports were infrequent and appeared to be written after the work had started, rather than prior to starting as required by PBGC. Finally, the contract files also showed evidence of insufficient monitoring by the COTR. In fact, for a 6-year period, we found only three COTR monthly status reports. These reports were completed by the previous COTR in the first 2 years of the contract. The file included no status reports from the current COTR, who has administered the contract for the last 3 years. We provided PBGC's Procurement Department with an opportunity to present additional documentation on PBGC's monitoring activities; however, the department did not provide us with any additional information.

## Conclusions

PBGC has historically relied heavily on contracting to address increasing workloads. Accordingly, contractors have played a significant role in PBGC's ability to serve plan participants and reduce the backlog of pending benefit determinations from a high of about 300,000 in fiscal year 1994 to about 190,000 in fiscal year 1999. However, we have identified underlying management weaknesses in regard to PBGC's overall approach to selecting

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and managing contractors, as well as its day-to-day administration of specific contract requirements.

First, despite a reduction in the backlog of pending benefit determinations and projected changes in future workloads, PBGC still has not taken steps to reassess its contracting and organizational structure needs. All organizations should regularly engage in analyses to ensure they have an appropriate level of skilled staff and to position them to meet workload challenges. Current trends show that PBGC should act soon to respond to a potentially different work environment in the future. During our review, management acknowledged the need to better link its decisions to contract to future workload and staffing assessments. However, no significant initiatives are under way. We believe that PBGC should undertake analyses of its staffing needs, skill levels, and organizational structure relative to current and future workloads. This type of contingency planning is consistent with the strategic planning requirements of GPRA and should allow PBGC to make systematic and orderly changes to its workforce as needed in the future while still meeting the needs of plan participants.

Second, PBGC can do more to encourage competition in the procurement of services. Without consistent efforts to monitor the marketplace and to stimulate competition, it is difficult to ensure that PBGC obtains the best value for services it procures. Moreover, without effective contract oversight, PBGC cannot be sure that its contractors are held accountable for meeting performance requirements.

We also believe that PBGC should refocus its management and contract oversight processes and better compile and use contractor data to ensure performance. PBGC should also enhance its quality assurance tools and provide more comprehensive policy guidance for individuals responsible for overseeing contractors. Finally, PBGC should ensure that the organizational alignment and reporting relationships of the CCRD provide for independent reviews.

As noted earlier, PBGC's budget structure provides it with substantial flexibility to address workload pressures by utilizing nonlimitation funds that are not directly subject to review and approval by the Congress. Over time, the nonlimitation budget has grown significantly and now supports nearly all of PBGC's operations and procurement activities. This absence of traditional checks and balances over PBGC's budget represents a potential weakness in regard to the Congress' ability to oversee and ensure that PBGC conducts its operations in a manner that sufficiently administers

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trust fund assets while still meeting the needs of pension plan participants. Because PBGC's budget lacks the structure of shared OMB and congressional review and approval common to most other government entities, it is essential that PBGC act prudently in managing its budget resources and procurement activities to ensure that competition and contractor oversight are strengthened. Inaction on PBGC's part to address the issues identified in this report could result in PBGC's paying too much for required services, in contractor performance problems, and in deterioration of service to plan participants. Continued inaction may also call for the Congress to strengthen its oversight role by reassessing and redefining the range of activities and functions treated as nonlimitation expenses.

#### Recommendations to the Executive Director of the Pension Benefit Guaranty Corporation

To improve PBGC's management of its contract responsibilities, we recommend that PBGC's executive director take the following actions:

- Conduct a comprehensive review of PBGC's future human capital needs, including the size of the workforce; its deployment across the organization; and the knowledge, skills, and abilities needed by PBGC. The results of this review should be used to better link staffing and contracting decisions to PBGC's long-term strategic planning process, consistent with GPRA.
- Address weaknesses in PBGC's procurement process to ensure that contract award decisions best serve the needs of the government and plan participants, while fostering competition. This would include conducting market research as appropriate to determine whether other potential offerors exist and seeking opportunities for increasing competition for PBGC contracts that are now awarded on a sole-source basis.
- Where appropriate, utilize more fixed-price contracts and fewer labor-hour payment arrangements consistent with best practices in performance-based contracting.
- Strengthen policies and procedures for evaluating proposals by ensuring that review panels adequately document their contract award recommendations in accordance with PBGC's internal guidelines.
- Strengthen PBGC's contract oversight role by developing the capacity to centrally compile and monitor essential field office performance data. Such a system should provide the longitudinal data necessary to quickly measure and compare field office performance in regard to outputs, product quality, backlogs, and timeliness.

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- Address weaknesses in PBGC's field office performance review process to better ensure that benefit administration services contractors meet quality and accuracy requirements.
- Develop a comprehensive set of procedural guidance for staff responsible for awarding contracts and monitoring contractor performance.
- Revise the current organizational placement and reporting relationship of CCRD to promote objectivity and independence.

### PBGC'S Comments and Our Evaluation

In providing comments on this report, PBGC generally agreed with all eight of our recommendations. If fully implemented, the corrective actions cited by PBGC have the potential to substantially improve the management of its contracting responsibilities.

PBGC agreed with our recommendation that a strategic workforce planning study is necessary, and said that it intends to engage an independent outside organization to conduct such a review. Second, PBGC agreed to strengthen its procurement processes by opening additional contracts to competition and expanding its market research efforts to identify potential offerors. PBGC said it plans to separately compete 10 FBA office contracts over the next year. The corporation also agreed with our recommendation that, where appropriate, it should use more fixed-price contracts and other non-labor-hour payment arrangements. PBGC also intends to strengthen its policies and procedures for evaluating contractor proposals, as we recommended. In particular, PBGC said that it would ensure that individual reviewer scores and additional documentation are retained in the procurement files.

In regard to our recommendations for strengthening PBGC's contract oversight role, PBGC stated that it would continue to develop additional centralized field office performance data essential to managing its contractors, and that changes were being made to its field office performance review process to ensure that trained and experienced staff are assigned to the reviews. PBGC also agreed that providing procurement policies and program guidance in a central location is needed. Accordingly, PBGC plans to identify gaps in procedural guidance and develop needed policies. Finally, PBGC told us it plans to address CCRD organizational placement and independence issues as part of its larger workforce planning study.

However, in some instances PBGC took issue with our findings regarding its past contract actions and procedures. For example, PBGC believed our assumption that future workloads would likely level off, were too optimistic. We agree that it is difficult to predict PBGC's future workloads with absolute accuracy. However, a steady downward trend in the data that could affect PBGC's future work environment requires PBGC to have a strategy or contingency plan in place to ensure that its staffing, contracting, and organizational structure meet the needs of current and future pension plan participants.

PBGC also disagreed that its 1997 procurements for FBA services may have limited competition. PBGC noted that its procurement actions met the competition requirements of the FAR and the prices obtained could be assumed to be reasonable. Consolidated procurements have the potential to restrict competition. As noted in this report, PBGC did not provide a sound business rationale to support its consolidated procurement approach. While in this case multiple bids were received, PBGC's actions showed weaknesses in the management of its procurement planning and execution practices. Consequently, PBGC risked paying too much for contracted services and receiving inferior performance.

In discussing its use of labor-hour, rather than fixed-price payment arrangements for its premium compliance audit contracts, PBGC noted that its decision was based on consideration of numerous workload factors. PBGC also questioned whether these types of contracts should be fixed-price, based on its interpretation of performance-based contracting guidelines. The guidelines state that fixed-price contracts are appropriate for services that can be objectively defined. PBGC's prior experience with these contracts allowed its managers to define the work to be completed and develop detailed fixed prices. Prior experience also allowed the incumbent contractors to initially respond with fixed-price offers. The guidelines do not explicitly exclude audit contracts from being designated as fixed-price. These factors led us to conclude that there was a reasonable basis to contract as fixed-price.

PBGC also disagreed with our conclusion that one former contractor received \$210,000 to complete only three plan audits. PBGC said that the figure was misleading in that it did not account for work completed by the contractor on more than 37 additional audits. Our conclusion was based on an internal PBGC document noting that the former contractor's remaining premium plan audits were transferred to another contractor, but this contractor could not use any of the work performed. Thus, the audits had

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to be started from "scratch." Therefore, the dollar figure cited represents an accurate assessment of how much PBGC paid for actual work completed.

Finally, regarding PBGC's need to ensure that its review panels document their award recommendations, PBGC explained that the contracts we reviewed predated a September 1999 revision to its internal guidance that required technical panel members to complete individual scoresheets for each offeror. PBGC explained that, while individual scoresheets were used prior to the guidance change, only summary scoresheets were required to be in the files. In response to PBGC's comments, we revised the report to note that individual panel member scoresheets were not required for the procurements reviewed.

As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that point, we will send copies to the Honorable David M. Strauss, Executive Director of the Pension Benefit Guaranty Corporation. Copies will be made available to others upon request.

If you have any questions concerning this report, please contact me at (202) 512-7215, or Daniel Bertoni at (202) 512-5988. Other major contributors are listed in app. IV.



Barbara D. Bovbjerg, Associate Director  
Education, Workforce, and Income Security Issues

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## Scope and Methodology

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This appendix describes our approach for collecting and analyzing data and for interviewing officials to document the growth and management of contract staff at the Pension Benefit Guaranty Corporation (PBGC). The objectives of our review were (1) to determine the basis for PBGC's decisions regarding the use of contractors versus government personnel to address its workloads, (2) to assess PBGC's processes and procedures for selecting contractors, and (3) to determine how effective PBGC has been in monitoring the performance of its contractors.

Our review was conducted at PBGC headquarters in Washington, D.C., and six field benefit administration (FBA) offices: Wilmington, Delaware; Miami, Florida; Atlanta, Georgia; Pueblo, Colorado; Sarasota, Florida; and Cleveland, Ohio. We selected the field offices based on the dollar amounts of the contracts, volume of work processed, geographic area, and whether the procurements were selected on a competitive or sole-source basis. Our selections included three large offices, two medium-sized offices, and one small office. Three of these offices' contracts were competed and three operated under sole-source contracts. We conducted our review from June 1999 to May 2000 in accordance with generally accepted government auditing standards.

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### Interviews With PBGC Managers and Staff

To determine the range of factors that have influenced PBGC contracting decisions over the last decade, as well as PBGC's approach to selecting and managing contract staff, we conducted in-depth interviews of more than 70 PBGC personnel. These included PBGC headquarters senior executives, middle managers, and line staff, as well as contract personnel in headquarters and the field offices. We captured this information using structured interview guides which included general questions applicable to all personnel regarding corporation procedures and policies, as well as specific questions tailored to each individual's particular position or area of expertise. We also administered a short survey to PBGC's 69 contracting officer's technical representatives (COTR) to obtain their views on how the contractor selection and management process could be improved.

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### Analysis of PBGC's Structure and Basis for Contracting Decisions

To assess PBGC's procurement practices, we obtained federal staff and contractor trend data that documented the extent to which PBGC has used contract personnel over the last decade. We also obtained and reviewed budget information to determine how PBGC is financed and its authority for using contractors. We identified and obtained internal policies and procedures with respect to contracting practices and documented PBGC

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decisions with respect to the use of contractors to address workload backlogs of prior years. Finally, we compared PBGC's activities against the strategic planning requirements of the Government Performance and Results Act of 1993 and prior GAO work outlining steps agencies should take to address resource, human capital, and other strategic planning challenges.

**Analysis of Contractor Selection and Oversight Practices**

To evaluate the effectiveness of PBGC's contractor source selection and oversight practices, we reviewed 15 contracts of the two largest users of contracting at PBGC. We assessed PBGC's activities against the requirements of the Federal Acquisition Regulation and PBGC's own internal policies and procedures. Where appropriate, we also compared PBGC's activities against "best practices" in contract selection and administration as defined by the Office of Federal Procurement Policy. Finally, we reviewed reports from PBGC's Office of Inspector General that identified past deficiencies in the selection, management, and oversight of contractors. Table 1 presents additional information related to the contracts we reviewed.

**Table 1: Summary of Contracts Reviewed**

Contractor/ contract number	Award date	Effective date	Option years (after base year)	Contract action	Type	Purpose	Estimated maximum value (base + option years)	Cumulative total amount obligated (06/12/00)	Contract status (as of 06/12/00)
D.L. Skully & Associates Inc. PBGC01-CT- 98-0540	12/23/97	10/01/97	3	Sole- source	Labor hour	Pension benefit administration services at Richmond Heights, Oh., FBA <sup>a</sup> office	\$13,949,308	\$2,350,319	In progress (option year 2)
General Employee Management Services, Inc. PBGC01-CT- 98-0536	03/20/98	10/01/97	3	Sole- source	Labor hour	Pension benefit administration services at Sarasota, Fla., FBA office	\$13,941,500	\$1,763,725	In progress (option year 2)

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Contractor/ contract number	Award date	Effective date	Option years (after base year)	Contract action	Type	Purpose	Estimated maximum value (base + option years)	Cumulative total amount obligated (06/12/00)	Contract status (as of 06/12/00)
Benefits Services Unlimited PBG01-CT- 98-0538	11/05/97	10/01/97	3	Com- petitive	Labor hour	Pension benefit administration services at Wilmington, Del., FBA office	\$24,093,636	\$4,373,842	In progress (option year 2)
Disciplined Benefit Services, Inc PBG01-CT- 98-0537	03/02/98	10/01/97	3	Sole- source	Labor hour	Pension benefit administration services at Pueblo, Colo., FBA office	\$8,385,816	\$1,340,315	In progress (option year 2)
Office Specialists PBG01-CT- 98-0543	11/17/97	11/01/97	3	Com- petitive	Labor hour	Pension benefit administration services at Miami, Fla., FBA office	\$13,173,656	\$4,702,529	In progress (option year 2)
Integrated Management Resources Group, Inc. PBG01-CT- 98-0573	10/14/98	10/01/98	4	Com- petitive	Labor hour	Pension benefit administration services at Atlanta, Ga., FBA office	\$25,261,453	\$3,814,090	In progress (option year 1)
Office Specialists PBG01-CT- 98-0545	11/10/97	11/01/97	4	Com- petitive	Labor hour	Pension benefit administration services and telephone center at PBG headquarters	\$64,289,740	\$14,811,787	In progress (option year 2)
Integrated Management Resources Group, Inc. PBG01-CT- 98-0546	11/05/97	11/03/97	4	Com- petitive	Labor hour	Audit services	\$13,878,025	\$6,010,475	In progress (option year 2)

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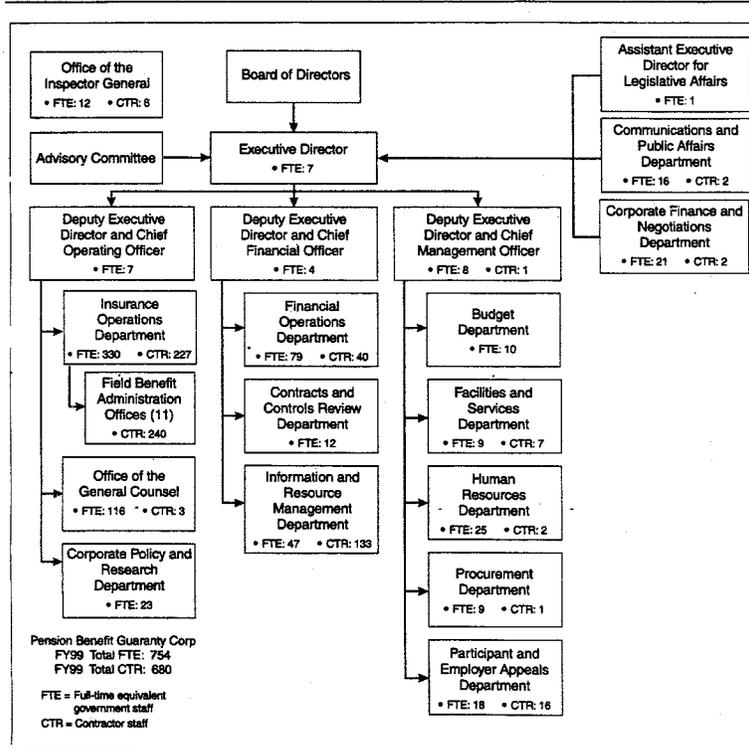
Contractor/ contract number	Award date	Effective date	Option years (after base year)	Contract action	Type	Purpose	Estimated maximum value (base + option years)	Cumulative total amount obligated (06/12/00)	Contract status (as of 06/12/00)
Booz, Allen & Hamilton, Inc. PBGC-J-6- 0418	10/20/93	09/30/93	4	Com- petitive	Labor hour, Task order	Systems engineering services to redesign Case Administration System	\$12,851,241	\$18,017,067*	Inactive (ended 09/30/99)
Paradigm Asset Management PBGC01-CT- 96-0509	01/31/97	10/01/96	5	Com- petitive	Fixed price	Investment management services	Percentage of investment earnings	\$1,074,699	In progress (option year 3)
Coleman & Williams PBGC- 9-0527	09/03/97	07/29/97	3	8(a) (noncom- petitive)	Labor hour	Premium compliance review services	\$1,597,600	\$305,000	Inactive (terminated 08/27/99)
Owusu & Company PBGC-J-7- 0528	10/02/97	07/25/97	3	8(a) (noncom- petitive)	Labor hour	Premium compliance review services	\$1,570,256	\$200,000	Inactive (ended 09/30/98 no options taken)
Emna S. Walker PBGC01-CT- 97-0529	09/03/97	07/25/97	3	8(a) (noncom- petitive)	Labor hour	Premium compliance review services	\$1,425,800	\$505,000	In progress (option year 3)
Frye, Williams & Company PBGC01-CT- 97-0530	09/03/97	07/25/97	3	8(a) (noncom- petitive)	Labor hour	Premium compliance review services	\$1,379,047	\$480,000	In progress (option year 3)
Carter & Associates PBGC01-CT- 97-0531	10/23/97	07/25/97	3	8(a) (noncom- petitive)	Labor hour	Premium compliance review services	\$1,527,164	\$674,342	In progress (option year 3)

\*Field benefit administration.

\*Increase to contract due to additional task orders.

Appendix II

PBGC Organization Chart



Appendix III

## Comments From the Pension Benefit Guaranty Corporation



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026  
(202) 526-4010

Office of the Executive Director

August 23, 2000

Ms. Barbara D. Bovbjerg  
Associate Director, Education Workforce, and  
Income Security Issues  
U.S. General Accounting Office  
Washington DC 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to review and comment on your proposed report, Pension Benefit Guaranty Corporation: Management of Contracting Activities Needs Improvement (GAO/HEHS-00-130). I appreciate the fact that your report documents the enormous progress that the PBGC has made since 1992 in finances, benefit processing, and contracts management. And I appreciate your recommendations for the further improvement of contracts management.

*Improvement in Finances*

As the report notes, "In 1992 [GAO] placed PBGC on [its] list of federal programs at high risk because of a large and growing deficit between its assets and liabilities that threatened the Corporation's long-term financial viability. . . . To address PBGC's financial problems, Congress passed the Retirement Protection Act of 1994 [RPA], which strengthened minimum funding requirements for plans and increased premiums paid to PBGC by underfunded plans."

As important as the RPA was in bolstering PBGC's financial condition, it took more than that to turn a \$3 billion deficit into a \$7 billion surplus. The Corporation changed its investment strategy to better focus on equities. This fact, coupled with a period of unprecedented economic expansion, helped us to create—on behalf of PBGC's plan sponsors and participants alike—the best financial position ever in PBGC's history.

In addition, PBGC significantly improved its internal controls in 1993, earning the first of seven consecutive unqualified financial audit opinions from independent financial auditors. Those internal control improvements, coupled with substantive system advances, led OMB to remove PBGC from its high risk list. Similarly, as your report rightly notes, GAO "removed PBGC from [GAO's] high-risk list in 1995."

The PBGC has taken advantage of the longest period of uninterrupted economic growth in history to build the surplus. This gives us a cushion to protect the insurance program in the

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event of an economic downturn. The cushion is important because of the long tail of PBGC's liabilities and PBGC's exposure to a variety of long-term risks, most of which are beyond PBGC's control. As the 1998 GAO report on PBGC's financial condition stated, "An economic downturn and the termination of a few plans with large unfunded liabilities could quickly reduce or eliminate PBGC's surplus." So, while the PBGC is in very sound financial condition today, we will continue to remain vigilant.

*Improvement in Benefit Processing*

Your report notes management improvements in PBGC's insurance program and confirms that PBGC's workloads have grown significantly. As the report states, this led to "... a backlog of pending participant benefit determinations, which peaked at over 300,000 in fiscal year 1994."

Your report found that "... PBGC has taken steps to improve the benefit administration process and better support field office contractors in processing their workloads. For example, in 1993, PBGC reorganized its benefit administration operations to implement team case processing so that auditors, actuaries, and benefit administrators in both headquarters and the field are arranged in teams to process benefits. ... Over the last several years, PBGC also made significant investments in automation and centralized several functions previously handled by the field offices to allow staff to focus primarily on processing benefit determinations."

Your report confirms the success of these efforts. "[GAO's] interviews with field office managers showed a general agreement that the reorganization was effective in terms of expediting pension plan processing and improving organizational communications. Most of the managers as well as their staff also noted that PBGC's automation investments have improved office productivity and overall customer service." And the ultimate proof of PBGC's efforts since 1993 is in the results. As you note, "At the time of [your] review, PBGC had reduced its backlog of pending benefit determinations from a high of over 300,000 in fiscal year 1994 to about 190,000."

*Improvement in Contracts Management*

Your report documents that PBGC responded to unpredictable workloads and large backlogs by turning increasingly to contracting for services. The report notes that "PBGC contracting decisions and its organizational field structure have been heavily influenced by the need to service dramatic and often-unexpected workload increases, while subject to staffing limitations."

We recognized in 1993 that contracting was taking on increased importance. So we took a number of steps to improve contract planning and administration:

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- In 1993, the procurement staff were reorganized from a lower-level division to a higher-level departmental status, reporting to the Chief Management Officer. Prior to 1993, there were only six procurement staff; today there are 10.
- In 1994, a new contract auditing function was established to assist the Procurement Department in both pre- and post-award contract pricing. Since this function has been in operation, over \$12 million of contract savings have been realized.
- In 1994, we adopted an advance procurement planning process to help us better analyze contract needs in the Corporation.
- And, as your report notes, "Although not required to do so in all cases, PBGC follows the regulations governing contracting by federal agencies. . . . PBGC voluntarily abides by the FAR [Federal Acquisition Regulation] in procuring all goods and services."

*PBGC's Future Workload*

We believe the report's assumption that there will be a leveling off of PBGC's workload in future years may well prove to be optimistic. PBGC's workload has always been episodic and unpredictable and remains so for the following reasons.

First, while the number of active participants in plans we insure has declined, the overall number of participants in those plans remains unchanged as the number of retirees has increased. If this trend continues, by the year 2003 the number of retired participants will exceed the number of active workers, and the defined benefit system may become even more unstable, which could increase PBGC's exposure.

Second, despite almost perfect economic conditions, we are still assuming responsibility for 30,000 to 50,000 new participants a year. It would not be prudent to assume that such ideal economic conditions will last indefinitely. A small downturn in the economy could lead to a significant increase in the number of participants for whom we would assume responsibility.

Third, as both PBGC's Office of the Inspector General and you have reported, the PBGC still has a large backlog of plans that have not been through plan closing. In addition, we need to improve the quality of the service we provide participants, most notably by allowing participants to responsibly plan for their retirement by providing them with timely benefit estimates. And, while we are now processing plans in less than five years on average, this is still too slow. We must continue to speed up PBGC's operations until we are routinely processing plans as rapidly as the Employee Retirement Income Security Act (ERISA) will allow (currently about three years).

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Finally, and most importantly, the PBGC's future workload, no matter how well we strategically plan, is to a large extent unpredictable. Despite today's excellent economic conditions, there are still hundreds of financially-troubled companies with significantly underfunded pension plans. The PBGC's exposure from this group of plans – i.e., the cost to the insurance program if these plans fail – remains in the \$15 to \$20 billion range, far exceeding PBGC's surplus. And, despite the strong economy, reported plan underfunding among this group of companies has not changed significantly over the last several years. Many of these companies are in cyclical industries that are vulnerable to economic downturns. More than half of PBGC's exposure from these financially troubled companies is concentrated in just three industries – airlines, retail, and steel. Even a small downturn in the economy could have a large negative impact on these companies and their plans. The PBGC could be again faced (as we were in 1991 and 1992 with Pan Am and Eastern Airlines) with taking in huge plans on very short notice.

RESPONSES TO THE GAO'S SPECIFIC RECOMMENDATIONS

*First Recommendation*

GAO recommends that the PBGC "conduct a comprehensive review of PBGC's future capital needs, including the size of the workforce, its deployment across the organization, and the knowledge, skills, and abilities needed by PBGC," and that PBGC "use the results of this review to better link staffing and contracting decisions to the Corporation's long-term strategic planning process, consistent with GPRA (Government Performance and Results Act)."

*Response*

To examine these issues, the PBGC will engage an outside, independent organization to conduct a strategic workforce planning study. The report should be completed by next Spring.

*Background*

The Corporation has expanded its use of contractors over time to handle its increased workload. Contracts were used for several reasons:

- Both the Administration and the Congress have preferred to reduce or at least not expand the size of federal employment wherever possible over the last several years;
- Contracting gives the Corporation greater flexibility in meeting changing workloads; and
- Costs associated with particular projects can be better tracked under a contractual arrangement.

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PBGC received an additional 117 positions during 1992 and 1993. But contract spending also rose from \$11 million in 1988 (30% of PBGC's budget) to \$79 million by 1993 (60% of PBGC's budget) in order to address the surge of trusted plans and participants. Because of this contract growth, the Corporation conducted an internal review in 1994 on its use of federal employees and contractors, finding that in specific instances we could justify federal employment as being more economical than contractor slots. We requested 58 additional positions and received approval from the Congress in 1996.<sup>1</sup> Since that time, we have opted to contract out most additional workload taken on by the Corporation for the above stated reasons. The Corporation, however, has also reduced the number of contract personnel whenever feasible:

- When the PBGC set up a special effort to complete the benefit processing of older plans largely from the 1980's, it hired an additional 32 contract staff. When the processing was completed, the project team was dissolved.
- During the late 1980's and early 1990's, PBGC was engaged in several large-scale litigation issues as it attempted to contain its growing deficit. As a result, outside legal counsel was needed. In 1993, about \$3 million was spent for outside legal expertise. In contrast, less than \$1 million in contracting was spent in 1999 due to changing workload.
- Since 1994, the PBGC has closed seven field benefit administration (FBA) contract offices and opened one new office based on workload and cost savings considerations.
- As PBGC has become more reliant on technology, the information technology contract staff have risen from 83 in 1995 to 133 in 1999. Likewise, the field benefit administration (FBA) contractor staff have gone from 131 to 240 in that time period in order to handle the influx of new trusted plans. On the other hand, the contract staffing number dropped from 79 to 40 in PBGC's financial area with the completion of development work on new financial systems, and from 346 to 227 for the headquarters insurance operations staff because of completion of special projects and a greater emphasis on field processing of benefits.

In summary, the Corporation has planned for and made rational decisions to reallocate flexible contract staffing needs to meet its changing priorities. We agree with the GAO, however, that it is now appropriate to conduct another strategic workforce planning study.

<sup>1</sup> PBGC had to take a 14 position reduction the same year due to the Government Workplace Restructuring Act.

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*Second Recommendation*

GAO recommends that the PBGC "address weaknesses in PBGC's procurement process to ensure that contract award decisions best serve the needs of the government and plan participants, while fostering competition. This would include conducting market research as appropriate to determine whether other potential offerors exist and seeking opportunities for increasing competition for PBGC contracts that are now awarded on a sole-source basis."

*Response*

We agree to expand PBGC's market research efforts and will continue to foster competition with respect to PBGC procurements. For example, we plan to separately compete 10 field benefit administration (FBA) offices next year. We are also reviewing a copy of the GAO's Contract Management: Few Competing Proposals for Large DOD Information Technology Orders to determine if we can implement its suggestions for PBGC's smaller contracts.

*Background*

In 1999, over 80 percent of the contract dollars awarded by PBGC was through full competition. Only 14 percent were awarded non-competitively.

The first sole source, FBA contractor office was set up in 1978. All of the subsequent FBA offices established in the 1980's and early 1990's were also sole source. Recognizing that PBGC would be increasing its field benefit processing workload, we planned for the first round of competitive bidding in 1997 with the 4 largest FBAs. In 1998, we again competed the Atlanta FBA (receiving 4 proposals). Over this next year, we intend to separately compete all of the remaining 10 FBA contracts in accordance with PBGC's advance procurement planning.

With regard to the smaller FBA offices that were extended on a sole source basis in 1997, the PBGC did publish a notice in the Commerce Business Daily soliciting additional interested contractors. We did not receive any responses. At the time, PBGC was looking at the competition for FBA offices as a two-step process: immediately compete PBGC's largest FBAs and then compete the remaining smaller FBAs, assuming they received additional plans. That strategy is still the one we are following.

**1999 Policy "Change":** The report references a policy "change" in fiscal year 1999 as an example of a decision that could unnecessarily perpetuate some field offices by allowing the "contract field offices to perform 'ongoing administration' for all of their closed plans regardless of plan size."

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PBGC did modify its contract language concerning the transfer of plans to ongoing FBAs in fiscal year 1999. This was an effort to clarify PBGC's existing policy, and no change in policy or practice was intended. Since 1993, it has been PBGC policy to transfer plans from the processing FBA site to an ongoing FBA office after the completion of plan closing in all but very limited circumstances. That policy and practice remains unchanged.

In fiscal years 1999 and 2000, 451 plans were transferred to the Ongoing Administrators. Only seven plans were allowed to be kept by the FBA office which had processed the plan. For example, PBGC determined based on size, complexity and customer service that one of the plans in the Eastern Airlines family of plans (seven plans with a total of nearly 50,000 participants) should remain with the Miami FBA.

**1997 Procurement:** The GAO report also raises a concern about a 1997 procurement for four field benefit administrative contractor offices, specifically the consolidated procurement for three of these offices. The 1997 procurement was conducted in accordance with the Federal Acquisition Regulation (FAR) requirement to obtain "full and open competition." A competitive evaluation was done by a panel of PBGC technical experts along with a cost evaluation by the procurement staff and outside auditors. Sixty percent of the evaluation was based on technical quality and 40 percent on cost. Detailed documentation is contained in the contract file to support the award decision. The FAR states that when "adequate price competition exists" the price can be assumed to be reasonable. "Adequate price competition" is defined by the FAR as:

"Two or more responsible offerors, competing independently, submit priced offers that satisfy the government's requirements and award will be made to the offeror whose proposal represents the best value where price is a substantial factor in source selection."

In this case, price was a substantial factor in the selection. Five offers were received. The winning offer received the most points for the best price and was tied with another competitor for the best technical proposal. Therefore, it was the best value to the government. We disagree that there was any substantial risk of paying too much or receiving inferior performance based on the way the competitive procedures were followed in this case.

*Third Recommendation*

GAO recommends that the PBGC, "where appropriate, utilize more fixed-price contracts and other non-labor-hour payment arrangements consistent with best practices in performance based contracting."

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*Response*

We agree. We will use fixed-price and other non-labor-hour payment arrangements as well as performance based contracts whenever appropriate.

*Background*

Your report recommends that stronger consideration should have been given to using fixed-price rather than labor-hour contracts for the 1997 premium compliance audit awards. Consistent with the FAR, we use sound judgment when selecting contract types and considering fixed price contracting where a reasonable basis for them exists. Section 16.202-2 of the FAR, however, describes fixed price contracting to be appropriate where there is "reasonably definite functional or detailed specifications."

We discussed in depth at the time whether these particular contracts should be labor-hour or fixed-price. PBGC's decision not to go with fixed-price was based on the following considerations: (1) the range of complexity in pension plans to be audited; (2) the differences in plan size (i.e., the number of plan participants) and multiple plan office locations; and (3) the risk that plan sponsors might not fully cooperate with the audit or provide inadequate records or reconciliations, requiring additional auditing work. A contracting judgment was made to award these contracts to 8(a), independent certified public accounting firms on a labor-hour basis.

The previous purchase orders used to obtain these auditing services were labor-hour, not fixed-price. The best practices guide referenced in the GAO report encourages increased use of fixed-price contracting specifically for "Performance-Based Service Contracting", which is a particular method of contracting that allows a contractor to be paid if they perform within an acceptable range of measurable performance standards. This type of contracting was not the one used for the auditing services.

**Payments to Contractor:** The report questions payments made to one premium audit contractor. It is important to note that the sum cited was not paid, as the report implies, solely to "complete three audits." Rather, the contractor was assigned 37 additional audits. Under the terms of PBGC's agreement with the contractor, we legitimately paid for that work which was done on all audits—not only those completed at the end of the term. Nonetheless, we observed that other contractors in the program were better able to meet PBGC's requirements. We made a business decision to not renew the contract and to transfer the work in progress to another contractor in the program. Thus, the high dollar per audit figure cited in the report is misleading in that other work was performed.

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*Fourth Recommendation*

GAO recommends that the PBGC "strengthen policies and procedures for evaluating proposals by ensuring that review panels adequately document their contract award recommendations in accordance with PBGC's internal guidelines."

*Response*

We have met this recommendation with PBGC's September 1999 requirement to retain individual scores from technical panel members in the contract files. We will also ensure that other needed documentation continues to be retained in those files.

*Background*

GAO reviewed two old contracts for documentation: a 1993 information technology contract for systems engineering and a 1996 investment management contract. The GAO finding that individual, technical panel scoring sheets were required to be in the contract files according to internal PBGC policy is incorrect for the time periods during which these two contracts were awarded. The internal guidance requiring individual scoring sheets was not put into place until September 1999, several years after the procurements in question. While individual scoring sheets were used prior to this guidance, only the summary scoring sheets were required in the files.

The existing record for the investment management award is made up of more than just final summary scores. The contract file contains both the initial and final scores for each panel member and the consensus scores agreed upon by the technical panel. It also contains about 45 pages of narrative outlining the strengths and weaknesses of each offeror and documenting the consensus scores given by the panel. Two awards were made to the offerors with the highest total scores. Individual rater scores did not markedly deviate from final consensus scores.

For the 1993 systems engineering contract examined by GAO, the task orders that were issued under the contract contained statements of work with detail on what to do, when and at what cost. While the GAO report is correct that the contract had a generic paragraph calling for work plans, there actually was no need to require work plans in this instance since they would have been redundant of the statements of work. With the advantage of hindsight, the generic paragraph should have been deleted from this particular contract.

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*Fifth Recommendation*

GAO recommends that the PBGC "strengthen PBGC's contract oversight role by developing the capacity to centrally compile and monitor essential field office performance data. Such a system should provide longitudinal data necessary to quickly measure and compare field office performance in regard to output, product quality, backlogs, and timeliness."

*Response*

While FBA performance data is currently used by the PBGC, development of additional FBA performance information will continue per the GAO recommendation.

*Background*

PBGC compiles and centrally monitors FBA performance data that is essential to overseeing the performance of the FBAs. For example, PBGC senior managers receive daily reports on customer service performance metrics for each FBA. PBGC also actively manages the document scanning activities in the field offices using centrally compiled and monitored data. In addition, using the automated data systems that have been brought on line over the past several years, PBGC is now compiling data that will allow senior management to analyze FBA performance in several additional areas GAO identified. The existing monthly status reports are being further standardized so that they will be more useful in providing FBA comparative data.

Your report also notes that, "In recent years, PBGC has taken actions to improve its contract oversight role and better support contractors performing field benefit administration services for the Corporation." Here too, PBGC has had to overcome significant challenges. As your report states, "PBGC could not provide data on the total number of contract employees performing services for the Corporation or a description of how they were deployed across various PBGC components prior to fiscal year 1995."

The report now confirms that PBGC currently "uses various tools to monitor contractor performance. For example all of the FBA offices ... received a performance review in the last year by PBGC. As required by their contract's statement of work, each office also used PBGC work plans to guide their daily activities and submitted monthly status reports to PBGC to document progress made. Field office managers also reported regular communication with their assigned Contracting Officer's Technical Representative (COTR) at PBGC."

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*Sixth Recommendation*

GAO recommends that the PBGC "address weaknesses in PBGC's field office performance review process to better ensure that benefit administration services contractors meet quality and accuracy requirements."

*Response*

Changes are being made to the FBA office performance review process to ensure trained and experienced staff are assigned to the reviews. The field office review function will be moved to a central location to ensure consistency in review procedures.

PBGC is confident that participants are receiving accurate benefit determinations and payments. We agree that efforts to provide more timely benefit determinations should not compromise their accuracy. We are taking action to address concerns about FBA performance reviews identified during PBGC's own study, a copy of which was provided to the GAO. We are revising PBGC's procedures to require that field office reviews be led by experienced staff. In addition, while GAO notes that PBGC provides for reviewer training, we agree that some team members in the past have not been fully trained. We are revising PBGC's procedures to make such training mandatory. Finally, in response to GAO's concern, we will shift the field office review function to the staff responsible for ensuring compliance with the program procedures and internal controls.

*Seventh Recommendation*

GAO recommends that the PBGC "develop a comprehensive set of procedural guidance for staff responsible for awarding contracts and monitoring contractor performance."

*Response*

We believe the training guidance, personal contacts with procurement specialists and periodic written updates for COTRs is the best approach for a good procurement program in a small organization. We agree, however, that providing procurement program guidance in a central location on the PBGC intranet or in hard copy is needed. As part of that consolidation effort, we will also identify any gaps in procedural guidance and develop the needed policies.

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*Background*

With regard to additional written guidance for the Corporation's COTRs, we have contacted a number of agency procurement offices and none have comprehensive standard operating procedures for COTRs. All rely on training the COTRs and providing them with access to procurement professionals for specific advice when needed. The PBGC procurement staff often interact with the COTRs, spending a significant amount of time on contract administration.

Two training manuals (240 pages long) are given to all COTRs outlining the basic principles and methods to be applied in contract administration. Significant increases in training have occurred in the last year and a formal COTR certification program is in development. A records disposition policy has been drafted to help answer staff questions about pension files after plans are closed. Finally, we implemented earlier this year an automated, COTR monthly status report and are now receiving all of the required reports. We agree with GAO that it would be beneficial to consolidate the most up-to-date guidance in one easily accessible venue. As part of that effort, we will also look to identify any gaps in guidance that need to be addressed.

*Eighth Recommendation*

GAO recommends that the PBGC "revise the current organizational placement and reporting relationship of the Contracts and Controls Review Department to promote objectivity and independence."

*Response*

The organizational placement of CCRD will be addressed as part of the workforce planning study.

*Background*

The Corporation did not have an in-house, dedicated contract audit capability for most of its history. In 1994, PBGC created the Contracts and Controls Review Department (CCRD) to handle this function, and over the years has saved more than \$12 million as a result. CCRD reports to the Chief Financial Officer (CFO) as a means of separating the function from the Chief Management Officer, who has oversight for procurement. Contract audits are performed at the request of the procurement staff. The CFO does not usually review those reports. In a small agency, placement of the contract audit function in a different area would not necessarily improve its independence. In addition, PBGC has an Office of Inspector General that audits contracts.

PBGC transferred premium compliance audit oversight to CCRD in FY 2000. One of PBGC's objectives with this change was to improve internal controls by separating the audit

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function from the premium determination function. In addition, it provided us an opportunity to reexamine the program for improving customer service. While this transition is still in process, we would note that monthly COTR status reports are being regularly filed. In addition, any new audit assignments will require signed reports to be issued.

**CONCLUSION**

We appreciate the opportunity to comment on the draft report and look forward to working on these recommendations to further strengthen FBGC's contract management.

Sincerely,

  
David M. Strauss  
Executive Director

Appendix IV

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## GAO Contacts and Staff Acknowledgments

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### GAO Contacts

Barbara Bovbjerg, (202) 512-7215  
Daniel Bertoni, (202) 512-5988

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### Staff Acknowledgments

In addition to those named above, Barry Bedrick, Jeff Bernstein, Deborah Moberly, Elizabeth O'Toole, Sylvia Shanks, and Craig Winslow made key contributions to this report.

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The CHAIRMAN. Let me make clear that everybody's written statement, if it is longer or different than your oral remarks, are automatically included in the record.

Now, Mr. Hast.

**STATEMENT OF ROBERT H. HAST, ASSISTANT COMPTROLLER GENERAL, OFFICE OF SPECIAL INVESTIGATIONS, U.S. GENERAL ACCOUNTING OFFICE, WASHINGTON, DC**

Mr. HAST. Chairman Grassley and Senator Breaux, I am pleased to be here to discuss the investigation you requested into the alleged contracting irregularities at the Pension Benefit Guaranty Corporation. As a result of information and documentation obtained by Ms. Bovbjerg's group during its previously discussed review of PBGC, she referred certain contracting irregularities to us. Those irregularities appear to involve improprieties or potentially illegal activity.

We investigated whether PBGC's award of two contracts to Integrated Management Resources Group was improper. The two contracts, an auditing contract and a field benefits administration contract for the FBA office in Atlanta, GA, were worth approximately \$40 million combined. Specifically, we investigated allegations that Bennie L. Hagans, PBGC's Director of the Insurance Operations Department, which oversees the administration of FBA, had improperly influenced the award of these contracts to IMRG. IMRG has been owned and operated by Myrna Cooks since April 1997, when she resigned from Office Specialists, a PBGC contractor. Ms. Cooks had been a Manager and Vice President of Office Specialists, which at the time of her resignation held the two contracts we investigated.

In brief, Mr. Hagans' actions demonstrated a lack of impartiality with respect to IMRG and created the appearance of improperly influencing the award of the two contracts in question. What follows is some of the evidence we discovered. IMRG was awarded its first contract, an auditing contract, on October 10, 1997. It had an estimated maximum value of almost \$14 million. However, between the time she left Office Specialists and was awarded her first contract, 34 telephone calls were logged from either Mr. Hagans' PBGC office telephone or his PBGC cellular telephone to Ms. Cooks' home, the location of IMRG.

Ms. Cooks told us that she had both received many calls from Mr. Hagans and made many calls to him during this period. For example, on July 10, 1997, after IMRG submitted its auditing contract proposal, PBGC phone records show two calls were made from Mr. Hagans' office to Ms. Cooks' hotel room in Atlanta. Hotel records indicate four calls from Ms. Cooks' hotel room to Mr. Hagans' hotel after he had arrived in Atlanta the same day. Two of these calls were made on the evening of July 10th. The second two were made early the next morning at 5:50 a.m. and 6:33 a.m., just before Mr. Hagans visited the Atlanta office of Office Specialists.

Ms. Cooks told us she was in Atlanta to recruit Office Specialist employees for IMRG and that the purpose of the hotel room calls were to request Mr. Hagans to intercede with Office Specialists' management to stop them from interfering with their employees'

discussion with her about possible employment with IMRG. Ms. Cooks told us that Mr. Hagans resolved this problem for her. She also stated that her other calls with Mr. Hagans concerned personnel problems at Office Specialists, but she was unable to detail what she meant by this. Mr. Hagans also cannot explain the content of the many phone conversations he had with Ms. Cooks.

Additionally, on or about August 29, 1997, after IMRG had submitted its contract proposals, but before the auditing contract was awarded that October, Ms. Cooks met with an officer of a Maryland bank to seek financing for IMRG. We interviewed the bank officer who processed the loan application and reviewed the loan file with his contemporaneous notes and memos of contacts with Ms. Cooks and Mr. Hagans.

According to the bank officer and his notes, Ms. Cooks informed him that she was competing for the PBGC contracts held by Office Specialists. The bank officer told Ms. Cooks that before approving the loan, he wanted assurances directly from PBGC officer responsible for awarding the contracts that IMRG would be awarded the contracts she claimed to be taking over from Office Specialists. In response, Ms. Cooks provided Mr. Hagans as a reference. The bank officer stated that after he had a telephone conversation with Mr. Hagans, he was convinced that Ms. Cooks' claim was truthful. PBGC telephone records show a 16-minute telephone call from Mr. Hagans' office to the bank officer on September 9, 1997.

In October 1997, Ms. Cooks notified the bank officer that IMRG had been awarded only the audit contract of the three she had bid on. The bank officer told her that he could not understand why she was unsuccessful getting the other two. In response, Ms. Cooks asserted that Office Specialists had substantially underbid IMRG. Ms. Cooks also told the bank officer that Mr. Hagans had pledged to give IMRG \$3 million in additional work from the savings between the IMRG and Office Specialists bids. Ms. Cooks also told him that PBGC was acting to remove Offices Specialists from the Atlanta FBA contract for nonperformance, and that once this occurred, the Atlanta contract would be given to IMRG. This is reflected in the bank officer's memo to support approving the loan.

The bank officer's memo also reflects his very frank discussion with Mr. Hagans in early September 1997, about IMRG and Ms. Cooks. In that discussion, Mr. Hagans said that he campaigned continuously for Office Specialists' removal from all three contracts in favor of Ms. Cooks. It continued that Mr. Hagans was a very big fan of Ms. Cooks and politicked within the Agency for her company to receive the bid.

After we presented Ms. Cooks with the above evidence, she claimed no knowledge of the statements attributed to her and was not aware that the bank officer had contacted Mr. Hagans, even though she had used him as a reference. Mr. Hagans told us that he did not know that he was listed as a bank reference and did not remember speaking to the bank officer. He added that if he had spoken with the bank officer, that it may look wrong and, in hindsight, it would have been bad judgment.

This concludes my prepared statement. I will be happy to respond to any questions of you or other members of the committee. Thank you.

United States General Accounting Office

**GAO**

**Testimony**

Before the Special Committee on Aging and the  
Committee on Small Business, United States Senate

For Release on Delivery  
Expected at 8:00 a.m. EDT  
Thursday,  
September 21, 2000

**PENSION BENEFIT  
GUARANTY  
CORPORATION**

**Appearance of Improper  
Influence in Certain  
Contract Awards**

Statement of Robert H. Hast,  
Assistant Comptroller General,  
Office of Special Investigations



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Chairman Grassley, Chairman Bond, and Members of the Committees:

We are pleased to be here to discuss the investigation that you asked us to undertake into alleged contracting irregularities at the Pension Benefit Guaranty Corporation (PBGC). During GAO's management review, as discussed in Ms. Bovbjerg's testimony,<sup>1</sup> weaknesses were identified in PBGC's procurement planning and execution processes. In particular, PBGC lacked a sound business rationale to support its approach for contracting for services at four field office locations for field benefits administration (FBA)<sup>2</sup> and may have limited competition.<sup>3</sup> As a result of information and documentation obtained in the management review, certain contracting irregularities—regarding two contracts that appeared to involve improprieties or potentially illegal activity—were referred to us.

We investigated the facts and circumstances surrounding the award of these contracts to Integrated Management Resources Group, Inc. (IMRG). The contracts—an auditing contract and the field benefits administration contract for the FBA office in Atlanta, Georgia—were worth approximately \$40 million combined. Specifically, we investigated allegations that Bennie L. Hagans, PBGC's Director of the Insurance Operations Department, which oversees the administration of FBAs, had improperly influenced the award of these contracts to IMRG, a firm owned and operated since April 4, 1997, by Myrna Cooks. From 1987 until April 1997, Ms. Cooks was a manager and vice president of Office Specialists, Inc., a PBGC contractor, and she had overall management responsibility for Office Specialists' PBGC contracts.

In brief, Mr. Hagans' actions, as summarized in the balance of my testimony, demonstrated a lack of impartiality<sup>4</sup> with respect to IMRG and created the appearance of improperly influencing the award of the two contracts we investigated. As a result, we plan on referring this matter to PBGC and the Department of Justice for them to determine what, if any, additional action may be appropriate.

<sup>1</sup> See *Pension Benefit Guaranty Corporation: Contracting Management Needs Improvement* (GAO/HEHS-00-198, Sept. 21, 2000).

<sup>2</sup> These four locations were Atlanta, Ga.; Miami, Fl.; Wilmington, Del.; and Wheeling, W.Va. The FBA offices process benefit payments for insolvent pension plans.

<sup>3</sup> See *Pension Benefit Guaranty Corporation: Contracting Management Needs Improvement* (GAO/HEHS-00-198, Sept. 18, 2000).

<sup>4</sup> *Standards for Ethical Conduct for Employees of the Executive Branch* (5 C.F.R. Part 2636 (2000)) states that "employees shall act impartially and not give preferential treatment to any private organization or individual."

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## Chronology of Contract Awards

Our investigation focused on two contracts awarded to IMRG. In 1997, IMRG received the first, an audit services contract. Office Specialists, Ms. Cooks' previous employer, was awarded other contracts for which IMRG had submitted proposals—contracts for FBA offices in Atlanta, Georgia; Miami, Florida; and Wheeling, West Virginia, and for in-house services. The second contract that we investigated was awarded to IMRG in 1998 after PBGC decided not to exercise its option to continue Office Specialists' Atlanta FBA contract for a second year because of poor performance.

Prior to 1997, PBGC awarded Office Specialists three sole-sourced FBA contracts for Atlanta, Miami, and Wheeling and a competed in-house services contract that included auditing services.<sup>5</sup> At the time, Ms. Cooks managed these contracts for Office Specialists.

On May 30, 1997, PBGC issued a Request for Proposals (RFP) for the auditing contract with a response date of June 30, 1997. PBGC reviewed four proposals in response to the RFP, including those from IMRG and Office Specialists. Shortly thereafter, PBGC issued an RFP for the FBAs in Atlanta, Miami, and Wheeling<sup>6</sup> and another RFP for the in-house service contract. Office Specialists and IMRG, among others, also submitted proposals on these RFPs.

On June 3, 1997, Mr. Hagans issued a memorandum to Mr. Robert Herting, Director of PBGC's Procurement Department, naming the three members of the individual Technical Evaluation Panels (TEP) that reviewed and scored the proposals for the auditing, FBA, and in-house services contracts. Wilmer Graham, a direct subordinate of Mr. Hagans, was placed on the TEP for the auditing contract. Mr. Hagans told us he knew that Ms. Graham was a neighbor of Ms. Cooks at the time she was on the panel. However, he denied involvement in selecting the TEP members. Ms. Graham stated that she could not recall if she had disclosed to the procurement staff that she and Ms. Cooks were neighbors and said that she did not know who had named her to the TEP. Ms. Cooks told us that she found out that Ms. Graham was on the TEP only after she had won the contract.

On July 8, 1997, the technical proposals for the auditing contract were given to PBGC's TEP. The TEP issued evaluation memoranda on August 8,

<sup>5</sup> In 1997, the auditing and in-house services aspects of the contract were competed separately.

<sup>6</sup> Although the RFP requested that proposals be submitted for three FBA offices as a package, PBGC ultimately awarded three separate contracts for these offices.

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1997 (initial); September 22, 1997 (revised); and October 1, 1997 (final). On October 10, 1997, PBGC notified IMRG that it had been awarded the auditing contract, which had an estimated maximum value of \$13,878,025 over 5 years.

On September 9, 1997, PBGC informed Office Specialists by letter that its performance in Atlanta under the existing sole-source FBA contract was unacceptable due to high employee turnover affecting work productivity and quality, a failure to timely issue Individual Determination Letters, and mail-processing and telephone backlogs. PBGC continued to document the performance issues. Without regard to the performance issues, PBGC notified Office Specialists in October 1997 that it was awarded three FBA contracts for Atlanta, Miami, and Wheeling, as the lower of the two offerors with the highest technical scores. These 1-year contracts had 4 option years. On February 18, 1998, about 4 months after Office Specialists had been awarded the Atlanta FBA contract, PBGC issued a "cure letter" to the company advising it that PBGC considered the performance of the Atlanta FBA contract to be endangered and that failure to remedy the situation immediately could result in termination of the contract for default. This letter cited continued employee turnover, failure to hire a project manager, training problems, failure to timely issue Individual Determination Letters, overdue communications, and failure to provide timely reports to PBGC.

On May 7, 1998, Mr. Hagans issued a memorandum to Mr. Herting recommending that PBGC not exercise the option to renew Office Specialists' Atlanta FBA contract. On May 18, 1998, PBGC advised Office Specialists that it had decided not to extend the term of the Atlanta FBA contract and that the current contract would end on September 30, 1998. Subsequently, Office Specialists advised PBGC of its intention not to submit a proposal on the next Atlanta FBA contract.

On June 26, 1998, PBGC issued an RFP for the Atlanta FBA contract with a response date of July 27, 1998. This RFP resulted in four proposals, including one from IMRG. On July 27, 1998, the technical proposals for the Atlanta FBA contract were given to the assigned PBGC TEP for review and scoring. The TEP issued evaluation memorandums on July 30, 1998 (initial); August 14, 1998 (revised); and August 24, 1998 (final). On September 1, 1998, PBGC notified IMRG that it had been awarded this contract, which had an estimated maximum value of over \$25 million over 4 years (1 base year and 3 option years).

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### Contacts Between Mr. Hagans and Ms. Cooks Prior to Contract Awards

According to Ms. Cooks, she first met Mr. Hagans when she started managing PBGC contracts at Office Specialists, about 13 years ago. According to both Mr. Hagans and Ms. Cooks, they have a friendly working relationship. Mr. Hagans stated that he and Ms. Cooks were friends "on a business level," while Ms. Cooks stated that she is also a social friend of Mr. Hagans and has lunch or dinner with him about every 2 months.

According to an Office Specialists employee, Ms. Cooks informed several co-workers on March 11, 1997, in Atlanta that she would be leaving Office Specialists, starting her own firm, and competing on PBGC contracts. She further stated that Messrs. Hagans and Herting knew of her plans. The next day, this employee met with Mr. Hagans in Atlanta who told her that both he and Mr. Herting were aware of the above meeting at which Ms. Cooks announced her plans. This employee further stated that Mr. Hagans commented that he and Mr. Herting both "fully supported her [Ms. Cooks]" and that they had been pleased with Ms. Cooks' productivity. PBGC records reflect that on March 21, 1997, Ms. Cooks gave notice to Office Specialists that she was leaving. Ms. Cooks told us that she did not tell Mr. Hagans that she was leaving Office Specialists until April 2, 1997. Her resignation was effective April 4, 1997.

A PBGC employee, responsible for the administration of the Office Specialists' contract during the period Ms. Cooks was the company's manager, told us that over the course of several months she had repeatedly advised Mr. Hagans of persistent problems with poor contractor performance in Atlanta. She stated that Mr. Hagans had replied, "It's none of your business. Stay out of it." After Ms. Cooks resigned from Office Specialists, Mr. Hagans instructed PBGC employees to begin documenting the problems in Atlanta. This documentation resulted in the September 9, 1997, notice to Office Specialists and the subsequent cure letter.

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### Telephone Conversations Between Mr. Hagans and Ms. Cooks Prior to Contract Awards

Between April 4, 1997, when Ms. Cooks resigned from Office Specialists and October 10, 1997, when IMRG was awarded its first contract, 34 calls were logged from either Mr. Hagans' PBGC office telephone or his PBGC cellular telephone to Ms. Cooks' home, the location of IMRG. Ms. Cooks told us that she had received many telephone calls from Mr. Hagans during this period. She acknowledged that she had also made many telephone calls to Mr. Hagans during the same period. Regarding her many telephone conversations with Mr. Hagans after she left Office Specialists, she stated that they concerned "personnel problems" at Office Specialists. However, when asked, Ms. Cooks was unable to provide any examples or explain what she meant by this. Mr. Hagans was similarly unable to explain the

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content of the many telephone conversations that he had had with Ms. Cooks. He stated that he and Ms. Cooks were friends "on a business level" and if the procurement issue came up, he always referred her to Mr. Herting. Mr. Hagans also stated that he stays out of contract issues with bidders because this is prohibited by the Federal Acquisition Regulations.<sup>7</sup> We interviewed an FBA contractor who was bidding on another contract. The contractor advised us that when she contacted Mr. Hagans during the procurement, Mr. Hagans responded that he could not speak with her during the procurement process and instructed her that all future contacts should be with Mr. Herting. Ms. Cooks also denied discussing the procurement with Mr. Hagans and stated that Mr. Hagans had referred her to Mr. Herting when issues arose involving the procurement.<sup>8</sup>

Specifically, PBGC telephone records show that on July 10, 1997, after IMRG submitted its auditing contract proposal, two telephone calls (at 3:08 p.m. and 3:12 p.m.) were made from Mr. Hagans' office telephone to Ms. Cooks' hotel room in Atlanta. Ms. Cooks told us that she was in Atlanta to recruit Office Specialists employees for IMRG. PBGC records further indicate that Mr. Hagans traveled to Atlanta later that day. Telephone records for Ms. Cooks' hotel room indicate four calls to Mr. Hagans' hotel in Atlanta. Two of these calls were made on the evening of July 10, 1997, (at 9:17 p.m. and 9:54 p.m.); and the second two were made early on the morning of July 11, 1997, (at 5:50 a.m. and 6:33 a.m.) just before Mr. Hagans visited the Atlanta office of Office Specialists. Ms. Cooks acknowledged that during her July 1997 trip to Atlanta, she had had telephone conversations with Mr. Hagans from her hotel room. She explained that the purpose of these contacts was to request that Mr. Hagans intercede on her behalf with Office Specialists' management to stop them from interfering with their employees' discussions with Ms. Cooks about possible employment with IMRG. During his visit, Mr. Hagans met separately with both Office Specialists management and line staff. Ms. Cooks told us that Mr. Hagans resolved her problem.

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<sup>7</sup> The Federal Acquisition Regulations do not apply to PBGC acquisitions that are not financed with appropriated funds. However, as a matter of policy, PBGC abides by the Federal Acquisition Regulations in procuring goods and services.

<sup>8</sup> Mr. Herting told us that he does not recall having any conversation with Ms. Cooks but may have had one.

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**Mr. Hagans' and  
Ms. Cooks'  
Conversations With  
IMRG's Bank Loan  
Officer Prior to  
Contract Awards**

On or about August 29, 1997, after IMRG had submitted its several contract proposals but before the auditing contract was awarded on October 10, 1997, Ms. Cooks met with an officer of a Maryland bank to seek financing for IMRG. At that time, Ms. Cooks was IMRG's only employee and operated the business out of her home.

We interviewed the bank officer who processed the loan application and we reviewed the loan file that contained his contemporaneous notes and memoranda that corroborated his statements. One of these memoranda is a chronology of ongoing conversations involving this loan application. The bank officer told us, and his notes of the initial meeting reflect, that Ms. Cooks had informed him that she was competing for three contracts: an auditing contract; the combined Atlanta, Miami, and Wheeling FBA contracts; and an in-house services contract—all held by Office Specialists. He also stated that prior to approving the loan, he wanted assurances directly from the PBGC officer responsible for awarding the contracts that Ms. Cooks and IMRG would in fact be awarded the contracts she claimed to be taking over from Office Specialists. In response, Ms. Cooks provided Mr. Hagans as a reference.

The bank officer stated that he had a telephone conversation with Mr. Hagans and afterwards was convinced that Ms. Cooks' claim that she would get the contract awards was truthful. He added that this was the only conversation that he had had with Mr. Hagans. Further, PBGC telephone records show a 16-minute telephone call from Mr. Hagans' office to the bank officer on September 9, 1997. On September 15, 1997, the bank officer documented his conversations with Mr. Hagans and Ms. Cooks and began processing the \$1-million loan application for IMRG.

On October 9, 1997, Ms. Cooks notified the bank officer that IMRG had been awarded the audit contract but not the FBA or the in-house services contracts. The bank officer stated that he could not understand why she was not successful in obtaining the other contracts. In response, Ms. Cooks asserted that Office Specialists had substantially underbid IMRG. The bank officer stated and his notes reflect that on October 31, 1997, Ms. Cooks stated that Mr. Hagans had pledged to give IMRG additional work for the "savings" difference between the IMRG and the Office Specialists offers (approximately \$3 million). Ms. Cooks also told the bank officer that PBGC was taking steps to remove Office Specialists from the Atlanta FBA for nonperformance on the contract and that once this was accomplished, the contract for Atlanta would be given to IMRG. In the bank officer's notes of the initial August 29, 1997, meeting with Ms. Cooks, he noted that Ms. Cooks had informed him that a "cure letter" was about to be issued to Office Specialists on September 8, 1997. PBGC

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records reflect that Office Specialists was notified of its unacceptable performance on September 9, 1997. The bank officer's memorandum prepared on November 3, 1997, to support approving the loan attributes the following statement to Ms. Cooks:

"...[B]y setting Standards of Service, which the incumbent [Office Specialists] probably can't achieve, the agency can follow well-established criteria to eventually void the relationship. At that time, PBGC management has [sic] told Myrna [Ms. Cooks] her company would get the nod for the other two contracts."

The bank officer's memorandum went on to describe his "very frank discussion" with Mr. Hagans in early September about IMRG's and Ms. Cooks' abilities. It also noted Mr. Hagans as saying that "[he] campaigned continuously for [Office Specialists] removal form [sic] all three contracts in favor of Myrna [Ms. Cooks]."

This same November 3, 1997, memorandum contained another recitation that Mr. Hagans had said he "was a very big fan of Myrna's [Ms. Cooks] and politicked within the agency for her company to receive the bid."

In addition to the written notes and memoranda, the bank officer told us that Mr. Hagans also made derogatory statements about Office Specialists and made other statements to suggest that IMRG would get the PBGC contracts.

After we informed Ms. Cooks about the above facts, she claimed no knowledge of the statements attributed to her and was not aware that the bank officer had contacted Mr. Hagans even though she had used him as a reference. After we advised Mr. Hagans that we had information that he had had contact with the loan officer, he told us that he did not know he was listed as a bank reference and did not remember speaking to the bank officer. He stated that no other PBGC contractors have used him as a bank reference. He added that if he had spoken with the bank officer that it "may look wrong" and in "hindsight" it would have been "bad judgment."

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## Scope and Methodology

We began our investigation in July 2000. In the course of the investigation, we interviewed current and/or former employees of PBGC, IMRG, and Office Specialists. We also interviewed cognizant Maryland bank officials. In addition, we reviewed IMRG loan file records, which were subpoenaed on our behalf by the Senate Committee on Aging, and PBGC records. We conducted our investigation in accordance with quality standards for investigations as set forth by the President's Council on Integrity and Efficiency.

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This concludes my prepared statement. I will be happy to respond to any questions you or other Members of the Committees may have.

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The CHAIRMAN. Thank you, Mr. Hast.  
Now, Mr. Strauss. You might want to pull the microphone a little bit closer to you.  
Thank you.

**STATEMENT OF DAVID M. STRAUSS, EXECUTIVE DIRECTOR,  
PENSION BENEFIT GUARANTY CORPORATION, WASH-  
INGTON, DC**

Mr. STRAUSS. Thank you, Mr. Chairman. I appreciate the opportunity to respond. I am a notorious micro-manager, and so it is killing me not to be able to take each one of these items and respond to each with some specificity.

Mr. Chairman, I was grateful for the opportunity to meet with your staff for about an hour-and-a-half last week to go over many of these issues in much greater detail. And, because of your time constraints today, what I would like to do is limit myself to four points this morning. I have five charts here which I think will help us with some of the mind-numbing complexity. So my charts will probably be helpful in terms of answering some of these questions.

The four points that I want to make, Mr. Chairman, are, first, I want to publicly apologize to Dr. Wilde for the way we handled his mother's case. She should not have had to go through this upsetting experience, and for that I am very sorry. And, Mr. Chairman, I want to assure you that shortly after Dr. Wilde's mother received that erroneous check in 1997, we fixed the glitch in what was then a new computer system to prevent this kind of error from ever occurring again.

Mr. Chairman, some of the details in Dr. Wilde's testimony about the phone calls to PBGC are very disturbing to me, and I want to assure you that I want to find out exactly what happened in each case and report back to you because I want you to know that in every office of the PBGC and every contract office, and you can go into the Waterloo office, you will see our service pledge posted on the wall. Calls are to be responded to in 24 hours. Letters are to be answered within a week, and I think that this has become an important part of our culture. And so, if there are problems with PBGC phone calls, that would be something that would be of great interest to me, and I want to assure you that I will investigate this personally and report back to the committee.

Second, witnesses at today's hearing have raised questions about specific contracts with the Integrated Management Resources Group. Mr. Chairman, I want to make two comments about these allegations. One, I would never tolerate, for one moment, the kind of conduct contained in these allegations, and I want the committee to know that. Second, over the last 3 years, the GAO, the Department of Justice, the PBGC's Inspector General and the PBGC's General Counsel have all conducted investigations and no one has been able to substantiate any of these allegations of misconduct. And so I want you to know that this is something that we have looked at for 3 years. I have looked at these procurements myself. I spent a day-and-a-half looking at each one of these procurements, and none of these allegations have been substantiated.

I want you to know that we continue to cooperate fully with all of these investigations. And, today, I am submitting for the record

a full report on this matter, which was prepared by PBGC's General Counsel.

Mr. Chairman, I want you to know that I remain confident in the integrity of our employees, and I am satisfied that we are correctly following the Federal Acquisition Regulation process. While I have not had the opportunity to see the OSI report released this morning, I welcome anything, any further review that will finally put these allegations to rest.

The third point that I want to make is to correct any misimpression from the earlier testimony that there is a delay in our participants receiving their benefits and that a delay in receiving these final determination letters has anything to do with our adherence to our ERISA statutory mandate, which is to provide continuous and uninterrupted benefits to each of the participants in these PBGC plans. Let me assure you that, when we take over a plan, we pay retiree benefits without interruption. And, as other participants become eligible for benefits, we pay them without delay. In other words, no participant ever has to wait to receive their benefits.

Mr. Chairman, I have attended almost 100 participant meetings and personally met with over 8,000 PBGC participants, and many of them are like Mr. Parks here. I mean, I have heard those same concerns, and I am acutely aware that the primary concern of these individuals is to receive their benefits promptly. And each month the PBGC pays over \$75 million in benefits to more than 215,000 participants. As I explained in great detail in my written testimony, the benefit amounts participants receive are considered to be estimated. And before we can calculate final benefits, we must satisfy the requirements of ERISA by verifying all of the plan records and participant data. In most cases, as with Mr. Parks, and I am very sympathetic with Mr. Parks, there is little or no difference between the estimated benefit and the final benefit amounts.

The other misimpression that I want to correct is with regard to benefit estimates. Benefit estimates have been a passion of mine at the PBGC. And I want you to know that you can call us up, and we can give you a ballpark benefit estimate in 5 minutes. And so, if someone is 20 years away from retirement and we have just trustee a plan, and they are wondering what the benefit might be, we can give you a ballpark benefit estimate in 5 minutes. If you are getting closer to retirement and it is important for you to have a precise benefit estimate, we now can provide those precise benefit estimates within 15 days.

Over the last 25 years, during the history of ERISA, obviously, technology has changed dramatically. We have much better technological tools now that help us to do these things. And I just want you to know that there should be no concern on the part of any PBGC participant about benefit estimates. You can get a ballpark one in 5 minutes. If you want a precise one, we can give it to you within 15 days.

My final point, Mr. Chairman, is that your committees, the PBGC's Inspector General and the GAO have made a number of recommendations over the past several years concerning PBGC benefit determinations, contract management and computer security. Mr. Chairman, we found these recommendations to be most

helpful. I am pleased to report to you that we have already implemented most of them, and we are following up on the rest. And as you know, Mr. Chairman, we have been reporting monthly to your committee on our computer security efforts. And as promised, we will complete our corrective action plan by September 30.

With that, I want to thank you, again, Mr. Chairman, for giving me an opportunity to appear this morning, and I welcome your questions.

[The prepared statement of Mr. Strauss follows:]

**STATEMENT OF DAVID M. STRAUSS**  
**Executive Director**  
**PENSION BENEFIT GUARANTY CORPORATION**  
**before the**  
**COMMITTEE ON SMALL BUSINESS**  
**and the**  
**SPECIAL COMMITTEE ON AGING**  
**SEPTEMBER 21, 2000**

## EXECUTIVE SUMMARY

The Committees asked me to address three issues: PBGC customer service, contract management, and computer security.

I PBGC Customer Service

The Committees have raised important questions about PBGC customer service, including the timeliness and accuracy of the PBGC's benefit determinations. I understand the Committees' concerns and I have tried to address them. Over the last three years, we have reformed our benefit determination process to accelerate the issuance of final benefit determinations and improve their accuracy. It is important to note that there is no delay in paying benefits to people when we take over a pension plan. We pay estimated benefits until we determine final benefits. For most people, there is no change between estimated and final benefit amounts.

In addition, soon after the PBGC trustees a plan, I often meet personally with plan participants. During the three years that I've been at the PBGC, I have attended almost 100 participant meetings -- virtually every meeting held since I became Executive Director -- and I personally met with more than 8,000 participants.

The PBGC's IG reported to the Committees on our past processing times. We agree with the IG that these past processing times were too long. However, we have significantly improved our operations and shortened the time it takes to issue benefit determinations, which the IG noted in his second report.

II Contract Management

At the Committees' request, the GAO reviewed the PBGC's contract management. The GAO found that, while we complied with all legal requirements, there are areas where the PBGC can further improve its operations through better contracting procedures and monitoring. We agree and have already begun implementing the GAO's suggestions.

III Computer Security

We have been working with the Committees on the PBGC's computer security efforts to protect participant records. We have enhanced our computer security to make sure that our electronic participant records and benefit information files are safe from misuse or compromise.

**Mr. Chairmen and Members of the Committees:**

Good morning. It is a privilege to be back in the Senate where I worked for 13 years as a Senate Chief of Staff and as Staff Director to the Senate Committee on Environmental and Public Works.

I appreciate this opportunity to address the issues that the Committees have raised concerning PBGC customer service, contract management, and computer security. I share the Committees' concerns, and have addressed many of these same issues during the three years that I have been Executive Director of the PBGC. I look forward to working with the Committees to continue to make progress in these areas.

This morning, before I discuss the three issues on which you invited me to testify, I want to give you some background about the PBGC.

**BACKGROUND ON THE PBGC**

The PBGC was established in 1974 as a wholly-owned federal corporation. We administer an insurance program that protects the pension benefits for participants in private-sector defined benefit pension plans -- plans that promise workers a specific monthly benefit for life at retirement based on age, salary, and years of service. The PBGC provides protection for 43 million American workers and retirees in nearly 40,000 private-sector defined benefit pension plans.

The PBGC assumes control of underfunded pension plans of bankrupt companies and administers the plans. We have taken responsibility for nearly 3,000 terminated pension plans with about 500,000 participants and beneficiaries. The PBGC pays retirement benefits based on the provisions of each pension plan it takes over. This means, in effect, that we are operating almost 3,000 benefit programs, no two of which are exactly alike.

Our operations are financed by insurance premiums paid by plan sponsors of covered plans, assets from the pension plans that we trustee, recoveries from employers that terminate underfunded plans, and investment income.

Each month we pay over \$75 million in benefits to more than 215,000 retirees, and we will pay benefits to nearly 320,000 more when they become eligible in the future. For example, Chairman Grassley, in your home state of Iowa, the PBGC is the trustee of 28 plans and pays \$19 million a year to 5,800 participants. Chairman Bond, in your home state of Missouri, we are the trustee of 36 plans and pay \$6 million a year to 2,300 participants.

Today, the PBGC is in the best shape it has ever been. We ended Fiscal Year 1999 with a \$7 billion accounting surplus. After 21 consecutive years of deficits, this is the fourth year in a row that we ended in the black.

This is a remarkable turnaround, especially considering that as recently as the early 1990s, both *The New York Times* and *The Wall Street Journal* headlined the PBGC as the next savings and loan crisis.

Just five years ago:

- The PBGC was on both the GAO and the OMB High Risk Lists,
- Our books were not auditable, and
- The PBGC had a \$3 billion deficit.

Today:

- The PBGC is off the GAO and OMB High Risk Lists,
- The PBGC's financial statements are receiving unqualified opinions from PriceWaterhouse Coopers, and
- The PBGC has turned a \$3 billion deficit into a \$7 billion surplus.

The PBGC has taken advantage of the longest period of uninterrupted economic growth in our nation's history to build a \$7 billion cushion to protect the insurance program in the event of an economic downturn. This cushion is important because the PBGC remains exposed to a variety of long-term risks, most of which are beyond our control. (Supplement A provides some additional materials explaining how we turned our deficit into a surplus. )

#### PBGC CUSTOMER SERVICE

The first issue that the Committees asked me to address this morning is PBGC's customer service, including the timeliness and accuracy of our benefit determinations. Mr. Chairmen, I want to assure you that, from my first day at the PBGC, I have tried to create a customer-service-oriented culture.

Good constituent service has been an ideal against which I have measured my own performance during my entire 24-year career in government. From my very first day of my first government job, I have always understood the importance of providing the highest level of personal service with the quickest turnaround time possible.

At the PBGC, I try to follow the example of John Chambers, the CEO of Cisco Systems, who says that a CEO should spend 50 percent of his time with customers. So, after the PBGC trustees a plan, I often meet personally with plan participants to explain PBGC's insurance program, to assure participants that their benefits are safe, and to address any concerns they may have.

During the three years that I've been at the PBGC:

- I attended almost 100 participant meetings – virtually every meeting held since I became Executive Director;

- I personally met with more than 8,000 participants;
- Prior to each of these participant meetings, I personally reviewed the details of each plan to determine whether there were any special benefit concerns that should be addressed; and
- At these meetings, I received many comments from participants and, as a result, we made a number of changes in the way we respond to their needs.

To measure how well we have been doing in meeting our customers' expectations, we instituted annual surveys of participants. These surveys are reported in our annual reports and the survey methodology is reviewed by PriceWaterhouseCoopers. According to the most recently completed survey, 70 percent of participants rated the PBGC's service as "above average" or "outstanding."

#### Overview of Benefit Determination Process

One of the customer service issues that the Committees asked me to address is the timeliness and accuracy of our benefit determination process. When we take over a plan, the plan often includes participants who are already receiving benefits. Our highest priority has always been to ensure that these participants continue to receive their benefit payments without interruption. As other participants become eligible for benefits, they also begin to get their benefits without delay. In other words, no participant ever has to wait to receive benefits.

At the time the PBGC takes over a plan, however, the benefit amounts these participants receive are considered to be "estimated" until we are able to verify all the plan records and participant data needed to calculate final benefits, as necessary under the law. In most cases there is little or no difference between estimated and final benefits. Once the PBGC completes the benefit calculation, a final benefit determination letter is issued to each participant. (Supplement B provides a full explanation of our benefit determination process.)

#### Final Benefit Determinations

In the 1980s and the early 1990s, the Corporation's focus was on its growing deficit and on the sudden influx of bankruptcy cases in major industries such as airlines. As a result, the PBGC did not promptly issue final benefit determinations. Because of these processing delays, retirees often received estimated benefits for many years, and participants not old enough to retire received no statements of estimated benefits. I have made the speedier issuance of final benefit determinations to participants a key element of our improved customer service.

Last year, at the request of the Committees, the PBGC's Inspector General reviewed the timeliness of our benefit determination process. The IG found that the PBGC generally had taken an average of 5.7 years to give participants their final benefit determinations, with half having to wait over seven years. While we agree with the IG that these processing times were too long, the IG's report does not reflect the improvements we have made and the current status of the PBGC's operations.

To improve the benefit determination process, the PBGC reorganized its Insurance Operations Department, developed new computer systems, and made numerous policy and procedural changes. These efforts have produced positive results. As of today:

- We increased the number of final benefit determinations issued from 20,000 in 1993 to more than 60,000 each year since 1995;
- We reduced our inventory of unissued benefit determinations from a high of 300,000 in 1994 to about 165,000 today;
- We completed benefit determinations for virtually all plans trusted prior to Fiscal Year 1996; and
- For plans that we trustee today, we expect to issue final benefit determinations within three years. Mr. Chairman, three-year processing is the best we can do under the current statutory requirements of ERISA.

Other customer service initiatives

In addition to faster benefit determinations, we have also taken numerous other steps to better meet the needs of our customers. (Supplement C provides examples of these customer service initiatives and the results of surveys that show how we have been doing in meeting our customers' expectations.)

**CONTRACT PLANNING AND ADMINISTRATION**

The second issue that the Committees asked me to address was the PBGC's contract planning and administration. The GAO recently reviewed our contract management. Although the GAO's draft report found that we complied with all legal requirements, it did identify a few areas where the PBGC can further improve its operations through better contracting procedures and monitoring.

We have accepted the GAO's recommendations and have already taken steps to begin implementing them. (Supplement D provides an explanation of the PBGC's contracting process.)

One of the issues that the GAO looked at was the way we use sole source contracts for PBGC field offices. In the early 1980s, the PBGC was faced with a significant influx of large underfunded pension plans. We responded to these growing workloads by establishing field benefit offices and contracting for benefit administration services.

As I have discussed with you and your office, Chairman Grassley, the Waterloo, Iowa field benefit office is a good example of this process. The Waterloo field office was set up in 1985 to handle three pension plans for about 5,700 employees of Rath Packing, a meat packing company in Waterloo. The manager and several other employees of the Waterloo field office had worked in Rath's benefit payments department, and they were uniquely qualified to handle the provisions of the Rath plans.

As the PBGC trusted more plans, we took advantage of the specialized skills that the Waterloo field office gained in processing the Rath plans. Today, the Waterloo field office employs 20 individuals who do the benefit administration for 850 plans – over a quarter of the PBGC's almost 3,000 plans. The Waterloo field office provides benefits, or will provide benefits in the future, to about 135,000 participants.

Initially, as with the Waterloo field benefit office, the PBGC often entered into sole source contracts with pension administrators from the insolvent companies whose plans we trusted. The administrators' familiarity with plan provisions and personnel records was critical for a smooth transition for participants.

Over time, the number of plans assigned to these field offices increased. Therefore, in 1997, for the first time we competitively bid the four largest field benefit offices. By 2001, all these offices will have been competitively procured. We have found that contracting for services with these field benefit offices continues to be a successful way to meet the demands of unpredictable workloads.

#### COMPUTER SECURITY

The third issue that the Committees raised is the adequacy of the PBGC's computer security. Mr. Chairmen, I want to address the Committees' concerns and assure you that we have enhanced our computer security to make sure that our electronic participant records and benefit information files are secure.

At the request of the Committees, we developed a comprehensive plan to upgrade the PBGC's computer security. We have been executing our plan and reporting monthly to the Committees on our progress, and we will complete work on the plan by September 30, 2000, as promised.

In the past, the biggest threat to participants' records was a fire or other natural disaster. Virtually all of our participant data base was on paper – and we had no backup records. Today, with a computerized participant data base, we face a different problem – protecting these records from hackers, viruses and the other dangers of the electronic age.

We have already taken a number of steps to enhance our computer security:

- In 1997, the PBGC tested a primary computer vulnerability – the penetration of computer systems from the Internet – and we strengthened the firewall to prevent unauthorized access to data from the Internet; and
- In 1999, our Inspector General conducted a penetration test of our computer systems and recommended other areas for improvement.

In recent months, as part of our corrective action plan:

- We have tightened standards for passwords;
- We have set up mechanisms to identify, and warn us against, attacks against our firewall or Internet servers;
- We strengthened information security policies and procedures; and
- We now have strong physical security for our information resources.

We are determined to protect our data, particularly our participant records. We will insist that our information security practices embody the best practices of government and industry, including a process for continuous evaluation and improvement.

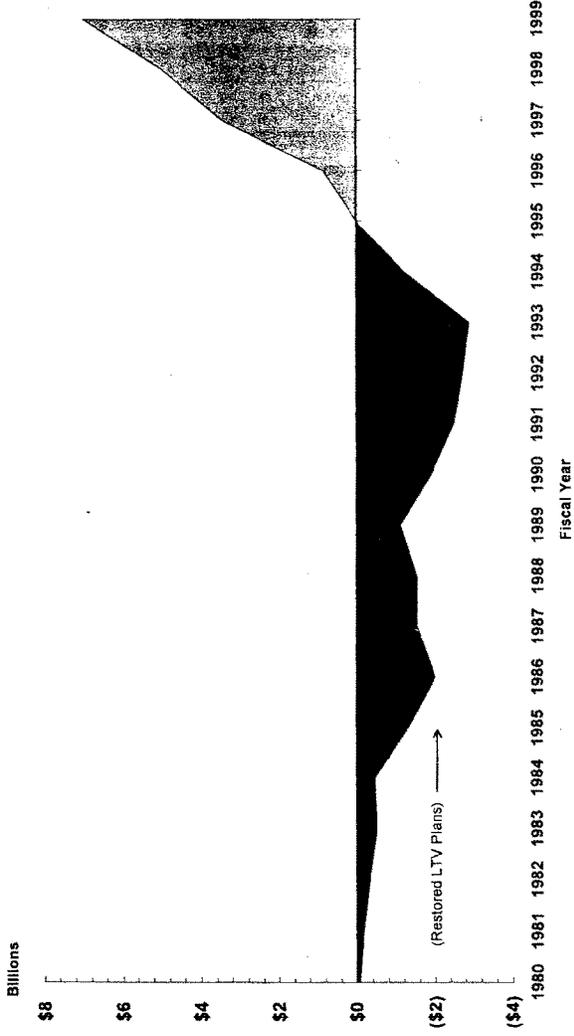
#### CONCLUSION

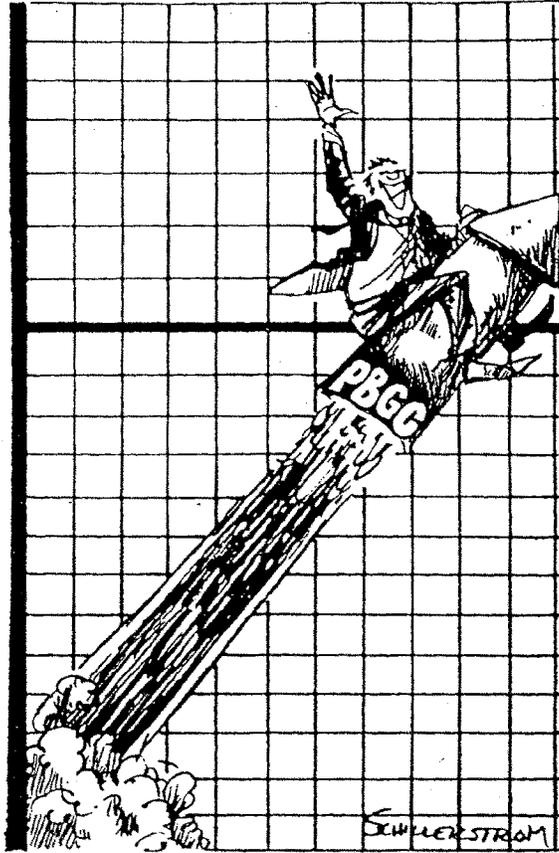
In closing, I want to thank you again, Mr. Chairmen, for giving me the opportunity to appear before you this morning. I appreciate the Committees' interest in the PBGC's operations, and I look forward to working with you and the members of the Committees.

**SUPPLEMENT A**

**Solvency Chart, Editorials, and Cartoons**

Chart 1  
Net Position PBGC Single-Employer Program  
FY 1980 - 1999









# Business Insurance

## PBGC's cushion grows 40% in 1999

By JERRY GEISEL

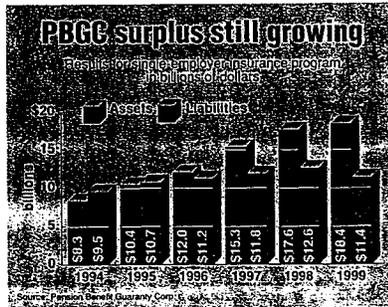
WASHINGTON—Helped by a strong economy, higher interest rates and no terminations of big underfunded pension plans, the Pension Benefit Guaranty Corp.'s surplus continues to swell.

The PBGC's surplus—the difference between assets it holds and benefits it must pay to participants of failed corporate pension plans it has taken over—climbed to a record \$7.04 billion last year, up 40.3% from \$5.01 billion in 1998 and more than double its \$3.48 billion surplus in 1997, according to the agency's 1999 annual report, which will be released later this week.

"I was very satisfied with the year. We are continuing to build on our cushion," said PBGC Executive Director David Strauss.

The PBGC's robust health is good news for employers with defined benefit plans that

See PBGC on page 22



GRAPHIC BY JOHN HALL

## PBGC

*Continued from page 1*

support the PBGC's insurance program through premiums they pay the agency. In 1974, when Congress created the PBGC to guarantee plan participants' basic, vested pension benefits, the annual premium was set at \$1 per plan participant.

Since the agency's creation, however, Congress on several occasions has had to raise premiums as losses from terminations of underfunded plans mounted and the PBGC's financial stability worsened. Today, the annual premium for fully funded plans is \$19 per participant, while an employer with a severely underfunded plan can pay as much as several hundred dollars for each person in its pension plan.

With a growing surplus, the PBGC's premiums—which, for fully funded plans, haven't been raised since 1991—should remain stable.

The rising surplus has led some business groups to call upon Congress to lower the agency's rates, a move Mr. Strauss said would be imprudent given the exposures the agency faces.

That \$7 billion surplus compares with an estimated \$17 billion to \$19 billion in unfunded obligations under pension plans maintained by financially weak companies—those with below investment grade bond ratings, he said.

Given the size of that exposure, "I don't think a \$7 billion surplus is out of line," Mr. Strauss said.

If PBGC premiums were to be cut now and the economy soured, leading once again to terminations of hugely underfunded plans, that financial cushion quickly erode and premiums would have to be raised, a scenario that Mr. Strauss said he does not want to see develop.

"My concern would be by making precipitous decisions now, you run the risk of having to raise premiums later when our premium payers are under a lot of (financial) pressure," he said.

The prudent course of action, he said, is to continue to take advantage of what has been a long run of near-perfect economic conditions to continue to build the PBGC's cushion.

The agency's growing surplus is the result of several factors, not the least of which is the sharp reduction—due to the strong economy—in terminations of underfunded plans.

Last year, for example, the PBGC reported \$224 million in claims—the gap between plan assets and liabilities—from completed and probable terminations of underfunded plans. The two largest claims came from the termination of a pension plan sponsored by Allegheny Health, Education and Research Foundation, which had \$23 million in unfunded benefits, and failed retailer, Caldor Corp., whose two plans had a total of \$10.5 million in unfunded benefits.

Those terminations pale in comparison to some of the blockbuster pension plan failures of the late 1980s and early 1990s. The termination and takeover by the PBGC of failed airliner Pan American World Airways' three pension plans—two in 1991 and one in 1992—alone resulted in a net loss of \$688 million incurred by the PBGC.

Higher interest rates also aided

**'My concern is that very few new people are coming into the system,' says David Strauss of the PBGC.**

the PBGC's financial results. The agency in 1999 used a somewhat higher interest rate assumption compared with 1998—reflecting market conditions—which has the effect of lowering the value of its liabilities.

While the PBGC's financial fortunes have vastly improved since a low point of 1993, when it faced a deficit of nearly \$3 billion, significant potential risks to the agency's insurance program and its premium payers remain.

Covered in the agency's insurance program are 184 companies with below investment grade bond ratings and whose pension plans are underfunded by between \$17 billion and \$19 billion, according to the PBGC.

Some of those companies with below investment grade bond ratings are in cyclical industries that are especially vulnerable to economic downturns.

For example, pension plans sponsored by steel companies with below investment grade bond ratings are underfunded by \$4.5 billion, while airline companies with below investment grade bond ratings account for another \$3.7 billion in un-

funded liabilities, the PBGC said.

Even as the PBGC's financial condition has never been better, its annual report details a continuing decline in the number of defined benefit plans.

In 1999 alone, employers terminated close to 2,000 fully or overfunded plans, while the agency took over 130 pension underfunded plans. That brought down to about 38,000 the number of defined benefit plans insured by the PBGC, compared with 112,000 plans in 1985.

The decline in defined benefit plans has been especially pronounced among small employers. Between 1985 and 1999, plans insured by the PBGC with fewer than 100 participants fell to 24,000 from 90,000, while covered plans with between 100 and 999 participants declined to about 11,000 from just over 19,000.

By contrast, the number of large plans—those with more than 10,000 participants—actually increased slightly between 1985 and 1999, though that probably is the result of a rise in the number of retirees and vested participants who have left a company, as well as corporate mergers, rather than new plans being created, the agency said.

The number of active participants in PBGC-insured plans actually fell to 22.6 million in 1996—the last year statistics are available—from 27.3 million in 1988.

Citing these and other figures, the PBGC's Mr. Strauss is an outspoken proponent of the need to revitalize the defined benefit system.

"My concern is that very few new people are coming into the system," Mr. Strauss said.

A consensus has emerged among benefit experts that more financial incentives are needed to encourage employers to offer defined benefit plans, while employers should be allowed to offer plans with more flexible designs and that government red tape needs to be cut, he said.

While the immediate prospects of Congress passing a defined benefit plan revitalization package incorporating those elements are not good, Mr. Strauss is optimistic about the long-term prospects of such a package.

"This is an issue Congress needs to address because there are large numbers of people in this country who are not prepared for retirement. In the short run, there may be some bumps in the road, but over the long run I am much more optimistic," he said.

■

## Opinions

## Keep the PBGC's cushion

WHEN IS ENOUGH ENOUGH?

That question was raised last year when the Pension Benefit Guaranty Corp. reported that its surplus had grown fourfold from 1996 to 1997, to a record \$3.48 billion.

The question is certain to be asked again this year by employers, benefit lobbying organizations and lawmakers after the PBGC reported that its 1998 surplus has topped the \$5 billion mark (*BI*, March 29).

The underlying reasons for the federal pension agency's surplus are clear. A healthy economy has meant high investment returns on assets held by the PBGC. The strong economy also has meant a complete absence of terminations of massively underfunded plans and, thus, fewer new losses borne by the PBGC.

Simply put, the PBGC is in its best financial shape ever.

Indeed, its \$5 billion surplus is a sea change from just five years ago, when it faced a nearly \$3 billion deficit that triggered fears that it would need a bailout by the U.S. Treasury to honor its obligations to pay benefits to workers and retirees in failed pension plans.

The PBGC's financial turnaround is good news for employers with defined benefit plans. As the agency's financial condition deteriorated, the premiums employers pay the PBGC were raised repeatedly—and by substantial amounts. What was once an annual premium of \$1 per participant has grown to \$19 per participant today. And that is only the base premium, which is assessed on employers with fully funded plans. Employers that maintain poorly funded plans can be liable to pay the PBGC as much as several hundred dollars per year for each participant in their defined benefit plans.

With a \$5 billion surplus, there is no question that employers will see no additional increases in the PBGC premium rate for years to come.

However, the PBGC's robust health does not mean those premiums should be cut. While a \$5 billion surplus is impressive—especially given the agency's woeful financial condition of just a few years ago—it could easily and quickly disappear if the economy dramatically reverses course.

Even in these flush economic times, there are plenty of financially troubled companies whose big underfunded plans pose a risk to the PBGC. The agency says that these



companies sponsor plans with \$15 billion to \$17 billion in unfunded liabilities. We'd like to see that exposure much lower—or the PBGC's surplus much higher—before premiums are cut and the agency sees its financial cushion grow thin.

Rather than focus on PBGC premium reductions at this time, a better course of action for lawmakers would be to concentrate on a far more important pension problem: the continuing decline in the number of companies offering defined benefit plans.

Giving employers more incentives to offer defined benefit programs—by legislating such measures as allowing the funding of larger benefits, permitting greater flexibility in plan design, and reducing government red tape wherever possible—would be an important and needed step that lawmakers could and should take to begin to reverse that decline.

Defined benefit pension plans are very much worth saving, as they are the only type of pension plan to promise workers secure lifetime retirement benefits. Having a financially strong PBGC makes that defined benefit plan promise even more secure.

## SUPPLEMENT B

The PBGC's Benefit Calculation Process1. Overview

Plans taken over by the PBGC invariably involve companies that have been financially troubled for many years. These companies have often filed for bankruptcy or have ceased operations altogether. Because of financial pressures, these companies have usually neglected the financial condition of their pension plans, failed to keep the plans amended to conform to changes in the law, and allowed their pension records to deteriorate.

Once the PBGC becomes the trustee of a plan, it must collect or reconstruct and verify all of the records necessary to calculate benefits. For example, the PBGC must find every plan document and amendment that impacts on the benefit calculation. In certain cases, Title IV of ERISA requires the PBGC to attempt to find every plan document that has been in effect over the past 30 years. Where plan records cannot be found, or where the plan has not been kept up-to-date, the PBGC must reconstruct plan provisions by reviewing the plan's operational history, and applying new pension provisions required by recent changes in the law.

The PBGC must also collect or reconstruct and verify all of the data for each of the plan participants. This includes, for example, records on wage history, work history, and personal data such as age and marital status. Where this data is not readily available, the PBGC must reconstruct the data from secondary sources such as Social Security.

After the PBGC trustees a plan, we take custody of any remaining plan assets. In many cases, these assets are difficult to locate. In other cases, the assets are tied up in illiquid investments or have been improperly transferred to the failing employer in the form of a loan that is no longer collectible. Because the amount of plan assets often affects the amount of the participants' benefits, it is important to locate assets, unwind poor investments, and account for the plan assets .

Finally, in many cases, the amount of a participant's benefit depends on the PBGC's experience with recoveries from plan sponsors. Because plan sponsors are liable to the PBGC for the plan's funding shortfall, we perform a financial analysis of the sponsor and related companies and estimate the amount expected to be recovered.

Where there are uncertainties, this estimate might have to be delayed until the uncertainties can be resolved. Additional delays may arise when the amount to be recovered depends upon the outcome of bankruptcy or other litigation to collect liabilities owed to the PBGC.

Only after these steps described above have been completed does the PBGC have sufficient information to complete the calculation of final benefits.

## SUPPLEMENT C

## CUSTOMER SERVICE INITIATIVES

Services To Participants

In addition to faster benefit determinations, we have also taken numerous other steps to better meet the needs of our participant customers. For example, we have revised our policies to make them more participant friendly by:

- Establishing a policy of providing estimated benefits within 15 days of request for participants in the largest trustee plans;
- Appointing a participant problem resolution officer;
- Establishing an Internet-based Pension Search Directory to locate missing participants so they can get the pensions that are owed to them; and
- Accelerating the payment of small lump sum benefits.

In addition to these policy changes, we have made it easier for participants to contact us by:

- Setting up a Customer Service Center with a toll-free telephone number so that participants can speak personally with trained customer service representatives. (The center handles a quarter million calls per year);
- Establishing a "One Call Does It All" policy. This means we will return phone calls within 24 hours and that we will either answer a caller's question with that first phone call, or we'll let them know who will handle the problem and when they can expect an answer. If it is found that it is going to take longer to answer than initially thought, we will call back to keep the customer informed of our progress;

- Establishing an Internet website to provide on-line information on PBGC and electronic access to PBGC staff; and
- Providing earlier, more frequent and improved communications with retirees and deferred vested participants to advise them of the status of their benefits, including periodic newsletters.

**Services To Premium Payers and Practitioners**

In addition to the participants who depend on us for their benefits, the PBGC has another distinct group of customers – plan sponsors and the pension practitioners who advise them. We have also revised our customer service policies to improve our services to premium payers:

- We greatly simplified the standard termination process;
- We moved the premium filing date to October 15th to make it coincide with the filing date for the Form 5500;
- We eliminated the widely criticized Top 50 annual list of underfunded plans;
- We made it easier to stay within the safe harbor for estimated premium payments;
- We revamped our premium compliance audit program;
- We eased our premium penalty policies;
- And we are speeding up our processing of requests for premium refunds and penalty waivers.

In addition to these substantive program changes, we have made it easier for premium payers to contact us by:

- Setting up a toll-free number, 1-800-736-2444, to answer questions from pension practitioners and plan sponsors about premiums, standard terminations, and plan coverage;
- Appointing a practitioner problem resolution officer, who handles calls from plan administrators and pension professionals;
- And establishing a PBGC website, [www.pbgc.gov](http://www.pbgc.gov), which includes answers to frequently-asked questions about premiums, standard terminations, and plan coverage.

#### Participant and Practitioner Surveys

To measure how well we have been doing in meeting our customers' expectations, we instituted annual surveys of participants and practitioners. These surveys are reported in our annual report and the survey methodology is reviewed by PriceWaterhouseCoopers.

According to the most recently completed surveys, 70 percent of participants and 66 percent of practitioners rated the PBGC's service as "above average" or "outstanding." We have made a great start but we will not be satisfied until we achieve our goal of 90 percent of participants and 81 percent of practitioners rating our service as "above average" or "outstanding." We are committed to reaching that goal.

## SUPPLEMENT D

The PBGC's Contracting Process

1. Whenever a PBGC Office wants to hire a contractor to provide a service, that office submits an Advanced Procurement Plan to the PBGC's Procurement Department. They also submit a Statement of Work describing the work they want done.
2. The submitting office, together with the Procurement Department, decides whether to put the contract out for public competition or to "sole-source" the contract to a single pre-chosen contractor in accordance with the Federal Procurement Regulation (FAR). It is the PBGC's policy to use competition whenever practicable.
3. The Procurement Department publishes an announcement of the intended procurement in the *Commerce Business Daily* (CBD), which is published daily as a newspaper and on the Internet. The public is invited to ask for a *Request for Proposals* (RFP).
4. The RFP is sent to anyone who asks for it. It describes what work PBGC wants done, and how PBGC will evaluate any offers that are submitted, e.g. 70% on technical expertise and 30% on cost.
5. After proposals are received, a panel of technical experts (usually three people) is convened. Each member separately evaluates the technical information in the proposal. This includes such things as the skills of personnel, the experience of the firm, and the approach the firm plans to take to getting the job done.
6. Each member then marks the score for each item on a PBGC score-sheet in accordance with the previously announced and published evaluation criteria. Then the panel meets to discuss their findings and arrive at a consensus. The panel writes a description of their evaluation process and what they found, and gives it to the Procurement Department.

7. **The Procurement Department evaluates the price and then combines the cost score with the technical panel's score to see which offers are ranked highest. Usually the top three remain eligible to get the award.**
8. **The Procurement Department then negotiates with these vendors on price and on any other terms that could give PBGC a better deal. Each vendor has the chance to clarify anything that was ambiguous and to make changes that improve their chance to win the contract.**
9. **Based on the negotiations each offeror submits final revisions to their proposal, which are evaluated as in paragraphs 5 and 6.**
10. **An awardee is selected by the Contracting Officer (the head of the Procurement Department), based on which offer he or she concludes will provide the best value to PBGC, meaning the best combination of quality and price.**

Chart 2  
PBGC Benefit Determinations Issued  
FY 1988 - FY 1999

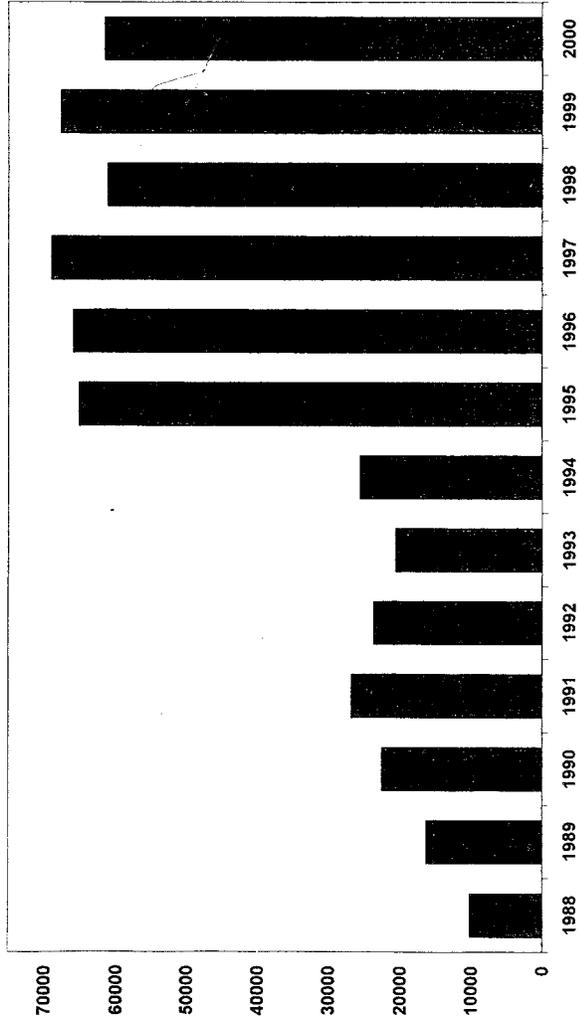
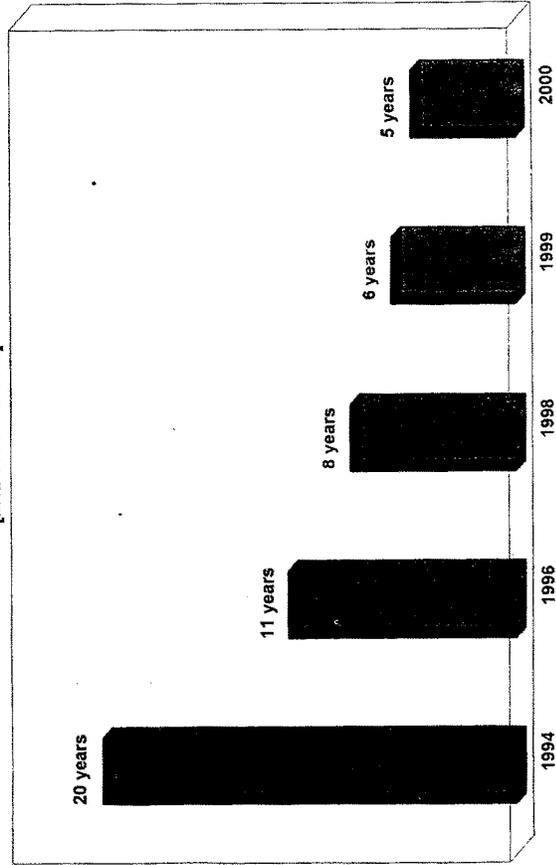


Chart 3

Age of the Oldest Plan  
With Incomplete Benefit Determinations  
[End of Fiscal Year]



2. Information and Records ERISA Requires the PBGC to Collect, Verify, and Analyze

- Plan document establishing the plan
- Collective bargaining agreements
- Plan amendments adopted
- Benefit provisions for:
  - normal retirement
  - early retirement
  - disability retirement
  - death benefits and spousal benefits
- Actuarial valuation reports
- Annual reports of the plan
- Schedules of plan assets
- Annuity forms in which benefits may be distributed
- Pre-termination liabilities (payable other than benefits)
- Participant Data
  - wage history
  - employment history (including any breaks in service)
  - history of coverage in other pension plans
  - personal information such as age, marital status, age of spouse, address, etc.
  - spousal consent forms
  - benefit history of owner-employees
  - for retirees: the retirement date, amount of monthly benefits, and the annuity form in which benefit are paid
  - for non-retirees: normal retirement age and early retirement age
  - any employee contributions to the plan
- Other Information
  - employer financial information
  - information on other businesses in the employer's controlled group
  - bankruptcy claims and recoveries
  - due and unpaid employer contributions to the plan

**3. Final Benefit Determinations**

As noted above, in the early years of the PBGC's existence, final benefit determinations were not a high priority. In working to make the PBGC a premier customer service agency, I recognized that final benefit determinations were an important product and that the PBGC's operations should focus on ensuring that benefit determinations were quickly and accurately issued.

A few key statistics highlight the magnitude of this problem in FY 1994:

- The PBGC was issuing from 20,000 to 25,000 benefit determinations per year, but the backlog of participants awaiting final benefit determinations had grown to 300,000 -- a 12 year workload;
- We had over 70,000 participants in over 600 trustee plans who had been waiting more than 7 years for their final benefit determinations, many as long as 20 years; and
- We were taking in more participants each year than issuing benefit determinations -- so the backlog was growing.

**4. Improvements in Benefit Determinations**

To address these problems, the PBGC's management team initiated a complete operational overhaul. The challenge in this overhaul was to find ways to issue final benefit determinations as quickly as possible within the complex legal and operational requirements of Title IV of ERISA. We did this by developing better processing, better tools, and better policies.

One of the most important changes was the reorganization of the PBGC's Insurance Operations Department. The reorganization introduced team case processing, where auditors, actuaries, pension administrators, and attorneys are asked to work as a team to process cases. Team case processing enables employees to proceed simultaneously on the numerous processing steps necessary to issue benefit determinations.

To support our team processing, we also developed better tools:

- Our new computer systems support the benefit calculation process;
- Our new document imaging system allows us to instantly access participants' records rather than having to wait for a paper file to be retrieved; and
- PRISM, our participant database, includes data needed for paying benefits as well as other data useful for measuring Corporate performance and improving internal controls.

In addition to better processing and better tools, we developed better policies:

- A new policy where benefit determinations are issued early to participants who have been receiving benefits for at least one year where there is little risk that the benefit is incorrect; and
- A new policy to streamline our procedures for estimating recoveries from employers for plan underfunding which will enable us to issue benefit determinations more quickly.

5. Benefit Determinations Today

As a result of better processing, tools, and policies, today we have dramatically improved the situation:

- Beginning in FY 1995, we tripled the number of benefit determinations we made each year, issuing over 60,000 benefit determinations a year (see chart #2).
- Even though we have trustee record numbers of new plans, and have taken in more than 260,000 new participants, we have still been able to cut the benefit determination backlog to 165,000 (less than a 3-year inventory as compared to the 12-year inventory of 1993-94).

- **Since FY 1995, we have been systematically targeting those participants who had been waiting the longest. By FY 1999 we had targeted all pre-1994 plans. And, by the end of FY 2000, we expect to complete all pre-1996 plans. For final benefit determinations issued in FY 1999 the average processing time was 5.7 years. For FY 2000 this time will be under 5 years, and for plans we trustee today, we expect to issue benefit determinations within 3 years (see chart #3).**

The CHAIRMAN. Thank you. If it is OK with Senator Breaux, I think what we will do is, even though there are only two of us here, do 5-minute turns so if other members come in, they will not miss a chance. So will the staff make sure that I do not take more than 5 minutes, at least in the first round.

Mr. Parks, I have already said how you are assisting a friend during a time of ill health, and so I want to thank you for coming here away from that trying time for you. Today, you testified that PBGC's delays and absence of communication caused uncertainties about your benefits since April 1996. I know you finally received your final benefit notice just last month. Do you know whether all of the 250 kwik-way participants have received a determination of their benefits as well?

Mr. PARKS. Mr. Chairman, I do not know if all. I have checked and quite a number of them have and all approximately at the same time that I received mine. But I am sure there are others that received it as well.

The CHAIRMAN. Do you have recommendations for the PBGC on how it can improve communication with participants once it assumes responsibility for the administration of a plan?

Mr. PARKS. Well, without desiring to offend anyone, I have to—refer to the 17 attachments to my testimony which clearly indicate that we have telephone calls that are not responded to, we have letters that are not answered. It would seem to me that just the common courtesy of proceeding to respond to those would be a step in the right direction.

The CHAIRMAN. So the 24-hour rule that Mr. Strauss has referred to is not necessarily followed in the people you have had contact with.

Mr. PARKS. That is correct, sir.

The CHAIRMAN. To Inspector General Poll, in your November 24th, 1998, report, and it was titled, "Pension Plan Participants Impacted by Delays in Initial Determination Letter Issuance," the Corporation asserted a 3-year goal for processing plan determinations, as adopted in its Results Act Strategic Plan. Has that goal been achieved?

Mr. POLL. I have not had a chance to audit that particular situation at this point in time. Because of the last follow-up report, we had indicated that it takes about 7 years or 6 to 7 years to be able to produce that. That is something that is on my radar screen to be doing in the future.

The CHAIRMAN. Is it fair to say that if the Corporation supplied the necessary human resources to gather participant information and facilitate actuarial valuations of plan determination, that the Corporation would be able to meet this 3-year goal?

Mr. POLL. I think it certainly is possible. I think you have to arrange your resources, as you had indicated, and also have the proper systems in place to be able to do that. But, again, I have not looked at that. And there are probably some additional efficiencies that could be derived from reengineering their process or looking at their processing in different ways.

The CHAIRMAN. Mr. Strauss, how long does it take?

Mr. STRAUSS. How long does it take us to do these final benefit determinations? I am sorry, Mr. Chairman?

The CHAIRMAN. Yes, that is right, and particularly in regard to the 3-year goal that you have set.

Mr. STRAUSS. What I can tell you, Mr. Chairman, is that, for plans that we are taking in today, we should be able to meet the 3-year goal.

The CHAIRMAN. I want to visit with you, Mr. Strauss, about the actuarial valuation completion date. Can you explain why it can take a year or more to issue the letter after—and I want to emphasize after—the valuation is complete? Because it seems to me that once all of the hard work is done, then the letter could go out immediately.

Mr. STRAUSS. Mr. Chairman, up to now, our most important task has been to work down these backlogs. And I think that this is where my charts would be helpful.

The CHAIRMAN. OK. Take your time.

Mr. STRAUSS. To try to make some sense out of this for the committee, I think that there are a couple of charts here that will be helpful in terms of understanding this process. I do not want to say anything here that would reflect poorly on my predecessors in any way, because when ERISA was passed in 1974, our statutory mandate was to provide continuous and uninterrupted benefits to the participants in the plans that we trustee. And so the Corporation's critical priority was to make sure that participants were paid.

And so you see here, in 1994, the average age of the oldest plans in our inventory are about 20 years because the priority, up to this time, has been to make sure that when we trustee a plan we put the participants in pay status. And so doing the final benefit determinations was never a Corporate priority. Now that we have been able to work down this backlog, and thanks to improved technology, you can see that we are making pretty steady progress here in terms of working down this aging inventory.

And while this is going on, Mr. Chairman, you can see from my second chart here that the number of final benefit determinations that were produced each year was somewhere around 10,000, 15,000, 20,000. For the last 6 years, we have been able to push out about 60,000 final benefit determinations each year. And so I think that we have been able to take advantage of these perfect economic conditions, where we have not been taking in large plans, to work down these historical backlogs. And as you can see, we have improved our output.

The CHAIRMAN. Let me follow up before you ask your first question because I think it fits right in here, a continuation.

Now, you have asserted that in fiscal year 1999 the average age of the IDLs issued after date of trusteeship was five and seven-tenth years. Now, the Inspector General stated in his written testimony that the Corporation uses a standard averaging method which masks the number of letters, IDLs, that take longer to process. So I would like to give you an opportunity to respond to that statement. The five and seven-tenth years is the average age of the IDLs that were issued in fiscal year 1999, so half took longer than that, and obviously took a much shorter time; is that correct?

Mr. STRAUSS. Mr. Chairman, I think what I would like to do on this point is to provide you with detailed information for the record

that explains all of these various numbers. Even I, as the Executive Director of the Corporation, can tell you generally the progress that we are making and that the age of the inventory has come down dramatically, that we are doing these benefit determinations much faster, and that we are producing many more of them each year. But once we get beyond that level of detail, what I would like to do is provide for the record answers to the more detailed questions, if you would be so kind.

The CHAIRMAN. That is OK. Could you be specific on this, though, whether or not the average includes some IDLs that have been issued or all IDLs in your backlog?

Mr. STRAUSS. Yes, sir, I would be happy to provide you with whatever specificity would be helpful.

The CHAIRMAN. Senator Breaux.

Senator BREAUX. Thank you very much. I thank all of the panelists for their presentations.

Mr. Parks, I apologize for the difficulties you have had. I was impressed with the fact that when you got the check and thought it was not a correct amount, you sent it back. I know a number of my constituents who have accepted it, cashed it and then called me up to try and find out a way for them to keep it. [Laughter.]

And to your credit, you did the right thing, and hopefully things will work out.

I take it that after all of this, you ended up getting 80 cents a month more; is that in your testimony?

Mr. PARKS. I think it is 83 cents, yes.

Senator BREAUX. Eighty-three cents more. So I guess the good news and bad news—the bad news, it took so long to get the final determination, but the good news is was not far off the initial target.

Mr. PARKS. I would comment, just for the edification of the committee, that all of this was transpiring in our lives, our corporate lives, as a result of a reorganization in 1992 which, incidently, was successful. But a lot of us, myself included, at that point in time were in an insecure status because we put everything we could find, beg, borrow or steal, into reorganizing and supporting the company.

Senator BREAUX. Sure.

Mr. PARKS. So having any additional insecurity, we really did not need.

Senator BREAUX. And, Mr. Poll, it was interesting to see, I mean, we are all struggling, and we are trying to make certain that all of our computer systems are secure. We have seen this, the top of the news lately is with regard to what we do with our computers. And your job, I guess, is to check various Federal agencies to see how we are doing in this regard.

What you found at the Corporation, do you think it was in much worse condition, about the same or better than most of them that you are looking at? I think we are all struggling to make sure that our computer systems are secure, and all of these are very important. Do you have a comparison of what you have found here in comparison to, perhaps, other agencies?

Mr. POLL. The only comparison I would have is what I read in the newspapers because I—

Senator BREAUX. Oh, Lord. [Laughter.]

Mr. POLL. Which I do not take, you know, with much stock in.

Senator BREAUX. But from your personal looking and your Department, you do not have enough to compare—

Mr. POLL. We do not look at other agencies and things of that nature dealing with any security—computer security. What we did find, I felt it was serious, and I notified the Corporation as quickly as I could about the results of the tests that we conducted. And they agreed with us that it was serious. Because when you kind of hang your keys out there outside your house and say, “Come on in,” and that is one serious problem, and that is what they basically did.

And the other thing that we—

Senator BREAUX. So the—I am sorry.

Mr. POLL. The other thing is that we did hack into the system, not using through the Internet, but other means, and we were able to be in there for about a 2-week period undetected by anyone in the Corporation. And we could have conducted serious damage on any of the IT systems that they had. We could have downloaded information. But that was not the objective. The objective was to get into the system and see if there were holes and then report that. And that is what we did.

Senator BREAUX. Thank you. You say on Page 6 that, in response to these findings that you made with this investigation, that the Corporation management has developed both high-level and detailed corrective action plans to address the weaknesses that was identified, and they are required to report on their actions monthly. Is that being done? I mean, the report period, are they reporting back to you? Are you continuing to monitor and check whether the recommendations are being followed or not?

Mr. POLL. I could validate that I have been to just about every meeting they have had once a month, where the people who are working on fixing the problems report to Executive Director Strauss. And it seems like it is progressing along.

Senator BREAUX. You all have actual meetings? I mean, this is just not—

Mr. POLL. Yes. He has actual meetings where they present, and I have gone behind, and I have done some checking, some verification, validation of it. But it is not quite 9/30 yet, so they have not really completed everything. And once that is done, and I have spoken to the committee’s staffers, and I have suggested that I will write a report as to what my opinion as to how they did comply with those recommendations that we had made.

Senator BREAUX. Thank you. Ms. Bovbjerg, in your GAO recommendations and with regard to contracting and organizational field structures, I take it that you all have made a series of recommendations after you have identified the problem areas. Can you tell the committee how were those received? I mean, has there been a cooperative relationship or a negative relationship, if you will, dealing with GAO’s findings with regard to the Corporation?

Ms. BOVBJERG. We have printed in our report a copy of Mr. Strauss’s letter to us, the draft Agency comments, as a result of the draft report we sent him. And I think they are very detailed and largely positive. They agree with us on most of our recommendations and

most of our findings. We detail where there are some disagreements and have stated that there are things that they will be doing in the near future that should address many of our points.

Senator BREAU. GAO, gosh, we deal with GAO all of the time, particularly in the committee that is chaired by Chairman Grassley, and very helpful to us, do you all do a follow-up role normally with your recommendations with the groups that you do these recommendations to?

Ms. BOVBJERG. Yes, sir, we do. We keep track and work with the agencies.

Senator BREAU. And that is being done in this case.

Ms. BOVBJERG. It will be, yes.

Senator BREAU. Mr. Hast, thank you for your testimony. I guess, when you were looking into some of the specific contracting questions that you have looked at, you said that there has been an appearance of improperly influencing the award of two contracts, I take it your testimony is that that has now been turned over to the appropriate people in Justice, I guess, for them to look at it.

Mr. HAST. We have not yet, but at the conclusion of this hearing, we will meet with Justice and give them this investigation.

Senator BREAU. And then they take it from there and do their investigation, I take it, and then you all sort of move back at that point?

Mr. HAST. Yes, sir.

Senator BREAU. And that will be done.

Mr. HAST. That will be done.

Senator BREAU. Mr. Strauss, I guess what you are saying, everybody wants to know what their pension is going to be as quickly as they can. This chart, I take it, shows me that, in 1994, that is 20 months—20 years—

Mr. STRAUSS. Twenty years.

Senator BREAU. What does that mean? Twenty years in 1994 what?

Mr. STRAUSS. What this means is that in 1994, the oldest plans in the inventory with incomplete benefit determinations were about 20 years old.

Senator BREAU. That means that people were receiving their pensions in 1994, they just had not gotten a final determination—

Mr. STRAUSS. They had not gotten their final benefit calculation.

Senator BREAU. And that 20 years was the age of the longest number of pensioners that had not received a final determination or was that the average?

Mr. STRAUSS. Yes, the oldest plans in the inventory.

Senator BREAU. Were 20 years without getting their final determination.

Mr. STRAUSS. Right. And now the oldest plans in the inventory are about 5 years old.

Senator BREAU. So those people that have not gotten a determination, a final determination, after 5 years are still monthly getting an estimated pension every month?

Mr. STRAUSS. That is correct, Senator. The ERISA statutory mandate is that we provide these participants with a continuous, uninterrupted payment from the moment we take these plans over.

Senator BREAUX. And explain to the committee what happens if the final determination that they are entitled to is more than they had been getting or less than they had been getting, what happens.

Mr. STRAUSS. If the final benefit is more, then we make up the difference, plus interest. If the final benefit is less, if they were getting more than they were entitled to, then we have a very liberal recoupment policy.

Senator BREAUX. That is when they call their Congressman. [Laughter.]

Mr. STRAUSS. Senator, we have actually worked with this committee and made changes in our recoupment policy, as a result of the interest of this committee.

Senator BREAUX. I guess, and I have dealt with these things on Social Security, when someone has had a determination that they have gotten too much and then the Government tries to get the money back, and they find that they are sort of, I mean, they are destitute or there is just no way they are going to pay it back, we attempt to try and work something out with them. Does the same thing—

Mr. STRAUSS. Right. And under no circumstances would we recoup more than 10 percent a month. So no one would have their benefit cut—

Senator BREAUX. My final question, if it is about 5 years now, and it used to be twenty years for the age of the oldest, what is the goal? I mean, is that about as best we can do, considering the bankrupt plans that we take over, or is there a goal to get it down further than that?

Mr. STRAUSS. We believe that for the plans that we are taking in today that we will be able to get these final benefit determinations issued within 3 years.

Senator BREAUX. Three years, OK.

Thank you all. I thank all of the members of the panel.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Senator Bond.

Chairman BOND. Thank you very much, Senator Grassley. And my apologies. I had commitments this morning until 9 o'clock which prevented from being here. But I am glad we have this hearing, and I have already submitted a statement for the record, so I will not enlighten and thrill you with my opening statement. That will be part of the record. I know you are really disappointed in that, but I would like to get on with the questions.

The CHAIRMAN. It is a real shame.

Chairman BOND. I could read it if you want to. [Laughter.]

The CHAIRMAN. That is OK.

[The prepared statement of Chairman Bond follows:]

#### PREPARED STATEMENT OF CHAIRMAN BOND

This morning we continue our on-going look at the Pension Benefit Guaranty Corporation with a hearing to assess where we stand on several issues that have been under review by the Small Business Committee and by the Special Committee on Aging.

At the end of the day, the PBGC has one key deliverable item. That is the Initial Determination Letter (or IDL) that it sends to pensioners of failed plans. The IDL is the definitive statement of benefits that pensioners will receive. It states the level of benefits that the PBGC insures under the law, given that the pension plan itself

has failed and that its assets are likely unable to deliver the level of benefits that would have been provided if the plan had not failed.

As Senator from Missouri, I am concerned about unnecessary delays in issuing IDLs. Missouri has a substantial retired population. The Lake of the Ozarks area has long been a popular place for retirees to enjoy after a long career of hard work. If IDLs are not issued promptly, these retirees can be directly affected, as today's hearing will show.

However, as Chairman of the Senate Committee on Small Business, I am also interested in seeing that small businesses get what they pay for when they pay insurance premiums to the PBGC. The PBGC finances its operations (which include monitoring of endangered plans, as well as closing out those that actually fail) by charging premiums based on the number of pension plan participants. If those funds are not spent effectively, this means that small business is paying a fee and not getting enough value from it. That directly affects the ability of small businesses to offer defined-benefit pension plans to their employees.

In addition to those broader issues, I as Chairman am also interested in the issues surrounding the support functions at PBGC, such as computer security and especially contracting. Computer security illustrates a number of issues facing not only the PBGC but also other agencies, such as the Small Business Administration. All agencies of government have a continuing battle to keep a little distance ahead of the hackers. These range from hackers who delight in causing headaches and mischief, to those who seek to steal personal information to perpetrate identity thefts, to those who are intent upon ripping off the Government.

With respect to contracting, the Small Business Committee has a long-standing commitment to enhancing small business participation in procurement. Although the rules governing the PBGC are not necessarily the same as those that apply to the regular Executive Branch purchasing agencies, the PBGC nevertheless highlights a number of the broader procurement problems.

As the General Accounting Office will tell us, the PBGC has not done enough oversight of the contractor personnel at its Field Benefit Administration offices. They have not collected performance reports on an office-by-office basis, making it impossible to assess the past performance of incumbent contractors. GAO will also point to the PBGC's market outreach and research efforts, which may have done the minimum work necessary under the law without providing the kind of effort that enhances competition and ensures small business participation.

It is vital that contracting be done in an ethical manner with the broadest possible outreach to small business. We have heard countless times from small business that they think some procurements are already "wired" for a predetermined contractor. If the PBGC does a better job of outreach to small business and does a better job of assessing the performance of incumbent contractors, the PBGC can help allay those fears, enhance competition, and deliver better quality services to the pensioners who rely on it.

Ultimately, however, these supporting functions of contracting and computer security are simply pieces of the overall puzzle. Done poorly, they impede the overall mission. Done correctly, they help the PBGC do its job effectively. In the eyes of pensioners, though, the central job is the IDL—the ability to resolve failed plans quickly and with the minimum disruption to the retirees who often have little else to rely on to pay their bills.

Chairman Grassley, I thank you for your long-standing interest in the PBGC and for your cooperation and assistance in our joint oversight efforts.

Chairman BOND. Mr. Poll, I understand that you gave the PBGC management advance warning that you intended to do a penetration study; is that correct? And when did you do that?

Mr. POLL. I did give the Corporation management advance warning, basically, orally, that I was going to do a penetration study. I did not give them the exact time and date, but they did know. I did indicate that to at least three people, that I remember. And we did the penetration study, and then we gave them the results. I also have suggested to them recently, again, that I may retest, again. And they do not know when that is going to happen, but I may retest again.

Chairman BOND. You were able to crack into the system; is that correct?

Mr. POLL. Yes, we did.

Chairman BOND. What could an unauthorized hacker do if they got access to—

Mr. POLL. An unauthorized hacker could be in the system. If they are not detected, they would get quite a bit of intelligence from the system on how to, for example, get into the password files. We did. We got into the password files, and we had just about everybody's password when we did that. We, also, could have downloaded every piece of information they had in these systems, and we do not think, at that point—they are a little more aware now—but at that point, we think we could have downloaded all kinds of sensitive information, participant information and other information, financial, also, and they would have not known it had gone out of their system and outside.

Chairman BOND. Was this one where you could have put a phony recipient into the system?

Mr. POLL. I believe, yes, that we could, with the systems administrator access that we had. Because the systems administrator access is up here. The Corporation has indicated that they have controls. The controls are down here. Systems administrator access can manipulate those controls because they are the owner or the individual who has the security on the system. So that is a real vulnerability.

Chairman BOND. But did PBGC detect that you were in there after a certain time?

Mr. POLL. No, they did not, not during the test.

Chairman BOND. You came and went and there was no—you left no—

Mr. POLL. We came and went several times—

Chairman BOND. No footprints.

Mr. POLL. We did it from a remote dial-up, which is through a modem, and we attached to a modem and got in. And we also came into the Corporation, went to a conference room, and we were able to get into the system while onsite.

Chairman BOND. Let me change to another aspect. Why did your office decide to refer to the Office of Special Investigation at the GAO, the matter of the \$40 million in contracts?

Ms. BOVBJERG. The focus of the work that I was leading was really management of the contracts and planning. It is a different focus than a criminal investigation. When we were presented with information that, because we are not criminal investigators, we didn't know how to handle it, we turned it over to Mr. Hast.

Chairman BOND. Mr. Poll, I understand that you initiated an investigation in the \$40 million in contracts a year or two ago; is that correct?

Mr. POLL. We have looked at PBGC's contracts over many years. Yes, I think we did look into, if you are referring to the Office Specialists contract—

Chairman BOND. Yes.

Mr. POLL. Yes, we did look into that, and we do have some investigative issues.

Chairman BOND. How often did Mr. Strauss contact you or seek input from you about the alleged contract steering matter that was discussed by the GAO and the Office of Special Investigations?

Mr. POLL. Well, I would say that Mr. Strauss has not directly contacted me or discussed this investigation with me at all.

Chairman BOND. Turning to Mr. Hast, Ms. Cooks needed to obtain resumes to respond to the PBGC's Request for Proposal; is that correct?

Mr. HAST. Yes.

Chairman BOND. Do you have any information regarding how Ms. Cooks obtained resumes for her response to the PBGC?

Mr. HAST. By approaching people that were already working at Office Specialists, and I am sure there may have been others, but certainly by approaching people that were already working for Office Specialists.

Chairman BOND. Mr. Strauss, again, welcome this morning. We are glad to have you here.

Mr. STRAUSS. Thank you, Senator.

Chairman BOND. When the New York Times asked about the results of the penetration study, you described our concerns as ludicrous and said, "I would say we are on a very high state of alert here at the PBGC." Do you still believe that way?

Mr. STRAUSS. I believe that we are on a very high state of alert. And the point that I was trying to make there is that many of the concerns that were raised were actually addressed in the report. Some of the issues that were raised were actually being addressed at that time, and that is the point that I was sort of unartfully trying to make.

Chairman BOND. You advised the staff, both of the Committee on Aging and Small Business, that you were very active when the allegations reached you regarding possible problems in 1998 with respect to the \$40 million in contracts in question, yet the report prepared for you by the general counsel is dated about 3 days ago. Is that when that report was completed?

Mr. STRAUSS. What I asked the general counsel for a summary of everything that had gone on up to that point. And so the summary was completed a few days ago to respond to the committee. But if you would just give me one minute on this issue since—

Chairman BOND. Sure. I would be happy to.

Mr. STRAUSS [continuing]. PBGC contracts are an issue for this committee.

What I want to assure you, Senator, is that I, personally, have looked at these four or five procurements that have been an issue for this committee. And what I have prepared for the committee is the steps involved in the PBGC's contracting process and all of the checks and balances in that system. And I want to assure the committee that we follow the Federal Acquisition Rules, and that if you look at those steps carefully there is no one person, including the Executive Director at the PBGC, who can influence those contracts. There is a step-by-step process and I could go into each of these things in great detail.

But I want you to know that it is not the head of the Insurance Operations Division, under No. 5 there, who picks the panel of technical experts, it is the head of the Procurement Operation at PBGC. And the way our culture works, these technical experts function very independently. And then when you look at the next step in the process there, then these technical experts get together,

compare their findings, and they are required to come up with a consensus recommendation. And so I want you to know that for each of these procurements that are in question here, that I have reviewed them myself. And I believe that my employees are entitled to a presumption of innocence until the facts and the conclusions really support that there is some sort of wrongdoing I simply have not been able to find any, and I want you to know that I have gone over these procurements myself with a fine-toothed comb.

Chairman BOND. Mr. Strauss, you say that there are system checks-and-balances in place and that it works. Mr. Hast, is that what you found?

Mr. HAST. Well, I agree with Mr. Strauss that there should be a presumption of innocence until something is proven. I would say that our findings are that there is an appearance that these contracts were steered and that the checks-and-balance systems that they have in place are not working very well. And I think we are going to refer our information, both to Mr. Strauss, the additional information we developed—

Chairman BOND. That will be resolved in another forum.

Mr. HAST. Yes.

Chairman BOND. Mr. Hast, just very briefly, back on the resumes. Were the Office Specialists employees allowed to give Mrs. Cooks their resumes from the beginning?

Mr. HAST. I am not absolutely sure.

Chairman BOND. Could you just describe for us how Mrs. Cooks received the Office Specialists resumes.

Mr. HAST. I was just told we were told during interviews that at the beginning they were told they were not allowed to give her resumes. There were some court actions going on between Office Specialists and Ms. Cooks and that that is when Mr. Hagans was called and asked to come to Atlanta and intervene, which he did. And once he intervened, they were able to give her the resumes.

Chairman BOND. Mr. Hagans has intervened with Office Specialists—

Mr. HAST. Yes.

Chairman BOND [continuing]. To facilitate the delivery of the resumes of the Office Specialists employees to Ms. Cooks; is that correct?

Mr. HAST. Yes.

Chairman BOND. Turning to Mr. Poll, have you all had cooperation with the management of PBGC? How has your cooperation been?

Mr. POLL. In general, Mr. Chairman, the Agency is resistant to us in certain areas of receiving information. Specific areas such as financial statement audits pretty much set out that that information is written down, and they know exactly what we are looking for.

And audits and investigations requires several times to ask for the information to get it, and sometimes they like to get involved in telling us exactly what we should have, as opposed to what we want. And, also, some departments, like the General Counsel's Office, has instructed their staffs that they are not to speak to the IG or the IG's Office until they notify the general counsel and possibly getting some type of approval for doing that.

So I kind of consider that to be a little bit resistant.

Chairman BOND. Thank you, Mr. Poll.

Mr. Chairman, I apologize for going over my time, but I appreciate the chance to ask the questions.

The CHAIRMAN. Thank you very much.

I will start with you, Mr. Strauss, on a second 5-minute turn here. And this is something I am going to want you to either respond to or clarify, if you would like to. You stated that your general counsel investigated the IMRG contracts. We requested a copy and received only a summary of the other investigations. I would like to read from the report that you provided to us. And so this would be from your general counsel to you, and I would read the bottom paragraph on the first page.

“Based on the extensive number of investigations that have taken place, my personal involvement in the various management inquiries and the checks and balances in the contracting process, I do not believe that any misconduct took place in the award of these contracts. In light of the IG’s ongoing investigation, I would not recommend conducting an additional management investigation, either internally or using outside counsel, as is often done in the private sector. In my view, there is little we can do, at this time, other than to await the inspector general to complete his investigation.”

And this is a follow-up of the litany of investigations you have said you have looked into that you referred to that there ought to be a presumption of innocence, and I do not disagree with that. But you were talking about all of the investigations you made and how you have looked into it, and you have your General Counsel here advising you just to wait for the Inspector General.

Mr. STRAUSS. What I can assure the committee is that a number of these issues have been investigated. And so let us just take the 47 phone calls, for example. Needless to say, I hear these revelations about the same time the committee does, and so I am very interested in knowing what is going on. And a lot of this information exists somewhere in my organization, either the Inspector General has already looked at this or this has been part of some other investigation.

And so when I heard that there had been 47 phone calls between Mr. Hagans and Ms. Cooks within a very short period of time, needless to say that was a concern of mine, and I wanted to know what the facts were. And I found that the facts were not that there had been 47 calls, but that there had been 34 calls, and that 18 of these calls were a minute or less, and that these calls extended over an 8-month period. And then I saw a statement that had been prepared by Mr. Hagans, where he had tried to reconstruct what they were talking about in each of these phone calls.

And so a bit of evidence here that seems very suspicious on the surface, when you really investigate what is going on here, there is a plausible explanation for it, and there was nothing that was proven that would indicate, in any way, that we are not following the Federal Acquisition Rules or Regulations to the letter. And I bet I, personally, investigated 15 different issues like that, where concerns were brought to my attention, and I investigated them

personally and found out that there was a perfectly plausible explanation.

The CHAIRMAN. Are there other general counsel reports not provided to us?

Mr. STRAUSS. I have instructed my people to provide everything.

The CHAIRMAN. Mr. Hast, during your investigation, did you review documentations prepared by the Corporation showing how the decisions were made to award the two contracts to the Integrated Management Resource Group, Myrna Cooks' company that you investigated?

Mr. HAST. Yes. We reviewed the negotiation summaries for the auditing service contract awarded in 1997 and the Atlanta FBA contract awarded in 1998.

The CHAIRMAN. Did you identify anything strange or unusual about the Corporation's decision to make these awards to the IMRG?

Mr. HAST. We did. PBGC appeared to use disparate rationales in making its final selections for these two contracts. The scoring for each bidder was based upon a combination of technical evaluation points and cost analysis. In the first contract, valued at about \$14 million, IMRG was not the low bidder, but was awarded the contract based on scoring 1.29 points higher than Office Specialists in the technical evaluation, but IMRG was \$590,000 higher in cost. PBGC justified the award to IMRG with higher costs based on the technical point difference that favored IMRG.

However, for the second contract, valued at about \$25 million, IMRG was five points lower in the technical evaluation than its competitor, but it was about \$685,000 lower in cost. In this case, PBGC justified the award based on the lower price by IMRG. PBGC's treatment of the evaluations and its justifications appear inconsistent with one another, and it adds to the appearance of improper influence used in awarding these contracts to IMRG.

The CHAIRMAN. Mr. Hast, referral of criminal investigations obviously a very serious step. What do you believe to be the most appropriate way to proceed there?

Mr. HAST. I believe that we should refer this to the United States Attorney's Office in Washington, D.C.

The CHAIRMAN. Ms. McHenry, it has been represented by the PBGC that its contracts with highly specialized personnel were familiar with terminated plans that the PBGC administers. It is my understanding, for instance, that many of the Pan Am pension staff were hired by the contractor. Were you familiar with the particular plans with which you worked at the Atlanta office?

Ms. MCHENRY. Not before I was actually employed there. But I am an actuarial analyst and quickly was able to come up to speed with these plans. There were only two, other than Barbara Mitchell, so that would make three former Pan Am employees who were actually actively working on Pan Am plans.

The CHAIRMAN. What is your observations about the personnel that were hired by IMRG in regard to this work?

Ms. MCHENRY. I think that the level of education is low, and I also believe that the way that the administrators were trained was very lacking in substance and competency.

The CHAIRMAN. One last question of you, since I have had a series of questions. This will be the last one.

You stated that one of your responsibilities at IMRG was to correct and reissue Initial Determination Letters sent out by the Corporation. Do you know what caused the PBGC to mail out so many incorrect IDLs?

Ms. MCHENRY. I think they were in a great rush, and I think that the data that they were using was not properly checked because I had the same data and ability to see that data right in Atlanta, and I could see the correct information, but somehow the data base got scrambled or something happened to cause these various incorrect IDLs to go out. So it just was not managed correctly. I just wanted to say that I, personally, witnessed pensioners waiting for as long as 6 or 7 months to get a first check. It was not a matter of just sending in an application and having IMRG respond to that in a prompt manner.

The CHAIRMAN. Thank you, Ms. McHenry.

Senator Breaux.

Senator BREAUX. Thank you very much. Let me explore two separate points here.

Mr. Strauss and Mr. Hast had responded to the Chairman's question with a prepared, and I appreciate it being a prepared statement, because what you are talking about has to be very accurately presented here. Can we give you an opportunity to respond to the comments that Mr. Hast presented to the committee, which I guess, in essence, said that when he looks at these contracts, it looks bad, I mean, it looks improper.

Mr. STRAUSS. It is possible that there are some appearance issues here. What I want to assure the committee is that I believe in the integrity of our process. We have about 1,400 contract actions every year, and we have very competent people who are involved in this. The head of Procurement at the Pension Benefit Guaranty Corporation is a 37-year Government veteran. He is a veteran of the Cuban Missile Crisis, he has worked in Procurement for the Department of the Navy and for the military before he came to the PBGC. This is a man who has total integrity. And so when you look at this process here, we have a lot of procurements. We have a lot of technical expertise in this area. And I have investigated each of these issues that have been raised, including some that Mr. Hast raised this morning, and, Senator Breaux, even though I do not believe that this is the appropriate forum to litigate this issue, that I want you to know that I am aware of each of these issues. And as these issues have been presented to me, I have investigated them, personally, to see if anything has happened here that would give me reason to have concern about the integrity of our process. And I have not seen anything to indicate to me, in any way, that the integrity of our process was compromised.

Senator BREAUX. I take it that, again, I think both sides are correct. We are not going to litigate this thing here. I take it that you will pledge your full cooperation with Justice and work with them and try to get to the bottom of whether there is anything improper, from a legal standpoint.

Mr. STRAUSS. Yes, Senator. And we have cooperated fully in all of these investigations.

Senator BREAUX. Well, the good news is I just got a note that said that the Finance Committee's, Mr. Chairman, mark-up has been postponed until tomorrow. [Laughter.]

So we can begin this hearing at 10 o'clock instead of at 8 o'clock in the morning. But I was here. [Laughter.]

Ms. McHenry, let me ask a couple of questions. I am trying to understand this situation, and it is a little bit confusing.

I take it that you were working with IMRG. You were extremely critical of what you saw in the office in I take it the 17 months that you were there. Before IMRG had the contract, Office Specialists had it in Atlanta; is that correct?

Ms. MCHENRY. Yes, that's correct.

Senator BREAUX. You didn't work with Office Specialists, did you?

Ms. MCHENRY. No. They had a hiring freeze on toward the end of their contract year.

Senator BREAUX. As far as you knew, did things work better when Office Specialists had the contract than after IMRG got the contract?

Ms. MCHENRY. I think, from the employees' point of view, yes, because Office Specialists paid once a week. IMRG paid twice a month and then withheld 2 weeks of earnings, whereas, Office Specialists did not, and it staggered paydays, which upset everyone's budgets, and would not respond to questions about benefits or anything else. They just took a totally "let us ignore the Atlanta office" stance.

Senator BREAUX. What confuses me, to a certain extent, you say in your testimony that you were the only new employee at IMRG, that the rest of the office used to work for Office Specialists. It seems to me that, in essence, the people running the operation in Atlanta before the new contract was awarded was the same people running the office after the new contract was awarded because IMRG apparently hired everybody from the people who had the contract the first time. In fact, you point out you were the only new employee. And, in fact, it sounds like to me we still had Office Specialists running the show down there, and you were the only new employee. I don't understand why, when Office Specialists was on the letterhead, it was working OK, and when IMRG became on the letterhead, all of a sudden it all fell apart. Any kind of comment as to why?

Ms. MCHENRY. Well, we had a great turnover. The contract called for over 60 employees, but during the time I was there it never reached more than 41, 42, 43 people. I think probably between 12, 13, 14 people had left and others had been reemployed during that time. So although we are starting out with maybe the same workforce, it changed over with new people coming in.

Senator BREAUX. Can you tell us what led you to leave.

Ms. MCHENRY. I think the very low standards and the inability to get anyone's attention.

Senator BREAUX. Was the head person in the office a new employee or was the head person a former Office Specialists employee?

Ms. MCHENRY. Former Office Specialists. Francis Emmanuel was the actuary for Office Specialists.

Senator BREAUX. So the same person that ran it for Office Specialists ended up running it for IMRG?

Ms. MCHENRY. No. I do not know what happened. They—

Senator BREAUX. I thought you said they were the same.

Ms. MCHENRY. Not in the same positions. The same people. Others left. There were quite a number of people who left prior to IMRG getting the contract.

Senator BREAUX. Well, was the person running the office, I use that term colloquially—I do not know what running the office means—but I mean the person in charge.

Ms. MCHENRY. I do not think anyone really “ran” the office, and that was a great problem.

Senator BREAUX. Was the person in charge, there had to be somebody that had the titular head of being in charge, was that person initially a former Office Specialists employee?

Ms. MCHENRY. Yes.

Senator BREAUX. And was that person there the 17 months that you worked there?

Ms. MCHENRY. Yes. He is now gone.

Senator BREAUX. So they had the same person running the office for IMRG that ran it for Office Specialists for the time that you were there. It is kind of interesting.

Ms. MCHENRY. Someone else I think was in the manager’s slot, and I do not know who that person would have been.

Senator BREAUX. Mr. Strauss, can you comment? It seems to me that you changed the contract, but essentially the same people were doing the work.

Mr. STRAUSS. Yes, Senator, I would love to try to shed some light on this. The Atlanta office is obviously very familiar to me. And based on some of my testimony this morning, you probably think that I am the Director of Procurement at the PBGC, rather than the Agency head. But I want to make a couple of points about the Atlanta office. In that these contracts that we have, even though you read these huge dollar figures in the paper, those dollar figures tend to reflect 5 years. And these contracts have to be evaluated annually based on costs and performance. And so any PBGC contract that we have has to be evaluated every year.

I was very dissatisfied myself with what was going on in the Atlanta office. The problem that we have is that in a major population center like Atlanta, where unemployment is very low, recruiting people to work on these contracts is a real challenge. I was dissatisfied with what was going on in the office there. And so, in I believe it was late 1997, we evaluated the Office Specialists’ contract, and basically let them know that we were dissatisfied and that we were going to rebid the contract after one year.

And then we had competitive bidding. And people here who have more expertise than me can tell you how many people actually bid on this contract, but I believe there were three or four bidders for this contract. But because ERISA benefits administration of failed pension plans is a very technical and specialized field, the people who are bidding here tend to be bidding the same employees. And so the cost differential is in the overhead, and that is what we are

really looking at. And so that is how these operations are staffed. That is how the operation in Waterloo is staffed. And I still believe, Senator, that if we can get you to the Waterloo office, you will get a much better insight into the work that is done there, the quality of the work that is done there, the quality of the people, and that that is much more representative of us than this Atlanta office.

And I want to assure the committee that I had town hall meetings myself with the Atlanta employees—Bonne is very familiar to me. She is an e-mail pal of mine. We have made changes, we have given them technology, and we have weekly video conferences with the Atlanta operation. And so we have tried to make a number of changes with respect to the Atlanta operation, and I believe that we have addressed many of the issues that Bonne has raised this morning in her testimony.

Senator BREAUX. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much.

I want to assure everybody that even though the Finance Committee is not meeting at 10 o'clock, I had a simultaneous mark-up in Judiciary, so I am going to have to hurry along here and get done regardless.

Thank you very much, Senator Breaux, for your loyalty to this committee.

To follow up on Senator Breaux's statement and question, Mr. Strauss, are you saying that the management of IMRG was worse than the Office Specialists, despite the fact that some of the same people were former Office Specialists staff. So management was different, and Ms. Cooks only visited the office a couple of times?

Mr. STRAUSS. I do not know how many times she visited the office. What I can tell you, Senator, is that I had four town hall meetings myself in the Atlanta office. I am very familiar with the Atlanta office. Many of the employees there have communicated with me directly, and I believe, based on the work plans that we provide these offices and the way in which we measure their work, that there has been improvement in the Atlanta office. I would be more than happy to submit that for the record to help to clarify some of these issues.

The CHAIRMAN. Ms. McHenry, I think I would like to have your response to the same issue I raised with Mr. Strauss.

Ms. MCHENRY. Let me ask you just to rephrase what—

The CHAIRMAN. Well, basically, we are going over the follow-up of Senator Breaux's question. And I asked Mr. Strauss if he was saying that the management at IMRG was worse than Office Specialists, despite the fact that some of the same people were former Office Specialists staff, some management was different, and Ms. Cooks only visited the office a couple of times.

Ms. MCHENRY. Oh, very definitely. She made a very clear statement that she was leaving everything in the hands of Francis Emmanuel, who was a very incompetent manager, as far as the employees were concerned. I think that the employees wanted to do a good job, but were constantly upset because Myrna Cooks, IMRG, could not pay them correctly, on time, and then kept changing pay-days and would not address any of the issues.

And then Francis Emmanuel just kept everyone subdued by threats, and intimidation, and notes in files and just trying to

make sure that everyone stayed quiet about what they saw and what was going on.

The CHAIRMAN. Ms. Bovbjerg, since the PBGC is a wholly owned Government corporation, what laws govern its operation, particularly contracting laws?

Ms. BOVBJERG. PBGC's procurement activities related to benefit processing and determination are not subject to the FAR. We have had a lot of discussion about this this morning, about the Federal Acquisition Regulation. PBGC voluntarily follows the FAR as a policy, but not as a matter of law, and that is because their funding is mainly from a nonappropriated source.

The CHAIRMAN. Mr. Strauss testified that FAR applies, which is it, in your judgment?

Ms. BOVBJERG. It applies as a matter of policy. The Corporation has chosen to follow the FAR. Now, I want to stress that in our work, which was a management review, the PBGC met the basic requirements of the FAR. In the information that we referred to Mr. Hast, he may be finding other things, but we found that they met the basic requirements of the FAR. I also want to emphasize that the FAR is the floor for what you might expect for really good management of a contracts process; we found that technically those contracts were competed, they were competitive, but that they clearly could have done more to get more bidders, to have more competition on price, on service. And we think that not taking action to really do more and to really go as far as you can toward full and open competition can result in poor service, it can result in higher cost, and ultimately, when those contracts are not closely managed after they are awarded, ultimately, you have more of a potential for waste, fraud and abuse than you would if they were closely managed.

The CHAIRMAN. Well, if few Federal laws apply, as you have indicated, then is it fair to say that the PBGC has very little oversight by the executive and legislative branches of the Federal Government and has free access to spend the trust fund in any matter its executives see fit?

Ms. BOVBJERG. We have commented in our report that there is only a very small amount of their budget under direct congressional oversight—this is the limitation amount. It is about \$11 million of their \$160 million budget. And there is rather general guidance as to what the nonlimited amounts can be spent for. We have observed in the report that, in some ways, this means that Congress does not have the normal budgetary oversight that it has for other agencies and that this also contributes to some of the management issues and contracts awards and processes not being very closely watched.

The CHAIRMAN. When did the General Accounting Office bring this lack of oversight and the leeway by which there is very little control over the trust fund money to the attention of Congress? Maybe never?

Ms. BOVBJERG. Traditionally, when we have done work on PBGC in the past, we have focused nearly entirely on the finances—and the premiums and the assets of the plans and the risk of future problems. In fact, I know that Mr. Strauss had a chart over there a few minutes ago that showed there was a large deficit around

1992–1993, and that was when we designated the PBGC a high-risk program. We felt that there was potential for deficits to go from \$3 billion in that year to something like \$18 or \$20 billion in 5 to 10 years, and we were concerned about that.

This is the first time, in this review, that we have really looked at how the Corporation is managed and not at how their balance sheet looks.

The CHAIRMAN. Following up on the lack of oversight on the part of Congress, besides conducting more of these activities, what can Congress do to ensure that the Corporation conducts its operation in a manner that sufficiently administers trust fund assets, while still meeting the needs of pension plan participants?

Ms. BOVBJERG. We did not make a recommendation on this, Senator, and that is because that is a much more complex issue than we could really address in this report. But I do want to say that I think that asking the kinds of questions that you have been asking and the kind of work that we have begun to do on management issues goes a long way to increasing oversight. But such an approach is necessarily ad hoc. And we think it is worth considering how to build a more routine approach to oversight of this Corporation.

The CHAIRMAN. Mr. Strauss, you heard Ms. McHenry state in her testimony that the Corporation issued determination letters regardless of the quality, solely to meet a court-ordered deadline. How does the PBGC measure the accuracy of determination letters it sends out? In other words, while it may take the PBGC less time to issue determination letters, is accuracy compromised in the interest of speedy delivery?

Mr. STRAUSS. I want to make a couple of points about this. One, we have a management control unit that looks at this. And when you look at our historical appeals rate, which would deal with these sorts of issues, that has not varied much from year to year.

The CHAIRMAN. Do you have any way, though, of measuring the accuracy of the letters of determination?

Mr. STRAUSS. Well, we have a Corporate standard, where the Corporate goal is to provide them promptly and to make sure that they are accurate. And so that is a high priority for the Corporation.

The CHAIRMAN. Well, I think that we will close there. And I may have some questions to submit for answer in writing. And by the way, we may also, I should have announced this at the beginning, for those of you that are not acquainted with the congressional process and you need some help from my staff, if you get letters or questions for answer in writing, my staff will help you process that. Most everybody else here understands that a lot of members cannot come or even those of us who do come will have some letters for follow-up. So we will keep the record open for a couple weeks on that.

I look forward to hearing the results of the action requests that we made today. The Inspector General's rigorous testing of the IDL accuracy and his follow-up penetration tests of the Corporation's information system I think will give us an updated status report on how the PBGC is responding to the concerns that we have heard today. And in light of the grave concerns raised by the Corporation

contracting practices, that area also warrants continued scrutiny. And I understand that the Office of the General Accounting Office Special Investigations will refer the matter to the Department of Justice for appropriate action. That is your decision, but I think it is one that we have heard enough that it is worth that process ought to go through.

And for Mr. Strauss, I will, as I told you a week ago yesterday when you and I were involved in a contest, a three-mile contest to see who could run the fastest and you beat me——

Mr. STRAUSS. I thought you had won, Mr. Chairman. [Laughter.]

The CHAIRMAN. I will be available any Saturday morning from 8 to 9:30 to visit the Waterloo office. It is close to my home, and I would be glad to do that.

Mr. STRAUSS. We will look forward to having you.

The CHAIRMAN. Thank you.

The meeting is adjourned. Thank you all very much.

[Whereupon, at 10:01 a.m., the committee was adjourned.]

## APPENDIX



Office of the General Counsel

B-286045

August 29, 2000

The Honorable Christopher S. Bond  
Chairman  
Committee on Small Business  
United States Senate

The Honorable Charles E. Grassley  
Chairman  
Special Committee on Aging  
United States Senate

This is in response to your July 25, 2000, letter to the Comptroller General, in which you asked a series of questions primarily concerning the applicability to the Pension Benefit Guaranty Corporation (PBGC) of the Federal Acquisition Regulation (FAR). Your questions and our answers are set forth in the enclosure. (We have combined questions 2 and 3, which deal with closely related issues.)

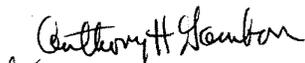
Our opinion is that the FAR does not apply to contracts awarded by PBGC as trustee for assets of terminated pension plans. As explained in more detail in the enclosure, the FAR applies only to "acquisitions," defined in the FAR as purchases using appropriated funds by and for the use of the federal government. Purchases with the assets of terminated private pension plans, held by PBGC only in its capacity as court-appointed trustee, are not acquisitions under this definition; the trust assets are the property of the plan participants and beneficiaries, and are used by the trustee to make purchases for the use of those participants and beneficiaries.

This does not mean that PBGC is free to ignore basic tenets of government procurement: it is subject to the requirements of the Competition in Contracting Act; it must follow the FAR as a requirement for procurements it conducts with appropriated funds; and it has adopted a policy of following the FAR for all its procurements. (We express no opinion here concerning individual PBGC procurements. Additional information on PBGC's contracting process is contained in a report, undertaken at your request, to be issued next month.) Moreover, PBGC's

contracting actions as trustee could be measured against the standard applied generally to fiduciaries, to act in the sole interest of beneficiaries of the trust.<sup>1</sup>

You asked for copies of each opinion and report by this Office with regard to PBGC. We found that approximately 100 documents are covered by your request. Many of these, particularly the older ones, are kept by us only in the form of microfiche. We are in the process of making printouts of these, and will shortly be able to provide all the documents.

If you or your staff have additional questions, please call me at 202-512-5400, or Barry Bedrick at 202-512-8203.

  
for Robert P. Murphy  
General Counsel

Enclosure

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<sup>1</sup> 29 U.S.C. § 1342(d)(3). PBGC's fiduciary duty is qualified to the extent it may be inconsistent with other requirements of the governing law, Title IV of the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1301-1461.

ENCLOSURE

**Questions and Answers  
Pension Benefit Guaranty Corporation**

**Question 1:** Does the Federal Acquisition Regulation, in whole or in part, apply to the PBGC, in whole or in part? Please provide appropriate citations.

**Answer:** The Federal Acquisition Regulation (FAR) applies to purchases made by PBGC using the revolving funds established by the Employee Retirement Income Security Act of 1974 (ERISA). It does not apply to purchases by PBGC using the trust funds that PBGC controls as court-appointed trustee for assets of terminated pension plans. As explained below, this is in essence because the FAR applies by its terms to procurements with appropriated funds. The revolving funds are appropriated; the trust funds are not.<sup>2</sup>

PBGC has two distinct sources of funds that it may use for procurements. One is a set of revolving funds established by ERISA, and containing primarily premiums required to be paid by sponsors of covered pension plans, to insure against the possibility that a plan will be unable to pay benefits. ERISA prescribes both what moneys may be credited to these funds and the purposes for which they may be expended.<sup>3</sup> The other source is a trust fund that contains primarily the assets of terminated pension plans for which PBGC has been appointed by a court to serve as trustee.<sup>4</sup> The trust fund was not established by ERISA; it was created by PBGC in order to carry out its trustee role, and its assets are held in trust accounts in the private sector, rather than on the books of the Treasury.

The FAR applies to "acquisitions" by "executive agencies."<sup>5</sup> There is no doubt that PBGC is an executive agency for this purpose. It is a wholly owned government corporation,<sup>6</sup> and the FAR definition of executive agency expressly includes

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<sup>2</sup> This conclusion is consistent with our earlier opinion, Pension Benefit Guaranty Corporation's Use of Contingent Fee Arrangement with Outside Counsel, B-223146, Oct. 7, 1986.

<sup>3</sup> 29 U.S.C. § 1305.

<sup>4</sup> We speak of a trust fund or trust funds interchangeably, for convenience. PBGC maintains a distinction between funds for single-employer programs and multi-employer programs, and accounts for assets of separate terminated plans separately. The distinction is not important for present purposes.

<sup>5</sup> FAR § 1.101, 1.104; see also 41 U.S.C. §§ 403(1), 405.

<sup>6</sup> 29 U.S.C. § 1302(a); 31 U.S.C. § 9101(3)(J).

government corporations.<sup>7</sup> However, this does not make all of PBGC's purchases of goods or services "acquisitions," as that term is defined in the FAR. "Acquisitions" means "the acquiring by contract with appropriated funds of supplies or services ... by and for the use of the Federal Government ...."<sup>8</sup> As discussed in more detail below, procurements using the revolving funds are acquisitions within the meaning of the FAR, but procurements using the trust funds are not.

Purchases of goods and services using the revolving funds are acquisitions subject to the FAR. It is well-settled that these revolving funds are appropriated. In an opinion concerning a PBGC procurement, we said that "[l]egislation which directs an agency to collect monies and use them for specific purposes is, in effect, a continuous appropriation of funds for those purposes ...."<sup>9</sup> (We have applied this rule to revolving funds operated by other government corporations.<sup>10</sup>) PBGC's revolving funds meet these conditions: ERISA provides for PBGC to establish and collect insurance premiums from plan sponsors for deposit in the revolving funds,<sup>11</sup> and to use the moneys in the funds for the purposes for which ERISA makes them available.<sup>12</sup>

It is also the case that procurements by PBGC in its role as trustee for terminated pension plans, using trust fund assets, are not acquisitions and therefore are not subject to the FAR, because they do not use appropriated funds to acquire supplies and services by and for the use of the federal government. These procurements use the privately-owned assets of the trust funds in accordance with the terms of the trusts for the benefit of the plan participants. These trust assets are not appropriated funds. Unlike the insurance premiums that ERISA requires be paid by employers and be deposited in the revolving funds, the trust fund assets comprise voluntary contributions by employers and employees to private pension plans, and earnings on those contributions. These assets are held by the pension plans, in trust for the participants and beneficiaries, and the federal government can assert no ownership

<sup>7</sup> FAR § 2.101. This definition has a basis in the statute. 41 U.S.C. §§ 403(1)(D).

<sup>8</sup> *Id.*

<sup>9</sup> B-217281-O.M., March 27, 1985, citing *United Biscuit Co. of America v. Wirtz*, 359 F.2d at 212 (D.C. Cir. 1965); see also *Monarch Water Systems, Inc.*, B-218441, August 8, 1985, 85-2 CPD ¶ 146.

<sup>10</sup> See, e.g., 60 Comp. Gen. 323 (1981) (*Federal Prison Industries, Inc.*); 43 Comp. Gen. 759 (1964) (*Federal Savings and Loan Insurance Corporation*); and B-193573, Dec. 19, 1979 (*St. Lawrence Seaway Development Corporation*).

<sup>11</sup> 29 U.S.C. §§ 1306, 1342. The revolving funds may also contain other moneys, including penalties paid by plan sponsors, and funds borrowed from the Treasury, but the possible addition of these funds does not change the result.

<sup>12</sup> 29 U.S.C. § 1305(b)(2).

interest in them. Their collection, use, and disposition are controlled not by ERISA, but by the terms of the plans.

The appointment of PBGC as trustee for plan assets does not convert the assets to appropriated funds. ERISA permits PBGC to be appointed as trustee for the assets of terminated plans under the same conditions that would permit appointment of a private person or organization.<sup>13</sup> The appointment of PBGC instead of a private trustee does not change the nature of the moneys in the trust from plan assets, held for the benefit of plan participants, to appropriations. Certainly nothing in the law or the logic behind allowing appointment of either PBGC or a private trustee suggests such a result.

Procurements with the trust fund assets are also not acquisitions within the meaning of that term in the FAR because these purchases are not "by and for the use of the Federal Government." Rather, they are for the use of the plan participants who are beneficiaries of the trust. Indeed, for PBGC to make purchases of goods or services for governmental use would appear to be a breach of its fiduciary duty as trustee.<sup>14</sup>

**Questions 2 and 3:** Chapter 91 of Title 31 includes the PBGC as a "wholly owned Government corporation" at 31 U.S.C. § 9101(3)(J). Does the definition of "executive agency" at 40 U.S.C. § 472(a), which includes wholly owned Government corporations, include the PBGC? If not, why not? Further, what wholly owned Government corporations are referenced by 40 U.S.C. § 472(a), if not those listed at 31 U.S.C. § 9101(3)? Please provide appropriate citations.

The Administrator of General Services (under whose authority the FAR is issued, jointly with the Department of Defense and the National Aeronautics and Space Administration) is authorized under 40 U.S.C. § 481(a)(1) to "prescribe policies and methods of procurement" for executive agencies. Why does this authority not extend to the PBGC, given the definition of executive agency at 40 U.S.C. § 472(a)?

**Answer:** There is no doubt that the statutory authorities that you cite extend to PBGC. For the reasons given in answer to question 1, PBGC is an "executive agency" as that term is used in the cited statutes and in the FAR. The Administrator of General Services, acting with the other agencies named in the Office of Federal Procurement Policy Act, is authorized to prescribe policies and methods of procurement for executive agencies, including PBGC, and the FAR is the product of that authority.<sup>15</sup>

<sup>13</sup> 29 U.S.C. § 1342(b).

<sup>14</sup> 29 U.S.C. § 1342(d)(3).

<sup>15</sup> 41 U.S.C. §§ 405, 421; FAR § 1.103.

However, as also discussed in answer to question 1, the FAR by its terms applies only to procurements using appropriated funds to procure supplies or services by and for the use of the government, and the trust fund procurements do not fall in that category. It is for that reason that, despite the fact that PBGC is an executive agency as that term is used in the cited statutes and the FAR, its procurements using the trust funds are not subject to the FAR.

**Question 4:** Government corporations, as defined in Chapter 91 of Title 31, are exempted from 40 U.S.C. §§ 486(b) and 487(c) by § 474. These exemptions extend to accounting and auditing practices. Does GAO believe this exemption provides a general exemption from the FAR?

**Answer:** No. As your question suggests, the cited exemptions are narrow. They do not provide a general exemption from the requirement for PBGC to follow procurement law and regulations, such as the FAR, issued thereunder.<sup>16</sup> PBGC is therefore subject to the Competition in Contracting Act (CICA) and the Office of Federal Procurement Policy Act. PBGC must adhere to those acts, and must follow the FAR, which is promulgated in accordance with those acts, except to the extent it is exempted from doing so by the FAR itself. As indicated in our answers to the preceding questions, the FAR definition of acquisition in effect exempts PBGC's trust fund procurements conducted in its capacity as court-appointed trustee.

**Question 5:** Notwithstanding the existence or nonexistence of statutory provisions subjecting the PBGC to the FAR, would a voluntary decision by the PBGC to accept the provisions of the FAR be binding? Would the PBGC be able to waive that decision at will? Is the PBGC permitted to adopt the FAR except on those occasions when it finds the FAR inconvenient?

**Answer:** In general, PBGC's internal policy to follow the FAR<sup>17</sup> is not legally binding with respect to its trust fund procurements. If PBGC were to announce that a procurement was being conducted in accordance with the FAR, the contract award could be challenged on the basis that it had not been conducted in accordance with the FAR. However, challenges to contract awards merely on the basis of failure to follow agency policies have not been sustained either by this Office or the Boards of

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<sup>16</sup> Pension Benefit Guaranty Corporation's Printing and Distribution Requirements, B-217628, January 23, 1986.

<sup>17</sup> "It is PBGC's policy to use competitive procurement as a means to acquire goods and services." "The Federal Acquisition Regulation [and other procurement regulations] govern PBGC's procurement activities." "Procurement actions . . . will be documented in all instances, will be made only by PBGC officials who have procurement authority, and will be carried out in accordance with the requirements of FAR [and other specified procurement regulations and procedures]." PBGC Notice No. 95-25, June 7, 1995.

Contract Appeals.<sup>18</sup> As discussed below, apart from whether or not the FAR applies, any PBGC contract award can be challenged for failure to follow CICA. CICA requirements parallel those of the FAR to a considerable extent.

This Office has held in a series of decisions that voluntary adoption by an agency of an internal policy does not establish legal rights and responsibilities.<sup>19</sup> Consequently, actions contrary to such policies are not illegal or subject to objection by our Office.

In concluding that PBGC's policy to follow the FAR is not legally binding, we considered court cases holding generally that agency policies or regulations are binding. We found no case on precisely the facts presented here, and we believe this situation is distinguishable from the cases we reviewed. For example, the Supreme Court ruled that a policy of the Department of Housing and Urban Development (HUD) was binding. However, the issue in that case was not, as it is here, whether the policy was binding on the agency that issued it; rather, the Court was addressing the question whether the HUD policy was binding on local housing authorities in their dealings with tenants in federally-funded housing. Also unlike this case, HUD's policy created rights for third parties, the public housing tenants.<sup>20</sup> In contrast, PBGC's policy to follow the FAR does not grant private rights or give rise to private interests.<sup>21</sup>

We do not mean to suggest that PBGC can ignore the FAR with impunity whenever compliance would be inconvenient. Arbitrary failure or refusal by agency officials to follow an agency's policies may be a basis for disciplinary action. Moreover, for PBGC to deviate from its policy merely for convenience would leave it vulnerable to criticism from outside the agency.

<sup>18</sup> See Braswell Services Group, Inc., B-278521, Feb. 9, 1998, 98-1 CPD ¶ 49, footnote 3; Border Maintenance Service, Inc., B-261090, May 24, 1995, 95-1 CPD ¶ 262; B-222334, June 2, 1986; Eric Biorgum, ASBCA No. 49988, Dec. 10, 1999, 00-1 B.C.A. (CCH) 30,695.

<sup>19</sup> Support Services International, Inc., B-271559, B-271559.2, July 16, 1996, 96-2 CPD ¶ 20; Indian Resources, Int'l., B-256671, July 18, 1994, 94-2 CPD ¶ 29; Baird Corporation—Second Reconsideration, B-228190, B-228190.3, Nov. 2, 1987, 87-2 CPD ¶ 430; American Contract Services, Inc., B-225182, Feb. 24, 1987, 87-1 CPD ¶ 203; Means Construction Co. and Davis Construction Co., 56 Comp. Gen. 178 (1976).

<sup>20</sup> *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268 (1969); see also *Service v. Dulles*, 354 U.S. 363 (1957) (State Department policy giving employees procedural rights when the Department attempts to fire them is binding).

<sup>21</sup> See *Delta Data Systems Corp. v. Webster*, 744 F.2d 197, 206-07 (D.C. Cir. 1984):

"The award procedures established by legislation and regulation for [procurement by the federal government] are not designed to establish private 'entitlements' to public business, but rather to produce the best possible contracts for the government in the majority of cases." (Opinion by then-Judge Scalia, citations omitted.)

Finally, even if PBGC were to decide not to follow the FAR in conducting a trust fund procurement, it would remain subject to CICA. Under CICA and the Office of Federal Procurement Policy Act, PBGC must follow many of the same general requirements found in the FAR and would be subject to legal challenges to its contract awards for non-compliance with those requirements. As discussed above, PBGC is required to conduct all its procurements in accordance with the general requirement of CICA for full and open competition.<sup>22</sup> More specifically, CICA requires, among other things, that agencies use noncompetitive procedures only in situations specifically delineated in the law<sup>23</sup>, and that solicitations contain specifications meeting criteria set forth in the law.<sup>24</sup> CICA also states that it is the policy of the Congress that "a fair proportion of [the Government's contracts] shall be placed with small-business concerns."<sup>25</sup> PBGC is subject to the bid protest jurisdiction of this Office under CICA, even when acting in its trustee capacity.<sup>26</sup>

**Question 6:** Are all contracts executed by the PBGC done so in carrying out its government functions? Are contracts related to administration of the trust funds carried out by the PBGC as an exercise of its governmental powers, and if so, are these contracts reimbursable by the trust funds? If not, do the trust funds have actual administrators who solicit and award contracts under their own authority? Please provide supporting citations.

**Answer:** PBGC exists as a government corporation, and any action it takes must be in that capacity, including when it is contracting as court-appointed trustee. However, in that case, PBGC is also acting with the additional legal authority of a trustee. PBGC contracts related to the purposes of the trust funds are reimbursable from those funds.<sup>27</sup>

PBGC was chartered by statute as a wholly owned government corporation, to achieve specified purposes, including providing for the timely and uninterrupted payment of pension benefits to participants and beneficiaries in terminated pension

<sup>22</sup> 41 U.S.C. § 251 *et seq.* "Full and open competition" means that "all responsible sources are permitted to submit sealed bids or competitive proposals." See generally the response to question 4.

<sup>23</sup> 41 U.S.C. § 253.

<sup>24</sup> 41 U.S.C. § 253a.

<sup>25</sup> 41 U.S.C. § 252(b).

<sup>26</sup> Professional Pension Termination Associates, B-230007.2, May 25, 1988, 88-1 CPD ¶ 498.

<sup>27</sup> Pension Benefit Guaranty Corporation's Use of Contingent Fee Arrangement with Outside Counsel, B-223146 (Oct. 7, 1986).

plans covered by ERISA.<sup>28</sup> As a government corporation, it can only act pursuant to authority granted by its statutory charter. One such authority is to enter into contracts.<sup>29</sup> Thus, when PBGC executes a contract within the scope of its authority, it does so in furtherance of its government functions.

One of the functions PBGC is authorized by law to perform is to serve, when appointed by a court, as trustee for the assets of terminated pension plans.<sup>30</sup> PBGC then holds these assets as trust funds. When acting as trustee, PBGC may exercise powers given by ERISA to trustees, subject to the jurisdiction of the court appointing it.<sup>31</sup> At the same time, PBGC continues to be a government corporation, with the powers bestowed on it by the Congress in that capacity. Thus, in entering into a contract as trustee, PBGC is exercising both its governmental powers and its powers as appointed trustee. This is analogous to what would happen if, as the law permits, a bank or trust company were appointed as trustee for the assets of a terminated plan. The private trustee, in awarding contracts, would be acting pursuant to the authority of its corporate charter to accept the appointment as trustee, and to do what is necessary for that purpose, and also pursuant to its role as court-appointed trustee.

**Question 7:** Do the trust funds, in GAO's opinion, contain private funds or government funds?

**Answer:** Assets of the trust funds are private funds.<sup>32</sup> As discussed in answer to question 1, they are not appropriated funds. They consist of amounts contributed to private pension plans by employers and plan participants, and earnings on investment of these amounts. The United States has no legal or ownership interest in them. They are held in private trust accounts, impressed with a trust in favor of the plan participants and beneficiaries, rather than on the books of the Treasury, as is generally the case with public funds. The trust assets are under the control of a court-appointed trustee, and are available for disbursement by the trustee to plan participants and beneficiaries, without legislative action.

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<sup>28</sup> 29 U.S.C. § 1302(a).

<sup>29</sup> 29 U.S.C. § 1302(c)(7).

<sup>30</sup> 29 U.S.C. § 1342(b)(1).

<sup>31</sup> 29 U.S.C. § 1342(d).

<sup>32</sup> This distinction—between private and government funds—is not precisely the one drawn by the FAR in terms of what constitutes an acquisition. For that purpose, as discussed in the answer to question 1, the issue is whether funds are “appropriated” or not.

**Question 8:** To whom, in either the Executive or Legislative Branches, is the PBGC accountable for its expenditure of funds from the trust funds, particularly for contracting?

**Answer:** As a creation of the Congress discharging a public purpose, PBGC is subject to oversight to the same extent as other federal agencies. In the executive branch, PBGC is under the direct control of, and is accountable to, a board of directors comprising the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce.<sup>33</sup> In addition, PBGC is subject to the Government Corporation Control Act (GCCA).<sup>34</sup> GCCA requires that PBGC annually submit to the President a "business-type budget that the President is then free to modify before incorporating it in his annual budget proposal to the Congress."<sup>35</sup> GCCA also calls for audits by an independent auditor of the financial statements of the covered corporations.<sup>36</sup>

GCCA also has implications for legislative branch oversight. It expressly gives the Congress responsibility for consideration of the corporate budgets submitted by the President.<sup>37</sup> GCCA also requires government corporations to submit an annual management report to the Congress and to this Office.<sup>38</sup> GAO's role is expressly recognized in GCCA<sup>39</sup> and, as you know, we also perform reviews of PBGC at the request of Members or committees of Congress.

Other legislative branch oversight of PBGC stems from the appropriations committees' consideration of its budget, and from activities of committees with legislative or oversight jurisdiction over it. PBGC is also subject to both executive and legislative oversight under the Government Performance and Results Act, which requires agencies to prepare and submit to the President and the Congress annual performance plans with specific goals, and reports on how their performance compares with the goals.<sup>40</sup>

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<sup>33</sup> 29 U.S.C. § 1302(d).

<sup>34</sup> 31 U.S.C. § 9101-9110.

<sup>35</sup> 31 U.S.C. § 9103.

<sup>36</sup> 31 U.S.C. § 9105.

<sup>37</sup> 31 U.S.C. § 9104.

<sup>38</sup> 31 U.S.C. § 9106. Copies of these reports also go to the President and the Director of the Office of Management and Budget.

<sup>39</sup> 31 U.S.C. § 9105.

<sup>40</sup> 31 U.S.C. § 1115-1119.



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026  
(202) 326-4010

Office of the Executive Director

October 3, 2000

Honorable Charles E. Grassley  
Chairman  
Special Committee on Aging  
United States Senate

Via fax: 202-224-8660

Honorable Christopher S. Bond  
Chairman  
Committee on Small Business  
United States Senate

Dear Chairmen Grassley and Bond:

On behalf of the Pension Benefit Guaranty Corporation (PBGC), I am submitting this letter, with attachments, for the record of the joint hearing entitled "Pension Tension: Does the Pension Benefit Guaranty Corporation Deliver for Retirees" held on September 21, 2000, by the Senate Special Committee on Aging and the Senate Committee on Small Business.

This letter answers, for the record, the twelve follow-up questions that you asked in your letter of September 28, 2000. This letter also includes answers to questions that you asked at the hearing and for which I agreed to submit responses for the record, as well as additional information that I promised to submit for the record.

#### EXECUTIVE SUMMARY

##### Benefit Determinations

Two years ago, the Committees asked the PBGC's Inspector General (IG) to review the timeliness of the PBGC's benefit determination process. The IG found that the PBGC generally had taken an average of 5.7 years to give participants their final benefit determinations. (The method used to calculate the average age of benefit determinations is discussed in our response to question 3.)

As I testified before the Committees, our highest priority has always been to ensure that participants continue to receive their benefit payments without interruption. As explained in more detail in our response to question 5, I have made the speedier issuance of final benefit determinations a top priority.

determinations a top priority.

We have tripled the number of final benefit determinations issued from 20,000 in 1993 to more than 60,000 each year since 1995. And we have made this dramatic improvement in the timeliness of benefit processing without compromising the accuracy of the final determinations. (See our responses to questions 2 and 4 to see how we ensure the accuracy of our final determinations.)

The IG's reports do not reflect the dramatic processing improvements we have made or the current status of the PBGC's operations. For plans that we trustee today, we expect to issue final benefit determinations within three years. (Three-year processing is the best we can do without legislative changes such as those detailed in our response to question 12.)

In order to make more timely benefit determinations, the PBGC has become more aggressive in its efforts to obtain and protect records that contain vital participant and actuarial valuation information. (See our response to question 1.)

#### Contract Management

The Committees asked the GAO to review the PBGC's contract management. GAO found that we complied with all legal requirements, but identified several areas where we can further improve our operations. As I testified before the Committees, we accepted the GAO's recommendations and have already begun implementing them. As detailed in our responses to questions 7, 8, and 9, an independent organization will study the issue of the organizational placement of our Contracts and Controls Review Department, and the PBGC is now compiling data to allow senior management to more effectively monitor FBA performance. As we responded to the GAO report, the PBGC will seriously consider using fixed-price contracts in all situations where these contracts are practicable. (See our response to question 10.)

#### Contract Awards to IMRG

Witnesses at the hearing raised allegations of steering of contracts by Mr. Bennie Hagans to Ms. Myrna Cooks, President of the Integrated Management Resources Group. As I noted during my testimony, over the last three years, the GAO, the Department of Justice, and the PBGC's Inspector General have all conducted investigations, and no one has been able to substantiate any allegations of misconduct. Enclosed for the record is an updated report prepared by the PBGC's General Counsel (see Enclosure C).

As more fully explained in my response to question 6, prior to the hearing I raised the possibility that the accusations against Mr. Hagans and Ms. Cooks might be racially motivated. Because these matters had been discussed privately with the Committees, I saw no reason to bring it up at the hearing.

Computer Security

As I testified before the Committees, we have been reporting monthly on our computer security efforts. We completed our corrective action plan on September 30, 2000, as promised. Inspector General Poll has attended the monthly computer security briefings, and has been given the opportunity to suggest additional steps that we may need to take to strengthen our computer security. To date, Mr. Poll has not made any additional recommendations. (See our response to question 11.)

In your letter to me of September 28, 2000 you asked me twelve questions, some of which had subparts. I have answered each in order, and they are attached along with other supplemental information for the record.

Sincerely,



David M. Strauss  
Executive Director

cc: Wayne Robert Poll  
Inspector General

## QUESTIONS IN THE LETTER OF SEPTEMBER 28, 2000

QUESTION 1: Inspector General Wayne Poll testified that it would be beneficial for the PBGC to be more aggressive in obtaining the records it needs from pension plans in order to perform timely valuations and benefit calculations.

QUESTION 1(A): How long does it take the PBGC to gain trusteeship of a plan after it has terminated?

ANSWER 1(A):

The PBGC's standard is to gain trusteeship of a plan, or file a trusteeship action in court, within two months after the PBGC decides that termination is necessary.

In most cases the PBGC becomes trustee by executing a trusteeship agreement with the plan sponsor. If this is not possible (e.g., where the plan sponsor opposes plan termination or the sponsor no longer exists), the PBGC files an action in court to become trustee of the plan. Actual trusteeship of the plan, of course, takes longer when litigation is involved.

In past years the PBGC faced a backlog of plans awaiting trusteeship. This backlog has been eliminated. Table 1 below shows the status, of the 38 plans awaiting trusteeship as of September 30, 2000.

Table 1: Trusteeships Pending As Of September 30, 2000

Age From Termination Decision Date	Trusteeship Agreement	Court Action Required	Total
0 - 1 Months	13	2	15
1 - 2 Months	6	1	7
2 - 3 Months	1	0	1
3 - 4 Months	2	2	4
4 - 5 Months	0	3	3
5 - 6 Months	0	0	0
More Than 6 Months	0	8	8

QUESTION 1(B): How aggressive is the PBGC in obtaining the records it needs to perform an actuarial valuation?

ANSWER 1(B):

The PBGC is very aggressive in its efforts to obtain and protect records that contain vital participant and actuarial valuation information. Early in the process the PBGC determines whether records are safe. If there is a cause for concern, the PBGC sends out a team of auditors and actuaries to secure any records that might be at risk.

QUESTION 1(C): What steps does the PBGC take to ensure that plan documents and records are preserved between the time of termination and the time of trusteeship?

ANSWER 1(C):

We make every effort to ensure that plan documents and records are preserved between the time of termination and the time of trusteeship. The PBGC identifies what records are needed to perform an actuarial valuation, their location, and how they are stored (e.g., paper or electronic). The PBGC collects, organizes, and validates the records and plan and participant data required for the valuation. Because in many cases the plan sponsor has gone out of business or is failing, they have not kept up-to-date records, the PBGC must identify and gather missing information from other sources.

The PBGC contacts a variety of sources when searching for valuation records and information. These include, for example, the Plan Administrator, the plan sponsor's human resources department, and actuaries and other professionals who have worked on the plan. In many cases, the PBGC's search expands to other sources (e.g., obtaining employment history from Social Security Administration or directly from participants).

QUESTION 1(D): Why does it take a year or more to issue an IDL after the actuarial valuation is complete?

ANSWER 1(D):

It no longer takes the PBGC more than a year to issue a benefit determination. Our most current data shows that, for valuations completed in FY 1999, 93 percent of the IDLs were issued in less than a year. With few exceptions, the remaining IDLs are attributable to litigation and to participants who cannot be located.

We would also note that the Office of the Inspector General has confirmed the dramatic improvements we have made. In 1999 the OIG found that for a sample of plans trusteeed between 1976 and 1991, the PBGC issued benefit determinations within one year of completing the valuation only 39 percent of the time. On March 31, 2000, the OIG "...found that PBGC significantly improved in the length of time to issue an IDL after the actuarial valuation process is completed.... During FY 1999, we noted that approximately 86% of IDL's were issued within a comparable period." Again, our estimate for FY 2000 is 93 percent.

QUESTION 2: How does the PBGC measure the accuracy of the determination letters it sends out?

ANSWER 2:

The PBGC ensures the accuracy of the determination letters we send to participants by adhering to strict procedures and controls that are closely monitored by PBGC management, the Office of the Inspector General, and an independent auditor, currently PriceWaterhouseCoopers.

First, the PBGC gathers the participant information needed to calculate benefits. The accuracy of PBGC's participant databases is validated through statistical sampling in accordance with generally accepted auditing methods.

Second, PBGC actuaries then calculate each participant's benefits in accordance with actuarial standards. To ensure the accuracy of this work the benefit liability valuation for each plan receives multiple reviews. In commenting on this process PBGC's Inspector General has even suggested that the agency should consider reducing the number and depth of these actuarial reviews. However, we believe that they are necessary to assure that each participant's benefit is accurately computed.

Finally, upon completion of the valuation the PBGC notifies each participant of their benefit by sending them a determination letter. The PBGC validates the accuracy of the benefit determination letters by routinely comparing the benefit amounts in them with the data contained in our automated participant records information system (PRISM).

Our commitment to the accuracy of our work has been consistently validated by our independent auditor and the participant appeals process. First, in auditing our Annual Financial Statement, PriceWaterhouse Coopers verifies the accuracy of our benefit calculations with a statistically valid sample of. These audits are conducted in strict accordance with government auditing standards. The PBGC has received unqualified financial opinions on each of its financial statements since 1993. Second, even though we have tripled the number of determination letters we issue, the appeals rate has remained constant at about 2 percent as confirmed by the Office of the Inspector General in his recent report to your Committees.

While nearly half of these appeals result in revised benefit determinations (1% of the total), you should bear in mind that in their appeals participants frequently provide new information about their age, earnings and employment history. ( The PBGC's initial decision was generally based on the participant information available to the agency from the prior plan sponsor's records.)

QUESTION 3. The PBGC asserted that in fiscal year 1999 the average age of IDLs issued after date of trusteeship was 5.7 years. Inspector General Poll stated in his written testimony that the PBGC uses a standard averaging method, which masks the number of IDLs that take longer to process. Does your average include some IDLs that have been issued or all the IDLs in your backlog? Please explain in detail.

## ANSWER 3:

For new plans that we take in today, the PBGC will process all the benefit determinations within three years.

Benefit Determinations Issued: The PBGC's report on the average age of benefit determination letters does include all the determination letters issued for the year. The average age includes the reissuance of earlier benefit determinations (which makes it seem that the issuance of these benefit determinations took longer than they actually did). In FY 1999 the average time was 5.7 years from the time of plan trusteeship until the benefit determination was issued. For FY 2000 our preliminary information is that the average dropped to 4.9 years, with less than 8 percent over 7 years old. The majority of these are attributable to one plan which has been caught up in litigation which we settled recently. We expect the average to drop again next year.

Benefit Determinations Pending: The PBGC separately monitors the size and age of the inventory of pending benefit determinations. On October 1, 1998 the average age of the 207,000 pending benefit determinations was 3.2 years. On October 1, 1999 the average age of the 190,000 pending benefit determinations was 2.3 years. On October 1, 2000 our preliminary data shows that the average age of the approximately 160,000 pending benefit determination letters has further decreased to about 2 years. At this time we have no pending benefit determinations for plans trustee'd more than 5 years ago.

QUESTION 4: In your testimony, you stated that the PBGC issued 67,700 benefit determination letters in fiscal year 1999.

QUESTION 4(A): How many of those letters told participants they had been overpaid and requested repayment?

## ANSWER 4(A):

Our preliminary numbers for FY 2000 show that about 1,400 participants (out of 60,000) had received too large an estimated payment (i.e., an overpayment). If the PBGC determines that the participant was overpaid, the PBGC will recalculate the participant's monthly benefit. The PBGC will reduce the monthly annuity benefit to recoup the amount (without interest) of the overpayment. The reduction is never more than 10% of the participant's monthly benefit. (The PBGC's recoupment policy was modified in 1998 consistent with Senator Grassley and the Senate Special Committee on Aging.)

QUESTION 4(B): How many of those letters told beneficiaries they had been underpaid and were due additional benefits? How many of those additional payments were made as lump-sum payments?

ANSWER 4(B):

Our preliminary numbers for FY 2000 show that about 4,000 participants (out of 60,000) had received too small an estimated payment (i.e., an underpayment). Once the PBGC determines that it has underpaid the participant, we adjust the participant's monthly benefits and pay him or her the amount (with interest) of the underpayment in the form of a lump sum. These amounts can, in accordance with tax rules and regulations, be rolled over, tax free, into IRAs or other tax qualified retirement vehicles.

QUESTION 4(C): What is the PBGC's strategy for reducing these overpayments and underpayments?

ANSWER 4(C):

The PBGC's first priority when we assume responsibility for a plan is to make sure anyone receiving benefits continues to receive their benefits and anyone eligible to start benefit payments starts getting paid.

It takes time for the PBGC to identify, collect, and audit all of the plan and participant data needed to verify each participant's exact benefit. Until this process is completed, the benefits that participants receive are "estimated." In most cases estimated and final benefits are exactly the same.

The PBGC is reducing the number and amount of overpayments and underpayments by issuing final benefit determinations more quickly. Our acceleration in the processing of benefit determinations will mean there are fewer participants who will have to receive an estimated benefit. And those who receive estimated benefits will do so for a much shorter time.

QUESTION 5: The Inspector General's office has documented an interview with Mr. Bennie Hagans, director of the Insurance Operations Department, as saying, "there is no impact [to participants] of delayed IDLs. Participants get their checks." A copy of this document is attached. Do you agree with Mr. Hagan's statement?

ANSWER 5:

The memorandum to the file of the Deputy Inspector General does not reflect the view of Mr. Hagans, nor does it reflect my view or that of PBGC's senior management. PBGC's view was expressed by PBGC's Chief Operating Officer, Mr. Joseph Grant, in an memorandum to the Inspector General in early 1999. That memorandum stated, "We recognize that delays in issuing IDLs can adversely affect some participants. It is for this reason that every member of PBGC's management team is, without exception, focused on processing cases as quickly as possible."

I want to clarify that the memorandum, drafted by Ms. Deborah Stover-Springer, documents a conversation between Mr. Hagans and Teryal Turner, Deloitte and Touche's audit manager, that she overheard -- not an interview. Ms. Stover-Springer's memorandum is dated December 3, 1998, nearly a year after the January 13 date the conversation took place.

QUESTION 6: The New York Times, in an article published September 21, 2000, cites a statement from you asserting a racial motivation for allegations about contracting matters investigated by the General Accounting Office's Office of Special Investigations. However, in the hearing that same day, you mentioned nothing about this alleged racial motive. The following day, the New York Times reporter noted that you had been making this allegation for months prior to the hearing.

A. What specific evidence do you have that the contracting allegations are racially motivated? Did you share that evidence with the General Accounting Office?

B. If you had such evidence, why did you not introduce the matter into the hearing? If you do not have such evidence, why did you make allegations of a racial motive to the New York Times reporter?

ANSWER 6A&B:

On Wednesday, Sept. 20, 2000, I spoke with *The New York Times* reporter, David Cay Johnston. He asked me what motivation people could have for making these allegations. I offered several possibilities: First, the falling out between the former management of Office Specialists and its former employee Myrna Cooks. Ms. Cooks left her \$350,000 a year job with Office Specialists (a PBGC contractor) to form her own company and compete for PBGC contracts on her own. Second, the fact that there is a group of former Pan Am employees who are very unhappy with the PBGC because we cannot legally pay them subsidized early retirement benefits. And third, a reorganization that resulted in a more diverse (more African-American) senior management at the PBGC. I then said that we cannot rule out the possibility that these allegations are racially motivated, especially in light of the fact that the individuals cited in *The New York Times* articles are all minorities.

I pointed out to David Cay Johnston that the PBGC engages in approximately 1,400 contract actions a year. The only two contracts that were singled out for investigation involved African-American principals. I also pointed out to David Cay Johnston that for several years I have looked into each of the allegations as they arose and none of them had been substantiated. As I testified before the Committees-- and as I emphasized to the reporter -- over the last three years the GAO, the Department of Justice, and the PBGC's Inspector General have all investigated these allegations, and no one has been able to substantiate any misconduct. At my request, the PBGC's General Counsel has reviewed these investigations and summarized the results in a report that has been provided for the record. (See Enclosure C for a supplement to that report.)

Prior to the hearing, in various private meetings with members of the Committees and with the staff of the Committees, I raised the possibility that the accusations against Mr. Hagans (one of PBGC's senior African-American career employees), Ms. Cooks, and Ms. Wilmer Graham (both also African-Americans) might have been racially motivated. I am confident that Mr. Hagans, Ms. Cooks and Ms. Graham will be cleared of any misconduct.

QUESTION 7: Do you agree with the General Accounting Office that the organizational placement of the Contracts and Controls Review Department is inherently not independent under generally accepted government auditing standards? If not, why not? Please attach any supporting documentation.

ANSWER 7:

As stated in our response to GAO Report entitled "Pension Benefit Guaranty Corporation, Contract Management Needs Improvement," issued September 21, 2000, the issue of the Contracts and Controls Review Department's (CCRD's) organizational placement is complex and will receive further study by an outside, independent organization.

QUESTION 8. How will the PBGC compile comparative analysis data of contractor Field Benefit Administration offices, to ensure contractors are accountable for their past performance records?

ANSWER 8:

Using the automated data systems that have been brought on line over the past several years, the PBGC is now compiling data that will allow senior management to more fully analyze FBA performance and compare FBA offices. PBGC senior managers receive daily reports on customer service performance metrics for each FBA, and the PBGC also actively manages the document scanning activities in the field offices using centrally compiled and monitored data.

The GAO in its report to the Committees on September 21 recommended that the PBGC strengthen its contract oversight role by developing the capacity to centrally compile and monitor essential field office performance data. In our response we agreed, noting that while FBA performance data is currently used by the PBGC, development of additional FBA performance information will continue per the GAO recommendation.

QUESTION 9: The General Accounting Office indicates that the PBGC is now shipping new work to the Field Benefit Administration offices even after those FBAs have handled the plans they were originally established to resolve. Do you intend to continue this practice? Are FBA offices becoming de facto regional offices for the PBGC? Does the current distribution of FBA offices make sense if these offices are going to act as regional offices?

## ANSWER 9:

Yes, we plan to continue sending new work to the FBAs. The PBGC uses FBA offices to provide essential contract benefit administration services that we could not provide under current staffing limits. However, the FBAs were never intended to, and do not serve as permanent, full service, regional offices. In fact, the PBGC periodically realigns its FBA operations to meet the agency's needs. For example, since 1994, the PBGC has closed seven FBA offices and opened one new office based on workload and cost savings considerations.

The GAO has recommended that the PBGC "conduct a comprehensive review of PBGC's future capital needs, including the size of the workforce, its deployment across the organization, and the knowledge, skills, and abilities needed by PBGC." To examine this and other issues, the PBGC will engage an outside, independent organization to conduct a strategic workforce planning study. An analysis of field benefit operations will be included in this study. The report should be completed by next Spring.

QUESTION 10: Currently, 60% of the PBGC's active contracts use labor-hour pricing. Does the PBGC have plans to increase its reliance on fixed-price contracts? Please explain in detail.

## ANSWER 10:

It is the policy of the PBGC, in accordance with the Federal Acquisition Regulation (FAR), to use fixed-price contracts whenever practicable. (As noted in the hearings, PBGC complies with the FAR as a matter of policy.) The FAR gives a contracting officer significant latitude in selecting the contract type that best fits the particular situation. Fixed-price contracts are best suited for service contracts where both the price and the types of services needed can be reasonably quantified. Routine training, for example, is the type of service for which fixed-price contracts are appropriate.

When PBGC contracts to obtain field benefit administration (FBA) services, fixed-price contracts are generally not appropriate because the nature and extent of the pension plan processing services cannot be predicted with any degree of certainty. Thus, labor-hour contracts are more economical due to the episodic nature of this work. If we were to put out a fixed-price Request for Proposal (RFP) for FBA work, we would probably either get no bids (because the contractors would have no idea what price to charge) or we would get bids of exorbitantly high cost.

QUESTION 11: Have you personally consulted with Inspector General Wayne Poll about additional steps that may need to be taken to strengthen the PBGC's computer security, based on what has been learned during the past few months of implementation of the corrective action plan?

## ANSWER 11:

Yes, the Inspector General has attended the monthly meetings I have held to review our implementation of our corrective action plan. We have been reporting to your Committees on our computer security efforts and, as promised, we have completed all steps required in the corrective action plan as of September 30, 2000. I and others have asked the IG for his suggestions or observations. He has indicated in those meetings that what we were doing made sense and he would be reviewing our work after September 30, 2000 (as he told the Committees).

In addition to the Inspector General, the PriceWaterhouseCoopers computer consultants (under contract to the OIG) have also attended the last three meetings. They too have received copies of all procedure changes and have had separate meetings with our computer staff.

QUESTION 12: Does the PBGC have any suggestions or recommendations for legislative changes that would provide the PBGC with a more efficient and faster benefit determination process?

## ANSWER 12:

There are several legislative changes to the Employee Retirement Income Security Act (ERISA) that would provide the PBGC with a more efficient and faster benefit determination process. We supplied the PBGC's Office of Inspector General with these suggested changes in March of 1999. I am enclosing for the record the memorandum entitled "Potential Changes to Title IV of ERISA that would speed the issuance of IDLs," along with the attachment to that memorandum entitled "SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS" that my deputy Joseph Grant sent to the Deputy Inspector General at that time. (See Attachments 1 and 2 to Question 12.)

The proposal to simplify the "substantial owner" rules of Title IV is included in both the President's pension proposals and as section 602 in the bi-partisan S. 741, the Pension Coverage and Portability Act, of which you, Mr. Chairmen, are co-sponsors. In Mr. Grant's memorandum we also indicated that we were looking at amending how the Small Plan Average Recovery Ratio (the "SPARR") is determined under section 4022(c) of ERISA. Waiting for the information needed to calculate the SPARR significantly delays PBGC's processing of many plans.



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

ATTACHMENT 1 TO QUESTION AND ANSWER 12

DATE: March 23, 1999

TO: Deborah Stover-Springer  
Office of the Inspector General

FROM: Joseph H. Grant  
Deputy Executive Director  
and Chief Operating Officer

SUBJECT: Potential Changes to Title IV of ERISA that would speed the issuance of IDLs.

I am writing in response to your inquiry of Thursday, March 11, asking for information about changes to Title IV of the Employee Retirement Income Security Act of 1974 (ERISA) that would enable the PBGC to issue Initial Determination Letters (IDLs) more quickly.

While the PBGC remains committed to improving the efficiency and effectiveness of our benefit determination process, we are, of course, bound by the statutory requirements of ERISA. Complying with some of these requirements can be quite time consuming. As we noted in our response to the Office of the Inspector General's Draft Audit Report: Improvements Are Needed to Achieve Better Efficiency and Effectiveness in PBGC's Benefit Determination Process, "The benefit calculation process is very time consuming because of . . . a complicated statute (e.g., calculations under Title IV of ERISA are often very complicated and can require data and documents that are very difficult to find).

One specific proposal the PBGC has made would simplify the PBGC guarantee and asset allocation rules that apply to benefits of owner-employees. This proposal has been cleared with the Administration and is included in the Administration's FY 2000 budget proposals. Under current law, special guarantee and asset allocation rules apply to substantial owners (generally, an ownership interest exceeding 10%). The rules are inordinately complex and require plan documents going back as far as 30 years, which are difficult or impossible for the PBGC to obtain. The proposal would apply special guarantee limitations only to owners with a 50% or more ownership interest (owners with less than 50% ownership would be treated the same as regular participants), and it would simplify the special guarantee and asset allocation rules applicable to majority owners. Attached is a more detailed explanation of the proposal.

Another example of the challenge the PBGC faces is the delay in case processing we encounter in valuing and allocating employer recoveries. ERISA requires the PBGC to determine the employer liability recovery for all plans and to share these recoveries with participants using the Small Plan Asset Recovery Ratio (SPARR). Determining the SPARR takes a minimum of 1 - 2 years. This makes it impossible to complete benefit processing for most plans in less than 3 years.

Other areas of processing complexity include valuing participant liabilities and determining the appropriate priority category to which they should be assigned, and applying the benefit limits under ERISA's phase-in rules.

We recognize that in most instances the statutory requirements of ERISA represent a balancing of competing considerations. With the exception of the above-mentioned substantial owner simplifications, the PBGC has not drafted or recommended changes at this time. As we noted in our response to the OIG report, while they would enable us to issue IDL's more quickly, they are more difficult to implement. . .". We recognize that careful consideration should be given before any action is taken. However, we believe it is important for all parties who are concerned about the delays our participants experience to understand that further substantial improvements in the PBGC's 3 - 5 year benefit determination processing time goal may require legislative changes.

ATTACHMENT 2 TO QUESTION AND ANSWER 12  
SUBSTANTIAL OWNER BENEFITS IN TERMINATED PLANS

**Current Law**

PBGC's guarantee of benefits of substantial owners (generally, ownership interest exceeding 10 percent) is phased in over 30 years as compared to five years for non-owners. A substantial owner's benefit under each amendment within the 30 years before termination is separately phased in. The combined guarantee of benefits under the terms of the original plan and all amendments to the plan cannot exceed two times the guarantee of benefits under the terms of the original plan. Priority Category 4 of the allocation of assets includes guaranteed benefits plus benefits that would be guaranteed but for the special substantial owner guarantee limitations. Assets are allocated pro rata in Priority Category 4 based on participants' benefit values. Thus assets may be allocated to a substantial owner's nonguaranteed benefits before all guaranteed benefits have been satisfied.

**Reason for Change**

The special substantial owner rules are inordinately complex and require plan documents going back as far as 30 years, which are difficult or impossible to obtain. The rules penalize owners in plans that started out with modest benefit levels and those with little control over plan decisions. Changes are needed in the guarantee and asset allocation rules to simplify determination of benefits and eliminate the unduly harsh treatment of owners under the current law. The proposed changes also will eliminate one of the reasons that small business owners give for not establishing defined benefit plans (i.e., the inadequacy of PBGC guarantees for owners).

**Proposal**

The proposal would apply special guarantee limitations only to owners with a 50 percent or more ownership interest ("majority owners"); other owners (less than 50 percent ownership) would be treated the same as regular participants. The guarantee for majority owners would be phased in at the rate of 1/10 for each year that the plan has been in effect. Thus, after a plan has been in effect for ten years, the same guarantee limits would apply to all participants. The proposal also would change the allocation of assets in priority category 4 to distinguish only between majority owners and regular participants and would allocate assets to nonguaranteed benefits of majority owners only after all guaranteed benefits have been satisfied.

ADDITIONAL INFORMATION I PROMISED TO SUPPLY FOR THE RECORD

ENCLOSURE A -- THE CASE OF MRS. DOROTHY JASKO

ENCLOSURE B -- RESPONSES TO ASSERTIONS MADE IN THE TESTIMONY OF MS. BONNE ANNE MCHENRY OR BY MS. MCHENRY IN RESPONSE TO QUESTIONS AT THE HEARING

ENCLOSURE C -- GENERAL COUNSEL'S SUPPLEMENTAL COMMENTS

ENCLOSURE A -- THE CASE OF MRS. DOROTHY JASKO

Mr. Chairmen, as I promised at the hearing, I have looked into the PBGC's actions with respect to the case of Mrs. Dorothy Jasko, using the attachments that Dr. Wilde submitted with his testimony. My review indicates that PBGC made some mistakes in handling this case.

First, although we did thank Mrs. Jasko orally for returning the \$437,129.55 check, it took the PBGC a month to send Mrs. Jasko a written apology and thank you. Second, the PBGC did not advise Mrs. Jasko that the IRS had been notified of the \$437,129.55 payment, did not warn her that she might hear from the IRS, nor did we tell her how to respond to the IRS.

Mr. Chairmen, I want to assure you that Mrs. Jasko's case was an isolated incident and is not representative of the customer service that we provide today in keeping with our corporate customer service pledge.

ENCLOSURE B -- RESPONSES TO ASSERTIONS MADE IN THE TESTIMONY OF MS. BONNE ANNE MCHENRY OR BY MS. MCHENRY IN RESPONSE TO QUESTIONS AT THE HEARING

Ms. Bonne McHenry testified concerning her experiences as a contract employee working on the Pan Am plans for PBGC's Atlanta Field Benefit Administration (FBA) office operated by Integrated Management Resources Group, Inc. (IMRG). PBGC believes that her testimony as a whole offers an inaccurate description of PBGC's processing of the Pan Am plans. Some of Ms. McHenry's statements are set forth below, followed by PBGC's clarification of the issues she discussed.

First, it is important to note that Ms. McHenry states she began working in the Atlanta FBA on October 1, 1998 -- after IMRG had the contract for the Pan Am work. She did not experience any of the difficulties PBGC had with Office Specialists during the preceding year. Moreover, she left IMRG in March 2000 and does not speak to PBGC's work with the Atlanta office since that time.

1. Ms. McHenry suggested that participants who had not received a formal Benefit Determination Letter (which she refers to as an "IDL," standing for Initial Determination Letter), and who believed their estimated benefit to be incorrect, had no option except to wait for their benefit determination letter and then appeal.

- This is incorrect. PBGC routinely corrects errors in estimated benefits and adjusts the amount of a benefit in advance of a Benefit Determination Letter being issued. PBGC welcomes inquiries from anyone who thinks his or her benefit is incorrect.

2. Ms. McHenry suggested that 45 days was too short of an appeal period for the complex issues addressed in the Benefit Determination Letter; she and others have said that, if it took PBGC so long to issue the Benefit Determination Letter, it is not fair to require an appeal in 45 days.

- In general, PBGC's experience with appeals indicates that a 45-day period is more than adequate for most participants to appeal a benefit determination. In those instances when participants need more time to submit their appeals, the PBGC routinely grants extensions of the 45-day deadline. And it is PBGC's policy to raise a participant's benefit whenever a benefit is discovered to be too low -- even if it is long after the 45-day appeal period is over, or even if an appeal has been already decided.

3. Ms. McHenry alleged that PBGC refused to issue Benefit Determination Letters in Pan Am and unnecessarily delayed them.

- This is incorrect. On many occasions, PBGC has publicly explained the reason for delays in completing the issuance of Pan Am Benefit Determination Letters. Briefly, PBGC's first priority as trustee was to make sure that each retiree then receiving a benefit continued to receive his or her monthly check, and that newly eligible retirees and beneficiaries were placed in pay status. Although the Pan Am plans by many measurements were the largest we had trusteeed, PBGC was successful in this effort. Since we assumed responsibility for the Pan Am plans in 1991, PBGC has been paying more than \$100 million each year in benefits to more than 14,000 Pan Am retirees.
- PBGC's next priority was to determine the correct amount that each former Pan Am employee should receive from PBGC. By law, PBGC guarantees the payment of certain basic pension benefits when a pension plan terminates, but the extent of this guarantee was limited by Congress. The process to determine the correct monthly benefit payable by PBGC involves gathering and auditing records relating to the pension plan, the employer, and all participants, valuing plan assets, and performing complex actuarial calculations.
- The pension and personnel records provided to PBGC by Pan Am were in very bad

condition. Considerable time and resources were expended to gather accurate participant data and rebuild and audit a computerized database for each plan. The amount of money PBGC recovered in Pan Am's prolonged bankruptcy was not settled until the end of 1994. This delayed PBGC's processing because participants' guaranteed benefits can be increased by the assets recovered in the bankruptcy. Thus, it was not possible for PBGC to begin issuing Benefit Determination Letters to most Pan Am retirees until June 1996. PBGC was able to complete the issuance of virtually all Pan Am CRIP Benefit Determination Letters by April 1999 and Pilot Plan Benefit Determination Letters by September 1999. These were not court-imposed deadlines. Finally, the number of CRIP includes approximately 29,000 participants, not the 20,000 stated by Ms. McHenry.

4. Ms. McHenry states that PBGC sent out letters to participants stating that we did not have sufficient information to determine their benefit and that this was done in order to inflate the number of Pan Am Benefit Determination Letters we had issued.

- This is incorrect. We never characterized or reported these letters as benefit determinations. For the Pan Am CRIP plan, after we had sent Benefit Determination Letters to nearly everyone for which we had sufficient information, we made several attempts to obtain additional information for the relative few participants for whom we had insufficient information -- either to determine whether they were entitled to a benefit or what the amount of the benefit should be. Not surprisingly, one of the ways in which we attempted to obtain this information was to send a letter to their last known address telling them we had insufficient information and asking if they could provide such information. Finally, a very few participants received a letter saying that their Benefit Determination was awaiting resolution of an unresolved policy issue that had arisen in the final stages of issuing Benefit Determination Letters.

5. Ms. McHenry asserted that there are thousands of missing Benefit Determination Letters.

- This concern was raised by Ms. McHenry and investigated by the PBGC. Plaintiffs in litigation with PBGC also raised this issue to the court. The PBGC explained how the mistaken assertion occurred in correspondence with the federal court.
- Briefly, an Atlanta FBA employee produced a document that appeared to show thousands of unissued Benefit Determination Letters. The PBGC database used to generate the document, the Participant Records Information System Management (PRISM), had not (and has not) been fully loaded to accurately reflect Benefit Determination Letter issuance for the Pan Am plans.
- PRISM is a relatively new computer database that PBGC has developed since the issuance of Pan Am benefit determinations began. When fully loaded with the proper

Pan Am data, and when the report-writing function is fully operational, PRISM will produce useful information for the Pan Am pension plans. But these two goals have not yet been reached and certainly had not been reached in October 1999 when the document was apparently generated.

- PBGC is currently in the "plan closing audit" stage with the Pan Am plans and making great progress in having PRISM reflect all the Pan Am data. This process will result in a complete picture of all the Benefit Determination Letters that were issued in all three Pan Am plans -- approximately 32,000 Benefit Determination Letters to participants receiving, or eligible in the future to receive, a benefit, and nearly 22,000 Benefit Determination Letters to former Pan Am employees who were not eligible for a benefit. This reconciliation process is part of PBGC's quality control process. During this process the PBGC often finds some of the previously unlocated participants, and also uncovers a few additional participant Benefit Determination Letters to be issued.
6. Ms. McHenry stated that letters were sent by PBGC to some people who did not work for Pan Am and who were paid by Prudential, CIGNA, and Johnson Controls.
- Ms. McHenry is correct. Because we believed it important to let participants know immediately of our trusteeship, we sent letters to everyone, including employees paid by the companies Ms. McHenry mentions. We could not tell whether these people were eligible for benefits or not because Pan Am had purged several thousand names from its electronic database including some terminated vested employees who might be entitled to benefits. We used the Pan Am payroll system and the paying agent system because they alone had addresses for everyone. After we sorted through these records, we sent letters to those people not eligible for pension benefits from Pan Am -- telling them of their ineligibility.
7. Ms. McHenry stated that some Pan Am participants waited for 6 to 7 months for their first paycheck after applying to PBGC for benefits.
- This is not the norm for PBGC's participants to have their benefit payments to begin. PBGC's normal processing period is 60 days. Importantly, at the same time the first check is issued, a check for any back payments, with interest, is sent.
8. Ms. McHenry referred to an IMRG "gag rule" keeping IMRG employees from discussing problems with PBGC management in Washington.
- PBGC management did not impose a "gag order." PBGC management regularly heard from contract employees in Atlanta concerning questions they had. PBGC suggested practices to be followed in the video conference meetings in order to maximize their

usefulness, but this did not include discouraging IMRG employees from raising any issue that concerned them.

9. Ms. McHenry stated that she did not think PBGC applied the Pan Am subsidized early retirement benefit correctly, and PBGC never explained their reasoning to the FBA employees.

- PBGC explained the early retirement issue to the Atlanta employees on numerous occasions. PBGC is without authority to pay subsidized early retirement benefits to participants in the Pan Am Cooperative Retirement Income Plan (CRIP) who, as of the plan termination date of July 31, 1991, had not satisfied both required plan conditions:
  - (1) 10 years of service; and
  - (2) attainment of age 55 prior to termination of employment.

Explanation:

- Under ERISA, PBGC guarantees only "nonforfeitable benefits."
- A nonforfeitable benefit is defined in the applicable law as a benefit for which a participant has satisfied the conditions for entitlement under the plan, as of the date of plan termination (DoPT).
- A subsidized early retirement benefit is a nonforfeitable benefit if the participant has satisfied the conditions for entitlement under the plan prior to DoPT.
- The CRIP plan document clearly makes accrual of 10 years of Pan Am service and attainment of age 55 prior to termination of employment express conditions for entitlement to the enhanced early retirement benefit.
- Therefore, CRIP participants who did not reach age 55 prior to July 31, 1991, while employed by Pan Am have not met the conditions for entitlement to the enhanced early retirement benefits contained in the CRIP plan.

10. Ms. McHenry's testimony, and a subsequent press release from Richard Brooks, suggest that the move of the Pan Am field benefit office from Rosedale to Atlanta was for some unstated, inappropriate reason.

- First, to clarify the history of Pan Am benefit processing, we attach a time line showing the history of the Pan Am FBA contract (see Attachment 1).
- Second, we have explained the move from Rosedale on several occasions. Briefly, PBGC took over as trustee of the three Pan Am pension plans in late 1991 and early 1992. The Pan Am "estate" continued to administer the pension plans for several months while PBGC made arrangements to take over the process.
- In 1992, PBGC contracted with a company called "Office Specialists" to set up a temporary benefit administration office in Rosedale, New York, to insure the uninterrupted payment of Pan Am pension benefits. Office Specialists in turn hired a number of employees, including several former Pan Am employees who were familiar

with the Pan Am pension plans. PBGC has engaged similar local benefit offices in cases in which it trustee pension plans with many participants. PBGC refers to these contractors as Field Benefit Administration (FBA) offices.

- In 1994, PBGC's Insurance Operations Department was reorganized. As part of this process, PBGC then looked to close and consolidate a number of its local FBAs. This consolidation was designed to improve management, reduce overhead and other costs, and enhance the customer service that could be provided. Because Office Specialists operated an Atlanta-based FBA office as well as its Rosedale FBA office, the decision was made in June 1995 to consolidate the Rosedale and Atlanta operations in Atlanta. The move was made more than four years after PBGC trusteeship -- a time when in-person visits to the Rosedale office had decreased to a minimal level. PBGC estimated building rental and salary savings of \$3 million over five years.
  - The Rosedale employees were informed of the move on July 28, 1995, more than five months in advance of the proposed move date. Every employee was given the opportunity to relocate to the Atlanta office at a comparable compensation level. PBGC also attempted to accommodate Rosedale employees interested in employment at PBGC in Washington, D.C., consistent with Civil Service requirements. Additional aid was given to those employees who chose not to leave the New York area. The move in fact occurred in February 1996.
  - In a June 4, 1999, letter, Senators Bond and Grassley asked about costs associated with this move, especially as they related to the initial director of the Atlanta office, John Butler. We responded in detail to issues relating to Mr. Butler's expenses. PBGC found the costs appropriate given the circumstances, including the fact that the coming Olympic games increased costs. Nothing has come to light since then suggesting any impropriety in the costs associated with the move to Atlanta.
  - The Atlanta FBA continues to service the Pan Am pension plans and many additional terminated pension plans.
11. Ms. McHenry outlined problems the Atlanta office was having with a computer program called PRISM and with the ALG.
- As PBGC switched to using PRISM and began to generate letters using its Automated Letter Generator (ALG), we encountered some initial problems associated with the introduction of any new technology. We have already explained that the Pan Am plans have not yet been fully loaded onto PRISM.
  - Because Pan Am plans are our largest and most complicated plans, and these changes occurred in the middle of processing the Pan Am plans, some problems occurred with Pan Am participants. As detailed elsewhere, PBGC has worked closely with the Atlanta FBA to help in the transition to PRISM and related technological changes. We believe the benefits from this technology have far outweighed the relative few problems

encountered along the way.

12. Ms. McHenry suggests that a stand-alone database in the Atlanta office had all the correct information, and yet they were not allowed to use it, thereby making their work more difficult.

- The stand-alone database received from Pan Am is a very valuable source of information and was the starting point for the database that PBGC built and audited. However, Pan Am had purged thousands of deferred vested participants from its database between 1979 and 1981. In 1994, PBGC discovered a printout of the purge list with over 5,000 participant names. The vast majority of these participants were not in the database. We then had to create new records from the paper records we received from Pan Am, or thousands of participants would have been missed. Moreover, the stand-alone database was not Y2K compliant. For these reasons, it could not be relied upon.

**Attachment 1 to Enclosure B****Pan Am -- Rosedale, New York, and Atlanta FBA contracts.**

**1991-1992** -- Pan Am's estate provides benefit administration for several months after PBGC trusteeship of the Pan Am pension plans in December 1991 and January 1992.

**August 1992** -- Office Specialists submits proposal to PBGC to open the Rosedale FBA office. Contract J-2-0371 (the "Pan Am Contract") awarded to Office Specialists on "other than full and open" basis for one year with four option years. \$250,000 authorized for the remainder of FY 1992.

**Nov. 18, 1992** -- Pan Am Contract modified to provide for total value of \$1.4 million through FY 1993, and renumbered J-3-0371.

**September 1993** -- Modification 6 to Pan Am Contract, total funds obligated for payment under the contract increased to \$2.16 million.

**December 7, 1994** -- Increase in the Pan Am Contract for FY 1995 to \$2.2 million; and increase in total funds obligated for payment under the contract from \$4.31 million to \$6.51 million.

**June 21, 1995** -- Memorandum to Martin Slate from William Posner and Bennie Hagens describing their proposal to relocate the Pan Am FBA from Rosedale, NY, to Atlanta.

**July 28, 1995** -- Office Specialists announces to Rosedale employees that the office will move to Atlanta late in January 1996.

**September 1995** -- Additional FY95 funds of \$615,000 obligated for the move of the office from Rosedale, New York to Atlanta; total funds obligated for payment under the contract increased to \$7.12 million.

**September 22, 1995** -- Request for proposal to consolidate Rosedale, NY, Contracts J-X-0371 and J-X-0455, and Atlanta Contract No. J-X-0454. (Rosedale was now the FBA for the Spaulding and UPI plans as well as the Pan Am plans).

**February 1996** -- Office Specialists' move from Rosedale to Atlanta complete.

**March 1996** -- PBGC accepts proposal to have "satellite" FBA office in New Jersey for Contracts J-X-0371 and J-X-0455 in order to retain John Butler, identified as a key contract employee. The cost stated was \$28,710 per 6 months, not to exceed one year.

**1996** -- Modifications 14 and 15 made to the contract to allow former Rosedale workers to work on other plans in the Atlanta office while compensated at the rate in the Pan Am contract.

**April 4, 1997** -- Myrna Cooks leaves Office Specialists and incorporates a new business, IRMG.

**June 1997** -- Request for Proposal No. PBGC RP-97-0025 -- full and open competition for the Atlanta FBA, bundled with the Wheeling, W. Va., and Miami FBA's. In November 1997, the contract was awarded to Office Specialists; done in 3 separate contracts, one for each FBA office.

**June 1997** -- Request for Proposal No. PBGC RP-97-0010 -- full and open competition for in-house benefit administration services. In October 1997, awarded to Office Specialists. Also Request for Proposal No. PBGC RP-97-0011 -- full and open competition for auditing services on PBGC trustee plans issued. In November 1997, contract awarded to IMRG (Myrna Cooks).

**July 1997** -- Office Specialists filed lawsuit in federal court to enjoin IMRG from bidding on the contracts alleging that Myrna Cook has signed a covenant not to compete. Court issues the Temporary Restraining Order ("TRO") requested by Office Specialists. IMRG made protest to GAO, which dismissed protest because of pending lawsuit.

**August 1997** -- TRO modified to allow IMRG's proposals to be considered by PBGC. Office Specialists files protest with GAO. Myrna Cooks and IMRG respond to PBGC that there is no covenant not to compete, and that she has no obligations to Office Specialists.

**October 1997** -- Inquiry from Senator Grassley into the contracting of the above RFP's; PBGC responded with information on November 6, 1997.

**January 1998** -- *AFPAE, Inc. v. Office Specialists, Inc.*, Y-98-322 (D. Md.): Action brought under the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730. The plaintiffs are AFPAE, Inc., Brigitte Martino, a former Office Specialist employee in Atlanta, Jim Dough (a pseudonym) a current or former PBGC employee, and Bryan Lenahan, an employee of Office Specialists from 1995 through January 16, 1998. Plaintiffs alleged that Office Specialists defrauded the United States Government of millions of dollars by billing the PBGC for work not performed.

**February 1998** -- Inquiry from Senator Grassley into the expenses and travel of John Butler, Bennie Hagans, and Myrna Cooks; PBGC responded in March 1998.

ENCLOSURE 0



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

ENCLOSURE

October 3, 2000

**TO:** David Strauss  
Executive Director

**FROM:** James J. Keightley  
General Counsel

**SUBJECT:** My Supplemental Comments on GAO's Procurement Investigation

I have reviewed both the written and oral testimony of Mr. Hast, to determine whether I should change my prior recommendation to you. Nothing he has said has swayed my opinion. I continue to believe no evidence of misconduct has been presented. I have found no actual violations of Government ethics standards. Likewise, I see no "appearance" of Government ethics violations as "appearance" is defined in the relevant regulations.

First, a point of clarification. At the hearing both Senators Grassley and Bond were concerned that the Office of the General Counsel had conducted its own investigation into these allegations. In light of the Inspector General's (IG) investigation that has been open since 1997, no one on my staff conducted an investigation; we wanted to avoid potential allegations that we would be interfering with the IG's investigation. Rather, we reviewed the previous records of inquiries into these matters as well as the evidence that had developed in the GAO investigation to date. Those records consisted of two pieces of evidence gathered by the Inspector General, the Department of Justice's (DoJ) inquiry that resulted from the Pan Am pension plan *qui tam* action, and GAO's year-long audit of PBGC's procurement program. To this review, I can now add the hearing testimony, both written and oral, of Mr. Robert Hast, Assistant Comptroller General, Office of Special Investigations. Having reviewed the new report that we were not provided in advance of the hearing, my opinion remains that there has been no showing that PBGC's employees have engaged in any wrongdoing.

What appears to have happened is that a number of sources – former PBGC employees, current PBGC employees, former IMRG employees, and perhaps others – have pieced together information, gossip, and rumors and come to the conclusion that the contracts between PBGC and IMRG were awarded improperly. Acting on allegations from these sources, the Committee asked the General Accounting Office to investigate. GAO's Office of Special Investigations began an investigation in August 2000 and concluded that investigation three weeks later. To my knowledge, GAO did not interview all of the relevant witnesses or obtain all of the relevant evidence before concluding its investigation.

Significantly, none of the inquiries – GAO’s, DoJ’s, or the IG’s – have found evidence of any improper financial dealings between PBGC employees and IMRG. Indeed, no one has even expressed the rumor of such financial dealings. Instead, this latest investigation by GAO attempts to create an appearance of impropriety by highlighting the activities of Bennie Hagans, Director of PBGC’s Insurance Operations Department, and Myrna Cooks, owner of IMRG. However, when analyzed against the ethical rules and statutory restrictions, it is clear that no evidence of misconduct has been produced. The detailed analysis is set forth below.

**No “Appearance of Impropriety” under Federal Ethics Rules**

As detailed below, the Office of Special Investigations report does not support an “appearance” problem under the Government’s ethics rules. The term “appearance” is specifically defined by regulations to limit the involvement of individuals who have familial or financial relationships. There is **no** evidence of such relationships in this case.

General federal ethics principles require that federal employees act “impartially and not give preferential treatment to any private organization or individual.”<sup>1</sup> This is the provision of the ethics rules cited by GAO as the basis for its allegations against Mr. Hagans. Yet the general principles only apply when a specific ethics standard does not cover the situation at hand.<sup>2</sup> In this case, a specific ethics standard applies. Under 5 C.F.R. § 2635.502, federal employees cannot engage in activities with a specific party which cause them to lose the “appearance of a loss of impartiality” unless they first seek the advice and authorization of the agency’s Designated Ethics Official. Key to this question is whether the employee has a “covered relationship” with the specific party. A “covered relationship” is not an ambiguous term meaning “any relationship that looks bad.” Instead, it is precisely defined.

(1) An employee has a covered relationship with:

(i) A person, other than a prospective employer described in § 2635.603(c), with whom the employee has or seeks a business, contractual or other financial relationship that involves other than a routine consumer transaction;

(ii) A person who is a member of the employee’s household, or who is a relative with whom the employee has a close personal relationship;

(iii) A person for whom the employee’s spouse, parent or dependent child is, to the employee’s knowledge, serving or seeking to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee;

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<sup>1</sup> 5 C.F.R. § 2635.101(b)(8) (2000).

<sup>2</sup> 5 C.F.R. § 2635.101(b) (2000).

(iv) Any person for whom the employee has, within the last year, served as officer, director, trustee, general partner, agent, attorney, consultant, contractor or employee; or

(v) An organization, other than a political party described in 26 U.S.C. 527(e), in which the employee is an active participant. Participation is active if, for example, it involves service as an official of the organization or in a capacity similar to that of a committee or subcommittee chairperson or spokesperson, or participation in directing the activities of the organization. In other cases, significant time devoted to promoting specific programs of the organization, including coordination of fundraising efforts, is an indication of active participation. Payment of dues or the donation or solicitation of financial support does not, in itself, constitute active participation.<sup>3</sup>

Since there is no evidence of a financial or familial relationship between Bennie Hagans and Ms. Cooks, Mr. Hagans does not have a "covered relationship" with her. Without a covered relationship, an appearance of the loss of his impartiality – as that term is used in the Office of Government Ethics regulations – cannot exist.

#### **No Actual Conflict of Interest**

Under 18 U.S.C. § 208, a federal employee may not participate "personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a . . . contract . . . in which, to his knowledge, he, his spouse, minor child, general partner, organization in which he is serving as officer, director, trustee, general partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest[.]" Again, there is no evidence or even an allegation that Bennie Hagans or one of his family members has a financial interest in IMRG. Therefore, there is no actual conflict of interest in this case.

#### **Review and Explanation of Allegations**

Contacts between Mr. Hagans and Ms. Cooks during the Procurement. GAO alleges that Mr. Hagans acted improperly simply because he knew that Myrna Cooks had decided to leave Office Specialists and form her own company. By 1997 Mr. Hagans had known Ms. Cooks professionally for many years and was pleased with the way she had managed the Office Specialists' contracts. No one disputes this. He then found out that she intended to form her own firm and to compete for PBGC contracts. Naturally, he was pleased. She is a nice person and works hard. And from a business perspective, there is nothing wrong with seeking to continue to do business with a proven performer. Subsequently,

<sup>3</sup> 5 C.F.R. § 2635.502(b) (2000).

PBGC called for proposals on three contracts. Mr. Hagans did not participate in the procurement process. Ms. Cooks' firm, IMRG, submitted proposals for all three contracts, but received only one of the three awards. This contract was awarded competitively by contracting officials working independently of Mr. Hagans, the program manager.

Telephone Calls. Much has been made of the telephone calls between Mr. Hagans and Ms. Cooks. During the period in 1997 in which IMRG was under consideration to receive three PBGC contracts, records show that Mr. Hagans placed 34 telephone calls from his office telephone or PBGC cellular telephone to Ms. Cooks. No evidence of improper or illegal dealings has been associated with those calls. Instead, the mere fact that he made the calls is supposed to cast an appearance of impropriety over the entire procurement. As noted above, Mr. Hagans and Ms. Cooks do not have a covered relationship, so there is no appearance of impropriety argument to be made. The bulk of the telephone calls were less than four minutes in length. Mr. Hagans had done official business with Ms. Cooks as a manager in Office Specialists' hierarchy for years. They are professional acquaintances and that is all the telephone records can support.

Office Specialist Employee Resumes. Office Specialists won the 1997 contract for Field Benefit Administration services in Atlanta in a competitive procurement. PBGC opted not to exercise its option to extend that contract for another year and instead decided to compete the contract again. IMRG wanted to submit a proposal for the contract. To do so, it needed to show that it would have competent employees to perform FBA services. If it received the contract award, IMRG intended to take over management of the contract using mostly the same employees that Office Specialists had used. It therefore asked Office Specialists' employees for their resumes. Some employees naturally felt uncertain as to whether this was proper. Myrna Cooks asked Bennie Hagans to clarify the situation for them. Mr. Hagans, who was visiting the Atlanta FBA for other reasons, simply informed the employees that they could submit their resumes to IMRG if they wanted, and that PBGC was not concerned either way. There is nothing inappropriate in this. The hastily drawn Office of Special Investigations report failed to include or develop Mr. Hagans' explanation on this issue.

Wilmer Graham is Myra Cooks' Neighbor. Here is another attempt to use a benign fact as evidence of wrongdoing. Myrna Cooks moved into Wilmer Graham's neighborhood when a new house was constructed. Wilmer Graham was subsequently a member of a PBGC Technical Evaluation Panel that evaluated contractors' proposals for the 1997 In-House Auditing contract. Ms. Graham knows Ms. Cooks, but they are not close friends. More important, they are neither family members nor financially related. Accordingly, there is no appearance of impropriety argument to be made here either.

Bennie Hagans' Conversation with the Bank Loan Officer. Like the other issues raised by GAO, this one does not support a finding of any wrongdoing. Mr. Hagans was not personally involved in the 1997 contracts for Wheeling/Miami/Atlanta FBA services, in-house auditing services, or in-house benefit services. And the notion that he had tremendous behind-the-scenes influence is rebutted by the fact that PBGC awarded only one of these three contracts to IMRG. Ms. Cooks' mention of the September 1997 Office Specialists "cure letter" to the loan officer only supports her knowledge of Office Specialists' contracting problems. She could have received information about that letter from a number of sources, including sources inside Office Specialists. Mr. Hagans' conversation with the bank loan officer is similarly innocuous. When he spoke to the bank loan officer, he was merely speculating that IMRG would receive a PBGC contract. Much has been made of this conversation, but it meant nothing to the bank itself. The bank's Vice President has noted that, in processing IMRG's loan application, "[t]here was no misapprehension or misunderstanding at any time that IMRG had any guarantee of being awarded a Pension Benefit Guaranty Corporation ("PBGC") contract. In fact, I was informed that IMRG in fact lost its first bid before the PBGC." He then continued, "The loan approval was based on a thorough analysis of standard information submitted by IMRG as well as the success of Ms. Cooks' meeting with the loan committee members where her business acumen and technical expertise in her field was displayed."<sup>4</sup> This is another witness GAO's Office of Special Investigations failed to interview.

#### Conclusion

We understand that GAO will refer these matters both to PBGC and the Department of Justice. Clearly there is no evidence of misconduct here and I would expect the Department of Justice to close the matter as soon as the Inspector General completes his investigation. I continue to believe that our only realistic course of action is to await the completion of the Inspector General and Department of Justice reviews.

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<sup>4</sup> September 15, 2000 affidavit of Thomas B. Freeze.

**U.S. Senate Special Committee on Aging  
&  
U.S. Senate Committee on Small Business**

**Testimony of John W. Wilde**

**September 21, 2000**

An article pertaining to a "goof" of Pension Benefit Guaranty Corporation (PBGC) appeared in the March 29, 1999 issue of *USA Today* describing the experience of Dorothy Jasko, a widow who received an incorrect PBGC pension check for almost a half million dollars. The article describes the retired widow's efforts to return money and the fact that she did not receive even so much as a thank you for her honesty.

This story was especially painful for me to read since I am the only son of the widow named in that article. I have had to watch the tragic impact that this error of PBGC has had on my 75 year old mother's mental health.

I trust your committees will consider my mother's plight in this unbelievable mess caused by PBGC.

By way of background, in late November of 1997 my mother called me in Beijing where I was on a one-year sabbatical. She emotionally informed me that a pension check addressed to her for \$473,129.55 had recently arrived and that she was fearful that someone was going to steal it. Over the phone I knew that her voice was shaking and I could easily sense she was in a state of stress. In an attempt to calm, I told her that there must be some mistake and that I would come to Chicago shortly to assist in straightening out the problem.

When I arrived at my mother's southside Chicago home on December 15, 1997 I found her in a highly agitated state. My mother informed me that she had been desperately trying to call PBGC "dozens of times", but had found it "impossible to get through to them." She said people kept hanging up on her and that she had to wait for long periods of time for someone to come on the line. I vividly recall her repeating to me, "They are going to arrest me." Apparently my mother had a double fear; that someone would break into her home and steal the check (because of this fear she finally put the full check amount into the bank because PBGC would not give her directions on what to do with the check), and that the government would take her away and put her in jail for cashing the check. Neither her sister, her niece, her friends nor myself could get her to think rationally.

On December 16, 1997, I phoned the PBGC and spoke with a representative. When I informed this person of the amount of the check received, *it was clear that the representative was unaware of the error.* After being put on hold for several minutes, she returned to the line and asked that my mother send the amount of the error check back to PBGC.

That very day I helped my mother write a personal check to PBGC for the full amount of the error check and personally accompanied her in mailing the check to the address given by the representative. When I left Chicago to return to China on January 15, 1998, my mother was still visibly upset by the PBGC mix-up, but it appeared that she was under control and we both thought the matter was resolved.

The last week of January, 1998 my mother called me in Beijing. She was crying frantically. She had just received in the mail from PBGC a 1099-R saying that she had a taxable income of \$474,944.67 from the proceeds of the pension check and that this amount was being reported to the IRS. She could not be calmed down. In one week of costly long distance calls with my mother I futilely tried to dissuade her fears and her irrational thoughts about the incorrect 1099. Finally, it was evident that I had to quit my sabbatical studies in Beijing to fly back to Chicago as soon as possible on an emergency basis.

When I returned to my mother's home on the night of February 5<sup>th</sup>, I was shocked to find she had stopped eating, cleaning her house and that she was constantly crying. I called the PBGC on the following Monday and requested that they correct the 1099 error. I had a highly charged conversation with two representatives where I blamed them for my mother's emotional grief. I angrily pointed to PBGC's lack of sensitivity in not even acknowledging my mother's honesty and it's refusal to at least demonstrate appreciation for returning the money that was sent to her in error. I was overwhelmed with the apparent cavalier way in which my mother's plight was handled by each of the representatives.

Unfortunately, the gravity of the PBGC error payment had done irreparable harm to my mother. On February 8, 1998 she tried to kill herself. With much grief, on February 11 I had to take her to the emergency room of Christ Community Hospital in Oak Lawn, Illinois. She was committed to the psychiatric ward where she stayed for seven days. Two weeks after her release from Christ Hospital, it was with even greater remorse that I had to move my mother out of her home and into a senior residence in a Chicago suburb—over 20 miles from her beloved neighborhood. She could no longer take care of herself.

Honorable Senators, to put a more human face on how this example of PBGC's careless operation devastated my mother's life, please know that before this mess occurred, my mother was completely independent. I had spent several weeks with her in the summer of 1997 and she was in fine spirits. She was healthy, had plenty of friends, tinted her hair blond, weighed 150 pounds, drove her car all over the city, daily walked six blocks to the local 7-11 to buy the *Chicago Tribune*, went to church every Sunday and closely monitored local, state and national politics. She prided herself on her cleanliness and she enjoyed taking care of her parakeet.

By March of 1998, only five months after the problems with PBGC started, my mother weighed 125 pounds and had become isolated. She could not sleep and had lost her appetite. The hospital psychiatrist diagnosed her condition as organic psychosis with dementia and depression. The prognosis was guarded and by September 1998 my mother weighed 110 pounds.

Between December 16, 1997 and March 18, 1998 I made numerous phone calls to PBGC and spoke with a variety of personnel. It took me over three months to completely

resolve all the errors made by PBGC. The requested correct 1099-R was issued and finally received along with an apology on February 12, 1998

Then on May 5, 1999 the IRS sent my mother a notice that she had underreported \$474,944 on her 1997 return. The letter asked for an explanation as to why she had not reported this income.

Imagine the emotional impact of such unresponsive and seemingly incompetent corporate behavior on a senior citizen living alone!

For your information, I have kept a log of all my phone contacts and written communications with PBGC along with dates and names. The number of times I had to place phone calls to that enterprise is staggering. Further, medical notes taken by the attending physicians and the hospital psychiatrist as well as the hospital's emergency room personnel all clearly document PBGC as being the sole culprit responsible for triggering my mother's emotional breakdown and subsequent loss of independence. In my recent conversation with her psychiatrist he still observes that the problem with PBGC was the cause of my mother's mental breakdown and subsequent hospitalization.

Indeed, this has been difficult for me. No one wants to see his or her parent violated and treated cruelly. My mother raised me as a single parent while she worked at the Wieboldt department store in Chicago. She worked long hours and in difficult conditions at that department store for forty-six years. She was a dedicated worker and made only a meager salary that was minimum wage. Today, she receives an obscene minimal pension of \$191.87 per month.

\$191.87 after working for forty-six years!

The rage I feel toward PBGC for what it did to my mother's mental health is certainly justified. It is my wish that your committee conduct a thorough investigation into PBGC's operations and that my mother be recognized for her loss and the pain she has been put through by this company's actions. A thank you came from PBGC only after I had to chide them into acting like humans. In my view, my mother should have been financially rewarded for her honesty in returning the \$473,129.55.



**NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES**

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WRITTEN STATEMENT

OF

KENNETH T. LYONS  
NATIONAL PRESIDENT  
NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

IN FRONT OF

SENATE SPECIAL AGING COMMITTEE  
&  
SENATE SMALL BUSINESS COMMITTEE

ON

DELIVERY OF BENEFITS TO RETIREES  
BY THE PENSION BENEFIT GUARANTY CORPORATION

SEPTEMBER 21, 2000  
562 DIRKSEN BUILDING



The Honorable Charles E. Grassley  
 Chairman, Special Committee on Aging  
 United States Senate  
 G31 Dirksen Senate Office Building  
 Washington, D.C. 20510-6400

The Honorable Christopher S. Bond  
 Chairman, Committee on Small Business  
 United States Senate  
 428A Russell Senate Office Building  
 Washington, D.C. 20510

**Re: Committee Hearings on Need for Oversight of Pension Benefit Guaranty Corporation**

*Agency Procurement and Personnel Practices Out of Control –  
 Workforce and Service Delivery Crisis*

Chairman Grassley and Chairman Bond, my name is Kenneth T. Lyons, President of the National Association of Government Employees (NAGE). NAGE is proud of the federal employees we represent including NAGE Local R3-77, our local that represents more than 500 bargaining unit employees who work as Federal employees at the Pension Benefit Guaranty Corporation (PBGC). NAGE is an affiliate of the million member Service Employees International Union (SEIU)/AFL-CIO. We very much appreciate the opportunity to provide insight from the front line employees on how that agency – which administers over \$19 billion in assets – delivers pension services for retirees. Please include this statement as part of the record of the September 21, 2000 hearing held by the Special Committee on Aging and the Committee on Small Business.

PBGC employees take tremendous pride in carrying out the mission of protecting the private pensions of 40 million Americans. They are dedicated, loyal, hard working, highly competent public servants. Indeed, in the past few years, the productivity of PBGC employees has nearly tripled. Three times as many benefit determination letters are being issued annually in a much shorter time frame. Employees have made tremendous strides to provide outstanding service to the public and the pension community. However, PBGC's Federal employee workforce is also heading toward crisis.

Witnesses at the September 21 Committee hearings and the GAO in its reports deplored the PBGC's arrogant mistreatment of retirees and its arbitrary contracting practices that include the exploitation of the employees of contracting firms. The witnesses and GAO suspected that PBGC management has not provided the necessary Federal employee staffing and resources to properly accomplish the agency's job. We can report from the inside that (1) the PBGC is understaffed and has failed to provide its employees with sufficient resources and incentives, (2) in important areas, because PBGC does not adhere to national and Governmental standards for auditing, it has denied employees the training and financial support to maintain and improve

professional knowledge and skills, and (3) the agency's personnel policies and practices are out of control. As a result, the work environment is extremely stressful, morale is poor, and employees are leaving. The public is not being served, as it should be.

A major part of the problem is the PBGC's lack of accountability. PBGC is exempt from rules that apply to most government agencies. As pointed out at the hearings, a large part of PBGC's budget is exempt from the congressional process, and PBGC is not necessarily bound by normal procurement rules. The same applies to the personnel area. PBGC is exempt from the enforcement of merit system rules that prohibit arbitrary personnel practices. 5 U.S.C. § 2302. Accordingly, managers are unaccountable and feel free to abuse employees and do as they please in personnel matters. The atrocious treatment of contract employees at the Atlanta field office reported to the Senate Committees is typical of the way PBGC acts toward its Federal employees at the Washington, D.C. headquarters.

A serious obstacle to PBGC effectively and efficiently carrying out its mission is an organizational structure that is overloaded with managers. The PBGC organization is layered with supervisor upon supervisor. Micromanagement suffocates employee initiative and stifles front line Federal employees in their ability to do their jobs. Endless bureaucratic procedures and red tape are the norm. In many areas, there is one supervisor for only five or six employees.

The massive contracting out of work is wasteful and inefficient and drains the ability of the Federal employee workforce to concentrate on and accomplish its work. As reported at the hearings, PBGC's expenditures on contractors have grown ninefold from \$11 million ten years ago to nearly \$100 million. Contracts now represent over 60% of PBGC's administrative budget. But, PBGC's own studies a few years ago showed that contracting out costs nearly twice as much as the cost of a Federal employee. At that time, an in-house attorney cost \$61 an hour, including overhead. Outside counsel cost \$107. An inside actuary cost \$50 an hour. An outside actuary cost \$99.

Since contractors do not have governmental authority to make benefit determinations, all their work must be thoroughly reviewed by the Federal employee workforce. Accordingly, because of the high ratio of contractors, PBGC's Federal employees use up a lot of time and resources attempting to monitor the work of the hundreds of contractor employees and end up re-doing the contractors' work.

Of course, another serious problem with the degree to which PBGC uses contractors is the perennial problem of the revolving door: PBGC managers and contract holders back-scratching one another. The expansion of contracting out creates future private employment potential for managers when they leave and enables double dipping as retired PBGC managers return as contractors.

All this leaves the undersized Federal employee staff overworked, overstretched and unable to do the quality job it would like to do. Quantity of work has replaced quality.

To make matters worse, PBGC management bullies its Federal employees, misclassifies their grades and positions, and has eliminated benefits and incentives. For example:

- Hostile treatment by supervisors has caused several employees to suffer medical problems and emotional breakdowns. A large number of employees must spend time under a nurse's care in the health unit daily.
- PBGC has classified many employees at GS grade levels at least one level below the norm and below the grade levels justified by the actual duties and responsibilities.
- Despite the tripling of productivity, management has reduced incentives and funding for special achievement and performance awards and taken away awards for outstanding performance.
- PBGC lowered employees' performance appraisals.
- The PBGC is facing an increasing number of claims of discrimination based on race, sex, age and disability.
- PBGC fails to provide reasonable accommodations for handicapped employees, does not follow the law for hiring handicapped individuals, and retaliates against disabled employees.
- PBGC has eliminated a special training and study program for actuaries, even though benefit calculation is central to the work of the agency.

Employees are reacting by leaving the agency. In the past year, 20% of the PBGC's attorneys have departed. Large proportions of actuaries, accountants, auditors and financial analysts also are leaving.

Needless to say, labor relations at PBGC are quite strained. PBGC has been fighting for fourteen months against reaching agreement on a collective bargaining agreement. The agency has been attempting to cut back on no-cost programs that permit employees flexible work arrangements that allow better balancing between family and work obligations and have proven to increase productivity and morale. Indeed, PBGC seeks to micromanage its employee's lives.

A successful future for PBGC depends on properly utilizing the skills and experience of its most valuable component – its front line Federal employee workforce. A restructuring of PBGC and any redeployment of manpower should include:

1. Bring contracted out work back in house. Reduce the number of contractors and increase the core Federal staff. This will save millions of dollars since contractors are much more expensive. Redundancy and duplication will be eliminated. Quality will be improved.
2. Require PBGC to adhere to national and Governmental auditing standards such as the Generally Accepted Governmental Auditing Standards (GAGAS).

3. Classify employees at the proper grade levels.
4. Introduce incentives allowed by regulation such as recruitment bonuses. Seek authorization from the Office of Personnel Management for special salary rates that could increase pay for the categories of employees where there are retention and recruitment problems.
5. Since PBGC is in many ways similar to Federal bank regulatory and financial and insurance agencies, PBGC should be authorized to create its own pay system. Other agencies such as the Federal Deposit Insurance Corporation, Comptroller of the Currency and Resolution Trust Corporation have salary structures 20% to 30% above PBGC's. Because of high employee turnover, the Securities and Exchange Commission is seeking congressional approval to raise some salaries by as much as 30%.
6. Amend the law to make PBGC managers fully accountable to all merit system rules.
7. Treat employees with dignity and respect.
8. Require PBGC to comply with executive orders and bargain with employees over staffing and technology so that employees can contribute their expertise on how to streamline and upgrade PBGC's operations.

Chairman Bond and Grassley thank you again for the opportunity to a written statement for the record. We look forward to working with you to ensure that the PBGC continues its fine work.

October 4, 2000

VIA FACSIMILE

Senator Charles Grassley  
135 Hart Senate Office Building  
Washington, DC 20050

Re: Hearings Regarding PBGC Practices  
Held on September 21, 2000

Dear Senator Grassley:

I write this letter on behalf of the Association of Former Pan Am Employees, Inc. ("AFPAAE"). Please place the following comments on the record with respect to the Hearings held on September 22, 2000 before the Special Committee on Aging and the Committee on Small Business (collectively, the "Committee"). Primarily, the Hearing focused upon: 1) PBGC contracting practices; 2) internet security; 3) the length of time required for the PBGC to issue Initial Determination Letters ("IDL's"); and 4) other aspects of the PBGC's "customer service" operations.

While AFPAAE welcomes the Hearings and applauds the Committee for the diligent oversight role it has played concerning PBGC activities, we strongly suggest that much more needs to be done to control the excesses of this agency who we believe has lost its focus. Through its public statements and lobbying efforts, PBGC has succeeded in "lowering the bar" by which its performance is measured so that any improvement in participant service is widely heralded as a major achievement.

The horrendous experience of tens of thousands of former Pan Am employees, at the hands of PBGC, has hardened AFPAAE's resolve to insure that PBGC is held to the same standards of participant service and protection of participant rights expected and demanded of officials responsible for the operation of private pension plans. PBGC's operations need to be addressed at several levels, including, but not limited to 1) its attitude towards the participants whose pensions it was formed to protect; 2) protection of the legal rights of those participants; and 3) clear and timely disclosure of the information to participants.

The Committee is, no doubt, aware of many of the considerations that served as the underlying rationale for the basic tenants of the Employee Retirement Security Act of 1974 ("ERISA"). As some of these considerations directly bear on PBGC's conduct, they are worthy of repetition. Prior to the passage of ERISA, many officials responsible for the operation and administration of pension plans engaged in acts of self-dealing, including failure to exercise diligence in selecting investments and lending substantial portions of plan assets in to employer/sponsor of the plan. It was also common for employers to interpret the plan so as to deny benefits to employees and to terminate employees immediately prior to becoming eligible to receive benefits. Finally, many employers avoided paying benefits by simply not telling employees about the plan or the level of benefits to which participants were

entitled.

As you know, ERISA effectuated a sea change in the private pension landscape, primarily by changing the legal standards by which the conduct of plan officials is governed. Although ERISA prohibited many specific acts of self-dealing, more importantly, it clearly re-defined the standard by which the conduct of plan officials is measured. Under ERISA, every pension plan must appoint at least two fiduciaries to oversee its operation and administration - one to be responsible for plan investments, usually referred to as the Trustee, and the other to be responsible for the administration, usually referred to as the Administrator. Both fiduciaries are held to the highest possible legal standard and are required to act solely in the interest of the participants in the plan. Fiduciaries were required to follow the terms of the plan, except in situations where following the plan would violate ERISA. In addition, ERISA imposed numerous reporting and disclosure requirements upon the individuals responsible for the operation and administration of the plan. Participants are now automatically entitled a copy of a "layman's" description of the plan, known as a "summary plan description", and are entitled to a copy of the plan document upon request.

Participants are also entitled to a statement of the benefits to which they are entitled with thirty days of request. ERISA imposes a penalty of \$100 per day, in the discretion of the court, for failure to comply with a participant request. ERISA also requires all plans to establish a claims denial procedure and communicate that procedure to participants. Under Department of Labor regulations, an Administrator must respond to a claim for benefits within 90 days, or the claim is considered denied. In addition, the Administrator is required to provide a detailed explanation of the reason for the denial. Similarly, an Administrator must respond to a participant appeal within 90 days, or the participant's claim is considered denied, and he or she may seek redress in state or federal court.

AFPAE strongly believes that PBGC is the business of administering private pension plans and, accordingly, its conduct must be measured against the fiduciary standard established by ERISA. While, some aspects of PBGC's conduct are the subjects of a lawsuit against PBGC, the courts are a notoriously inefficient forum for resolving such grievances. Regardless of the action of any litigation, AFPAE strongly believes that plan participants are entitled to a greater level of legal protection from arbitrary PBGC action from Congress. The need for such action is explained in more detail in remaining portion of this letter.

In addition to creating the participant rights outlined herein, ERISA created the PBGC for the purpose of insuring payment of pensions to participants in situations where pension plans were unable to pay pensions due the financial difficulties of their sponsoring employers. Virtually the entire pension insurance scheme is financed through annual premiums paid by employer-sponsors of the pension plans covered by the PBGC insurance program. The law permits, but does not require, PBGC to become trustee of the plan, as any other person or organization may be appointed. However, in its twenty five-year existence, PBGC has never sought appointment or even acquiesced in the appointment of any other party as the trustee of any terminated pension plan.

Once appointed a trustee of a terminated pension plan, PBGC will take

possession of all of the assets of the plan and all of the participant records. In many cases, the plan in question may be underfunded by only a small percentage of its assets. In some cases, the assets of the plan may consist of the participant's own contributions. The point is that these funds are not tax dollars derived from government revenue but funds contributed by an employer for the purpose of paying retirement benefits to participants. Under ERISA and the underlying law of trusts, participants have a beneficial interest in those funds. Most participants believe, and expect, that they have certain legal rights concerning those funds. AFPAAE is not aware of a single participant who has ever been informed that all of the rights guaranteed by ERISA can be erased if the plan, to which his employer sponsors, is under-funded by a very small amount.

During the Hearings, PBGC took great pains to point out that it has fulfilled its "primary" mission to insure uninterrupted payment of pension benefits to participants and retirees. AFPAAE strongly believes that PBGC sets a very low threshold for itself and that Congress should demand much more of an agency entrusted with billions of dollars of employer and participant pension contributions. At minimum, participants should be entitled to same legal rights as participants in private pension plans. There is no policy justification to strip participants of their legal rights because PBGC has become trustee of an under-funded pension plan. If anything, participants are entitled to greater rights and a greater level of certainty about the security of their pensions and, in many cases, their livelihoods.

AFPAAE urges the Committee to look beyond the array of confusing statistics amassed by PBGC, as part of its continuing effort obfuscate its woeful lack of performance. We urge the Committee to address PBGC's performance from the perspective of the typical plan participant who has not yet retired and who does not believe his pension has been correctly calculated. To this participant, PBGC's supposed improvement from a seven year delay to a five year delay in the time he must wait to receive an initial determination letter is meaningless. In many cases, this participant has also lost his or her job and is middle aged and cannot find another comparable position. His or her entire financial future depends on the amount of his pension. This typical participant cannot wait for seven years, or even five years, to know the final amount of his pension. He or she must decide whether to retire early, to look for a more stressful higher paying job or to dip into personal savings. This participant cannot rely upon estimates or vague promises of better customer service from self-important bureaucrats.

If the same individual was a victim of a hurricane or natural disaster or was due benefits from the Social Security Administration, Congress would not tolerate delays of anywhere close to this magnitude. Yet the loss of one's job and possible loss of all or part of one's pension is no less of a tragedy. In some cases, the financial loss is greater because participants do not have a job to waiting after the end of a short clean up period. There is justification for victims of a pension disaster to be treated in a less responsive and timely manner than the victims of natural disasters. PBGC's tired and oft repeated excuse for its tardiness is that: 1) the poor condition of the records of many bankrupt companies; and 2) its statutory mandate to perform certain valuations before it can issue individual determination letters. AFPAAE flatly rejects these excuses as specious and self-serving. They are not supported by the PBGC's own Inspector General's

report dated \_\_\_\_\_ which criticized redundancies and built-in duplication of efforts in PBGC procedures. AFPAAE believes that Congress should insist on even better performance than suggested in the Inspector General's report. The calculations required are actuarial computations, which, even in the case of a large complicated plan, such as the Pan Am Plan, can reasonably be completed in one to two years. Any competent actuarial firm could perform these calculations on a short time table and there is no reason why PBGC cannot contract out this work to a reputable actuarial firm. AFPAAE urges the Committee to verify its assertions by seeking independent estimates of the time and cost of making participant IDL calculations by contracting such work to a reputable actuarial firm.

Furthermore, AFPAAE believes that Congress needs to direct further attention to the timeliness of IDL's from the perspective of the participant rights guaranteed under ERISA and communicated to participants. The average participant does not understand the intricacies of Title IV of ERISA or whether the PBGC or some other party has become trustee of his plan. However, most participants understand and believe that the pension promised to him or her is in fulfillment of the employer's part of the bargain of employment. The funds he or she earned guaranteed a pension by reporting for work, when expected, during the last 10, 20, 30 or even 40 years. He or she views the pension as a contractual entitlement and not a government benefit to be taken away at the whim of a bureaucrat. Few understand that the premiums paid by his or her employer for PBGC insurance may not cover his or her entire pension which was promised by the employer.

However, many employees have read the Summary Plan Description provided by their employers. They understand that they have a right to receive a statement of their pension benefits within 30 days. They understand that they have a right to receive a copy of the plan document upon request. They understand that they are entitled to a prompt review of their claim for additional benefits. If they dispute their estimated pension, they are entitled to a prompt and fair review of their claim as well as a timely resolution of their claim and a full and complete explanation of the reasons for the denial of their claim. They are entitled to a fair chance to prove any disputed claim. Participants are accorded none of these rights by the PBGC.

From the participant perspective, the PBGC simply waives a magic wand over the pension plan, to make all of rights granted to participants under ERISA disappear. It simply takes possession of all a plan's assets and declares them government funds. It takes possession of all the plan's records and deems them government property. Instead of the level playing field guaranteed by ERISA, the participant must enforce his contractual rights before a government agency that does not respect them.

Instead of a right, under ERISA, to receive documents, the participant must make a freedom of information request for "government agency records" and in some cases is required to pay PBGC to search for his own pension records. AFPAAE believes that this requirement is inconsistent with ERISA's fundamental participant protection scheme. Instead of a right to receive a timely, accurate pension calculation, participants have a right to receive an estimate of their pension with no assurance that the amount is accurate. In addition, participants have no way of ascertaining whether the amount is accurate. Those participants who do contest the amount of their pensions have no legal right to appeal PBGC's determination because it is not a final government agency decision.

PBGC would have the committee believe that a comparatively few number of pension estimates are wrong and those few employees who challenge the amount of the PBGC estimate are simply malcontents. Nothing could be further from the truth. For example, most of AFPAA's members are hardworking mechanics, flight attendants or ground service personnel who were promised a pension by Pan Am commensurate with their 20 to 40 years of service. When they found out that PBGC intended to pay less than half the benefits promised by Pan Am, they simply wanted their day in court. These individuals were told they would have wait for five to ten years in order to even begin the judicial process.

The PBGC process stands in stark contrast to ERISA guarantee of a full and fair review of any claim within 90 days. Participants are never told that their right to a prompt final decision on any claim disappears whenever PBGC becomes trustee of a Plan. AFPAA believes that, as a matter of Congressional policy, no participant should ever have to wait for more than one year to receive an appealable decision on any claim for benefits. These delays would never be tolerated from any other government agency.

AFPAA also believes that the PBGC's appeals process deserves much more intense scrutiny from Congress and the Committee. After waiting for as long as 10 years to receive an IDL from PBGC, the participant is given 45 days to appeal the determination. Those who do not do so, within 45 days, will lose all rights even if their appeal has merit. Again, PBGC stands in stark contrast to the level of participant rights guaranteed by ERISA - which imposes no specific statute of limitations on participant claims. In any event, the courts have held that the statute of limitations does not begin to run until the participant's claim is denied. Thus, a participant in a private plan has legal right to bring a claim, for additional benefits, whenever he or she discovers he or she has been underpaid.

When questioned by AFPAA and others, PBGC responds by encouraging participants who believe their pensions were incorrectly calculated to call PBGC's customer service center, with a promise that "errors" would be corrected notwithstanding the fact that the statute of limitations has expired. Vague promises of a friendly and helpful customer service personnel cannot serve as the foundation for this country's pension policy. AFPAA strongly believes that participants in this country are entitled to a legal right to appeal any determination made by PBGC. Subjecting participants and retirees to unreasonably short period of time would not be tolerated from the Social Security Administration or any other government agency.

Incredibly, PBGC has even suggested that its 45-day appeal deadline is meant for the protection of the participants. Under this tortured line of reasoning, PBGC argues that the 45-day period provides an outer time limit for the appeal process so that parties can fix a time for further appeals. AFPAA strongly suggests that PBGC examine its own determination letter process before establishing unreasonably short timetables for participant appeals.

It is clear to AFPAA and others that the PBGC appeals process is designed to discourage participant appeals and to minimize the amount of pensions paid by PBGC. Under ERISA, a plan administrator is required to produce a calculation

of the participant's benefit and establish that such calculation is correct. Under its own regulations, PBGC assumes no such obligation. Participants must prove that they are entitled to the higher pension by producing salary records and other documents. Most do not understand the manner in which their pension was calculated and would not be able to determine whether it was calculated correctly. PBGC makes no effort to explain its calculations and generally provides participants with a one or two page set of calculations in support of its IDL. These calculations are generally replete with jargon and are incomprehensible to even experienced pension professionals. After waiting for ten years to receive an IDL, very few participants are equipped to successfully appeal an incorrect determination. AFPAAE strongly believes that, as a matter of pension policy, every plan participant should have a legal right to receive a timely and understandable calculation of his or her pension benefits and the PBGC should be required to maintain and provide underlying records to support its calculations.

On a more fundamental level, AFPAAE believes that a pervasive change in the PBGC's attitude and culture must be implemented if the PBGC is to fulfill its fundamental mission of protection of participant pensions. AFPAAE believes that current PBGC leadership is still imbued with the notion that it is fundamentally an "insurance" operation. For many years, the PBGC operated at a deficit and was criticized (sometimes unfairly) over the size of the potential bailout that the taxpayers would have to fund if the PBGC were to fail. AFPAAE believes that the PBGC adopted an insurance company mentality as a result of this criticism and that this culture still pervades the PBGC attitudes and policies.

The primary objective of a commercial insurance company is to make a profit by taking in more in premiums than it pays out in benefits. However, PBGC is not a profit making enterprise and was formed to serve much broader social and policy goals. It cannot, and should not, be operated with the overriding goal of protecting its current surplus. In AFPAAE's view, the PBGC has lost sight of the fact that it was formed to insure the payment of pensions to individuals who have, in many cases, lost their jobs as well as their pensions.

As a matter of Congressional policy, the PBGC's policies, regulations and procedures should be protective of participant rights. As demonstrated above, PBGC's policies are anything but participant friendly. Too often PBGC will "reinterpret" the language of a plan to disturb long established administrative practices and plan interpretations - always to the detriment of the participants. AFPAAE urges Congress and the Committee to undertake a comprehensive examination of the effect that PBGC regulations, policies and procedures have upon participants and to require that the PBGC make substantial changes in those policies.

AFPAAE recognizes that Congress cannot easily change the culture and attitudes of an entrenched government agency. However, AFPAAE strongly believes that this country's retirees deserve better. Congress and the Committee should not be sidetracked by the PBGC's mountain of glowing statistics concerning the performance of its customer service centers. A promptly returned phone call is meaningless to a participant whose benefit is incorrectly calculated and who cannot appeal the calculation for another 5 to 10 years. A participant's legal right to be heard cannot depend on the current quality of

service at the PBGC service center. The PBGC needs to appreciate that participants fulfilled their end of the contractual bargain with their employer. Their employer paid premiums into the pension insurance program so that their pensions would be protected as part of that bargain. Their legal right to receive that pension should be guaranteed in the same manner as it if the employer's plan was still solvent.

AFPAAE has proposed legislation that would produce a fundamental change in the manner in which PBGC operates and urges the Committee to consider this legislation in connection with a comprehensive investigation of the PBGC's policies and practices. The key aspects of this legislation would address some of the most flagrant PBGC abuses. It would require a court to appoint the trustee of a terminated plan based upon whether the trustee would act in the interest of the plan participants. An independent trustee would be more receptive to participant concerns and more willing to follow less restrictive plan interpretations. Every trustee would be required to produce initial determination letters no later than one year after the date of plan termination, except in extraordinary circumstances. Participants would be guaranteed timely information and a "level playing field" in which to bring their grievances. Unions and participant committees would be given formal input into the termination process. Most importantly, the legislation would create a participant ombudsman to assist participants with questions, concerns and help them resolve disputed issues with the PBGC and the Trustee.

As a final matter, AFPAAE urges the Committee to further examine the PBGC's contracting practices particularly those practices involving Bennie Hagans and Myrna Cooks. AFPAAE commends the Committee for its diligent investigation of the apparent impropriety committed by Hagans with respect to an award of the 40 million dollar Pan Am contract to her wholly owned start-up venture. However, the Pan Am contract is not the only contract awarded to IMRG, at the urging of Bennie Hagans. Annexed hereto is list of such contracts. We urge the Committee to request the Comptroller General to investigate whether any of these contracts were improperly awarded.

Moreover, it is no coincidence that PBGC's dissatisfaction with the prior Pan Am contractor, Office Specialists, coincided with Myrna Cooks' departure from that contractor to form IMRG. As the Office Specialist representative responsible for the Pan Am account, logic would dictate that PBGC would hold Cooks responsible for Office Specialist's under performance. To the contrary, Cooks was rewarded by PBGC at Hagan's urging. We urge the Committee investigate whether any contracts were awarded to Office Specialists as a result of the special relationship between Hagans and Cooks.

AFPAAE is engaged in litigation with Office Specialists as part of a so-called "false claims" suit in connection with the contract awarded by PBGC. One of AFPAAE's allegations is that Office Specialists falsely billed PBGC under the Pan Am contract for employees who performed services on other plans and billed for services at rates which exceeded the mark-up provided in the contract. At the Hearings, Bonnie McHenry's testimony raised the possibility that similar fraudulent acts were committed by IMRG. In particular, Bonnie McHenry testified that her salary was reduced after her salary was incorporated into IMRG's contract proposal. She also testified that the Pan Am Contract was understaffed and many positions bid under the contract were not filled. AFPAAE urges the Committee to initiate an investigation to

determine whether PBGC was defrauded by IMRG.

One of the most disturbing aspects of the PBGC's conduct was the manner in which the PBGC has reacted to allegations of fraud, overbilling, waste and favoritism. In light of PBGC's parsimonious attitude towards participants, one would expect it to carefully supervise and control the manner in which it spends tens of millions of dollars of participant and employer funds. Surprisingly, PBGC takes a completely opposite approach and fervently defends Hagan's conduct, regardless of the cost to the Agency, both in terms of reputation and dollars.

Some of the lengths that the PBGC and its executive director, David Strauss, have gone to defend Hagan's conduct defy any reasonable explanation. For example, at the Hearings, Strauss excused IMRG's poor performance because of the tight job market. In doing so, Strauss ignored the fact that IMRG reduced the salaries of many individuals, including Bonnie McHenry. It also ignores the fact that PBGC moved the field service operation for Pan Am to Atlanta from Rosedale, NY in 1997. In doing so, PBGC virtually abandoned several experienced employees who formerly worked in the Pan Am employee benefits department. Here too, experienced employees were offered positions in a far away city and at reduced salaries.

Strauss' testimony concerning his defense of Hagan's conduct in regard to the award of the initial contract to IMRG similarly defies explanation. Yet Strauss offered no explanation for the 34 phone calls made concerning "personnel matters" during the time in which Cooks was bidding on a PBGC contract or the un-refuted testimony of Cook's loan officer. While AFPAAE strongly believes that all individuals are entitled to the presumption of innocence, these legal protections apply only to accusations of criminal conduct. An individual's conduct as a government official must be above reproach and free from even the appearance of impropriety. Yet, Strauss has announced no disciplinary action against Hagan of any kind. Nor has he demanded explanations from Hagan regarding the evasive answers he provided to officials from the Office of Special Investigations, of the Comptroller General.

However, by far the most serious aspect of Strauss' behavior is his apparent attempt to derail the investigation of Hagan's conduct by privately and publicly stating that the allegations against Hagan were motivated solely by racism. Yet, when testifying under oath before the Committee, Strauss declined to repeat these allegations. AFPAAE believes that Strauss' omission of the charge of racism from his testimony before the Committee raises serious questions as to whether Strauss raised this charge with a reporter from the New York Times and various federal investigators solely for the purpose of throwing off investigators engaged in various federal investigations. AFPAAE strongly urges the Committee to thoroughly investigate whether Strauss attempted to impede the investigation into Hagan's conduct by falsely labeling his accusers as racists.

AFPAAE thanks the members of the Committee for an opportunity to make present its views as its officials are available for further questions.

Respectfully submitted,

Richard Brooks  
President, AFPAAE

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MEMBER OF THE BAR  
VIRGINIA  
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PENNSYLVANIA

October 4, 2000

The Honorable Charles Grassley  
Chairman  
Special Committee on Aging  
Senate Hart Building, Room 825  
Washington, DC 20510

HAND-DELIVERED

Dear Senator Grassley:

On behalf of my client, Integrated Management Resources Group (IMRG), I am pleased to submit the enclosed document with exhibits to the Senate Special Committee on Aging and Committee on Small Business in response to the hearing these committees held on September, 21, 2000, entitled "Pension Tension: Does the Pension Benefit Guaranty Corporation deliver for retirees?" At that hearing, testimony was provided by a representative of the Office of Special Investigations of the General Accounting Office which alleged the appearance of improper influence in certain Pension Benefit Guaranty Corporation contract awards to IMRG. In addition, Ms. Bonne McHenry, who was briefly an IMRG employee, provided testimony critical of IMRG's management of its Atlanta operations. The attached document responds to these allegations and criticisms and, on behalf of IMRG, I respectfully request that it be made a part of the committee's official record with regard to this matter.

Sincerely,



David W. Kuhnsman

encl.

Integrated Management Resources Group (IMRG) is pleased to submit the following information to the Senate Special Committee on Aging and Committee on Small Business in response to the hearing these committees held on September, 21, 2000, entitled "Pension Tension: Does the Pension Benefit Guaranty Corporation deliver for retirees?" At this hearing, testimony was provided by the General Accounting Office (GAO) Office of Special Investigations (OSI) in which GAO/OSI alleged the "appearance of improper influence" in certain Pension Benefit Guaranty Corporation (PBGC) contract awards to IMRG. Not only is this report inaccurate and unbalanced, it pertains to matters which have been thoroughly reviewed by various Federal entities which have consistently found no wrongdoing.<sup>1</sup> Further, the deliberate "re-hashing" of these same unproven allegations continues a pattern of harassment IMRG has faced since its inception. In addition to GAO/OSI, Ms. Bonne McHenry, who was briefly an IMRG employee, provided testimony raising questions about IMRG's management of its Atlanta operations. While the disgruntled nature of her testimony is apparent and unworthy of a reply, to the extent her personal attacks are based upon inaccurate information, which she has now placed in the public record, IMRG is obliged to respond.

#### CORPORATE BACKGROUND

IMRG was founded in April of 1997. The company is a small, woman-owned minority business. The company is certified under the federal 8(a) program. IMRG was formed as a response to the need in the federal government and private business sectors for innovative integration of existing management resources with outside expertise and strategies. IMRG provides management and personnel systems that concern benefit administration, accounting, auditing services and other related financial services. In addition, IMRG offers customer service vehicles such as response center support, IT support and human resources support. The company distinguishes itself by offering these services through a strategic partnership with an agency or organization. The result is the customer's ability to redefine processes and procedures that allow them to concentrate on their core functions.

IMRG currently provides auditing and benefit administration to the PBGC. These services are performed in government-owned, contractor operated facilities in Washington, D.C. and Atlanta, Georgia. In addition, IMRG has contracts with other federal agencies and departments as well as private companies. IMRG has approximately ninety employees. The IMRG corporate office is located in Ft. Washington, Maryland and the company also has a regional office in Washington, D.C. IMRG's service efforts, however, are not limited to the metropolitan area. IMRG has secured partnering relationships with companies in areas throughout the United States which allow IMRG to provide service in other locations.

#### HARASSMENT OF IMRG

Since IMRG first began competing for PBGC contracts the company has been harassed by a business competitor and others individuals who have attempted to smear IMRG and its owner/

<sup>1</sup>See, Memorandum of James Keightley, PBGC General Counsel, to David Strauss, PBGC Executive Director (Sept. 18, 2000). (Hereinafter referred to as "PBGC Memorandum" and attached hereto as Exhibit 1, without attachments. The PBGC Memorandum has previously been submitted by the agency for inclusion in the official committee record for this matter).

president, Ms. Myrna Cooks. All of these efforts have failed, yet they continue to be repeated. This is in spite of the fact that the PBGC contracts IMRG has competed for have been "full and open" competition unlike many other PBGC contracts which are sole-source contracts. Under full and open competition IMRG has lost contract bids as well as received two contract awards. IMRG's performance has received excellent reviews, been favorably audited through an agency internal review, and been a model of achievement and integrity for the minority small business community.

GAO/OSI Testimony

The most recent harassment of IMRG, is the reiteration of many of the same baseless and defamatory claims, but now under the auspices of a GAO review of the PBGC. At the request of the Senate Committee on Aging and the Committee on Small Business, since June 1999, GAO has been reviewing PBGC's use of contract staff to carry out its responsibilities and the processes associated with the selection and oversight of such staff. As a part of this review, the GAO/OSI has been reviewing two PBGC contracts which had been competitively awarded to IMRG. These contracts are the Auditing Services contract (PBGC-0546) and Atlanta Field Benefit Administration contract (PBGC-J-8-0573).

While GAO/OSI personnel have stated that there is no information of any kind regarding any financial remuneration paid by IMRG to any PBGC personnel, GAO/OSI is claiming the Director of PBGC Insurance Operations (Director) "steered" these contracts to IMRG. They base these allegations on rumors and innuendo; records of telephone calls between the Director and IMRG; internal bank documents reflecting discussions between IMRG and its then bank; and the fact that IMRG listed the director as a technical reference for the bank.

As the PBGC's General Counsel has concluded in his report to the Executive Director of the PBGC, "the rumors and allegations are not true...[and] that some individual is (or individuals are) spreading inaccurate information for some improper personal reason."<sup>2</sup> Further, the PBGC has provided overwhelming evidence that proper procurement steps were followed with these two contracts and that the agency's system of checks and balances prevents any individual from manipulating the procurement process. Unfortunately, the GAO/OSI written testimony chooses to use innuendo and inaccurate information to create the appearance of something which does not exist.

GAO/OSI also places great emphasis on the fact that IMRG and the Director exchanged telephone calls. The PBGC General Counsel has thoroughly reviewed the telephone records and other information relating thereto and concluded that the calls "do not reveal any unusual business activity."<sup>3</sup> GAO/OSI has chosen to avoid including such material factual information, as well as affidavit of an individual who participated in or was present for many of the telephone calls, and mischaracterize or misstate information provided by Ms. Cooks, since this information would conflict with the GAO/OSI storyline.

According to GAO/OSI, it has reviewed a bank loan file pertaining to IMRG. Contained therein are allegedly the notes of a former loan officer of the bank and an internal bank memo drafted by him. The bank records allegedly include notes of telephone conversations between Ms. Cooks and

<sup>2</sup>ibid, at 9.

<sup>3</sup>id., at 3.

the loan officer and a phone call between the Director and the loan officer. These notes and an internal bank memo state that Ms. Cooks allegedly told him PBGC contracts were guaranteed to be awarded to IMRG or were going to be awarded to IMRG. Ms. Cooks has flatly denied these statements and her denial has been corroborated in an affidavit by the actual bank officer who was personally responsible for the IMRG loan application. He states in his affidavit that a full credit analysis and risk assessment was performed and Ms. Cooks was interviewed in his presence by members of the loan committee. Further he had numerous discussions with Ms. Cooks in person or telephonically. Never was there any "misapprehension or misunderstanding at any time that IMRG had any guarantee of being awarded a PBGC contract." In fact IMRG lost its first bid. He regards his subordinate's reference to any alleged guarantee of a contract as mistaken and an attempt by him to over-promote the loan within the bank.<sup>45</sup> Once again, GAO/OSI has chosen to follow a storyline rather than include this important and material information, even after two GAO/OSI agents appeared unannounced at the home of the affiant and subjected him to thorough questioning wherein he verified the contents of the affidavit.

Bonne McHenry Testimony

Unlike the inaccurate and biased portrayal of IMRG's Atlanta operations by Ms. Bonne McHenry, the factual reality of many of the issues she discussed is described below. Ms. McHenry claims she was paid less than "she was promised." The initial conversations with Ms. McHenry were with regard to a position as an Actuary on the contract. After formal review of Ms. McHenry's qualifications and phone calls to the National-Louis University where she obtained an M. ED. degree, it was determined that Ms. McHenry did not meet the specific educational requirements of the actuarial position under the contract. Ms. McHenry was aware throughout the process that this evaluation was taking place and indicated that she would consider an alternate position, if available, for which she qualified under the contract. A salary range was discussed with Ms. McHenry for the Actuary position during the summer of 1998. When, in fact, Ms. McHenry was offered a position as a Senior Pension Administrator, she was offered a salary commensurate with that position.

Ms. McHenry also asserts that some employees were paid less by IMRG than their previous employer. It is difficult to speak to Ms. McHenry's supposed knowledge of other employees' salaries. Each individual hired by IMRG was offered, during their interview, a salary commensurate with their skills and experience, based on a market survey previously conducted by IMRG for the Atlanta area.

With regard to her claim that Performance Reviews were not provided, Ms. McHenry received her review on December 8, 1999. Ms. McHenry also received a 4% salary increase which was paid retroactively to October 1, 1999.

Ms. McHenry also states that she only saw Ms. Cooks at the Atlanta office twice during an eighteen month period. Ms. Cooks' schedule has normally included travel to Atlanta every other month. However, for several months during Ms. McHenry's employment with IMRG, Ms. Cooks, under advice of her physician, was unable to travel. Several other members of her staff did travel to

<sup>4</sup> A copy of this affidavit is attached to the Addendum to the Memorandum of James Keightley, PBGC General Counsel, to David Strauss, PBGC Executive Director (Sept. 20, 2000) which is attached hereto as Exhibit 2.

<sup>5</sup> A summary of the IMRG loan and the extensive collateral required is attached as Exhibit 3.

Atlanta during this period. During critical periods, Ms. Cooks attended weekly video conferences with the Atlanta staff, as well as client representatives.

Ms. McHenry also questions the office's work schedule and difficulty in obtaining overtime. IMRG allows for a flexible schedule, giving employees the opportunity to begin work between 7 a.m. and 9 a.m. with an eight hour work day plus forty-five minutes for lunch. Overtime was allowed only with the approval of the client. As a result, employees were not allowed to work overtime without such prior approval.

She also attempts to create the appearance of impropriety with regard to the termination of Barbara Mitchell. Ms. Mitchell was terminated for legitimate and non-retaliatory reasons which have been fully disclosed to the PBGC. There has been no wrongdoing by IMRG.

Finally, Ms. McHenry personally attacks two of the Atlanta office's managers and claims they "used to threaten or intimidate employees." The reality is that IMRG maintained a qualified management staff in the Atlanta office. Both the Project Manager and Assistant Project Manager maintained an exemplary level of professionalism and performance within the operation. When staff were reprimanded, documentation to their files indicate the specific performance issue or other behavior deemed inappropriate, based on IMRG's clearly defined policies.

#### CONCLUSION

As described above, and in the detailed exhibits, these matters have been thoroughly reviewed and there has been no wrongdoing of any kind by IMRG. GAO/OSI has willfully avoided the reporting of material and verified facts which do not fit its storyline. The result is an inaccurate and unbalanced report which continues the pattern of harassment IMRG has faced for the past three years. Further, Ms. McHenry's testimony regarding IMRG's Atlanta operations is biased and inaccurate.



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

September 18, 2000

To: David Strauss  
Executive Director

From: James J. Keightley  
General Counsel 

Re: Investigations into Allegations of Contract Improprieties

In light of the continuing concern regarding certain 1997 and 1998 procurements involving the Insurance Operations Department ("IOD"), you have asked for my views regarding: (1) the thoroughness of the various inquiries; (2) the possibility of misconduct regarding the awarding of contracts; and (3) whether there is any further action that management should take at this time.

**Summary and Conclusions**

Since these contracts were awarded, numerous, often anonymous, allegations of misconduct have triggered a series of investigations that have failed to find any misconduct in the award of these contracts. As I will detail below, the Inspector General ("IG"), the Department of Justice ("DOJ"), the General Accounting Office ("GAO"), Senator Grassley's staff, and senior PBGC management including the Office of the General Counsel ("OGC"), have all looked into various allegations. Adding to my conclusion that there has been no misconduct is the procedural structure of the procurement process, which I describe briefly below. That process involves a large number of individuals including contract officials who are not employed by IOD, and who report to separate Deputy Directors.

Based on the extensive number of investigations that have taken place, my personal involvement in the various management inquiries, and the checks and balances in the contracting process, I do not believe that any misconduct took place in the award of these contracts. In light of the IG's ongoing investigation, I would not recommend conducting an additional management investigation -- either internally or using outside counsel (as is often done in the private sector). In my view, there is little we can do at this time other than to wait for the IG to complete his investigation.

### Executive Summary

The General Counsel's memorandum with addendum, attached, provides review of the four outside investigations that have taken place and analyzes three specific claims including telephone calls, tapes of a Field Benefit Administrators (FBA) conference and loan documents. Based on the extensive number of investigations that have taken place, his personal involvement in the various management inquiries, and the checks and balances in the contracting process, the General Counsel does not believe that any misconduct took place in the award of contracts.

The Inspector General opened an investigation three years ago. He provided the General Counsel with two pieces of information from its on-going investigation: (1) a tape recording of a FBA conference held in February 1997 at the PBGC; and (2) an eight month phone log of calls between the Director's Office of the Insurance Operations Department (IOD) and the corporate phone of Integrated Management Resources Group, Inc. (IRMG). The General Counsel reviewed these materials and determined that neither piece of information indicated any employee conducted corporate business in an inappropriate manner.

As Senators Grassley and Bond requested, the General Accounting Office (GAO) conducted a year-long review of PBGC's contracting activities. PBGC gave the GAO unfettered access to all employees and documents. The General Counsel has seen the GAO's draft report, but not a final report. The draft report contains no suggestion of contract improprieties regarding any specific contract.

In August 2000, following the GAO inquiry, investigators from the GAO's Office of Special Investigations contacted a number of PBGC employees alleging criminal activity had taken place regarding specific contracts.

Similar allegations of contract improprieties occurred in a *qui tam* lawsuit in New York. After investigating these allegations in 1998, the Department of Justice decided not to intervene in the case.

Senator Grassley's office inquired into similar aspects of the contracting process and PBGC promptly complied and disclosed all documents (some 8,000 pages) in its possession.

PBGC management looked into various rumors alleging an inappropriate business relationship between the Director of IOD and the owner of IRMG. The inquiry found no basis for any of the allegations.

Finally, the report reviews PBGC's programmatic "checks and balances" regarding the contracting process. The process involves many different employees who report to different supervisors and separate deputy directors. An internal auditing unit monitors the contracting process independently from the procurement department. In the General Counsel's opinion, this monitoring system prevents contract improprieties.

In light of the Inspector General's ongoing investigation, the General Counsel would not recommend conducting an additional management investigation -- either internally or using outside counsel (as is often done in the private sector.) In his view, there is little to be done at this time other than to wait for the Inspector General to complete his investigation.

## **1. INSPECTOR GENERAL INVESTIGATIONS**

Available evidence suggests that since mid 1997, the IG has been investigating these contracts and the relationship between IOD and Integrated Management Resources Group, Inc. ("IMRG"). To date, OGC has received no details regarding the nature or extent of the IG's inquiry other than telephone logs and a tape recording I recently received as a result of the disclosure of these matters by an investigator from GAO's Office of Special Investigations ("OSI"). I am aware of no referral to the DOJ, which would be the appropriate course of action if the IG had discovered evidence of criminal misconduct. Nor has the IG reported to management any findings that would cause you to take any organizational or disciplinary action. Until any such investigation has been completed, management can do little. The very existence of that investigation -- and the independent role of the IG -- make it impossible for my office, or even an outside law firm, to conduct a comprehensive inquiry.

As I indicated, I recently received two pieces of information developed by the IG which my office has reviewed. Investigators from OSI characterized these pieces of information as particularly troubling. In my opinion, neither the telephone calls nor the tape reflect PBGC employees conducting corporate business in an inappropriate manner.

### **The Tape**

The tape reflects a meeting held at PBGC in mid February 1997 where Robert Herting and other PBGC employees briefed FBA contractors about an upcoming requirement to submit proposals in response to an upcoming Request for Proposals ("RFP"). Mr. Herting, the Contracting Officer ("CO"), advises OGC that at the time of the meeting, PBGC planned to award sole source contracts to the incumbent FBA contractors. The FBA contractors were briefed about a "new" procurement process by personnel from the IOD Contract Support Review Branch, the Contracts and Control Review Department ("CCRD"), and Mr. Herting.

The CO told the attendees that he and Bennie Hagans, the Director of IOD, wanted to replace the cumbersome, impractical Basic Ordering Agreements ("BOA's") with new contracts. The new contracts would be awarded noncompetitively, based on proposals submitted by the FBA contractors in response to a RFP. A dialogue followed, with Mr. Herting explaining the "new" procurement process to the FBA contractors, and addressing questions and issues raised by the contractors. The CO reassured a group of nervous contractors that despite changes in PBGC's procurement scheme, they would continue to receive PBGC contracts -- unless they submitted unreasonable proposals. A discussion of how much profit would be "fair and reasonable" followed.

At the time Mr. Herting made his remarks, the agency intended to award all the FBA contracts on a sole-source basis -- just as it had before. Later, PBGC's Competition Advocate, John Seal, recommended competing some FBA contracts. PBGC decided to compete the Atlanta, Miami, Wheeling, and Wilmington FBA contracts -- the four largest FBA's.

**The Phone log**

The phone log (Attachment 1) contains a list of calls placed from PBGC to IMRG during the period between April through November 1997. Although OSI told the agency that the logs included 47 calls, the logs we received from the IG included only 34 calls over an eight month span. Our log analysis revealed that 18 calls lasted under a minute. The remaining 16 calls included only 12 calls that lasted more than ten minutes. No call lasted more than eighteen minutes.

The Director of IOD did not maintain a contemporaneous phone log of his calls. However, I was advised that the subject of several of the lengthier phone calls made from PBGC to IMRG (over ten minutes) included: (1) Requesting that IMRG contact Mr. Herting regarding whether it could bid on the RFP's due to the non-compete clause in its employee's contract with Office Specialists; (2) returning calls regarding subsequent contract issues, again referred to the Procurement Department; (3) a return call regarding a question from IMRG about overhead issues, which was referred to CCRD; (4) returned calls regarding gathering resumes from contract staff and (5) returned calls from IMRG about contract employees who had worked for IMRG's president while she was with Office Specialists, but continued to call her to discuss issues that she felt PBGC should be told about.

I believe that twelve calls between IOD and IMRG over an eight-month period do not reveal unusual business activity. No one has provided this office with information to the contrary.

**2. GAO INQUIRY INTO PBGC'S CONTRACTING ACTIVITIES**

Senators Grassley and Bond requested that the GAO review and assess the effectiveness of PBGC's contracting activities. Between June 1999 and May 2000, the GAO had unimpeded access to all employees and contracting files, including those between IOD and IMRG. It conducted more than 70 in-depth interviews of PBGC staff and managers, contractors and federal employees. The GAO reviewed thousands of documents including those regarding fifteen separate procurements (including the 1997 contracts at issue). In August 2000, the GAO issued a 42-page draft report, "Pension Benefit Guaranty Corporation: Management of Contracting Activities Needs Improvement." The draft details GAO's thorough review of PBGC's management of its contracting activities. The draft and PBGC's response are briefly summarized below.

**Summary of GAO Draft Report****GAO Statements regarding FBA contracting.**

The GAO recited that during the 1980s, PBGC's contracting for services was shaped by the need to meet rapidly increasing workloads. PBGC has acknowledged the need to better link its service contracting and work force decisions to workload trends. GAO noted that no new large, disruptive plan terminations have added to PBGC's workload burden in recent years. The defined benefit pension universe is decreasing. Each year, PBGC expects to assume responsibility for

underfunded pension plans covering 40,000 - 50,000 participants. GAO stated that PBGC's GPRA planning through FY 2004 doesn't incorporate the issue of workforce planning.

GAO opined that PBGC should consider using fixed price contracts rather than labor hour contracts, because labor hour contracts tend to cost more and require more contract administration than fixed price contracts. Insufficient data is collected to properly monitor the quality of performance of the FBA contractors. It noted that PBGC has taken steps to improve contract administration.

The draft also noted that prior to 1997, all FBA contracts were sole-sourced. The contracts for the four largest FBA's were competed in FY 97 with total value of \$71M. GAO stated that the decision to competitively procure these services was influenced by PBGC's OIG. One contractor received three FBA's, (Miami, Atlanta and Wheeling); another received the Wilmington contract. The net result was that PBGC retained the incumbent contractor at each of the four FBA's. The draft stated that the decisions made regarding contracting for services at the Atlanta, Wheeling, Miami, and Wilmington FBA's lacked sound business rationale. The draft found that this risked restricting competition, paying too much for services, and receiving inferior performance.

The draft states that PBGC needs to centralize and compile FBA performance data. Data is compiled on a plan basis, not an FBA basis. FBA's do maintain FBA productivity data. Reports can vary in organization and content from FBA to FBA. The draft noted that it may be difficult to compare one FBA's performance with another, due to the fact that FBA workloads vary, in particular, workloads vary due to differences between plans, and the stages of plan processing.

The draft found that PBGC has taken steps to better manage contractor workloads and performance, including the benefit determination process. However, the report cited that some PBGC staff and managers allege that senior management does not support efforts to identify contractor weaknesses and hold contractors accountable. Membership and leadership of FBA review teams is rotated; nearly 1/3 of review teams were led by someone who had never previously participated in a review. The draft stated that PBGC does not require FBA review team members to meet minimum professional education standards. PBGC does provide and encourage field office reviewer training.

**Other GAO Statements Regarding Contracting**

There were weaknesses noted in a couple of Chief Financial Officer and Information Resources Management Department ("IRMD") contracts, and the draft found that records compiled by Technical Evaluation Panels were inadequate. The draft stated that PBGC overpaid a poorly performing premium audit services contractor, and ultimately ceased using that contractor. The \$18 M IRMD systems engineering contract and the \$1.5 M investment management contract were criticized. The draft concluded that PBGC should try to use fixed price contracts in lieu of labor-hour contracts.

The draft stated that the independence of the Contracts and Control Review Department ("CCRD") is compromised by its location under the Deputy Executive Director and Chief Financial Officer.

The draft recommends that more emphasis should be placed on contract administration, including consistent written policies and procedural guidance for COTRs and contract specialists. The draft found that the Procurement Department has a limited policy manual, and that the manual has been supplemented by ad hoc messages and directives. The GAO found that FBA COTRs completed COTR reports uniformly and that non-FBA COTRs did not.

**PBGC Response**

PBGC agreed with much of the draft report's recommendations, and pledged to implement most of those that have not already been implemented.

**GAO Follow-up**

It is apparent that the GAO auditors focused on some very specific questions regarding the FBA contracts, because they also inquired through their General Counsel's office in February 2000 regarding the structure of a number of those contracts. Craig Winslow of the GAO Office of the General Counsel requested that Mr. Herting, the PBGC Contracting Officer, respond to four questions in his letter dated February 1, 2000. (Attachment 2). The questions included:

1. Does the PBGC consider its procurement of pension benefit administration services to be subject to the CICA and the FAR?
2. If so, it is our understanding that PBGC based its decision to consolidate the requirements for pension benefit services at the Miami, Wheeling, and Atlanta sites upon a finding of administrative convenience. Please explain how combining these requirements as a total package served and was therefore justified by the specific needs of the agency.
3. After consolidating the requirements for these locations, what was the agency's rationale in issuing separate contracts for each location?
4. Why was the Wilmington site not included in the consolidated requirement, but instead, competed separately?

The Contracting Officer replied to all questions.

**3. THE GAO OFFICE OF SPECIAL INVESTIGATIONS**

In mid-August 2000, following the year-long GAO inquiry into PBGC's procurement process, two more GAO OSI investigators -- trained in criminal investigative techniques -- contacted a number of PBGC employees alleging that criminal activity had taken place. Two senior

managers were interviewed (unscheduled) by these investigators for approximately five hours in one case and three hours in the other. In both cases, the managers fully cooperated without the presence or knowledge of any other corporate officials or counsel. In spite of the employees' full cooperation, when I contacted the investigator the next day regarding the authority for his investigation, he indicated to me that both witnesses were "lying". Other than these broad conclusory statements, OSI has not provided any information that supports a finding of any kind of misconduct -- let alone criminal activity. The only evidence the investigators alluded to were the phone log and the tape discussed earlier which they apparently obtained from the IG.

It is not clear how many individuals the investigators have interviewed. However, it is our understanding that OSI has interviewed many of the same employees interviewed by the auditing unit of the GAO and the IG -- including technical evaluation panel members, senior managers and contract employees. We have encouraged our employees to cooperate with the investigators, after first making them aware of their right to have an attorney present during any interviews. In doing so, PBGC was striving to balance the public's need for open government against the possible perception that our employees' individual rights would be abridged in that process. As a result, an attorney from our Office of the General Counsel attended two witness interviews at the request of the employees involved. We have also assisted OSI in reviewing contract files and related documents, and explaining our procurement actions as we went along.

In light of the other investigations and the lack of success so far, I do not expect these investigators to develop any significant new evidence.

#### **4. THE DEPARTMENT OF JUSTICE INVESTIGATION**

Allegations of contract misconduct are also made in federal litigation involving Office Specialists and a Pan Am retiree organization, AFP&E, Inc. In *AFP&E, Inc. v. Office Specialists, Inc.*, the plaintiffs sued under the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730 ("FCA"). The plaintiffs were AFP&E, Inc., Brigitte Martino, a former Office Specialist employee in Atlanta, Bryan Lenahan, an employee of Office Specialists from 1995 through January 16, 1998; and Jim Dough (a pseudonym for an anonymous current or former PBGC employee who later withdrew from the case). Under the FCA, private plaintiffs file an action on behalf of the United States for alleged fraud committed against the United States. The FCA provides that the Complaint is initially filed under seal so that the Department of Justice ("DOJ") can investigate the allegations, and decide whether to intervene and take the case over.

Plaintiffs' lawsuit alleges that Office Specialists defrauded the United States of millions of dollars by billing PBGC for work not performed. Plaintiffs' allegations include:

- Office Specialists fraudulently billed PBGC at higher Pan Am contract rates for work performed on contracts for non-Pan Am plans, which were awarded for lower fees. Plaintiffs contend that Pan Am was a contract paid at high New York-based

rates. Other plans were administered under contracts not based on New York City rates. Plaintiffs allege that Office Specialists made misrepresentations to get PBGC to pay for non Pan Am work at the higher Pan Am rates.

- Office Specialists allegedly represented that highly qualified professionals would work on the Pan Am contract, and then allegedly employed mostly junior level and unqualified workers and billed them at the rates for senior and qualified employees.
- Office Specialists allegedly used the move to Atlanta to replace more qualified New York workers with under-qualified replacements while also reducing its overhead, and receiving money for moving expenses.
- Office Specialists allegedly made misrepresentations in order to obtain "sole source" contracts and avoid the Competition in Contracting Act.
- Office Specialists allegedly used the wrongful charges as the bases for lower bids on other contracts, e.g., to exclude the cost of the project manager knowing that the manager could be paid under the Pan Am contract, and also used misrepresentations to extend the Pan Am contract.
- Office Specialists allegedly conspired with Myrna L. Cooks, its officer, and Bennie Hagans, the Director of PBGC's Insurance Operations Department, to perpetuate these frauds. Mr. Hagans allegedly saw to it that payments to Office Specialists were expedited. After Ms. Cooks left Office Specialists and formed her new company, plaintiffs allege that Office Specialists favored status at PBGC ended in order to bring work to Ms. Cooks' new company.

DOJ, through its Civil Division and the Maryland U. S. Attorneys Office, investigated the plaintiffs' allegations. While the case was still under seal, DOJ worked with investigators in the PBGC Office of Inspector General, and DOJ attorneys independently interviewed PBGC employees concerning the allegations. In early 1999, after investigating the allegations for nearly a year, DOJ decided not to intervene in the case. The underlying case remains in federal court pending a decision on Office Specialists' motion to dismiss.

5. **SENATOR GRASSLEY'S INQUIRIES REGARDING PBGC CONTRACTING ISSUES**

**Senator Grassley's letter of 10/15/1997** (Attachment 3)

In response to Senator Grassley's letter dated October 15, 1997, the Office of the General Counsel undertook a massive review and document gathering effort to reply to the following questions:

1. Provide complete copies of all audits, examinations, inquiries, evaluations, inspections, reviews, reports or investigations conducted by the PBGC which relate in any way to the billing practices and/or audit procedures of Office Specialists.

2. Provide complete copies of all audits, examinations, inquiries, evaluations, inspections, reviews, reports or investigations conducted by the PBGC which relate in any way to claims, bills, or any other charges or costs submitted to the PBGC by Office Specialists.

3. Provide complete copies of all audits, examinations, inquiries, evaluations, inspections, reviews, reports or investigations conducted by any governmental agency/entity other than the PBGC which relate in any way to the billing practices, procedures, activities, claims, bills, or any other charges or costs submitted to the PBGC by Office Specialists.

4. Provide complete copies of all documentation and materials related to and/or reflecting Office Specialists' reimbursement, refund, credit or any other transfer of value from Office Specialists to the PBGC.

5. Provide complete copies of all audits, examinations, inquiries, evaluations inspections, reviews, reports or investigations conducted by any non-governmental agency/entity other than the PBGC which relate in any way to the billing practices, procedures, activities, claims, bills, or any other charges or costs submitted to the PBGC by Office Specialists.

PBGC compiled and timely-delivered more than 3,400 pages of indexed materials to the Senator's office.

**Senator Grassley's letter of 12/24/97** (Attachment 4)

PBGC's Contracts and Control Review Department ("CCRD") responded to a request from Senator Grassley to conduct an audit of the Atlanta FBA office. An audit was performed and copies of the audit result were provided to Senator Grassley on May 4, 1998. It was a clean audit.

**Senator Grassley's letter of 2/26/98** (Attachment 5)

In Senator Grassley's February 26, 1998 letter, he requested PBGC provide the following:

1. A copy of each and every travel request/order form or other comparable document prepared by or on behalf of Mr. John Butler, Mr. Bennie Hagans and Ms. Myrna Cooks where reimbursement was derived in whole or in part from the PBGC.

2. A copy of each reimbursement claim or other comparable document prepared by or on behalf of Mr. John Butler, Mr. Bennie Hagans and Ms. Myrna Cooks.

3. A complete and detailed itinerary covering any and all travel periods for Mr. John Butler, Mr. Bennie Hagans and Ms. Myrna Cooks where reimbursement was derived in whole or in part from the PBGC, including the purpose of such travel.

4. A list of all travel by Mr. Hagans paid for in whole or in part by any organization other than the PBGC.

PBGC compiled and timely delivered more than 3,000 pages pertaining to Mr. Butler and Mr. Hagans. As a Senior Manager of Office Specialists, Ms. Cook's travel was not directly billed to or reimbursed by PBGC, therefore, PBGC had no records relating to her travel.

Senator Grassley's letter of 6/4/99 (Attachment 6)

In his June 4, 1999 letter, Senator Grassley asked the following:

Whether the PBGC acted consistently with its internal guidelines, government rules and federal regulations when the PBGC approved travel arrangements for Mr. John Butler, a former Office Specialists employee with regard to three broad areas: (1) Travel to Atlanta; (2) possible personal travel by Mr. Butler during these trips to Atlanta, and (3) Mr. Butler's lodging arrangements in Atlanta.

PBGC complied and timely delivered all the materials pertinent to the inquiry. OGC reviewed all relevant documents and found the agency complied with applicable internal guidelines, government rules and federal regulations.

**6. PBGC MANAGEMENT INQUIRIES**

Over the last few years, management has looked into various rumors concerning an inappropriate business relationship between the Director of IOD and the owner of IMRG. For example, it was alleged that the two were immediate neighbors -- this was determined to be false. It was alleged that the two went to college together -- this is false. It was alleged the two owned a beach property together -- this is false.

The PBGC's Chief Operating Officer and myself have been aware of these rumors for some time, as well as the on-going IG investigation. We have undertaken steps to assure ourselves that the rumors and allegations are not true, and we are not aware of any contrary information from the IG. The conclusion I have drawn is that some individual is (or individuals are) spreading inaccurate information for some improper personal reason.



Pension Benefit Guaranty Corporation  
1200 K Street, N.W., Washington, D.C. 20005-4026

September 20, 2000

To: David Strauss  
Executive Director

From: James J. Keightley   
General Counsel

Re: Addendum to my Sept. 18, 2000 Memorandum regarding  
Investigations into Allegations of Contract Improprieties

As I said in my September 18, 2000 memorandum, there have been several allegations of misconduct regarding the awarding of contracts between PBGC's Insurance Operations Department ("IOD") and Integrated Management Resources Group, Inc. ("IMRG"). I addressed some of those allegations in that memorandum. I have since learned from the Committees' Pre-hearing Memorandum that an investigator from the GAO's Office of Special Investigations ("OSI") has also investigated allegations that a PBGC official made a loan reference for the President of IMRG in which the PBGC official "intimated that [IMRG] would be awarded a multi-million dollar contract that he controlled."

I have since received from counsel for IMRG a fax of an affidavit (attached) from the bank official "personally responsible for the review, analysis, and presentation to the Bank's loan committee of the application for a business loan for [IMRG], a start-up company." This official states that there was no misapprehension or misunderstanding at any time that IMRG had any guarantee of being awarded a PBGC contract, and that in fact the bank was notified that IMRG was not awarded the first contract for which it competed.

This bank official said that he was not aware of any reference to IMRG being certain to receive PBGC contracts in internal bank documents, and that if there was such a reference, he would regard it as an attempt by the loan officer to over promote the loan within the bank. The affidavit concludes by saying that the loan was *not* based upon any such mistaken reference in an internal bank document, but on the basis of a thorough analysis of the standard information submitted by IMRG, together with the success of the IMRG's president in meetings with the loan committee.

The Committees' Pre-hearing Memorandum implies that this was a \$1 million loan secured only by future contracts with PBGC. I have received and reviewed voluminous closing documents showing that the transaction in question involved a \$250,000 term loan and a \$750,000 revolving line of credit, guaranteed by the Small Business Administration, and by personal guarantees of the IMRG President and her husband; the lender also required as collateral all IMRG assets including contract rights, and personal assets of the IMRG President.

AFFIDAVIT

I, Thomas B. Freeze, residing at, 6498 Kenmar Drive, Sykesville, Maryland, 21784, state the following:

1. From 1991 until 1998 I was a Vice-President/Unit Manager of Provident Bank ("Bank"), located in Baltimore, MD, and served as the immediate supervisor of Charles Kirshner, a Vice-President of the Bank.
2. During 1997, I was personally responsible for the review, analysis, and presentation to the Bank's loan committee of the application for a business loan for Integrated Management Resources Group, Inc. ("IMRG"), a start-up company.
3. The credit analysis and risk assessment of IMRG's application included a thorough review of detailed information, including but not limited to, a business plan and pro-forma financial information; tax returns of the company principal, Ms. Myrna Cooks; credit report; and other standard information. In addition, I personally presented Ms. Cooks to the key members of the Bank's loan committee who interviewed her in my presence.
4. During 1997, I spoke with Ms. Cooks, both in person and on the phone, numerous times regarding her loan application and issues related thereto.
5. There was no misapprehension or misunderstanding at any time that IMRG had any guarantee of being awarded a Pension Benefit Guaranty Corporation ("PBGC") contract. In fact, I was informed that IMRG in fact lost its first bid before the PBGC.
6. I am unaware of any statement or other information provided by Ms. Cooks, other IMRG staff, or any other person that any PBGC contract was guaranteed or otherwise certain to be awarded to IMRG.
7. If I had noticed or otherwise became aware of any reference to any such alleged guarantee of contract in any internal Bank document I would have immediately had such language stricken. If any such language does, in fact, appear in any Bank document it appears in error and I regard it as an attempt by Mr. Kirshner to over-promote the loan application within the Bank.
8. The loan approval was based on a thorough analysis of standard information submitted by IMRG as well as the success of Ms. Cooks' meeting with the loan committee members where her business acumen and technical expertise in her field was displayed. The approval was not based upon any mistaken reference within an internal document regarding any guarantee of contract award.

Further Affiant saith not.

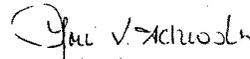


Thomas B. Freeze

NOTARY PUBLIC

State of Maryland  
 County of Carroll

City/County of \_\_\_\_\_  
 State of Maryland \_\_\_\_\_  
 Subscribed before me this 15th  
 day of September, 2001.  
 My commission expires 3/31/2001

  
 Lori V. Schissler

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CREDIT FACILITIES PROVIDED BY PROVIDENT BANK TO INTEGRATED MANAGEMENT RESOURCES GROUP ON NOVEMBER 27, 1997

The credit facilities extended by Provident Bank to Integrated Management Resources Group, Inc. ("IMRG") on November 26, 1997 were as follows:

- I. \$500,000 Revolving Line of Credit, and a
- II. \$250,000 Term Loan amortized over a period of five years. This term loan was approved by the Small Business Administration which provides a guarantee to the lender of the majority of the principal amount to help lenders assist small businesses.

COLLATERAL

As collateral for the credit facilities, the lender required the following:

- I. First lien and priority security interest in all IMRG assets, including, but not limited to:
  - A. accounts, instruments, inventory, documents, chattel paper, general intangibles, equipment, investment property, and goods;
  - B. contract rights;
  - C. fixtures;
  - D. all monies, bank accounts, or deposits with any financial institution (This is particularly important since Ms. Cooks, the IMRG president, provided a personal capital infusion into the company in the amount of \$100,000);
  - E. contracts with customers, deposits, prepayments and rights to tax refunds, etc.
- II. In conjunction with the term loan, an indemnity deed of trust in favor of the lender was placed on Ms. Cooks' personal residence.
- III. Assignment of a Key Person Life Insurance Policy on Ms. Cooks.
- IV. Also, the unconditional, unlimited, joint and several personal guarantees of Ms. Cooks and her husband.

Both credit facilities were at market interest rates and included standard terms, conditions, and covenants.

(Please note the revolving line of credit was increased to \$750,000 in Nov. 1998.)

On or about July 1, 2000, all loans with Provident Bank were paid off in full by IMRG.

