



Pension Benefit Guaranty Corporation
Office of Inspector General
Audit Report

**Audit of PBGC's Response To Certain
Questions Concerning Appeals
of PBGC Initial Determinations
of Pension Benefits**

September 29, 1998

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Abbreviations

CFR	Code of Federal Regulations
COO	Chief Operating Officer
CY	Calendar Year
DL	Determination Letter
DoPT	Date of Plan Termination
ERISA	Employee Retirement Income Security Act of 1974
FY	Fiscal Year
IDL	Initial Determination Letter
IOD	Insurance Operations Department
OIG	Office of Inspector General
N/A	Not applicable
PBGC	Pension Benefit Guaranty Corporation
PEAD	Participant and Employer Appeals Department
QDRO	Qualified Domestic Relations Order

September 29, 1998

The Honorable Charles E. Grassley
Chairman
Special Committee on Aging
United States Senate
Washington, DC 20510-6400

This letter responds to your request that we conduct a multi-year review of the number of initial determination letters that are appealed by pension plan participants to the Pension Benefit Guaranty Corporation (PBGC). In particular, we were to account for (1) the number of appeals filed yearly; (2) the number of appeals pending at the end of each fiscal year; and (3) the number of appeals granted in favor of the participant or upholding the PBGC's initial decision. Appendices I and II provide detailed information on PBGC's assertions regarding its appeals inventory for Fiscal Years (FY) 1996 and 1997.

RESULTS IN BRIEF

We asked PBGC to provide detailed information about their appeals inventory. In response, PBGC issued a memorandum, "Review of Benefit Determination and Appeals Process -- Schedule of Appeals" (see Appendix II). This memorandum represents certain statistical assertions of PBGC's appeals inventory. PBGC states that the statistics comprise all appeals pending at FY-end 1995, and docketed, closed and pending for FYs 1996 and 1997.

We conducted tests to verify these statistical assertions. We verified that the total number of appeals closed at the end of FYs 1996 and 1997 were 912 and 927, respectively. In addition, PBGC informed us that they had not kept statistical information to track whether these appeal decisions were favorable or unfavorable to participants but were in the process of implementing a new system which would permit them to report this information. To assist our review, PBGC advanced their timetable for implementation in order to categorize their closed appeals for FY 1997 using the favorable or unfavorable outcome criteria.

As a result of our testing, we conclude that PBGC's assertions, as summarized in its memorandum in Appendix II, are fairly presented. In Appendix I, we have summarized the statistical information to answer the three questions asked by the Special Committee on Aging.

BACKGROUND

The Pension Benefit Guaranty Corporation (PBGC) was established under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. PBGC is a government corporation that protects the pensions of more than 42 million Americans in approximately 43,000 single-employer and 2,000 multiemployer defined benefit plans. PBGC represents that its mission is to operate as a service-oriented, professionally managed agency that protects participants' benefits and supports a healthy retirement plan system by:

- encouraging the continuation and maintenance of private pension plans;
- protecting pension benefits in ongoing plans;
- providing timely payments of benefits in the case of terminated pension plans; and
- making the maximum use of resources and maintaining premiums and operating costs at the lowest levels consistent with statutory responsibilities.

The laws and regulations containing relevant criteria for PBGC appeals are:
1) ERISA, and 2) PBGC regulations, "Rules for Administrative Review of Agency Decisions," at 29 CFR Part 4003.

PBGC's programs are financed by revenues obtained from premiums paid by sponsors of covered pension plans, assets from terminated plans that PBGC trustees, recoveries from sponsors formerly responsible for the trusteed plans and investment income.

At September 30, 1997, PBGC was trustee, or in the process of becoming trustee, of 2,510 terminated pension plans. One of PBGC's responsibilities under ERISA is to ensure the uninterrupted payment of pension benefits to plan participants. Retirees receive estimated benefit amounts until PBGC confirms key participant data and values plan assets and recoveries from the plan's sponsors. PBGC then calculates the actual benefit to be paid to each participant according to the specific terms of the participant's plan, statutory guarantee levels, and the funds available from plan assets and employer recoveries. PBGC uses the initial determination letter (IDL) to notify participants of an official decision regarding entitlement to, amount, and other conditions of a benefit.

In addition, the IDL also informs the participant of the right to appeal the determination and any of the information used by PBGC in its decision. Appeals are to be sent to PBGC's Appeals Board (the Board) and generally must be received by the Board no later than 45 days after the date of the IDL. When an appeal is submitted and accepted by the Board, PBGC delays any adjustment to the benefit amount until the Board has issued its decision.

The Board resides within the Participant and Employer Appeals Department (PEAD). PEAD personnel support the appeals process and assist the Board in conducting administrative reviews.

The Board issues written appeal decisions to the participants. Based on the decision, the Insurance Operations Department (IOD) will take some specific action concerning the participant's benefit. Such action may be implementing the IDL's final benefit calculation or issuing a new IDL.

OBJECTIVE, SCOPE and METHODOLOGY

The objective of our audit was to conclude on PBGC's assertions in Appendix II. PBGC represented to the OIG that they are responsible for the fair presentation of Appendix II, the data is accurate and complete, and all pertinent records and data were made available. Our audit was conducted in accordance with *Government Auditing Standards* issued by the Comptroller General of the United States.

We gained an understanding of the appeals process and the controls in place for receiving, reviewing and issuing decisions on appeals of benefit determinations. These procedures included reviewing pertinent PBGC regulations and manuals, related reports and other documents and interviewing personnel. In our sampling tests, we also tested relevant controls to verify our understanding of the process.

We asked PBGC to provide the information contained in Appendix II along with the factual support. To support its assertions, PBGC provided information from the PEAD appeals database. With this information, we performed tests to verify: (1) for FY 1995, the number of appeals that were pending closure at FY end; and (2) for FYs 1996 and 1997, the number of appeals docketed and closed, and the classifications of the reasons for closure. The number of appeals pending at the end of FYs 1996 and 1997 can be derived from the above information; therefore, it was not necessary to obtain separate information concerning these appeals.

To test the reasonableness of Appendix II, we used statistical sampling with random starts to select a sample of appeals from categories (1) and (2), above. By using this method, we could quantify the sampling risk and all appeals in the populations had an equal chance for selection. Separate samples were not selected for the number of appeals pending at the end of FYs 1996 and 1997.

We then compared the appeals selected with the documentation PBGC used to support its categorizations by fiscal years and classifications of reasons for closure. This documentation included appeal letters, minutes of Appeals Board meetings, notifications to IOD, forms showing the Board Chairman's approval for certain actions, and letters to appellants providing a detailed narrative of the appeals decision.

We performed certain procedures to test the completeness of the appeals reported by PBGC. These procedures were not sufficient in scope to assure that PBGC reported all appeals in Appendix II; however, we did not identify any appeals which were not reported in the Schedule of Appeals.

We did not review the accuracy of PBGC's final decisions on the appeals of IDLs.

CONCLUSION

In our opinion, Appendix II, "Review of Benefit Determination and Appeals Process -- Schedule of Appeals," fairly presents the number of appeals of benefit determinations pending closure at the end of FYs 1995, 1996, and 1997, the number of appeals docketed and closed and the classifications of the reasons for closure during FYs 1996 and 1997 in conformity with the criteria listed above.

AGENCY COMMENTS

A draft letter report was provided to the Agency for comment. PBGC officials stated that the report reflects a fair and thorough review of the appeals process. The full text of the comments is attached at Tab A.

If you have any questions concerning this letter report, please contact me at (202) 326-4030.

Wayne Robert Poll
Inspector General

Appendix I

Questions and Answers on PBGC's Appeals Inventory

1. Number of appeals docketed by PBGC.

We reviewed PBGC's process for processing appeals. We tested the number of docketed¹ appeals for FYs 1996 and 1997. Based on audit work, we concluded that PBGC's assertions in Appendix II, Section A of the number of appeals docketed during FY 1996 and 1997 were fairly presented. Additionally, we concur with PBGC's assertion that the number of appeals other than those of benefit determinations (e.g., employer liability or plan coverage issues) is not significant.

Exhibit I.1
Number of Appeals Docketed

	FY 1996	FY 1997
Appeals Docketed	1425	1300

¹ Before docketing correspondence as an appeal, the Board verifies that an IDL has been issued and that an appeal has not been previously docketed. Therefore, the date the appeal is docketed may be later than the date the correspondence is received and filed.

Appendix I (cont'd)

2. Number of appeals pending at the end of each fiscal year.

As shown below, we tested the number of appeals pending at FY-end 1995 and the number of appeals docketed and closed for FYs 1996 and 1997. The number of appeals pending at the end of FYs 1996 and 1997 were derived from the audited information. Therefore, it was not necessary to separately test the appeals pending.

**Exhibit I.2
Number of Appeals Pending**

	FY 1995	FY 1996	FY 1997
Appeals pending at the beginning of period	--	645	1158
Appeals docketed for period	--	1425	1300
Appeals closed for period	--	(912)	(927)
Appeals pending at close of period	645	1158	1531

Appendix I (cont'd)

3. Number of appeals granted in favor of the participant or upholding the PBGC's initial decision.

PBGC has not maintained statistical information tracking whether appeal decisions were favorable or unfavorable to appellants. However, they were in the process of implementing a new system which would permit them to report this information. PBGC advanced their timetable for implementation in order to categorize their closed appeals for FY 1997 using the favorable or unfavorable outcome criteria. We tested PBGC's analysis as reported in page 2 of Appendix II. As a result, we conclude that PBGC's assertions, as represented below, are fairly presented.

**Exhibit I.3
Schedule of Appeal Decisions**

	FY 1997
PBGC determinations upheld	461
Appeal decisions resulting in changes favorable to appellants	458
Appeal decisions less favorable for appellants than PBGC determinations	8
Total closed	927



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

MEMORANDUM

April 30, 1998

To: Wayne Robert Poll
 Inspector General

From: Harriet D. Verburg, Director
 Participant and Employer Appeals Department

Subject: Review of Benefit Determination and Appeals
 Process -- Schedule of Appeals

This provides certain information requested by your memorandum dated November 25, 1997, as further discussed with members of your staff.

<u>A. Appeal Case Inventory</u>	<u>FY95</u>	<u>FY96</u>	<u>FY97</u>
1. Number of appeals docketed FY96/FY97 *		1,425	1,300
2. Number of appeals pending at FY-end	645	1,158	1,531

* Includes all appeals docketed each year; the number of appeals of matters other than benefit determinations (e.g., employer liability, plan coverage) is not significant for this purpose. The time required to work each such appeal, however, is significant.

<u>B. Number of Appeals Closed</u>	<u>FY96</u>	<u>FY97</u>
1. Determinations affirmed by the Appeals Board	128	55
2. Determinations changed by the Appeals Board	84	65
3. Closed administratively (C.10, C.11, C.12)	15	39
4. Appeals decided otherwise (C.2 thru C.9, C.13)	685	768
5. Total closed	912	927

<u>C. Procedural Methods for Closing Appeals **</u>	<u>1997</u>
(expanded classification; N/A prior to FY97)	
1. Issue(s) in dispute decided by the Appeals Board (B.1 + B.2)	120
2. Closed on the basis of prior Appeals Board decisions	116
3. Issue(s) in dispute resolved by new DL issued at PEAD's request	304
4. Issue(s) in dispute explained by PEAD; no grounds presented subsequently when additional time is allowed	145
5. Issue(s) in dispute explained by IOD; no grounds presented subsequently within the period allowed, usually 30 days	3
6. Information provided by Disclosure Officer; no grounds presented subsequently within the period allowed, usually 30 days	0
7. No grounds presented (e.g., non-specific assertion of error)	84
8. Issue not appealable (e.g., DoPT, QDRO, other court order, fact of recoupment)	9
9. Appeal untimely	85
10. Appeal withdrawn by appellant or his/her representative	38
11. Premature appeal filing (appeal filed before DL is issued)	1
12. Duplicate filing	0
13. Other (21 issue decided COO; 1 appeal of a duplicate IDL)	22

** Methods 2 through 9 and 13 allow for the closure of appeals analyzed and/or reviewed by Appeals Board Members and certain other senior PEAD, and approved by the Chairperson of the Appeals Board (i.e., closed without full Appeals Board review). Examples: Under Method 2, issues are decided on the basis of prior Board decisions involving the same pension plan and the same or similar issues and/or facts and circumstances. Appellants in these cases are considered to have exhausted their administrative remedies and may seek court review of the decision in the same manner as a case decided by vote of a 3-member Appeals Board. Method 3 provides for closure through the joint efforts of PEAD and other PBGC staff where errors may be corrected by new determination letters with appeal rights.

As previously discussed, closed appeal cases do not fall neatly into the classifications identified in lines 9.c (the number of appeals granted in favor of appellants) and 9.d (the number of appeals upholding PBGC initial determinations) of the attachment to your November memorandum. For the reasons previously explained, PEAD has not maintained that data. With the redesign of PEAD's Appeals Case Control System (ACCS), more information about each appeal can be captured, and PEAD began to do so at the beginning of CY 1997. Current system enhancements allow for an expanded appeal classification scheme. Relevant data for FY97 closed appeal cases have been compiled by PEAD staff and entered into a prototype system.

Although the following is a slight modification of the data you requested, I believe the information is fully responsive:

461	PBGC determinations upheld (includes 12 upheld, but for reasons other than presented in the determination letters)
458	Appeal decisions resulting in changes favorable to appellants (includes 10 involving a post-determination policy change and 221 closed in connection with a PBGC settlement)
8	Appeal decisions less favorable for appellants than PBGC determinations
927	Total appeals closed during FY97

If you require further information or explanation, please do not hesitate to contact me on extension 3476.

cc: Nell Hennessy
Fran Downey

TAB A



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

Memorandum

September 25, 1998

To: Wayne Robert Poll
Inspector General

Through: John Seal, Deputy ^{John Seal} Executive Director
and Chief Management Officer

From: Harriet Verburg, ^{Harriet Verburg} Director
Participant and Employer Appeals Department

Subject: Evaluation of Certain questions Concerning
Appeals of PBGC Determinations (98-10/23131)

We appreciate the opportunity to comment on the subject draft report dated September 10, 1998. We find that it reflects a fair and thorough review of the appeals process.

If you issue your report on appeals apart from the logical lead-in (i.e., your related report on "Benefit Determinations"), the appeals report needs an overall PBGC program context. We suggest the following.

Appeals are filed, on average, for approximately two percent (2%) of the IDLs issued each fiscal year. For example, during FY 1997, 69,011 IDLs were issued and 1,300 appeals were docketed (1.9%). Of course, this varies from year-to-year, but on average, the 2% rate has held historically.

With respect to the 927 appeals closed during FY 1997, Appendix No. 2 shows approximately one-half decided in favor of appellants. The relief granted in these decisions ranges from partial (sometimes minimal) to full relief requested, and may result from a PBGC settlement agreement after an appeal was filed.

Although PEAD's response to the questions you presented required that we advance the planned schedule for developing and implementing a revised appeals classification scheme and supporting automated system, the professionalism of your staff and the manner in which they did their "homework" minimized disruption to our operations and made our job go somewhat smoother. Please express our appreciation to Ms. Wlodarczak and Mr. Zeilman.

We are available to discuss these comments if you need additional information.