



Pension Benefit Guaranty Corporation  
*Office of Inspector General*  
Audit Report

**Audit of PBGC's Schedules of Appeal Closings  
For Fiscal Years 1999 and 2000**

***August 15, 2002***

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## **Abbreviations**

BD	Benefit Determination
BDL	Benefit Determination Letter
CFR	Code of Federal Regulations
DoPT	Date of Plan Termination
ERISA	Employee Retirement Income Security Act of 1974, as amended
FOIA	Freedom of Information Act
FY	Fiscal Year
IOD	Insurance Operations Department
OIG	Office of Inspector General
PanAM CRIP	Pan American World Airways, Inc. Cooperative Retirement Income Plan
PBGC	Pension Benefit Guaranty Corporation
PEAD	Participant and Employer Appeals Department



August 15, 2002

The Honorable John B. Breaux  
Chairman  
The Honorable Larry E. Craig  
Ranking Member  
Special Committee on Aging  
United States Senate

The Honorable John F. Kerry  
Chairman  
The Honorable Christopher S. Bond  
Ranking Member  
Committee on Small Business and Entrepreneurship  
United States Senate

This letter responds to a request by your committees that we review the results of pension plan participants' appeals of pension benefit determinations issued by the Pension Benefit Guaranty Corporation (PBGC). Specifically, you were interested in how many benefit determinations were "successfully" appealed, i.e., the appeals decision resulted in a benefit determination more favorable to the participant than PBGC's original benefit determination.

**RESULTS IN BRIEF**

We asked PBGC to provide detailed information about the appeals closed during FYs 1999 and 2000. In response, PBGC issued Schedules of Closed Appeals for Fiscal Years 1999 and 2000 (Appendix I). PBGC asserts that the schedules comprise the appeals closed during the two fiscal years. As a result of our testing, we conclude that PBGC's assertions, as reported in its schedules at Appendix I and summarized below, are fairly presented.

As shown in the schedule below, the number of appeals closed was 2005 in FY 1999 and 1583 in FY 2000. Most of these closed appeals upheld PBGC's benefit determinations. On the other hand, 17% in FY 1999 and 26.3% in FY 2000 of appeal decisions resulted in changes more favorable to participants, while 1% or fewer resulted in less favorable changes for participants.<sup>1</sup>

**Summary Schedule of Appeal Decisions**

	FY 1999	FY 2000
PBGC benefit determinations upheld	1646 (82.1%)	1151 (72.7%)
Appeal decisions resulting in changes more favorable to participants	341 (17%)	416 (26.3%)
Appeal decisions less favorable for participants than PBGC determinations	18 (.9%)	16 (1%)
Total closed	2005	1583

<sup>1</sup> The term "appellant" in Appendix 1 is synonymous with "participant" in this report.

We note that PBGC's Schedule of Closed Appeals for Fiscal Years 1999 and 2000 at Appendix I includes separate columns for closed appeals for the Pan American World Airways, Inc. Cooperative Retirement Income Plan (PanAM CRIP) as these appeals comprise a majority of the appeals closed during each FY.

## **BACKGROUND**

The Pension Benefit Guaranty Corporation (PBGC or corporation) 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 43 million working men and women in approximately 35,000 private defined benefit pension plans including 1,700 multiemployer plans. ERISA § 4002 (a) states:

The purposes of this title, which are to be carried out by the corporation, are—

(1) to encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants,

(2) to provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under plans to which this title applies, and

(3) to maintain premiums established by the corporation under §4006 at the lowest level consistent with carrying out its obligations under this title.

PBGC insures pensions, within statutory limits, of participants in certain defined benefit single-employer and multiemployer<sup>2</sup> pension plans that meet the criteria specified in ERISA § 4021.

At September 30, 2000, PBGC was trustee, or in the process of becoming trustee, of 2,874 terminated pension plans. To fulfill its responsibility to ensure the uninterrupted payment of pension benefits to plan participants, PBGC pays estimated benefit amounts until PBGC obtains 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, ERISA's guarantee levels, and the funds available from plan assets and employer recoveries.

PBGC issues a benefit determination letter (BDL)<sup>3</sup> to participants regarding entitlement to, amount, and other conditions of a benefit. The BDL should include a benefit statement that lists the information PBGC used in its determination.

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<sup>2</sup> Under the multiemployer program, when a plan becomes insolvent and cannot pay pension benefits when due, it receives financial assistance from PBGC so that the plan can continue to pay participants' guaranteed benefits, rather than PBGC paying the benefits directly to the participants.

<sup>3</sup> Since the time we were asked to conduct this review, PBGC changed its terminology regarding its benefit decisions – formerly the decisions were “initial determination letters” or “IDLs,” now they are “benefit determination letters” or “BDLs.”

The BDL also informs the participant of the right to appeal the determination. Appeals must be filed with PBGC's Appeals Board (the Board), and generally must be received by the Board no later than 45 days after the date of the BDL.<sup>4</sup> When an appeal is submitted and accepted, PBGC's Insurance Operations Department (IOD) usually delays any contemplated actions discussed in the BDL (i.e., change in the benefit amount) until the appeal is decided by the Board or closed on procedural or administrative grounds.<sup>5</sup>

When the Board's review is concluded, it issues a written appeal decision to the participant. Based on the results of the appeals decision, IOD will take specific action concerning the participant's benefit. This action may include paying the benefit amount stated on the BDL or recalculating the benefit amount and issuing a new BDL.

During FY 2001, an inter-departmental team of PBGC employees examined the appeals process to find ways to reduce processing time and improve responsiveness to customers. As a result, in January 2002, PBGC's Operations Integration Board approved several changes to the appeal process. None of these changes were in effect at the time of our audit.

### **OBJECTIVE, SCOPE and METHODOLOGY**

The objective of our audit was to conclude on PBGC's assertions in Appendix I. PBGC represented to the OIG that they are responsible for the fair presentation of Appendix I, 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.

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

We gained an understanding of the appeals process and the controls in place during FYs 1999 and 2000 for receiving, reviewing and issuing decisions on appeals of benefit determination letters. These procedures included reviewing pertinent PBGC regulations, manuals, and other documents and interviewing personnel. In our sampling tests, we also tested relevant controls to verify our understanding of the process.

To support its assertions in Appendix I, PBGC provided information from the PEAD appeals database. With this information, we performed tests to verify the number of appeals closed during FYs 1999 and 2000 and the classifications of the reasons for closure.

To test the reasonableness of Appendix I, we used statistical sampling to select a sample of closed appeals for each FY. By using this method, we could quantify the sampling risk and all appeals in the two populations had an equal chance for selection.

We then compared the appeals selected for testing with the documentation PBGC used to support its categorizations for each FY and classifications of reasons for closure. This documentation included appeal letters, minutes of Appeals Board meetings, notifications to IOD, forms showing the Board members' approvals of certain actions, and letters to participants providing a detailed discussion of the appeals decision.

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<sup>4</sup> 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.

<sup>5</sup> The Schedules of Closed Appeals at Appendix I include a listing of specific appeal closings categories. Items 02 through 09 and 13 are appeals closed on procedural grounds, while items 10 through 12 are appeals closed on administrative grounds.

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 I; however, we did not identify any appeals which were not reported in the Schedules of Appeals.

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

**CONCLUSION**

In our opinion, Appendix I, "Schedules of Closed Appeals," fairly present the number of appeals of benefit determination letters closed and the classifications of the reasons for closure during FYs 1999 and 2000 in conformity with the criteria listed above.

**AGENCY COMMENTS**

A draft letter report was provided to the Agency for comment. PBGC's response includes a clarification of the rate of change described in the Results in Brief section of this letter. The response also refers to an earlier OIG report which is *Audit of PBGC's Response to Certain Questions Concerning Appeals of PBGC Initial Determinations of Pension Benefits*, 98-10/23131. The report responded to a request by the Chairman of the Special Committee on Aging. The full text of the comments is included at Tab A.

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



Deborah Stover-Springer  
Acting Inspector General

## Appendix I

## ***Appendix I***

### **CLOSED APPEALS**

Date: 03/09/2001

**FY 1999**

	Total	PanAM - CRIP	All Others
<b>Effect Of Appeal Decision On Appellant:</b>			
Benefit determination upheld for same reason as BD	1627	1303	324
Benefit determination upheld for other reasons	19	0	19
Appeal decision more favorable than BD	341	49	292
Appeal decision less favorable than BD	18	3	15
	2005	1355	650
<b>Appeal Closing – General:</b>			
Determination affirmed by Appeals Board	47	8	39
Determination changed by Appeals Board	66	3	63
Appeal closed administratively	23	5	18
Appeal decided otherwise	1869	1339	530
	2005	1355	650
<b>Appeal Closing – Specific:</b>			
01. Decided by Appeals Board	113	11	102
02. Closed per earlier Appeals Board Decision	1292	1263	29
03. IOD issued new BD	275	47	228
04. Information provided by PEAD	248	22	226
05. Information provided by IOD	8	1	7
06. Appeal not perfected post - FOIA	3	0	3
07. No grounds presented	21	6	15
08. No appealable issue, e.g. DOPT, terms of court order	5	0	5
09. Appeal untimely	16	0	16
10. Appeal withdrawn	19	3	16
11. Premature filing	3	1	2
12. Duplicate filing	1	1	0
13. Other	1	0	1
	2005	1355	650

**Appendix I**

**CLOSED APPEALS**

Date: 03/09/2001

**FY 2000**

	Total	PanAM - CRIP	All Others
<b>Effect Of Appeal Decision On Appellant:</b>			
Benefit determination upheld for same reason as BD	1136	794	342
Benefit determination upheld for other reasons	15	0	15
Appeal decision more favorable than BD	416	72	344
Appeal decision less favorable than BD	16	1	15
	1583	867	716
<b>Appeal Closing – General:</b>			
Determination affirmed by Appeals Board	48	7	41
Determination changed by Appeals Board	115	37	78
Appeal closed administratively	19	1	18
Appeal decided otherwise	1401	822	579
	1583	867	716
<b>Appeal Closing – Specific:</b>			
01. Decided by Appeals Board	163	44	119
02. Closed per earlier Appeals Board Decision	840	780	60
03. IOD issues new BD	280	33	247
04. Information provided by PEAD	234	2	232
05. Information provided by IOD	5	1	4
06. Appeal not perfected post - FOIA	1	1	0
07. No grounds presented	30	5	25
08. No appealable issue, e.g. DOPT, terms of court	2	0	2
09. Appeal untimely	9	0	9
10. Appeal withdrawn	18	1	17
11. Premature filing	1	0	1
12. Duplicate filing	0	0	0
13. Other	0	0	0
	1583	867	716





# Pension Benefit Guaranty Corporation

1200 K Street, N.W., Washington, D.C. 20005-4026

August 12, 2002

TO: Deborah Stover-Springer  
Acting Inspector General

THRU: John Seal   
Chief Management Officer

FROM:   
for Harriet D. Verburg  
PEAD Director

SUBJECT: Audit of PBGC's Schedules of Appeal Closings for Fiscal Years  
1999 and 2000

Thank you for the opportunity to provide comments on the subject draft report dated July 24, 2002. We have only the following comment, which clarifies the rate of change described under "Results in Brief" on pages 1 and 2 of the draft.

Most Pan Am CRIP appeals were multiple issue form-letter appeals as the result of a write-in campaign mounted by some former CRIP participants. Omitting Pan Am CRIP appeals from the schedule, 47% of appeals closed in FY 1999 and 50% of appeals closed in FY 2000 resulted in changes more favorable to participants. This result is comparable to the change rate in [OIG's] earlier report to the Committee regarding the schedule of appeals closed during FY 1997.

Please let us know if you need additional information.