Pension Benefit Guaranty Corporation

Office of Inspector General

Audit Report

Protecting the Assets of [redacted] Retirement Fund

March 31, 2008

2008-6/PA-0037-1

Pension Benefit Guaranty Corporation

Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

March 31, 2008

INTERIM REPORT

TO: Terrence Deneen
Chief Insurance Program Officer

FROM: Luther Atkins *Luther Atkins*
Assistant Inspector General for Audits

SUBJECT: Protecting the Assets of [redacted] Retirement Fund
(OIG 2008-6/PA-0037-1)

In March 2007, the Office of Inspector General (OIG) issued an audit report[1] that examined amounts PBGC paid as administrative costs to certain insolvent multiemployer pension plans to operate their plans. In that report, we estimated PBGC could save about $1.9 million in future administrative costs and recommended that PBGC close these plans by funding the purchase of annuities or lump sum payments for the participants. Based on these identified cost savings, we expanded our audit coverage to include multiemployer plans that are terminated but not yet insolvent. These are plans that currently have sufficient funds to pay benefits and administrative costs and are not yet receiving financial assistance from PBGC.

Based on our analysis of forty-four[2] terminated multiemployer plans, we selected the [redacted] Retirement Fund (the Plan) of the [redacted] for the first audit.

The overall objective of this audit was to determine if PBGC could assist the Plan in better protecting the Plan's assets, thereby reducing the amount PBGC will pay in the future for financial assistance.

We plan to conduct additional audits of other terminated multiemployer plans and at the conclusion of our work we will issue a combined audit report. As our audits progress, we will issue interim reports about each plan that we audit to keep PBGC abreast of the progress and results of our audits. In addition, as part of our work at the Plan we will also issue a separate memorandum report identifying ways the Plan can improve its internal controls.

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[1] *PBGC Has Opportunities to Reduce Multiemployer Administrative Costs* (2007-4/PA-0031)

[2] As of March 31, 2007, PBGC reported there were 44 terminated multiemployer pension plans. This number fluctuates as plans move on and off the list.

Results in Brief

We concluded that PBGC could assist the Plan in better protecting the assets to reduce PBGC's future financial assistance for this plan. The assets of the Plan, a recently terminated multiemployer plan, are being depleted in a manner that could cost the PBGC millions of dollars if no action is taken to close out the Plan.

After analyzing the administrative costs of the [redacted] Retirement Fund in several different ways and, after comparing the administrative costs of this plan to other terminated multiemployer plans, we believe the costs of this plan were disproportionately high as compared to benefits paid.

PBGC has at least two options to assist the Plan in better protecting the assets and reduce PBGC's future liability.

- Develop a program to more closely monitor the expenses of terminated but not yet insolvent plans. This option would require collaboration with the Employee Benefits Security Administration (EBSA) of the Department of Labor.
- Another option is for PBGC to fund the Plan's close-out soon or when the Plan is insolvent and avoid future administrative expenses. This would result in significant savings in PBGC's future financial assistance.

Rather than waiting until the Plan is completely insolvent, PBGC should consider taking action soon for the following reason: PBGC could save approximately $4.3 million to $5.3 million. Future administrative costs comprise approximately $2 million to $3 million of that range of amount. The remainder of the savings is attributed to reduced financial assistance by closing the plan soon while the plan still has significant assets (see Table of Cost Savings at page 7).

Although PBGC could save approximately $4.3 million to $5.3 million in future administrative costs and in future benefit payments, there are obstacles to PBGC closing the plan now.

The first obstacle involves PBGC's inability to close out plans under which benefits exceed ERISA's guaranteed benefit levels. In this plan, some participants' benefits exceed the statutory limit. The trustees of the plan cannot reduce these benefits in order to close out the plan nor can PBGC reduce these benefits. The second obstacle relates to whether and how PBGC could collect withdrawal liability owed to the Plan.

Therefore, we recommend that PBGC:

- Determine whether PBGC can legally collect debts from employers, after a plan is closed, who previously owed withdrawal liability to that plan.
- Explore whether regulations could be issued to assist in overcoming the obstacles to closing terminated but not yet insolvent multiemployer plans or whether legislative changes would be necessary.
- Develop a policy with respect to closing out terminated multiemployer plans that are not yet receiving financial assistance from PBGC.
- Determine, within one year, whether the Plan can be closed out in accordance with the policy.

OIG Evaluation of Agency Comments

The OIG met with program officials many times during the draft report process, resulting in some changes to the draft report that clarify the findings and recommendations. One such change was to ensure the report did not imply that PBGC could or should violate ERISA by somehow paying more than the statutorily guaranteed benefits.

In his official written comments, the Chief Insurance Program Officer said that he generally agreed with the concept of identifying terminated multiemployer plans for close out to reduce PBGC's administrative costs. He reported that he has already taken certain actions in response to the report:

- directed MEPD staff to draft a close out policy that will include guidelines for closing out terminated multiemployer plans that are not yet receiving financial assistance.
- charged MEPD staff with monitoring [redacted] Fund and evaluating opportunities for closing out the [redacted] Fund consistent with the new policy's guidelines.
- asked the Office of Chief Counsel to identify any legal means of collecting withdrawal liability owed to the closed out plan.

However, he noticed that there are significant legal issues to be considered in closing out any multiemployer plan, including the [redacted] Fund, before insolvency. Therefore, he recommended that PBGC should explore whether regulations could be issued to assist in over coming these obstacles or whether legislative changes would be necessary, which we have now included in our recommendations.

The agency comments are attached to this report.

Background

Multiemployer plans are defined benefit plans that are usually maintained by two or more employers and are collectively bargained. They are usually within the same or related industries. Participants in a typical multiemployer plan receive benefits based on a flat dollar amount for each year of service covered by the plan. PBGC's Multiemployer Program Division within the Insurance Programs Department monitors the approximately 1500 multiemployer plans, as well as the 44 terminated plans. The plans are required to file certain financial documentation with PBGC, including their total benefits and expenses to operate the plan (administrative costs). PBGC then determines when the plan's assets are likely to be depleted. Once depleted, PBGC will begin paying financial assistance to the plan to continue benefit payments.

The [redacted] Retirement Fund ("the Plan"), a multiemployer pension plan, was established pursuant to collective bargaining agreements between the [redacted] who are employing union members. As a multiemployer plan, it is subject to the provisions of the Employee Retirement Income Security Act of 1974 (ERISA), as amended. The Plan was initiated in December 1952 and was terminated by a mass withdrawal of employers in [redacted] Benefit accruals were frozen on December 31, 2001. The total number of participants as of December 31, 2006 was 519 and total assets as of that date were approximately $3.2 million.

The Plan had been overfunded as far back as 1992. Beginning in 1994, the employers ceased making contributions to the Plan as allowed by ERISA. Beginning in 1997, the amount of overfunding began to decrease. By the year 2000, the Plan's liabilities exceeded the assets. However, due to accumulated credits, the employers still were not required to make contributions until 2004, and by that time it was too late. The employers withdrew, in a mass withdrawal, in [redacted] with a shortfall of $2.6 million as reported by the Plan's actuary. PBGC has estimated the projected date of insolvency to be around February 2013 and, as of that date, the Title IV Present Value of Future Benefits (PVFB) will be approximately $6.2 million.[3]

Scope and Methodology

To conduct our work we reviewed Form 5500 filings (Annual Return/Report of Employee Benefit Plan) from 1997 through 2006 for the Plan. Of the 44 terminated multiemployer plans, we reviewed Form 5500 data from the year 2005 of which data was available. In addition, during the August 2007, we reviewed the Plan's records at the offices of [redacted] in [redacted] where the Retirement Fund's records were located. We interviewed the plan administrator, plan trustees, and union employees, who assist in the administration of the Plan. Our review was conducted in accordance with government auditing standards.

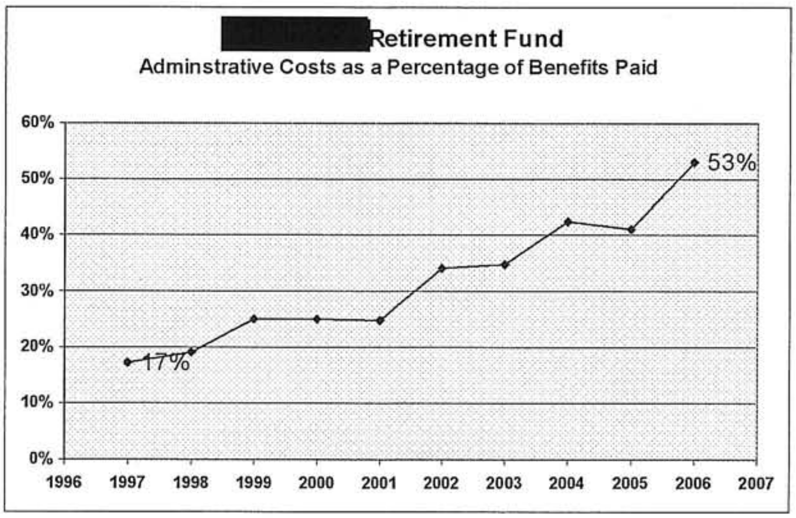
[3] This amount, as calculated by the PBGC Actuarial Services Division, includes both future benefits to participants and future costs to administer the [redacted] Retirement Fund. In addition, both the estimated date of insolvency and the calculation of PVFB are based on the Form 5500 for the year 2005.

Increasingly Higher Costs to Administer [redacted] Retirement Fund

A pension plan legitimately incurs expenses to enable it to pay benefits to retirees and beneficiaries. These include fees for actuaries and attorneys, persons to initiate benefit payments, maintain documentation and answer participants' questions, and office space. When a multiemployer plan terminates, it is operated as a "wasting trust" until all assets are depleted, at which time it begins to receive financial assistance, in the form of loans, from PBGC so it can continue paying benefits to participants. As PBGC does not assume trusteeship of multiemployer plans (like it does for single employer plans), these plans continue to incur administrative expenses until the final benefit payment is made.

[redacted] ***Administrative Costs.*** We analyzed the costs incurred by the Plan using two methods: administrative costs as a percentage of benefits paid and administrative costs per participant.[4]

When we calculated administrative costs as a percentage of benefits paid for the year 1997, we determined that administrative costs were only 17% when compared to benefits paid to retirees. However, each year thereafter the costs continued to increase until, by 2006, the administrative costs were approximately 53% of benefits paid, as shown in this chart.



In the second method, we measured administrative costs on a per participant basis. For 1997, we calculated the administrative costs to be $113 per participant. However, by 2006, administrative costs had increased to $367 per participant, more than a 300 percent increase over 10 years.

[4] Other methods of performing cost comparisons among plans such as segregating by geographic area or by industry were not completed as of the issuance of this report. However, the OIG has begun a project to develop multiple base lines in order to compare costs of administering multiemployer plans from the data base of all multiemployer plans.

Potential Causes for Increased Administrative Expenses. During our audit, we noted there were several factors that may have contributed to this significant increase:

- Total benefits paid during the 10 year period dropped from $469,154 to $360,086 due to a drop in participants from 712 to 519. As a result, when using a lower participant count to calculate the cost per participant, the administrative costs would be spread over fewer participants.
- The professional fees for attorneys and actuaries increased as a result of the termination of the plan that occurred in [redacted][5] During our audit, we reviewed invoices that indicated attorneys and actuaries had charged for work specifically attributed to the Plan's termination. The professional fees grew from about $26,000 in 1998 to over $72,000 in 2006 (about a 200 percent increase).

However, from the data we also noted the following:

- In 2004, the full year prior to termination, administrative costs had already risen to 42.5% of benefits paid.
- Although benefits paid and participant counts dropped from 1997-2006, the actual costs to operate the plan increased from $80,591 to $190,714. While participant counts decreased by 27.1 percent over 10 years, we determined that actual costs increased by 136.6 percent during that same period.

A summary of administrative costs and participant counts by year is in Appendix I of this report.

Other Terminated Plans' Administrative Costs. As of the inception of our audit, there were 44 multiemployer pension plans that were terminated and, like the [redacted] Plan, still have sufficient assets to continue paying benefits. PBGC monitors these plans and collects data about the plans such as benefit payments and administrative costs. As part of our analysis we studied the administrative expenses of the other terminated plans. We were able to obtain complete data on all 44 terminated plans.

We performed a comparison of the administrative costs for the Plan to costs at other terminated multiemployer plans (Appendix II). With [redacted] Retirement Fund as the [redacted] highest on the list, it had higher administrative costs as a percentage of benefits paid than most of the plans in the appendix. The data shows that the Plan costs more to administer, on a percentage basis, than [redacted] other terminated multiemployer plans.

[5] Appendix III shows the details of legal fees and actuarial fees for the period 1998 through 2006. The average cost for combined legal and actuarial fees for the years prior to termination is approximately $26,000 per year.

In a further comparison between [redacted] Retirement Fund and other terminated plans, we divided the 44 plans for which we had complete data into 3 tiers[6] based on participant size. The [redacted] Retirement Fund was in the middle tier which included plans having between [redacted] and [redacted] participants. Of the 14 plans in this tier, only two plans had higher administrative costs as a percentage of benefits paid.

After analyzing the administrative costs of the [redacted] Retirement Fund we saw significant increases from 1997 through 2006 as measured in several different ways. And, after comparing the administrative costs of this plan to other terminated multiemployer plans we believe the costs of this plan were disproportionately high as compared to benefits paid.

Possible PBGC Action to Protect Plan Assets

PBGC has at least two options to assist the Plan in better protecting the assets and reduce PBGC's future liability.

- It might develop a program to more closely monitor the expenses of terminated but not yet insolvent plans, including guidelines regarding the reasonableness of administrative expenses and required documentation. This option would require collaboration with the Employee Benefits Security Administration (EBSA) of the Department of Labor, as EBSA has statutory responsibility for these terminated multiemployer plans since they are still operated by the plans' trustees.

- Another option is for PBGC to fund the Plan's close-out, soon or when the Plan is insolvent, and avoid future administrative expenses. This would result in significant savings in PBGC's future financial assistance.

Potential Cost Savings

PBGC could save approximately \$4.3 million to \$5.3 million if the Plan is closed today. Administrative costs comprise approximately \$2 million to \$3 million of that range of amount. The remainder of the savings is a reduction in financial assistance attributed to closing the plan soon while the plan still has \$3.2 million in assets. The Table shown on the next page is followed by a detailed explanation of how we determined the total potential cost savings.

[6] The top tier contained 13 plans and the participant counts for these plans ranged between [redacted] and 4,688. The second tier contained 14 plans. This tier had participant counts that ranged between [redacted] and [redacted] The third tier contained 17 plans and participant counts ranged between 27 and [redacted]

Cost Savings by Closing Plan Soon vs. Closing Plan at DOI

	As of December 31, 2006[7] (most current data)	**As of DOI** *(February 2013)*
a) PV of Future Benefits	$5.5 million	$4.6 million
b) PV of Future Admin Costs	$2 million - $3 million	$1.6 million - $2.6 million
c) Plan's Assets	$3.2 million	$0
d) PBGC Financial Assistance Needed to Close Plan	$2.3 million	$4.6 million
e) Cost Savings (does not reflect fees to close plan)	**$4.3 million - $5.3 million**	**$1.6 million - $2.6 million**

a) PV of Future Benefits
The Present Value of Future Benefits (PVFB) "As of December 31, 2006" is $5.5 million. Over a course of years, this liability decreases because a stream of payments will be paid to retirees on a regular basis and, similar to a mortgage, the total PVFB decreases over time. The Actuarial Services Division has calculated the PVFB at Date of Insolvency (DOI) to be $4,618,042. The projected DOI is estimated to occur during February 2013.[8] As a result, the PVFB of $5.5 million as of December 31, 2006 will decrease to $4.6 million by the year 2013.

b) PV of Future Admin Costs
As shown in Appendix I on page 13 of this report, the total administrative costs reported by the Plan for 2006 were $190,714. Using that amount, PBGC's Actuarial Services Division calculated the present value (PV) of future administrative costs for this plan to be $2,999,682[9] or approximately $3 million. Because the 2006 expenses may have been higher due to professional services related to the Plan's termination, we also examined the PV of future administrative costs using 2004 and 2005 data from the Form 5500. For the years 2004 and 2005, the PV of future administrative costs is $2.1 million and $1.9 million, respectively. As a result, we estimate that the PV of future administrative costs to be between $2 million and $3 million.

As with the PV of future benefits, the PV of future administrative costs will also decrease in value over time. The decrease in value is shown in the column titled "As of DOI," where we

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[7] We used data from the Form 5500 for the year 2006. Because the Form 5500 is not due until 7 calendar months after the end of the plan year, the Form 5500 for the year 2007 is not yet available.

[8] PBGC officials state they use conservative interest rates when making calculations such as projected DOI. In addition, since [redacted] Retirement Fund has almost 70% of the assets invested in the stock market, any significant increases in earnings or appreciation in assets would push the DOI forward in time.

[9] This calculation was based on the Form 5500 for the year 2006 which contained higher than normal legal fees due to plan termination.

show the PV of future administrative costs to be approximately $1.6 million to $2.6 million as of DOI.[10]

c) Plan's Assets
"As of December 31, 2006," the Plan reported assets of $3.2 million. The amount under "As of DOI" shows the plan will have exhausted all assets by DOI, thus the amount $0 (zero).

d) PBGC Financial Assistance Needed to Close Plan
"As of December 31, 2006," the PVFB is $5.5 million. However, since the plan has $3.2 million in assets, PBGC would only need to provide $2.3 million in financial assistance to close the plan ($5.5 million in PVFB - $3.2 million in assets = $2.3 million in financial assistance).

However, if PBGC delays closing [redacted] Retirement Fund until DOI, it is estimated to cost the full PVFB of $4.6 million since the plan will no longer have any assets.

e) Cost Savings
Our cost savings are based on 2006 data as it is the most current data available, so the savings are approximate and may be a little more or less depending on when PBGC funds the plan closing.

"As of December 31, 2006"
The total savings is the combined savings in financial assistance and avoidance of payment of administrative costs.

- The **savings in financial assistance** is determined by subtracting how much financial assistance PBGC would have to provide today to close the plan from how much financial assistance PBGC would have to provide if it waits until DOI ($4.6 million - $2.3 million = $2.3 million). As a result the total savings in financial assistance if PBGC closes the Plan today is approximately $2.3 million.

- The **savings in administrative costs** is determined by using the PV of future administrative costs of $2 million to $3 million that would be avoided if the plan were closed as of today.

As a result of the savings in financial assistance and future administrative costs, the combined savings would be approximately $4.3 million to $5.3 million.

"As of DOI (February 2013)"
If PBGC waits until DOI to close the Plan, they could still save $1.6 million to $2.6 million by avoiding future administrative expenses. However, the $4.6 million for benefits at DOI, plus closing fees, could prohibit PBGC management from closing this Plan at that time.

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[10] As calculated by the Actuarial Services Division, the $1.6 million ($1,604,829) was based on the Form 5500 from the year 2005. The $2.6 million ($2,584,008) was calculated using the Form 5500 from the year 2006.

Obstacles to Closing the Plan

Multiemployer Program Division officials expressed several concerns about the impact of providing financial assistance to close the Plan.

Guaranteed Benefits

Although it is in PBGC's financial interest to close the plan in advance of insolvency, one obstacle is that some participants' benefits exceed the statutory limit which would limit the amount of financial assistance PBGC could loan toward closing the plan. If the plan became insolvent today, these participants would have their benefits cut immediately because PBGC cannot pay for benefits that exceed the statutory limit (see ERISA § 4245(a), 29 U.S.C. § 1426(a)). But, as long as the plan continues to operate, the participants who receive benefit payments above the guarantee level would continue to receive their full amounts until the assets are depleted. Therefore, PBGC may be unable to close the Plan until it is insolvent.

Our review of participant records showed some retirees would experience a modest reduction in benefits if the Plan were closed out in 2008. Since the Plan is estimated to remain solvent until 2013, these participants would lose their benefits five years earlier than otherwise. Consequently, closing the Plan prior to insolvency may not be in the best interest of retirees unless the non-guaranteed benefits can be funded from some other source.[11]

The reduction would only apply to participants who were employed at any time during the period January 1, 1995 through December 31, 2001. During this time the Plan had increased the accrual rate to $12 per month per year of service. However, ERISA limits the accrual rate to 100 percent of the first $11 per month plus 75% of the next $33. As a result some employees would have their retirement calculation cut back to $11.75 per month per year of service, a reduction of twenty-five cents. On the other hand, any employee who terminated employment between the date of plan inception (1952) and January 1, 1995 would be able to receive their full benefits as calculated under the plan document and would not be affected by a cutback to the PBGC guarantee.

This audit did not include work to determine how many participants would be affected by the cutback to the PBGC guarantee nor did we determine the exact amount of the cutback. Using known data, however, we estimate that approximately $110,000 in future benefits would be cut from retiree benefits as a result of the 25 cent reduction to the guarantee. We calculated this based on the following factors:

- The present value (PV) of future benefits for [redacted] Retirement Fund is approximately $5.5 million.
- Multiemployer Program Division officials estimate that about 2% of benefits would need to be cut to reach the PBGC guarantee level. That means approximately 98% of the $5.5 million are benefits within PBGC's guarantee limits.
- Two percent of $5.5 million is $110,000.

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[11] In the recent past, one of the withdrawn employers offered a cash settlement of its employer liability. We do not know if withdrawal liability collected from the withdrawn employers will be sufficient to eliminate the small non-guaranteed benefit shortfall.

Therefore, only about $110,000 would be needed by the Plan to bring the benefits up to their current level to allow the Plan to be closed.

Collection of Withdrawal Liability

Another obstacle to closing the plan is the existence of current debts owed to the Plan from employers for withdrawal liability. 29 C.F.R. § 4041A.23 states that "...the plan sponsor shall be responsible for determining, imposing and collecting withdrawal liability..." In order to close the Plan, there is a concern about the status of withdrawal liability claims the Plan has against employers. These claims are Plan assets and, to the extent these debts are collected, they decrease PBGC's liability.

Closing the Plan with outstanding employer withdrawal liability claims raises two issues:

- Whether PBGC can legally collect the debts that resulted from employer withdrawal liability[12] owed to the plan from employers after it closes the plan, i.e., whether PBGC can become the successor to the debt owed to the plan through a specific contractual arrangement; and
- If PBGC can legally collect the debt from employer's withdrawal liability, how would PBGC do it?

The first issue will require a legal determination. The second issue is an administrative process, and can be resolved with current resources. In response to this concern, the OIG contacted officials in the Financial Operations Department (FOD). Currently, FOD accounts for employer liability payments from some single employer plans. They already have a system in place to track, receive, record and take collection action if necessary. The Plan currently has fewer than 5 employers who are actively making withdrawal liability payments. FOD officials stated they could take over collection of debts from employers who were part of a multiemployer plan as long as the appropriate documentation or proper agreements are designed to allow this to occur.

CONCLUSION

PBGC is in a unique position to save millions regarding this Plan if they can act soon to close it out. The Plan has approximately $3.2 million in assets. If a regulatory or legislative amendment were enacted to remove the legal obstacles noted herein or if there were another source of funding non-guaranteed benefits, PBGC would only need to fund approximately $2.3 million. Then, the Plan's administrator could purchase annuities to close the Plan. The underfunded gap for this plan continues to grow as the Plan's assets continue to deplete. This depletion is, in large part, due to the high administrative costs.

By combining the $2 million to $3 million in potential savings for future administrative costs and the potential savings of $2.3 million for future benefit payments, PBGC could save between

[12] ERISA § 4219(c)(8) states "In the case of a terminated multiemployer plan, an employer's obligation to make payments under this section ceases at the end of a plan year in which the assets of the plan (exclusive of withdrawal liability claims) are sufficient to meet all obligations of the plan, as determined by the corporation."

$4.3 million and $5.3 million in combined costs for future administrative expenses and future benefit payments if the Plan was closed soon.

We recognize, however, that there are additional issues that impact PBGC's ability and decision to close this plan such as how participants' benefits would be affected, the collection of withdrawal liability, and the potential disincentive to similarly situated multiemployer plans to manage prudently their administrative costs.

Recommendations

Therefore, we recommend that PBGC:

- Determine whether it can legally collect debts from employers, after a plan is closed, who previously owed withdrawal liability to that plan.
- Explore whether regulations could be issued to assist in overcoming the obstacles to closing terminated but not yet insolvent multiemployer plans or whether legislative changes would be necessary.
- Develop a policy with respect to closing out terminated multiemployer plans that are not yet receiving financial assistance.
- Determine, within one year, whether the Plan can be closed out in accordance with the policy.

cc: Charles Millard
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[redacted] Retirement Fund
Administrative Costs as a Percent of Benefits Paid

Year	Benefit Payments	Administrative Costs	Administrative Costs as a % of Benefit Payments	Total Participant Count as of Year End
1997	$469,154	$80,591	17.18%	712
1998	$481,754	$91,062	18.90%	661
1999	$432,237	$108,243	25.04%	651
2000	$432,654	$106,360	24.58%	652
2001	$413,875	$102,706	24.82%	637
2002	$408,355	$138,874	34.01%	631
2003	$393,987	$136,903	34.75%	632
2004	$358,641	$152,333	42.48%	571
2005	[redacted]			
2006	$360,086	$190,714	52.96%	519

Administrative Costs Analysis of the 44 Terminated Multiemployer Plans For the Year 2005

APPENDIX II

Pension Plan	Admin Costs	Benefits Paid	Admin as a % of benefits	# of participants
Laundry, Dry Cleaning and Dye House	$257,180	$294,285	87.39%	352
Local 3 Tire and Plastic Division	$49,519	$66,439	74.53%	170
Greater St. Louis Service Employees	$146,612	$207,769	70.56%	916
Southern Council of Industrial Wkrs	$188,822	$342,820	55.08%	919
Fishermen's Union San Pedro	$65,422	$128,340	50.98%	204
Teamsters Local 240 PF	$83,932	$170,058	49.35%	126
Plasterers' Union Local No. 123	$15,795	$32,085	49.23%	42
Milwaukee Projectionists Local 164	$26,784	$60,835	44.03%	27
Retirement Plan of Local 1102	$152,327	$371,060	41.05%	551
Tiny Naylors Pension Plan	$25,328	$61,813	40.98%	172
Massachusetts Leather	$76,166	$200,881	37.92%	270
Resilient Floor Coverers 1533	$27,268	$72,228	37.75%	60
Luggage Workers Union Retirement Fund	$121,514	$361,321	33.63%	647
Gloucester Seafood Pension Plan	$71,272	$245,890	28.99%	66
Local 413 Pension Trust	$372,527	$1,477,777	25.21%	1402
Retail Local 906 PF	$37,195	$156,944	23.70%	348
Florida Marble Polishers PF	$62,487	$274,543	22.76%	128
Fishermen Local 33	$168,672	$745,084	22.64%	902
Kern County Plasterers and Lathers	$73,325	$325,429	22.53%	69
NMU - Great Lakes	$68,142	$330,442	20.62%	242
Teamsters Local 531	$141,399	$692,773	20.41%	210
S.E.I.U. Local 74 Metal Spinners	$201,927	$1,008,562	20.02%	355
UFCW Local 1262	$187,774	$976,881	19.22%	1221
Int Union of Electrical Local 431	$379,231	$2,159,603	17.56%	1317
Cement Masons Local Union 521	$71,713	$414,048	17.32%	173
Schiffli Embroidery Workers	$303,478	$1,772,456	17.12%	1914
Roofers Local 124	$20,812	$125,571	16.57%	66
IBEW Local 1919 PF	$131,183	$807,522	16.25%	272
Laborers Local 442	$17,015	$111,307	15.29%	46
UFCW Local 1049	$88,873	$596,489	14.90%	437
UFCW LOCAL 919 (Non-Food)	$264,266	$2,117,458	12.48%	1265
Joint Division 1541 Blvd PP	$19,759	$166,431	11.87%	115
Hotel Industry Local 76	$75,074	$694,252	10.81%	515
Grand Rapids Roofers	$2,025	$18,770	10.79%	31
United Food Workers Local 592	$28,917	$286,928	10.08%	178
Milk and Ice Cream Drivers Union	$77,055	$877,981	8.78%	616
Int Ass of Mach and Aero Local 2848	$191,573	$2,186,780	8.76%	1465
TWU-NYC Pension Trust	$1,282,335	$14,869,051	8.62%	2317
SoCal, Ariz, Colo, & SoNev Glaziers	$1,084,861	$13,694,860	7.92%	4688
Western Growers Pension Trust	$458,567	$6,133,627	7.48%	3344
Master Electroplaters Pension Plan	$2,866	$49,645	5.77%	219
Terrazzo Industry Pension Plan	$6,213	$114,459	5.43%	66
Wine and Liquor Salesmen of NJ	$144,441	$4,041,681	3.57%	1264
Danville Carpenters PF	$19,151	$1,003,459	1.91%	147

Summary of Legal and Actuarial Fees Compared to Total Costs to Operate the Plan

[redacted] Retirement Fund

Calendar Year	2006	2005[13]	2004	2003	2002	2001	2000	1999	1998
Legal fees	$40,572	$24,976	$7,148	$6,600	$6,600	$6,600	$6,600	$6,600	$6,600
Actuarial fees	$31,809	$24,430	$18,523	$28,724	$30,640	$20,750	$12,000	$12,000	$19,050
Subtotal (legal and actuarial)	***$72,381***	***$49,406***	***$25,671***	***$35,324***	***$37,240***	***$27,350***	***$18,600***	***$18,600***	***$25,650***
Total Admin Costs to Operate Plan	$190,714	[redacted]	$152,333	$136,903	$138,874	$102,706	$106,360	$108,243	$91,062

13 [redacted] Retirement Fund terminated in [redacted]

Agency Comments

PBGC
Protecting America's Pensions

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

MAR 20 2008

Memorandum

To : Luther L. Atkins
Assistant Inspector General for Audits

From : Terrence M. Deneen
Chief Insurance Program Officer

Subj. : Draft report on the audit of the [redacted] Retirement Fund

Thank you for the opportunity to comment on your "Draft Report on the Audit of [redacted] Retirement Fund" (2007-7/PA-0037-1). As I expressed in comments on a related audit report, "PBGC Has Opportunities to Reduce Multiemployer Administrative Costs" (2007-4/PA-0031), I review these reports with great interest. As with the earlier report, I have shared this draft report with staff of the Office of the Chief Counsel ("OCC") and the Multiemployer Program Division ("MEPD").

The draft report observes that PBGC could save approximately $3.5 to $5.3 million in future administrative costs by funding, before insolvency, closure of the [redacted] Retirement Fund ("[redacted] Fund") even though it would require PBGC to fund $2.3 million in unfunded nonforfeitable benefits. Based on an analysis of administrative costs incurred by the [redacted] Fund, the draft report recommends that PBGC take the following steps:

- determine whether PBGC can legally collect debts from employers who were assessed withdrawal liability by a plan, after the plan is closed;
- develop a policy with respect to closing out terminated multiemployer plans that are not yet receiving financial assistance; and
- within one year, determine whether the [redacted] Fund can be closed out under the policy.

Additionally, the report suggests there are two options for protecting [redacted] Fund's assets and reducing PBGC's future liability:

- collaborate with the Employee Benefits Security Administration ("EBSA") of the Department of Labor ("DOL") to monitor the expenses of terminated but not insolvent plans; and
- pay for the close-out of the [redacted] Fund now or at insolvency rather than wait until the [redacted] Fund is receiving financial assistance on an ongoing basis.

Specific response

I generally agree with the concept of identifying terminated multiemployer plans for close out to reduce PBGC's administrative costs. I have directed MEPD staff to draft a close out policy that will include guidelines for closing out terminated multiemployer plans that are not yet receiving financial assistance. I have also charged MEPD with monitoring the [redacted] Fund and evaluating opportunities for closing out the [redacted] Fund consistent with the new policy's guidelines. And I have asked the Office of Chief Counsel ("OCC") to identify any legal means of collecting withdrawal liability owed to a closed out plan. Finally, we hope to work with the OIG in the next few months to explore the potential for collaboratation between PBGC and EBSA in monitoring these plans. There are, however, significant legal issues to be considered in closing out any multiemployer plan, including the [redacted] Fund, before insolvency, which are discussed in more detail below.

Legal issues

ERISA prohibits forfeitures of nonforfeitable benefits.

Closing out terminated but not insolvent multiemployer plans raises issues of benefit forfeitures. To close out a multiemployer plan before insolvency, the plan needs to satisfy all nonforfeitable benefits, not just those benefits covered by PBGC's guarantee. Consistent with the law governing multiemployer plans, a terminated plan with sufficient assets may use a portion of those remaining assets to pay certain benefits above the level that will be paid upon insolvency — when the trustees are required to reduce benefit payments to PBGC guaranteed amounts. Thus, until a plan becomes insolvent, the trustees of the plan may have a duty under Title I of ERISA not to permit close out of the plan unless nonforfeitable benefits above the guarantee are fully satisfied. Title I of ERISA is, of course, under the jurisdiction of the DOL. If the trustees were to allow close out without satisfaction of these liabilities, the trustees could be subject to participant actions under Title I or enforcement action by the DOL. Accordingly, the final report should not imply that PBGC can decide to close out a terminated plan and eliminate nonforfeitable benefits. *See, e.g.,* draft report at 2 ("The first obstacle is the fact that some participants' benefits exceed the statutory limit and would be reduced sooner *if PBGC makes a decision to fund the closure of this plan* soon[er] rather than waiting until insolvency") (emphasis added).

PBGC's financial assistance is limited to guaranteed benefits and reasonable administrative expenses.

Closing out terminated plans also implicates the statutory limit on PBGC's guarantees. In certain cases under audit, the potential savings in administrative costs are significantly greater than the remaining non-guaranteed benefits. But even if the remaining benefit liabilities exceed the guaranteed liabilities by only a small amount, PBGC has no statutory authority to pay the difference to facilitate closure. PBGC is authorized under Title IV to pay only guaranteed benefits and reasonable administrative expenses and could not make up the difference in these situations. As noted, the trustees may have a duty under Title I not to close out the plan until insolvency, unless the non-guaranteed portions of the benefits are satisfied. PBGC cannot compel the closure of these plans.

Withdrawal liability may not survive close out of multiemployer plans.

The trustees of a terminated multiemployer plan are required to collect withdrawal liability and remit the proceeds to the plan. Withdrawal liability owed to a terminated plan is paid over an extended period, which may be decades long. Withdrawal liability claims are plan assets and, when paid, help reduce the underfunding of a terminated multiemployer plan. If PBGC closes out a terminated multiemployer plan before insolvency, even where the level of participants' benefits is below the level of PBGC's guarantee, an employer's obligation to pay its withdrawal liability may be extinguished. Thus, the draft report correctly identifies PBGC's collection of withdrawal liability as a legal issue and as a potential obstacle to closing a plan that is owed withdrawal liability. While it may be possible to structure three-party settlements among liable employers, plans, and PBGC, any such settlements would have to be achieved on a case-by-case basis with each liable employer, and would likely involve reducing an employer's liability, which could offset the savings of administrative expenses.

DOL (through EBSA) is the government agency with enforcement jurisdiction over plan fiduciaries.

Although the draft report expresses concern about high administrative costs in terminated multiemployer plans, the final report should recognize that plan fiduciaries must comply with the fiduciary standards under Title I of ERISA in managing the plan assets in these plans and that these fiduciary standards are enforced by DOL, not PBGC. As noted, PBGC becomes the statutory trustee of a single-employer plan when it terminates and is vested with numerous powers, including the responsibility for the plan's administration and the management of the plan's assets. By contrast, the trustees of a multiemployer plan continue to act as fiduciaries after termination, even after insolvency, and are solely responsible for the management of the plan's assets. In discussions leading up to this report, EBSA staff members have reiterated these points. Accordingly, the final report should avoid any suggestion that PBGC enforces Title I of ERISA. Thus, until EBSA or DOL indicates that it will permit PBGC to collaborate with EBSA in developing a program for monitoring the expenses of terminated plans, including guidelines "regarding the reasonableness of administrative expenses and required documentation," it may be premature to categorically state in the final report that this is indeed an "option" at this time. *See e.g.*, draft report at 2, 6.[1]

Conclusion

I appreciate your staff's initiative in identifying and developing this audit, and I greatly value your insight into a complex program. If we can assist you in your analysis, please let me know.

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[1]In this regard, on page 1 of the draft report, OIG states that it "will also issue a separate memorandum report identifying ways the Plan can improve its internal controls." As noted, specific issues relating to Title I duties are in EBSA's's purview, and we recommend that OIG share that memorandum report in draft form with EBSA so that its staff, which has the expertise in these matters, has the opportunity to provide its views.