Pension Benefit Guaranty Corporation
Office of Inspector General
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September 30, 2015

RISK ADVISORY

To: Alice Maroni
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Subject: Multiemployer Program Financial Assistance Review Process Risks

In March 2014, we announced our plan to conduct a series of limited-scope audits of the multiemployer program. The first audit was to review the completeness and accuracy of the financial assistance review process. We have completed some work, and are currently overseeing detailed reviews of the benefit calculations of five plans. We will be reporting the results of those reviews separately. This Risk Advisory is to advise PBGC management of our observations to date for whatever actions management deems warranted. The suggestions contained in this report do not constitute audit recommendations; therefore, written management response is not required. If you do take action as a result of this Risk Advisory, we respectfully request a written summary of the action taken.

Summary

Management is responsible for identifying internal and external risks that may prevent the Corporation from meeting its objectives, assessing risks to determine their potential impact, and applying the appropriate risk responses. One source of risk information is OIG reviews.

We have identified the following risks in the financial assistance review process:

1. **Records Management** – PBGC's organization of financial assistance determinations and supporting records were incomplete, not readily available for examination, and not easily accessible by management and stakeholders. This makes it difficult to monitor and evaluate program performance timely and will not be scalable to handle the exponential growth that is projected in financial assistance case work.

2. **Quality Assurance** – PBGC needs to establish and implement administrative and procedural activities to provide reasonable assurance that financial assistance determinations meet requirements including: (a) a systematic measurement of and comparison to Multiemployer Plan Procedures and (b) reporting of results to management.

To mitigate these risks, we suggest that the Chief of Negotiations and Restructuring: (1) strengthen controls regarding Federal records management in financial assistance cases to include specifying records to be maintained and (2) establish and maintain a system of quality control that is designed to provide management and stakeholders with reasonable assurance that the Multiemployer Program Division (MEPD) and its career and contract personnel comply with MEPD policies and procedures.

Background

The PBGC protects the retirement benefits of millions of workers and retirees.
The multiemployer program protects about 10 million workers and retirees in about 1,400 pension plans. Multiemployer plans are typically established pursuant to collective bargaining agreements involving more than one unrelated employer, generally in one industry. These plans are administered jointly by employer and union trustees, who engage a third party to administer the plan. PBGC does not directly pay the benefits of people in failed multiemployer plans. Instead, the agency provides financial assistance to the plans themselves through the third-party administrator who continues to pay retirees and place new retirees into pay status.

MEPD is responsible for processing financial assistance requests. Once a plan files a Notice of Insolvency and a financial assistance request with PBGC, MEPD assigns the plan to a case auditor for processing. Upon receipt of requested documents and information, the MEPD auditor determines the appropriate amount of assistance the plan needs.

A field audit is a tool used by MEPD to ensure that the initial financial assistance provided to the plan is an appropriate amount and that the proceeds of the PBGC loan are being properly spent by the plan. The field audit is more in-depth than the initial financial assistance request review.

In FY 2013, PBGC paid $89 million in financial assistance to 44 insolvent multiemployer plans; in FY 2014, payments rose to $97 million to 53 insolvent plans. PBGC is anticipating a significant increase in the number of multiemployer plans that will become insolvent and seek financial assistance, and projects a nearly 400 percent increase in the amount of financial assistance over the next 10 years.

Risks

Record Management Practices

Records management is mandated by Federal law and is an important requirement for all Federal employees and contractors. Every Federal agency is required to create and manage its records as the evidence of the agency's actions. To implement *Presidential Memorandum – Managing Government Records* (11/28/2011), the Office of Management and Budget issued M-12-18, *Managing Government Records Directive (8/24/2012)*, stating:

> Records are the foundation of open government, supporting the principles of transparency, participation, and collaboration. Well-managed records can be used to assess the impact of programs, to improve business processes, and to share knowledge across the Government. Records protect the rights and interests of people, and hold officials accountable for their actions. Permanent records document our nation's history.

Records management includes making and preserving records that contain adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency. Further, records need to be designed to furnish the information necessary to protect the legal and financial rights of the Government and of persons directly affected by the agency's activities. An essential part of records management is maintaining and archiving agency records in a manner that they are available and accessible.

We found:

- Files for plans asserting insolvency and applying for financial assistance lacked complete work papers documenting the auditor's analysis, decision–making process, and conclusions that the plans were in fact insolvent;
- Some files were missing key documents needed to verify the plan's insolvency, the amount of funds required by the plan to pay expenses, and the accuracy and appropriateness of professionals' fees such as accountants, attorneys and actuaries; and
- PBGC financial determination records were stored in varying physical locations such as in shared drives, auditors' offices, multiple MEPD file cabinets, and the basement of PBGC's headquarters building.

This occurred because PBGC did not have: (1) a formal and centralized record keeping system, and (2) clear and enforceable guidance on required plan audit file contents. Based on these records management practices, PBGC management and supervisors could not reliably monitor past decisions to verify whether a plan was validly insolvent and, therefore, qualified to receive financial assistance at the time and in the amount they were receiving.

During the course of our work, MEPD advised OIG that it had migrated to an electronic-based document storage system. We commend management for this step and agree that a centralized document repository should enhance management's ability to monitor MEPD performance. The records management risks, however, persist whether documents are in paper or electronic form. PBGC needs to ensure that it defines the records to be collected and created, the manner of maintenance, and supervisory oversight and enforcement.

Quality Assurance Practices

MEPD is responsible for monitoring the multiemployer insurance program in accordance with its *Multiemployer Plan Procedures*. Section 1.500 of the *Procedures* states that:

> ...as part of the supervisor's review of the work-papers, the supervisor should determine that all of the following have been completed:
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> - Work program steps completed and signed off
> - All conclusions have been documented
> - All findings have been documented
> - All key information in the report has been referenced to the work-papers
> - All required checklists have been completed
> - There are no outstanding issues related to the audit fieldwork.

We found instances where these MEPD procedures were not followed and supervisory reviews failed to identify errors. These conditions increase the risk of waste of funds. In plans that asserted insolvency and applied for financial assistance in or after January 2010, illustrative examples include:

1. Documentation for Determining Plan Eligibility

   MEPD auditors are required to conduct an "in-depth review of the information provided" by the plan to determine whether the plan is eligible for financial assistance. We found this was not always the case. For example, in one case we found that the initial financial assistance audit work was performed separately by MEPD and a contractor. Both verified the plan insolvency, but they each reached different audit conclusions about the amount of financial assistance needed. The file did not contain any work papers to indicate how these different audit conclusions as to the proper level of financial assistance were reconciled.

2. Conducted Field Audit

   Field audits are required to be "conducted within 120 days of the initial financial assistance payment," except for plans that the MEPD Associate Manager identifies as appropriate for closing with the purchase of annuities. We tested 14 plans with a date of insolvency of January 2010 or later, 8 of the plan audits were not initiated within the 120 days.

3. Completion of Field Audits

   MEPD auditors did not complete the field audits in a timely manner. Three of the 14 audits were open for 1.5 to 3 years prior to concluding audit work and issuing a final report.

4. Documentation Regarding Administrative Expenses

   In testing the administrative expenses for reasonableness and accuracy, MEPD Procedures require the auditors to document their analyses and conclusions and include supporting documentation from the plan. We found this was not always the case. For example, in one case, the auditor's report concluded that administrative expenses were reasonable and necessary, however, the auditor had identified certain anomalies and accepted the administrator's simple explanation. There was no supporting documentation in the case file to enable any reviewer to validate the auditor's conclusion.

5. Determining Reasonableness of Professional Service Expenses – Service Agreements

   A plan is entitled to reimbursement of professional service fees (e.g., actuaries, attorneys, accountants) that are directly related to the insolvent plan. MEPD auditors are required to determine whether the expenses incurred are reasonable and prudent.

In 4 of the 14 audits initiated in or after January 2010, MEPD auditors did not obtain a contract or service agreement specifying the type and level of services the third parties were to provide to the plan and the agreed upon rates for such services. While obtaining the service agreements the plan has entered into with its service providers is not expressly required by ME procedures, these are basic and vital documents for the auditor or any PBGC manager to verify whether the invoices PBGC received from the plan administrator were valid for authorized services, billed at the contracted rate, and services were limited to the specific insolvent plan.

To reduce the risk of waste of funds and to enhance program performance, we offer the following suggestions:

Suggestion 1: The Chief of Negotiations and Restructuring strengthen controls regarding Federal records management in financial assistance cases to include identifying the specific records to be maintained.

Suggestion 2: The Chief of Negotiations and Restructuring establish and maintain a system of quality control that is designed to provide management and stakeholders with reasonable assurance that MEPD and its career and contract personnel comply with MEPD policies and procedures.