Pension Benefit Guaranty Corporation

***Office of Inspector General***

Audit Report

# Increased Oversight, Internal Controls and Performance Accountability Needed for PBGC's Monitoring, Enforcing and Modifying Negotiated Funding Agreements

***March 21, 2014***

AUDIT-2014-8/PA-11-80

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

March 19, 2014

To: Josh Gotbaum
Director

From: Rashmi Bartlett *Rashmi Bartlett*
Assistant Inspector General for Audit

Subject: Increased Oversight, Internal Controls and Performance Accountability Needed for PBGC's Monitoring, Enforcing and Modifying Negotiated Funding Agreements (Audit-2014-8/PA-11-80).

I am pleased to transmit the final report Increased Oversight, Internal Controls and Performance Accountability Needed for PBGC's Monitoring, Enforcing and Modifying Negotiated Funding Agreements. PBGC agreed with all recommendations in this report and stated that a number of recommendations have already been completed. Although PBGC has asserted that six recommendations have been completed, OIG was not provided adequate artifacts and supporting documentation to test and opine on PBGC's conclusion. We look forward to receiving documentation through the recommendation completion process. PBGC has stated these recommendations have been resolved; we therefore expect to receive recommendation completion packages in the near future.

PBGC disagreed with a statement on page 11 of this report "…increased risks are created for the Corporation…[i]f PBGC should decide to enforce an agreement because the analysis and decisions were not documented or were inadequately documented." PBGC believes improvements were not recognized, and PBGC concluded the internal analytic and decisional process do not warrant the same level of consideration as the terms of the legal agreement the parties entered into. OIG disagrees with PBGC's conclusion. Our audit concluded that PBGC's documentation of key records and decisions supporting the negotiated funding agreements process needs improvement and without enhancement the Corporation is at risk should the terms of an agreement need to be enforced. OIG stands by this conclusion and observation.

We would again like to take this opportunity to express our appreciation for the overall cooperation OIG received while performing the audit.

Attachment

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# Executive Summary

The Pension Benefit Guaranty Corporation (PBGC) operated its negotiated funding agreement activity without clearly defined objectives or documented operating procedures. The Corporation views each agreement as a unique negotiation and lacked a programmatic view of the activity. *As a result, the Corporation operated the agreements with a variable approach which lacked consistent standards, internal controls, and meaningful evaluation of the agreements over time*.

PBGC publicly reports obtaining millions of dollars in protections for pension plans annually through negotiated funding agreements (hereafter agreements). Underfunded pension plans present an increased risk to PBGC and plan participants, and PBGC reports that the agreements counteract risk to pension plans and reduce the Corporation's potential liability by providing increased funding for pension plans.

The PBGC Office of Inspector General (OIG) conducted an audit to review the effectiveness of PBGC's processes for monitoring, enforcing and modifying agreements, as well as an assessment of internal controls, transparency, and overall accountability. We also reviewed PBGC's use of information technology in its processes and how PBGC protects sensitive information entrusted to it. This review encompassed agreements in effect between FY 2000 and FY 2012.

Programmatic weaknesses were identified in PBGC processes for monitoring, enforcing, modifying and controlling agreements. PBGC had not established uniform guidelines. Since PBGC management views each plan sponsor agreement as a unique negotiation, at the time of our review, PBGC had not adopted a consistent and centrally managed practice with effective internal controls, defined business processes, and documented guidelines.

PBGC demonstrated a lack of full transparency and accountability when reporting the face value of agreements and secured funding. The Corporation did not similarly track, analyze or routinely announce the actual outcome of the agreements, which might include significant, although rare, modifications and reductions in contributions. PBGC management consistently stated that the success of the agreements is based upon getting additional protections for pension plans. However, PBGC could not provide evidence they ever quantified or valued this measure of success against any concessions the Corporation made as part of the agreements.

PBGC monitored, enforced and modified agreements with inadequate performance metrics. According to data PBGC provided for Fiscal Year (FY) 2000 to FY 2012, the agency had 221 agreements in effect valued at more than $7.8 billion. However, we determined the Corporation had not cumulatively tracked the amount of protections actually achieved through the agreements. PBGC management did not effectively ensure processes, controls and responsibilities were fully developed, documented, functioning and reviewed. And, PBGC did not consistently obtain adequate documented assurance that agreement payments were fulfilled according to terms.  As a result, realized contributions under the agreements could not be accurately tracked and analyzed, and the Corporation did not know the actual amount of protections achieved under the terms of the agreements in our scope.

TeamConnect, the system used to track the negotiated funding agreements, did not have adequate access controls.  Additionally, user access was not restricted on a need-to-know basis.  As a result, sensitive proprietary information entrusted to PBGC is exposed to risk.

Due to our audit work, PBGC has made progress and developed written procedures for monitoring the agreements.  The procedures provide a framework for monitoring and identification of some key documents in the process, such as Settlement Recommendation Memos.  Work is still required to develop more comprehensive procedures for enforcement and modification.  PBGC procured a contractor to assist with defining its business processes and developing procedures.  The Corporation's new procedures were implemented during the latter part of our field work.  The procedures have not been in effect long enough to determine their effectiveness, therefore, the findings and recommendations will remain.

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# Background and Objectives

## Background

PBGC is a Federal government corporation established under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 USC § § 1301-1461 (ERISA sections 4001-4402). PBGC's mission is to encourage the continuation and maintenance of private-sector defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep the insurance premiums at a minimum.[1] Through its single-employer and multiemployer programs, PBGC protects the pensions of approximately 42 million workers and retirees in more than 25 thousand pension plans. Under section 4022(b) of ERISA, these pension plans ensure a specified monthly retirement benefit, usually based on salary or a stated dollar amount and years of service.[2]

PBGC receives no funds from general tax revenues and receives financing through insurance premiums paid by plan sponsors that support defined benefit pension plans, by investment income and assets from terminated plans. PBGC has been in a deficit position (liabilities in excess of assets) for a number of years. Inadequate minimum contributions, inadequate insurance premiums, employer shift from defined benefit pension plans to defined contribution pension plans and insufficient funding of terminated plans are factors contributing to PBGC's deficit position. As of September 30, 2013, PBGC reported in its financial statements net deficit positions in the Single-Employer and Multiemployer Program Funds of approximately $27.4 billion and $8.3 billion, respectively. PBGC has been able to meet its short term obligations; however, PBGC management believes that neither program at present has the resources to fully satisfy PBGC's long-term obligations to plan participants.

PBGC's goal is to preserve pension plans and keep the onus of paying benefits in the hands of plan sponsors. However, with ERISA authorization, PBGC sometimes initiates the termination of a pension plan when certain conditions occur, such as if the plan sponsor will be unable to pay benefits when they are due, or the possible long-run loss to PBGC with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated.[3] In order to prevent plan termination or to mitigate losses to PBGC and plan participants in the event a plan terminates, PBGC at times works with plan sponsors to obtain protections. PBGC typically negotiates funding agreements, commonly referred to as settlements, through its Early Warning

[1] ERISA Section 4002(a)(2); 29U.S.C. § 1302(a)(2)

[2] ERISA Section 4022(b); 29 U.S.C. § 1322(b)

[3] ERISA Sections 4042(a)(2) and (a)(4); 29 U.S.C. § 1342(a)(2) and (a)(4)

Program (EWP) or through ERISA 4062(e) events.  PBGC stated that, until recently, it entered into agreements strictly through its EWP.  Under the EWP, PBGC monitors financially underfunded defined benefit pension plans to identify corporate transactions that could jeopardize pensions and to attempt to negotiate protections for participants in those pension plans and the pension insurance program.  But recent regulations enacted by PBGC on enforcement of ERISA 4062(e), now allow PBGC to negotiate additional protections with plan sponsors which must report a defined event.  In general, a section 4062(e) event occurs when an employer ceases an operation at a facility in any location and, as a result of the cessation, more than 20 percent of the total number of the employer's employees who are participants under a plan maintained by the employer are separated from employment.[4]

Currently, PBGC monitors plan sponsors through the EWP, though it is more likely to enter agreements under 4062(e) authority.  In FY 2012, PBGC publicly reported monitoring more than 1,000 plan sponsors to identify transactions that could pose significant risks to underfunded plans, and to arrange for sponsors to protect those plans financially.  In FY 2012, the Corporation's Annual Report states they opened (PBGC may or may not enter into an agreement for opened cases) 37 new investigations under the Early Warning Program and reached 2 EWP agreements.[5]  When responding to our inquiry however, PBGC then reported to OIG that for FY 2012 they reached 3 EWP agreements valued at $30.50 million.[6]  The Corporation's FY 2011 Annual Report states that PBGC secured $195 million in increased protections in FY 2011[7], PBGC then reported to OIG a value of $279 million for 11 EWP agreements.  Under its more frequently exercised 4062(e) authority, PBGC reports that in FY 2012 it reached settlement with 27 plan sponsors for approximately $471 million in additional protections to pension plans.  In prior years, PBGC Annual Reports state that the Corporation opened 68 new 4062(e) cases in FY 2011, as compared with 129 in 2010, 105 in 2009, and 40 in 2008.[8]

A negotiated funding agreement typically begins within the Corporate Finance and Restructuring Department (CFRD), formerly the Department of Insurance Supervision and Compliance (DISC), where pension plans that may pose an increased risk of loss are identified.[9]  CFRD is one of four units within PBGC's Office of Negotiations & Restructuring (ONR), which includes the Office of Chief Counsel (OCC), the Standard Termination Compliance Division, and the Multiemployer Program Division.  Under the EWP, CFRD monitors plan sponsors at risk and focuses on transactions that pose a risk of long-run loss to PBGC's pension insurance program;

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[4] ERISA Section 4062.8(a); 29 U.S.C. § 1362(e)

[5] PBGC 2012 Annual Report, http://www.pbgc.gov/documents/2012-annual-report.pdf

[6] According to PBGC, one of the agreements executed provided no additional cash contributions.

[7] PBGC 2011 Annual Report, http://www.pbgc.gov/documents/2011-annual-report.pdf

[8] PBGC 2010 Annual Report, http://www.pbgc.gov/Documents/2010_annual_report.pdf

[9] ERISA Section 4062(a)(4); 29 U.S.C. § 1342(a)(4)

this includes transactions by troubled plan sponsors[10] and by plan sponsors whose plans are underfunded on a current liability basis. Agreements sometimes result from PBGC's monitoring of plan sponsors at risk. The activities of monitoring, modifying and enforcing agreements are a joint collaboration between CFRD and the OCC**.** Once an agreement has been executed between PBGC and the plan sponsor, CFRD is primarily responsible for monitoring the agreement to ensure the plan sponsor is fulfilling the terms of the agreement. According to CFRD, if the plan sponsor is not able to meet the terms of the agreement, CFRD in collaboration with OCC will either enforce the agreement or renegotiate the terms so the pension plan can remain ongoing with the sponsor.

OIG requested and obtained from PBGC a listing of all active agreements (4062(e) and EWP) from FY 2000 through FY 2012.[11] From that listing, we selected and analyzed the agreements that became effective within that time period. Our results revealed an increase in the agreements PBGC negotiates and settles. (See Figure 1) Reflecting the downturn in economic conditions, PBGC experienced a significant spike in the number and dollar amount of agreements after FY 2006.[12] The incidence of agreements increased more than 70% between 2009 and 2010, and peaked between 2010 to 2011when they increased over 80%. Although the increases varied over time, the recent trend continued to represent considerable potential liability for PBGC. Because PBGC did not assess or quantify the long-run impact of these funding agreements (See Finding 2), it assumes that the total amount negotiated resulted in a reduction in PBGC's liability. Thus, this recent trend could, in fact, result in greater liability for the Corporation. Therefore, it is critical that PBGC provide adequate management oversight and internal controls in order to provide effective monitoring and accurately inform participants on the projected funding that materialized.

[10] PBGC focuses on companies who are financially troubled or have a significantly underfunded pension plan.

[11] The PBGC-provided listing included all agreements active or in effect during our scope of FY 2000 through FY 2012, which includes agreements that became effective during that time period, as well as agreements which were already active with an established effective date prior to our scope.

[12] Per PBGC information, dollar spikes in FY 2007 and FY 2009 were largely due to a significant agreement ($1.28B in FY 2007) and its renegotiation ($800M in FY 2009).

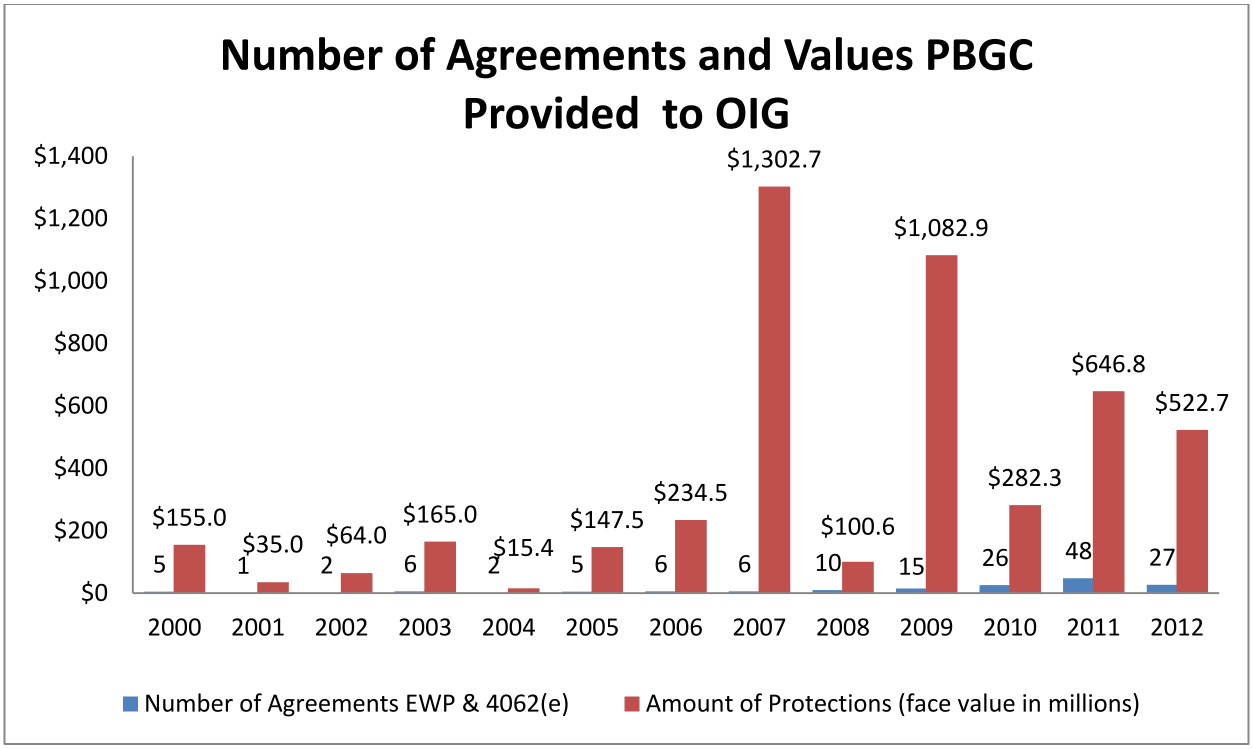


**Figure 1 – A trend of increasing liability can be seen over time in the amount of agreements established annually. Information in this chart contains 4062(e) and EWP agreements data, which was provided by PBGC. The information in this chart may differ with data PBGC provides in its Annual Reports because PBGC does not comprehensively report both types of agreement information, and because information provided to OIG may be more inclusive.**

## Objectives, Scope and Methodology

Our objective was to evaluate how PBGC monitors, enforces, and modifies negotiated funding agreements, including an assessment of how PBGC demonstrates accountability with respect to fulfillment of agreements. We determined how PBGC measures the effectiveness of negotiated funding agreements and evaluated PBGC's use of information technology in recording, tracking and managing negotiated funding agreements, as well as PBGC's actions to ensure protection of sensitive data.

Our audit took place in Washington, DC. The scope of our review included negotiated funding agreements in effect from FY 2000 to FY 2012 from which we selected a sample of agreements based on active status as of 01/01/2008, modifications or dollar values greater than $200 million, and some based on press releases made within the scope (see Figure 1 & Figure 6 – for sampling detail). By active status, we mean agreements that were in effect during our scope, which includes:

- agreements PBGC established within our scope, and therefore carry an effective date between FY 2000 and FY 2012; and
- agreements which PBGC established prior to our scope, which carry an effective date established prior to FY 2000.

As a result, we reviewed 12 agreements.

The sample may not be representative of the entire population of agreements. We requested, obtained and assessed all forms of documentation associated with our sample of agreements in order to evaluate the controls over how PBGC monitors, enforces and modifies agreements.

We interviewed management and staff from PBGC's offices in CFRD and OCC. We also looked at the press releases associated with the agreements and interviewed Communications and Public Affairs Department (CPAD) personnel on PBGC policies and procedures for making these types of announcements. And, we evaluated internal controls in PBGC's activities for negotiated funding agreements, as well as in TeamConnect, its computer system for agreement data. We evaluated PBGC's practices against federal rules and regulations and PBGC's policies and procedures.

The audit was conducted in accordance with Government Auditing Standards, July 2007 and December 2011 revisions (note: auditing standards were updated during the time of our review) issued by the Comptroller of the United States, and applicable OIG policies and procedures. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our conclusions based on our audit objectives.

# Audit Results

## Findings and Recommendations

### Section A - PBGC should develop a programmatic approach with consistent management and internal controls for their processes of monitoring, enforcing, and modifying negotiated funding agreements.

PBGC had not established a program whereby agreements are monitored, enforced and modified under uniform guidelines with adequate oversight. Because management viewed each plan sponsor individually and each agreement as unique, PBGC had not established a consistent and centrally-managed program with defined business processes and documented guidelines. Consequently, the agency had not established internal controls to provide reasonable assurance that the terms of the agreements had been fulfilled and that the protections had been achieved as intended.

#### Finding 1: During our audit period, we determined that PBGC had not developed overarching policies and procedures for monitoring, enforcing and modifying the agreements.

PBGC had not established adequate processes and controls to effectively monitor, enforce and modify the negotiated agreement activity. This occurred because PBGC viewed each plan sponsor individually and each agreement as unique, requiring a differential approach. The Corporation's inconsistent approach means it had not developed coherent standards to apply throughout agreement activities conducted. PBGC's agreement activities lacked ownership, accountability, and a consistent approach. As a result, PBGC could not ensure that agreements were monitored, enforced and modified on a consistent and transparent basis under uniform and equitable guidelines with effective internal controls.

Agreements are primarily monitored, enforced and modified by two departments under PBGC's Office of Negotiations and Restructuring: CFRD and OCC. Press releases, which publicly announce many of the agreements, are handled by CPAD. PBGC press releases and annual reports place emphasis on the face value of the agreements, rather than the actual outcome of the agreements. We selected a sample of 12 plan sponsors for our review, 10 of which had press releases announcing that the sponsors were contributing a total of $2.67 billion in additional pension plan funding to their respective plans.

PBGC provides CFRD and OCC with delegation of authority, which allows management in both departments to take official action on behalf of the Corporation, up to an agreed upon monetary threshold. However, the delegation of authority does not ensure CFRD and OCC have a coordinated and documented business process for monitoring, enforcing and modifying agreements. PBGC management believed that the agreements process should be flexible and nimble due to the uniqueness of each plan sponsor's pension plan, taking a variable approach. However, we determined the lack of a coordinated and documented process has led to agreements being monitored, enforced, and modified without consistently applied methodologies and standards. Lack of coordination has negatively impacted PBGC's ability to retrieve critical agreement data and produce timely accurate reports to stakeholders. (See Finding 3)

PBGC management stressed the importance of obtaining additional protections for the plans throughout our review, but provided no evidence the Corporation ever performed adequate and consistent analysis of its activities. PBGC could not provide adequate documentation evaluating the impact of negotiated agreements on the participants' benefits and PBGC's liability if the plan subsequently terminates. PBGC's response to our initial request for a listing of agreements required a labor intensive manual process to develop a cumulative listing. It took the Corporation nearly one month to compile the listing which was then subsequently modified due to recording and tracking inconsistencies and inaccuracies. PBGC has begun developing a process whereby all agreement data is stored in TeamConnect, the shared CFRD and OCC application used to monitor agreements. Prior to the use of TeamConnect, records were inconsistent and PBGC's divergent method led to duplicative and irreconcilable data being stored across various computer systems (including TeamConnect) in multiple file formats. (See Finding 3)

We selected 12 negotiated funding agreements with plan sponsors based on the following criteria: eight from the PBGC-provided listing that were active as of 01/01/2008 and had a face value greater than $200 million, and four for which PBGC had issued a press release but which did not appear on the listing.

We requested that CFRD provide all documentation for our sample agreements. Upon review of the Corporation's records, we determined PBGC lacked adequate controls over management of the activities for monitoring, enforcing and modifying the agreements. Specifically, OIG expected PBGC to maintain some basic information regarding ongoing agreements, such as:

- comprehensive ongoing analysis of risks, gains and/or losses to the Corporation, and/or the potential effects of modifications on pension plans and participant benefits. (for our sample of agreements)
- the dollar amount owed for which PBGC had issued enforcement letters.
- the dollar amount of protections indicated in the agreement that were actually received by the plan.

Though there are no metrics that quantify the dollars received, the then-Acting Director of CFRD provided evaluations stating that "every dime" that comes into the plans improves PBGC's financial position. The Acting Director indicated that financial analysts perform formal risk assessments at the time funding agreements are initially executed, which were reviewed and signed by a CFRD reviewer. PBGC was unable to provide formal documented risk assessments for the agreements in our sample, as it relates to effectiveness; gains or losses in the event the plan is terminated. PBGC stated that risk assessments are conducted for new agreements only. OIG believes this type of analysis is beneficial throughout the agreement process.

We made similar observations regarding affordability analysis for agreement modifications. After PBGC and the plan sponsor enter into a negotiated funding agreement, PBGC can modify the agreement if the plan sponsor states it cannot afford the agreed-to payments. With respect to agreement modifications, PBGC stated that it verifies the financial distress of the plan sponsor by performing an affordability analysis[13] and by reviewing relevant financial and pension information, including an assessment of a plan sponsor's profitability. Of our 12 sample agreements, 11 were modified but did not have an affordability analysis. Furthermore, our review of agreement documentation revealed that 5 of the 12 plan sponsors did not have the required modification recommendation memo referred to by CFRD officials; this is the formal proposal made by the case team to management to support modifying the payment terms. Our review of the 7 plan sponsors with recommendation memos showed inconsistent levels of effort and detail.

In addition, PBGC did not ensure meetings were documented where key decisions were made. For example, PBGC could not provide meeting notes for the negotiations between PBGC and the plan sponsor that resulted in a modification whereby money due to the aforementioned pension plan was reduced to $800 million from the original amount of $1.2 billion. In most agencies, policies, decisions, and commitments are frequently made in meetings, over the telephone, or by electronic mail or facsimile transmission. To ensure that such policies and decisions are adequately documented, agencies should establish procedures that require personnel at all levels to document conversations and meetings dealing with significant program business by preparing a dated and signed memorandum or form identifying the participants and summarizing the conversation or meeting.[14] Government-wide regulations issued by the National Archives and Records Administration (NARA) require that full and accurate records of an agency's business operations and activities be created or captured and that the records be organized and maintained to ensure they are available in a usable format at all times.[15] In its guidance to all Federal agencies, NARA notes: "Conducting Government business without adequate documentation increases the possibility that, in time, all relevant facts may be unavailable or interpretations may be distorted. As staff members leave, information that has not been documented will be lost to the agency."[16]

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[13] PBGC performs an affordability analysis to determine if the agreement needs to be modified, and reviews ad-hoc forms of documentation, such as business plans, bank books, historical financials, bank agreements, capital expenditures, marketing materials, and the pension information needed to project pension contributions.

[14] http://www.archives.gov/records-mgmt/publications/agency-recordkeeping-requirements.html

[15] 36 CFR §§ 1220.32 and 1220.34.

[16] Agency Recordkeeping Requirements: A Management Guide: http://www.archives.gov/records-mgmt/publications/agency-recordkeeping-requirements.html

PBGC has taken a step to emphasize the importance of recording meeting discussions and outcomes by adding a reminder of the requirement to the electronic scheduling notice for conference rooms, including this message: "…verbal decisions must be documented in a manner that is appropriate for conducting PBGC business."

We observed that PBGC's knowledge of the negotiated agreements activity was stove-piped based on individual employees' understanding of how agreements should be processed due to the unique nature of each agreement. This contributed to PBGC's decentralized and inconsistent approach to managing agreements, and this also attributed to employees storing data in decentralized locations.

Internal controls within the business process are cornerstones to effective knowledge management, program operation, and management oversight. At the time we initiated our review, TeamConnect was recently implemented as CFRD's electronic record-keeping system. The implementation was completed without adequately defining business processes and key controls upfront, which resulted in inconsistent document creation and filing. For example:

- In testing how PBGC verified plan sponsors make required contributions to their pension plans, we found documentation of payment verifications for 9 of 12 agreements in our sample. This documentation was inconsistent in format and filing. Most financial analysts stated they monitored the payments, but they provided no documentation supporting the performance of periodic monitoring to identify and follow-up on missed payments.
- When PBGC identifies that plan sponsors have missed payments under the agreements, the Program Manager and Lead Business Expert for the TeamConnect Application told us that PBGC sends out enforcement letters. There were no enforcement letters issued for the 12 agreements in our scope. However, we tested PBGC's tracking of enforcement letters for other agreements and determined that PBGC's inconsistent file-naming conventions hindered the Corporation's ability to track and report the amount of enforcement letters and other types of critical documentation over time.
- According to the TeamConnect Manager, payment information is entered into TeamConnect and management can review what is entered at any given time. However, when we interviewed a financial analyst who worked on an agreement modification, we found that payment information was not entered, tracked and verified in TeamConnect.

When agreements are modified, they are entered into TeamConnect as new agreements. In addition, they are not "linked" to the original agreement, resulting in modifications not appropriately designated in the system. Since agreement information is not readily available, this condition makes it difficult for the Corporation to track and report on agreement modifications from TeamConnect. PBGC has no assurance all necessary Federal records have been created and maintained; tracking and reporting modifications in TeamConnect may be a burdensome and time-consuming task, and management oversight may be difficult. This may result in inaccurate, untimely, and unreliable data. Further, we would have expected that PBGC obtained cancelled checks or wire transfer notifications as verification of payment, but we found the Corporation accepted memos from the plan sponsor. For example, for one agreement, Plan Sponsor A merely wrote to PBGC that it contributed $8.75 million to its plans. (See Figure 2) This failure to obtain source documentation to verify that plan sponsors actually made the required payments to the pension plans was not limited to Plan Sponsor A, but was typical. As a result, PBGC does not have adequate documented assurance that payments in the agreements were fulfilled according to terms.

| Plan sponsor A | Agreement Balance | Payments to Plan |
|---|---|---|
| Agreement made and publicly announced by PBGC * (due over 6 years) | $39 | |
| Reported payments made by plan sponsor over a two year period ($26.75 remained due on agreement) ** | | $12.25 |
| Remainder due on original agreement | $26.75 | |
| Agreement modification results in lesser amount due to plan *** | | $11.5 |
| Modification means pension plan received $15.25 less than PBGC reported in its public announcement | ($15.25) | $23.75 |

**Figure 2 – Agreement and modification example**

*** The purpose of this chart is to highlight the lack of transparency between what the Corporation publicly announced and the amounts actually received into the plan.**

**** PBGC's reported payments, verified only with memos from plan sponsor.**

***** PBGC reports that at the time of the modification, the Unfunded Benefit Liability was $16 million.**

Our audit confirmed what one analyst stated: it is up to each individual to design the appropriate methodology to monitor each plan sponsor based on the terms and conditions of the agreement. We observed that this approach has metastasized over time, resulting in confusion and redundant documentation in TeamConnect. For example, one plan sponsor had over 9,000 total documents stored in TeamConnect, while another plan sponsor had only 37 total documents. While OIG recognizes that different agreements will have varying levels of associated documentation, PBGC's approach did not ensure standard documentation was required for agreements in our sample. For example, no standard file structure was in place for document retention and filing. Similarly, no standard naming conventions were in place. These inconsistencies resulted in difficulties identifying documents and ensuring all necessary documents have been properly created and retained, especially in plans with voluminous documentation. Such inconsistency can negatively impact both the operation and management oversight of the program. PBGC stated that new controls (described below) will mitigate data redundancy and inconsistencies.

In March 2013, CFRD implemented new procedures that PBGC management believes will enhance oversight and ensure increased consistency amongst agreements. These new procedures require that all agreement data is captured in TeamConnect, and establish activities to better monitor agreements on an ongoing basis. Prior to March 2013, PBGC did not have controls in place to ensure employees manage and maintain consistent documentation under uniform guidelines. While these new procedures are certainly a step in the right direction, OIG cannot state that they are complete or effective; that will be established through application and operation over time.

When PBGC takes action inconsistently and without adequate documentation, increased risks are created for the Corporation. One potential risk may be a litigation risk. Though PBGC reported it has not sought court-enforcement of an agreement in the past, conditions might arise in the future whereby PBGC may wish to file an enforcement action against the plan sponsor to compel agreed-to payments for the plan.

Negotiated funding agreements are legal agreements that are enforceable under contract law. If PBGC should decide to enforce an agreement, PBGC's documentation of its monitoring, enforcing and modification of agreements may create additional challenges for the Corporation. For example, it may decide it cannot bring the action because the analysis and decisions were not documented or were inadequately documented. Or, if the plan sponsor sought a modification of the agreement, PBGC declined to modify, and the plan failed to pay, inconsistent documentation of PBGC's analysis and determination may adversely impact its enforcement action.

**Recommendation 1:** Define, establish and implement a consistently managed program with documented and assigned responsibilities for staff and managers, including key controls such as supervisory review and required standard documentation to ensure agreements are consistently monitored, enforced, and modified under uniform and equitable guidelines.

**Recommendation 2:** Train applicable staff in newly developed processes and TeamConnect required documentation, and ensure periodic management review to ensure effectiveness of established internal controls.

**Recommendation 3:** Establish policies, procedures and controls which ensure that key decisions made in PBGC meetings are adequately recorded and periodically reviewed by management, according to federal records management regulations and PBGC policy.

## Finding 2: PBGC's performance measures did not successfully assess the effectiveness of negotiated funding agreements.

PBGC had not established adequate performance measures which provide a meaningful assessment of the negotiated funding agreements program. Because management viewed each plan sponsor's circumstances individually and each agreement as unique, PBGC had not established measures that demonstrated a consistent approach or a centrally-managed program.

As a result, PBGC could not definitively assess the effectiveness of agreements.

Adequate performance measures provide management with a tool to evaluate overall program effectiveness. PBGC publicly reports two "measures":

1. The dollar amount the plan sponsor agreed to contribute to the pension plan in the original negotiated agreement; and
2. The number of plans and/or participants impacted by the agreement.

While this data may be a measure of accomplishment, because PBGC did not routinely retain documentation of their negotiations and analysis, it is difficult to validate whether the particular negotiated dollar amount was the best, or even a good, outcome. This resulted from PBGC's position that any additional dollar contributed to the pension plan was a success; the pension plan remained ongoing. In addition, PBGC did not evaluate the actual value of protections achieved as a result of entering into an agreement – e.g., actual amount contributed to the plan vs. promised amount. For example, PBGC did not have tools in place to assess: if a plan subsequently terminated after entering into an agreement, the extent to which the additional contributions would cover increased benefits to participants because the plan remained on-going, or whether the additional payments reduced PBGC's liability. Of the 12 plan sponsors we reviewed, none had any formal analysis documenting the outcome of the agreement. As a result, the Corporation could not quantify the outcome of the agreements for the plan participants, provide documented assurance that agreements were fulfilled according to terms, or quantify a reduction in PBGC's liability in cases of subsequent plan termination.

Similar to OIG's observations, an official from PBGC's Strategic Planning and Evaluation Division (SPED) stated there have been difficulties establishing performance metrics within the ONR (the division under which CFRD operates). The SPED official indicated it has been challenging to establish metrics because ONR's work is cyclical and relies on economic conditions. And the agreements may span 20 years, so the agency must first establish measureable time periods.

In Office of Management and Budget (OMB) Memorandum 10-24, *Performance Improvement Guidance: Management Responsibilities and Government Performance and Results Act Documents* (6/25/10),[17] OMB provides guidance to Federal agencies on the Government Performance and Results Act (GPRA) and other performance management activities. OMB stresses that the agency's strategic plan is critical for managing the agency and accomplishing the mission.

An agency's strategic plan is a valuable tool for communicating to agency managers,

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[17] OMB 10-24 also provides strategies for ensuring performance information to lead, learn, and improve outcomes, communicate performance coherently and concisely for better results and transparency and strengthen problem-solving networks that improve outcomes and performance management practices.

employees, delivery partners, supplies, Congress, and the public a common vision for the future. It should inform agency decision-making about the need for major new acquisitions, updated information technologies, hiring, skill development, and evaluations. Strategic plans can also help agencies invite ideas and stimulate innovation to advance agency goals. Above all, an agency's strategic plan should be used to align resources and guide decision-making to accomplish priorities and improve outcomes.

OMB further states that agencies need to translate the goals in their strategic plans to annual performance targets that are updated annually as part of their budget submissions. Senior agency leaders are expected to hold goal-focused, data-driven reviews at least once every quarter to review progress on their Priority Goals. As GAO stated in a report analyzing GPRA's effectiveness: "The federal government should be able to demonstrate to the American Public that it can anticipate emerging issues, develop sound strategies and plans to address them, and be accountable for the results that have been achieved."[18]

In PBGC's Strategic Plan, Goal 1 is to "Preserve Pension Plans and Protect Pensioners." Within Goal 1, PBGC has established the following performance goal that is related to the work conducted by ONR - specifically CFRD and OCC - when it enters into negotiated funding agreements.

**Performance Goal: Minimize Potential Losses from Financially Weak Sponsors with Underfunded Plans**

Strategy: We monitor companies with large pension plans for risky corporate transactions, enforce section 4062(e) of ERISA relating to corporate downsizing events, protect the program and participants in plan sponsor bankruptcies, terminate underfunded plans when necessary, and pursue and defend against claims in litigation.

From this overall Corporate Strategic Goal, performance goal and strategy set out in PBGC's Strategic Plan, the departments responsible for achieving or contributing to the goal would develop their own performance goals, strategies and metrics - in this case, ONR and then CFRD and OCC. When we examined PBGC's reporting on this performance goal and strategy in its annual performance reports, the annual budget submissions, and internal quarterly performance, we found that PBGC was simply reporting numbers of companies with which it entered into negotiated agreements and the unrealized face amounts. For example, PBGC said:

- In the FY 2010 Annual Report and in the FY 2012 Congressional Budget Justification (CBJ), it reached settlements with 20 companies for approximately $250 million; (the CBJ stated it "secured funding of $250,000….");
- In the FY 2011 Annual report and the FY 2013 CBJ, it "negotiated $195 million in

[18] *GPRA Has Established a Solid Foundation for Achieving Greater Results*, GA-04-38 (March 2004) http://www.gpo.gov/fdsys/pkg/GAOREPORTS-GAO-04-38/content-detail.html

increased protection for over 200,000 plan participants at risk from corporate transactions, and secured $370 million on behalf of people in 40 plans whose companies down-sized.";

- In the FY 2012 Annual Report, it "negotiated $31 million in financial assurance to protect more than 9,000 people in plans at risk from corporation transactions (2 companies), and negotiated $471 million in financial assurance to protect 50,000 people whose companies had downsized (27 companies)."

In addition, PBGC's quarterly performance assessments report this same data as "performance metrics." This is performance data, not performance metrics. Moreover, it is not a final performance outcome, but rather incomplete performance data because it does not account for modifications in which PBGC agrees for the plan sponsor to pay a lesser amount than reported.

When PBGC is in the situation of considering a negotiated agreement, it is because some event has occurred that puts the pension plan at greater risk for underfunding and potential inability to pay benefits. In these circumstances, PBGC must evaluate under ERISA whether it should take steps to terminate the pension plan. PBGC will often agree to forgo terminating pension plans in return for the extra protections the agreements provide. However, without formal analysis of outcomes, PBGC cannot reasonably assess and value considerations it makes in relation to the amount of protections actually achieved. For example, new participants and increased benefits (i.e., from additional vesting or new benefits) potentially add to the liabilities of the plans as they continue.

We recognize that PBGC cannot set a target for how many agreements it will enter into or the protections it may negotiate. We also acknowledge that PBGC's first statutory mission in ERISA is to encourage the continuation of defined benefit pension plans and these negotiated funding agreements are a tool to accomplish this mission.[19] However, PBGC also has a responsibility to be fiscally responsible and to terminate a plan when the "possible long-run loss of the corporation with respect to the plan may reasonably be expected to increase unreasonably if the plan is not terminated."[20] Thus, PBGC should analyze data about the agreements it negotiates and develop some internal performance metrics to evaluate the efficacy of the agreements and the impact of these agreements upon PBGC's liability. Only after analysis of empirical data can PBGC state with assurance that the program is accomplishing the desired outcome – greater protection for employees in on-going plans and protection of PBGC's long-term financial condition.

**Recommendation 4:** Establish performance measures which reflect the effectiveness of the program and reevaluate data from the negotiated funding agreements in order to determine differences between EWP and 4062(e) trends over time, to adequately track the amount of

[19] ERISA 4002(a)(1), 29 U.S.C. 1302(a)(1)

[20] ERISA 4042(a)(4), 29 U.S.C. 1342(a)(4)

protections achieved through the agreements, amount of modifications, and to identify required documentation. Performance measures should meet federal performance standards, PBGC policy, and provide for transparent communication to key stakeholders and plan participants.

### Finding 3: PBGC lacked adequate structure for effective records management relating to negotiated funding agreements.

PBGC did not have a sufficient records management structure for storing and retrieving files related to agreements. This occurred because PBGC did not have documented processes and uniform guidelines for monitoring, enforcing, and modifying agreements. Employees were not properly trained in records management or the use of the TeamConnect application. Moreover, undocumented business processes led to TeamConnect's inadequate system design. These conditions caused inconsistent use of TeamConnect and inconsistent naming conventions for records. Consequently, PBGC has no assurance all necessary Federal records have been created and maintained, management oversight is difficult, and retrieving data for the agreements can be a burdensome and time-consuming task. This may result in inaccurate, untimely, and unreliable data.

As a Federal entity, PBGC is subject to record-keeping requirements set forth in the Federal Records Act[21] and the implementing regulations. Under 44 U.S.C. § 3101, the head of each Federal agency must make and preserve records containing adequate and proper documentation of the organization, functions, policies, decisions procedures, and essential transactions of the agency. These records must 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. Further, the statutory definition of "records" in 44 U.S.C. 3301 is broad and includes:

> all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Government because of the informational value of the data in them.

The Code of Federal Regulations at 36 CFR Part 1220 sets out record keeping requirements for Federal agencies. Section 1220.10(b) states Federal agencies are responsible for establishing and maintaining a records management program that complies with National Archives and Records Administration and General Services Administration regulations and guidance.[22]

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[21] 44 U.S.C. §§ 3101- 3107

[22] http://www.gpo.gov/fdsys/pkg/CFR-2011-title36-vol3/pdf/CFR-2011-title36-vol3-sec1220-10.pdf

PBGC's Interim Guidance, Records Management Program[23] states that departments must establish and maintain a file plan and perform records management reviews. A file plan is a classification scheme describing: different types of files maintained in an office; how they are identified; where they should be stored; how they should be indexed for retrieval; and a reference to the approved records disposition schedule for each file.

PBGC's Records Management Officer performed a Records Management Assessment of PBGC as a whole, as required by NARA in April 2010. He recommended that each PBGC department develop a file plan, however PBGC had not effectively enforced the records management reviews required by NARA and CFRD was unable to provide a sufficient file plan. When CFRD provided us a logical data model in response to our request for a file plan, we found that agreements were not properly mapped to the responsible departments and key documents and process flows related to agreements were not included. PBGC subsequently provided us with another file plan. However, the subsequent file plan did not contain retention schedules, departmental designations were undefined, and processes related to the files were unclear.

PBGC did not have a comprehensive database for negotiated agreement data and at the time of our review, PBGC maintained files in various systems and locations such as:

- Network drive;
- TeamConnect;
- CFRD's High-Tech Actuarial & Financial Management Pension System (CHAMPS);
- Legal Edge for Windows (LEW);
- Excel Spreadsheets; and
- Hard copies in file cabinets.

In 2009, PBGC implemented TeamConnect, in part to address file inconsistencies. At the time of TeamConnect's rollout, the Corporation intended for the application to manage case documentation and workflow in line with proper enterprise architecture. Enterprise architecture establishes an Agency-wide road map to achieve an agency's mission through optimal performance of its core business processes within an efficient information technology environment.[24] PBGC expected to attain better coordination between CFRD and OCC with a common computer system. However, we found that TeamConnect reflects design faults, and an enterprise architecture which was not built to adequately support the monitoring, enforcement and modification of agreements. Upon requesting information, we observed PBGC personnel and conducted independent searches in TeamConnect, we determined information was not easily locatable. At the time of our review, we observed that employees did not use TeamConnect in a uniform and consistent manner and users still relied heavily on network drives; therefore critical data files were not being migrated into TeamConnect. As a result of TeamConnect's inadequate

[23] This document replaces Directive IM 15-1.

[24] http://www.gao.gov/assets/590/588407.pdf

design and inconsistent use, information in TeamConnect was not readily available when needed, and the integrity of information in TeamConnect may be compromised.

PBGC developed a handbook and CFRD management said employees were instructed on the use of TeamConnect. However, elements of the processes associated with monitoring, enforcing and modifying agreements were not well-defined; therefore, PBGC has recently implemented new controls to address the inconsistent usage of TeamConnect. CFRD employees previously stored a significant amount of agreement data on a shared network drive, and a number of files were duplicated, leading to data redundancy and increased cost. (See Appendix B). This inconsistent organization of files on the shared network drive then continued into the transition to TeamConnect.

We also observed that files which are uploaded into TeamConnect are inconsistently named, resulting in a burdensome task when trying to locate specific documents. For example, we found a memorandum used for payment verification in TeamConnect titled "RJ.pdf," an Actuarial Valuation Report (AVR) titled "rjrenolds.pdf," and a Form 5500 titled "R.J.pdf." These three documents were among numerous documents related to this plan; none of these names would assist in locating these particular documents. Without naming conventions and specific titles, documentation identification and retrieval is a daunting task, with considerable risk that relevant documents cannot readily be found. This makes management oversight significantly more difficult and can lead to decision making with incomplete information. Also, when staff changes ultimately occur, PBGC will not be able to obtain legacy information, unless employees develop a data dictionary or directory prior to departure.

OMB Circular A-130 requires agencies to incorporate records management and archival functions into the design, development, and implementation of information systems.[25] Although PBGC's design documents for TeamConnect reflect the technical aspects of the system, we did not see evidence that PBGC adequately defined and incorporated comprehensive business processes and records management for the negotiated funding agreements.

Recently, PBGC developed new procedures regarding the use of TeamConnect and assigned a staff member the responsibility of ensuring and verifying records are accurately maintained. PBGC focused on entering open agreement information into TeamConnect; older information from closed agreements, prior to 2008, may not be in TeamConnect. The Corporation's new controls are designed to address the inconsistent usage of TeamConnect going forward. These processes are steps in the right direction; however, they have not been in place long enough to adequately assess effectiveness.

TeamConnect's development did not consider and effectively implement records management requirements and enterprise architecture guidelines defined in OMB Circular A-130. As a result, TeamConnect was not used consistently and did not provide a reliable source of government

[25] OMB Circular A-130, Appendix IV para. 8a(1)(k), http://www.whitehouse.gov/omb/circulars_a130_a130trans4

records needed to support the negotiated funding agreements.

**Recommendation 5:** Ensure that TeamConnect procedures adequately incorporate federal guidance and PBGC policies and procedures for records management, so that staff consistently store, maintain and dispose of federal records.

**Recommendation 6:** Perform and document annual records management reviews in compliance with Federal standards and PBGC policy. Reassess the file plan to ensure all federal records have been identified.

### Finding 4: PBGC reporting of agreement information lacked transparency, standard procedures and coordination.

PBGC's communications regarding publicly reported negotiated agreement outcomes need improvement. Agreement information was distributed on what could be perceived as an ad-hoc basis. PBGC's reporting process was not transparent. This occurred because PBGC did not have coordinated and documented processes for publishing agreement information and notifying stakeholders. As a result, PBGC lacks transparency in the information it reports to the public.

As noted above, the Corporation consistently reports the face value of the agreements in its annual performance reports and budget submissions, without effectively tracking and analyzing agreements or reporting subsequent results. For example, in PBGC's FY 2012 annual report, the Corporation identified that it reached settlement in 27 4062(e) agreements valued at approximately $471million. These numbers alone are problematic, because they do not tell the whole story. Specifically, we would expect PBGC to track the amount of contributions to pension plans over time against the face value of the agreements, taking into consideration any modifications to the original agreement. Additional performance measures would then demonstrate subsequent comparison of the program's output and outcome in order to judge the program's effectiveness. Minimally, we would also expect PBGC to quantitatively gauge the impact of the program's outcome with an estimate of what would have happened in the absence of the agreement program.

In addition to reporting the initial dollar amounts as outcomes in statutorily-required reports; PBGC also issues press releases. PBGC announces large dollar protections it has negotiated with a plan sponsor soon after entering into an agreement, but prior to fulfillment. PBGC knows from past experience that the contributions may not fully materialize. The Corporation has made these announcements on an extemporized and informal basis and did not have associated policies or procedures directing officials when and how press releases should be issued for the agreements. Further, PBGC did not have a standard to issue a press release in the rare event the agreement is subsequently modified and the plan sponsor will be contributing less to the plan. For example, PBGC published a press release in which they announced an agreement for $39 million. However, PBGC did not similarly announce when the original agreement was modified and $15.25 million of the $39 million never materialized.  (See Plan Sponsor A in Figure 2)

When making press releases, PBGC targets two audiences: plan participants and the media.  The Corporation considers where a majority of participants in the plan live and runs ads in local newspapers, and also reaches out to the press through trade and investment publications.  CPAD evaluates the announcements based on how widely they are picked up and by what publications and/or media.  According to PBGC officials, for negotiated funding agreement press releases, CFRD and OCC collaborated informally on the language and CFRD provided the numbers.  Then CPAD would "craft" the announcements, CFRD/OCC reviewed it, and the Director provided final approval.  We note that, of the 12 plan sponsors in our sample, 10 plan sponsors had press releases totaling $2.67 billion.  Further, the number of press releases to announce the agreements increased four-fold from 2007 to 2012.  (See Appendix A)

PBGC has recently implemented, the "CPAD Coordination" process designed to ensure CPAD and CFRD communicate early on in the process of determining whether an agreement should be announced.  The CPAD Director stated that PBGC developed the coordination document as a result of this audit and because CPAD recognized that previous agreements were announced on an ad-hoc basis.  OIG commends CPAD's proactive approach.  We believe additional processes are needed, as it does not account for announcing the potential maximum dollar amount of initial contributions in the settlement and subsequent modifications.

PBGC does not report the actual outcome of the agreements, nor does the Corporation have standards to report if any of the agreements were subsequently modified.  Of our sample of 12 agreements, 11 were modified.  Agreement modifications varied, including monetary, notes, and stock.  PBGC management said that participants can go at any time to the U. S. Securities and Exchange Commission (SEC) filings of a particular plan sponsor to obtain the actual amount of pension plan contributions.  PBGC does not state in the press release that one should follow-up on the plan's compliance with the funding agreement through SEC filings.  Neither has PBGC developed instructions or guidance directing participants to SEC filings.  Additionally, when we tested some SEC filings, we found that SEC filings did not always contain up-to-date plan information.   This condition provides unreasonable expectations of participants when PBGC has, or should have the information in its possession in the event pension plan contributions are not materialized or agreements don't reach fulfillment.  PBGC's process lacks transparency.  As a result, PBGC lacks transparency in the information it reports to the public.

Transparency in Federal government operations is important to accountability.  OMB Circular No. A-130, *Management of Federal Information Resources*, states: agencies must make accessible sufficient information to ensure the management and accountability of agency programs.  Agencies have a responsibility to provide information to the public consistent with their missions, and agencies must discharge this responsibility by helping the public locate government information maintained by or for the agency.  Additionally, President Obama communicated to all agency heads that he was committed to creating an unprecedented level of openness in Government. In his memo, he stated:

> Transparency promotes accountability and provides information for citizens about what their Government is doing. Information maintained by the Federal Government is a national asset. My Administration will take appropriate action, consistent with law and policy, to disclose information rapidly in forms that the public can readily find and use.

To implement the President's direction, OMB developed *Guidance on Open Government and Transparency* (OMB M-10-096), which directs executive departments and agencies to take specific actions to implement the principles of transparency, because transparency promotes accountability by providing the public with information about what the Government is doing. PBGC is proactive in announcing initial negotiated funding agreement amounts, but is silent when those amounts are re-negotiated, contrary to transparent and open government required by OMB.

**Recommendation 7:** Ensure policies implemented incorporate guidelines to promote transparency for publicly reporting information regarding negotiated funding agreements, including criteria for when agreements, modifications and other relevant information will be included in press releases.

## Section B – PBGC's TeamConnect Application used to track the negotiated funding agreements does not have adequate access controls.

PBGC has recently completed a Security Authorization (SA)[26] (April 2013) for the TeamConnect application. At the start of our review, an SA was not in place and we brought this matter to PBGC's attention. We commend the agency for being proactive and addressing this important security control. However, we caution that TeamConnect's existing access controls were not configured or operating effectively and based on our review of the SA documentation, effective new controls have not been implemented. As a result, sensitive proprietary information entrusted to PBGC is at risk of being leaked, stolen or otherwise compromised.

### Finding 5: TeamConnect does not have adequate access controls.

PBGC did not limit access to TeamConnect on a need- to-know basis, with least privilege in mind. [27] This occurred because management of system security lacked oversight, control and

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[26] Certification is a comprehensive analysis of information technology systems' technical and non-technical security controls. Accreditation or "authorize processing" is the official management authorization for the operation of a system or application and is based on the certification process as well as other management considerations. http://csrc.nist.gov/groups/SMA/fasp/faqs.html

[27] The National Institute of Standards and Technology defines "need-to-know" as a method of isolating information resources based on a user's need to have access to that resource in order to perform their job but no more. The terms "need-to-know" and "least privilege" express the same idea, but need-to-know is generally applied to people, while least privilege is generally applied to processes.

ownership.  As a result, sensitive proprietary information entrusted to PBGC is at risk of being leaked, stolen, or otherwise comprised.

We learned that social security numbers and confidential business information within TeamConnect were not protected with least privilege controls.  We met with the system owner for TeamConnect who stated that all users could see everything (i.e., with "read-only" access) because access controls for TeamConnect were not yet fully implemented.  Additionally, the system owner was unaware of the full scope of sensitive information within TeamConnect. Subsequently, PBGC completed a TeamConnect Privacy Impact Assessment (PIA) whereby it believes all relevant privacy information is outlined.

Further analysis of the access control listing showed that PBGC employees and contractors from over a dozen different departments including CFRD, Benefits Administration & Payment Department (BAPD), Financial Operations Department (FOD), and Policy Research and Analysis Department (PRAD) had "normal access."  That is, normal users may add or update records in specified objects, but have no delete, tool access or security access rights.  We conducted application control testing with two users, an OCC attorney and a CFRD actuary. Both employees demonstrated they had privileges which exceeded read-only access and were able to upload documents into matters that were not assigned to them, thus superseding their need-to-know and least privileges.  Further, OIG was provided with guest privileges to TeamConnect for the purpose of reviewing agreement documentation, but this access was not restricted from uploading documents.  Regarding access privileges, NIST standards state that organizations should apply the concept of "least privilege," only allowing authorized access to a user that is necessary to accomplish assigned tasks in accordance with organizational missions and business functions.

When PBGC analyzes access privileges for TeamConnect, it may decide that persons in multiple departments require access to relevant documents.  But, such determination should be fully documented and limited on a need-to-know basis with established protections against unauthorized changes.

At the time of our review, PBGC's Information Assurance Handbook (IAH), Volume I, Section II was the applicable guidance; it stated PBGC must review user accounts every 30 days and match personnel files to user accounts daily to ensure individuals who no longer work at PBGC don't retain their access.  OMB Circular A-130, *Management of Federal Information*, states that agencies shall safeguard information with protection commensurate with the risk and magnitude of the harm that would result from the loss, misuse, or unauthorized access to or modification of such information.[28]  We reviewed the TeamConnect user access listing and found that two employees (including one contractor) who should have been removed from the application within 30 days were not removed timely.  The separated PBGC contractor retained an active

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[28] http://www.whitehouse.gov/omb/circulars_a130_a130trans4

TeamConnect account for 3 months after separation. A federal employee separated December 31, 2010, but PBGC did not ensure access was removed until April 25, 2011. PBGC has since implemented new security standards[29] and additional controls to review user access on a periodic basis.

Per OMB, agencies must safeguard sensitive information by limiting access to only those individuals who must have such access.[30] PBGC employees and contractors are responsible for all sensitive information obtained by them in the course of performing official duties, whether in electronic or hard copy format, and must treat such information in a manner that will prevent it from being accessed by or disclosed to a person or entity who is not authorized to receive it.[31] According to GAO standards, people are what make internal control work, and although the responsibility for good internal control rests with all managers, all personnel in the organization play an important role. Recent events such as the WikiLeaks and the NSA spy scandal[32] have brought to the forefront the importance of internal and access controls, especially for personnel with powerful account privileges. Without well-designed and implemented controls, PBGC sensitive data is at risk and PBGC cannot provide reasonable assurance that corporate sensitive data entrusted to PBGC is appropriately protected.

**Recommendation 8:** Establish roles within TeamConnect and limit access to the TeamConnect application on a need-to-know basis in accordance with NIST standards and PBGC security standards.

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[29] PBGC's Access Control Standard, STD-01-32, requires that information system owners identify authorized users of information systems and specify access privileges.

[30] OMB M-07-16, http://www.whitehouse.gov/sites/default/files/omb/memoranda/fy2007/m07-16.pdf

[31] PBGC Directive IM 10-3, Protecting Sensitive Information (4/23/08)

[32] http://www.gsnmagazine.com/node/22133

## Appendix A: Agreements Announced by PBGC by Calendar Year

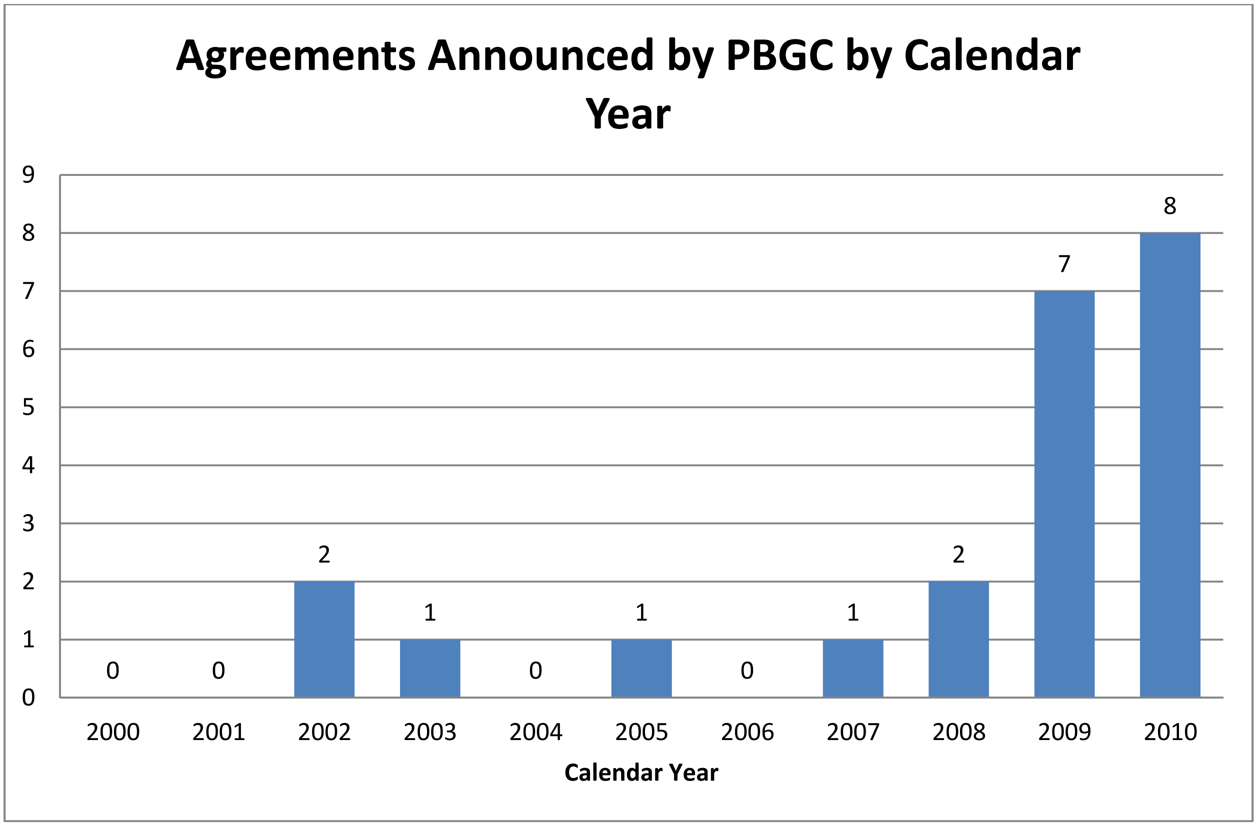


**Figure 3 – Increase in PBGC Announcements of Negotiated Funding Agreements**

## Appendix B: Number of Documents in TeamConnect by Plan Sponsor

| Plan sponsor | Number of Documents in TeamConnect |
|---|---|
| A | 4,801 |
| B | 9,234 |
| C | 50 |
| D | 168 |
| E | 0 (zero) |
| F | 6,027 |
| G | 7,416 |
| H | 37 |
| I | 114 |
| J | 74 |
| K | 501 |
| L | 66 |

**Figure 5 –Variances in TeamConnect documentation**

## Appendix C:  Amount of Protections Announced by PBGC

| Plan sponsor | Press Release | Amount Announced (in Millions) |
|---|---|---|
| A | Yes | $39 |
| B | Yes | $1,200* |
| B | Yes | $800* |
| C | Yes | $39.3 |
| D | No | |
| E | Yes | $17.70 |
| F | Yes | ---- |
| G | Yes | ---- |
| H | Yes | $153 |
| I | Yes | $400 |
| J | Yes | $17.5 |
| K | Yes | ---- |
| L | No | |
| Total | | $2,666.5 |

**Figure 6 – Amount of protections publicly announced by PBGC for the agreements in our sample**
***PBGC modified the agreement with Plan sponsor B two years later and made a second press release.**

## Appendix D: Comments from the Pension Benefit Guaranty Corporation

PBGC
Protecting America's Pensions

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

MAR 12 2014

**To:** Rashmi Bartlett, Assistant Inspector General for Audit
Office of Inspector General

**From:** Sanford Rich, Chief of Negotiations and Restructuring
Office of Negotiations and Restructuring

**Subject:** Response to OIG Draft Report, "Increased Oversight, Internal Controls and Performance Accountability Needed for PBGC's Negotiated Funding Agreements"

Thank you for the opportunity to comment on the Office of Inspector General's (OIG) report entitled "Increased Oversight, Internal Controls and Performance Accountability Needed for PBGC's Negotiated Funding Agreements", Project No. PA-11-80 (Report). We appreciate the OIG's early discussions of its initial findings with PBGC because it enabled us to focus our efforts on making improvements to the processes and internal controls affecting negotiated funding agreements. We agree with the eight recommendations and have provided details regarding our corrective actions and completion dates in the attachment to this memorandum.

Because this audit was started in 2011 and many of the recommendations have already been addressed by corrective actions, PBGC was disappointed that the Report is largely silent on the significant progress already made to improve these processes, even though we reported our progress to the OIG and provided copies of the new procedures and monitoring reports in the summer of 2013.

Lastly, PBGC disagrees with the statement on page 11 that ". . . increased risks are created for the Corporation . . . [i]f PBGC should decide to enforce an agreement because the analysis and decisions were not documented or were inadequately documented." Putting aside that this statement ignores PBGC's process improvements during the period of the report, an action to enforce a settlement agreement would not involve PBGC's analytic and decisional processes, but rather, the terms of the legal agreement the parties entered. We believe that the statement should be removed from the Report.

Attachment

cc: Deborah Stover-Springer, Acting Inspector General
Joshua Gotbaum, Director
Judith Starr, General Counsel
Patricia Kelly, Chief Financial Officer
Alice Maroni, Chief Management Officer
J. Jioni Palmer, Chief of Policy and External Affairs
Barry West, Chief Information Officer
Marty Boehm, Director, Corporate Controls and Review Department

Attachment

**Response to OIG Negotiated Funding Agreements Report**

**OIG Recommendation 1**: Define, establish and implement a consistently managed program with documented and assigned responsibilities for staff and managers, including key controls such as supervisory review and required standard documentation to ensure agreements are consistently monitored, enforced, and modified under uniform and equitable guidelines.

**PBGC Response:** We agree that this condition existed at the time the audit was initiated in 2011; however, we believe the condition no longer exists. We have implemented new procedures in 2013 that address this area. Procedures outlining roles and responsibilities as well as key controls and required standard documentation have been developed and implemented. Specifically, the new procedures contain the following:

- A centralized repository of negotiated funding agreements and all necessary data required for monitoring the agreement.
- Regular oversight meetings with management to review agreement monitoring, compliance, and possible enforcement actions.
- Identification of the standardized documentation required for each agreement.
- A compliance review upon the initiation of a settlement agreement to ensure that all required documentation has been completed and uploaded into TeamConnect (RMEW).
- Linking of agreement modifications to the original agreement.

**Completion Date**: March 2013 (completed)

**OIG Recommendation 2**: Train applicable staff in newly developed processes and TeamConnect (RMEW) required documentation and ensure periodic management review to ensure effectiveness of established internal controls.

**PBGC Response:** We agree that this condition existed at the time the audit was initiated in 2011; however, we believe the condition no longer exists. We have implemented new procedures in 2013 that address this area. CFRD and OCC staff has been trained on the processes and procedures related to their roles and responsibilities in documenting, executing, monitoring, enforcing, and modifying negotiated funding agreements. Improvements to TeamConnect (RMEW) and the designation of a specific staff member to oversee the monitoring of settlement requirements have strengthened internal controls over these processes. Regular review meetings have been established to ensure CFRD management oversight of settlement monitoring activities.

**Completion Date:** March 2013 (completed)

**OIG Recommendation 3**: Establish policies, procedures and controls which ensure that key decisions made in PBGC meetings are adequately recorded and periodically reviewed by management, according to federal records management regulations.

**PBGC Response**: We agree that this condition existed at the time the audit was initiated in 2011; however, we believe the condition no longer exists. We have implemented new procedures in 2013 that address this area. The procedures referenced above include the process and documentation requirements for key decisions as they relate to negotiated funding agreements.

**Completion Date**: March 2013 (completed)

**OIG Recommendation 4**: Establish performance measures which reflect the effectiveness of the program and reevaluate data from the negotiated funding agreements in order to determine differences between EWP and 4062(e) trends over time, to adequately track the amount of protections achieved through the agreements, amount of modifications, and to identify required documentation. Performance measures should meet federal performance standards, PBGC policy, and provide for transparent communication to key stakeholders and plan participants.

**PBGC Response**: Agree. PBGC is in the process of refining its performance measures to more accurately reflect the effectiveness of negotiated funding agreement monitoring, enforcement, and modification activities. In order to increase transparency of those activities, PBGC has posted the agreements on its website, along with enforcement program details and instructions for how to obtain more information.

**Estimated Completion Date**: September 2014

**OIG Recommendation 5**: Ensure that TeamConnect (RMEW) procedures adequately incorporate federal guidance and PBGC policies and procedures for records management, so that staff consistently store, maintain and dispose of federal records.

**PBGC Response:** We agree that this condition existed at the time the audit was initiated in 2011; however, we believe the condition no longer exists today. We have an updated file plan that is integrated with the document types and subtypes in TeamConnect (RMEW) that specifically relate to the monitoring, enforcement, and modification of agreements. ONR staff is required to take annual records management training and has been trained in ONR requirements for uploading records to TeamConnect (RMEW). Furthermore, upon execution of either new or modified settlement agreements after March 2013, a compliance review of the settlement agreement is performed to ensure that all required documentation has been completed and uploaded into TeamConnect (RMEW) to ensure successful compliance monitoring of the settlement agreement.

**Completion Date:** March 2013 (completed)

**OIG Recommendation 6**: Perform and document annual records management reviews in compliance with Federal standards and PBGC policy. Reassess the file plan to ensure all federal records have been identified.

**PBGC Response**: We agree that this condition existed at the time the audit was initiated in 2011; however, we believe the condition no longer exists. ONR has updated its file plan in 2012 and 2013 to ensure that all federal records have been identified. ONR will continue to conduct annual reviews going forward in accordance with the PBGC Records Management Procedures Manual.

**Completion Date**: April 2013 (completed)

**OIG Recommendation 7**: Ensure policies implemented incorporate guidelines to promote transparency for publicly reporting information regarding negotiated funding agreements, including criteria for when agreements, modifications and other relevant information will be included in press releases.

**PBGC Response**: Agree. In order to make negotiated funding agreement data more readily available, PBGC now posts a list of 4062(e) agreements on its website, along with details about the enforcement programs and instructions for how to get more information.

**Completion Date**: January 2014 (completed)

**OIG Recommendation 8**: Establish roles within TeamConnect (RMEW) and limit access to the TeamConnect (RMEW) application on a need-to-know basis in accordance with NIST standards.

**PBGC Response**: Agree. PBGC has established roles within TeamConnect (RMEW) and does limit access to the TeamConnect (RMEW) application in accordance with its interpretation of the NIST standards; however, this information is not clearly documented in the System Security Plan and there is an open Plan of Action and Milestones (POAM) item to track its progress. ONR plans to complete the additional documentation and justification required to support its application of the NIST standards.

**Estimated Completion Date**: September 2014

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Web:
http://oig.pbgc.gov/investigation/details.html

Or Write:
Pension Benefit Guaranty Corporation
Office of Inspector General
PO Box 34177
Washington, DC 20043-4177