



Pension Benefit Guaranty Corporation

Office of Inspector General

Final Audit Report

**PBGC's Incentives and Compensation Flexibilities Program
To Recruit and Retain a Qualified Workforce
Was Administered Inconsistently**

September 30, 2014

AUD- 2014-10/PA-12-86



Pension Benefit Guaranty Corporation

Office of Inspector General

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

September 30, 2014

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Subject: PBGC's Incentives and Compensation Flexibilities Program To Recruit and Retain a Qualified Workforce Was Administered Inconsistently (Aud-2014-10/PA-12-86)

I am pleased to transmit the final report PBGC's Incentives and Compensation Flexibilities Program To Recruit and Retain a Qualified Workforce Was Administered Inconsistently. OIG has worked diligently with PBGC to ensure the attached report gives appropriate credit to PBGC for its current efforts and accurately reflects the conditions we found during the scope of our audit. Throughout the course of fieldwork and the draft reporting process, OIG has provided PBGC with clear, fact-based, and actionable information for the Corporation to correct weaknesses within the Recruitment, Retention and Relocation (3Rs) program, as well as the student loan repayment program (SLR). We are pleased to report that PBGC has already taken action to correct a number of internal control weaknesses.

Despite PBGC's corrective actions and OIG's transparency from the initiation of the audit until final report issuance, the Corporation expressed general disagreement with the findings in this report. We strive to issue final reports in a timely manner, but are always mindful of audit standards and our internal quality control processes that require our work to undergo a rigorous examination of facts and a detailed supervisory review process. We provided PBGC multiple briefings and lengthy timeframes to respond to draft reports. After each briefing and correspondence, we considered each point presented by the Corporation. OIG exercised the time needed for our deliberative review process; generally, we discovered that the "new" information PBGC provided was not new but a repackaging of information we had already obtained and assessed during the course of our audit.

We carefully considered PBGC's responses to this draft report, including their general disagreement with the findings and recommendations. Despite multiple requests to the agency to submit specific information demonstrating how they implemented the new controls and evidence of their effectiveness, including most recently at the Exit Conference, PBGC once again provided a large binder of documents. This transmittal memorandum responds to certain issues PBGC raised and provides further clarification

so the Corporation can better understand and provide appropriate evidence of corrective actions to improve a key Human Resources Department (HRD) program.

The Role of the Office Inspector General and Transparency

PBGC's response to this report shows that it may not fully appreciate Federal OIG audit processes and standards. For example, PBGC takes issue with our audit scope description, asserting that OIG made five requests for additional documentation after March 2013 – this is a common practice as auditors are drafting reports and completing the referencing process. Also, the Corporation's response to this report focused on current conditions, rather than those existing during the audit scope. We expressed to PBGC on multiple occasions that an audit is always based on a point-in-time which is why standards require us to be explicit with respect to nature, timing and extent of testing – objective, scope and methodology; the time frame in this audit included all incentives that were paid or in effect from calendar year (CY) 2010 through CY 2012; we performed field work from December 2011 through March 2013.

One of the core functions of an OIG is the promotion of transparency. PBGC cites several issues as “stale” that OIG reported – the fact is the exceptions noted by PBGC represent accurate conditions that occurred during the scope of our audit. PBGC did award law clerks superior qualifications without complete information and required documentation. We discussed this issue with HR officials. Shortly thereafter, the Corporation took action to correct this internal control weakness, but during the scope of our audit this weakness existed. Importantly, our Government Audit Standards state that: “Audits provide essential accountability and transparency over government programs.” We are stating facts about the conditions we found in this case and throughout the report.

We also note that we gave PBGC credit for taking corrective action on this internal control weakness. PBGC stresses that we did not consider additional evidence they provided. This is simply not true, and we refer PBGC to the paragraph below on page 12 of the report:

“To PBGC's credit, during the course of our audit, on February 9, 2012, PBGC established a Memorandum of Understanding (MOU) and Standard of Procedure for the Use of Superior Qualifications Hiring Authority for Law Clerk Hiring. (See Appendix I). The agency no longer uses the previous MOU to hire law school graduates at the GS-11 grade level. The new MOU provides procedures for hiring law clerks at the GS-11 grade level and commensurate step based on the job candidate meeting two or more required criteria. The requesting official is now required to document each determination to use a Superior Qualifications authority in accordance with the Federal regulations. (5 CFR § 531.212(e)). HRD will review and approve Superior Qualifications, make the job offer, and maintain files pursuant to applicable Federal regulations criteria.”

We included no recommendation for this condition because we considered the evidence PBGC provided. However, we are required by audit and professional standards to be transparent and report on the conditions we find, even if PBGC has reported mitigation of said condition afterward.

PBGC takes exception to our reporting of a \$138,379 recruitment incentive that was awarded without any documentation. We determined that this incentive was in fact awarded contrary to PBGC and OPM policy. PBGC’s response addresses their justification for the award, an issue that is outside the scope of our audit. It is important to note that OIG did not opine (in any instance) on the rationale and justification surrounding any incentive. Rather we focused this audit on internal controls for the incentives and pay flexibilities programs, and documentation of and support for the monetary awards. Moreover, PBGC acknowledged this \$138,379 incentive had neither documentation nor support. Generally, effective documentation demonstrates a well-planned and executed business process; PBGC is aware of this, and yet still disagrees with this finding. We find PBGC’s position to be perplexing; it could appear to be an effort to discourage our transparency. The facts and circumstances of this incentive are accurate and warrant disclosure in our report. We remain steadfast in our reporting practices and reiterate that we are committed to communicating our findings and conclusions.

Clarification regarding number of employees that received SLR \$40,000 or above.

PBGC asserts that OIG’s count on the number of employees who received SLR above \$40,000 is incorrect. OIG determined the following: “We found that in 14 out of 21 instances (67%) employees received SLR benefits of \$40,000 or higher.” The chart below provides additional detail, the department and SLR Amount.

Number of SLR’s	Department	SLR Amount
Employee 1	Office of the Chief Counsel	\$40,000
Employee 2	Corporate Finance & Restructuring Department. Formerly referred to as Department of Insurance Supervision and Compliance (DISC)	\$45,000
Employee 3	Office of the Chief Counsel	\$40,000
Employee 4	Office of the General Counsel	\$40,000
Employee 5	Office of the General Counsel	\$40,000
Employee 6	Office of the Chief Counsel	\$40,000
Employee 7	Office of the Chief Counsel	\$60,000
Employee 8	Office of the Chief Counsel	\$40,000
Employee 9	Office of the Chief Counsel	\$40,000
Employee 10	Benefits Administration Payment Department	\$40,000

Employee 11	Office of the Chief Counsel	\$40,000
Employee 12	Office of the General Counsel	\$40,000
Employee 13	Office of the Chief Counsel	\$40,000
Employee 14	Communication and Public Affairs	\$40,000

A Two-part Mandatory Test Cannot Rest on “Implicit” Criteria within Agency Directive

PBGC objects to the finding that the agency must determine “the employee would be likely to leave Federal service in absence of the incentive.” PBGC based their objection on the assertion that this was “implicitly” included within other criteria. This is incorrect for several reasons. First, the regulation makes it clear that the criteria for awarding a retention incentive is a mandatory 2-part test: (1) unusual/unique qualifications of the employee or special needs of agency make it essential to retain the employee AND (2) the employee is likely to leave if the retention incentive is not awarded. The two criteria are different and must both be explicitly analyzed. Second, the “implicit” criteria PBGC cites – e.g., “the extent to which the employee’s departure would affect the agency’s ability to carry out an activity, perform a function, or complete a project the agency deems essential to the mission” – addresses the first part of the mandatory test: whether the employee is performing a mission-essential function. The fact that an employee’s contribution is mission-essential (test 1) does not mean that the employee is likely to leave Federal service (test 2). Finally, PBGC acknowledged in its response that they changed their policy in 2013 to require “a finding that one requirement for awarding a retention incentive be that the employee is likely to leave federal service, in accordance with OPM regulations.” This occurred very late in our audit process and evidence of its effective implementation was not provided.

PBGC Overly Reliant on OPM Evaluation, Despite Acknowledging Program Lapses

PBGC states that OPM evaluated PBGC’s incentive programs and superior qualifications in 2010 and 2012. OPM reviewed PBGC policies and procedures and evaluated records for a selected sample of personnel actions. PBGC asserts the Corporation is entitled to rely on OPM’s interpretation of its own regulation and policies when assessing PBGC’s compliance. Moreover, PBGC states:

“Specifically, in 2010 and 2012 the use of PBGC’s pay flexibilities (e.g. recruitment and relocation incentives and superior qualifications and special needs pay setting) were found to have proper documentation and justification for recruitment incentives, established policy on superior qualifications and special needs pay settings authority, and a satisfactory superior qualifications authority checklist used by HRD Staffing Specialists when assisting managers in making superior qualification determinations.”

We cannot opine on OPM's review methodology without access to its work and supporting documentation, but can affirm that audits conducted under Generally Accepted Government Auditing Standards (GAGAS) occur under a framework for conducting high quality audits with competence, integrity, objectivity, and independence. The Corporation could also not comment on the scope and methodology of the OPM review, but merely provide OPM results as evidence of "compliance." PBGC has acknowledged two instances of internal control weaknesses which occurred during OPM's scope periods: 1) a \$138,379 recruitment incentive without any supporting documentation and 2) the superior qualifications pay for nine law school graduates without documentation they met the criteria. Yet, OPM's reports were silent on both. These conditions raise questions about PBGC's heavy reliance on OPM's review and directly contradict the Corporation's tacit and concrete acknowledgement of the conditions found by OIG.

OPM's review, while valuable, should not stand alone when considering the internal control reality at PBGC. For its fifth consecutive year, PBGC has received an adverse opinion on internal control in the financial statement audit. Our performance audit work similarly has found lack of controls, weak controls, or non-operational controls throughout the agency. The remediation steps that the PBGC has taken in response to this audit show that it needed to address the general problem in internal controls for the operations of its compensation flexibilities and incentive programs.

OIG agreement with change to final report

We agree with PBGC's observations with respect to the 3Rs service agreements on page 14 of the draft report – 5 CFR § 575.314 applies to retention award service agreements for those employees who are likely to leave PBGC for other Federal service and there were no such awards; and the CFR does not require PBGC to include non-mandatory termination conditions in service agreements. Thus, we have removed those cited "discrepancies" from the final report.

We note however, that we issued a discussion draft report to PBGC on March 27, 2014, which contained these two issues. We held multiple discussions with PBGC officials, including a formal meeting on May 16, 2014, at which time PBGC produced a large binder of information they believed we had not considered. PBGC did not raise a challenge to our interpretation of the CFR provisions until September 5, 2014, when they formally responded to the draft report we issued more than five months prior. The purpose of issuing a discussion draft is to confirm our findings and have timely, substantive, discussions with management on issues and concerns; waiting until providing a written response to the final report is not useful for either OIG or the agency.

Closure of Two Recommendations

Based on documentation provided after the official draft report, we concur with closure of the recommendations below upon issuance of the final report.

Recommendation 1: In accordance with the CFR, when offering a recruitment incentive, obtain required and written approvals to support the determination to the pay the incentive.

Recommendation 6: In accordance with the CFR and OPM guidelines conduct annual review of those receiving 3Rs incentives, document and validate whether conditions continue to warrant the award and the employee meets all eligibility requirements.

cc:

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EXECUTIVE SUMMARY

The Pension Benefit Guaranty Corporation (PBGC) did not consistently apply incentives and compensation flexibilities¹ (flexibilities) related to recruitment and retention in compliance with the Code of Federal Regulations (CFR) and Office of Personnel Management (OPM) policies. This occurred because the programs did not have effective governance or adequate controls, including effective policies and procedures. As a result, student loan benefits and incentives were awarded with varying levels of documentation and support which resulted in mandatory criteria not being applied and justifications not being consistently and completely documented.

Lack of Documentation. PBGC awarded a large recruitment incentive without any documentation. At the direction of a former PBGC Director, in 2008, PBGC awarded a \$138,379 recruitment incentive without a written justification and a signed service agreement. The incentive is the highest recruitment incentive PBGC has paid since establishing the Recruitment, Relocation, and Retention (3Rs) Program in April 2005. PBGC policy requires a written recommendation and an authorization that includes a specific recruitment incentive amount and length of the service period. The failure to follow internal controls could lead to fraudulent activity.

Missing Mandatory Requirements. PBGC's policy omitted some mandatory requirements for 3Rs and Student Loan Repayment (SLR) incentives. Federal regulation requires an agency to establish criteria for paying a retention incentive and it must monitor the use of 3Rs incentives to ensure that its plan and the payment of incentives are consistent with Federal regulations and criteria. For example, one important requirement for awarding a retention incentive is that the agency determine the "unusually high or unique qualifications" of the employee or "special needs of the agency" for the employee's services makes it "essential" to retain the employee; and PBGC omitted that the employee would be likely to leave the Federal service in the absence of the retention incentive. In response to the feedback OIG provided during the course of the audit, PBGC issued a new 3Rs Directive in October 2013 which addressed a number of the missing elements that we identified during our work, including "likely to leave Federal service." The Directive is a first step in establishing adequate controls to ensure the 3Rs program is effective and operating in compliance with OPM standards and the CFR. We commend PBGC on being proactive.

Guidelines for Incentive Amounts and Service Agreements Inadequate. PBGC did not have adequate guidelines for determining 3Rs and SLR incentive amounts and length of 3Rs agreements. Before paying 3Rs and SLR incentives, an agency must establish a plan that includes requirements such as determining the amount of the incentive and length of service period. PBGC's new 3Rs Directive and recently developed draft SLR Directive provides additional guidelines for management when determining incentive amounts and length of service periods. We did not select a sample of new service agreements to determine if the new Directive is operating effectively; our scope period ended in calendar year 2012 and the new control

¹ PBGC uses compensation flexibilities (flexibilities) that allow payment of monetary benefits to employees or prospective employees, such as the Recruitment, Relocation, and Retention Program, Student Loan Repayment Program, and the Superior Qualifications and Special Needs Pay-Setting authority.

(PBGC's 3Rs Directive) had not been in place long enough to test its effectiveness (less than one year). We look forward to reviewing a sample of new service agreements through the recommendation completion process.

Superior Qualifications Undocumented. Under the Superior Qualifications authority, PBGC increased the base pay offered to nine law school graduates without sufficient documentation. At the time of our review PBGC did not provide written determinations, documentation evidencing a review and approval process and adequate support for PBGC's determination that the individuals met two or more of the criteria to justify the superior qualifications salary increase. PBGC implemented a new policy during our audit to require written analysis and documentation.

Continued Eligibility Unverified. PBGC did not have assurance that employees who received 3Rs and SLR incentives continued to meet the terms of their service agreements. This occurred because PBGC did not effectively monitor 3Rs incentives and SLR agreements. As a result, PBGC could not ensure that employees who received 3Rs and SLR remained eligible to receive the agreed-upon incentive. PBGC reported that a review of 3Rs awardees' records was completed in 2014; no exceptions were identified as a result of their review. We commend PBGC on initiating the review after we identified and reported this issue during our audit.

PBGC Correctly Calculated Retention Incentives. After completion of our fieldwork, we observed that PBGC interpreted OPM's regulation for the calculation of the maximum retention incentive amount (5 CFR § 575.309) differently than other Federal agencies. In evaluating PBGC's retention incentive calculation methodology, we reviewed a cabinet-level agency's retention policy and consulted the Interior Business Center (IBC), the federal shared services center that PBGC OIG uses for human resources. Both Federal agencies interpreted the CFR language "may not exceed 25% of an employee's basic pay" as establishing that 25% was the maximum retention incentive that could be paid, whether paid for one year or over several years. PBGC had a different understanding of the retention incentive regulation. It believed that an agency could pay the maximum retention incentive (25%) each year over a multiyear service agreement. We sought written clarification from OPM and found that PBGC correctly interpreted the calculation methodology. In its clarification letter, OPM stated it would take steps to ensure consistent interpretation across the Federal government.

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BACKGROUND AND OBJECTIVE

BACKGROUND

The Employee Retirement Income Security Act of 1974 (ERISA) created the Pension Benefit Guaranty Corporation (PBGC) to encourage the continuation and maintenance of voluntary private defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at the lowest level necessary to carry out the Corporation's obligations under ERISA. PBGC protects the retirement incomes of approximately 44 million American workers in more than 27,500 private-sector defined benefit pension plans. PBGC insures, subject to statutory limits, pension benefits of participants in covered private defined benefit pension plans in the United States. A defined benefit plan provides a specified monthly benefit at retirement, often based on a combination of salary and years of service. PBGC pays monthly retirement benefits, up to a guaranteed maximum to nearly 801,000 retirees in 4,200 single-employer and multiemployer pension plans that cannot pay promised benefits. PBGC is not funded by general tax revenues. To accomplish its mission under ERISA, PBGC relies on approximately 900 federal employees from wide-ranging fields of expertise, including accountants, actuaries, attorneys and information technology specialists, amongst others.

To assist in addressing human capital needs, PBGC uses incentives and compensation flexibilities (flexibilities) that allow payment of monetary benefits to employees or prospective employees, such as the Recruitment, Relocation, and Retention (3Rs) Program, Student Loan Repayment (SLR) Program, and the Superior Qualifications and Special Needs Pay-Setting (Superior Qualifications) authority. Based on a September 2013 National Academy of Public Administration (NAPA) report on PBGC's governance and pay structure, we expect usage may increase. NAPA found that PBGC's pay structure is substantially lower than financial regulatory agencies. In NAPA's report, PBGC explained the agency's heavy reliance on the types of financial and actuarial expertise that are similar to those in financial regulatory agencies. PBGC believes that employees are under-compensated relative to their counterparts in financial regulatory agencies. PBGC officials believe that this negatively affects the Corporation's ability to recruit the talent needed to retain a well-trained and experienced staff. The NAPA report specifically stated:

In the near-term, PBGC should address key work environment issues and use the agency's existing compensation flexibilities and incentives.

...compensation flexibilities and incentives have proven to be valuable tools to improve recruitment and retention. PBGC should take advantage of all available options to strengthen its ability to attract new candidates or retain current employees. In addition, as GAO pointed out in its 2008 report, PBGC would be able to make a better case for why it needs an alternative compensation structure after fully exploring all existing compensation flexibility and incentive options.²

² National Academy of Public Administration, The Governance Structure of the Pension Benefit Guaranty Corporation an Independent Review, September 2013.

The PBGC Human Resource Department (HRD) is responsible for managing and implementing flexibilities. During the scope of our review, PBGC had 136 flexibilities in effect.³ We reviewed a sample of 74 flexibilities.

Figure #1 – Sample of Incentives

Compensation Flexibilities Type	CY2010	CY2011	CY2012	Total
Recruitment, Relocation, and Retention (3Rs) Program	12	5	8	25
Student Loan Repayment (SLR) Program	10	7	4	21
Superior Qualifications Authority	16	7	5	28
TOTAL	38	19	17	74

Based on our sampled population, PBGC awarded \$2,032,701 in flexibilities.⁴

Figure #2 – PBGC Approved Compensation Flexibility Amounts

Compensation Flexibility Type	Total Approved Amounts*
Recruitment, Relocation, and Retention (3Rs) Program	\$643,015
Student Loan Repayment (SLR) Program	\$741,194
Superior Qualifications Authority	\$648,492 ⁵
TOTAL	\$2,032,701

*The aggregate dollar value is based on our samples as noted in Appendix A.

Figure #1 shows a sharp decrease in 3Rs flexibilities (incentives) during calendar years (CY) 2011 and 2012. In a June 10, 2011 memorandum, the Office of Personnel Management (OPM) required agencies to ensure that spending did not exceed CY2010 levels for 3Rs incentives in CY2011 and CY2012. The number of SLR benefits did not decrease.⁶ PBGC reported to OPM that it paid 38 SLR benefits in CY2011. Figure #1 shows a decrease because we accounted once for an employee and did not tally each year the employee received the SLR benefit. For example, an employee received a \$40,000 SLR benefit (\$10,000 each year) that commenced in CY2010 – we counted the SLR benefit in CY2010 only and not for subsequent CYs. PBGC management attributed the decrease in Superior Qualifications to a weakening economy, departmental budget constraints, and policy changes in offering superior qualifications. For

³ The total includes flexibilities in effect that were either paid during our audit scope or were ongoing incentives as a result of a 3Rs and SLR service agreement.

⁴ The aggregated incentive dollar amounts are incentives PBGC approved or were in effect during the audit scope.

⁵ The total superior qualifications “amount” is the difference in the amount between Step 1 and the Step the employee was hired.

⁶ The number of SLR incentives PBGC reports to OPM accounts for each SLR benefit paid and therefore the charted numbers and PBGC’s reported numbers are different, as a result of the methodology used to account for the number of SLR incentives.

additional information on 3Rs, Student Loan Repayment and Superior Qualifications criteria, see Appendix C.

PBGC provided evidence of an assessment completed by OPM's division of Merit System Accountability and Compliance. The most recent review conducted by OPM and issued in October 2012 covered the period October 1, 2010 through April 30, 2012. OPM focused on three implementation systems of the Human Capital Assessment and Accountability Framework (HCAAF):⁷ (1) Leadership and Knowledge Management, (2) Results-Oriented Performance Culture, and (3) Talent Management. Using this framework, OPM states it assessed PBGC's Human Capital initiatives and included a review of the delegated examining activities. In our audit of PBGC's administration of incentive awards, such as the 3Rs and SLR programs, we evaluated compliance with statutes, regulations, and OPM policies, and whether program controls are established and operating effectively. We conducted this audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), which is a more rigorous examination and analysis than OPM's review.

OBJECTIVE

Our objective was to assess whether the Pension Benefit Guaranty Corporation's (PBGC) administration of incentive awards related to recruiting and retaining a qualified workforce complies with statutes, regulations, and OPM policies and procedures and determine if PBGC's controls around these programs are in place and operating effectively.

We performed fieldwork for this audit from December 2011 through March 2013. After our fieldwork concluded we identified an issue regarding the calculation of retention incentives. We reached out to OPM in July 2014 to obtain clarification of its regulation. Additional information regarding our observation can be found on page 20 of this report.

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), July 2007. Those standards require that we plan and perform this audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

⁷ The Human Capital Assessment and Accountability Framework (HCAAF) identifies five human capital systems that together provide a consistent, comprehensive representation of human capital management for the Federal Government. The HCAAF fuses human capital management to the merit system principles—a cornerstone of the American civil service—and other civil service laws, rules, and regulations.

Finding 1 – PBGC Did Not Consistently Award Incentives and Pay Flexibilities in Compliance with Federal Regulations and Guidance.

PBGC issued incentives for recruitment and retention that did not comply with the Federal regulations and the Office of Personnel Management (OPM) policies. This occurred because PBGC did not have effective governance or adequate controls, including effective policies and procedures. As a result, PBGC awarded 3Rs and other incentives with inconsistent levels of documentation and support that each employee met the mandatory eligibility requirements and the terms of the service agreement. PBGC paid a recruitment incentive of more than \$138,000 without a written justification and service agreement in place.

PBGC awarded a large recruitment incentive without any documentation.

During the scope of our audit, PBGC awarded (or had in effect) 25 recruitment and retention incentives under the Recruitment, Relocation, and Retention (3Rs) Program totaling \$643,015 with service agreement periods ranging from one year to four years. Payment methods included initial lump-sum payments, installments, and a combination of the payment methods. According to Federal regulations, each determination to pay a recruitment incentive must have written documentation stating that the position is likely to be difficult to fill in the absence of a recruitment incentive; the reason for the incentive; basis for the amount and timing of the incentive payments; and the length of the service period. (5 CFR § 575.105(a)–(3)). Additionally, PBGC’s own policy requires the requesting and approving officials to sign and date the request. Despite these requirements, PBGC awarded a \$138,379 recruitment incentive to an employee without proper approvals and a signed service agreement. According to Federal regulations, “[b]efore receiving a recruitment incentive, an employee must sign a written agreement to complete a specified period of employment with the agency.”⁸ (5 CFR § 575.110(a)).

In 2008, PBGC’s former Director instructed the Human Resources Department (HRD) Director to issue a recruitment incentive in the amount of \$138,379. The incentive was not only unique in amount, but there was also no documentation to support this payment, as mandated by Federal regulations. (5 CFR § 575.108). The recruitment incentive was paid from September 28, 2008 through September 22, 2012. The failure to comply with internal controls and federal statutes illustrated a lack of governance within the 3Rs program. We found that:

- The position that gave rise to this recruitment incentive was new to the Corporation and was not considered as “difficult-to-fill” – an important requirement when awarding recruitment incentives. The Federal regulation requires an agency to consider certain factors in determining whether a position is likely to be “difficult-to-fill” in the absence of a recruitment incentive, such as competencies required for the position, employment trends, and salaries typically paid outside the Federal Government. (5 CFR § 575.106(b)-(8)).
- The former Director authorized an unprecedented amount; this recruitment incentive is the highest PBGC has paid since establishing the 3Rs program. There was no

⁸ Service agreements are addressed on pages 12 and 13.

documentation of how this amount was determined as required by Federal regulation and PBGC policy. (5 CFR § 575.108(3); PBGC 3Rs Policy/Plan dated May 31, 2005). (See Appendix D).

- The employee did not sign a service agreement.

According to Federal regulations, an employee is required to sign a service agreement to complete a specified period of employment with the agency. (5 CFR § 575.110(a)). Further, PBGC policy (dated May 2005) states that “no payment may be made until HRD has a written service agreement with the signature of the employee, the hiring official, and the approving official.”

A senior HRD official told us that HRD did not have a written justification for the determination to pay the \$138,379 recruitment incentive nor did the Corporation have a signed service agreement.⁹ Federal regulations require that before paying a recruitment incentive, an agency must document each determination in writing and designate an official to review and approve recruitment payments. The employee’s direct supervisor did not sign-off nor was the supervisor involved in recommending the incentive. PBGC policy did not give the PBGC Director or any PBGC employee the authority to award a recruitment incentive without written justification. Moreover, PBGC policy requires a written recommendation and an authorization that includes a specific recruitment incentive amount and length of the service period.

Circumvention of the agency’s internal control structure is an important issue that PBGC must address and avoid in the future. According to the Government Accountability Office (GAO), internal controls, such as policies and procedures, provide reasonable assurance that programs will meet their goals and objectives, adequately safeguard resources, assist in ensuring the agency obtains reliable data and ensure compliance with laws and regulations. (GAO *Standards for Internal Controls in the Federal Government*, Nov. 1999). The circumvention of internal control as demonstrated by this incentive could lead to fraudulent activity, if a single person within the Corporation is permitted to direct and award incentives while bypassing Federal oversight and accountability requirements.

PBGC’s policy omitted some mandatory requirements for 3Rs incentives.

According to Federal regulations, an agency may pay a retention incentive if the agency determines that the “unusually high or unique qualifications” of the employee or “special needs of the agency” for the employee’s services makes it “essential” to retain the employee; and that the employee would be likely to leave the Federal service in the absence of the retention incentive. (5 CFR § 575.301). At the time of our review, PBGC policy (dated May 2005) omitted “the employee would be likely to leave the Federal service” and a number of other criteria. PBGC issued a new 3Rs Directive in October 2013 which addressed missing elements identified during the scope of our audit work, including “likely to leave Federal service.” The Directive is a first step in establishing adequate controls to ensure the 3Rs program is effective and operating in compliance with OPM standards and the CFR. We commend PBGC on being proactive.

⁹ There was an unsigned service agreement in the file, and the incentive is being paid in a four year service period.

3Rs incentive amounts and lengths of service agreements lacked support to distinguish between incentives awarded.

Before paying incentives for 3Rs and SLR, an agency must establish a plan that includes: designations of authorizing officials, eligibility requirements, criteria for determining the amount of the incentive and length of service period (if not specified by regulation), requirements for service agreements, and required written documentation.¹⁰ In addition, the statute authorizing payment of these incentives mandates certain prerequisite determinations to assess whether an incentive should be authorized:

- recruitment and relocation incentives require determinations that the position that the candidate (or Federal employee incumbent) is applying to is "difficult to fill in the absence of an incentive" (5 CFR §§ 575.101, 575.201) and the regulations provide eight factors the agency must consider in making that determination. (5 CFR §§ 575.106(b), 575.206(b));
- retention and SLR each require a determination that the individual is "highly qualified" (5 CFR § 575.301; 5 CFR § 537.101); the retention incentive specifies a higher bar: the agency must determine that the "unusually high or unique qualifications (i.e., competencies) of an employee or a special need of the agency for the employee's services makes it essential to retain the employee..." (5 CFR § 575.301); and
- retention and SLR incentives require a determination that the employee is likely to leave Federal service if the incentive is not awarded (5 CFR § 575.315(a)(ii); 5 CFR § 537.105(2)(ii)). Regulations also specify that the employee must have a rating of record of at least "Fully Successful" or equivalent. (5 CFR § 575.315(b)(2); 5 CFR § 537.108(b)).

PBGC had not developed adequate written plans nor issued adequate guidance for managers and supervisors to follow. At the time of our review the guidance in effect was PBGC's 3Rs policy, dated May 31, 2005; this policy omitted some mandatory requirements such as establishing required documentation for determining that an employee would be likely to leave Federal service in the absence of the 3Rs incentive. During the scope of our work, PBGC also used Incentive Request and Determination Worksheets (worksheet) for each of the 3Rs. These documents were posted on the PBGC Intranet (See Appendix D). The 3Rs worksheet required the requesting official to "complete parts A, B, and C of this form," that consists of a proposed 3Rs incentive amount, frequency of the payment, and a service agreement period, along with written justification.

Our review of the worksheets showed that they did not accurately reflect or institute statutory and regulatory requirements. The worksheets did not provide requesting officials with any guidelines or instructions on how to assess these ranking factors. Based on our review of the 25 approved 3Rs incentives, we could not determine how any of the requesting officials determined the specific proposed incentive rate and length of service period, nor did we find any evidence to support the requester's ranking factor evaluations for the proposed rate. HRD officials could not

¹⁰ 5 CFR § 575.107; 5 CFR § 575.207; and 5 CFR § 575.307.

provide OIG with clear guidance and instructions on how 3Rs incentive amounts or length of service period were derived. In October 2013 PBGC issued new 3Rs worksheets which address whether the individual is “likely to leave federal service,” salaries paid outside the Federal government and other key factors to be considered before awarding a 3Rs incentive. The new worksheets along with the new 3Rs Directive are critical first steps in establishing a program with adequate controls. We did not sample additional incentives to test the effectiveness of the new worksheets; however, we recognize PBGC’s proactive approach in correcting a weakness within the 3Rs program.

Federal regulations require the agency to justify in writing proposed 3Rs incentive amounts.¹¹ These regulations also require an agency to monitor the use of their incentives to ensure its 3Rs plan and incentive payments are consistent with requirements and criteria, and that the incentive plan is applied uniformly across the agency.¹² We found a large variation in 3Rs incentive amounts and the lack of clarity in guidelines and detailed supporting documentation made it difficult for us to conclude that the incentives were appropriate and in compliance with regulations. For example, as noted above, PBGC awarded a \$138,379 recruitment incentive (100% of the employee salary) over a 4-year period without a signed service agreement, while awarding an \$8,000 recruitment incentive with a 3-year service period, and a \$20,000 recruitment incentive with a 2-year service period. Additionally, PBGC awarded a retention incentive of 21% of an individual’s salary with a 1-year service period, while awarding a 4 % (of salary) retention incentive with a 1-year service period, and a 10% (of salary) retention incentive with a 3-year service period. These differences in amount and length of the retention incentives may have been appropriate; however, PBGC did not require consistent written justifications and documentation to support them.

¹¹ 5 CFR § 575.108(a), (3); 5 CFR § 575.208(a)(i)(iii); and 5 CFR § 575.308(b), (2).

¹² 5 CFR §§ 575.112(a), 575.107(c); 5 CFR §§ 575.212(a), 575.207(c); 5 CFR §§ 575.312(a), 575.307(c).

For the incentives within our scope, PBGC awarded the following recruitment incentives to employees across various departments:

Figure #3 – PBGC Awarded Recruitment Incentives

Grade	Recruitment Incentive	Service Period	Payment Method
GS-11	\$7,928	1 year	Lump sum
GS-12	\$7,500	1 year	Lump sum
GS-13	\$8,000	3 years	Combination
GS-13	\$8,903	2 years	Lump sum
GS-13	\$8,903	2 years	Lump sum
GS-13	\$8,903	2 years	Lump sum
GS-14	\$5,000	2 years	Lump sum
GS-14	\$10,000	1 year	Biweekly Installments
GS-14	\$7,500	1 year	Lump sum
GS-14	\$10,000	1 year	Lump sum
GS-14	\$20,000	2 years	Combination
GS-15	\$12,375	1 year	Lump sum
GS-15	\$77,464	4 years	4 installments
SL	\$17,970	2 years	Lump sum
SL	\$74,866	4 years	Biweekly Installments
SL	\$138,379.28	4 years	Biweekly installments

For the incentives within our scope, PBGC awarded the following retention incentives within various departments:

Figure #4 – PBGC Awarded Retention Incentives

Grade	Retention Incentive (Percentage of Salary)	Service Period	Payment Method
GS-13	10%	3 years	Bi-weekly
GS-13	4%	1 year	Bi-weekly
GS-15	21%	1 year	Bi-weekly
GS-15	10%	1 year	Bi-weekly
GS-15	10%	2 years	Bi-weekly
GS-15	10%	2 years	Bi-weekly
GS-15	10%	3 years	Bi-weekly
SL	10%	1 year	Bi-weekly

PBGC has developed a new Directive and worksheets to increase controls and better document the rationale for incentive amounts and service periods. The new Directive provides the following guidelines:

Grade	Incentive Amount (Percent of Salary)	Service Period
GS-9 thru GS-11	1%-10%	1 year service agreement
GS-12 thru GS-14	11%-15%	18 months – 2 year service agreement
SG-15 thru SL	16%-25%	4 year service agreement

We did not test additional service agreements and supporting documentation to determine if the new control is effective, but we look forward to reviewing a sample of new agreements through the recommendation completion process.

SLR repayment amounts lacked support to distinguish between benefits awarded.

The SLR program did not have established written requirements for determining proposed incentive amounts. During our three-year scope period, PBGC approved SLR benefits totaling \$741,194 to 21 employees. PBGC did not provide adequate documentation to support the proposed SLR benefits for 15 of the 21 employees which totaled \$485,194. The SLR Program Directive No. PM-25-04, April 6, 2006 (2006 SLR Directive) established policy and implementation for the SLR Program for all PBGC employees, which included a SLR Determination Worksheet. (Appendix E). On the Worksheet the requesting official answered questions and made a determination for each factor to establish a proposed SLR amount; the requesting official used ranking categories, such as: “good,” “limited,” or “poor.” HRD personnel then assigned a numeric ranking for each factor and tallied a total ranking number. The ranking numbers corresponded to a repayment range. The requesting official would then use the ranking information to determine the amount of the SLR benefit; and after departmental approvals, the worksheet was sent to HRD for final approval.

On February 1, 2011, PBGC implemented SLR Directive No. PM-25-4 NBU (2011 SLR Directive) that established policy for the SLR program for non-bargaining unit employees. The 2006 SLR Directive remained in effect for bargaining unit employees. The 2011 SLR Directive discontinued the practice of using the SLR Determination Worksheet form and Factor Ranking, and Repayment Amount Determination Guide. (See Appendix F). In the 2011 SLR Directive, the requesting official was given increased deference in determining the amount of the SLR benefit. The 2011 Directive also led to changes in the application process for both bargaining and non-bargaining unit employees. PBGC implemented a Student Loan Repayment Request and Approval Benefits Application (Application) to answer questions regarding the SLR amount and outstanding loan balance. The requesting official completes the Application along with a written justification and obtains departmental approval prior to submitting the application to HRD for approval. There are no instructions or guidance provided to the requesting official to determine a proposed SLR amount. (See Appendix G). We found that in 14 out of 21 instances (67%) employees received SLR benefits of \$40,000 or higher. PBGC HRD officials and members of PBGC management could not provide OIG with clear guidance and instructions on how SLR amounts were derived. During our review, we noted that the majority of Federal employees receive \$40,000 - or the maximum allowed of \$10,000 per year over four years. We were told by key PBGC personnel that an employee will receive SLR benefits based simply on submitting an approved application.

OIG met with one senior official who approved 3 SLR benefits; the department accounts for 14% of SLR benefits. The manager told us SLR benefits are awarded based on personal knowledge of an employee's finances. The manager explained the decision to offer or approve a SLR benefit is based on the employee's family wealth and perceived ability to repay the loan. Knowledge of the employees' financial situations is known, in part, as a result of employees talking about their loan debt in casual conversations. Anecdotal "evidence" of personal circumstances does not meet Federal requirements and would be insufficient to support a SLR benefit, even if considered in conjunction with the financial disclosures that employees are required to complete.

Federal regulations require that before an agency can pay a SLR incentive, it must establish: the criteria for authorizing SLR benefits which includes the amount and timing of the loan payments (5 CFR 537.103(c)); and a system for selecting employees (or candidates) to receive SLR benefits that ensures fairness and equitable treatment. (5 CFR § 537.103(d)). During our audit, a HRD official expressed concern that the 2011 SLR Directive (non-bargaining unit) made HRD's role in determining SLR benefits more administrative – simply ensuring the completeness of paperwork. The official also expressed concern about the absence of guidelines in determining SLR benefits. The lack of internal control and appropriate governance in awarding SLR benefits has resulted in a program that did not fully comply with the intention of the CFR.

Under the two SLR Directives, the HRD Director was provided different dollar threshold authorities. The April 2006 SLR Directive for a bargaining unit employee stated that the HRD Director can approve a SLR incentive up to \$20,000, while the 2011 SLR Directive for non-bargaining unit employees gave the HRD Director approval authority up to \$40,000. Prior to PBGC establishing the 2011 Directive (for non-bargaining unit employees), the 2006 Directive applied to bargaining and non-bargaining unit employees. We found that dating back to

CY2007, HRD directors approved 14 SLR applications for bargaining unit employees beyond their approval authority. These totaled \$574,493 of student loan repayments, of which \$294,493 exceeded the HR Directors' maximum approval authority. We were told that having two SLR Directives with different approval thresholds created the confusion in authorizing SLR benefits which resulted in amounts above approval rights being granted.

To PBGC's credit, the Corporation developed a new Directive (still in draft) for SLR. Upon issuance, this Directive will replace the directives noted above PM 25-4 (bargaining unit) and PM 25-5 (non-bargaining unit). PBGC has again demonstrated a willingness to correct a control deficiency. We cannot opine on the effectiveness of the draft Directive because it is not in place. However, the draft does include new worksheets to assess eligibility and better aligns with the CFR and OPM policies. Once the draft Directive is finalized and issued, we look forward to testing the Directive's effectiveness through the recommendation completion process.

PBGC Superior Qualifications were awarded without complete information and required documentation.

Federal regulations state an agency is permitted to use the Superior Qualifications incentive to pay a candidate above the Step 1 salary when a candidate is newly appointed to Federal Service and the candidate possesses superior qualifications or fills a special agency need (5 CFR § 531.212(b)). The rate of pay is determined by such factors as the candidate's superior qualifications, existing salary, labor market conditions, and other related factors (5 CFR § 531.212(c)). The CFR requires "each determination must be made in writing and reviewed and approved by an official of the agency who is at least one level higher than the employee's supervisor." (5 CFR § 531.212 (e)). OPM and PBGC have also issued additional guidance with respect to Superior Qualifications authority.

The CFR also requires an agency to document each determination for Superior Qualifications and include the superior qualifications of the individual, an explanation of the factors used to support the higher rate along with supporting documentation, and the reason for authorizing the superior qualifications incentive instead of a recruitment incentive. (5 CFR § 531.212(e)(2)(i) – (iii)). OPM requires "before using the Superior Qualifications authority, agencies must establish ... recordkeeping procedures sufficient to allow reconstruction of the action taken in each case... the explanation of the factor(s) and supporting documentation used to justify the rate... and the reason for authorizing a higher than minimum rate instead of or in addition to a recruitment incentive." (5 CFR § 531.212).

Under the Superior Qualifications authority, PBGC increased the base pay offered to nine law school graduates without sufficient documentation, totaling \$168,633. The employees were hired pursuant to a December 8, 2000 HRD memorandum (see Appendix H) that approved the hiring of law school graduates at the GS-11, Step 10 salary rate as long as two or more criteria were met:

- Top one Third of Graduating Law School Class;
- Outstanding Undergraduate Record;
- Graduate Degree in Area Relevant to Pension Issues;

- Judicial Clerkship;
- Law Review Membership;
- Participation in Clinical Programs, Advance Moot Court, etc.;
- Professional Work in Corporate Bankruptcy;
- Significant Legal Work While Attending Law School; or
- Legal Experience Involving Pension law.

At the time of our review PBGC did not provide written determinations, documentation evidencing a review and approval process. Overall, PBGC provided inadequate support for each of the nine law school graduates within our sample. A manager in the legal department told us that if PBGC was not able to use the authority to hire at the GS-11, Step 10 salary cited in the HRD memo, it would be impossible to hire quality attorneys.

To PBGC's credit, during the course of our audit, on February 9, 2012, PBGC established a Memorandum of Understanding (MOU) and Standard of Procedure for the Use of Superior Qualifications Hiring Authority for Law Clerk Hiring. (See Appendix I). The agency no longer uses the previous MOU to hire law school graduates at the GS-11 grade level. The new MOU provides procedures for hiring law clerks at the GS-11 grade level and commensurate step based on the job candidate meeting two or more required criteria. The requesting official is now required to document each determination to use a Superior Qualifications authority in accordance with the Federal regulations. (5 CFR § 531.212(e)). HRD will review and approve Superior Qualifications, make the job offer, and maintain files pursuant to applicable Federal regulations criteria.

RECOMMENDATIONS:

1. In accordance with the CFR, when offering a recruitment incentive, obtain required documentation and written approvals to support the determination to pay the incentive (OIG Control Number HRD-16).

PBGC Response:

PBGC has established controls and obtains required documentation and approvals prior to issuance of recruitment incentives as outlined in the determination worksheet, Attachment A of the 3R's Directive and all applicable regulations. In an ongoing effort to improve our programs, we have revised and updated our tools and processes. The fact that there has been no similar re-occurrence of the incident from six years ago should validate that the proper controls are in place, and that the one instance is not a representative sample.

OIG Evaluation:

This recommendation will be closed upon report issuance.

2. In accordance with the CFR and OPM policy, establish written requirements for determining proposed incentive rates for SLR benefits (OIG Control Number HRD-17).

PBGC Response:

PBGC is in compliance with both the CFR and OPM policy. Notably, there is no regulatory requirement for an agency to establish requirements for determining proposed SLRP amounts. However, to support best practices, moving forward the draft SLRP Directive provides guidance for supervisors to consider when determining incentive amounts.

OIG Evaluation:

OIG disagrees with PBGC's response and position on this recommendation. The Code of Federal Regulations 5 CFR 537.103 states (note section c):

Before providing student loan repayment benefits under this part, an agency must establish a student loan repayment plan. This plan must include the following elements:

(a) The designation of officials with authority to review and approve offering student loan repayment benefits (which may parallel the approval delegations used for other recruitment, relocation, and retention incentives);

(b) The situations in which the student loan repayment authority may be used;

(c) The criteria to meet or consider in authorizing student loan repayment benefits, including criteria for determining the size and timing of the loan payment(s);
(emphasis supplied)

Throughout the course of this audit and based on our review of Student Loan Repayment (SLR) documentation, it was apparent that PBGC employees typically received \$40,000 in student loan repayments. No written analysis to determine the SLR amount was produced for any of the SLR awards. Agency officials could not provide a rationale as to why employees received the flat rate of \$40,000 -- other than that the maximum PBGC can award annually is \$10,000 and service agreements are typically for 4 years, hence, the \$40,000 SLR. PBGC awarded the maximum amount to the majority of employees that applied for the program, without any justification as to why the maximum amount was awarded rather than a lesser amount. We viewed and continue to view this as an internal control issue. PBGC's response acknowledges the issue: "However, to support best practices, moving forward the draft SLR Directive provides guidance for

supervisors to consider when determining incentive amounts.” We took exception that guidance was not being provided to supervisors and the fact that the vast majority of participants received the maximum annual \$10,000 without any documented support as to why the individual received the maximum. PBGC appears to agree, that providing guidance to supervisors is an important step in determining incentive amounts. Moreover, our reading of the CFR supports that PBGC should have had this control in place during the scope of our audit and PBGC seems to acknowledge this weakness; hence, the establishment of new criteria within the draft SLR Directive that has not yet been issued and implemented.

3. Periodically provide information to PBGC managers on 3Rs incentives and SLR including the procedures for nomination, writing justifications, and required supporting documentation (OIG Control Number HRD-18).

PBGC Response:

HRD already provides guidance and information to managers:

- *Managers/supervisor informational sessions on 3R 's on a recurring and requested basis, outlined in the HRD ala carte training menu*
- *3R 's manager/supervisor presentations (lunch and learn session)*
- *3R 's manager/supervisor fact sheets*
- *3R 'sand SLRP one-on-one consultations as requested by the manager/supervisor*
- *Advertisement of SLRP via Captiva informational screens*
- *SLRP informational emails (Corporate-wide)*

OIG Evaluation:

PBGC cites several ways it provides “training” to managers; however, this is testimonial evidence. During the audit and the lengthy draft report process, PBGC did not provide any evidence that these control have been executed and are operating effectively. In addition, though this “training” may be available it is not mandatory, so there is no assurance that those offering the incentives are knowledgeable of the requirements. This was born out in our audit. Although PBGC may offer guidance to managers, the current program was ineffective based on OIG’s testing of 3Rs and SLR. We noted that for the both 3Rs and SLR programs no PBGC official could explain the rationale for amounts that were awarded. OIG recognizes that a cookie-cutter approach is not required when awarding incentives; however, providing guidance and instructions to managers is a key control for an effective 3Rs and SLR program. PBGC appears to agree with OIG, as the new 3Rs Directive and the SLR draft Directive both include

guidelines for managers to follow when awarding incentives. Given that PBGC has just recently made this change as a result of OIG pointing out weaknesses within the 3Rs and SLR programs, this recommendation is designed to ensure PBGC managers responsible for nominating employees receive the proper training and guidance on the new Directives. The previous process PBGC had in place resulted in incentives that perhaps justifiable could not be explained or traced to any agency criteria or standards.

Finding 2 – Written Service Agreements Were Inconsistent and Often Lacked Required Information.

Written service agreements for the 3Rs and SLR incentives did not consistently contain required clauses as prescribed by the Federal regulations.¹³ This occurred because PBGC has not implemented a disciplined process for granting and approving 3Rs and SLR incentives. As a result, PBGC may not be able to enforce key provisions required by the Federal regulations, and PBGC could have more difficulty rebuking claims of inequitable treatment.

Written SLR service agreements were inconsistent with evidence supporting different treatment.

Statutes and regulations require written service agreements for virtually all 3Rs and SLR incentives.¹⁴ A service agreement is an agreement between the agency and the employee specifying that the employee will complete a period of employment with the agency in return for the payment of an incentive. The service agreement bounds the parties to the terms and conditions set out in the agreement; an executed agreement creates a legal obligation between the parties. Each service agreement should have some common terms and conditions, such as the obligation to remain employed for the duration of the service period and consequences for not completing the service agreement period. The service agreements should also include conditions applicable to that specific incentive, such as maintaining an acceptable performance rating. Once signed, the parties are obligated to the terms and conditions in the agreement and are expected to abide by those terms.

The one exception to the written service agreement requirement is for a retention incentive that is paid bi-weekly in equal installments. Federal regulations state that a written agreement is not required (5 CFR § 575.310(f)-(2)) in that circumstance. Though the regulation did not provide a rationale for this exception, when the retention incentive is paid bi-weekly, the employee "earns" the incentive while he/she is working during the agreed-to service period. Accordingly, if the incentive is terminated, the employee has not incurred a liability which must be repaid.

Upon our review of SLR service agreements for 21 employees, we found discrepancies among the agreements and no documentation to support the differences:

¹³ 5 CFR § 575.110; 5 CFR § 575.210; 5 CFR § 575.310; and 5 CFR § 537.107.

¹⁴ 5 CFR § 575.110; 5 CFR § 575.210; 5 CFR § 575.310; and 5 CFR § 537.107.

- In six SLR service agreements totaling \$215,000, PBGC required the employees to reimburse the agency if they separated from PBGC to work for another agency;
- In 13 service agreements, PBGC did not require the employee to reimburse the agency if they separated from PBGC to work for another agency; and
- In the remaining two service agreements, PBGC only required the employee to reimburse the agency if they separated from Federal service.

Federal regulations do not require the employee to reimburse the agency unless it is specified in the service agreement.

PBGC approvals and oversight focused on administrative processing, not adequate documentation.

3Rs and SLR statutes provide that the “head of the agency” is involved in awarding incentives. For example, the statutes authorizing the 3Rs states that OPM “may authorize the head of the agency to pay” the particular incentive “only if” the specific enumerated requirements are met. The SLR incentives statute states “an agency may, establish a program...[for] the agency to repay...any student loan.” The regulation defines an authorized agency official as the head of the agency or an official who is authorized to act for the head of the agency.¹⁵ Thus, the authorizing official is in the key role of carrying out a statutory requirement on behalf of the agency head when he/she is “determining” whether the incentive may legally be made.

During the scope of our work, the PBGC policy for the 3Rs program and the Guidance and Determination Worksheets specified levels of review and approval. First, the 3Rs Program Manager in HRD certified that the request package met “regulatory and/or agency guidelines.” For each incentive that is 10% or less, the HR Director signed as approving or disapproving the incentive; above 10%, the PBGC Director approved or disapproved.

For the SLR program, the following HRD approval process is set forth in the SLR Directive for non-bargaining unit employees:

HRD SLR Program Manager –

- Reviews SLR application for compliance with PBGC policy that requesting official provided all required documentation;
- Determines eligibility based on such factors as an acceptable performance rating; and no disciplinary actions; and
- Verifies loan type, loan balance, and whether the loan is in good standing.

HRD Director –

- Approves the SLR application;
- Notifies the employee; and

¹⁵ 5 USCA § 5753 (3)(b)-(II); 5 USCA § 5754 (3)(b)-(B); 5 USCA§ 5379 (b)(1)-(B); 5 CFR § 575.102; 5 CFR § 575.202; 5 CFR § 575.302; 5 CFR § 537.101; 5 CFR § 537.102.

- Authorizes the SLR payment.

An HRD official informed us that signing-off only indicated that paper work is in order. The determination about who received benefits and the amount paid was made at the program level. In our opinion, ensuring paperwork was adequately processed failed to meet the intent of the statute to act for the head of the agency as the authorizing official to review and approve each written determination to pay a SLR benefit (5 CFR §§ 537.102, 106(3)). As result of HRD's role being viewed and carried out as mostly administrative, 3Rs and SLR benefits were inconsistently awarded with key provisions missing from service agreements. Furthermore, it does not appear that HRD's administrative focus was effective if their documentation review did not catch these lapses.

RECOMMENDATIONS:

4. Improve controls to align SLR and 3Rs service agreements more closely to the CFR and OPM policies, by applying consistent contract language and provisions for similar types of agreements (OIG Control Number HRD-19).

PBGC Response:

With the exception of three service agreements noted above, the agreements for both programs are consistent in language and contain all the required regulatory provisions for each program as outlined in the CFR and OPM policy. While language varied depending on the iteration, the service agreement language used was adequate and in compliance with regulations.

OIG Evaluation:

OIG observed in this report that similar service agreements contained different provisions; such as the conditions under which an employee would have to reimburse upon separation from PBGC. We agree it is PBGC's prerogative to include different provisions under similar agreements. The agency does have the authority to require one employee to reimburse if they separate before a service period and not require reimbursement from another employee. Because there was no documented justification and no one could explain the variance in provisions, we cannot conclude this was a strategic decision based on each employee's circumstances but rather a demonstrated lack of control and oversight within the respective programs. This observation is based on our assessment of the control environment within the 3Rs and SLR programs. Moreover, these variances, if ever challenged could present the Corporation with an issue of fairness and disparate treatment. An employee could question why they would have to reimburse under their agreement while another employee under a similar agreement is not required to reimburse the Corporation. Again, OIG disagrees with PBGC's position on this recommendation and believes the agency should

ensure similar agreements for comparable classes of employees share consistent language, particularly as it relates to reimbursement clauses.

5. Implement controls to make HRD's review and approval process for 3Rs and SLR incentives more substantive (OIG Control Number HRD-20).

PBGC Response:

The current review and approval process is quite substantive.

HRD's SOP has these controls, and management provided the SOP to the OIG.

As a best practice, the draft SLRP Directive outlines a new approval process which clearly defines the approval authority for funding thresholds (see Section 8, b(J)).

OIG Evaluation:

This recommendation requires PBGC to “implement controls;” it is not enough to issue a directive or guidance. Implementation includes communication of and training on the controls to those who are impacted or must comply. Furthermore, the agency must provide ongoing monitoring of these controls to demonstrate effectiveness. OIG's review of sampled documentation and discussions with PBGC officials strongly support the implementation of this recommendation. The HRD Director told OIG that HR officials, particularly for the SLR program, are “paper pushers” and only sign-off to ensure paper work is in order. This statement along with other conversations with HR personnel, combined with OIG's review of SLR and 3Rs agreements, has led us to conclude that HRD's role was not substantive. We noted that the majority of SLR recipients receive the maximum \$10,000 annually without a documented justification; this observation is consistent with a program whereby HRD's role was administrative. Moreover, during the course of our audit, we observed no evidence that HRD provided guidance to managers on 3Rs amounts or lengths of service agreements. Individual managers made that determination, with HRD's role again being more administrative and ensuring paper work was in order and a documented justification was included (except in the case of the \$138,379 recruitment incentive, the highest in PBGC's history). We believe that HRD providing a more substantive role within the 3Rs and SLR program could add value and provide additional controls to ensure incentives are warranted and justified.

Finding 3 – PBGC Did Not Have Assurance that Employees Receiving 3Rs and SLR Incentives Remained Eligible.

PBGC did not have assurance that employees who received 3Rs and SLR incentives continued to meet the terms of their service agreements. This occurred because PBGC did not effectively monitor 3Rs incentives and SLR agreements. As a result, PBGC could not ensure that employees who received 3Rs and SLR remained eligible to receive the agreed-upon incentive.

For each of the 3Rs incentives, the Federal regulations require the agency "must terminate" the incentives when the required performance rating is not met, the employee is demoted or separated for cause, or otherwise fails to meet service agreement requirements. The agency "may unilaterally terminate" an incentive based solely on management needs. Though Federal regulations state that a service agreement is not required for retention incentives that are paid bi-weekly, an agency must still review each determination to pay a retention incentive that extends more than one-year at least annually to determine whether payment is still warranted. Such a determination would not only include compliance with agreement requirements, but also whether the conditions still existed to require the employee's continued service. The regulation requires the determination to be "certified" in writing. (5 CFR § 575.311(f)(1)).

PBGC awarded eight retention incentives totaling \$214,324 with various continued eligibility requirements – such as maintaining an acceptable performance rating and remaining employed during the service agreement period. Of the eight retention incentives, three retention incentives totaling \$95,861 with service agreement periods over one year required an annual review and were not reviewed.

An HRD employee told us that PBGC did not monitor 3Rs incentives to determine whether 1) the employees continue to meet the terms and conditions of the service agreements, and 2) the incentives continue to warrant payment. An HRD official initially told us that the employee's supervisor should monitor and ensure compliance with the terms and conditions of the service agreement. We were later told it is a shared responsibility between HRD and the employee's supervisor. As suggested by the inconsistencies noted above, PBGC did not clearly define roles and responsibilities for monitoring 3Rs service agreements. PBGC's October 2013 3Rs Directive clarifies that the Recruitment, Relocation and Retention Program Manager is responsible for monitoring. PBGC reported that a review of 3Rs awardees records was completed in 2014 and no exceptions were identified as a result. We commend PBGC on initiating the review after we identified and reported this issue during our audit. A onetime review is the first step and we look forward to receiving additional evidence that this control is effectively operating to ensure employee eligibility and PBGC compliance with the CFR.

Unlike the 3Rs program, we found that HRD performs an annual re-certification for SLR benefits that consists of verifying the employee's performance rating, ensuring there has been no disciplinary action and the outstanding loan is in good standing. However, the rating designation in the service agreement was not aligned with PBGC's performance rating levels. Therefore, it was not clear if an employee continued to meet the terms and conditions of the agreement.

The service agreements state that during the service agreement period the employee must maintain at least an "Excellent" performance rating or any pending or future loan payments must be terminated immediately. However, the PBGC performance rating system did not have a classification of "Excellent;" employees can receive the following ratings:

- 5 = Outstanding;
- 4 = Exceeds Expectations;
- 3 = Meets Expectations;
- 2 = Below Expectations; or
- 1 = Unsatisfactory.

An employee received SLR benefits and had a rating of level 3, "Meets Expectations." An "Excellent" rating would seem to correlate to a rating above level 3, "Meets Expectations" – likely, level 4, "Exceeds Expectations." According to the Federal regulations, an employee must maintain an acceptable level of performance that is equivalent to level 3 ("Fully Successful" or equivalent) or higher to remain eligible to receive SLR benefits. (5 CFR § 537.108(b)). PBGC's Intranet and Directive state an applicant must have a level 4, "Excellent" or higher performance rating to be eligible for SLR benefits. The language in the service agreements was not aligned with PBGC's performance ratings, but it did specify "level 4" is required to retain the SLR incentive. Thus, it appears the employee who received a "level 3" rating should not have remained eligible to receive SLR benefits. PBGC provided documentation of annual reviews for SLR; however, the reviews were not fully effective because the guidance used for assessing an employee's eligibility was misaligned. PBGC provided support that performance appraisals and the SLR draft Directive are now aligned.

RECOMMENDATION:

6. In accordance with the CFR and OPM guidelines, conduct annual reviews of those receiving 3Rs incentives, document and validate whether conditions continue to warrant the award and the employee meets all eligibility requirements (OIG Control Number HRD-21).

PBGC Response:

HRD has incorporated and implemented an annual review process outlined in the current SOP for the 3R's Program. The SOP has been provided to the OIG.

OIG Evaluation:

This recommendation will be closed upon report issuance.

PBGC Correctly Calculated Retention Incentives

After completion of our fieldwork, we observed that PBGC interpreted OPM's regulation for the calculation of the maximum retention incentive amount (5 CFR § 575.309) differently than other Federal agencies. In evaluating PBGC's retention incentive calculation methodology, we had reviewed a cabinet-level agency's retention policy and consulted the Interior Business Center

(IBC¹⁶), the federal shared services center that PBGC OIG uses for human resources. Both Federal agencies interpreted the CFR language “may not exceed 25% of an employee’s basic pay” as establishing that 25% was the maximum retention incentive that could be paid, whether paid for one year or over several years. Under this reading of the regulation, an agency has the authority to award a 25% total maximum retention incentive and OPM can award up to 50%. That is, without regard to the length of the service agreement, an agency could not award a retention incentive of more than 25% of the employee’s pay. PBGC had a different understanding of the retention incentive regulation. It believed that an agency could pay the maximum retention incentive (25%) each year over a multiyear service agreement.

Because of this significant legal interpretation, OIG sought written clarification from OPM in July 2014. OPM’s Associate Director for Employee Services and Chief Human Capital Officer confirmed that PBGC was correct in its interpretation of the methodology used to calculate retention incentives. OPM provided a helpful example of calculating a retention incentive over a 2-year service agreement in which an employee receives 25% of basic pay each year. (See Appendix J).

OPM’s response to our inquiry explained:

The limitation in the law and regulations are for the retention incentive rate. The rate is expressed as a percentage. This means that an agency may not establish a retention incentive rate (percentage) that exceeds 25 percent, such as 26 percent, without OPM approval.

The only limitation on the length of a service period established in a retention incentive service agreement is that the service period must begin on the first day of a pay period and end on the last day of a pay period. An agency may establish a service period that lasts multiple years.

...There is no maximum service period for a retention incentive.¹⁷

...For each retention incentive that is subject to a service agreement, the agency must make a determination at least annually whether the payment is still warranted and certify this determination in writing.¹⁸

Because of OIG’s inquiry, OPM told us they would contact the cabinet level agency and IBC regarding the calculation of retention incentives. We appreciate the timely, thorough response and clarification from OPM.

¹⁶ IBC is located within the Department of Interior and offers numerous services (Acquisition, Financial Management, Human Resources, IT and Budget) to more than 150 government offices and agencies.

¹⁷ OPM noted that as a matter of agency policy, an agency could choose to limit retention service agreements to one year.

¹⁸ Written service agreements are not required if an agency pays a biweekly incentive provided the installments are set at the incentive percentage rate established for the employee. Annual agency determination on whether the payment is still warranted and a written certification of the decision is still required.

APPENDIX A

APPENDIX A – Scope and Methodology

Our objective was to assess whether PBGC’s administration of incentive awards related to recruiting and retaining a qualified workforce complies with statutes, regulations, and the Office of Personnel Management policies and procedures and determine if PBGC’s and controls around these programs are in place and operating effectively. We performed fieldwork for this audit from December 2011 through March 2013. To achieve our audit objective, the scope of our audit included all incentives that were paid or in effect from January 1, 2010 through December 31, 2012; CY2010 through CY2012. We assessed data and documentation for the Recruitment, Relocation, and Retention (3Rs) Program; the Federal Student Loan Repayment (SLR) Program; and the Superior Qualifications and Special Needs Pay-Setting (Superior Qualifications) authority.

Based on data HRD provided under the 3Rs Program, we identified a total population of 25 3Rs incentives that were paid or in effect during CY2010 through CY 2012. We performed a 100% review of the total population.

Based on data HRD provided under the SLR Program, we identified a total population of 65 SLR benefits that were paid or in effect during CY2010 through CY2012. We sampled every third employee listed on the spreadsheet provided by PBGC which resulted in 21 employees being selected for review.

Based on data HRD provided under the Superior Qualifications authority, we identified 48 Superior Qualifications incentives that were paid or in effect during CY2010 through CY2012. We conducted a judgmental sampling of the total population by selecting Superior Qualifications incentives at steps 9 and 10, the two highest steps in grade. Our sampling method resulted in 28 employees being selected for review.

The sample may not be representative of the entire population of 3Rs, SLR and Superior Qualifications. We requested, obtained and assessed all forms of documentation associated with our sample of 3Rs, SLR and Superior Qualifications in order to evaluate the controls over how PBGC administers the 3Rs, SLR and Superior Qualifications programs.

Sample Population		
Incentive Type	Sample Size	Methodology
3Rs Program	25	100% Review
SLR Program	21	Random sampling; every third employee.
Superior Qualifications	28	Judgment sampling; highest Steps 9 and 10
Total Incentives	74	

OIG conducted interviews of HRD management and PBGC management to assess the process for issuing and awarding 3Rs, SLR and Superior Qualifications incentives. We also reviewed the Federal Workforce Flexibility Act of 2004 and Federal Employees Pay Comparability Act of 1990, as well as:

- Relevant sections of the Code of Federal Regulations (CFR) and the Office of Personnel Management (OPM) policies.
- Relevant audit reports by Government Accountability Office
- PBGC policies and procedures, including checklists and internal control documents.

We performed this audit at the PBGC Headquarters in Washington, D.C. from December 2011 through March 2013. We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), July 2007. Those standards require that we plan and perform this audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions, based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

APPENDIX B



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

Office of the Director

SEP 05 2014

TO: Deborah Stover-Springer
Acting Inspector General

FROM: Alice C. Maroni 
Acting Director

SUBJECT: PBGC Response to OIG's Draft Incentives Audit Report Related to
Recruitment and Retention

Thank you for the opportunity to respond to the official OIG draft report regarding PBGC's incentives and compensation flexibilities programs, which we deploy to recruit and retain a qualified workforce (AUD-2014-10/PA-12-86). During the course of the audit, we received helpful feedback on how to improve our processes and appreciate where our considerable efforts are reflected in the draft report. In particular, we appreciate the auditors' post-fieldwork effort to research and conclude that PBGC correctly calculated retention incentives within the limits set by OPM, an issue that was raised after the initial audit fieldwork concluded.

Nonetheless, management has three overarching concerns: (1) the apparent confusion in the report between practices that raise legal/regulatory compliance issues as opposed to internal control and best practices issues; (2) the lack of full consideration of the evidence that management provided at the discussion draft stage of the audit; and (3) the staleness of the findings and recommendations.

Compliance versus Best Practices

The draft report appears to confuse legal and regulatory compliance with best practices for administering programs. The draft report (e.g., Finding 1) alleges that PBGC did not consistently award incentives in compliance with OPM regulations and policies in the operation of its incentives programs. However, OPM audited PBGC's HR programs in 2010 and 2012, including these incentives programs, for a time period that covered this audit and found that PBGC's policies and practices were in compliance with OPM regulations and policies. The report adverts to one of two OPM audit reports we provided to OIG (see report at 3) but does not expressly acknowledge the positive results of the audits. Most disturbingly, the OIG report dismisses the OPM audit reports with the observation that the Generally Accepted Auditing Standards under which the OIG audit was conducted entail "a more rigorous examination and analysis than OPM's review."

(report at 3). While PBGC management is in no position to assess the quality of the two audits against one another, we believe we are entitled to rely on OPM's interpretation of its own regulations and policies in assessing those of PBGC, as OPM has been given the statutory authority to issue and interpret federal personnel regulations. As the report acknowledges, the one issue of regulatory interpretation that OIG actually took to OPM resulted in OPM confirming that PBGC's interpretation was correct. But regulatory compliance is only a floor; we are committed to improving our internal controls and incorporating best practices into our programs. As the report notes, changes we have made since the commencement of this audit have moved us in this direction.¹

However, even in reporting internal control and documentation issues, the report lacks balance. It leads with an isolated incident -- a singular noteworthy lack of documentation for a recruitment incentive that occurred six years ago under a prior administration. There is no evidence cited anywhere in the report that anything like that has happened since, nor does one isolated instance support the finding that PBGC did not consistently award incentives in compliance with regulations. As noted above, we appreciate the feedback we received from OIG during the course of the audit that helped us improve our internal controls and make our documentation more accessible. However, our movement in the direction of best practices is a far cry from having had legal compliance issues.

Failure to Consider Evidence

When management was finally provided a discussion draft highlighting a purported lack of documentation—again, more than two years after the start of the audit—management provided extensive documentation across the board. For example, the evidence presented demonstrated that, even under the pre-February 2012 law student hiring policy, we complied with law and regulation in documenting qualifications and approvals for law student hires at rates of pay above step 1 of the GS schedule. The pre-2012 policy did not stipulate that all documentation needed to be in one place, which was a reason for the change in the policy. However, the documents demonstrated that criteria for authorizing a higher level of pay (such as law review experience or pension law experience) had been satisfied for each law student hire, and that the appropriate level of authorization had been obtained. Management assembled all the relevant documents (such as law school transcripts and hiring official sign-offs) and provided them when we learned—at the discussion draft report stage—that the documents were needed. Yet the final draft completely ignores this evidence. The underlying issue here appears to be the need for greater communication during the audit when the auditors believe they have not received necessary evidence.

¹ For example, the 2013 Policy explicitly requires a finding that one requirement for awarding a retention incentive be that the employee is likely to leave federal service, in accordance with OPM regulations. That requirement was implicit in the former policy's requirements that an official requesting a retention incentive address both other methods for retaining the employee and the harm that would be caused by their leaving. Yet the draft report uses this one example as the evidence that PBGC policy did not comply with OPM regulations.

Staleness of Findings and Recommendations

This audit began with an entrance conference on December 6, 2011. Management was provided a discussion draft on March 27, 2014—more than two years after the entrance conference. In that time frame, management continued to update PBGC policies and procedures as we generally do, yet these updates went untested, despite the long course of the audit. For example, in February of 2012, only two months into the audit, we implemented a new process for hiring law clerks with superior qualifications, yet the report issued more than two years later does not acknowledge the results of that improvement. Similarly, PBGC issued a new Recruitment, Retention, and Relocation incentives directive and supporting worksheets in October 2013, which directly address the internal control issues identified in the report. Thus, major policy documents in this report have been superseded by new documents and internal controls that have been implemented for a reasonable period of time.

While we understand that there is always a period of time between the end of an audit and the issuance of the final audit report, it is difficult to understand why this report would note PBGC's proactive changes yet recommend that PBGC implement those very changes. Because the findings and recommendations address practices that have not been in effect for some time, they lack utility and create a misleading impression of the current state of these important programs.

As a result of these overarching issues as well as the particular comments and concerns related to the specific findings and recommendations noted in the attachment, management respectfully asks for OIG's full consideration in closing the draft report's findings and recommendations, as all concerns have been addressed. We would anticipate closure of the findings and recommendations with the issuance of the final report. However, if there is any need for further discussion of these matters moving forward, management will certainly work cooperatively with your office.

Attachment

Attachment A

PBGC Response to OIG's Draft Report on Incentives and Compensation Flexibility Programs Related to Recruiting and Retaining a Qualified Workforce December 2011 – March 2013

General Observations

PBGC disagrees with the assertion contained within the title of the draft report, as our incentives and compensation flexibilities program was generally administered with consistency to recruit and retain a qualified workforce. The executive summary further needs modification in that PBGC was overall in compliance with the Code of Federal Regulations (CFR) and the Office of Personnel Management (OPM) policies. The implication throughout the report that PBGC did not comply with Federal regulations and OPM guidance gives the reader a false perception of PBGC's commitment and execution of our Incentives Programs and pay flexibilities.

The report notes that OPM, the governing body for human capital, conducted its evaluations of PBGC focusing on three implementation systems of the Human Capital Assessment and Accountability Framework (HCAAF). The reader might also want to know that OPM evaluated PBGC's incentive programs and superior qualifications in 2010 and 2012, reviewing PBGC's policies and procedures and evaluating records for a selected sample of personnel action, and found that PBGC's "HR programs and operations adhered to merit principles, complied with laws and regulations, and were generally effective." (2012 OPM cover - See Tab 1¹). OPM specifically found that PBGC "generally used compensation and pay flexibilities appropriately". Under 5 CFR 575.112, 212, and 312, when OPM finds that an agency is not paying incentives consistent with the agency's incentive plan and the criteria established under 5 U.S.C. or this subpart or otherwise determines that the agency is not using this authority selectively and judiciously, OPM may—

- (1) Direct the agency to revoke or suspend the authority granted to any organizational component of the agency and, with respect to any category or categories of employees, require that the component obtain approval from the agency's headquarters level before paying an incentive to such employees; or
- (2) Revoke or suspend the authority granted to the agency under this subpart for all or any part of the agency and, with respect to any category or categories of employees, require that the agency obtain OPM's approval before paying an incentive to such employees.

¹ To fully document these responses, PBGC is providing a redacted version of the binder provided at the discussion draft stage of the audit, for OIG's consideration. Tab references are to this binder.

Over the course of the OPM's 2008, 2010 and 2012 evaluations, PBGC has made significant strides in strengthening our Human Capital Programs. Specifically, in 2010 and 2012, the use of PBGC's pay flexibilities (e.g., recruitment and relocation incentives and superior qualifications and special needs pay setting) were found to have proper documentation and justification for recruitment incentives, established policy on superior qualifications and special needs pay setting authority, and a satisfactory superior qualifications authority checklist used by HRD Staffing Specialists when assisting managers in making superior qualifications determinations. This was evidenced per OPM's letters, dated December 16, 2010 and October 3, 2012, transmitting the findings regarding PBGC's Delegated Examining Unit (DEU).

OPM did recommend in the 2010 evaluation that PBGC include all pay determination factors in the superior qualifications authority policy, which since has been updated and implemented. Additionally, in the 2012 evaluation, OPM required that PBGC include all required information in student loan repayment justifications and document each payment to allow for sufficient reconstruction of files. PBGC has updated its current directives and Standard Operating Procedures (SOPs) to ensure required documentation is included and aligned with Federal regulations. The minor documentation issues OPM found did not affect its conclusion that PBGC was in compliance with OPM regulations. These documents have all been presented to the IG's office.

The report criticizes PBGC for having variances in incentive amounts and length of service requirements in the Recruitment, Relocation, and Retention (3R's) Program while also criticizing PBGC for having too similar incentive amounts and length of service requirements in the Student Loan Repayment (SLRP) incentive program, outlined under a broad description of the finding/issue, which appears contradictory and may mislead the reader. While criticizing the similar lengths of service under the SLRP, the report fails to mention that the minimum service period required is 3 years, which is found in many of the agreements utilizing this regulatory requirement.

The report states that field work was performed December 2011 through March 2013, however, subsequent requests for information relative to the "Incentives Audit" were submitted to the Human Resources Department (HRD) on July 8, 2013, February 5, 2014, February 25, 2014, June 26, 2014, July 2, 2014, and July 17, 2014, with no mention of the outcome of the additional requests or how it related to this audit. Although it appears that field work continued, it does not appear to have resulted in adverse findings. Although the draft report commends PBGC for improvements made during the audit period, we are disappointed that the OIG chose to not select samples of our new service agreements, worksheets, and supporting documentation, to assess the overall effectiveness of the SLRP and 3R's Programs and Superior Qualifications pay flexibility.

The following are PBGC's specific responses to the audit findings and recommendations outlined in the audit report.

Finding 1 – PBGC Did Not Consistently Award Incentives in Compliance with Federal Regulations and Guidance. *PBGC does not concur with this finding. Based on the responses below, PBGC respectfully requests OIG’s consideration in the closure of the finding and recommendations.*

PBGC awarded a large recruitment incentive without any documentation.

While PBGC agrees that this incentive was not properly documented, there are several issues that require additional discussion. In 2008, PBGC awarded a total recruitment incentive of \$138,379, which amounted to 25% of the employee’s annual rate of basic pay paid out in biweekly installments over a 4-year period. CFR 575.109, (4)(b)(1), states: Except as provided in paragraph (c) (OPM waiver) of this section, the total amount of recruitment incentive payments paid to an employee in a service period may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years (including fractions of a year) in the service period (not to exceed 4 years). The incentive amount chosen was in line with the difference between federal and competing private sector salaries and within the Director’s authority to approve up to 25% of an employee’s salary as outlined in 5 CFR.

The report correctly asserts that the position that gave rise to this recruitment incentive was new to the Corporation. However, it further states the auditors’ view of the position involved “was not considered as ‘difficult to fill’.

There is no regulatory requirement for awarding a recruitment incentive that a new position be deemed difficult to fill. The factors that an agency applies when making a determination is applicable to the specific position. 5 CFR 575.106(a)(1), states: an authorized agency official retains sole and exclusive discretion, subject only to OPM review and oversight to determine when a position is likely to be difficult to fill and 5 CFR 575.106(b), states: factors for determining when a position is likely to be difficult to fill – an agency must consider the factors *as applicable* to the case at hand.

Moreover, this new position was a classic case of one that is difficult for the Federal government to fill, under the following criteria:

- Limited pool of qualified applicants (14%)
- Required extended announcement period – vacancy announcement was open March 27 – May 18, 2008, yielding a total of only 44 applicants, 20 of which were not minimally qualified, 18 were minimally qualified, and 6 were determined to be best qualified.
- Competing Private Sector salary far exceeded federal government salary - the median salary for top investment executives in the private sector is \$258,073 (www.bls.gov/oco and salary.com).

HRD acknowledges that there was no supporting documentation provided by the Director of PBGC for this incentive or a signed service agreement. That being said, 1) this was an isolated incident that occurred in 2008; 2) there has not been a subsequent situation; 3)

the employee received bi-weekly installments, not a lump sum; and, 4) the individual hired has continued employment with PBGC--in the same position for which he/she was hired--even after the incentive payments ended. The recruitment tool was clearly deployed successfully and met the intent of the regulation.

The report's conclusion states that "circumvention of the agency's internal control structure is an important issue that PBGC must address and avoid in the future. . . . The circumvention of internal control as demonstrated by this incentive could lead to fraudulent activity if a single person within the Corporation is permitted to direct and award incentives while bypassing Federal oversight and accountability requirements." It is clear from the report itself that every incentive over the past 6 years was documented and signed off on by appropriate officials. With six years of proper documentation and approval after one isolated incident, PBGC believes the finding does not reflect current practice. (See recommendation #1)

PBGC's policy omitted some mandatory requirements for 3R's incentives.

The report states that PBGC policy omits "the employee would be likely to leave the Federal service in the absence of the retention incentive."

We disagree. The 2005 3R's policy contained all the required provisions outlined in 5 CFR as well as applicable references. The policy required hiring officials to address various factors, to include: the extent to which the employee's departure would affect the agency's ability to carry out an activity, perform a function, or complete a project the agency deems essential to the mission. (See Tab 2, section 5(2)(f)), which would aid the authorizing official in determining that the employee would be likely to leave federal service. While the "likely to leave Federal service" was not explicit. That requirement was implicit in the former policy's requirements that an official requesting a retention incentive address both other methods for retaining the employee and the harm that would be caused by their leaving. Yet the draft report uses this one example as the evidence that PBGC policy did not comply with OPM regulations. Moreover, the 2013 Policy explicitly requires a finding that one requirement for awarding a retention incentive be that the employee is likely to leave federal service, in accordance with OPM regulations.

PBGC consistently issued payments in accordance with the regulation by meeting the minimum standards for authorization as outlined in the 2008, 5 CFR 575.306(b), which also states an authorized agency official retains sole and exclusive discretion to determine when the employee would be likely to leave the federal service in absence of a retention incentive (See 5 CFR 575.306 (a) (1)). The report does not elaborate on the referenced "other missing elements" identified during the scope of the audit, so we are unable to comment or provide specifics on what is meant by other "missing elements."

PBGC's current 3R's Directive, dated 10/22/13 (Tab 3), specifically and explicitly added the verbiage "likely to leave Federal service" under section 9.

3R's incentive amounts and lengths of service agreements lacked support to distinguish between incentives awarded.

We disagree. PBGC's current policies outline: designations of authorizing officials, eligibility requirements, suggested criteria for determining the amount of the incentive and length of service period, required supporting documentation and requirements for service agreements.

PBGC clearly distinguished the amounts and the lengths of service in the agreements based on justifications provided by the requesting managers for the 3R's incentives. While the header for this section identified the 3R's, the subsequent text discussed 3R's and SLRP. We disagree that we have not developed adequate written plans nor issued adequate guidance. There is no regulatory requirement that there be a comparison between the 3R incentives awarded. Every situation is not the same nor should it be treated the same. The text in this section of the report cites regulatory criteria; it does not identify any instance where the incentive authorized lacked adequate justification.

Variances in the requested incentive amounts and service agreement periods for retention incentives were solely based on the operational needs of the requesting department, the complexity of the position, the grade level, contributions to mission critical initiatives, and the experience and competencies of employees that met the eligibility criteria to receive an incentive. A review of the retention incentives show the different circumstances that offices and employees faced such as the maturity of the programs, the depth of the existing talent pool and the unique skills and experience of the employee. This cannot be reduced to formula, and OPM wisely has no such requirement.

While the report criticizes the variances in incentive amounts and lengths of service, the program's intent is to meet the operational needs of the organization, not to have a cookie cutter approach that limits the flexibilities of management. The report also states that PBGC policy omitted "some" mandatory requirements, however the report does not identify any other omission beyond the "likely to leave Federal service" language.

As a best practice, to assist managers in their analysis, PBGC proactively established recommended incentive amounts and service periods by grade level as evidenced in the published 3R's Directive, dated October 22, 2013, which requires requesting officials to describe various factors which support their requests for consideration by HRD.

PBGC also disagrees with the assertion that we did not provide guidance to managers/supervisors on the 3R's Program or have an adequate written plan. We believe our 3R's policy, our worksheets, one-on-one consultations, and training are adequate.

SLR reimbursement amounts lacked support to distinguish between benefits awarded.

We disagree. There is no regulatory requirement to "distinguish between benefits awarded." 5 CFR 537.106(b), states:

In determining the amount of student loan repayment benefits to approve, an agency must consider the employee's (or job candidate's) value to the agency and how far in advance the agency is permitted to commit funds. If an agency decides to make additional student loan repayment benefits contingent on budget levels or other factors, it must address these contingent benefits in the written service agreement as described in §537.107(a).

As outlined in 5 CFR 537.106(2), PBGC issued SLRP payments in accordance with the regulation and did not exceed the maximum disbursement of \$60,000. PBGC also consistently applies a service agreement period of 4 years (Non Bargaining Unit) and 3 years (Bargaining Unit) for up to the first \$40,000 and an additional 2 years for up to an additional \$20,000 in benefits. The current draft SLRP Directive directly coincides with the current regulations.

The report states: "We found that in 14 out of 21 instances (67%) employees received SLR benefits of \$40,000 or higher." To get to a count of 14, one would have to include three employees who received the benefit twice; however, this would affect the total number of service agreements referenced, raising the count to 24.

A large percentage of PBGC's SLRP recipients are attorneys. The average law student graduate loan balance is \$140,616². Therefore, based on this data, having the benefit at the maximum rate is reasonable to attract and retain highly qualified attorneys.

Page 10 of the Official Draft, states that one (1) senior official stated that SLR benefits are awarded based on personal knowledge of an employee's finances. The manager further explained that the decision to offer or approve a SLR benefit is based on the employee's family wealth and perceived ability to repay the loan. This statement is from one (1) official and is his/her personal opinion, not an official agency position. Employees do not provide financials to the Human Resources Department as support for receiving SLRP benefits, so it is not sanctioned part of the approval process.

PBGC Superior Qualifications were awarded without complete information and required documentation.

This sub-heading is unrelated to Finding 1, which is restricted to Incentives. This is an important distinction because *Superior Qualifications* is a pay flexibility that affects the employee's base pay and continues throughout the lifetime of the employee's federal career. Incentives are temporary.

PBGC agrees that there were no written determinations for the 9 law school students; however, PBGC was able to provide source documentation that showed the nine law

² (Delisle, Jason. "The State of Graduate Student Borrowing." *The Graduate Student Debt Review*: (2014): 11. *New America Education Policy Program*. Web. <<http://newamerica.net/sites/newamerica.net/files/policydocs/GradStudentDebtReview-Delisle-Final.pdf>>

school students identified in the sample met the minimum criteria outlined in the 2000 MOU between OGC and HRD to include a resume, academic transcript, and work history. PBGC provided this documentation (See Tab 12) to the IG's office in response to the draft report.

Pursuant to the February 9, 2012, MOU between OCC and OGC, PBGC has documented superior qualifications for all law school graduates. The process for the legal interns has been in effect since February 2012, before the end of the audit period; however, the new process was not tested by the OIG auditors.

Since 2008, PBGC has documented superior qualifications for all other candidates as evidenced by the 2010 and 2012 OPM audits. This documentation included a written justification from the hiring manager that highlighted a candidate's relative experience, competencies, and/or education; a review and approval by the respective department director, a Job Offer Checklist for Superior Qualifications/ Special Needs Pay Setting prepared by the HRD staffing specialist; and the review and approval delegated to PBGC's Delegated Examining Chief. This pay setting authority has been awarded consistently and in compliance with Federal regulations.

PBGC has consistently documented the high or unique qualifications or special needs of the agency for every employee who has been hired under the Superior Qualifications authority since February 2012.

Recommendation – PBGC does not concur with recommendations 1-3 and respectfully requests that they be closed.

1. In accordance with the CFR, when offering a recruitment incentive, obtain required documentation and written approvals to support the determination to pay the incentive.

PBGC has established controls and obtains required documentation and approvals prior to issuance of recruitment incentives as outlined in the determination worksheet, Attachment A of the 3R's Directive and all applicable regulations. In an ongoing effort to improve our programs, we have revised and updated our tools and processes. The fact that there has been no similar re-occurrence of the incident from six years ago should validate that the proper controls are in place, and that the one instance is not a representative sample.

2. In accordance with the CFR and OPM policy, establish written requirements for determining proposed incentive rates for SLR benefit.

PBGC is in compliance with both the CFR and OPM policy. Notably, there is no regulatory requirement for an agency to establish requirements for determining proposed SLRP amounts. However, to support best practices, moving forward the draft SLRP Directive provides guidance for supervisors to consider when determining incentive amounts.

3. Periodically provide information to PBGC managers on 3Rs incentives and SLR including the procedures for nomination, writing justifications, and required supporting documentation.

HRD already provides guidance and information to managers:

- *Managers/supervisor informational sessions on 3R's on a recurring and requested basis, outlined in the HRD ala carte training menu*
- *3R's manager/supervisor presentations (lunch and learn session)*
- *3R's manager/supervisor fact sheets*
- *3R's and SLRP one-on-one consultations as requested by the manager/supervisor*
- *Advertisement of SLRP via Captiva informational screens*
- *SLRP informational emails (Corporate-wide)*

Finding 2 – Written Service Agreements Were Inconsistent and Often Lacked Required Information. *PBGC does not concur with this finding. Based on the below responses, PBGC requests OIG's consideration in the closure of the finding and recommendations.*

Written service agreements did not have standard language and customary provisions.

PBGC's 3R's and SLRP service agreements contain all of the required regulatory terms and conditions. While SLRP service agreements have changed over the years, they have met regulatory requirements and have been consistent within specific iterations. The audit report does not identify what "customary provisions" were not included in the service agreements, so PBGC is unable to comment on this assertion.

Of the 21 SLRP service agreements, in which the IG found discrepancies, we disagree with the IG's conclusions. In our review of the 21 SLRP service agreements audited, we found the following:

- Six SLRP service agreements required employees to reimburse PBGC if they separated from PBGC to work for another Federal agency, or outside the federal government;
- Eleven SLRP service agreements did not require PBGC employees to reimburse PBGC if they separated from PBGC to work for another agency;
- Four SLRP service agreements required employees to reimburse PBGC if they separated from Federal service. (All four agreements were from 2007.)

These variances are not discrepancies, and all service agreements met regulatory requirements. The differences correlate to what policies were in effect at the time and whether or not the employee was bargaining unit or non-bargaining unit, with the exception of three agreements. PBGC acknowledges that these three agreements did not comply with the governing PBGC policies; however, they were in regulatory compliance.

The report identified that there were three retention service agreements that did not include the required provision for notifying the employee about annually reviewing the determination to pay the retention incentive. This is not a requirement in the federal regulations for a retention incentive for an employee likely to leave the Federal service. It is a requirement for an employee who is likely to leave for a different position in the Federal service – inapplicable here.

The report also identified 16 recruitment service agreements that did not include an allegedly required provision for when the agency may terminate a service agreement. This is an incorrect interpretation of the cited regulation. If an agency wants to terminate an agreement for conditions above the regulatory required conditions for termination, the agency must include any additional conditions in the service agreement for which the agency may terminate the agreement. The agency is not required to have additional conditions, but they have the option to include additional conditions. For example, if the employee is detailed to another position, the agency can include language in the agreement that states if an employee is detailed to another position, the agreement may be terminated. PBGC is not aware of any instances wherein a service agreement was terminated for a condition not identified in the service agreement, nor does the audit report reference such a situation in which the cited regulation would be applicable. Therefore, this finding is not accurate and should be removed.

PBGC approval and oversight focused on administrative processing not adequate documentation.

PBGC does not agree. The HR Director's oversight of the process aimed at ensuring that written determinations adequately reflect consider of all relevant/required factors. We would like to point out that the report notes that the authorizing official is responsible for determining whether the incentive may legally be made. PBGC disagrees with the characterization of the program that oversight is focused on administrative processing. One can argue semantics over verbiage, but we believe the report misrepresents the interpretation of ensuring the paperwork is in order when it is how we determine the legal requirements have been met.

Recommendation- PBGC disagrees with recommendations 4-5 and respectfully requests that they be closed.

4. Improve controls to align SLR and 3Rs service agreements more closely to the CFR and OPM policies, by applying consistent contract language and provisions for similar types of agreements.

With the exception of three service agreements noted above, the agreements for both programs are consistent in language and contain all the required regulatory provisions for each program as outlined in the CFR and OPM policy. While language varied depending on the iteration, the service agreement language used was adequate and in compliance with regulations.

5. Implement controls to make HRD's review and approval process for 3Rs and SLR incentives more substantive.

The current review and approval process is quite substantive.

HRD's SOP has these controls, and management provided the SOP to the OIG.

As a best practice, the draft SLRP Directive outlines a new approval process which clearly defines the approval authority for funding thresholds (see Section 8, b(1)).

Finding 3 – PBGC Did Not Have Assurance that Employees Receiving 3Rs and SLR Incentives Remained Eligible. *PBGC does not concur with this finding. Based on the below responses, PBGC respectfully requests OIG's consideration in the closure of the finding and recommendation.*

PBGC did have assurance that employees receiving SLRP benefits remained eligible, and the program was effectively monitored during the annual re-certification process.

There is a government-wide standard for determining equivalence for the various performance rating levels as outlined in 5 CFR 430.208(d). Therefore, we disagree that the reviews were not fully effective because the performance rating level language differed between the Non-Bargaining Unit (NBU) SLRP policy and PBGC's performance management program. The example of an employee receiving a level 3 and maintaining eligibility is one isolated instance, not an oversight/program deficiency. The current forms and service agreements speak to the 5-tier performance system currently in place. Also, the draft SLRP Directive includes the current 5-tier performance system rating language as well as all corresponding forms and SOP.

While there was no annual review outlined for the 3R's, none of the recipients received a rating below "fully successful or equivalent," nor had any disciplinary or adverse actions been brought against them during their receipt of incentives.

The 3R's annual review process is now clearly defined in HRD's current SOP, also provided to OIG.

Recommendation – PBGC does not concur with recommendation 6 and respectfully requests OIG's consideration that it be closed.

6. In accordance with the CFR and OPM guidelines conduct annual reviews of those receiving 3Rs incentives, document and validate whether conditions continue to warrant the award and the employee meets all eligibility requirements.

HRD has incorporated and implemented an annual review process outlined in the current SOP for the 3R's Program. The SOP has provided to the OIG.

PBGC Correctly Calculated Retention Incentives

PBGC appreciates the acknowledgement that, after consultation with OPM, OIG determined that PBGC correctly calculated retention incentives. However, the report states that OIG reviewed a cabinet-level agency's retention policy and that the Interior Business Center (IBC) was consulted as a benchmark for retention incentive calculation methodologies. The report further states that IBC services more than 150 governmental offices and agencies. However, IBC does not provide human resource operational services to over 150 governmental offices and agencies, rather only 13. The implication that over 150 governmental offices and agencies use a different methodology to calculate retention incentives than PBGC is misleading. The remaining governmental offices and agencies utilize IBC for systems services only.

APPENDIX C

Criteria on 3Rs, SLR, and Superior Qualifications

Recruitment, Relocation, and Retention Program

According to the Code of Federal Regulations (CFR), an agency is permitted to pay 3Rs incentives if certain conditions are met.

- Recruitment incentives are used to attract new employees (or former employees who had a break in service) for positions that the agency determines are difficult-to-fill in the absence of the recruitment incentive. (5 CFR § 575.101).
- Relocation incentives are used when, in advance of the recruitment, the agency determines the position is likely to be difficult-to-fill in the absence of the incentive and the individual selected is a current Federal employee who must relocate to accept a position in a different geographic area.¹ (5 CFR § 575.201).
- Retention incentives are used to retain a current employee when the agency determines it is essential to retain the employee because of the employee's high or unique qualifications or the agency's special need for the employee's services and the employee would be likely to leave Federal service in the absence of the incentive. (5 CFR § 575.301).

Current employees are eligible for retention incentives and current federal employees are eligible for relocation incentives with some exclusions.² Federal employees must have a performance rating of "Fully Successful" or equivalent at the time of award and during the service agreement period. Agencies may pay 3Rs incentives up to 25 percent of the employee's annual salary; with OPM approval, an agency may pay up to 50% of the employee's annual salary.

In return, the employee must sign a service agreement to remain employed with the agency for a required period not to exceed four years. An authorized agency official determines the length of service agreement period for retention incentives. A written service agreement is not required for retention incentives that are paid biweekly and there is no service period requirement. An agency must terminate a 3Rs incentive service agreement if an employee does not fulfill the terms and conditions of the service agreement.

For the incentives within our scope, PBGC recruitment incentives ranged from \$5,000 to \$138,379 per employee; retention incentives ranged from \$3,798 to \$30,449 per employee; and PBGC paid one relocation incentive of \$5,000.

¹ Relocation benefits differs from relocation incentives, in that relocation benefits are the costs associated with locating a new hire or an existing Federal employee who accepts a federal job. Under Federal travel regulations, an agency can pay relocation benefits when a position is advertised that relocation expenses will be paid.

² An agency may not pay a 3Rs incentive to a Presidential appointee, a senior executive who is in a non-career appointee, employees in a position excepted from the competitive civil service because of their confidential, policy-determining, policy-making, or policy-advocating nature or a designated or expected agency head.

Student Loan Repayment Program

Federal regulations permit an agency to establish a SLR Program that repays certain types of federally-made, insured, or guaranteed student loans as an incentive to recruit or retain highly qualified personnel. Any employee is eligible, excluding employees occupying a position that is excepted from the competitive civil service because of their confidential, policy-determining, policy-making, or policy-advocating nature. (5 CFR §§ 537.101 and 537.104(b)). When authorizing a SLR benefit, Federal regulations state that an agency must make written determinations.

- To offer a SLR when recruiting, the agency must determine it would be difficult to fill the position with a highly qualified individual in the absence of the SLR benefit.
- To offer a SLR benefit to a current Federal employee, the agency must determine the employee would be likely to leave Federal service and it is essential to retain the employee because of the employee's unique qualifications or the special need of the agency. (5 CFR § 537.105(a)(2)(ii)).

An employee must maintain an acceptable level of performance that is equivalent to a level 3 ("Fully Successful" or equivalent) or higher to be eligible for continued SLR benefits. (5 CFR § 537.108(b)). Payments are made to a loan holder up to \$10,000 for an employee in a calendar year; and at an aggregate maximum of \$60,000 for any one employee. In return, the employee must sign a service agreement to remain employed with the agency for a period of at least three years. (5 CFR §§ 537.106 and 537.107(a)).

For the Student Loan repayments within our scope, PBGC incentives ranged from \$6,541 to \$60,000 per employee.

Superior Qualifications and Special Needs Pay-Setting authority

In accordance with the Federal regulations, an agency can use the Superior Qualifications authority to pay above the default of step one of a pay grade of the General Schedule when recruiting non-Federal candidates who possess unusually high or specialized qualifications or who possess a particular combination of education and experience that meets a special need of the agency. The General Schedule has 15 grades; the lowest grade is a GS-1 and the highest grade is a GS-15. Each grade has 10 step rates. A position is posted and generally offered at the Step 1 rate, per 5 CFR 531.211(a). Section 531.212(b), (c) of 5 CFR establishes an exception for an agency to set pay above the minimum rate with certain factors an agency is required to address, such as the job candidate's existing salary, significant disparities between Federal and non-Federal salaries, and existing labor conditions, when determining the step to set the individual's pay. There is no service agreement requirement.

For the Superior Qualifications within our scope, PBGC paid 28 Superior Qualifications at the step 9 and step 10 salaries.

Congress authorized compensation flexibilities, such as the 3Rs, SLR, and the Superior Qualifications authority; they are valuable incentive tools used to address human capital needs to build and maintain a high-performing workforce with essential skills and competencies. Agencies are to establish programs that apply mandatory incentive requirements, define criteria for determining incentive amounts and length of service periods. Agencies must also, assign responsibilities, ensure appropriate written service agreements are in place, and provide for on-going review to certify continued eligibility. Our audit identified instances where PBGC did not award compensation flexibilities in compliance with the statutory and regulatory requirements. For 3Rs incentives, OPM may revoke or suspend any agency's authority and require OPM approval to pay incentives if the agency does not comply with requirements.³ Improved management controls, such as clear guidance and adequate oversight are needed to provide reasonable assurance that incentives are awarded in compliance with the Federal regulations and OPM.

³ 5 CFR 575.112(b) – (2); 5 CFR 575.212(b) – (2); 5 CFR 575.312(b) – (2).

APPENDIX D



Recruitment Incentive Request and Determination Worksheet

Instructions: Complete parts A, B, C, and D of this form and submit it to the Recruitment, Relocation & Retention Program Coordinator for approval.

A. General Information

Selectee's Name: _____ Department/Division: _____

Position Title, Series, and Grade: _____

Vacancy Announcement Number: _____

Number of Well-qualified Candidates on the Selection Certificate (s): _____

B. Justification

1. Briefly describe in an attachment to the worksheet, why this position has been difficult to fill and the high or unique qualifications the selectee possesses.
2. What is the selectee's current or former annual salary (Including commission, differentials, and other incentives)? You must attach supporting documentation.

\$ _____

3. Has the selectee been offered relocation expenses? Yes No

4. Has the selectee been offered superior qualifications? Yes No

If yes, what is the grade/step and salary? Grade/Step: _____ Salary: \$ _____

C. Proposed Amount and Factor Ratings

1. Proposed recruitment incentive amount (whole numbers): \$ _____

Frequency of Payment: Lump-Sum Bi-Weekly

Length of Service Agreement: 1 year 2 years 3 years Other: _____

2. Factors Used to Determine Amount of Incentive

a) Recruitment/retention success: Good Limited Poor

b) Turnover Rate: Few/Seldom Some/Moderate Significant/High

c) Labor Market: Good Limited Poor

d) Value of Qualifications: Good Limited Poor

Recruitment Incentive Request and Determination Worksheet

D. Requesting Office Approval

Requesting Official (print): _____

Signature: _____ Date: _____

Department Director (print): _____

Signature: _____ Date: _____

THIS SECTION IS FOR HRD USE ONLY

E. Eligibility Review (Staffing and Classification Division)

- The employee is eligible for the proposed incentive.
- The employee is not eligible for the proposed incentive. (Memorandum of review is attached.)

Staffing Specialist Signature: _____ Date: _____

Manger, SCD Signature: _____ Date: _____

F. Certifications (3R Program Manager)

1. Policy Review

- This request package meets the regulatory and/or agency guidelines.
- This request package does not meet the regulatory and/or agency guidelines.

2. Funding Review

- Sufficient funds are available.
- Sufficient funds are not available.

Signature: _____ Date: _____

G. Approval/Disapproval

HRD Director (10% or less):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Recruitment Incentive Request and Determination Worksheet

Signature: _____

Date: _____

PBGC Director (10% or higher):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Signature: _____

Date: _____



Relocation Incentive Request and Determination Worksheet

Instructions: Complete parts A, B, C, and D of this form and submit it to the Recruitment, Relocation & Retention Program Coordinator for approval.

A. General Information

Selectee's Name: _____ Department/Division: _____

Position Title, Series, and Grade: _____

Vacancy Announcement Number: _____

Number of Well-qualified Candidates on the Selection Certificate (s): _____

B. Justification

1. Briefly describe in an attachment to the worksheet, why this position has been difficult to fill and the high or unique qualifications the selectee possesses.
2. What is the selectee's current or former annual salary (Including commission, differentials, and other incentives)? You must attach supporting documentation.

\$ _____

3. Has the selectee been offered relocation expenses? Yes No

4. Has the selectee been offered superior qualifications? Yes No

If yes, what is the grade/step and salary? Grade/Step: _____ Salary: \$ _____

C. Proposed Amount and Factor Ratings

1. Proposed relocation incentive amount (whole numbers): \$ _____

Frequency of Payment: Lump-Sum Bi-Weekly

Length of Service Agreement: 1 year 2 years 3 years Other: _____

2. Factors Used to Determine Amount of Incentive

a) Recruitment/retention success: Good Limited Poor

b) Turnover Rate: Few/Seldom Some/Moderate Significant/High

c) Labor Market: Good Limited Poor

d) Value of Qualifications: Good Limited Poor

Relocation Incentive Request and Determination Worksheet

D. Requesting Office Approval

Requesting Official (print): _____

Signature: _____ Date: _____

Department Director (print): _____

Signature: _____ Date: _____

THIS SECTION IS FOR HRD USE ONLY

E. Eligibility Review (Staffing and Classification Division)

- The employee is eligible for the proposed incentive.
- The employee is not eligible for the proposed incentive. (Memorandum of review is attached.)

Staffing Specialist Signature: _____ Date: _____

Manger, SCD Signature: _____ Date: _____

F. Certifications (3R Program Manager)

1. Policy Review

- This request package meets the regulatory and/or agency guidelines.
- This request package does not meet the regulatory and/or agency guidelines.

2. Funding Review

- Sufficient funds are available.
- Sufficient funds are not available.

Signature: _____ Date: _____

G. Approval/Disapproval

HRD Director (10% or less):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Relocation Incentive Request and Determination Worksheet

Signature: _____

Date: _____

PBGC Director (10% or higher):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Signature: _____

Date: _____



Retention Incentive Request and Determination Worksheet

Instructions: Complete parts A, B, and C of this form and submit it to the Recruitment, Relocation & Retention Program Coordinator for approval.

A. General Information

Employee Name: _____ Department/Division: _____

Position Title, Series, and Grade: _____

B. Justification

Briefly describe in an attachment to the worksheet, the high or unique qualifications this employee possesses.

C. Proposed Amount and Factor Ratings

1. Proposed retention incentive amount (percent): _____ %

Frequency of Payment: Lump-Sum Bi-Weekly

Length of Service Agreement: 1 year 2 years 3 years Other: _____

2. Factors Used to Determine Amount of Incentive

a) Recruitment/retention success: Good Limited Poor

b) Turnover Rate: Few/Seldom Some/Moderate Significant/High

c) Labor Market: Good Limited Poor

d) Value of Qualifications: Good Limited Poor

D. Requesting Office Approval

Requesting Official (print): _____

Signature: _____ Date: _____

Department Director (print): _____

Signature: _____ Date: _____

Retention Incentive Request and Determination Worksheet

THIS SECTION IS FOR HRD USE ONLY

E. Certifications (3R Program Manager)

1. Policy Review:

- This request package meets the regulatory and/or agency guidelines.
- This request package does not meet the regulatory and/or agency guidelines.

2. Funding Review:

- Sufficient funds are available.
- Sufficient funds are not available.

Signature: _____

Date: _____

F. Approval/Disapproval

HRD Director (10% or less):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Signature: _____

Date: _____

PBGC Director (10% or higher):

- The proposed incentive is approved.
- The proposed incentive is modified as: _____
- The proposed incentive is disapproved (memorandum of review is attached).

Signature: _____

Date: _____

May 31, 2005

TO: PBGC Executive Staff

FROM: John Seal
Chief Management and Human Capital Officer

SUBJECT: Interim Policy, Pension Benefit Guaranty Corporation (PBGC)
Recruitment, Relocation, and Retention Incentive Policy and Plan.

Pursuant to interim changes to 5 C.F.R. § 530 and 5 C.F.R. § 575, as posted in the Federal Register, volume 70, No. 92, pages 25732-25747, this policy and plan replaces the Interim PBGC Recruitment Bonus Policy, April 4, 2005, and the Interim PBGC Relocation Bonus Policy, April 4, 2005. This policy adds Retention Incentives for both bargaining unit and non-bargaining unit positions and employees; and allows Relocation Incentives for bargaining unit positions.

1. Policy

- a. PBGC may authorize payment of: 1) a recruitment incentive to a newly appointed employee, defined at 5 C.F.R. § 575.103; 2) a relocation incentive to an individual in the Federal civil service, as defined at 5 C.F.R. § 575.203; or 3) a retention incentive to an individual in the Federal Civil Service, as defined at 5 C.F.R. § 575.303, when, but for payment of the incentive, the PBGC would have difficulty filling the position. The determination to pay an incentive is made on a case-by-case basis using predetermined criteria and the authority is exercised at the sole and exclusive discretion of the approving official, subject only to OPM oversight. When making a timely offer is important, a designated official or recruiter may initiate negotiations with a prospective employee based upon pre-approved criteria; however, the determination that the prospective employee meets the set criteria still must be justified on a case-by-case basis and the official offer shall always come from the Human Resources Department (HRD).
- b. The criteria for determining the amount of an incentive shall be based on employment trends and labor market factors, to include consideration of typical salaries for similar occupations in the private sector. Payment of an incentive is contingent upon the execution of a written service agreement to remain a PBGC employee for a specific period of time (minimum of 12 months) 5 C.F.R. § 575, except where retention incentive situations do not require a written agreement as cited at 5 C.F.R. § 575.310

2. Scope

- a. This policy covers: 1) the payment of a recruitment incentive by PBGC to an employee who is “newly appointed” to the Federal Government including an employee reappointed with a 90 day break in service; 2) the payment of a relocation incentive by PBGC to an individual in the civil service (defined at 5 C.F.R. § 575.203) who is relocated to a different geographic area without a break in service, upon appointment to a position in the PBGC; or a current civil service employee, whose duty station is changed permanently or temporarily to a different geographic area; and 3) the payment of a retention incentive to an employee who is currently employed by the PBGC.
- b. This policy does not extend to the Executive Director; a position excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or a position in which the employee is expected to receive an appointment as PBGC's Executive Director.

3. Approval

The Executive Director delegates authority to the HRD Director to review and approve a recruitment, relocation, or retention incentive in an amount not to exceed 10% of the employee’s basic pay and retains authority to review and approve recruitment, relocation, or retention incentives over 10% of the employee’s basic pay. The approving official will:

- a. approve an incentive for any eligible applicant or employee of the PBGC, on a case-by-case basis;
- b. approve target groups of similar positions for recruitment incentives that have been difficult to fill in the past and may be difficult to fill in the future and;
- c. approve groups of similar positions for appropriate criteria and amounts in advance to enable a recruiter or other official, where applicable, to make timely offers of incentives without further review or approval, on a case-by-case basis.

4. Incentive Funding

Department Directors are responsible to budget for and fund incentives for their respective departments. When contemplating an incentive for an employee, the Department Director shall forward a memorandum to HRD indicating funds are or will be available to fulfill the incentive service agreement.

5. Recommendations to HRD for Recruitment, Relocation, and Retention Incentives

- a. Hiring officials and designated recruiters may recommend in writing to the HRD Director, the approval of payment of an incentive for an eligible position or applicant.
 - (1) For recruitment and relocation incentives, the recommendation must address the following factors applicable to the recommended case:
 - (a) The availability and quality of candidates possessing the competencies required for the position;
 - (b) The success of recent efforts to recruit candidates for similar positions;
 - (c) The salaries typically paid outside the Federal Government for similar positions;
 - (d) Recent turnover in similar positions;
 - (e) Employment trends and labor market factors;
 - (f) Special or unique competencies required for the position;
 - (g) Efforts to use non-pay authorities alone or combination with other authorities;
 - (h) The desirability of the duties, work or organizational environment, or geographic location of the position; and
 - (i) Any other supporting factors.
 - (2) For retention incentives, the recommendation must address the following factors applicable to the recommended case:
 - (a) Employment trends and labor market factors;
 - (b) Success of recent efforts to recruit candidates with similar competencies;
 - (c) Special or unique competencies required for the position;
 - (d) Efforts to use non-pay authorities to help retain the employee instead of, or in addition to a retention;

- (e) The desirability of the duties, work or organizational environment, or geographic location of the position;
 - (f) The extent to which the employee's departure would affect the agency's ability to carry out an activity, perform a function, or complete a project the agency deems essential to the mission;
 - (g) The salaries typically paid outside the Federal Government; and
 - (h) Any other supporting factors.
- b. The hiring official or designated recruiter's written justification must also include:
 - 1) a description as to how the target group of positions or individual meet the factors that warrant an incentive, and 2) the proposed incentive percentage and a justification for that amount.
 - c. The criteria listed at Section 5a(1) shall be used when establishing a target group or groups of similar positions for recruitment actions by designated recruiters or other officials to make offers in a timely manner.

6. Basis and Criteria for Determining to Pay Recruitment, Relocation, and Retention Incentives

- a. Prior to offering an incentive, the approving official must make a determination that in the absence of such a bonus, difficulty would be encountered in filling the position, which should include consideration of the factors discussed in Section 5(a)(1)-(2) above. The recommending, reviewing, and approving officials shall also consider: a) the criticality of the position to meeting the PBGC mission; b) cost effectiveness of granting an incentive to a specific applicant relative to the cost of further recruitment; and c) availability of funds.
- b. Specific criteria for incentives are:
 - (1) Recruitment incentives must meet the general criteria in Section 6a above and must have a written basis establishing: 1) that the position is likely to be difficult to fill; 2) for authorizing an incentive and; 3) for the amount and timing of the approved incentive payment, and length of the service period.
 - (2) Relocation incentives must meet the general criteria in Section 6a above and must have a written basis: 1) that the position is likely to be difficult to fill; 2) for authorizing an incentive; 3) for the amount and timing of the approved incentive payment, and length of the service period; and 4) that the worksite of the employee's new position is not in the same geographic area as the worksite of the position held immediately before the move and the employee established a residence in the new geographic area.

- (3) Retention incentives must meet the general criteria in Section 6a above and must have a written basis: 1) that the unusually high or unique qualifications of the employee's position is likely to be difficult to fill; 2) for authorizing an incentive; and 3) for the amount and timing of the approved incentive payment, and length of the service period.

7. Service Agreements

a. General.

- (1) Prior to receiving an incentive payment, an employee must enter a written service agreement to complete a specified period of employment with PBGC. All incentive agreements must contain, but are not limited to: 1) the period of employment expressed in months; 2) the commencement and termination dates; 3) the total amount of the incentive; 4) the method of paying the incentive; 5) the timing and amounts of each incentive payment; 6) conditions under which PBGC *must* terminate the service agreement; 7) conditions under which PBGC *may* terminate the service agreement; 8) conditions under which PBGC *may* temporarily suspend the service agreement; and 9) the obligations of the employee and PBGC, as applicable, if the agreement is terminated.
- (2) No service agreement shall be entered into by PBGC without the permission of the approving official for an incentive under this policy.
- (3) PBGC may not commence a retention incentive service agreement during a period of employment established under a recruitment or relocation incentive.
- (4) The minimum service period for any incentive shall be one year, regardless of the total approved percentage. Only the Executive Director may waive this minimum service period.
- (5) The maximum service period for any incentive shall be 4 years.

- b. Service Period Determinations. The criteria for determining the service period for a service agreement shall be based on the individual's job responsibilities, expertise, the length and expected outcome of a critical project or assignment for the individual, the amount of the incentive and the additional factors identified in Section 5(a) above.

c. Termination and Reduction

- (1) The Executive Director delegates authority to the HRD Director to unilaterally terminate service agreements in all incentive categories and reduce retention incentive authorization for reasons specified in 5 C.F.R. § 575, this policy, and the specific service agreement.

- (2) Prior to the action being taken, HRD shall provide the employee with written notice of the reduction or termination action.
- (3) Specific termination criteria at 5 C.F.R. § 575 shall be followed, as applicable to the category of incentive in question.
- (4) Termination of any incentive under this policy is not grievable or appealable.

8. Payment

- a. Payment amounts: The total amount of any incentive payments, except as provided for by waiver, may not exceed 25 percent of the annual rate of basic pay of the employee at the beginning of the service period multiplied by the number of years in the service period if the incentive is for an individual employee, unless waived by OPM in accordance with 5 C.F.R. § 575.109, 209, or 309, as applicable. Normally an incentive payment would be less than the maximum. If the incentive is for retention and established for a group or category of employees, the incentive rate may not exceed 10 percent.
- b. Payment methods:
 - (1) Recruitment or relocation incentives may be paid: 1) as an *initial* lump-sum payment at the commencement of the service period; 2) before the start of the service as long as a written service agreement is on file in HRD; 3) in installments throughout the period of service required by the service agreement; 4) as a *final* lump-sum payment upon the completion of the full service period; or 5) in a combination of these methods. The payment method will be determined by HRD using calculation guidelines at 5 C.F.R. § 575.109 and 5 C.F.R. § 575.209, as applicable.
 - (2) Retention incentives may be paid in: 1) installments after the completion of specified periods of service, or 2) a single lump-sum payment after completion of the full service period. A retention incentive payment shall not be paid as an initial lump-sum payment at the start of a service period or in advance of fulfilling the service period. The payment method will be determined by HRD using calculation guidelines at 5 C.F.R. § 575.309.
- c. Exceptions:
 - (1) For all incentives: 1) no payment shall be counted as a part of an employee's basic pay for any purpose; 2) payments are subject to the aggregate limitation on pay under 5 C.F.R. § 530; and 3) no payment may be made until the HRD has a written service agreement with the signature of the employee, the hiring official, and the approving official.

- (2) For relocation incentives, no payment may be made until: 1) the employee has provided proof of residence in the new geographic area to the HRD; and 2) the HRD has verified the establishment of the employee's residence.
- (3) For retention incentives:
 - (a) PBGC may not offer or authorize a retention incentive for an individual prior to employment with the agency.
 - (b) PBGC may not commence a retention incentive service agreement or begin paying a retention incentive during a period of employment established under a recruitment or relocation incentive.
 - (c) PBGC may pay a relocation incentive without affecting the payment of a retention incentive.
 - (d) Where no service agreement is required under conditions at 5 C.F.R. § 575.310(f), PBGC must review each determination annually to determine whether payment is still warranted, should be reduced, or terminated.

9. Repayment of Recruitment and Relocation Incentives

An employee may be required to repay a portion of a recruitment or relocation incentive under specific conditions identified at 5 C.F.R. § 575, subpart A or B. The conditions that may warrant repayment shall be specified in the applicable incentive service agreement.

10. Records and Reports

The HRD will maintain records sufficient to recreate the basis for the determination to pay an incentive and provide reports to OPM as may be required. The HRD will also monitor the submission, approval, and disapproval for incentives. This information will be analyzed from a Corporate-wide recruitment and retention perspective to determine trends, problem areas, and future needs.

APPENDIX E

**STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET
(Recruitment)**

A. Background Information (Complete the information for each item)

1. Selectee's name: _____
2. Organization: _____
3. Vacancy Announcement # _____
4. Position title, series, and grade: _____
5. Number of well-qualified candidates on the selection certificate (s): _____
6. Briefly describe (in an attachment to the worksheet) why this position has been difficult to fill and the high or unique qualifications this selectee possesses.
7. Value of selectee's current or former (within 4-months) compensation (include salary, commissions, differentials, other incentives) that is being used to determine the value of this offer (attach supporting documentation): \$ _____
8. Has the selectee been offered a recruitment incentive? _____yes _____no; if yes, percentage _____ and value: \$ _____
9. Has the selectee been offered a relocation incentive? _____yes _____no; if yes, percentage _____ and value: \$ _____
10. Has the selectee been offered an advanced step? _____yes _____no; if yes, step # _____ and value: \$ _____

B. Proposed Amount and Supporting Factors (Complete the information for each item)

1. Proposed student loan repayment amount: \$ _____
2. Criteria/factors (used to determine amount of loan repayment request):

<u>Factor</u>	<u>Determination</u>
a. Recruitment/retention success (<i>Good, Limited, or Poor</i>)	_____
b. Turnover (<i>Few/Seldom; Some/Moderate; Significant/High</i>)	_____
c. Labor market (<i>Good, Limited, or Poor</i>)	_____
d. Value of Qualifications (<i>Good, Limited, or Poor</i>)	_____

Requesting Official

Date

**(STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET (Recruitment)
Continued)**

C. Certifications. Each section should be completed by the applicable official, signed, dated, and include the official's title.

1. Review of Eligibility (HRD)

_____ The employee is eligible for the proposed incentive.

_____ The employee is not eligible for the proposed incentive (memorandum of review is attached).

(Signature)

Human Resources Official

Date

2. Funding Review (Department BLO)

_____ Sufficient funds *are/are not* available. (circle one)

(Signature)

Budget Liaison Officer

Date

3. First-level Consideration Approval/Disapproval

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved (memorandum of review is attached).

(Signature)

(Title)

Date

**(STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET (Recruitment)
Continued)**

4. Second-level Consideration Approval/Disapproval (Not used if less than \$20,000)

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved (memorandum of review is attached).

(Signature)

(Title)

Date

5. Final Approval/Disapproval

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved.

(Signature)

(Title)

Date

File: Original: Employee's OPF

Copy: Individual

Department

HRD Services

**STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET
(Retention)**

A. Background Information (Complete the information for each item)

1. Employee's name: _____
2. Organization: _____
3. Position title, series, and grade: _____
4. Briefly describe (in an attachment to the worksheet) the unusually high or unique qualifications of the employee occupying the position or the special need of the organization that makes it essential to retain the employee and the likelihood of the employee leaving the Federal service in the absence of the loan repayment benefit.

B. Proposed Amount and Supporting Factors (Complete the information for each item)

1. Proposed student loan repayment amount: \$ _____
2. Criteria/factors (used to determine amount of loan repayment request):

<u>Factor</u>	<u>Determination</u>
a. Recruitment/retention success (<i>Good, Limited, or Poor</i>)	_____
b. Losses (<i>Few/Seldom; Some/Moderate; Significant/High</i>)	_____
c. Employee's value to the mission (<i>Limited; Moderate; High</i>)	_____
d. Documented salary in a competing job offer	\$ _____

Requesting Official _____
Date

Department Director _____
Date

**(STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET (Retention)
Continued)**

C. Certifications. Each section should be completed by the applicable official, signed, dated, and include the official's title.

1. Review of Eligibility (HRD)

_____ The employee is eligible for the proposed incentive.

_____ The employee is not eligible for the proposed incentive (memorandum of review is attached).

(Signature)
Human Resources Official

Date

2. Funding Review (Department BLO)

_____ Sufficient funds *are/are not* available. (circle one)

(Signature)
Budget Liaison Officer

Date

3. First-level Consideration Approval/Disapproval

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved (memorandum of review is attached).

(Signature)
(Title)

Date

**(STUDENT LOAN REPAYMENT DETERMINATION WORKSHEET (Retention)
Continued)**

4. Second-level Consideration Approval/Disapproval (Not used if less than \$20,000)

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved (memorandum of review is attached).

(Signature)

(Title)

Date

5. Final Approval/Disapproval

_____ The proposed incentive is approved.

_____ The proposed incentive is modified as: _____

_____ The proposed incentive is disapproved.

(Signature)

(Title)

Date

File: Original: Employee's OPF

Copy: Individual

Department

HRD Services

APPENDIX F

Table 1, Retention Factor Ranking/Repayment Amount Determination Guide

Ranking Total	12 – 16	17 – 24	25 – 32
Repayment Range	0 – 19	21 - 40	41 - 60

(Repayment range in thousands)

Candidate Name: _____

(Retention)

APPENDIX G



Pension Benefit Guaranty Corporation STUDENT LOAN REPAYMENT REQUEST FOR AND APPROVAL OF BENEFITS

Name (<i>Print or Type</i>)		Department					
Title		Series/Grade/Step					
Type of appointment		Permanent <input type="checkbox"/>	Term <input type="checkbox"/>	Excepted <input type="checkbox"/>	Temporary <input type="checkbox"/>		
Student Loan Repayment Benefit Amount Requested \$ _____		Current Balance of Outstanding Loan \$ _____ NOTE: Official documentation from loan holder documenting loan balance and type of loan must be attached to this request form.					
Recommending Official*		Title		Date			
Approving Official (<i>Director, CMO or ED</i>)		Title		Date			
Certification of Funds		Title		Date			
Effective Date		Benefit Number of Years					
		1 <input type="checkbox"/>	2 <input type="checkbox"/>	3 <input type="checkbox"/>	4 <input type="checkbox"/>		
		5 <input type="checkbox"/>	6 <input type="checkbox"/>				
ELIGIBILITY REQUIREMENTS (<i>for HRD use only</i>)							
Most recent performance appraisal rating:		5 <input type="checkbox"/>	4 <input type="checkbox"/>	3 <input type="checkbox"/>	2 <input type="checkbox"/>	1 <input type="checkbox"/>	_____ Date Verified
Any pending disciplinary or adverse actions:		Yes <input type="checkbox"/>	No <input type="checkbox"/>			_____ Date Verified	
Loan information verified:		Yes <input type="checkbox"/>	No <input type="checkbox"/>			_____ Date Verified	

***Must be signed and a written nomination from the recommending official must be attached with each student loan repayment benefit application.**

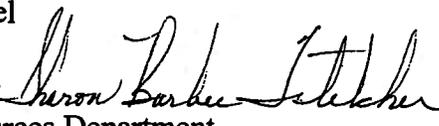
APPENDIX H



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

December 8, 2000

TO: Philip R. Hertz
Deputy General Counsel

FROM: Sharon Barbee Fletcher 
Director, Human Resources Department

SUBJECT: Hiring of Law School Graduates

I know PBGC faces serious competition in recruiting high caliber law school graduates because of the opportunities offered by other Federal agencies such as the Securities and Exchange Commission and the Department of Justice.

Therefore, I am approving your December 7, 2000, request to hire certain law school graduates at the GS-11 step 10 as long as two or more of the following criteria are met:

- 1) top one-third of graduating law school class;
- 2) outstanding undergraduate record (e.g., graduation with honors, election to academic honor society);
- 3) graduate degree in area relevant to pension issues;
- 4) judicial clerkship;
- 5) law review membership;
- 6) participation in clinical programs, advanced moot court, etc;
- 7) professional work in corporate bankruptcy;
- 8) significant legal work while attending law school;
- 9) legal experience involving pension law.

We hope that this approval will allow PBGC to successfully recruit high caliber law school graduates.

APPENDIX I



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

MEMORANDUM OF UNDERSTANDING

To: Judith Starr
General Counsel
Office of General Counsel (OGC)

Israel Goldowitz
Chief Counsel
Office of Chief Counsel (OCC)

From: Arrie Etheridge
Director
Human Resources Department (HRD)

Subject: Superior Qualifications Process for Law Clerk Hiring

Effective February 9, 2012 all Law Clerk hiring will be as follows:

To maintain PBGC's competitiveness, all Law Clerks will be hired at the GS-11 grade level and commensurate step based on individual education/qualifications if they meet two or more of the following criteria:

1. Top one-third of graduating law school class;
2. Outstanding undergraduate record (e.g., graduation with honors, election to academic honor society);
3. Graduate degree in employee benefits or other relevant specialty;
4. Judicial clerkship;
5. Law review membership;
6. Participation in clinical programs, internships/externships, advanced moot court, etc;
7. Experience in employee benefits, corporate bankruptcy, or other relevant specialty;

8. Significant legal work while attending law school.

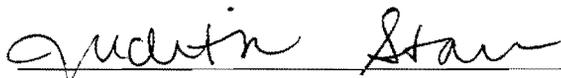
OGC/OCC will be responsible for:

- Coordinating with BOPD to ensure FTE's/budget are available;
- Reviewing minimum qualifications for each candidate (i.e., graduation from law school and proof of receipt of JD degree);
- Identifying source(s) from which to recruit. Openings may be posted with law schools around the country.
- Determining which schools should receive postings for positions and are encouraged to use consortiums to expand the pool of possible candidates while recognizing that diversity is important and must be considered;
- Evaluating the candidates fairly and equitably consistent with Merit Systems Principles;
- Documenting all hiring and related decisions;
- Providing written justification to HRD to include identifying two or more of the criteria listed above for approval to support superior qualifications (above the first step of the grade);
- Justifying a higher salary to remain competitive with other DC area employers;
- Providing HRD with SF-52, applicable transcripts; resume(s); written superior qualifications justification; the announcement, if applicable; and any other related documents;

HRD will be responsible for:

- Reviewing proper documentation and providing approval for superior qualifications;
- Making final job offer to candidate(s);
- Negotiating an effective date for candidate(s) to start at the beginning of a new pay period;
- Processing the SF-52 and applicable employee documentation;
- Maintaining employee records to include a copy of the resume, transcript(s), SF-52, and approved copy of written justification for superior qualifications. Hiring records will be maintained by HRD pursuant to applicable records retention requirements.

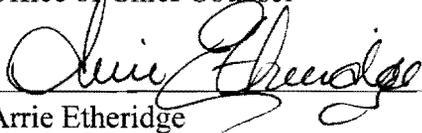
Concurrence:



Judith Starr
General Counsel
Office of General Counsel



Israel Goldowitz
Chief Counsel
Office of Chief Counsel



Arrie Etheridge
Director
Human Resources Department

APPENDIX J

Retention Incentive Calculation Example

- On January 3, 2013, an agency establishes a 25 percent retention incentive for a GS-15, step 7, employee in Washington, DC (\$148,510 in 2013).
 - The agency asks the employee to sign a service agreement. The service period begins January 13, 2013, and ends December 27, 2014.
 - The agency will pay the employee the retention incentive biweekly.
 - The employee's biweekly rate in 2013 is \$5,692.80 ($\$148,510 / 2,087$ hours = \$71.16 per hour x 80 hours in a pay period).
 - The employee's retention incentive each pay period in 2013 is \$1,423.20 ($\$5,692.80$ biweekly pay earned x 25 percent).
 - $\$1,423.20 \times 26$ pay periods at 2013 rate = \$37,003.20 in retention incentive payments in 2013.
- On January 3, 2014, the agency determines that the original determination still applies.
- On January 12, 2014, the 2014 pay rates are effective.
 - The GS-15, step 7, rate in DC in 2014 is \$149,993.
 - The employee's biweekly rate in 2014 is \$5,749.60 ($\$149,993 / 2,087$ hours = \$71.87 per hour x 80 hours in a pay period).
 - The employee's retention incentive payment each pay period in 2014 is \$1,437.40 ($\$5,749.60 \times 25$ percent).
 - $\$1,437.40 \times 25$ pay periods at 2014 rate = \$35,935 in retention incentive payments in 2014.
- By the end of the employee's service agreement, the employee will have earned \$72,938.20 ($\$37,003.20 + \$35,935$) in retention incentive payments.
- These retention incentive payments are within the limits in OPM's regulations. The retention incentive rate was not greater than 25 percent and in no pay period did the employee receive more than 25 percent of her rate of basic pay.