

# Pension Benefit Guaranty Corporation Office of Inspector General



**SEMIANNUAL REPORT TO CONGRESS  
OCTOBER 1, 2008 - MARCH 31, 2009**



# Pension Benefit Guaranty Corporation

Office of Inspector General

1200 K Street, NW, Washington, DC 20005-4026

April 30, 2009

The Board of Directors  
Pension Benefit Guaranty Corporation

I am submitting the Pension Benefit Guaranty Corporation Office of Inspector General's Semiannual Report to Congress, as required by the Inspector General Act of 1978, as amended. The report summarizes accomplishments for the period October 1, 2008 through March 31, 2009. The Act requires that you transmit this report, along with the management report prepared by the Pension Benefit Guaranty Corporation (PBGC), to the appropriate congressional committees.

The PBGC Office of Inspector General demonstrates our accountability to the Board, to Congress, and to the public through this semiannual report of our activities. During this six-month period, we issued four audit reports with 21 recommendations for improvement. We completed nine investigations and resolved fifty complaints. We referred two cases to the Department of Justice and four individuals to PBGC management for corrective action. Results of our work during this period included an arrest, recovery of \$31,000 from a convicted murderer, and two administrative actions. Working jointly with PBGC, we were able to close 43 prior audit recommendations, many of which resulted in the correction of long-standing issues.

The audits issued during this period demonstrate PBGC's accountability for the \$63 billion in assets for which it is responsible. Our audit of the Single-Employer and Multiemployer Program Funds showed that the financial statements prepared by PBGC were presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America. While our financial statement audit work also disclosed significant deficiencies in internal control (as discussed in the attached report), users can rely on PBGC's financial statements as a basis for decision-making.

PBGC relies heavily on the efforts of its contractors and must be willing to hold those contractors accountable for compliance with contract terms. The OIG expends a significant portion of our efforts performing audits of PBGC contractors. We are working collaboratively with PBGC to resolve a long-standing backlog of contract audit recommendations and we have the commitment of PBGC management to identify better ways of ensuring contractor accountability, going forward. In discussing whether PBGC will pursue collection of questioned costs, PBGC management notes that contracting officers do not have a duty to enforce each and every term in a contract and have broad discretion for resolving audit findings. Although OIG recommendations are not considered "closed" until OIG agrees that PBGC managerial corrective actions are "adequate," PBGC policy holds that OIG agreement with the contracting officer's decision is not a prerequisite for closure of contract administration and questioned cost recommendations.

We understand the broad discretion granted to contracting officers in determining whether to pursue collection of questioned costs. Nevertheless, we are troubled by PBGC's past practice of using the contracting officer's discretion in ways that result in contractors being paid, often the full amount, when they furnish personnel that fail to meet minimum education and experience requirements as established by contract. When contracts are clear about the consequences of providing personnel who fail to meet minimum education and experience requirements – "dollars associated with personnel found not to meet the labor category qualifications will be disallowed" – we question the reasoning of choosing not to hold contractors accountable by pursuing repayment from the overpaid contractor who benefitted. Further, we remain concerned that acceptance of unqualified personnel may provide certain contractors with a competitive advantage over other potential bidders that propose only personnel meeting or exceeding contract requirements.

We appreciate the cooperation you, your staffs, and the PBGC management team have provided to the OIG. We look forward to continuing this productive and professional working relationship as we continue to help PBGC meet its important challenges.

Sincerely,



Rebecca Anne Batts  
Inspector General

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# Executive Summary

This Semiannual Report to Congress summarizes the activities and accomplishments of the Pension Benefit Guaranty Corporation (PBGC) Office of Inspector General (OIG) for the period October 1, 2008 through March 31, 2009. To achieve our mission under the Inspector General Act of 1978, we must continually evaluate major challenges and issues to identify vulnerabilities to fraud, abuse, and inefficient and ineffective activities. During the past six months, we focused on issues that PBGC is facing and will face over the next several years. Communicating our results to the Board of Directors (the Board), the Acting Director, and to Congress through this report helps us achieve our goal of providing an independent and objective voice in support of protecting the pension benefits of American workers.

Highlights of the significant audit and investigative activity during this period include:

- **Governance**— As part of our audit of PBGC’s implementation of its new investment policy, we performed work to address a whistleblower’s concerns about the former PBGC Director’s unusual and active participation in multiple contracting activities and his contacts with potential bidders (see pages 5 -7).
- **Stewardship**— We issued 4 reports related to the annual financial statement audit, including the 16th consecutive unqualified opinion. We also reported three significant internal control deficiencies, and issued a detailed limited distribution internal control report. Our investigative results included recovery of \$31,000 from a convicted murderer (see pages 7 – 12).
- **PBGC’s Business Model**— At the request of U.S. Senator Herb Kohl, Chairman of the Senate Special Committee on Aging, we initiated a review of PBGC’s preparedness for a potential influx of pension plans (see pages 14-15).
- **Information Technology** — An investigation found that a contractor employee had used an unencrypted, un-password-protected flashdrive to store personally-identifiable information (PII) regarding PBGC participants. The contractor lost the flashdrive and failed to report the loss, all in violation of PBGC’s policy to protect PII (see pages 15-16).

The Appendix to this report presents statistical information about OIG audits and investigations and a cross-reference to the reporting requirements of the Inspector General Act.



# Introduction

## The Pension Benefit Guaranty Corporation

The Pension Benefit Guaranty Corporation (PBGC or the Corporation) was established under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA), as amended (29 U.S.C. §§ 1301-1461), as a self-financing, wholly-owned Federal government corporation to administer the pension insurance program. ERISA requires that PBGC: (1) encourage the continuation and maintenance of voluntary private pension plans, (2) provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries, and (3) maintain premiums at the lowest level consistent with carrying out PBGC's obligations.

For about 44 million Americans, PBGC provides assurance that their retirement benefits will be paid, up to a statutory limit. PBGC protects the pensions of participants in certain defined benefit pension plans (i.e., plans that promise to pay definitely determinable retirement benefits). Such defined benefit pension plans may be sponsored individually or jointly by employers and unions. PBGC is now responsible for the pensions of about 1.3 million people.

As stated in its Annual Report, during FY 2008 PBGC managed about \$63 billion in assets and paid about \$4.3 billion in benefits to more than 640,000 current retirees. The Corporation reports having sufficient liquidity to meet its obligations for a number of years, despite significant deficits in both the single-employer and multiemployer programs. Neither program at present has the resources to satisfy all of the benefit obligations already incurred, much less future obligations likely to be assumed.

## The Office of Inspector General

Our Office of Inspector General (OIG) was created under the 1988 amendments to the Inspector General Act of 1978. We provide an independent and objective voice that helps the Congress, the Board of Directors, and PBGC protect the pension benefits of American workers. Like all Offices of Inspector General, the PBGC OIG is charged with preventing and detecting fraud, waste, abuse, and mismanagement; conducting and supervising independent audits and investigations; and recommending policies to promote sound economy, efficiency, and effectiveness.

To provide value, we focus our work on the challenges facing PBGC. We strive to target the highest risk areas and emphasize timely reporting of results. We determine what we will investigate and audit and how we will conduct those investigations and audits. We determine our own priorities and have had our own independent legal counsel since 1990. Our audit and investigative staff is competent and experienced, with professional backgrounds in other Offices of Inspector General, independent accounting firms, and federal and state criminal investigative agencies. We independently respond to Congressional requests and initiate contact with Congress, as warranted. The OIG is in full compliance with the Quality Standards for Federal Offices of Inspector General, published by the President's Council on Integrity and Efficiency (PCIE) and the Executive Council on Integrity and Efficiency (ECIE). Our audit work is performed in

*OIG provides an  
objective and  
independent voice.*

compliance with Generally Accepted Government Auditing Standards, issued by the Government Accountability Office (GAO) and our investigations are performed in compliance with PCIE and ECIE Quality Standards for Investigations. The PBGC OIG is organizationally independent. The Inspector General reports directly to the highest level of PBGC governance, the PBGC Board and to Congress. In executing our independent oversight role, we perform a range of legally-mandated work (e.g., the annual financial statement audit and the annual Federal Information Security Management Act review) as well as a body of discretionary work.

# Management Challenges

PBGC faces the challenge of dealing with the financial turmoil that is affecting much of the American investment community. In early 2008, the Corporation adopted a new investment strategy to diversify its portfolio and increase its investment in stocks and in alternative asset classes. The following months brought a high level of activity from many parts of the Corporation, including the appointment of a Chief Investment Officer.

Although the current turbulence in our economy will mean a challenging environment for the remainder of FY 2009 and beyond, PBGC states it has the resources to meet its commitments to America's retirees for many years to come. Nevertheless, the economic recession is creating investment challenges for PBGC as well as the defined benefit pension plans it insures.

In the coming months, PBGC may be called to address an influx of large defined benefit pension plans, if companies can no longer afford to maintain the plans. PBGC's leadership has been proactive on several fronts. For example, PBGC's senior leadership has been engaged in contingency planning for a potential wave of pension plan trusteeships in the near future. The focus is on ensuring that PBGC's core functions — insurance programs and benefits administration — have the necessary resources (including staff, budget, and information technology) to address the incoming workload. Additionally, PBGC consistently monitors the conditions of multiple high-profile industrial sectors including retail, newspaper, pharmaceutical and auto. Many companies across a wide range of sectors – manufacturing, banking, health care, and retail – have suffered sharp declines in investment and business profitability.

OIG has identified five broad PBGC management challenge areas -- Governance, Stewardship, PBGC's Business Model, Information Technology, and Procurement and Contracting. While we conducted some audit and investigative work in each of the five areas, during this six month period, we concentrated on the areas of procurement and contracting, governance and stewardship. One of our major initiatives, our ongoing audit of PBGC's implementation of its new investment policy, crosses all three of these management challenges. The results of our efforts are detailed below.

## 1. Governance

PBGC's governance structure comprises the Board of Directors, their Board Representatives, a Presidentially-appointed Director, and Congressional oversight. Other elements of governance include PBGC's system of internal control, its clearly articulated authority to act, and the policies and procedures under which PBGC operates. PBGC governance is complex and requires those who are charged with its oversight to view the Corporation from a number of differing perspectives. Oversight by the PBGC Board, PBGC management and the OIG is critical to effective corporate governance. Equally important is the ethical tone set by PBGC leaders.

### *We identified PBGC's top Management Challenges:*

- *Governance*
- *Stewardship*
- *Business Model*
- *Information Technology*
- *Procurement*

## Audit of PBGC's Implementation of Its Investment Policy

During the past six months, our office has focused much effort on our ongoing audit of PBGC's implementation of the investment policy adopted by the Board in February 2008. The objective of this audit was to identify the strengths and weaknesses of PBGC's approach to executing investment policy and to determine the effectiveness of PBGC's plan to identify and mitigate key risks that could affect investment performance or limit anticipated benefits.

During the course of the audit, a whistleblower brought to our attention concerns about multiple contracting activities in which the Director was taking an unusual and active role. The former Director, who left office on January 20, 2009, served as PBGC's external "face." He was responsible for representing PBGC before the investment community and others. He frequently communicated in person, by phone and by email with numerous Wall Street investment firms, including some seeking to do business with PBGC. At the same time, the former Director also participated directly in drafting contract requirements and evaluation factors and selecting winning bidders, including the selection of BlackRock, Goldman Sachs, and JPMorgan for strategic partnership contracts to manage \$2.5 billion in PBGC assets.

After the close of this semiannual period, but before issuance of this Semiannual Report to Congress, we issued an interim audit report to the PBGC Board of Directors addressing the former Director's dual roles as agency representative and procurement official. The Board responded promptly and made commitments for appropriate corrective actions, as needed. Our other work addressing PBGC's implementation of its investment policy continues and will be reported in the next Semiannual Report to Congress.

### Ensuring Corrective Action for Open Audit Recommendations

Audit recommendations are the heart of any audit report. No matter how interesting the findings may be, a report is not effective unless the recommendations are implemented and the problems reported are fully addressed. At the request of the House Committee on Oversight and Government Reform, we undertook a comprehensive review of the status of outstanding audit recommendations and identified 130 outstanding recommendations for corrective action that have not yet been implemented by PBGC. We noted the following:

- Some recommendations were quite old; for example, the need to implement an integrated financial management system was first reported twelve years ago, in 1997. The issue has been included in each subsequent year's financial statement audit, including the audit for FY 2008.
- As another example of a corrective action that is long overdue, recommendations from an audit report issued in 2003 related to PBGC's Premium Accounting System are not scheduled to be completed until June 2010. While PBGC has initiated a range of efforts to address this issue, significant challenges persist.

***PBGC Board  
Responded  
Promptly to Our  
Interim Report***

- Progress is being made on some old recommendations, however. For example, our FY 2004 financial statement audit included a recommendation for the development of a comprehensive procedures manual for processing and estimating premiums - an action that is scheduled to be completed sometime in the summer of 2009.
- As good news, we noted that 50 of the 130 open recommendations were issued within the prior year and most of these 50 recommendations are in the process of being implemented.

Our recommendations focus on helping PBGC become more efficient and effective. About three-fourths of the recommendations are intended to improve PBGC’s internal controls or governance. As part of ensuring effective governance of PBGC, entities charged with oversight should continue to emphasize implementation of outstanding audit recommendations.

### Congressional Oversight

Congress is an important part of oversight for both PBGC and the PBGC OIG. During this semiannual period, we met with staff of the Senate Committee on Finance; Senate Committee on Health, Education, Labor, and Pensions; and the Senate Special Committee on Aging. In response to Chairman’s letters from these Committees, we provided briefings about our ongoing work, including our review of the actions of the former Director.

### OIG Membership on PBGC Internal Control Committee

The Assistant Inspector General for Investigations (AIGI) provided insight gained through his experience as a criminal investigator to the committee responsible for oversight and accountability of PBGC internal controls. Effective control systems may detect fraud or deliberate non-compliance with policies, regulations, or laws.

## 2. Stewardship

OIG’s work in the “Stewardship” area focuses primarily on PBGC’s overall financial management and its stewardship of entrusted resources. Specific activities include preventing fraud, detecting improper payments, protecting participant data, and safeguarding assets of pension plans close to termination.

PBGC’s strategic plan outlines the “Stewardship” goal of exercising effective and efficient stewardship of PBGC resources. OIG shares this goal and dedicates a large proportion of resources to this challenge. Specifically, during the past six months we have:

- completed the annual audit of PBGC’s financial statements, as required by the Chief Financial Officer’s Act, and
- investigated matters that threatened PBGC resources, with results including recovery of stolen benefits and identification of a supervisory employee who engaged in fraud.

*OIG Kept Senate  
Committee Staff  
Informed*

***PBGC Earned an  
Unqualified Opinion  
on its Financial  
Statements***

Audit of the Pension Benefit Guaranty Corporation's  
Fiscal Year 2008 and 2007 Financial Statements  
(AUD-2009-1/FA-08-49-1)

We contracted with an independent certified public accounting firm, Clifton Gunderson LLP, to audit the financial statements of the Single-Employer and Multiemployer Program Funds administered by PBGC, as of and for the years ended September 30, 2008 and 2007. The audit was performed in accordance with the Generally Accepted Government Auditing Standards issued by GAO; OMB's Bulletin No. 07-04, Audit Requirements for Federal Financial Statements, as amended; and the methodology set forth in the GAO/PCIE Financial Audit Manual.

As a result of the audit of the Single-Employer and Multiemployer Program Funds administered by PBGC, Clifton Gunderson reported that:

- The financial statements were presented fairly, in all material respects, in conformity with accounting principles generally accepted in the United States of America; and
- PBGC's assertion about internal control over financial reporting (including safeguarding assets) and compliance with laws and regulations, as of September 30, 2008, was fairly stated in all material respects.

By law, PBGC's Single-Employer and Multiemployer Program Funds must be self-sustaining. The audit report explained that PBGC reported net deficit positions (liabilities in excess of assets) in both the Single-Employer and Multiemployer Funds. Management based the Single-Employer Program estimate on data for fiscal years ending in calendar year 2007. This data was obtained from filings and submissions to the government and from corporate annual reports. Because subsequent adjustment for economic conditions through September 30, 2008 (the date of the financial statements) was not made, the exposure to loss for the Single-Employer Program as of September 30, 2008 could be substantially different than reported. The report went on to explain that PBGC's net deficit and long-term viability could be further impacted by certain other losses as a result of deteriorating economic conditions, the insolvency of a large plan sponsor, or other factors.

Clifton Gunderson also identified, and summarized, three significant deficiencies.

- **-Entity-wide Security Program Planning and Management.** PBGC made significant progress in strengthening the design and implementation of their entity-wide security management program. Such a program should be in place to establish a framework and continuing cycle of activity to manage security risk, develop security policies, assign responsibilities, and monitor the adequacy of computer security related controls. It should also represent the foundation for an entity's security control structure and reflect senior management's commitment to addressing security risks. During FY 2008, PBGC management corrected four prior years' internal control weaknesses and made progress on others. However,

continued improvements are needed to resolve remaining control deficiencies. These deficiencies prevent PBGC from implementing effective security controls to protect its information from unauthorized access, modification, and disclosure.

- **-Access Controls.** PBGC is in the process of implementing a program to address access control weaknesses. Access controls should be in place to consistently limit, detect, or monitor access to computer programs, data, equipment and facilities. Such controls include both logical and physical security and are intended to protect against unauthorized data modification, disclosure, loss or impairment. PBGC has acknowledged that additional time will be required to fully address access control weaknesses. Until PBGC consistently implements all key elements of its information security program, PBGC will not have sufficient assurance that financial information and financial assets are adequately safeguarded from inadvertent or deliberate misuse, fraudulent use, improper disclosure, or destruction.
- **-Integrated Financial Management System.** As reported in prior year audits, the risk of inaccurate, inconsistent, and redundant data is increased because PBGC lacks a single integrated financial management system. The current system cannot be readily accessed and used by financial and program managers, and requires excessive manual processing and inefficient balancing to reconcile disbursements, collections, and general ledger data. In the short term, PBGC's ability to accurately and efficiently record, accumulate, and summarize information required for internal and external financial reporting may be impacted.

The audit did not identify any instances of reportable noncompliance with tested laws and regulations.

In responding to the report, PBGC management concurred with the recommendations in the report, expressed appreciation for our acknowledgement of PBGC's progress, and committed to working with PBGC OIG in fully addressing the issues.

#### Report on Internal Controls Related to the Audit of the Pension Benefit Guaranty Corporation's Fiscal Year 2008 and 2007 Financial Statements (AUD-2009-2/FA-08-49-2)

This report on internal controls, prepared by Clifton Gunderson LLP, provided a more detailed discussion of the specifics underlying the three significant deficiencies reported in the internal control section of the independent auditors report (AUD-2009-1/FA-08-49-1) noted above. PBGC's response to the internal control report indicated management's agreement with and intention to work diligently on correcting the report's findings and implementing recommendations.

*Significant  
Deficiencies  
Still Need To Be  
Corrected*

## **Audit of the Pension Benefit Guaranty Corporation's Fiscal Year 2008 and 2007 Special-Purpose Financial Statements (AUD-2009-3/FA-08-49-3)**

As part of the financial statements audit, we contracted with Clifton Gunderson LLP to audit PBGC's reclassified balance sheets as of and for the years ended September 30, 2008 and 2007, and the related reclassified statements of net costs and changes in net position for the years then ended.

PBGC prepares special-purpose financial statements for submission to the U.S. Department of the Treasury and the U.S. Government Accountability Office (GAO) through the Government-wide Financial Reporting System for GAO's use in preparing and auditing the Financial Report of the U.S. Government. The special purpose report is not intended to comprise a complete presentation of PBGC's financial statements. Rather, these special-purpose financial statements link PBGC's audited financial statements to the Financial Report of the United States Government.

### **Fiscal Year 2008 Financial Statements Audit Management Letter (AUD-2009-4/FA-08-49-4)**

During the annual financial statements audit (AUD-2009-1/FA-08-49-1), our contract independent certified public accounting firm, Clifton Gunderson LLP, identified certain less significant matters related to PBGC internal controls and operations that were not included in the report on internal controls (AUD-2009-2/FA-08-49-2).

The management letter summarized Clifton Gunderson's findings and recommendations regarding those less significant matters and included the status of prior years' management letter recommendations. The Chief Financial Officer stated that PBGC management agreed with the recommendations and was making progress in addressing prior year recommendations.

### **PBGC Recovered \$31,000 in Pension Benefits from Convicted Murderer**

OIG criminal investigators completed an investigation that resulted in PBGC recovering more than \$31,000 in pension overpayments intended for a missing Pennsylvania man. As we reported in our last semiannual report, the daughter of a man missing since 1993 took her father's PBGC benefit payments totaling at least \$31,140 and then spent the money.

The OIG and the PBGC Office of the General Counsel (OGC) worked jointly to ensure that PBGC suspended the missing participant's monthly benefits. Further, OIG and the OGC worked through the court to freeze the participant's bank account to prevent further withdrawals until the court ruled on PBGC's petition to have the participant declared dead. Because a missing person can be presumed dead after 7 years, neither the participant's estate nor his heirs were entitled to any of the overpaid pension

***OIG and PBGC  
Worked Together To  
Recover Funds***

benefits after the presumed date of death. The court ruled in PBGC's favor, allowing the Corporation to recover from the daughter the benefits PBGC paid after the presumed death date.

Because the daughter received a life sentence for an unrelated murder conviction and PBGC could recover the overpaid benefits from bank proceeds, the local prosecutor declined to pursue criminal charges related to the benefit theft. The OIG reported the results of our investigation and the court's declaration of the participant's death to the Social Security Administration, allowing clearance of that agency's case on the participant as well.

### **Human Resources Department Made Mistakes, But Did Not Compromise Fair and Open Competition**

As part of the Office of Personnel Management's (OPM) human capital management evaluation of PBGC's human resources recruitment activities, OPM identified several hiring actions that appeared to compromise fair and open competition. OPM referred these potential violations of 5 USC §2302(b)(6) to the OIG for investigation. In addition, the referral requested that the OIG determine if official hiring records were at risk based on a past practice of shredding hiring documents.

For one recruitment, we found the agency had improperly established an education requirement, but that no corrective action could be taken as the employee who had been selected was no longer in that position.

For a second recruitment, we found that the Human Resources Department had not adequately documented its analyses in developing a selective placement factor; nevertheless, the factor was appropriate and did not improperly exclude other applicants, including a number of veterans who had applied for the position. We also confirmed that the recruitment period did not meet OPM's recommended minimum 5-day period for job openings.

Finally, we concluded personnel records were no longer at risk for improper destruction, as both the individual who had been shredding records and that employee's supervisor had left PBGC employment and shredding had been discontinued.

### **Supervisory Employee Exploited Lax Timekeeping Practices to Perpetrate Fraud**

An OIG investigation found a former PBGC supervisory employee provided false information on a federal employment application and committed time and attendance fraud that resulted in the employee's receipt of more than \$3,000 in pay for time that she did not work. The former employee exploited lax timekeeping procedures and the good will of subordinates, causing fraudulent overtime entries and leave omissions from the timekeeping records. The report recommended that PBGC pursue collection of the overpayment from the employee who is now a supervisor at another federal agency. A management advisory addressing internal control issues will follow.

***OIG Addressed  
OPM's Concerns  
About PBGC Hiring  
Actions***

## Arrest Warrant Issued for Former Employee Who Stole Laptops

With the assistance of local law enforcement in Greenville, South Carolina, we located a former employee who stole two PBGC laptop computers upon terminating employment with the agency. During an interview with the OIG, the former employee confessed that she took the laptops. The Greenville County Sherriff's Office recovered the stolen property and returned it to the OIG. The former employee was arrested and charged with receiving stolen property. The former employee failed to appear in court for an initial appearance. As a result, the court issued a bench warrant for the former employee's arrest.

## Employee Suspended for Misconduct

Based on a previous OIG investigation that found an employee forged his supervisor's signature on a PBGC document, PBGC management determined that the employee failed to follow administrative rules and procedures and suspended the employee from duty for one work day.

### 3. Procurement and Contracting

PBGC relies heavily on the services of contractors to carry out its operations, a factor that makes procurement and contracting a significant PBGC activity. In its FY 2009 Congressional budget submission, PBGC reported spending about two-thirds of its annual operating budget through contracts. When base and option years are considered, total obligations for PBGC's active contracts are \$820 million. In addition, between FYs 2001 and 2009, the dollar value of PBGC's contracting activity more than doubled. This trend and volume of expenditures makes contract management a major challenge for PBGC.

OIG continues to devote a significant portion of its resources to audits and reviews of PBGC's procurement and contracting activities. During the past six months, we focused our efforts on the resolution of contract audit reports issued in prior periods. As of March 31, 2009, there were 13 contract audit reports for which PBGC had not completed action to implement OIG recommendations. While some reports had languished without being addressed for several years (e.g., Report No. 2005-11/CA-2004, issued in February, 2005), other reports were more recent. Overall, at the end of this reporting period, 51 recommendations from contract audit reports remained open, including 28 with questioned costs totaling over \$2.1 million.

PBGC continues to work to implement our recommendations, submitting some recommendation completion documentation after the close of this reporting period. OIG is currently reviewing documentation involving 15 recommendations and about \$1 million of questioned costs.

***Audit Reports With  
More Than \$2 Million  
in Questioned Costs  
Remain Open***

## OIG Concerns About Management Decisions Not to Disallow Costs

PBGC management places great emphasis on the contracting officer's exercise of business judgment in determining whether and to what extent the contracting officer will (a) disallow questioned costs and (b) pursue recoupment. As part of our joint effort to resolve the backlog of aged contract audits, OIG has given deference to the contracting officer's business judgment in many instances. However, when the contracting officer's judgment is not supported by valid evidence or when the contracting officer's decision results in payments for items that are specifically not allowed by contract terms, we will report our disagreement with the contracting officer's decision. The Inspector General Act of 1978, as amended, requires OIG to report on any significant management decision with which the Inspector General is in disagreement.

During the last six months, in at least two instances, PBGC issued letters to contractors to settle audit recommendations without consulting with our office, even though such consultation is required by PBGC Directive when recommended recoveries exceed \$100,000. While PBGC was able to rescind one of the letters, a response to the other letter had already been received, with the result that PBGC accepted \$3,544 in full settlement of audit issues that included \$114,225 in questioned costs. We disagreed with PBGC's decision not to pursue collection of questioned costs, where those questioned costs relate to payment for amounts that were specifically unallowable under the terms of the contract.

PBGC contracts contain clauses addressing the types of costs that will be disallowed. For example, the contract noted above established minimum qualifications for each category of labor under the contract and included the provision that "dollars associated with personnel found not to meet the labor category qualifications **will be disallowed**" (emphasis added). We questioned \$27,566 paid to the contractor for work done by a computer operator who advised that she had never graduated from high school. The contractor provided PBGC a resume incorrectly stating that the employee did have a diploma and PBGC paid the contractor at a rate based on the employee having graduated from high school.

The contract between PBGC and the contractor gives clear notice about what is supposed to happen if PBGC finds out that the contractor has provided an employee who does not have the minimum education or experience – the dollars "will be disallowed." Nevertheless, even though PBGC agreed with OIG that the employee did not have the required education, the Procurement Department (PD) determined that "PD does not believe the government is due any consideration. Therefore, PD will not pursue any of this portion of questioned cost."

We disagree with PBGC's decision in the example above and believe that PBGC should act to ensure that contractors are held accountable for providing employees that meet the minimum requirements established in the contract. This is a recurring issue for PBGC – in our prior semiannual report, we noted that our review of three PBGC contractors showed that 7 of 25 contract employees reviewed did not meet minimum

*OIG Disagreed  
with Some PBGC  
Management  
Decisions*

experience requirements and 2 of the 25 did not have the minimum required education. As we work with PBGC to resolve contract audits issued in prior years, we will advocate for PBGC to hold contractors accountable, in accordance with contract terms, when the contractors provide employees that do not meet minimum education and experience requirements.

As PBGC moves forward, it is important that the Corporation (1) require contractors to establish effective internal controls to ensure contract compliance and (2) enforce contract provisions when contractors do not provide services as set forth in the contract. PBGC management has emphasized to OIG their view that “contracting officers do not have a duty to enforce each and every term in a contract. They may determine that technical variances with contract terms are not material and have broad discretion for resolving audit findings.” We remain concerned that failure to enforce the terms of the contract may result in PBGC paying for performance at a higher level than it receives and may provide an unfair competitive advantage to the contractors over other potential bidders that do intend to comply with contract provisions. Over time, unfair competitive advantages to one particular contractor may erode future competition, which is contrary to the best interests of PBGC and the Federal government.

## 4. Business Model

PBGC’s business environment is constantly changing, often as a result of external factors such as the current economic crisis. For example, this year PBGC is actively monitoring about 4,000 defined benefit pension plans with approximately 29 million participants to determine the potential for termination and the economic impact on PBGC, and to negotiate with plan sponsors over pension benefit protection. In recent months, pension plan underfunding has dramatically increased as the value of plan assets has decreased. Plan sponsors are filing for bankruptcy in record numbers. Compared to the last several years when the number of pension plan terminations was low, PBGC reported to us that the number of plan terminations and the volume of participants in terminating plans has significantly increased.

Nationwide economic uncertainties affect every component of PBGC. For example, the Insurance Program Operations Department analyzes financial condition and participates in the bankruptcies of a greater number of pension plan sponsors. The Benefits Administration and Payments Department is terminating and trusteeing more single-employer pension plans and paying the benefits of hundreds of thousands more participants and beneficiaries. The Chief Financial Officer’s organizations are assuming responsibility for and investing the assets from those plans. PBGC’s other management organizations must all support the increased workload.

Although it is regularly called upon to deal with very large and sophisticated corporate players, PBGC is a relatively small Federal entity charged with the mission of protecting the retirement income of nearly 44 million American workers. PBGC is challenged to adapt the way it does its business to a constantly changing environment — to have

***Plan Terminations and  
Volume of Participants  
in Terminated Plans  
have Significantly  
Increased***

the right staff and resources in the right place at the right time. In helping PBGC respond to the "Business Model" challenge, OIG conducts work to evaluate PBGC programs and make recommendations to improve effectiveness and efficiency.

### OIG's Multiemployer Audit Findings May Be Referred to DOL for Enforcement

Currently, PBGC insures about 1,500 multiemployer plans that have roughly 10 million participants or beneficiaries. When a multiemployer plan depletes its assets, PBGC provides financial assistance to pay the guaranteed benefits and plan administrative expenses. During our audits of terminated multiemployer plans, we found that certain money might have been owed to a plan but, since the private trustees are in place and the U.S. Department of Labor (DOL) has continued oversight jurisdiction, a question arose about whether PBGC had authority to take any action to enforce collection. So that we could make effective audit recommendations, we asked PBGC's Office of the Chief Counsel to opine on the extent of PBGC's authority, with respect to terminated multiemployer plans, to: (1) direct a plan trustee to seek money owed to the plan or to seek monetary recovery on behalf of these plans, and (2) require the plan to seek competitive bids for professional service to ensure its administrative costs are reasonable. PBGC's Chief Counsel opined that PBGC generally does not have authority to direct a terminated multiemployer plan to seek repayment of amounts owed to the plan from a third party – DOL has that enforcement authority. Similarly because of DOL's authority, PBGC generally does not have authority to require a plan to take particular steps to ensure the reasonableness of administrative expenses. Therefore, we will be referring to the DOL matters for which the terminated multiemployer plan needs to recover money owed to the plan.

### Request from Senate Special Committee on Aging

At the request of Chairman Herb Kohl of the Senate Special Committee on Aging, we initiated an engagement to evaluate PBGC's readiness to address the potential increase in workload attributable to changes in the economy. Because of economic stress, there is concern that some large plan sponsors may terminate their defined benefit pension plans. Chairman Kohl asked OIG to evaluate whether "PBGC management is taking steps to strategically prepare the Corporation for the possible influx of such plans and their participants." We subsequently met with the Committee and outlined our approach to this evaluation. We will report our results in the next semiannual period.

## 5. Information Technology

PBGC's mission of protecting and providing pension plan retirement benefits for over 44 million Americans relies heavily on the effectiveness and security of the PBGC information systems network. The confidentiality, integrity, and availability of information for pension benefits are key elements. Information security has been reported as a significant deficiency in the internal controls report issued as part of PBGC's annual financial statements audit (see pages 8-9). Although PBGC has made

*OIG is Evaluating  
PBGC's Readiness  
to Deal With a  
Potential Influx of  
Terminated Plans*

***Contract Employee***

***Lost Personal***

***Data of PBGC***

***Participants***

progress in this area, information security improvements are still needed. Through the financial statement audit work in the upcoming period, we will evaluate and report on the Corporation's actions in addressing the significant deficiencies so that the integrity and privacy of both federal workers' and pension plan participants' information are protected.

### **PBGC Contractor Failed to Protect Personally-Identifiable Information**

The OIG investigated a breach of security incident when an employee of the Transportation Security Agency (TSA) contacted PBGC after a flash drive containing Personally Identifiable Information (PII) regarding PBGC participants was found at a Cleveland, Ohio commuter train station parking lot. OIG investigators recovered the flash drive from the TSA employee and performed an electronic analysis to identify the source of the PII data. Documents stored on the flash drive were traced to a company that was under contract with the PBGC. We found that an employee and a supervisor of the company downloaded PBGC PII data to an unauthorized, unencrypted, and non-password protected flash drive and failed to secure the flash drive in a safe location. These actions violated PBGC's policy to protect sensitive information which is included in the company's contract. OIG referred the investigative results to PBGC management for action.

## **Other OIG Reporting**

### **Access to Information**

Under the Inspector General Act, the Inspector General is to have unfettered access to all agency records, information, or assistance when engaged in an investigation or audit. Whenever access to requested records, information, or assistance is unreasonably refused or not provided, the Inspector General must promptly report the denial to the agency head.

During this six month reporting period, the Inspector General's access to information and assistance was not restricted.

### **Management Decisions**

The Inspector General is required to report the following about management decisions on audit reports that occurred during this six-month period:

- There are 8 audit reports for which management decisions are pending (see Appendix, page 24).
- There were no significantly revised management decisions.
- Details of management decisions with which the Inspector General disagrees are provided on pages 13-14 of this report.

# Other Office of Inspector General Activities

## Review of Proposed Statutory and Regulatory Changes

### Statutes

A major responsibility of the OIG under the Inspector General Act is the independent review of PBGC-proposed changes to laws and regulations. There were no significant PBGC statutory proposals this period.

### Regulations

PBGC continues in a major effort to streamline its regulations and to improve administration of the pension insurance program, with a focus on making pension-related information more accurate, complete and transparent. PBGC continues to develop regulations to implement the Pension Protection Act of 2006, including terminations of hybrid defined benefit pension plans, such as cash balance plans. PBGC also issued a proposed rule to implement the Uniformed Services Employment and Reemployment Rights Act of 1994. We reviewed, provided written comments, and had substantive conversations with the drafters of these proposed rules.

## Congress Examines Inspector General Independence

On March 25, 2009, Chairwoman Diane E. Watson of the Subcommittee for Government Management, Organization, and Procurement of the House Committee on Oversight and Government Reform held a hearing on the roles and responsibilities of certain Inspectors General. The five Inspectors General affected by HR 885 – PBGC, the Board of Governors of the Federal Reserve, Commodities Futures Trading Commission, National Credit Union Administration, and the Securities and Exchange Commission - were either invited to testify or submit statements for the record. Our Inspector General, Rebecca Anne Batts, submitted a statement emphasizing that independence is the foundation of the IG Act. Independence is fostered through an OIG's independent determination of the audits and investigations to be performed, the prohibition on agency interference, the dual reporting structure to Congress and to the PBGC Board, budget transparency, full law enforcement authority, and pay parity with agency executives. She offered other ideas for Congressional consideration that would enhance Inspector General independence, such as:

- Requiring the agency head to address identified deficiencies or to certify to Congress that no action is necessary.

*Independence is  
the Foundation  
of the Inspector  
General Act*

*Special Agent-in-  
Charge Mentored  
Investigators at FLETC*

- Providing authority for OIG to employ rehired annuitants without employee reduction in annuities.
- Authorizing the issuance of testimonial subpoenas.

We are continuing to meet with Congressional staff to develop proposals to positively impact Inspector General independence.

## Other Activities

### Special Agent-in-Charge Provides FLETC Support

During the months of November and December 2008, OIG's Special Agent-in-Charge (SAC) served as a course facilitator for the Federal Law Enforcement Training Center's (FLETC) Inspector General Academy Basic Non-Criminal Investigator Training Program in Glynco, Georgia. FLETC has found that having an experienced senior agent to mentor a small group of investigators during their training, makes the investigators more successful. Our SAC served as a field supervisor, trainer and liaison for a group of administrative investigators from several Federal agencies. The course is designed to improve investigative techniques in areas such as interviewing, employee's rights, union representation and civil and criminal procedures.

### Participation in Professional Organizations

In addition, various staff members participated in external and internal professional activities. Examples include:

- The IG participates in the new consolidated Council of Inspectors General for Integrity and Efficiency (CIGIE) that promotes inspector general collaboration on integrity, economy, and efficiency issues that transcend individual agencies. She serves as a member of the CIGIE Audit and Information Technology Committees. In the Federal Financial Regulatory Inspectors General group, she joins with other IGs to discuss common financial concerns and the work each is doing.
- The Assistant IG for Investigations (AIGI) participated with the AIGIs from the Department of Agriculture and National Science Foundation in planning the 2009 AIGI Annual Training conference in Cape May, New Jersey. The training conference provides an opportunity for AIGIs responsible for conducting investigations throughout the Federal government to network, participate in training, and discuss issues that impact the investigators in the Inspector General community. Agenda topics for this year's conference included a presentation on the implementation and plans of the newly established CIGIE, an investigations best practices panel, and a presentation from the Georgetown Public Policy Institute on the interaction of OIGs with Congress.

# Appendix

## CROSS-REFERENCE TO REPORTING REQUIREMENTS OF THE INSPECTOR GENERAL ACT

The table below cross-references the reporting requirements prescribed by the Inspector General Act of 1978, as amended, to the specific pages in the report where they are addressed.

Inspector General Act Reference	Reporting Requirements	Page
Section 4(a)(2)	Review of legislation and regulations.	17
Section 5(a)(1)	Significant problems, abuses, and deficiencies.	5-16
Section 5(a)(2)	Recommendations with respect to significant problems, abuses, and deficiencies.	5-16
Section 5(a)(3)	Prior significant recommendations on which corrective action has not been completed.	25
Section 5(a)(4)	Matters referred to prosecutorial authorities.	10, 20
Section 5(a)(5)	Summary of instances in which information was refused.	16
Section 5(a)(6)	List of audit reports by subject matter, showing dollar value of questioned costs and recommendations that funds be put to better use.	21
Section 5(a)(7)	Summary of each particularly significant report.	5-16
Section 5(a)(8)	Statistical table showing number of reports and dollar value of questioned costs.	21
Section 5(a)(9)	Statistical table showing number of reports and dollar value of recommendations that funds be put to better use.	21
Section 5(a)(10)	Summary of each audit report issued before this reporting period for which no management decision was made by end of the reporting period.	22-23
Section 5(a)(11)	Significant revised management decisions.	16
Section 5(a)(12)	Significant management decisions with which the Inspector General disagrees.	16

## SUMMARY OF AUDIT AND INVESTIGATIVE ACTIVITIES

For the Six-Month Period Ending March 31, 2009

### Audit Reports Issued

Number of Reports	4
Number of Recommendations	21

### Management Decisions

Open Recommendations Beginning of Period	152
Opened this Period	21
Closed This Period	43
Open Recommendations End of Period	130 <sup>1</sup>
Reports with Open Recommendations End of Period	30

### Investigations

Pending Beginning of Period	17
Opened	9
Closed	9
Pending End of Period	17

### Complaints<sup>2</sup>

Pending Beginning of Period	18
Opened	52
Closed	50
Pending End of Period	20

### Financial Recoveries<sup>2</sup>

Theft of Funds Recovered	\$31,000
Court Ordered Fines, Penalties, and Restitution	\$0
U.S. Government Property Recovered	\$1,200

### Criminal Actions<sup>2</sup>

Arrests	1
Indictments	0
Convictions	0

### Administrative Actions<sup>3</sup>

Terminations	0
Suspensions	1
Oral or Written Reprimand	1

### Referrals

#### For Prosecution:

Department of Justice	2
Declined	2
Various States' Attorney Offices	0
Declined	0

#### For Other Action:

PBGC Management for Corrective Action	4
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<sup>1</sup>After the close of the Semiannual Period, PBGC and the OIG identified one additional open recommendation, for a total of 131.

<sup>2</sup>Complaints include allegations received through the hotline operation and issues resulting from proactive investigative efforts.

<sup>3</sup>Results reported for Financial Recoveries, Criminal, and Administrative Actions include both open and closed cases.

## RESULTS OF REPORTS ISSUED

For the Six-Month Period Ending March 31, 2009

	Number of Reports	Questioned Costs	Unsupported Costs <sup>2</sup>	Funds Put to Better Use
A. For which no management decision had been made by the commencement of the reporting period.	11 <sup>1</sup>	\$2,159,960	\$25,405	\$0
B. Which were issued during the reporting period.	4			
Pension Benefit Guaranty Corporation's FY 2008 and 2007 Financial Statements, 2009-1/FA-08-49-1 (11/13/08)		\$0	\$0	\$0
Report on Internal Controls Related to the Pension Benefit Guaranty Corporation's FY 2008 and 2007 Financial Statements Audit, 2009-2/FA-08-49-2 (11/13/2008)		\$0	\$0	\$0
Pension Benefit Guaranty Corporation's FY 2008 and 2007 Special-Purpose Financial Statements, 2009-3/FA-08-49-3 (11/17/2008)		\$0	\$0	\$0
FY 2008 Financial Statements Audit Management Letter, 2009-3/FA-08-49-4 (01/15/2009)		\$0	\$0	\$0
<b>Total</b>	4			
Subtotal (Add A. & B.)	15	\$2,159,960	\$25,405	\$0
C. For which a management decision was made during the reporting period.	7 <sup>3</sup>	\$248,152	\$0	\$0
(i) dollar value of disallowed costs		\$51,467	\$0	\$0
(ii) dollar value of costs not disallowed		\$196,685	\$21,164	\$0
D. For which no management decision had been made by the end of the reporting period.	8	\$1,911,808	\$4,241	\$0
E. For which no management decision was made within six months of issuance.	8	\$1,911,808	\$4,241	\$0

<sup>1</sup> Number of reports and dollar amounts revised from the last semiannual period to remove CCRD's contract reviews and questioned costs.

<sup>2</sup> Unsupported costs are a subset of questioned costs.

<sup>3</sup> Management decisions were made on 3 of the 7 reports at the end of the reporting period; disagreements, if any, with amounts not disallowed will be reported in the next semiannual report.

SUMMARY OF REPORTS OLDER THAN SIX MONTHS FOR WHICH  
MANAGEMENT DECISION HAS NOT BEEN ACHIEVED

Report and Summary	Reason For No Management Decision	Anticipated Management Decision
<p><b>Incurring Cost Audit, 2005-11/CA-0004 (2/22/05)</b></p> <p>Questioned Costs of \$10,414 for use of billing rates that differed from the fixed rates contained in the contract and use of a markup on the questioned costs.</p>	<p>Due to an oversight, this audit was not reviewed in a timely manner and PD is actively reviewing this matter to avoid further delays.</p>	<p>9/30/2009</p>
<p><b>Examination of Contract Termination Proposal, 2006-14/CA-0013 (9/27/06)</b></p> <p>Questioned Costs of \$197,035 because the contractor did not effectively manage its employees and allowed idle time to be billed as a direct expense.</p> <p><b>Incurring Cost Audit, 2006-16/CA-0013 (9/27/06)</b></p> <p>Questioned Costs of \$146,628 for unallowable costs associated with the use of the actual indirect rates instead of the forward pricing indirect rates; unallowable facility costs; and unsupported purchased labor costs.</p>	<p>Subsequent to the close of this semiannual period, PBGC combined these two audits of the same contractor and issued a final decision letter determining to pursue collection of \$38,960 of the total \$343,663 in questioned costs. Documentation of the decisions will be provided to OIG in the near future.</p>	<p>Prior to next</p>
<p><b>Incurring Cost Audit, 2007-5/CA-0028 (3/19/07)</b></p> <p>Questioned Costs of \$475,896 because of unsupported labor hour billings; questionable experience and education of contract employees; improper billings; and erroneous time charges.</p>	<p>Subsequent to the close of this semiannual period, PBGC issued a final decision letter determining to pursue collection of \$6,906. Documentation of the decision has been provided to OIG.</p>	<p>6/30/2009</p>

SUMMARY OF REPORTS OLDER THAN SIX MONTHS FOR WHICH  
MANAGEMENT DECISION HAS NOT BEEN ACHIEVED

Report and Summary	Reason For No Management Decision	Anticipated Management Decision
<p><b>Incurring Cost Audit, 2007-13/CA-0038-1 (9/27/07)</b></p> <p>Questioned Costs of \$533,081 because of unsupported labor hour billings; unsigned timesheets; erroneous and unapproved billings; and unverified education and experience for contract employees.</p> <p><b>Incurring Cost Audit, 2007-14/CA-0038-2 (9/27/07)</b></p> <p>Questioned Costs of \$113,782 because of unsupported documentation for labor hour billings; erroneous and unapproved billings; and unverified education and experience for contractor employees.</p>	<p>Subsequent to the close of this semiannual period, PBGC treated these two audits of the same contractor together and issued a final decision letter determining to pursue collection of \$115,773 relating to \$291,138 in questioned costs. Action on the remaining 8 recommendations with questioned costs totaling \$355,725 is pending.</p>	<p>9/30/2009</p>
<p><b>Incurring Cost Audit, 2007-15/CA-0039 (9/27/07)</b></p> <p>Questioned Costs of \$337,391 related to unsupported costs; erroneous and unapproved billings; and unverified education and experience for contractor employees.</p>	<p>Management continues to review this report and the amounts questioned.</p>	<p>9/30/2009</p>
<p><b>Incurring Cost Audit, 2008-09/CA-0054 (9/30/2008)</b></p> <p>Questioned Costs of \$97,581 for unallowable costs associated with the use of unaudited indirect cost rates.</p>	<p>Management decision is pending as it awaits DCAA's completion of its incurred cost audit and settlement of indirect cost rates.</p>	<p>8/31/2009</p>

**PREVIOUSLY REPORTED SIGNIFICANT RECOMMENDATIONS  
FOR WHICH CORRECTIVE ACTION HAS NOT BEEN COMPLETED**

Report Number, Report Title and Date Issued	Number of Significant Recommendations	Significant Problems and Deficiencies	Summary of Significant Recommendations
<b>96-4/23093-2</b> Audit of the Pension Benefit Guaranty Corporation's Fiscal Year 1995 Financial Statements 03/13/1996	1	<b>Significant Deficiency:</b> Integrating Financial Management Systems	PBGC needs to complete the integration of its financial management systems.
<b>2003-3/23168-2</b> Audit of the Pension Benefit Guaranty Corporation's Fiscal Years 2002 - 2001 Financial Statements 01/30/2003 and <b>AUD-2008-2/ FA-09-0034-2</b> Limited Disclosure Report on Internal Controls - PBGC's FY 2007 and 2006 Financial Statements Audit 11/15/2007	5	<b>Significant Deficiency:</b> Entity-Wide Information Security Program Planning & Management	PBGC needs to complete its efforts to fully implement and enforce an effective information security program.
<b>2003-10/23177-2</b> Review of PBGC's Premium Accounting System 10/10/2003	3	Control weaknesses that undermine the quality and integrity of reported premium revenues.	PBGC needs to ensure that its automated system produces accurate and verifiable premium accounting data.
<b>2008-1/FA-0034-1</b> Audit of the Pension Benefit Guaranty Corporation's Fiscal Years 2007 - 2006 Financial Statements 11/15/2007 and <b>AUD-2008-2/ FA-09-0034-2</b> Limited Disclosure Report on Internal Controls - PBGC's FY 2007 and 2006 Financial Statements Audit 11/15/2007	13	<b>Significant Deficiency:</b> Access Controls	PBGC needs to mitigate the systemic issues related to information access controls.

This chart complies with Section 5(a)(1), (2) and (3) of the Inspector General Act of 1978, as amended.

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CONFIDENTIALLY ANY INSTANCE OF  
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1-800-303-9737

THE DEAF OR HARD OF HEARING,  
DIAL FRS (800) 877-8339  
AND GIVE THE HOTLINE NUMBER  
TO THE RELAY OPERATOR.

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[HTTP://OIG.PBGC.GOV/INVESTIGATION/DETAILS.HTML](http://OIG.PBGC.GOV/INVESTIGATION/DETAILS.HTML)

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