



Testimony for the
Subcommittee on Government Management,
Organization, and Procurement
Committee on Oversight and Government Reform
U.S. House of Representatives

The Roles and Responsibilities of Inspectors General within the Financial Regulatory Agencies

Statement of

Rebecca Anne Batts

Inspector General
Pension Benefit Guaranty Corporation

March 25, 2009

Chairman Watson, Ranking Member Bilbray, and Members of the Subcommittee on Government Management, Organization, and Procurement, House Committee on Oversight and Government Reform, I appreciate the opportunity to submit a statement for the record addressing the independence of the Pension Benefit Guaranty Corporation (PBGC) Office of Inspector General (OIG).

PBGC OIG has worked closely with this Subcommittee and the Committee on Oversight and Government Reform in support of legislation to foster independence in the Inspector General (IG) community. Deborah Stover-Springer, PBGC OIG Deputy Inspector General and Legal Counsel, was significantly involved in the effort that led to passage of the Inspector General Reform Act of 2008. This legislation enhanced the ability of Offices of Inspector General to provide the independent and effective oversight that the American people have a right to expect from their Inspectors General.

I am pleased to provide an overview of the PBGC Office of Inspector General, details of our commitment to independence in conducting audits and investigations, and potential actions that could further strengthen the capacity of my office to meet its mission.

Pension Benefit Guaranty Corporation Office of Inspector General

The PBGC OIG was created under the 1988 amendments to the Inspector General Act of 1978, as one of the Designated Federal Entities (DFE). 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, my office is charged with preventing and detecting fraud, waste, abuse, and mismanagement; conducting and supervising independent audits and investigations; and recommending policies to promote economy, efficiency, and effectiveness.

Our office is addressing the major issues facing PBGC today. These include evaluating the implementation of PBGC's new investment policy and assessing PBGC's strategy for addressing the potential influx of an unprecedented number of large defined benefit plans and their participants. Additionally, we do work in each of PBGC's management challenge areas – Governance, Stewardship, PBGC's Business Model, Information Technology, and Procurement and Contracting. The results of our efforts are described in our Semiannual Reports to Congress.

I was appointed as Inspector General for PBGC in April 2008. I am proud of my twenty-five year career in the Inspector General community. Before my appointment as Inspector General, I served as Assistant Inspector General for Surface and Maritime Programs at the Department of Transportation Office of Inspector General. Prior to that, at the United States Department of Agriculture Office of Inspector General, I held a variety of progressively responsible positions including Regional Inspector General of the Northeast Region.

No Office of Inspector General can meet its mission unless it is independent -- both in appearance and in fact. As Inspector General of PBGC, I report directly to the Chair of the PBGC Board,¹ as does the recently established Presidentially-appointed Director of PBGC. In fact, this was memorialized in the Board's recent by-law revisions to reiterate our reporting relationship. The PBGC Director cannot direct or alter the work of my office or remove me from my position. The independence of my office has been respected; no efforts have been made by any Board member to limit or influence my ability to carry out the statutory role established by the Inspector General Act.

The Pension Benefit Guaranty Corporation

In 1974, Congress passed the Employee Retirement Income Security Act and created PBGC to insure pensions earned by American workers under certain private sector defined-benefit plans. Today, PBGC insures almost 44 million workers, retirees, and beneficiaries in over 30,000 plans. When an employer is no longer able to keep the financial promises made to its employees and a plan is terminated in an underfunded condition, PBGC takes over the plan as trustee and pays benefits. At the end of FY 2008, PBGC was paying benefits to more than 640,000 retirees and beneficiaries in terminated underfunded plans. About 660,000 more participants in these plans will become eligible to start receiving benefits in the future. Since 2002, PBGC has been in a deficit position. At the end of FY 2008, PBGC had assets of \$63.0 billion to cover liabilities of \$74.1 billion, resulting in an accumulated deficit of \$11.1 billion.

¹ The PBGC Board of Directors comprises the Secretary of Labor, who serves as Chair, and the Secretaries of Commerce and Treasury.

Independence of the PBGC Office of Inspector General

I appreciate the Subcommittee's commitment to ensuring the ability of the Inspectors General, including the PBGC Office of Inspector General, to enhance accountability and protect against fraud, waste, abuse, and mismanagement. Congress demonstrated the high value it places on Inspector General independence last fall, with the near-unanimous bipartisan passage of the Inspector General Reform Act of 2008. I thank the members of this Subcommittee who played important parts in that effort.

The PBGC Office of Inspector General is fully independent. We independently determine our budget request, which is included in PBGC's budget submission without internal agency review. We have historically received adequate resources to accomplish our mission and have free use of our budgeted funds. We speak directly with the Office of Management and Budget about our budget request, as necessary.

My office is organizationally independent. As Inspector General, I report directly to the highest level of PBGC, the Chair of the PBGC Board. When I was appointed to my current position, the Chair expressed her high expectations of me and of the PBGC Office of Inspector General, as well as her support for our independent oversight role. In addition to our legally mandated work, (e.g, the annual financial statement audit and the annual Federal Information Security Management Act review), 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.

Independence is the cornerstone of professional auditing and the audit work performed by my office meets all standards for independence. PBGC OIG follows Government Auditing Standards relating to personal, external, and organizational independence. These standards apply to all federal Offices of Inspector General, regardless of whether or not the office is headed by a Presidentially-appointed Inspector General. The independence standards I followed at the Departments of Agriculture and Transportation Offices of Inspector General (both are agencies headed by a Presidentially-appointed Inspector General) are identical to those we follow at PBGC OIG. Conformance with these standards has been confirmed through

an independent external peer review; in 2007, the external reviewers determined that PBGC OIG was in full compliance with all standards for independence, as well as other applicable audit standards.

Our independence is well protected by the Inspector General Act. Dual reporting to the agency and to Congress supports our independence. Because neither the PBGC Board or the PBGC Director can prevent my office from initiating, carrying out, or completing any audit or investigation, the PBGC OIG is shielded from external forces that could otherwise compromise our independence. Other protections to independence offered by the Inspector General Act include the right of access to all PBGC documents and records, prompt access to the agency head, the ability to select and appoint my own staff, the authority to obtain the services of experts, and the authority to enter into contracts. Should the PBGC Board or Director attempt to impede our work, the Inspector General Act gives us direct access to Congress.

As Inspector General, my personal independence, in appearance and in fact, is critical to the effective operation of PBGC OIG. Government Auditing Standards require an independent and objective state of mind that does not allow personal bias or the undue influence of others to override the auditor's professional judgments. This attitude is also referred to as "intellectual honesty." PBGC OIG's success rests in large measure on our ability to demonstrate that our judgments and recommendations are impartial and are viewed as impartial by others.

The Inspector General Reform Act of 2008 enhanced Inspector General independence and addressed two particular threats to my office's independence. First, the Reform Act granted law enforcement authority to my office, as well as to other OIGs that had not previously had that authority. PBGC OIG had been significantly hampered in the performance of our responsibilities due to lack of authority to carry firearms, make arrests, and seek and execute search warrants. In recent years, the FBI, with whom IGs have concurrent jurisdiction to investigate fraud in federal programs, have refocused their priorities and resources on counter-terrorism efforts and national security. We worked hard to increase our own investigative efforts, by hiring additional investigators and obtaining necessary training. However, as a result of the FBI's national and international responsibilities and the limited resources at the state and local levels, some of our investigations have been hindered, delayed, and even discontinued because assistance was not available. Obtaining law enforcement powers for the investigative personnel in my office affords opportunities to pursue investigations that we had not been able to pursue in the past.

A second issue addressed by the Inspector General Reform Act was the disparity between the grade/rank and pay of the DFE Inspectors General and other agency executives, a situation that was exacerbated by the decision made by many Inspectors General (including me) to protect our personal independence by refusing to accept bonuses or cash awards. Prior to passage of the Reform Act, well-qualified individuals may have chosen not to seek appointment as Inspectors General, given salaries that were, in some cases, lower than subordinates within OIG and lower than comparable agency executives. The Reform Act corrected this situation by requiring that the rank and pay stature of the DFE Inspectors General be comparable to other executives at their own agencies.

I greatly appreciate the focus this Subcommittee has provided on the importance of Inspector General independence. As part of that focus, your Subcommittee has highlighted HR 885, a bill that would make the position of Inspector General at PBGC a position appointed by the President and confirmed by the Senate. I respectfully disagree that this change would increase the independence of the Inspector General at PBGC. Further, I believe that the establishment of a Presidentially-appointed Inspector General would likely reduce the overall effectiveness of my office at a time when PBGC is facing a historic workload, due to the economic turmoil that is bringing many defined benefit plans to the brink of financial distress and beyond.

Making Presidential appointments and obtaining Senate confirmation takes time. Necessarily, Offices of Inspector General headed by Presidentially-appointed IGs are sometimes led by acting Inspectors General for extended periods. I have served under acting Inspectors General many times throughout my career and observed firsthand the disruption that can occur when an Office of Inspector General lacks a permanent leader. No matter how skilled or knowledgeable an acting Inspector General may be, it is difficult for any “acting” to take an unpopular stand or make a critical policy decision, knowing that the permanent Inspector General has yet to be named. This effect is mitigated, to some extent, in the largest Offices of Inspectors General, where permanent senior executive audit and investigative staff remain in place throughout the transition from one Inspector General to the next. However, for a small office such as my own, with only one senior level executive in addition to the Inspector General, having an “acting” Inspector General for a prolonged period of time could seriously impact our ability to meet our mission.

A second concern with HR 885 is its impact on the pay structure that was established through the Inspector General Reform Act. The pay of a Presidentially-appointed Inspector General is significantly less than the current rate of pay for the PBGC Inspector General. It would also be far less than the pay of senior officers at PBGC, such as the Chief Financial Officer and the General Counsel. It would even be less than the pay of some subordinates, who are eligible to receive bonuses or have an enhanced salary due to Law Enforcement Availability Pay (LEAP). Reducing the pay of an Inspector General to a level below that of agency executives would likely also reduce the stature of the Office in the eyes of agency executives, making it more difficult for the PBGC Office of Inspector General to meet its mission.

I appreciate the positive intention of the drafters of HR 885 and offer the following suggestions to meet the objective of enhancing the independence of the PBGC OIG.

- Legislation similar to that provided to the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), which required the Secretary of the Treasury to address identified deficiencies or to certify to Congress that no action is necessary, could improve the ability of the PBGC OIG to obtain consideration of our recommendations at higher levels of agency management.
- The authority to employ rehired annuitants without the employees facing reductions in their annuities would allow us to rapidly obtain the skills of professionals who are already fully trained and ready to meet the PBGC OIG mission.
- The authority to issue a testimonial subpoena would enhance our criminal investigations and fraud detection, particularly since investigations or audits of PBGC's significant procurement activities necessarily involves private companies. At this time, we do not have the authority to compel the employees of private companies to speak with us.
- While we currently have adequate resources for oversight, this situation could change rapidly in the event PBGC's workload increases exponentially due to the terminations of very large pension plans. Additional funding for PBGC operations is automatically "triggered" by its assumption of a specified number of participants in newly terminated pension plans. However, at this time, none of that money is slated for the Office of Inspector General. A greatly increased workload for PBGC should be accompanied by increased resources for PBGC OIG.

Concluding Remarks

I appreciate the Subcommittee's concern for the independence of the PBGC OIG. I believe that Congressional involvement with PBGC is critical to ensuring the accountability and effectiveness of the Corporation, especially in this time of economic turmoil. I also believe that a dynamic, independent, and effective Office of Inspector General is crucial for every Federal entity, including PBGC. I am honored to serve as PBGC's Inspector General and I take very seriously the responsibility to detect and report fraud, waste, abuse, and mismanagement. Thank you for your interest in Inspector General independence and in PBGC OIG.