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PENSION BENEFIT GUARANTY CORPORATION

Improvements Needed to Strengthen Governance Structure and Strategic Management

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Highlights

Highlights of GAO-11-182T, a testimony before the Committee on Health, Education, Labor, and Pensions, U.S. Senate

Why GAO Prepared This Testimony

The Pension Benefit Guaranty Corporation (PBGC) is a self-financing government corporation that insures the pensions of 44 million workers in more than 27,000 private sector defined benefit pension plans. Yet, PBGC faces financial instability that could pose a future threat to this source of protection for Americans' retirement income. As fewer sponsors pay premiums for fewer participants in defined benefit plans, and as the underfunding of large defined benefit plans increases, the risks to PBGC's financial future also increase. As of September 2010, PBGC's net accumulated financial deficit was $23 billion. GAO has designated PBGC and the pension insurance programs it administers as "high risk" areas in need of urgent attention and transformation to address economy, efficiency, or effectiveness changes.

In this testimony, GAO discusses its recent work regarding PBGC. Specifically, this statement focuses on needed improvements to PBGC's governance structure and strategic management based on GAO's prior work in these areas. GAO is making no new recommendations in this statement, but continues to believe that Congress should consider expanding PBGC's board of directors and that PBGC should implement recommendations from prior reports that have not yet been implemented, such as those concerning strategic workforce management and benefit determination process performance measures for large, complex plans.

View GAO-11-182T or key components.
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December 1, 2010

PENSION BENEFIT GUARANTY CORPORATION

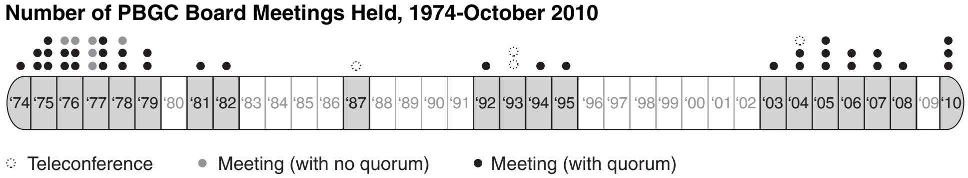
Improvements Needed to Strengthen Governance Structure and Strategic Management

What GAO Found

PBGC requires a strong governance structure and strategic management to ensure that it can meet its future financial challenges. Companies who pay annual premiums to PBGC and the millions of employees whose retirement benefits are under PBGC's protection are owed greater stewardship of the corporation and its funds.

By law, PBGC is governed by a three-member board of directors composed of the Secretaries of the Treasury, Commerce, and Labor. Because of their numerous responsibilities in their roles as cabinet-level secretaries, the board members have historically been unable to dedicate consistent attention to PBGC matters. In fact, since 1980, the board has met only 23 times. During a critical 2-year period between February 2008 and February 2010, amid turbulent economic times and congressional investigations of certain procurement practices, the board did not meet at all. While the current PBGC board is meeting more frequently than in prior years, its members still have little time to devote to PBGC governance and the board remains vulnerable to disruptive transitions during future changes of administration.

Number of PBGC Board Meetings Held, 1974-October 2010



Source: GAO analysis of PBGC documents and board meeting minutes.

In addition, although PBGC management has taken steps in recent years to strengthen its operations, recommendations from GAO's prior work concerning how the corporation could improve its strategic workforce management and the benefit determination process have yet to be fully implemented. PBGC's contract workers comprise about two-thirds of its workforce, yet GAO found that workforce management lacked a strategic approach for determining the mix of contract and federal workers, and PBGC did not include procurement decision making in corporate-level strategic planning. Also, GAO found that management of PBGC's benefit determination process did not provide for separate reporting of performance measures for large, complex plans, yet these plans are responsible for most long delays in processing and most cases with overpayments. Measures that reflect averages across all plans do not provide sufficient incentive to improve the processing of these plans. The need for a more strategic approach in managing both the contract workforce and the benefit determination process is essential to ensure that PBGC is operating efficiently and effectively.

Improvements to PBGC's governance and strategic management cannot correct structural weaknesses in its financial design, but it can better position PBGC for the challenges that lie ahead.

Mr. Chairman and Members of the Committee:

I am pleased to be here today to discuss the need for improved governance and strategic management of the Pension Benefit Guaranty Corporation (PBGC). PBGC operates two pension insurance programs—the single-employer program and multiemployer program—that insure the pensions of 44 million private sector workers and retirees in more than 27,000 defined benefit pension plans.[1] With the growth in number of large plans under its trusteeship, PBGC's responsibilities for administering plans and managing assets have increased significantly since its creation in 1974, and its financial portfolio is now one of the largest of any federal government corporation.[2] While PBGC has sufficient assets to pay retirees promised benefits in the near future, PBGC has maintained an accumulated financial deficit for a number of years. In fact, we first designated PBGC's largest insurance program—the single-employer program—as "high risk" in 2003 due to PBGC's prior-year net deficit, as well as the increased likelihood of large, underfunded pension plan terminations.[3] Since that time, the single-employer program has remained high risk because of its continued deficit and the structural challenges that pose a risk for future losses. In 2009, we designated the multiemployer program as high risk as well.[4] At the end of fiscal year 2010, PBGC's deficit for both programs combined was approximately $23 billion.

My statement will focus on steps PBGC could take to help meet the challenges of its unstable financial condition and increasing workloads. Specifically, I will discuss PBGC's need for (1) a stronger board structure and (2) a more strategic approach to managing its contract workforce and

[1]A defined benefit plan is a pension plan that generally provides monthly retirement benefits based on a formula that combines salary and years of service to the company. 29 U.S.C. §1002 (35). In contrast, a defined contribution plan is a pension plan that generally provides retirement benefits based on the balance available in an individual's account that has received contributions from the employee, employer, or both, during the employee's years of service to the company. U.S.C. §1002 (34).

[2]Federal government corporations are corporations owned or controlled by the federal government. 5 U.S.C. § 103. In addition to PBGC, other examples of federal government corporations include the Federal Deposit Insurance Corporation and the Export-Import Bank of the United States.

[3]GAO, *Pension Benefit Guaranty Corporation Single-Employer Insurance Program: Long-Term Vulnerabilities Warrant "High Risk" Designation*, GAO-03-1050SP (Washington, D.C.: July 23, 2003).

[4]GAO, *High-Risk Series: An Update*, GAO-09-271 (Washington, D.C.: January 2009).

benefit determination process. My statement is based on our prior work assessing PBGC's long term financial prospects, and various reports we have published over the past several years on PBGC governance and management. Our prior work was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the 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 objectives.

Background

PBGC was created by the Employee Retirement Income Security Act of 1974 (ERISA)[5] to pay benefits to participants in private defined benefit pension plans in the event that an employer could not.[6] PBGC may pay benefits up to specified limits, if a plan does not have sufficient assets to pay promised benefits and the sponsoring company is in financial distress. As of September 2010, PBGC was paying monthly retirement benefits to more than 800,000 retirees in about 4,200 terminated pension plans.[7]

PBGC receives no funds from general tax revenues. Instead, the corporation finances its activities from three main sources of funds: (1) insurance premiums in amounts set by Congress and paid by defined benefit plan sponsors, (2) assets acquired from plans that have been terminated and trusteed by PBGC, and (3) investment income earned on these assets. Under current law, the corporation has no substantial source of funds available to it if it were to exhaust its assets, except for the ability to borrow up to $100 million from the Department of the Treasury.[8] The

[5]Pub. L. No. 93-406, 88 Stat. 829 (codified, as amended, at 29 U.S.C. §§ 1001-1461).

[6]29 U.S.C. § 1302(a)(2).

[7]A single-employer plan is established and maintained by one employer. Single-employer plans can be established unilaterally by the sponsor of through a collective bargaining agreement with a labor union. 29 U.S.C. § 1002(41). A multiemployer plan is a collectively bargained arrangement between a labor union and a group of employers in a particular trade or industry. Management and labor representatives must jointly govern multiemployer plans. 29 U.S.C. § 1002(37).

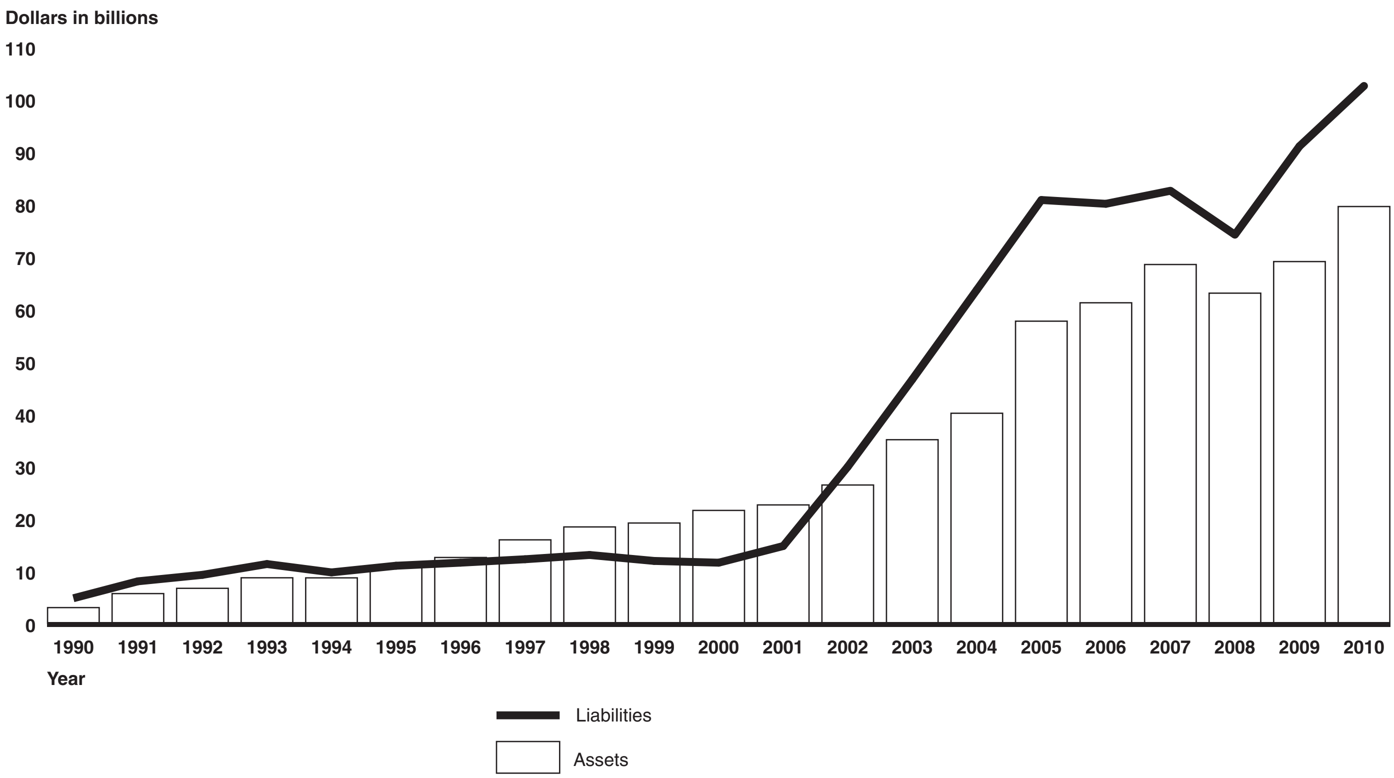
[8]29 U.S.C. § 1305(c).

United States government is not liable for any obligation or liability incurred by the corporation.[9]

PBGC's deficit fluctuates due to various factors, including changes in interest rates, investment performance, and losses from completed and probable plan terminations. PBGC's deficit improved during fiscal year 2008, but then worsened the next year with the severe market downturn. As of September 2010, PBGC held approximately $79.5 billion in assets and approximately $102.5 billion in liabilities—for an accumulated deficit of $23.0 billion, more than double the deficit from 2 years earlier (see fig. 1). This growth in its deficit was due largely to an increase in plan terminations and a decline in interest rates used to value PBGC's liabilities. As a result of these plan terminations, PBGC became directly responsible for the pensions of more than 200,000 additional participants in fiscal year 2009, the third highest annual total of new participants in PBGC's history. During this time, the corporation trusteed plans of companies such as Lehman Brothers, IndyMac Bank, Circuit City, Nortel, and Delphi Corporation. In addition, as of September 2010, PBGC estimated future losses from underfunded multiemployer plans that are unable to repay financial assistance provided by PBGC at about $3.0 billion—up from $1.8 billion 2 years earlier.

[9] 29 U.S.C. § 1302(g)(2).

Figure 1: PBGC's Assets and Liabilities, Fiscal Years 1991 through 2010



Source: GAO's analysis of PBGC annual report data.

PBGC currently has sufficient assets to make scheduled benefit payments for a number of years, given that benefits are paid monthly and spread over participants' and beneficiaries' lifetimes. However, in the long term, PBGC is likely to remain at financial risk due, in part, to several structural challenges that limit PBGC's ability to manage its risk.[10] For example, statutorily prescribed pension funding requirements specify how much a sponsor must contribute to its defined benefit plans each year.[11] However, these funding rules are based on assumptions about future liabilities that may differ from a plan's actual payouts of benefits over time. Similarly, PBGC's premium

[10]GAO, *Private Pensions: Recent Experiences of Large Defined Benefit Plans Illustrate Weaknesses in Funding Rules*, GAO-05-294 (Washington, D.C.: May 31, 2005).

[11]Funding requirements for employer plans are generally codified at 26 U.S.C. §§ 412, those specific to single-employer plans at 26 U.S.C. § 430 and multiemployer plans at 26 U.S.C. §§ 431 and 432.

structure is specified in law for both single- and multiemployer defined benefit plans.[12] This structure limits the corporation's ability to manage its financial risk because, unlike private insurers, PBGC cannot decline to provide insurance coverage or adjust premiums in response to actual or expected claims exposure. Meanwhile, PBGC's premium base has been shrinking as the number of defined benefit pension plans and active plan participants has been declining rapidly. In fiscal year 2010, PBGC insured about half the number of plans it insured 15 years earlier.

Legislation enacted over the past 5 years has taken steps to address these concerns, but the extent to which these steps may reduce PBGC's risk of future losses is still unknown. For example, the Deficit Reduction Act of 2005 included provisions to raise flat-rate premiums and create a new, temporary premium for certain terminated single-employer plans.[13] In addition, the Pension Protection Act of 2006 (PPA)[14] included a number of provisions aimed at improving plan funding and PBGC finances through such measures as raising the funding targets defined benefit pension plans must meet, reducing the period over which sponsors can "smooth" reported plan assets and liabilities, and restricting sponsors' ability to substitute "credit balances" for cash contributions.[15] However, in response to the recession, Congress enacted legislation in 2008 to help companies better weather the economic downturn by granting funding relief to

[12]29 U.S.C. § 1306. The flat-rate premium is a per-participant premium that plans pay to PBGC each year. In 2009, the rate for the flat premium was $34 per participant in insured single-employer plans. For multiemployer plans the flat rate premium was $9 per participant.

[13]Pub. L. No.109-171, § 8101, 120 Stat. 4, 181-83 (2006). The new temporary premium was not to apply to any plan terminated after December 2010. Congress recently provided temporary funding relief through the enactment of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010, which allows plan sponsors to amortize funding gaps over a longer period of time than is currently allowed and provides funding relief for up to 2 years. Pub. L. No. 111-192, §§ 201 and 202, 123 Stat. 1280, 1283-99.

[14]Pub. L. No. 109-280, §§ 101-221, 120 Stat. 780, 784-919.

[15]For further discussion of these provisions, such as "smoothing" and use of "credit balances," see Patrick Purcell and Jennifer Staman, *Summary of the Employee Retirement Income Security Act (ERISA)*, Congressional Research Service (Washington, D.C., May 19, 2009).

certain sponsors and delaying implementation of certain PPA provisions.[16] Thus, the overall impact of PPA remains unclear.

PBGC's insurance programs are in need of urgent congressional attention and agency action. We first designated the single-employer insurance program as "high risk" in 2003 after it moved from a $9.7 billion accumulated surplus in fiscal year 2000 to a $3.6 billion accumulated deficit in fiscal year 2002.[17] Since that time, the net financial position of PBGC has significantly worsened due, in part, to the declines in certain industries that led to PBGC having to assume responsibility for several large underfunded plans, and to the steep downturn in the financial markets. We added the high risk designation to the multiemployer program in 2009 in light of the increased risk of future losses in that program as well.[18] As of September 2010, PBGC's estimated financial deficit for both programs combined was $23.0 billion—more than double its deficit from 2 years earlier.

PBGC's Board Structure Needs Strengthening

PBGC needs strong policy direction and oversight in the face of its current financial condition and long-term structural challenges, yet the board's structure as established by law limits the board's ability to provide such policy direction and oversight. ERISA specified that PBGC is to have a three-member board of directors consisting of the Secretaries of the Treasury, Commerce, and Labor. The Secretary of Labor serves as the Chairman of the Board.[19] The board is required to direct and oversee the corporation, in part, by approving all policy decisions affecting American employers and workers as well as reviewing and approving its budget, strategic plans, and financial performance. Each board member can

[16]The Worker, Retiree, and Employer Recovery Act of 2008, Pub. L. No 110-455, 122. Stat. 5036. It also provided multiemployer plans with temporary relief from PPA requirements by allowing plans to temporarily freeze their funded status at the previous year's level. § 204, 122. Stat. 5118-20.

[17]GAO-03-1050SP.

[18]GAO-09-271.

[19]29 U.S.C. § 1302(d).

designate an official to serve on his or her behalf in most instances.[20] This designee is referred to as the board member's "representative." In addition, ERISA established an Advisory Committee, whose seven members are appointed by the President to represent the interests of labor, employers, and the general public. The committee has an advisory role but has no statutory authority to set PBGC policy or conduct formal oversight.[21]

Our prior work has highlighted a number of limitations with this statutory governance structure, starting with the size and composition of the board. According to corporate governance guidelines published by The Conference Board,[22] corporate boards should be structured so that the composition and skill set of a board is linked to the corporation's particular challenges and strategic vision, and should include a mix of knowledge and expertise targeted to the needs of the corporation. We found that other government corporations' boards averaged about 7 members, with one having as many as 15 (see table 1). None had a board as small as PBGC's. In addition, the size of PBGC's board also prevents the members from establishing standing oversight committees, which are commonly used by both government corporations and private corporate boards. For example, other government corporations, such as the Overseas Private Investment Corporation (OPIC) and the Federal Deposit Insurance Corporation have established standing committees to conduct oversight of certain functions, such as audits and case file reviews.

[20]The board representatives hold the rank of assistant secretary or above. The organizational level of a PBGC board representative can vary depending upon whom each secretary selects. As part of recent bylaw revisions, the board of directors more clearly defined the roles and responsibilities of its members, representatives, and director. *Bylaws of the Pension Benefit Guaranty Corporation*. 73 Fed. Reg. 29,985 (May 23, 2008). For example, the new bylaws state that the board is responsible for establishing and overseeing the policies of the corporation. The new bylaws explicitly outline the board's responsibilities, which include approval of policy matters significantly affecting the pension insurance program or its stakeholders, approval of the corporation's investment policy, and review of certain management and Inspector General reports. 29 C.F.R. § 4002.3(a)(3) (2009). In addition, the new bylaws explicitly define the role and responsibilities of the director and the corporation's senior officer positions. 29 C.F.R. § 4002.9 (2009).

[21]29 U.S.C. § 1302(h).

[22]Matteo Tonello and Carolyn K. Brancato, *Corporate Governance Handbook, 2007: Legal Standards and Board Practices*, The Conference Board, Research Report R-1405-07-RR, (New York, New York 2007).

Table 1: Board Membership of Selected Government Corporations with a Similar Mission

Government corporation	Members	Description of key provisions
Commodity Credit Corporation 15 U.S.C. § 714g(a)	8	Board of directors consists of seven members, in addition to the Secretary, who are appointed by the President, with the advice and consent of the Senate. Board is subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio member and chairperson.
Export-Import Bank of the United States 12 U.S.C. § 635a(c)	5	Board of directors consists of the bank's president (as chairman), the bank's first vice president (as vice chairman), and three others. All members of the board are appointed by the President with the advice and consent of the Senate and serve staggered 4-year terms.
Federal Crop Insurance Corporation 7 U.S.C. § 1505(a)	10	Board of directors consists of the manger of the corporation (serving as a nonvoting ex officio member), the Department of Agriculture under secretary responsible for crop insurance, an additional department under secretary, the department's Chief Economist, and six private sector members appointed by and holding office at the pleasure of the Secretary of Agriculture (including one experienced in the crop insurance business, one experienced in reinsurance, and four active producers, who are policy holders, from different geographic areas and represent an cross-section of agricultural commodities). Board selects its own chair and private sector members serve staggered 4-year terms.
Federal Deposit Insurance Corporation 12 U.S.C. § 1812(a) -(c)	5	Board of directors consists of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and three citizens (including one with state bank supervisory experience) appointed by the President with the advice and consent of the Senate. Chairperson and vice chairperson are designated by the President with the advice and consent of the Senate. Each member appointed for 6 -year term and, if vacancies occur, others are appointed only to complete unfinished terms.
Overseas Private Investment Corporation 22 U.S.C. § 2193(a) and (b)	15	Board of directors consists of eight members from the private sector and seven from the federal government. At least two of the private sector directors must be experienced in small business, one must represent organized labor, and another must have experience in cooperatives. Government members include the President of the Corporation, the Administrator of the Agency for International Development, the United States Trade Representative or Deputy U.S. Trade Representative, and four additional members who are principal government officers, including at least one from the Department of Labor. All members appointed by the President, with advice and consent of the Senate and serve staggered 3 year terms.
Pension Benefit Guaranty Corporation 29 U.S.C § 1302(d)	3	Board of directors consists of the Secretaries of Labor (as chairman), Commerce and the Treasury.

Source: GAO Analysis of U.S. Code.

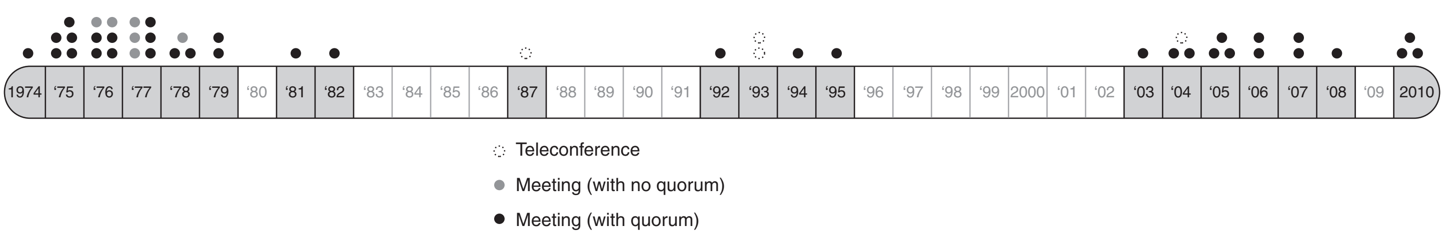
PBGC's governance structure is also vulnerable to disruptive transitions with each administration change. The board, its representatives, and the director typically change with each presidential transition, thus limiting the board's institutional knowledge of the challenges facing the corporation.[23] Other government corporations have board structures with

[23]GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvement to Ensure Policy Direction and Oversight*, GAO-07-808 (Washington, D.C.: July 2007).

staggered terms for their directors, which arguably avoid gaps in their organization's institutional knowledge. For instance, OPIC's directors may be appointed for a term of no more than 3 years, and the terms of no more than 3 of the 15 directors can expire in any given year.[24]

Our prior work has also found that PBGC's board members often have limited time and resources to dedicate to PBGC matters given their numerous other responsibilities in their roles as cabinet secretaries.[25] According to corporate governance guidelines, boards should meet regularly and focus principally on broader issues, such as corporate philosophy and mission, broad policy, strategic management, oversight and monitoring of management, and company performance against business plans. However, we found that since PBGC's inception, the board has met infrequently, even when pressing strategic and operational issues were at play. In 2003, after several high-profile pension plan terminations, PBGC's board began meeting twice a year (see fig. 2). But PBGC officials have told us that it is a challenge to find a time when all three cabinet secretaries are able to meet, and when they do meet, the meetings generally only last about an hour. The current board has recently begun to meet more frequently, meeting three times since February 2010. However, prior to that time, the board had not met since February 2008, despite pending terminations of several pension plans sponsored by large automakers and congressional investigations into certain procurement practices.

Figure 2: Number of PBGC Board Meetings, 1974-October 2010



Source: GAO analysis of PBGC documents and board meeting minutes.

[24] 22 U.S.C. § 2193.

[25] GAO, *Pension Benefit Guaranty Corporation: Need for Improved Oversight Persists*, GAO-08-1062 (Washington, D.C.: September 2008) and GAO-07-808.

Because PBGC's board members have generally been unable to dedicate consistent attention to PBGC, they have relied on their board representatives to conduct much of the work on their behalf. The board also relies on PBGC's Inspector General and management oversight committees to ensure that PBGC is operating effectively. However, we have found that the communications between these entities and the board may be limited and the board may not always be sufficiently aware of PBGC's activities. For example, PBGC's bylaws require the board to review any reports that the Inspector General deems appropriate,[26] and the Inspector General reports to the board through the Chair.[27] However, there is no formal protocol requiring the Inspector General to routinely meet with the board of directors or their representatives. Moreover, PBGC's oversight committees are not independent of the PBGC director nor required to formally report all matters to the board. Under this structure, it remains unclear if the board members would be aware of the Inspector's General findings or of significant actions taken by PBGC management.

We have also noted that the PBGC Advisory Committee does not have formal access to the board members, potentially limiting the board members' knowledge of the committees' concerns and recommendations. PBGC's Advisory Committee typically reports only to the director, although officials said that the committee can submit concerns to the board if it believes it is warranted. In contrast, the advisory boards or committees of other government corporations—such as the Federal Deposit Insurance Corporation and Export-Import Bank—are required to submit formal reports to their board chair and directors.[28]

To address these weaknesses in PBGC's governance structure, we believe that Congress should consider expanding the board of directors to include additional members with diverse backgrounds who possess knowledge and expertise useful to PBGC's mission.[29] PBGC hired a consulting firm to

[26]29 C.F.R. § 4002.3(a)(3)(ix) (2009).

[27]29 C.F.R. § 4002.3(a)(2) (2009).

[28]In some instances, government corporations' advisory committees are subject to the Federal Advisory Committee Act, which defines how federal advisory committees operate, including open meetings, chartering, public involvement, and reporting for such entities. Pub. L. No. 92-463, 86 Stat. 770 (1972) (codified as amended at 5 U.S.C. app. 2). According to PBGC officials, the corporation is exempt from the Federal Advisory Committee Act because of the proprietary nature of its work.

[29]GAO-07-808.

review governance models and provide a background report to assist the board in its review of alternative corporate governance structures. While the report did not advocate any particular governance option, the consulting firm's final report corroborated our findings and described the advantages and disadvantages of governance practices of other government corporations and selected private sector companies. The report concluded that there are several viable alternatives for strengthening PBGC's governance structure and practices, some of which are now being put forth in pending legislation.[30]

PBGC Needs More Strategic Management of Its Contract Workforce and Benefit Determination Process

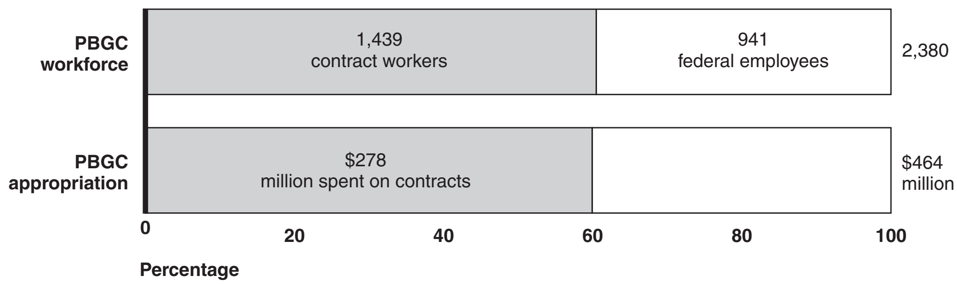
Although PBGC management has taken steps in recent years to strengthen its operations, our prior work has identified ways that the corporation could be more strategic in its management of its contract workforce and the benefit determination process. The need for a strategic approach in these areas is essential to ensure that PBGC is operating as efficiently and effectively as possible to manage its increasing workload.

Contract Workforce Management

Since the mid-1980s, PBGC has had contracts covering a wide range of services, including the administration of terminated plans, payment of benefits, customer communication, legal assistance, document management, and information technology. As PBGC's workload grew in response to the significant number of large pension plan terminations, PBGC has come to rely on contractors to supplement its workforce. About two-thirds of PBGC's workforce consists of contract workers (see fig. 3).

[30]For example, the Pension Benefit Guaranty Corporation Governance Improvement Act of 2009, S.1544, proposes amending ERISA with respect to the composition of the PBGC board of directors, among other changes.

Figure 3: PBGC Overall versus Contractor Personnel and Spending, Fiscal Year 2010



Source: PBGC.

Note: The number of contract workers is as of June 30, 2010; the number of federal employees is as of July 9, 2010; and the amount spent on contracts is for fiscal year 2010 as of September 30, 2010.

Over the years, PBGC has taken steps to improve its workforce management. For example, in response to a recommendation we made in 2000, PBGC agreed to conduct a comprehensive review of its future human capital needs and to use this review to better link contracting decisions to PBGC's long-term strategic planning process.[31] After commissioning this review, PBGC developed a human capital strategic plan that called for aligning human capital programs with the corporations' strategic goals and mission. However, in 2008, we found that the corporation still lacked a strategic approach to identifying the optimal mix of federal versus contract workers and ensuring that the performance of its contract workforce contributes to the corporation's mission.

As a matter of general best practice, our 2008 work noted that a strategic plan should incorporate an understanding of how acquisitions will be used to assist an agency in achieving its mission.[32] This is especially true of PBGC with its large contract workforce. Yet, our 2008 work found that although PBGC had made efforts to improve its acquisition infrastructure, it had not developed a strategic approach to its contracting process as envisioned in our 2000 report. Moreover, PBGC's human capital strategic plan focused almost exclusively on its federal workforce. We recommended that the plan do more to reflect the importance of

[31]GAO, *Pension Benefit Guaranty Corporation: Contracting Management Needs Improvement*, GAO/HEHS-00-130 (Washington, D.C.: Oct. 18, 2000).

[32]GAO, *Pension Benefit Guaranty Corporation: A More Strategic Approach Could Improve Human Capital Management*, GAO-08-624 (Washington, D.C.: June 2008).

contracting and to link staffing and contracting decisions at the corporate level. While PBGC agreed that contracting should be part of its strategic planning process, it maintained that this is already being achieved by its current process.

Since our 2008 report, PBGC has implemented new guidance and policies in a number of areas to improve its management of the contracting process and contractor oversight. In August 2009, PBGC issued guidelines for determining whether to use contractors or government employees. While useful, these procedures do not include any specific steps to ensure that such decisions are linked to the strategic planning process. Subsequently, PBGC issued its new human capital strategic plan for fiscal years 2010-2014. In this plan, PBGC acknowledges the importance of contracting and the challenges of balancing their workforce between federal and contract workers, but the plan does not provide specific actions to address such challenges and appears to continue to focus primarily on PBGC's federal workers.

Our previous reports also found weaknesses in PBGC's efforts to ensure that the performance of its contract workforce contributes to the corporation's mission. In 2000, and again in 2008, we found that most of PBGC's contracts lacked performance incentives and methods to hold contractors accountable for performance outcomes linked to the corporation's strategic goals. In 2000, we recommended that, where appropriate, PBGC should utilize more fixed-price contracts and fewer labor-hour payment arrangements, consistent with best practices in performance-based contracting. In 2008, we recommended that to improve implementation of a performance-based approach to contracting, PBGC should ensure that future contracts measure performance in terms of outcomes, provide incentives for the accomplishment of desired outcomes, and ensure payment of award fees only for excellent performance. We also recommended that PBGC should provide comprehensive training on performance-based contracting for PBGC's procurement staff, managers, and acquisition-related workforce.

PBGC agreed with our previous recommendations to enhance implementation of performance-based contracting, and stated that the actions recommended were already under way, including: incorporating performance-based measures into its future contracts and providing comprehensive training for PBGC staff. Further, PBGC noted that the use of labor-hour contracts had been restricted. However, the move to performance-based contracting has been difficult. For example, officials attempted to use performance-based contracts when making new awards for contracts with the field benefit administration offices, but these efforts were abandoned because, according to PBGC officials, the proposals were too complicated to evaluate and more costly than expected. We are examining these issues in a study currently under way to assess how well PBGC is managing its contracting activities and the steps it is taking to ensure the integrity of its contract process. We anticipate completing this work next summer.

Although we commend PBGC for its improvements to contract management, we continue to believe that more should be done to include procurement decision-making in corporate-level strategic planning and to link contractor performance measures with the corporation's mission. Without a more inclusive strategic planning process that looks at the contract workforce and federal workforce together, PBGC cannot be assured that it has the optimal mix of contractor staff and federal employees and that it is holding its contract workforce accountable for helping meet its strategic goals.

Benefit Determination Process Management

Finally, our prior work has also found that PBGC needs a more strategic approach for determining the benefits for participants in large, complex plans that have been terminated. In our August 2009 report, we reviewed plans terminated with insufficient funds and trusteed by PBGC during fiscal years 2000 through 2008. We found that a small number of complex plans—especially those with large numbers of participants affected by limits on guaranteed benefit amounts[33]—accounted for most cases with lengthy delays and overpayments.[34] For example, PBGC completed most participants' benefit determinations in less than 3 years, but required more time—up to 9 years—to process determinations for complex plans and plans with missing data.[35] In addition, while only a small percentage of participants receive overpayments of their estimated benefits while their

[33]When single-employer plans are terminated without sufficient assets to pay all promised benefits, PBGC guarantees participants' benefits only up to certain limits, specified under ERISA and related regulations. These limits on guaranteed benefits are commonly referred to as the maximum limit, the phase-in limit, and the accrued-at-normal limit. 29 U.S.C. § 1322(b)(1), (3) and (7); 29 C.F.R. §§ 4022.21, 4022.23, and 4022.25 (2009).

[34]GAO, *Pension Benefit Guaranty Corporation: More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments*, GAO-09-716 (Washington, D.C.: Aug. 17, 2009).

[35]If the participant is already retired, or retires before the benefit determination process is complete, PBGC makes payments to the retiree based on an estimate of the final benefit amount. However, lack of certainty about their final benefit amounts can make it difficult for retirees to plan for retirement.

final benefit amounts are being determined, we found that nearly two-thirds of cases with overpayments involved participants in just 10 large, complex plans.[36]

Given these findings, we recommended that PBGC develop a better strategy for processing benefit determinations for complex plans in order to reduce delays and minimize overpayments, and that PBGC set goals for timeliness and monitor the progress made in finalizing benefit determinations for large, complex plans separately from other plans. In response, PBGC has taken a number of steps to improve its procedures for communicating with participants in large, complex plans and to reduce overpayments. In addition, officials indicated that formal process improvement efforts were under way to tailor plan processing to plan size and streamline other aspects of work in an effort to reduce process times in the future. At the same time, officials noted that they had no plans to set any performance goals separately for large, complex plans as a group. Due to the complexities and variations with each of these plans, PBGC prefers to set schedules only on an individual plan basis. However, we continue to believe that reporting performance measures that reflect averages across all plans does not provide adequate weight to large versus small plans and does not provide sufficient incentive to improve the processing times for large, complex plans.

Concluding Observations

In these challenging economic times, PBGC has become even more essential as millions of American workers and retirees have come to rely on the corporation for protection of their retirement income. PBGC is now one of the largest federal government corporations with nearly $80 billion in assets, yet it continues to face a future of financial instability. Its premium base has been eroding over time as fewer sponsors are paying premiums for fewer participants. In addition, as a result of the recession, PBGC is still at risk from the increased underfunding of some large defined benefit plans. To the extent that companies are more at risk of bankruptcy, the plans that they sponsor are more at risk of termination. The fact that PBGC's board of directors has only recently begun to meet to discuss these problems is less than reassuring. Moreover, even with the increased attentiveness of the current board, the lack of staggered terms for board membership means that consistency in both policy direction and

[36] If a retiree receives an estimated benefit amount that is greater than the final benefit amount, then the retiree is likely to have received an overpayment which must be repaid.

oversight is not guaranteed in the future. PBGC needs a board that can offer long-term, strategic sophistication to keep the corporation as solvent as possible for as long as possible.

Improvements to PBGC's governance and to its strategic management cannot correct the structural weaknesses of its financial design, but it can put PBGC in a better position to confront the challenges that lie ahead. It is untenable to rest the management of nearly $80 billion in assets on a corporate board architecture that can fail to meet and provide strategic direction for years at a time, and that is vulnerable to a lack of leadership during transitions to new administrations. Companies that pay annual premiums to PBGC and the millions of employees whose retirement benefits are under PBGC's protection are owed greater stewardship of the corporation and its funds.

Chairman Harkin and Members of the Committee, this concludes my prepared statement. I would be happy to respond to any questions.

Contacts and Staff Acknowledgments

For further questions on this testimony, please contact me at (202) 512-7215. Individuals who made key contributions to this testimony include Blake L. Ainsworth, Joseph A. Applebaum, Susan C. Bernstein, Jason S. Holsclaw, Charles A. Jeszeck, Kristen W. Jones, Lara L. Laufer, Sheila R. McCoy, Margie K. Shields, Craig H. Winslow, and William T. Woods.

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