

GAO

Report to the Chairman, Committee on
Ways and Means, House of
Representatives

September 2008

**PENSION BENEFIT
GUARANTY
CORPORATION**

**Need for Improved
Oversight Persists**





Highlights of [GAO-08-1062](#), a report to the Chairman, Committee on Ways and Means, House of Representatives

Why GAO Did This Study

The Pension Benefit Guaranty Corporation (PBGC) insures the pension benefits of 44 million private sector workers and retirees in over 30,000 employer-sponsored pension plans. In July 2007, GAO reported that PBGC's governance structure needed improvements, and asked Congress to consider expanding the board of directors to include additional members. GAO also recommended that the board develop policies and mechanisms consistent with corporate governance practices, and develop formal guidelines to clarify the roles and responsibilities of the board chair, members, their representatives, and the director. On the basis of that work, this report addresses (1) the steps PBGC has taken to improve policy direction and oversight and (2) how Congress applies oversight to PBGC and what other oversight mechanisms exist for government corporations.

GAO reviewed PBGC's new corporate bylaws and the structure and reporting requirements of selected government corporations. GAO also interviewed PBGC and Department of Labor officials.

What GAO Recommends

GAO recommends that PBGC provide Office of Inspector General and GAO reports on the corporation's management and financial challenges to the newly appointed board members, board representatives, and director. In response, PBGC agreed to provide such reports to new appointees.

To view the full product, including the scope and methodology, click on [GAO-08-1062](#). For more information, contact Barbara Bovbjerg at (202) 512-7215 or bovbjerg@gao.gov.

PENSION BENEFIT GUARANTY CORPORATION

Need for Improved Oversight Persists

What GAO Found

Although PBGC's board has strengthened the corporation's governing bylaws, the three-member board of directors is still limited in its ability to provide policy direction and oversight to PBGC. In implementing our earlier recommendation, the board revised the corporation's bylaws to more clearly define the roles and responsibilities of PBGC's board members, representatives, director, and senior management. PBGC also contracted with a consulting firm to provide a background report to assist the board in its review of alternative corporate governance structures, including restructuring the board of directors as GAO suggested in 2007. However, because of its small size, the board has not been able to develop procedures and mechanisms to monitor PBGC's operations, such as standing committees, which are mechanisms used by other government corporations. PBGC may also be exposed to challenges as the board, its representatives, and the director will likely change with the upcoming presidential transition in January 2009. While PBGC management has experienced a partial leadership change in recent years and provides operational and financial information to those newly appointed, PBGC Inspector General and GAO reports have recently identified additional financial and operational challenges facing the corporation. This additional information could help the new board members better understand the vulnerabilities and challenges facing the corporation.

PBGC is subject to routine congressional oversight, but certain other government corporations have other types of reporting requirements in place—such as congressional notifications and reporting protocols for their advisory committees—to ensure effective communication exist between the corporations and Congress. Congressional oversight of PBGC in recent years has ranged from formal committee hearings to investigations and studies conducted by its congressional support agencies. For example, since 2002, PBGC officials have testified 19 times before several different committees on issues such as the status of its financial condition. Further, GAO, the Congressional Budget Office, and the Congressional Research Service have issued a variety of reports and testimonies on PBGC financial and operational matters. However, PBGC does not have reporting requirements applied to other government corporations for providing additional information to Congress. For example, the Millennium Challenge Corporation and the Commodity Credit Corporation are required to notify Congress prior to conducting certain financial transactions. The advisory committee of the Federal Deposit Insurance Corporation formally reports to its board of directors, while the Export-Import Bank of the United States' advisory committee formally reports to its board and Congress each year on matters related to their respective organizations. In addition, the advisory boards of other government entities with retirement-related responsibilities—such as the Social Security Administration, the Railroad Retirement Board, and the Federal Retirement Thrift Investment Board—provide reports to their overseeing bodies.

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Abbreviations

Amtrak	National Railroad Passenger Corporation
CBO	Congressional Budget Office
CCC	Commodity Credit Corporation
CRS	Congressional Research Service
ERISA	Employee Retirement Income Security Act of 1974
FDIC	Federal Deposit Insurance Corporation
GCCA	Government Corporation Control Act of 1945
MCC	Millennium Challenge Corporation
OPIC	Overseas Private Investment Corporation
PBGC	Pension Benefit Guaranty Corporation
SSA	Social Security Administration

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United States Government Accountability Office
Washington, DC 20548

September 10, 2008

The Honorable Charles Rangel
Chairman
Committee on Ways and Means
House of Representatives

The Pension Benefit Guaranty Corporation (PBGC) insures the pension benefits of 44 million private sector workers and retirees in over 30,000 employer-sponsored pension plans. Since its creation in 1974, PBGC's assets have increased significantly, making its financial portfolio one of the largest of any federal government corporation. PBGC holds approximately \$68 billion in assets and approximately \$82 billion in liabilities from underfunded plans—many of which were terminated in the past decade. As a result, PBGC has an accumulated deficit that currently stands at about \$14 billion. Recognizing the effect PBGC's financial condition could have on the federal budget, in 2003, we placed PBGC's largest insurance program on GAO's High Risk list; a list composed of federal programs that need attention and transformation.¹ PBGC's insurance program remains on the list today.

PBGC is governed by a three-member board of directors consisting of the Secretaries of the Treasury, Labor, and Commerce, who are responsible for providing policy direction and oversight of PBGC. In July 2007, we reported that the board structure was not sufficient in size to include the expertise or diverse set of interests needed to provide policy direction and oversight of PBGC. Consequently, we asked Congress to consider restructuring the corporation's board of directors by appointing additional members with diverse backgrounds who possess knowledge and expertise useful to PBGC's responsibilities. We also recommended that the board develop policies and mechanisms consistent with corporate governance practices and develop formal guidelines to articulate the roles and responsibilities of the board chair, members, their representatives, and the director.² You asked us to update the progress PBGC has made in improving its governance structure to provide policy direction and

¹GAO, *High-Risk Series: An Update*, [GAO-07-310](#) (Washington, D.C.: January 2007).

²GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, [GAO-07-808](#) (Washington, D.C.: July 6, 2007).

oversight since our report. Specifically, this report addresses (1) the steps PBGC has taken to improve its policy direction and oversight and (2) how Congress applies oversight to PBGC and what other oversight mechanisms exist for government corporations.

To identify the steps PBGC has taken to improve its governance structure, we updated our prior work, collecting and reviewing documents related to PBGC's bylaws, which were published in May 2008. We also reviewed reports on PBGC's organizational structure. To identify how Congress has recently exercised oversight of PBGC, we reviewed congressional hearings from 2002 to the present related to PBGC matters, examined the work of the Congressional Budget Office, the Congressional Research Service, and PBGC's Office of Inspector General, and reviewed PBGC's congressional reporting requirements. To identify oversight mechanisms that exist at other government corporations, we collected information on the federal government corporations we identified for our July 2007 review that have similar missions or designations to those of PBGC. Moreover, we reviewed government agencies with retirement-related responsibilities to determine what additional mechanisms may exist. We also met with officials from PBGC and the Department of Labor.

We conducted this performance audit between June 2008 and September 2008 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 the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Appendix I discusses our scope and methodology in further detail.

Results in Brief

Although PBGC's board has strengthened the corporation's governing bylaws, the three-member board of directors is still limited in its ability to provide policy direction and oversight to PBGC. In implementing our earlier recommendation, the board revised the corporation's bylaws to more clearly define the roles and responsibilities of PBGC's board members, representatives, director, and senior management. PBGC also contracted with a consulting firm to provide a background report to assist the board in its review of alternative corporate governance structures, including restructuring the board of directors as we suggested in 2007. However, because of its small size, the board has not been able to develop procedures and mechanisms to monitor PBGC's operations, such as standing committees, which are mechanisms used by other government

corporations. PBGC may also be exposed to challenges as the board, its representatives, and the director will likely change with the upcoming presidential transition in January 2009. While PBGC management has experienced a partial leadership change in recent years and provided operational and financial information to those newly appointed, PBGC's Inspector General and our reports have recently identified additional financial and operational challenges facing the corporation. This additional information could help the new board members and their representatives better understand the vulnerabilities and challenges facing the corporation.

PBGC is subject to routine congressional oversight, but some government corporations have other types of reporting requirements in place—such as congressional notifications and reporting protocols for their advisory committees—to ensure effective communication exists between the corporations and Congress. Congressional oversight of PBGC in recent years has ranged from formal committee hearings to investigations and studies conducted by congressional support agencies. For example, since 2002, PBGC officials have testified 19 times before several different committees on issues such as the status of PBGC's financial condition. Further, GAO, the Congressional Budget Office, and the Congressional Research Service have issued a variety of reports and testimonies on PBGC financial and operational matters. However, PBGC does not have reporting requirements applied to other government corporations for providing additional information to Congress. For example, the Millennium Challenge Corporation and the Commodity Credit Corporation are required to notify Congress prior to conducting certain financial transactions. The advisory committee of the Federal Deposit Insurance Corporation formally reports to its board of directors, while the Export-Import Bank of the United States' advisory committee formally reports to its board and Congress each year on matters related to their respective organizations. In addition, the advisory boards of other government entities with retirement-related responsibilities—such as the Social Security Administration, the Railroad Retirement Board, and the Federal Retirement Thrift Investment Board—provide reports to their overseeing bodies.

To ensure that recently identified management and financial challenges facing PBGC are shared with those newly appointed, we are making a recommendation that PBGC provide Office of Inspector General and GAO reports on the corporation's financial and management challenges to the newly appointed board members, board representatives, and director so that they can take appropriate action as needed. In response to our draft

report, PBGC's director stated that PBGC agreed with our recommendation.

Background

Congress passed the Employee Retirement Income Security Act of 1974 (ERISA) to protect the interests of participants and beneficiaries of private sector employee benefit plans.³ Before the enactment of ERISA, few rules governed the funding of defined benefit pension plans,⁴ and participants had no guarantee that they would receive promised benefits. ERISA established PBGC to insure private sector plan participants' benefits and to encourage the continuation and maintenance of private sector defined benefit pension plans by providing timely and uninterrupted payment of pension benefits.⁵

PBGC is a wholly owned government corporation—that is, the federal government does not share ownership interests with nonfederal entities, and PBGC is subject to requirements under the Government Corporation Control Act of 1945, as amended, such as annual budgets, audits, and management reports.⁶ According to public administration experts, a government corporation is appropriate for the administration of government programs that are

- predominately of a business nature,
- produce revenue and are potentially self-sustaining,
- involve a large number of business-type transaction with the public, and
- require greater budget flexibility than a government department or agency.

³Pub. L. No. 93-406, 88 Stat. 829 (codified, as amended, at 29 U.S.C. §§1001-1461).

⁴A defined benefit plan is a pension plan where the plan sponsor provides a benefit generally expressed as a monthly payment based on a formula that combines salary and years of service to the company. Defined benefit plans usually express benefits as an annuity, but may offer departing participants the opportunity to receive lump sum distributions.

⁵ERISA also established rules for funding defined benefit plans, instituted pension insurance premiums, promulgated certain fiduciary rules and mandated annual reporting requirements.

⁶31 U.S.C. §§ 9101(c)(3)(J) and 9103-9106.

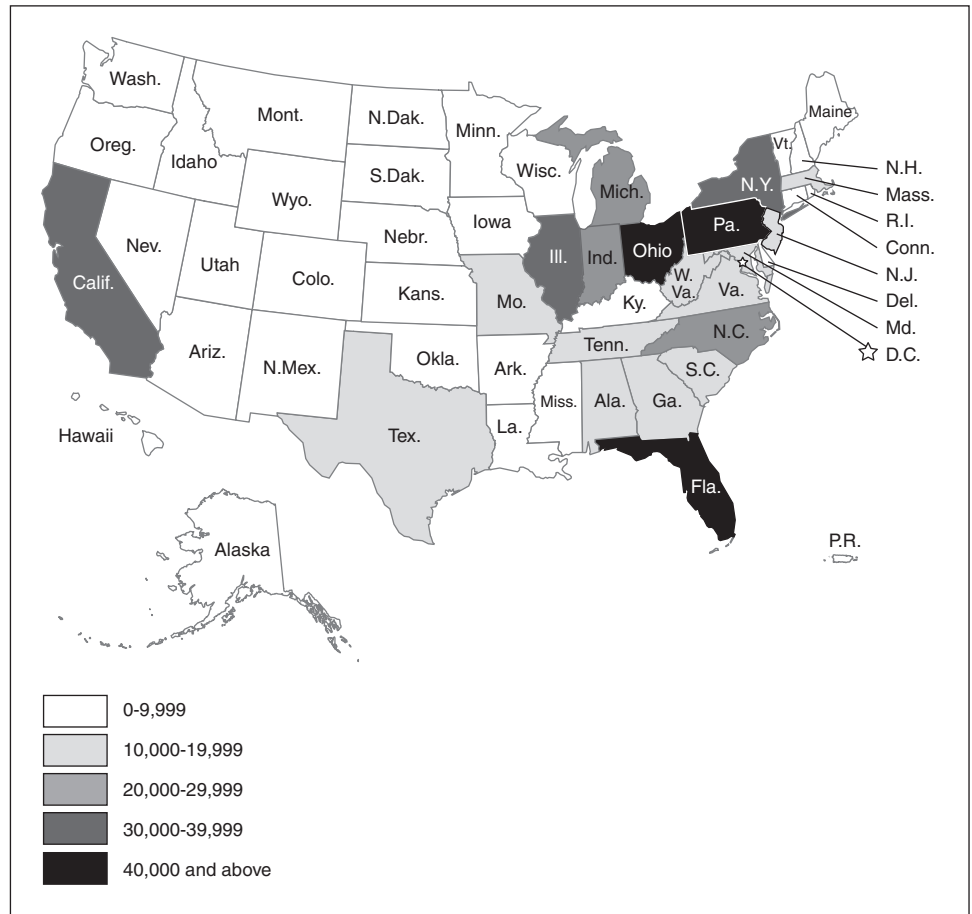
The United States government is not liable for any obligation or liability incurred by PBGC.⁷ The corporation is funded through insurance premiums from employers that sponsor insured pension plans, as well as assets from terminated pension plans and investment income.

PBGC insures certain private sector defined benefit plans through its single-employer and multiemployer insurance programs.⁸ Through its single-employer insurance program, PBGC paid nearly \$4.1 billion in benefits to 622,000 participants and beneficiaries across the United States in fiscal year 2006 (see fig. 1). The geographic breakdown of PBGC-insured participants largely matches the overall population. Appendix II includes information on PBGC's single-employer plans by each U.S. state and territory, as shown in figure 1.

⁷29 U.S.C § 1302(a), (g)(2).

⁸PBGC administers two insurance programs: the single-employer and multiemployer insurance programs. A single-employer plan is established and maintained by only one employer. Single-employer plans can be established unilaterally by the sponsor or 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).

Figure 1: Number of Payees Receiving Single-Employer Program Benefits from PBGC, Fiscal Year 2006



Source: GAO analysis; Map, Map Resources.

PBGC is governed by a board of directors that consists of the Secretaries of the Treasury, Labor, and Commerce, with the Secretary of Labor serving as chair of the board.⁹ Prior to the passage of the Pension Protection Act of 2006,¹⁰ ERISA provided the Secretary of Labor with

⁹29 U.S.C. § 1302(d). PBGC board members have designated officials and staff within their respective agencies to conduct much of the day-to-day work related to PBGC on their behalf. These officials are referred to as board representatives and act as liaisons between their cabinet secretaries and PBGC. They hold the rank of assistant secretary or above.

¹⁰Pub. L. No. 109-280, 120 Stat. 780.

responsibility for administering PBGC's operations, personnel, and budget. The Secretary has historically delegated the responsibility for administering PBGC to an executive director. The Pension Protection Act replaced the chair of the board as PBGC's administrator with a Senate-confirmed director. The corporation is also aided by a seven-member Advisory Committee appointed by the President to represent the interest of labor, employees, and the general public.¹¹ This committee has an advisory role, but has no statutory authority to set PBGC policy or conduct formal oversight. PBGC also has an Office of Inspector General that reports to the board through the chair. With 22 staff, the Office of Inspector General generally conducts audits, inspections, and investigations of PBGC's programs and operations in order to promote program administration effectiveness and deter waste, fraud, and abuse of PBGC resources.

Revised Bylaws Improve Policy Direction and Oversight, but Board Structure Continues to Limit Attention and Oversight

PBGC's board has taken steps to improve its governance structure by revising the corporation's bylaws. PBGC also contracted with a consulting firm to assist the board in its review of alternative corporate governance structures. However, the board consists of three cabinet secretaries, a fact that limits their ability to provide policy direction and oversight. PBGC may also face additional challenges as the board members, their representatives, and director will all likely change with the upcoming presidential transition, thus limiting the corporation's institutional knowledge.

PBGC Has Taken Steps to Address Concerns

PBGC has taken steps to improve its policy direction and oversight through the revision of its bylaws. In our July 2007 report, we recommended PBGC's board of directors establish formal guidelines that articulate the authorities of the board, the Department of Labor, other board members, and their respective representatives.¹² As part of its May 2008 bylaw revision, the board of directors more clearly defined the roles and responsibilities of its members, representatives, and director. For example, the new bylaws state that the board is responsible for

¹¹29 U.S.C § 1302(h)(b) specifies that the Federal Advisory Committee Act shall not apply to PBGC's advisory committee.

¹²[GAO-07-808](#).

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. In addition, the new bylaws explicitly define the role and responsibilities of the director and the corporation's senior officer positions. See appendix III to view PBGC's new bylaws.

Our July 2007 report also asked Congress to consider restructuring the board of directors to appoint additional members of diverse backgrounds who possess knowledge and expertise useful to PBGC's responsibilities and can provide the attention needed for strong corporate oversight. In response to these findings, PBGC contracted with a consulting firm to review governance models and provide a background report to assist the board in its review of alternative corporate governance structures. The consulting firm's final report describes the advantages and disadvantages of the corporate board structures and governance practices of other government corporations and select private sector companies, and concludes that there are several viable alternatives for PBGC's governance structure and practices.

Board's Limited Ability to Provide Policy Direction and Oversight Persists

Our July 2007 report found that PBGC's board has limited time and resources to provide policy direction and oversight and has not established procedures and mechanisms to monitor PBGC operations. Although board members have met more frequently since 2003, the three cabinet secretaries who compose the board have numerous other responsibilities. Because of their responsibilities and the small size of the board, it is difficult for the board to establish and manage oversight mechanisms, such as the use of standing committees—which are common mechanisms used by both government and private corporate boards. According to board officials, the board representatives, assisted by their staff, undertake some of the oversight functions that could be conducted by standing committees.¹³ Other government corporations, such as the Federal Deposit Insurance Corporation (FDIC), the Overseas Private

¹³Each representative has a dedicated staff person whose assignments include working on PBGC matters. In 2007, we reported that although the board representatives can draw on the expertise of other staff within their respective agencies as needed, these staff persons have other job responsibilities, which could limit the amount of time they can dedicate to PBGC.

Investment Corporation (OPIC), and the National Railroad Passenger Corporation (Amtrak), have established standing committees to conduct certain oversight functions. For example, FDIC's board of directors established standing committees, such as the Case Review Committee and the Audit Committee, to conduct certain oversight functions.

Instead, PBGC's board continues to rely on the Inspector General and PBGC's management oversight committees to ensure that PBGC is operating effectively.¹⁴ However, our prior work found that while the board requires the Inspector General to brief it at its semiannual meetings, there were no formal protocols requiring the Inspector General to routinely meet with the board or its representatives and staff. Consequently, when the board and its representatives likely change, it is unclear whether the board would be aware of this informal protocol. Further, we reported that the board relies on PBGC's executive committees and working groups for monitoring and reviewing PBGC's operations. However, these committees and working groups are neither independent of the PBGC director nor required to formally report all matters to the board.¹⁵

PBGC may also be exposed to challenges as the board, its representatives, and director will likely change with the upcoming presidential transition in January 2009, thus limiting institutional knowledge of the challenges facing the corporation. As we noted in 2007, because PBGC's board is composed of cabinet secretaries, PBGC board members, their representatives, and the director typically change with each administration. Other government corporations' authorizing statutes—such as OPIC's—have established board structures with staggered terms for their directors, possibly avoiding gaps in their organization's institutional knowledge. PBGC management has experienced partial leadership transitions in recent years, and in anticipation of the forthcoming complete leadership change, PBGC is developing additional

¹⁴PBGC's executive management has established committees and working groups for policy and oversight. According to PBGC, the Executive Management Committee is responsible for corporate policy decisions and coordination of the work of various PBGC offices. The Internal Control Committee has oversight responsibility for PBGC's internal controls. The Budget Planning and Integration Team provides a standardized process to promote integrated approaches for the alignment of budgetary resources and strategic planning. The Operations Integration Board provides a forum for senior leadership to commission and review corporationwide programs, projects, and internal policies.

¹⁵[GAO-07-808](#).

materials to include in its official transition package for newly appointed officials. This new information includes information on standards of ethical conduct, appointments, compensation levels, and information on presidential transitions. While PBGC typically provides newly appointed members, representatives, and directors with information on its operations and financial position, PBGC's Office of Inspector General and our work recently identified additional financial and operational challenges facing the corporation. This additional information could help the new board members and their representatives better understand the vulnerabilities and challenges facing the corporation.

Congress Has Overseen PBGC in Several Ways, but Some Other Government Corporations Have Additional Reporting Requirements

Congressional oversight of PBGC in recent years has ranged from formal congressional hearings to the use of its support agencies, such as GAO, the Congressional Budget Office (CBO), and the Congressional Research Service (CRS). However, unlike some other government corporations, PBGC does not have certain reporting requirements for providing additional information to Congress. In general, our prior work has shown that congressional oversight is designed to fulfill a number of purposes, including but not limited to ensuring executive compliance with legislative intent; improving the efficiency, effectiveness, and economy of government operations; evaluating program performance; and conducting investigations.

Congress Has Overseen PBGC in a Variety of Ways

Since 2002, PBGC officials have testified 19 times before various congressional committees—mostly on broad issues related to the status of the private sector defined benefit pension policy and its effect on PBGC (see table 1). For example, in 2005, the PBGC director testified before the House Committee on Transportation and Infrastructure's Subcommittee on Aviation regarding pension challenges facing the airline industry. The director's testimony discussed the possible effects such defaults would have on the defined benefit pension industry and the financial position of the corporation. Congress also recently began exercising oversight of PBGC through the confirmation process of PBGC's director. With the passage of the Pension Protection Act of 2006, PBGC's director now must be confirmed by the Senate.¹⁶ During the confirmation hearing conducted in 2007, members expressed concerns about key defined benefit pension

¹⁶Pub. L. No. 109-280, § 411(a)(1), 120 Stat. 780, 935 (codified at 29 U.S.C. § 1302(a)).

policy issues and PBGC's financial condition, as well as sought the nominee's thoughts on addressing weaknesses in PBGC's governance structure, such as the concerns we raised about the corporate governance practices.¹⁷

Table 1: PBGC Appearances before Congress since 2002

Date	Congressional committee	Subject of hearing or testimony
Feb. 27, 2002	Committee on Finance; United States Senate	Enron Corporation's defined benefit pension plan
June 20, 2002	Committee on Ways and Means; Subcommittee on Oversight; House of Representatives	The state of defined benefit pension system
Jan. 14, 2003	Committee on Appropriations; Subcommittee on Labor, Health and Human Services, and Education; United States Senate	Restoration of U.S. Airways pension plans
Mar. 11, 2003	Committee on Finance; United States Senate	The state of defined benefit pension system
Apr. 30, 2003	Committee on Ways and Means; Subcommittee on Selected Revenue Measures; House of Representatives	Defined benefit pension plan funding
Sept. 4, 2003	Committee on Education and the Workforce; House of Representatives	Defined benefit pension plan funding and the health of PBGC
Sept. 15, 2003	Committee on Governmental Affairs; Subcommittee on Financial Management, the Budget and International Security; United States Senate	Defined benefit pension plan funding and the health of PBGC
Oct. 14, 2003	Special Committee on Aging; United States Senate	The financial health of PBGC and future of defined benefit pension plans
Oct. 7, 2004	Committee on Science, Commerce and Transportation; United States Senate	The financial and policy challenges facing the private defined benefit pension system and PBGC's federal pension insurance program
Mar. 1, 2005	Committee on Finance; United States Senate	Defined benefit pension plan funding and the health of PBGC
Mar. 2, 2005	Committee on Government Reform; Subcommittee Government Management, Finance and Accountability; House of Representatives	Defined benefit pension plan funding and the health of PBGC
Mar. 2, 2005	Committee on Education and Workforce; House of Representatives	Defined benefit pension plan funding and the health of PBGC
Mar. 8, 2005	Committee on Ways and Means; Subcommittee on Select Revenue Measures; House of Representatives	Defined benefit pension plan funding and the health of PBGC
Apr. 26, 2005	Committee on Health, Education, Labor and Pensions; Subcommittee on Retirement Security and Aging; United States Senate	Defined benefit pension plan funding and the health of PBGC

¹⁷The Senate Committee on Finance and the Committee on Health, Education, Labor, and Pensions both have jurisdiction over the nomination.

Date	Congressional committee	Subject of hearing or testimony
June 7, 2005	Committee on Finance; United States Senate	Private pension reform and the Administration's proposals
June 15, 2005	Committee on Budget; United States Senate	Defined benefit pension plan funding and the health of PBGC
June 22, 2005	Committee on Transportation and Infrastructure; Subcommittee on Aviation; House of Representatives	Pension challenges facing the airline industry and role of PBGC
July 25, 2007	Committee on Finance; United States Senate	Confirmation of PBGC Director
Sept. 6, 2007	Committee on Health, Education, Labor, and Pensions; United States Senate	Confirmation of PBGC Director

Source: PBGC.

Beyond formal congressional hearings, PBGC staff told us that they frequently discuss pension policy matters with congressional staff. In addition, PBGC must annually submit reports to Congress on its prior fiscal year's financial and operational matters, which include information on PBGC's financial statements, internal controls, and compliance with certain laws and regulations.¹⁸ For example, the Pension Protection Act of 2006 requires that PBGC provide a comparison of the average return on investment earned with respect to asset investments by the corporation, which PBGC includes in its annual report.

Through its support agencies—GAO, the Congressional Budget Office, and the Congressional Research Service—Congress has also provided oversight and reviewed PBGC. Specifically, Congress has asked GAO to conduct assessments of policy, management, and the financial condition of PBGC. For example, we conducted more than 10 reviews of PBGC over the past 5 years, including assessments related to PBGC's 2005 corporate reorganization and weaknesses in its governance structure, human capital management, and contracting practices. Our work also raised concerns about PBGC's financial condition and the state of the defined benefit industry. In addition, CBO has published nine specific reports on PBGC since 2005.¹⁹ For example, in April 2008, CBO reported that PBGC's

¹⁸PBGC is required each year to submit to Congress and the President an annual report, which must include the actuarial assumptions and methods PBGC uses to evaluate the expected 5-year operations and status of its pension benefit guaranty funds, and a comparison of its funds' investment returns with a designated index. 29 U.S.C. § 1308.

¹⁹The U.S. Congressional Budget Office is charged with providing Congress with objective, nonpartisan, and timely analyses to aid in economic and budgetary decisions on the wide array of programs covered by the federal budget and the information and estimates required for the congressional budget process.

investment policy is likely to produce higher returns over the long run, but noted the new strategy increases the risk that PBGC will not have sufficient assets to cover retirees' benefit payments when the economy and financial markets are weak.²⁰ Further, CRS has published eight studies related to PBGC since 2006. Appendix IV includes a list of selected GAO, CBO, and CRS reports and testimonies related to PBGC.

Some Government Corporations Have Additional Congressional Reporting Requirements

Some government corporations have additional reporting requirements for notifying Congress of significant actions. The Millennium Challenge Corporation is required to formally notify the appropriate congressional committees 15 days prior to the allocation or transfer of funds related to the corporation's activities.²¹ The Commodity Credit Corporation is subject to a similar requirement, which obliges the Secretary of Agriculture to alert the Committee on Agriculture, Nutrition, and Forestry of the Senate and the Committee on Agriculture of the House of Representatives prior to making adjustments to a certain price support program.²² The Overseas Private Investment Corporation is required to submit a detailed report to the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives at least 60 days prior to issuing, among other things, political risk insurance for losses due to business interruption for the first time.²³ These examples demonstrate how Congress has required additional reporting requirements for certain activities conducted by government corporations. While PBGC generally has no requirements to formally notify Congress prior to taking significant financial or operational actions, PBGC officials said that they informally

²⁰U.S. Congressional Budget Office, *A Review of the Pension Benefit Guaranty Corporation's New Investment Policy* (Apr. 24, 2008).

²¹The Millennium Challenge Corporation is a U.S. government corporation designed to work with foreign countries to reduce global poverty through the promotion of sustainable economic growth. 22 U.S.C. §§ 7701, 7703.

²²The Commodity Credit Corporation (CCC) is a U.S. government corporation created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their distribution. 15 U.S.C. § 714.

²³OPIC undertakes programs to provide political risk insurance to U.S. investors, contractors, exporters and financial institutions involved in international transactions. 22 U.S.C. § 2194b. Political risk insurance can cover currency inconvertibility, expropriation, and political violence, and is available for investments in new ventures, expansions of existing enterprises, privatizations, and acquisitions with positive developmental benefits.

notify Congress prior to certain policy shifts. For example, in fiscal year 2008, PBGC officials met with congressional staff before modifying the investment policy to decrease the corporation's fixed-income asset investments. In addition to its annual reporting requirements, PBGC is required to report proposals for certain premium rate revisions, including reasons for such revisions, to specific congressional committees; however, these premium rate revisions are not considered effective until 30 days after enactment of a law approving them.²⁴

Like other government corporations, PBGC has an advisory committee. PBGC's advisory committee is charged with advising the corporation on its policies and procedures related to the corporation's appointment of trustees in termination proceedings, investments of monies, whether terminated plans should be liquidated immediately or continued in operation, and any other matters the corporation may request. Unlike PBGC's advisory committee, the advisory boards or committees of other government corporations—such as the Export-Import Bank and FDIC—are subject to the Federal Advisory Committee Act²⁵ and some submit formal reports to their board chair and directors (see table 2). In contrast, PBGC's advisory committee is not subject to the Federal Advisory Committee Act. According to PBGC officials, the corporation is exempt because of the proprietary nature of its work. PBGC's advisory committee typically reports only to the director, although representatives of PBGC's board members frequently attend advisory committee meetings and officials said that the committee can submit concerns to the board if it believes it is warranted.

²⁴29 U.S.C. § 1306(a)(2), (b).

²⁵The Federal Advisory Committee Act became law in 1972 and 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).

Table 2: Examples of Advisory Committees at Government Corporations

Federal government corporation	Advisory committee	Reports to	Number of members	Subject to Federal Advisory Committee Act
Export-Import Bank of the United States	Advisory Committee of the Export-Import Bank of the United States	Board of Directors and Congress	17	Yes
Saint Lawrence Seaway Development Corporation	Advisory Board of the Saint Lawrence Seaway Development Corporation	Administrator	5	Yes
Federal Deposit Insurance Corporation	Advisory Committee on Economic Inclusion	Chairman of the board	Not to exceed 20	Yes
Pension Benefit Guaranty Corporation	Advisory Committee of the Pension Benefit Guaranty Corporation	Director	7	No

Source: GAO analysis.

Beyond reporting to the chairman of its board, the Export-Import Bank’s advisory committee is also required to submit an annual report to Congress on the extent to which the Export-Import Bank is providing competitive financing to expand U.S. exports, along with suggestions for improvements. In addition to government corporations, some government agencies with retirement-related responsibilities—such as the Social Security Administration (SSA), the Railroad Retirement Board, and the Federal Retirement Thrift Investment Board—have advisory committees as part of their governance structures, which annually report to their respective overseeing bodies. For example, when Congress established SSA as a separate and distinct agency from the Department of Health and Human Services, it also established an independent seven-member bipartisan Advisory Board to advise the President, Congress, and the commissioner of Social Security on respective policy issues.

Conclusions

With more than 44 million Americans insured by PBGC, it is essential that the corporation is soundly governed and efficiently managed to guarantee that retirement income will be available to all those covered. Despite PBGC’s efforts to improve its bylaws, the three-member board of directors is still one of the smallest and least diverse of any government corporation. Other government corporations’ governance structures include oversight mechanisms, such as standing committees, and additional reporting requirements to conduct certain oversight functions and assist their boards of directors. While PBGC’s board should be restructured, additional reporting requirements, like some government corporations have, may not be appropriate for PBGC given the proprietary

nature of its financial work; thus, any reporting changes would need to be carefully considered.

The limitations of the board structure will become even more apparent in the coming months as the board, its representatives, and the corporation's director will likely be replaced with a new presidential administration. Because board members and their representatives serve by virtue of their positions in the federal government, there is no assurance that these individuals will have the needed expertise to understand the corporation's business or financial vulnerabilities. Without adequate information and preparation, this transition could limit not only the progress made by the current board, its representatives, and director, but may also curtail the corporation's ability to insure and deliver retirement benefits to millions of Americans that rely on the corporation.

Recommendation for Executive Action

To ensure that recently identified management and financial challenges facing PBGC are shared with those newly appointed, we recommend that PBGC provide Office of Inspector General and GAO reports on the corporation's financial and management challenges to the newly appointed board members, board representatives, and director so that they can take appropriate action as needed.

Agency Comments and Our Evaluation

We obtained written comments on a draft report from PBGC's director, which are reproduced in appendix V. In addition, the Departments of the Treasury, Labor, and Commerce provided joint technical comments, which were incorporated into the report where appropriate.

In response to our draft report, the PBGC director stated that PBGC prepares substantial in-depth briefing materials on its operational issues for incoming administrations. The director agreed with our recommendation, stating that PBGC will ensure that the transition materials provided to those newly appointed will also include pertinent PBGC Office of Inspector General and GAO reports. Further, the director stated that PBGC will continue to work in concert with the board to provide oversight information necessary to address the important issues that they confront in providing pension security to Americans.

We are sending copies of this report to the Secretaries of the Treasury, Labor, and Commerce, as well as the PBGC director and other interested parties. We will also make copies available to others on request. If you or your staff has any questions concerning this report, please contact me on (202) 512-7215 or bovbjergb@gao.gov. Contact points for our Office of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report are listed in appendix VI.

A handwritten signature in black ink that reads "Barbara D. Bovbjerg". The signature is written in a cursive style with a large, stylized initial "B".

Barbara D. Bovbjerg
Director, Education, Workforce, and
Income Security Issues

Appendix I: Scope and Methodology

To identify the steps that the Pension Benefit Guaranty Corporation (PBGC) has taken to improve its governance structure, we reviewed our work issued in July 2007, as well as collected and reviewed documents related to PBGC's bylaws, which were last published in May 2008.¹ We reviewed reports on PBGC's organizational structure and financial condition. We also identified provisions of the Employee Retirement and Income Security Act of 1974,² the Pension Protection Act of 2006,³ and chapter 91 of the U.S. Code, which is commonly known as the Government Corporation Control Act (GCCA),⁴ that outline the authority of PBGC's board of directors as well as the administrative responsibilities of PBGC's director. To understand the board of directors', their representatives', and PBGC's director's role, we reviewed documentation related to the board members' activities to identify what types of actions the board members had considered and taken.

To determine how Congress exercises oversight of PBGC, we identified the number of times PBGC officials testified before Congress since 2002, and reviewed the issues discussed at each formal hearing. Further, we reviewed the work of the Congressional Budget Office, the Congressional Research Service, PBGC's Office of Inspector General, and our work on PBGC's financial and management challenges. To determine the oversight mechanisms and reporting requirements that exist at other government corporations, we collected information on select federal government corporations that we identified in our July 2007 work, which are listed under the Government Corporation Control Act of 1945, as amended, and have similar missions or designations to those of PBGC. We reviewed information on the following government corporations:

- Commodity Credit Corporation,
- Export-Import Bank of the United States,
- Federal Crop Insurance Corporation,
- Federal Deposit Insurance Corporation,
- Federal Financing Bank,
- Federal Prison Industries (UNICOR),

¹PBGC's board published a copy of its bylaw amendments in the Federal Register. 29 U.S.C. § 1302(f). See also 73 Fed. Reg. 29985, which is reproduced in appendix III.

²29 U.S.C. §§ 1001-1461.

³Pub. L. No. 109-280, 120 Stat. 780.

⁴31 U.S.C. §§ 9101-9110.

- Financing Corporation,
- Government National Mortgage Association,
- Millennium Challenge Corporation,
- National Railroad Passenger Corporation (Amtrak)
- Overseas Private Investment Corporation,
- Resolution Funding Corporation,
- Saint Lawrence Seaway Development Corporation,
- Tennessee Valley Authority, and
- United States Postal Service.

We also reviewed government agencies with retirement-related responsibilities to determine what other oversight mechanisms may exist; the agencies include the Social Security Administration, the Railroad Retirement Board, and the Federal Retirement Thrift Investment Board. Moreover, we met with officials from PBGC and the Department of Labor.

Appendix II: Selected PBGC Single-Employer Plan Pension Data by State

States	Claims 1975-2006		Coverage 2005		Benefits Paid 2006		Mean Monthly Pension
	Plans	Claims	Plans	Participants	Payees	Payments	
Alabama	17	\$23,807,269	248	415,872	12,116	\$44,588,012	\$295
Alaska	4	1,171,886	26	86,673	214	1,789,662	732
Arizona	24	10,460,945	484	545,397	6,937	56,848,787	677
Arkansas	12	9,578,594	127	165,700	3,377	12,287,719	300
California	187	978,952,261	3,848	3,233,642	31,583	287,934,252	762
Colorado	17	202,019,557	327	483,819	7,672	87,626,865	987
Connecticut	115	339,608,195	785	504,152	7,081	32,920,689	379
Delaware	8	4,878,368	130	138,983	1,273	8,528,959	544
District of Columbia	15	12,606,511	242	83,384	335	1,749,182	430
Florida	77	369,603,170	866	2,065,553	41,860	298,574,227	580
Georgia	61	601,098,985	511	744,446	19,217	86,596,390	365
Hawaii	22	142,207,993	213	119,957	3,052	26,084,695	920
Idaho	7	12,709,939	63	142,722	1,649	11,769,270	585
Illinois	254	8,945,225,727	1,745	1,746,522	33,912	285,817,417	676
Indiana	105	1,406,771,939	495	867,713	24,614	207,556,275	660
Iowa	39	95,456,903	353	428,284	6,107	21,091,686	274
Kansas	24	42,691,574	155	258,904	2,506	16,018,743	508
Kentucky	24	99,638,280	275	616,310	5,254	24,313,046	368
Louisiana	25	75,296,341	227	493,403	4,747	24,829,486	420
Maine	13	9,781,410	99	151,088	2,018	8,208,993	333
Maryland	69	86,663,529	566	728,300	18,141	168,551,790	738
Massachusetts	204	528,083,138	958	831,350	13,815	94,423,951	545
Michigan	295	598,758,451	1,129	1,490,039	25,220	149,174,690	476
Minnesota	44	192,710,240	500	686,475	8,558	59,500,618	548
Mississippi	11	21,097,449	116	234,496	3,892	13,404,305	282
Missouri	67	293,981,974	421	722,134	12,276	78,685,377	509
Montana	3	207,534	41	118,228	425	3,440,334	668
Nebraska	4	7,328,458	154	256,808	1,212	6,155,180	410
Nevada	8	594,387	153	189,526	3,340	35,652,807	906
New Hampshire	25	34,769,380	120	194,990	3,028	18,325,844	487
New Jersey	196	330,487,687	1,682	1,185,568	12,923	67,369,924	419
New Mexico	7	10,380,110	113	89,021	1,347	7,922,268	491
New York	481	3,303,673,171	3,978	2,399,744	32,999	186,672,223	451

**Appendix II: Selected PBGC Single-Employer
Plan Pension Data by State**

States	Claims 1975-2006		Coverage 2005		Benefits Paid 2006		Mean Monthly Pension
	Plans	Claims	Plans	Participants	Payees	Payments	
North Carolina	47	373,760,939	480	1,154,334	29,134	125,373,643	352
North Dakota	2	128,733	37	70,031	103	456,710	363
Ohio	328	3,304,343,666	1,637	1,635,016	58,535	374,856,178	504
Oklahoma	22	381,366,835	182	433,611	3,011	15,248,545	409
Oregon	19	34,524,982	222	510,513	2,556	21,149,671	691
Pennsylvania	337	4,668,703,939	1,874	2,031,563	80,524	547,528,915	538
Rhode Island	47	41,309,238	126	90,683	1,659	6,245,574	307
South Carolina	17	64,941,570	182	399,740	14,022	50,759,828	301
South Dakota	—	—	29	63,263	227	1,936,569	692
Tennessee	45	184,947,667	348	552,423	13,563	60,579,227	368
Texas	109	191,265,052	1,261	1,874,076	16,491	83,429,213	418
Utah	8	29,595,562	123	203,310	1,983	12,095,719	510
Vermont	10	8,194,563	67	54,931	1,401	7,167,453	411
Virginia	47	2,753,225,929	626	883,510	11,957	71,827,569	498
Washington	22	261,758,583	322	711,907	8,549	88,815,895	883
West Virginia	53	1,236,685,805	149	184,201	12,218	110,762,806	709
Wisconsin	82	282,816,207	660	839,370	9,251	48,528,938	421
Wyoming	1	90,887	24	48,701	262	2,223,900	734
Puerto Rico	12	16,614,401	90	69,306	2,400	8,826,510	284
U.S. Territories	—	—	8	2,377	153	766,996	394
Foreign countries	1	204,359	8	—	1,654	9,200,275	451
Total	3,673	\$32,626,780,271	29,605	\$34,041,993	622,353	\$4,082,193,800	531

Sources: PBGC's Pension Insurance Data Book 2006. Information derived from PBGC Fiscal Year Closing File (9/30/06), Pension Plan Coverage Topic Module (May 2003) to the 2001 Survey of Income and Program Participation (SIPP), PBGC Case Administration System, PBGC Premium Filings, PBGC Participant System (PRISM), and fiscal year calculations. Claims and plan coverage data by state of plan administration; benefits and participant coverage data by state of payee residence. SIPP used to estimate participant coverage data.

Appendix III: Bylaws of the Pension Benefit Guaranty Corporation, May 23, 2008

number for the section 811 program is 14.181.

List of Subjects in 24 CFR Part 891

Aged, Grant programs-housing and community development, Individuals with disabilities, Loan programs-housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, HUD amends 24 CFR Part 891 to read as follows:

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

■ 1. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

■ 2. Revise § 891.120(c) to read as follows:

§ 891.120 Project design and cost standards.

* * * * *

(c) *Restrictions on amenities.* Projects must be modest in design. In individual units in supportive housing for the elderly and in independent living facilities for persons with disabilities, amenities not eligible for HUD funding include individual unit balconies and decks, atriums, bowling alleys, swimming pools, saunas, Jacuzzis, trash compactors, washers and dryers. However, HUD funding is eligible to pay for washers and dryers in group homes for persons with disabilities. Sponsors may include certain excess amenities, but must pay for them from sources other than the section 202 or 811 capital advance. They must also pay for the continuing operating costs associated with any excess amenities from sources other than the section 202 or 811 project rental assistance contract.

* * * * *

Dated: May 15, 2008.
 Brian D. Montgomery,
 Assistant Secretary for Housing—Federal Housing Commissioner.
 [FR Doc. E8-11619 Filed 5-22-08; 8:45 am]
 BILLING CODE 4210-67-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4002

Bylaws of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is a final rule to amend the bylaws of Pension Benefit Guaranty Corporation.

DATES: Effective June 23, 2008.

FOR FURTHER INFORMATION CONTACT: Judith R. Starr, General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026; 202-326-4400. (TTY/TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4400.)

SUPPLEMENTARY INFORMATION: Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(b)(3) of ERISA gives PBGC power “to adopt, amend, and repeal, by the board of directors, bylaws * * *.” Section 4002(f) of ERISA provides that “[t]he board of directors may alter, supplement, or repeal any existing bylaw * * * and may adopt additional bylaws * * * from time to time as may be necessary.” PBGC’s bylaws are set forth in 29 CFR Part 4002.

PBGC’s Board of Directors has amended the bylaws. This rule replaces the old bylaws with the new bylaws.

Compliance With Rulemaking Guidelines

As a rule of agency organization, procedure, or practice, this rule is exempt from notice and public comment requirements. Because no general notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply to this rule. See 5 U.S.C. 601(2), 603, 604. PBGC has determined that this rule is not a “significant regulatory action” under Executive Order 12866, as amended.

List of Subjects in Part 4002

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ Accordingly, 29 CFR part 4002 is revised to read as follows:

PART 4002—BYLAWS OF THE PENSION BENEFIT GUARANTY CORPORATION

- Sec.
- 4002.1 Name.
- 4002.2 Offices.
- 4002.3 Board of Directors, Chair, and Representatives of Board Members.
- 4002.4 Quorum.
- 4002.5 Meetings.
- 4002.6 Place of meetings; use of conference call communications equipment.
- 4002.7 Voting without a meeting.
- 4002.8 Conflicts of interest.

4002.9 Director of the Corporation and Senior Officers.

4002.10 Emergency Procedures.

4002.11 Seal.

4002.12 Amendments.

Authority: 29 U.S.C. 1302(b)(3), 1302(f).

§ 4002.1 Name.

The name of the Corporation is the Pension Benefit Guaranty Corporation.

§ 4002.2 Offices.

The principal office of the Corporation is in the Metropolitan area of the City of Washington, District of Columbia. The Corporation may have additional offices at such other places as the Board of Directors may deem necessary or desirable to the conduct of its business.

§ 4002.3 Board of Directors, Chair, and Representatives of Board Members.

(a)(1) The Corporation is governed by a Board of Directors which is composed of the Secretary of Labor, the Secretary of the Treasury, and the Secretary of Commerce. Members of the Board shall serve without compensation, but shall be reimbursed by the Corporation for travel, subsistence, and other necessary expenses incurred in the performance of their duties as Members of the Board. A person at the time of a meeting of the Board of Directors who is serving in an acting capacity as Secretary of Labor, Secretary of the Treasury, or Secretary of Commerce shall serve as a Member of the Board of Directors with the same authority and effect as the designated Secretary.

(2) The Secretary of Labor shall be the Chair of the Board of Directors and shall call and preside over all Board meetings, and shall, on behalf of the Board, review and approve the Corporation’s budget. The Inspector General of the Corporation shall report to the Board through the Chair.

(3) The Board of Directors is responsible for establishing and overseeing the policies of the Corporation. The Board may delegate powers to the Director of the Corporation except that the following powers of the Board may not be delegated to the Director of the Corporation:

- (i) Voting on an amendment to these bylaws;
- (ii) Approval of the Annual Management Report (AMR), which includes the annual financial statements, management’s discussion and analysis, annual performance report, and reports of the independent auditor;
- (iii) Approval of the Annual Report, which includes the AMR, the

Appendix III: Bylaws of the Pension Benefit Guaranty Corporation, May 23, 2008

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Chairman's message, and certain statutory reporting requirements;

(iv) Approval of the Corporation's Investment Policy Statement;

(v) Approval of the issuance of any notes or debt instruments to the Secretary of the Treasury under Section 4005(c) of ERISA;

(vi) Approval of all final nonprocedural regulations prior to publication in the **Federal Register**, except for amendments that establish new interest rates and factors under Parts 4044 (Appendices C and D) and 4281 of this chapter, which may be approved by the Director of the Corporation;

(vii) Approval of all reports or recommendations to the Congress required by Title IV of ERISA;

(viii) Approval of any policy matter that would have a significant impact on the pension insurance program or its stakeholders; and

(ix) Review of reports from the Corporation's Inspector General that the Inspector General deems appropriate to deliver to the Board.

(4) The Board shall review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years.

(b)(1) Each Board Member shall designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Representative. Such designation shall be effective until revoked or until a date or event specified therein. A Board Representative may act for all purposes under these bylaws, except that an action of a Board Representative on a Board Member's behalf with respect to the powers described in paragraph (a)(3)(i) through (v) of this section, shall be valid only upon ratification in writing by the Board Member. Any Board Representative may refer for Board action any matter under consideration by the Board Representatives.

(2) A Board Member may designate in writing an official, not below the level of Assistant Secretary, to serve as the Board Member's Alternate Representative at a meeting. An Alternate Representative may act for all purposes at that meeting, except that the Alternate Representative's actions shall be valid only upon ratification in writing by either the Board Member or the Board Representative. Any action of the Alternate Representative involving the powers described in paragraph (a)(3)(i) through (v) of this section or any matter that has been referred to the Board under paragraph (b)(1) of this

section must be ratified in writing by the Board Member.

(3) For purposes of this section, ratification shall include approval of the minutes of the meeting of the Board of Directors.

(c) Final procedural regulations and all proposed regulations shall be approved by the Director of the Corporation prior to publication in the **Federal Register**; however, all final procedural regulations and all proposed regulations shall first be reviewed for comment by each Board Representative, except for amendments that establish new interest rates and factors under Parts 4044 (Appendices C and D) and 4281 of this chapter. A Board Representative may, within 21 days of receiving a final procedural regulation or proposed regulation for review, request that it be referred to the Board Representatives for approval.

§ 4002.4 Quorum.

A majority of the Board Members shall constitute a quorum for the transaction of business. Any act of a majority of the Members present at any meeting at which there is a quorum shall be the act of the Board.

§ 4002.5 Meetings.

Regular meetings of the Board of Directors shall be held as often as required to provide appropriate oversight and guidance to the Corporation and at such times as the Chair shall select. Special meetings of the Board of Directors shall be called by the Chair on the request of any other Board Member. Reasonable notice of any meetings shall be given to each Board Member. The General Counsel of the Corporation shall serve as Secretary to the Board of Directors and keep its minutes. As soon as practicable after each meeting, a draft of the minutes of such meeting shall be distributed to each Member of the Board for approval.

§ 4002.6 Place of meetings; use of conference call communications equipment.

Meetings of the Board of Directors shall be held at the principal office of the Corporation unless otherwise determined by the Board of Directors or the Chair. Any Member may participate in a meeting of the Board of Directors through the use of conference call telephone or similar communications equipment, by means of which all persons participating in the meeting can speak to and hear each other. Any Board Member so participating in a meeting shall be deemed present for all purposes. Actions taken by the Board of Directors at meetings conducted through

the use of such equipment, including the votes of each Member, shall be recorded in the usual manner in the minutes of the meetings of the Board of Directors.

§ 4002.7 Voting without a meeting.

A resolution of the Board of Directors signed by each of the Board Members or each of the Board Representatives shall have the same effect as if agreed to at a meeting and shall be kept in the Corporate Minutes Book. A resolution for an action taken on any matter for which a Board Member has been disqualified under § 4002.8 may be signed by the Board Representative of the disqualified Board Member.

§ 4002.8 Conflict of interest.

Any Board Member may disqualify himself or herself from participation in a Board action on any matter if the Board Member may have or may appear to have a conflict of interest. The Board Member shall notify the other Board Members of a disqualification. The disqualified Member's Board Representative, acting independently of that Member, may vote on the matter in the Member's place. The disqualified Board Member need not and may not ratify any action taken on the matter giving rise to his or her disqualification.

§ 4002.9 Director of the Corporation and Senior Officers.

(a) *Director of the Corporation.* The Corporation shall be administered by a Director appointed by the President with the advice and consent of the Senate. Subject to policies established by the Board, the Director shall have responsibility for the Corporation's management, including its personnel, organization and budget practices, and shall carry out the Corporation's functions under Title IV of ERISA. The Director shall submit the Corporation's budget to the Chair of the Board for review and approval.

(b) There shall be the following senior officers of the Corporation, reporting directly to the Director:

- (1) Deputy Directors for Policy and Operations, who shall be first and second assistant, respectively;
- (2) General Counsel, who shall serve as Secretary to the Board;
- (3) Chief Financial Officer;
- (4) Chief Information Officer;
- (5) Chief Management Officer;
- (6) Chief Operating Officer; and
- (7) Chief Insurance Program Officer.

(c) Subject to prior approval of the Board, the Director may establish such additional or other senior officers as necessary. Before making an appointment to a senior officer position,

Appendix III: Bylaws of the Pension Benefit Guaranty Corporation, May 23, 2008

the Director shall consult with the Board.

§ 4002.10 Emergency procedures.

(a) An emergency exists if a quorum of the Corporation's Board cannot readily be assembled or act through written contact because of the declaration of a government-wide emergency. These emergency procedures shall remain in effect during the emergency and upon the termination of the emergency shall cease to be operative unless and until another emergency occurs. The emergency procedures shall operate in conjunction with the PBGC Continuity of Operations Plan ("COOP Plan") of the current year, and any government-wide COOP protocols in effect.

(b) During an emergency, the business of the PBGC shall continue to be managed in accordance with its COOP Plan. The functions of the Board of Directors will be carried out by those Members of the Board of Directors in office at the time the emergency arises, or by persons designated by the agencies' COOP plans to act in place of the Board Members, who are available to act during the emergency. If no such persons are available, then the authority of the Board shall be transferred to the Board Representatives who are available. If no Board Representatives are available, then the Director of the Corporation shall perform essential Board functions.

(c) During an emergency, meetings of the Board may be called by any available Member of the Board. The notice thereof shall specify the time and place of the meeting. To the extent possible, notice shall be given in accordance with these bylaws. Notice shall be given to those Board Members whom it is feasible to reach at the time of the emergency, and notice may be given at a time less than 24 hours before the meeting if deemed necessary by the person giving notice.

§ 4002.11 Seal.

The seal of the Corporation shall be in such form as may be approved from time to time by the Board.

§ 4002.12 Amendments.

These bylaws may be amended or new bylaws adopted by unanimous vote of the Board.

Issued in Washington, DC, this 20th day of May, 2008.

Charles E.F. Millard,
Director, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to Resolution 2008-09 of the Board of

Directors authorizing adoption of the revised Bylaws contained in this final rule.

Judith R. Starr,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. E8-11667 Filed 5-22-08; 8:45 am]

BILLING CODE 7709-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG-2008-0375]

Portland Rose Festival Fireworks Display

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the "Portland Rose Festival Fireworks Display safety zone on the Willamette River"; from 8:30 p.m. through 11:30 p.m. on May 30, 2008. This action is necessary to provide a safe display for the public and to keep them clear of the fall out area of the fireworks. During the enforcement period, no person or vessel may enter the safety zone without permission of the Captain of the Port.

DATES: The regulations in 33 CFR 165.1315(a)(2) will be enforced from 8:30 p.m. through 11:30 p.m. on May 30, 2008.

FOR FURTHER INFORMATION CONTACT: BM2 Joshua Lehner, Sector Portland Waterways Management at (503) 247-4015.

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone for the Portland Rose Festival fireworks display in 33 CFR 165.1315(a)(2) on May 30, 2008 from 8:30 p.m. to 11:30 p.m.

Under the provisions of 33 CFR 165.1315, a vessel may not enter the regulated area, unless it receives permission from the COTP. The Coast Guard may be assisted by other Federal, state, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 33 CFR 165.1315(a)(2) and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and a marine information broadcast. If the COTP determines that the regulated area need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to

grant general permission to enter the regulated area.

Dated: May 7, 2008.

F.G. Myer,

Captain, U.S. Coast Guard, Captain of the Port Portland.

[FR Doc. E8-11549 Filed 5-22-08; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA-R08-RCRA-2006-0127; FRL-8569-9]

Utah: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize states to operate their hazardous waste management programs in lieu of the federal program. Utah has applied to EPA for final authorization of the changes to its hazardous waste program under RCRA. EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing Utah's changes through this final action.

DATES: This final authorization will become effective on May 23, 2008.

FOR FURTHER INFORMATION CONTACT: Carl Daly, Solid and Hazardous Waste Program, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202, (303) 312-6416, daly.carl@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal program. As the federal program changes, states must change their programs and ask EPA to authorize the changes. Changes to state programs may be necessary when federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) Parts 124, 260 through 266, 268, 270, 273 and 279.

Appendix IV: List of Selected Reports and Testimonies Related to the Pension Benefit Guaranty Corporation

U.S. Government Accountability Office

Pension Benefit Guaranty Corporation: Some Steps Have Been Taken to Improve Contracting, but a More Strategic Approach Is Needed. [GAO-08-871](#). Washington, D.C.: August 2008.

PBGC Assets: Implementation of New Investment Policy Will Need Stronger Board Oversight. [GAO-08-667](#). Washington, D.C.: July 2008.

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

High Risk Series: An Update. [GAO-07-310](#). Washington, D.C.: January 2007.

Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight. [GAO-07-808](#). Washington, D.C.: July 6, 2007.

PBGC's Legal Support: Improvement Needed to Eliminate Confusion and Ensure Provision of Consistent Advice. [GAO-07-757R](#). Washington, D.C.: May 18, 2007.

Private Pensions: Questions Concerning the Pension Benefit Guaranty Corporation's Practices Regarding Single-Employer Probable Claims. [GAO-05-991R](#). Washington, D.C.: September 9, 2005.

Private Pensions: The Pension Benefit Guaranty Corporation and Long-Term Budgetary Challenges. [GAO-05-772T](#). Washington, D.C.: June 9, 2005.

Pension Benefit Guaranty Corporation: Single-Employer Pension Insurance Program Faces Significant Long-Term Risks. [GAO-04-90](#). Washington, D.C.: October 2003.

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

Pension Benefit Guaranty Corporation: Statutory Limitation on Administrative Expenses Does Not Provide Meaningful Control. [GAO-03-301](#). Washington, D.C.: February 2003.

GAO Forum on Governance and Accountability: Challenges to Restore Public Confidence in U.S. Corporate Governance and Accountability Systems. [GAO-03-419SP](#). Washington, D.C.: January 2003.

U.S. Congressional Budget Office

A Review of the Pension Benefit Guaranty Corporation's New Investment Strategy. April 24, 2008.

Effect of H.R. 2830 on the Net Economic Costs of the Pension Benefit Guaranty Corporation. December 29, 2005.

The effect on the 10-year net costs to the Pension Benefit Guaranty Corporation (PBGC) of enacting S. 1783, the Pension Security and Transparency Act of 2005. October 11, 2005.

A Guide to Understanding the Pension Benefit Guaranty Corporation. September 2005.

The Risk Exposure of the Pension Benefit Guaranty Corporation. September 2005.

Testimony on Multiemployer Pension Plans. June 28, 2005.

Testimony on the Pension Benefit Guaranty Corporation: Financial Condition, Potential Risks, and Policy Options. June 15, 2005.

Testimony on Estimating the Costs of the Pension Benefit Guaranty Corporation. June 9, 2005.

Testimony on Defined-Benefit Pension Plans: Current Problems and Future Challenges, June 7, 2005.

U.S. Congressional Research Service

Baird Webel. *Insurance Guaranty Funds.* RL32175. February 27, 2008.

John J. Topoleski. *Pension Benefit Guaranty Corporation: A Fact Sheet.* 95-118. January 29, 2008.

Patrick Purcell. *Summary of the Pension Protection Act of 2006.* RL33703. May 1, 2007.

Appendix IV: List of Selected Reports and Testimonies Related to the Pension Benefit Guaranty Corporation

William Klunk. *The Pension Benefit Guaranty Corporation and the Federal Budget*. RS22650. April 24, 2007.

William Klunk. *The Financial Health of the Pension Benefit Guaranty Corporation (PBGC)*. RL33937. March 23, 2007.

Jennifer Staman and Erika Lunder. *The Pension Benefit Guaranty Corporation and Single-Employer Plan Terminations*. RS22624. March 14, 2007.

Jennifer Staman and Erika Lunder. *Pension Protection Act of 2006: Summary of the PBGC Guarantee and Related Provisions*. RS22513. December 20, 2006.

Neela K. Ranade and Paul J. Graney. *Defined Benefit Pension Reform for Single-Employer Plans*. RL32991. January 26, 2006.

Appendix VI: GAO Contact and Acknowledgments



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Office of the Director

September 8, 2008

Ms. Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to comment on the draft version of your report entitled, "Pension Benefit Guaranty Corporation – Need for Improved Oversight Persists." PBGC appreciates GAO's work in reviewing this important area.

PBGC especially appreciates the recognition that the report gives to the work of the Board and management in revising our by-laws, which the Board approved in May of this year. In August, PBGC issued Order GA 15-6, "Documents for PBGC Board of Directors" to help implement the by-laws, document Board interactions, and enable our Office of General Counsel to better document and monitor the Board review process.

The draft report notably highlights the variety of ways in which PBGC receives Congressional oversight, ranging from hearings to the support of agencies such as the Congressional Budget Office, the Congressional Research Service, and GAO. It is worthwhile noting that GAO alone over the past decade has produced scores of reports and testimonies about PBGC and its central issues. Indeed, Appendix IV of your draft report cites 28 selected reports and testimonies related to PBGC from the three support agencies in recent years.

Your draft report further acknowledges the work that management is undertaking to prepare for the upcoming Presidential transition. As you know from your review of PBGC's governance structure in 2007, PBGC has prepared substantial in-depth briefing materials on its operational and financial issues for incoming administrations. We agree with the recommendation to ensure that these transition materials include pertinent IG and GAO reports.

In moving forward on corporate governance, PBGC will work in concert with its Board to provide the oversight information necessary to address the important issues that we confront in providing pension security to millions of Americans. Again, thanks for the opportunity to comment.

Sincerely,

Charles E.F. Millard
Director

GAO Contact

Barbara D. Bovbjerg, (202) 512-7215 or bovbjergb@gao.gov

Acknowledgments

The following team members made key contributions to this report: Blake Ainsworth, Assistant Director; Jason Holsclaw, Analyst-in-Charge; Susannah Compton; William King; Matthew Lee; Charlie Willson; and Craig Winslow.

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