



Pension Benefit Guaranty Corporation

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

Office of the Director

July 29, 2008

The Honorable George Miller
Chairman
Committee on Education and Labor
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Miller:

This letter is in response to the subpoena issued by the Committee on Education and Labor (the "Committee") on July 16, 2008, to me, as Director of the Pension Benefit Guaranty Corporation ("PBGC"). The PBGC was established as a corporate body within the Department of Labor by the Employee Retirement Income Security Act of 1974, 29 U.S.C. 1302(a). The PBGC Board of Directors (the "Board") consists of the Secretary of Labor, the Secretary of Treasury, and the Secretary of Commerce, with the Secretary of Labor designated as the Chair of the Board. (29 U.S.C. 1302(b).) I have been authorized to respond on behalf of the Board.

The Committee's subpoena seeks all documents relating to contract number GS-I0F-0118S. As you know, this contract was awarded by PBGC to McKinsey & Company, Inc. ("McKinsey") to provide background material in the form of a report (the "report") to assist the Board in its review of alternative corporate governance structures and practices. Aside from the actual contract, copies of which we already produced to the Committee, the documents you are seeking are drafts of the report and related communications that are part of an ongoing deliberative process to determine whether the Board may wish to consider changes to the current governance structure to improve the oversight and administration of the PBGC, a process that may ultimately result in one or more legislative proposals or other changes. The Board is very concerned that disclosure of drafts of the report and related communications before the report is finalized would infringe on the Board's ongoing deliberative process.

We were surprised to receive your subpoena because we have been cooperative in responding to your questions about the report. In early June, Committee staff requested a copy of the McKinsey contract, and it was provided to them on June 9th. You then wrote to me on June 19, 2008 asking why the report had not yet been delivered as well as requesting copies of the report and all prior drafts. In a June 24, 2008 letter, Judith Starr, PBGC General Counsel and Board Secretary, responded to the June 19th letter by stating that McKinsey requested, and I granted, an extension so that McKinsey would have more time to conduct a comprehensive study. The letter also stated that the final report had not yet been delivered, that the request for drafts of an unfinished report infringed on the Board's deliberative processes, and that the final report would

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be produced to the Committee as soon as it is complete. On July 16, 2008, Ms. Starr, Deputy Director for Operations Vincent Snowbarger, Legislative and Regulatory Department Director John Hanley, Chief of Staff George Koklanaris and I met with your staff and explained how the report was being structured and the methodology that was being used to conduct the study. Your staff did not ask for further information about these topics, and, at the end of the meeting, the subpoena was served.


We have consistently told the Committee that we will provide a copy of the report as soon as it is final, and we reiterate that point here. The Board will produce to the Committee the final report as soon as it is complete. The Board is concerned, however, that disclosure of drafts and related documents would have a serious adverse impact on the ongoing deliberative process, raising fundamental separation of powers concerns. As a matter of principle, such information requires protection because of the chilling effect disclosure could have on the candor of internal executive deliberations.

Above and beyond agreeing to produce the final report, we are offering two additional accommodations in an effort to cooperate with the Committee's request while protecting our important interests. First, the Board is willing to allow the Committee to review in a PBGC reading room the following portions of the latest draft of the Report, which are purely factual and believed to be in final form:

1. Chapter 4: Setting the Stage: 11 Case Studies
2. Appendix I: Organizations Studied
3. Appendix II: In Depth Case Studies

Second, PBGC is willing to provide the Committee with a second briefing on the Report. We believe that our efforts to cooperate with the Committee go beyond what is necessary to assist the Committee in fulfilling its functions. Please contact John Hanley at 202-326-4124 to set up a mutually agreeable time to discuss the terms and conditions of these accommodations.

Sincerely,



Charles E.F. Millard
Director

cc: The Honorable Howard P. "Buck" McKeon, Ranking Member