



June 3, 2004

James J Keightley
Designated Agency Ethics Official
Pension Benefit Guaranty Corporation
1200 K Street, NW
Suite 340
Washington, DC 20005-4026

Dear Mr Keightley

The Office of Government Ethics (OGE) has completed its review of the Pension Benefit Guaranty Corporation's (PBGC) ethics program. The review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended (the Ethics Act). Our objective was to determine the program's compliance with applicable laws and regulations. We also evaluated PBGC's systems and procedures for ensuring that ethics violations do not occur. This review was conducted intermittently from January through April 2004.

HIGHLIGHTS

While certain areas of PBGC's ethics program are sound and suited to your agency's mission, size, and employees, other areas require improvement. Well-run aspects of your program include satisfying OGE's ethics training regulatory requirements and providing useful and accurate advice when employees ask ethics-related questions. However, we found deficiencies in the financial disclosure systems for both regular employees and special Government employee (SGE) members of PBGC's one advisory committee. In addition, in the enforcement area, we want you to notify us not only of any administrative action (including disciplinary action) taken concerning the two ethics cases referred to in this report, but if action is not taken, please confirm that it was affirmatively considered.

PROGRAM STRUCTURE

It appears that ethics staffing of your program is appropriate given the agency's size and organizational structure. As the General Counsel, you serve as the Designated Agency Ethics Official (DAEO) for approximately 800 PBGC employees, all of whom are located in Washington, DC. An Assistant General Counsel serves as Alternate DAEO (ADAEO) and devotes about 20 percent of his time to ethics-related duties. His supervisor, a Deputy General Counsel, also serves as an ethics official. In addition, several Office of General Counsel (OGC) staff attorneys serve as Ethics Counselors, one of whom serves as a primary ethics point of contact and another

Mr James J Keightley

Page 2

who recently took charge of tracking financial disclosure reports and conducting preliminary reviews of those reports

ENFORCEMENT

The handling by your office and the OIG of two ongoing ethics cases which are discussed below revealed instances of non-compliance with 5 C F R § 2638 603 and raised questions with respect to PBGC's compliance with § 2638 203(b)(9), (11), and (12) Indeed, we do not believe that in the first case described below you ensured that PBGC took prompt and effective administrative action against the employee In addition, discussions with ethics and OIG officials revealed a longstanding difficult relationship between the two offices which impeded effective coordination on employee misconduct cases Though we still have some concerns about the overall effectiveness of the working relationship between the two offices, based on comments from both you and OIG officials, it appears that the relationship is getting better To ensure the viability of PBGC's enforcement process when dealing with future employee misconduct cases, we encourage that you and OIG officials continue to improve upon your working relationship

Section 2638 603 requires agencies to concurrently notify OGE of referrals for prosecution to the Department of Justice (DOJ) of alleged violations of the criminal conflict-of-interest statutes, as well as to notify OGE promptly of any declinations to prosecute and disciplinary or corrective action initiated, taken, or to be taken Section 2638 203(b)(9) requires the DAEO to ensure that the agency takes prompt and effective administrative action against agency employees to remedy ethics violations Subparagraph (b)(11) of § 2638 203 requires the DAEO to ensure that information developed by OIG is reviewed to determine whether such information discloses a need for taking prompt corrective action to remedy actual or potential conflict-of-interest situations Subparagraph (b)(12) of § 2638 203 requires the DAEO to ensure that the services of OIG are utilized by ethics officials, including referring matters to and accepting matters from OIG

Case Involving the Director Insurance Operations Department

Ethical violations involving the Director, Insurance Operations Department (IOD) have been longstanding OIG officials initially began investigating him in 1997 based on allegations that he had improperly accepted a gift and showed favoritism to a PBGC contractor during the awarding of contracts Since that time, according to OIG officials, there have been a series of intertwining investigations involving this employee

In July 2000, the General Accounting Office (GAO) initiated its own investigation concerning contracting irregularities at PBGC GAO's investigation focused on the propriety of two of the contracts awarded by the Director, IOD In its testimony before the Senate Special Committee on Aging and the Committee on Small Business on September 21, 2000, GAO reported they found that the Director, IOD had "demonstrated a lack of impartiality" with respect to awarding one of the contracts and had "created the appearance of improperly influencing the award of the two contracts"

under examination GAO planned on referring this matter to PBGC and to DOJ for additional action

We understand that in early-2001 OIG officials referred the Director, IOD to DOJ's Public Integrity Section and the U S Attorney for the District of Columbia alleging an 18 U S C § 208 violation However, our Office was not concurrently notified, as required by 5 C F R § 2638 603 In September 2001, DOJ declined to prosecute this case ¹ We also understand that OIG officials subsequently referred this matter, in June 2003, to DOJ's Civil Division and that a determination is still pending

We were informed that in August 2003 an OIG investigative report covering wrongdoings on the part of the Director, IOD was transmitted to you After receipt of this report, you asked the OIG to provide additional evidence to support its report findings, which we were told was provided in December 2003 When we met with you in March 2004, you told us that this matter had been under review for several months and that you had retained outside counsel to ensure consistency in the application of any disciplinary action that may be meted out Subsequent to our exit briefing with you, on April 16 the Deputy Executive Director issued a notice to the Director, IOD, proposing a 14-day suspension without pay, and counseled him in writing Please notify us of the final decision on whether or not proposed action is taken

Case Involving the Director, Strategic Planning Department

Allegations of misconduct by the Director, Strategic Planning Department (SPD) were raised to the OIG in January 2002 OIG officials began an investigation in June 2002 based on allegations that she was still a partner in the firm she was employed with prior to her employment with PBGC and that she had steered PBGC contracts to her friend and former partner According to OIG officials, they substantiated that the Director, SPD participated in various procurement actions which resulted in her former partner obtaining multiple non-competitive contracts with PBGC

In January 2003, OIG officials referred this case to DOJ's Fraud and Public Corruption Section, which declined prosecution One year later, in January 2004, the OIG referred this case to DOJ's Public Integrity Section alleging violations of 18 U S C. §§ 205 and 208, which was declined in February 2004 ² Also in February, according to OIG officials, DOJ's Fraud and Corruption Section referred this case to DOJ's Civil Division and received a declination that same month

¹OIG officials notified OGE of this referral and DOJ's disposition in February 2004 OIG officials told us they plan to implement a new process for improved identification of cases and notification to OGE to ensure that we are concurrently notified of referrals and promptly notified of any declinations and disciplinary or corrective action initiated or taken

²As in the other case, OGE was not notified of the referral and declination until February 2004

We were informed that in December 2003, an OIG investigative report covering various charges against the Director, SPD was transmitted to you and that PBGC management officials were briefed on this case. According to OIG officials, they provided supplemental investigative information to management and you in February 2004. You have also retained outside counsel in this case to ensure consistency in the application of any disciplinary action that may be meted out as well as to conduct additional investigative work. Accordingly, as required by 5 C.F.R. § 2638.603, notify us of any disciplinary action taken. If action is not taken, notify us whether it was affirmatively considered.

FINANCIAL DISCLOSURE SYSTEMS

Various aspects of PBGC's public and confidential financial disclosure systems need strengthening to ensure that recently made improvements are institutionalized. At the start of our review in January, we found that many financial disclosure reports required to be filed in 2003 were missing and that many reports had not been reviewed and/or certified. These findings raised our concerns about the viability of these systems to detect potential conflicts of interest. We advised ethics officials about our concerns and they took immediate action to locate, review, and certify the missing reports. While our examination of reports did not detect any potential conflicts (and subsequent reviews conducted by ethics officials found none), we were concerned about the adequacy of disclosed information on some reports. These concerns were addressed by the close of our review.

PBGC has longstanding written procedures for administering its financial disclosure systems which we found generally met the fundamental requirements of the Ethics Act. However, we believe that these procedures need to be updated to more accurately reflect how the systems are now being administered. Since ethics officials agreed to make changes and incorporate the suggestions we made, we are not making a formal recommendation.

We also discussed methods to streamline and improve the overall processing and tracking of financial disclosure reports. We were advised that many of our suggestions would be implemented. For example, as a first step, one Ethics Counselor has reorganized the filing and tracking system. In addition, she has assumed responsibility for tracking receipt of financial disclosure reports as they are submitted to OGC. Moreover, she will initially review all reports and monitor those reports that will be certified by other ethics officials.

Public System

We examined 30³ of the 31 public reports required to be filed in 2003 and found all were filed timely. However, the review and certification of many reports was protracted—exceeding a year

³We did not examine one report which was under review by ethics officials.

for some Ethics officials explained that many reports were misfiled and forgotten instead of being forwarded to the ADAEO and you for final certification

During our review, once ethics officials had certified most public reports, we questioned them on whether the financial information disclosed in a few reports was accurate and complete. Ethics officials advised us that except for two of the reports for which requested additional data was pending, they had followed up with filers, obtained all required information, and assured that there were no potential conflicts of interest.

Concerning the delayed forwarding of your May 2003 public report to our Office pursuant to 5 C F R § 2634 602, apparently, it too was misfiled and forgotten about along with other public reports. In addition, when it was forwarded to the Executive Director for certification, it languished. The report was ultimately certified by the ADAEO and forwarded to OGE in January 2004. We advised ethics officials that your report is not required to be certified by the Executive Director (as called for in your current written procedures for administering the public system) but rather can be certified by the ADAEO.

Confidential System

We found similar breakdowns in the confidential system as with the public system. Although we did not independently verify that all of the approximately 170 confidential reports required to be filed in 2003 were accounted for, ethics officials told us that all had been collected. Based on our review of a sample of 35 reports, we found that most were filed and initially reviewed by supervisors timely. However, certification by ethics officials was protracted. Mostly due to poor record keeping and a mismanaged tracking system, ethics officials were not aware of the extent of uncertified reports until we raised our concerns when we examined the files.

During our review, once ethics officials had certified most confidential reports, we questioned them on whether the financial information disclosed on a few reports was accurate and complete. By the close of our review, ethics officials advised us that all required information had been obtained and that there were no potential conflicts of interest.

SPECIAL GOVERNMENT EMPLOYEES

In 2003, due to the press of other legal work, ethics officials forgot to collect the required new entrant confidential reports filed annually by six of the seven PBGC advisory committee members, all of whom are SGEs. However, they did timely collect and review the required report from one member, who was newly appointed in 2003. As a way to remedy future oversights and to avoid the administrative burden of having advisory committee members file at the time of their anniversary/reappointment dates, ethics officials plan to implement OGE's suggestion to use May 15 for their SGE report filing anniversary date (See DAEOgram DO-03-021, dated October 23, 2003).

Ethics officials advised us that all advisory committee members received in-person annual ethics training in April 2003. For 2004, they intended to distribute written ethics training materials to all members when they distribute the OGE Forms 450. Ethics officials also planned to provide in-person training at one of the advisory committee's meetings in 2004. Furthermore, from now on, in addition to tracking the receipt and review of advisory committee confidential reports, ethics officials will be recording the dates when written materials are distributed and in-person training is provided.

WAIVERS

From 2003 to the present, PBGC did not issue any waivers pursuant to 18 U.S.C. § 208(b)(1) or (b)(3); however, in 2002, three were issued. While consultations took place with our Office prior to granting these waivers, copies were not forwarded in accordance with 5 C.F.R. § 2640.303. Instead, we collected copies of the three waivers at the start of our review. Similar to the observation we made in 1999 when we last conducted a review at PBGC, we remind you of the requirement to forward copies of waivers to our Office.

ETHICS EDUCATION AND TRAINING

The requirements of subpart G of 5 C.F.R. § 2638 are being met at PBGC in providing initial ethics orientation and annual ethics training and documenting your agency's annual ethics training plan. We commend that in addition to providing OGE-required ethics training, for the last few years ethics officials have also conducted "business ethics" training for all employees. According to the results of OGE's employee ethics survey,⁴ respondents who received recent training indicated that it was very useful in making them more aware of ethics issues and in guiding their decisions and conduct in connection with their work. As a good record-keeping practice, ethics officials intend to annually record covered employees' receipt of ethics training along with tracking information on the receipt and review of those employees' financial disclosure reports.

Initial Ethics Orientation

The initial ethics orientation requirement is immediately satisfied for new employees when they enter on duty through the Human Resources Department (HRD) and are given required written materials. Information given to new employees includes a copy of the Standards of Conduct, a memorandum summarizing the regulation, a list of frequently asked questions, and information about PBGC ethics officials. According to ethics officials, all new senior officials are also given personalized ethics orientation briefings shortly after they begin work.

⁴OGE surveyed PBGC employees in the November through December 2003 time frame. Complete results of this survey were transmitted to you in March 2004.

We commend that in 2003 ethics officials instituted the practice of offering ethics orientation classes to all new employees (in addition to the orientation materials provided by HRD) We encourage that these classes continue to be offered as a means to raise ethical awareness, especially among non-covered employees

Annual Ethics Training

We determined that the annual ethics training requirement was satisfied in 2003 based on attendance records we examined and ethics officials' assurances Almost all covered employees attended in-person classroom training which covered various aspects of the ethics rules and laws All public filers received either classroom or personalized training For the few confidential filers who did not attend a classroom session, ethics officials confirmed that they instead used an OGE computer-based training (CBT) module

In 2004, ethics officials planned to provide in-person training to all public filers Though in-person training may also be provided to all confidential filers (including providing specialized training to some office groups), officials are also considering offering additional CBT options to them We discussed the possibility of using CBT developed by other agencies and adapting it for PBGC use If this were to be done, it would be useful to add these training modules to your Intranet Ethics Page for use by all employees

ETHICS COUNSELING AND ADVICE

PBGC's ethics counseling and advice services meet the requirements of 5 C F R § 2638 203(b)(7) and (8) Though advice is most often provided orally, it is also dispensed in written form, usually by e-mail We examined approximately 25 written determinations that were provided to employees from 2003 to the present and found that they were accurate, consistent with applicable laws and regulations, and appeared to meet employees' needs According to OGE's employee survey results, respondents who sought advice from agency ethics officials indicated that the advice they received was very useful and that ethics officials were extremely helpful

A commendable practice that you have in place is that you provide post-employment information to all departing employees In addition, there is an Ethics Page on PBGC's Intranet However, since limited written advice is dispensed and primarily only basic information displayed on the Ethics Page, we suggest, in an effort to highlight ethical behavior and rules, that ethics officials on a regular basis either distribute written information to all employees or post new entries on the Intranet addressing topical ethics matters In addition, because ethics officials dispense most of their advice orally, as a good management practice, we advocate retaining some type of written record of the advice provided to employees

We commend that PBGC recently removed its longstanding residual ethical conduct regulation at 29 C F R. part 4904 This action clarifies for employees that PBGC does not require them to obtain prior approval before engaging in outside employment and other activities

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

We found that all 13 payments from non-Federal sources for travel, subsistence, and related expenses incurred by employees on official travel from October 1, 2002 through September 30, 2003 were accepted in accordance with 31 U S C § 1353 However, due to ethics officials' oversight, the semiannual report required to be sent to our Office covering the period of October 1, 2002 through March 31, 2003 was not forwarded Instead, in December 2003, officials provided a report covering October 1, 2002 through September 30, 2003 Ethics officials assured us that the next semiannual report (covering October 1, 2003 through March 31, 2004) would be timely forwarded

We discussed methods to streamline the administrative aspects of approving offers of payments of travel and expediting the required reporting to our Office In addition, we discussed the need for PBGC Notice Number 92-5⁵ to be updated to remove references to the General Services Administration's interim regulation, PBGC's regulations on ethical conduct, and the honoraria prohibition While we understand that this agency notice does not fall under OGC's jurisdiction, ethics officials advised us that they would work with appropriate PBGC officials to revise it

RECOMMENDATIONS

We recommend that you

- 1 Ensure that the newly developed financial disclosure tracking systems capture reliable and accurate information concerning the filing and review of public and confidential reports
- 2 Ensure that public and confidential reports are timely reviewed and certified
- 3 Collect the required confidential reports from advisory committee members
- 4 Ensure that public and confidential report filers disclose accurate and complete information


⁵In our 1999 report, this document was referred to as PBGC Directive IM 10-4

Mr James J Keightley
Page 9

- 5 Notify us not only of any administrative action (including disciplinary action) taken concerning the two ethics cases discussed in this report, but if action is not taken, confirm that it was affirmatively considered

In closing, I wish to thank you for all of your efforts on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendations in our report. A follow-up review will be scheduled within six months from the date of this report. In view of the corrective action authority vested with the Director of the Office of Government Ethics under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C F R part 2638, it is important that ethics officials take actions to implement recommendations in a timely manner. We are sending a copy of this report by transmittal letter to the Inspector General. Please contact Ilene Cramsky at 202-482-9227, if we can be of further assistance.

Sincerely,


Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 04 - 011