

A Report by a Panel of the

NATIONAL ACADEMY OF PUBLIC ADMINISTRATION



THE GOVERNANCE STRUCTURE OF THE PENSION BENEFIT GUARANTY CORPORATION: AN INDEPENDENT REVIEW



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**NATIONAL ACADEMY OF
PUBLIC ADMINISTRATION**

For the U.S. Congress and the Pension Benefit Guaranty Corporation

September 2013

**THE GOVERNANCE STRUCTURE OF THE
PENSION BENEFIT GUARANTY CORPORATION:
AN INDEPENDENT REVIEW**

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The views expressed in this report are those of the Panel. They do not necessarily reflect the views of the Academy as an institution.

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FOREWORD

Created by Congress in the landmark Employee Retirement Income Security Act of 1974, the Pension Benefit Guaranty Corporation (PBGC or the Corporation) is tasked with insuring the defined benefit pension plans of more than 40 million Americans and providing payments to plan beneficiaries if a company’s plan is terminated with insufficient funds. PBGC has grown from a small operation on relatively sound fiscal footing to a somewhat larger corporation with a net accumulated deficit of over \$30 billion. Currently, PBGC serves as one of over two-dozen federal “government corporations” with responsibility for “business-like” tasks. Because they generate revenue outside of the federal appropriations process, they are potentially self-sustaining and may be granted fiscal and management flexibilities denied to traditional departments and agencies.

PBGC is governed by a three-member Board consisting of the Secretaries of Labor, Commerce, and Treasury. Concerned that the current governance structure may not provide the necessary framework for the Corporation to operate effectively and respond to future challenges, Congress directed the National Academy of Public Administration (Academy) to conduct a review to determine and recommend whether changes—brought about through agency action or by Congress—should be made.

As a Congressionally chartered non-partisan and non-profit organization with over 750 distinguished Fellows, the Academy is uniquely qualified to provide Congress and agencies with solutions for critical governance and organizational challenges. The Academy honors the directive contained in its Congressional charter to assist Congress “whenever called upon” by conducting this review of the PBGC.

The Academy assembled an expert study team and an expert five-member Panel of Fellows. Recognizing that no governance structure is perfect—all involve trade-offs—the Panel has identified two different options for Congressional consideration. One would expand and restructure the current Board to gain additional expertise and ensure continuity during changes of administration. The other would eliminate the Board and make the Director responsible for managing the Corporation to carry out its mission. Each option has advantages and disadvantages that are described in detail in this report. While Congress is considering the options, the Panel identified a number of important changes that PBGC should make now, within its current structure, to improve its governance and management practices.

I thank PBGC’s Board Representatives and management for its assistance, contributions, and cooperation throughout this review. Further, special thanks go to the Academy Panel who provided invaluable expertise and thoughtful analysis to this undertaking, as well as the professional study team.



Dan G. Blair
President and CEO
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ACRONYMS

CFPB	Consumer Financial Protection Bureau
CFTC	Commodity Futures Trading Commission
CPDF	Central Personnel Data File
DB	Defined Benefit
DOC	Department of Commerce
DOL	Department of Labor
EFAST2	ERISA Filing Acceptance System
ERISA	Employee Retirement Income Security Act
EBSA	Employee Benefits Security Administration
FCA	Farm Credit Administration
FDIC	Federal Deposit Insurance Corporation
FEVS	Federal Employee Viewpoint Survey
FHFA	Federal Housing Finance Agency
FHFB	Federal Housing Finance Board
FIRREA	Financial Institutions Reform, Recovery, and Enforcement Act
FLRA	Federal Labor Relations Authority
GAO	Government Accountability Office
GCCA	Government Corporation Control Act of 1945
GS	General Schedule
HRD	Human Resources Department
IRS	Internal Revenue Service
MAP-21	Moving Ahead for Progress in the 21 st Century Act
NCUA	National Credit Union Administration
NTEU	National Treasury Employees Union
OCC	Office of the Comptroller of the Currency
OFHEO	Office of Federal Housing Enterprise Oversight
OMB	Office of Management and Budget
OTS	Office of Thrift Supervision
PAS	Presidential appointment with Senate confirmation
PBGC	Pension Benefit Guaranty Corporation
PPA	Pension Protection Act of 2006
SEC	Securities and Exchange Commission
SL	Senior Level
SLRP	Student Loan Repayment Program
3Rs	Recruitment, Relocation and Retention Incentives

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EXECUTIVE SUMMARY

Despite its relatively small size, the Pension Benefit Guaranty Corporation (PBGC or the Corporation) deserves attention as a wholly owned federal corporation responsible for insuring the defined benefit plans of nearly 43 million workers in more than 25,500 retirement plans. The Corporation has total obligations valued at \$120 billion and faces a growing long-term deficit that has raised questions about its future. PBGC has been on the Government Accountability Office's High-Risk List since 1992.

Given its programmatic and financial challenges, it is critically important that the Corporation be governed and managed effectively. At the direction of Congress, a five-member Panel of the National Academy of Public Administration (the Academy) has spent the past year conducting an independent review of PBGC's governance structure. This review examined prior studies of PBGC, analyzed the governance structures of analogous organizations, conducted extensive interviews inside and outside of PBGC, and identified challenges posed by the current governance structure. At the request of PBGC, the Panel also analyzed PBGC's human capital data to determine whether and to what extent its compensation system has affected recruitment and retention.

As structured by the Employee Retirement Income Security Act of 1974¹ (ERISA), PBGC's Board of Directors currently consists of the Secretaries of Labor, Treasury, and Commerce, with the Labor Secretary as Chair. The Secretaries assign most of their PBGC duties to undersecretaries or assistant secretaries in their respective agencies. PBGC has long experienced governance and management challenges. In reviewing PBGC's history, the Panel found that, while the Board has sometimes been substantially involved, it has also had long periods of virtual inactivity. Congress has made relatively minor statutory changes to PBGC's governance structure over the years, and the fundamental structure has remained in place for nearly 40 years.

Governance structures help determine how decisions are made, who makes them, and how decision makers are held accountable. Based on its extensive review over the past year, the Panel concludes that PBGC's current governance structure does not work well:

- Inherent tensions exist among Board Member Departments and PBGC Management on certain issues;
- Complex lines of authority lead to boundary issues between the Board and PBGC's Leadership;
- Historically, important leadership gaps in the Board Departments and in the PBGC Director's tenure have occurred;
- Board Members and Board Reps have competing demands on their time and attention and have often focused on PBGC-specific policy issues to a limited degree;
- PBGC has organizational and management challenges;
- PBGC's governance lacks transparency; and
- The potential of the Advisory Committee is not fully utilized.

¹ P.L. 93-406; 29 USC § 1302(a)(September 2, 1974).

Although PBGC's current leadership and management have undertaken a concerted effort to improve practices and strengthen accountability, the Corporation faces continuing management challenges. PBGC has to manage increasingly complex processes and benefit plans and satisfy rising public expectations. As the PBGC Inspector General (IG) has noted, the Corporation failed to follow its own procedures in determining benefits at United Airlines and elsewhere and continues to have inadequate internal controls, including over its information technology. PBGC also acknowledges that its outdated technology does not meet modern security needs.

PBGC's governance and management challenges hinder its operations and make it more difficult for the Corporation to achieve its mission. The Panel recommends that PBGC's current governance structure be changed and that its management be strengthened. To this end, the Panel urges Congress to consider two possible options for governance reform:

- *Option 1—Governing Board.* This option would expand and restructure the current Board. A strong Governing Board would be responsible for setting policy and providing high-level oversight. The Governing Board would include three new part-time members appointed by the President and confirmed by the Senate to provide expertise in such areas as pension plan management, finance, investments, and actuarial science. No more than two of these three appointed individuals would be of the same political party. The Governing Board would include ex-officio members selected by the Secretaries of Labor, Treasury, and Commerce who would be policy officials with expertise most relevant to achieving the PBGC mission, but need not be Presidentially appointed and Senate confirmed (PAS) or at the Assistant Secretary or Undersecretary level. The Director would continue to have a fixed-term in an Executive Level III position, appointed by the President and confirmed by the Senate, and be recruited for his or her ability to manage a complex enterprise. The Director would serve as Chair of the Governing Board and the chief executive officer of the Corporation. The Governing Board is most appropriate if Congress believes that PBGC has or should have significant policy responsibilities that require such input, deliberation, and oversight.
- *Option 2—Single Head of Agency.* Given the longstanding structural challenges documented in this report, this option would eliminate the PBGC Board. The PBGC Director would continue to be an Executive Level III position, appointed by the President and confirmed by the Senate. To provide accountability, the Director would serve at the President's pleasure. The Director would be recruited for his or her ability to manage a complex enterprise. The Director would have full authority and responsibility to manage the Corporation on a daily basis; to represent the Corporation to external stakeholders, including Congress; to set the Corporation's strategic direction according to law; and to issue required reports. This option is most appropriate if Congress believes that PBGC is or should be largely an operating agency, and that larger policy issues are likely to be determined primarily by more powerful actors such as Congress and the Departments of Treasury and Labor, with PBGC's distinctive expertise relating to the implementation of proposed policies.

While Congress considers these options and deliberates next steps, PBGC and the current Board can take steps to improve matters without legislation. Perhaps the most important of these would be for the Board and PBGC Director to try to negotiate an agreement, which would be revised from time to time, to clarify (1) the boundary between the Board's and PBGC Director's responsibilities for contributing to policy discussions and (2) the level of oversight of management issues appropriate for the Board. The PBGC also could create a position at PBGC of Chief Operating Officer (COO). The COO, a career civil servant selected for his or her management skills, would be the second most senior official at PBGC and would have authority over operating units of PBGC as well as administrative functions. Among other benefits, the COO could help to provide continuity if there is a gap between terms of successive PBGC Directors. The Panel also recommends that the current Board and management hold at least one open Board meeting per year, and issue meeting minutes that clearly describe the subjects of Board deliberation and Board actions.

PBGC must have a high-performing workforce. Because PBGC employees are paid according to the federal government's General Schedule, while employees of certain financial agencies are paid according to a higher compensation scale, some concerns have been expressed that PBGC may be disadvantaged in recruiting and retaining highly skilled employees. The Panel determined that recent hiring and attrition data do not provide adequate evidence for PBGC to move to another pay system now, but recognizes that (1) even a few vacancies in key positions can substantially affect performance and (2) recent economic downturn may have resulted in atypical hiring and attrition patterns. Accordingly, the Panel recommends that PBGC regularly monitor its recruitment and attrition information to determine whether a new pay system may be justified in the future. In the near-term, PBGC should address key work environment issues and use the agency's existing compensation flexibilities and incentives.

A new governance structure will not solve the long-term financial challenges facing PBGC, nor will it address the personal and societal challenges associated with a changing American retirement system. Yet a new governance structure—combined with stronger management—is an important ingredient in helping PBGC to run effectively and efficiently, and in ensuring that Congress and the American public have confidence in its operations.

CHAPTER I: INTRODUCTION

WHY PBGC'S GOVERNANCE STRUCTURE IS IMPORTANT

Governance structures help determine how decisions are made, who makes them and how decision makers are held accountable. Poor governance structures can be made to work, and good governance structures can fail. But the odds of success for a good structure are far higher than those for a poor one. Almost since inception, concerns have been raised about the efficiency and effectiveness of PBGC's governance structure, with numerous external reviews citing problems and offering recommendations for change. Despite some statutory changes, the original governance structure remains largely intact. As PBGC has grown since the 1970s from a small operation on a relatively sound fiscal footing to a larger corporation with a large and increasing workload and potential deficit, the need to optimize governance effectiveness has grown. Now with a net accumulated deficit of \$34 billion (in FY 2012), and risks posed by potential future failures of pension plan sponsors, PBGC's solvency is threatened. This makes it all the more important to act now to strengthen PBGC's governance structure as the Corporation faces a challenging future.

PBGC is a federal government corporation established under ERISA to provide insurance for American workers whose companies promise them a defined benefit (DB) pension upon retirement but then fail to fund the plan appropriately or otherwise renege on that promise. Private companies offering DB pension benefits pay insurance premiums to PBGC. In return, if their plans are terminated because the company goes out of business, or for other reasons, PBGC pays retirees their pension benefits up to statutory limits. If funds collected from terminated plans fail to cover promised benefits, and premiums are insufficient to fill the gap between assets and liabilities, a deficit results. This is an extremely simplified rendition of what is actually a highly complex process for insuring DB pensions, terminating plans when appropriate, and making pension payments to beneficiaries.

ACADEMY STUDY MANDATE

The Moving Ahead for Progress in the 21st Century Act of 2012 (MAP-21) mandated that PBGC contract with the National Academy of Public Administration to conduct a comprehensive review of PBGC's governance structure and offer recommendations to enhance its effectiveness. Consistent with the Congressional mandate, the Academy agreed to:

- Conduct a review of the governance structures of analogous organizations to identify effective practices;
- Issue recommendations on the ideal size and composition of the PBGC Board of Directors, as well as the qualifications and term lengths and procedures for selecting and removing members; and
- Recommend policies necessary to enhance Congressional oversight and transparency of the Board, as well as mitigate potential conflicts of interest.

At PBGC's request, the Academy also reviewed and reported on PBGC's compensation structure. Of specific interest to PBGC is the relationship between pay and recruitment and retention.

SCOPE AND METHODOLOGY

The Academy formed a five-member expert Panel—drawn from the organization's over 750 elected Fellows—to direct and oversee the project. By bringing together experts with different views, experiences, and skills in a process that yields state-of-the-art, innovative thinking, Academy Panels have proven to be a powerful management assessment tool. They afford an opportunity for the government to interact with seasoned executives with significant experience dealing with similar challenges. With support from a study team, the Academy's PBGC Panel created a work plan, monitored progress on data collection and analysis, and developed the findings and recommendations. The Panel held four meetings to provide the opportunity for full Panel engagement and in-person discussion with each other and the study team. Numerous teleconferences including all Panel members, and frequent discussions with individual members, ensured their active participation in every aspect of the project. The Panel members' brief biographical sketches can be found in Appendix A.

The study began with an extensive review of relevant literature regarding governance, including prior studies of PBGC's governance structure and related issues. More than 90 individuals—including current or past officials at PBGC, the Departments of Labor (DOL), Treasury, and Commerce (DOC) and other selected analogous organizations, governance experts, and leaders of pension advocacy groups—were interviewed using a semi-structured protocol. A complete list of the individuals interviewed can be found in Appendix B. These interviews, as well as the review of the literature and other relevant documents, allowed the Panel and study team to develop an understanding of PBGC's operations, both currently and in past administrations. Appendix C includes a bibliography of the literature reviewed.

The Panel also gained a broad perspective of other government corporations' governance structures and in-depth information on selected entities that seemed most relevant to the review. In addition, information concerning governance best practices was gathered to compare against current PBGC Board practices. The Academy Panel developed findings and recommendations based on information from many sources and its own expertise in the field of government organization and management.

The review of compensation issues focused on determining the effect of PBGC's pay structure on its ability to recruit and retain quality staff. The quantitative analysis involved comparing four years of PBGC's recruitment and retention data with that of financial regulators and all other federal agencies. Emphasis was placed on relationships between pay structures and recruitment and retention patterns. Numerous interviews were conducted with PBGC senior managers and human resources staff to gather their views on the relationship between the current compensation structure, and recruitment and retention. Several senior managers provided attrition data specific to their departments to demonstrate the loss of critical staff. Other human capital data, including PBGC exit survey information on reasons for leaving and recent Federal Employee Viewpoint Survey results were reviewed. Finally, the Panel considered the larger

context of PBGC's operations and the large deficits that federal pension insurance is accruing. The governance structure of PBGC cannot be properly understood except in this larger context.

PBGC HISTORY AND MISSION

In 1964, the Studebaker automobile manufacturer closed its plant in South Bend, Indiana, subsequently terminating its employee pension plan and defaulting on its obligations to 4,000 employees. This unprecedented event symbolized the need for pension reform and ultimately led to the creation of PBGC. A decade later, ERISA established the PBGC as a wholly-owned government corporation charged with (1) insuring the pension benefits of participants in qualified private-sector defined single and multiemployer benefit plans and (2) paying participants up to certain statutory limits should their plans be terminated with insufficient funds.² The PBGC has received no taxpayer dollars, but some of its operational cash flows are included in the federal budget.

ERISA established three specific mission priorities for PBGC:

- (1) Encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants;
- (2) Provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under applicable plans; and
- (3) Maintain premiums established by the corporation at the lowest level consistent with carrying out its obligations.

These mission priorities may conflict with one another. For example, setting premiums consistent with carrying out PBGC's obligations might potentially discourage continuation and maintenance of some defined benefit retirement plans. PBGC's ability to adhere to these mission priorities is further challenged by competing interests inherent in its governance structure. PBGC officials contend that the conflicts inherent in the current governance structure not only prevent action on the first objective, but also reduce the likelihood of PBGC obtaining premium-setting authority to further the third objective.

PBGC is overseen by a three-member Board of Directors consisting of the Secretaries of the DOL, Treasury, and DOC, with the Secretary of Labor serving as Board Chair. These ex-officio members were intended to serve as a compromise among stakeholder groups represented by DOL and Treasury, with DOC serving as a "tie-breaker" and a representative of general business

² 29 U.S.C. §§ 1302(a)(2) and 1361. The guaranteed benefit limits for participants in single-employer plans cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. For 2012, the maximum is \$54,000 per year for a person retiring at age 65 with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.23 (2012). Other guaranteed benefit limits for participants in single-employer plans include the phase-in limit and accrued-at-normal limit. Under the phase-in limit, for any benefit increase implemented through a plan amendment that has been in effect for less than 5 years, only a pro-rata portion can be guaranteed. 29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2012). Under the accrued-at-normal limit, the monthly guaranteed benefit cannot be greater than the monthly benefit available at the plan's normal retirement age provided as a straight-life annuity (that is, a periodic payment for the life of the retiree), with no additional payments to survivors. 29 C.F.R. § 4022.21 (2012).

principles. There is a natural tension between the DOL and Treasury. DOL promotes the interests of pension plan beneficiaries, while Treasury champions the interests of taxpayers. Further, with the Chair position at DOL, rather than Treasury, the usual order of cabinet rank is disrupted.

Overseen by the Board Directors and responsible for management of the Corporation, PBGC's Director is appointed by the President and subject to Senate confirmation.³ The Director has a five-year term and can be removed by the President or the Board of Directors.⁴ The Board and Director receive support from a seven-member Advisory Committee that primarily advises on investment issues and is composed of two labor, two business, and three public members appointed by the President. The Corporation currently employs a staff of 965 federal employees and 1,316 contractor employees.

PBGC'S PROGRAM MANAGEMENT RESPONSIBILITIES

PBGC administers two separate insurance programs for defined benefit plans: a single-employer program and a multiemployer program. The single-employer program is by far the largest, covering about 33 million participants in approximately 24,000 plans in 2012,⁵ compared to nearly 92,000 plans covering about 32 million participants in 1990.⁶ Under the current premium structure for its single-employer program, PBGC collects from sponsors a flat-rate premium for each participant and a variable-rate premium that is based on a plan's level of underfunding.

A multiemployer plan is sponsored by multiple firms—usually within the same or related industries in which employees frequently move from one employer to another—where the contributions to the plan are collectively bargained between the employers and labor union representatives. As of FY 2012, about 1,500 active multiemployer defined benefit pension plans cover approximately 10 million participants.⁷ Many of these participants are employed by small companies in the building and construction industries. Other industries with significant numbers of workers covered by multiemployer plans include entertainment, retail food, garment manufacturing, mining, trucking, and maritime. In multiemployer plans, the amount of the employer's contribution is set by a collective bargaining agreement that specifies a contribution formula (such as \$3 per hour worked by each employee covered by the agreement) that requires contributions to be paid to the plan on a monthly basis. If an employer is delinquent, ERISA § 502(g) permits the plan to sue and obtain the delinquency, plus interest, liquidated damages, and attorney fees.

PBGC's single- and multiemployer benefit programs are separately funded and administered. Each program has assets separated into revolving and trust funds that consist of the premiums

³ P.L. 109-280 § 1302(a). Prior to the enactment of the Pension Protection Act, ERISA charged the Secretary of Labor, as the chair of PBGC's board, with administering PBGC. The Secretary had, in turn, historically delegated the responsibility for administering PBGC to an executive director. Since the enactment of PPA, the director has replaced the chair of the board as PBGC administrator. § 411(a), 120 Stat. 935.

⁴ P.L. 112-141 § 40231(d). (July 6, 2012).

⁵ U.S. Pension Benefit Guaranty Corporation, *FY 2012 Annual Report*. (Washington, DC: November 2012), 2.

⁶ U.S. Pension Benefit Guaranty Corporation, *2011 Pension Insurance Data Book*

⁷ *Ibid.*, 2.

collected from each program, assets of terminated plans, and investment earnings on these premiums and assets.⁸ PBGC draws on the trust funds for virtually all administrative expenses and proportionate payment of unfunded benefits. The Corporation invests the trust funds, using outside investment management firms, in stocks and bonds.

If the sponsor of a single-employer plan is in financial distress and does not have sufficient assets to pay guaranteed promised benefits, PBGC will terminate the plan. Employers sponsoring defined benefit plans may choose to terminate their fully-funded plans rather than continuing them indefinitely. Standard terminations occur when single-employer sponsors terminate their fully funded plans (known as standard terminations) by purchasing a group annuity contract from an insurance company, under which the insurance company agrees to pay all accrued benefits, or by paying lump-sum benefits to participants if permissible. At that point, federal pension insurance for the plan ceases. An event preceding at least some of these standard terminations is a so-called plan “freeze”—an amendment to the plan to limit some or all future pension accruals for some or all plan participants.⁹ If the sponsor of a single-employer plan meets the statutory requirements for financial distress, and the plan does not have sufficient assets to pay promised (“vested accrued”) benefits, the plan cannot be terminated as a standard termination. Instead, the plan will be terminated as a distress or involuntary termination, and PBGC will likely become the plan’s trustee, assuming responsibility for paying benefits to participants as they become due, up to the guaranteed benefit limits.¹⁰ PBGC may initiate an “involuntary” termination if a plan has not met minimum funding standards, a plan will be unable to pay benefits when due, a reportable event¹¹ has occurred, or the loss to PBGC is expected to increase unreasonably if the plan is not terminated. Prior to agreeing to terminate plans, PBGC works with companies to determine whether the plans are affordable and can be preserved.

In contrast to single-employer plans, if a multiemployer pension plan is unable to pay guaranteed benefits when due, PBGC will provide financial assistance to the plan, in the form of a loan to ensure that benefits are paid up to the guaranteed benefit limits. Many of these loans are never repaid to PBGC.

There are two types of multiemployer plan terminations:

- Mass withdrawal occurs when all employers withdraw or cease to be obligated to contribute to the plan.
- Plan amendment occurs when the plan adopts an amendment that provides that participants will receive no credit for service with any employer after a specified date, or an amendment that makes it no longer a covered plan.

⁸ The multiemployer trust fund ran out of assets several years ago.

⁹ U.S. Pension Benefit Guaranty Corporation, *An Analysis of Frozen Defined Benefit Plans*. (Washington, DC: December 21, 2005), 2.

¹⁰ P.L. 93-406, 29 U.S.C. § 1341(c).

¹¹ ERISA has a list of reportable events (29 USC § 1343(c)). Only one reportable event is a basis for involuntary termination—distribution to a substantial owner.

Unlike single-employer plans, multiemployer plans continue to pay all vested benefits out of existing plan assets. PBGC's guarantee of the benefits in a terminated multiemployer plan—payable as financial assistance to the plan—only occurs should a plan be unable to make payments at the statutorily guaranteed level.

Upon plan termination, PBGC uses a calculation process provided under federal law to determine each participant's benefit. After actuaries calculate each participant's benefit according to the provisions of the particular pension plan, they must apply statutory and regulatory rules to determine how much PBGC can pay. When a plan fails, PBGC initially continues the payments that were already being made. Then, based on participant and plan records, PBGC estimates the benefits that would be owed under federal law. This step can be difficult due to access limitations to plan documents once bankruptcy is filed, poor recordkeeping on the part of the plan sponsor, and other variables beyond PBGC's control. As a result, estimated benefits based on available documentation are made until a final benefit determination can be made. Plan participants are able to appeal final benefit determination through PBGC.¹²

Although the number of PBGC-insured defined benefit plans has been in decline since the 1980s, the Corporation's workload has increased significantly. PBGC currently pays monthly retirement benefits to nearly 780,000 retirees in 4,500 terminated pension plans. Including employees in plans taken over by the PBGC who have yet to retire and participants in multiemployer plans currently receiving financial assistance, PBGC is responsible for the current and future pensions of about 1.5 million beneficiaries. At the end of FY 2012, PBGC's net accumulated financial deficit was \$34 billion—an increase of over \$23 billion from the end of fiscal year 2008, and significantly worse than in 2000, when PBGC reported a \$10 billion surplus. PBGC estimates that its financial risk for potential termination of underfunded plans sponsored by financially weak firms is about \$322 billion,¹³ an amount that has continued to grow since the economic downturn in 2008. In addition, as GAO observed in its 2012 report, PBGC premiums have not kept pace with the increasing obligations from terminated plans.¹⁴ PBGC's solvency is threatened by its net accumulated deficit of \$34 billion, future risks posed by plan sponsors, and insufficient premium income.

¹² U.S. Pension Benefit Guaranty Corporation, *FY 2012 Annual Report* (Washington, DC: November 2012), 10.

¹³ For financially weak plan sponsors, the risk is \$295 billion for single-employer plans and \$27 billion for multiemployer plans.

¹⁴ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Redesigned Premium Structure Could Better Align Rates with Risk from Plan Sponsors*. GAO-13-58 (Washington, DC: November, 2012).

PBGC'S ROLE AND FUNCTION

PBGC performs a variety of roles in carrying out its three ERISA mission priorities:

1. *Encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants.* PBGC must make multiple decisions with respect to early warning and risk mitigation. Both the financial condition of the defined benefit plan as well as the current and future health of the company must be considered. PBGC must identify companies representing the most significant risks to ensure it can step in at the right time to negotiate additional protections when problems are identified. PBGC uses screening criteria to identify financially troubled companies, or companies that have significantly underfunded pension plans. Although PBGC obtains financial and other information from multiple sources (including DOL, IRS and the SEC), the Corporation continues to point to the need for more extensive tools and authority to apply creditor remedies, improved technology, and financial expertise if it is to better protect its financial condition. After identifying a potential transaction that might jeopardize the pension insurance program, PBGC works with the plan sponsor to take steps to remedy the situation. In each case, a settlement is tailored to the specific situation. This requires expert judgment on the part of PBGC management, as well as policies to ensure fair and effective treatment of plan sponsors and the protection of beneficiaries.
2. *Providing timely and uninterrupted payment of pension benefits.* This is important to millions of current and potential beneficiaries. Decisions concerning asset valuation, bankruptcy actions, and calculation of individual benefits all play a role in effectively handling this work. PBGC sets policies related to asset allocation regulations that involve the criteria and methods for valuing plans at or near termination, loss determinations of current and probable pension plan terminations, and valuation of assets at termination or during trusteeship.
3. *Maintain premiums established by the Corporation at the lowest level consistent with carrying out its obligations.* While Congress sets the level of pension plan premiums, ERISA sets multiple requirements for PBGC to advise Congress with respect to premiums.¹⁵ Maintaining premiums at the “lowest level,” as ERISA prescribes, means that PBGC must operate in an efficient and effective manner to preserve and protect resources. This includes working to ensure timely payment of premiums owed by plan sponsors, developing and implementing sound investment policies and liability valuation interest rate policies.¹⁶

¹⁵ ERISA requirements for PBGC to advise Congress with respect to premiums: 1) Section 4008(a) requires the Annual Report to contain an actuarial evaluation of the expected operations of the funds for 5 years. 2) Section 4022A(f) requires PBGC to report to Congress every 5 years on the sufficiency of multiemployer premiums to support the guaranty. If PBGC finds an increase in premiums or decrease in the guaranty is needed, in the year it is making such a recommendation it must file schedules with Congress showing what must be done.

¹⁶ “Liability valuation interest rate policies” refer to the interest rate methodology to be used to determine the present value of vested benefits for purposes of the variable-rate premium.

PBGC's operations are primarily focused on defined benefit pension plans and their beneficiaries.¹⁷ Broader pension policy and retirement issues that are highly important to the current and future generations of Americans are beyond PBGC's jurisdiction.

PBGC'S BUDGET TREATMENT HAS EVOLVED

Although to date PBGC has not used taxpayer revenues to fund its operations, its budget process has shifted over the past 40 years from one of a wholly-owned government corporation to one more closely resembling a typical agency subject to annual appropriations limitations. At PBGC's inception, ERISA excluded from the budget of the United States the PBGC's "receipts and disbursements" made in the discharge of its duties,¹⁸ and PBGC was not subject to annual appropriations as part of the government-wide budget process. The Government Corporation Control Act (GCCA) explicitly provides that Congress make corporate financial resources of wholly-owned government corporations available "for operating and administrative expenses."¹⁹ The intent of the GCCA was to give a government corporation offering business-like products or services the authority to fund its operations and investments with the revenues it collects. It would be exempt from annual appropriations limitations so that it would have flexibility to make multi-year investments and respond to changes in its business. Since ERISA was enacted, PBGC's budgetary independence has been diminished by the imposition of more restrictive budget processes by Congress, OMB, and the DOL.

The Multiemployer Plan Amendments Act of 1980 resulted in one of the earliest changes to PBGC's budgetary authority.²⁰ Under the Act, the ERISA language that had excluded PBGC from the budget of the United States was amended to include PBGC. In 1985, when PBGC purchased a mainframe computer that had not been approved in advance, members of Congress responded by imposing an appropriations cap on PBGC's administrative expenses. For the first time, PBGC's administrative expenses were limited by annual appropriations language. The cap on administrative expenses forced PBGC to use Trust Fund dollars, as opposed to appropriated revolving fund assets, to finance contracts with financial and legal experts who represent the Corporation in bankruptcy proceedings in exceptionally large or complex cases. PBGC requested that OMB propose to modify its appropriation language by permitting it to exceed the authorized fiscal year limit for certain expenditures. Concerned about controls and accountability, OMB and Congress agreed to exclude certain contractual expenses for legal and financial services required for the termination of plans from the authorized limit on expenses.²¹

¹⁷ Congress has charged PBGC with setting up a process to find missing participants in defined contribution plans. The Missing Participant Program was originally created by the Retirement Protection Act of 1994, to locate participants and beneficiaries of terminated PBGC-insured defined benefit pension plans. The Pension Protection Act of 2006 expanded the program to include defined contribution plans, such as 401(k) plans, multiemployer defined benefit plans, and small professional service employers. PBGC published in the Federal Register an RFI, soliciting input from the public about the Missing Participant Program (<http://www.pbgc.gov/documents/2013-14834.pdf>). To date, PBGC has received 21 comments from the public, which were all highly favorable to PBGC entering this area (<http://www.pbgc.gov/documents/Missing-Participants-in-Individual-Account-Plans-Comments.pdf>).

¹⁸ P.L. 93-406; 29 USC §4002 (g)(2) (September 2, 1974).

¹⁹ 31 USC 9104(a)(3).

²⁰ 94 Stat. 1208 (September 26, 1980).

²¹ P.L. 100-436, Stat. 1680 (September 20, 1988).

However, PBGC's budget remained subject to annual appropriations limits with regard to administrative expenses not falling under this exception.

Over several years, appropriations language gradually expanded the types of administrative expenses that would not be subject to annual appropriation limits. Congress continues to limit PBGC's annual funding for program administration,²² allowing for increase only if specific "triggers" become applicable (i.e., an increase in the number of new plan participants resulting from the termination of plans). Therefore, PBGC must either hit the "trigger" to increase funds or submit requests to change funding allocations. Proposed appropriations language for FY 2014 would authorize PBGC "to make such contracts and commitments without regard to fiscal year limitations, as provided by 31 U.S.C. 9104, as may be necessary in carrying out the program, including associated administrative expenses" if they are "within limits of funds and borrowing authority available to the Corporation, and in accord with law."²³

In addition to administrative expense limitations imposed by Congress, PBGC's current budget process has been conformed to the way that DOL budgets for any of its bureaus. The Secretary of Labor serves as the Chair of PBGC's Board of Directors and the Board's by-laws require that DOL approve PBGC's budget.²⁴ Consequently, the Board Chair vested DOL's central budget office with authority over the review, control, and approval of PBGC's budget form, presentation, submission, and execution. Thus, PBGC does not operate on the basis of a business-type budget that would provide flexibility to meet expenses and make multi-year investments, except as allowed by appropriations language.

RECENT LEGISLATIVE CHANGES

The default of several large pension benefit plans and PBGC's increasing deficit led to passage of the Pension Protection Act of 2006 (PPA)²⁵ and the most comprehensive reforms to federal pension law since ERISA. The PPA and MAP-21²⁶ contained new provisions with respect to premiums, plan funding rules, and PBGC's governance structure. Congressional concern that the termination of large underfunded plans would lead to the insolvency of PBGC resulted in statutory changes including new requirements for multiemployer plans (see table below). Following allegations of mismanagement by a former PBGC director, Senator Herb Kohl introduced the "Pension Benefit Guaranty Corporation Governance Improvement Act" in July 2009. The bill was designed to improve oversight and accountability and rebuild trust in the Corporation to ensure that it continued to be a good steward of the pension system. While Senator Kohl's bill was not passed by Congress, it served as a foundation for some PBGC provisions in the enacted transportation law, MAP-21. These provisions focused primarily on premiums and plan funding requirements, including: (1) relief from the pension funding requirements attendant to the current low interest rate environment; (2) PBGC premium increases for single-employer and multiemployer plans; and (3) new rules allowing the transfer

²² Ibid. PBGC's FY 2014 budget request is \$505,441,000.

²³ Department of Labor, *FY 2014 DOL Budget in Brief* (Washington, DC.: April 2013), 1.

²⁴ 29 USC §4002.3(2)(September 2, 1974)

²⁵ 120 STAT. 780 P.L. 109-280(August 17, 2006)

²⁶ P.L. 112-141 (July 6, 2012).

of excess pension assets by plan sponsors. MAP-21 also changed requirements for the PBGC Board of Directors, Advisory Committee, the PBGC Director, and other personnel. The major changes are summarized in the table below. (“PAS-III” in the Table below, for the 2006 law means that the position is a presidential appointment at Executive Level III with Senate confirmation).

Table I-1: Recent Legislation Resulting in Major PBGC Reforms*	
Pension Protection Act of 2006	Moving Ahead for Progress in the 21st Century Act of 2012
<p>Director of the PBGC appointed by the President at an Undersecretary level (PAS-III), subject to confirmation by both the Senate Committee on Finance and the Senate Committee on Health, Education, Labor and Pensions.</p> <p>Director made administrative head of PBGC under policy guidance of Board.</p> <p>New requirements for multiemployer plans²⁷ including funding requirements, requirements for underfunded plans, reductions in adjustable benefits, and disclosure requirements.</p> <p>Changes to defined contribution plan regulation.</p>	<p>PBGC Director given a five-year term subject to dismissal by the President or the Board.</p> <p>Minutes of PBGC Board meetings must be made public, with certain exceptions allowed to protect confidentiality.</p> <p>PBGC’s Director and Board may not participate in decisions in which they have a direct financial interest.</p> <p>PBGC must select a risk management officer.</p> <p>PBGC must designate an advocate for participant and plan sponsors who reports to Congress annually.</p> <p>PBGC must obtain annual peer review of its insurance modeling systems.</p> <p>Repeal of PBGC’s statutory \$100 million line of credit from the Treasury.</p>

**Selected legislative changes are listed.*

PREVIOUS REVIEWS OF PBGC

Over the past several decades, numerous studies have reported on PBGC's governance structure, human capital and compensation system, and its solvency. PBGC has been on the Government Accountability Office's (GAO) high-risk list since 1992. Congressional interest has resulted in multiple GAO reports on issues including: limitations on PBGC's ability to provide policy direction and oversight;²⁸ PBGC's need for better communication with Congress;²⁹ the financial condition of the multiemployer plan insurance program;³⁰ redesigning PBGC's premium structure;³¹ and the need for better stewardship in its asset management.³²

The Academy has conducted previous reviews of PBGC including a 1991 analysis of its corporate charter, organizational structure, statutory authorities, and practices compared to that of other wholly-owned government corporations.³³ The 1991 report by an Academy study team recommended that the Board of Directors be abolished and that the Secretary of Labor be responsible for providing policy direction and oversight of PBGC. In addition to efforts by GAO and the Academy, PBGC commissioned a 2008 study from McKinsey and Company examining the structure of the boards of a variety of agencies and privately-owned corporations.³⁴ This body of research reflects the continuity of core challenges that PBGC faces. The present Academy study aims to go beyond the consensus that PBGC faces governance and management challenges and propose ways to improve PBGC governance. Responding to the larger financial challenges facing the Corporation and federal pension insurance generally is beyond the scope of this report. Indeed, solving PBGC's long-term solvency will require the Administration and Congress to make difficult policy choices about larger issues concerning pension insurance premiums, retiree benefit levels, and funding rules for insured plans.

²⁸ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight* GAO-07-808 (Washington, DC: July 6, 2007).

²⁹ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Improvements Needed to Strengthen Governance Structure and Strategic Management* GAO-11-182T. (Washington, DC: Dec. 1, 2010).

³⁰ U.S. Government Accountability Office, *Private Pensions: Multiemployer Plans and PBGC Face Urgent Challenges* GAO-13-428T. (Washington, DC: Mar. 5, 2013).

³¹ U.S. Government Accountability Office, *Redesigned Premium Structure Could Better Align Rates with Risk from Plan Sponsors* GAO-13-58. (Washington, DC: Nov. 7, 2012).

³² U.S. Government Accountability Office, *Asset Management Needs Better Stewardship* GAO-11-271. (Washington, DC Jun 30, 2011).

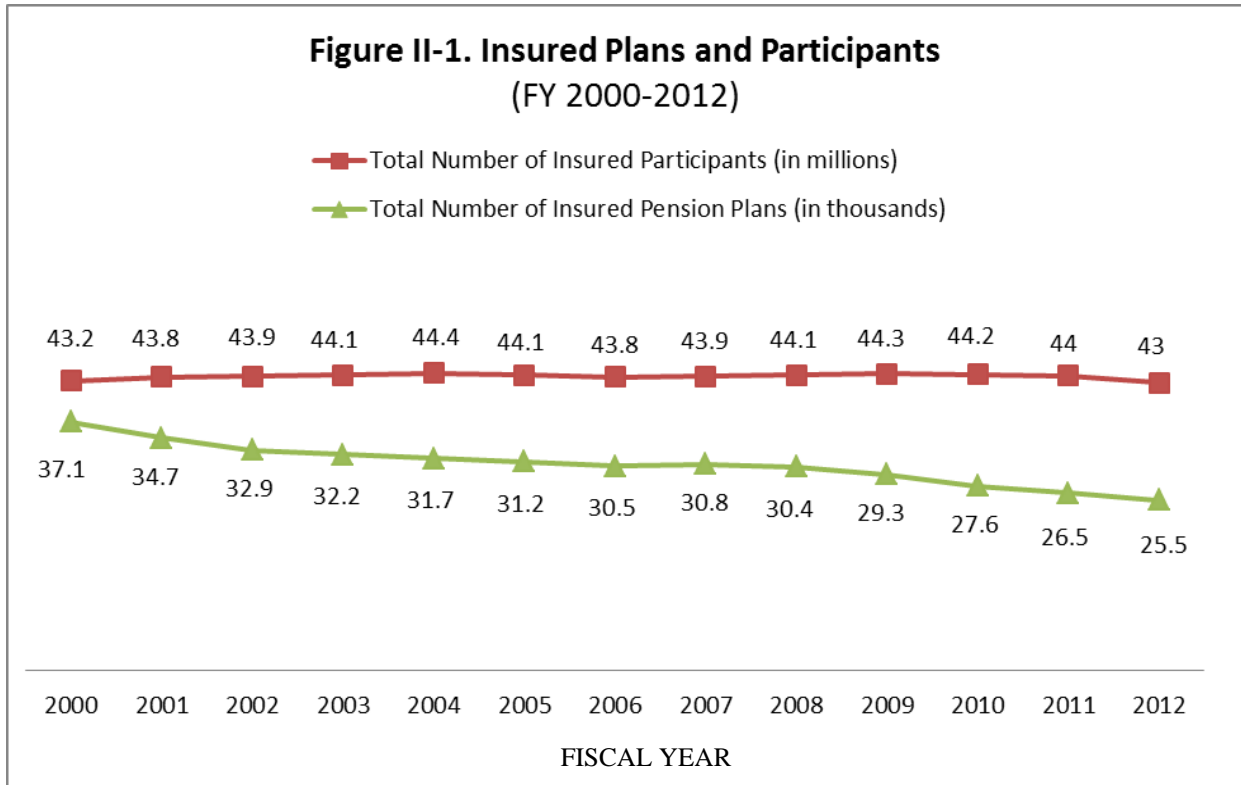
³³ National Academy of Public Administration, *Study of the Pension Benefit Guaranty Corporation's Corporate Study* (April 1991).

³⁴ McKinsey and Company, *PBGC's Board Structure*. (Washington, DC: September 2008).

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CHAPTER II: THE LARGER CONTEXT OF PBGC'S GOVERNANCE STRUCTURE

PBGC's governance structure does not exist in isolation. In considering reform options, it is important to recognize the environment in which PBGC operates and the constraints imposed on the Corporation that limits its ability to operate in a financially sound manner. Even with these constraints, stronger governance can help to ensure that appropriate energy is given to addressing the long-term needs of the Corporation, improving the quality of decision-making and management, identifying issues that impede the Corporation's ability to be successful, developing workable solutions, and advocating on behalf of the Corporation when legislative actions are needed. The Corporation's responsibilities are enormous. It insures the pension benefits of 43 million American workers and retirees and will make actual benefit payments in the future to an estimated 1.6 million retirees. The 43 million covered workers and retirees include participants in both ongoing and terminated plans. Thus, the number of participants has remained fairly constant even as the number of insured pension plans has fallen substantially.



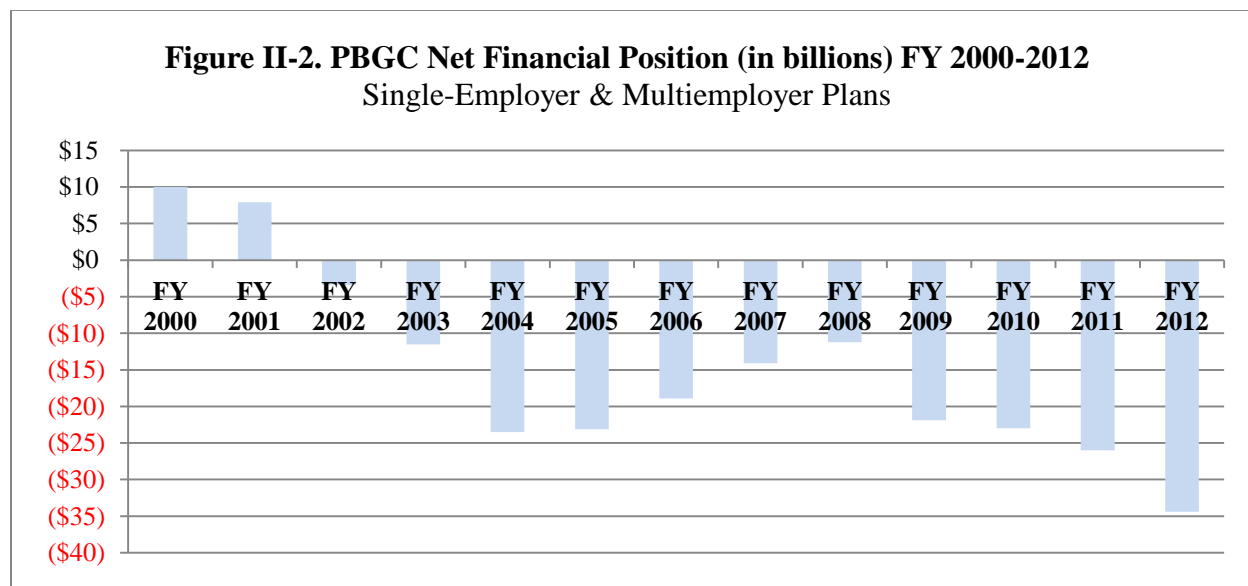
Data Source: *PBGC Annual Reports & PBGC Pension Data Book*³⁵

By law, PBGC must provide insurance coverage regardless of the potential financial risk posed by insured plans; and private companies with defined benefit plans must purchase PBGC insurance. The decline in defined benefit retirement plans and increasing risk of insolvency of

³⁵ These figures aggregate multiemployer and single-employer data.

both federal pension plan programs are influenced by economic downturns, declines in collective bargaining, withdrawal of contributing employers, and an aging workforce in sectors of the economy such as manufacturing (primarily automobiles and auto parts, and metals), transportation (primarily airlines), services and wholesale and retail trade.

PBGC reported in 2012 that it held a negative financial position of \$34 billion and estimated that its possible future exposure for both the single-employer and multiemployer programs was \$322 billion,³⁶ a projection that is primarily due to an estimate of reasonably possible pension plan terminations because of the financial health of companies holding PBGC insurance and the anticipated level of underfunding in those plans. The volatility of these factors makes long-term exposure estimates highly uncertain. Regardless of how uncertain the projections may be, two factors are clear: that (1) there is significant exposure for the federal government and (2) PBGC lacks adequate tools and authority to deal with this exposure. The chart below shows PBGC's net financial position from FY 2000 to 2012.



Data Source: PBGC Annual Report 2012.

PBGC'S FINANCIAL HEALTH—TODAY AND IN THE FUTURE

The Corporation's financial condition is driven by a number of factors, including insurance premiums collected, income from investments, and the extent to which sponsored plans are fully funded at the time they are taken over by PBGC. More generally, PBGC's financial state is influenced heavily by the condition of companies, the state of the economy, and the business cycle. The Congress sets insurance premiums and has not permitted PBGC to charge premiums that reflect the risk the federal government incurs with the insured plans.³⁷ The premium rate is only part of the premium problem. Fewer and fewer companies offer defined benefit pension plans, resulting in a declining source of premium revenues, a situation that is unlikely to change.

³⁶ U.S. Pension Benefit Guaranty Corporation, *FY 2012 Annual Report*. (Washington, DC: November 2012) 24-25.

³⁷ The President's FY2014 Budget proposal calls for risk-based premiums to be set by PBGC.

Compounding the inadequacy of current and future premium revenues is the impact of economic downturns. Economic conditions affect PBGC's investment income, and financially challenged companies that are cash-strapped are less likely to fully fund their retirement plans during a downturn, especially if their plans are already underfunded.

In February 2013, GAO reported that the Corporation's ability to meet pension benefit payment responsibilities is at high risk of insolvency, given its current financial condition and its statutory limitations.³⁸ Although MAP-21, in 2012, adjusted premium rates and stabilized pension contribution requirements, the Corporation's financial future remains dire given terminations of underfunded pension plans, declining participation in defined benefit pension plans and insufficient sources of revenue to pay for future benefit claims.³⁹

PBGC's problems are not new. More than 20 years ago, in its inaugural High Risk Series,⁴⁰ GAO identified PBGC's "large and growing deficit" as a threat to the Corporation's long-term sustainability in addition to "management problems that prevented PBGC from effectively assessing and monitoring its financial condition."⁴¹ The report pointed both to PBGC's inability to charge premiums sufficient to cover assumed risks and to its lack of control as to whether assets of terminated plans cover promised benefits. GAO also cited weak oversight and enforcement by DOL and IRS with regard to plan fund deficiencies as contributing factors to PBGC's high risk status.⁴² GAO designated the single-employer program as high risk in 2003, and gave the multiemployer program that designation in 2009.

In addition to the attention given to PBGC's financial problems by Congress and GAO, President Obama's budgets for FY 2013 and FY 2014—as did previous budgets from President Bush—proposed providing PBGC's Governing Board the authority to raise and adjust insurance premiums based on the risk posed to the Corporation by defined benefit plans. Citing that the "Deficit Reduction Act of 2005 and the Pension Protection Act of 2006 made significant structural changes to the Nation's pension and pension insurance systems, but did not address fully the long term financial challenges facing PBGC," the President's budgets call for "better aligning risk with premium levels that will encourage high-risk companies to fully fund their employees' promised pension benefits." If enacted, this effort to give PBGC greater premium-setting authority and partially address the current gap between PBGC's liabilities and assets would be phased in starting in 2015.

Several experts have argued that increasing premiums alone will not solve the Corporation's financial problems.⁴³ The President's 2014 Budget proposal would raise only \$25 billion over 10

³⁸ U.S. Government Accountability Office, *High Risk Series: An Update* GAO-13-283. (Washington, DC: February 2013), 242-244.

³⁹ H.R. 4348 (112th)(January 3, 2012).

⁴⁰ U.S. Government Accountability Office, *High Risk Series: Pension Benefit Guaranty Corporation* GAO/HR-93-5. (Washington, DC: December 1992), 6.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ By contrast, PBGC contends that increased premiums could be sufficient to sustain the system. Although PBGC's potential exposure is large, the actual liability is much smaller.

years compared to an estimated long-term exposure that has been growing sharply in recent years and stands at \$322 billion today. Others have said that a combination of increased premiums and a sustained stronger economy could forestall the decision about whether to undertake a federal bailout or reduce retirement benefits to ensure that benefits can be paid. Still others fear that any increase in premiums will serve as a dangerous tipping point resulting in plan sponsors choosing to freeze or voluntarily terminate their defined benefit plans.

In a 2012 study,⁴⁴ GAO recommended that Congress consider revising PBGC's premium structure. Because of longstanding concerns regarding the Corporation's governance structure, GAO contended that an expansion of Board membership and expertise was needed to ensure that sufficient attention is given to the needs of the Corporation. The report also discussed the need for greater transparency in the Corporation's analysis of data on which it would base a premium increase and its process for deciding on a rate increase. GAO recommended the premium structure be redesigned to "more fully reflect the risks posed by plans and sponsors," and recommended establishment of an independent advisory commission with members that bring a wide range of perspectives that could assist the Corporation in the study of risk factors and to assist in the implementation of new risk-based premiums. GAO further noted that PBGC's lack of regulatory and examination authority limits its ability to routinely obtain the information it might need to adequately determine and set premium rates; this would require additional legislation where Congress delegates authority for rate setting to the Corporation. Several experts that the Academy interviewed similarly emphasized the critical importance of aligning the insurance revenues collected with current and future payouts, but expressed doubt that Congress would relinquish its authority to set rates.

TOUGH DECISIONS AHEAD

As previously discussed, PBGC operations are paid for by the insurance premiums it collects plus the funds and assets it receives and manages from terminated pension plans. Despite its projected long-term deficits, PBGC recently reported holding assets of nearly \$80 billion.⁴⁵ Ninety-eight percent of those assets are in the single-employer program, ensuring that benefits can be paid to beneficiaries for some years to come. By contrast, the multiemployer program is quickly moving toward insolvency, with some estimating that within ten years PBGC will lose its ability to provide financial assistance to multiemployer pension plans in financial distress.

The authors of ERISA did not envision the demise of defined benefit pension plans or anticipate how the greatest economic downturn since the Great Depression would impair the financial health of pension plan funds. The low premium level set in the enabling legislation was due in part to the optimistic belief that the self-funding nature of the insurance program would ensure that sufficient funds would be collected and invested to cover the cost of insured beneficiaries.

⁴⁴ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Redesigning Premium Structure Could Better Align Rates with Risk from Plan Sponsors* GAO-13-58. (Washington, DC: November 2012).

⁴⁵ U.S. Pension Benefit Guaranty Corporation, *FY 2012 Annual Report*, 14.

At numerous points in PBGC's history, both the Office of Management and Budget and the Congressional Budget Office have recognized the likelihood that taxpayers would pay for any shortfall in PBGC's operations. In 1977, a senior OMB official wrote:

I would like to comment on some statements we noticed in the correspondence between the agencies to the effect that losses of the PBGC would not be losses of the U.S. government. This is the wording of the law as now written. However, reliance on such strict legalisms tends to ignore political realities. It seems obvious that if unfortunate investment losses made it impossible to meet benefit payments, neither this Administration nor the Congress is likely to permit such benefits to remain unpaid. The U.S. Government would make good. Thus the operations of the PBGC are of concern.⁴⁶

In a 2005 study of the risk exposure of the PBGC, the Congressional Budget Office (CBO) made a similar observation:

Although PBGC has no legal claim on the general fund of the Treasury, many policymakers and observers believe that a major shortfall at PBGC would prove untenable because the government has provided an implicit guarantee of pension plans—and that the law would be changed to provide resources necessary to avoid losses of federally insured pension benefits by retirees.⁴⁷

The Panel is unaware of any policy statements to date that have contradicted this view, and the technical language of the law remains unchanged in this regard.⁴⁸ This perception highlights the importance of ensuring high-quality management of the federal pension insurance program. The need for a bailout might be forestalled if PBGC were to be granted the authority and a full set of financial tools, such as premium setting authority, needed to improve the financial outlook of federal pension insurance. Other actions could also be taken, whether using authority provided to PBGC or by statutory changes, to reduce retiree benefits or tighten funding rules for insured plans.

The public's understanding of the growing contingent liability of the PBGC's pension insurance program may be limited by the current treatment of the program in the federal budget. Like most of the federal government's agencies and programs, PBGC's finances are presented in the budget on a cash basis—that is, outlays and receipts. In FY 2012, the PBGC's financial transactions recorded in the federal budget showed \$6.2 billion in premium and investment income along with spending of \$5.8 billion on benefits and administrative costs, resulting in a \$400 million net surplus.⁴⁹ If the cost of federal pension insurance were reflected in the federal budget on an accrual basis, policymakers and taxpayers would see a different picture of the financial condition

⁴⁶Letter from W. Bowman Cutter, Executive Associate Director for Budget, to Honorable W. Michael Blumenthal, Secretary of the Treasury, October 12, 1977.

⁴⁷ Congressional Budget Office, *The Risk Exposure of the Pension Benefit Guarantee Corporation*, September 2005, vii.

⁴⁸ PBGC contends that it is open to debate whether Congress will authorize any more bailouts of financial institutions, and points to Congress' elimination in 2012 of the \$100 million Treasury line of credit that had been in effect since 1974 as a possible indication.

⁴⁹ Office of Management and Budget, *FY 2012 Budget Appendix*, 767.

of the PBGC. According to the Government Accountability Office:

On a cash basis, some insurance programs may appear profitable while subjecting the government to long-term costs. As a result, cost comparisons with programs whose costs are fully reflected on a cash basis will be distorted. Accrual-based budgeting allows for better relative cost comparisons by recognizing the government's expected costs for insurance commitments at the time decisions are made. For example, for FY 1993, an accrual-based budget would have shown that PBGC had a potential future cost to the government rather than being an income generator as reflected in the cash-based budget. As a result, pension insurance would have competed for budget resources with other federal programs based on the government's expected cost rather than appearing to be a source of income in budget terms.⁵⁰

⁵⁰ U.S. Government Accountability Office, *Budgeting for Federal Insurance Programs* GAO/AIMD-97-16. (Washington, DC: September 1997), 69-70.

CHAPTER III: ORGANIZATIONAL ISSUES: PBGC AS A GOVERNMENT CORPORATION

As a general rule, it is advisable to place programs with a common focus into a single cabinet department.⁵¹ It makes the President's job of managing the executive branch much more difficult when a myriad of federal agencies carry out their public purposes independently without being situated in a cabinet department along with other agencies serving similar purposes. Including an agency in a department has both advantages and disadvantages for the agency's operations. On the one hand, an agency sometimes may need backing of a cabinet secretary in order to protect itself from forces that threaten its ability to do its work. On the other hand, placing an agency into a cabinet department can create delay and possible friction over matters such as budget priorities, regulatory policy, and relations with Capitol Hill. Chapter IV discusses these issues with respect to PBGC's relationship to its parent department, the DOL.

In many cases, policymakers have opted to create independent agencies rather than placing those agencies within a department. These include large organizations such as the Environmental Protection Agency, the General Services Administration, and the Small Business Administration, and smaller agencies such as the African Development Foundation and the Defense Nuclear Facilities Safety Board. Sometimes, as in the case of the Federal Emergency Management Agency, now a part of the Department of Homeland Security, the law may be changed to fold a formerly independent agency into a larger department. If policymakers create an independent agency, they frequently prescribe governance by a multi-member board. This helps to insulate the agency from the direct presidential control that characterizes much of the Executive Branch and tends to make the agency more susceptible to congressional and stakeholder influence than otherwise might be the case.

As this report discusses in Chapter V, the Panel has determined that PBGC is a relatively small agency that shares common purposes with parts of the DOL and the Treasury in terms of maintaining and adequately funding pension plans. The Panel believes that there need to be significant changes to PBGC's current relationships, both with the current Board and with the DOL. PBGC's structure as a wholly owned government corporation under the GCCA is also relevant in considering its appropriate relationship to DOL.

THE GOVERNMENT CORPORATION AS AN ORGANIZATIONAL FORM

President Harry S. Truman set forth the distinguishing characteristics of a government corporation. Government corporations are:

...peculiarly adapted to the administration of government programs which are predominately of a commercial character—those which are revenue producing, are at least potentially self-sustaining and involve a large number of business-type transactions

⁵¹ Dean, Alan L. "The Organization and Management of Executive Departments," Chapter 7, in *Making Government Manageable*, edited by Thomas H. Stanton and Benjamin Ginsberg (Johns Hopkins University Press, 2004), 157.

with the public. In their business operations such programs require greater flexibility than the customary type of appropriations budget ordinarily permits.⁵²

The use of the government corporation as a vehicle for accomplishing a federal purpose is long-standing. Many of these corporations functioned well for decades, with some such as the Export-Import Bank of the United States and Ginnie Mae tracing their roots to the New Deal. Other government corporations, such as the Resolution Trust Corporation, functioned well for a time and then were dissolved. Government corporations are created by law and most are parts of the executive branch of government, while others, such as the Federal Deposit Insurance Corporation are independent agencies of the federal government.⁵³ Although attempts have been made to establish a framework for consistency in operation and accountability across federal corporations, success has been limited. Passed in 1945, the GCCA was intended to achieve that purpose, but the pattern of singularity of each corporate design persists.

The essential attribute of a wholly owned government corporation as an organizational form is, as President Truman observed, that it should be revenue-producing and potentially self-sustaining. Of the more than two-dozen federal corporations that currently exist, many conform to this basic description, while others do not.⁵⁴ For example, the Legal Services Corporation and the International Clean Energy Foundation are funded through annual appropriations of general revenues rather than generating their own funding.⁵⁵ By contrast to their sometimes distinct budgetary status, government corporations share many operational characteristics, such as procurement and human resources authority, with other federal agencies. These attributes also vary from corporation to corporation; when enacting the laws to charter a government corporation, policymakers may grant operational flexibilities that are not available to the traditional government agency.

Government corporations are legal entities distinct from the departments where they may be housed. They may sue and be sued in their own name and this makes them liable for their own obligations without recourse to a parent department. A useful flexibility in many government corporations is the authority to determine the character of and the necessity for its obligations and expenditures, and the manner in which they shall be incurred, allowed and paid, subject to provisions of law specifically applicable to Government corporations. This provides government corporations some discretion in the expenditure and obligation of their funds, compared to the usual federal agency and subject to limitations that the Congress may impose in authorizing or appropriations laws. PBGC does not have such a provision in its charter. A review of the

⁵²U.S. Congress, *The Budget of the United States Government for the Fiscal Year Ending June 30, 1948*. 80th Cong., 1st Sess., 1947. (H. Doc. 19), M57-M62.

⁵³ Congressional Research Service, *Federal Government Corporations: An Overview* (RL30365; June 8, 2011), by Kevin R. Kosar, 4.

⁵⁴ The exact number of government corporations is difficult to pinpoint because of somewhat different definitions. For example, the 2011 CRS report does not include the Millennium Challenge Corporation as a government corporation although Congress refers to it as such.

⁵⁵ Virtually all wholly owned government corporations are subject to the congressional appropriations process. The distinguishing characteristic of government corporations is that generally they are funded from their own revenues rather than from general revenues.

potential benefits of this provision for PBGC reveals that, while possibly helpful, it would not make a major difference to PBGC's operations.

GOVERNANCE STRUCTURES OF GOVERNMENT CORPORATIONS

Although a governing Board is a governance attribute of most federal corporations, many experts do not agree that this is the best governance structure. A 1981 Academy Panel report by public administration scholars and practitioners expressed concern that a governing board can impede and confuse the lines of authority from the President, or for those corporations that are located within a department, from the Secretary.⁵⁶ Although boards are the norm for private corporations, the report identified sufficient differences between the public and private sectors to raise concern about following the private sector model. For government corporations:

An advisory board is a good substitute for a governing board. The President or a department secretary should have the power to appoint and remove government corporation board members, who should serve for short, staggered terms.⁵⁷

Ten years later, an Academy study team reviewed PBGC's governance structure and called for the current Board of Directors to be abolished due to its inattention to PBGC issues and role in contributing to confusion in authority. High turnover of PBGC executive directors was also identified as a challenge. The report called for maintaining PBGC under the policy direction and supervision of the Secretary of Labor and also called for creation of a statutory chief executive officer to be PBGC's administrator. This proposal would place policy direction in the hands of the Secretary of Labor, and management with a chief executive officer in order to end the confusion about their respective responsibilities. Further, the report proposed an advisory board consisting of "two members appointed by the secretaries of Treasury and Labor, not below the rank of assistant secretary, and one individual skilled in pension administration, appointed by the President, to advise the chief executive officer with respect to pension issues." The Chief Executive Officer, appointed by the President and confirmed by the Senate, would serve a six-year term, thus potentially providing continuity across administrations and an incentive for appointment of officials who may remain longer in the position. In the intervening years, Congress enacted legislation designating the PBGC Director as an Executive Level III appointee with a five-year term.⁵⁸

A 2007 report from the GAO, citing multiple concerns about the effectiveness of a previous Board, called for an expanded Board with additional members bringing relevant expertise.⁵⁹ This report called for the Board to have dedicated staff, independent of PBGC's management, to

⁵⁶ National Academy of Public Administration, *Report on Government Corporations, Volume I* (Washington, DC.: August 1981), vii.

⁵⁷ *Ibid.*, vii.

⁵⁸ In 2006, provisions of the Pension Protection Act provided that PBGC's Director be the agency's administrative head (rather than the Secretary of Labor) and that the Director be a Presidential appointee at an Undersecretary level (PAS-III) with Senate confirmation (by both the tax-writing and HELP committees). MAP-21 stipulates that the Director serve a five-year term.

⁵⁹ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to ensure Policy Direction and Oversight* GAO-07-808. (Washington, DC.: July 2007).

support the new Board's policy and oversight activities. GAO faulted the Board for spending limited time and attention on PBGC issues, lacking the necessary expertise, and lacking a committee structure that could focus attention on significant issues. Although acknowledging differences between federal government corporations and private corporations, the report looked to criteria developed for private corporations, particularly by the Conference Board, for models of good practice. The report also recommended that PBGC's Board establish policies, procedures, and mechanisms to improve accountability and oversight.

In 2008, as a response to the PPA, the Board adopted bylaws intended to improve accountability and oversight.⁶⁰ In 2009, Senator Kohl introduced a bill that would have expanded the Board, established committees, and mandated regular meetings. In late 2010, GAO reiterated the need for PBGC to adopt a stronger governance structure. Finally, in 2012, similar provisions were included in Senator Harkin's Rebuild America Act. The governance provisions enacted in MAP-21 are largely derived from these bills.

Appendix D provides information concerning the governance structures of 20 federal corporations, six non-corporate independent agencies, and four non-corporate organizations within larger departments that had been suggested as sharing similar characteristics with PBGC. As Appendix D shows, nine of the corporations are located within federal departments, and 11 are independent. All but two of these corporations have a board of some sort. All of the independent corporations included in the table have boards. For seven of eleven independent corporations, the director sits on the board, but this is the case for only two of the nine corporations that are part of federal departments. Similarly, half of the non-corporate agencies have a board and vary as to whether they are located in a department. This appendix should be read with some caution: the roles of the various boards can range from minimal oversight to actual decision-making authority.

A more detailed review of governance structures of six organizations—identified based on input from the Panel and other experts—offered insights into possible governance structures for PBGC. Each differs from PBGC in significant ways, but they are all responsible for administrative and/or policy decisions that require effective leadership. The governance structure of another organization cannot be simply lifted and adopted by PBGC with an expectation that it would be a perfect fit and entirely functional. Instead, the intention in the Appendix is to assess strengths and weaknesses and identify attributes of structures that seem especially relevant to PBGC's functions and circumstances. Some of these organizations have a board; others are governed by a single head of the agency.

Table III-1 provides basic information on the six selected agencies. More detailed information for each of the organizations listed in the table can be found in Appendix G.

⁶⁰ These proposed changes to the bylaws were stated as being submitted by the Office of the General Counsel in 2006, but were not formally approved by the Board until May 2008.

Table III-1 Attributes of Selected Government Agencies

Organization	Government Corporation, Independent Agency, Executive Branch Agency, or other organization?	Director Runs Agency	Within a Cabinet Department?	Is there a Board?	Number?	Ex-officio	Director on Board?
FDIC	Corp./ Indep. agency	Yes	No	Yes	5	2	Yes, Chair
FHFA	Indep. agency	Yes	No	Yes	4	4	Yes, Chair
Federal Retirement Thrift Investment Board	Indep. agency	Yes	No	Yes	5	None	No
Ginnie Mae	Corp.	Yes	Yes	No	-	-	-
Small Business Admin.	Executive Branch agency	Yes	No	No	-	-	-
U.S. Census Bureau	Executive Branch Agency	Yes	Yes	No	-	-	-

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CHAPTER IV: PBGC's GOVERNANCE STRUCTURE DOES NOT WORK WELL

As described earlier in this report, the PBGC's governance structure consists of the following elements:

- Board of Directors composed of the Secretaries of Labor, Treasury and Commerce, with the Labor Secretary as Chair;
- A Director who is presidentially appointed and Senate confirmed;
- An Advisory Committee.

Based on its review, the Panel determined that this structure does not work well. This chapter describes challenges to effective governance of the PBGC identified by the Panel, summarizes the views of the current Board Representatives (called "Board Reps") concerning options for improving the governance of the Corporation, and presents the Panel's recommendations for non-legislative steps that could be undertaken to improve PBGC's governance. Some of the issues that have confronted the Corporation over its history are similar to those found in many federal agencies, such as budget and regulatory authority, and pay and staffing determinations. Other issues, however, are particular to the PBGC's mission and governance structure. In sum, the key management and governance issues the Panel found include:

- Inherent tensions exist among Board Member Departments and PBGC Management on certain issues.
- Complex lines of authority lead to boundary issues between the Board and PBGC's Leadership.
- Historically, important leadership gaps in the Board Departments and in the PBGC Director's tenure have occurred.
- Board Members and Board Reps have competing demands on their time and attention and have often focused on PBGC-specific policy issues to a limited degree.
- PBGC has organizational and management challenges.
- PBGC's governance lacks transparency.
- The potential of the Advisory Committee potential is not fully utilized.

ISSUE 1: INHERENT TENSIONS EXIST AMONG BOARD MEMBER DEPARTMENTS AND WITH PBGC MANAGEMENT ON CERTAIN ISSUES.

While PBGC and Board-member Departments are likely to agree on a broad national goal of ensuring that participants in defined benefit pension plans receive promised benefits upon retirement, they may differ about preferred strategies to achieve that objective. The Board functions as an interagency committee, with a critical objective being to ensure that PBGC's actions neither conflict with departmental interests nor reflect negatively on a cabinet member. Within the Board, a natural tension exists between the DOL and Treasury. In general terms, DOL tends to promote the interests of pension plan beneficiaries, while Treasury tends to champion the interests of taxpayers. Having the Secretary of Labor serve as Chair instead of the Treasury Secretary disrupts the usual order of cabinet rank.

Inherent tensions include:

- *Mission of PBGC.* Disagreements have arisen about whether PBGC’s pension insurance program is intended primarily to provide a financial guarantee or social insurance. The Board views PBGC’s primary role as ensuring that beneficiaries are paid the appropriate benefit amount on time, not maintaining or increasing the value of PBGC’s trust funds. However, the current PBGC Director believes he has broader responsibilities, including advocating for additional tools to improve PBGC’s financial condition.
- *Pension Funding Rules and Premium Setting.* The DOL and PBGC have overlapping and conflicting interests in the enforcement of pension funding rules. While the DOL needs to set priorities for allocating the department’s Employee Benefits Security Administration’s (EBSA’s) limited enforcement resources among multiple employee retirement, health and welfare plans, PBGC has a more direct financial interest in active oversight and enforcement of defined benefit plans to reduce the incidence of plan terminations and minimize PBGC’s liability. Interviewees cited some conflict between DOL’s EBSA and PBGC with respect to enforcement in specific cases. For example, PBGC has at times sought more aggressive action than EBSA is willing to pursue against plan sponsors that are in financial trouble.

More recently, conflicts between the PBGC Director and the Board or Board Reps—in particular, the DOL—have arisen over a proposal to authorize PBGC to charge risk-based premiums. The President’s budget proposals for FY 2013 and FY 2014 call for the establishment of risk-based premiums for plan sponsors. These proposals follow that of the Bush Administration, which also advocated increasing PBGC premiums and making them risk-based. The current budget proposal would provide PBGC’s Board with the authority to adjust premiums, at least to a limited extent, while PBGC staff would be responsible for determining and accounting for the varying degrees of risks posed by plan sponsors.⁶¹ The desired effect would be to allow premiums to be increased while encouraging companies to remain in the DB system and thus improve the financial position of the PBGC.⁶² Some DOL officials continue to express concern that increasing premiums would discourage continuation of defined benefit plans. Several other interviewees suggested that implementing risk-based premiums may also be disadvantageous to pension plan funding and lead to unintended consequences, with plan sponsors no longer contributing to existing plans or opting to annuitize them. PBGC contends that such concerns are misplaced because, even with a premium increase, the cost of premiums to a company would be only a small part of the overall costs of maintaining a DB plan.

⁶¹ The President’s FY 2014 Budget states: “PBGC receives no taxpayer funds and charges premiums much lower than private financial institutions would charge for insuring the same risk. The Budget proposes to give the PBGC Board the authority to adjust premiums and directs the PBGC to take into account the risks that different sponsors pose to their retirees and to PBGC. This reform proposal is estimated to save \$25 billion over the next decade”

⁶² Department of Labor, *FY 2014 DOL Budget in Brief*, 3-4.

- *Investment Policy.* Treasury’s traditional view with regard to investment policy has been that PBGC should invest in Treasuries and minimize risk⁶³ instead of investing some assets in equities as is currently the case. The Corporation and Treasury leadership have sparred over the investment policy issue at various points over the years.
- *Relationship between DOL and PBGC.* Over PBGC’s nearly 40-year history, the extent of DOL’s involvement in directing the Corporation has varied, with the Department playing a more active role in recent years. Although hardly unique to the PBGC’s relationship to its parent department, the budget process provides the clearest example of this tension. For example, when ERISA established PBGC as a government corporation, PBGC’s budget was to be set by the Corporation itself and funded by its premium income. There was no expectation that Congress would enact appropriations limitations on the use of those revenues by the Corporation; in that context, including PBGC’s financial transactions in the DOL, budget was to have been an administrative convenience not an expectation for DOL budget review and approval. Today, however, even though PBGC is a government corporation that generates the funds required to support its operations, its budget is submitted to OMB as part of the DOL’s budget and is reviewed in the same manner as any other part of DOL.

In 2007, GAO documented how DOL control over PBGC’s budget had increased over the years, resulting in disagreements between PBGC officials and Department officials concerning the value and appropriateness of this control. Past and current PBGC officials have described the budget review process as very difficult with little value added. By contrast, DOL officials involved in the process of preparing PBGC’s budget for submission to OMB stated that the review by DOL has been beneficial.

Another budget-related example of the tension between the DOL and the Corporation can be seen in a 2006 PBGC IG report in which the IG raised objections to the use of Corporation funds for the development of the DOL’s ERISA Filing Acceptance System (EFAST2).⁶⁴ This system, then under development, would provide pension plan sponsor data to the DOL, IRS, and PBGC, and represented a substantial upgrade to the existing system. DOL initially planned to fund the entire cost of EFAST2, but a funding shortage resulted in a new plan to tap PBGC’s budget for about half of the total cost—\$7 million—of the project. The IG objected, saying that PBGC’s use of the system was in no way at a level that would justify this contribution to the overall costs. A number of ways to assess PBGC’s level of use of the system were provided with none of them justifying this level of payment. The IG noted that IRS, a much bigger user, was not making any contribution to the expense and that DOL’s proposal was taking money away from PBGC that belonged to pension beneficiaries to fund a project benefiting other federal programs. Nevertheless, DOL sought and received OMB’s approval to use PBGC funds for the project.

⁶³Recently, the Board, including the Department of Treasury, agreed to a proposed increase in the percent of assets invested in equity securities.

⁶⁴ Pension Benefit Guaranty Corporation, Office of Inspector General, *Audit Report: FY 2007 EFAST2 Development Costs* (Washington, DC.: September 29, 2006), 1.

PBGC also submits its budget reprogramming requests to DOL for review and approval before they are sent for OMB review and approval and then to the Congress. PBGC officials told the study team that DOL's review has caused significant delay in the Corporation's reprogramming process. Due to the slow approval process, PBGC has been unable to transfer its available funds to effectively respond to unexpected needs and requests. For example, PBGC had to reduce billable hours for contractors working on the American Airline negotiation case in 2012 because of delays in the DOL's review of the Corporation's reprogramming request. In one case, PBGC was unable to respond quickly to a court order-related pension plan termination because the Corporation could not reprogram available funds without DOL approval.

PBGC and DOL have also disagreed on staffing levels, with PBGC arguing that it should be able to control its own staffing levels and not be subject to ceilings imposed by the Department given its status as a self-funded government corporation.

PBGC's request for special pay authority—though not unique to PBGC—has been yet another source of tension between DOL and the Corporation. In the early 1990s, PBGC developed a plan for pay authority outside the Title 5 federal pay system that would have required DOL approval. PBGC proposed a pay system modeled after the special pay authority enacted for federal bank regulators, arguing that PBGC staff was required to have the same types of expertise as staff of these agencies.⁶⁵ This new pay authority, PBGC argued, would enhance its ability to recruit and retain the caliber of staff needed to fulfill its mission. When the proposal was forwarded to the DOL for approval, however, the DOL Solicitor opposed the change and sent a letter to OMB raising his objection. OMB rejected PBGC's request. Some PBGC interviewees stated that the underlying reason for DOL's objection was that PBGC employees should not be paid more than DOL employees.

ISSUE 2: COMPLEX LINES OF AUTHORITY LEAD TO BOUNDARY ISSUES BETWEEN THE BOARD AND PBGC'S LEADERSHIP.

Tensions between various Board Reps and Directors have occurred during multiple administrations about who is in charge of which matters. While personalities can contribute to tense and unproductive interactions, the persistent question of where power and authority rests suggests that the governance design and structure lie at the root of these issues. The Board and PBGC Director are not in agreement about the boundaries defining their respective responsibilities. Over the course of this study, the Board Reps sent a letter to the Academy Panel Chair indicating their view that the PBGC should limit itself to implementation issues while the Board should concern itself with issues relating to federal pension insurance policy. By contrast, the current PBGC Director views his job is to both implement current pension policy as well as advocate for changes in pension policy, such as risk-based premiums to help bring the federal pension insurance program back into fiscal balance.

⁶⁵ The bank regulators' pay structure is discussed in chapter VI.

The tensions inherent in these relationships, especially in the absence of agreement on the boundaries of responsibility between the Board and PBGC Director, have led to a lack of trust that is detrimental to the Corporation. One person from a past administration described a situation where the friction created in the course of ordinary oversight resulted in a “bunker mentality” at PBGC that made it more difficult to get things done.

Despite the current Board’s argument that implementation issues ought to be left to the PBGC Director, it has involved itself in PBGC’s budget. The current bylaws call for PBGC to submit its budget to the Chair of the Board only for review and approval. Yet the Chair of the Board, from DOL, has in fact played a strong role in the detailed development and execution of PBGC’s budget.

Review of PBGC proposed regulations, as with its budget, can be excessively time consuming. PBGC Board bylaws require that final procedural regulations and all proposed regulations be reviewed for comment by each Board member. After this review and approval, the regulation is directed to OMB for review. As with all Executive Branch regulations, OMB then sends the draft regulations to all agencies that have an interest in its contents. Most often, those agencies would be the Treasury and DOL, as well as other agencies, where appropriate. Proposed regulations affecting the airline industry, for example, would likely be directed to the Department of Transportation as well as to the three Board Departments.

Because this extra layer of Board member review takes place in addition to the normal federal agency process for regulatory review, it means that the three cabinet departments represented on the Board are likely to review draft PBGC regulations multiple times. The requirement for the pre-review of regulations before submission to OMB has been described as working better through some of the PBGC Board departments than others. PBGC interviewees described the DOL process as lengthy and complicated with little value added.

By contrast, DOL officials believe that the quality of the regulation is often much improved because of their involvement and prevents PBGC from sending OMB flawed proposed regulations. They also note that, after the first round of agency reviews of proposed PBGC regulations, OMB does not circulate revised regulations to DOL, which could hinder the department’s ability to coordinate regulatory policy between PBGC and the rest of the department. One DOL interviewee indicated that the process followed by PBGC is no different from any other entity within the department. To illustrate the value added by the DOL’s pre-review of proposed regulations, a department official provided the study team with the history of one proposed regulation. Based on the information provided, the Panel has serious questions about the value of the pre-OMB review process.

More broadly, the degree of oversight of PBGC exercised by the Board has varied over the years. During some periods in PBGC’s history, the Board’s focus on oversight has been minimal. Some Boards have focused very little attention on PBGC. As noted above, the current Board Reps hold weekly calls to discuss issues related to review and approval of reports and to follow-up on the implementation of changes recommended by various reports from the PBGC IG. Current Board Reps hold a monthly call with the IG to receive updates on prior recommendations, or to

learn of new areas of IG focus and have weekly calls with the Director and other appropriate staff that have focused on management issues.

A substantial proportion of the activity related to oversight in recent years involved correcting asset valuations related to the United Airlines pension plans. Multiple problems with the initial valuation were reported by the IG in 2010. These valuations were performed by a contractor under the supervision of PBGC. A second contractor was hired to review the work of the initial contractor and ensure that errors were corrected. The work of the second contractor, completed in 2011, was also flawed, and a third contract was required to finish the work properly. The IG reported that this latter failure was the result both of inadequate contract specifications by PBGC concerning the appropriate method of valuation and also inadequate management oversight.

The Board Reps believe that attention has been necessary to address such management deficiencies at PBGC. By contrast, some PBGC interviewees believe that the Board Reps are engaging in micromanagement. One PBGC interviewee noted that the involvement of Board Reps and the representatives of the Board reps (“Rep Reps”) during this process is related to a lack of a clear statement of responsibilities of the Board in its oversight role. Weekly calls on these issues are not an optimal use of the time for individuals at the rank of Undersecretary and Assistant Secretary, even if they contribute to resolving these issues. Nor should they have been necessary. Despite extensive oversight, it took several years before the issues were satisfactorily addressed.

The passage of the PPA may have imposed additional conflicts within the governance structure of PBGC. This statute upgraded the PBGC Director to a PAS Executive Level III. The Undersecretaries of Treasury and Commerce are also Executive Level III positions. The Assistant Secretary of Labor for Employee Benefits Security—described by some as the de facto Chair of the PBGC Board—is ranked lower in the executive schedule (Executive Level IV).

Finally, it should be noted that staff level interactions were described as productive and collaborative despite complex lines of authority and failure to negotiate the boundary between responsibilities of the Board and PBGC Director. Multiple interviewees at PBGC and at Board agencies spoke of cooperative and helpful interactions with counterparts at other agencies. Some concern was noted at the Board Rep level about having to channel all of their requests for information from PBGC through a central point of contact at PBGC, but staff-level cooperation was considered to be positive.

ISSUE 3: HISTORICALLY, IMPORTANT LEADERSHIP GAPS IN THE BOARD DEPARTMENTS AND IN THE PBGC DIRECTOR’S TENURE HAVE OCCURRED.

Given that Board members are political appointees leading cabinet level departments, and Board Reps are senior political appointees as well, turnover in these positions will almost certainly occur with each change in the political party of the President. Even without a change in political party, turnover in these positions during and between presidential terms has been common, as has been turnover at the PBGC Director level. All three Board members, for example, announced their departure after the 2012 election. Gaps in leadership while waiting for positions to be filled have been numerous and lengthy.

Tenure in the positions of the Secretaries of Labor and Treasury has been relatively stable for the past decade.⁶⁶ The position of Secretary of Commerce has not been as stable, as two Secretaries and an Acting Secretary (who served in this position twice) have led the agency over the last four years.⁶⁷ Although this degree of turnover at the Secretary level of a Board department may happen infrequently, it is not uncommon for leadership positions to experience turnover beyond what would be expected because of a change in administration. Additionally, leadership at the board rep level is subject to frequent turnover. The current DOL Board Rep has served in that role for more than four years, but the Board Reps for Treasury and DOC have each served in these positions for less than two years. Turnover in both the board member and board rep positions is particularly troubling given that many individuals who fill them are starting with little or no background in PBGC issues. With a change of administration, both Board members and Board Reps could be on a steep PBGC learning curve at the same time they are stepping into their highly-demanding departmental positions.

On the other hand, the Board Reps noted that each department has developed career staff who are knowledgeable about PBGC and federal pension issues; these staff resources can help new Board Reps come up to speed. The impact of turnover among Board members and Board Reps may be mitigated by the long tenure of the Rep Reps—career employees who have tended to stay in their Rep Rep positions for long periods of time. Realistically, however, new Board members and Board Reps are assuming substantial roles as heads of departments or agencies and of large and significant programs in addition to their PBGC responsibilities. As a result, the amount of time they are able to spend to become fully knowledgeable about PBGC matters could be limited.

Two individuals have served as PBGC Director since 2006 when the position was converted to PAS. But the position was vacant for 18 months prior to the appointment of the initial PAS director, and another 18 months passed before his successor was appointed. The term specified by current statute for the Director of PBGC is five years. Whether incumbents will stay beyond the end of the administration that appoints them is yet to be seen.

Prior to enactment of the PPA in 2006, the Secretary of Labor appointed the PBGC Executive Director (as the position was then called). Although gaps between appointments tended to be shorter than 18 months, turnover was high. For example, the two Executive Directors immediately prior to 2006 remained in the position for an average of about two and a half years. A 1991 Academy report identified 11 Executive Directors (or Acting) between 1974 and 1991 with an average tenure of just 15 months.⁶⁸

⁶⁶ Between 1999 and 2013 a total of five Treasury Secretaries, five Commerce Secretaries, and three Labor Secretaries have served. As of August 2013, candidates were confirmed for all Secretary positions, although the Secretary of Labor position had been unfilled for more than half a year.

⁶⁷ In this particular case, the issues of change in this position were no doubt mitigated somewhat for PBGC because the Acting Secretary of Commerce during both periods had served as the Board Rep for Commerce.

⁶⁸ National Academy of Public Administration, *Study of the Pension Benefit Guaranty Corporation's Corporate Status* (Washington, DC: April 1991), 15.

Past and current PBGC staff reported that frequent replacement of top PBGC leadership have left them feeling “whipsawed” by changes, some of which were never completed before new leadership took over. For example, a new PBGC Director started the process of adopting a new timekeeping system, but departed before it was implemented, leaving the Corporation without a functioning system in place. More significantly, there has been more frequent concern about the high rate of turnover in the Director’s position, especially before the position was raised to Executive Level III. The rate of turnover has an impact on morale as well as efficiency. Directors in an acting role have tended to put new initiatives on hold while waiting for the next appointee to arrive and provide direction. Since acting directors have been in place for substantial periods of time this hold-the-fort mode of operation could impede progress toward achieving objectives and be detrimental to Corporation morale.

In some cases, changes in administration have affected investment policy and may have raised transaction costs. During the 18-month period prior to appointment of the current Director, all decisions about investment policy were on hold. GAO reported in 2011 that PBGC has not always considered the financial impacts of transaction costs, which may be substantial when reinvesting large volumes of assets. Although the impact can be mitigated to some degree by pooling practices,⁶⁹ over the past decade total net transaction costs during reinvestment periods have ranged from a gain of \$40.5 million (2004) to a loss of \$74.6 million (2008).⁷⁰

Gaps in leadership have also affected the relationship between the Board and the Advisory Committee. Enacted in July 2012, MAP-21 requires the Board to meet with PBGC’s Advisory Committee once a year. With the departure of all three members of the Board at the end of 2012, the joint meeting of the Board and Advisory Committee is expected to take place only later in 2013.

⁶⁹ Transaction costs for reinvestment of assets generally consist of commissions, fees and certain taxes (explicit costs) and opportunity costs due to market changes during transactions (explicit costs).

⁷⁰ U.S. Government Accountability Office, *Pension Benefit Guaranty Corporation: Asset Management Needs Better Stewardship* GAO-11-271. (Washington, DC.: June2011) 14.

ISSUE 4: BOARD MEMBERS AND BOARD REPS HAVE COMPETING DEMANDS ON THEIR TIME AND ATTENTION AND HAVE OFTEN FOCUSED ON PBGC-SPECIFIC POLICY ISSUES TO A LIMITED DEGREE.

Even when the relevant Cabinet members are confirmed and take office, they have little time to spend on PBGC issues. PBGC's three Cabinet Secretary-level Board members have enormous responsibilities for the operations of multiple programs that affect almost all facets of American society. The Cabinet Secretaries each designate an official in their Departments, at the level of assistant secretary or higher, to carry out some of their PBGC responsibilities. Their Board Reps also have substantial responsibilities within their Departments.⁷¹ For example, the current Board Rep for the DOC is the Undersecretary for Economic Affairs with responsibility for the Census Bureau and Bureau of Economic Analysis. Each agency's Board Rep in turn has designated a Rep Rep to assist with his or her PBGC-related duties.

Numerous GAO reports have documented the infrequency of PBGC Board meetings through much of the history of PBGC,⁷² and many officials who served in senior positions at PBGC during past decades indicated in interviews for this study that Board involvement was extremely limited during their tenures. Although as many as six Board meetings per year occurred during PBGC's first five years (1974 to 1979), between 1980 and 2002, a total of only eight meetings took place, three of them by conference call. Table IV-1 below documents the number of Board meetings, attendance, length, and mode of meetings from 2007 through 2012. In the most recent years, 2010 to 2012, the table shows an increase in the number of meetings compared to prior years. Yet only five of the 13 meetings during the last three years included all three Board members. Three of the 13 meetings involved no Board members whatsoever; instead, Board Reps attended those meetings in place of Board members as is allowed under the current PBGC bylaws. The Secretary of the Treasury attended just five meetings out of the 13 held during the last three fiscal years. Some meetings were extremely brief and centered on the approval of a report or regulation.

⁷¹ Current Board Reps are the Assistant Secretary for Employee Benefits Security at the Department of Labor, the Under Secretary for Domestic Finance at the Treasury Department, and the Under Secretary for Economic Affairs at the Department of Commerce.

⁷² For example see Government Accountability Office, *Governance Structure Needs Improvements to Ensure Policy Direction and Oversight Pension Benefit Guaranty Corporation: Asset Management Needs Better Stewardship* GAO-07-808 (Washington, DC.: July 2007), 15.

Table IV-1: Board meetings, Attendance, Length, and Mode of Meetings

		FY 2007		FY 2008		FY 2009	FY 2010				FY 2011				FY 2012				
		11/7/06	5/8/07	11/7/07	2/12/08	11/10/2008	10/21/09	11/10/09	2/23/10	7/22/10	10/18/10	11/10/10	3/2/11	5/3/11	10/26/11	11/10/11	12/01/11	6/13/12	9/26/12
The length of Board meetings		75	55	45	75	25	95	15	78	56	37	46	105	6	110	21	95	74	73
Bd. Members	DOL																		
	Treasury																		
	DOC																		
Board Reps	DOL																		
	Treasury																		
	DOC																		

Because Board members do spend time being briefed for PBGC Board meetings and other PBGC matters, meeting data underrepresent the true level of Board member involvement in PBGC issues. Nonetheless, the data show a clear indication of the lack of face-to-face discussions by Board members themselves to work through significant PBGC issues. Minutes of Board Meetings are extremely limited in content, but do indicate that time is spent on briefings from the Director, various annual reports, and IG issues. The minutes of Board meetings show no evidence that substantive policy discussions and strategic planning activities affecting PBGC's long-term fiscal health are undertaken at Board meetings. Board Reps have suggested that these discussions do in fact occur, even if they are not reflected in the minutes.

Recently, Board Reps have inherited much of the responsibility for interaction with PBGC in relation to oversight and policy matters, likely because the 2008 PBGC Bylaws empowered Board Reps to act for Board members, with the exception of formal approval of investment policy, issuing the annual report, and several other similar matters. Involvement of Board Reps in PBGC issues had varied greatly over previous years. Board Reps have varied substantially in their knowledge of pension issues: some have come to their positions with significant knowledge of both pension issues in general and the PBGC in particular, while others have lacked expertise in these areas. As with Cabinet Secretaries, Board Reps are primarily selected to fill high-level positions in their respective departments, not necessarily for their expertise on PBGC-related matters. Over the years, some Board Reps have been very interested and attentive to PBGC issues while others have been substantially less involved.

Current Board Reps report that they spend the necessary time on PBGC issues. In recent years, for example, Board Reps have routinely held weekly calls to discuss issues related to the review and approval of reports, including the Annual Report and the recently-issued report on the status of multiemployer plans. They have also been actively involved in overseeing the implementation of recommendations of reports from PBGC's IG. For example, they were heavily involved in tracking the resolution of issues related to asset valuation for the United Airlines pension plans. PBGC's unsatisfactory initial responses to this IG-reported issue resulted in a significant level of involvement of Board Reps in overseeing its resolution over several years. Other issues raised by the PBGC IG have also been the focus of much Board Rep attention.

Each Board Rep is assisted by a Rep Rep who is employed in the respective department. While Rep Reps have specific responsibilities in their departments, the current Rep Reps spend a substantial amount of their time on PBGC activities in support of the Board Reps and Board members. Both current and past Board Reps indicate that they can call on other staff at each of their departments to provide additional support and expertise as needed. For example, when PBGC sends draft regulations to the DOL for review, the Rep Rep engages with the appropriate offices within DOL to provide comments.

All Board Departments have devoted significant resources to PBGC issues in recent years, although involvement of actual Board members themselves seems quite limited. In general, the Panel found that the Board Reps generally act as the de facto Board in place of the Cabinet Secretaries who are the actual Board members.

Despite their inability to devote much time to this role, the PBGC's Board is charged with responsibility for both policy direction and oversight. Not surprisingly, Board meetings are infrequent, and minutes of those meetings fail to show evidence of substantial and collective Board engagement in either policy or oversight discussions. Board meetings appear to focus on formalizing the approval of annual and other reports and a handful of regulations. These approvals are all required by PBGC's bylaws. The Board also receives briefings on financial and other matters from PBGC officials. Some Board Reps and Rep Reps said they view PBGC as an agency that fundamentally gives out checks to beneficiaries, so there are no policy issues to be considered.

Board members spend more time on PBGC activities than is indicated by the Board meeting schedules and minutes, and Board Reps act for the Board members in most cases. Board Reps in their respective departmental roles spend time focusing on broader pension policy issues that affect PBGC at least in part. Still, multiple interviews with past and current Board Reps and PBGC officials indicate that there is little focus on PBGC-specific policy issues beyond investment policy, and very recently, multiemployer plans. During some previous administrations, Board Members and Board Reps devoted little time to PBGC issues. More recently, Board Reps have indicated that the preponderance of their time has been spent addressing management and operational issues at PBGC. For example, Board Reps during the last few years have spent substantial amounts of time overseeing the review and correction of errors in asset valuation related to United Airlines pension plans. Comment and approval of various reports is also time-consuming with multiple iterations.

The Board is required to review the Corporation's Investment Policy Statement at least every two years and approve the Investment Policy Statement at least every four years. A new investment policy was adopted in May 2011. The prior investment policy of February had been suspended in May 2009 because of investment management contracting issues that required resolution.

Investment management responsibility rests with PBGC staff. Several interviewees noted that current investments are performing well, and one interviewee suggested that it may be the result of limited Board involvement. The Board has been described as turning its focus away from investment returns due to positive performance to other issues. Nonetheless, the Board is responsible for ensuring that investment policy statement standards are being met.

ISSUE 5: PBGC HAS ORGANIZATIONAL AND MANAGEMENT CHALLENGES.

PBGC has faced a series of management challenges ranging from issues of plan asset valuation to compliance with federal management laws and standards. One recent example is PBGC's management of the United Airlines plan termination. The IG determined that PBGC's plan audit was "seriously flawed" and did not follow "established protocols or ensure compliance with applicable professional standards."⁷³ Another example comes from a recent review of PBGC's financial statements on single-employer and multiemployer plans for both FY 2011 and FY

⁷³PBGC Inspector General, *PBGC Processing of Terminated United Airline Pension Plans Was Seriously Deficient* (Washington, DC: November 30, 2011), 1.

2012. The IG's investigation resulted in identification of serious weaknesses in PBGC's internal controls in the areas of enterprise-wide security program planning and management, access controls and configuration management, in addition to management and oversight of its benefits administration and payment department operations.

PBGC is currently reworking its organizational structure, which is positive because the previous structure has contributed to its management challenges. In the past, PBGC has had a Deputy Director for Operations, a Chief Management Officer (CMO), and a Chief Operating Officer (COO). In March 2013, the Director eliminated the position of Deputy Director of Operations. The COO is responsible for planning and directing the efficiency and effectiveness of the Corporation's single-employer benefits administration. This position is vacant, and the Director is serving as the Acting COO. Under the new structure, responsibilities for overseeing the management of PBGC remain fragmented and divided between these two positions. A more effective structure, discussed below, would include a single Chief Operating Officer, serving as a deputy to the Director, with responsibility for overseeing the line units and the mission support functions and covering interim periods of vacancy of the Director's position. The current organizational chart is not shown here because it is currently under internal review.

PBGC has been making a concerted effort to address and improve its management practices. It recently strengthened its terminated pension plan valuation process, with the goal of ensuring better accuracy and efficiency. GAO also credited PBGC for its response to concerns about its management of its assets and to ensure a more disciplined and long-term approach to investment⁷⁴ and PBGC issued a new investment policy statement in May 2011. The new statement is more comprehensive than in the past, providing clear organizational accountability, well-defined goals, and risk management parameters. In addition, with proper oversight from the Chief Financial Officer (CFO), PBGC has subsequently aligned its portfolio with these new objectives and the CFO provides regular reports at each meeting of the Board of Directors regarding financial and investment-related activities and results. Due to improved market conditions since PBGC adopted a new investment policy in May 2011, the Corporation's investment income has rebounded from its sharp decline in 2008.

In the same 2013 report, GAO recognized steps taken by PBGC to strengthen accountability of its contract management in response to recommendations from previous GAO reports. GAO provided as an example PBGC's implementation of new practices requiring that service contracts for more than \$100,000 include documentation of the decision to use contractors instead of federal employees, that contract files be reviewed annually, and that staff assigned contract monitoring duties have their performance of these duties reflected in performance evaluations.

In the IG's most recent Semiannual Report to Congress, PBGC's Office of General Counsel received recognition for its progress with regard to improved operations in the areas of privacy

⁷⁴U.S. Government Accountability Office, *High Risk Series: An Update*, GAO-13-283. February 2013.

and procurement protection.⁷⁵ In the same report, the IG concluded that PBGC instituted a systematic method to review its programs and activities for improper payments and generally complied with the Improper Payments Information Act (IPIA) and the implementing requirements issued by the Office of Management and Budget (OMB).⁷⁶ However, the IG also determined that PBGC's methodology for estimating improper payments had certain analytical flaws. Despite its management and oversight challenges, PBGC has maintained one of the highest customer service satisfaction ratings among benefits processing agencies across the federal government and a record of clean independent auditor reports.⁷⁷

ISSUE 6: PBGC'S GOVERNANCE LACKS TRANSPARENCY.

Some issues are discussed only by PBGC's Board, Board Reps, and management. For example, the status of individual pension plan sponsors and pending termination information should not be made public. Other issues can be made public. These include discussions about the Corporation's approach to determine pension plan watch lists or to assess the financial stability of plan sponsors, as well as processes PBGC may follow when making termination decisions. Such transparency would be helpful for the stakeholders most affected by those decisions and arguably could build confidence in the Corporation's ability to effectively manage billions of dollars in assets and accurately pay pension benefits to hundreds of thousands of retirees. However, both Board meetings and Advisory Committee meetings are closed to the public and are exempt from requirements of the Sunshine Act.⁷⁸ Almost all federal corporations with boards do hold some planned open meetings. Given the scope of PBGC's responsibilities and the potential impact of its actions on plan sponsors, plan beneficiaries, and taxpayers, the virtually complete lack of effective opportunity for the public to hear the views of those who are making policy and to voice their concerns seems unwise and inappropriate.

MAP-21 requires that Board meeting minutes be posted. Published minutes identify the topics discussed, but provide little information about the content of the discussions. The minutes are not helpful to third parties attempting to understand PBGC's decision-making processes, much less the basis for particular decisions.

PBGC staff and Board Reps indicated that a substantial portion of Board involvement and direction comes through the monthly or weekly telephone conversations held by the Board Reps and PBGC's Director and senior management. PBGC and Rep Reps indicated that both agendas and minutes are kept of these meetings. These minutes are for internal PBGC use and as the content seems pre-decisional, it would be standard government practice that they are not widely available, but they are not produced in a timely manner. The Academy study team was allowed

⁷⁵ Pension Benefit Guaranty Corporation, Office of Inspector General. *Semiannual Report to Congress*. SARC 45. Washington, D.C.: April 1, 2011 through September 30, 2011 and October 1, 2011 through March 31, 2012, 18.

⁷⁶ Ibid.

⁷⁷ American Customer Satisfaction Index, *ACSI Customer Service Benchmark for U.S. Federal Government 2012*, http://www.theacsi.org/index.php?option=com_content&view=article&id=362&Itemid=789.

⁷⁸ P.L. 94-409 § 552b establishes that government meetings may be exempted from public disclosure on the basis of ten conditions. In particular, discussion of sensitive financial information during Advisory Committee meetings satisfies one of the conditions for exemption.

to view a sample of the records of weekly telephone meetings to gain a basic understanding of the contents of these meetings.

Advisory Committee materials are maintained in the PBGC library, which is accessible to PBGC staff but not routinely available to the public. In response to a request from the study team, the library staff compiled the Advisory Committee materials for review. They were brief and offered little detail, allowing minimal understanding of the discussion by Advisory Committee members of the issues on the meeting agenda.

There is also a transparency issue with respect to PBGC's relations with the Congress. Beyond the scope of technical assistance and data, which may be provided directly, PBGC's responses to congressional requests for policy-related information must go not only through clearance by the relevant Administration, which is appropriate, but also through DOL before being delivered to the requesters. While there is no indication that information is not eventually received, the extra review by DOL creates a barrier to the timely flow of information between PBGC and Congress.

Transparency is an accountability issue and is an important aspect of good government. Transparency allows for the tracking of the decision making process and the actual decisions. Although the passage of resolutions is duly noted in minutes of Board meetings—that recently have been posted on the PBGC website—discussion of those resolutions in the minutes is minimal.

The Panel's concern about transparency relates to the access and release of information to inform the public about PBGC's financial circumstances and other critical issues. While the Panel recognizes the need to protect some information (such as financial information of plan sponsors) and acknowledges the importance to PBGC's Board of preserving the confidentiality needed to foster open discussion, the current level of information that would allow the public to understand decisions that PBGC and the Board make is minimal.

ISSUE 7: THE POTENTIAL OF THE ADVISORY COMMITTEE IS NOT FULLY UTILIZED.

ERISA established yet another element of the PBGC's governance structure, an Advisory Committee. Given a broad agenda, this committee was charged by law, including changes, with advising on policies and procedures related to:

- The appointment of trustees in termination proceedings,⁷⁹
- Investment of monies,
- Whether plans being terminated should be liquidated immediately or continued in operation under a trustee,⁸⁰
- Such other issues as the corporation may request from time to time, and

⁷⁹ PBGC notes that advising on the appointment of trustees has long been irrelevant because terminations are managed centrally.

⁸⁰ Again, PBGC notes that the method of termination does not involve trustees.

- (Since passage of MAP-21) other issues as deemed appropriate by the Advisory Committee.

The seven members of this Committee are recommended by the Board, and appointed by the President⁸¹ with two members representing the interests of employee organizations, two members representing the interests of employers who maintain pension plans, and three members representing interests of the general public. The President designates the Chair. Members serve three-year terms that are intended to be staggered, and no more than four members of the Advisory Committee can be affiliated with the same political party. Members are to be chosen based on their experience in the administration of pension plans and related issues. The Committee is required to meet six times a year.

While ERISA gave the Advisory Committee a substantial potential role in assisting policy development for the organization, the Advisory Committee during the last decade has played a limited role. Since most Advisory Committee members bring significant relevant experience to their positions, their underutilization may deprive the Corporation of important and useful information.

Multiple issues have helped to reduce the effectiveness of the Committee. According to several interviews with Advisory Committee members, the Director decides on the extent to which the Committee is utilized. When the Director values the input of particular experts, they are given a bigger role and wider agenda, but when the Director is not receptive to outside views and advice, the Committee's role is minimized. On the other hand, an advisory body is not supposed to be a decision-maker; this means that the influence of an advisory committee depends on the quality of advice offered and the openness of the decision-maker to hear particular pieces of advice.

While Advisory Committee members are Presidential appointees for three-year terms, few actually serve a full three years because of a time-consuming appointment process that often takes about eight months. As a result, more than a quarter of a member's term may be over before he or she attends the first meeting, leaving at most 16 meetings during the remaining term.

With very limited exceptions, Advisory Committee members have not been invited to serve consecutive terms. Due to recent term expirations, the Advisory Committee currently does not have its full complement of members, which follows a historic trend during the last decade when as few as three were actually serving at one time. Interviewees point to the low priority given to the vetting process for these positions. Unlike other federal advisory groups, the PBGC Advisory Committee member nomination process runs through the White House Personnel Office and does not include announcement of openings in the Federal Register. Furthermore, without knowledge of openings by interested stakeholders (such as pension experts and plan sponsors) to ensure their representation, the appointment process can drag on for lack of focused attention.

Some new members require time to learn the nuances of the Corporation. Although members are intended to be selected for their expertise on pension related issues, they are not necessarily fully

⁸¹ 29 USC § 1302(h)(2).

informed about the inner workings of PBGC. Lack of a formal Committee mission statement or operating procedures also adds to a learning curve for new members. With relatively short and staggered terms, there will always be a contingent of new members on the Committee who may not be ready to make a full contribution in discussions. Several interviewees expressed frustration that their terms ended just as they were beginning to be effective, although members are permitted to serve as consultants with the Committee until a replacement is nominated for their position. Some other advisory committees have longer terms. As examples, private sector members of the Community Development Financial Institutions (CDFI) Fund Advisory Board serve four-year terms, the non-federal members of the Federal Accounting Standards Advisory Board can serve two five-year terms, and members of the Social Security Advisory Board serve six-year terms.

During the early years of PBGC, the Advisory Committee addressed a much broader agenda of policy issues than today. At that time, Committee meetings were held for several consecutive days, had PBGC staff support, and produced analytic reports on a variety of issues.

Advisory Committee meetings still take place six times a year. However, each meeting lasts less than a single day. Current committee members and those serving in the last ten years report that they do more listening than advising. Agendas for meetings are filled with reports from PBGC executives, and afford little time for discussion and feedback. Many PBGC presentations to the Committee relate to reports and other products that have already been issued by PBGC, providing no opportunity for Advisory Committee input. Many current and recent Advisory Committee members said that they have requested more discussion time but the meeting format and schedule have not changed. Although Advisory Committee members are asked to suggest agenda items, and these items are generally listed for discussion at meetings, the amount of time and depth of discussion are limited.

Several past and current members have suggested that a sub-committee structure would provide members the opportunity for more detailed review of issues, and that these sub-committees could then engage the full committee in more fruitful dialogue. They note that there is substantial, and often very specialized, expertise among the Advisory Committee members, and that the talent could be put to better use. Recently, two members of the committee with expertise on multiemployer plans gave a presentation at a meeting that was roundly viewed as helpful by other members of the Committee. Several years ago, the Advisory Committee included members with expertise related to the industry standard on the presentation of investment performance data. Their ideas were adopted by PBGC and have resulted in improvement in financial materials and presentations.

Some Board Reps and Rep Reps attend Advisory Committee meetings on a regular basis; others do not. However, Board members do not attend, as discussed earlier in this report. MAP-21 requires the Board to meet with the Advisory Committee once a year; as was discussed earlier, the meeting for this year has not yet been scheduled.

MAP-21 also mandates that the Advisory Committee nominate candidates for the position of Participant and Plan Sponsor Advocate. As of July 2013, the Advisory Committee has interviewed candidates and made recommendations, but the Board has yet to act on those

recommendations. The Board plans to discuss the selection of the plan sponsor advocate during the Board meeting scheduled for the end of September 2013.

Table IV-2: Summary of Issues and Comments related to PBGC’s Current Governance Structure

<p>Inherent tensions exist among the Board Departments and with PBGC Management on certain issues.</p>	<p>Board agencies have competing goals that may mean they take actions that are not necessarily in the best interests of PBGC.</p> <ul style="list-style-type: none"> — Board agencies also have competing goals that may not be supportive of each other. Board decisions may favor Reps’ departments rather than PBGC. — An additional concern is that PBGC policy issues may be formally communicated to the White House without Board support. <p>DOL treats PBGC as it does other DOL programs rather than as an independent corporation housed in DOL.</p> <ul style="list-style-type: none"> — Cumbersome processes for budget, regulations and responding to congressional inquiries are inefficient.
<p>Complex lines of authority lead to boundary issues between the Board and PBGC’s Leadership.</p>	<p>Lack of agreement on the boundary between responsibilities of the Board and the PBGC Director has led to friction and distrust.</p> <ul style="list-style-type: none"> — Lack of defined boundaries between roles of the Board and PBGC Director contributes to jockeying for power and lack of cooperation. <p>Board oversight focus is inconsistent and at times burdensome.</p> <ul style="list-style-type: none"> — Although the current Board Reps actively oversee IG-recommended changes, it is unclear whether this is an effective process. Historically, Board members and Reps have been less involved in oversight. A more positive relationship between Board Reps and the Director could lead to more cooperative implementation of IG recommendations.
<p>Historically, important leadership gaps in the Board Departments and in the PBGC Director’s tenure have occurred.</p>	<p>Turnover of members and reps is significant.</p> <ul style="list-style-type: none"> — Both at change of administrations and at other points most or all Board members and Reps can turn over. New members and reps may have stiff learning curve while also learning their agency responsibilities. Much institutional memory is lost. <p>Turnover of Directors leads to ineffective management.</p> <ul style="list-style-type: none"> — Short-lived director-led changes whipsaw staff. Acting directors hold the fort rather than moving forward. Management problems do not get solved.
<p>Board Members and Board Reps have competing demands on their time and attention and have often focused on PBGC-specific policy issues to a limited degree.</p>	<p>Current Board Reps believe that ERISA requires the PBGC Director to act “in accordance with the policies established by the Board.”</p> <p>The PBGC Board Reps believe that PBGC is largely an agency with the administrative responsibility to get checks to beneficiaries. They believe that PBGC does not need to address policy issues.</p> <p>In addition to investment policy and management issues, the Board should also spend time focusing on other PBGC issues, such as tools to manage terminations and strategies to strengthen its fiscal position.</p> <p>Board members have little time to focus on PBGC.</p> <ul style="list-style-type: none"> — Board Reps who act for Board members also have multiple responsibilities. <p>Historically, Board members and Board Reps have had little PBGC-related expertise, though this is not the case with the current Board Reps.</p> <ul style="list-style-type: none"> — Level of expertise may limit effectiveness. <p>Small Board size limits potential to include a wider range of expertise and diverse views.</p>

Table IV-2: Summary of Issues and Comments related to PBGC’s Current Governance Structure

	<p>Board members and Rep attention to PBGC has been inconsistent over the years.</p> <ul style="list-style-type: none"> — While at times, Board members and Reps have been actively involved, at other times they have been detached. <p>Focus on PBGC by Board Reps has been stronger at some Board departments than others.</p>
<p>PBGC has organizational and management challenges.</p>	<p>PBGC has management challenges, including difficulties with plan asset valuation and complying with federal management laws and standards.</p>
<p>PBGC’s governance lacks transparency.</p>	<p>PBGC Board meetings and Advisory Committee meetings are not open to the public. Board meeting minutes provided little information about the content of Board discussions. Lack of transparency affects Congressional oversight.</p> <ul style="list-style-type: none"> — Some issues discussed by the Board, Board Reps, and management should be open to the public, such as PBGC’s approach to determine pension plan watch lists and assessments of financial stability of plan sponsors. Delay in providing information to Congress is a transparency issue.
<p>The potential of the Advisory Committee is not fully utilized.</p>	<p>The Advisory Committee has minimal opportunity to provide advice.</p> <ul style="list-style-type: none"> — Advisory Committee receives briefings but has minimal opportunity to provide advice. Although MAP-21 mandated an annual meeting with Board members, more than a year has elapsed without a meeting.

VIEWS OF CURRENT BOARD REPS ON THE PANEL'S PRELIMINARY ASSESSMENT OF PBGC'S GOVERNANCE STRUCTURE

After interviewing the Board Reps (and others), the study team briefed the Board Reps in early April 2013 on the preliminary work of the Panel, using some potential governance options to gain their feedback. Subsequently, the Board Reps sent the Panel a letter formally responding to the briefing and to the options that the Panel had been using to develop its governance proposals. The letter made the following points.⁸²

- PBGC's principal purposes are to determine who is entitled to pension insurance benefits and to pay those benefits.
- In order for national retirement security policy to develop effectively and efficiently, the Corporation must take direction from the Board on policy matters.
- The current Board is not large enough to form committees that would enhance its operations.
- Turnover and delays in filling leadership positions can reduce PBGC's effectiveness.
- The Board can take action to more clearly delineate the roles and responsibilities of PBGC's Director and the Corporation as a whole regarding large-scale policy issues.
- Congress could enhance this effort by amending ERISA to more clearly state that policy issues reside with the Board.
- The Board lacks clarity regarding its policy-making authority.
- The Advisory Committee is not used to its full potential.

In contrast to the Panel's concerns about the level of tension between Board Reps and the Director, the Board Reps feel such tension is less of a concern and is rather a natural product of the process of setting the policies and boundaries of PBGC's activities. The Panel agrees that tense working relationships are not unique to any particular environment and can serve a useful purpose as compromises can often result in sound decisions. However, evidence from multiple parties concerning the relationships between the Board/Board Reps and various PBGC directors across multiple administrations clearly indicates that the level of tension has often undermined trust and reduced functionality. Observations by the study team of interactions between the Board Reps and the Director over the course of this review have reinforced concerns raised during interviews with past and current PBGC management, Board Reps, and others about the unhealthy level of tension.⁸³

The Board Reps noted in their letter that they previously provided materials demonstrating the extent of interaction and transparency between the Board agencies and PBGC. While materials demonstrating a far greater level of interaction between the Board (Board Reps and Rep Reps) and PBGC were provided and reviewed, it is important to note that the Board Reps did not share this letter with the PBGC Director or staff prior to submitting it to the study team. This serves as

⁸²The letter also included proposals by the Board Reps for how to address some major issues. Some of the proposals could be implemented under current law and some would require a change in law.

an example of the communication issues inherent in the current relationship between the Board and PBGC.

The letter from the Board Reps included options to address some major issues that are within their current authority and others that would require legislative changes. The complete PBGC Board Reps' letter is presented in Appendix H. The Board Reps' proposed new board structure is discussed in Chapter V of this report.

PANEL RECOMMENDATIONS THAT DO NOT REQUIRE STATUTORY CHANGES

Recognizing that any proposals the Panel makes to the PBGC governance that would require legislative changes will take time for consideration, the Panel is making a number of recommendations that can be implemented more immediately without legislative changes.

- 1. The Board should clarify the responsibilities of the Board and management of PBGC through changes in bylaws.** The Board should alter its bylaws to ensure that the Board focuses greater attention on PBGC high-level oversight. Further, the bylaws should be changed to give PBGC greater independence on budget issues and regulations.
- 2. Congressional staff should not need to go through DOL to obtain access to PBGC information.** While it is appropriate for policy-related issues to go through the relevant Administration's clearance process, additional control by DOL seems to add little value.
- 3. The Board should ensure that Board minutes convey a clear understanding of Board actions.** Although Board minutes are posted on PBGC's website, they do not convey meaningful information about Board decisions or PBGC activities. Although the Panel fully recognizes that some discussions should remain confidential, more transparency in relation to governance activities is an important goal.
- 4. The Board should have at least one open meeting per year that will provide information to and allow participation of plan sponsors, beneficiaries, and the public.**
- 5. Without further delay, the Board should schedule the required annual meeting with the Advisory Committee.** The meeting should have a substantive agenda. Consideration should be given to holding all or part of this meeting open to the public.
- 6. The Advisory Committee should have a clear statement of mission as well as operating procedures.** Clear direction for the Advisory Committee would allow it to plan a more focused approach to issues and contribute in a true advisory capacity. It would also provide new Committee members with an understanding of their roles and responsibilities.
- 7. PBGC should utilize the Advisory Committee in a truly advisory capacity by ensuring that Advisory Committee members have the opportunity to comment on**

selected reports and testimony as they are being developed, rather than merely after they are completed. While the Advisory Committee reserves autonomy for agenda-setting and scheduling, it should receive meaningful consultation by the Director and the Board. The Advisory Committee should report to both the Director and the Board. Board Reps should be allowed to attend the executive sessions of Advisory Committee meetings.

- 8. The PBGC Director should appoint a career Senior Level Executive Chief Operating Officer (COO) to help elevate, integrate, and institutionalize responsibility for key management functions and business transformation efforts to act with the functions envisioned for the COO by the Government Performance and Results Act Modernization Act (GPRAMA) of 2010.⁸⁴** This position should be responsible for overseeing the line units and the mission support functions, as well as serving as the Acting Director in the event that the chief executive's position is vacant. PBGC should also rely on guidance from the November 2007 GAO report, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, in establishing this position.⁸⁵ Specifically, PBGC should define the specific roles of this position ensuring that the COO has: (1) a high degree of authority and clearly delineated working relationships, (2) responsibility for fostering good executive-level relationships across the organization, (3) assists in integrating the PBGC management team, (4) supports appropriate transformation initiatives, (5) promotes enterprise risk management and accountability for performance across the Corporation, and (6) provides for leadership continuity.

⁸⁴ See also EO 13576, June 13, 2011, and OMB Memo M-11-17.

⁸⁵ U.S. Government Accountability Office, *Organizational Transformation: Implementing Chief Operating Officer/Chief Management Officer Positions in Federal Agencies*, GAO-08-34. November 2007.

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CHAPTER V: ALTERNATIVE GOVERNANCE STRUCTURES FOR PBGC

In theory, any governance structure can be made to work when the right people work together and build trusting relationships over time. The tension that exists between the positions of the PBGC Director and the Board, and constant turnover in those positions, have made it difficult to sustain the strong viable working relationships needed to carry out the mission of the Corporation. One question facing the Panel is whether or under what circumstances such tension might also be inherent in any board relationship, even with a board with a different membership and structure.

Over the decades, numerous reviews of the PBGC Board structure have reported serious issues in its effective functioning, with problems ranging from the Board's inattention to PBGC to its micromanagement of the Corporation. This has been the case through numerous changes in leadership and administrations. Given these longstanding challenges, it would be difficult to conclude that the PBGC's problems result simply from a deficit in skills and personalities of the individuals who have held these governance positions, rather than from fundamental flaws in the governance structure itself or perhaps from the lack of consensus regarding the goals of federal pension insurance.

Decision makers should consider a new governance structure for PBGC and base it on PBGC's responsibilities. If they change those responsibilities, then they also should consider, along the lines suggested here, whether it would be appropriate to alter the governance structure accordingly. A structure that works for another federal agency cannot be simply be copied and imposed on PBGC and expected to work equally well. While there are aspects of some federal agencies that resemble PBGC and its mission, none has the same mix of mission and function.

The Panel deliberated many questions about potential governance options:

- Should there be a Board in the first place?
- What should be the functions and authority of the Board vis-à-vis PBGC?
- How many members should be on the Board?
- How should the Board relate to a Director?
- Should the Director serve on the Board (and in what capacity)?
- What expertise should Board members have? How long should they serve, and how often should they meet?

The Panel considered a variety of options that represented wide variations in governance structures to consider their strengths and weaknesses in relation to PBGC's roles and responsibilities. The Panel also studied the history and current state of PBGC's governance. Based on the review of governance structure options and the history and current PBGC governance structure described earlier in this report, the Panel developed three models for governance as a tool to elicit feedback on the advantages and disadvantages of various approaches. These models did not represent Panel recommendations, but rather represented a range of potential structures to obtain further information and views. The continuum of models ranged from a director as head-of-agency, a director with an advisory group, and a director with

a strong governing board. These models proved effective at eliciting discussions of strengths and weaknesses of each and helped to refine the Panel's thinking.

Application of basic public administration principles and review of past studies, combined with extensive discussions with PBGC officials, relevant officials at other federal agencies, and a wide range of experts, led the Panel to conclude that fundamental changes in PBGC governance are called for:

- A single leader should be responsible and accountable for operations of the Corporation on a day-to-day basis;
- The roles of the DOL, Treasury, and DOC in PBGC's governance should change;
- As a wholly owned government corporation, PBGC should be independent of the DOL's budget process;
- PBGC should not require approval from DOL in the development of its regulations and in its relations with Congress.
- PBGC should take steps to enhance transparency of its decisions.

Each Panel member agreed on the importance of recommending these fundamental changes. Panel members differed as to the best governance structure for PBGC and recommend that the Congress consider two options.

The Panel began its analysis with the basic principle of organizational design that an agency's public purpose should determine its structure.⁸⁶ Also important in designing a governance structure is the nature and complexity of PBGC's programs. Because PBGC faces multifaceted problems, it can be difficult to distinguish the extent that these problems reflect weaknesses in the current Board governance structure, fundamental policy conflicts concerning federal pension insurance, or both. While all Panel members agreed that the existing governance structure was flawed and should be changed, some favored a strong revamped governing Board, while others favored a single-head-of-agency for the PBGC.

In both cases, a single individual would be responsible for the day-to-day operations of the Corporation. The Panel believes that PBGC needs to strengthen the quality of its internal management. Regardless of which governance structure is chosen, the Panel believes that strong management skills and experiences should be among the key criteria for selecting the PBGC Director and other senior officials.

All Panel members agree that no structure is foolproof; each option has strengths and weaknesses and depends on the skills and commitment of those who serve in governance positions. As the Panel explains below in the discussion of each of the two options, policymakers should evaluate the preferred way to improve the PBGC's governance structure based on how they view its fundamental public purpose—that is, whether they believe that PBGC must make important policy decisions within its current statutory framework, or whether they view PBGC as

⁸⁶ See, e.g., Thomas H. Stanton, "Moving Toward More Capable Government: A Guide to Organizational Design," Chapter 1 in Thomas H. Stanton, ed., *Meeting the Challenge of 9/11: Blueprints for More Effective Government*, Armonk, NY: M.E. Sharpe, 2006.

fundamentally an operating agency with considerable discretion in the implementation of federal pension insurance, but with more influential cabinet departments, the Treasury and DOL, playing primary roles with the respective Committees of Congress in determining larger pension insurance policies.

OPTION 1. AN IMPROVED GOVERNING BOARD

The purpose of the proposed Governing Board would be to provide policy direction, strategic thinking, and high-level oversight to an agency with substantial and growing deficits, many pension plans to monitor and analyze, a large beneficiary population to serve, and a history of weak governance.

The Director would be Chair of the Board and would be accountable both for PBGC operations and for leading the Board. The Director would be responsible for administering the Corporation. The Board should not be involved in daily management. By making the Director the Chair of the Board, the recommendation also restructures the relationship between the Director and the Board.

The Panel's proponents of the Governing Board option looked to ERISA's statement of purpose (section 4002) to be carried out by the PBGC as the definition of the scope of the PBGC's policy responsibilities.

Section 4002(a)(1). [T]o encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants.

To fulfill this responsibility, the PBGC develops risk mitigation and early warning reporting policies, which create the information that PBGC needs to evaluate the financial health of plan sponsors. This information goes beyond the financial condition of the defined benefit plan itself and focuses on the current and future health of the company. The purpose of the policies are to identify those companies that represent PBGC's biggest risks or even potential transactions by a particular company that could jeopardize the pension insurance program, which then allows the PBGC to step in early to negotiate the best outcome when problems are identified.⁸⁷

Section 4002(a) (2). [T]o provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries under applicable plans

To fulfill this responsibility, the PBGC must make the determination of when to terminate a pension plan. To make this decision, PBGC must perform pension plan and asset valuation and evaluate the financial future of the company. It must take action in bankruptcy cases. Accordingly, it has to determine policies for valuing pension plan benefits at or near termination,

⁸⁷ PBGC believes that risk mitigation is not a mandate but a way PBGC has found to help further its mission. Preventing plans from terminating is one way to encourage continuation and maintenance of plans, but not the only one or even the most important to this goal. Other ways to encourage the continuation of pension plans include having a fair premium system, developing investment policies that have growth elements, and being an information source and an advocate for plan sponsors and participants.

estimating losses of current and probable pension plan terminations, and valuing assets taken over at termination and during trusteeship.

These responsibilities go beyond that of a successful “write some rules and then write the checks according to the rules” operation and are analogous to the responsibilities of agencies that regulate financial institutions and provide deposit insurance.

Taking the view that the law requires the PBGC, in carrying out its mission, to make ongoing policy determinations that require more expertise and deliberation than can possibly be provided by a single head of agency, the Panel’s Governing Board option contemplates a seven-member Board governing PBGC, chaired by the PBGC Director. The Director, a PAS appointee with a five-year term at Executive Level III (as in current law), would be the operational head of PBGC. This is the key to ensuring accountability.

In addition to the PBGC Director, PBGC’s Board would include:

- Three ex-officio members selected by the Secretaries of Labor, Treasury, and Commerce to represent their respective departments. Selected representatives would not be required to be at the Assistant Secretary or Undersecretary level or be a PAS appointee. Representatives should be policy officials chosen with expertise that would contribute to carrying out the PBGC mission.
- Three part-time members (PAS) selected to bring a mix of skills in management of pension plans, finance, investments, actuarial science, large organization management, or other relevant fields. Expanding the Board by adding members of the public (i.e., non-ex-officio members) would provide a broader range of expertise than exists on the current Board. No more than two members would be appointed from the same political party. This design should attract candidates who are willing to contribute their expertise but would not be willing to leave their full time positions, should they have them. Under this option, the Board should not include representatives of designated stakeholder interests.

The Board would meet approximately six times a year, with meetings open to the public unless confidentiality warrants closed deliberations. It would publish agendas in advance and make minutes publicly available after meetings.

The Board would issue an annual report describing the Board’s accomplishments and plans for the future. This report would include policy issues debated and decided during the past year in the course of governing the corporation, such as policies that would have become part of draft and final regulations and issues for which the Board asked for additional research and analysis before making decisions. To a large extent, this would summarize information already available in an ongoing way through published meeting agendas and meeting minutes. However, because some deliberations would be confidential, information would not have been available in an ongoing way and the annual report would clarify the Board’s role and results once the decisions have been made. The annual report would also include an outline of the Board’s agenda for issues that it would expect to address during the coming year. The Board would send its Annual

Report to the President and the Congress, with copies to the Secretaries of Labor, Treasury, and Commerce, and would also make it public.

Table V-1 provides detailed information concerning the functions and composition of the Governing Board option. (“PAS” means that the position is a presidential appointment with Senate confirmation).

Table V-1 Attributes of the Proposed Governing Board	
Governance Design Attributes	Option 1: Governing Board Specifics
Responsibilities	Sets strategic vision, ensures a sound internal controls framework, formulates and directs policy decisions.
Reporting	Provides an annual report to the President and Congress on significant PBGC policy issues, financial status, and internal controls. Reports also address the planned focus for the coming year and anticipated staff/resource needs.
Director Role	Manages all PBGC operations and is the Chair of the Governing Board.
Size	Seven members
Board Member Selection	<p>Four ex-officio members. Three selected by the Secretaries of Labor, Treasury, and Commerce to represent their respective departments. They may be, but are not required to be, PAS appointees. The PBGC Director is also ex-officio.</p> <p>Three private sector presidential appointees Senate confirmed; no more than two from the same political party. These non-ex-officio members can serve until replacement member is confirmed.</p>
Term Length	<p>For non-ex-officio members, five year staggered terms, incumbents may remain until replaced.</p> <p>The Director has a five-year term and is a PAS position.</p>
Time Commitment	Part-time.
Expertise Required	Members, both ex-officio and non-ex-officio, comprise expertise in finance, pensions, investments, actuarial science, large organization management or other relevant fields.

Table V-1 Attributes of the Proposed Governing Board

Governance Design Attributes	Option 1: Governing Board Specifics
Board Meetings	Meet approximately six times per year (in person as often as possible); quorum is four members. In the unlikely event that there are no non-ex-officio members, the quorum would be reduced to three.
Standing Committees	The Board would have an Audit committee headed by one of the non-ex-officio members, and the Board could form other standing committees as necessary. While this option does not continue the current Advisory Committee, the Board could decide to have one.
Staffing	Three staff at PBGC devoted to Board work. Board has access to PBGC staff and information. Reconsideration of Board staffing needs on a regular basis.
IG Reporting	IG reports to the Director and to the Chair of the Board's Audit Committee as well. The IG provides an annual report to the full Board on the status of open recommendations.
Transparency	Board meetings are open, but can be closed if deemed needed to protect confidentiality. Agendas are available to the public in advance and minutes of open meetings are well documented and available to the public as well.

Table V-2 provides a summary of how the proposed Governing Board structure would address the problems with the current governance structure documented earlier in this report.

Table V-2: PBGC Governance Issues and How they are Addressed by the Proposed Board Structure

Current Issues	How Governance Board Addresses the Issues	
<p>Inherent tensions exist among the Board Departments and with PBGC Management on certain issues.</p>	<p>Board agencies have competing goals that may mean they take actions that are not in the best interest of PBGC.</p>	<ul style="list-style-type: none"> • The PBGC Director is Chair and a voting member of the Governing Board. As Board Chair the Director would foster compromise rather than competition. • Cabinet Secretaries select policy officials as Governing Board members with expertise that would best help PBGC as well as represent their departments. • The Governing Board includes three non-ex-officio members from the private sector with relevant expertise. • Non-ex-officio members would provide independent voices and balance. • Governing Board decisions would be melded out of expertise of multiple individuals and compromise may moderate extremes. •
	<p>DOL treats PBGC as it does other DOL programs rather than as an independent corporation housed in DOL.</p>	<ul style="list-style-type: none"> • PBGC would be independent of DOL in developing its budget and regulations, and in its relationship with Congress. DOL would participate in the executive branch processes as would other agencies.
	<p>Tensions between Board Reps and Director results in distrust that undermines effectiveness.</p>	<ul style="list-style-type: none"> • Governing Board decisions are melded out of expertise of multiple individuals and compromise may moderate extremes. • Having the Director Chair the Governing Board would foster compromise rather than competition.
<p>Complex lines of authority lead to boundary issues between the Board and PBGC Leadership.</p>	<p>Lack of agreement on the boundary between responsibilities of the Board and the PBGC Director has led to friction and distrust.</p>	<ul style="list-style-type: none"> • Governing Board members are responsible for setting strategic vision; ensuring a sound internal controls framework; and formulating and directing policy decisions. • The PBGC Director is responsible for managing the operations of the Corporation; also serves as Chair of the Governing Board.

Table V-2: PBGC Governance Issues and How they are Addressed by the Proposed Board Structure

Current Issues	How Governance Board Addresses the Issues	
	Board oversight focus is inconsistent.	<ul style="list-style-type: none"> • The Governing Board is charged with a high-level oversight function, ensuring that PBGC is responsive to IG and GAO recommendations and to ensure sufficient internal control. • An audit committee focuses attention on major oversight issues. • IG reports to the Director and the Chair of the Board’s Audit Committee and provides an annual report to the Board on open recommendations.
<p>Board Members and Board Reps have competing demands on their time and attention and have often focused on PBGC-specific policy issues to a limited degree.</p>	Board members have little time to focus on PBGC.	<ul style="list-style-type: none"> • Governing Board includes three non-ex-officio members from the private sector. • Ex-officio Board members are not Cabinet Secretaries. They are policy officials selected by the Secretaries of Labor, Treasury, and Commerce to represent their respective departments. They may be, but are not required to be, PAS. • Six board meetings per year; quorum is four members—three if vacancies in all non-ex-officio member appointments. • Provide staff support to the Board.
	Some Board members and reps have little PBGC-related expertise.	<ul style="list-style-type: none"> • Non-ex-officio members are selected based on their skills and experiences in PBGC-related issues. Department Secretaries should appoint ex-officio members with relevant skills and experiences as well.
	Small Board size limits potential to include a wider range of expertise and diverse views.	<ul style="list-style-type: none"> • Non-ex-officio members are appointed because they have expertise in finance, pension, investments, actuarial science, large organization management or other relevant fields.
	Board members and Rep attention to PBGC has been inconsistent over the years.	<ul style="list-style-type: none"> • Six board meetings per year; quorum is four members. In the unlikely event that there are no non-ex-officio members, the quorum would be reduced to three.
	Some Board members and Reps do not believe that PBGC has important policy issues that require consideration.	<ul style="list-style-type: none"> • The Governing Board is responsible for formulating and directing policy decisions. • The Governing Board provides an annual report to the President and Congress on significant policy issues and the planned focus for the coming year.
	There is little focus on PBGC-specific policy issues beyond investment policy.	<ul style="list-style-type: none"> • The Board may choose to form standing committees to focus on policy issues.

Table V-2: PBGC Governance Issues and How they are Addressed by the Proposed Board Structure

Current Issues		How Governance Board Addresses the Issues
Historically, important leadership gaps in the Board Departments and in the PBGC Director's tenure have occurred.	Turnover of members and reps is significant.	<ul style="list-style-type: none"> • Governing Board members who are non-ex-officio have five-year, staggered terms; incumbents can remain until replaced. • Set the quorum at four of the seven members or at three in the unlikely event that there are no non-ex-officio members. • Three non-ex-officio members could be a means of maintaining institutional knowledge through changes of administrations. • The bi-partisan composition of the board may encourage timely appointment of nominees.
	Turnover of Directors leads to ineffective management.	<ul style="list-style-type: none"> • Clear lines of authority may make the Director position more attractive for incumbents to serve their full term. • When there is turnover, COO will be prepared to serve effectively in an acting capacity.
PBGC has organizational and management challenges.	PBGC has management challenges, including difficulties with plan asset valuation and complying with federal management laws and standards.	<ul style="list-style-type: none"> • A career Chief Operating Officer would serve as the number two official at PBGC. The COO would lead and integrate performance and management improvement and reforms as envisioned in the GPRAMA of 2010. • The Board would serve a high-level oversight function and not be involved in day-to-day management.
PBGC governance lacks transparency.	PBGC Board meetings and Advisory Committees are not open to the public. Board meeting minutes proved little information about the content of discussions.	<ul style="list-style-type: none"> • Governing Board would meet six times a year. • Governing Board meetings include both open and closed sessions. • Agendas are published in advance and minutes of open meetings are well documented and available to the public shortly after meetings. • Annual reports are available to the public.
The potential of the Advisory Committee is not fully utilized.	Advisory Committee has minimal opportunity to provide advice.	<ul style="list-style-type: none"> • This expertise would be used directly by the Governing Board. Members of the public who might have been considered for (or are members of) the Advisory Committee could be considered for non-ex-officio Board seats. • The Governing Board proposal would eliminate the current requirement for an Advisory Committee, making use of these talents on the Governing Board itself. As described above, the Governing Board may choose to establish standing committees when they would be useful.

This option has a number of advantages that are described below.

A Governing Board Would Make Use of Expertise

The proposed Governing Board structure would improve on the past experience of the three PBGC Board members at times neglecting PBGC issues because as Cabinet Secretaries they had to devote their primary attention to their Departments. The proposed structure would include ex-officio appointees below the Secretary level as members, many of whom were active as Board Reps over the last several years. In addition, while the historically underutilized PBGC Advisory Committee has largely seen the expertise of its members ignored, the proposed Governing Board would shift that expertise and multiple viewpoints to a Governing Board membership with clout.

The fact that PBGC has been able in the past to recruit highly skilled and talented individuals to its Advisory Committee, despite its lack of involvement in PBGC issues, indicates that there would be highly qualified candidates willing to serve as Board members. Their specialized expertise in this complex area would bolster and enhance the expertise of the Director and senior staff.

Although the Governing Board option would give authority to the Director for managing PBGC on a daily basis, responsibility for policy decisions and high level oversight would be in the hands of the Board. While the Director would Chair the Board and have substantial influence on Board decisions, the Director could not fully control them. Indeed, the other members of the Governing Board could adopt policies that might not be consistent with the views of the Director. This potential for disagreement would be the price of including a broader range of expertise and viewpoints in the development of policies. In addition, the bipartisan nature of the proposed Governing Board almost ensures that decision making by the Board will be complex, time consuming, and involve compromise.

While this could lead to similar tensions that have sometimes existed in the current governance structure, having the Director on the Board may in part reduce this “we-they” relationship and foster compromise rather than competition. Consideration of multiple perspectives presented by people with various experiences as policies are being developed and implemented would ensure that the President, the Congress, and the public could rely on full consideration of alternatives with attention to balance and fairness before a policy was proposed to Congress or implemented by the PBGC. These multiple viewpoints and pragmatic experiences would also provide reinforcement to strengthen PBGC management. An additional benefit of the proposed Governing Board is the potential to handle additional policy responsibilities that the Congress might authorize, such as setting PBGC premiums within Congressional guidelines.

A Governing Board Would Enhance Oversight

A crucial part of the Governing Board’s role would be its oversight function. The expectation here is that the Board would work as a safety net to ensure that sufficient internal controls are in place and that the Director and senior management are appropriately responsive to critical IG and

GAO audit recommendations. The Governing Board would establish an audit committee⁸⁸ that would assist the Director by focusing attention on these issues. The audit committee would be chaired by one of the non-ex-officio members and would have responsibility for overseeing resolution of issues raised not only by financial audits, but also by “performance” audits that review the efficiency and effectiveness of PBGC operations. Utilizing an audit committee to focus attention on critical oversight issues can push the Director and Corporation management to take appropriate actions. An audit committee could, for example, consider an agency-developed action plan, be briefed at specific milestones, and provide feedback on progress. The Director would be responsible for overseeing the staff in the activities required to achieve milestones.

The potential issue here is drawing the line between a focus on broader issues as opposed to delving into day-to-day operations that are the purview of the Director. Carefully crafted bylaws, as well as the demands of the other roles of the Board (that must be completed within the limited amount of time they would have to devote to PBGC work), may mitigate against micromanagement by the Board.

A Governing Board Would Provide Continuity

The frequent turnover that has occurred in the PBGC as currently structured has adversely affected maintenance of institutional knowledge. In this governing board option, the non-ex-officio members would be a means of maintaining that knowledge through changes in administrations, as well as through turnover for other reasons. The five-year staggered terms, and the provision that non-ex-officio board members can remain in office until their replacements are appointed, should assure that some board members will remain through changes in administrations.

These non-ex-officio members would have to submit to the lengthy process of Presidential appointment with Senate approval, which could result in vacancies on the Board. Longer terms and the ability to retain members with expiring terms until their replacements can be confirmed, however, may reduce the problem at least somewhat. The bipartisan composition of the Board may help to encourage timely appointment of nominees. Setting the quorum at four with a full membership can help to ensure that the Governing Board can continue to function in the event of vacancies.

The Proposed Governing Board is Structured to Minimize “Special Interests”

A non-ex-officio member of the Governing Board would be selected for his or her expertise, not as a representative of a stakeholder group or segment of the economy. While members of a government board do not take a fiduciary oath as do members of a private sector board (to protect shareholders), they are expected to keep the interests of achieving the PBGC’s mission as primary. Their selection based on their expertise, the number of members, the mix of ex-officio and non-ex-officio members, and the transparency of their work should minimize the likelihood that members would act in the interest of a particular group and help them work toward

⁸⁸ PBGC pointed out that, in MAP-21, Congress recommended the establishment of an audit committee, but that was not possible with a 3- person board composed of people who couldn’t devote the time.

consensus. Policies should be set with due regard to future taxpayers given PBGC's long-term deficit and the possibility that the funding gap would be bridged by future Congresses.

Differences between the Panel's Governing Board Option and the Current Board Reps' Suggestions

As discussed earlier, the Board Reps sent a letter to the Panel Chair in May 2013 to offer their suggestions how to resolve some of the problems with the current governance structure (see Appendix H). One of their proposals was to expand the Board to ten members, seven voting and three non-voting, including:

- Two members each from Labor, Treasury and Commerce, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with the Chair being a member from the Department of Labor and adding the PBGC Director to the Board, as a voting member; and
- Three non-voting members selected from the current PBGC Advisory Committee.

The Panel is concerned that this model would not provide the range of expertise needed and may promote rather than diminish the level of competing priorities that affect the current structure. If implemented, this structure could result in as many as six departures during a change of administration, which would hinder institutional memory and, as new members are appointed, put the majority of the Board on a steep learning curve. Also, if a DOL representative continues to serve as Chair, PBGC will not gain the greater independence from the department that the Panel believes is necessary; instead, under its Governing Board option, the Panel would make the PBGC Director the Chair of the Board.

The Panel's Governing Board option would give each Secretary the discretion to appoint a policy official below the level of Assistant Secretary if there is a policy official with expertise that would best help the PBGC as well as represent the department. The Panel also believes that the non-ex-officio members should be voting members if their expertise is to have an impact, that they should not represent particular stakeholder interests (as do members of the current Advisory Committee), and that a ten-member Board would be unwieldy.

OPTION 2. SINGLE HEAD OF AGENCY WITHOUT A GOVERNING BOARD

Option 2 begins with two propositions:

- PBGC's primary function relates to implementation of the Corporation's operating responsibilities under ERISA; and
- PBGC is not a powerful enough agency, especially vis-à-vis the departments currently represented on the PBGC Board, to play a major role in large policy decisions relating to federal pension insurance.

It follows that the most important value-added of the PBGC should be good management of the federal pension insurance programs that ERISA entrusts to the corporation.

Option 2 then builds upon a long history of federal departments and agencies headed by a single official. Straight lines of authority through a single agency head help to improve the quality of management in ways that a multi-member governing board would tend to complicate. Having a single agency head reduces the possibility of friction between a board and the agency head and also improves accountability. The agency head can be held directly to account in ways that are not possible with a governing board that can shift blame among its members, and to the agency's top executive, for poor decisions.⁸⁹

Option 1 of this report seeks to institutionalize divergent policy views in one governing board. By contrast, Option 2 proposes that policymakers recognize PBGC's limited ability to affect larger policy issues concerning federal pension insurance, especially relative to the more powerful DOL and Treasury and the Congress, where large pension policy issues play out across multiple authorizing committees. Given this reality, PBGC should be governed as an operating agency, with a single head. Recognizing PBGC's limited ability to affect larger policies governing the scope and cost of federal pension insurance can help to focus PBGC on its essential role of ensuring that federal pension insurance is properly administered. The PBGC Director should be selected primarily for his or her management strengths rather than for policy skills.

Under this option, the PBGC Director would continue to be an Executive Level III position, appointed by the President, confirmed by the United States Senate, and serving at the President's pleasure. The Director would have full authority and responsibility to manage the Corporation on a daily basis; to represent the Corporation to external stakeholders; set the Corporation's strategic direction, and prepare and make required plans and reports. Recognizing the importance of having an institutionalized capacity for outside advice, this option would include an Advisory Committee to advise the PBGC Director on matters of implementation of federal pension insurance for which PBGC is responsible. Advisory Committee members would be appointed by the PBGC Director. In addition, the Director could appoint other advisory committees (either continuing or ad hoc) for outside input at his or her discretion, for example, with respect to specialized subjects such as the state of PBGC's information systems. PBGC would continue to be subject to provisions of the Inspector General Act and other laws and forms of accountability that apply to federal agencies. PBGC would continue to be exempt from accountability structures, such as an audit committee, that are suited to the private sector but that would be inappropriate and redundant for a government agency that is subject to the Chief Financial Officers Act, Inspector General Act, and other distinctively governmental forms of accountability.

⁸⁹ This has been understood from the early days of the Republic. Alexander Hamilton explained in the Federalist No. 70 that, while the legislative function is properly carried out by a deliberative body, a governing council at the top of the Executive Branch could diminish and undermine the executive's ability to act effectively, and also would reduce the executive's accountability. Alexander Hamilton, John Jay, and James Madison, *The Federalist*, No. 70, "The Executive Department Further Considered," March 18, 1788, available at http://thomas.loc.gov/home/histdox/fed_70-2.html.

Public administration experts have long supported the idea that there should be single heads rather than governing boards at the top of federal agencies. The First Hoover Commission in 1949 stressed the importance of clean lines of authority:

Responsibility and accountability are impossible without authority—the power to direct. The exercise of authority is impossible without a clear line of command from the top to the bottom, and a return line of responsibility from the bottom to the top.⁹⁰

As indicated in Chapter III, the Academy has repeatedly applied these principles in studies of agencies serving a broad range of public purposes. Once the focus is on improving management, the choice between a single head and a board does not depend on the particular public purposes that an agency carries out. Thus, in 1984, an Academy Panel recommended against placing a governing board at the top of the Social Security Administration when the Congress was deliberating whether to place a board into its governance structure. The Academy Panel report to the Congressional Panel on Social Security Organization stated that:

[T]o the extent that management needs dictate the form of leadership, it is strongly advocated that a single commissioner be appointed and that the use of a board be avoided as neither necessary nor desirable.⁹¹

The Congress agreed with the Academy's assessment and the Social Security Administration remains governed by a single head.

This discussion of Option 2 first discusses the importance of management in PBGC's role and then turns to discussion of reasons why the single agency head is superior to placing a new governing board at the top of PBGC.

PBGC's Most Important Value-Added Should Be Good Management of the Federal Pension Insurance Program

As this report and numerous other reports document, federal pension insurance is running large and increasing liabilities that exceed projected returns from federal insurance premiums and other revenues that PBGC collects. The law does not provide PBGC with authority to affect most of the major policy parameters that determine the scope and cost of federal pension insurance, such as the level of pension insurance premiums, extent of coverage of retiree benefits, and funding rules for insured plans.⁹² If this were to change so that PBGC gets authority to determine important aspects of federal pension insurance policy, such as true premium-setting authority, then the choice between a single-headed agency and an agency with a governing board

⁹⁰ The Hoover Commission Report on Organization of the Executive Branch of Government, February 5, 1949, 3.

⁹¹ National Academy of Public Administration, *Management Reforms as a Part of Organizational Independence*, report to the Congressional Panel on Social Security Administration, May 1984, 1-2.

⁹² The last two administrations and GAO have proposed giving PBGC the authority to set premiums, but Congress has not acted on these recommendations.

should be revisited. As indicated in the discussion of Option 1, any such board should not include representatives of designated stakeholder interests.

One area in which PBGC does have significant policymaking authority concerns how it should invest its premium income and acquired assets. During the course of its history, PBGC's investment strategy has swung several times between heavily favoring fixed income securities and opting for a balance of fixed income securities and equities. Workers and retirees with defined benefit pension plans have a large stake in the success of the investment strategies pursued by both their companies and the PBGC. While pursuit of higher returns through a strategy favoring equities may seem attractive, such a strategy has a serious downside risk. By investing in fixed income securities, pension fund managers can be assured that their funds will grow to predetermined amounts to make pension payments to retirees on specific future dates. Hence, such investments are well suited to meeting the obligations of pension funds. Equities are volatile. An economic downturn can cause a significant loss in value of PBGC's investment funds that could make meeting payment obligations difficult. For this reason, some experts advise that pension funds invest largely in fixed income securities.⁹³ Exercising PBGC's investment authority in this manner would minimize the range of policy decisions to be considered and would thereby reduce the need for extensive policymaking by PBGC leadership, whether by a board or a single agency head.

The Panel agreed on the matters that PBGC must decide. These include prescribing reporting standards for plans, working with companies to keep their plans, deciding whether and when to take over a plan, and taking necessary legal action to terminate a plan. PBGC must also value and manage financial and other assets and develop standards to implement the Corporation's limited ability to prescribe fees. Where the options differ is that Panel members supporting Option 1 view these as matters that would benefit from deliberation by a board while Panel members supporting Option 2 view these as largely operational decisions that require discretion, but will only marginally affect the scope and cost of the federal pension insurance programs that PBGC administers.

The current PBGC Board would seem to support the view that PBGC is an operating agency charged with implementing laws that the Congress has enacted. In their joint letter to the Academy Panel ("the PBGC Board letter"), the three Board representatives, Phyllis C. Borzi, Assistant Secretary of Labor, Mark E. Doms, Under Secretary of Commerce, and Mary John Miller, Under Secretary of the Treasury, all made this point:

At the outset, we note that PBGC is not as similar to the Federal Deposit Insurance Corporation (FDIC) as one might think at first glance. The FDIC is primarily a bank examining and regulating entity. Its operations affect banks nationwide and directly affect the operations of each of those banks. *In contrast, PBGC is primarily a benefit*

⁹³ See, for example, Zvi Bodie, "On Asset-Liability Matching and Federal Deposit and Pension Insurance." *Federal Reserve Bank of St. Louis Review*, July/August 2006, 88(5), 323-29.

*payment entity. Its principal purposes are to determine who is entitled to pension insurance benefits and to pay those benefits [emphasis added].*⁹⁴

In other words, the three representatives of PBGC's current Board, who otherwise might differ on matters relating to federal pension insurance policy, view PBGC as primarily an operating agency, implementing the law to determine who is eligible for federal payments and then making those payments.

Whether or not that view of PBGC's primary responsibilities is somewhat restrictive, the Academy Panel members who favor Option 2 have concluded that PBGC's primary value-added as a federal agency relates to management of the federal pension insurance program. While PBGC should contribute data to policymakers and information about operational issues relating to choices that policymakers may face, final decisions about federal pension policy rest with the Administration and Congress. As the PBGC Board Reps' letter notes, PBGC can contribute "expertise and information" that is useful to policymakers about operational issues. In testimony to the Congress, for example, PBGC could help to inform the debate by pointing to the implementation issues involved in various policy alternatives under congressional consideration.

It is true that, under the law, PBGC is responsible for encouraging the continuation and maintenance of voluntary private pension plans for the benefit of their participants, and this would appear to be primarily an advocacy function. As a federal agency that focuses on federal pension insurance, and that has access to significant data not available elsewhere in government, PBGC has been able to play a useful role in drawing attention to larger policy issues such as the looming liabilities of PBGC-insured multiemployer pension plans and the need for risk-based premiums. This a valuable contribution for which a Board is not required. Oversight organizations such as the IG, GAO, and congressional committees should focus on holding PBGC accountable for its primary responsibility of effectively managing implementation of federal pension insurance.

⁹⁴ Letter from Phyllis C. Borzi, Assistant Secretary of Labor, Mark E. Doms, Under Secretary of Commerce, and Mary John Miller, Under Secretary of the Treasury, to Thomas H. Stanton, "Re: Governance Study of the Pension Benefit Guaranty Corporation," May 29, 2013, reproduced in Appendix H to this report.

The Best Governance Structure for Promoting Good Management is to have a Single Official, Rather Than a Governing Board, at the Top of an Agency

Especially because PBGC is primarily an operating agency it should be governed by a single head. A governing board is unlikely to be able to make a significant contribution to improving PBGC management and may get in the way. Many reasons support this conclusion. Perhaps the best articulation of those reasons came from the Academy report on the Social Security Administration, reproduced below. The Social Security Administration and PBGC carry out quite different responsibilities; however, regardless of the particular role that each operating agency plays, the following observations apply:

Governance of an Operating Agency: The Choice Between a Single Administrator and a Board

In management terms, the most important point is that it is almost universally agreed that single administrators are far more effective and accountable than multi-person boards or commissions, bipartisan or otherwise.

Again in management terms, a board is not a necessity and is not desirable. Even if a board's role is carefully defined and its membership carefully selected, history strongly suggests that it is almost impossible to keep such a board from interjecting itself into the management of the organization which it stewards. While such interjections are occasionally useful, the likelihood is that they would end up confusing and debilitating the authority of the agency head, creating conflict for the staff, and becoming another layer of management which adds little and detracts much. Furthermore, the composition of such boards becomes an issue in itself, and all too often breeds preoccupation with diversionary issues of balance, representativeness, or political fairness, rather than the ability of such boards to contribute to the success of the program.

Where boards attempt to manage programs directly without an authoritative manager (administrator, executive director) they have proved most often to be ineffective.

Source: National Academy of Public Administration, Management Reforms as a Part of Organizational Independence, report to the Congressional Panel on Social Security Administration, May 1984, 1-2.

For many reasons, a single full-time agency head can make better management decisions than a multi-member board.

The agency head serves full-time in a management capacity.

Serving with direct responsibility and authority allows the agency head to master complexities of operations that a board only learns about second-hand from reports and presentations. By contrast, designing a board involves a dilemma: does one include some or a majority of part-time members? Part-time members are unlikely to master the complexities of operations of managing an agency such as the PBGC. On the other hand, if one appoints full-time members of a board, these people are likely to have time on their hands that can turn into make-work and an effort to look productive even when information asymmetries make it hard to know what is really going on.

If board members do not also serve in an executive capacity with an organization, they will tend to lack the operational knowledge that is available to those who are executives. This is true even of very sophisticated boards. A private-sector example illustrates the problem, which is an issue for government boards as well. The JPMorgan Chase (JPM) Board of Directors discovered only after-the-fact that the London Office of their company had made major mistakes that cost JPM \$6.2 billion in 2012. This occurred even though JPM's Board included active audit and risk committees. The JPM Board issued a report that emphasized that it could not make sound decisions without access to good information:

The ability of the Board or its committees to perform their oversight responsibilities depends to a substantial extent on the relevant information being provided to them on a timely basis...Because the risks posed by the positions in the [London office] were not timely elevated to the Risk Policy Committee as they should have been or to the Board, the Board and the Risk Policy Committee were not provided the opportunity to directly address them.⁹⁵

The same problem can arise for the board of a federal agency. Whether a governing board or an oversight board, the reality is that—as the JPM board found last year—board members too often will lack the information they need even to ask the right questions. That can be especially true when, as happened in JPM's case, management seems predisposed to dismiss public reports as “a complete tempest in a teapot.” There is simply too large an information gap between board members and the agency they are supposed to oversee.

Many of the oversight shortcomings of the current PBGC Board, as described in Chapter IV of this report, would seem to reflect the disparity in access to information of the operating agency vis-à-vis a board with only limited time and resources to devote to its oversight responsibilities. This disparity tends to limit the value that oversight by any board can add compared to other accountability tools such as an inspector general, reviews by the Government Accountability Office, and the many federal management laws and requirements that apply to government agencies and that often are supervised by outside organizations such as the Office of Management and Budget and congressional authorizing, appropriations, and oversight committees.

The agency head can make better decisions than a board.

Especially because PBGC lacks a significant role in fundamental policy issues concerning the cost and scope of federal pension insurance, a board is likely to involve itself in major management issues. In implementing ERISA, however, a single agency head is likely to make better, and timelier, decisions than a board.

Because the agency head manages direct reporting relationships with his or her subordinates, he or she can receive information more quickly than a board, can make more prompt decisions, and can follow up decisions both to ensure that they are carried out and to modify them based upon

⁹⁵ *Report of the Review Committee of the Board of Directors of JPMorgan Chase & Co. Relating to the Board's Oversight Function With Respect to Risk Management*, January 15, 2013.

additional information. By contrast, a board must convene, request information, debate available options, possibly request additional information from the executive, and then try to ensure that its directions are properly implemented.

The Board is a committee and committees tend to compromise or perhaps (as in the case of this Academy study panel) to split on the vision of an appropriate option to select. Especially for an operational agency such as PBGC, crisp decisions are much easier to implement, can be carried out in a consistent manner, and can better be aligned with the agency's strategic and performance plans.

A board tends to function much less effectively in government than in the private sector (although even in the private sector they can have difficulty staying on top of issues, as in the JPMorgan case discussed above). Members of the board of directors of a private corporation have a fiduciary responsibility to represent the interests of shareholders, and often hold a financial stake in the company. This creates a significant incentive to come to agreement about the desired direction for the organization. By contrast, members of a government board have no such incentive to act in a collaborative fashion. Indeed, the appointees to a government board are likely to be appointed in a way that encourages divergent views on major issues and -- in the case of departmental members -- to prioritize protection of interests of their respective departments. The lack of a working consensus can create delay and impede the ability of agency managers to act in the best interests of the organization and its mission.

There also can be friction between a board and the agency head. One area of continuing potential friction relates to the division of responsibilities and jurisdiction between a board and the agency head. However the formal boundary may be specified, issues inevitably arise that potentially create disagreement. That has occurred in the current structure with respect to differing perspectives about ERISA's provision specifying that PBGC be "housed" in the DOL. Depending on the personalities involved, relations between any board and any agency head may range from good cooperation to significant tension.

As was recounted above, representatives of the current PBGC Board sent a letter to the head of the Panel expressing their opinion about the role of the PBGC and making recommendations about the governance structure. It was striking to the Panel that some weeks later, the PBGC contacted the study team asking about the letter because the PBGC Board Reps had never sent a copy to PBGC. This provided a stark example of the types of poor communications that can arise between a board and an agency. Interviews with informed observers of the PBGC reinforce this concern, as was reflected in Chapter IV. Even when the agency head also chairs the board, observers of federal independent regulatory commissions have witnessed poor communication and friction that can occur from time to time between board members and the Board Chair.

The single agency head is more likely to possess necessary qualifications than are governing board members.

For both the single-head of an agency and a multi-member board, problems can arise if people appointed to those positions do not possess the requisite backgrounds, experience or stature. This issue can be addressed in part by writing minimal qualifications into the authorizing statute, but such language still does not assure high quality appointments. Since an agency head serves at the

pleasure of the President of the United States, as was seen in the recent resignations of the heads of the General Services Administration and the Internal Revenue Service, the President may terminate, formally or more indirectly, the appointment of an agency head if their performance is not considered adequate. This can be more complicated for a governing board.

A major problem arises if appointments either of an agency head or to a governing board reflect stakeholder interests rather than representing interests of strong and capable management of an operating agency. In both cases, these issues can be partially addressed in statutory and report language and also perhaps at a confirmation hearing. However, to the extent that the law prescribes or implies that board members reflect stakeholder interests, stakeholder members of a board are likely to represent the interests of the groups from which they have been appointed. That could mean that some stakeholders may seek to direct benefits of PBGC's operations to serve their particular interests. Conflict-of-interest rules cannot cure this problem since PBGC may deal with companies and plans in which a board member may not have a specific interest, even though the board member stands firmly and consistently on the side of the decision that they as a stakeholder favor.

Indeed, in some government programs some stakeholders may even have an incentive to impede rather than enhance some operations. An operating issue such as the rules governing whether to defer taking down an underfunded pension plan could potentially be fraught with stakeholder interests. To be sure, the Panel has not analyzed the interests of individual stakeholders of the federal pension insurance program with respect to this point. However, the basic point remains: the views of special interests are best represented on an advisory committee rather than exerting influence within the governance structure of a federal agency, and especially one that dispenses billions of dollars of benefits.

A single head of agency can be made more accountable than is possible with a multi-member board.

Accountability is important to keep an agency out of trouble, to permit prompt identification of problems when they arise, and – by identifying mistakes and responsibility for mistakes – to help rectify problems that occur. When there is a single agency head it is easy to identify the person who ultimately knew or should have known of emerging problems.

By contrast, when a multimember board governs an agency, various officials, each of whom may have had a role in part of the mistaken decision that led to a problem, may tend to point at one another. The diffuse responsibility of multiple decision makers may be most impenetrable when a problem arises from inaction. Each member of the board may find grounds to point to others when they explain why they personally did not detect the problem in time.

The bottom line, for accountability as for good management generally, is that a clear line of authority to a single head of an agency is the best way to allow the agency the capacity and flexibility that it needs to operate. Under most circumstances, assigning responsibility to a committee is not a recipe for effective operations. The PBGC's primary work – deciding whether and when to terminate an underfunded plan of a troubled company, determining who is entitled to pension insurance benefits, and paying those benefits – requires skilled people, good

systems, strong management processes, and clean lines of authority among decision makers. This work, largely operational, involves decisions that are too important and too complicated to leave to the predilections of a governing committee situated at the top of the organization.

PANEL RECOMMENDATIONS

The Panel recommends that the current governance structure of PBGC be changed significantly:

- PBGC should not require approval from the DOL in the development of its budget and regulations, or in its relations with Congress.
- Congress should make statutory changes to PBGC's governance structure based on its view of PBGC's primary public purposes and appropriate role.

If Congress determines that PBGC has significant policy responsibilities, it should adopt the Governing Board presented in Option 1. This would establish an expanded Board to include a seven-member Board of Directors chaired by the PBGC Director. The Director, a Presidentially-appointed Senate-confirmed (PAS) appointee, would be the operational head of PBGC. The new Board would include DOL, Treasury, and DOC representatives selected by the Secretaries of each Department, as well as three part-time PAS members from the private sector with a combination of skills in areas including pension plan management, finance, investments, and actuarial science. No more than two non-ex-officio members would be appointed from the same political party.

If Congress determines that PBGC should primarily be an operating agency, without higher-level policy authority concerning benefits and costs of federal pension insurance, it should make the PBGC Director the single head of PBGC, as presented in Option 2. The PBGC Director would continue to be an Executive Level III position, appointed by the President and confirmed by the U.S. Senate, and serve at the President's pleasure. The Director would have full authority and responsibility to manage the Corporation on a daily basis; to represent the Corporation to external stakeholders; to set strategic direction according to applicable law; to prepare strategic plans, and other Corporation reports; and to set investment policy within prescribed limits.

With respect to the current Advisory Committee, Option 1 would provide some of the value of that structure by utilizing a Governing Board that would include the types of skills of those currently on the Advisory Committee. Option 2, with a single agency head, includes an Advisory Committee whose members and portfolio are determined by the Director.

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CHAPTER VI: PBGC COMPENSATION

To support its mission and address existing and future challenges, PBGC must have a highly qualified and motivated workforce. PBGC officials have suggested that the Corporation's current compensation system has placed them at a disadvantage when competing for talent compared to the private sector and other federal financial regulators. The Academy was asked to review the compensation structure for key occupations at PBGC, review the current state of PBGC's recruitment and attrition, assess the hiring and retention data of PBGC, financial regulatory agencies, and other federal agencies, and compare patterns to determine the effects of PBGC's existing compensation structure on its recruitment and retention of key personnel.

The findings and conclusions in this chapter are based on both qualitative and quantitative research. The study team interviewed PBGC officials and met with their human resources staff. The study team also reviewed and analyzed:

- Literature and documents, including PBGC's legislative history, the PBGC Human Capital Strategic Plan (2010-2014), GAO reports, and literature on federal government retention and attrition;
- PBGC workforce data, and FedScope's recruitment and retention data for PBGC⁹⁶, FIRREA agencies, and all other federal agencies; and
- Results from PBGC exit surveys and the Federal Employee Viewpoint Survey.

OVERVIEW OF THE PBGC WORKFORCE

PBGC's projected financial liabilities have increased significantly, along with its workload, since it was established by ERISA in 1974. In 1975, the PBGC had taken over three pension plans, with a total of 400 beneficiaries.⁹⁷ PBGC is now responsible for about 26,000 private sector defined benefit pension plans, covering about 43 million American workers⁹⁸ and paying retirement benefits to nearly 1.5 million people.

PBGC had 965 employees in FY 2012.⁹⁹ In its Human Capital Strategic Plan (2010-2014), PBGC identified eight mission critical occupations: Accountant, Actuary, Attorney, Auditor, Employee Benefits Law Specialist, Financial Analyst, Information Technology Specialist, and Procurement Specialist. In FY 2012, more than half of PBGC's employees worked in these eight key occupations (see Table VI-1). The workforce analysis in this chapter mainly focuses on these eight occupations, as they are considered the critical occupations at PBGC.

⁹⁶ See Appendix I for detailed FedScope Data Analysis Methodology

⁹⁷ U.S. Government Accountability Office. *A More Strategic Approach Could Improve Human Capital Management*. GAO-08-624. (Washington, DC.: June 2008), 5.

⁹⁸ U.S. Pension Benefit Guaranty Corporation, *FY 2012 Annual Report*, 1.

⁹⁹ PBGC also has 1,316 contractors. Only Federal employees are included in this analysis

Table VI-1: PBGC Employees in Key Occupations (FY 2009—2012)								
Occupation	2009		2010		2011		2012	
	# of Staff	Percent of Total Staff	# of Staff	Percent of Total Staff	# of Staff	Percent of Total Staff	# of Staff	Percent of Total Staff
Accountant	58	6	57	6	59	6	61	6
Actuary	87	10	99	10	98	10	97	10
Attorney	98	11	105	11	108	11	106	11
Auditor	97	11	100	11	101	10	100	10
Employee Benefits Law Specialist	38	4	64	7	66	7	66	7
Financial Analyst	36	4	34	4	41	4	42	4
Information Technology Specialist	87	10	92	10	98	10	106	11
Procurement Specialist	15	2	15	2	16	2	14	2
Subtotal—Key Occupations	516	56	566	60	587	60	592	61
Total Staff—All Occupations	916		948		978		965	

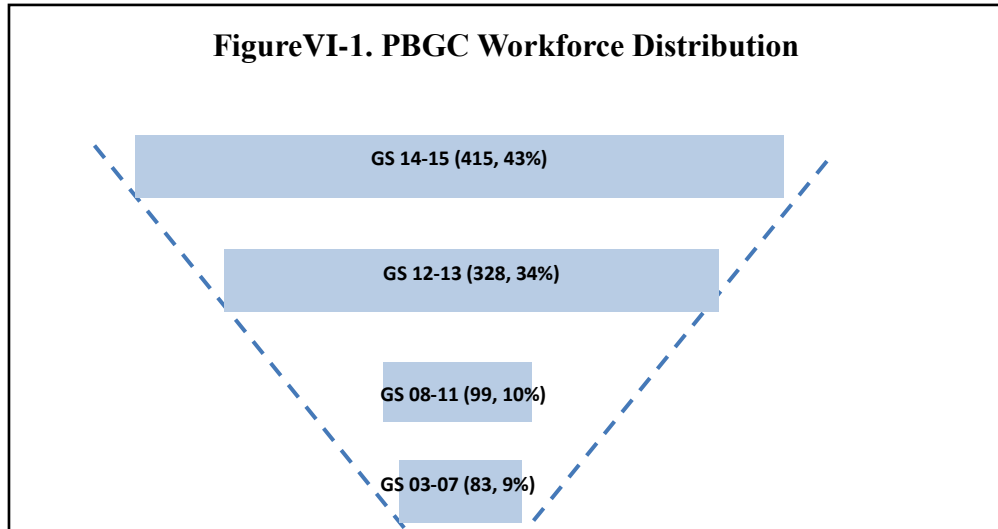
Source: Fedscope www.fedscope.opm.gov; includes count of all employees in key occupations at the end of each fiscal year. Note – detail for percentages may not add to total because of rounding.

COMPENSATION STRUCTURES IN PBGC AND AT FINANCIAL REGULATORY AGENCIES

PBGC Pay Structure

Under Title 5 of the U.S. Code, PBGC follows the General Schedule (GS), which is the regular federal pay system used by most agencies. Unlike the average federal agency profile, PBGC’s workforce distribution can be depicted as an “inverted pyramid,” with 415 GS 14-15 employees, 328 GS 12-13 employees, 99 employees at the GS 08-11 level, and 83 GS 03-07 employees (see Figure VI-1 below). Although not included in this figure, PBGC has 40 Senior Level (SL) positions, of which 35 were filled as of FY 2012.¹⁰⁰ About 77 percent of the PBGC workforce are GS-12 and above.

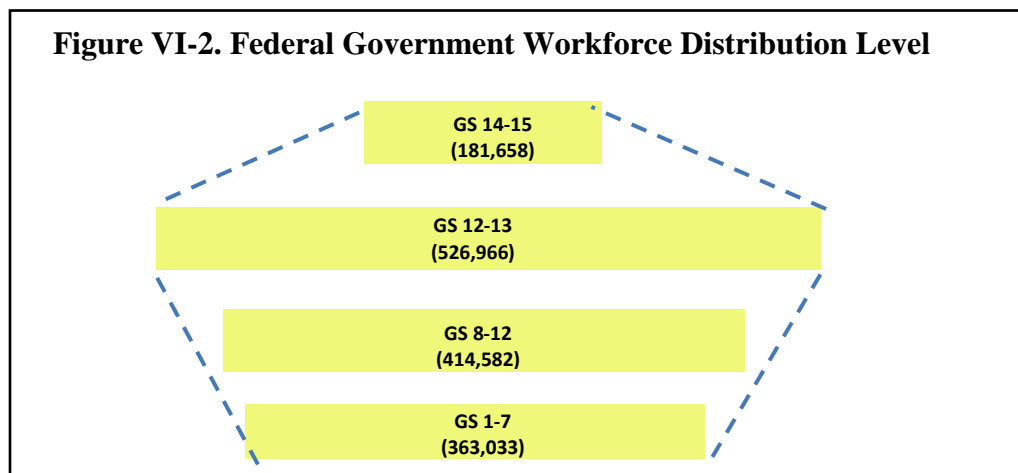
¹⁰⁰ Data Source: PBGC FY 2012 Staffing List



Data Source: PBGC FY 2012 Staffing List

Note – detail for percentages may not add to total because of rounding.

By contrast, the government-wide workforce distribution is shaped like a “diamond” (see Figure VI-2 below): a larger percentage of federal employees are at the mid-level (GS 08-13), while fewer employees at the high end (GS 14-15). PBGC, then, has a higher proportion of GS 14-15 employees than other agencies, and thus, on average PBGC employees are paid more than are employees of other federal agencies. This difference in structure reflects a difference in workforce composition between PBGC and many other federal agencies. It provides no information about pay in relation to specific occupations at PBGC. Additional analyses follow that provide occupation-specific information.



Data Source: FedScope Employment data December 2012 (does not include the federal employees in US Territories and foreign countries)

Note: detail for percentages may not add to total because of rounding.

Financial Regulators' Compensation Structures

Certain federal financial regulators are exempt from the federal government's GS pay system and have the authority to establish their own compensation systems (see Table VI-2 below), mainly because their workforce is considered more comparable to the non-federal workforce. The purpose of the special compensation authorities is to ensure that these financial agencies have the flexibility to attract and retain the highly specialized personnel they need to achieve their organizational goals and missions. According to a GAO report, after the savings and Loan Crisis, Congress provided some financial agencies i.e., FIRREA agencies, so named because of the authorities given to them by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989) the authority to set their own compensation after they were able to establish the need for such special authorities and flexibilities.¹⁰¹

These financial regulators are required to maintain compensation and benefit comparability to each other to avoid competing among themselves for federal employees. In addition, employee performance objectives in these agencies are generally linked to their organizations' overall strategic directions.

Legislation	Agencies Covered	Year of Enactment
Financial Institutions Reform, Recovery and Enforcement Act (FIRREA)	Federal Deposit Insurance Corporation (FDIC)	1989
	Office of the Comptroller of the Currency (OCC)	
	National Credit Union Administration (NCUA)	
	Federal Housing Finance Board ¹⁰² (FHFB)	
	Farm Credit Administration (FCA)	
	Office of Thrift Supervision (OTS) ¹⁰³	
Federal Housing Enterprise Safety and Soundness Act	Office of Federal Housing Enterprise Oversight (OFHEO) ¹⁰⁴	1992
Investor and Capital Markets Fee Relief Act	Securities and Exchange Commission (SEC)	2002
Farm Security and Rural Investment Act	Commodity Futures Trading Commission (CFTC)	2002
Housing and Economic Recovery Act	Federal Housing Finance Agency (FHFA) ¹⁰⁵	2008
Dodd-Frank Wall Street Reform and Consumer Protection Act	Consumer Financial Protection Bureau (CFPB)	2010

¹⁰¹ U.S. Government Accountability Office. *A More Strategic Approach Could Improve Human Capital Management* GAO/08-624. (Washington, DC.: June 2008), 6.

¹⁰² FHFB was reorganized into the Federal Housing Finance Agency (FHFA) in 2008.

¹⁰³ OTS became a part of the Office of the Comptroller of the Currency in July 2011, as enacted in the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

¹⁰⁴ OFHEO was reorganized into FHFA in 2008. OFHEO was granted the special pay authority when it was established in 1992.

¹⁰⁵ FHFA is comprised of the former FHFB, OFHEO, and the Government Sponsored Enterprises mission office at the HUD. Employees from these parts of HUD were included in the special pay authority as part of the reorganization.

PBGC officials believe that, in the past two decades, PBGC has become a major financial institution, and PBGC should have the same authority and flexibility to create and adjust its salaries and benefits as the federal financial regulators do. Officials suggested that PBGC relies heavily on the types of financial and actuarial expertise that are similar to those in FIRREA agencies, but PBGC employees are under-compensated relative to their counterparts in those agencies. PBGC officials believe that this negatively affects PBGC's ability to recruit the talent they need and retain well-trained, experienced staff.

PBGC Average Salaries Compared to Federal Financial Regulators and Other Federal Agencies

The study team's review of OPM's FedScope data¹⁰⁶ (FY 2012) shows that for each of the mission critical occupations, PBGC offers substantially lower salaries than financial regulatory agencies. For example, PBGC's average salary for accountants was \$105,353 in FY 2012, while accountants in financial agencies had an average salary of \$162,273. Although the salary difference for IT specialists was smaller, PBGC's IT specialists still earned \$25,000 less than those in financial agencies.

In addition, for five of the eight occupations at the PBGC (accountants, auditors, attorneys, employee benefits law specialists, and actuaries), PBGC's average salaries were slightly lower than those of other regular federal agencies; salaries for procurement specialists, financial analysts, and IT specialists in PBGC were higher than in other agencies. Minimum salaries at PBGC are higher than other federal agencies in six of the eight occupations. This is likely to be a reflection of higher entry level positions for PBGC. The shape of the PBGC workforce compared to the federal workforce, as shown in figures VI-1 and VI-2, reinforce this conclusion. Table VI-3¹⁰⁷ below is a comparison of basic average salaries for the key occupations at PBGC, federal financial regulators, and other federal agencies.

¹⁰⁶ In this analysis, financial regulators include: CFTC, FDIC, OCC, NCUA, FHFA, FCA, SEC, OTS and CFPB

¹⁰⁷ See Appendix J for the basic salary ranges, average basic salaries of employees in key occupations in PBGC, Financial Regulators, and other federal agencies.

	Accountant	Auditor	Attorney	Employee Benefits Law Specialist
PBGC	105,353	95,556	130,414	101,463
Financial Regulators	162,273	151,652	173,680	<i>n/a</i>
All Other Agencies	109,235	108,556	137,333	122,570
	Procurement Specialist	Financial Analyst	Actuary	Information Technologist
PBGC	114,868	111,628	103,888	119,825
Financial Regulators	138,011	146,361	<i>n/a</i>	144,683
All Other Agencies	105,203	108,324	126,297	113,614

Data Source: Analysis of FedScope Employment Cube 2012

History of PBGC Attempts to Obtain Special Compensation Authorities

PBGC’s compensation authority has been the subject of debate for decades. Under ERISA, PBGC has the authority to “appoint and fix compensation of such officers, attorneys, employees, and agents as may be required, to determine their qualifications, to define their duties...”¹⁰⁸ In the early 1980s, the union for PBGC employees at the time, the National Treasury Employees Union (NTEU), attempted to bargain with the Corporation regarding pay. After PBGC refused, the case was taken before the Federal Labor Relations Authority (FLRA). FLRA determined that ERISA did not grant PBGC special compensation authorities and PBGC did not have a duty to bargain, so the NTEU appealed the decision to the DC Circuit.¹⁰⁹ The DC Circuit upheld FLRA’s decision, and NTEU’s bargaining efforts ceased.

In the early 1990s, PBGC submitted a request to establish a new compensation system outside the “General Schedule” to attract and retain the best employees. PBGC argued that the Classification Act—which establishes the General Schedule—would not apply to PBGC’s salary structure if it began paying salaries from the trust fund and not “wholly from appropriated funds of the United States.”¹¹⁰ PBGC hired a contractor to conduct a job evaluation and compensation study to revise the classification process and establish a new, market-sensitive pay system for PBGC.

¹⁰⁸ P.L. 93-406; 29 USC §4002 (b)(6) (September 2, 1974).

¹⁰⁹ 9 FLRA No. 82 NATIONAL TREASURY EMPLOYEES UNION and PENSION BENEFIT GUARANTY CORPORATION Agency Case No. O-NG-320 (1982).

¹¹⁰ 5 U.S.C. § 5102(c)(14).

In addition, a study team of the Academy concluded in a 1991 study of the PBGC that special compensation authorities could help PBGC address its recruitment and retention challenges for mission critical occupations.¹¹¹ At that time, Congress had granted some large government corporations special compensation authorities; however, this is not a standard feature of government corporations, and those agencies/corporations that seek additional pay flexibilities need to prove their need for such authorities. The report also pointed out that PBGC needed to provide more convincing information/data to support its request for a different pay system.

DOL had a negative reaction to PBGC's request, and based on a memo from the DOL Solicitor, OMB concluded that PBGC employees' salaries were paid directly from its revolving fund (although the trust fund reimburses the revolving fund for a percentage of the administrative expenses, including salaries) and that PBGC was not exempt from the GS. Some interviewees contend that DOL rejected this proposal because DOL was not itself entitled to special pay authorities. The chronology of documentation related to these events provided by PBGC shows that, when discussing changes in PBGC's pay system, DOL told PBGC "not to make a unilateral decision on the contents of a new pay system without her (the Secretary's) approval."¹¹² It would be very difficult for PBGC to obtain the higher pay authority without the approval of the Secretary of Labor, the Board Chair.

Since the early 1990s, PBGC directors have, periodically, brought the compensation issue to the Board or OMB, but the discussions have not resulted in change.

PBGC Officials Report Recruitment and Retention Challenges

The study team's interviews with PBGC officials and key stakeholders revealed a widely-held view that it is difficult for PBGC to compete for key staff because of its existing compensation authority. Further, PBGC's Human Resources Department (HRD) told the study team that it is common for PBGC employees to leave the Corporation for higher salaries and better benefits in the private sector, or at federal financial agencies with special pay authorities.

Interviewees said that PBGC has difficulty attracting well-qualified applicants in certain areas, such as investment, law, and auditors with a specialty in asset valuation. For example, according to several officials, PBGC has been struggling with recruiting and retaining top legal talent for at least five years. A senior attorney at PBGC told the study team that graduates of top law schools will not even consider applying for PBGC jobs. The attrition list provided by PBGC showed that, from 2006 to 2013, six out of 20 attorneys who left PBGC found jobs in the private sector, and only one attorney left for a financial regulatory agency. About half of the departing attorneys during these seven years left the Corporation for personal reasons, such as retirement, family considerations, and relocation to other cities. Some interviewees stated that PBGC has had to contract for specialized services where it could not hire qualified professionals at GS rates, particularly in the actuarial, financial, and IT fields. In some cases, PBGC has limited its recruitment to individuals that have already retired from major private financial institutions, for

¹¹¹ National Academy of Public Administration, *Study of the Pension Benefit Guaranty Corporation's Corporate Status* (Washington, DC.: April 1991), 26.

¹¹² Chronology, Revised 6/17/92, provided by PBGC General Counsel's Office

whom the federal salary is not their primary source of income. PBGC HRD noted that, for some positions, they had to re-advertise openings due to lack of qualified applicants. As an example, PBGC had to put out the job announcement of an auditor (asset valuation) position four times in order to find the right candidates. The startup of the newly-established Asset Valuation Division was repeatedly deferred due to the difficulties in attracting qualified candidates at the current salary level.

One concern commonly discussed by interviewees was that executive recruiting has become a problem. Given the current compensation level, it is very difficult for PBGC to recruit people with extensive financial experiences for high-level positions. People who are qualified for these positions can easily find jobs in the private sector, or at financial regulatory agencies. In some cases, PBGC has used hiring and retention bonus to recruit or retain executives and has utilized professional recruiting firms to identify qualified candidates for senior level positions.

ANALYSIS OF PBGC WORKFORCE DATA

While PBGC officials recounted multiple recruitment and retention challenges facing PBGC during interviews with the study team, those reports amount to selected anecdotal information. The workforce data from PBGC HRD and FedScope, by contrast, do not suggest major recruitment and retention issues in PBGC in recent years. It is important to note that this is a small agency with a limited number of staff in key occupations. This means that even small changes in staffing levels can have a large impact on the work. This, in part, may explain the differences between the perceptions of PBGC’s management regarding recruitment and retention issues, and what the actual data show.

Hiring

Although PBGC has a lower pay range and lower average salaries than financial regulators, the hiring and attrition data from FedScope indicated that PBGC generally has been able to maintain staffing levels in key occupations. For FY 2009 to 2012, PBGC hired 161 new employees for eight key occupations while 117 employees in those occupations left PBGC. During these four years, in six of the key occupations, PBGC hired more people than it lost; PBGC remained even in terms of Employee Benefits Law Specialists and lost four more attorneys than it hired (See Table VI-4 below). The Panel recognizes that the hiring data does not reflect the quality of candidates. As PBGC officials pointed out, the quality of candidates has declined, and for some positions, PBGC has had to hire individuals who require in-house training.

Table VI-4: PBGC New Hires and Separations in Key Occupations FY 2009-2012	Separations	New Hires
Total: Key Occupations	117	161
Accountant	19	24
Actuary	7	18
Attorney	20	16
Auditor	23	25
Employee Benefits Law Specialist	6	6

Table VI-4: PBGC New Hires and Separations in Key Occupations FY 2009-2012	Separations	New Hires
Financial Analyst	7	12
Information Technology Specialist	29	49
Procurement Specialist	6	11

Source: Analysis of the Office of Personnel Management's FedScope

The hiring data supplied by PBGC showed that the length of time it took PBGC to hire new employees had increased from 100 days in FY 2010 to 106 days in FY 2012, while the government-wide average time¹¹³ to hire was 93 days in FY 2011 and 87 days in FY 2012.¹¹⁴ In 2008, OPM launched an 80-day hiring model to help speed federal hiring process, and PBGC has a goal of filling vacancies within 93 days.

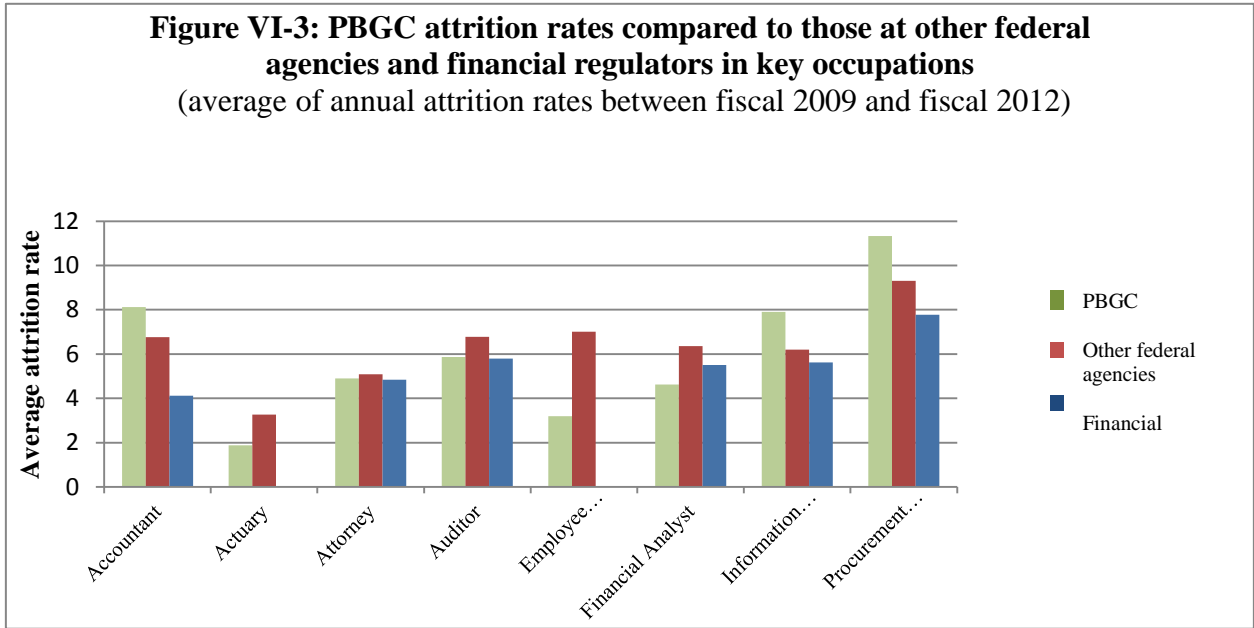
The length of a Corporation's hiring process depends on a number of factors. While availability of qualified applicants and attractiveness of the jobs offered are important factors, internal elements of the hiring process are critical as well. PBGC HRD provided us with timelines of activities for recruitment of candidates for several key occupations during recent years to demonstrate the difficulties of recruiting for these positions. Although these examples demonstrated substantial efforts to recruit over a long period of time, internal processes -- rather than compensation issues -- seemed to contribute to the time lapse between advertising to fill positions and hiring a new employee. In one case, the job announcement for a key position was open for applicants from December 23rd to January 10th. This timeframe, coinciding with a major holiday season, does not seem conducive to attract applicants. HRD officials indicated that candidates who are searching for a job would still apply. Nonetheless, this does not seem optimal to attract a pool of qualified applicants. The study team also found that the "internal processing" time of the hiring process in PBGC was very lengthy. PBGC spent a large amount of time developing and revising job descriptions, rating and ranking criteria, and posting job (re)announcements for these positions.

Attrition Rates

FedScope attrition data (2009-2012) showed that, for the eight mission critical occupations collectively, PBGC's attrition rates were in line with those of financial regulators as well as with other federal agencies, although rate differences exist in certain key occupations (see Figure VI-3 below). For attorneys and auditors, PBGC was able to retain staff at similar rates as financial agencies and other federal agencies; PBGC had a lower average attrition rate for financial analysts than financial regulators and other agencies; for accountants, IT specialists, and procurement specialists, PBGC's average attrition rates were higher than those of financial regulators and other agencies. In the six categories for which PBGC and financial regulators share occupational categories, the latter has lower attrition than both PBGC and other federal agencies during the four years of the analysis.

¹¹³ The government-wide average time to hire data is only captured for CHCO agencies and does not include non-CHCO agencies—small agencies like PBGC.

¹¹⁴ "Hire the Best Talent." Performance.gov. <<http://hr.performance.gov/initiative/hire-best/home>>



Data Source: Analysis of the Office of Personnel Management's FedScope

Although PBGC had higher average attrition rates (2009-2012) than financial regulators and other agencies for accountants, IT specialists, and procurement specialists, PBGC's attrition rates for these three occupations had decreased significantly since 2009 (see Table VI-5). For example, the attrition rate for accountants in PBGC had declined from 10 percent in 2009 to 3 percent in 2012, and the procurement specialists' attrition rate had gone down from 32 percent to 7 percent. Additionally, in 2012, PBGC's attrition rates for these three occupations were similar to (or lower than) the rates of financial regulators. Year to year attrition in key occupations is volatile at least in part because there are relatively small numbers of employees in each category. That is, a small change in the number of staff departing can have a large impact on percentages. Nonetheless with the exception of financial analyst and attorney positions, attrition rates for 2012, the most recent year of data, are lower than the average for the three prior years.

Occupation	FY 2009	FY 2010	FY 2011	FY 2012
Accountant	10%	14%	5%	3%
Actuary	1%	3%	2%	1%
Attorney	4%	2%	5%	5%
Auditor	3%	8%	6%	6%
Employee Benefits Law Specialist	4%	4%	5%	0
Financial Analyst	6%	6%	0	7%
IT Specialist	6%	10%	11%	5%
Procurement Specialist	32%	7%	0	7%

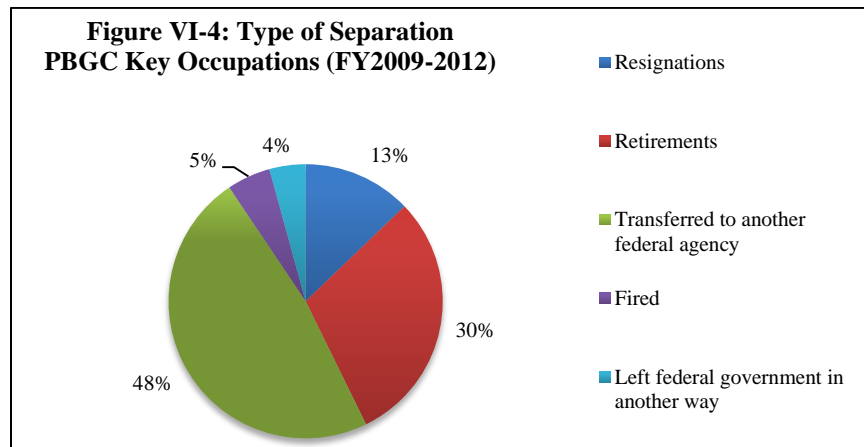
Data Source: OPM FedScope; Results have been rounded to the nearest one.

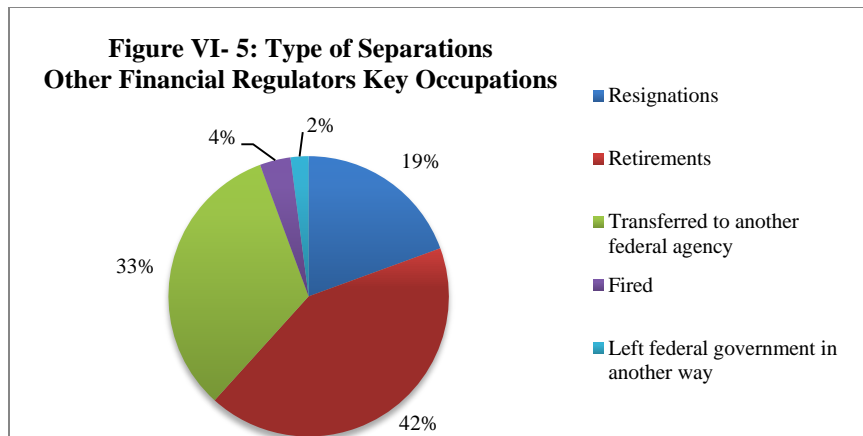
Separations

According to the separation data from FedScope, PBGC departing employees are more likely than staff from financial regulators to transfer to other federal agencies (Figures VI-4 & 5). From FY 2009 to 2012, 48 percent of PBGC departing employees in key occupations transferred to other federal agencies, compared to only 33 percent in financial regulators. Five out of seven financial analysts who left PBGC in these four years moved to other agencies, the highest rate (72 percent) of eight key occupations. The FedScope data did not suggest any patterns for receiving agencies, so the study team could not determine whether these people left PBGC for greater pay. Nor could it be determined if departing employees going to other federal agencies were attracted by promotions.

Second, PBGC's separation data showed that, from 2010 to 2012, 43 key occupation employees transferred from PBGC to 26 different federal agencies, and nine out of the 43 departing employees left PBGC for financial regulators—four IT specialists, three attorneys, one auditor, and one financial analyst. During these three years, PBGC did not lose any accountants, actuaries, employee benefit law specialists, or procurement specialists to financial regulators. As discussed in the earlier section, PBGC has lower salaries for many occupations than other federal agencies, and therefore it is possible that some of these moves to other agencies involved promotions, and thus higher pay, but the data available for this analysis does not identify the details.

Third, the FedScope data indicated that approximately 13 percent of PBGC staff in key occupations resigned from PBGC during FY 2009-2012, but the data did not provide additional information to further identify reasons for leaving. Resignations could include, for example, relocations to other cities, family considerations, health issues, or change in occupations.





Data Source: OPM FedScope

Results have been rounded to the nearest one.

UNDERSTANDING ATTRITION AT PBGC

The analysis of PBGC workforce data and FedScope data did not suggest any significant relationship between PBGC’s pay scale and its hiring and attrition trends. Past studies and research have shown that an agency’s ability to hire and retain qualified employees is related to a variety of factors, and compensation alone would not improve employee satisfaction and commitment. It is important for agency leaders to develop a comprehensive picture of employee attrition and the key drivers. As quantitative workforce data cannot fully explain PBGC’s attrition, the study team reviewed relevant literature, PBGC exit interview results, and the Federal Employee View Point Survey results for additional information related to recruitment and retention issues.

The literature and past studies have revealed a number of factors affecting attrition. A study conducted by the Saratoga Institute in 2005 showed that 88% of employees leave their jobs for reasons other than money. Their report documents that employees leave mainly due to career development opportunities, employee skill match, performance recognition, work-life balance, and leadership.¹¹⁵ According to a survey conducted by the American Psychological Association in 2012, the top two reasons for staying with an employer include: “I enjoy the work I do” and “it fits well with the other areas of my life.”¹¹⁶ The Partnership for Public Service developed two reports in 2010 and 2011 focusing on federal government attrition and retention issues. These studies highlighted the importance of a healthy work environment in retaining federal employees. They identified four key factors including (1) teamwork, supervision and leadership; (2) agency mission and employee skills match; (3) performance management, compensation,

¹¹⁵ Branham, Leigh. “The 7 Hidden Reasons Employees Leave.” *Keeping the People, Inc.*

<http://apps.keepingthepeople.com/_articles/pdfs/The_7_Hidden_Reasons_2_-_Association_Executive.pdf>

¹¹⁶ Belsky, Gary. “Top Reasons Why Americans Stay At Their Jobs (And What It Means For The Presidential Campaign)” *Time*. 31 Aug 2012. <<http://business.time.com/2012/08/31/top-reasons-why-americans-stay-at-their-jobs-and-what-it-means-for-the-presidential-campaign/>>.

benefits and work/life; and (4) employee development and support.¹¹⁷ All three of these studies indicate that pay is of lesser importance to employees than other work factors.

Exit Interview Results

Agencies' exit interviews provide a valuable tool to understand the attitudes of departing employees. PBGC HRD provided the study team its analysis of exit interview for FY 2010-2012. During this time period, half of the departing employees—82 out of 164—returned their exit survey questionnaires. The number one concern identified by PBGC departing employees was “no promotion potential” (47 out of 82 respondents). About a quarter of the respondents cited compensation as the reason why they left PBGC. Thirteen out of 82 respondents indicated that they left PBGC for “more money in private sector,” and eight respondents said that they left because of the Corporation's pay structure. Since private sector pay tends to be substantially greater than even the enhanced pay of federal financial regulators, it is unclear whether PBGC's adoption of financial regulators' pay scale would affect the number of departures of PBGC employees for more money. Other concerns identified in exit interviews were related to federal employees' retirement benefits and workplace flexibility.

To obtain the most recent data available, the study team reviewed PBGC's exit interview questionnaires for FY 2013, 2nd Quarter and found that compensation was again not a topic frequently discussed by survey respondents. Twelve out of 25 departing employees returned their exit interview questionnaires during this time period. Based on survey responses, seven people left PBGC for “career advancement”; three out of four respondents who were not satisfied with their jobs cited “type of work/assignment” as their primary reason for leaving and indicated that their new jobs would provide more “opportunities for recognition.” Only one respondent listed pay as his/her reason for leaving, and one commented that PBGC's compensation structure should be more competitive. Generally, survey responses show that PBGC employees' responses were more focused on issues like meaningful work, career development opportunities, work flexibility, leadership, teamwork/coworkers, and bureaucracy.

The study team notes that the exit interview data—both from the past years and for the most recent quarter available—should be used cautiously, as the survey response rates (50%) are low. The survey responses may not reflect the attitudes and opinions of all PBGC departing employees, because those who provided survey information may differ from those who chose not to complete the exit survey.

Federal Employee Viewpoint Survey

The OPM's Federal Employee Viewpoint Survey (FEVS) is another important information source to understand agencies' attrition and retention issues. FEVS is a key tool in assessing federal employees' job satisfaction and commitment level. The survey covers a wide range of topics, including leadership, pay, strategic management, teamwork, work/life balance,

¹¹⁷ Partnership for Public Service and Booz Allen Hamilton. *Beneath the Surface: Understanding Attrition at Your Agency and Why It Matters* (Washington, DC.: November 4th, 2010), 8.

performance based rewards and advancement, etc. According to the Partnership for Public Service's *Best Place to Work* report,¹¹⁸ PBGC's overall index score in 2012 was 63, ranking at 18 of 29 among small agencies. The index score is calculated based on the employee responses to three items:

- I recommend my organization as a good place to work.
- Considering everything, how satisfied are you with your job?
- Considering everything, how satisfied are you with your organization?

Some financial agencies with special pay authorities—FDIC, FCA, CFTC, NCUA—had higher overall index scores than PBGC, reflecting a higher level of employee satisfaction in these agencies. However, some financial regulators, such as FHFA, and SEC, had lower overall scores.

In terms of pay satisfaction, the Partnership for Public Service, again using the FEVS data, ranked PBGC at 20 of 27 in 2012 among small agencies. PBGC's pay index score had decreased by 12 points since 2010, indicating a decline in employee pay satisfaction. Most financial regulators—including the agencies with higher overall satisfactions scores, as well as those with lower scores—had higher pay satisfaction scores than PBGC. These results suggest that PBGC employees have a lower pay satisfaction than their financial regulator counterparts; however, pay satisfaction is not always correlated with overall job satisfaction. It is worth noting that FDIC had the highest overall satisfaction and highest pay satisfaction among middle-size agencies. FDIC's overall score for 2012 was 83.3 out of 100, which was 20 points higher than PBGC, and the difference in pay satisfaction between these two agencies was more significant—FDIC's score was 28 points higher than PBGC.

At the study team's request, PBGC divided survey responses into two groups: "employees who indicated that they are planning to stay" and "employees who indicated that they are planning to leave." Not surprisingly, more employees who said they planned to stay than those who planned to leave indicated that they were satisfied with compensation. About two-thirds of employees who planned to stay and just one third of employees who planned to leave were satisfied with their compensation.

Employees who planned to stay were more satisfied with issues related to effective leadership, teamwork, meaningful work/agency mission, work-life balance, and performance management. For example, 96 percent of the respondents who planned to stay believed that the work they do is important, 92 percent were satisfied with the work/life programs in the Corporation, and 90 percent believed that PBGC is successful at accomplishing its mission.

For those who planned to leave, a number of job attributes were considered less satisfactory than pay. People who planned to leave PBGC were less satisfied in such areas as performance recognition, leadership, and promotion potential/career development. For example, only 16 percent of those who planned to leave agreed with the statement "pay raises depend on how well employees perform their jobs." Only 18 percent of these employees were satisfied with their

¹¹⁸ The Best Place to Work report is based on the OPM's FEVS data

opportunities to get a better job within PBGC. While there is too little data to reach a definitive conclusion, the FEVS data seem to be roughly in accord with PBGC’s exit interview survey information.

As would be expected, there are gaps in responses between the two groups of respondents, reflecting the differences in attitude between employees who are leaving and who are staying. The gap analysis helps to identify those areas, because of the differences in attitude between employees who plan to stay and who plan to leave are great, an agency might target to fend off attrition. The Table VI-6 below shows that the PBGC response gaps were highest in satisfaction with performance recognition, employee skill match, communication, career advancement, and pay.

Table VI-6: PBGC Federal Employee View Point Survey			
Questions	Staying	Leaving	Gap
Pos Q71) Considering everything, how satisfied are you with your organization? (Q71_pos)	80 %	36%	44%
Pos Q69) Considering everything, how satisfied are you with your job? (Q69_pos)	84%	42%	42%
Pos Q31) Employees are recognized for providing high quality products and services. (Q31_pos)	70%	31%	39%
Pos Q40) I recommend my organization as a good place to work. (Q40_pos)	83%	47%	37%
Pos Q65) How satisfied are you with the recognition you receive for doing a good job? (Q65_pos)	70%	34%	36%
Pos Q11) My talents are used well in the workplace. (Q11_pos)	75%	40%	35%
Pos Q64) How satisfied are you with the information you receive from management on what's going on in your organization? (Q64_pos)	67%	32%	34%
Pos Q67) How satisfied are you with your opportunity to get a better job in your organization? (Q67_pos)	51%	18%	33%
Pos Q32) Creativity and innovation are rewarded. (Q32_pos)	59%	25%	33%
Pos Q70) Considering everything, how satisfied are you with your pay? (Q70_pos)	69%	37%	33%

*Data Source: Analysis of PBGC Federal Employee View Point Survey Results
Results have been rounded to the nearest one.*

In sum, compensation does not seem to be the primary concern of PBGC employees. Although it is one of the concerns, as it might be in any work situation, other factors seem to play a significant role in overall satisfaction and in employee decisions to stay or leave. While PBGC’s leadership may not have unilateral control to affect the pay scale of its workforce, they can create a work environment that keeps their employees engaged and motivated. These actions could potentially reduce unwanted attrition and attract the best-qualified individuals.

STRATEGIES TO ATTRACT AND RETAIN TOP TALENT—COMPENSATION FLEXIBILITIES AND INCENTIVES

There is no one single solution when it comes to recruitment and attrition. Past studies and research have identified many hiring and retention tools and strategies. For example, in its report *Keeping Talent: Strategies for Retaining Valued Federal Employees*, the Partnership for Public Service described some of the most effective retention practices, such as providing management training, establishing mentoring programs to junior staff, emphasizing individual development plans, offering flexible workplaces and work schedules, improving performance appraisals, and offering retention bonuses.

Pay and benefits are, of course, tools to attract and retain top talent. Although not a decisive factor in job satisfaction, compensation is nonetheless an important for hiring and retention success. PBGC has not taken advantage of all compensation options available within its current statutory authority. In 2008, GAO indicated that PBGC's use of compensation flexibilities and incentives was insufficient and ineffective.¹¹⁹

PBGC has an interim *PBGC Recruitment, Relocation, and Retention Incentive Policy and Plan* outlining the scope of the Corporation's Recruitment, Relocation, and Retention incentives (3Rs) program; the authorities and responsibilities of the HR, hiring officials, and others; the basic determination criteria; and the funding source. This interim policy was developed in 2005. PBGC HRD indicated that they are in the process of developing a new 3Rs directive. In addition, PBGC has a Student Loan Repayment Program (SLRP) Directive and Implementation Plan and a set of standard operating procedures for the use of 3Rs, SLRP, and superior qualifications. PBGC's incentive activity report (FY 2010-2012) showed that PBGC has used some flexibility options such as 3Rs, the SLRP, and superior qualifications. As would be expected, in FY 2011 and FY 2012, the majority of PBGC's compensation flexibilities and incentives were paid to staff in mission critical occupations. The Table VI-7 below provides an overview of PBGC's incentive activities in FY 2011 and FY 2012.

¹¹⁹ GAO, *A More Strategic Approach Could Improve Human Capital Management*, 20.

Table VI-7: PBGC Incentive Activity (FY 2011-2012)				
Year	Incentive Programs	Mission Critical Occupations (MCO)	Non MCOs	Total
FY 2012	Recruitment Incentives	2	3	5
	Retention Incentives	1	1	2
	Student Loan Repayment Program	43	0	43
	Superior Qualifications	4	0	4
FY 2011	Recruitment Incentives	5	0	5
	Retention Incentives	1	2	3
	Student Loan Repayment Program	39	0	39
	Superior Qualifications	4	0	4

Data: PBGC HRD

According to the OPM’s handbook *Human Resources Flexibilities and Authorities in the Federal Government*, in addition to 3Rs, SLRP, and superior qualifications, agencies have the authority to use the flexibility programs such as the maximum payable rate rule, waiver of dual pay limitation, and advanced payments for new appointees.¹²⁰ There are a number of additional compensation flexibilities and incentives available to agencies with the approval of OPM and OMB, such as recruitment and relocation incentives in excess of 25 percent, retention incentive in excess of 25 percent for individuals and 10 percent for groups of employees, and critical position pay authority. The study team was not provided evidence that PBGC has used these flexibilities and incentives.

The study team recognized that PBGC’s ability to use these incentives maybe hampered by budget restrictions. PBGC, as well as other agencies, are subject to OPM and OMB’s guidance that spending for these incentives are restricted to the 2010 budget levels. However, compensation flexibilities and incentives have proven to be valuable tools to improve recruitment and retention. PBGC should take advantage of all available options to strengthen its ability to attract new candidates or retain current employees. In addition, as GAO pointed out in its 2008 report, PBGC would be able to make a better case for why it needs an alternative compensation structure after fully exploring all existing compensation flexibility and incentive options.

¹²⁰ These are only examples of potential incentives options for PBGC. See Appendix K for more detailed information of OPM compensation flexibilities and incentives programs.

IMPACTS OF ECONOMIC DOWNTURN

The analysis of PBGC recruitment and retention patterns in this study is based on the workforce data and information for FY 2009 to FY 2012, and it is highly likely that patterns may change as the economy improves. The federal government's hiring and retention are significantly influenced by the overall economy. For both PBGC and other federal agencies that employ staff with expertise in fields such as investment, finance, auditing and economics the economic downturn resulted in fewer opportunities in the private sector and made federal jobs more attractive. For example, many former Wall Street employees were hired by the federal government after the collapse of the financial market five years ago. The government-wide attrition rate had decreased from 7.6% in FY 2008 to 5.9% in FY 2009, likely, in part, reflecting lack of private sector opportunities.

Some PBGC officials pointed out that the financial crisis has greatly helped PBGC attract top talent. However, as the economy continues to recover, it may become more difficult for PBGC to recruit and retain high-quality employees. Many interviewees expressed the concern that a large number of employees (especially financial analysts and actuaries) will leave PBGC as the private sector starts hiring again.

WORKFORCE DATA ANALYSIS

It is crucial for PBGC to develop effective mechanisms and policies to document hiring and attrition issues, monitor the changing trends, and develop strategies to address workforce challenges accordingly. The study team worked with the PBGC HRD to collect the Corporation's basic workforce data and found that PBGC has not routinely collected and analyzed its basic personnel data, such as attrition rates, time to hire, and separation data. PBGC HRD noted that all workforce data are collected and maintained in its system; however, PBGC HRD does not seem to conduct regular analysis of the data to better understand its hiring, attrition, and other workforce issues. Further, low response rates from exit surveys hamper the Corporation's ability to understand factors affecting attrition. Efforts to ensure response from departing employees could help PBGC diagnose major attrition-related issues and take actions that might reduce losses. In its 2010-2014 Human Capital Strategic Plan, PBGC indicated that numerous structured analyses would be performed to track and assess multiple human capital issues. However, very few of these analyses have been performed to date.

PBGC HRD has not made use of the data from the OPM's Central Personnel Data File (CPDF)¹²¹ and FedScope to further analyze attrition issues. The CPDF has individual records for most civilian, executive branch federal employees and is the primary government personnel information sources. With the comparative government-wide data from CPDF, agencies can put their workforce data into context and make better sense of their workforce challenges. Furthermore, the study team found that the accuracy of the PBGC's workforce data cannot be verified. PBGC HR provided the study team inconsistent data, and these inconsistencies are not

¹²¹ CPDF is now called the Enterprise Human Resources Integration-Statistical Data Mart (EHRI-SDM). FedScope is the public version of CPDF.

easily resolved. PBGC's data is also different from the FedScope data, and PBGC officials noted that OPM has different standards on data collection and analysis.

Reliable workforce data and analysis provide a crucial foundation for developing effective workforce strategies. In addition, the study team believes that PBGC's request for an alternative pay structure must be supported by accurate, reliable workforce data. Without valid data, it would be difficult for PBGC to make a convincing argument.

CONCLUSIONS AND RECOMMENDATIONS

PBGC has been actively seeking the authority to establish a new compensation system outside the federal General Schedule pay system, stating that the lack of compensation flexibility is impeding its ability to hire the most qualified individuals. However, PBGC was not able to provide sufficient, strong evidence to support this statement. Although it may encounter difficulty in hiring and retaining certain personnel, PBGC generally has been able to hire and retain staff for its mission critical occupations.

Although compensation does play an important role in recruitment and retention, it does not appear to be the primary concern of PBGC employees. The study team's research has shown that PBGC employees value career advancement opportunities, effective leadership, meaningful work, agency mission, and performance recognition. The workforce data and information collected from various sources did not show that additional compensation authorities would greatly improve PBGC's recruitment and retention of key staff nor the staff's overall satisfaction levels.

Regardless of whether PBGC decides to continue to explore an alternative compensation structure or not, the Panel recommends that the following actions would significantly strengthen PBGC's monitoring and assessment of its recruitment and retention issues as well as focus needed attention on improving the quality of the Corporation's work environment:

- **PBGC should regularly collect, analyze and report information regarding the recruitment and retention of PBGC's mission critical occupations.** A robust, reliable human capital database is crucial for PBGC to monitor the performance of workforce policies, practices, and trends, as well as to identify strategies to address workforce challenges. It would better enable the agency's leaders to determine the extent to which compensation and other issues contribute to the Corporation's difficulty in finding, attracting, and keeping talent. The data can help PBGC determine the effect of pay and other issues on its recruitment efforts and would provide needed evidence to support legislative consideration for an alternative pay system.
- **PBGC leadership should focus on addressing work environment issues that contribute to employee engagement and motivation.** Based on the results of the Federal Employee Viewpoint Survey, it is clear that PBGC can do more to create a healthy work environment—effective leadership and teamwork, strong performance

management, and greater career development opportunities—which would also help to address its retention challenges.

- **PBGC should take full advantage of existing compensation flexibilities and incentives options.** Compensation flexibilities and incentives are valuable tools to improve recruitment and retention. PBGC should utilize all available options to strengthen its ability to attract new candidates and retain current employees.
- **PBGC should complete the analyses identified in its Human Capital Strategic Plan.** PBGC should develop and implement a workforce plan, a succession plan, competency gap assessments, and the recruitment outreach action plan. In addition, PBGC should review the implementation of these plans on a regular basis, and update the plans as needed.
- **PBGC should give greater priority to streamlining its hiring process and ensure that its internal HR processes are efficient and effective.**

APPENDIX A: ACADEMY PANEL AND STUDY TEAM

PANEL

Thomas H. Stanton (Chair)*

Financial and Legal Policy Consultant and author. Fellow, Center for Advanced Governmental Studies, Johns Hopkins University; former director, National Academy of Public Administration; former member of the federal Senior Executive Service at the Federal Trade Commission. Publications include two books on government-sponsored enterprises (GSEs), two edited books on federal organization and management, and *Why Some Firms Thrive While Others Fail: Governance and Management Lessons from the Crisis* (Oxford University Press, 2012).

Jim Hearn*

Budget Director, Public Company Accounting Oversight Board. Former positions with the U.S. Senate Committee on the Budget: Director for Federal Programs and Budget Process, Deputy Staff Director, Senior Analyst for Government Finance and Management. Former positions with the Congressional Budget Office: Principal Analyst, Associate Analyst.

Susan Jacobs*

Former Chief Strategic Planning Officer, Federal Housing Finance Agency; Associate Director, Finance and Administration, Office of Federal Housing Enterprise Oversight; Assistant Commissioner for Budget, Immigration and Naturalization Service, Department of Justice. Former positions with OMB: Chief, Veterans Affairs Branch; Economist, Special Studies in Economics and Government. Former Economist, Division of Economic Development and Public Finance, HUD; Economic Policy Fellow, Brookings Institution; Instructor/Assistant Professor of Economics, Brooklyn College, City University of New York.

Karl Nollenberger*

Vice President, Voorhees Associates. Associate Professor of Public Administration, University of Wisconsin at Oshkosh; Academic Director, Masters of Public Administration Program, Illinois Institute of Technology. Former Vice President, The PAR Group; County Administrator, Lake County, Illinois; Chief Administrative Officer, City of Duluth, Minnesota; County Administrator, County of St. Louis, Minnesota; Senior Manager, Arthur Young & Company; City Manager, City of Beaumont, Texas; City Manager, City of Richfield, Minnesota.

Alan B. Rhinesmith*

Former Senior Financial Analyst, Federal Housing Finance Agency, Office of Inspector General; Former Senior Policy Advisor, Congressional Oversight Panel, U.S. Congress; Chief of Staff to the Chief Economist, Citigroup Global Markets, Inc. Former positions with the Office of Management and Budget: Deputy Associate Director for Housing, Treasury and Commerce; Chief, Financial Institutions Branch; Chief, Transportation Branch, Chief, Housing Branch; Budget Examiner, Commerce and Housing Branches. Former Price Economist, Bureau of Labor Statistics, U.S. Department of Labor.

STUDY TEAM

Joseph Mitchell, Ph.D., *Director of Project Development*—Leads and manages the Academy’s studies program and serves as a senior advisor to the Academy’s President and CEO. He has served as Project Director for past Academy studies for the Government Printing Office, the U.S. Senate Sergeant at Arms, USAID/Management Systems International, the National Park Service’s Natural Resource Stewardship and Science Directorate, and the USDA Natural Resources Conservation Service. During his more than 10 years at the Academy, Dr. Mitchell has worked with a wide range of federal cabinet departments and agencies to identify changes to improve public policy and program management, as well as to develop practical tools that strengthen organizational performance and assessment capabilities. He holds a Ph.D. from the Virginia Polytechnic Institute and State University, a Master of Public Administration from the University of North Carolina at Charlotte, and a BA in History from the University of North Carolina at Wilmington. He is currently pursuing a Master of International Public Policy with a concentration in American Foreign Policy from the Johns Hopkins University School of Advanced International Studies.

Nicole Camarillo, *Project Advisor*—Serves as an Associate General Counsel and Project Development Advisor at the Academy since 2011. Ms. Camarillo has a legal background in regulatory compliance and employment law issues. She has extensive experience working for nonprofits on a variety of advocacy issues and has federal campaign experience. At the Academy, Ms. Camarillo supports the Academy’s General Counsel with all employment law and policy matters affecting the organization. She also serves as a legal advisor on Academy studies, particularly those involving legislative and regulatory matters, and assists the Director of Project Development with the development of Academy proposals and studies. Ms. Camarillo received her B.A. in Political Science from Stanford University and her J.D. from the University of California, Berkeley School of Law.

Chloe Yang, *Research Analyst*—Previously served on the study team for past Academy studies for the Office of Management and Budget, Amtrak Office of Inspector General, U.S. Coast Guard, U.S. Department of Veterans Affairs, and Government Accountability Office. Former research intern, the Foundation for Environmental Security and Sustainability; intern, Woodrow Wilson Center for Scholars; and research assistant, George Mason University. Holds an MPA from George Mason University and a Bachelor of Management in Financial Management from the Renmin University of China.

Daniel Orr, *Research Associate*—Prior to joining the Academy, Mr. Orr served as an AmeriCorps VISTA focusing on capacity-building and strategic planning for housing outcomes and completed an internship with the National League of Cities. He is a recent graduate of the Master of Public Administration program at Penn State University, Capital College, writing his Thesis on organizational models for homelessness prevention program implementation. Mr. Orr is also a 2008 graduate of American University’s School of Public Affairs, holding a BA in Political Science.

APPENDIX B: INDIVIDUALS CONTACTED

PENSION BENEFIT GUARANTY CORPORATION

Batts, Rebecca—Inspector General
Boyce, Steve—Policy, Research and Analysis Department
Etheridge, Arrie—Director, Human Resources Department
Finke, Charles—Deputy Chief Counsel
Goldowitz, Israel—Chief Counsel
Gotbaum, Josh—Director
Graham, Wilmer—Director of Strategic Planning/Performance Improvement Officer
Greenberg, John—Chief Investment Officer
Gustafson, David—Chief Policy Actuary, Policy, Research and Analysis Department
Hertz, Philip—Deputy General Counsel
Kelly, Patricia—Chief Financial Officer
Langham, Philip—Director, Benefits Administration and Payments Department
Marchowsky, Joseph—Assistant Inspector General for Audit
Maroni, Alice—Chief Management Officer
Mehta, Salil—Director, Policy, Research and Analysis Department
Messina, Jennifer—Acting Director, Corporate Finance & Restructuring Department
Morris, Karen—Deputy Chief Counsel
Orr, Ann—Chief of Staff
Rich, Sanford—Chief of Negotiations & Restructuring
Saucier, Mary—Manager, Performance Accountability and Systems Division, Human Resources
Shyamsunder, Vidhya—Acting Chief Information Officer
Snowbarger, Vincent—Deputy Director of Operations; former Acting Director
Starr, Judith—General Counsel and Secretary to the Board
Stover-Springer, Deborah—Deputy Inspector General and Legal Counsel
Thompson, John—Policy, Research and Analysis Department
Viener, Amy—Policy, Research and Analysis Department

GOVERNING BOARD STAKEHOLDERS

Blank, Rebecca—Acting Secretary of Commerce (Board Member)
Borzi, Phyllis—Assistant Secretary, Employee Benefits Security Administration (Department of Labor Board Rep.)
Doms, Mark—Under Secretary for Economic Affairs (Department of Commerce Board Rep.)
Duke, Hilary—Division Chief for Legislative Policy Analysis, Office of Policy and Research (Department of Labor Board Rep.'s Rep.)
Lattimer, Rick—Policy Analyst (Department of Commerce Board Rep.'s Rep.)
Miller, Mary—Under Secretary for Domestic Finance (Department of the Treasury Board Rep.)
Quinn, Philip—Senior Financial Analyst (Department of the Treasury Board Rep.'s Rep.)
Swift, Nicole—Department of Labor Board Rep.'s Rep. Assistant

CURRENT PBGC ADVISORY COMMITTEE MEMBERS

Alston, Cheryl—Advisory Committee Member
Blitzstein, David—Advisory Committee Member

Mader, Joyce—Advisory Committee Member
Peifer, Daralyn—Advisory Committee Member
Salisbury, Dallas—Advisory Committee Member
Strauss, David—Advisory Committee Chair
Wilson, Harry—Advisory Committee Member

FORMER PBGC ADVISORY COMMITTEE MEMBERS

Gardenhire, Todd—former Advisory Committee Member; Senior Vice President, Wealth Management, Morgan Stanley Smith Barney
Miller, Jack—former Advisory Committee Member
Muir, Dana—former Advisory Committee Member
Szczur, John—former Advisory Committee Member; Director of Pension Investments, National Rural Electric Cooperative Association

FORMER PBGC MANAGEMENT & BOARD MEMBERS

Belt, Bradley— former Executive Director, Pension Benefit Guaranty Corporation
Campbell, Bradford—former Assistant Secretary, Employee Benefits Security Administration (former Department of Labor Board Rep.)
Combs, Ann—former Assistant Secretary, Employee Benefits Security Administration (former Department of Labor Board Rep.)
Emmons, Bob—former Inspector General, Pension Benefit Guaranty Corporation
Molloy, Jane—former Department of Commerce Board Rep.’s Rep.
Nagle, Bob—former Executive Director, Pension Benefit Guaranty Corporation
Rose, Henry—former General Counsel, Pension Benefit Guaranty Corporation
Seal, John—former Acting Executive Director, Pension Benefit Guaranty Corporation
Walker, David*—former Associate Executive Director; Acting Executive Director, Pension Benefit Guaranty Corporation (former Public Trustee for Social Security and Medicare, former Comptroller General of the United States)

CONGRESSIONAL STAKEHOLDERS

Banducci, Andrew—Professional Staff Member, United States House of Representatives Committee on Education and the Workforce Committee
Dean, Jr., Gregory—former Chief Counsel, United States Senate Committee on Health, Education, Labor and Pensions
Kreps, Michael—Senior Pensions & Retirement Counsel, United States Senate Committee on Health, Education, Labor and Pensions
Seidman, Lindsay—Senior Policy Advisory, United States Senate Committee on Health, Education, Labor and Pensions

COMPARABLE AGENCY REPRESENTATIVES

Apfel, Kenneth*—former Commissioner, Social Security Administration
App, Steven*—Deputy to the Chairman; Chief Financial Officer, Federal Deposit Insurance Corporation
Bothwell, James—former Managing Director; Chief Operating Officer, Federal Housing Finance Board

DeMarco, Ed*—Acting Director, Federal Housing Finance Agency; former Department of the Treasury Board Rep.
Gianni, Gaston—former Inspector General, Federal Deposit Insurance Corporation
Long, Greg—Executive Director, Thrift Savings Plan
Mendelowitz, Allan—former Chairman, Federal Housing Finance Board
Montgomery, Ryan—General Counsel, Thrift Savings Plan
Rymer, Jon—Inspector General, Federal Deposit Insurance Corporation and Acting Inspector General, Security and Exchange Commission
Sale, Chris*—former Deputy to the Chairman; Chief Financial Officer, Federal Deposit Insurance Corporation
Stack, Kathryn*—former Advisor on Transition, Office of Student Financial Assistance, Department of Education
Weaver, Kim—Director of External Affairs , Thrift Savings Plan

OTHER FEDERAL EMPLOYEES

Barnes, Bethanne—Program Examiner, Executive Office of the President, Office of Management and Budget
Bomberger, Melissa—Labor Branch Chief, Office of Management and Budget
Bovbjerg, Barbara*—Managing Director; Education, Workforce & Income Security Issues Government Accountability Office
Clowers, Nicole—Director, Financial Markets & Community Investment, Government Accountability Office
Dwyer, Adrienne—Attorney, Department of Labor
Falkenheim, Michael—Acting Director for Economic Policy, Office of Management and Budget
Granger, Kimberly—Assistant Director; Education, Workforce & Income Security Issues, Government Accountability Office
Khawar, Ali—ERISA Attorney, Department of Labor
Kinneen, Kelly—Program Examiner, Executive Office of the President, Office of Management and Budget
Kuhlman, Kay—Assistant Director, Financial Markets & Community Investment, Government Accountability Office

OTHER EXPERTS/STAKEHOLDERS

Blahous, Chuck—former Deputy Director, National Economic Council (also, current Public Trustee for Social Security and Medicare)
Brown , Jeffrey—Professor of Finance, University of Illinois - Urbana
Cummings, Frank—Attorney, formerly of U.S. House Ways and Means Committee
Doyle, Robert—former Director, Office of Regulations and Interpretations, Employee Benefit Security Administration
Elliott, Douglas—Fellow, Brookings Institution
Ferguson, Karen—Director, Pension Rights Center
Forbes, Deborah—Executive Director, Committee on Investment of Employee Benefit Assets
Friedman, Karen—Executive Vice President and Policy Director, Pension Rights Center
Kosar, Kevin—Analyst, Congressional Research Service
Lindholm, Mary Lou—former NAPA Project Director; President, Lindholm & Associates, Inc.
Porter, Ken—former Actuarial and International Benefits Consultant, American Benefits Council

Shiplett, Myra Howze*—former NAPA Study Advisor, National Academy of Public Administration
Stein, Norman—Professor of Law, Drexel University

* *Academy Fellow*

APPENDIX C: SELECTED BIBLIOGRAPHY

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APPENDIX D: GOVERNANCE STRUCTURES OF SELECTED OTHER ORGANIZATIONS ¹²²

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Amtrak	The National Railroad Passenger Corporation (Amtrak) is a corporation striving to deliver a high quality, safe, on-time rail passenger service that exceeds customer expectations.	Yes	No	Yes	9	2 (Sec. of Transportation and the President of Amtrak)	8 PAS	5 years	No	Yes (no more than 5 members from one party)	Yes	Member
Commodity Credit Corporation	The Commodity Credit Corporation was 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 orderly distribution.	Yes	Yes (USDA)	Yes	8	8 (Sec. of Agriculture; Dep. Sec. of Agriculture; Under Sec. of Farm and Foreign Agricultural Services; Under Sec. of Rural Development Under Sec. of Food, Nutrition, and Consumer Services; Chief Financial Officer and Chief Information Officer, USDA; Under Secretary of Marketing and Regulatory Programs; Under Secretary of Natural Resources and Environment	All PAS members (all must be USDA officials)	No; defaulted to term in office	No	No	Yes	Chair

¹²² All facts and information were compiled by use of online public sources or through agency contact.

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Community Development Financial Institutions Fund	The CDFI Fund's mission is to increase economic opportunity and promote community development investments for underserved populations and in distressed communities in the United States.	Yes	Yes (Treasury)	Yes	15	6 (Secs. of the Departments of Agriculture, Commerce, HUD, the Interior, the Treasury, and the Admin. of the Small Business Administration)	6 PAS; 9 PA (Private citizens)	Chair = 2 years; Private Sector = 4 years	No	No	No	Not on Board
Corporation for National and Community Service	The CNCS is a federal agency that engages more than 4 million Americans in service through Senior Corps, AmeriCorps, and the Social Innovation Fund, and leads President Obama's national call to service initiative, United We Serve.	Yes	No	Yes	15	10 (Sec. of Education, Sec. of HHS, Sec. of Labor, Sec. of Interior, Sec. of Agr., Sec. of HUD, Sec. of Defense, the Attorney General, Dir. of the Peace Corps, Admin. of the EPA, and the CEO)	All PAS	5 years	No	Yes (No more than 50% plus one additional member from one party)	Yes	Non-voting Member

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Export-Import Bank	Ex-Im Bank is the official export credit agency of the United States. Ex-Im Bank's mission is to assist in financing the export of U.S. goods and services to international markets.	Yes	No	Yes	7	4 (Sec. of Commerce and US Trade Rep. [not voting members]; President and VP of Ex-Im Bank)	All PAS	Not specified for non-ex-officio; defaulted to office term for ex-officio	No	No	Yes	Chair
Federal Crop Insurance Corporation	The Federal Crop Insurance Corporation (FCIC) promotes the economic stability of agriculture through a sound system of crop insurance and providing the means for the research and experience helpful in devising and establishing such insurance.	Yes	Yes (USDA)	Yes	10	4 (Director of the FCIC; Under Sec. for Agr., responsible for crop insurance program; one additional Under Sec., and Chief Econ. of Agr.)	2 PAS	Private sector members =4 years; (no more than 2 terms)	Yes (private sector members)	No	Yes	Non-voting member
Federal Deposit Insurance Corporation	FDIC is an independent agency created by the Congress to maintain stability and public confidence in the nation's financial system.	Yes	No	Yes	5	2 (The Comptroller of the Currency and Director of the CFPB)	All PAS	Chair = 5 years; All other Directors = 6 years	No	Yes (no more than 3 from one party)	Yes	Chair

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Federal Financing Bank	The FFB was established to centralize and reduce the cost of federal borrowing, as well as federally-assisted borrowing from the public.	No	Yes (Treasury)	Yes	5	1 (Secretary of the Treasury)	1 PAS; 4 PA	Directors hold office until successor is appointed death, resignation, or retirement, whichever occurs first.	No	No	Potentially (President appoints members from within Bank or other Federal Agencies)	Potential member (but not chair)
Federal Housing Administration Fund	FHA insures mortgages on single family and multifamily homes including manufactured homes and hospitals. It is the largest insurer of mortgages in the world, insuring over 34 million properties since its inception in 1934.	No	Yes (HUD)	No				N/A				
Ginnie Mae	Ginnie Mae provides a federal guarantee of timely payment on securities backed by loans insured or guaranteed by the FHA, VA and Rural Housing Service.	Yes	Yes (HUD)	No				N/A				
International Clean Energy Foundation	The ICEF was established as an entity that serves the long-term foreign policy and energy security goals of reducing global greenhouse gas emissions.	Yes	No	Yes	8	4 (Sec. of State, Sec. of Energy, the Admin. of the USAID, and the CEO of ICEF)	7 PAS (CEO is Board-appointed and Senate-approved)	Non ex-officio members only: 3 years (Max of two terms); ex-	No	No	Yes	Non-voting Member

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
								officio members serve term consistent with time in office				
Millennium Challenge Corporation	MCC is an innovative and independent U.S. foreign aid agency that is helping lead the fight against global poverty.	Yes	No	Yes	9	5 (Sec. of State, Sec. of Treasury, U.S. Trade Rep., Admin. of USAID, and the CEO of the MCC)	All PAS	Ex-officio (term of office); other members (3 years with option for additional 2 years)	No	No	Yes	Member

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
National Credit Union Administration	NCUA is the independent federal agency that regulates charters and supervises federal credit unions. With the backing of the full faith and credit of the U.S. Government, NCUA operates and manages the National Credit Union Share Insurance Fund, insuring the deposits of nearly 94 million account holders in all federal credit unions and the overwhelming majority of state-chartered credit unions.	Yes	No	Yes	3	None	All PAS	6 years	Yes	Yes (no more than 2 members from one party)	No	Not on Board

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Overseas Private Investment Corporation	OPIC mobilizes private capital to help solve critical development challenges and in doing so, advances U.S. foreign policy. Because OPIC works with the U.S. private sector, it helps U.S. businesses gain footholds in emerging markets, catalyzing revenues, jobs and growth opportunities both at home and abroad.	Yes	No	Yes	15	3 (Admin. of the Agency for International Dev., the U.S. Trade Rep. or Deputy U.S. Trade Rep., and the President of OPIC)	All PAS	3 years	Yes	No	Yes	Chair
Pension Benefit Guaranty Corporation	PBGC provides federal insurance to support the continuation and maintenance of private-sector defined benefit pension plans and ensures timely and uninterrupted payment of pension benefits.	Yes	Yes (Labor)	Yes	3	3 Ex-officio (Secs. of Labor, Commerce and Treasury)	All PAS	No; defaulted to term in office	No	No	No	Not on Board
Presidio Trust of San Francisco	The Presidio Trust is a distinctive federal agency created to save an historic American place and transform it to serve a new national purpose.	No	No	Yes	7	1 Ex-officio (Sec. of the Interior)	6 PA	4 years	Yes	No	No	Not on Board

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Saint Lawrence Seaway Development Corporation	Serve the marine transportation industries by providing a safe, secure, reliable, efficient, and competitive deep draft international waterway, in cooperation with the Canadian St. Lawrence Seaway Management Corporation.	Yes	Yes (DOT)	Yes	5	None	All PAS	No; defaulted to term in office	No	Yes (No more than 3 members from same party)	No	Not on Board
Tennessee Valley Authority	TVA has renewed its vision to help lead the Tennessee Valley region and the nation toward a cleaner and more secure energy future, relying more on nuclear power and energy efficiency and relying less on coal.	Yes	No	Yes	9	None	All PAS	Chair = 2 Years; All Other Members = 5 years	Yes	No	No	Not on Board
UNICOR (Federal Prison Industries, Inc.)	The mission of Federal Prison Industries, Inc. (FPI) is to protect society and reduce crime by preparing inmates for successful reentry through job training.	Yes	Yes (DOJ)	Yes	6	2 (Sec. of Defense and Attorney General)	2 PAS; 4 PA	Not specified	Not Specified	No	No	N/A

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Government Corporations												
Valles Caldera Trust	The Valles Caldera Trust was created by the Valles Caldera Preservation Act of 2000 to preserve and protect the historic Baca Ranch of New Mexico's Jemez Mountains.	No	No	Yes	9	2 (Supervisor of the Santa Fe National Forest, United States Forest Service; Superintendent of the Bandelier National Monument, National Park Service)	7 PA	4 years	Yes	No	No	Not on Board

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Non-Corporate Federal Agencies												
Federal Energy Regulatory Commission	Assists consumers in obtaining reliable, efficient and sustainable energy services at a reasonable cost through appropriate regulatory and market means.	N/A	Yes (Independent agency within DOE)	Yes	5	None	All PAS	5 years	Yes	Yes	Yes	Chair
Federal Housing Finance Agency	Regulates the housing GSEs to ensure they operate in a safe and sound manner and serve as a reliable source of liquidity and funding for housing finance; also currently overseeing the conservatorships of Fannie Mae and Freddie Mac.	N/A	No	Yes	4	All (Sec. of the Treasury, Sec. of HUD, Chairman of SEC and FHFA Director)	All PAS	No; defaulted to term in office	No	No	Yes	Chair
Federal Retirement Thrift Investment Board (FRTIB)	The FRTIB mission is to administer the Thrift Savings Plan (TSP) solely in the interest of participants and beneficiaries. TSP is a retirement savings and investment plan for Federal employees and members of the uniformed services, including the Ready Reserve. It was established	N/A	No	Yes	5	None	All PAS	Chair = 4 years; All Other Members = 2-3 Years	No	No	No	Not on Board

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Non-Corporate Federal Agencies												
	by Congress in the Federal Employees' Retirement System Act of 1986 and offers the same types of savings and tax benefits that many private corporations offer their employees under 401(k) plans											
Office of Federal Student Aid	Provide student financial aid through more than \$150 billion in federal grants, loans, and work-study funds each year to more than 15 million students paying for college or career school.	N/A	Yes (Education)	No								N/A
Office of the Comptroller of the Currency	The OCC's primary mission is to charter, regulate, and supervise all national banks and federal savings associations. We also supervise the federal branches and agencies of foreign banks. Our goal in supervising banks and federal savings associations is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products.	N/A	Yes (Independent Agency within Treasury)	No								N/A

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Non-Corporate Federal Agencies												
Railroad Retirement Board	The Railroad Retirement Board's mission is to administer retirement/survivor and unemployment/sickness insurance benefit programs for railroad workers and their families under the Railroad Retirement Act and the Railroad Unemployment Insurance Act	N/A	No	Yes	3	None	All PAS	5 years	No	No	No	Not on Board
Small Business Administration	The U.S. Small Business Administration (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to and maintain and strengthen the overall economy of our nation.	N/A	No (SBA is an Executive Branch Agency)	No	N/A							
Social Security Administration	Deliver Social Security services that meet the changing needs of the public.	N/A	No (SSA is an Executive Branch Agency)	2 Boards: Social Security Advisory Board (independent, bipartisan, advises President, the SSA Commissioner and the Congress on SS and SSI programs. Strictly advisory, no administrative actions or responsibilities. SSA Board of	SSAB = 7 SS Trustee Board = 6	SSAB = No SS Trustee Board = 4 (Sec. of the Treasury, Sec. of Labor, Sec. of HHS and Comm. Of SS)	SSAB = 3 PAS; SS Trustee Board = All PAS	SSAB = 6 years SS Trustee Board = 4 years (Public Trustees)	SSAB = Yes; SS Trustee Board = No	SSAB = Yes SS Trustee Board = Yes (Public Trustees)	SSAB = No; SS Trustee Board = Yes	SSAB = Not on Board; SS Trustee Board = Member

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Non-Corporate Federal Agencies												
				Trustees is required to report annual to the Congress on the financial outlook of the Social security Trust Fund.								
United States Postal Service	The Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people. It shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities	N/A	No	Yes	11	2 (Postmaster General and Deputy Postmaster General)	9 PAS	Governors = 7 years (two terms max)	Yes	Yes (no more than 5 of 9 may belong to same party)	Yes	Member

Name	Mission	Included in Gov. Corp. Control Act?	Within a Dept?	Board Aspects								
				Is there a Board?	Number	Ex-officio?	PA or PAS?	Term length?	Staggered ?	Bi-partisan?	Director on Board?	Director Role?
Non-Corporate Federal Agencies												
U.S. Census	To serve as the leading source of quality data about the nation's people and economy.	N/A	Yes (within the DoC)	No								N/A

APPENDIX E: BOARD STRUCTURES OF SELECTED OTHER ORGANIZATIONS¹²³

Name	Board Scope	Number of Meetings Per Year	Open vs. Closed Meetings	Quorum Requirement	Board-Dedicated Staff
Government Corporations					
Amtrak	The affairs and business of the Corporation shall be managed by the Board of Directors	Not specified	Not specified	A majority of the holders of the outstanding shares of the Corporation	1 Assistant
Commodity Credit Corporation	Oversight of the CCC activities stipulated by its Charter Act, subject to the supervision and general directions of the Secretary of Agriculture	No number specified; meetings held “whenever necessary”	All meetings open	5 members	No Staff
Community Development Financial Institutions Fund	The Advisory Board is to advise the Administrator on the policies of the Fund, not including granting or denial of any particular application	At least once annually	Not specified	A majority of members	1 Part-time Assistant
Corporation for National and Community Service	The Board is responsible for the setting overall policy for the corporation	Not less than three times each year	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	1 Full-time staff assistant

¹²³ All facts and information were compiled by use of online public sources or through agency contact.

Name	Board Scope	Number of Meetings Per Year	Open vs. Closed Meetings	Quorum Requirement	Board-Dedicated Staff
Export-Import Bank	The Board of Directors shall adopt and amend bylaws, designate the vice presidents and other officers of the Bank, make loan/guarantee determinations, and promote expansion of financial commitments in specified areas	Approximately 52 times annually; regular meetings scheduled weekly	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	Information Unavailable
Federal Crop Insurance Corporation	The Board is responsible for expert review of policies, plans of insurance, and related material	At least 5 times annually	Designated open and closed sessions occur during all meetings	4 members	1 Secretary
Federal Deposit Insurance Corporation	The management of the Corporation shall be vested in a Board of Directors	Approximately 12; at least once monthly	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	Yes, Chairman, Vice Chairman and Director all provided with internal FDIC staff
Federal Financing Bank	The Board shall determine the general policies governing the operations of the Bank and the exercise of the rights and powers granted to the Bank under the Federal Financing Bank Act of 1973	At least once annually	All meetings closed	A majority of members	No dedicated staff
International Clean Energy Foundation	The Board shall perform the functions specified to be carried out by the Board in this title and may prescribe, amend, and repeal bylaws, rules, regulations, and procedures governing the manner in which the business of the Foundation may be conducted and in which the powers granted to it by law may be exercised	At least once annually	Not specified	A majority of members	Information Unavailable

Name	Board Scope	Number of Meetings Per Year	Open vs. Closed Meetings	Quorum Requirement	Board-Dedicated Staff
Millennium Challenge Corporation	The Board shall have such powers and perform the functions specified to be carried out by the Board in the establishing legislation and may prescribe, amend, and repeal bylaws, rules, regulations, and procedures governing the manner in which the business of the Corporation may be conducted and in which the powers granted to it by law may be exercised	At least once annually	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	Information Unavailable
National Credit Union Administration	The management of the Administration shall be vested in the Board. The Board shall adopt such rules as it sees fit for the transaction of its business and shall keep permanent and complete records and minutes of its acts and proceedings	At least once annually	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	1 Secretary
Overseas Private Investment Corporation	The Board shall provide policy direction and general oversight as to the manner in which the business of the Corporation may be conducted and in which the powers granted it by law may be exercised and enjoyed.	Not less than quarterly	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	8 members	1 full-time staff person

Name	Board Scope	Number of Meetings Per Year	Open vs. Closed Meetings	Quorum Requirement	Board-Dedicated Staff
Pension Benefit Guaranty Corporation	The Board of Directors is responsible for establishing and overseeing the policies of the Corporation.	Not less than quarterly	All meetings closed; minutes must be publicly available unless decision made by Chair to not disclose	2 members	1 Part-time Secretary; 1 Part-time Assistant
Presidio Trust of San Francisco	The powers and management of the Trust shall be vested in a Board of Directors	No less than 3 times annually	At least 2 meetings per year must be open; meetings closed by majority vote of Board members	4 members	1 full-time Board Coordinator
Saint Lawrence Seaway Development Corporation	The Advisory Board shall review the general policies of the Corporation, including its policies in connection with design and construction of facilities and the establishment of rules of measurement for vessels and cargo and rates of charges or tolls; and shall advise the Administrator with respect thereto	No less than once each ninety days	Open meetings provided; procedure for closing meetings not specified	3 members (including Chairman)	Less than part-time staff person
Tennessee Valley Authority	The Board shall establish the broad goals, objectives, and policies of the Corporation and develop long-range plans to guide the Corporation in achieving the goals, objectives, and policies of the Corporation and provide assistance to the chief executive officer to achieve those goals, objectives, and policies; ensure that those goals, objectives, and policies are achieved	At least 4 times annually	All meetings open to the public, unless two or more members vote in favor of closed meeting	5 members	2 full-time assistants

Name	Board Scope	Number of Meetings Per Year	Open vs. Closed Meetings	Quorum Requirement	Board-Dedicated Staff
UNICOR (Federal Prison Industries, Inc.)	The Board of Directors shall provide employment for the greatest number of those inmates in the United States penal and correctional institutions who are eligible to work as is reasonably possible, diversify, so far as practicable, prison industrial operations and so operate the prison shops that no single private industry shall be forced to bear an undue burden of competition from the products of the prison workshops, and to reduce to a minimum competition with private industry or free labor	At least 3 times annually	No requirement for open meetings; a portion planned for each meeting to provide public access	Information Unavailable	Information Unavailable
Valles Caldera Trust	The Board of Trustees can make final decisions to adopt or amend the comprehensive management program or to approve any activity related to the management of the land or resources of the Preserve only in open public session	At least 3 times annually	All meetings open to the public, unless majority of Board members vote in favor of closed meeting	A majority of members	1 Secretary

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APPENDIX F: BUDGET PROCESS AND FUNDING SOURCES FOR SELECTED OTHER ORGANIZATIONS¹²⁴

Name	Budget Approval Process	Source(s) of Income	Interest/Premium-Setting Authority
Amtrak	Direct submission to Congress	Fares and Concessions	Independent Authority
Commodity Credit Corporation	Incorporated into UDSA budget	Loan Repayments	Independent Authority
Community Development Financial Institutions Fund	Incorporated into Department of the Treasury budget	Loan Repayments and Investments	Independent Authority
Corporation for National and Community Service	Direct submission to Congress	No revenue from operations	No premiums or interest rates
Export-Import Bank	Self-sustaining; receives no appropriation for operating and program expenses	Loan Repayments	Independent Authority
Federal Crop Insurance Corporation	Incorporated into UDSA budget	Insurance Premiums	Set by USDA's Risk Management Agency

¹²⁴ All facts and information were compiled by use of online public sources or through agency contact.

Name	Budget Approval Process	Source(s) of Income	Interest/Premium-Setting Authority
Federal Deposit Insurance Corporation	Self-sustaining; receives no appropriation for operating and program expenses	Insurance Premiums and Investments	Independent Authority
Federal Financing Bank	Subject to Department of the Treasury review prior to Congressional submission	Loan Repayments and Investments	Independent Authority
Federal Housing Administration Fund	Self-sustaining; receives no appropriation for operating and program expenses; budget is submitted as part of the departmental budget.	Mortgage Insurance Premiums and Investments	Independent Authority
Ginnie Mae	Self-sustaining; receives no appropriation for operating and program expenses; budget is submitted as part of the departmental budget.	Guaranty Fees and Interest Income	Limited Independent Authority (statutory ceiling)
International Clean Energy Foundation	Direct submission to Congress	No revenue from operations	No premiums or interest rates
Millennium Challenge Corporation	Direct submission to Congress	No revenue from operations	No premiums or interest rates
National Credit Union Administration	Self-sustaining; receives no appropriation for operating and program expenses	Credit Union Fees	Independent Authority

Name	Budget Approval Process	Source(s) of Income	Interest/Premium-Setting Authority
Overseas Private Investment Corporation	Self-sustaining; administrative appropriations approved by Congress regularly	Loan Repayments and Investments	Independent Authority
Pension Benefit Guaranty Corporation	DOL review required per Corporation Bylaws prior to Congressional submission	Premiums and Investment Returns	Congressional Authority
Presidio Trust of San Francisco	Self-sustaining; receives no appropriation for operating and program expenses	Leasing and Municipal Fees	Independent Authority
Saint Lawrence Seaway Development Corporation	Incorporated into Department of Transportation Budget	Toll Charges	Independent Authority
Tennessee Valley Authority	Self-sustaining; receives no appropriation for operating and program expenses	Electricity Sales	Independent Authority
UNICOR (Federal Prison Industries, Inc.)	Self-sustaining; receives no appropriation for operating and program expenses	Products & Services	Independent Authority; statutory limitation
Valles Caldera Trust	Direct submission to Congress	Visitation Fees	Independent Authority

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APPENDIX G: DISCUSSION OF SELECTED GOVERNANCE MODELS

FDIC: A Strong Governing Board Model

The FDIC was created by Congress in 1933 to maintain stability and public confidence in the nation's financial system after thousands of bank failures during the depression. Funded through premiums collected from banks and thrift institutions, FDIC insures individuals' bank accounts up to set limits. The FDIC does not receive appropriated funds, but pays for itself with the premiums it collects. FDIC funds are invested in U.S. Treasury Securities. Since 1991, FDIC has had authority to set premiums to cover its costs. FDIC is a mixed-ownership government corporation and operates with considerable, but not complete independence from both the administration and Congress. FDIC funds itself from premiums charged to banks that it supervises and sets its own budget and formulates regulations without review by OMB.

The corporation is directed by a five-member board, with a Chair responsible for executive and administrative operations. The board is responsible for policy formulation, effective supervision of the FDIC, and promotion of its welfare. The President appoints three board members, and selects one of them to be the chair. The other two board members—the “outside” members—are the Comptroller of the Currency and the Director of the Consumer Financial Protection Bureau. These latter two members are described as focusing predominantly on policy issues, as opposed to management which is more within the purview of the “inside” members.

All three non-ex-officio board members work for FDIC on a full-time basis, with those in the two non-chair positions heading committees focusing on a number of issues. For example, one board member heads an audit committee that works closely with the IG, GAO and others on a range of financial and performance audit issues. Other committees are formed and work as needed. Each full-time board member has staff at FDIC.

Some concerns have been raised about the need for this much board member attention to issues, and whether this level of involvement results in more burden than benefit. Past and current officials indicated that there can be some issues along these lines, but the importance of this potential over-attention was considered minimal. Although there have been vacancies on the FDIC board for relatively lengthy periods, they have not been reported to have seriously affected operations. These vacant positions could indicate that potential over-attention has been minimized by accommodating long-term vacancies. Generally, FDIC Board meetings are held monthly, and are attended by all members. Meetings are open, but closed sessions can occur as needed. Open meetings are available for viewing on the FDIC website.

FDIC has clear lines of authority and a Board with ample time to focus on issues of concern. The committee structure further allows for focus on substance. The audit committee, working with the IG, is able to affect change when needed. The relationship between the IG and the board was described as constructive. Both past and current FDIC officials described the agency as well run and professional. In addition, multiple governance experts, and officials at analogous organizations, cited FDIC's structure as effective.

FHFA: Director with Oversight Board Structure

The Federal Housing Finance Agency was created in 2008 **by** combining the Office of Federal Housing Enterprise Oversight, the Federal Housing Finance Board, and the Government-sponsored Enterprises (GSE) mission office at U.S. Department of Housing and Urban Development (HUD) and enhancing the authority of the new agency. Its mission is to provide supervision, regulation, and oversight for Fannie Mae, Freddie Mac and the Federal Home Loan Banks. A regulatory agency, FHFA is headed by a Director who is charged with managing the organization. The FHFA IG reports to the Director. Since 2009, an acting Director has headed the agency.¹²⁵ The FHFA has an Oversight Board comprised of the Secretaries of Housing and Urban Development and Treasury, and the Chairman of the Securities and Exchange Commission, all of whom have substantial responsibilities beyond their roles on FHFA's Advisory Board. FHFA's Director is Chair of the Oversight Board. The Board does not have management authority or administrative responsibilities with regard to the agency. FHFA funds itself from assessments on the Enterprises and Federal Home Loan Banks that it regulates and sets its own budget and formulates regulations without involvement of OMB.

By law, the Oversight Board must meet at least quarterly to review financial conditions of the Fannie Mae, Freddie Mac, and the Federal Home Loan Banks. Meetings are closed, and some members of the Oversight Board attend more frequently than others. The Board provides an annual report to Congress which is prepared by the FHFA Director in his role as Board Chair and provided to other board members for their comments. The Director, or currently, the Acting Director, is responsible for congressional relations including testimony before Congress.

This structure provides clear lines of authority within the organization that can lead to efficient operations. However, it also depends on sound leadership by the Director, effective sharing of important information with the Oversight Board, and the willingness of the Director to take advice when needed. Interviewees indicate that there has been minimal involvement of the Oversight Board since its creation in 2008. The Treasury Department is likely to work with the FHFA through other channels.

Federal Retirement Thrift Investment Board: Director Selected by the Board

An independent agency, the Federal Retirement Thrift Investment Board (FRTIB) was established in 1986 to administer the Thrift Savings Plan (TSP), a retirement plan for federal employees and members of the uniformed services. With 4.6 million participants and \$350 billion in assets, it is the largest defined contribution plan in the world. It is also one of the smallest federal agencies with fewer than 150 employees. Its budget is funded from plan participants and is established by the Board. It does not go through the appropriations process.

¹²⁵ In late 2010, a nomination was sent to the Senate to fill this position. However, opposition to the nomination resulted in the candidate's withdrawal. In May 2013 the President made a new nomination for this office, which is pending.

Members of the five-person Board are Presidential appointees confirmed by the Senate and are required to have “substantial experience, training, and expertise in the management of investments and pension benefit plans.” Three Board members are nominated by the President and one each is nominated by the House and the Senate. Terms are staggered.¹²⁶ Board members spend two to three days per month on FRTIB business.

The Board establishes operating policies and provides general oversight. An Executive Director, chosen by the Board and serving at its pleasure, is responsible for agency operations. The Board and the Executive Director meet monthly to review policies, practices, and performance. These meetings are open to the public and minutes are posted on their website. The Executive Director and the Board have a legal fiduciary responsibility to TSP participants.

In addition to the Board, the FRTIB also has an Employee Thrift Advisory Council (ETAC), a 15-member group representing a range of employee organizations as specified in law. The Executive Director is responsible for appointing members to this group, and looks to member organizations for recommendations. ETAC can assist FRTIB in supporting legislation under consideration by Congress.

FRTIB is completely independent of OMB, although it shares its budget is with Treasury and the White House. The Executive Director proposes an operating budget to the Board for approval. FRTIB budgets are public documents. FRTIB can also go directly to Congress on issues without OMB review or approval. The agency contracts out financial audits and arranges other audits, related to management of the TSP, through the Department of Labor.

The Executive Director and the Board are responsible for some investment-related decisions, but most investment parameters are spelled out in legislation. Unlike the Oversight Board of FHFA, the FRTIB controls many important policy decisions and can dismiss the Executive Director if it deems appropriate.

Ginnie Mae: Single-Head Agency within an Executive Branch Department

The Government National Mortgage Association, (Ginnie Mae), traces its beginnings back to the New Deal when the Reconstruction Finance Corporation created the Federal National Mortgage Association as a wholly owned government corporation in 1938. The Housing and Urban Development Act of 1968 partitioned the organization into the Federal National Mortgage Association (Fannie Mae), which the government sold to private shareholders as a GSE, and the less profitable parts of the business which remained with the Government National Mortgage Association (Ginnie Mae), a wholly owned government corporation within the Department of Housing and Urban Development. Its mission is to ensure that adequate funding is available to finance affordable single-family and rental housing based on government-insured mortgages, and to provide liquidity to the home mortgage market in times of economic stress.

¹²⁶ A provision in the law creating the Board, does not allow for Board members to resign until a new member is appointed. Although this is good in terms of ensuring that all seats on the Board are filled, it could be problematic for a Board member intending to leave.

Ginnie Mae serves a secondary market function: it provides a federal guarantee of timely payment on securities backed by loans insured or guaranteed by the FHA, VA, and Rural Housing Service.¹²⁷ The agency developed the first mortgage-backed security (MBS), a funding tool that lenders frequently use to support mortgage lending across the nation. Ginnie Mae is a part of the Department of Housing and Urban Development (HUD) and its powers are vested in the Secretary of HUD. The President of Ginnie Mae is a Presidential appointment requiring Senate approval. The Secretary is authorized to select individuals for appointments to other senior positions in Ginnie Mae. Ginnie Mae's executive management team consists of a President, an Executive Vice President and Senior Vice Presidents (including the Chief Financial, Chief Risk, and Chief Operating Officers).

Ginnie Mae is subject to HUD's authority and direction. Its budget and regulations are reviewed by the department and OMB. According to the 1968 legislation, Secretary-appointed officers "shall perform such executive functions, powers and duties as may be prescribed by the bylaws or by the Secretary."¹²⁸ HUD's Office of the Inspector General is responsible for financial and performance reviews of Ginnie Mae. Ginnie Mae generates revenues from the fees it charges for providing its government guarantee; the agency has consistently generated more revenues than it spends to administer its programs. Ginnie Mae is a small organization, staffed by just over 100 employees, plus contractor support. Ginnie Mae has no governing board.

Small Business Administration: Single-Head Independent Agency

The 1953 Small Business Act created the Small Business Administration (SBA) to support and promote preserve small businesses in the United States. Among its functions are guaranteeing loans to small businesses, making loans to victims of natural disasters, counseling, and ensuring government contracting opportunities and advocating for small businesses. These functions help to provide small businesses with better access to credit and entrepreneurial education. The SBA derives additional authority from the Small Business Investment Act of 1958.

The head of SBA, the Administrator, is a Presidential appointee with Senate confirmation. SBA's budget and regulations are subject to OMB review. During some administrations the SBA administrator is accorded cabinet rank; in others not. The Administrator is charged with selecting all personnel "necessary to carry out" the Small Business Act, as well as defining their duties and compensation according to laws generally applicable to federal agencies.¹²⁹

The SBA Administrator has considerable discretion over development of small business policies and implementation of SBA programs. The Administrator's authority also extends to imposing additional fees (subject to congressional approval) and issuing regulations associated with agency activities. The SBA Inspector General is responsible for financial and performance

¹²⁷ By contrast, Fannie Mae and Freddie Mac deal largely in so-called "conventional" mortgages, which are not guaranteed by the federal government.

¹²⁸ Section 802(y)(1)-(6) of Public Law 90-448, approved August 1, 1968, 82 Stat. 539, codified at 12 U.S.C. Sec. 1723(a).

¹²⁹ The Small Business Act is found at

<http://www.sba.gov/sites/default/files/Small%20Business%20Act_0.pdfhttp://www.sba.gov/sites/default/files/Small%20Business%20Act_0.pdf>

audits, and makes semi-annual reports to Congress. SBA has over 3,000 employees. It is funded by appropriations and its fee revenues offset 20% of its operating costs in 2012.¹³⁰ SBA does not have a governing board. The agency has created a variety of advisory committees, either pursuant to statute or on its own, including an Advisory Committee on Veterans' Business Affairs and an Advisory Council on Underserved Communities.

United States Census Bureau, Single-Head Agency within an Executive Branch Department

The Census Bureau (Census) is an agency within the U.S. Department of Commerce (DOC) and subject to orders and regulations of the Secretary of Commerce. As part of the DOC's Economic and Statistics Administration, Census is overseen by the Undersecretary of Commerce for Economic Affairs. The agency's FY 2013 budget is \$858 million.

The Census was established in 1903 to "serve as the leading source of quality data about the Nation's people and economy." The agency is responsible for designing and implementing surveys and censuses, and collecting, processing and disseminating census and survey data. It conducts the constitutionally mandated Population & Housing Census every ten years, and the Economic Census and the Census of Governments every five years. In addition, the Census conducts a number of ongoing economic and demographic censuses and surveys, such as the American Community Survey, the Economic Census, and the Current Population Survey, to produce information about the nation's social and economic conditions. Census and survey data are used to determine distribution of congressional seats among states, guide public policy and business investment decisions, provide information to update the nation's key economic indicators, and help inform distribution of over \$400 billion of federal funds annually,

The Census is led by a Director, who is appointed by the President and confirmed by the Senate. The Director serves for a five-year term and can be removed by the President. An individual may serve up to two terms as the Director, and may continue in office until his or her replacement is appointed, up to one year after expiration of the term. The agency manages over 4,000 employees at its headquarters in Suitland, Maryland. In 2011, Census carried out an 18-month consolidation of 12 regional offices to six to increase operational efficiency and reduce costs. The estimated annual cost savings from closing the six regional offices will be in the range of \$15-18 million. This was the agency's first major regional office consolidation in 50 years.

¹³⁰ SBA Congressional Budget Justification for FY 2014, page 18.

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APPENDIX H: BOARD REPS' LETTER



MAY 29 2013

Thomas H. Stanton, Fellow
National Academy of Public Administration
900 7th Street, NW, Suite 600
Washington, DC 20001

Re: **Governance Study of the Pension Benefit Guaranty Corporation (PBGC)**

Dear Mr. Stanton,

We appreciate the collaborative approach you, your colleagues, and your professional staff have taken in addressing the congressional mandate to study PBGC's governance structure. Following the interim briefing for the PBGC Board Representatives on April 4th and 5th, we looked closely at your materials and realized that we have not completely given you the benefit of our experience working with the Board and with PBGC. What follows are our thoughts on the shortcomings of the current structure and procedures and our recommended options for resolving those shortcomings. These observations and options are not the Administration's policy views but reflect the collective concerns of the Board agencies. We thank you for the opportunity to comment and welcome further discussions.

At the outset, we note that PBGC is not as similar to the Federal Deposit Insurance Corporation (FDIC) as one might think at first glance. The FDIC is primarily a bank examining and regulating entity. Its operations affect banks nationwide and directly affect the operations of each of those banks. In contrast, PBGC is primarily a benefit payment entity. Its principal purposes are to determine who is entitled to pension insurance benefits and to pay those benefits. The PBGC does not engage with companies in a supervisory capacity or set prudential requirements for pension funds, as the FDIC does for banks. In comparison to the banking activities regulated by the FDIC, the pension community is regulated primarily by the Department of Labor and the Department of the Treasury, not PBGC.

Our review of other federal entities' board structures correlates with yours: there is a wide range of structures and each appears to be unique to the entity involved. Thus we would encourage you to look at PBGC as unique and not attempt to compare it to the FDIC or other entities. While we agree that the Board could be improved, both as to its structure and its procedures, we do not believe a wholesale change is necessary.

Shortcomings of Current Structure and Procedures

In thinking about your interim presentation, it became clear to us that setting out the current issues facing PBGC's governance would be helpful. From our perspective, the issues are:

1. The current Board is not large enough to form committees that would enhance its operations;
2. Turnover and delays in filling the leaderships positions can reduce PBGC's effectiveness;
3. There is a lack of clarity as to policy-making authority; and
4. The Advisory Committee is not used to its full potential.

NAPA would probably add two additional issues – (i) tensions between the Board and the PBGC Director and (ii) a lack of transparency in the Board's activities and its relationship with PBGC. We do not see these issues in the same way NAPA sees them.

Over the years, the Board has had differing relationships with PBGC's chief executives. As your professional staff has noted, it would be unreasonable to expect to create a governance structure around differing personalities. Instead, it is appropriate to look at the effectiveness of the overall structure. A certain amount of tension between the two entities is expected and built into the current governance structure. The Employee Retirement Income Security Act (ERISA) requires the PBGC Director to administer the Corporation while acting "in accordance with the policies established by the board." Tension naturally arises as the two entities work to determine the policies and the boundaries of the PBGC's activities.

As for transparency, the Board agencies have provided considerable materials following your April briefing to support the extent of interaction and transparency between the Board agencies and the PBGC. Nonetheless, we agree that transparency could be enhanced, for instance, by more frequent financial reporting and more public involvement. Such changes do not require legislation, however; the Board can take the necessary steps on its own.

Recommended Options

In setting out recommended options to addressing the four issues, we are mindful of what the Board can do on its own using existing authorities and what Congress could do to make PBGC's governance and operations even better. Our options also recognize that the Board agencies – Labor, Treasury, and Commerce – collectively contain a tremendous reservoir of knowledge about PBGC's policies and operations. PBGC's governance could be improved, but any improvements should capitalize on this existing knowledge base, rather than eliminating any portion of it.

1. The current Board is not large enough to form committees that would enhance its operations

We generally agree with your idea of expanding the size of PBGC's Board. Its current size makes it difficult to form committees or for Board Members to work directly and effectively on matters relating to PBGC outside of formal board meetings. Expanding the Board – formally or informally – would rectify this shortcoming. We posit three options for your consideration:

- Create a 10-member board by requiring the three existing Board agencies to each designate two board members, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with appropriate knowledge and experience and by placing the PBGC Director on the Board as a voting member. A board member from the Department of Labor would be the Chair of the Board. The remaining three members of the Board would be three members from the PBGC Advisory Committee, who would serve as non-voting board members.
- Create a 7-member board by requiring the three existing Board agencies to each designate two board members, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with appropriate knowledge and experience and by placing the PBGC Director on the Board as a voting member. A board member from the Department of Labor would be the Chair of the Board.
- Create a 5-member board in one of two forms:
 - (a) by requiring the three existing Board agencies to each designate one board member, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with appropriate knowledge and experience, and by placing the PBGC Director and the PBGC Advisory Committee Chair on the Board as voting members. The board member from the Department of Labor would be the Chair of the Board.
 - (b) by establishing the same structure as (a), above, except that the Advisory Committee itself would determine who among its members would serve as the voting member of the Board. The board member from the Department of Labor would be the Chair of the Board.

2. Turnover and delays in filling the Director position can reduce PBGC's effectiveness

The political appointment and Senate confirmation process is time-consuming. At PBGC, the senior-most career executive "acting" as director of PBGC often results in a caretaker form of leadership, lacking a political mandate to press forward with certain issues. From our perspective, there is no need to require the PBGC Director to be a presidentially appointed, Senate confirmed position. MAP-21 states that the PBGC Director "shall be accountable to the board of directors." Returning to the practice before the Pension Protection Act of 2006, when the Chair of the PBGC Board of Directors appointed PBGC's chief executive would substantially accelerate the appointment of new PBGC directors.

At the Board level, delays in appointments can affect the continuity of PBGC policy making and oversight. Our recommendations address this in two ways. First, expanding the Board's size to ten, seven, or five members would significantly mitigate this concern by making a quorum easier to achieve. Second, explicitly allowing officials who are "performing the duties of" the Assistant Secretary or above ensures continuity is not disrupted by delays in the nomination and confirmation processes.

3. There is a lack of clarity as to policy-making authority

ERISA sets out three purposes for PBGC:

- (1) To encourage the continuation and maintenance of voluntary private pension plans for the benefit of their participants;
- (2) To provide for the timely and uninterrupted payment of pension benefits to participants and beneficiaries; and
- (3) To maintain premiums established by the corporation . . . at the lowest level consistent with carrying out its obligations under Title IV of ERISA.

Of these three purposes, the PBGC Director and the corporation's employees are rightly focused on the second one: paying benefits. Congress has retained premium setting authority (although the Administration's budget recommends giving that authority to PBGC's Board), so PBGC's third statutory purpose cannot be affected by the Corporation's or the Board's activities. The ambiguity concerning policy-making authority comes from the first purpose.

The United States is struggling with retirement security issues as an increasing proportion of its population nears retirement age. Encouraging the continuation of pension plans is important, but it must be accomplished in the greater context of developing and executing a national retirement security policy. The three cabinet secretaries who make up PBGC's Board work closely with the president and his advisers on national retirement security policy, both in their individual secretarial capacities and together as a board of directors. The Board appreciates the important contribution of expertise and information that PBGC makes to this effort, and its role in executing portions of this policy. However, in order for national retirement security policy to develop effectively and efficiently, the Corporation must take direction from the Board on policy matters.

With this in mind, the Board can take action to more clearly delineate the roles and responsibilities of PBGC's Director and the Corporation as a whole regarding large-scale policy issues. Congress could enhance this effort by amending ERISA to more clearly state that policy issues reside with the Board.

4. The Advisory Committee is not used to its full potential

The PBGC Advisory Committee consists of a talented and knowledgeable group of people who can greatly contribute to the PBGC's success. We agree the Advisory Committee has been used more effectively in the past than it is today. Both the Board and the Board Representatives could work more closely with the Advisory Committee to study issues, formulate plans, and monitor the execution of those plans. ERISA currently states that the Advisory Committee shall "advise the corporation" as to three specific matters and "such other issues as the corporation may request from time to time." To enhance both the effectiveness of the Board and the Advisory Committee, Congress could amend ERISA to have the Advisory Committee report to the Board rather than the Corporation. Alternatively, the Advisory Committee could be directed to report to both the Board and the Corporation.

We hope that you find the points we have raised in this letter useful as you prepare your final report. For your convenience, we have attached a table that summarizes the issues, our recommendations, and our concerns about the options your professional staff advanced during the interim briefing. If you would like to discuss this further, please do not hesitate to contact any of our staff members. You may reach them via email and telephone as follows: Hilary Duke, duke.hilary@dol.gov, (202) 693-8439; Phil Quinn, philip.quinn@treasury.gov, (202) 622-0270; and Rick Lattimer, rlattimer@doc.gov, (202) 482-6919.

Sincerely yours,



Phyllis C. Borzi
Assistant Secretary
of Labor for Employee
Benefits Security
Administration



Mark E. Doms
Under Secretary
of Commerce for
Economic Affairs



Mary John Miller
Under Secretary
of the Treasury
for Domestic Finance

PBGC Governance Issues

Issues: 1. The current Board is not large enough to form committees that would enhance its operations		
Board Recommendation & Advantages	NAPA Recommendation	Concerns with NAPA's Proposed Response
<p>Option 1: Expand Board to 10 members, 7 voting and 3 non-voting: 2 each from Labor, Treasury, and Commerce, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with the Chair being a member from the Department of Labor and add PBGC Director to the Board, as a voting member. The three non-voting members would come from members of the PBGC Advisory Committee.</p> <p>Option 2: Expand Board to 7 members: 2 each from Labor, Treasury, and Commerce, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), with the Chair being a member from the Department of Labor and add PBGC Director to the Board, as a voting member.</p> <p>Option 3: Modify the existing Board by requiring Labor, Treasury, and Commerce to designate a voting member, not below the level of Assistant Secretary (or a person performing the duties of an Assistant Secretary or above), by adding the PBGC Director as a voting member, and either (a) adding the Advisory Committee Chair to the Board as voting member, or (b) allowing the Advisory Committee itself to select the voting member from among its members.</p> <ul style="list-style-type: none"> • Provides additional people to serve as committee members, including on audit and investment committees as suggested by MAP-21 • Provides additional board members and others to devote time to PBGC • Retains current oversight structure • Retains current knowledge base from all three Board agencies • Eliminates difficulty of finding highly-qualified board members from outside the government and ensures continuity/quorum • Would retain the IG's direct reporting relationship with the Board (the Director could be excused from meetings as necessary) 	<p>Expand the Board to 5 to 7 members, with PBGC Director as chair. The additional members would come from outside the government and would be full-time board members.</p>	<ul style="list-style-type: none"> • Underestimates the value of Board Agency oversight of PBGC • Vests too much authority in the PBGC Director. Full-time board members would either – <ul style="list-style-type: none"> ○ Take direction from PBGC Director, or ○ Resist Director, creating dysfunction • Overestimates the quality of potential full-time board members; federal salaries (even FIRREA salaries) cannot compete with insurance and pension industry salaries • Making the Director the Chair would have the IG report to the Director, eliminating the IG's conduit to the Board. • It would appear to be inappropriate for a representative of plan sponsors and perhaps other special interest groups to be voting on PBGC's investment policy, particularly when PBGC has negative equity and the general taxpayers may bear the risk of PBGC's investment strategies.

Issue: 2. Turnover and delays in filling the leaderships positions can reduce PBGC's effectiveness		
Board Recommendation & Advantages	NAPA Recommendation	Concerns with NAPA's Proposed Response
<p>Amend ERISA to have the Board select the PBGC Director and to expand the size of the Board per one of the three options set out above.</p> <ul style="list-style-type: none"> • Having the Board appoint the PBGC Director eliminates the need for the time-consuming presidential nomination and Senate confirmation process • Expanding the Board as suggested above mitigates the risk of delays in filling board member and board representative positions • Explicitly allowing officials "performing the duties of" the position of Assistant Secretary or higher ensures continuity 	<p>Our understanding of NAPA's options is that all board members would be PAS</p>	<p>The PAS process can be time consuming and create gaps that reduce PBGC's effectiveness.</p>

Issue: 3. There is a lack of clarity as to policy-making		
Board Recommendation & Advantages	NAPA Recommendation	Concerns with NAPA's Proposed Response
<p>Amend ERISA to clarify that policy-making resides solely with the Board and allow the Board the opportunity to clarify the roles and responsibilities of PBGC regarding policy development.</p> <ul style="list-style-type: none"> • Retains the current and accepted roles of cabinet secretaries in policy-making • Reduces unnecessary tensions between PBGC and the Board by setting clear roles and responsibilities • Reduces the likelihood of conflicting information reaching Administration and congressional policy-makers 	<p>PBGC Director chairs the Board – "leader of management and policy development."</p>	<ul style="list-style-type: none"> • ERISA established Labor and Treasury as the entities that regulate pensions • Giving the PBGC Director a policy-development role superior to the Secretaries of Labor and the Treasury would cause conflicts and dysfunction • Unrealistic to expect the President to have time to sort out any irreconcilable conflicts

4. The Advisory Committee is not used to its full potential

Board Recommendation & Advantages	NAPA Recommendation	Concerns with NAPA's Proposed Response
<p>Amend ERISA to have the Advisory Committee report to the Board or to both the Board and PBGC.</p> <ul style="list-style-type: none"> • Allows for the Advisory Committee to play an instrumental role in policy formulation • Advisory Committee members could work directly with Board Members on Board committees • Takes greater advantage of the talent and capabilities of the Advisory Committee • By clarifying its purpose the Advisory Committee would likely become more engaged in PBGC issues 	<p>Enhance use of Advisory Committee</p>	<p>None. NAPA's interim presentation highlighted these same issues.</p>

APPENDIX I: FEDSCOPE DATA ANALYSIS METHODOLOGY

Data Source

Attrition, hiring, salary and demographics data about PBGC, the Financial Regulatory Agencies and the rest of the Executive branch comes from the Office of Personnel Management's Fedscope - a tool that displays data from the Central Personnel Data file, now called the Enterprise Human Resources Integration-Statistical Data Mart (EHRI-SDM). The EHRI-SDM covers most civilian, executive branch federal employees apart from the Intelligence Community and a few other exceptions. Details about those exceptions can be found here: http://www.fedscope.opm.gov/datadefn/eahri_sdm.asp. It does not include data about federal contractors or military personnel.

Hiring/Separations and Other Data Definitions

Employment demographics and trends are based on a snapshot of the federal workforce on the last day of the federal fiscal year. Hiring and Separations numbers are based on all personnel actions of these types occurring during a fiscal year. The attrition rate is calculated by dividing the total separations of full-time, non-seasonal permanent employees from the agency by the average number of employees at the agency based on the counts at the start and end of a fiscal year. Transfers into or out of an agency are included in the new hire and attrition numbers, but transfers within an agency are not. Length of federal service is defined as the number of years of federal service creditable towards retirement. It includes Federal civilian employment, creditable military service, and other service made creditable by specific legislation. Salary information is an annualized rate of pay based on the base salary and any locality adjustments. More information can be found at: <http://www.fedscope.opm.gov/datadefn/index.asp>.

Financial Regulators

In this analysis financial regulators are defined as agencies that were granted pay rate flexibility in the Federal Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) or similar legislation and agencies created by the Dodd-Frank Act. These include: Commodity Futures Trading Commission, National Credit Union Administration, Federal Deposit Insurance Corporation, Farm Credit Administration, Federal Housing Finance Agency, the Consumer Financial Protection Bureau, Securities and Exchange Commission, and the Office of the Comptroller of the Currency. To maintain consistency, for earlier years, when available, this analysis includes data from organizations that were reorganized into the above institutions, namely, the Federal Housing Finance Board, Office of Federal House Enterprise Oversight and the Office of Thrift Supervision was included. The Federal Reserve was not included in this analysis because its data are unavailable from OPM's database.

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APPENDIX J: BASIC SALARY RANGES AND AVERAGE BASIC SALARIES OF EMPLOYEES IN KEY OCCUPATIONS

Data Source: OPM FedScope

Basic Salary Ranges and Average Basic Salaries of Employees in Key Occupations PBGC, Financial Regulators, and Other Federal Agencies FY 2012 (rounded to nearest thousandth)												
	Accountant			Auditor			Attorney			Employee Benefits Law Specialist		
	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary
PBGC	62,000	105,000	155,500	42,000	96,000	172,000	87,000	130,000	177,000	52,000	101,000	156,000
Financial Regulators	59,000	162,000	242,000	46,000	152,000	235,000	73,000	174,000	260,000	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>
All Other Agencies	35,000	109,000	180,000	34,000	109,000	236,000	52,000	137,000	232,000	52,000	123,000	180,000
	Procurement Specialist			Financial Analyst			Actuary			Information Technologist		
	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary	Min Salary	Ave Salary	Max Salary
PBGC	65,000	115,000	153,000	62,000	112,000	153,000	52,000	104,000	172,000	47,000	120,000	177,000
Financial Regulators	54,000	138,000	207,000	50,000	146,000	229,000	<i>n/a</i>	<i>n/a</i>	<i>n/a</i>	47,000	145,000	250,000
All Other Agencies	34,000	105,000	180,000	52,000	108,000	156,000	52,000	126,000	180,000	34,000	114,000	195,000

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APPENDIX K: SELECTED COMPENSATION FLEXIBILITIES AND INCENTIVES FOR FEDERAL AGENCIES

(OPM Human Resource Flexibilities and Authorities in the Federal Government)

Agency-based Compensation Flexibilities		
Recruitment Incentives		An agency may pay a recruitment incentive to a newly-appointed employee if the agency has determined the position is likely to be difficult to fill in the absence of an incentive.
Relocation Incentives		An agency may pay a relocation incentive to a current employee who must relocate to accept a position in a different geographic area if the agency determines the position is likely to be difficult to fill in the absence of an incentive.
Retention Incentives	Likely to leave Federal Service	An agency may pay a retention incentive to a current employee if the agency determines the unusually high or unique qualifications of the employee or a special need of the agency for the employee's services makes it essential to retain the employee and the employee would be likely to leave the Federal service in the absence of a retention incentive.
	likely to leave for a different Federal position	An agency may pay a retention incentive to a current employee if the agency determines— Given the agency's mission requirements and the employee's competencies, the agency has a special need for the employee's services that makes it essential to retain the employee in his or her current position during a period of time before the closure or relocation of the employee's office, facility, activity, or organization; and The employee would be likely to leave for a different position in the Federal service in the absence of a retention incentive.
Superior Qualifications and Special Needs Pay-setting Authority and Special Qualifications Appointments		Agencies may set the rate of basic pay of a newly-appointed employee at a rate above the minimum rate of the appropriate General Schedule (GS) grade because (1) the candidate has superior qualifications or (2) the agency has a special need for the candidate's services.
Maximum Payable Rate Rule (Highest Previous Rate)		Upon reemployment, transfer, reassignment, promotion, demotion, or change in type of appointment, an agency may set the rate of basic pay of an employee by taking into account a rate of basic pay previously received by the individual while employed in another civilian Federal position (with certain exceptions). This rate may not exceed the maximum rate of the employee's grade.
Waiver of Dual Pay Limitation		Agencies have authority to waive the limitation (40 hours per week) on aggregate basic pay, when "required services cannot be readily obtained otherwise" and "under emergency conditions relating to health, safety, protection of life or property, or national emergency."
Travel and Transportation Expenses for Interviews and/or New Appointments		An agency, at its discretion, may pay the travel or transportation expenses of any individual candidate for a pre-employment interview or pay travel and transportation expenses for a new appointee to the first post of duty.
Advanced Payments for New Appointees		Agencies may advance a new hire up to two paychecks so a new employee can pay immediate expenses that are normally incurred as a result of starting a new job and/or relocating to a new geographic area.
Premium Pay, Exceptions to the Biweekly Limitation		The head of an agency (or designee) may make an exception to the biweekly limitation on premium pay during emergencies involving a direct threat to life or property or in mission-critical situations.

Agency-based Compensation Flexibilities		
Supervisory Differential		The head of an agency may pay a supervisory differential to a General Schedule employee who has supervisory responsibility for one or more civilian employees not covered by the General Schedule if one or more of the subordinate civilian employees, in the absence of such a differential, would be paid more than the supervisory employee.
Student Loan Repayment Program		Agencies may repay certain types of Federally made, insured, or guaranteed student loans to attract job candidates or retain current employees.
Compensation Flexibilities with OPM, OMB Approval		
Special Rates		OPM may establish higher rates of pay for an occupation or group of occupations nationwide, worldwide, or in a local area when it finds the Government's recruitment or retention efforts are, or would likely become, significantly handicapped without those higher rates. The minimum rate of a special rate range may exceed the maximum rate of the corresponding grade by as much as 30 percent.
Recruitment and Relocation Incentives in Excess of 25 Percent		Upon the request of the head of an agency, OPM may waive the recruitment or relocation incentive 25 percent limitation based on a critical agency need. Under such an approval, the total amount of recruitment or relocation incentive payments may not exceed 50 percent of an employee's annual rate of basic pay at the beginning of the service period multiplied by the number of years in the service period.
Retention Incentives in Excess of 25 Percent for Individual Employees and 10 Percent for Groups of Employees		At the request of an agency head, OPM may waive the retention incentive limitation of 25 percent of basic pay for individual employees or 10 percent for a group or category of employees (but not to exceed 50 percent of basic pay) based on a critical agency need.
Critical Position Pay Authority		OPM may, upon the request of an agency head, and after consultation with the Office of Management and Budget (OMB), grant authority to fix the rate of basic pay for one or more critical positions in an agency at not less than the rate that would otherwise be payable for that position, up to the rate for level I of the Executive Schedule under the critical pay authority. Under this same provision of law, a higher rate of pay may be established upon the President's written approval.
Federal Wage System Authorities	Special Rates	The special rate authority allows a lead agency, with the approval of OPM, to establish rates above the regular Federal Wage System wage schedule rates for an occupation or group of occupations experiencing or potentially experiencing recruitment or retention difficulties.
	Increased Minimum Hiring Rate	The increased minimum hiring rate authority allows a lead agency to establish any Federal Wage System scheduled rate above step 1 as the minimum rate at which a new employee can be hired.
	Special Schedules	The special schedule authority allows a lead agency, with the approval of OPM, to establish a Federal Wage System schedule of rates broader in scope than would normally be authorized under the special rates program.

APPENDIX L: GLOSSARY OF TERMS¹³¹

Annuity—Regular payments (usually monthly) to a person for a set period, such as for a certain number of years, or for life. The type of annuity affects the amount of the payment and how much, if anything, a beneficiary will receive after a participant's death. For example, payment amounts typically are reduced if an annuity has a survivor feature. See Your PBGC Benefit Options for more information.

Beneficiary—Generally, a person designated by a pension plan participant, or by the plan's terms, to receive some or all of the participant's pension benefits upon the participant's death. (An "Alternate Payee" under a "Qualified Domestic Relations Order" also is considered a beneficiary.)

Defined Benefit Plan—A pension plan that specifies the benefits or the method of determining the benefits, but not the contribution. Specification of benefits can be done in several ways: a specified amount per month for each year of service payable at retirement (dollar benefit); a stated percentage of compensation (fixed benefit); or a stated percentage of compensation for each year of service (unit benefit). Employer contributions to a defined benefit plan are determined actuarially on the basis of the benefits expected to become payable. The company bears the risk of investment performance and must compensate the plan for any shortfalls in funding.

Defined Contribution Plan—A pension plan in which the contributions are specified, but not the benefits. Examples are money purchase plans, 401(k) salary deferral plans, and profit-sharing plans. Under ERISA, a defined contribution plan (also called “an individual account” plan) is a plan that provides an individual account for each participant that accrues benefits based solely on the amount contributed to the account, and any income, expenses, gains and losses, and reallocation of any forfeitures of accounts of other participants. The employee bears the investment risk.

Flat-Rate Premium—The fixed premium rate that all PBGC-insured plans pay annually to PBGC for each participant. The rate is higher for single-employer plans than for multiemployer plans. Single-employer plans also may owe a "Variable-Rate Premium" depending on the plan's funding level.

Frozen Plan—An ongoing pension plan in which the plan sponsor "freezes" benefits, that is, stops some or all future benefit accruals. A plan can be frozen in several ways. Under a partial freeze, a plan can be frozen for some, but not all, current participants based on, for example, years of service, job classification, or plant location. Under a soft freeze, benefits typically are increased for wage growth, but not for additional service. Under a hard freeze, no participant accumulates any further benefits.

¹³¹Terms and definitions are reproduced from *Glossary*. Pension Benefit Guaranty Corporation, available at <<http://www.pbgc.gov/about/pg/header/glossary.html#top>>

Guaranteed Benefit Limit—The amount of a participant's pension benefit that PBGC guarantees based on ERISA's legal limits. The benefits that PBGC may guarantee include pension benefits payable at normal retirement age; certain early retirement benefits and disability benefits; and annuity benefits for survivors of participants. The guarantee applies only to benefits earned on or before the "Plan Termination Date" or the "Bankruptcy Filing Date," as applicable.

Multiemployer Pension Plan—A collectively bargained arrangement in which two or more employers in a particular trade or industry participate in one plan covering a geographical area. These plans are common in the building and construction industry, coal mining, and trucking.

Plan Sponsor (multiemployer plan)—The association, committee, joint board of trustees, or other entity that oversees a multiemployer pension plan.

Risk-Based Premium—A premium rate structure accounting for plan sponsors' level of financial risk. Level of financial risk **can be** based on several pension plan solvency indicators, such as overall company financial health and investment mix for pension plans.

Single-Employer Plan—Generally, a pension plan sponsored by one company or a group of companies under common ownership. It may or may not be collectively bargained. (A multiple employer plan is a type of single-employer plan that is maintained by two or more unrelated companies and does not meet the requirements of a "Multiemployer Plan".)

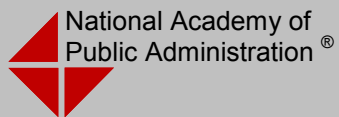
Termination (for single-employer plans)—The ending of a single-employer defined benefit plan. The three types of termination are standard and distress terminations, which are initiated by the plan sponsor, and PBGC-initiated (involuntary) terminations. See *How Pension Plans End* and the Plan Termination Fact Sheet for more information.

Underfunded Plan—A defined benefit plan without enough assets to pay all benefits earned by participants. A plan's funded status can vary depending on the method used to value the plan's assets and liabilities.

Variable Rate Premium—The premium that an underfunded single-employer defined benefit plan must pay to PBGC based on the amount of the plan's unfunded vested benefits. The variable-rate premium is in addition to the "Flat-Rate" per-participant premium, which all PBGC-insured plans must pay regardless of funding status.

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