

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-217628

DATE: January 23, 1986

MATTER OF: Pension Benefit Guaranty Corporation--Printing and Distribution Requirements

- DIGEST:**
1. The Pension Benefit Guaranty Corporation (PBGC) may not be regarded as exempt from the Government-wide statutory requirements (44 U.S.C. §§ 501, 1701) to satisfy its printing and distribution needs from the Government Printing Office because the statutes and legislative history which created PBGC clearly indicate that Congress intended that, after the first 270 days of the corporation's existence, it would be subject to those requirements.
 2. Agencies and establishments of the United States Government are required by 44 U.S.C. §§ 502, 1701 to satisfy their printing and distribution requirements through the offices of the Government Printing Office (GPO) unless their enabling legislation confers some statutory exemption from those requirements. Those agencies and establishments which have previously been found exempt from those requirements have been given the statutory authority to determine the character and necessity of their accounts, "notwithstanding the provisions of any other law governing the expenditure of public funds." Since the statutes creating the Pension Benefit Guaranty Corporation (29 U.S.C. §§ 1301 *et seq.*) do not contain such a provision, that corporation may not be regarded as exempt from the general requirement to use GPO to satisfy its printing and distribution needs.

The Executive Director of the Pension Benefit Guaranty Corporation (PBGC) has requested our opinion on whether PBGC is exempt from the provisions of 44 U.S.C. §§ 501 and 1701 (1982) which generally require Federal Government agencies and establishments to have their printing and distribution needs handled by the Government Printing Office (GPO). For the reasons given below, we find that PBGC is not exempt from those statutory requirements.

034369

PBGC STATUTORY AUTHORITY

PBGC was established by title IV of the Employment Retirement Income Security Act of 1974 (ERISA) in order to administer a program of pension plan termination insurance.^{1/} Pub. L. No. 406, 93rd Cong., 2d Sess., 88 Stat. 829, 1003 et seq., codified in, 29 U.S.C. § 1301 et seq. (1982). PBGC is one of the wholly owned Government corporations listed in the Government Corporation Control Act, as amended. 31 U.S.C. § 9101(3)(I) (1982). Among other things, PBGC is authorized:

" * * * to enter into contracts, to execute instruments, to incur liabilities, and to do any and all other acts and things as may be necessary and incidental to the conduct of its business * * *." 29 U.S.C. § 1302(b)(8).

In addition, the act which created PBGC expressly granted PBGC certain additional powers which were characterized as "temporary authority for [PBGC's] initial period." ERISA,

^{1/} The law creating PBGC vests in it two fundamentally different duties. On one hand, PBGC is a "trustee" for the non-public funds of terminated pension plans. ERISA, § 4042, 29 U.S.C. § 1342. In this capacity, PBGC is serving primarily the interests of the participants and beneficiaries of the plan, in the same manner and to the same degree as would a nongovernmental party appointed to the same position.

On the other hand, PBGC also serves as an "insurer" using revolving funds which are appropriated public funds. ERISA, § 4005(b)(2)(D), 29 U.S.C. § 1305(b)(2)(D). Cf., e.g., 60 Comp. Gen. 323 (1981); 43 Comp. Gen. 759 (1964); B-193573, Dec. 19, 1979. Cf. also National Treasury Employees Union v. FLRA, No. 82-2176 (D.C. Cir. May 10, 1983) (unpublished opinion), aff'g 9 F.L.R.A. 82 (Case No. O-NG-320, Aug. 3, 1982). When acting in this other capacity, PBGC is serving primarily the interests of the United States.

This decision only addresses PBGC's activities in its capacity as insurer, and its use of public funds. This is because 44 U.S.C. §§ 501 and 1701 explicitly apply only to (a) printing work undertaken "for" (i.e., primarily in the interests of) the Government, and (b) to distribution services reimbursed with "[m]oney appropriated by any Act * * *," respectively.

§ 4004, 88 Stat. 1008-9 ("catchline" of section). That additional "temporary authority" provided that:

"In addition to its other powers under this title, for only the first 270 days after the date of enactment of this act the corporation [PBGC] may--

"(1) contract for printing without regard to the provisions of chapter 5 of title 44, United States Code, * * *."
ERISA, § 4004(f)(1), 88 Stat. 1009;
29 U.S.C. § 1304 note.

GPO Printing and Distribution Requirements

Pursuant to 44 U.S.C. §§ 501 and 1701, each executive department, independent office, and establishment of the Federal Government is required (with certain exceptions not relevant here) to obtain its printing and distribution services from GPO. In a number of previous cases, however, this Office has ruled that some Federal agencies and establishments are exempt from these requirements.^{2/}

PBGC thinks it should also be regarded as being exempt from the requirement to use GPO printing and distribution services. PBGC argues that given its broad authority under 29 U.S.C. § 1302(b)(8), the "temporary initial authority" granted PBGC in its enabling legislation should not be read as "constituting an affirmative application" of the GPO printing and distribution requirements to PBGC. PBGC also argues that its authority under 29 U.S.C. § 1302(b)(8) is as broad as the authority which has been conferred upon the agencies and establishments that GAO has previously found to be exempt. We disagree with both of these arguments.

^{2/} E.g., 14 Comp. Gen. 698 (1935) (Federal Home Loan Bank Board); A-49652, June 28, 1933 (Home Owners' Loan Corporation); A-60495, Oct. 4, 1938 (Federal Savings and Loan Insurance Corporation) (modifying 14 Comp. Gen. 695 (1935)); B-156202, Mar. 9, 1965 (Federal Housing Authority); B-114829, July 8, 1975 (United States Postal Service); B-209585, Jan. 26, 1983 (Tennessee Valley Authority).

DISCUSSION

The first basis upon which we disagree with PBGC's analysis concerns the provisions of § 4004(f) of ERISA, as quoted above. The plain language of that section clearly shows that Congress contemplated that (except for the initial 270 days of PBGC's existence) PBGC was and would be subject to the GPO printing requirements. See, e.g., Perrin v. United States, 444 U.S. 37, 42 (1979); 38 Comp. Gen. 812, 813 (1959) (plain meaning rule of statutory construction). That this language accurately reflects the intent of Congress may be seen in the House Conference Report which states that PBGC "is also to have special temporary powers during the first 270 days after enactment to * * * contract for printing without regard to the provisions to chapter 5 of title 44 United States Code * * *." H.R. Rep. No. 1280, 93rd Cong., 2d Sess. 382 (1974) (House Conference Report). The interpretation of section 4004(f) of ERISA that PBGC urges upon us would render otherwise clear language and legislative history meaningless and absurd. This would violate the established presumption against interpreting statutes in a way which renders them ineffective. E.g., 62 Comp. Gen. 55, 56-57 (1982), citing FTC v. Manager, Retail Credit Co., 515 F.2d 988, 994 (D.C. Cir. 1975). Thus, we find that the language and legislative history of section 4004(f) of ERISA clearly show that Congress meant PBGC to be subject to the GPO printing requirements after an initial start-up period of 270 days. (This interpretation was evidently shared as well by the congressional codifiers of title 29 of the United States Code. They dropped subsection (f) of section 1304 from the Code completely, presumably because it was executed. See note following 29 U.S.C. § 1304.)

Second, even if we could disregard the provisions of section 4004(f) of ERISA, it is our opinion that the authority granted PBGC is not as broad as that granted to the other establishments and agencies which this Office has previously determined to be exempt from the GPO printing and distribution requirements. Under its statutes, PBGC is authorized to "enter into contracts, to execute instruments, and to incur liabilities, and do any and all other acts and things that may be necessary or incidental" to the conduct of its business and responsibilities under law. 29 U.S.C. § 1302(b)(8). The statutes creating each of the organizations that we have previously found exempt not only give them that authority, but

also provide that they may determine the character and necessity of their own accounts "notwithstanding the provisions of any other law governing the expenditure of public funds."^{3/} This statutory authority was present in all of our decisions exempting organizations from GPO's printing and distribution requirements.^{4/} In B-209585, Jan. 26, 1983 (which established an exemption for the Tennessee Valley Authority (TVA)), we noted that our previous cases had turned on the agency's authority to "determine its necessary expenditures without regard to any other provision of law governing the expenditure of public funds." That decision went on to quote TVA's enabling legislation as authorizing TVA to "make such expenditures and enter into such contracts * * * as it may deem necessary * * *." 16 U.S.C. § 831h(b). The decision then concluded that TVA has authority that is "certainly as broad" as that granted the other exempt agencies and establishments. Although B-209585 did not spell out that TVA may determine the character and necessity of its own accounts "notwithstanding the provisions of any other law governing the expenditure of public funds," that authority, in fact, is present in TVA's enabling legislation. Id.

It was the existence of this specific statutory authority to determine the propriety of their expenditures and obligations, notwithstanding the provisions of any other laws governing the expenditure of public funds, that enabled us to conclude that TVA and those other agencies and establishments

^{3/} See, e.g., Pub. L. No. 43, § 4(j), 48 Stat. at 132 (HOLC); Pub. L. No. 43, § 6, 48 Stat. at 143 (PHLBB); Pub. L. No. 76, § 22, 49 Stat. at 298 (FSLIC); 39 U.S.C. §§ 401(3), 410(a), 2008(c) (USPS); 12 U.S.C. § 1702 (FHA); 16 U.S.C. § 831h(b) (TVA).

^{4/} See the cases and statutes cited previously in footnotes 2 and 3, respectively.

were exempt from the otherwise strict statutory requirements to use GPO printing and distribution services. PBGC does not have this authority.^{5/} In the absence of more specific statutes that override them (such as the provisions noted above), Government-wide statutory requirements and prohibitions must be obeyed. Cf. 24 Comp. Gen. 339, 341 (1944) ("The decisions of this office [cannot] overcome [a] statutory prohibition * * * except when specifically authorized by law."). Consequently, we may not conclude that the provisions of 29 U.S.C. § 1302(b)(8) create a statutory exemption from the GPO printing and distribution requirements for PBGC.

Moreover, the provisions of 44 U.S.C. §§ 501 and 1701 already enumerate a number of exceptions which do not include a general exemption for PBGC. In this regard, the Supreme Court has ruled that "[w]here Congress expressly enumerates certain exceptions to a general prohibition [or requirement], additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." Andrus v. Glover Construction Co., 446 U.S. 608, 616-17 (1980), citing Continental Casualty Co. v. United States, 314 U.S. 527, 533 (1941). See also 55 Comp. Gen. 1077, 1078 (1976). For this

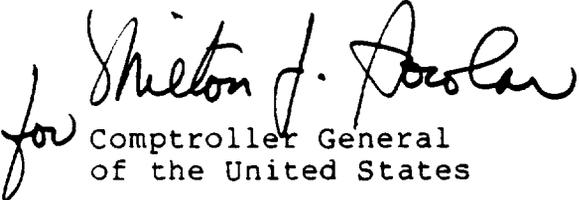
^{5/} In two of our previous cases (63 Comp. Gen. 1 (1983) and B-194274.2, May 8, 1979) we determined that GAO did not have the authority to consider bid protests involving PBGC procurements because we assumed that PBGC, like most other wholly owned Government corporations, had the authority to determine the character and necessity of its own expenditures, notwithstanding the provisions of other laws governing the expenditure of public funds.

As indicated above, however, PBGC does not in fact have that authority. Were we to reconsider those two cases now in light of the findings of this case, we would have to overrule them due to our erroneous assumption regarding PBGC's authority. At the same time, however, we note that the holdings of those two cases have already been effectively mooted as a result of the passage of the Competition in Contracting Act of 1984, 31 U.S.C.A. §§ 3551-56 (1985 Supp.). See, e.g., B-218441, Aug. 8, 1985. Accordingly, our decisions in 63 Comp. Gen. 1 and B-194274.2, supra, are hereby modified to be consistent with our decisions in this case and in B-218441, supra.

reason, we also may not imply the existence of an additional exception covering PBGC.

CONCLUSION

In summary, we find that the statutes creating PBGC did not confer upon it sufficient authority to constitute (or permit the inference of) an exemption from the requirements of 44 U.S.C. §§ 501, 1701. We also find that the Congress, as shown in the language and history of section 4004(f) of ERISA, exempted the PBGC from these requirements only for the first 270 days of the corporation's existence.

for 
Comptroller General
of the United States