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UNITED STATES GENERAL ACCOUNTING OFFICE

WASHINGTON, D.C. 20548

OFFICE OF GENERAL COUNSEL

B-207435

July 7, 1982

The Honorable Orrin G. Hatch
Chairman, Committee on Labor and
Human Resources
United States Senate

[redacted]

Dear Mr. Chairman:

This is in response to your letter dated April 30, 1982, inquiring as to whether the Pension Benefit Guaranty Corporation is required to subject its accounting system to our review and approval as described in the General Accounting Office Policy and Procedures Manual for Guidance of Federal Agencies. For the reasons stated below, we have concluded that the corporation need not obtain this Office's approval of its accounting system.

Section 112(a) of the Accounting and Auditing Act of 1950 (1950 Act), as amended, 31 U.S.C. § 66(a) (1976), requires that the Comptroller General, after consulting with the Secretary of the Treasury and the Director of the Office of Management and Budget, prescribe the principles, standards, and related requirements for accounting to be observed by each executive agency. Our principles and standards relating to accounting are set forth in 2 GAO chapter 2. Section 113(b) of the 1950 Act, as amended, 31 U.S.C. § 66a (b), requires that an executive agency's accounting system be in conformity with our principles and standards, while section 112(b) of the 1950 Act, as amended, 31 U.S.C. § 66(b), requires that the Comptroller General approve an executive agency's accounting system when deemed to be adequate and in conformity with our principles and standards. The procedures for obtaining our approval are set forth in 2 GAO chapter 3.

The Pension Benefit Guaranty Corporation is not, however, covered by these provisions. Section 118 of the 1950 Act, as amended, 31 U.S.C. § 65a defines the term "executive agency" to mean "***any executive department or independent establishment in the executive branch of the Government but (a) except for the purposes of sections 114, 116, and 119 [of the 1950 Act] shall not include any Government corporation or agency subject to the Government Corporation Control Act***". Section 101 of the Government Corporation Control Act, (GCCA) as amended, 31 U.S.C. § 846 (1976), defines the term "wholly-owned Government corporation" to include the Pension Benefit Guaranty Corporation (Corporation) thereby making the Corporation subject to the GCCA. Thus the Corporation is exempt from the application of sections 112 and 113 of the 1950 Act. 1/ In the absence of any other statutory provisions requiring that the Corporation seek our approval of its accounting system, and we know of none, the Corporation is free to maintain a system of its choosing, not subject to our approval.

You also ask whether section 107 of the GCCA as amended, 31 U.S.C. § 852, has any relevance to your basic question. Section 107 provides that:

> "Whenever it is deemed by the Director of the Office of Management and Budget, with the approval of the President, to be practicable and in the public interest that any wholly owned Government corporation be treated with respect to its appropriations, expenditures, receipts, accounting, and other fiscal matters as if it were a Government agency other than a corporation, the Director shall include in connection with

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1/ That this provision was intended to preclude requiring Government corporations from having to comply with our accounting principles and standards is made clear by its legislative history. The reports of both the Senate and House Committees on Expenditures in the Executive Departments accompanying the 1950 Act state with regard to section 118 that: "This section defines the term 'executive agency' as used in this part to mean any executive department or independent establishment in the executive branch of the Government but excludes from such definition, except for the purposes of section 114, 116, and 119, any Government corporation or agency subject to the Government Corporation Control Act (59 Stat. 597; 31 U.S.C. § 841). It is not intended to supersede the existing authority of the corporations to maintain their accounting systems under determinations made by them. With respect to the audit of such corporations, the Government Corporation Control Act already provides for a comprehensive commercial-type audit of their transactions by the General Accounting Office and for report thereof to the Congress by the Comptroller General.***"

See S. Rep. No. 2031, 81st Cong., 2d Sess., 15-16 (1950) and H.R. Rep. No. 2556, 81st Cong., 2d Sess., 14 (1950).

> the budget program of such corporation in the Budget a recommendation to that effect. If the Congress approves such recommendation in connection with the budget program for any fiscal year, such corporation, with respect to subsequent fiscal years shall be regarded as an establishment other than a corporation for the purposes of the Budget Accounting Act, 1921, and other provisions of law relating to appropriations, expenditures, receipts, accounts, and other fiscal matters, and shall not be subject to the provisions of this chapter other than this section. The corporate entity shall not be affected by this section."

We have been informally advised by an official at the Office of Management and Budget (OMB) that no request pursuant to this section has been made upon the Congress to change the status of the Corporation from that of a corporation to that of an agency for the purpose of other provisions of law relating to appropriations, expenditures, receipts, accounts and other fiscal matters. Unless and until OMB starts proceedings under this section, it cannot be effective to alter the corporation.

You also ask the relevance of the OMB apportionment of the Corporation funds to this inquiry. The Antideficiency Act specifically makes Government corporations (either wholly or partly owned) subject to that Act's apportionment requirements. See 31 U.S.C. § 665(d)(2). However, the inclusion of Government corporations generally within the scope of the provisions of the Antideficiency Act was not intended to and does not affect the other authorities given corporations under the Government Corporation Control Act.

You also ask the basis for our audits of the Pension Benefit Guaranty Corporation. The only financial audits we have performed upon the Corporation have been or are being performed pursuant to the Government Corporation Control Act and in accordance with principles and procedures applicable to commercial corporate transactions. See Examination of the Financial Statements of the Pension Benefit Guaranty Corporation for the Fiscal Year ended September 30, 1977. H.R.D. 79-44, May 3, 1979. Our report on our second financial audit of the Corporation is currently being drafted.

This Office has also performed reviews and evaluations of the program and activities of the Corporation as authorized by section 204(a) of the Legislative Reorganization Act (1970 Act) as amended, 31 U.S.C. § 1154(a). Section 207 of the 1970 Act, 31 U.S.C. § 1157, specifically brings the Corporation within the scope of our program review and evaluation authority. However, we have made no findings during the course of these reviews which would constitute a basis for recommending that the Corporation be subjected to our accounting systems approval requirements under section 112 (c) of the 1950 Act, nor, by the way, have we made any findings based upon 2 GAO chapter 2.

Consequently, we must conclude that nothing has taken place that would alter the fact that the Corporation is exempt as a Government corporation from the accounting system approval requirement under section 112(b) of the 1950 Act.

Milton J. Socolar

Acting Comptroller General
of the United States

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