



General Government Division

B-274546

October 2, 1996

The Honorable John L. Mica
Chairman, Subcommittee on Civil Service
Committee on Government Reform and Oversight
House of Representatives

Dear Mr. Chairman:

In your letter to us dated July 23, 1996, you requested that we investigate alleged improper personnel activities at the Pension Benefit Guaranty Corporation (PBGC) and the Consumer Product Safety Commission (CPSC). More specifically, you were concerned about alleged improper hirings of former IRS employees by PBGC and alleged "burrowing in" of political appointees at CPSC. As agreed with your office, in this letter we are reporting on the results of our work at PBGC. Our work at CPSC is continuing, and we will report separately on those results when our work there is completed.

The objective of our work at PBGC was to determine whether hirings of former IRS employees, following and including the March 29, 1993, appointment of PBGC's current Executive Director, were done in accordance with applicable rules and regulations. We did this principally by examining documents contained in the official personnel folders (OPFs) of current or former PBGC employees identified by PBGC's personnel department as having been formerly employed by IRS. In examining the OPFs, we verified that the employees had previously worked for IRS, ascertained the legal authority PBGC used to effect the hiring, and determined whether there was any evidence that the hiring was done improperly.

RESULTS IN BRIEF

PBGC personnel officials identified 17 current or former employees hired between March 1993 and July 1996 who the officials collectively recalled had previously worked for IRS. OPFs were readily available from PBGC for all but one of these employees, whose file had been sent to the Federal Record Center following his retirement. Since this OPF could not be obtained without serious delay in our work, we excluded this employee from our review.

All but one of the 16 employees whose files we reviewed were hired at the GS-13 level or higher, and these hires accounted for about 18 percent of all PBGC hires at those levels over approximately the same period. We verified that all of the employees—including the current PBGC Executive Director—had previously worked for IRS and were hired by PBGC during the period March 29, 1993, through July 7, 1996. Thirteen of the 16 confirmed former IRS employees—including the Executive Director—had worked within the IRS organization that has responsibility for pension plan issues. The other three had worked as attorneys for IRS and had been involved in pension plan issues as well. On the basis of our examination of documents and subsequent discussions with PBGC officials, we concluded that all 16 former IRS employees were hired by PBGC in accordance with applicable rules and regulations.

BACKGROUND

PBGC is a self-financed and wholly owned government corporation whose mission is to ensure the provision of certain private sector pension plan benefits to nearly 42 million workers participating in about 55,000 private sector plans. PBGC employs approximately 700 people. A Board of Directors consisting of the Secretaries of Labor (Chairman), Commerce, and the Treasury governs PBGC, but day-to-day activities are managed by the Executive Director.

PBGC's establishment in 1974 made it the third federal organization having significant involvement in private sector pension plan issues. While PBGC serves an insurance function, the Department of Labor sets pension plan policies and reviews compliance. IRS examines pension plans in terms of benefits paid and plan qualifications for tax-exempt status. The bulk of IRS' work in pension plan issues is done by the Employee Plan, Technical, and Actuarial Division. The current PBGC Executive Director had directed that division before coming to PBGC.

During fiscal years 1992 through 1996, the number of full-time equivalent PBGC positions was increased by a total of 25 percent. Between March 1993 and July 1996, PBGC hired 91 people for positions at the GS-13 level or equivalent and above.

ANALYSIS OF THE HIRING ACTIONS

After becoming aware of allegations that PBGC had improperly hired former IRS employees, the Director of PBGC's Human Resources Department directed her staff to gather information on former IRS employees hired by PBGC since March 29, 1993, the date the current PBGC Executive Director was appointed. Information gathered showed that to the best of her staff's knowledge, 17 people—including the current Executive Director—were former IRS employees and had been hired by PBGC since March 29, 1993. All except one were hired by PBGC at the GS-13 level (or equivalent) and above. The one exception was hired as a GS-8 Secretary. The former IRS employees hired at the GS-13 level and above represented about 18 percent of the 91 people hired at these levels during approximately the same time period.

We examined documents contained in 16 of the 17 employees' OPFs, and the documents showed that each had worked at IRS prior to being hired by PBGC. Notification of Personnel Action Standard Form 50-B (SF-50), which documents official personnel actions, shows the legal authority PBGC used to effect the hiring of each employee. According to the SF-50s in the OPFs, 15 of the 16 confirmed former IRS employees were appointed noncompetitively as follows:

- Six were appointed through transfer authority provided in 5 C.F.R. 315.501 that permits the appointment of a current career or career-conditional employee of another agency to a competitive service position by transfer. Documents in the OPFs showed that all six were current career employees of IRS at the time of transfer.
- Four were appointed through reinstatement authority provided in 5 C.F.R. 315.401 that permits the appointment of a person who previously was employed under a career or career-conditional appointment to be reinstated into a competitive service position. Documents in the OPFs showed that all four had previously held career or career-conditional appointments.
- Three were appointed through the excepted service Schedule A authority provided in 5 C.F.R. 213.3102(d) that permits agencies having specific authorization from the Office of Personnel Management (OPM) to make noncompetitive appointments to attorney positions. Documents in the OPFs showed that all three were attorneys. PBGC had received authority from OPM to make noncompetitive appointments to attorney positions.
- Two were appointed through the excepted service Schedule C authority provided in 5 C.F.R. 213.3301 that permits the noncompetitive appointment of persons to positions that are policy-determining or that involve a close and confidential working relationship with the head of an agency or other key appointed officials. One appointment was to the Executive Director position and the other was to the Deputy Executive Director and Chief Negotiator position. Both of these positions involve policymaking determinations and confidential working relationships.

Documents showed that 1 of the 16 former IRS employees competed for her PBGC position. In this case, a new position was established for an actuary within PBGC's Corporate Finance and Negotiations Department. The position vacancy was announced and, using examination authority delegated by OPM, PBGC personnel officials examined and ranked the applicants and prepared a certificate of eligibles from which the Deputy Executive Director and Chief Negotiator made the selection. The person selected was already working at PBGC as a Visiting Actuary on a term appointment. After her selection, she was converted to career-conditional status. We examined the procedures followed by PBGC in this case and found them to be in compliance with applicable civil service rules and regulations.

More details on the positions filled by the 16 confirmed former IRS employees are provided in the enclosure.

AGENCY COMMENTS

We requested comments on a draft of this letter from the PBGC Executive Director or his designee. On September 27, 1996, the General Counsel at PBGC provided us with PBGC's oral comments. According to the General Counsel, PBGC agreed with the factual content of this letter as well as the overall message. He made some editorial suggestions which we incorporated as appropriate.

SCOPE AND METHODOLOGY

In doing our work, we obtained a listing of 17 current or former PBGC employees who PBGC said had (1) previously worked at IRS sometime prior to being hired by PBGC; and (2) been hired by PBGC since March 29, 1993, and through July 7, 1996. This list was prepared by staff within PBGC's Human Resources Department and was based on the knowledge and memory of the staff involved in the appointments of these people. Although we did not review the hirings of other persons during the period of review to determine whether or not they also worked at IRS before being hired by PBGC, the Director of PBGC's Human Resources Department, which processes all PBGC hirings, assured us that her staff was unaware of any other former IRS employee hired by PBGC during the period of review.

We examined documents contained in OPFs available for 16 of the 17 people to determine (1) if they had previously worked for IRS and, if so, in which division of IRS they had worked, (2) the legal authority used to effect their hiring by PBGC, and (3) whether there was any evidence that the hirings were done improperly. Documents contained in OPFs we reviewed typically included Request for Personnel Action Standard Forms 52, forms SF-50, Application for Federal Employment Standard Forms 171, resumes, and performance appraisals. We interviewed the current Executive Director and three of his Deputy Executive Directors to discuss the hiring of former IRS employees.

We compared the hiring authority cited by PBGC on the SF-50 for each of the 16 former IRS employees to the Code of Federal Regulations to ensure that the authorities existed and were properly used. We also interviewed the Director of the Human Resources Department and her Operations Manager to determine the process PBGC used to effect the hirings.

We did our work in Washington, D.C., from August 1996 to September 1996 in accordance with generally accepted government auditing standards.

- - - - -

As agreed with your staff, we will send copies of this letter to the Ranking Minority Member of your Subcommittee and to the Chairmen and Ranking Minority Members of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs. We will also send copies to members of the PBGC Board of Directors, to PBGC's Executive Director, and to the Directors of OPM and OMB, as well as to other interested parties on request.

Please contact me on (202) 512-7680 if you or your staff have any questions. Major contributors to this letter were N. Scott Einhorn, Evaluator-in-Charge, and Stephen J. Kenealy, Technical Adviser.

Sincerely yours,



jr Timothy P. Bowling
Associate Director
Federal Management and
Workforce Issues

Enclosure

PBGC POSITIONS FILLED BY FORMER IRS EMPLOYEES
SINCE MARCH 29, 1993

Position for which hired	Date hired	Appointment type	Pay plan and grade level when hired	Most recent PBGC position (and grade level)	Is person still working for PBGC as of 9/20/96?
Executive Director	3-29-93	Sched. C	EX-05	Executive Director (EX-05)	Yes
General Attorney	4-19-93	Sched. A	GM-15	Director, Corporate Policy and Research Dept. (Senior Level)	Yes
Deputy Executive Director & Chief Operating Officer	4-26-93	Reinstatement-career	Senior Level	Deputy Executive Director & Chief Operating Officer (Senior Level)	No ^a
Secretary	5-2-93	Transfer	GS-8	Secretary (GS-9)	Yes
Program Analyst	5-30-93	Transfer	GM-14	Program Analyst (GM-14)	Yes
Deputy Executive Director & Chief Negotiator	6-11-93	Sched. C	Senior Level	Deputy Executive Director & Chief Negotiator (Senior Level)	Yes
Program Analyst	6-21-93	Reinstatement-career	GM-14	Special Assistant (GS-15)	No

Special Assistant to the Dep. Exec. Dir. & Chief Operating Officer	6-27-93	Transfer	GM-15	Special Assistant to the Dep. Exec. Dir. & Chief Operating Officer (GM-15)	Yes
Associate General Counsel	7-11-93	Sched. A	Senior Level	Associate General Counsel (Senior Level)	Yes
Special Assistant to the Dep. Exec. Dir. & Chief Operating Officer	1-9-94	Transfer	GS-15	Actuary (GS-15)	Yes
Mgt. & Program Analyst	10-30-94	Transfer	GS-13	Instructional Systems Specialist (GS-13)	Yes
Program Analyst	1-8-95	Transfer	GS-13	Program Analyst (GS-13)	No
General Counsel	5-14-95	Sched. A	Senior Level	General Counsel (Senior Level)	Yes
Actuary	9-5-95	Competitive	GS-15	Actuary (GS-15)	Yes
Program Analyst	5-12-96	Reinstatement-career	GS-13	Program Analyst (GS-13)	Yes
Program Analyst	7-7-96	Reinstatement-career	GS-14	Program Analyst (GS-14)	Yes

^aThe individual who held this position retired in January 1996 and is currently performing services under contract with PBGC.

(410075)

Ordering Information

The first copy of each GAO report and testimony is free. Additional copies are \$2 each. Orders should be sent to the following address, accompanied by a check or money order made out to the Superintendent of Documents, when necessary. VISA and MasterCard credit cards are accepted, also. Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:

**U.S. General Accounting Office
P.O. Box 6015
Gaithersburg, MD 20884-6015**

or visit:

**Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC**

**Orders may also be placed by calling (202) 512-6000
or by using fax number (301) 258-4066, or TDD (301) 413-0006.**

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

For information on how to access GAO reports on the INTERNET, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web Home Page at:

<http://www.gao.gov>

**United States
General Accounting Office
Washington, D.C. 20548-0001**

**Bulk Rate
Postage & Fees Paid
GAO
Permit No. G100**

**Official Business
Penalty for Private Use \$300**

Address Correction Requested
