



Office of Inspector General
Pension Benefit Guaranty Corporation

February 12, 2016

The Honorable Michael R. Turner
U.S. House of Representatives
2239 Rayburn House Office Building
Washington, DC 20515

SUBJECT: Response to Your Inquiry Regarding Delphi Retirement Program for Salaried Employees

Dear Congressman Turner:

I am writing in response to your December 9, 2015 request that our office conduct an inquiry into the Pension Benefit Guaranty Corporation's (PBGC) delay in processing the final benefit determination letters (BDs) for plan participants of the Delphi Retirement Program for Salaried Employees (the Salaried Plan). Specifically you asked:

- 1. Plan Asset Audit for the Salaried Plan: Please determine the date of completion and what justification, if any, PBGC has for informing plan participants that it has not yet been completed. If the document has not been completed, please determine how PBGC arrived at its final benefit determinations in the absence of the necessary supporting calculations and documentation.*
- 2. Benefit Statement Worksheets: Please determine why PBGC has provided benefit determinations that fail to explain whether, and/or to what extent, a benefit comes from PBGC's insurance guarantee, the Salaried Plan's asset allocation, or the participant's share in PBGC's recoveries from Delphi and GM. Please also determine the cause of PBGC's delay in fulfilling requests for Benefit Statement Worksheets.*

In conducting this inquiry, we met with Office of Benefits Administration (OBA) officials on December 15, 2015, January 27, 2016, and February 8, 2016; met with Office of General Counsel officials on February 10, 2016; requested and received several written responses from OBA and OGC to specific questions; and evaluated the asset evaluation (audit) reports. In addition to providing documents we requested, OBA identified and provided numerous documents from the asset evaluation workpapers to assist our understanding of the work

KPMG and PBGC conducted. From these procedures, we provide the following response to your concerns.

Plan Asset Audit for the Salaried Plan – Date of Completion

It is important to note that although the term “audit” is frequently used, PBGC actually conducts and oversees plan asset “evaluations.” This process is conducted in accordance with OBA’s Plan Asset Evaluation Manual. Determining the value of a plan’s assets as of the date of plan termination (DOPT) is one of the most important aspects of this process, but there are other purposes as well such as identifying all of the terminated plan’s assets and liabilities as of DOPT, and determining whether there were any instances of fraud, fiduciary breach, and party-in-interest transactions.

We determined that the substantive work to value the plan assets was completed in May 2015 (when asset values were finalized and transmitted to PBGC financial operations staff for reconciliation), and assets were reconciled and finalized on June 29, 2015. These values were then used to prepare the actuarial case memo and to calculate individual participant benefits. This work was reported in: Asset Evaluation Track 1 report (January 30, 2015), Asset Evaluation Track 2 report (May 19, 2015) and Additional Supplemental Plan Asset Evaluation Report (December 4, 2015). From our inquiry, we learned:

- PBGC contracted with KPMG to conduct a Plan Asset Evaluation for the Delphi plans in accordance with the OBA Plan Asset Evaluation Manual and AICPA Consulting Standards. On January 30, 2015, KPMG issued an asset evaluation report labeled “Track 1” which indicates that KPMG was able to evaluate about 74% of the securities and valued a sample of the remaining 26% “hard-to-value” (HTV) assets.
- The errors from the HTV asset samples tested in Track 1 exceeded PBGC’s tolerable error rate, resulting in PBGC deciding to conduct greater asset value testing for the HTV assets in a second asset evaluation phase (Track 2).
- KPMG issued the “Track 2” report to PBGC on May 19, 2015. That report states the purpose was to “increase coverage over the amount of investments selected for testing from Track 1.” In this work, KPMG tested certain private equity limited partnerships and real estate funds. This testing resulted in an additional \$3 million of additional asset value for the Salaried Plan participants.

- PBGC asserts, and the documents from the contractor support, that the KPMG work to assess the asset values was completed as of May 19, 2015, when the Track 2 report was submitted. OBA advised OIG that additional work PBGC conducted (e.g., valuing the excess assets attributable to guaranteed annuity contracts, due and unpaid employer contributions, pre-termination liabilities, premium refunds) was completed by June 2015. Documentation we reviewed supported this assertion.
- The asset values were submitted to PBGC's Financial Operations Department for reconciliation of assets PBGC had received. That reconciliation was completed on June 29, 2015 (Form 1108), and final values were transmitted to the actuaries for individual benefit calculations. OBA stated this reconciliation is the final step in determining the value of the assets. The actuaries used this final amount to finalize calculations of participants' individual benefits.
- Shortly after receiving the Track 2 report, PBGC decided the Delphi participants and the public would be better served if PBGC issued a report to summarize the KPMG and PBGC work and conclusions about final asset values. OBA told OIG it decided to have KPMG prepare this third report to maintain independence and limit any potential criticism that PBGC withheld or otherwise did not accurately or fully report the contractor's asset valuation work. While the summary report was being drafted, PBGC was also ensuring summary memoranda were drafted to document the many steps and processes OBA and KPMG undertook to value the assets in compliance with the requirements of the Plan Asset Evaluation Manual. We reviewed some of this additional documentation.
- In a letter dated August 14, 2015, to your office, Acting Director Alice Maroni wrote: "We have completed the valuation and allocation of amounts PBGC recovered through Delphi's bankruptcy proceedings (memo attached). We have also completed the valuation of the plan's assets and we are now finalizing the associated documentation. Our actuarial contractor used this plan asset and recovery valuation information to calculate individual participant benefits, and in June submitted those calculations in their Actuarial Case Memo and Report. We expect to complete our review of their work this month. Your letter asked about the status of certain reports documenting benefit determinations for participants in the Salaried plan. As noted above, documentation of our recovery valuation and allocation is attached.

Documentation of the plan asset valuation and our review of the Actuarial Case Memo and Report are in process.”

- Since 2009, PBGC has been involved in litigation with Delphi Salaried Plan participants. In a court document filed on August 31, 2015, PBGC attorneys stated the asset evaluations were not done and PBGC would provide it to the participants as soon as it was complete.¹ Office of General Counsel (OGC) advised OIG that although the valuation work and associated workpapers were complete in June of 2015, PBGC ensured KPMG provided a comprehensive Plan Asset Evaluation Package required by its contract documenting all significant work performed, the standards applied, and the conclusions reached in compliance with the Plan Asset Evaluation Manual. According to OGC, the December 2015 report accomplished this objective.
- The December 2015 additional supplemental plan asset evaluation report states that no KPMG values changed after the May Track 2 report. It further states that the objective was to “compile and summarize” previous work, to “provide clarification and additional background” regarding certain test procedures and findings, and “document” that the Contractor reviewed additional information sent to PBGC by General Motors Asset Management on April 2, 2015.
- On or about December 23, 2015, PBGC posted on its website copies of the Track 1, Track 2, and the additional supplemental plan asset evaluation reports.

From the above chronology, we conclude that PBGC could have more clearly communicated the actions it took regarding the plan asset evaluation process of the Delphi Salaried Plan. Neither the August court documents nor the August 14 letter to your office mention the prior Track 1 and Track 2 reports or the decision to prepare an additional supplemental report to compile and summarize these prior reports. Moreover, PBGC indicated on its public website that the

¹ In a responsive pleading filed August 31, 2015, in *Black v. PBGC*, No. 2:09-cv-13616 (US D Ct for the ED of Michigan), PBGC attorneys said: “...As an accommodation, PBGC agreed that it would treat plaintiffs’ letter request as if it were a FOIA request, and would provide a copy of the Plan Asset Audit to them when it had been completed.” Attached to the pleading was an August 14, 2015, letter to plaintiffs’ attorney in which PBGC stated: “Documentation of the plan asset valuation and our review of the Actuarial Case Memo and Report are in process. We will provide you copies of these reports as soon as they have been completed.” We note this letter is a more nuanced response than that in the pleading; a reasonable person would conclude the asset valuations were not completed.

plan asset evaluation report was completed in February. In its February 2015 monthly web update, PBGC wrote:

Kept to the schedule for action on the Delphi timeline when the agency's Benefit Administration and Payment Department (BAPD) and Financial Operations Department (FOD) worked together in February 2015 to complete reconciliation of the Delphi pension assets. The reconciliation included a review of KPMG's final plan asset evaluation report and supporting schedules produced by BAPD during its earlier review of the KPMG report. (emphasis added)

No subsequent monthly website postings mention the decision to conduct additional asset valuation work, completion of that work in May (Track 2), that another "final" reconciliation was performed in June 2015, or the decision to prepare a summary report. The first time any of the additional asset evaluation reports is mentioned is in the December 2015 entry when all three reports were posted. (See <http://www.pbgc.gov/wr/large/delphi/january-2016-delphi-salaried-participant-report.html>)

We understand the difficulty for participants and stakeholders to reconcile PBGC's public website statement that the asset evaluation was final in February with PBGC's letters and public litigation statements that PBGC would provide the "Plan Asset Audit when it had been completed." There was no PBGC communication to Delphi Salaried plan participants that asset values were final in June 2015, but PBGC was preparing a summary report for better clarity of actions taken and results. In litigation, PBGC was saying as late as August 2015, the asset valuation was not done. To participants, this appeared that PBGC was not being forthcoming and may have needlessly waited to provide this information to them.

We have suggested that PBGC clarify and provide greater information on its Delphi website to explain the timing and context of these reports. PBGC has committed to provide more information and has already made changes to the Delphi Salaried Plan section of the website, including reorganizing content, adding FAQs describing the plan asset evaluation process and timing of the reports, creating hyperlinks directly to content, describing newly added information with a "last updated" date. Attached as Exhibit A are screenshots of the website improvements that have been made as a result of your letter to our office and our interactions with PBGC management.

To increase the participants' understanding of the three asset evaluation reports posted on the PBGC website, we also suggested PBGC add FAQs regarding the asset evaluation process in laymen's terms. In its FAQ "How did PBGC determine the value of plan assets?" PBGC now describes the Track 1 and Track 2 valuation process, Track 2's additional asset testing resulted in an additional \$3 million in asset values, the time taken after the May 19 Track 2 report to

document the asset evaluation steps and decisions which resulted in the December 2015 report. This information is now more clearly identified and linked directly to the FAQ (<http://www.pbgc.gov/wr/large/delphi/delphifaqsalaried.html#delphiFAQ-5b>).

Benefit Statement Worksheets

As you know, in our September 2, 2014 letter, we provided PBGC's timeline for necessary activities that would culminate in issuance of BDs. In that timeline, PBGC stated that it would "start issuing Benefit Determination Letters and detailed supporting Benefit Statements" in October 2015. PBGC reported to us that they began issuing the benefit letters in October and by December 31, 2015, had issued 10,400.²

In responding to participant complaints that "PBGC has not provided supporting documentation for those benefit determinations," OBA provided OIG with the following context. OBA told us that a simplified benefit calculation statement is attached to the majority of BDs. In the past, PBGC had provided a detailed benefit calculation showing all factors the actuaries used to calculate the participant's benefit. Based on participant feedback, PBGC determined some time ago that participants wanted a more simple explanation of how PBGC calculated their benefit. Most participants receive a 3-4 page "Benefit Determination Statement" that has their specific demographic information (e.g., date of birth, date of hire, length of service, last date service earned, and date of termination) and retirement date options and dollar amounts at selected retirement dates.

Further, different types of plan participants need more or less benefit calculation information with their BD. OBA officials provided a few examples:

- For a participant who is already retired when the plan terminated and for whom PBGC determines the participant will continue receiving the same benefit amount (i.e., no benefit reduction), PBGC simply sends a letter notifying the participant of this decision. This participant had an opportunity to review and contest the benefit amount when the plan put him/her into pay status and nothing is changing. No Benefit Determination Statement is attached.

² PBGC reports on its website FAQs: "PBGC began sending benefit determination in October 2015. We expect to have about 80 percent of the benefit determinations issued by March 2016 and about 95 percent of all benefit determinations issued by the end of September 2016. The more complex determinations, such as those for participants with Qualified Domestic Relations Orders (QDROs) will take longer." This statement comports with the benefit determination issuance schedule PBGC shared with us.

- For a participant who is not yet eligible to receive a benefit (a “deferred vested”), PBGC sends a letter notifying the participant of the amount of benefit he/she is entitled to receive at the normal retirement date, various options available (e.g., early and late retirement) and the impact of choosing the option, and other information impacting the benefit amount. This participant receives a Benefit Determination Statement described above.
- For a participant currently in pay status whose final benefit will not change from the estimated benefit, PBGC sends a letter describing the current benefit (e.g., supplemental benefit, joint and survivor) with a multi-page Benefit Determination Statement described above.

We determined that a majority of participants who have received BDs since October 2015 have also received a statement showing how their benefits were calculated.³

Underlying each participant’s BD is a much longer detailed “Benefit Determination Statement Worksheet” that has each factor (e.g., participant’s demographic data, plan benefit amount, maximum PBGC guarantee, etc.) PBGC considered in determining the benefit. These worksheets are commonly 9-12 pages, and are provided to participants upon request.

OBA told us about 200 participants had requested the detailed benefit determination worksheets, as well as other plan and PBGC documents, through the Freedom of Information Act. Some responses were delayed. About 70 FOIA requests were received “before all the documentation was available,” and the internal agency processes for collecting and reviewing for redaction documents other than the benefit worksheets contributed to delayed responses. OBA told OIG that in lieu of a FOIA request, a participant could simply call PBGC to request the worksheet and it would be quickly provided. OIG suggested that PBGC highlight the “ask and receive” policy with the telephone number on the Delphi webpage on PBGC’s website. OBA agreed and notified OIG it had done so. We confirmed that this information is now on PBGC’s website in the Delphi Salaried Plan FAQs

(<http://www.pbgc.gov/wr/large/delphi/delphifaqsalaried.html>). OBA also stated that, from the more than 10,000 BDs issued to Delphi Salaried participants through December 31, 2015, only 15 called or emailed requesting the detailed benefit worksheet. PBGC provided to most within 5 business days. OBA officials stated their commitment to providing the benefit determination worksheet within 5-7 business days of receiving a request.

We asked PBGC’s FOIA Disclosure Officer specific questions regarding the processing of requests for benefit determination worksheets, and she provided OIG with documentation and

³ We note that every BD provides information about the participant’s right to appeal PBGC benefit determination.

written responses. According to FOIA records, 75 Delphi Salaried participants had filed FOIA requests by December 15, 2015.⁴ None of the FOIA requests asked solely for the benefit calculation worksheet; rather, most Delphi Salaried requestors asked for their entire participant file, Plan documents, and the various PBGC reports on the Delphi Salaried Plan (e.g. Actuarial Case Memorandum, Plan Asset Evaluation reports, etc.). The FOIA office followed its procedure of contacting the office that holds responsive records, fully disclosing records that did not need to be redacted (i.e., records about the specific requestor) and reviewing/redacting information about other participants from the requested records. Because the request for a benefit determination worksheet was combined in requests for other records, the requestor did not receive the worksheet immediately.

We suggested that because FOIA requests are not necessary to receive the benefit worksheet, OBA establish a referral process with the Disclosure Office if future FOIA requests are filed. The Disclosure Officer informed us of a new process, stating:

... in an effort to highlight the availability of the Benefit Worksheets outside of the FOIA process, when the Disclosure Division receives a FOIA request for a Benefit Statement Worksheet along with other documents, it will inform the requestor that the Benefit Statement Worksheet can be obtained outside the FOIA process by contacting the Customer Call Center at 1-800-400-7242.

We then suggested that FOIA requests for benefit determination worksheets simply be transmitted to OBA who can provide the worksheet rather than requiring the participant to make a second request via telephone. We have been advised by OBA that this change has since been implemented.

We believe your questions to the OIG and our subsequent inquiry will result in a better understanding by the Delphi Salaried participants of the extent of the work PBGC performed in valuing their plan's assets, when this work was performed, and will provide additional information regarding requests for the benefit determination letters and associated calculation statements. Though no one is happy when their promised pension benefit is reduced, these improvements should contribute to greater confidence regarding the work PBGC has done.

⁴ December 15 was the date OBA ran a report that showed them the number of FOIA requests and appeals and the date closest to the December 23 posting of the three asset evaluation reports on the website.

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Thank you for your inquiry to our office. If you have any questions regarding this letter, please feel free to contact me at (202) 326-4000 x3437 or OIG Chief Counsel Deborah Stover-Springer at (202) 326-4000 x3877.

Very truly yours,

A handwritten signature in black ink, reading "Robert A. Westbrook". The signature is written in a cursive, flowing style with a large initial "R".

Robert A. Westbrook
Inspector General