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Description of document: Pension Benefit Guaranty Corporation (PBGC) Inspector General (OIG) response to a Congressional request for "agency"-specific information on climate change, 2013

Requested date: 03-August-2013

Released date: 04-September-2013

Posted date: 23-September-2013

Source of document: Freedom of Information Act Request
Pension Benefit Guaranty Corporation
Disclosure Officer
Pension Benefit Guaranty Corporation
1200 K Street, N.W., Suite 11101
Washington, D.C. 20005

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Pension Benefit Guaranty Corporation
1200 K Street, N.W., Washington, D.C. 20005-4026

FOIA 2013-5522

September 4, 2013

Re: Bicameral Task Force on Climate Change

I am responding to your Freedom of Information Act request dated August 4, 2013, which we received in our office on August 16, 2013. Your letter requested a copy of the documents and/or any other response provided to the Bicameral Task Force on Climate Change in response to their February 25, 2013 letter request to the Office of the Inspector General, signed by Co-Chairs Henry A. Waxman, Sheldon Whitehouse, Edward J. Markey and Benjamin L. Cardin.

Pursuant to your request, I am enclosing a copy of the responsive letter addressed to Co-Chairs of the Bicameral Task Force on Climate Change, dated August 29, 2013 and signed by Mr. Aaron Jordan on behalf of the Pension Benefit Guaranty Corporation (PBGC)'s Inspector General, Ms. Rebecca Anne Batts. This information proves to be fully disclosable (5 pages).

Although this decision does not constitute a denial, should you wish to appeal this response, the FOIA permits you to file an administrative appeal if you are not satisfied with an agency's initial response to your request. PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2012) that if a disclosure request is denied in whole or in part by the disclosure officer, the requester may file a written appeal within 30 days from the date of the denial or, if later (in the case of a partial denial), 30 days from the date the requester receives the disclosed material. The appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, N.W., Washington, D.C. 20005. To expedite processing, the words "FOIA appeal" should appear on the letter and prominently on the envelope.

Sincerely,



Jeanean West
FOIA Specialist



Pension Benefit Guaranty Corporation
Office of Inspector General
1200 K Street, N.W., Washington, D.C. 20005-4026

August 29, 2013

Via Email

The Honorable Henry A. Waxman
Co-chair
Bicameral Task Force on Climate Change
Ranking Member
Committee on Energy and Commerce

The Honorable Sheldon Whitehouse
Co-Chair
Bicameral Task Force on Climate Change
Chairman
Subcommittee on Oversight, Senate
Committee on Environment & Public Works

The Honorable Edward J. Markey
Co-Chair
Bicameral Task Force on Climate Change
Ranking Member
Committee on Natural Resources

The Honorable Benjamin L. Cardin
Co-Chair
Bicameral Task Force on Climate Change
Chairman
Subcommittee on Water and Wildlife, Senate
Committee on Environment & Public Works

Re: Response to February 23, 2013 Bicameral Task Force on Climate Change Request

Dear Gentlemen:

You requested the Pension Benefit Guaranty Corporation (PBGC) Office of Inspector General (OIG) determine if the PBGC is doing everything it can to confront the growing threat of climate change. PBGC is a small wholly-owned government corporation that insures certain private sector defined benefit pension plans, and pays benefits to the pension plan participants when the plan can no longer continue. PBGC has approximately 1,000 Federal employees and 1,400 contractors, some of which are co-located with Federal employees in leased space.

Your request was in two parts, which we will address separately.

First Request

With respect to climate change, you first asked us to (1) identify the existing requirements in legislation, regulation, executive order, and other directives that apply to the government entity, (2) assess whether PBGC is meeting the requirements, and (3) if PBGC is not fully meeting the requirements, make recommendations for improving its performance.

To respond to (1) above, we asked PBGC's Office of the General Counsel (OGC) to provide us with a listing and analysis of the applicable Federal requirements, from which we began our analysis. We concluded that PBGC is subject to the Energy Independence and Security Act of 2007, and Executive Order (EO) 13514. As a result, though PBGC leases non-government owned space, it must meet the requirements governing Federal buildings and agencies. We also determined that PBGC is covered by the Federal Acquisition Regulations (FAR) requirements.¹

Assessing Compliance You asked us to assess whether PBGC is complying with the Energy Independence Act and Executive Order 13514. The OIG reviewed the PBGC's 2012 Sustainability Plan and Executive Summary, examined the Greenhouse Gas Inventory (both are required by the Executive Order), and assessed the actions the PBGC has reported it has taken to reduce its environmental footprint (PBGC, 2012). During our review, we identified several significant inaccuracies between the Executive Summary and the Sustainability Plan's data that impacted the reliability of the data. For example:

- The Sustainability Plan reported PBGC leased 577,150 square feet of space between its headquarters and field offices. However, the Executive Summary reported PBGC leases approximately 420,000 square feet of space. The Sustainability Plan reported PBGC had 989 total employees "as reported in the President's Budget for fiscal years 2010 and 2011." However, the PBGC FY 2011 Congressional Budget Justification reported PBGC having 941 and 942 full time equivalents in fiscal years 2010 and 2011, respectively.
- The Sustainability Plan's Goals 1 - 7 targets were almost all pre-populated by OMB in the templates; however, there was some data that PBGC submitted in prior reports, e.g., target numbers of buildings in Goal 2. PBGC had no supporting documentation or a method to validate the entries.

PBGC staff responsible for completing the FY 2012 Sustainability Plan stated that the pre-populated information was not reviewed for accuracy but instead she focused solely on the written Executive Summary, as was her understanding of what OMB required. We obtained the email guidance provided to agencies from OMB; it states, in part:

We recognize that certain agencies with limited operations, particularly Federal Boards, Commissions or Councils, frequently find that certain of the goals and requirements of EO 13514 have limited relevance to their organization.... We are asking that Federal Boards, Commissions, Councils and other "small" agencies submit a Sustainability Plan and focus primarily on the Executive Summary portion of the Plan. Where a "small" agency already collects data requested in the template and that data is readily available, we are asking that you include information.... To assist in the Sustainability Plan effort, we have prepopulated the OMB MAX data collection tool with any data that your agency has previously reported....

From our assessment, while OMB communicated that it wanted agencies to "focus primarily" on the Executive Summary, it did not state that the Sustainability Plan information was irrelevant.

¹ Though PBGC, as a government corporation, is not required to follow the FAR, it has elected to follow it. Thus, PBGC also must meet the environmental directives and policy preferences that apply to all executive agencies subject to the FAR.

To the contrary, it asked “small agencies” to provide the information it collects. Since PBGC’s Sustainability Plan was prepopulated with information, it clearly had collected and reported information in the past. By failing to review the prepopulated information for accuracy, PBGC reported information in its Executive Summary that contradicted information in the Sustainability Plan (i.e., square footage); such inaccuracies impact the reliability of PBGC’s submission. Also, if OMB rolls-up the reported numbers across the government for Sustainability Plans, the information will not be accurate.

In the narrative Executive Summary, PBGC reported certain energy-efficient achievements and steps taken in 2012 with respect to the headquarters building located in Washington DC, which represents approximately 358,000 square feet, or 85%, of the agency’s total footprint. One significant achievement was that the leased headquarters space was accorded the *Leadership in Energy and Environmental Design* Gold² and Energy Star³ certifications. PBGC also reported that as the leases expire for other small field offices scattered around the United States, PBGC will incorporate environmental and energy efficiency requirements in the lease renewals or new spaces, as appropriate. Our assessment also confirmed steps taken by PBGC (or its leasing agent) identified in the Executive Summary to reduce their Greenhouse Gas emissions and be more energy efficient:

- retrofitted lighting fixtures with increased energy efficient lighting;
- installed occupancy sensors in offices and common areas;
- installed low-flow sinks and toilets in all restrooms;
- required contractors to use low-VOPC paint products;
- cancelled the lease for the agency vehicle;
- implemented a new telework policy; and
- encouraged greater personal accountability for energy savings, such as communications about recycling, print management, and energy consumption, and installation of more recycling bins in work spaces.

With respect to FAR compliance, according to PBGC’s OGC, many Energy Independence Act and EO 13514 requirements have been incorporated into Federal Acquisitions Regulations. We note that the majority of PBGC’s contracts are for services and task orders for commercial supplies and IT software and hardware. Accordingly, PBGC has determined that its contracting is largely unaffected by these FAR Subparts.

While some FAR provisions are advisory, there are certain FAR provisions that have mandatory requirements which PBGC has reported to us it has not implemented. For example:

- FAR 23.703 requires agencies to implement cost-effective contracting preference programs promoting energy-efficiency, water conservation, and the acquisition of

²The LEED certification is awarded by the U.S Green Building Council to owners and operators of buildings who implement sustainable practices and reduce the environmental impacts of their buildings, while addressing the major aspects of ongoing building operations through such efforts as water and energy use; environmentally preferred products and practices for cleaning and alterations; waste stream management; and ongoing indoor environmental quality. There are 3 standards: Platinum, Gold and Silver.

³ Energy Star is an international standard for energy efficient consumer products originated in the United States of America. It was created in 1992 by the Environmental Protection Agency and the Department of Energy.

environmentally preferable products and services. PBGC stated it has not implemented such “contracting preference programs” because it generally purchases Energy Star equipment and uses the GSA schedule to purchase equipment.

- FAR 23.803 requires agencies to implement programs to minimize ozone depletion, such as substitution of ozone depleting substances as required under the Clean Air Act. PBGC reported that these requirements were not implemented because it does not purchase supplies and substances that would contribute to ozone depletion.
- FAR 23.903 requires all solicitations and contracts for contractor operations of Government-owned or leased facilities to contain an insertion referencing FAR 52.223.19, Compliance with Environment Management Systems. PBGC reported that it has not included this clause in leases or contracts with contractors working off-site without further explanation of the reason.

The OIG assessment noted that while PBGC, as a small agency, has a limited environmental impact, it has taken positive steps to minimize the impact of PBGC’s operations. Yet, there are areas for improvement as PBGC is not fully meeting statutory and regulatory requirements. Therefore in response to your request (3) above, we make the following recommendations for improvement:

- Prior to filing the FY 2013 Sustainability Plan, PBGC should carefully review the prepopulated data and correct all errors prior to submission to OMB.
- For all mandatory FAR clauses relating to climate change, PBGC should prepare formal documentation of its analysis of the FAR clauses with a determination of whether it is not required to comply, and consider whether that determination should be reported to OMB.
- For all data responses entered into the Sustainability Plan, the PBGC should maintain supporting documentation to ensure the integrity of the information.

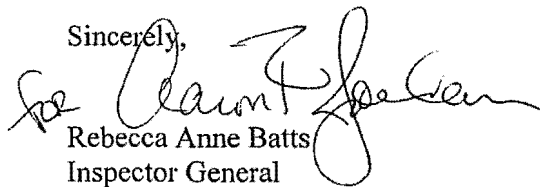
Second Request

In the second part of your request, you asked for an assessment of (1) the authorities the government entity has to reduce emissions of heat-trapping pollution, (2) its authorities to make the nation more resilient to the effects of climate change, and (3) the most effective additional steps it could take to reduce emissions or strengthen resiliency (Co-Chairs for the Bicameral Force on Climate Change, 2013).

The PBGC neither has authorities to reduce emissions of heat-trapping pollution nor has authorities to make the nation more resilient to the effects of climate change. As a wholly-owned government corporation created by the Employee Retirement Income Security Act of 1974, PBGC’s mission is to provide insurance to private-sector businesses and unions that sponsor defined benefit pension plans. If the insured plan fails, the PBGC terminates and usually becomes trustee of the plan, assumes the assets of the failed plan, and pays the monthly benefits to the participants. Given this mission, there are no additional steps the agency could take to reduce emissions or strengthen resiliency.

If you require further information regarding this matter or have questions about the assessment, I can be reached at (202) 326-4030.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rebecca Anne Batts". The signature is written in black ink and is positioned above the printed name and title.

Rebecca Anne Batts
Inspector General

Cc: Joshua Gotbaum, PBGC Director
Alice C. Maroni, PBGC CMO