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Description of document: Closing documents for nine (9) Pension Benefit Guaranty Corporation (PBGC) Inspector General (OIG) investigations, 2015-2016

Requested date: 08-February-2017

Released date: 30-March-2017

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Source of document: Disclosure Officer  
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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

PBGC 2017-000583

March 30, 2017

Re: Request for Information related to 20 Pension Benefit Guaranty Corporation's (PBGC) Office of Inspector General (OIG) Investigations

I am responding to your request, submitted via the Disclosure Mailbox on February 8, 2017. You requested copies of the final report, closing memo, referral memo, referral letter and report of investigation for each of the following PBGC OIG Investigations:

- |               |               |
|---------------|---------------|
| 1. 08-0023-I  | 11. 15-0062-C |
| 2. 14-0020-I  | 12. 16-0003-I |
| 3. 15-0008-C  | 13. 16-0005-I |
| 4. 15-0010-I  | 14. 16-0006-I |
| 5. 15-0015-I  | 15. 16-0015-C |
| 6. 15-0034-C  | 16. 16-0023-I |
| 7. 15-0036-C  | 17. 16-0024-I |
| 8. 15-0042-C  | 18. 16-0130-C |
| 9. 15-0052-C  | 19. 16-0131-C |
| 10. 15-0059-C | 20. 17-0007-C |

Your request was processed in accordance with the Freedom of Information Act (FOIA), and PBGC's implementing regulation.

Pursuant to your request, the PBGC's OIG conducted a search of their records and located five close-out memorandums, two investigative reports, and two referral memorandums responsive to your request.<sup>1</sup> The OIG also located intake screenshots associated with each case number ending in "C". On March 13, 2017, I contacted you to discuss the results of the OIG's search. During our conversation, you confirmed you are not interested in receiving the intake screenshots, nor the exhibits and/or attachments.<sup>2</sup> As such, I am enclosing copies of the following documents, totaling 50 pages:

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<sup>1</sup> Some of these included exhibits and/or attachments (i.e. agents' chronology reports, memorandums of activity, emails, and interview statements).

<sup>2</sup> If upon receipt of this letter, you wish to have a copy of these records, please submit a new FOIA request describing the records you seek.

- Report of Investigation, dated June 26, 2015, for case #14-0020-1 (12 pages)
- Close-out Memorandum, dated August 10, 2016, for case #15-0010-I (13 pages)
- Close-out Memorandum, dated September 11, 2015, for case #15-0004-C/15-0015-I (2 pages)
- Referral E-mail, dated June 11, 2015, for case #15-00042-C (2 pages)
- Referral Memorandum, dated August 4, 2015, for case #15-0059-C (4 pages)
- Investigation Report, dated December 3, 2015, for case #16-0003-I (5 pages)
- Close-out Memorandum, dated October 25, 2016, for case #16-0005-I (7 pages)
- Close-out Memorandum, dated September 12, 2016, for case #16-0006-I (2 pages)
- Close-out Memorandum, dated September 27, 2016, for case #16-0023-I (3 pages)

Unfortunately, the OIG did not locate the final report, closing memo, referral memo, referral letter or report of investigation for cases #08-0023-I and 16-0024-I,<sup>3</sup> and for the cases ending in “C”, except for cases #15-00042-C and 15-0059-C. Per the OIG, case numbers ending in “C” are complaints or preliminary inquiries. Those matters may, under certain circumstances, be closed without a formal report or memo.”

The Disclosure Officer determined that it was necessary to withhold portions of personal privacy information from the enclosed documents. We relied upon two FOIA exemptions to withhold this information.

The first applicable exemption, 5 U.S.C. § 552(b)(6), exempts from required public disclosure, “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” The records you have requested contain “similar files” within the meaning of the above cited statutory language and the PBGC implementing regulation (29 C.F.R. § 4901.21(b)(4)). In applying Exemption 6, a balancing test was conducted, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information. The public interest in disclosure is one that “sheds light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). The Disclosure Officer has determined disclosure of this information would constitute a clearly unwarranted invasion of an individual’s personal privacy.

The second applicable exemption, 5 U.S.C. § 552 (b)(7)(C) prohibits disclosure of “records compiled for law enforcement purposes” if it could reasonably be expected to constitute an unwarranted invasion of personal privacy. The FOIA requires agencies to conduct a balancing test when invoking this exemption. In applying Exemption 7(C), a balancing test was conducted, weighing the privacy interests of the individuals named in a document against the public interest in disclosure of the information. The public interest in disclosure is one that will “shed light on an agency’s performance of its statutory duties.” *Dep’t of Justice v. Reporters Committee*, 489 U.S. 749, 773 (1989). The Disclosure Officer has determined disclosure of this information would reasonably constitute and unwarranted invasion of an individual’s personal privacy.

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<sup>3</sup> Per the OIG, this case was mistakenly opened and was administratively closed. The case was a duplicate to 16-0023-I.

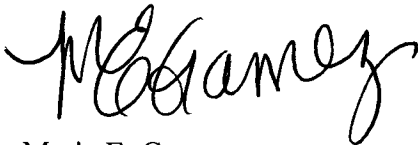
This response constitutes a partial denial of your records request. I am providing you your administrative appeal rights in the event you wish to avail yourself of this process. The FOIA provides at 5 U.S.C. § 552(a)(6)(A)(i) (2014) amended by FOIA Improvement Act of 2016, Pub. L. No. 114-185, 130 Stat. 538 that if a disclosure request is denied in whole or in part by the Disclosure Officer, the requester may file a written appeal within 90 days from the date of the denial or, if later (in the case of a partial denial), 90 days from the date the requester receives the disclosed material. The PBGC's FOIA regulation provides at 29 C.F.R. § 4901.15 (2015) that the appeal shall state the grounds for appeal and any supporting statements or arguments, and shall be addressed to the General Counsel, Attention: Disclosure Division, 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.

In the alternative, you may contact the Disclosure Division's Public Liaison at (202)326-4040 for further assistance and to discuss any aspect of your request. You also have the option to contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001; e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA, *See* 5 U.S.C. 552(c) (2012). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not exist.

This completes processing of your request. There are no fees associated with processing this request.<sup>4</sup> You may submit future requests for PBGC records by accessing FOIAonline, our electronic FOIA processing system, at <http://foiaonline.regulations.gov> or by email at [Disclosure@pbgc.gov](mailto:Disclosure@pbgc.gov).

Sincerely,



Maria E. Gamez  
Deputy Disclosure Officer

Enclosures

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<sup>4</sup> The FOIA Improvement Act of 2016 precludes an agency from charging search fees to a FOIA requester if the agency does not meet the FOIA's twenty-day time limit. As such, all fees associated with this request have been waived.



**PENSION BENEFIT GUARANTY CORPORATION**

***Office of Inspector General***

**REPORT OF INVESTIGATIONS**

**Failure of Information Systems Security Officer to Report  
Misuse of Government IT Equipment and Systems**

(b)(6)

**14-0020-I**

**June 26, 2015**

**Important Notice**

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**Copy**\_\_\_\_\_



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

June 26, 2015

**Referral Memorandum**

**TO:** Rashmi Bartlett  
Assistant Inspector General for Audits  
Office of Inspector General

**FROM:** Robert A. Westbrooks *[Signature]*  
Inspector General  
Office of Inspector General

**COPY** Robert Scherer  
Chief Information Officer  
Chief Information Officer Department

Peter P. Paradis, Sr.  
Assistant Inspector General for Investigations  
Office of Investigations  
Office of Inspector General

**SUBJECT:** Complaint Number 14-0096-C / Investigation No. 14-0020-1

The Pension Benefit Guaranty Corporation (PBGC) Office of Inspector General (OIG) received an allegation from you regarding the failure of (b)(6) then (b)(6) Pension Benefit Guaranty Corporation (PBGC), to report misuse of US Government computer systems, hardware and software by various PBGC OIG employees and contractors.

The PBGC OIG conducted an investigation into this allegation. The investigation resulted in a determination that the original allegation against (b)(6) was unsubstantiated. This memorandum makes notice that all investigative steps are complete and we are closing this investigation. The PBGC OIG refers this matter to you, with "cc" to the Chief Information Officer PBGC and the Office of Investigations, for whatever action you deem appropriate.

Attachment

# REPORT OF INVESTIGATION



## Pension Benefit Guaranty Corporation

Office of Inspector General

1200 K Street, N.W., Washington, D.C. 20005-4026

<b>Investigation Number:</b>	14-0020-1
<b>Investigation Title:</b>	(b)(6) [REDACTED]
<b>Report Status:</b>	Final
<b>Alleged Violation(s):</b>	Non-Criminal: Poor or Improper Management Practices: Failure to Report Misconduct by Another PBGC Employee

### INVESTIGATIVE SUMMARY

This investigation was initiated on May 19, 2014, based upon the allegation (b)(6)

(b)(6)

(b)(6)

IT Risk Management and Security Division within the Office of

<b>Reporting Agent</b>		<b>Distribution:</b>	
Name: Peter P. Paradis, Sr.	Signature: [Signature]	PBGC OIG AIGA PBGC OIG OI PBGC OIT	Original
Title: Assistant Inspector General for Investigations	Date: 06/26/2015		1cc 1cc
<b>Technical Reviewing Official</b>			
Name: N/A	Signature:		
Title: N/A	Date:		
<b>Approving Official</b>			
Name: N/A	Signature:		
Title: N/A	Date:		
<b>Concurring Official</b>			
Name: Robert A. Westbrooks	Signature: [Signature]		
Title: Inspector General	Date: 6/26/2015		

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## REPORT OF INVESTIGATION

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Information Technology (OIT) at the Pension Benefit Guaranty Corporation (PBGC), Washington, DC failed to accurately and timely report to OIT and other appropriate PBGC Management violations of PBGC IT hardware / software / systems misuse in accordance with PBGC protocols to facilitate PBGC Management action, as alleged by PBGC OIG OA Management.

PBGC Office of Inspector General engaged in a physical review of the miscellaneous non-inventoried documentation and materials, alleged to have been removed from the PBGC work space of former PBGC employee (b)(6) by an anonymous PBGC employee, and which were subsequently provided to the PBGC OIG by the same anonymous employee, in an effort to identify any facts to substantiate the allegation, or otherwise prove the existence of other criminal or non-criminal misconduct. No material evidence was developed to support the allegation made by the complainants. To the contrary, evidence was identified which reflected very detailed accounting of computer systems misuse and the timely reporting of such violations to PBGC Senior Management within the various PBGC sub-components, not limited to: Office of Information Technology (OIT), Benefits Administration and Payments Division (BAPD), Procurement (PRO) and Human Resources Department (HRD). Senior PBGC Management confirmed receiving notifications from (b)(6) and to having taken appropriate corrective action concerning offending employees and contractors.

The matter was not presented to the U.S. Attorney's Office, Washington, DC, based upon the fact there was no evidence discovered to substantiate any criminal activity.

Based on the above, the allegation is deemed "unsubstantiated." No further criminal investigation is warranted at this time. This report will be referred to the Senior Management of the PBGC OIG AO, for action as deemed appropriate, with a "cc" to the PBGC OIT and PBGC OIG OI files.

### INTRODUCTION

On May 19, 2014, this investigative inquiry was initiated based on a complaint (14-0096-C) received from PBGC OIG Assistant Inspector General for Audits (AIGA) Rashmi Bartlett and (b)(6).

(b)(6). According to AIGA Bartlett and (b)(6) former PBGC (b)(6) (b)(6) received information, during the execution of (b)(6) duties as the PBGC (b)(6) concerning the misuse of PBGC computer hardware / software / systems by PBGC employees and contractors but then failed to accurately and

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## REPORT OF INVESTIGATION

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timely report such violations in accordance with PBGC protocols to facilitate PBGC Management action. According to the complainants, some of the miscellaneous documentation retrieved from (b)(6) prior work space was dated back to 2006. The initial inquiry involved an investigative review of the miscellaneous documentation contained in the two (2) cardboard boxes and one (1) small plastic trashcan.

### ALLEGATION

In violation of PBGC Directive IM 05-2 "PBGC Information Security Policy", Section 8 "Roles and Responsibilities, sub-section k "Information System Security Officer", Item #3, former PBGC (b)(6) failed, on numerous occasions, to execute (b)(6) duties and responsibilities as (b)(6) in that (b)(6) failed to "... ensures compliance with those policies and procedures"

### INVESTIGATIVE ACTIVITY

On May 19, 2014, the reporting agent was contacted by PBGC OIG AIGA Rashmi Bartlett and (b)(6). According to AIGA Bartlett and (b)(6), former PBGC (b)(6) received information, during the execution of (b)(6) duties as the PBGC (b)(6) concerning the misuse of PBGC computer hardware / software / systems by PBGC employees and contractors but then failed to accurately and timely report such violations in accordance with PBGC protocols to facilitate PBGC Management action. [EXHIBIT 1]

On May 22, 2014, PBGC OIG (b)(6) provided this reporting agent with the two (2) large cardboard boxes and one (1) plastic trashcan containing miscellaneous non-inventoried documents and CDs, all reportedly removed from the PBGC work space of former PBGC (b)(6) by the initial anonymous source of information, who then provided it to (b)(6).

On May 22, 2014, the reporting agent memorialized, on the OIG Document Control Form, dated May 22, 2014, the chain of custody of the previously referenced non-inventoried materials received as from (b)(6) (EXHIBIT 1a)

During the period May 22, 2014 through July 15, 2014, inclusive, this reporting agent personally reviewed the previously cited miscellaneous non-inventoried materials for evidence of 1) (b)(6) failure to accurately and timely report misuse of PBGC computer hardware / software / systems by PBGC employees and contractors, as alleged;

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## REPORT OF INVESTIGATION

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and 2) other significant computer related criminal activity warranting investigation (e.g. child pornography, gambling, etc.). During the course of this review, it was observed that various documentation and other materials appeared to be "working copies" of computer use violation matters which (b)(6) either had, or was, adjudicating, as most of the documents which bore signatures of various PBGC and other officials were photocopies of original documents, and as such the signatures were not originals but photocopies too. No material evidence was developed to support the allegation that (b)(6) failed to accurately and timely report violations to PBGC Senior Management. To the contrary, evidence was identified which reflected very detailed accounting of computer systems misuse and the timely reporting of such violations to PBGC Senior Management within the OIT and Human Resources Division, as exemplified herein:

### Example #1 (EXHIBIT 2)

Employee / Contractor Name: (b)(6)  
Employee / Contractor userID: (b)(6)  
Employee / Contractor PBGC Unit: DISC  
Alleged Violation: "Evidentiary Link to Inappropriate Content"  
Official Report Date (by (b)(6)): April 26, 2007  
PBGC Officials Notified: "to" (b)(6) (Project Manager) and  
(b)(6)  
"through" (b)(6)  
(b)(6) and Susan Taylor (Director of Procurement)

### Example #2 (EXHIBIT 3)

Employee / Contractor Name: (b)(6)  
Employee / Contractor userID: (not listed)  
Employee / Contractor PBGC Unit: BAPD  
Alleged Violation: "Inappropriate Use of PBGC Computer Resources"  
Official Report Date (by (b)(6)): May 23, 2007  
PBGC Officials Notified: "to" Bennie Hagans (Director BAPD) and Michele Pilipovich  
(Director Human Resources Division);  
"through" (b)(6)  
(b)(6)

### Example #3 (EXHIBIT 4)

Employee / Contractor Name: (b)(6)  
Employee / Contractor userID: (b)(6)  
Employee / Contractor PBGC Unit: DISC

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## REPORT OF INVESTIGATION

Alleged Violation: "Inappropriate Use of PBGC Computer Resources"

Official Report Date (by (b)(6)): June 4, 2007

PBGC Officials Notified: "to" (b)(6) and Michele Pilipovich  
(Director Human Resources Division);  
"through" (b)(6)  
(b)(6)

### Example #4 (EXHIBIT 5)

Employee / Contractor Name: (b)(6)

Employee / Contractor userID: (b)(6)

Employee / Contractor PBGC Unit: HRD

Alleged Violation: "Inappropriate Use of PBGC Computer Resources"

Official Report Date (by (b)(6)): January 29, 2008

PBGC Officials Notified: "to" (b)(6) and Arrie Etheridge (Director Human Resources  
Division);  
"through" (b)(6)  
(b)(6) Patsy Garnett (Chief Information Officer)

On September 11, 2014, in an effort to determine if (b)(6) accurately and timely made notification to PBGC Senior Management of misuse of PBGC computer systems by employees and/or contractors, this reporting agent submitted, via email, a written request for assistance memorandum to the PBGC HRD Director, Arrie Etheridge, seeking information related to any possible administrative action(s) levied against any of the following four (4) PBGC employees / contractors for which documentation copies exist that (b)(6) did report them to have violated PBGC Computer Resource Use policies (EXHIBIT 6 through EXHIBIT 6b):

- (b)(6)
- 
- 
- 

On September 16, 2014, in an effort to determine if (b)(6) accurately and timely made notification to PBGC Senior Management of misuse of PBGC computer systems by employees and/or contractors, this reporting agent submitted a written request for assistance memorandum to the PBGC OIT Chief Information officer (CIO), Barry West, seeking information related to any possible administrative IT systems action (s) (e.g.

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## REPORT OF INVESTIGATION

access restricted, access terminated, removed from contract, etc.) levied against any of the following four (4) PBGC employees / contractors for which documentation copies exist that (b)(6) did report them to have violated PBGC Computer Resource Use policies (EXHIBIT 7 through EXHIBIT 7b):

- (b)(6)
- 
- 
- 

On September 19, 2014, PBGC OIT CIO West provided this reporting agent with an email response to my earlier September 16, 2014 request for information. In summary, CIO West confirmed OIT records reflected (b)(6) and OIT managers followed appropriate guidelines and policy to do what was required for inappropriate use of PBGC computer systems. Furthermore, CIO West provided electronic copies of OIT guideline materials in place during the tenure of (b)(6) as follows:

- IM-05-04, Use of Information Technology Resources;
- IAH Volume eight (8); and
- Memorandum from Vincent Snowbarger on the inappropriate use of computers.

CIO West reported there was no requirement for OIT to maintain a separate record system relative to administrative actions taken against any employees, so therefore no such records were located. (EXHIBIT 8 through EXHIBIT 8d)

On September 26, 2014, PBGC HRD Director Etheridge provided this reporting agent with an email response to my earlier September 11, 2014 request for information. In summary, HRD records reflected (b)(6) and OIT made timely notification to HRD of PBGC Computer Resource Use policy violations to permit timely and appropriate action by HRD. Of the four (4) examples provided to HRD, existing records confirmed administrative action was taken against employees (b)(6) and (b)(6). Actions against (b)(6) and (b)(6) could not be confirmed via existing records due to the fact records retention requirements did not require HRD records be maintained longer than 4 years. An HRD manager does have a recollection that (b)(6) voluntarily resigned in lieu of administrative action being levied against (b)(6). Such a proposed action would have only resulted from timely notification from OIT on the systems misuse. HRD now has a retention period of 7 years for these types of records. (EXHIBIT 9 and EXHIBIT 9a)

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## REPORT OF INVESTIGATION

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On June 26, 2015, this reporting agent annotated the OIG Document Control Form, originally dated May 22, 2014, to reflect the physical return of the following materials to PBGC OIG (b)(6) (b)(6) (EXHIBIT 10):

- two (2) large cardboard boxes, and
- one (1) plastic trashcan containing miscellaneous non-inventoried documents and CDs, all reportedly removed from the PBGC work space of former PBGC (b)(6) (b)(6) by the initial anonymous source of information, who then provided it to (b)(6) (b)(6)

### REFERRAL TO THE UNITED STATES ATTORNEY'S OFFICE

The matter was not presented to the U.S. Attorney's Office, Washington, DC, for a prosecutorial opinion based upon the fact there was no evidence developed to substantiate the allegation.

### CONCLUSION

The investigation did not result in any corroboration of the complaint concerning (b)(6) alleged failure to accurately and timely document and report to PBGC Senior Management misuse of US Government computer hardware / software / systems in accordance with PBGC protocols to facilitate PBGC Management action, and as such the allegation has been deemed unsubstantiated relative to misconduct or criminal activity at this time. To the contrary, evidence was identified which reflected very detailed accounting of computer systems misuse and the timely reporting of such violations to PBGC Senior Management within various PBGC components, not limited to: Office of Information Technology (OIT), Benefits Administration and Payments Division (BAPD), Procurement (PRO) and Human Resources Division (HRD), as is exemplified in Exhibits #2 through #5, inclusive.

### DISPOSITION

This investigation is closed in the OIG's official electronic Case Management and Tracking System and the matter is referred back to the PBGC OIG OA (copy to the PBGC OIG OI and to the PBGC OIT) for action as deemed appropriate.

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# REPORT OF INVESTIGATION

## EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>
1	Memorandum of Activity, Complaint Initiation, PBGC OIG Assistant Inspector General for Audits (AIGA) Rashmi Bartlett and (b)(6) (b)(6) dated May 19, 2014.
1a	PBGC OIG Document Control Record Form, dated May 22, 2014, memorializing receipt of materials from PBGC OIG ISO (b)(6)
2	Copy of Notification of "Evidentiary Link (b)(6) memorandum, dated April 26, 2007 "from" (b)(6) (OIT); "to" (b)(6) (COTR), (b)(6) and (b)(6); "through" (b)(6) and Susan Taylor (Director of Procurement)
3	Copy of Notification of "Inappropriate Use of PBGC Computer Resources" memorandum, dated May 23, 2007 "from" (b)(6) (OIT); "to" Bennie Hagans (Director BAPD) and Michele Pilipovich (Director Human Resources Division); "through" (b)(6) (b)(6)
4	Copy of Notification of "Inappropriate Use of PBGC Computer Resources" memorandum, dated June 4, 2007 "from" (b)(6) (OIT); "to" (b)(6) and Michele Pilipovich (Director Human Resources Division); "through" (b)(6) (b)(6)
5	Copy of Notification of "Inappropriate Use of PBGC Computer Resources" memorandum, dated January 29, 2008 "from" (b)(6) (OIT); "to" (b)(6) and Arrie Etheridge (Director Human Resources Division); "through" (b)(6) (b)(6) and Patsy Garnett (Chief Information Officer)
6	Memorandum of Activity, Request for HRD Information Assistance, from

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## REPORT OF INVESTIGATION

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PBGC OIG AIGI Peter P. Paradis, Sr. to HRD Director Arrie Etheridge, dated September 11, 2014.

- 6a Copy of email from AIGI Peter P. Paradis, Sr. to HRD Director Arrie Etheridge, dated September 11, 2014.
- 6b OIG Memorandum to PBGC HRD requesting information assistance, dated September 11, 2014.
- 7 Memorandum of Activity, Request for OIT Information Assistance, from PBGC OIG AIGI Peter P. Paradis, Sr. to CIO Barry West, dated September 16, 2014.
- 7a Copy of email from AIGI Peter P. Paradis, Sr. to CIO Barry West, dated September 16, 2014.
- 7b OIG Memorandum to PBGC OIT requesting information assistance dated September 16, 2014.
- 8 Memorandum of Activity, Receipt of OIT Record Data, from CIO Barry West, dated September 19, 2014.
- 8a Copy of email from CIO Barry West to AIGI Peter P. Paradis, Sr., dated September 19, 2014.
- 8b Copy of PBGC Directive Number: Part IM, Section 05-05, effective date April 26, 2006.
- 8c Copy of Information Assurance Handbook, Volume 8, Section III "Investigating Internal Security Incidents – Procedures", version 1.0, dated April 2007.
- 8d Copy of Memorandum from PBGC Interim Director Vincent Snowbarger, entitled "Inappropriate Use of PBGC Computer Resources", dated January 4, 2007.
- 9 Memorandum of Activity, Receipt of HRD Record Data, from HRD Director Arrie Etheridge, dated September 26, 2014.

### IMPORTANT NOTICE

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## REPORT OF INVESTIGATION

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- 9a Copy of email from HRD Director Arrie Etheridge to AIGI Peter P. Paradis, Sr., dated September 26, 2014.
- 10 PBGC OIG Document Control Record Form, dated June 26, 2015, memorializing return of materials from PBGC OIG OI to PBGC OIG (b)(6) [REDACTED]

### IMPORTANT NOTICE

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Office of Inspector General  
Pension Benefit Guaranty Corporation

August 10, 2016

MEMORANDUM

TO:

(b)(6)

Complainant

DeVan Brown, President and CEO  
CyQuest Business Solutions, Inc.

Tom Reeder  
PBGC Director

FROM:

*Ronald C. Engler*  
Ronald C. Engler  
Acting Chief Counsel

WARNING PRIVACY ACT STATEMENT. This special report contains information subject to the provisions of the Privacy Act of 1974. Such information may be disclosed only as authorized by this statute. Questions concerning release of this report should be coordinated with the Pension Benefit Guaranty Corporation, Office of Inspector General.

SUBJECT: Special Report: Alleged Whistleblower Reprisal by CyQuest Business Solutions, Inc., against (b)(6) (Case No. 15-0010-I)

Our office received a complaint from (b)(6) (Complainant) alleging PBGC contractor CyQuest Business Solutions, Inc., in violation of 41 U.S.C. § 4712, terminated (b)(6) from (b)(6) pension benefits supervisor position as a reprisal for (b)(6) disclosure of certain information. We obtained documents from the Complainant, CyQuest and PBGC, and interviewed 17 witnesses, including the Complainant and the CyQuest official responsible for (b)(6) termination. We also reviewed the applicable statutes and case law. This memorandum is to report our findings, analysis, and conclusion relating to the allegation of whistleblower reprisal. The scope of this special report is limited to the investigation of the allegation of whistleblower reprisal. The merits of any underlying disclosures or other information are not discussed in this report.

Section 4712 requires the Inspector General to investigate a whistleblower reprisal complaint and, upon completion of such investigation, submit a report of the findings of the investigation to the complainant, the contractor, and the PBGC Director. Under the law, no later than 30 days after receiving this report, the PBGC Director is to determine whether there is a sufficient basis to conclude CyQuest committed whistleblower reprisal and either issue an order denying relief or requiring corrective action. Potential corrective action includes reinstatement with compensatory damages (including back pay) and the reimbursement of all costs reasonably associated with the Complainant's OIG complaint.

## Executive Summary

Based upon our evaluation of the facts and applicable law, we are unable to conclude that CyQuest terminated the Complaint in reprisal for (b)(6) disclosures. Although the evidence shows that two of the Complainant's disclosures could reasonably be considered protected under Section 4712, we are unable to show they were a contributing factor in (b)(6) termination. Even if we were able to establish (b)(6) disclosures were a contributing factor, we find there is reasonable grounds to conclude that CyQuest can show by clear and convincing evidence that they would have terminated the Complainant on other grounds absent (b)(6) disclosures. In sum, we have concluded there is insufficient evidence to substantiate the Complainant's allegation that CyQuest subjected (b)(6) to a reprisal for whistleblowing.

## Background

On August 13, 2009, PBGC entered into a labor hours contract (PBGC01-CT-09-0033) with CyQuest to provide Field Benefit Administration (FBA) services in Sarasota, Florida. An FBA is a field contract office that works with PBGC's Office of Benefits Administration to provide participant and benefit processing services and assistance to case processing. FBAs perform almost 100 percent of the participant administration for PBGC's trustee plans. The work of the FBA typically begins when PBGC recommends a plan for termination. The FBA is responsible for participant administration of the plan from trusteeship until a plan goes to Post Valuation Administration (PVA). In some instances, the FBA also provides services during the PVA phase of processing. The case processing cycle lasts on average 2.5 to 3.5 years. Once the plan has gone through the Plan Closing Process, it is transferred to a PVA center. In 2014, there were four FBA offices and one PVA office.

The August 13, 2009, contract had a base year with a period of performance from August 14, 2009, through August 13, 2010, and four option years concluding August 13, 2014. The total value of the five-year contract award was \$29 million. On September 13, 2014, PBGC entered into another labor hour contract (PBGC01-CT-14-0042) with CyQuest to provide services for the Sarasota FBA. The contract has a base year with a period of performance from September 13, 2014, through September 12, 2015, and four option years concluding September 12, 2019. The total value of the five-year contract award is \$33 million.

On (b)(6) 2014, CyQuest hired (b)(6) as a pension benefits supervisor for the Sarasota FBA. A benefits supervisor is responsible for oversight of the plan administration functions, including developing work plans, authorizing benefits payments, and overseeing the issuance of benefit determination letters. At the Sarasota FBA, pension benefits supervisors oversee one

team leader and several senior, junior and entry-level pension administrators. The teams are comprised of about 10 members, including the supervisor.

In 2014 at the Sarasota FBA, the pension benefits supervisors, including the Complainant, reported to the project manager, (b)(6) and the assistant project manager, (b)(6). In 2014, (b)(6) was the PBGC's backup or alternate Contracting Officer's Representative (COR). (b)(6) responsibilities included oversight of the CyQuest contract to provide services for the Sarasota FBA. CyQuest President and CEO DeVan Brown terminated the Complainant's employment on (b)(6), 2014.

Complainant alleges (b)(6) was terminated as reprisal for making disclosures protected under 41 U.S.C. § 4712, the "Pilot program for enhancement of contractor protection from reprisal for disclosure of certain information." Under this statute, a federal contractor may not discharge an employee in reprisal for making certain disclosures to, among others: (1) a Federal employee responsible for contract oversight or management at the relevant agency or (2) a management official of the contractor who has the responsibility to investigate, discover, or address misconduct.

To receive whistleblower protection under this section, a complainant must disclose information (b)(6) reasonably believes is evidence of: (1) gross mismanagement of a Federal contract or grant; (2) a gross waste of Federal funds; (3) an abuse of authority relating to a Federal contract or grant; (4) a substantial and specific danger to public health or safety; or (5) a violation of law, rule, or regulation related to a federal contract or grant. The legal burdens of proof specified in 5 U.S.C. § 1221(e), the Whistleblower Protection Act, are controlling for the purposes of OIG's investigation. See 41 U.S.C. § 4712(c)(6).

## Findings and Analysis

**The Evidence Indicates the Complainant Made Six Disclosures; Two of Which About the Failure to Pay (b)(6) Overtime Could Reasonably be Considered "Protected."**

Based upon our interviews of the Complainant, documents we obtained from (b)(6) PBGC, and CyQuest, and our interviews of witnesses, we determined the Complainant made six disclosures. As described below, we conclude four of (b)(6) disclosures were not "protected" disclosures as defined by the statute. (b)(6) third and fourth disclosures about CyQuest's failure to pay (b)(6) overtime could reasonably be considered protected.

*First Disclosure - changing expected resolution dates for participant "service requests"*

In a May 12, 2014, email to, among others, CyQuest project manager (b)(6) and assistant project manager (b)(6) the Complainant wrote, in pertinent part:

(b)(6) was handling moving the dates on the CRM report daily to prevent things from going into over-due status up until now. However, to control and know what request we have with our plans on the daily report from (b)(6) and to prevent things from being moved out on the calendar going forward we will handle this within our team.

The Complainant contends (b)(6) email shows that CyQuest pension benefits supervisors were directed by the project manager and the assistant project manager to change the expected resolution dates for participant "service requests," which includes requests for benefits applications, in the Customer Relationship Management (CRM) system – PBGC's computerized database that tracks the status of the requests. The Complainant did not allege, nor did we find, any evidence the Complainant made a disclosure about this to anyone else at any other time.

The Complainant's email does not say that managers directed the Complainant and other supervisors to change expected resolution dates for participant service requests in the CRM system. Even if we assume, however, the email does show this, this information must constitute wrongdoing covered by Section 4712. Ordering the change of expected resolution dates for participant service requests might, for example, constitute an abuse of authority, that is, an "arbitrary or capricious exercise of power ... that adversely affects the rights of any person or that results in personal gain or advantage to himself or to preferred other persons." *McCordle v. Department of Agriculture*, 98 M.S.P.R. 363, 375 (2005). (Citation omitted.) However, the email and the Complainant's written explanation of it does not show how changing those dates adversely affected the rights of participants or provided a gain or advantage to anyone at CyQuest. Therefore, we cannot show that this email constitutes a protected disclosure.

*Second Disclosure - failure to properly train employees*

In a July 2, 2014, email entitled, "The Application Tracking Tool has been updated – PAST DUE," to CyQuest employee (b)(6) and copied to assistant project manager (b)(6) and project manager (b)(6) the Complainant wrote, in pertinent part:

Just so I make sure that you and (b)(6) are aware. My Senior staff members told me that they have never been trained on using this tool or even

how to access it. (b)(6) and I and now (b)(6) are the only people that went to the training provided by (b)(6) right after we started but, at the time I assumed this was something everyone knew about. Especially the tenured people. I will ensure my staff is all trained on using this tool and that we work on getting the past due one's updated but it probably would be adventitious [sic] for all staff members to attend a training with (b)(6)

The Complainant contends that this email evidences a disclosure of CyQuest's failure, generally, to properly train all its employees. Such a failure might constitute gross mismanagement of the contract with PBGC to process participant applications. However, the disclosure is limited to the failure to train employees on the application tracking tool. For that failure to constitute gross mismanagement of the contract, it must create a "substantial risk of significant adverse impact on the agency's ability to accomplish its mission." *Swanson v. General Services Administration*, 110 M.S.P.R. 278, 285 (2008). (Citation omitted.) However, the Complainant did not present, nor did we find, evidence that this alleged failure created a "substantial risk of significant adverse impact" on the ability of CyQuest as a whole to accomplish its mission of processing participant benefits applications. Therefore, we cannot show this email constitutes a protected disclosure.

*Third Disclosure – failure to pay overtime*

In a September 10, 2014, email, the Complainant told CyQuest's human resources director, (b)(6) "I work more than 40 hours on a routine basis and always have to modify that because of unapproved overtime but that is what the job calls for to manage it effectively so I do so without complaint." The Complainant contends this email evidences CyQuest's failure to pay (b)(6) overtime for those hours (b)(6) elected to work beyond 40. The failure to pay overtime for hours worked over 40 in a workweek might constitute a violation of law, that is, the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et. seq.* Therefore, we find it is reasonable to conclude that this disclosure was protected.

*Fourth Disclosure – failure to pay overtime*

In a September 15, 2014, email to human resources director (b)(6) the Complainant wrote, in pertinent part:

[A]ll other Supervisors were paid time and a half and approved for Overtime BUT me per (b)(6) I came in and worked straight time to help support the workloads and my peer supervisors and this was fine with (b)(6) beforehand. It was changed and submitted and then I was asked to initial after

the fact. This is a pattern of timesheet altering and OT manipulation. I have never asked to be compensated even though I understand FLSA.

The Complainant contends this email also evidences CyQuest's failure to pay (b)(6) overtime for those hours (b)(6) elected to work beyond 40. The failure to pay overtime for hours worked over 40 in a workweek might constitute a violation of the FLSA. Also, altering an employee's timesheet to avoid paying overtime might constitute an abuse of authority or a violation of law, rule, or regulation. Therefore, we find it is reasonable to conclude that this disclosure was protected.

*Fifth Disclosure – 5,000 overdue service requests*

In a September 25, 2014, email to project manager (b)(6) and CyQuest employee (b)(6) and copied to assistant project manager (b)(6) and CyQuest employees (b)(6) and (b)(6) (b)(6) the Complainant told them, "The morning reports show over 5,000 overdue SR's." (An "SR" is a service request.) The term service request encompasses a range of actions sought by a participant from pension administrators. A service request includes, among other things, a participant's request for a benefits application, assistance in completing the application, or receipt of an address or telephone number. CyQuest's performance on some service requests, for example, "authorization of monthly benefits" and "benefit determination letter processing" are, pursuant to its contract with PBGC, measured.

The Complainant's September 25 email might evidence CyQuest mismanagement of service requests. Not all mismanagement, however, rises to the level of "gross mismanagement." For example, a disclosure that agency officials failed to assist the appellant in ensuring that contractors were meeting their contractual duties did not rise to the level of "gross," because it failed to disclose a substantial risk of significant adverse impact upon the agency's ability to accomplish its mission. *Lane v. Department of Homeland Security*, 115 M.S.P.R. 342, 351-352 (2010). Further, to be protected "disclosures must be specific and detailed, not vague allegations of wrongdoing regarding broad, imprecise matters." *Kraushaar v. Department of Agriculture*, 87 M.S.P.R. 378, 381 (2000). (Citation omitted.) Here, the Complainant did not present specific and detailed information regarding how the 5,000 overdue service requests presented a substantial risk of significant adverse impact on CyQuest's ability to process participant benefits applications. Therefore, we are unable to show this disclosure was protected.

*Sixth Disclosure - failure to authorize overtime for all teams and adequately train employees*

At an October 23, 2014, meeting regarding pension benefits payment deadlines, the Complainant told PBGC COR (b)(6) that CyQuest management selected other teams for approval to work overtime, but not (b)(6). The decision not to have every team work overtime, (b)(6) believed, was in part responsible for the backlog of service requests. (b)(6) also said (b)(6) told (b)(6) that (b)(6) believed the inadequacy of employee training at both the entry and managerial level caused the Sarasota FBA's low "technical skills" and "soft skills" scores. (Scores for technical skills measure knowledge of the benefits application process. Soft skills scores measure the way an employee conducted a telephone conversation with a participant.) Also present at the meeting were project manager (b)(6) assistant project manager (b)(6) and CyQuest employees (b)(6) and (b)(6).

The failure to authorize overtime for all teams and adequately train employees might constitute a disclosure of gross mismanagement if those things presented a substantial risk of significant adverse impact on CyQuest's ability to process participant benefit applications. However, the Complainant did not present, nor did we find, evidence that these alleged failures had such an impact. What the Complainant said appears to indicate only that (b)(6) was displeased and disagreed with management's decisions about who received overtime and how much training was sufficient. We found evidence that CyQuest employees received technical and soft skills training from PBGC and contractor instructors. As such, the disclosures were not protected disclosures of gross mismanagement. *See Downing v. Department of Labor*, 98 M.S.P.R. 64 (2004); *O'Donnell v. Department of Agriculture*, 120 M.S.P.R. 94 (2013), *aff'd*, 561 Fed. Appx. 926 (Fed. Cir. 2014). (Mere differences of opinion between employee and his agency superiors as to proper approach to a particular problem or most appropriate course of action do not rise to level of "gross mismanagement."); *Baker v. Department of Agriculture*, 131 Fed. Appx. 719 (2005), 2005 WL 790636, *rehearing en banc denied, cert. denied*, 546 U.S. 987 (2005). (Employee's disclosures to his supervisor that certain methods used in connection with work project were allegedly flawed were not protected, given that employee's disclosures did no more than voice his dissatisfaction with his supervisor's decision.)

**The Evidence Does Not Show the Complainant's Disclosures Were a Contributing Factor in (b)(6) Termination**

Given it appears at least two of the Complainant's disclosures were protected, (b)(6) can demonstrate reprisal by proving a causal connection between (b)(6) disclosures and (b)(6) October 24, 2014, termination. Section 4712(c)(6) states the OIG must use the burden of proof provided in 5 U.S.C. § 1221(e) to establish such a causal connection. Under Section 1221(e), that burden

of proof requires a showing that a protected disclosure was a “contributing factor” in the personnel action the employee suffered.

According to Section 1221(e)(1), the whistleblower may demonstrate that the disclosure was a contributing factor in the personnel action through circumstantial evidence, including that the official taking the personnel action knew of the disclosure and the personnel action occurred within a period of time such that a “reasonable person could conclude that the disclosure ... was a contributing factor in the personnel action.” This is known as the “knowledge-timing test” in reprisal for whistleblowing cases. Section 1221(e)(2) adds, however, that corrective action in the matter may not be ordered if, after a finding that a protected disclosure was a contributing factor, the employer demonstrates by clear and convincing evidence that it would have taken the same personnel action in the absence of such disclosure.

#### *Evidence of knowledge and timing*

To satisfy the first element of the “knowledge-timing test” provided in Section 1221(e)(1), the official responsible for terminating the Complainant, CyQuest President and CEO DeVan Brown, must have had knowledge of (b)(6) protected disclosures. The Complainant did not present nor did we find any evidence, however, that Brown knew of (b)(6) protected third and fourth disclosures – the September 10 and 15, 2014, emails about (b)(6) not being paid for overtime work. And, Brown denied having any knowledge that Complainant was not paid for overtime. Nonetheless, if there is evidence Brown was aware of these disclosures, the evidence indicates the Complainant would be able to meet the “timing” part of the “knowledge-timing test.”

The “reasonable time” element of the “knowledge-timing test” is satisfied if the Complainant’s termination occurred within a period of time such that “a reasonable person could conclude that the disclosure was a contributing factor” in the personnel action. Here, the Complainant was terminated on October 24, 2014, approximately six to seven weeks after (b)(6) disclosures about not being paid overtime. Although section 1221(e)(1) does not state how much time would cause a reasonable person to conclude the disclosure was a contributing factor in the reprisal, courts adjudicating Whistleblower Protection Act cases have established a lengthier reasonable time standard. In *Kewley v. Department of Health and Human Services*, 153 F.3d 1357, 1363 (Fed. Cir. 1998), for example, the Federal Circuit held a reasonable time could normally extend to an action taken within the employee’s same performance evaluation period of one year. September 10 and 15, 2014, disclosures followed by an October 24, 2014, termination, a duration of six or seven weeks, would demonstrate a temporal proximity that supports an inference of reprisal.



**Even if we could establish the Complainant's disclosures were a contributing factor in (b)(6) termination, there is reasonable grounds to conclude that CyQuest can show by clear and convincing evidence Brown would have terminated (b)(6) absent those disclosures.**

Under Section 1221(e)(2), the presumption of reprisal may be overcome if CyQuest can demonstrate by clear and convincing evidence it would have discharged the Complainant notwithstanding (b)(6) disclosures. In Whistleblower Protection Act cases, clear and convincing evidence is "that measure or degree of proof that produces in the mind of the trier of fact a firm belief as to the allegations sought to be established." *Rychen v. Department of the Army*, 51 M.S.P.R. 179, 183 (1991) (citation omitted); 5 C.F.R. § 1209.4(e). It is a higher burden of proof than preponderance of the evidence. 5 C.F.R. § 1209.4(e).

In determining whether employers meet the clear and convincing standard, courts in Whistleblower Protection Act cases consider: (1) the strength of the employer's evidence in support of the termination; (2) the existence and strength of any retaliatory motive by the officials responsible for the termination decision; and (3) evidence concerning the employer's treatment of similarly-situated employees who were not whistleblowers. *See Redschlag v. Department of the Army*, 89 M.S.P.R. 589, 627 (2001); *Carr v. Social Security Administration*, 185 F.3d 1318, 1323 (Fed. Cir. 1999). The Merit Systems Protection Board does not view these factors as discrete elements, each of which the agency must prove by clear and convincing evidence. Rather, the Board will weigh the factors together to determine whether the evidence is clear and convincing as a whole. *Phillips v. Department of Transportation*, 113 M.S.P.R. 73, 77 (2010); *Yunus v. Department of Veterans Affairs*, 84 M.S.P.R. 78 (1999), *aff'd*, 242 F.3d 1367 (Fed. Cir. 2001).

#### *Strength of CyQuest's Evidence in Support of the Complainant's Termination*

Brown told OIG investigators he terminated the Complainant for (b)(6) "unprofessional behavior that was consistently exhibited towards my client" – PBGC. Brown said he terminated Complainant after being copied on an email dated October 23, 2014, from (b)(6) the (b)(6) PBGC COR, to project manager (b)(6) entitled, "Unacceptable Behavior." In the email, (b)(6) wrote in reference to the Complainant:

Please know that I did not appreciate the rudeness, aggressiveness or unprofessional behavior of one of your Supervisors in the meeting today. (b)(6) (b)(6) behavior did not portray a good image of professionalism required from any CyQuest employee. I was trying to help the contract perform better based on the feedback from some TPDs [Trade Processing Divisions] on processing

Benefit Applications and Submission cutoff date[s]. (b)(6) did not only twist my word[s], but accused me of setting unrealistic expectation[s] when my message was based on PBGC policies and procedures. (b)(6) got up from my meeting and [was] ready to walk out and I had to tell (b)(6) that (b)(6) has to sit down and listen to my message. I suggested that (b)(6) needs to use (b)(6) listening skills. I informed (b)(6) that I had no control over how much CyQuest is paying (b)(6) and (b)(6) group. I suggested (b)(6) stops polarizing the office and take (b)(6) grievances to CyQuest. (b)(6) was very aggressive and uncontrollable and (b)(6) thinks (b)(6) is speaking out for (b)(6) group. I informed (b)(6) that there are four groups with Supervisors and other Supervisors are not throwing [a] temper tantrum about [a] raise or overtime to Federal staff. I have been in the office since Monday and have witnessed three outbursts from (b)(6). (b)(6) is not ready to learn this job, but here to foment trouble.

Approximately an hour and half before receiving the email from (b)(6) Brown received an email from (b)(6) a CyQuest benefits supervisor, entitled, "Unhappy Client." In it, (b)(6) told Brown that (b)(6) and another PBGC employee (who we learned was (b)(6)) (b)(6) had approached (b)(6):

in reference to (b)(6) and the way (b)(6) represented CyQuest and the Management Team in Tier One training on [sic] yesterday. They stated that they was [sic] not happy with (b)(6) professionalism and the way (b)(6) conducted (b)(6) (b)(6) asked about incentives, overtime and other things that should be addressed with [the] CyQuest Management Team only. I apologized to (b)(6) and (b)(6) and informed them that I will report it to the appropriate individuals. I just wanted to give you a heads up.

Within minutes of receipt of the email from (b)(6) Brown emailed CyQuest human resources manager (b)(6) and project manager (b)(6) about the Complainant. He wrote, "This is a serious offense and must be firmly managed. It's my preference to terminate (b)(6) for (b)(6) unprofessional behavior which is contrary to CyQuest. I say we obtain statements from (b)(6) (b)(6) and anyone else who witnessed the conversation."

(b)(6) provided a written statement. (b)(6) wrote, in pertinent part:

On October 23, 2014, (b)(6) requested that (b)(6) gather all the supervisors for a quick meeting about the benefit payment deadlines. (b)(6) started to speak and before (b)(6) could finish (b)(6) started to interrupt

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(b)(6) Both (b)(6) and I requested that (b)(6) let (b)(6) finish. (b)(6) attempted to interrupt (b)(6) three more times during (b)(6) discussion and each time was asked to wait until the end of the discussion. (b)(6) stood up and stated (b)(6) was supposed to be at lunch and was not going to be yelled at. I asked (b)(6) to sit down and listen and (b)(6) [said] I was not supporting the management team against (b)(6) and from a business process we were not being given enough time. ... Both (b)(6) and I expressed to (b)(6) that (b)(6) needs to learn to listen.

\*\*\*

(b)(6) behavior was disrespectful and argumentative to (b)(6) and (b)(6) management team. (b)(6) fails to adjust (b)(6) approach for different audiences, does not select the correct forum for discussion issues, and is confrontational to others who do not share (b)(6) views.

(b)(6) and (b)(6) confirmed for us the accuracy of their written statements. Witnesses (b)(6) and (b)(6) did not provide CyQuest a written statement, but their descriptions to us of (b)(6) behavior was consistent with that provided by (b)(6) and (b)(6)

Brown also told us he was aware of previous instances of similar behavior by the Complainant toward a PBGC employee and CyQuest employees. He told us he perceived these incidents as exhibiting a continuing pattern of misconduct and they factored into his decision to terminate (b)(6). He cited the Complainant's conduct toward PBGC employee (b)(6) at an October 21, 2014, training session conducted by (b)(6). (b)(6) confirmed for us that the Complainant had been "very aggressive" in complaining about the timing of the meeting, and described (b)(6) behavior as "rude," and "not professional." Brown also cited Complainant's conduct toward other CyQuest employees. Human resources manager (b)(6) reported to Brown on October 16, 2014, that the Complainant's team was "very upset by (b)(6) behavior that continues to be an issue everyday."

Given the above, the evidence to support the reason for Complainant's termination appears strong. And, we found no evidence to refute Brown's reason for terminating (b)(6). Further, the CyQuest employee handbook, which the Complainant signed, notes the Complainant's employment was "at will." Moreover, according to the handbook, the type of conduct the Complainant reportedly engaged in on October 23 with PBGC's (b)(6) and on October 21 with PBGC's (b)(6) that is, "displaying unprofessional behavior to the client," can be grounds for termination. In terminating the Complainant, Brown said the Complainant's behavior negatively impacted the success of CyQuest's relationship with PBGC.

The Merit Systems Protection Board has held that rude and discourteous behavior toward supervisors, coworkers, and non-agency personnel is a proper basis for imposing discipline. *See, e.g., Kirkland-Zuck v. Department of Housing and Urban Development*, 90 M.S.P.R. 12, 18-20 (2001). In Whistleblower Protection Act cases, the MSPB's function is not to displace management's responsibility or to decide what penalty it will impose. Rather, the MSPB must assure that management's judgment has been properly exercised and the penalty selected does not exceed the maximum limits of reasonableness. *Dunn v. Department of the Air Force*, 96 M.S.P.R. 166, 170 (2004). Given the strength of the evidence supporting Brown's findings of unprofessional conduct, such conduct is a proper basis for imposing discipline, and CyQuest's employee handbook notified the Complainant (b)(6) could be terminated for such behavior, we cannot show (b)(6) termination exceeded the bounds of reasonableness.

#### *Existence and Strength of Any Retaliatory Motive by Brown*

Concerning retaliatory motive, courts in whistleblower retaliation cases have considered, among other things, the effect of the whistleblower's disclosure on those responsible for taking action against the whistleblower. *See, e.g., Whitmore v. Department of Labor*, 680 F.3d 1353, 1370-1372 (Fed. Cir. 2012). The Complainant's protected disclosures about CyQuest's failure to pay (b)(6) overtime essentially accused Brown, as CyQuest's President and CEO, of violating the law and, as such may have had a motivating effect on him. Nonetheless, even if Brown had a motive to retaliate against the Complainant based on those disclosures, the evidence indicates, on balance, Brown's primary motive for terminating the Complainant's employment was his concern over (b)(6) unprofessional conduct rather than any animus or ill will.

#### *Evidence concerning CyQuest's treatment of similarly-situated employees*

We did not find any evidence that Brown did not terminate another CyQuest employee who was not a whistleblower for misconduct similar to the Complainant's. We found that Brown terminated another employee, (b)(6) for behavior similar to the Complainant's. And, like the Complainant, (b)(6) alleged that (b)(6) was terminated in reprisal for whistleblowing. OIG previously found, however, there was insufficient evidence to conclude (b)(6) termination was in reprisal for whistleblowing.

### **Conclusion**

Although the evidence shows that two of the Complainant's disclosures could reasonably be considered protected under 41 U.S.C. § 4712, we are unable to show Brown, the CyQuest official who terminated (b)(6) knew of them. Even if we could establish the Complainant's disclosures were a contributing factor in (b)(6) termination, we find there is reasonable grounds

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to conclude that CyQuest can show by clear and convincing evidence Brown would have terminated (b)(6) on other grounds absent (b)(6) disclosures. In sum, we have concluded there is insufficient evidence to substantiate the Complainant's allegation that CyQuest subjected the Complainant to a reprisal for whistleblowing.

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

September 11, 2015

**TITLE** Teamsters Union No. 142

**INVESTIGATION #** 15-0004-C / 15-0015-I

**TYPE OF INVESTIGATION** Administrative – Failure to Create a Proper EIN

**INVESTIGATOR** (b)(7)(C) [redacted]  
Special Agent

**SUBJECT** Close-Out Memorandum

**ALLEGATIONS & FINDINGS**

Allegations:

On October 13, 2014, PBGC OIG received an emailed Hotline complaint from (b)(6) [redacted]. Complainant stated that during litigation it came to (b)(6) [redacted] attention that the Teamsters Union No. 142 Pension Trust Fund was never created with a proper EIN. Complainant stated that PBGC is aware of this matter and has done nothing to resolve it.

Potential Violations: There are no potential criminal violations.

Findings:

OIG did not find an EIN for Teamsters Union No. 142 Pension Trust Fund, as no such plan could be located in PBGC records.

**INVESTIGATIVE ACTIVITY AND FACTS**

SA (b)(7)(C) [redacted] conducted a thorough search of PBGC electronic records, but was unable to locate an EIN for Teamsters Union No. 142 Pension Trust Fund [Exhibit 1].

SA (b)(7)(C) [redacted] contacted the Complainant for additional information and was provided the following details:

- (b)(6) [redacted] contacted PBGC OIG regarding a civil case which has now been settled.
- (b)(6) [redacted] stated (b)(6) [redacted] had no allegation of any impropriety.
- (b)(6) [redacted] clarified (b)(6) [redacted] had a technical issue regarding the misnaming of a pension plan in a collective bargaining agreement.

## **CONCLUSION**

The Complainant advised SA (b)(7)(e) (b)(6) no longer in needed OIG assistance.

## **DISPOSITION**

### **Investigative Status:**

This investigation is closed to OIG's official electronic Case Management and Tracking System. There is no further investigative activity required at this time based upon a withdrawal of the Complainant's request for assistance.

### **Administrative Status:**

Not Applicable.

### **Judicial Status:**

The matter was not presented to the U.S. Attorney's Office, District of the District of Columbia, due to an absence of evidence of any violation.

## **RECOMMENDATION**

Case Agent recommends closing this investigation.

## **CONCURRENCE:**



Peter P. Paradis, Sr.  
Assistant Inspector General for Investigations

09 / 11 / 2015  
Date

## **Exhibits:**

**Exhibit 1** - Case Agent March 20, 2015 Email Detailing Actions Taken

**Exhibit 2** - PBGC Internet Search Documents Regarding Teamsters Union No. 141

(b)(7)(c)

**From:** Margensey Karen  
**Sent:** Thursday, June 11, 2015 3:11 PM  
**To:** (b)(7)(c)  
**Cc:** Paradis Peter; Westbrooks Robert  
**Subject:** RE: Potential Whistleblower Protection Act Complaint received by OEEO

Hi, (b)(7)(c) –

Thank you for calling. I can confirm that OEEO is currently processing the individual's EEO concerns and that the individual's physical presence at PBGC facilities is not required. I have instructed the EEO Counselor processing this matter to conduct any further processing via email and/or telephone. I have also advised the EEO Counselor to immediately advise OIG if he receives any further information regarding the potential Whistleblower Protection Act concerns raised by the former employee.

Thanks,

Karen

*Karen Margensey  
Director, Office of Equal Employment Opportunity  
Pension Benefit Guaranty Corporation  
1200 K Street, NW  
Washington DC 20005-4026  
Margensey.Karen@pbgc.gov  
202.326.4000 x 6826*

**From:** (b)(7)(c)  
**Sent:** Thursday, June 11, 2015 2:53 PM  
**To:** Margensey Karen  
**Cc:** Paradis Peter; Westbrooks Robert  
**Subject:** Potential Whistleblower Protection Act Complaint received by OEEO

Karen

Per our conversation concerning the potential Whistleblower Protection Act complaint, the OIG has reviewed the documents and determined that your office is best suited to address the concerns of the former employee at this point. In the event that new information is learned that you feel the OIG should be made aware of please forward it to AIGI Peter P. Paradis for review. Finally, as discussed a recommendation will be made by the OIG to the PBGC Workplace Solutions Division to bar the former employee from entering the building. As you indicated, EEO staff will be able to address the former employees EEO complaint via telephone and further entry into PBGC controlled space will not be required and the barring action will not interfere with the former employee's EEO rights.

Regards,

(b)(7)(c)  
Special Agent (b)(7)(c)  
U. S. Pension Benefit Guaranty Corporation  
Office of Inspector General



1200 K Street NW, Suite 480  
Washington, DC 20005  
Office: (202) 326-4000 ext. (b)(7)(C)




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

*August 4, 2015*

**Referral Memorandum**

**TO:** Nicole Williams  
Director  
Enterprise Evaluation Division  
Quality Management Department

**FROM:**  Peter P. Paradis, Sr.  
Assistant Inspector General for Investigations

**SUBJECT:** Participant Complaint Alleging Misapplication of Early Retirement  
Benefit Payment Formula

The Office of Inspector General Hotline received the attached correspondence.

We have reviewed the information provided and have determined that your office can best address the issues raised. The OIG will not be taking action, therefore, we are referring the correspondence for whatever action you deem appropriate.

Attachment

Ms. Alice Maroni, Acting Director  
PBGC  
1200 K St. NW  
Washington, D.C. 20005

July 13, 2015

Mr. Robert Westbrook  
Office of Inspector General  
1200 K Street NW, Suite 480  
Washington, D.D. 20005

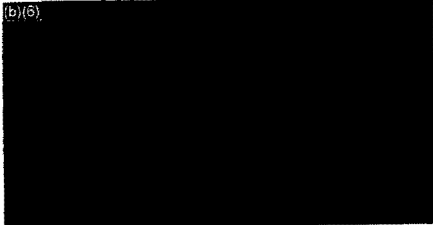
Dear Ms. Maroni and Mr. Westbrook—

The attached letter is a copy of my letter to the PBGC which I mailed on April 6<sup>th</sup>, 2015. It was received by the PBGC on April 10<sup>th</sup>. Since I have not had a response I am writing directly to you to solicit your help in addressing my concerns.

My letter explains my question over the “early retirement” reduction in my monthly benefit due to retiring prior to age 65. At that time the law mandated that all commercial airline pilots could not fly beyond 60 years of age and thus I had no choice but to retire. I was certainly mentally and physically capable of continuing to fly past age 60. I am asking for an explanation as to why this unfair practice cannot be reversed (or corrected) and my rightful benefits restored.

Please note that the Benefit Worksheet attached to my letter is from 2011. Due to adjustments made by the PBGC the current figures are slightly different. However, my concern about the reduction due to ‘early retirement’ remains unchanged.

Thank you in advance for your help.



Problem Resolution Officer  
Pension Benefit Guaranty Corp.  
1200 K Street, N.W. Room 9429  
Washington, D.C. 20005

6 April 2015

I am a former United Airlines pilot, retiring in 2005. After my airline declared bankruptcy, the Pension Benefit Guarantee Corporation (PBGC) was allowed by the bankruptcy judge to terminate and take over the management of our retirement. This, of course, is allowed under the Employee Retirement Income Security Administration (ERISA), a law passed by Congress in 1974 to offer some limited protection to workers with private-sector retirement plans.

When I retired it was mandated by law that pilots had to retire upon reaching their 60<sup>th</sup> birthday. Flying ability and health were not considered (I should mention that the retirement age was raised to 65 shortly after my retirement). This was the law and, though we did not like it, we had no choice but to stop flying for commercial airlines upon reaching our 60<sup>th</sup> birthday. It was also apparent that our expected pension would be less than what we planned, due to the bankruptcy. This we understood and reluctantly accepted. However, what we did not expect was to be given a further reduction in benefits due to what the PBGC refers to as "early retirement," retiring prior to what the PBGC considers a 'normal' retirement age of 65. In my case two PBGC categories were used to determine my final benefit, Category 3 and Category 4. Using various PBGC formulae for each category, my final monthly benefit was determined. However, in Category 3 my benefit was reduced by a "plan adjustment for early retirement" of 0.795 and in Category 4 my benefit was reduced by the "plan adjustment for early retirement" of 0.6558. For Category 3 this means a reduced benefit of about \$600/month and for Category 4 it means a reduction of about \$1200.

It just is not morally justifiable to reduce the monthly benefits for early retirement when the law clearly would not allow a pilot to fly beyond age 60. At one time I called the PBGC and asked about this benefit reduction for retiring early. I was told that I was mistaken in thinking the benefits were reduced for retiring prior to age 65 and there was no such penalty. When I read the calculations for the Category 3 and 4 benefits, and the early retirement reductions, from the benefit worksheet sent by the PBGC, the PBGC representative admitted to having no answer and she would have someone contact me later. This never happened. I later wrote to the Department of Labor, ERISA, and asked them why they had such an unfair 'early retirement' rule (I had the impression that perhaps it was ERISA's rule). The Acting Director, Office of Outreach, Education and Assistance wrote a detailed letter to me and was very clear in saying "the issue of concern.....is within the jurisdiction of the PBGC."

I have found the PBGC to fair and honest in their dealings in the past and expect it to continue. The reduction in benefits for "early retirement" is incomprehensible. Can you please explain the justification of the PBGC continuing with this unfair practice? It just is not right.

(b) (6)

A large black rectangular redaction box covering several lines of text.

Attach: Copy, Benefit Worksheet

(b) (6)

A small black rectangular redaction box covering a single line of text.


@gmail.com



Office of Inspector General  
Pension Benefit Guaranty Corporation

December 3, 2015

TO: David Foley  
Director, Participant Services Department

FROM: William Owens   
Chief of Staff, Office of Inspector General

SUBJECT: (b)(6) [REDACTED] OIG Investigation Number: 16-0003-I

The enclosed Report of Investigation documents the results of an investigation into allegations of misconduct against (b)(6) [REDACTED] in the Office of Benefits Administration and is being provided for your review and appropriate action. Please advise us within 90 days of the action, if any, you took in connection with this matter.

The investigation was based on allegations that (b)(6) [REDACTED] participated in a scheme to provide a forged and falsified employment verification form, required by the IRS, for (b)(6) [REDACTED] former PBGC OIG employee in connection with (b)(6) [REDACTED] apartment lease. (b)(6) [REDACTED] needs to annually recertify (b)(6) [REDACTED] employment information as (b)(6) [REDACTED] apartment manager receives an IRS tax incentive for offering reduced cost rent to low income individuals.

We found no evidence that (b)(6) [REDACTED] participated in preparing or submitting the forged employment verification form. However, we found reasonable grounds to conclude that (b)(6) [REDACTED] engaged in conduct that created the appearance that (b)(6) [REDACTED] participated in its preparation. Specifically, when the apartment management first contacted (b)(6) [REDACTED] by email about the verification form, (b)(6) [REDACTED] replied to them that (b)(6) [REDACTED] "will get the form completed and back to [them] today" instead of advising them (b)(6) [REDACTED] was not the correct point of contact for employment verification.

If you have any questions, please feel free to contact me at extension 3424.

(1) enclosure



Office of Inspector General  
Pension Benefit Guaranty Corporation

December 3, 2015

TITLE: (b)(6),  
GS-11, (b)(6)  
Benefit Payments Division, Office of Benefits Administration

INVESTIGATION  
NUMBER: 16-0003-I

TYPE OF  
INVESTIGATION: Title 5 C.F.R. § 2635.101 – Standards of Ethical Conduct

INVESTIGATOR: William L. Owens, Chief of Staff

SUBJECT: Final Investigative Report

Summary

This investigation was based on allegations that (b)(6) (b)(6) Benefit Payments Division, Office of Benefits Administration, participated in a scheme to provide a forged and falsified employment verification form, required by the IRS, for (b)(6) (b)(6), former PBGC OIG employee in connection with (b)(6) apartment lease. (b)(6) is a tenant who needs to annually recertify (b)(6) employment information as (b)(6) apartment manager receives an IRS tax incentive for offering reduced cost rent to low income individuals.

We found no evidence that (b)(6) participated in preparing or submitting the forged employment verification form. However, we found reasonable grounds to conclude that (b)(6) engaged in conduct that created the appearance that (b)(6) participated in its preparation. Specifically, when the apartment management first contacted (b)(6) by email about the verification form, (b)(6) replied to them that (b)(6) "will get the form completed and back to [them] today" instead of advising them (b)(6) was not the correct point of contact for employment verification.

Rules/Regulations Implicated

The Principles of the Standards of Ethical Conduct for Federal employees are a list of the basic obligations of public service, including a standard that requires employees to endeavor to avoid

December 3, 2015

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any actions creating the appearance that they are violating the law or the standards of ethical conduct. Whether particular circumstances create an appearance that the law or these standards have been violated shall be determined from the perspective of a reasonable person with knowledge of the relevant facts. (5 C.F.R. § 2635.101(b)(14))(emphasis added)

Title 18 of the U.S. Code makes it a crime to knowingly and willfully make a false writing or document knowing it to contain fraudulent statements. (18 USC § 1001)

PBGC Directive IM-05-04, Use of Information Technology Resources, dated April 26, 2006, Section 5(e) contains the policies related to proper and improper use of PBGC information technology resources. Paragraph 5(e) (1)(a) prohibits conducting illegal activity using IT resources.

#### Details

This investigation was based on a November 6, 2015, complaint from the Interior Business Center (IBC). (b)(6), a Human Resources Specialist at IBC received a call from (b)(6) at The Courts of Camp Springs, Suitland, MD regarding an improperly completed employment verification for (b)(6). When (b)(6) examined the form (b)(6) discovered that almost all of the information about (b)(6) employment at PBGC was incorrect. For example, the annual salary was incorrect, the pay period was incorrect as (b)(6) position at PBGC was terminated effective October 26, 2014. Further, though the form purported to be filled out and signed by (b)(6), (b)(6) indicates that it definitely was not and that completing employment verification information was not part of (b)(6) job duties. (Attachment 1)

(b)(6) advised that (b)(6) is a tenant who needs to annually recertify (b)(6) employment information as the apartment manager (Hallkeen Management) receives a tax break from the IRS for offering reduced cost rent to low income individuals. (b)(6) October 6, 2015, employment verification form lists (b)(6) OAB, as a PBGC contact person. Since (b)(6) was listed, (b)(6) attempted to call (b)(6) and received no response. (b)(6) sent (b)(6) a message to (b)(6) PBGC email account requesting employment verification on October 9, 2015, and again on November 2, 2015. A couple of days after (b)(6) second email (on or about November 4, 2015), (b)(6) received a fax in (b)(6) inbox containing the completed employment verification form. The form purports to be completed and signed by (b)(6), indicating that (b)(6) has been employed by PBGC from October 2011 through present. Because (b)(6) had some questions about the information on the form (b)(6) called (b)(6) and sent (b)(6) a copy of the form. (Attachments 2 and 3)



December 3, 2015

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A review of (b)(6) PBGC email reveals that on October 9, 2015, (b)(6) sent an email to (b)(6) with a subject line of "Employment Verification Request." (b)(6) email asks (b)(6) to have someone complete "the form" and send it back as soon as possible. (b)(6) also indicates that the information is required by the IRS. Attached to the email is an Employment Verification form in Portable Document Format (PDF), titled "(b)(6) EV.PDF," for (b)(6), listing PBGC as the employer and (b)(6) as the employer contact person. The section titled "THIS SECTION TO BE COMPLETED BY EMPLOYER" is blank. (Attachment 4)

On October 9, 2015, in an email, (b)(6) responded to (b)(6) "I will get the form completed and back to you today." (b)(6) forwarded (b)(6) email and the employment verification form titled "(b)(6) EV.PDF" on October 13, 2015, to (b)(6) personal email address at (b)(6)@gmail.com. The attached form appears the same as in (b)(6) October 9, 2015, email.

On November 2, 2015, (b)(6) sent (b)(6) an email asking "is it possible for me to get the employment verification for (b)(6) today? This is very important as it pertains to (b)(6) housing." No response to this email is found in (b)(6) email records.

During an OIG interview, (b)(6) advised that (b)(6) has known (b)(6) since high school. (b)(6) knows that (b)(6) formerly worked at PBGC Office of Inspector General but that (b)(6) separated from the OIG in late 2014. (b)(6) advised that (b)(6) maintains contact with (b)(6) outside of PBGC, last having seen (b)(6) over the summer, and having spoken to (b)(6) over the phone sometime in early November 2015. (Attachment 5)

(b)(6) related that (b)(6) duties in OBA do not include any human resources related functions nor do they include providing employment verifications.

(b)(6) acknowledged to OIG investigators that (b)(6) received the October 9, 2015, email from (b)(6) and replied that (b)(6) would forward the request on to someone in the agency. Even though (b)(6) responded to (b)(6), (b)(6) did not know why the verification information was being requested. (b)(6) opened the attachment but told the OIG investigators (b)(6) did not do anything with it. (b)(6) characterized (b)(6) response to (b)(6) indicating that (b)(6) will get the form completed and back to (b)(6), as "not politically correct."

(b)(6) acknowledged to OIG investigators that (b)(6) forwarded (b)(6) email to (b)(6) gmail account after (b)(6) left a voice mail, and said (b)(6) did so as a reminder to ask (b)(6) about it.

(b)(6) told OIG investigators that (b)(6) spoke with (b)(6) and asked (b)(6) what (b)(6) expected (b)(6) to do with the verification form. (b)(6) also stated that (b)(6) asked (b)(6) why this request

December 3, 2015

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came to (b)(6), to which (b)(6) said that it needed to be forwarded to someone in the agency as (b)(6) was not sure who was still in the OIG's office. (b)(6) told the OIG investigators that (b)(6) asked (b)(6) if (b)(6) was supposed to forward the form to someone in the agency. (b)(6) told (b)(6) not to worry about it, it is not for (b)(6) to complete, and (b)(6) advised (b)(6) would call (b)(6). (b)(6) told the OIG investigators that (b)(6) also asked (b)(6) to have (b)(6) name removed from the form. (b)(6) stated the (b)(6) had no prior discussions with (b)(6) about the employment verification prior to having received it from (b)(6).

(b)(6) acknowledged to the OIG investigators that should not have responded to (b)(6).

#### Attachments

- 1 Signed statement from (b)(6) dated November 10, 2015
- 2 Memorandum of Activity, Record of Conversation with (b)(6) dated November 9, 2015
- 3 Copy of (b)(6) Employment Verification Form provided by Interior Business Center
- 4 Memorandum of Activity, Record of Review (b)(6) emails, dated November 16, 2015
- 5 Memorandum of Interview, (b)(6) dated November 20, 2015
- 6 Memorandum of Activity, Record of Conversation with (b)(6) dated November 13, 2015



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

October 25, 2016

Title CACI IDIQ Contract

Investigator (b)(7)(c)

Subject Close-Out Memorandum

Investigation # 16-0005-I

**INVESTIGATIVE INITIATION**

On November 19, 2015, (b)(6) contacted the PBGC OIG alleging that CACI (a PBGC contractor) and PBGC violated a FAR rule prohibiting firms such as CACI from gaining an unfair advantage under: 9.505-1. FAR rule 9.505-1 is as follows:

Providing systems engineering and technical direction. (a) A contractor that provides systems engineering and technical direction for a system but does not have overall contractual responsibility for its development, its integration, assembly, and checkout, or its production shall not- (1) Be awarded a contract to supply the system or any of its major components; or (2) Be a subcontractor or consultant to a supplier of the system or any of its major components. (b) Systems engineering includes a combination of substantially all of the following activities: determining specifications, identifying and resolving interface problems, developing test requirements, evaluating test data, and supervising design. Technical direction includes a combination of substantially all of the following activities: developing work statements, determining parameters, directing other contractors' operations, and resolving technical controversies. In performing these activities, a contractor occupies a highly influential and responsible position in determining a system's basic concepts and supervising their execution by other contractors. Therefore, this contractor should not be in a position to make decisions favoring its own products or capabilities.

**Potential Violations**

Conflict of Interest: FAR rule 9.505-1 prohibits firms such as CACI from gaining an unfair advantage.

### ACTION TAKEN

- PBGC OIG Special Agent (b)(7)(c) (Case Agent) obtained all CACI contracts in existence for the last 3 years. None of the contracts contained any statements for the mitigation of organizational conflicts of interest (OCI).
- On November 30, 2015, Case Agent called (b)(6) to gain a better understanding of (b)(6) issues regarding CACI having an unfair advantage at PBGC. (b)(6) provided the following information during the phone call:
  - PBGC Procurement Department (PD) (b)(6) brought (b)(6) in to PBGC as a consultant as PBGC was in need of help with their IT procurements.
  - During a March 15, 2015 meeting at PBGC, (b)(6) gave a presentation on the services (b)(6) non-profit company Interoperability Clearinghouse (IC) could provide to PBGC. Attendees at the meeting included David Trumble, Marilyn Collins, Steve Block, Deborah Herald, Jeff Donohue, Alex Granados, and others.
  - CACI has a Systems Engineering and Technical Assistance (SETA) Support contract with the PBGC PD, as well as a \$140,000,000 IDIQ contract in the PBGC IT Department. Per (b)(6), this is a definite violation of the FAR, as it gives CACI an unfair advantage at PBGC. CACI should have to choose either the SETA contract or the IDIQ contract. They cannot have both. (b)(6) did not know the names of these contracts and which contract had an earlier effective date.
  - Other companies in similar situations have divested parts of their companies so as not to be in violation of the FAR.
  - When (b)(6) later spoke with (b)(6) about the March meeting, (b)(6) told (b)(6) that PBGC had decided to use "organic resources" in dealing with their IT procurement problems. (b)(6) questions this decision for two reasons. First, (b)(6) questions why PBGC contacted (b)(6) for assistance and then decided to use organic resources, when those currently in position at PBGC have not been able to fix PBGC's IT procurement issues. Second, (b)(6) questions how PBGC can let CACI have the IT IDIQ contract at the same time as the SETA contract, as it is a clear violation of the FAR.
  - (b)(6) would like an explanation as to why PD decided to fix their IT procurement issues with organic resources rather than with the assistance of IC. (b)(6) stated that (b)(6) non-profit was established for solving the type of issues that PBGC is experiencing.

- Case Agent agreed to email (b)(6) a brief request for more information to supplement (b)(6) initial complaint submission.
- After the phone call with (b)(6) Case Agent emailed (b)(6) a request for additional information, including further explanation of the FAR violation and some specific issues at PBGC that prompted PD to enlist IC's services.
- On January 26, 2016, (b)(6) emailed the following additional information to Case Agent:
  - I recently met with the FAR Council headed up by GSA OGP, (b)(6) on this issue. (b)(6) said they will be sending some updates out on unmitigatable OCI issues that cannot be firewalled off with OCI mitigation plans. This occurs when a company has a core competency that is well known by all the staff, and compensation and stock plans that encourage employees to promote these capabilities. DIA forced BAH off a SETA contact several years ago for this same reason, as has DHS rulings on OCI.
  - The fact that senior government officials working with me to bring our skills on board were halted without cause suggests that CACI has weighed in on our possible engagement. Calls to the senior CACI PM who attended our presentation without disclosure that (b)(6) was a contractor suggests a serious problem. CACI's multi-million IDIQ of IT Services and Products creates a unfair situation for all other suppliers as the acquisition support team has the means and access to influence evaluation factors and market research that would undermine best value and real competition.

On January 26, 2016, Case Agent emailed PBGC Procurement Department (b)(6) and informed (b)(6) of the following:

- OIG received a complaint stating that CACI has an unfair advantage at PBGC, due to having both an IDIQ contract in the IT Department at the same time as a Systems Engineering and Technical Assistance (SETA) support contract with the Procurement Department.
- The complainant stated that this is a definite violation of the FAR 9.505-1.
- It appears that the complainant was talking about the ITIOSS IDIQ contract and PD's contracting support services 2013 contract.

Case Agent asked (b)(6) to weigh in on the complaint by addressing whether or not there may be an issue. Also, Case Agent asked (b)(6) to let (b)(7)(c) know if any steps were or are being taken to mitigate any potential unfair advantage, if applicable.

On January 29, 2016, (b)(6) responded as follows:

- We have researched all of the current contracts in PBGC awarded to the various divisions of CACI which resulted in the following:
  - PD has a task order, DO-13-0094, with CACI Inc., Federal (DUNS 114896066) written against the GSA schedule GS-10F-0226K. The task order is for acquisition support services. This task order is not a SETA contract.
  - ITBMD has a work order, FA-14-0002 with CACI ENTERPRISE SOLUTIONS, Inc. (DUNS 145070723) written against the National Institutes of Health Information Technology Acquisition and Assessment Center (NITAAC) multiple award Flexible Ordering Agreement (FOA) PBGC01-F-14-0006 for the Information Solutions Engineering Services (ISES). The Work Order provides Operations & Maintenance/Steady State Support to Customer Care Applications (MyPBA & CRM). The CCAs do not interface with Comprizon or CFS.
  - ITIOD has a task order, DO-14-9017 also with CACI Inc., Federal (DUNS 114896066) written against the multiple award IDIQ contract, PBGC01-D-13-0008 for the Information Technology Information Operation and Support Services (ITOSS). The task order provides services for planning and migration of PBGC's unstructured data, including H Drive, I Drive, Plumtree Portal and Intranet to SharePoint in the cloud. This request is also to plan and migrate PBGC's email to exchange in the cloud.
  - ITIOD has a task order DO-14-0031, with CACI Inc., Federal (DUNS 114896066) written against the GSA schedule GS-35F-4483G. The task order is for the annual ComprizonSuite license agreement contract.
  - ITIOD has a task order DO-14-0087, with CACI Inc., Federal (DUNS 114896066) written against the GSA schedule GS-10F-0226K. The task order is for the annual FedSelect license agreement.
  - PD can provide copies of these contracts for the OIG's review, if necessary.

On February 5, 2016, Case Agent submitted a Request for Legal Review of Potential Violation of FAR 9.505-1 through his Acting AIGI to the OIG Senior Investigative Counsel. At this point in the investigation, Case Agent had concluded that the two contracts mentioned by (b)(6) were:

- Information Technology Infrastructure Operations Services & Support (ITIOSS) IDIQ contract PBGC01-D-13-0008

- Procurement Department Contracting Support Services contract PBGC01-DO-13-0094
- However, the other CACI contracts with PBGC may be at issue, as well.

On May 3, 2016, Acting SAC asked that the request for legal review header be changed, so the request was routed through the OIG Chief of Staff to the OIG Chief Counsel.

On May 13, 2016, the Chief of Staff returned the request. He asked that the following questions be answered before a decision could be made as to whether a violation of FAR 9.505.1 exists or not:

- Since CACI's contract with PD is not SETA based support, what kind of support are they providing to PD?
- Did the support they provided under the contract with PD, include touching in anyway the contracts they were awarded for work in ITBMD or ITIOD?

On May 19, 2016, Case Agent emailed (b)(6) the following follow-up questions:

- Are there currently or should there be any OCI mitigation plans regarding the contracts awarded to CACI?
- Has PD been firewalling CACI off from work that could pose potential OCI?
- Has CACI been awarded any additional contracts since you sent the below January 29 email? If so, please provide the solicitation and award files for them.

On June 2, 2016, (b)(6) responded as follows:

- There are currently OCI plans in place regarding the CACI contract in PD.
- CACI is excluded from accessing procurement sensitive pre-award actions when either party identifies it as a potential for the company to bid on.
- No new awards have been made since our last email in January 2016.

Case Agent requested copies of the OCI plans and on June 15, 2016, (b)(6) provided a CACI OCI Mitigation Plan for their work in the PBGC Procurement Department (Attachment 1).

On July 25, 2016, Case Agent requested that OIG Auditor (b)(6), who was on (b)(6), take the following steps to verify that CACI was following through on their own OCI Mitigation Plan:

- Obtain OGC's review of CACI's OCI Risk Mitigation Plan for the Solicitation #PBGC01-RQ-13-0031 (i.e. PD Support Services Contract), if applicable. If not done, determine if they should have reviewed it.
- Determine if CACI employees working on other PBGC contracts are firewalled off from the PD contract both organizationally (no employee overlap or supervision) and physically (workspace).

- Obtain PD contract employees annual documentation that they understand the OCI plan and its requirements.
- Determine if CACI communicated any potential impaired objectivity OCI to PD.
- Ensure that no CACI employee working in PD has worked on other CACI bid and proposals for other PBGC contracts.
- Obtain periodic reviews (audits) done by CACI to ensure the effectiveness of the OCI plan.

On August 3, 2016, PD replied to the above bulleted items (Attachment 2). Certain items required OIG to obtain documentation directly from CACI.

On August 9, 2016, (b)(6) emailed a request for additional information directly to (b)(6) of CACI and (b)(6) responded on August 10, 2016 (Attachment 3).

On August 10, 2016, PD sent a response to the last bulleted item (Attachment 4).

On September 30, 2016, (b)(6) delivered spreadsheets to the Case Agent showing the hours worked by CACI employees. Case Agent reviewed the documents and requested additional information from (b)(6) (Attachment 5).

On October 5, 2016, (b)(6) provided the Case Agent with a legend showing the contracts on which the CACI employees worked (Attachment 6).

### CONCLUSION

CACI had an OCI mitigation plan in place at PBGC. OIG's review of the plan and supporting documentation indicated that CACI applied the plan during their contracting with PBGC, so they were able to adequately mitigate any potential conflicts of interest.

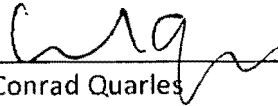
### RECOMMENDATION

No further action is deemed warranted.

### DISPOSITION

Case is being closed to files.

### **CONCUR:**

  
 Conrad Quarles  
 Assistant Inspector General  
 for Investigations

10/25/16  
 Date



Attachments:

- 1 - OCI Mitigation Plan – PBGC
- 2 - PDs Aug 3 Responses
- 3 - Aug 9 Request to CACI and CACI Aug 10 Response
- 4 - Aug 10 PD Response to Last Bulleted Item
- 5 - MOA - CACI Employee Time Records (9-30-16)
- 6 - CACI Legend



Office of Inspector General  
Pension Benefit Guaranty Corporation

September 12, 2016

TO: File, 16-0006-I

(b)(6)

FROM: William L. Owens  
Chief of Staff

WILLIAM  
OWENS  
2016.09.12  
07:14:33 -04'00'

SUBJECT: Case Closing

This investigation was based on complaints from various individuals within PBGC that (b)(6) former GS-13 (b)(6) in the Office of Information Technology, Resource Management Division, PBGC, Washington DC, was telephoning them and making disturbing comments. These phone calls occurred in late 2015 and continued into early 2016.

(b)(6) started working for PBGC in 1997. In 2009, (b)(6) began making unusual statements and behaving in an inappropriate manner at work. (b)(6) was placed on administrative leave and in 2011 removed for failure to follow instructions. (b)(6) filed several complaints/appeals in connection with the actions that led to (b)(6) removal from PBGC.

During the period September 2015 through January 2016 (b)(6) called individuals in PBGC 48 times and left voicemail messages. Those messages became increasingly threatening up to the point where (b)(6) finally made death threats to two PBGC employees.

In January 2016, OIG coordinated with the Prince George's County Police Department (PGCPD) and PG County Crisis Services Center (PGCCSC) — (b)(6). PGCPD dispatched an officer to (b)(6) residence, spoke with (b)(6) for about 10 minutes, and opined that (b)(6) checked out fine. PGCCSC attempted to contact (b)(6) on two occasions in late January 2016, but on both occasions (b)(6) was either not at home or did not answer the door.

OIG filed a petition for emergency evaluation with Maryland District Court for PG County. The judge granted the request on February 1, 2016, but the evaluation order was unable to be executed before it expired.

On February 18, 2016, OIG issued a Risk Advisory to the PBGC Director regarding (b)(6) threats suggesting that a review of the current building security protocols be performed and that PBGC retain a third party expert to assess the current and future threats. PBGC management implemented both suggestions.

OIG coordinated with the FBI Threat Assessment Task Force and the U.S. Attorney's Office for the District of Columbia. Ultimately, on February 25, 2016, a criminal complaint was issued charging (b)(6) with a misdemeanor of Threats to Do Bodily Harm in violation of 22 DC Section 407 (2001 ed.). Because the charge was a misdemeanor, if arrested in Maryland, (b)(6) could not be extradited to DC, so on February 29, 2016, a second criminal complaint was issued charging (b)(6) with a felony of Threatening to Injure and Kidnap a Person in violation of 22 DC Section 1810 (2001 ed.). A felony warrant was issued, which would allow for (b)(6) extradition from Maryland.

On March 7, 2016, the felony warrant was executed by Charles County MD Sheriff's Office and (b)(6) was arraigned in DC Superior Court at which time (b)(6) was released on (b)(6) personal recognizance. (b)(6) failed to appear for (b)(6) April 8, 2016, initial status hearing and a bench warrant was issued. On April 13, 2016, the U.S. Marshals Service arrested (b)(6) on the bench warrant, the judge ordered (b)(6) to be held, ultimately resulting in (b)(6) being detained for a competency mental health examination to be conducted at St. Elizabeth's Hospital.

On July 22, 2016, in DC Superior Court, Judge Reid-Winston found (b)(6) competent. After finding (b)(6) competence restored, Judge Reid-Winston accepted (b)(6) guilty plea to two counts of Attempted Threats. (b)(6) accepted the terms of a Deferred Sentencing Agreement, and (b)(6) plans to move to (b)(6), where (b)(6) can live with (b)(6) family. The terms of the deferred sentencing are as follows:

- (b)(6) is required to stay away from, and make no contact with, the PBGC, (b)(6), (b)(6), (b)(6), and (b)(6). The only exception is that (b)(6) —through (b)(6) counsel of record—may contact the U.S. Pension Benefit Guaranty Corporation if necessary for pending litigation. (b)(6) may not—on (b)(6) own—make contact with the PBGC.
- (b)(6) is required to stay away from the District of Columbia in its entirety.
- (b)(6) must complete 48 hours of community service in (b)(6), which must be verified by the Community Service Program at D.C. Superior Court.

If (b)(6) violates any terms of the Deferred Sentencing Agreement, the Court would sentence (b)(6) based on (b)(6) already-accepted guilty pleas. The Deferred Sentencing Agreement will remain in effect for 12 months. If (b)(6) complies with the terms of the Deferred Sentencing Agreement, after 12 months, the government would dismiss the charges. The Court scheduled the next status hearing for July 21, 2017. (b)(6) is excused from that hearing if (b)(6) otherwise complies in full with the terms of the Deferred Sentencing Agreement.

No further action is anticipated in this matter, therefore, this case is closed.



# Pension Benefit Guaranty Corporation

Office of Inspector General

1200 K Street, N.W., Washington, D.C. 20005-4026

September 27, 2016

**Title:** William Thomas Reeder

**Investigator:** Conrad Quarles  
Assistant Inspector General  
for Investigations

**Subject:** Close-Out Memorandum

**Investigation #:** 16-0023-I

## INVESTIGATIVE INITIATION

In July 2016, the Investigations Division began an inspection to determine whether PBGC employees complied with PBGC policies and directives for the Employee Mass Transit Benefit (EMTB) program, and to assess whether there are adequate internal controls in place for the EMTB program.

According to PBGC Directive GA 10-10, employees participating the EMTB program must commute to and from their permanent duty station via mass public transportation or a vanpool on a regular basis (at least 75 percent of the time). Employees may not receive transit benefits from PBGC if they are also receiving another form of commuter benefit, such as participating in the subsidized parking program. [Exhibit 1]

During the inspection, we received information that Director William Thomas Reeder received mass transit benefits and a free parking space at PBGC Headquarters. Additionally, we determined that Director Reeder did not use mass transit 75% of the time for his commute to and from work. Based upon this information, we initiated an investigation into Director Reeder's compliance with PBGC Directive GA 10-10.

## ACTION TAKEN

After contacting Director Reeder to schedule an interview, we learned that the Office of General Counsel (OGC) issued an opinion indicating that it was permissible for him to

participate in the EMTB program, while also allowing him to park in an official parking space on the days he did not use public transportation. [Exhibit 2]

On September 2, 2016, Director Reeder was interviewed by Assistant Inspector General for Investigations Conrad Quarles and Special Agent (b)(6), (b)(7)(c). Director Reeder stated that he did not commute to and from work via mass transit 75 percent of the time. [Exhibit 3]

Following our interview, Director Reeder withdrew from the EMTB program and repaid \$155.40 in EMTB funds. [Exhibit 4]

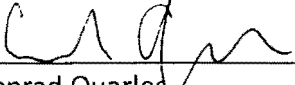
#### CONCLUSION & RECOMMENDATION

Given OGC's opinion, Director Reeder no longer participating in the EMTB program, and the EMTB funds being repaid to PBGC, this investigation should be closed.

#### DISPOSITION

Investigation closed.

#### APPROVED:

  
\_\_\_\_\_  
Conrad Quarles  
Assistant Inspector General for Investigations

9/27/16  
\_\_\_\_\_  
Date

**Exhibits:**

**Exhibit 1** – Directive GA 10-10, dated August 22, 2012.

**Exhibit 2** – OGC Memorandum, Andrew Seff, dated October 29, 2015.

**Exhibit 3** – Memorandum of Interview #1, Reeder, dated September 2, 2016.

**Exhibit 4** – Email from (b)(6), dated September 9, 2016.