

July 2007

PENSION BENEFIT
GUARANTY
CORPORATION

Governance Structure
Needs Improvements
to Ensure Policy
Direction and
Oversight





Highlights of [GAO-07-808](#), a report to congressional committees

PENSION BENEFIT GUARANTY CORPORATION

Governance Structure Needs Improvements to Ensure Policy Direction and Oversight

Why GAO Did This Study

The Pension Benefit Guaranty Corporation (PBGC) insures the pensions of millions of private sector workers and retirees in certain employer-sponsored pension plans. It is governed by a board of directors consisting of the Secretaries of the Treasury, Labor, and Commerce, who are charged with providing PBGC with policy direction and oversight. This report assesses (1) the extent to which PBGC's governance structure provides PBGC with policy direction and oversight, and (2) whether administrative responsibilities among the PBGC board, Department of Labor (DOL), and PBGC management are clearly defined. We examined corporate governance practices, select federal government corporations, and reviewed documents on PBGC's structure. We interviewed officials from all board member agencies and PBGC, among others.

What GAO Recommends

GAO recommends that the board develop policies and mechanisms consistent with corporate governance practices, and develop formal guidelines to clarify roles and responsibilities. In response, PBGC's board stated that its review of the corporation's bylaws will help delineate authorities, and PBGC's interim director said he was committed to working with the board to enhance PBGC's governance processes.

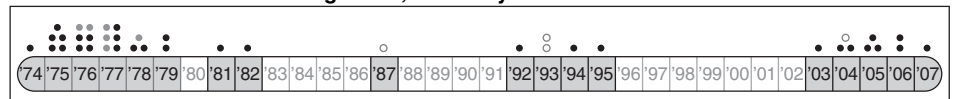
GAO is also asking Congress to consider expanding the PBGC's board of directors.
www.gao.gov/cgi-bin/getrpt?GAO-07-808.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Barbara Bovbjerg, 202-512-7215, bovbjergb@gao.gov.

What GAO Found

Although PBGC's board has provided greater attention to PBGC since 2003, the board has limited time and resources to provide policy direction and oversight and has not established comprehensive written procedures and mechanisms to monitor PBGC operations. Because PBGC's board is composed of three cabinet secretaries, who have numerous other responsibilities, the board structure does not guarantee that PBGC's board is active and diverse. For example, since 1980, a span of 27 years, there were only 18 official board meetings, as shown below. Further, the board has not established formal procedures to ensure that PBGC management provides it information on all policy matters nor has it developed standing committees to oversee operations. Instead, the board relies on PBGC's Inspector General and management's oversight committees to ensure that PBGC is operating effectively. However, there are no formal protocols concerning the Inspector General's interaction with the board, and PBGC internal management are not independent and are not required to routinely report all matters to the board. Even though PBGC uses informal channels of communication to inform its board members, the board's oversight may be limited, because it cannot be certain that it is receiving high quality and timely information about all significant matters facing the corporation.

Number of PBGC Board Meetings Held, 1974-May 2007



- Teleconference
- Meeting (with no quorum)
- Meeting (with quorum)

Source: GAO analysis of PBGC documents and board meeting minutes

PBGC's lack of formal guidelines to articulate the administrative roles and responsibilities among the board, the Secretary of Labor as the board chair, board members' agencies, and the PBGC Director has led, at times, to confusion and inefficiencies. The board has not addressed uncertainty over the extent to which PBGC is a separate and distinct executive agency, a fact that has resulted in confusion over when DOL has the authority to manage PBGC's operations. Further, neither DOL nor PBGC has developed formal policies and procedures to define the board's authorities and responsibilities. Instead, PBGC officials typically react to DOL's periodic written and oral communications, which PBGC officials said sometimes become a part of PBGC's operational framework. For example, PBGC is required to incorporate its budget request with DOL's budget request, and over the years, DOL has taken a more active role in reviewing PBGC's budget. However, PBGC officials believe that DOL has in some cases overstepped its role. For instance, DOL and PBGC officials disagreed over the inclusion of a funding request in PBGC's fiscal year 2007 budget.

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Abbreviations

DOL	Department of Labor
ERISA	Employee Retirement Income Security Act of 1974
FDIC	Federal Deposit Insurance Corporation
GCCA	Government Corporation Control Act
GSE	government-sponsored enterprise
OMB	Office of Management and Budget
PBGC	Pension Benefit Guaranty Corporation
PPA	Pension Protection Act of 2006

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United States Government Accountability Office
Washington, DC 20548

July 6, 2007

The Honorable Max Baucus
Chairman
The Honorable Charles E. Grassley
Ranking Member
Committee on Finance
United States Senate

The Honorable Edward M. Kennedy
Chairman
The Honorable Michael B. Enzi
Ranking Member
Committee on Health, Education, Labor and Pensions
United States Senate

The Pension Benefit Guaranty Corporation (PBGC) insures the pensions of more than 44 million private sector workers and retirees in over 30,000 employer-sponsored pension plans. Since its creation in 1974, PBGC's assets have increased significantly, and its financial portfolio is now one of the largest of any federal government corporation. In addition, PBGC has become responsible for a number of large terminated pension plans, which have brought the corporation record numbers of claims from plan participants. In fact, between fiscal year 2000 and 2005, the number of participants to whom PBGC has paid benefits increased from around 243,000 to almost 700,000, with another half million expected to receive benefits from PBGC when they become eligible to retire. To strengthen pension plan funding, Congress passed the Pension Protection Act of 2006 (PPA).¹ However, PBGC still shows an accumulated \$18 billion deficit for its single-employer insurance program.

Established as a self-financing government corporation, PBGC is governed by a three-member board of directors consisting of the Secretaries of the Treasury, Labor, and Commerce. PBGC board members are charged with providing policy direction and oversight of PBGC's finances and operations. Because of concerns about PBGC's long-term financial condition, in 2003, we added PBGC's single-employer pension insurance

¹ Pub. L. No. 109-280, 170 Stat. 780.

program—its largest insurance program—to our high-risk list; a group of federal programs that need urgent attention and transformation. PBGC’s insurance program remains on the high-risk list today.² We reviewed PBGC’s governance and management structure to determine whether PBGC is well positioned to address current and growing fiscal and operational challenges. Specifically, this report assesses (1) the extent to which PBGC’s governance structure provides PBGC management with policy direction and oversight, and (2) whether the administrative responsibilities among PBGC’s board, the Department of Labor (DOL), and PBGC’s management are clearly defined.

To identify the extent to which PBGC’s governance structure provides policy direction and oversight, we reviewed the Employee Retirement Income Security Act of 1974³ (ERISA) and PPA to understand the authority of PBGC’s board of directors as well as the administrative responsibilities of PBGC’s Director. We examined private sector corporate governance guidelines and those of similar federal government corporations to determine the extent to which other corporations have similar policy mandates, structures, and oversight functions. We selected similar federal government corporations with similar missions and designations as listed under the Government Corporation Control Act (GCCA).⁴ To determine the extent to which PBGC’s administrative structure has affected PBGC’s internal operations, we collected and reviewed documents related to PBGC’s organizational structure and administrative reporting requirements, such as its relationship with DOL and the Office of Management and Budget (OMB). In addition, we reviewed the work of PBGC’s Office of the Inspector General and GAO to determine what weaknesses or inefficiencies resulted from the corporation’s governance and organizational structure. We met with officials from PBGC; the Departments of the Treasury, Labor, and Commerce; and OMB; as well as with former PBGC executive directors, former general counsels, and former PBGC staff. While we met with the board representatives and their

² GAO, *High Risk Series: An Update*, [GAO-07-310](#) (Washington, D.C.: January 2007), and GAO, *Private Pensions: The Pension Benefit Guaranty Corporation and Long-Term Budgetary Challenges*, [GAO-05-772T](#) (Washington, D.C.: June 9, 2005).

³ ERISA is a federal law that, among other things, set certain minimum standards for pension plans sponsored by private employers and established PBGC. 29 U.S.C. §§1001-1461.

⁴ 31 U.S.C. §§ 9101-9110.

staff, we did not meet with the cabinet secretaries who constitute the board.

We conducted our work between November 2006 and May 2007 in accordance with generally accepted government auditing standards. Appendix I discusses our scope and methodology in further detail.

Results in Brief

PBGC's board has limited time and resources to provide policy direction and oversight and has not established comprehensive written procedures and mechanisms to monitor PBGC operations. While PBGC's board has provided greater attention to the corporation since 2003, the three-member board structure may not be large enough to dedicate the necessary time and attention or provide the skills needed to direct and oversee PBGC. In addition, because the board is composed only of cabinet secretaries, PBGC's board members typically change with each Administration, potentially limiting the board's institutional knowledge of the corporation. Since the board members have limited time to direct and oversee PBGC, they have designated representatives within their respective agencies to act on their behalf. However, these officials also have limited staff and resources to dedicate to PBGC. In fact, we found that between 1980 and May 2007, a span of 27 years, there were only 18 board meetings, 10 of which were since 2003. While the board is now meeting regularly, it appears that these meetings only last about an hour, with very little time spent on strategic and operational issues. The board also has not established formal procedures to ensure that PBGC management provides it with information on all policy matters, nor has it developed standing committees to oversee operations. Instead, the board relies on the Inspector General and PBGC management's oversight committees to ensure that PBGC is operating effectively. However, there are no formal protocols concerning the Inspector General's interaction with the board, and PBGC's management committees are not independent of management and are not required to routinely report all matters to the board. Even though PBGC uses informal channels of communication to inform its board members, the effectiveness of the board's oversight may be limited, because it cannot be certain that it is receiving high-quality and timely information about all significant matters facing the corporation.

The PBGC's lack of formal guidelines to articulate the administrative roles and responsibilities among the board, the Secretary of Labor as board chair, the board members' agencies, and the PBGC Director has led, at times, to confusion and inefficiencies. Although ERISA places PBGC in DOL, the board has not addressed the uncertainty that exists over the

extent to which PBGC is a separate and distinct executive agency, a fact that has resulted in confusion over the extent to which DOL has the authority to manage PBGC's operations. DOL officials believe that PBGC is one of its agencies, and PBGC officials believe that it is a separate and distinct executive branch agency that is responsible to the entire Board of Directors. PBGC has developed its own policies, procedures, directives, and systems separate from DOL, and does not rely on DOL-wide services, such as legal, procurement, and information technology services. Neither DOL nor PBGC has developed formal policies and procedures to define the administrative authorities and responsibilities of PBGC. Instead, PBGC officials typically react to DOL's periodic written and oral communications, which PBGC officials said sometimes become a part of PBGC's operational framework. For example, PBGC is required to incorporate its budget request with DOL's budget request. Over the years, DOL has taken an increasingly active role in reviewing PBGC's budget, and PBGC officials believe that DOL has in some cases overstepped its role. For instance, DOL and PBGC officials disagreed on the inclusion of a funding request in PBGC's fiscal year 2007 budget.

We are asking Congress to consider expanding PBGC's board of directors. If Congress decides to take such action, it would be helpful to appoint additional members of diverse backgrounds who possess knowledge and expertise useful to PBGC's responsibilities and can provide the attention that would be needed. Further, dedicating staff, independent of PBGC's executive management, with relevant pension and financial expertise, to solely support the revised board's policy and oversight activities may be warranted. We are also making recommendations to the Secretaries of the Treasury, Labor, and Commerce, as the PBGC board of directors, to establish policies, procedures, and mechanisms to improve accountability and oversight of PBGC. In response to our draft report, the PBGC board of directors recognized that the current law establishes an unusual corporate structure for PBGC, and stated that if Congress considers making changes to PBGC governance structure, they would be pleased to discuss the merits of various corporate governance proposals for PBGC. The board also stated that the review and revisions of PBGC bylaws will help delineate the respective roles, responsibilities, and authorities of PBGC's board and Director in the management of PBGC. The PBGC interim director stated that PBGC management is committed to working with the board to enhance PBGC's governance processes on issues identified in our review. PBGC's board of directors and PBGC interim director's comments are reproduced in appendixes IV and V, respectively.

Background

Congress passed ERISA to protect the rights and interests of participants and beneficiaries of private sector employee benefit plans. Before the enactment of ERISA, few rules governed the funding of defined benefit pension plans,⁵ and participants had no guarantee that they would receive promised benefits. Title IV of ERISA created PBGC to insure plan participants' benefits and to encourage the continuation and maintenance of private sector defined benefit pension plans by providing timely and uninterrupted payment of pension benefits.⁶ Through its two insurance programs, PBGC covers certain private sector defined benefit plans.⁷ PBGC is funded through insurance premiums from employers that sponsor insured pension plans as well as investment income and assets from terminated pension plans.

ERISA established a governance structure consisting of a board of directors, with the Secretary of Labor as the Chairman of the Board. ERISA provided the Secretary of Labor with responsibility for administering PBGC's operations, personnel, and budget. The Secretary delegated the responsibility for administering PBGC to an Executive Director through a series of chairman's orders describing the Executive Director's responsibilities. For example, one order issued in 1984 authorized the Executive Director to make final decisions addressing legal matters on behalf of the corporation. In 2006, PPA replaced the Chairman of the Board as PBGC's administrator with a Senate-confirmed director. The PPA established the director position at the same level of the executive schedule as two of the PBGC board representatives—Under Secretaries of Commerce and Treasury as well as the heads of other federal government corporations, such as the Federal Deposit Insurance

⁵ A defined benefit plan is a pension plan where the plan sponsor provides a benefit generally expressed as a monthly benefit based on a formula that generally combines salary and years of service to the company. Defined benefit plans usually express benefits as an annuity, but may offer departing participants the opportunity to receive lump sum distributions.

⁶ ERISA also established rules for funding defined benefit plans, instituted pension insurance premiums, promulgated certain fiduciary rules, and mandated annual reporting requirements.

⁷ PBGC administers two programs: the single-employer and multiemployer insurance programs. A single-employer plan is established and maintained by only one employer. Single-employer plans can be established unilaterally by the sponsor or through a collective bargaining agreement with a labor union. 29 U.S.C. § 1002(41). A multiemployer plan is a collectively bargained arrangement between a labor union and a group of employers in a particular trade or industry. Management and labor representatives must jointly govern multiemployer plans. 29 U.S.C. § 1002 (37).

Corporation (FDIC) and the Export-Import Bank of the United States. In addition, the corporation is aided by a seven-member Advisory Committee appointed by the President to represent the interests of labor, employers, and the general public.⁸ This committee has an advisory role but has no statutory authority to set PBGC policy or conduct formal oversight.

Under the GCCA, PBGC is a wholly owned government corporation—that is, the government holds all its assets and liabilities. However, the United States is not liable for any obligation or liability incurred by the corporation.⁹ (See app. II for a list of selected government corporations). According to public administration experts, a government corporation is appropriate for the administration of governmental programs that

- are predominately of a business nature,
- produce revenue and potentially are self-sustaining,
- involve a large number of business-type transaction with the public, and
- require greater budget flexibility than a government department or agency.

Under ERISA, PBGC is also empowered to sue and be sued; appoint and fix the compensation of officers, employees, attorneys, and agents; and utilize the personnel and facilities of any other agency or department of the U.S. government with or without reimbursement (with its head's consent).¹⁰ Figure 1 illustrates some of the differences among traditional government departments/agencies, government corporations, government-sponsored enterprises (GSE),¹¹ and private corporations.

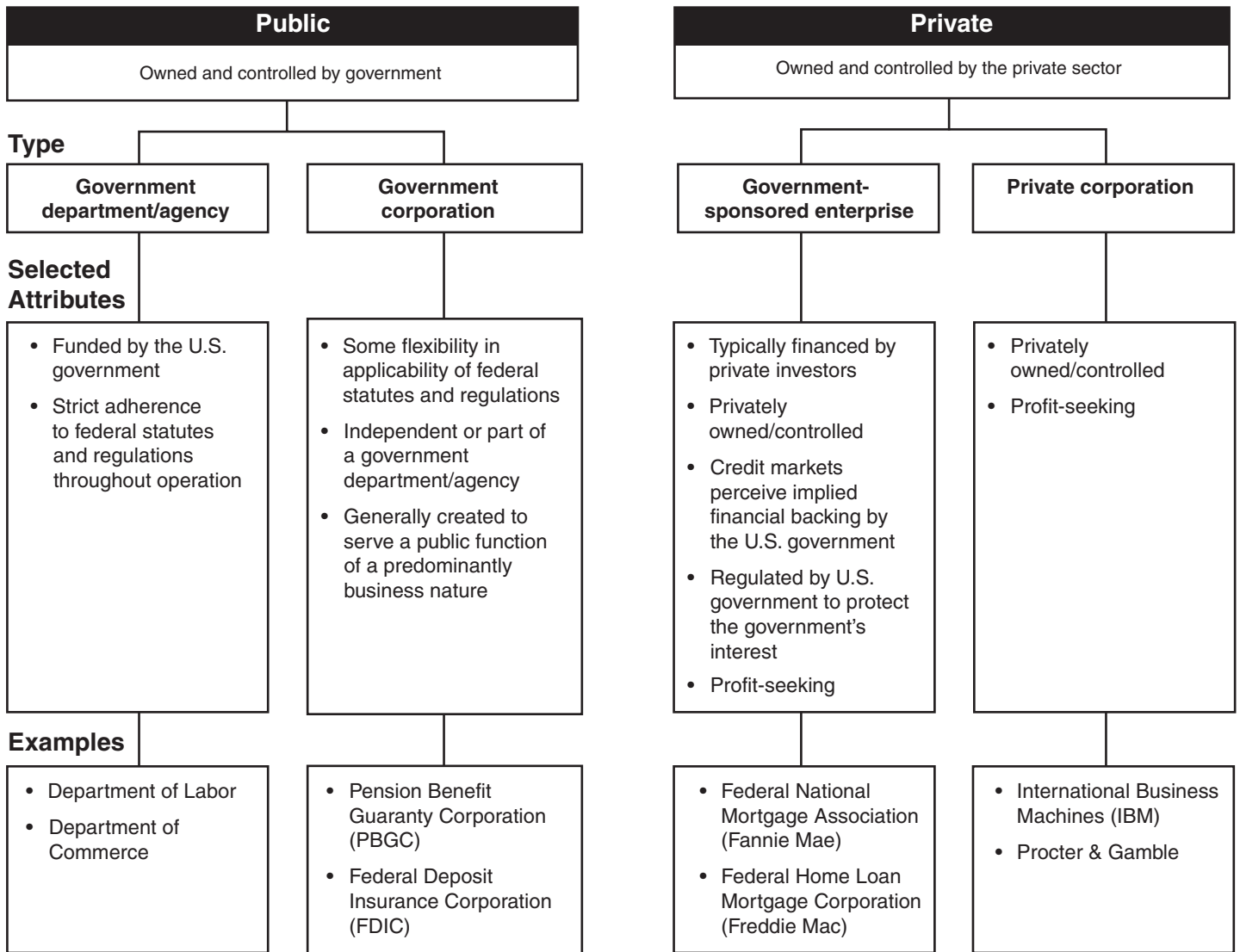
⁸ 29 U.S.C. § 1302(h).

⁹ 29 U.S.C. § 1302(g)(2).

¹⁰ 29 U.S.C. § 1302(b).

¹¹ A government-sponsored enterprise is a federally established, privately owned corporation. 2 U.S.C. § 622. GSEs typically receive their financing from private investment, and the credit markets perceive that GSEs have implied federal financial backing. In general, GSEs do not receive government appropriations.

Figure 1: Comparison of Public and Private Entities



Source: GAO.

With the financial collapse of several large corporations over the past years and the passage of the Sarbanes-Oxley Act of 2002,¹² which outlined a framework for more effective corporate governance, many private sector companies have reassessed their corporate governance practices. Although the Sarbanes-Oxley Act is intended to strengthen the corporate governance of private sector entities, certain corporate governance elements from it may also be relevant to government corporations and government-sponsored enterprises.¹³ For example, corporate governance practices suggest that corporations headed by boards of directors should have people in place with the appropriate qualifications, independence, and resources to conduct their responsibilities effectively. (See table 1 for examples of corporate governance practices.) Additional information on corporate governance practices is included in appendix III.

¹² Pub. L. No. 107-204, 116 Stat. 745.

¹³ GAO, *Highlights of GAO's Corporate Governance, Transparency, and Accountability Forum*, [GAO-02-494SP](#) (Washington, D.C.: March 2002), and GAO, *Corporate Governance: NCUA's Controls and Related Procedures for Board Independence and Objectivity Are Similar to Other Financial Regulators, but Opportunities Exist to Enhance Its Governance Structure*, [GAO-07-72R](#) (Washington, D.C. Nov. 30, 2006).

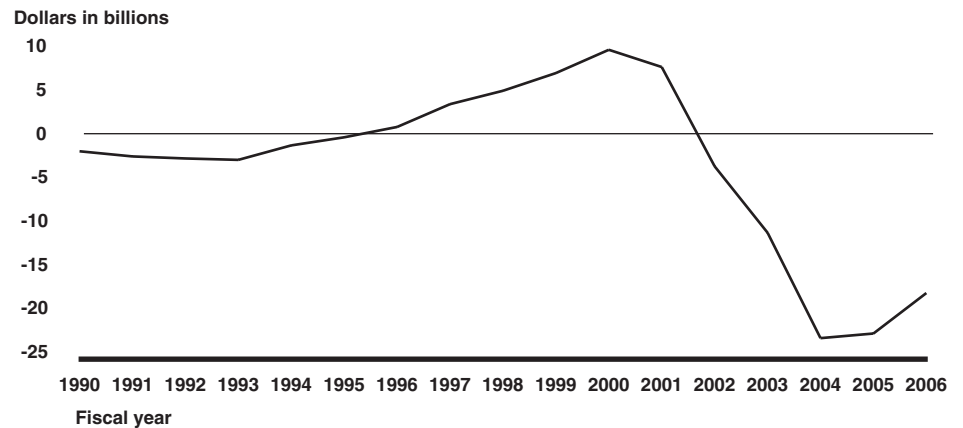
Table 1: Examples of Corporate Governance Practices

Corporate practices	Corporate governance guidelines
Board's fiduciary duties	In carrying out their duties, directors should fulfill their fiduciary duties of care, loyalty, and good faith and act in the best interests of the corporation and its shareholders. Boards usually delegate the day-to-day management of the company to the Chief Executive Officer (CEO) and other senior management, but the board retains responsibilities for oversight and monitoring of these delegated functions.
Roles of board and management clearly defined	A strong and effective board should have a clear view of its role in relationship to management. How a board organizes itself and structures its processes will vary with the nature of the business, business strategy, size and maturity of the company, and talents and personalities of the chief executive officer and the board. The Board should focus principally on guidance and strategic issues, choice of the CEO and other senior management, oversight and monitoring of management and company performance, and adherence to legal requirements.
Corporate governance guidelines available	The board should have a set of written guidelines in place to articulate corporate governance principles and the roles and responsibilities of the board and management. These guidelines should be reviewed at least annually and help the board and individual directors understand their obligations and the general boundaries within which they will operate.
Board access to information	The effectiveness of the board depends on the quality and timeliness of the information each director receives. The board and management should agree on the important information needed for board oversight and monitoring to enable the board to make informed decisions.
Board composition and size	The composition and skill set of the board should be linked to the company's particular challenges and strategic vision. As companies develop and experience changed circumstances, the desired composition of the board may be different and should be reviewed.
Board committee structure	Boards should establish committees that will enhance the overall effectiveness of the board by ensuring focus and oversight on matters of particular concern. Committees can enhance board effectiveness by permitting closer focus, oversight, and monitoring of sensitive areas. In the private sector, certain statutes and standards require that companies maintain a number of standing committees, such as an audit, nominating, and compensation committees. In addition, boards have established committees, such as risk, technology, pension and benefits, public policy, and corporate governance, which focus on substantive issues of particular concern to the company or the board.

Source: Carolyn K. Brancato and Christian A. Plath, *Corporate Governance Handbook, 2005: Legal Standards and Board Practices*, The Conference Board (New York, New York: 2005).

PBGC's financial outlook has improved since 2004, when it reported an accumulated deficit of \$23 billion, but PBGC still projects large deficits for its single-employer program. Despite PPA's provisions to strengthen defined benefit plan funding, PBGC reported an accumulated deficit of \$18.1 billion as of September 30, 2006. While PBGC currently has assets exceeding \$60 billion, sufficient to meet its responsibilities in the coming years, the single-employer program has had an accumulated deficit for much of its existence—the value of its program assets is less than the present value of benefits and other obligations (see fig. 2).

Figure 2: Net Financial Position of PBGC's Single-Employer Program



Source: Pension Benefit Guaranty Corporation.

Note: Net position equals program assets less the current value of future benefit obligations for terminated plans and those deemed likely to default. Values are for the end of the fiscal year.

Board Structure Provides Limited Attention and Mechanisms for Overseeing PBGC

PBGC's board has limited time and resources to provide policy direction and oversight and has not established procedures and mechanisms to monitor PBGC operations. Although PBGC's board members have met more frequently since 2003, the three cabinet secretaries composing the board have numerous other responsibilities, and have been unable to dedicate consistent and comprehensive attention to PBGC. In fact, we found that between 1980 and May 2007, a span of 27 years, there were only 18 board meetings, 10 of which were since 2003. The three-member board is also not large enough to ensure diverse skills, such as knowledge in strategic risk assessment and management, are included to direct and oversee PBGC. Since the board has limited time to direct and oversee PBGC, the members have designated officials within their respective agencies to conduct much of the work on their behalf. However, these officials also have limited resources to dedicate to PBGC. Further, the board has not established important mechanisms, such as the use of standing committees, to monitor and review PBGC operations and programs. Instead, the board mostly relies on the Inspector General and PBGC's management oversight committees to ensure that PBGC is operating effectively. However, there are no formal protocols requiring the Inspector General to routinely meet with the board or its representatives and staff, and PBGC's management committees are neither independent of PBGC, nor are they required to routinely report all matters to the board. As a result, the effectiveness of the board's oversight may be limited, because it cannot be certain that it is receiving high-quality and timely information about all significant matters facing the corporation, even though PBGC officials report that they informally communicate with the board representatives weekly.

PBGC's Board Structure Limits Board Members' Ability to Direct and Oversee PBGC

PBGC's board members have numerous other responsibilities in their roles as cabinet secretaries and have been unable to dedicate consistent and comprehensive attention to PBGC. ERISA charges the PBGC board with directing and overseeing PBGC management in several ways. The board is required to approve final decisions on policy matters that could affect many American employers and their workers. The board is also responsible for reviewing and approving PBGC's budget, monitoring financial performance, approving the corporation's strategic plan, and evaluating the effectiveness of its managers, among other responsibilities. Beyond their roles as heads of executive agencies and sitting on PBGC's board, two of the cabinet secretaries are also members of other boards. For example, the Secretary of the Treasury serves on the boards of the Millennium Challenge Corporation, the Community Development Financial Institutions Fund, and is a managing trustee of the Social

Security and Medicare trust funds.¹⁴ The Secretary of Commerce is on the board of the Export-Import Bank of the United States.¹⁵ The Secretary of Labor is also a trustee of the Social Security and Medicare trust funds.

According to some corporate governance guidelines, boards should have no fewer than 5 members and no more than 15.¹⁶ With only 3 members, PBGC's board may not be large enough to include the knowledge needed to direct and oversee PBGC, such as expertise in accounting, management, or strategic risk assessment. According to corporate governance guidelines, the board of directors should be large enough to provide the necessary skill sets, but also small enough to promote cohesion, flexibility, and effective participation. We did not identify any other government corporations with a similar board size as PBGC. Government corporations' boards averaged about 7 board members, with one having as many as 15. For example, the Overseas Private Investment Corporation's board of directors consists of 15 members—8 from the private sector and 7 from the federal government, as shown in table 2.

¹⁴ The Millennium Challenge Corporation is a U.S. government corporation designed to work with some of the poorest countries in the world to reduce global poverty through the promotion of sustainable economic growth. The Community Development Financial Institutions Fund was created to expand the capacity of financial institutions to provide credit, capital, and financial services to underserved populations and communities in the United States. Congress established the Social Security and Medicare trust funds in the U.S. Treasury to account for all program income and disbursements. Social Security and Medicare taxes, premiums, and other income are credited to the funds. Disbursements from the funds can be made only to pay benefits and program administrative costs. There are six trustees, four of whom serve by virtue of their positions in the federal government, and the other two trustees are public representatives appointed by the President.

¹⁵ The Export-Import Bank of the United States is the official export credit agency of the United States and assists in financing the export of U.S. goods and services to international markets.

¹⁶ Holly J. Gregory, *Comparison of Corporate Governance Guidelines and Codes of Best Practice*, Weil, Gotshal & Manges LLP (New York, New York: January 2006), and Carolyn K. Brancato and Christian A. Plath, *Corporate Governance Handbook, 2005: Legal Standards and Board Practices*, Special Report SR-05-02, The Conference Board (New York, New York: 2005). The Conference Board is a global business membership and research organization that creates and disseminates knowledge about management and the marketplace.

Table 2: Comparison of Select Government Corporations with a Similar Mission

Federal government corporation	Number of board members	Board composition
Commodity Credit Corporation 15 U.S.C. § 714	8	Board of directors is subject to the general supervision and direction of the Secretary of Agriculture, who is an ex-officio director and chairperson of the board. The board consists of seven members, in addition to the Secretary, who are appointed by the President, with the advice and consent of the Senate.
Export-Import Bank of the United States 12 U.S.C. § 635	5	Board of directors consists of the bank's president and chairman, the first vice president, as vice chairman, and three other directors. All of the members of the board of directors are appointed by the President with the advice and consent of the Senate and serve 4-year terms.
Federal Crop Insurance Corporation 7 U.S.C. § 1505	10	Board of directors, who are appointed by and serve at the pleasure of the Secretary of Agriculture.
Federal Deposit Insurance Corporation 12 U.S.C. § 1811	5	Board of directors consists of the Comptroller of the Currency, the Director of the Office of Thrift Supervision, and three citizens appointed by the President with the advice and consent of the Senate. Members serve 6-year terms.
Overseas Private Investment Corporation 22 U.S.C. § 2191	15	Board of directors consists of eight members from the private sector and seven from the federal government. At least two of the private sector directors must be experienced in small business, one must represent organized labor, and another must have experience in cooperatives. Government members include the Administrator of the Agency for International Development, the United States Trade Representative or Deputy U.S. Trade Representative, the President of the Overseas Private Investment Corporation, and four additional members who are senior officials of other government agencies, including the Department of Labor. All members must be appointed by the President, with advice and consent of the Senate.
Pension Benefit Guaranty Corporation 29 U.S.C § 1301	3	Board of directors consists of the Secretaries of Labor, Commerce, and the Treasury, with the Secretary of Labor as Chairman. The corporation is headed by a Director appointed by the President with the advice and consent of the Senate.

Source: GAO analysis of U.S. Code.

PBGC's board structure does not guarantee that the board represents a diverse set of interests and contains areas of expertise particular to PBGC. According to corporate governance guidelines published by The Conference Board,¹⁷ corporate boards should be structured so that the composition and skill set of a board is linked to the corporation's particular challenges and strategic vision, and should include a mix of knowledge and expertise targeted to the needs of the corporation. Boards

¹⁷ *Corporate Governance Handbook 2005*, Special Report SR-05-02

of directors should include certain expertise in accounting and finance, strategic risk assessment, management, and industry knowledge, among other factors. PBGC's board members represent the interests of three government agencies—DOL and the Treasury share responsibility for ERISA, and Commerce represents the interests of business and economic sectors. While having these interests represented on PBGC's board is important and the members can draw on the expertise within their respective agencies, PBGC's governance structure does not necessarily guarantee that board members will have a range of diverse expertise needed to specifically address PBGC's policy and oversight because the current structure only consists of members who serve by virtue of their position in the federal government.

Our review of other governance structures found that many government corporations' boards of directors consist of a variety of individuals reflecting a mix of knowledge, perspectives, and political affiliations. For instance, the FDIC board includes a full-time Chairman as well as the directors of the Office of the Comptroller of the Currency, the Office of Thrift Supervision, and two other directors with specific banking expertise, such as state bank supervision. In addition, because PBGC's board is composed of cabinet secretaries, PBGC's board members typically change with each administration, limiting the board's institutional knowledge of the corporation. Other government corporations have integrated staggered term limits to avoid such gaps. For example, OPIC's directors may be appointed for a term of no more than 3 years, and the terms of no more than 3 of the 15 directors can expire in any 1 year.¹⁸

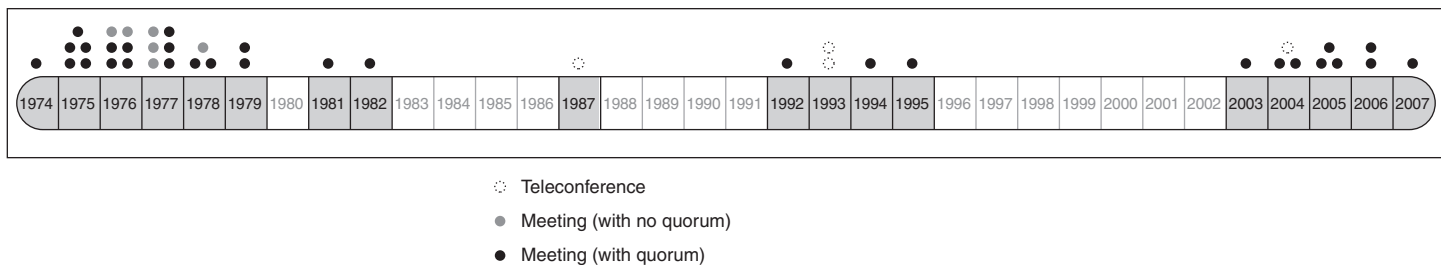
Since PBGC's inception, the board has met infrequently. While corporate governance guidelines do not specify either frequency or duration of board meetings, the literature states that the appropriate number of hours to be spent by a director on his or her duties and the frequency and length of the meetings depend largely on the complexity of the corporation and its operations.¹⁹ Longer meetings may permit directors to explore key issues in more depth, whereas shorter but more frequent meetings may help the directors stay up to date on emerging corporate trends and business and regulatory developments. However, as shown in figure 3, PBGC has only recently begun to meet regularly. In 2003, after several high-profile pension plan terminations and with the urging of PBGC's Executive

¹⁸ 22 U.S.C. § 2193.

¹⁹ *Corporate Governance Handbook 2005*, Special Report SR-05-02

Director, PBGC's board agreed to begin meeting twice a year to discuss PBGC matters. As a result, between July 2003 and May 2007, the PBGC board met 10 times. PBGC officials told us that it is a challenge to find a time when all three cabinet secretaries are able to meet. As a result, the board members' representatives officially met in their place 3 of the 10 times. Government corporations' boards vary in the number of times they meet, but our review found that on average many government corporations meet about 5 times per year, with some meeting more often. For example, we found that the Export-Import Bank of the United States' board generally met more than twice a month between 2004 and 2006.

Figure 3: Number of PBGC Board Meetings Held, 1974-May 2007



Source: GAO analysis of PBGC documents and board meeting minutes

While the PBGC board is now meeting twice a year, it appears that very little time is spent on addressing PBGC's strategic and operational issues. According to corporate governance guidelines, boards should meet regularly and focus principally on broader issues, such as corporate philosophy and mission, broad policy, strategic management, oversight and monitoring of management, and company performance against business plans.²⁰ However, our review of the board's recorded minutes found that although some meetings devoted a portion of time to certain strategic and operational issues, such as investment policy, the financial status of PBGC's insurance programs, and outside audit reviews, the board meetings generally only lasted about an hour.

Since the board members have limited time to direct and oversee PBGC, they have designated officials and staff within their respective agencies to conduct much of the work on their behalf. These officials are referred to as board representatives and act as liaisons between their cabinet

²⁰ *Corporate Governance Handbook 2005*, Special Report SR-05-02

secretaries and PBGC. They hold the rank of assistant secretary or above.²¹ Yet PBGC's board representatives have no policy-making authority under ERISA. Under PBGC's bylaws, however, a representative may represent a board member at a board meeting, and take action on behalf of the board member if the board member ratifies the representative's actions in writing within a reasonable time.

PBGC officials told us that the board representatives meet regularly—several times a year—and generally provide staff with broad policy direction and oversight on behalf of the cabinet secretaries. They also receive briefings on emerging issues and matters requiring the board's attention. However, we found limited documentation of such meetings. In fact, we were informed that no formal minutes were kept of these meetings, and the only documentary evidence we found of the board representatives' meeting was when they represented their respective board members at select board meetings. Each representative has a dedicated staff person whose assignments include working on PBGC matters. Although the board representatives can draw on the expertise of other staff within their respective agencies as needed, these staff persons have other job responsibilities, which could limit the amount of time they can dedicate to PBGC. Consequently, limited time and attention may be dedicated to PBGC matters.

Board Lacks Mechanisms to Monitor and Review PBGC Operations and Programs

Neither the board nor PBGC has developed formal procedures to ensure information is elevated to the board on all pertinent policy matters. Further, likely because of its small size, the board has not established standing oversight committees. As a result, the board may be unaware of significant PBGC management actions. According to corporate governance guidelines, corporate boards should have mechanisms to monitor and review operations, assess progress against performance measures, and manage risks to the institution, and boards should operate using committees to assist them. The board has not established formal policies and procedures describing the types of policy matters that should

²¹ As of May 2007, the following officials within the Department of the Treasury, Commerce, and Labor represented their respective Secretaries: the Under Secretary of Domestic Finance (Treasury), Under Secretary for Economic Affairs (Commerce), and Assistant Secretary of the Employee Benefits Security Administration (DOL). The organizational level of a PBGC board representative can vary depending upon whom each secretary selects. Because the Secretary of Labor is the Board Chair, the DOL Assistant Secretary typically leads the board representatives. However, this may create a unique dynamic because the Under Secretaries outrank the DOL Assistant Secretary.

be raised to the board's attention. Rather, the board relies mostly on PBGC's management to inform the board of pending issues when management believes it's appropriate, which is done through weekly communications to the board representatives. While officials believe that this process has generally worked well, in some cases board members have not received information in a timely manner. For example, in 2005, PBGC's Inspector General found that the board members and their representatives were not told of certain actions taken by PBGC's management regarding a large bankruptcy settlement until after the case had been settled. In response, PBGC drafted a protocol to govern communications with the board representatives about potential settlements. At this writing, the board is also revising the PBGC's bylaws, which establish board governing procedures. However, since there are no formal policies and procedures describing what other policy matters should be elevated to the board's attention, the board may be unaware of other significant actions of PBGC's management.

The board has not established standing committees, such as audit and ethics committees, to perform certain oversight and monitoring functions. A committee structure permits the board to address key areas in more depth than may be possible in a full board meeting. In prior years, the board established certain committees—staffed with individuals from PBGC's Advisory Committee—to probe specific issues. However, the board has not used this approach since the early 1990s. Instead, the board has generally relied on PBGC's Inspector General and its executive management to provide oversight of PBGC's operations.

As of May 2007, PBGC's Inspector General reports directly to the board and conducts reviews of PBGC's operations and financial condition and monitors PBGC's contractors. Even though the current board has required the Inspector General to brief it at its now semiannual meetings, there are no formal protocols describing the Inspector General's interaction with the board or its representatives and staff. Consequently, if the Inspector General or the board were to change, it is unclear whether the Inspector General or the board would be aware of this informal protocol. Further, the board relies on PBGC's executive management committees and

working groups for monitoring and reviewing PBGC's operations.²² However, these committees and working groups are not independent of PBGC's management and are not required to routinely report to the board. Some government corporations, such as FDIC, the Export-Import Bank of the United States, the Overseas Private Investment Corporation, and the National Railroad Passenger Corporation (Amtrak), have established standing committees to conduct certain oversight functions to assist their boards of directors. For example, FDIC's board of directors established standing committees, such as the Case Review Committee and the Audit Committee, to conduct certain oversight functions. FDIC's committees are governed by formal rules that cover areas such as membership, functions and duties, and, in some cases, submission of activity reports to the board.

Lack of Protocols for Administering PBGC Can Result in Confusion and Inefficiencies

While ERISA provides the board, the Secretary of Labor as Chair, and PBGC's Director the authority to oversee and administer PBGC, no formal guidelines articulate the different roles and responsibilities of the board and PBGC management. ERISA established PBGC "within the Department of Labor" and provided the Secretary of Labor administrative authority over the corporation. As a consequence, the Secretary has been responsible for overseeing PBGC's operations, including overall supervision of PBGC's personnel, organization, and budget practices. As a result, DOL officials consider PBGC to be a DOL agency and have required the corporation to follow its policies and procedures. However, under its authorities, PBGC has also developed its own policies, procedures, directives, and systems separate from DOL, and it does not rely on DOL-wide services, such as legal, procurement, and information technology. As a result, DOL and PBGC disagree over the extent to which PBGC is a separate and distinct executive agency.

A November 2005 PBGC memorandum stated that Congress' intention in placing PBGC within DOL was to provide PBGC with a physical location

²² PBGC's executive management has established committees and working groups for policy and oversight, such as its Executive Management Committee, Internal Controls Committee, Budget and Planning Integration Team, and Operations Integration Board. According to PBGC, the Executive Management Committee is responsible for corporate policy decisions and for coordination of the work of various PBGC offices. The Internal Control Committee has oversight responsibility for PBGC's internal controls. The Budget Planning and Integration Team provides a standardized process to promote integrated approaches for the alignment of budgetary resources and strategic planning. The Operations Integration Board provides a forum for senior leadership to commission and review corporationwide programs, projects, and internal policies.

and was not meant in an organizational or operational sense. Some PBGC managers now view the language as an anachronism. One former PBGC Executive Director also noted that PBGC could not be just like any other DOL agency, because if it were, the Secretaries of the Treasury and Commerce, by a two-vote majority, could theoretically direct policies of another federal cabinet department. Further, federal agencies, including DOL, recognize PBGC's separateness either directly or indirectly through various types of reporting requirements that are required of PBGC and the board. For example, PBGC is responsible for representing itself in matters before other agencies, such as the Equal Employment Opportunity Commission, the Federal Labor Relations Authority, and the Merit Systems Protection Board. In another instance, DOL's Office of the Solicitor stated in a March 2007 letter to the Department of Justice that while PBGC was "within the Department of Labor," the two agencies have historically operated with separate administrative structures and should be considered separate for matters relating to postemployment ethics.

The uncertainty of PBGC's status has resulted in confusion over the extent to which DOL has the authority to manage PBGC's operations. According to our internal control standards,²³ agencies should ensure that key areas of authority and responsibilities are defined and communicated. However, neither the board, DOL, nor PBGC has developed formal policies and procedures to define its authorities and responsibilities. Instead, PBGC officials typically react to DOL's periodic written and oral communications, which PBGC officials said sometimes become a part of PBGC's operational framework. DOL and PBGC provided us with memorandums and e-mail correspondence outlining some of these administrative requirements. The following are examples of the confusion and disagreement resulting from the uncertainty related to PBGC's status:

- In December 2006, the Office of the Secretary of Labor, without consulting with officials from the Departments of the Treasury or Commerce, orally directed PBGC to obtain DOL's clearance before it could advertise for or select individuals to fill three vacant executive management positions, even though DOL had not required this in prior years. According to PBGC officials, this resulted in hiring delays. DOL officials stated that this requirement was needed to oversee PBGC's hiring activities only while PBGC has an interim director.

²³ GAO, *Internal Control Standards: Internal Control Management and Evaluation Tool*, GAO-01-1008G (Washington, D.C.: August 2001).

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- A May 2006 DOL memorandum to all its agency heads, including PBGC, provided guidance for the preparation and submission of information technology investments in DOL's fiscal year 2008 budget request. However, because OMB considers PBGC's information technology program independent from DOL's, there has been confusion not only between DOL and PBGC officials, but also among DOL officials, over the role that DOL's Chief Information Officer has in PBGC's information technology program and whether DOL's guidance is applicable to PBGC on this issue.

DOL and PBGC have also disagreed on management approaches to PBGC's operations. For example:

- During the fiscal year 2007 budget process, DOL and PBGC officials disagreed over the amount of money included in PBGC's budget for the development of a new system for pension plan sponsors to file their required annual reports to DOL electronically.²⁴ While PBGC benefits from these annual reports, PBGC's Inspector General reviewed PBGC's fiscal year 2007 budget request, which included \$7 million to cover these costs. After investigating, the Inspector General concluded that the requested increase was disproportionate to PBGC's usage of the annual reports. However, DOL officials disagreed with the Inspector General's findings and said that the Inspector General's methodology for determining the percentage usage was flawed.²⁵ Further, the board representatives from the Departments of the Treasury and Commerce were unaware of DOL and PBGC's actions until they were brought to their attention by PBGC's Inspector General. In May 2007, the direction to transfer funds was enacted by Congress and PBGC is providing \$7 million to DOL as part of a fiscal year 2007 supplemental appropriation.²⁶
- In January 2007, DOL officials orally directed PBGC to have no direct contact with OMB without DOL's approval, a condition that PBGC officials believe has strained the relationship between DOL and PBGC budget offices. In previous years, PBGC's budget office worked directly

²⁴ Unlike most federal agencies, PBGC does not receive a general revenue appropriation each year, because PBGC is intended to be financially self-sustaining. However, PBGC is subject to spending limitations imposed by Congress and must submit an annual budget request through DOL and OMB.

²⁵ GAO staff did not attempt to verify the Inspector General's findings.

²⁶ Pub. L. No. 110-28, § 6601.

with OMB examiners to resolve matters related to its annual budget submissions, even though PBGC submitted its budget to OMB through DOL's Office of the Assistant Secretary for Administration and Management. DOL now closely monitors PBGC's interactions with OMB by attending meetings and participating in telephone calls. DOL officials said that such action is needed to coordinate with PBGC in order to provide OMB examiners with a consistent message. OMB officials said that DOL's review of PBGC's budget submission was useful.

- DOL and PBGC officials have also disagreed over PBGC's authority to explore and establish an independent compensation system for its employees. In the early 1990s, PBGC officials requested approval from DOL to establish a new compensation system (outside of the federal government's "general schedule" pay system and merit pay), arguing that PBGC employees should be exempt from these pay systems because their compensation was not wholly from appropriated funds. In a 1992 memorandum, DOL cited the absence of an explicit exception for PBGC employees, the legislative history of ERISA, and prior rulings by the Federal Labor Relations Authority and the United States Court of Appeals for the District of Columbia to argue against such an exemption. Consequently, some PBGC officials believe PBGC is limited in attracting and retaining the types of expert financial and actuarial staff it needs.

Conclusions

As PBGC continues to navigate the challenges presented by the changing defined benefit pension environment, ensuring that the corporation is soundly governed and efficiently managed is essential to the thousands of Americans who rely on PBGC for their retirement income. Since 1974, the private sector pension industry has evolved and corporate governance models have changed. Yet, PBGC is still directed and overseen by one of the smallest and least diverse boards of directors, even though it is financially one of the largest corporations within the federal government.

While the current board members recognize PBGC's importance and are meeting more frequently than before, the limited amount of time they can dedicate to PBGC is troubling. In fact, if PBGC's board of directors were held to private sector standards, the corporation could be considered vulnerable to mismanagement. Because the Secretaries change with each administration, the board may also have limited institutional knowledge. This could weaken PBGC's governance further, since the ever-changing board membership may not understand the corporation's business or the vulnerabilities it faces. Even though each agency has a variety of staff who

may be able to fill the gaps in institutional knowledge, each board agency has only assigned a board representative and one staff person, both of whom have other job responsibilities, a fact that may limit the time and attention given to PBGC. As a result, oversight of this \$60 billion corporation that provides pension benefits to over a half a million participants in terminated pension plans may be limited.

Because the Secretary of Labor has historically had the authority to administer PBGC, DOL has, in some ways, filled the void in accountability. However, the confusion resulting from the lack of clarity over who is responsible for certain matters has raised additional questions about the extent to which DOL should be involved in directing PBGC's activities. Board representatives from the Departments of Commerce and the Treasury have often deferred to DOL on administrative matters and not generally questioned DOL on its actions. Perhaps some aspects of the relationship between DOL and PBGC could be clarified in the revised bylaws currently being prepared, but it remains essential that the board exercise its authority to oversee PBGC and coordinate with DOL and each other not only on major policy issues, but also on the oversight of PBGC's activities. PBGC's management staff should also work with the board to ensure that all significant matters are formally elevated to the board's attention. This will become even more critical in the coming months as the new Senate-confirmed Director begins to work with the board to clarify the Director's role in administering PBGC.

Matter for Congressional Consideration

To strengthen PBGC's policy direction and oversight, Congress should consider expanding PBGC's board of directors. If Congress decides to expand the board, it would be helpful to appoint additional members of diverse backgrounds who possess knowledge and expertise useful to PBGC's responsibilities and can provide the attention that would be needed. This revised board structure could resemble those at other government corporations, such as the Federal Deposit Insurance Corporation, the Export-Import Bank of the United States, or the Federal Crop Insurance Corporation. Further, dedicating staff, independent of PBGC's executive management, with relevant pension and financial expertise, to solely support the revised board's policy and oversight activities may be warranted.

Recommendations for Executive Action

To improve overall accountability and oversight of PBGC, we recommend that the Secretaries of the Treasury, Labor, and Commerce, as PBGC's board of directors,

- establish policies, procedures, and mechanisms for providing oversight of PBGC that are consistent with corporate governance guidelines and
- establish formal guidelines that articulate the authorities of the Board Chair and the Department of Labor, the other board members and their respective departments, and PBGC's Director.

Agency Comments and Our Evaluation

We obtained written comments on a draft report from the Secretary of Labor, on behalf of the PBGC board of directors, and from the interim director of PBGC. Their comments are reproduced in appendixes IV and V, respectively. In addition, the Departments of the Treasury, Labor, and Commerce, as well as PBGC, provided technical comments, which were incorporated in the report where appropriate.

In response to our draft report, the PBGC board of directors recognized that the current law establishes an unusual corporate structure for PBGC, and stated that a number of corporate structures are possible for addressing PBGC's unique purpose and authority under the law. The board members added that if Congress considers making changes to PBGC corporate structure, they would be pleased to discuss the merits of various corporate governance proposals. Further, the board reiterated its continued commitment to improving the corporate governance of PBGC within the current statutory structure, and stated that in addition to the board members meeting regularly, the board representatives and their staffs of resident experts in pension and financial matters meet frequently throughout the year to address PBGC matters. The board also stated that the review and revisions of PBGC bylaws will help delineate the respective roles, responsibilities, and authorities of PBGC's board and Director in the management of PBGC. The PBGC interim director stated that PBGC management is committed to working with the board to enhance PBGC's governance processes on issues identified in our review.

As agreed with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days after its issue date. At that time, we will send copies of this report to the

Secretaries of the Treasury, Labor, and Commerce as well as the Director of PBGC and other interested parties. We will also make copies available to others on request. If you or your staff have any questions concerning this report, please contact me on (202) 512-7215. Key contributors are listed in appendix VI.

A handwritten signature in black ink that reads "Barbara D. Tomjerg". The signature is written in a cursive style with a large, prominent "B" and "T".

Director, Education, Workforce, and
Income Security Issues

Appendix I: Scope and Methodology

To address Pension Benefit Guaranty Corporation's (PBGC) governance structure, we interviewed board representatives, board agency officials, former PBGC Executive Directors, former PBGC General Counsels, senior PBGC management officials, former and current Executive Directors, officials from the Office of Management and Budget, and outside experts to obtain their perspectives on the board's governance structure and its effect on management and operations. To encourage open communication, we met with many officials separately, and in all cases, subordinate employees were interviewed separately from their managers. Additionally, we spoke to PBGC's Inspector General as well as PBGC's union representatives. We were unable to attend a PBGC board meeting to observe what types of issues the board members discussed during their biannual meetings, because the PBGC board does not open its meetings to the public or others.

To identify the extent to which PBGC's governance structure provides policy direction and oversight, we reviewed previous GAO work on the governance of private sector and government corporations and PBGC's single-employer and multiemployer insurance programs and management challenges. We also identified key provisions of the Employee Retirement and Income Security Act of 1974 (ERISA), the Pension Protection Act of 2006 (PPA), and the Government Corporation Control Act (GCCA) that outline the authority of PBGC's board of directors as well as the administrative responsibilities of PBGC's Director. Further, our review examined the governance structures of similar federal government corporations listed in the GCCA to determine the extent to which they had similar sizes, compositions, activities, policy mandates, and oversight functions. In addition, we also reviewed our reports and other available literature, such as The Conference Board's *Corporate Governance Handbook 2005*,¹ on the characteristics of private sector boards of directors to identify common practices. We also consulted our standards for internal control in the federal government to determine how delegations of authority affect an agency's internal control environment.²

¹ Carolyn K. Brancato and Christian A. Plath, *Corporate Governance Handbook 2005: Developments in Best Practices, Compliance, and Legal Standards*, Special Report SR-05-02, The Conference Board (New York, New York: 2005).

² GAO, *Internal Control Standards: Internal Control Management and Evaluation Tool*, [GAO-01-1008G](#) (Washington, D.C.: August 2001).

To understand the board of directors' role, we reviewed documentation related to the board members' activities. We collected and reviewed available board meeting minutes from 2000 to 2006 to identify what types of actions the board members had considered and taken. In addition, we requested documentation on board representative meetings, however, we were told that no formal documentation existed. Also, we reviewed board meeting information dating back to 1974, including summations of board resolutions. We also collected and reviewed memorandums from PBGC officials and other information concerning previous efforts by PBGC staff to evaluate the issue of PBGC's governance structure.

To assess how PBGC's governance structure affects its ability to conduct efficient operations, we identified and reviewed key legal interpretations of ERISA, PPA, and corresponding regulations that outline the relationship between PBGC's board of directors, the Secretary of Labor as Board Chair, and PBGC's Director. We reviewed available policies and procedures regarding PBGC's interaction with the board members' agencies, and we collected and reviewed the policies and procedures from PBGC and DOL. Given the Secretary of Labor's role as Board Chair, we reviewed available documentation on DOL and PBGC protocols to determine the extent to which guidance existed on how they should interact on specific administrative activities.

Appendix II: List of Selected Federal Government Corporations

Federal government corporation	Mission
Commodity Credit Corporation 15 U.S.C. 714, <i>et seq.</i>	Created to stabilize, support, and protect farm income and prices. CCC also helps maintain balanced and adequate supplies of agricultural commodities and aids in their orderly distribution.
Export-Import Bank of the United States 12 U.S.C. 635, <i>et seq.</i>	Assists in financing the export of goods and services between the United States and international markets. The Export-Import Bank of the United States is the official export credit agency of the United States.
Federal Crop Insurance Corporation 7 U.S.C. 1501, <i>et seq.</i>	Improves the economic stability of agriculture through a sound system of crop insurance and provides the means for the research and experience helpful in devising and establishing such insurance.
Federal Deposit Insurance Corporation 12 U.S.C. 1811, <i>et seq.</i>	Preserves and promotes public confidence in the U.S. financial system by insuring deposits in banks and thrift institutions for up to \$100,000 per depositor; by identifying, monitoring and addressing risks to the deposit insurance funds; and by limiting the effect on the economy and the financial system when a bank or thrift institution fails.
Federal Financing Bank 12 U.S.C. 2281, <i>et seq.</i>	Established to centralize and reduce the cost of federal borrowing, as well as federally assisted borrowing from the public.
Federal Prison Industries (UNICOR) 18 U.S.C. 4121, <i>et seq.</i>	To employ and provide skills training to the greatest practicable number of inmates confined within the Federal Bureau of Prisons and produce goods for sale to the federal government.
Financing Corporation 12 U.S.C. 1441, <i>et seq.</i>	The Financing Corporation (FICO) serves as a financing vehicle for the Federal Savings and Loan Insurance Corporation (FSLIC) Resolution Fund (formerly the Federal Savings and Loan Insurance Corporation) by issuing debentures, bonds, and other obligations.
Government National Mortgage Association 12 U.S.C. 1717, <i>et seq.</i>	A corporation that guarantees, with the full faith and credit of the U.S. government, full and timely payment of all monthly principal and interest payments on the mortgage-backed securities of registered holders.
National Railroad Passenger Corporation (AMTRAK) 49 U.S.C. 241, <i>et seq.</i>	Provides passenger train service in the United States.
Overseas Private Investment Corporation 22 U.S.C. 2191, <i>et seq.</i>	Helps U.S. businesses invest overseas, fosters economic development in new and emerging markets, assists the private sector in managing risks associated with foreign direct investment, and supports U.S. foreign policy.
Pension Benefit Guaranty Corporation 29 U.S.C. 1301, <i>et seq.</i>	Established to encourage the continuation and maintenance of private sector defined benefit pension plans, provide timely and uninterrupted payment of pension benefits, and keep pension insurance premiums at a minimum.
Presidio Trust of San Francisco 16 U.S.C. 460bb note	Established to protect, preserve, and enhance the Presidio as a resource for the American public and as a national historic landmark.
Resolution Funding Corporation 12 U.S.C. 1441b	Established by Congress to raise funds for the activities of the Resolution Trust Corporation.
Rural Telephone Bank ^a 7 U.S.C. 941, <i>et seq.</i>	Established in 1971 to obtain supplemental funds for use in making loans to eligible telecommunications companies and cooperatives.

**Appendix II: List of Selected Federal
Government Corporations**

Federal government corporation	Mission
Saint Lawrence Seaway Development Corporation 33 U.S.C. 981, <i>et seq.</i>	Established to construct deep water navigation works in the Saint Lawrence Seaway.
Tennessee Valley Authority 16 U.S.C. 831, <i>et seq.</i>	Created in May 1933 to provide navigation, flood control, electricity generation, fertilizer manufacturing, and economic development in the Tennessee Valley.
United States Postal Service 39 U.S.C. 101, <i>et seq.</i>	Established to provide postal service to the United States.
Valles Caldera Trust 16 U.S.C. 698-v4, <i>et seq.</i>	Created to manage, provide administrative services, collect funds, and coordinate with federal and state governments on behalf of the Valles Caldera National Preserve.

Source: GAO analysis of federal government corporations.

^aIn February 2005, the President's fiscal year 2006 budget proposed the dissolution of the Rural Telephone Bank. After 6 months of discussion and deliberation, the board of directors unanimously approved resolutions to liquidate and dissolve the bank. On November 10, 2005, the liquidation and dissolution process was initiated with the enactment of the 2006 agriculture appropriations bill.

Appendix III: Examples of Corporate Governance Practices

Corporate practices	Corporate governance guidelines
Board's fiduciary duties	<p>In carrying out their duties, directors should fulfill their fiduciary duties of care, loyalty, and good faith, and act in the best interests of the corporation and its shareholders. Boards usually delegate the day-to-day management of the company to the chief executive officer (CEO) and other senior management, but the board retains responsibilities for oversight and monitoring of these delegated functions.</p> <p>A director's actions must fulfill three fiduciary duties:</p> <ul style="list-style-type: none"> • the duty of care to make decision that are informed, • the duty of loyalty to act without conflict and always to put the interests of the corporation before those of the individual director, and • the duty to act in good faith in accordance with evolving corporate governance best practices.
Roles of board and management clearly defined	<p>A strong and effective board should have a clear view of its role in relationship to management. How a board organizes itself and structures its processes will vary with the nature of the business, business strategy, size and maturity of the company, and talents and personalities of the chief executive officer and the board. The board should focus principally on guidance and strategic issues, choice of the CEO, other senior management, oversight and monitoring of management and company performance, and adherence to legal requirements.</p>
Corporate governance guidelines available	<p>The board should have a set of written guidelines in place to articulate corporate governance principles and the roles and responsibilities of the board and management. These guidelines should be reviewed at least annually and help the board and individual directors understand their obligations and the general boundaries within which they will operate.</p> <p>A constructed set of governance guidelines will, in part,</p> <ul style="list-style-type: none"> • delineate responsibilities of the board, management, directors, and committees; • be reviewed regularly, at least annually, and revised as appropriate; and • be made publicly available. <p>Guidelines should also include information on director orientation and continuing education. Such orientation should entail a thorough briefing on the company and its businesses and industries, organizations, people, strategies, key issues, and risks. Further, guidelines should include continuing education requirements for board members, which can be fulfilled through the use of subject matter experts or belonging to professional organizations that offer training courses and publish information pertaining to their industry's operating environment.</p>
Board access to information	<p>The effectiveness of the board depends on the quality and timeliness of the information each director receives. The board and management should agree on the important information needed for board oversight and monitoring and to enable the board to make informed decisions.</p> <p>Directors' access to management and, as necessary and appropriate, independent advisors. For purposes of having information that is timely and relevant, boards need to have both formal and informal channels of communication with the appropriate officers and other individuals within the company that enable directors to perform their oversight functions.</p>

**Appendix III: Examples of Corporate
Governance Practices**

Corporate practices	Corporate governance guidelines
Conduct of board meetings	<p>Boards should consider the following best practices to generally ensure effective decision making and exchange of information and ideas:</p> <ul style="list-style-type: none">• Directors should be able to place items on the agenda, with time for adequate discussion and consideration.• The lead director should take responsibility to surfacing issues that affect the business.• Management should provide information that effectively explains the corporation’s operating and financial status, as well as other significant issues facing the corporation and the board.• Meetings should be structured to encourage participation and dialogue among the directors.• Directors should attempt to attend all board meetings and actively participate in the meetings, including asking hard questions of management. <p>Executive sessions:</p> <ul style="list-style-type: none">• should promote open dialogue among the members and free exchange of ideas, perspectives, and information,• have a ‘feedback’ mechanism to the CEO for important issues that may arise, and• be supplemented by additional off-line informational channels to help build trust and relationships among the directors.
Board composition and size	<p>The composition and skill set of the board should be linked to the company’s particular challenges and strategic vision. As companies develop and experience changed circumstances, the desired composition of the board may be different and should be reviewed.</p> <p>Regardless of their mix of background and skills, all directors should:</p> <ul style="list-style-type: none">• possess knowledge and expertise to fulfill an appropriate role given the mix of background and skills;• exercise diligence, including attending board and committee meetings and coming prepared to provide thoughtful input at the meetings and during communications between meetings; and• be independent in their judgment and committed to the long-term interests of the company. <p>The composition of the board should be tailored to meet the needs of the company at its stage of development, but there should be a mix of director knowledge and expertise in areas such as</p> <ul style="list-style-type: none">• accounting and finance,• strategic risk assessment,• technology,• management, and• industry knowledge <p>The size of the board will vary depending on the corporation’s needs and requirements. Boards need to be large enough to accommodate the necessary skill sets, but small enough to promote cohesion, flexibility, and effective participation. According to a private sector research center, in 2004, the median private sector board size ranged from 11 to 15 total members, with the number of outside directors ranging from 8 to 9.</p>

Appendix III: Examples of Corporate Governance Practices

Corporate practices	Corporate governance guidelines
Board leadership	<p>Boards should adopt a structure that provides the nonmanagement directors with the leadership necessary for them to act independently as well as function effectively. This structure could include separating the positions of chairman and CEO, creating a lead independent director, or appointing a presiding director from among the independent directors.</p> <p>Any structural alternative, a private sector board wishes to adopt should</p> <ul style="list-style-type: none"> • strengthen the independence and oversight role of the board; • provide the nonmanagement directors with the ultimate authority over information flow to the board; and • improve the relationship and flow of information between the board, CEO, and senior management.
Board committee structure	<p>Boards should establish committees that will enhance the overall effectiveness of the board by ensuring focus and oversight on matters of particular concern. Committees can enhance board effectiveness by permitting closer focus, oversight, and monitoring of sensitive areas. In the private sector, certain statutes and standards require that companies maintain a number of standing committees, such as an audit committee, a nominating committee, and a compensation committee. In addition, boards have established committees, such as risk, technology, pension and benefits, public policy, and corporate governance, which focus on substantive issues or particular concerns to the company or the board.</p> <p><i>Examples of committees:</i></p> <ul style="list-style-type: none"> • Audit committee: Is responsible for the appointment, compensation, and oversight of the work of any registered public accounting firm employed by that issuer; and must be composed entirely of independent directors, meaning that a director may not, other than in his or her capacity as member of the audit committee, the board of directors, or any other board committee, accept any consulting, advisory, or other compensatory fee from the issuer or be an affiliated person of the issuer or its subsidiary. • Governance committee: Is designed for the purpose of monitoring and implementing the governance structure of the corporation. This committee of independent directors is charged, in part, with ensuring that the board is informed of new and emerging governance practice being employed.
Oversight mechanisms—internal controls	<p>Boards must play an active role in the area of internal controls by ensuring that the company has an effective internal control framework in place. This should include the assessment and management of key financial and nonfinancial risks and an effective monitoring and oversight process, supported by timely and accurate information and clear communication channels.</p> <p>Internal controls are processes designed to provide reasonable assurance that an organization is achieving its objectives by helping to</p> <ul style="list-style-type: none"> • protect its assets, • ensure it is not overly exposed to risk, • improve the reliability of internal and external reporting, • promote compliance with applicable laws and regulations, and • improve the effectiveness and efficiency of operations.

Source: Carolyn K. Brancato and Christian A. Plath, *Corporate Governance Handbook 2005: Developments in Best Practices, Compliance, and Legal Standards*, Special Report SR-05-02, The Conference Board (New York, New York: 2005); Richard Steinberg, PriceWaterhouseCoopers, *Corporate Governance and the Board: What Works Best*, The Institute of Internal Auditors Research Foundation (May 1, 2000); and Scott Green, *Sarbanes-Oxley and the Board of Directors: Techniques and Best Practices for Corporate Governance*, John Wiley and Sons, Inc. (Hoboken, New Jersey: 2005).

Appendix IV: Comments from the Pension Benefit Guaranty Corporation Board of Directors

SECRETARY OF LABOR
WASHINGTON, D.C. 20210

JUN 26 2007

Mr. David M. Walker
Comptroller General
United States Government Accountability Office
Washington, DC 20548

Dear General Walker:

As the Chair of the Board of Directors of the Pension Benefit Guaranty Corporation (PBGC), I am responding on behalf of the Board to your request for comments on the Government Accountability Office's (GAO) draft report entitled "Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight" (GAO-07-808).

The current law establishes an unusual corporate structure for the PBGC. There are concerns about whether this statutory structure is the best approach. A number of corporate structures are possible that take into account the PBGC's unique purpose and its authority under the law. If Congress considers this issue further, we will be pleased to discuss the merits of various proposals to enable the Corporation to best succeed in its primary mission to safeguard the pension benefits of American workers, retirees and their families.

Within the current statutory structure, my fellow Board members and I have been committed to improving the corporate governance of the PBGC, and I am pleased the draft report documents our efforts in this important area. For example, prior to my becoming Chair of the PBGC, the Board had not met since 1995. I instituted twice-annual Board Meetings and established the Board practice of meeting directly with the PBGC Inspector General and the Corporation's outside auditors, as well as PBGC executives, during Board meetings.

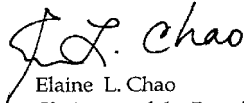
The Board Representatives and their staffs of resident experts in pension and financial matters meet frequently throughout the year with one another and with PBGC officials, and receive weekly reports from the PBGC. The Board has worked together through some of the PBGC's most financially challenging years, culminating in the most significant revision of the nation's pension laws since the PBGC's creation.

**Appendix IV: Comments from the Pension
Benefit Guaranty Corporation Board of
Directors**

As GAO notes, the Board previously directed an ongoing review of the bylaws of the Corporation to determine what changes would improve the oversight and administration of the PBGC and to adapt the bylaws to the changes encompassed in the Pension Protection Act. The review of, and the revisions to, the bylaws will help delineate the respective roles, responsibilities, and authority of the Director and the Board in the management of the PBGC.

The PBGC is dedicated to protecting the basic pension benefits of 44 million Americans covered by the PBGC's insurance programs. We appreciate having had the opportunity to review and comment on the draft report.

Sincerely,



Elaine L. Chao
Chairman of the Board
Pension Benefit Guaranty Corporation

Appendix V: Comments from the Pension Benefit Guaranty Corporation



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

Office of the Director

June 22, 2007

Barbara D. Bovbjerg, Director
Education, Workforce, and Income Security Issues
U.S. Government Accountability Office
Washington, D.C. 20548

Dear Ms. Bovbjerg:

Thank you for the opportunity to comment on the draft version of your report entitled "PBGC Governance Structure Needs Improvements to Ensure Policy Direction and Oversight." Corporate governance issues have received greater attention recently in a variety of settings, and PBGC appreciates GAO's work in assessing whether PBGC's governance structure could be enhanced.

With the passage of the Pension Protection Act of 2006, PBGC recognized the need to update the Corporation's bylaws, and has been working with the Board of Directors and their staff on this important project. We will continue to work with our Board to enhance our governance processes, as well as with our Board agencies on issues identified in the report, so that the Corporation will be best positioned to address the challenges we face in the years ahead.

Sincerely,

Charles E. F. Millard
Interim Director

Appendix VI: Contacts and Acknowledgments

GAO Contact

Barbara D. Bovbjerg, (202) 512-7215

Acknowledgments

The following team members made key contributions to this report: Blake Ainsworth, Assistant Director; Jason Holsclaw; Joe Applebaum; Kisha Clark; Monika Gomez; Jean McSween; Charles Willson; and Craig Winslow.

GAO Related Products

PBGC's Legal Support: Improvement Needed to Eliminate Confusion and Ensure Provision of Consistent Advice. [GAO-07-757R](#). Washington, D.C.: May 18, 2007.

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