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COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
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January 16, 2024

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
1200 K Street, NW
Washington, DC 20005

Dear Director Hartogensis:

The Committee on Education and the Workforce (Committee) is investigating reckless mismanagement at the Pension Benefit Guaranty Corporation (PBGC) that led to sending a \$127 million overpayment to one multiemployer plan.¹ This overpayment raises the concern that more overpayments exist. As part of this investigation, the Committee requests documents and information relating to PBGC's disbursement of these payments and its plan to recoup these significant taxpayer funds.

On November 1, PBGC's Office of Inspector General (OIG) released a report detailing a wrongful payment from PBGC to the Central States, Southeast and Southwest Areas Pension Fund (Central States Pension Fund) to fund pensions for at least 3,479 deceased participants.² The Report reveals that PBGC did not cross-check applications against the Social Security Administration's full Death Master File (DMF).³ As far back as 2018, PBGC's OIG has instructed PBGC that using the DMF is essential to prevent overpayments as a result of funding annuities for dead people.⁴ PBGC's failure to incorporate the DMF is inexcusable. Amazingly, in its response to the report, PBGC asserted that this payment "should not be subject to recovery actions."⁵ In the same vein, the Central States Pension Fund claims it neither owes nor intends to

¹ PBGC OIG, REPORT NO. EVAL-2024-01, MANAGEMENT ALERT: DECEASED PARTICIPANTS IN THE CENTRAL STATES' SPECIAL FINANCIAL ASSISTANCE CALCULATION (2023), <https://oig.pbgc.gov/pdfs/EVAL-2024-01.pdf> [hereinafter REPORT].

² REPORT, *supra* note 1 at 6. According to the report, the figure of 3,479 deceased participants does not include other deceased participants for whom the Social Security Administration Death Master File does not report the date of death, nor does it include other deceased participants who do not meet the "three-factor match criteria" (presumably due to missing data). Thus, OIG's report indicates there may be significantly more deceased persons for whom taxpayer-funded annuities will never be paid.

³ REPORT, *supra* note 1 at 2.

⁴ See ROBERT A. WESTBROOKS, PBGC OIG, WHITE PAPER: DETECTING FRAUD AND IMPROPER PAYMENTS INVOLVING DECEASED PARTICIPANTS (2018), <https://oig.pbgc.gov/pdfs/SR-3-9-18.pdf>; BROOKE HOLMES, PBGC OIG, WHITE PAPER: SEARCHING PLAN RECORDS FOR DECEASED PARTICIPANTS (2023), <https://oig.pbgc.gov/pdfs/SR-2023-10.pdf>.

pay back these taxpayer dollars.⁶ By all appearances, PBGC intended to shift taxpayer dollars to the Central States Pension Fund in an unauthorized windfall and refuses to get this money back.

PBGC's dismissive attitude toward taxpayer waste and abuse defies common sense. When asked whether the Central States Pension Fund, which includes nearly 350,000 Teamster retirees,⁷ should refund this money to PBGC, the International Brotherhood of Teamsters president, Sean O'Brien, stated that he "assumed it would" and he "assumed that the government would go after that, if that's truly what happened."⁸ He further stated, "I'll go on record as saying if someone was given something that they weren't entitled to, they should refund it."⁹ If someone who stands to benefit from the \$127 million windfall can recognize the impropriety, the federal government should make every effort to remedy this irresponsible mistake.

This mismanagement casts doubt on PBGC's implementation of the larger program, the \$91 billion Special Financial Assistance (SFA) program.¹⁰ In its response to the OIG report, PBGC characterizes the projections for SFA as "inherently uncertain."¹¹ Further, PBGC argues that deceased individuals being included in census data used for the purposes of SFA projections "is just one of the multiple factors that contributed to the inherent imprecision of assumptions."¹² However, census data is not an estimate, projection, or assumption: it is factual data used for reference or analysis. PBGC's commentary suggests a flippant attitude toward the taxpayer dollars used to bail out a select group of pension plans.

Furthermore, the beneficiaries of these taxpayer funds seem to consider the SFA as their personal slush fund. In a letter to the OIG, the Central States Pension Fund characterized the "additional" SFA from deceased participants as a "fund asset" that will be used to "increase the likelihood that the Fund will achieve its statutory objective of remaining solvent through 2051."¹³ PBGC's reckless handouts and deliberate negligence reflect an attitude of entitlement to transfer virtually unlimited funds to union pension plans.

Taxpayers rightfully expect agencies like PBGC to take the necessary measures to ensure that their funds are protected and spent wisely. Instead, PBGC's reckless disregard of prudent steps is a case study of waste and abuse. The Committee intends to conduct robust oversight of PBGC's negligence, including possible testimony before the Committee. To understand PBGC's

⁶ See Letter from Thomas C. Nyhan, Exec. Dir., Cent. States Pension Fund to John Seger, Assistant Inspector Gen. for Audit, PBGC 2 (Nov. 29, 2023) (stating that the additional SFA amount is a Central States Pension Fund asset) [hereinafter Central States Letter], <https://oig.pbgc.gov/pdfs/EVAL-2024-01.pdf>.

Int'l Bhd. of Teamsters, In Victory for Teamster Retirees, Central States Pension Fund Awarded \$36 Billion (Dec. 8, 2022), <https://teamster.org/2022/12/in-victory-for-teamster-retirees-central-states-pension-fund-awarded-36-billion/>.

⁸ *Standing Up Against Corporate Greed: How Unions are Improving the Lives of Working Families: Hearing Before the S. Comm. on Health, Ed., Lab., & Pensions*, 118th Cong. (2023) (statement of Sean M. O'Brien, Gen. President, Int'l Bhd. of Teamsters), <https://www.help.senate.gov/hearings/standing-up-against-corporate-greed-how-unions-are-improving-the-lives-of-working-families>.

⁹ *Id.*

¹⁰ Press Release, PBGC, PBGC Issues Final Rule on Special Financial Assistance (July 6, 2022), <https://www.pbgc.gov/news/press/releases/pr22-28>.

¹¹ REPORT, *supra* note 1, at 12.

¹² *Id.*

¹³ Central States Letter, *supra* note 6, at 2.

overpayment more fully, we request PBGC provide responses to the following requests and questions as soon as possible, but by no later than January 30, 2024. Please provide responses to the following:

1. Explain what justification PBGC has for paying out taxpayer funds in excess of the amount authorized by the *American Rescue Plan Act*.¹⁴
2. Provide the steps PBGC has taken or plans to take to quantify similar overpayments already paid to other multiemployer pension plans.
3. Did PBGC ask plans that received SFA overpayments if they would return the funds? Why or why not?
4. PBGC has stated that it plans to make changes to the SFA application process:
 - a. Does PBGC intend to suspend the approval of SFA applications until it can implement changes to SFA application instructions that would allow PBGC to conduct an independent death search to ensure that it does not attribute funds to plans based on deceased participants? If not, why not?
 - b. Will PBGC compare census data for all pending applications with the Social Security Administration DMF before paying further SFA? If not, why not?
5. PBGC's response letter to the OIG cites "PBGC Legal Analysis dated June 30, 2023" when it suggests that the funds described in the OIG report were not improperly paid and should not be subject to recovery actions.¹⁵
 - a. Provide the legal analysis cited in the report and any supporting documentation that led PBGC to reach this conclusion.
 - b. The OIG's closure memo indicates that the OIG needed to consult the Office of Management and Budget (OMB) for additional information.¹⁶ Did OMB provide PBGC with technical assistance regarding payment integrity or compliance with OMB Circular A-123, Appendix C in the development of its SFA rules? If so, provide all technical assistance documents and communications regarding SFA payment integrity or compliance with OMB Circular A-123, Appendix C, including but not limited to those between PBGC, PBGC's Board of Directors (or their representatives), and OMB.

¹⁴ See 29 U.S.C. § 1432(j)(1) (providing for SFA funds in "such amount required for the plan to pay all benefits due.")

¹⁵ REPORT, *supra* note 1, at 12.

¹⁶ Memorandum from John Seger, Assistant Inspector Gen. for Audit, PBGC OIG, to Lisa Carter, Dir., Corp. Controls & Revs. Dep't, PBGC (Sept. 27, 2023), <https://www.pbgc.gov/sites/default/files/documents/rcf-closure-memo-2023-05-02-2.pdf>.

6. In light of Sean O'Brien's comments, do you agree that funds provided to the Central States Pension Fund should be refunded to PBGC if the Central States Pension Fund was not entitled to them? Why or why not?

Clause 2 of House Rule X provides the Committee with general oversight responsibility to evaluate "the application, administration, execution, and effectiveness of Federal laws" and "conditions and circumstances that may indicate the necessity or desirability of enacting new or additional legislation." Specifically, on January 31, 2023, the Committee approved an oversight plan stating the Committee will "examine PBGC as it implements [ARPA] and conduct vigorous oversight of multiemployer pension plans that receive taxpayer dollars."¹⁷ This request and any documents created as a result of this request will be deemed congressional documents and property of the Committee. An attachment to this letter provides additional information about responding to the Committee's request.

Sincerely,



Virginia Foxx
Chairwoman



Bob Good
Chairman
Subcommittee on Health, Employment,
Labor, and Pensions

Enclosure

¹⁷ SUBMISSION OF OVERSIGHT PLAN, H. COMM. ON EDUC. & THE WORKFORCE, 118th Cong. (2023), https://edworkforce.house.gov/uploadedfiles/118_acctoversightplan.pdf.

Responding to Committee Document Requests

1. The agency's response to questions and request(s) should be answered or provided in separate document and not included inside a narrative response.
2. In complying with this request, you should produce all responsive documents that are in your agency's possession, custody, or control, whether held by you or other past or present employees of the executive branch, or a representative acting on your behalf. Your response should also produce documents that you have a legal right to obtain, that the agency has a right to copy or to which you have access, or that you have placed in the temporary possession, custody, or control of any third party.
3. Records, documents, data or information that have been requested and/or are related to underlying requests should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee on Education and the Workforce (the "Committee").
4. If any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
5. The Committee's preference is to receive documents in electronic form (i.e., email, CD, memory stick, or thumb drive) in lieu of paper productions. To the extent responses are provided in paper form, any documents that are stapled, clipped, or otherwise fastened together should not be separated. Documents produced in response to a request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued.
6. Regardless of format, documents produced pursuant to this request should be produced in the order in which they appear in your files and should not be rearranged. Indicate the office or division and person from whose files each document was produced.
7. Regardless of format, documents produced to the Committee should include an index describing the contents of the production and a total page count for the entire production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box, or folder should contain an index describing its contents. Documents produced in electronic format should also be identified and indexed electronically.
8. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

- (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
- 9. All documents shall be Bates-stamped sequentially and produced sequentially.
- 10. When you produce documents, you should individually identify the paragraph, question number or request number in the Committee's request to which the documents respond.
- 11. It shall not be a basis for refusal to produce documents that any other person or entity—either inside or outside of the executive branch—also possesses non-identical or identical copies of the same documents.
- 12. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), the agency's staff should consult with the Committee staff to determine the appropriate format in which to produce the information.
- 13. If compliance with any request cannot be made in full, compliance shall be made to the extent possible and shall include a written explanation of why full compliance is not possible.
- 14. If the agency does not expect to produce all documents responsive to a request by the date requested, the agency's staff shall consult with the Committee as soon as it is known the agency cannot meet the deadline, but no later than 24 hours before the due date to explain:
 - (a) what will be provided by the due date;
 - (b) why the agency believes certain materials cannot be produced by the due date; and
 - (c) the agency's proposed timeline for providing any omitted information.
- 15. If any document responsive to this request was, but no longer is, in your possession, custody, or control, or has been placed into the possession, custody, or control of any third party and cannot be provided in response to this request, you should:
 - (a) identify the document, including its date, author, subject, and recipients;
 - (b) explain the circumstances under which the document ceased to be in your possession, custody, or control, or was placed in the possession, custody, or control of a third party;
 - (c) state how the document was disposed of;
 - (d) identify the name, current address, and telephone number of the person who currently has possession, custody or control over the document;
 - (e) state the date of disposition; and
 - (f) identify the name, current address, and telephone number of each person who authorized said disposition or who had or has knowledge of said disposition.

16. If any document responsive to this request cannot be located, identify the document and describe with particularity the efforts made to locate the document and the specific reason for its disappearance, destruction or unavailability.
17. In the event that a document or portion of a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document or redaction:
 - (a) Bates number(s);
 - (b) the privilege asserted and the grounds therefor;
 - (c) the type of document;
 - (d) the general subject matter;
 - (e) any other description necessary to identify the document;
 - (f) the date, author, and addressee; and
 - (g) the relationship of the author and addressee to each other.

If a claimed privilege applies to only a portion of any document, that portion only should be withheld and the remainder of the document should be produced.

18. Any objections or claims of privilege are waived if you fail to provide an explanation of why full compliance is not possible and a log identifying with specificity the ground(s) for withholding each withheld document prior to the request compliance date.
19. In complying with the request, be apprised that (unless otherwise determined by the Committee) the Committee does not recognize: any purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative-process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
20. Any assertion by a request recipient of any such non-constitutional legal bases for withholding documents or other materials, for refusing to answer any deposition question, or for refusing to provide hearing testimony, shall be of no legal force and effect and shall not provide a justification for such withholding or refusal, unless and only to the extent that the Committee (or the chair of the Committee, if authorized) has consented to recognize the assertion as valid.
21. If a date or other descriptive detail set forth in this request referring to a document, communication, meeting, or other event is inaccurate, but the actual date or other descriptive detail is known to you or other agency employees, or is otherwise apparent from the context of the request, you should produce all documents that would be responsive as if the date or other descriptive detail were correct.

22. The time period covered by this request is included in the attached request. To the extent a time period is not specified, produce relevant documents from January 20, 2021 to the present.
23. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery. Such submission shall include an explanation as to why the information was not produced originally.
24. If physical documents are to be delivered, two sets of documents should be delivered, one set to the Majority Staff in Room 2176 of the Rayburn House Office Building and one set to the Minority Staff in Room 2101 of the Rayburn House Office Building during Committee office hours (9am-5pm, unless other arrangements are made) and signed by members of the respective staffs upon delivery.
25. Upon completion of the document production, the agency's written response should include a written certification, signed by the Secretary or his or her designee, stating that:
 - (a) a diligent search has been completed of all documents in your possession, custody, or control that reasonably could contain responsive documents; and
 - (b) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any

notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term “documents in your possession, custody or control” means documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and/or documents that have been placed in the possession, custody, or control of any third party.
3. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email, regular mail, telexes, releases, or otherwise.
4. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
6. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
7. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflect s, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
8. The term “agency” means any department, independent establishment, or corporation of the federal government. For the purposes of responding to oversight requests, the Committee expects information to be provided from all sub-agencies of an agency and not just the information that is immediately available to the addressee or the addressee’s immediate sub-agency.
9. The term “privilege” includes, but is not limited to, any claim that a document either may or must be withheld from production pursuant to any statute, rule, or regulation.
10. The term “employee” means agent, borrowed employee, casual employee, consultant, de facto employee, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, contract employee, contractor, or any other type of service provider.

11. The term “Administration” means and refers to any department, agency, division, office, subdivision, entity, official, administrator, employee, attorney, agent, advisor, consultant, staff, or any other person acting on behalf or under the control or direction of the Executive Branch.
12. “You” or “your” means and refers to you as a natural person and the United States and any of its agencies, offices, subdivisions, entities, officials, administrators, employees, attorneys, agents, advisors, consultants, staff, contractors, or any other persons acting on your behalf or under your control or direction; and includes any other person(s) defined in the document request letter.