

MAJORITY MEMBERS:

VIRGINIA FOXX, NORTH CAROLINA,
Chairwoman

JOE WILSON, SOUTH CAROLINA
GLENN THOMPSON, PENNSYLVANIA
TIM WALBERG, MICHIGAN
GLENN GROTHMAN, WISCONSIN
ELISE M. STEFANIK, NEW YORK
RICK W. ALLEN, GEORGIA
JIM BANKS, INDIANA
JAMES COMER, KENTUCKY
LLOYD SMUCKER, PENNSYLVANIA
BURGESS OWENS, UTAH
BOB GOOD, VIRGINIA
LISA C. MCCLAIN, MICHIGAN
MARY E. MILLER, ILLINOIS
MICHELLE STEEL, CALIFORNIA
RON ESTES, KANSAS
JULIA LETLOW, LOUISIANA
KEVIN KILEY, CALIFORNIA
AARON BEAN, FLORIDA
ERIC BURLISON, MISSOURI
NATHANIEL MORAN, TEXAS
JOHN JAMES, MICHIGAN
LORI CHAVEZ-DEREMER, OREGON
BRANDON WILLIAMS, NEW YORK
ERIN HOUGHIN, INDIANA



COMMITTEE ON
EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES
2176 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6100

MINORITY MEMBERS:

ROBERT C. "BOBBY" SCOTT, VIRGINIA,
Ranking Member

RAÚL M. GRIJALVA, ARIZONA
JOE COURTNEY, CONNECTICUT
GREGORIO KILILI GAMACHO SABLÁN,
NORTHERN MARIANA ISLANDS
FREDERICA S. WILSON, FLORIDA
SUZANNE BONAMICI, OREGON
MARK TAKANO, CALIFORNIA
ALMA S. ADAMS, NORTH CAROLINA
MARK DESAULNIER, CALIFORNIA
DONALD NORCROSS, NEW JERSEY
PRAMILA JAYAPAL, WASHINGTON
SUSAN WILD, PENNSYLVANIA
LUCY MCBATH, GEORGIA
JAHANA HAYES, CONNECTICUT
ILHAN OMAR, MINNESOTA
HALEY M. STEVENS, MICHIGAN
TERESA LEGER FERNÁNDEZ,
NEW MEXICO
KATHY E. MANNING, NORTH CAROLINA
FRANK J. MRWAN, INDIANA
JAMAAL BOWMAN, NEW YORK

March 26, 2024

The Honorable Gordon Hartogensis
Director
Pension Benefit Guaranty Corporation
445 12th Street, SW
Washington, DC 20005

Dear Director Hartogensis:

The Committee on Education and the Workforce (Committee) is continuing its investigation into the Pension Benefit Guaranty Corporation's (PBGC) gross negligence in overpaying multiemployer pension plans for deceased participants. PBGC's continued failure to provide responsive information needed by the Committee leads us, with this letter, to take compulsory measures.

The Committee is concerned about PBGC's overpayment of \$127 million in taxpayer money to the Central States Pension Fund for deceased participants.¹ Accordingly, the Committee wrote to PBGC twice seeking information about overpayments to multiemployer pension programs and about PBGC's efforts to recoup these overpayments on behalf of taxpayers.² At PBGC's request, the Committee provided two extensions to permit PBGC more time to produce responsive materials.³ Unfortunately, PBGC's responses have left significant gaps. What is more, the responses show a complete and total lack of respect for hardworking taxpayers' dollars.

Neither of PBGC's responses made any attempt to explain how it justified making Special Financial Assistance (SFA) payments beyond the amount authorized under the *American Rescue Plan Act*.⁴

¹ PBGC Off. of Inspector Gen., Rep. No. EVAL-2024-01, Management Alert: Deceased Participants in Central States' Special Financial Assistance Calculation (2023), <https://oig.pbgc.gov/pdfs/EVAL-2024-01.pdf>.

² Letter from Chairwoman Foxx & Chairman Good to Gordon Hartogensis, Dir., PBGC (Jan. 16, 2024), https://edworkforce.house.gov/uploadedfiles/1.16.2024_-_letter_to_pbgc.pdf; Letter from Chairwoman Foxx & Chairman Good to Gordon Hartogensis, Dir., PBGC (Feb. 26, 2024), https://edworkforce.house.gov/uploadedfiles/02.26.24_pbgc_re_continuing_oversight_on_pbgcs_overpayment.pdf.

³ Email from Joe Wheeler, Comm. staff, to Gail Sevin, Manager, Leg. Aff. Div., PBGC (Jan. 26, 2024) (on file with Committee); Email from Joe Wheeler, Comm. staff, to Gail Sevin, Manager, Leg. Aff. Div., PBGC (Mar. 1, 2024) (on file with Committee).

⁴ Letter from Gail Sevin, Manager, Leg. Aff. Div., PBGC, to Chairwoman Foxx & Chairman Good (Feb. 9, 2024) (on file with Committee); Letter from Gail Sevin, Manager, Leg. Aff. Div., PBGC, to Chairwoman Foxx & Chairman Good (Mar. 11, 2024) (on file with Committee).

The Honorable Gordon Hartogensis

March 26, 2024

Page 2

PBGC's responses also assert, with no legal analysis at all, that census data is an actuarial assumption.⁵ While PBGC's March 11 letter did not identify the steps it took to quantify overpayments paid to other multiemployer pension plans, it referred to what would appear to be an 11th-hour request for information from PBGC to plans.⁶ The Department of Labor's (DOL) subsequent statement on March 14 that multiemployer pension plans are obligated to repay these overpayments comes at the 11th hour and does not explain the months of wasted resources and delay that PBGC perpetrated; nor does DOL's statement shed light on PBGC's reasoning for its position.⁷

Despite the Committee's attempts to provide PBGC with reasonable accommodations and to maintain an open line of communication about this investigation with PBGC staff, the Committee is still not in receipt of responsive materials regarding what led to the overpayments or regarding PBGC's delays in remedying the overpayments. As the Committee noted in its February 26 letter, the information it is seeking is necessary for consideration of H.R. 7135, the *Ghost Handouts and Overpayments Stop Today Act* (GHOST Act), or similar legislation to ensure PBGC meets its obligation to reclaim the full amount of any overpayment it made in the SFA program.⁸ PBGC's failure to provide responsive materials is unacceptable, and as a result, the Committee must now resort to compulsory process.

House Rule X vests the Committee with the jurisdiction and responsibility to "review and study on a continuing basis the application, administration, execution, and effectiveness of laws and programs addressing subjects within its jurisdiction." This includes the Committee's obligation to investigate PBGC's implementation of the SFA program and to make legislative changes, as warranted. Attached is a subpoena compelling you to provide the documents and communications delineated in the attached schedule of documents no later than 12:00 p.m. on April 9, 2024.

Sincerely,



Virginia Foxx
Chairwoman

Enclosure

⁵ *Id.*

⁶ Letter from Gail Sevin, Leg. Aff. Div., PBGC, to Chairwoman Foxx & Chairman Good, at 2 (Mar. 11, 2024) ("On Wednesday, March 6, 2024, PBGC sent individual letters to 62 plans out of 67 total plans that received SFA, and for which we do not already have full census data, to collect and audit the census data used by the plans in their SFA applications.")

⁷ DEP'T. OF LAB., EMP. BENEFITS SECURITY ADMIN., STATEMENT OF ENFORCEMENT POLICY REGARDING RETURN OF EXCESS SPECIAL FINANCIAL ASSISTANCE PAYMENTS (Mar. 14, 2024), <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/retirement/statement-of-enforcement-policy-regarding-return-of-excess-sfa-payments>.

⁸ Letter from Chairwoman Foxx & Chairman Good to Gordon Hartogensis, Dir., PBGC (Feb. 26, 2024), *supra* note 2; H.R. 7135, 118th Cong. (2024).

SUBPOENA

**BY AUTHORITY OF THE HOUSE OF REPRESENTATIVES OF THE
CONGRESS OF THE UNITED STATES OF AMERICA**

To Gordon Hartogensis, Director, Pension Benefit Guarantee Corporation

You are hereby commanded to be and appear before the
Committee on Education and Workforce

of the House of Representatives of the United States at the place, date, and time specified below.

- to produce the things identified on the attached schedule touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of production: 2176 Rayburn House Office Building, Washington, D.C. 20515

Date: April 9, 2024

Time: 12:00 p.m.

- to testify at a deposition touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

- to testify at a hearing touching matters of inquiry committed to said committee or subcommittee; and you are not to depart without leave of said committee or subcommittee.

Place of testimony: _____

Date: _____

Time: _____

To The U.S. Marshals Service, or any authorized Member or congressional staff

_____ to serve and make return.

Witness my hand and the seal of the House of Representatives of the United States, at

the city of Washington, D.C. this 26 day of March, 2024.

Attest:

Kevin F. McCulley

Clerk

Virginia Foxe
Chairman or Authorized Member

PROOF OF SERVICE

Subpoena for

Gordon Hartogenesis, Director, Pension Benefit Guarantee Corporation

Address 445 12th Street, SW, Washington, DC 20024-2101

before the Committee on Education and Workforce



*U.S. House of Representatives
118th Congress*

Served by (print name) Mindy Barry

Title General Counsel, Committee on Education and the Workforce

Manner of service _____

Date _____

Signature of Server _____

Address _____

In accordance with the attached Schedule instructions and definitions, you, Gordon Hartogensis, Director, Pension Benefit Guaranty Corporation (PBGC), are required to produce all documents and communications described below in your possession, custody, or control, from January 20, 2021, to present, in complete and unredacted form:

1. All documents and communications referring or related to the legal justification PBGC used for paying out taxpayer funds in excess of the amount authorized by the American Rescue Plan Act.
2. All documents and communications referring or related to actions, procedures, decisions, and positions PBGC has taken or plans to take to quantify similar overpayments already paid to other multiemployer pension plans.
3. All documents and communications referring or related to the process PBGC used to recoup Special Financial Assistance (SFA) overpayments from plans that received funds.
4. All documents and communications referring or related to the process that PBGC used to suspend the approval of SFA applications until it could 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.
5. All documents and communications referring or related to PBGC's conclusion that the funds described in the "PBGC Legal Analysis dated June 30, 2023" were properly paid and should not be subject to recovery actions.
6. All documents and communications exchanged between PBGC and the Office of Management and Budget (OMB) referring or related to payment integrity or compliance with OMB Circular A-123, Appendix C, in the development of its SFA rules.
7. All documents and communications referring or related to the Central States Pension Fund or any other multiemployer pension plan returning SFA overpayments to PBGC.
8. All documents and communications exchanged between PBGC and other offices within the Executive Branch referring or related to a potential mechanism for recovery of SFA overpayments, including legislation.
9. All documents and communications exchanged between PBGC and other offices within the Executive Branch referring or related to why PBGC believes it does not have authority to recover SFA overpayments, including through the existing authority in PBGC regulation section 4262.12(g) (29 C.F.R. § 4262(g)).

Instructions for Responding to a Subpoena

U.S. House Committee on Education and the Workforce

118th Congress

1. In complying with the U.S. House Committee on Education and the Workforce's (Committee) subpoena, produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You also should produce documents that you have a legal right to obtain, that you have a right to copy, or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Subpoenaed records, documents, data, or information should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization, or person denoted in the subpoena has been or is also known by any other name or alias than herein denoted, the subpoena should be read also to include the alternative identification.
3. 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.
4. Documents produced in electronic form should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - a. All documents derived from word processing programs, email applications, instant message logs, spreadsheets, and wherever else practicable should be produced in text searchable Portable Document Format ("pdf") format. Spreadsheets should also be provided in their native form. Audio and video files should be produced in their native format, although picture files associated with email or word processing programs should be produced in .pdf format along with the document it is contained in or to which it is attached.
 - b. Document numbers in the load file should match document Bates numbers and 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.
 - d. All electronic documents produced should include the following fields of metadata specific to each document:

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

- e. If any of the subpoenaed information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), consult with the Committee staff to determine the appropriate format in which to produce the information.
6. Documents produced to the Committee should include an index describing the contents of the 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.
7. Documents produced in response to the subpoena should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when the subpoena was served.
8. When producing documents, identify the paragraph in the Committee's schedule to which the documents respond.
9. Do not refuse to produce documents on the basis that any other person or entity also possesses non-identical or identical copies of the same documents.
10. This subpoena 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, should be produced immediately upon subsequent location or discovery.
11. All documents should be Bates-stamped sequentially and produced sequentially. Each page should bear a unique Bates number.
12. Two sets of documents should be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets should be delivered to the Majority Staff in Room 2176 of the Rayburn House Office Building or provided electronically to Majority General Counsel at mindy.barry@mail.house.gov and the Minority Staff in Room 2101 of the Rayburn Office Building or provided electronically to Minority General Counsels at ilana.brunner@mail.house.gov and christian.haines@mail.house.gov.
13. If compliance with the subpoena cannot be made in full by the date specified in the subpoena, compliance should be made to the extent possible by that date. Notify Committee staff as soon as possible if full compliance cannot be made by the date specified in the subpoena and provide an explanation for why full compliance is not possible by that date.

14. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
15. In the event that a portion of a document is redacted on the basis of alleged privilege, provide a privilege log containing the following information concerning any such redaction: (a) the privilege asserted; (b) the location of the redaction in the document; (c) the general subject matter of the redacted material; (d) the date, author, and addressee of the document, if not readily apparent; and (e) the relationship of the author and addressee to each other.
16. If any document responsive to this subpoena was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject, and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
17. If a date or other descriptive detail set forth in this subpoena referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the subpoena, produce all documents which would be responsive as if the date or other descriptive detail were correct.
18. In the event a complete response requires the production of classified information, provide as much information in unclassified form as possible in your response and send all classified information under separate cover via the Office of Senate Security.
19. Unless otherwise specified, the period covered by this subpoena is from October 7, 2023, to the present.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

21. The term “document” in the subpoena, the schedule, or the instructions 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 calls, meetings or other communications, 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.

22. The term “communication” in the subpoena, the schedule, or the instructions means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face to face, in meetings, by telephone, mail, telex, facsimile, email (desktop or mobile device), computer, text message, instant message, MMS or SMS message, regular mail, telexes, discussions, releases, delivery, or otherwise.
23. The terms “and” and “or” in the subpoena, the schedule, or the instructions should be construed broadly and either conjunctively or disjunctively to bring within the scope of this subpoena 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.
24. The terms “person” or “persons” in the subpoena, the schedule, or the instructions mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, businesses or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
25. The term “identify” in the subpoena, the schedule, or the instructions, 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.
26. The terms “referring” or “relating” in the subpoena, the schedule, or the instructions, when used separately or collectively, with respect to any given subject, mean anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is pertinent to that subject in any manner whatsoever.
27. The term “employee” in the subpoena, the schedule, or the instructions means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, or subcontractor.
28. The terms “you” and “your” in the subpoena, the schedule, or the instructions refer to the Pension Benefit Guaranty Corporation; yourself; your firm, corporation, partnership, association, department, or other legal or government entity, including all subsidiaries, divisions, branches, or other units thereof; and all members, officers, employees, agents, contractors, and all other individuals acting or purporting to act on your behalf, including all present and former members, officers, employees, agents, contractors, and all other individuals exercising or purporting to exercise discretion, make policy, and/or

decisions.

29. 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 subagency.
30. 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.
31. The term “*American Rescue Plan Act*” means Public Law 117-2 (2021) and the underlying provision in Section 9704 of Public Law 117-2 (2021) that amended the *Employee Retirement Income Security Act* to include “Sec. 4262. Special Financial Assistance By The Corporation.”
32. The term “independent death search” means the “independent death audit” as discussed on page 2 in the letter dated March 11, 2024, from Gail Sevin, Legislative Affairs Division, Pension Benefit Guaranty Corporation, to The Honorable Virginia Foxx, Chairwoman, Committee on Education and the Workforce, and The Honorable Bob Good, Chairman, Subcommittee on Health, Employment, Labor, and Pensions.
33. The term “Central States Pension Fund” means the Central States, Southeast and Southwest Areas Pension Fund including (i) its predecessors, successors, wholly or partly owned direct or indirect subsidiaries, divisions, affiliates, boards, and joint ventures and any (ii) any current, past, or future fiduciaries, trustees, partners, officers, directors, employees, representatives, or agents of any of the above entities.
34. The term “PBGC Legal Analysis dated June 30, 2023” means the legal analysis referred to in footnote one of Appendix II of the Pension Benefit Guaranty Corporation’s Office of Inspector (PBGC OIG) General Report Number EVAL-2024-01 titled “Management Alert: Deceased Participants in Central States’ Special Financial Assistance Calculation” dated November 1, 2023, and the legal analysis referred to in the PBGC OIG Memorandum titled “Closure of RCF 2023-05-02” dated September 27, 2023.
35. The term “OMB Circular A-123, Appendix C” means the OMB Circular A-123’s Appendix C which contains requirements for payment integrity and is located at <https://www.whitehouse.gov/wp-content/uploads/2021/03/M-21-19.pdf>.

#