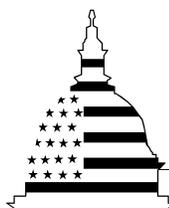


August 2009

PENSION BENEFIT  
GUARANTY  
CORPORATION

More Strategic  
Approach Needed for  
Processing Complex  
Plans Prone to Delays  
and Overpayments



G A O

Accountability \* Integrity \* Reliability



Highlights of [GAO-09-716](#), a report to congressional requesters

### Why GAO Did This Study

As the insurer of over 29,000 private sector defined benefit plans, the Pension Benefit Guaranty Corporation (PBGC) may be required to assume responsibility for the plans of a growing number of companies filing bankruptcy due to the recession. Concerns about PBGC's benefit determination process, reductions in benefits due to guarantee limits, and workers' retirement security overall led the chairmen and ranking members of the Senate Health, Education, Labor, and Pensions Committee and the Senate Finance Committee, among others, to ask GAO to study:

- (1) how long it takes PBGC to make benefit determinations;
- (2) the extent of overpayments on retirees' benefits;
- (3) how well PBGC communicates with participants; and
- (4) the timeliness and accessibility of the appeals process.

To conduct this study, GAO reviewed PBGC policies and procedures, analyzed automated data and case files, and interviewed PBGC officials and certain associations, participants, and their representatives from among those most affected by the process.

### What GAO Recommends

GAO is recommending that PBGC develop a better strategy for processing complex plans in order to reduce delays, minimize overpayments, improve communication with participants, and make the appeals process more accessible. PBGC generally agreed with the recommendations.

[View GAO-09-716](#) or [key components](#). For more information, contact Barbara Bovbjerg at (202) 512-7215 or [bovjberg@gao.gov](mailto:bovjberg@gao.gov).

## PENSION BENEFIT GUARANTY CORPORATION

### More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments

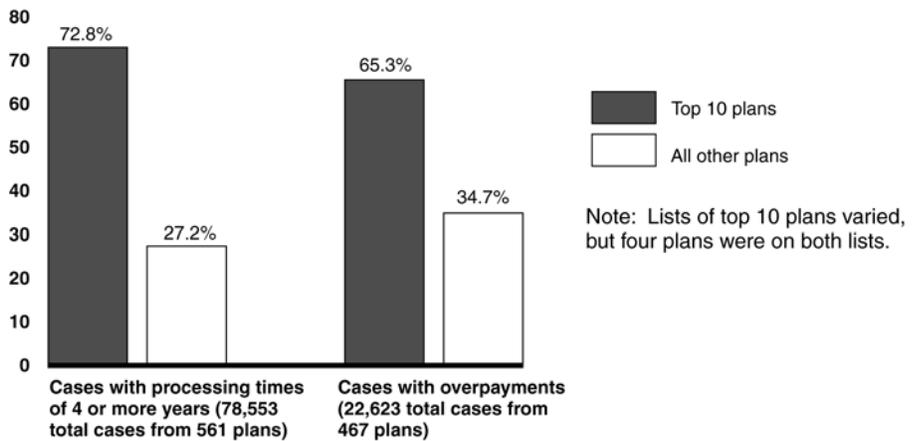
#### What GAO Found

GAO's review of plans terminated with insufficient funds and trusted by PBGC during fiscal years 2000 through 2008 revealed that a small number of complex plans—especially those with large numbers of participants affected by limits on guaranteed benefit amounts—accounted for most cases with lengthy delays and overpayments.

**Processing times.** PBGC completed most participants' benefit determinations in less than 3 years, but required more time—up to 9 years—to process determinations for complex plans and plans with missing data. Nearly three-quarters of the lengthiest processing times were associated with individuals in just 10 of the 1,089 plans reviewed. Although PBGC has taken steps to shorten this process, its initiatives do not address the longest delays.

**Overpayments.** Although many participants are affected by sizable benefit reductions, the vast majority are not affected by overpayments. Moreover, nearly two-thirds of overpayments involved participants in just 10 plans. In cases with overpayments, PBGC's policy generally requires participants' benefits to be reduced by no more than 10 percent until the amount owed is repaid, but due to participants' ages, the full amount often is never recouped.

**Figure: A Small Number of Complex Plans Account for Most Delays and Overpayments**  
Percentage of cases



Source: GAO analysis of PBGC data on participants in plans terminated and trusted during fiscal years 2000 through 2008.

**Communication.** PBGC has made efforts to improve communication, but key correspondence often did not meet the needs of those in complex plans. For example, when the process was lengthy, PBGC did not communicate with some participants for several years. When the benefit calculation was complicated, PBGC did not provide explanations that could be understood without further information or assistance.

**Appeals.** Since restructuring the appeals process in 2003, PBGC has reduced the average amount of time needed to decide an appeal by almost a year. However, the agency does not readily provide key information that would be helpful to participants in deciding whether to pursue an appeal.

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## Abbreviations

AFL-CIO	American Federation of Labor and Congress of Industrial Organizations
ERISA	Employee Retirement Income Security Act of 1974
OPM	Office of Personnel Management
PBGC	Pension Benefit Guaranty Corporation
RTI	Republic Technologies International
SPARR	Small Plan Average Recovery Ratio
SSA	Social Security Administration
SSI	Supplemental Security Income
USWA	United Steelworkers of America

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United States Government Accountability Office  
Washington, DC 20548

August 17, 2009

### Congressional Requesters

The Pension Benefit Guaranty Corporation (PBGC) insures the retirement income of nearly 44 million workers in over 29,000 private-sector defined benefit plans. In the event that a company files for bankruptcy and can no longer fund the benefits promised by its pension plan, the plan may be terminated and PBGC may be required to step in and assume responsibility for paying the pension benefits owed by that plan, subject to certain legal limits. Determining the correct benefit amounts following a plan's termination is a complex process that can take years to complete. Concerned about potential reductions to retirees' benefits, workers' retirement security in the face of economic volatility, as well as PBGC's actions with respect to the recent termination of the Republic Technologies International (RTI) pension plans, you asked GAO to assess PBGC's procedures for determining benefits following the termination of underfunded plans. Specifically, this report addresses the following:

- the length of time it takes PBGC to make benefit determinations and the causes for delays;
- the extent to which overpayments affect retirees' benefits;
- PBGC's communication with participants to keep them informed of possible impacts on their benefits; and
- the length of time it takes to obtain an appeals decision and the accessibility of the appeals process.

To address these topics, we reviewed PBGC policies and procedures, analyzed automated data, and interviewed PBGC officials knowledgeable of various stages of the benefit determination process. We reviewed several reports issued by PBGC's Office of Inspector General in the late 1990s that provided a description of the benefit determination process

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before 2000,<sup>1</sup> and focused our study on plans trusted since then—that is, during fiscal years 2000 through 2008.<sup>2</sup> PBGC provided electronic data on all the participants in these plans and the status of their benefits as of February 2009. We also examined plan and participant documents in PBGC’s image processing system, selecting for review those most affected by delays and overpayments. For details on our methodology, see appendix I. Finally, we spoke with personnel from employee associations and advocacy groups who have been involved in some plan terminations, including the Pension Rights Center, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), and the United Steelworkers, and with participants and their representatives from six large terminated plans: Reliance Group Holdings, Reliance Insurance Company, RTI-United Steelworkers’ of America (USWA), RTI-USS/KOBE, United Air Lines (ground employees), and United Air Lines (pilots). For a complete list of organizations and participants contacted, see appendix II.

We conducted this performance audit between October 2008 and August 2009, in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

PBGC was created as a government corporation by the Employee Retirement Income Security Act of 1974 (ERISA)<sup>3</sup> to help protect the retirement income of U.S. workers with private-sector defined benefit

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<sup>1</sup>PBGC Office of Inspector General, *The Length of Time It Has Taken PBGC To Issue Initial Determination Letters*, 99-3/23128-2, (Washington, D.C.: March 1999); PBGC Office of Inspector General, *Improvements Are Needed To Achieve Better Efficiency And Effectiveness In PBGC’s Benefit Determination Process*, 99-2/23128-1 (Washington, D.C.: March 1999); PBGC Office of Inspector General, *Pension Plan Participants Impacted by Delays In Initial Determination Letter Issuance*, 99-1/23128-3 (Washington, D.C.: March 1999); and PBGC Office of Inspector General, *Audit of PBGC’s Response to Certain Questions Concerning Appeals of PBGC Initial Determinations of Pension Benefits*, 98-10/23131 (Washington, D.C.: September 1998).

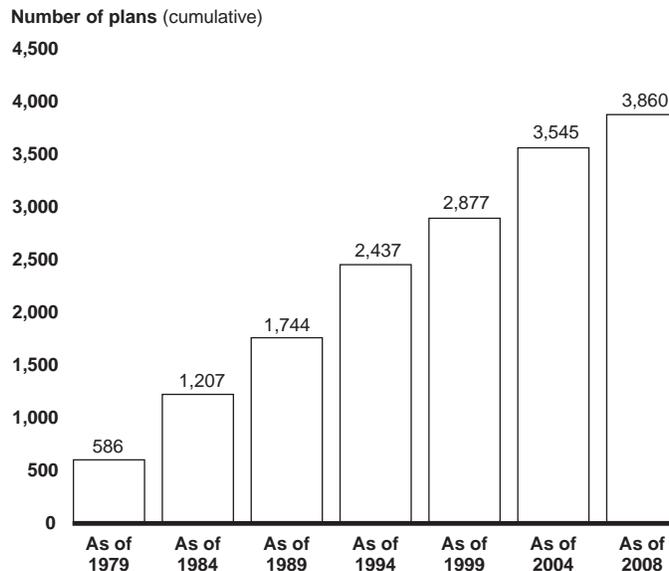
<sup>2</sup>PBGC administers two separate insurance programs: a single-employer program and a multiemployer program. This report focuses solely on plans in PBGC’s single-employer program, as PBGC will provide assistance, but will not trustee multiemployer plans that are unable to pay guaranteed benefits when due.

<sup>3</sup>Pub. L. No. 93-406, 88 Stat. 829 (codified, as amended, at 29 U.S.C. §§ 1001-1461).

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plans by guaranteeing their benefits up to certain legal limits. PBGC administers two separate insurance programs for these plans: a single-employer program and a multiemployer program. The single-employer program covers about 34 million participants in about 28,000 plans. The multiemployer program covers about 10 million participants in about 1,500 collectively-bargained plans that are maintained by two or more unrelated employers. If a multiemployer pension plan is unable to pay guaranteed benefits when due, PBGC will provide financial assistance to the plan, usually a loan, so that retirees continue receiving their benefit. However, if the sponsor of a single-employer plan is in financial distress and does not have sufficient assets to pay promised benefits, the plan will be terminated and PBGC will likely become the plan's trustee, assuming responsibility for paying benefits to participants as they become due, up to the guaranteed benefit limits. As of the end of fiscal year 2008, PBGC had terminated and trusteesd a total of 3,860 single-employer plans (see fig. 1). The single-employer program is financed through premiums paid by the plan sponsors, recoveries from the companies formerly responsible for the plans, and investment income from the assets that PBGC acquires when it assumes control of a plan. A three-member Board of Directors, consisting of the Secretaries of the Commerce, Labor, and Treasury, is charged with providing policy direction and oversight of PBGC's finances and operations.

**Figure 1: Growth in Number of Single-Employer Plans under PBGC Trusteeship (1975-2008)**



Source: GAO analysis of PBGC data, 1975-2008.

## PBGC’s Pension Insurance Program Has Been Designated “High Risk”

We designated PBGC’s single-employer pension insurance program as “high risk” in 2003, including it on our list of major programs that need urgent attention and transformation.<sup>4</sup> The program remains a high-risk concern due to an ongoing threat of losses from the terminations of underfunded plans. Financially, PBGC’s accumulated deficit totaled \$33.5 billion at the end of the second quarter of fiscal year 2009, a \$22.5 billion increase since the end of fiscal year 2008. Additionally, as we concluded in a recent report, PBGC’s governance structure and strategic management need improvement. We found that PBGC’s Board of Directors is limited in its ability to provide policy direction and oversight, and recommended that the board be expanded.<sup>5</sup> Further, in two additional reports, we concluded

<sup>4</sup>GAO, *Pension Benefit Guaranty Corporation Single-Employer Insurance Program: Long-Term Vulnerabilities Warrant “High Risk” Designation*, [GAO-03-1050SP](#) (Washington, D.C.: July 23, 2003).

<sup>5</sup>GAO, *Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, [GAO-07-808](#) (Washington, D.C.: July 6, 2007).

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that PBGC lacks a strategic approach to its acquisition and human capital management needs.<sup>6</sup>

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## The Benefit Determination Process

Under the single-employer program, if a company's pension plan has inadequate assets to pay all promised benefits, plan sponsors meeting certain criteria can voluntarily terminate a plan through a "distress" termination.<sup>7</sup> PBGC may also decide to terminate an underfunded plan involuntarily to protect plan assets,<sup>8</sup> and PBGC must terminate a plan if assets are insufficient to pay benefits currently due. In all these situations, PBGC generally becomes the trustee of the plan and assumes responsibility for paying benefits to the participants as they become due. Determining participants' benefit amounts following termination, however, is a complex process (see fig. 2). It begins with gathering extensive data on plans and individuals' work and personnel histories, and determining who is eligible for benefits under a plan, which can be complicated if the company or plan has a history of mergers, elaborate structure, or missing data. It requires understanding plan provisions that vary from plan to plan and can be numerous, applying the guarantee limitations to each individual's benefit, and valuing plan assets and liabilities. If the participant is already retired, or retires before the process is complete, PBGC makes payments to the retiree based on an estimate of the final benefit amount. Once the process is complete, PBGC notifies each participant of the final benefit amount through a "benefit determination letter." In cases with a final benefit that is greater than the estimated amount, retirees are likely due a backpayment for having been underpaid, which PBGC will repay in a lump sum, with interest. In cases with a final benefit that is less, the retirees are likely to have received an

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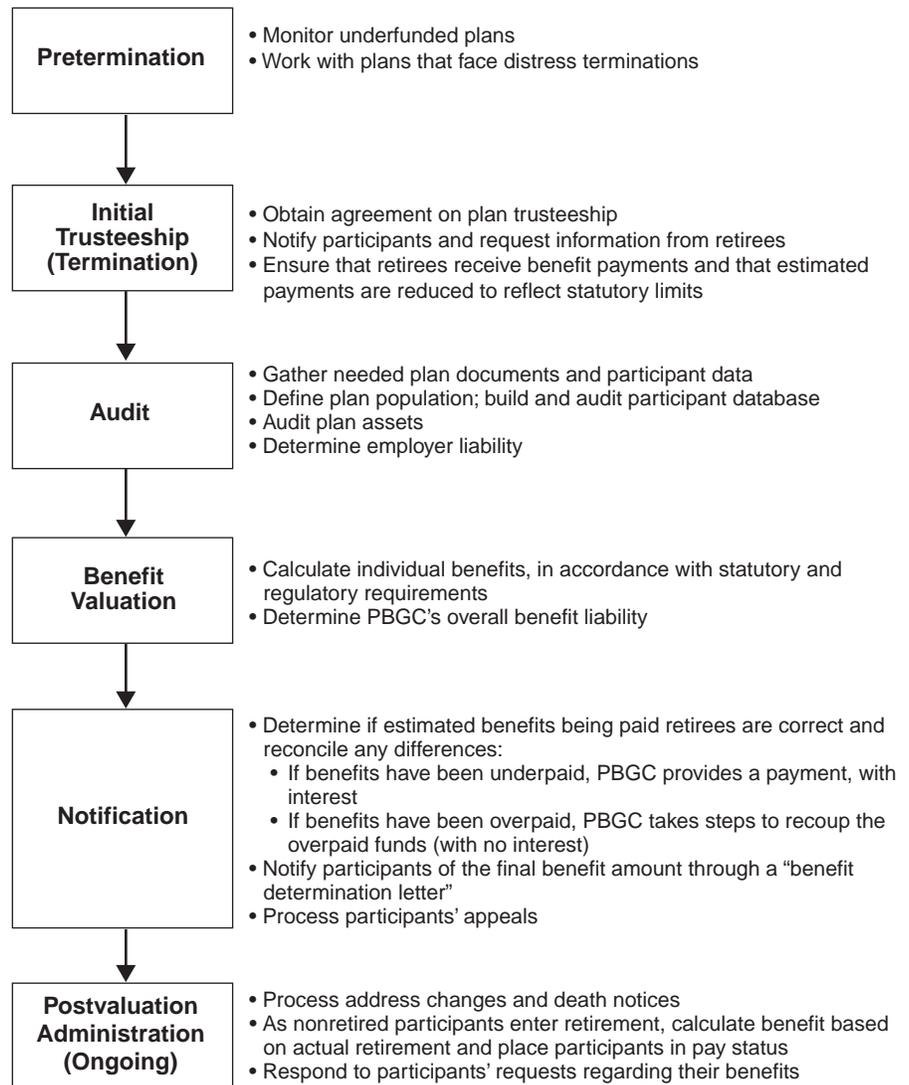
<sup>6</sup>GAO, *Pension Benefit Guaranty Corporation: Some Steps Have Been Taken to Improve Contracting, but a More Strategic Approach Is Needed*, [GAO-08-871](#) (Washington, D.C.: August 18, 2008); and GAO, *Pension Benefit Guaranty Corporation: A More Strategic Approach Could Improve Human Capital Management*, [GAO-08-624](#) (Washington, D.C.: June 12, 2008).

<sup>7</sup>At least one of the following criteria must be met in order for PBGC to approve a distress termination filing: (1) liquidation in bankruptcy (Chapter 7) or insolvency proceedings; (2) reorganization in bankruptcy (Chapter 11); (3) a company will be unable to continue to stay in business unless its plan is terminated; or (4) unreasonable, burdensome pension costs caused solely by a decline in workforce. 29 U.S.C. § 1341(c)(2)(B).

<sup>8</sup>PBGC may initiate involuntary terminations for several reasons, including if PBGC's loss from that plan may be expected to increase unreasonably if the plan is not terminated. 29 U.S.C. § 1342(a).

overpayment, which they then must repay to PBGC, with no added interest.

**Figure 2: PBGC's Benefit Determination Process**



Source: GAO analysis of PBGC documents.

## Guarantee Limits, Ceased Accruals, and Overpayments Can Reduce Benefits

When single-employer plans are terminated without sufficient assets to pay all promised benefits, PBGC guarantees participants' benefits only up to certain limits, specified under statute in ERISA and related regulations. Participants whose benefits exceed these limits may have their benefits reduced to the guaranteed amounts, unless the plan has sufficient assets to pay the nonguaranteed portion of their benefits, either all or in part.<sup>9</sup> These guarantee limits are commonly referred to as the maximum limit, the phase-in limit, and the accrued-at-normal limit (see table 1).<sup>10</sup> One group often affected by the application of these limits is made up of those who take early retirement. The maximum limit is lowered for each year a person retires before age 65. Also, supplemental benefits—which are typically provided to early retirees as a bridge to when they become eligible for Social Security benefits—are eliminated or greatly reduced by the accrued-at-normal limit. Because many steelworkers and airline pilots retire before reaching age 65, retirees in these industries are hit particularly hard by the application of such limits.

**Table 1: Types of Guaranteed Benefit Limits under ERISA**

Type of limit	Description
Maximum limit	The guaranteed benefit cannot exceed the statutory maximum, adjusted annually, at the time the plan terminates. In 2009, the maximum is \$54,000 per year for a person retiring at age 65 and with no survivor benefit (that is, a single-life annuity). The maximum is lower for those retiring under age 65 or with a survivor benefit. 29 U.S.C. § 1322(b)(3); 29 C.F.R. § 4022.24 (2009).
Phase-in limit	The guaranteed benefit cannot include any benefit increase implemented through a plan amendment that was made within 1 year of the date of the plan termination. For benefit improvements that became effective more than 1 year but less than 5 years prior to the plan's termination, the guaranteed amount is the larger of 20 percent of the benefit increase or \$20 per month of the increase for each full year the increase was in effect. 29 U.S.C. § 1322(b)(1) and (7); 29 C.F.R. § 4022.25 (2009).
Accrued-at-normal limit	The monthly guaranteed benefit cannot be greater than the monthly benefit provided as a straight-life annuity (that is, a periodic payment for the life of the retiree, with no additional payments to survivors) available at the plan's normal retirement age. The portion of any combined early retirement benefit and supplemental benefit that exceeds the normal retirement age straight life annuity is eliminated by this provision. 29 C.F.R. § 4022.21 (2009).

Source: ERISA, PBGC's implementing regulations, and related documents.

<sup>9</sup>The process for determining how the plan's assets are distributed among the plan's participants is detailed in ERISA. For a description of the allocation process, see appendix III.

<sup>10</sup>For a description of guarantee limits from a participant's perspective, see appendix IV.

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PBGC's benefits are set based on the amounts accrued as of the date of plan termination.<sup>11</sup> When a plan terminates, accruals cease.<sup>12</sup> As a result, participants who are not yet retired are likely to receive lower benefits than what they would have received under their plans if they had been able to accrue further benefits. For example, if participants work for the plan sponsor beyond the termination date, the additional service would not be credited under that plan. The dollar amount or salary level used to calculate benefits is also frozen at the level in effect as of the date of plan termination, which can cause a participant's benefit to be substantially less than it would have been if the plan had continued. Participants can also be affected when a plan's termination date occurs before they become eligible for certain benefits, such as early retirement or disability benefits.

For retirees and participants who retire prior to completion of the benefit determination process, estimated benefits are provided that can sometimes be greater than the final benefit amount, causing an overpayment. In addition to having benefits reduced due to the guarantee limits, some retirees' have their monthly benefit reduced once their benefit amount is finalized because they are required to repay an overpayment that was incurred while receiving estimated benefits.

Most participants of terminated plans receive the full amount of the benefits they have earned under their plans, according to studies conducted by PBGC. PBGC does not systematically track the number of participants affected by guaranteed benefit limits or how much these limits affect benefit amounts; however, PBGC has conducted two studies

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<sup>11</sup>The termination date is set by either the plan sponsor or PBGC, depending on which party initiates the plan termination, except in cases where the plan sponsor has filed for bankruptcy. In cases of Chapter 7 or Chapter 11 bankruptcy, the Pension Protection Act of 2006 required that the date on which a plan sponsor files for bankruptcy be used as the date of plan termination for purposes of determining the amount of guaranteed benefits and the allocation of assets. Pub. L. No. 109-280, § 404(a), 120 Stat. 280, 928 (codified at 29 U.S.C. § 1322(g)). If the plan sponsor and PBGC disagree over the date of termination, a court determines the date.

<sup>12</sup>GAO has issued several reports on the related topic of "plan freezes," which limit some or all future pension accruals for some or all plan participants. For example, see GAO, *Defined Benefit Pensions: Survey Results of the Nation's Largest Private Defined Benefit Plan Sponsors*, [GAO-09-291](#) (Washington, D.C.: Mar. 30, 2009); GAO, *Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, [GAO-08-817](#) (Washington, D.C.: July 21, 2008); GAO, *Private Pensions: Timely and Accurate Information Is Needed to Identify and Track Frozen Defined Benefit Plans*, [GAO-04-200R](#) (Washington, D.C.: Dec. 17, 2003); and GAO, *Pension Plans: Benefits Lost When Plans Terminate*, [T-HRD-92-58](#) (Washington, D.C.: Sept. 24, 1992).

**PBGC Findings on the Impact of Guaranteed Benefit Limits**

	1999 study	2008 study
Number of plans included in study	22	125
Number of participants included in study	90,448	525,700
Percentage receiving full plan benefits	94.5%	84.1%
Percentage receiving reduced benefits	5.5%	15.9%
Average amount of reduction (as percentage of participant's benefit) for those with a reduction	16%	28%

Source: PBGC.

on the impact of these limitations in a sample of large plans. The first study, issued in 1999, found 5.5 percent of participants were affected by the limits; and the second study, issued in 2008, found that 15.9 percent were affected. PBGC attributed the increase in the numbers affected in the second study to the inclusion of several large plans from the steel and airlines industries. Officials noted that these plans were more likely to be subject to the limits. Steel plans often provide supplements and allow retirement with unreduced benefits after 30 years of service, regardless of age, and airline plans often allow pilots to retire early and receive generous benefits. Across the different plans in both studies, participants' reductions in benefits varied widely, from less than 5 percent for some, to over 50 percent for others.

## Most Benefit Determinations Are Completed within 3 Years, but Cases with Complex Plans and Missing Data Take Longer

PBGC makes most benefit determinations within 3 years after assuming trusteeship of a plan. However, complex plans and plans with missing data have required more time to process—up to 9 years, in some instances (the full time span we examined). Most of the benefit determinations that took 4 or more years to process were for participants<sup>13</sup> in just 10 plans. PBGC officials have taken steps to shorten the benefit determination process, although their initiatives have focused on ways to expedite processing of straightforward cases instead of the processing of difficult cases prone to delays.

<sup>13</sup>Throughout this report, the term “participant” refers to the primary participant (that is, the individual who earned the pension), or if deceased, the beneficiary. For a more detailed explanation of our methodology, see appendix I.

## PBGC Makes Most Benefit Determinations in Less than 3 Years

### Length of Time from Trusteeship to Final Benefit Determination

#### Determinations completed (824,718 total):

Maximum:	9.2 years
Minimum:	-0.5 years <sup>a</sup>
Mean:	2.5 years
Median:	2.6 years

#### Determinations pending, as of February 2009 (232,554 total):

Maximum:	9.3 years
Minimum:	0.3 years
Mean:	3.3 years
Median:	3.6 years

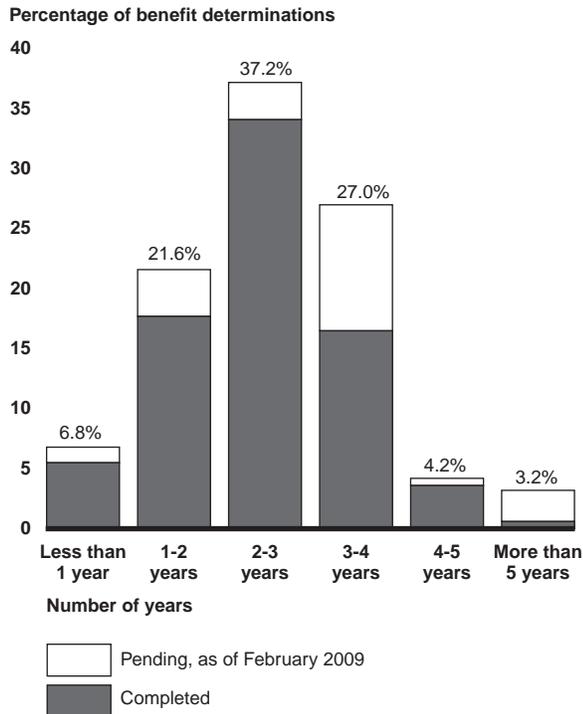
Source: GAO analysis of PBGC data for participants in plans trusteeed during fiscal years 2000 through 2008.

<sup>a</sup>In two atypical cases, PBGC made benefit determinations prior to trusteeship.

PBGC becomes the trustee of most plans within 10 months of termination and, once it has assumed trusteeship of a plan, the agency takes slightly less than 3 years to process most benefit determinations and notify participants of their final benefit amount. Following a PBGC Inspector General study, issued in 2000, that found that the majority of benefit determination letters were sent more than 5 years after PBGC assumed trusteeship of the plan, PBGC set a corporate goal of issuing benefit determinations, on average, no more than 3 years after trusteeship.<sup>14</sup> Our review of the benefit determinations for participants in plans trusteeed during fiscal years 2000 through 2008 indicates that PBGC has moved processing times closer to this mark. Nearly three-quarters of the benefit determinations completed for these plans were made in 3 years or less (see fig. 3). The vast majority of all completed benefit determinations—95 percent—was processed in less than 4 years' time. On the other hand, in February 2009, more than 200,000 participants were awaiting benefit determinations that had been pending for an average of 3 or more years.

<sup>14</sup>PBGC Office of Inspector General, *Pension Plan Participants Impacted by Delays In Initial Determination Letter Issuance*, 99-1/23128-3 (Washington, D.C.: March 1999).

**Figure 3: Number of Years to Process Benefit Determinations**



Source: GAO analysis of PBGC data on length of time, from trusteeship to final benefit determination, for participants of plans terminated and trusteeed during fiscal years 2000 through 2008 (1,057,272 total).

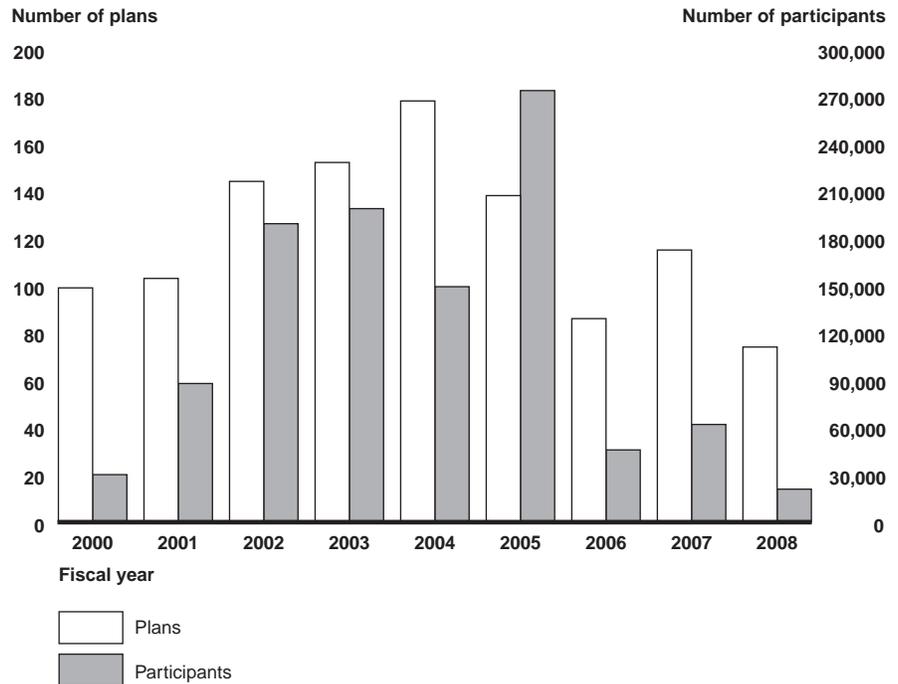
PBGC practice is to prioritize benefit determinations based on an individual's retirement status at the time of plan termination. For example, participants who were retired when their plans terminated received their benefit determinations in about 2.0 years after PBGC assumed trusteeship, on average. Participants who had separated from employment under the plan but had some vested benefits at the time of the termination received benefit determinations in about 2.8 years, on average. All other participants received benefit determinations in about 2.8 years, on average.

## Workload Affects Processing Times

Processing times have varied considerably in any given year, due in part to the number and size of plans being terminated and trusteeed that year (see fig. 4). The number of plans trusteeed by PBGC peaked during 2002, 2003, and 2004, although the largest influx of participants occurred in 2005. The average number of participants per plan is slightly fewer than 1,000, but some plans have many more. For example, the Bethlehem Steel plan has

nearly 93,000 participants, the LTV Steel (hourly) plan has about 68,000 participants, and the Kaiser Aluminum and Chemical Corp. (hourly) plan has just over 10,000 participants.

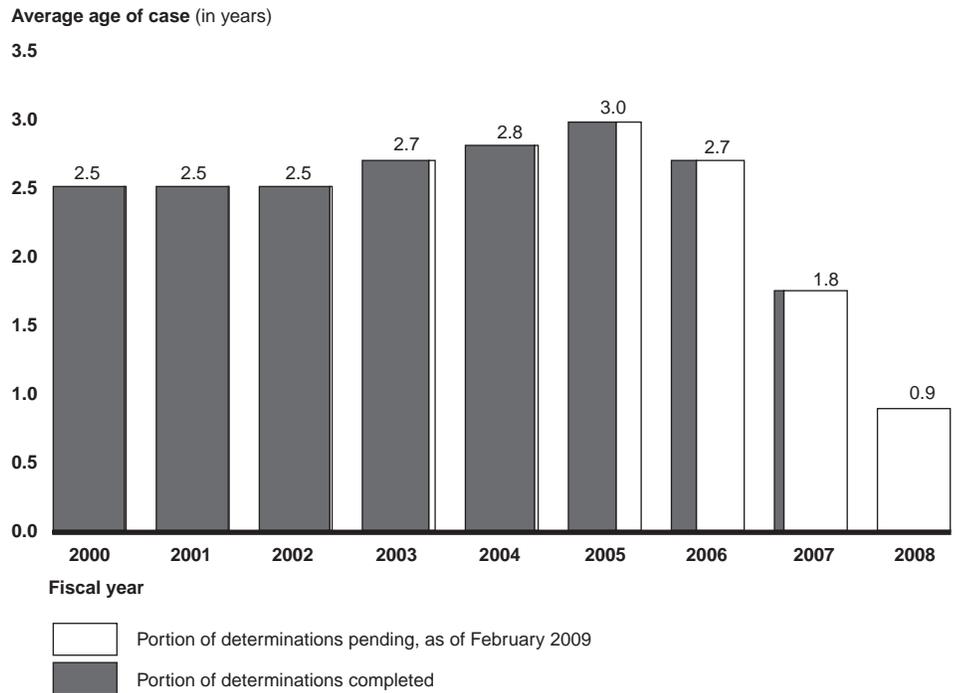
**Figure 4: Number of Participants and Plans Terminated and Trusteed, by Fiscal Year (2000-2008)**



Source: GAO analysis of PBGC data on participants in plans terminated and trusteed during fiscal years 2000 through 2008 (1,057,272 participants and 1,089 plans total).

We found that processing times were longer, on average, for those plans trusteed in peak years (see fig. 5). For example, processing times generally increased during fiscal years 2002 through 2005.

**Figure 5: Average Processing Time, by Fiscal Year of Trusteeship**

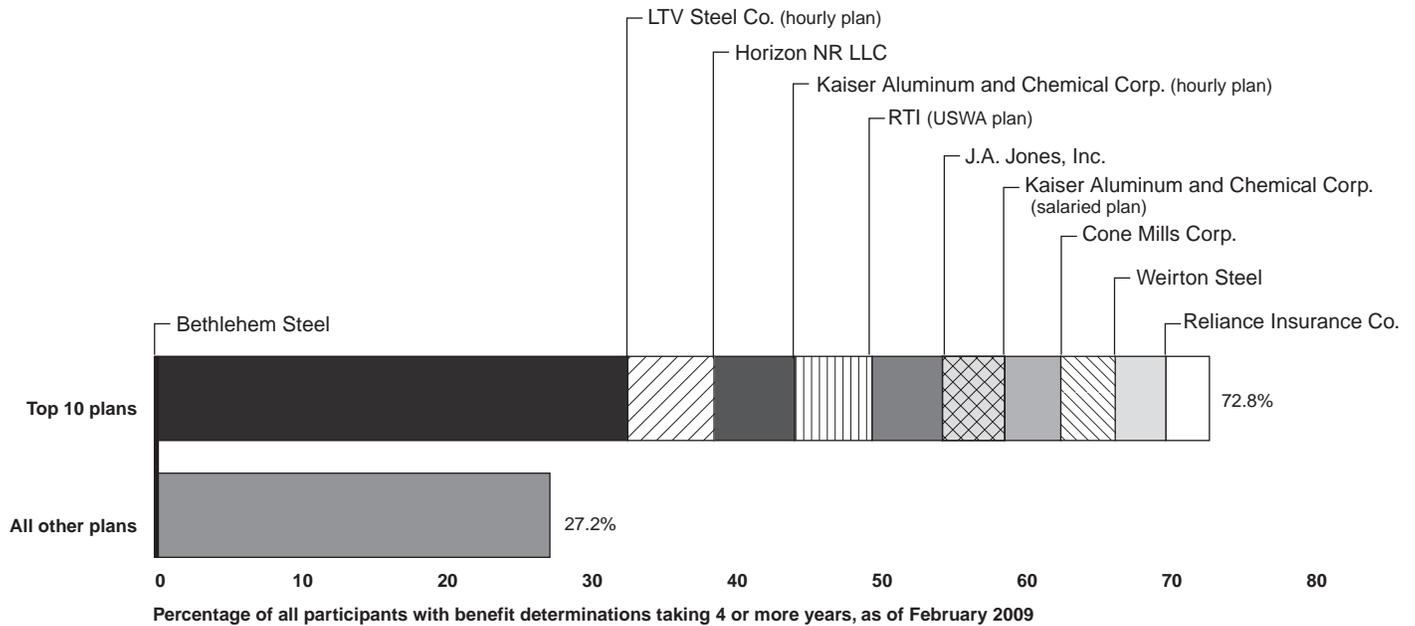


Source: GAO analysis of PBGC data on length of time, from trusteeship to final benefit determination, for participants of plans terminated and trusteeed during fiscal years 2000 through 2008 (1,057,272 total).

### Plan Complexity and Missing Data Also Adds to Processing Times

Processing times have also increased with the complexity of plans and the unavailability of needed data. Obtaining plan documents, gaining complete participant data, and interpreting plan requirements often present difficulties. Nevertheless, nearly three-quarters of the benefit determinations that took 4 or more years to process were for participants in just 10 of the 1,089 plans terminated and trusteeed during fiscal years 2000 through 2008, as shown in figure 6. These plans were sponsored by four steel companies, two mining companies, one other manufacturer, an insurance company, and a construction company.

**Figure 6: Ten Plans with the Greatest Number of Benefit Determinations Taking 4 Years or Longer**



Source: GAO analysis of PBGC data on participants of plans terminated and trustee during fiscal years 2000 through 2008. (Cases taking 4 or more years: 78,553 total participants from 561 plans.)

### Plan Complexity

We found that a variety of factors had contributed to the complexity of the 10 plans with these lengthier determinations. One key factor was the level of difficulty of calculating benefits. For some, a history of company or plan mergers, or other unusual or complicated benefit formulas, made determining a participant’s benefit more difficult and added to processing time. For example, the pension plan of Bethlehem Steel Corporation—which still had some benefit determinations pending as of February 2009, nearly 6 years after the plan’s trusteeship—is a product of more than 100 company mergers, consolidations, and/or spinoffs. There are eight major parts to this plan, and three of the parts have separate hourly and salaried plans. In general, if a plan has undergone a merger, participants may be covered by different plan provisions, or participants may transfer between component plans, such as moving from an hourly to salaried plan. According to PBGC, the Bethlehem Steel plan required an analysis of more than 30 sets of plan documents to make benefit determinations for the nearly 93,000 participants.

Unusual or numerous plan provisions have also made benefit determinations more challenging and, therefore, time consuming. The

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Cone Mills Corporation plan consists of three merged plans. In 2001, the company's plans for long-distance drivers and salaried workers were merged into its plan for hourly workers. Yet, distinct provisions in each of the original plans remained in place for their respective members. It required time for PBGC to understand which participants belonged to each group and the provisions associated with each participant.

In other cases, an elaborate plan structure has also made it challenging for PBGC to determine the availability of plan assets and to distribute them across different categories of participants' benefits in the asset allocation process.<sup>15</sup> The Kaiser Aluminum and Chemical Corp. had 26 direct and indirect subsidiaries in its controlled group and in bankruptcy; 36 subsidiaries not in bankruptcy; and 13 operating subsidiaries and joint ventures not in the controlled group or in bankruptcy.<sup>16</sup> Kaiser had eight defined benefit plans, seven of which were trustee by PBGC, and the assets for these eight plans were commingled, which added complexity to PBGC's audit of the plans' net worth.

Benefit guarantee limits contributed to the complexity of several plans. PBGC must determine, on a participant-by-participant basis, the level of benefits each is entitled to under ERISA and related regulations.<sup>17</sup> According to PBGC officials, these calculations can be time consuming when there are a large number of participants receiving benefit adjustments as a result of these limits. For example, there were several benefit rate increases in the LTV Steel (hourly) plan that went into effect within 5 years of the plan's termination and, therefore, were subject to the phase-in limit. These included a plant shutdown supplement for certain participants, a surviving spouse's special payment, and additional

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<sup>15</sup>For a description of the allocation process, see appendix III.

<sup>16</sup>A controlled group is a group of businesses under common control that is treated as a single employer for the purposes of determining the extent of employer liability.

<sup>17</sup>As noted previously (see background section), PBGC's 2006 study of these limits found that participants in steel and airline industry plans are often subject to the guarantee limits because these plans provide generous benefits and allow their participants to retire at relatively young ages.

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continuous service for participants affected by certain layoffs.<sup>18</sup> In total, there were 35,279 participants whose benefits were affected by the phase-in limitation under this plan, as well as 4,850 affected by the accrued-at-normal limit, and 3,644 affected by the maximum limit.<sup>19</sup>

Qualified domestic relations orders have also contributed to the complexity of making a benefit determination. When participants have domestic relations orders related to child support, alimony payments, and marital property rights, some portion of, or all of, a participant's pension benefits may be assigned to a spouse, former spouse, child, or other dependent. In these cases, PBGC must determine whether the order is a qualified domestic relations order, a process which can entail a detailed review of legal documents. Although nearly two-thirds of the plans we examined did not have any participants with qualified domestic relations orders, several of the ten plans associated with the lengthiest processing times had numerous participants with such orders. For example, the Bethlehem Steel plan included 904 participants with qualified domestic relations orders, and the LTV Steel (hourly) plan included 609.

## Missing Data

The condition of plan and participant data is also a key factor affecting processing times. When a plan terminates, PBGC tries to obtain all plan documents, such as the original plan, plan amendments, and, if applicable, negotiated agreements with unions, as well as personnel and payroll data. To do so with the termination of a large, complex plan, PBGC auditors have usually visited sponsor locations to collect data and contacted the plan's actuarial staff, administrators, or others responsible for managing the plan's assets. When the plan's administration is decentralized, this process involves collecting records from different locations in the course of many site visits. For example, over a 2-month period, a PBGC audit team visited Bethlehem Steel facilities in Sparrows Point, MD; Bethlehem, PA; Coatesville, PA; Steelton, PA; Lackawanna, NY; and Burns Harbor, IN

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<sup>18</sup>In a more recent plan termination, PBGC did not provide shutdown benefits for two RTI plans (USWA and USS/KOBE). These plans' termination dates—which were ultimately decided in court and set prior to the shutdown date—precluded some participants from qualifying for shutdown benefits. (For a more detailed discussion of the RTI plan terminations, see appendix V). However, in accordance with the Pension Protection Act of 2006, PBGC's guarantee of shutdown benefits is now phased in from the date of plan shutdown. If this requirement had been in place at the time of the RTI case, the date of plan termination would not have been significant for determining benefits. § 403, 120 Stat. 928.

<sup>19</sup>Participants may be subject to more than one type of limitation, so numbers cannot be added together to determine a total.

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to collect records. Data were not always available in electronic form. The Bethlehem Steel Lackawanna facility, for example, did not use an electronic recordkeeping system, so PBGC collected more than 20,000 hard-copy employee record cards from the site.

According to PBGC officials, plan sponsors have frequently diverted resources away from actuarial and information technology services during rough financial periods, causing records maintenance to deteriorate before PBGC is able to take over the plan. In such situations, data become difficult to locate, key personnel with knowledge of the data leave the organization, and data systems may be inaccessible. Additionally, the data PBGC is able to collect has often been incomplete. As a result, PBGC actuaries sometimes have to make assumptions about which plan provisions apply to whom when estimating the plan's assets and liabilities, and calculating individual participants' benefits. When processing the Weirton Steel plan, for example, PBGC was required to calculate benefits for some participants whose average monthly earnings were missing. A PBGC official told us that they sometimes use collective bargaining agreements and board resolutions, even if their legality cannot be verified, if those documents provide the best information available.

To avoid situations where data are missing or in poor condition, PBGC officials told us they generally try to obtain data prior to taking over a plan. In most situations, they will quickly try to assess the location and condition of plan records, and take steps to preserve the records in the event that PBGC takes over the plan. However, officials acknowledged that negotiations between PBGC and plan sponsors prior to trusteeship have sometimes deterred them from using their access authority<sup>20</sup> to secure records until after actually becoming the trustee. For example, the RTI case involved a lengthy legal deliberation over the plan's termination date, and while this litigation was ongoing prior to trusteeship, PBGC's case processing division did not pursue documents from RTI prior to trusteeship, on the advice of the agency's and company's counsel at the time. PBGC officials noted that when aspects of termination are being contested, it is not uncommon for company officials to be unwilling to share information until after PBGC's trusteeship is official. In the RTI case, by the time the court case was resolved and PBGC became the trustee, a new owner had assumed control of the personnel files, documentation

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<sup>20</sup>29 U.S.C. §§ 1302, 1303, and 1310.

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needed to determine benefit entitlement had been purged, and only one person remained with working knowledge of the RTI pension plan.<sup>21</sup>

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### New Initiatives to Shorten the Benefit Determination Process Do Not Address Longest Delays

PBGC officials have taken steps to shorten the benefit determination process, although these initiatives do not specifically address complex cases. Rather, PBGC officials said that their initiatives are intended to process straightforward cases more quickly so that staff can concentrate on those that are difficult. Specifically, PBGC adopted a simplified data validation process to speed the processing of plans with fewer than 200 participants. They decided that the validation process used for large plans, which involves a full electronic data audit and a review of all data elements by an auditor, was unnecessary for smaller plans, which have fewer participants and less data, making any errors highly visible. PBGC has also prioritized benefit determinations for retirees who have been receiving benefits for some time. Such determinations are more straightforward because these retirees are less likely to have their benefits reduced by the guarantee limits. These efforts help PBGC to avoid unnecessary delays in straightforward cases. PBGC does not, however, target its changes on complex plans with benefit determinations most prone to lengthy delays. Nor does PBGC set benchmarks for complex cases or goals for decreasing the processing time for these cases. Officials acknowledged that the current tracking of timeliness focuses on average processing times only.

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<sup>21</sup>Of the cases with the lengthiest processing times, the RTI plan was the only one with more than 1 year between termination and trusteeship. PBGC officials regarded the circumstances of this case—specifically, the protracted legal battle over the plan’s termination date—to be rare. Moreover, the circumstances giving rise to this debate are unlikely to be repeated due to changes made by the Pension Protection Act of 2006, which provides for the phase-in of PBGC’s guarantee from the date of a plant shutdown, and for the date on which a sponsor files for bankruptcy to be used as the date of plan termination for the purposes of determining the amount of guaranteed benefits and the allocation of assets. §§ 403 and 404, 120 Stat. 928 and 928.

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## Overpayments Have Been Infrequent and Mostly Concentrated in a Few Complex Plans

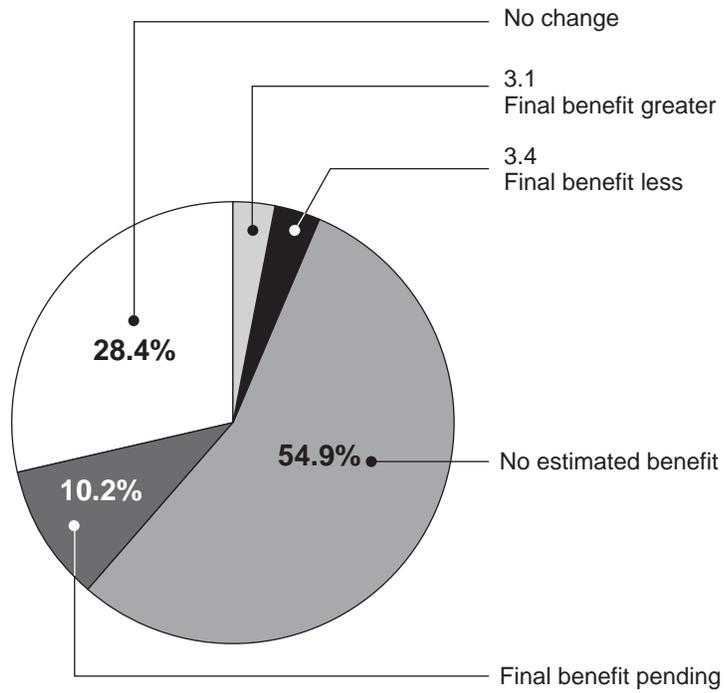
Overpayments have been infrequent and the impact on benefit amounts has been generally minor. As with the cases that required lengthy processing times, most of the cases in which overpayment occurred have been concentrated in a small number of plans. These tended to be large plans with large numbers of retirees, as well as plans whose total asset values were difficult to determine or anticipate. Meanwhile, PBGC's requirement for repayment of overpayments is highly amortized, thereby limiting the amount of money that PBGC will recoup. By comparison, some other federal agencies have more aggressive repayment policies, but more liberal waiver policies for cases of hardship.

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## Overpayments Are Infrequent and Generally Have Limited Impact on Benefits

Overpayments generally occur when a plan retiree receives estimated benefits while PBGC is in the process of making benefit determinations and the final benefit amount is less than the estimated benefit amount. Our review of plans terminated and trustee during fiscal years 2000 through 2008 found that this happened only in a small percentage of cases (see fig. 7). Of the 1.1 million participants in plans terminated and trustee during fiscal years 2000 through 2008, more than half were not yet retirees and, therefore, did not receive estimated benefits before the benefit determination process was complete. For most who were retirees, the estimated benefit amount received did not change when finalized. Of those whose benefit amount did change when finalized, about half received a benefit that was greater and half received a benefit that was less (about 3 percent of total participants in these plans, overall).

**Figure 7: Proportion of Participants with Estimated Benefits that Differ from Final Benefits**



Source: GAO analysis of PBGC data on participants of plans terminated and trusteed during fiscal years 2000 through 2008 (1,057,272 cases total).

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### Recoupment Cases

<b>Number of participants with overpayments:</b>	<b>22,623</b>
<b>Estimated total amount of overpayments:</b>	<b>\$100,000,000</b>
Maximum:	over \$150,000
Minimum:	under \$1
Mean:	about \$4,400
Median:	about \$2,500
<b>Estimated total amount recouped, as of February 2009:</b>	<b>\$13,000,000</b>
<b>Monthly benefit reductions due to recoupments:</b>	
Maximum:	\$930
Minimum:	under \$1
Mean:	about \$24
Median:	about \$16
<b>Monthly benefit reductions as percentage of payment:</b>	
Maximum:	50%
Minimum:	less than 1%
Mean:	about 3%
Median:	about 2%

Source: GAO analysis of PBGC data on participants in plans terminated and trustee during fiscal years 2000 through 2008.

According to PBGC data on recoupments, 22,623 participants in plans terminated and trustee during fiscal years 2000 through 2008 owed PBGC for overpayments. These amounts varied widely—from less than \$1 to more than \$150,000—but our analysis of PBGC data suggests that most owed less than \$3,000.<sup>22</sup> Since in most cases PBGC recoups no more than 10 percent of a participant’s final benefit each month,<sup>23</sup> the impact on the participant’s benefit was limited. Per individual, the median benefit reduction due to recoupment was about \$16 a month, or about 3 percent of the monthly payment amount, on average. Per case, the median amount that had been repaid, as of February 2009, was \$365.

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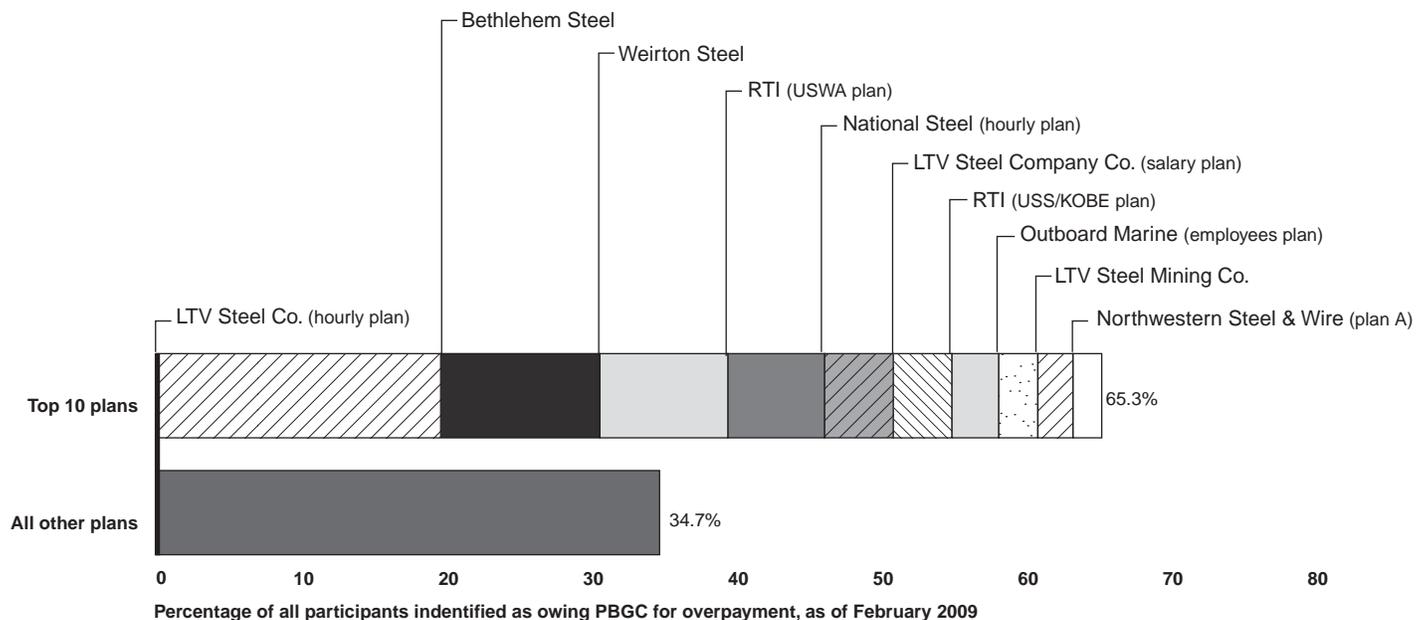
<sup>22</sup>Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see appendix I.

<sup>23</sup>PBGC regulations generally limit benefit reductions to the greater of (a) 10 percent of the participant’s monthly benefit, or (b) the amount in excess of the participant’s “maximum guaranteeable benefit.” 29 C.F.R. § 4022.82 (2009). In addition, the regulation provides that PBGC may use its discretion to recoup overpayments by other methods. 29 C.F.R. § 4022.81(a) (2009). According to the *PBGC Operating Policy Manual*, these other methods include situations when there is a delay in implementing the recoupment; when the overpayment was due to (a) the participant providing false information, (b) a failure to pay an alternate payee under a qualified domestic relations order, or (c) a change in disability benefits; or when the recoupment was initiated by the plan sponsor prior to termination. In these situations, the amount of the reduction may be increased to 25 percent, 40 percent, or some other percentage of the benefit, and, in certain situations, the entire benefit may be suspended.

## A Few Plans Accounted for Most Cases with Overpayments

Of the 1,089 plans terminated and trusted during fiscal years 2000 through 2008, just 10 accounted for more than 65 percent all cases of overpayment (see fig. 8).<sup>24</sup> Nine of these 10 plans were sponsored by steel companies trusted by PBGC from 2001 to 2003. When PBGC assumes responsibility for a plan, retirees generally continue to receive an estimated benefit that is the same as what they had been receiving, unless PBGC determines they are subject to any of the guarantee limits, and that their estimated payments need to be reduced to reflect these limits. In such cases, overpayments can occur for two basic reasons: (1) there is a period of time when the retiree's estimated benefit has not yet been reduced to reflect applicable limits; and (2) the retiree's estimated benefit is adjusted to reflect applicable limits, but the estimate is still greater than the benefit amount that is ultimately determined to be correct once the benefit determination process is complete.

**Figure 8: Ten Plans with the Greatest Number of Participants Owing PBGC for Overpayments**



Source: GAO analysis of PBGC data on participants of plans terminated and trusted during fiscal years 2000 through 2008. (Cases with overpayments: 22,623 total participants from 467 plans.)

<sup>24</sup>Four of these 10 plans also were among the 10 plans with the greatest number of benefit determinations taking 4 years or longer to process (see fig. 6).

As summarized in table 2, of the 10 plans with the greatest number of overpayments, 9 also had large numbers of participants, including many who were subject to the guarantee limits and who were retired and receiving estimated benefits.<sup>25</sup> In addition, all these plans had assets or recoveries allocated to pay some, but not all, of retirees' nonguaranteed benefits, which are generally some of the first nonguaranteed benefits to be paid from the allocation process—before, for example, future retirees' nonguaranteed benefits.<sup>26</sup> According to PBGC officials, uncertainty about how much a plan's assets or recoveries will be able to contribute toward a retiree's benefit that the agency does not guarantee, under law, can make it difficult to calculate an accurate benefit amount until the benefit determination process is complete.

**Table 2: Characteristics of 10 Large, Complex Plans**

Plan sponsor (name) <sup>b</sup>	Total number of participants	Number subject to guarantee limits <sup>a</sup>			Number receiving estimated benefits	Sufficient assets or recoveries to pay some nonguaranteed benefits <sup>c</sup>	Total number of participants with overpayments
		Accrued-at-normal limit	Maximum limit	Phase-in limit			
LTV Steel Co. (hourly plan)	68,124	4,850	3,644	35,279	46,007	Yes—retirees' nonguaranteed benefits partially paid	4,442
Weirton Steel	9,757	1,342	2,482	672 <sup>d</sup>	6,915	Yes—retirees' nonguaranteed benefits partially paid	1,997
RTI (USWA plan)	4,289	941	11	1,693	2,257	Yes—retirees' nonguaranteed benefits partially paid	1,508
National Steel (hourly plan)	10,433	40	1,113	-- <sup>e</sup>	6,272	Yes—retirees' nonguaranteed benefits partially paid	1,075
LTV Steel Company Inc. (salary plan)	13,450	45	7	1,401	9,606	Yes—retirees' nonguaranteed benefits partially paid	913

<sup>25</sup>Bethlehem Steel could not be included in the table because the valuation of that plan was not complete as of February 2009, and the number of participants subject to guarantee limits had not yet been documented.

<sup>26</sup>For a description of the allocation process, see appendix III.

Plan sponsor (name) <sup>b</sup>	Total number of participants	Number subject to guarantee limits <sup>a</sup>			Number receiving estimated benefits	Sufficient assets or recoveries to pay some nonguaranteed benefits <sup>c</sup>	Total number of participants with overpayments
		Accrued-at-normal limit	Maximum limit	Phase-in limit			
RTI (USS/KOBE plan)	2,299	874	51	7	1,356	Yes—retirees' nonguaranteed benefits partially paid	730
Outboard Marine (employees plan)	9,744	780	159	-- <sup>e</sup>	4,797	Yes—retirees' nonguaranteed benefits partially paid	614
LTV Steel Mining Co.	3,416	643	381	1,099	2,383	Yes—retirees' nonguaranteed benefits partially paid	548
Northwestern Steel & Wire (plan A)	3,576	1,023	533	0	2,812	Yes—retirees' nonguaranteed benefits partially paid	450
US Airways Inc. (pilots' plan)	7,050	51	5,171	175	1,501	Yes—retirees' nonguaranteed benefits partially paid	111

Source: GAO analysis of PBGC data.

<sup>a</sup>Participants may be subject to more than one type of limitation, so the three columns cannot be added together to determine a total.

<sup>b</sup>Bethlehem Steel was not included in this table because valuation of the plan was not complete and data on numbers subject to the guarantee limits were not available as of February 2009.

<sup>c</sup>For further details about the allocation process, see appendix III.

<sup>d</sup>This represents the number of participants subject to the phase-in limitation who were in pay status as of the date of plan termination. No data were readily available on the number of participants subject to this limitation who retired (or will retire) after the date of plan termination.

<sup>e</sup>Various changes in benefits were described as subject to the phase in limit in these plans (9 for National Steel and 17 for Outboard Marine), but no listings were provided to indicate the number of participants affected.

Finally, a lengthy benefit determination process can exacerbate the impact of inaccurate estimates. The total overpayment can become substantial over a long period of time, even if the difference between the estimated and final monthly benefit amount is small. Also, when plans are terminated involuntarily, there can sometimes be lengthy delays before PBGC reduces estimated benefits to reflect guarantee limits. Among the 10 plans with the most overpayments, all were involuntary terminations, and we found that the length of time between plan termination and when estimated benefits were adjusted to reflect guarantee limits varied widely. In some cases, estimated benefits were adjusted within 9 months of termination, while in other cases, more than 6 years elapsed before estimated benefits were adjusted—and in general, the longer the delays, the larger the

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overpayments. In contrast, when plans are terminated at the sponsor's request as distress terminations, the sponsors are required to impose these limits themselves so that participants' benefits are reduced as of the date of termination.<sup>27</sup>

The following examples illustrate how the above circumstances can combine to create large numbers of cases with overpayments among some plans. We chose these two case examples from among the cases sampled in the 10 plans with the most overpayments to illustrate the two types of situations that can result in overpayments outlined previously: (1) delayed adjustment of the retiree's estimated benefit to reflect applicable limits; and (2) timely, but inaccurate adjustment of the retiree's estimate to reflect applicable limits. We also chose these two case examples specifically because they had similar benefit amounts prior to termination.

In the RTI (USWA) plan, four large groups of participants were affected by the guarantee limits: (1) those with six different types of temporary supplements who were subject to the accrued-at-normal limit;<sup>28</sup> (2) former Bar Technologies employees whose benefits were subject to a \$20 or 20 percent phase-in limit;<sup>29</sup> (3) those who retired or will retire with 30 years of service and were subject to a \$60 or 60 percent phase-in; and (4) those who retired under the early retirement program whose benefits were subject to a \$60 or 60 percent phase-in. To explore the impact of guarantee limits on the retirees who incurred overpayments, we randomly selected 5 participants from among the 1,693 subject to the phase-in limits, and found

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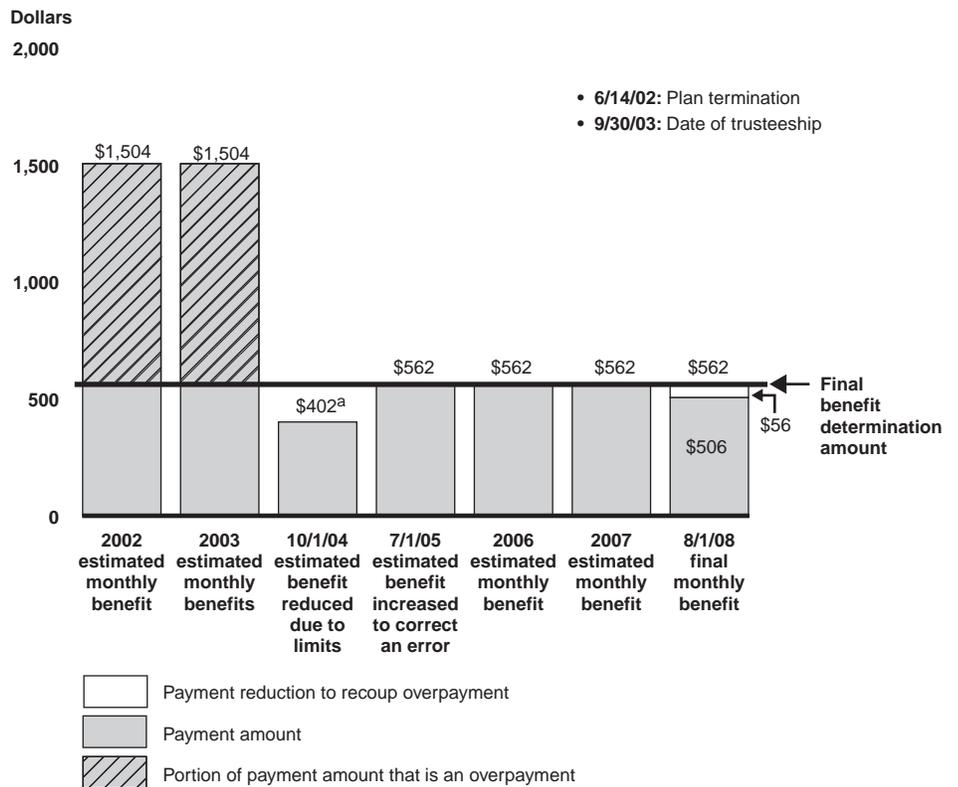
<sup>27</sup>29 U.S.C. § 1341(c)(3)(D)(ii)(IV). For example, although our analysis of plan data suggests that several airline plans were among those most affected by guarantee limits, no airline plans were among those most affected by overpayments (see appendix VI). This is likely due to the fact that these airlines plans were terminated at the sponsor's request. For example, according to agency officials, the Delta Air Lines plan and the US Airways pilots' plan were both distress terminations at the sponsor's request, and both reduced participants' benefits as of the date of plan termination, as required by law. Thus, we found that although nearly 60 percent of the individuals associated with the US Airways pilots' plan were affected by one or more of the guarantee limits (see table 2), US Airways was not on the list of 10 plans most affected by overpayments. (For a more detailed discussion of the US Airways plan termination, see appendix V.)

<sup>28</sup>The accrued-at-normal limit requires guaranteed benefits to be calculated based on retirement at the plan's normal retirement age, with no survivor benefits. (For more details, see the background section, table 1.)

<sup>29</sup>Phase-in limits apply to benefit changes made during the 5 years before plan termination. The term "\$20 or 20 percent" means the larger of either \$20 per month or 20 percent of the benefit increase for each full year the increase was in effect prior to termination. (For more details, see the background section, table 1.)

that all were retirees who had their benefits reduced between 19 percent and 63 percent from what they had been receiving prior to termination. In three cases, estimated benefits were adjusted to reflect these limits 2.3 years after termination, but in two cases, estimated benefits were not adjusted prior to issuance of the benefit determination letter, which took place more than 6 years after termination. Due to inaccurate estimated benefits that were paid over several years, all 5 had incurred overpayments, ranging from \$2,000 to about \$57,000, and as a result, their benefits were reduced further to recoup the amounts owed. The effect on the monthly payment for one RTI retiree, whom PBGC overpaid by a total of \$23,986, is illustrated in fig. 9. Ultimately, this retiree's payment was reduced by almost two-thirds, mostly due to guarantee limits.

**Figure 9: The Effect of Plan Termination on One RTI Retiree's Monthly Payment**



Source: GAO analysis of PBGC data.

<sup>a</sup>During this time, participant was underpaid. Amount of underpayment was factored in when the total net overpayment amount was determined.

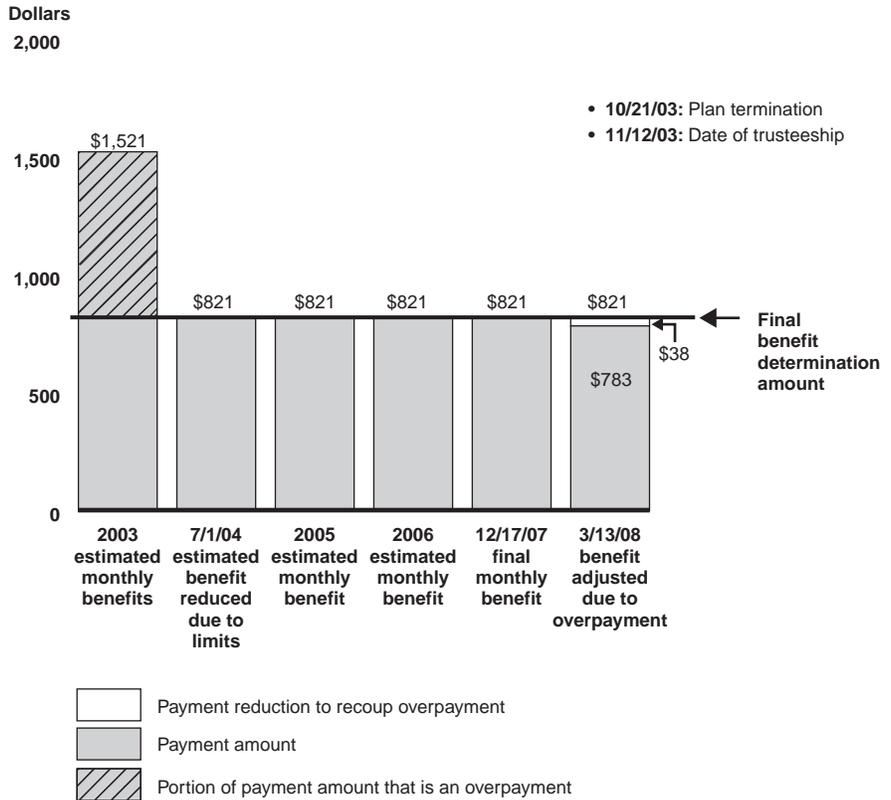
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In the Weirton plan, we found that large numbers of participants were subject to the accrued-at-normal limits due to various plan supplements; and were subject to the phase-in limits due to seven different types of benefit changes made within 5 years before plan termination. In addition, many participants were subject to the maximum limits, in part due to the aggregate limit imposed when participants are involved in more than one terminated plan<sup>30</sup> (many participants had worked previously for National Steel or other PBGC-trusted plans). We reviewed five randomly-selected cases from among the 1,342 participants who were subject to the accrued-at-normal limit and found that all were retirees whose estimated benefit amounts were inaccurate for at least part of the period involving the benefit determination process. One case resulted in an underpayment, with a backpayment of \$11,384 to be repaid to the retiree, plus interest. The other four cases resulted in overpayments, ranging from \$3,200 to just over \$6,000, with reductions in benefit payments to recoup the amounts overpaid. In contrast with the five sampled RTI participants, these retirees had their benefits adjusted more quickly to reflect the guarantee limits so that, in general, the overpayments incurred were not as large. All 4 had their estimated benefits adjusted in less than 9 months. The effect on one Weirton retiree's monthly payment is illustrated in fig. 10. As was the case in the previous example, this retiree's payment was ultimately reduced by nearly one-half, mostly due to guarantee limits.

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<sup>30</sup>29 U.S.C. § 1322(b).

**Figure 10: The Effect of Plan Termination on One Weirton Retiree's Monthly Payment**



Source: GAO analysis of PBGC data.

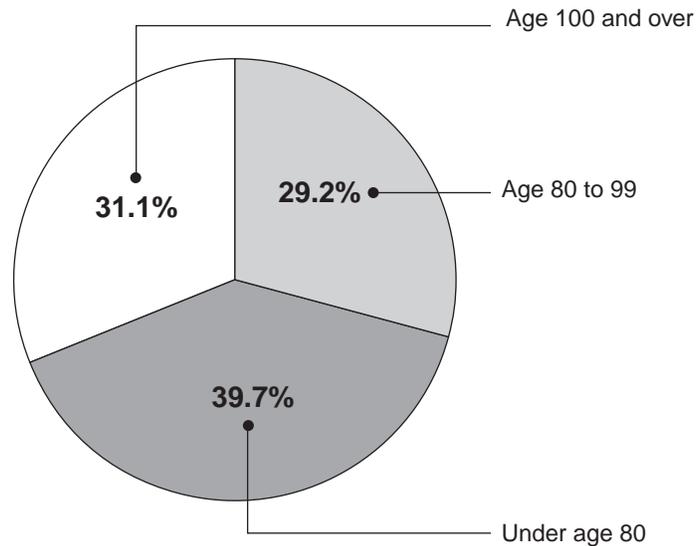
## Large Overpayments Are Not Fully Recouped

Our analysis of PBGC data indicates that the overpayments owed by participants in plans terminated and trustee'd during fiscal years 2000 through 2008 totaled almost \$100 million.<sup>31</sup> Of this total, about \$14 million had been recouped, as of February 2009. However, PBGC's policy of restricting recoupments to no more than 10 percent of the recipient's monthly benefit results in a long amortization period for collection that can well exceed normal life expectancies. Since PBGC does not pursue further collection from a participant's estate once a retiree (and any

<sup>31</sup>Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see appendix I.

beneficiary) dies, a substantial portion of these overpayments will not be repaid. Specifically, for many of these individuals, it was projected that these debts would not be fully paid until the year 2099, PBGC's arbitrary cutoff. Nearly 60 percent of those with future recoupments would not finish repaying these debts until the year 2020 and beyond. We analyzed the ages of retirees and/or beneficiaries at their projected end date of recoupment for all cases involving overpayments greater than \$10,000. Although these cases accounted for fewer than 10 percent of those with overpayments, the amounts they owed accounted for more than 40 percent of total recoupments. We found that about 60 percent of these individuals would be age 80 or older, and over 30 percent would be age 100 or older, when their debts to PBGC would be fully repaid (see fig. 11). The life expectancy for those age 65 in 2009 is estimated to be 82 to 87 years.<sup>32</sup>

**Figure 11: Participants' Ages at the End of Recoupment in Cases with Overpayments Greater than \$10,000**



Source: GAO analysis of PBGC data on participants in plans terminated and trustee during fiscal years 2000 through 2008 with recoupments greater than \$10,000 (2,035 cases total).

Note: In 173 of these cases, the end date was the arbitrary cutoff of 2099, so ages at the actual end of recoupment would be greater.

<sup>32</sup>Based on the Social Security Administration's Cohort Life Expectancy Tables for the cohort age 65, as of January 1, 2009, males are projected to live another 16.8 to 18.1 years on average, and females another 19.2 to 20.6 years on average. PBGC uses different tables that project slightly greater life expectancies. In 2009, these tables projected healthy males to live another 19.3 years, and healthy females to live another 21.8 years.

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## Some Federal Agencies Reduce Payments More Aggressively, but Also Grant More Waivers for Overpayments

Once overpayments have been made, finding the right balance between agency fiscal responsibility and fairness to participants can be difficult to achieve. Compared with PBGC's policy on overpayments,<sup>33</sup> federal agencies such as the Social Security Administration (SSA) and the Office of Personnel Management (OPM) generally allow larger reductions to benefits when recouping overpayments, but their policies also give much greater prominence to waivers. PBGC policy stipulates that in cases with an ongoing payment, recoupment of an overpayment may not be waived unless the monthly reduction would be less than \$5.<sup>34</sup> Waivers for hardship are to be considered only in cases for which there is no ongoing payment to the participant. According to the agency's general counsel and subsequent comments from agency officials, since the outset of 2009, PBGC has been receiving hardship waiver requests in recovery cases at more than twice the rate received the prior year.

In contrast, both SSA and OPM policies on overpayments allow hardship consideration for cases with ongoing payments. For overpayment of Social Security benefits, SSA will withhold the full amount of the benefit each month until the overpayment is fully recouped. However, in its fact sheet on overpayments with respect to Social Security benefits and Supplemental Security Income (SSI) benefits, available on its Web site, SSA devotes over half the document to detailing the steps participants should take if they wish to either appeal or request a waiver. For SSI benefits, SSA will withhold 10 percent of the maximum federal benefit rate each month,<sup>35</sup> but the beneficiary can request a lesser withholding amount, subject to SSA approval. Further, if the beneficiary disagrees with the overpayment, he or she can appeal or request that collection be waived.<sup>36</sup>

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<sup>33</sup>PBGC has reserved the right to use its discretion to recoup overpayments by methods other than those specifically set out in its applicable regulation, and may decide not to recoup net overpayments that it determines to be *de minimis*. 29 C.F.R. §§ 4022.81(a) and 4022.82(a)(4) (2009).

<sup>34</sup>In addition, in the last month that benefits are to be reduced to repay an overpayment, PBGC policy allows the final monthly reduction amount to be waived if the remaining balance due is less than the normal monthly reduction amount. 29 C.F.R. § 4022.82(a)(5) (2009).

<sup>35</sup>If no benefits are being paid, SSA can recover the overpayment from federal income tax refunds or from the person's wages and report delinquencies to credit bureaus.

<sup>36</sup>According to SSA's Performance and Accountability Reports, in fiscal year 2007, SSA detected \$5.1 billion in overpayments and collected \$2.5 billion.

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Similarly, OPM’s policy guidance on overpayments of retirement benefits devotes over half the document to the subject of waivers. Under law, OPM is directed not to recover overpayments when the beneficiary bears no responsibility for the overpayment and requiring repayment would be “against equity and good conscience.”<sup>37</sup> In deciding whether to grant a waiver, errors or delays by OPM may be considered, along with financial hardship or any other basis for equity that OPM deems appropriate. Just the last 7 pages of this 34-page policy guide are devoted to policies on collections. These policies call for overpayments of federal employee retirement benefits to be collected in one lump sum, whenever feasible. If one lump-sum payment is not feasible and recoupment is by installment, the payments are to be sufficient in size and frequency to recoup the debt in no more than 3 years. The standard rate of collection is 10 percent of the net monthly annuity or \$50 per month, whichever is higher; but if a 10 percent reduction will not result in full recoupment within 3 years, the reduction rate can be increased up to 50 percent.<sup>38</sup>

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## PBGC’s Initial Communications Drew Praise, but Later Communications Were Sometimes Found Lacking

PBGC’s initial communications with participants shortly following termination—especially its on-site information sessions—generally drew praise from the pension advocacy groups and union representatives we interviewed. These groups’ concerns with PBGC’s communication efforts most often focused on the long gaps between contacts when the benefit determination process was lengthy and the complicated calculations that accompanied letters notifying participants of significant benefit reductions.

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<sup>37</sup>5 U.S.C. § 8346(b).

<sup>38</sup>According to OPM’s annual report, in fiscal year 2008, OPM identified \$194.1 million in overpayments and recovered \$165.9 million (including amounts due from prior years).

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## PBGC's Initial Notification and On-Site Information Sessions Generally Drew Praise

PBGC's first communication with participants is generally a letter informing them that their pension plan has been terminated and that PBGC has become the plan trustee.<sup>39</sup> Shortly thereafter, this letter is generally followed by a more detailed letter with a packet of materials, including a DVD with an introduction to PBGC and frequently-asked questions about how the benefit determination process works. PBGC officials refer to this as a "welcome" package. Additionally, for large plans likely to have many participants affected by the guarantee limits, PBGC will hold on-site information sessions shortly after plan termination. PBGC also operates a customer service center with a toll-free number that participants can call if they have questions, provides a Web site for workers and retirees with detailed information about plans and benefits, and sends participants a newsletter with information about PBGC once or twice per year.<sup>40</sup>

Nearly all pension advocacy groups and union representatives we spoke with<sup>41</sup> praised PBGC's efforts to hold information sessions with the larger plans. One union representative commended PBGC staff for going out into the field to talk with participants and answer questions even though participants are going to be angry. Other union representatives commented that they have been impressed by PBGC's staff for staying at these sessions until they have answered every participant's questions. While these sessions are generally viewed as helpful, some pension rights advocates noted that the information presented is difficult for participants to understand, and may not have the same meaning when talked about in generalities as when they later receive notices concerning their specific benefits. Also, since not everyone may attend these events, these advocates believe it is important for all the information presented at the sessions to be provided through written communication as well.

PBGC's customer service center and Web site received mixed reactions from the pension rights advocates and union representatives we interviewed. A few noted that some of their members reported receiving good service from the toll-free number while others found the service

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<sup>39</sup>Prior to termination, plan sponsors are required to notify participants if the plan is significantly underfunded and warn them that if the plan is terminated, their benefits must be cut back to ERISA levels as of the plan termination date. 29 U.S.C. § 1021.

<sup>40</sup>PBGC produces an annual newsletter for retirees and a biannual newsletter for future retirees.

<sup>41</sup>For a list of these groups, see appendix II.

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frustrating or useless. One union representative said that the center's staff use PBGC terminology, which may be different from the plan and benefit language that is familiar to their members. However, other groups we spoke with were generally more positive regarding their own direct communications with PBGC staff, describing PBGC staff as forthcoming and responsive to their inquiries. Similarly, the groups we interviewed generally found the information on PBGC's Web site useful, but they expressed doubt that this would be the case for most of their members. They noted that many people whose plans are taken over by PBGC are not accustomed to using a computer or do not have access to the internet, and that some do not feel comfortable relying on information they find on a Web site.

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### Long Gaps in Communication until Completion of the Process Raised Some Concerns

Following the initial contacts, PBGC generally does not communicate with participants again until the benefit determination process is complete, which in some cases can stretch into years.<sup>42</sup> Among the participants' files we examined when the benefit determination process took 4 or more years, we found that there often was no contact from PBGC for most of this time. For example, we examined the files of five randomly selected Bethlehem Steel participants whose benefit determinations were still pending as of February 2009,<sup>43</sup> and found that—aside from one instance of an acknowledgment of a form submitted by one participant—PBGC had not communicated with these participants for more than 5 years. The last PBGC-initiated communications were dated late 2003 or early 2004.

Some of the pension advocacy groups and union representatives we spoke with said that these long periods without communication are problematic for participants for several reasons. For example, retirees whose benefits are subject to the guarantee limits but who continue to receive their higher plan-level benefits for long periods of time may come to expect that these higher amounts are permanent, and then they are surprised when—years later—their benefits are suddenly reduced. Even for participants who are not yet receiving benefits, the lack of communication about the likely amount of their final benefits makes it difficult to plan for retirement.

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<sup>42</sup>However, if a participant applies to start benefit payments during this time, communications would be exchanged between PBGC and the participant about the participant's current status, eligibility, and benefit amount, based on the requested retirement date.

<sup>43</sup>For a description of our random selection process, see appendix I.

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Some groups noted that PBGC does not always provide realistic time frames for completing the benefit determination process, and does not periodically update participants on the status of benefit processing. Two groups suggested it would be helpful if PBGC provided updates at least every 6 months.

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### Complicated Benefit Calculations Are Not Adequately Explained

When participants are notified of a payment amount—whether estimated or final—PBGC’s letters generally provide only limited explanations for why the amount may be different from the amount provided under their plan. In complex plans, when benefit calculations are complicated, the letters do not adequately explain why benefits are being reduced, and although benefit statements are generally attached, the logic and math involved can be difficult even for pension experts.

The standard language used in these letters to explain a different estimated amount states: “We have adjusted the amount of your benefit because there are legal limits on how much we can pay.” The standard language used to explain a different final benefit amount states: “Your final monthly benefit of [amount] is the amount that the PBGC is legally allowed to pay you. It was calculated by determining the benefit you are entitled to in your plan and then applying the limits spelled out in federal pension law.” These letters generally provide no specific information about which limits apply or why. However, enclosed with each benefit letter is a detailed attachment that shows the line-by-line calculations leading to the benefit amount, referred to as a “benefit statement.” In the participant files we reviewed, these benefit statements ranged in length from 2 to 8 pages, and were very difficult to understand. In some cases, there were as many as 20 to 30 different line items that required making comparisons between the items to understand the logic of the calculations. (See sample letter provided in appendix VII.)

Some pension advocates and union representatives we spoke with said that they found the explanations in these letters to be too vague and generic, and that the letters did not provide enough information specific to the individual’s circumstances to be helpful. This was especially true in cases where participants were shocked or confused by a large benefit reduction. Moreover, some said they did not think most participants would be able to understand the accompanying benefit statements without additional information and assistance—especially for complex cases, according to one advocate. At the same time, they were generally sympathetic to the difficulty of communicating such complicated information. As one advocate acknowledged, for the letters to be accurate,

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they have to be complicated; this may just be “the nature of the beast.” Nevertheless, they said that PBGC could take some steps to improve the letters. For example, for those likely to incur overpayments, they suggested providing an example of how the recoupment process works. For those with complex benefit statements, they suggested that PBGC provide more text to help explain each step of the calculations, and include referrals to pension rights groups for obtaining additional information and assistance.

In addition, we found a number of errors in the correspondence with participants, although we reviewed only a small sample of letters for participants in certain complex plans. For example, we found a number of cases with corrected benefit determination letters and other correspondence that had been sent to rectify various errors, such as the failure to account for overpayments, or inaccurate end dates for recoupment. We also identified some errors in the payment amounts or other information in the letters that we brought to PBGC’s attention to be corrected.<sup>44</sup>

PBGC has developed more than 500 letter formats—in both English and Spanish—to address the myriad of situations that may arise in the benefit determination process. Nevertheless, PBGC officials acknowledged that their standard letter formats may not always meet the needs of participants, especially those in complex plans, and they recently undertook a project to review and update their letters to try to better meet participant needs.

According to PBGC officials, in September 2008, they began rolling out about 50 different versions of key letters to fit different circumstances. They also noted that the amount of detail and length of the benefit statements has varied over time—sometimes longer, sometimes shorter. Most recently, they have tended toward longer. They commented, however, that they are not sure it makes a difference either way, because for the most part, participants react to the benefit amount, not to the steps PBGC has used to arrive at the amount. Finally, they also noted that while the benefit amounts in the letters are verified by actuaries, the letters are prepared manually by Field Benefit Administration staff, using the

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<sup>44</sup>We reviewed letters only to determine if they accurately conveyed information documented elsewhere in the files. We did not attempt to verify PBGC calculations of benefit amounts.

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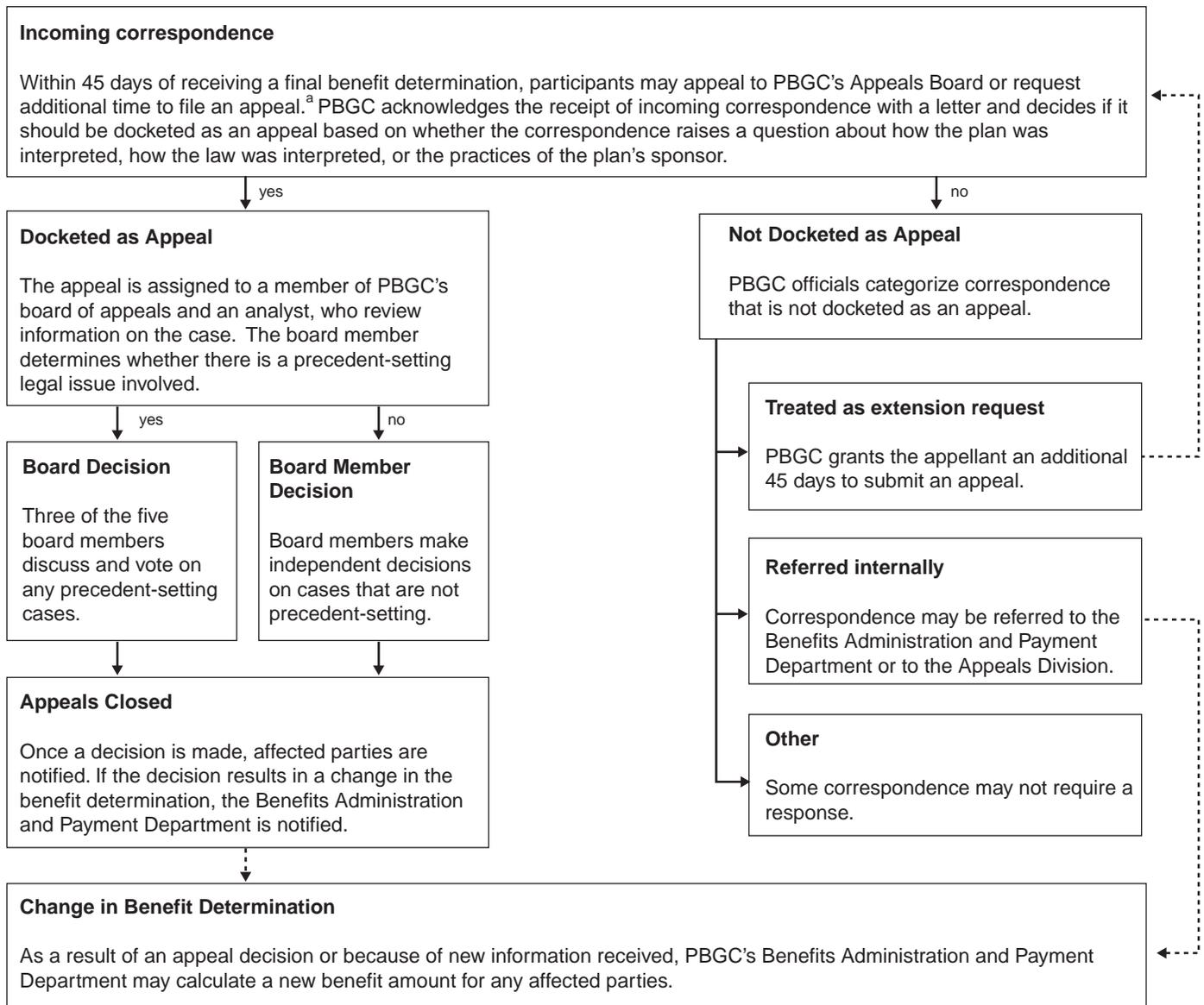
standard formats, and until recently, these letters were not reviewed. Beginning in early 2009, however, plan analysts have started to review the letters before mailing.

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**Restructured Appeals  
Process Resolves  
Requests More  
Efficiently but Key  
Information Is Not  
Readily Provided**

Since streamlining its appeals process in 2003, PBGC has responded more quickly to correspondence sent to its Appeals Division (see fig. 12). It has reduced the average amount of time to decide an appeal by almost a year and has cut the average amount of time needed to resolve all appeals-related inquiries in half. At the same time, most appeals docketed since 2003 have not resulted in appellants receiving higher benefit amounts. A lack of understanding on the part of participants about how their benefits are calculated may contribute to unnecessary appeals.

**Figure 12: PBGC's Appeals Process**



Source: GAO analysis of PBGC documents.

<sup>a</sup>If an appeal is filed, PBGC's benefit determination will not take effect until the Appeals Board issues a decision; in the meantime, PBGC continues to pay retirees benefits at the estimated level.

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## Triage Approach Has Streamlined Appeals Process

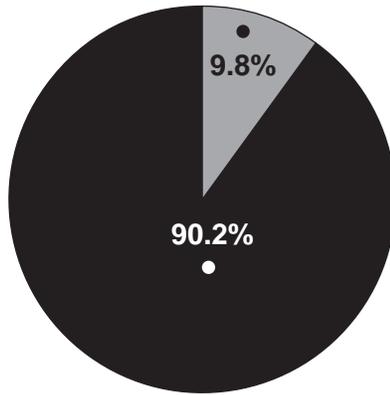
PBGC's appeals process was restructured in 2003 to create a triage system that makes more efficient use of agency resources and resolves cases more quickly. Previously, PBGC treated nearly every correspondence sent to its Appeals Division as an appeal. The agency now evaluates correspondence to determine if it raises a question about how the plan was interpreted, how the law was interpreted, or the practices of the plan's sponsor and docketed correspondence as an appeal if it meets these criteria based on regulations.<sup>45</sup> In analyzing appeals correspondence associated with plans trustee by PBGC from fiscal year 2000 to fiscal year 2008, we found that since 2003, PBGC docketed as an appeal less than one-third of the correspondence received by the Appeals Division (see fig. 13). Correspondence concerning corrections to personal data, such as a participant's date of hire or length of service, is now directed to PBGC's Benefits Administration and Payment Department (Benefits Department) so that a corrected benefit determination can be issued more expeditiously. Additionally, in instances where a potential appellant requests a more detailed explanation of his or her benefit determination, the Benefits Department can quickly provide a detailed explanation based on its familiarity with the benefit calculation and relevant participant data. Further, under this triage approach, the Appeals Board staff, rather than the Appeals Board, responds to appeals received before a benefit determination has been issued or to claims that PBGC's recovery of overpayments create a financial hardship and should be waived.

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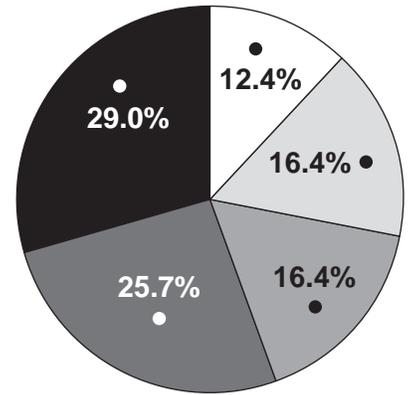
<sup>45</sup>This triage approach was later formalized in PBGC's *Rules for Administrative Review of Agency Decisions*. 29 C.F.R. § 4003 (2009).

**Figure 13: Actions Taken on Correspondence Associated with Plans Trusted during Fiscal Years 2000-2008**

Correspondence received prior to Fiscal Year 2003



Correspondence received Fiscal Years 2003-2009



**Actions**

- Referred to the Appeals Division<sup>a</sup>
- Other<sup>b</sup>
- Treated as extension request
- Referred to the Benefits Administration and Payment Division<sup>c</sup>
- Docketed as appeal

Source: GAO analysis of PBGC data on participants in plans terminated and trusted during fiscal years 2000 through 2008.

Note: Data reflect multiple correspondences associated with individual cases.

<sup>a</sup>Referrals to the Appeals Division include appeals that are filed too early or requests to have PBGC's recovery of overpayments waived.

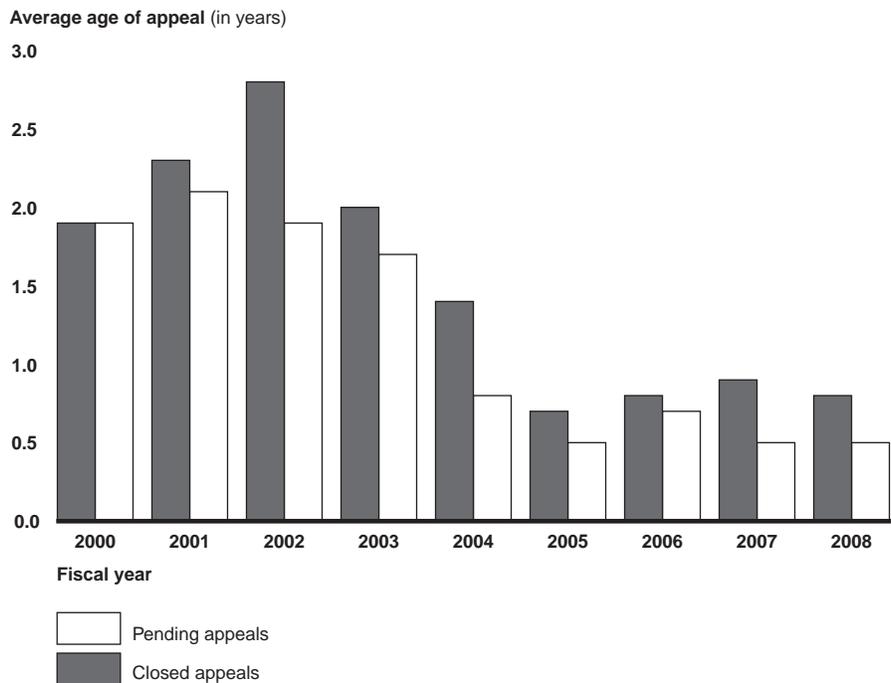
<sup>b</sup>Other includes correspondence that requires no action or is sent in response to a PBGC request, as well as Freedom of Information Act requests.

<sup>c</sup>Referrals to the Benefits Administration and Payment Division include corrections to personal information and requests for benefit explanations.

Since streamlining the appeals process, PBGC has reduced its response time for appeals and other appeals-related inquiries without increasing the size of its appeals staff. According to agency data, PBGC reduced its average time for closing docketed appeals from 2.3 years to 1.4 years since implementing this triage approach. In fact, since fiscal year 2005, PBGC has averaged a response time of less than 10 months (see fig. 14). PBGC has also reduced the average age of pending appeals from about 2 years to less than 9 months, since implementing its triage approach. We also found, on examining the 14,545 appeals-related correspondences associated with

plans trusted from fiscal year 2000 to fiscal year 2008, that PBGC responded to all correspondence in an average of less than 4 months after 2002 (fiscal years 2003 through 2009), as compared to an average of about 8 months prior to 2003 (fiscal years 2000 through fiscal year 2002). However, there were also 852 cases of correspondence which had been pending for an average of nearly 7 months, as of April 2009.

**Figure 14: Average Age of Closed and Pending Appeals, by Fiscal Year**



Source: GAO analysis of PBGC data on participants in plans terminated and trustee during fiscal years 2000 through 2008.

Note: Data provide a snapshot of the average age of closed and pending appeals at the end of each fiscal year.

The procedural requirements of the appeals process do not appear to present barriers to appellants. Appellants are to provide a specific reason for their appeals and submit them within 45 days of their benefit determinations.<sup>46</sup> Of the 3,637 closed appeals we examined, only 37 were closed because the appellant did not conform to a procedural

<sup>46</sup>29 C.F.R. §§ 4003.52 and 4003.54 (2009).

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requirement.<sup>47</sup> Additionally, PBGC readily grants extensions. Within the correspondence we examined, PBGC granted 2,371 extension requests during fiscal years 2000 through 2008.

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### Most Appeals Have Not Resulted in Higher Benefit Amounts for Appellants

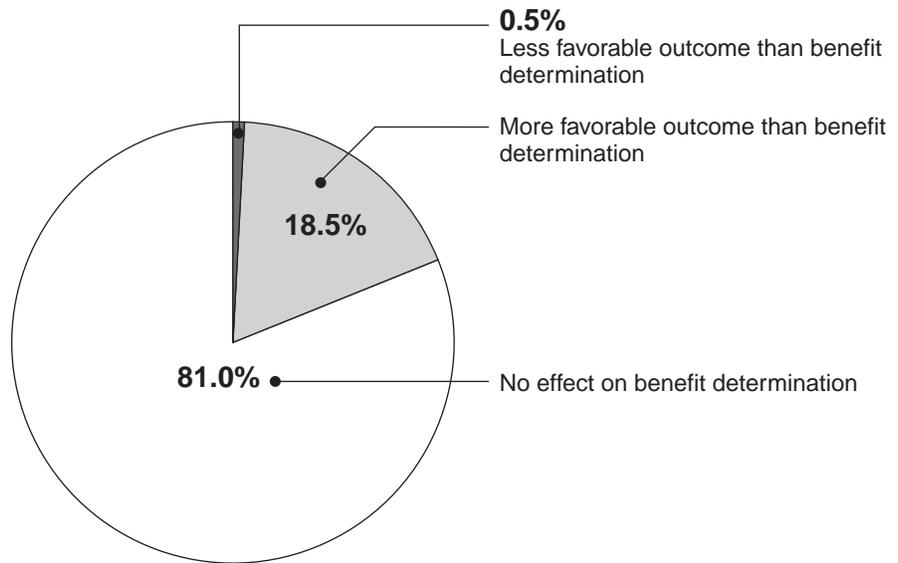
More than 80 percent of appeals resulted in appellants receiving no increase in their benefit amounts. Of the 4,337 correspondences that were docketed as appeals since the beginning of fiscal year 2003, 3,637 had been decided as of April 2009. In most of these cases, the appeal decision resulted in no change to the participant's benefit determination amount (see fig. 15). However, appellants received a higher benefit amount in 18 percent of the cases.<sup>48</sup> For example, in one of the successful appeals, a Bethlehem Steel participant submitted copies of his medical records with his appeal, convincing the Appeals Board that he was eligible to receive a "permanent incapacity" benefit. In another case, a participant in the US Airways Inc. (pilots) plan had US Airways Inc. furnish documentation to PBGC that his date of hire had been adjusted as the result of a lawsuit, and with this new date of hire, PBGC considered the participant vested.

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<sup>47</sup>More specifically, 27 appeals were closed because the appeal was not submitted within the required time frame; 7 were closed because the appellant failed to identify a specific error; and 3 were closed because the appellant attempted to appeal an issue that cannot be appealed through this process.

<sup>48</sup>When PBGC identifies an error through the appeals process in how it interpreted plan provisions, it also typically adjusts the benefits of all other similarly-situated participants accordingly; but, generally only does so if it results in a higher benefit amount.

**Figure 15: Outcome of Appeals since Restructuring**



Source: GAO analysis of agency data on participants in plans terminated and trustee during fiscal year 2003 to fiscal year 2008 with a closed appeal. There were 700 appeals that had not yet been closed, as of April 2009.

In cases with no change in the participant's benefit determination amount, the amount of overpayment can grow significantly during an appeal. While cases are appealed, PBGC typically places a hold on any change in benefit until the appeal is resolved. Thus, in cases where the benefit determination amount is less than the estimated amount, the participant may continue to receive the higher estimated amount during an appeal. If the lower amount is ultimately upheld, we found that these continued higher payments could add significantly to the amount of the participant's overpayment—more than \$10,000 in some cases.

### **PBGC Does Not Readily Provide Key Information that Could Help Avoid Unnecessary Appeals**

Although some appellants have successfully used the appeals process to increase their benefits, PBGC is not readily providing key information that would be helpful to participants in deciding whether or not to pursue an appeal. For example, the information PBGC provides on how it arrives at its benefit calculations can be difficult for potential appellants to understand. Plan provisions and guarantee limitations are often complicated, and it may be difficult for the average individual to interpret PBGC's benefit calculations, especially for complex plans. Based on Appeals Board findings, it appears that participants sometimes file appeals because they do not understand how the guarantee limitations affect their

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benefits. For example, the Appeals Board denied one Weirton Steel participant's appeal by explaining that the participant's estimated benefit included a temporary supplement that, ultimately, was not payable due to the accrued-at-normal limitation. In another case, the Appeals Board concluded that an Outboard Marine participant simply did not understand PBGC's benefit statement and explained the accrued-at-normal, maximum, and phase-in limitations, while denying the participant's appeal.

Even pension counselors and union representatives, who are knowledgeable about pensions and have experience filing appeals with PBGC, had difficulty understanding the materials provided to participants about their benefits. Several of the pension counselors and union representatives we interviewed told us that they have established contacts at PBGC who help them understand benefit determinations in appeals cases, and they, in turn, help convey this information to the participants they serve. Some have even held three-way calls with PBGC's customer service center and participants, so that they can help participants understand the information provided by PBGC. Additionally, representatives from the pension counseling centers we spoke with have actuarial support they consult for help interpreting complicated benefit calculations.<sup>49</sup> In some cases, by assisting participants in understanding their benefit calculations better, pension counselors told us they can also help participants avoid unnecessary appeals.

Some of those we interviewed also told us that a complete understanding of a participant's benefit determination—which is important for an effective appeal—cannot be obtained from a benefit determination letter alone. Several of these pension counselors and union representatives commented that they routinely file Freedom of Information Act<sup>50</sup> requests, on a participant's behalf, to obtain more information about a participant's case from PBGC when preparing an appeal because there is not sufficient information in the benefit determination letter. Although PBGC provides a guide on how to use these requests on its Web site, PBGC's communications materials about the appeals process do not provide a description of how individuals can gain access to PBGC's full benefit calculation records through a Freedom of Information Act request.

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<sup>49</sup>The Administration on Aging currently funds six regional counseling projects that provide core services in 27 states for individuals who need help in understanding and enforcing their pension and retirement savings plan rights.

<sup>50</sup>5 U.S.C. § 552.

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## Conclusions

The current economic downturn has already brought a new influx of pension plan terminations to PBGC, and more are expected to follow. While our findings reveal a reasonably good record of processing beneficiary cases and assuming responsibility for the payment of benefits since 2000, the loss of jobs at this time, as well as the impending retirement of the baby boom generation, leave little room for anything short of high performance. This means acting as quickly and as efficiently as possible to value and allocate plan assets; to expedite the calculation of estimated benefits to reflect guarantee limits, as well as final benefit amounts; and to keep plan participants well-informed throughout the benefit determination process. Workers and retirees in terminated plans who stand to lose as much as one-half or more of their long-anticipated retirement income will likely have to make painful financial adjustments, and due consideration in helping to ease that pain is warranted.

The calculation of benefits according to complicated provisions that vary by plan is a challenging task. It becomes more so with the delays that can occur in valuing the assets of large and complex plans and determining how those assets are to be allocated among different groups. However, the likelihood of lengthy processing for some plans is not unpredictable, and while PBGC has taken steps to expedite the processing of small and simpler plans, its approach to large and complex plans appears less than strategic. The hope of freeing up staff to handle complex plans by processing others more quickly will probably not be sufficient by itself for tackling difficult plans in the near future. Absent a calculated effort to anticipate and plan for such terminations, the heretofore modest number of beneficiaries caught in a protracted process could, indeed, grow in the next few years.

While overpayments to those already in retirement have been infrequent, delays clearly exacerbate them. Moreover, the failure to communicate more often and clearly with participants awaiting a final determination can be disconcerting—especially when they receive the news that their final determination is “surprisingly” less than they anticipated, or when retirees learn that the estimated interim benefit they had been receiving was too high and that they owe money. PBGC’s long recoupment period—which can be even further elongated by an appeal—may be a consolation to such retirees; however, the agency itself stands to lose considerable sums under this policy. This is another peril for an agency that may well be dealing with an increasing number of plan failures. Clearer and more frequent communication with plan participants, including quicker and responsible adjustments to estimated benefits, more information about how their benefits are calculated, and where to find help if they wish to appeal,

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would better manage expectations, help people plan for their future, avoid unnecessary appeals, and earn good will in a trying time for all.

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## Recommendations

To improve PBGC's benefit determination process, a more strategic approach is needed to prepare for and manage the calculation of benefit amounts and communications with participants in cases involving large, complex plans. Specifically, we recommend that:

- PBGC should set goals for timeliness and monitor the progress made in finalizing benefit determinations for large, complex plans separately from other plans.
- To reduce the number and size of overpayments in large, complex plans, PBGC should prioritize the calculation of estimated benefits for retirees subject to the guarantee limits and adjust estimates, as needed, throughout the benefit determination process. To reduce increased overpayments due to appeals, PBGC should prioritize the processing of appeals for those already receiving benefits and should consider implementing the final benefit determination for retirees during the appeals process.
- PBGC should develop improved procedures for adapting and reviewing letters to participants in large, complex plans, such as by (1) providing more specific information in letters to participants who receive benefit reductions describing which limits were applied and why; (2) ensuring all letters to participants involving benefit reductions are reviewed for accuracy and coherence before being sent; and (3) establishing processes to more frequently communicate with participants who are experiencing delays in receiving final benefits determinations.
- PBGC should provide information or resources to help participants in large, complex plans better understand their benefit calculations and also to avoid any unnecessary appeals. Specifically, PBGC's benefit determination letters should provide information, such as how participants can obtain additional information by using the Freedom of Information Act or other resources.

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## Agency Comments and Our Evaluation

We obtained written comments on a draft of this report from PBGC's acting director, which are reproduced in appendix VIII. PBGC also provided technical comments, which are incorporated into the report where appropriate. In addition, we provided copies of the draft report to the Departments of Commerce, Labor, and Treasury.

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In response to our draft report, PBGC generally concurred with our recommendations and outlined actions the agency has under way or plans to take in order to address each topic of concern. With respect to the first recommendation, PBGC agreed and noted that the agency has started to implement steps for tracking and monitoring tasks associated with processing large, complex plans. While we are pleased to learn of these steps being initiated, we would like to emphasize the importance of setting goals for processing large, complex plans and reporting progress toward meeting those goals separately from other plans. With respect to the second recommendation, PBGC agreed and commented that it generally already identifies and prioritizes cases where adjustments to estimated benefits are likely, but will continue to look for ways to improve its processes. Moreover, despite possible legal concerns with implementing final benefit determinations prior to completion of the appeals process, the agency is willing to explore options for making earlier benefit adjustments, when appropriate. With respect to the third recommendation, PBGC agreed and noted that the agency is revising the guidelines for its benefit statements to better communicate the complexities of PBGC benefits and to better manage expectations of plan participants. The comments state that the agency will evaluate and make necessary modifications to its letter review process, as well as examine ways to more frequently and clearly communicate with participants experiencing delays in receiving final benefit determinations. Finally, with respect to the fourth recommendation, PBGC agreed to amend its appeals brochure to include information about accessing records through Freedom of Information Act requests.

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As agreed with your staff, 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 Acting Director of PBGC, the Secretary of Labor, the Secretary of the Treasury, and other interested parties. In addition, the report will be available at no charge on the GAO Web site at <http://www.gao.gov>. If you or your staff have any questions concerning this report, please contact me at (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page

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of this report. GAO staff who made key contributions to this report are listed in appendix IX.

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

Barbara D. Bovbjerg  
Director, Education, Workforce, and  
Income Security Issues

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*List of Requesters*

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 Honorable Barbara A. Mikulski  
Chairman

The Honorable Richard Burr  
Ranking Member  
Subcommittee on Retirement and Aging  
Committee on Health, Education, Labor,  
and Pensions  
United States Senate

The Honorable Evan Bayh

The Honorable Sherrod Brown  
The Honorable Robert P. Casey, Jr.  
The Honorable Richard J. Durbin  
The Honorable Arlen Specter  
United States Senate

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# Appendix I: Scope and Methodology for Analysis of Automated and Imaged Data

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To assess the timeliness and results of the Pension Benefit Guaranty Corporation's (PBGC) benefit determination process, we obtained automated data from PBGC on all plans terminated and trusteed during fiscal years 2000 through 2008, as well as data for all individuals associated with those plans. Three different data sets were provided: (1) a plan level data set, (2) an individual level data set with benefit data, and (3) an individual level data set with appeals data.

The plan level data set, including 1,089 plans total, was comprised of three component groups:

- Group A - plans for which the valuation of assets and liabilities had been completed, as of February 2009 (909 plans).
- Group B – plans for which the valuation of assets and liabilities had not been completed, as of February 2009 (83 plans). When actual values were not yet available, estimated values for assets and/or liabilities were provided. The participant count for these plans was based on audited data.
- Group C – plans for which the valuation of assets and liabilities was not completed, as of February 2009 (97 plans). Estimated values for assets and/or liabilities were only available for some plans. The participant count for these plans was based on preliminary data.

We analyzed the plan level data to determine the length of time it takes PBGC to complete the valuation of a plan's assets and liabilities, on average. We also analyzed the plan level data to identify various plan characteristics, such as the fiscal year when trusteed by PBGC and the extent to which participants' benefits are affected by legal guarantee limits. PBGC does not systematically track the number of participants affected by one or more of the three types of guaranteed benefit limits specified under the Employee Retirement Income Security Act of 1974 (ERISA) and related regulations—which include maximum, phase-in, and accrued-at-normal limits—or how much these limits affect participants' benefit amounts. However, PBGC does systematically track each plan's total benefit liabilities and the amount PBGC owes, taking into account the guarantee limits. The difference between these two amounts (referred to as the amount of "unfunded nonguaranteed benefits") provides an indicator of the magnitude of the impact of guarantee limits on participants within each plan. If the amounts are the same, it means that no participants had benefits reduced due to these limits. If total liabilities are greater, it means that at least one participant had benefits reduced due to these limits.

The individual level data set, with benefit data as of February 2009, included 1,487,679 individuals associated with 1,057,272 primary participants (the person who had earned the pension). The most common reasons for multiple individuals per case were situations where a portion of the pension was to be shared between the primary participant and another individual with a qualified domestic relations order (referred to in the data set as an “alternate payee”), or situations where a primary participant had died and the pension was being paid to a beneficiary. In our analyses, we aggregated the data so that the characterization of each case reflected the data for the primary participant, as well as all other individuals associated with that primary participant, as appropriate for the data element being analyzed.

We analyzed the individual level data on benefits, by case, to determine the length of time it takes PBGC to make benefit determinations and the extent to which overpayments affect retirees’ benefits. To assess the time required for processing, we began by identifying all those participants whose benefit determinations had been completed. We then examined the length of time between the date the participant’s plan was trusteed and the date PBGC first issued a final benefit determination letter to the participant. (Subsequent benefit determination letters are sometimes issued when corrections are needed or when a participant successfully appeals.) For participants whose benefit determinations were still pending, we calculated the length of time between the plan’s trusteeship and February 18, 2009, when these data were provided, to determine how long the determinations had been awaiting completion. We also analyzed the length of time to process benefit determinations by participants’ retirement status at the time the plan terminated.

To determine the proportion of participants possibly affected by overpayments, we first identified all those who had received estimated benefits and then compared the earliest available estimated benefit amount with the final benefit amount, by case, tabulating whether the difference was positive (indicating a likely overpayment) or negative (indicating a likely underpayment). Because estimated benefit amounts may be adjusted over time, and because the records on estimated benefits had sometimes been overwritten or deleted, we were not able to use these data to determine with certainty whether or not an overpayment or underpayment had been incurred, or the amounts involved. Instead, to assess the amount of overpayments incurred and the effect of repaying these debts on participants’ benefits, we analyzed the data on recoupments. First, we identified all those who were listed as having amounts recouped to date, by case. We then used the available data on

projected benefit reductions, which included the amount of monthly reduction and the start date and end date for that reduction amount (sometimes involving up to four different reduction amounts) to calculate the amounts yet to be recouped. We determined the total amount of the overpayments, by case, by combining the data PBGC provided on amounts recouped to date with our calculation of amounts yet to be recouped.

Based on a review of selected records in PBGC's image processing system for cases with the largest overpayments, it appears that these data are reliable for identifying whether a case has an overpayment, but not as reliable for determining the total amount of overpayments. We were able to verify that the participant with the largest overpayment, according to our analysis of these data, was correct: an LTV participant with an overpayment of about \$152,000. Also, we found that the amounts calculated using these data were very close (within 2 percent) of the overpayment amounts in the records for 15 of the 24 cases reviewed—differences small enough to be explained by rounding. However, in the remaining 9 cases, the amounts calculated varied significantly from those in the records—some greater, some less. We investigated the 3 most egregious differences and found that all 3 were due to data entry errors in the PBGC data set. In 2 cases, PBGC officials told us that the end date for recoupment had been entered as 12/1/2099 by default, which was not correct. They said that they would implement a system fix to prevent inappropriate use of this default in the future. In the third case, we found that the monthly payment amount had been inadvertently entered as the monthly reduction amount. None of these errors had resulted in inaccurate payments to participants, since all involved future recoupment amounts. However, it appears that the reliability of these data for calculating total overpayment amounts is limited.

We also analyzed the individual level data, by case, to identify various case characteristics, aggregating the data together for all individuals associated with the same case. These characteristics included the final benefit amount (with and without any benefit reduction due to recoupment), and the projected age of the youngest individual at the end of recoupment for cases with overpayments greater than \$10,000.

We then combined the plan level data and individual level data, by case, to determine the number of individuals and cases associated with each plan, and identify those plans with the most cases that took 4 or more years to provide a final benefit determination, and the most cases with overpayments. We also used these data to generate lists of cases for more detailed reviews of documents in PBGC's image processing system and

examine more closely the cases that took the longest to provide a benefit determination and that had the largest overpayments and benefit reductions.

In addition to the automated data, PBGC maintains records that are individually scanned into an image processing system. The types of documents we reviewed in PBGC's image processing system included both plan documents and participant records. On the plan level, we reviewed documents for the plans most affected by guarantee limits, by delays in processing, and by overpayments (see appendix VI). For the 10 plans ranking highest in each of these categories, we typically reviewed the "actuarial case memo," which summarizes all the steps taken to obtain records and determine the value of assets and liabilities for each plan terminated and trustee by PBGC. We then selected five of these plans for more detailed review of participant records in order to illustrate key trends identified in our analysis of the automated data. These five plans were: Bethlehem Steel, LTV Steel, RTI-United Steelworkers of America (USWA), US Airways, and Weirton Steel. For Bethlehem Steel, we randomly selected five participants from among those participants whose benefit determinations were still pending. For each of the other four plans, we randomly selected five participants from the lists of participants provided in the plans' actuarial memos. Then, for each of these participants, we typically reviewed all letters sent to the participant, all benefit calculation documents, and the internal correspondence among PBGC staff about the case. We reviewed the letters to participants only to determine if they accurately conveyed information documented elsewhere in the files. We did not attempt to verify PBGC calculations of benefit amounts.

Finally, to assess the length of time it takes PBGC to provide a decision when a participant appeals, we examined PBGC data on the average time to close docketed appeals and the average age of pending appeals, by fiscal year, 2000 through 2008. We also analyzed the 14,545 appeals-related correspondences associated with plans terminated and trustee during fiscal years 2000 through 2008 so that we could make comparisons between PBGC's average response time, both before and after its restructuring of the appeals process. Data reflect multiple correspondences associated with individual cases. For correspondences that were pending, we calculated the amount of time between when PBGC received these correspondences and April 13, 2009, when we received these data. To describe PBGC's triaging system, which was implemented in fiscal year 2003, we analyzed PBGC's action taken code for each correspondence and aggregated these results into two groups: those

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correspondences received during fiscal years 2000 through 2002, and those received during fiscal years 2003 through 2008. Of the 4,337 correspondences that were docketed as appeals, 3,495 had been decided as of April 2009. We then tabulated the data on the outcomes of closed appeals and the reasons why these appeals were closed, which were coded to indicate whether a change to the benefit amount occurred.

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# Appendix II: Organizations and Participants Contacted

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## Organizations

**American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)** (<http://www.aflcio.org>) A voluntary federation of 56 national and international labor unions, representing 11 million members in a variety of industries.

**Air Line Pilots Association** (<http://www.alpa.org>) The largest airline pilot union in the world, representing nearly 54,000 pilots at 36 U.S. and Canadian airlines.

**Association of Flight Attendants-Communications Workers of America** (<http://www.afanet.org>) The world's largest flight attendant labor union, organized by flight attendants for flight attendants, representing over 55,000 flight attendants at 20 airlines.

**New England Pension Assistance Project** (<http://www.pensionaction.org/nepap.htm>) One of the six regional projects funded by the Administration on Aging to provide free pension counseling services. Initially, the project served only Massachusetts residents, but in 1998, it expanded to help residents of the six-state New England region: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

**Ohio Pension Rights Center** ([http://www.proseniors.org/oh\\_pension.html](http://www.proseniors.org/oh_pension.html)) Part of one of the six regional projects funded by the Administration on Aging to provide free pension counseling services. The Ohio Pension Rights Center shares a grant with the Michigan Pension Rights Project and provides all types of pension assistance to people in Michigan, Ohio, Pennsylvania, Kentucky, and Tennessee.

**Pension Rights Center** (<http://www.pensionrights.org>) Provides legal consultation and training to the six regional projects funded by the Administration on Aging to provide pension counseling services for individuals who need help in understanding and enforcing their pension and retirement savings plan rights.

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**United Steelworkers**<sup>1</sup> (<http://www.usw.org/>) The largest industrial labor union in North America, representing 1.2 million current and retired workers in industries that include primary and fabricated metals, mining, chemicals, paper, glass, rubber, transportation, utilities, container industries, pharmaceuticals, call centers, and health care.

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## Participants

Members of the Reliance Group Holdings Inc. plan and the Reliance Insurance Company plan, which were among the plans most affected by long processing times.

Members of the Republic Technologies International USWA and USS/KOBE plans, which were among the plans most affected by the guarantee limits, long processing times, and/or overpayments.

Members of United Air Lines ground employees plan and pilots' plan.

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<sup>1</sup>Formerly the United Steelworkers of America (USWA); in 2005, the union's name was officially changed to United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, but is commonly known as United Steelworkers.

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# Appendix III: The Process for Allocating Assets and Recoveries to Participant Benefits

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Upon the termination of a single-employer plan, plan assets are identified, valued, and then allocated to participant benefits, in accordance with the provisions in ERISA, section 4044.<sup>1</sup> In addition to plan assets, any monies from company assets that PBGC recovers for unfunded benefit liabilities are allocated to participant benefits, in accordance with the provisions in ERISA, section 4022(c).<sup>2</sup>

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## Section 4044—Allocation of Plan Assets

The amount of plan assets available to pay for participant benefits includes all plan assets remaining after the subtraction of all prior or current liabilities paid or payable from the plan. This amount includes the value of the collectible portion of any due and unpaid employer contributions.<sup>3</sup> Liabilities include expenses, fees and other administrative costs, and benefit payments due before the allocation date. For plans terminated and trustee by PBGC, assets are valued and the allocation determined based on liabilities as of the termination date.<sup>4</sup>

Plan assets available to pay for benefits under the plan are allocated to participant benefits according to six priority categories, as described in Table 3. Assets are allocated to each priority category in succession, beginning with priority category 1. If the plan has sufficient assets to pay for all benefits in a priority category, the remaining assets are allocated to the next lower priority category. This process is repeated until all benefits in priority categories 1 through 6 have been provided or until all available plan assets have been allocated. Most private sector defined benefit plans do not require or allow participant contributions. Thus, in most trustee

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<sup>1</sup>29 U.S.C. 1344.

<sup>2</sup>29 U.S.C. 1322(c).

<sup>3</sup>Before 2006, for any plan that had due and unpaid employer contributions, PBGC would value the collectible portion of these contributions and include that value as part of the plan assets, as determined through adjudication (for example, in bankruptcy) or settlement. The Pension Protection Act of 2006 created a new mechanism, similar to the recovery ratio used for purposes of section 4022(c), that allows PBGC to assign a value to the collectible portion of these contributions in order to complete the valuation of the plan more quickly. Pub. L. No. 109-280, § 408(b)(2), 120 Stat. 780, 931-32 (codified at 29 U.S.C. § 1344(f)).

<sup>4</sup>Based on provisions in the Pension Protection Act of 2006, the date that the sponsor files for bankruptcy is treated as the plan termination date for purposes of determining the amount of guaranteed benefits and allocating assets, if that date is after September 16, 2006 and the sponsor is still in bankruptcy when the plan actually terminates. § 404, 120 Stat. 928 (codified at 29 U.S.C. §§ 1322(g) and 1344(e)).

plans, asset allocation begins with the benefits in priority category 3, that is, the benefits of those retired or eligible to retire 3 years before the plan terminated. However, it should be noted that assets are allocated based on type of benefit, not retirement status, and that many participants have benefits in more than one category.

**Table 3: Priority Categories for Allocating Participant Benefits**

Priority category 1	Accrued benefits derived from voluntary employee contributions. (According to PBGC, such benefits are “extremely rare” among private sector defined benefit plans.) <sup>a</sup>
Priority category 2	Accrued benefits derived from mandatory employee contributions. (According to PBGC, such benefits are “quite uncommon” among private sector defined benefit plans.)
Priority category 3	Annuity benefits that have been in pay status for at least 3 years before the plan’s termination date, or could have been in pay status for at least 3 years before the plan’s termination date had the participant chosen to retire at his or her earliest possible retirement date; however, benefits subject to the phase-in limitation (that is, benefit increases made within the last 5 years) are excluded. These benefits can be either guaranteed or nonguaranteed.
Priority category 4	Other guaranteed benefits, and certain nonguaranteed benefits. <sup>b</sup>
Priority category 5	Other vested nonguaranteed benefits that a participant is entitled to under the plan; however, benefits that result solely due to the termination of the plan—which are deemed “forfeitable”—are excluded.
Priority category 6	All other benefits under the plan. This category includes nonvested benefits and “grow-in” benefits, which are benefits that are provided in some situations where the company continues to operate after the plan is terminated.

Source: GAO analysis of PBGC documents.

<sup>a</sup>However, one PBGC official noted that in the General Motors salaried plan, employees have the option to make contributions, and that if PBGC were to take over the plan, this would add a great deal of complexity to the benefit determination process.

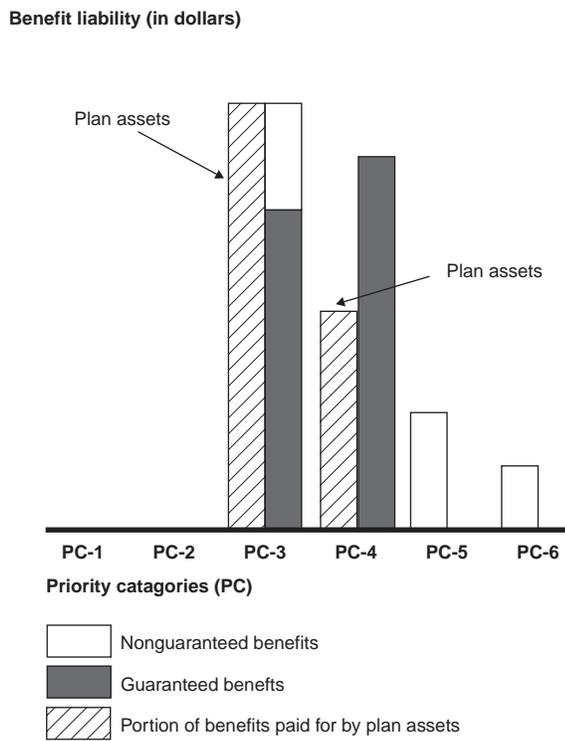
<sup>b</sup>Specifically, the nonguaranteed benefits included in priority category 4 are those that are nonguaranteed because they are subject to the aggregate benefits limitation for participants in more than one plan that has been terminated with insufficient funds, or because they are subject to special provisions applicable to substantial owners (that is, those owning more than 10 percent of the company).

Except for priority category 5, which includes benefits subject to the phase-in limit, if the plan assets available for allocation to any priority category are insufficient to pay for all benefits in that priority category, those assets are distributed among the participants according to the ratio that the value of each participant’s benefit or benefits in that priority category bears to the total value of all benefits in that priority category. If the plan assets available for allocation to priority category 5 are insufficient to pay for all benefits in that category, the assets are allocated by date of plan amendment, oldest to newest, until all plan assets available for allocation have been exhausted. Within each priority category, once the amount of assets to be allocated to each participant has been determined, assets are allocated first to the participant’s “basic-type” benefits (which include benefits that are guaranteed by PBGC, or that

would be guaranteed but for the maximum and phase-in limits), and then to the participant’s “nonbasic-type” benefits (which include all other benefits).

Plan assets are distributed according to the process described above until all have been allocated. Thus, to the extent plan assets are available for allocation under this scheme, some participants may have some or all their nonguaranteed benefits paid. For example, in the scenario illustrated in figure 16, sufficient plan assets are available to cover all priority category 3 guaranteed and nonguaranteed benefits, as well as a portion of priority category 4 guaranteed benefits. PBGC would then pay the remaining guaranteed benefits in priority category 4, but all remaining benefits (that is, priority categories 5 and 6 benefits, which are all nonguaranteed benefits), would not be paid, and participants would have their benefits reduced accordingly, unless there are recoveries of company assets that can be allocated to benefits, as discussed below.

**Figure 16: Example Scenario of Section 4044 Asset Allocation to Participants’ Benefits**



Source: Adapted from PBGC materials.

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Section 4022(c)—  
Allocation of Recovered  
Company Assets

Section 4022(c), added to ERISA in 1987,<sup>5</sup> requires PBGC to share with participants a portion of its recoveries resulting from an employer liability claim against the plan sponsor and other liable parties, usually in bankruptcy. As a result, a portion of participants' losses of unfunded nonguaranteed benefits can be paid. Where a plan's unfunded nonguaranteed benefits exceed \$20 million, the total amount paid under §4022(c) depends on PBGC's actual recoveries in that case. In all other cases, the amount paid is determined by an average of PBGC's recoveries over a 5-year period.<sup>6</sup>

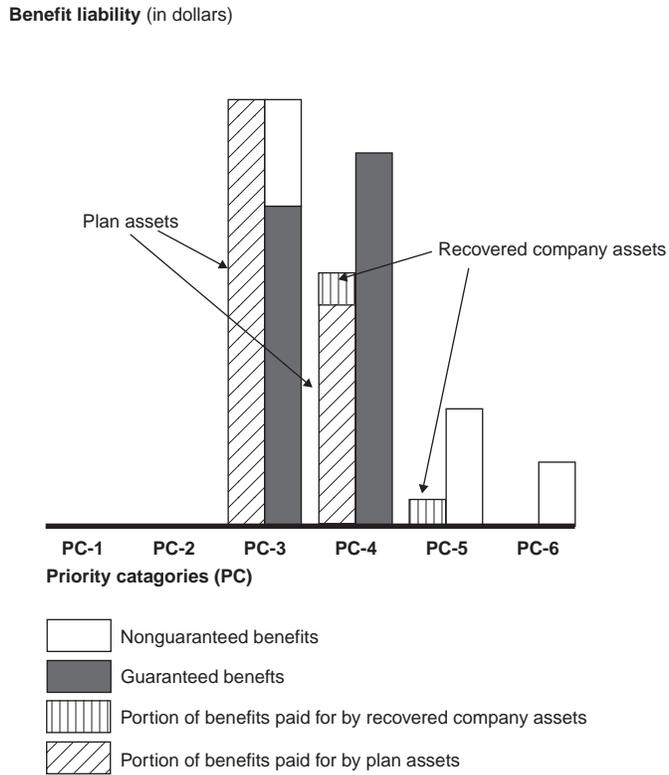
PBGC allocates the participants' portion of the §4022(c) amount, as described above, to participants' unfunded nonguaranteed benefits using the same priority categories and procedures outlined above for the §4044 asset allocation process. The allocation begins with the highest priority category in which there are unfunded nonguaranteed benefits, and then to each lower priority category, in succession. If the plan §4022(c) amount to be allocated in a particular priority category is not sufficient to pay all the unfunded nonguaranteed benefits in that category, the amount will be allocated within the category as described above for the §4044 allocation process. As noted by one employee group we spoke with, it is more advantageous for participants for assets to be considered recoveries allocated under §4022(c) than plan assets allocated under §4044, because recoveries are shared between PBGC and participants. For example, to continue with the scenario introduced above, if company assets are recovered, some would be allocated to pay a portion of the guaranteed benefits in priority category 4 that PBGC would pay to participants regardless, and some would be allocated to pay a portion of priority category 5 nonguaranteed benefits that would not have been paid otherwise (see fig. 17).

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<sup>5</sup>Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, § 9312(b)(3)(A)(ii), 111 Stat. 1330, 1330-362—1330-363 (codified at 29 U.S.C. § 1322(c)).

<sup>6</sup>This average is known as the Small Plan Average Recovery Ratio (SPARR). Before passage of the Pension Protection Act of 2006, this 5-year period consisted of the 5 fiscal years before the fiscal year in which termination was initiated for the plan in which benefits are being determined. The Pension Protection Act of 2006 backed up the 5-year period for plans with unfunded nonguaranteed benefits not exceeding \$20 million. Specifically, the 5-year period was changed to consist of the 5 full fiscal years ending with the third fiscal year before the fiscal year in which termination was initiated for the plan in which benefits are being determined. § 408(a), 120 Stat. 931 (codified at 29 U.S.C. § 1322(c)(3)(B)(ii)). This change allowed processing for these plans to be expedited.

**Figure 17: Example Scenario of Section 4022(c) Recovery Allocation to Participants' Benefits**



Source: Adapted from PBGC materials.

To help illustrate this process, we gathered data from plan records about § 4044 and § 4022(c) asset allocation for 10 large, complex plans. The results are summarized in table 4.

**Appendix III: The Process for Allocating  
Assets and Recoveries to Participant Benefits**

**Table 4: Asset and Recovery Allocation among 10 Large, Complex Plans**

<b>Plan sponsor (name)</b>	<b>Results of §4044 asset allocation</b>	<b>Results of §4022(c) recovery allocation<sup>a</sup></b>
LTV Steel Company Inc. (hourly plan)	66.08% of PC3	100% of PC3 and 28.76% of one subgroup of PC5 (phase-in limit losses)
LTV Steel Company Inc. (salary plan)	65.38% of PC3	100% of PC3 (maximum limit losses) and 0.25% of PC5 (accrued-at-normal and phase-in limit losses)
LTV Steel Mining Company, Inc.	100% of PC3	3.20% of PC5
National Steel Corporation (hourly plan)	76.69% of PC3	0
Northwestern Steel & Wire (plan A)	100% of PC3	0
Outboard Marine (employees' plan)	100% of PC3 and 62.51% of PC4	9.21% of one subgroup of PC5 (phase-in limit losses)
Republic Technologies International (USS/KOBE plan)	85.63% of PC3	0
Republic Technologies International (USWA plan)	100% of PC3	0
US Airways Inc. (pilots' plan)	100% of PC3	0.19% of PC5
Weirton Steel	70.83% of PC3	0

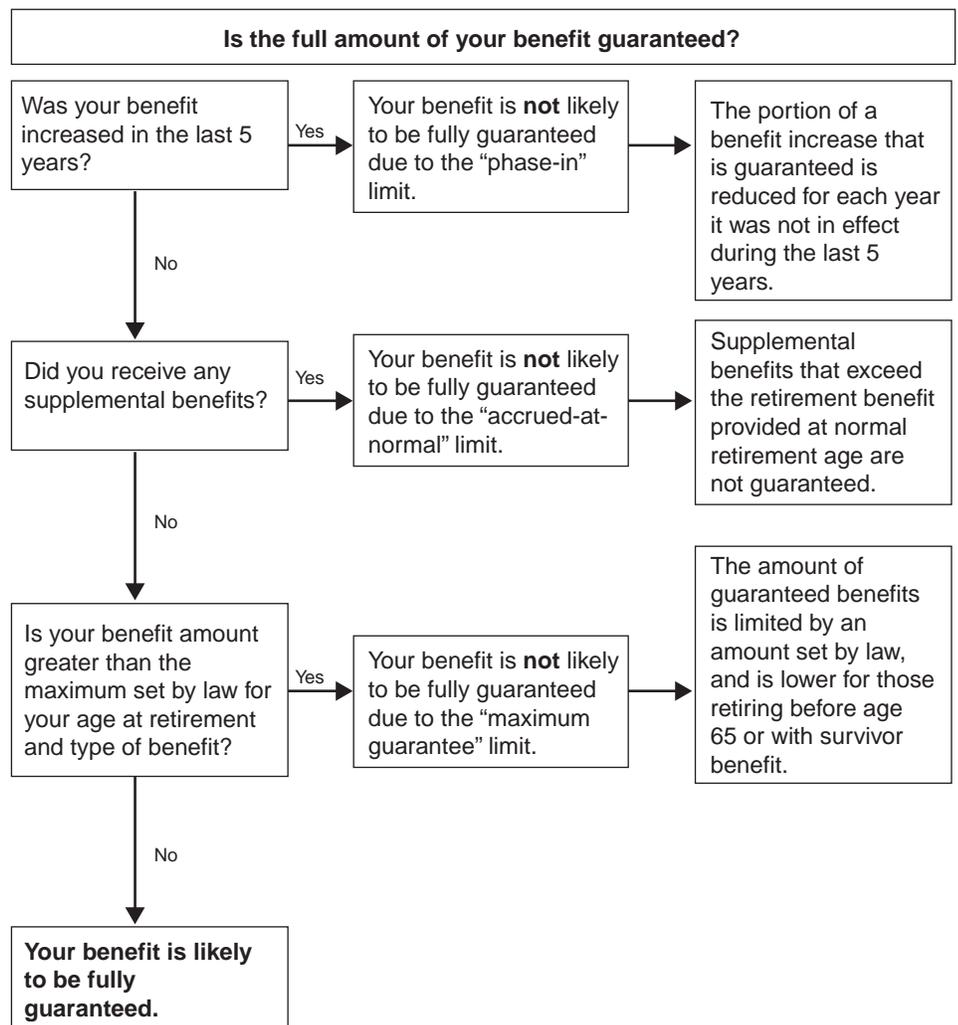
Source: Based on PBGC data on selected large, complex plans from among those listed in appendix VI with completed financial valuations, as of February 2009.

<sup>a</sup>The amount of assets allocated as recoveries under § 4022(c) is determined differently, depending on the amount of the plan's unfunded nonguaranteed benefits. If that amount exceeds \$20 million, the total amount paid under § 4022(c) depends on PBGC's actual recoveries. For example, this was the case for both Northwestern Steel and RTI-USWA, and there were no recoveries to allocate. Alternatively, if the amount of unfunded nonguaranteed benefits is less than \$20 million, the total amount paid under § 4022(c) depends on an average of PBGC's recoveries over a 5-year period (known as the SPARR calculation). For example, the SPARR calculation was used for both LTV Steel Mining and US Airways, and a small amount of assets were allocated to priority category 5 benefits in each of these plans.

# Appendix IV: Limits on Guaranteed Benefits from a Participant's Perspective

The statutory and regulatory limits on guaranteed benefits can be difficult to understand for many participants. The following schematic distills the application of these limits into a series of questions, one for each type of limit: phase-in, accrued-at-normal, and maximum.

**Figure 18: Understanding the Limits on Guaranteed Benefits**



Source: GAO analysis of ERISA, PBGC's implementing regulations, and related documents.

# Appendix V: Profiles of Three Large, Complex Plans

We selected three terminated pension plans to profile as examples of large, complex plans: Bethlehem Steel, RTI (USWA), and US Airways (pilots) (see appendix VI). All three were among the 10 plans most affected by the guarantee limits. In addition, both Bethlehem Steel and RTI (but not US Airways) were among the 10 plans most affected by processing delays and by overpayments.<sup>1</sup>

**Table 5: Profile of a Bethlehem Steel Terminated Pension Plan**

Plan sponsor: Bethlehem Steel Corporation				
	Maximum	Minimum	Mean	Median
<b>Plan name: Pension Plan of Bethlehem Steel Corporation</b>				
• Date of plan termination:	12/18/2002			
• Date of trusteeship:	4/30/2003			
• Date plan valuation complete:	Valuation not complete as of February 2009.			
• Number of individuals associated with the plan:	151,991			
• Number of cases (primary participants):	92,924			
• Total amount of unfunded nonguaranteed benefits:	\$537,500,000			

**Context for termination:**

In 2000, the principal activities of Bethlehem Steel were the production, manufacture, and sale of a wide variety of steel mill products, including hot rolled, cold rolled, and coated sheets; tin mill products; carbon and alloy plates; specialty booms; carbon and alloy bars; and large diameter pipe. Bethlehem Steel also had iron ore, lake shipping, railroad and trucking operations, but steel products accounted for 92 percent of its revenue in 2000.

On October 15, 2001, Bethlehem Steel filed for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code. The company entered into an agreement, which was ratified on April 22, 2003, that provided for the sale of substantially all of its assets to a third party. The company is no longer in operation.

Over the years, the Bethlehem Steel plan was the product of a culmination of over 100 mergers, consolidations, and or spinoffs. At the date of the plan's termination, PBGC and the Milliman Actuaries identified 8 major component parts: Bethlehem Steel Corporation Steel, Bethlehem Steel Corporation Shipbuilding, Bethlehem Steel Corporation Railroad, 1976 Great Lakes Hourly, Bethlehem 1957 Hourly, Washington Steel Hourly 1998, Bethlehem Lukens Plate Hourly – 1998, and Lukens Salaried – 1998. Three of the components, the Bethlehem Steel Corporation Steel, the Bethlehem Steel Corporation Shipbuilding and the Bethlehem Steel Corporation Railroad, have separate hourly and salaried plans.

<sup>1</sup>US Airways (pilots) was 2nd on the list of plans most affected by guarantee limits, but 18th on the list of plans most affected by processing delays, and 27th on the list of plans most affected by overpayments.

**Appendix V: Profiles of Three Large, Complex Plans**

**Groups affected by guarantee limits:**

Data not available as of February 2009.

	<b>Maximum</b>	<b>Minimum</b>	<b>Mean</b>	<b>Median</b>
<b>PBGC processing time (from trusteeship to issuance of benefit determination letters):</b>	5.8 years	7.6 months	2.7 years	2.3 years
<ul style="list-style-type: none"> <li>Number of cases taking 4 or more years (including cases pending as of February 2009): 25,619</li> </ul>				
<b>Overpayments (total amount, per case):<sup>a</sup></b>	(N/A) <sup>b</sup>	less than \$1	about \$4,400	about \$3,500
<ul style="list-style-type: none"> <li>Estimated total amount of overpayments for plan: \$11.1 million</li> </ul>				
<b>Recoupments (monthly benefit reduction due to recoupment, per individual):</b>	\$660	less than \$1	\$28	\$23
<ul style="list-style-type: none"> <li>Number of cases with recoupments: 2,487</li> </ul>				
<b>Appeals:</b>	<b>Number</b>			
<ul style="list-style-type: none"> <li>Cases with appeals:</li> </ul>	186			
<ul style="list-style-type: none"> <li>Appeals cases pending as of April 2009:</li> </ul>	33			
<ul style="list-style-type: none"> <li>Appeals closed:</li> </ul>	153			
<ul style="list-style-type: none"> <li>Closed appeals resulting in a higher benefit amount:</li> </ul>	48			
<ul style="list-style-type: none"> <li>Closed appeals resulting in a lower benefit amount:</li> </ul>	1			
<ul style="list-style-type: none"> <li>Closed appeals resulting in no change in benefits:</li> </ul>	104			

Source: GAO analysis of PBGC data and documents.

<sup>a</sup>Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see appendix I.

<sup>b</sup>Amount of maximum overpayment for this case, based on calculations using data provided in PBGC's individual level data set: \$58,903. Amount of overpayment for this case, verified in case records: \$99,032. Discrepancy was due to a legal dispute between the participant and his ex-wife (who had a qualified domestic relations order) and appeals that were not yet resolved and entered into the system at the time we obtained our data set.

**Table 6: Profile of a Republic Technologies International Terminated Pension Plan**

<b>Plan sponsor: Republic Technologies International (RTI)</b>	
<b>Plan name: Republic Technologies International LLC - USWA Defined Benefit Plan</b>	
• Date of plan termination:	6/14/2002
• Date of trusteeship:	9/30/2003
• Date plan valuation complete:	12/6/2007
• Number of individuals associated with the plan:	6,929
• Number of cases (primary participants):	4,289
• Total amount of unfunded nonguaranteed benefits:	\$77,901,131

**Context for termination**

After Republic Technologies International, LLC (RTI), once a leading domestic producer of special bar quality steel products, declared bankruptcy and was unable to pay pension benefits, PBGC initiated an involuntary termination of 4 plans administered by RTI. While in bankruptcy proceedings, RTI agreed to sell a substantial portion of its assets to a new company that intended to hire many of RTI's employees, but that did not want responsibility for the pension plans. Two of the plans covered participants represented by the United Steelworkers (USW) and included provisions for shutdown benefits, which allow participants who meet certain age and service requirements to receive an immediate unreduced early retirement benefit. USW reached an agreement with RTI to consider the sale of RTI's assets to the new company a "shutdown" under the plans, thereby triggering the provisions for shutdown benefits.

Concerned about the impact of the proposed sale on the plans and its own financial condition, PBGC sought to terminate the plan prior to the asset sale. This earlier termination date would preclude PBGC from having to pay the shutdown benefits, because participants cannot earn additional benefits after a plan terminates. USW raised the issue in court, seeking a termination date after the asset sale. Although a lower court found in favor of USW, setting a termination date after the asset sale, a circuit court overturned this decision and established the termination date prior to the asset sale. As a result, PBGC was not obligated to pay the shutdown benefits. However, during the time between the lower and higher courts' decisions, PBGC began determining participants' eligibility for shutdown benefits and paying groups of individuals shutdown benefits. When the termination date changed, PBGC stopped paying these individuals shutdown benefits and sought repayment of the shutdown benefits already dispensed.

<b>Groups affected by guarantee limits:</b>	<b>Number</b>	<b>Description</b>
• Accrued-at-normal limit	941	Groups with various types of supplemental benefits
• Maximum limit	11	(no description provided)
• Phase-in limit	1,693	Groups affected by the following three changes: <ol style="list-style-type: none"> <li>1. The RTI settlement agreement effective 8/2/98: \$60/60% phase-in.</li> <li>2. The resolution relating to various retirement plan changes (effective dates varied): \$60/60% phase-in.</li> <li>3. The restatement effective 9/8/98: \$60/60% phase-in.</li> </ol>

	<b>Maximum</b>	<b>Minimum</b>	<b>Mean</b>	<b>Median</b>
<b>PBGC processing time (from trusteeship to issuance of benefit determination letters):</b>	5.3 years	3.5 years	4.5 years	4.6 years
• Number of cases taking 4 or more years (including cases pending as of February 2009): 3,819				
<b>Overpayments (total amount, per case):<sup>a</sup></b>	about \$56,700 <sup>b</sup>	less than \$70	about \$8,900	about \$5,600
• Estimated total amount of overpayments for plan: \$13.4 million				

**Appendix V: Profiles of Three Large, Complex Plans**

	<b>Maximum</b>	<b>Minimum</b>	<b>Mean</b>	<b>Median</b>
<b>Recoupments (monthly benefit reduction due to recoupment, per individual):</b>	\$117	less than \$1	\$28	\$28
• Number of cases with recoupments: 1,508				
<b>Appeals:<sup>c</sup></b>	<b>Number</b>			
• Cases with appeals:	375			
• Appeals cases pending as of April 2009:	372			
• Appeals closed:	3			
• Closed appeals resulting in a higher benefit amount:	1			
• Closed appeals resulting in a lower benefit amount:	0			
• Closed appeals resulting in no change in benefits:	2			

Source: GAO analysis of PBGC data and documents.

<sup>a</sup>Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see appendix I.

<sup>b</sup>Amount of maximum overpayment for this case, based on calculations using data provided in PBGC's individual level data set: \$56,745. Amount of overpayment for this case, verified in case records: \$56,772.

<sup>c</sup>According to PBGC officials, as of June 2009, there were 376 RTI (USWA) appeals. Of these, 160 appeals were pending and 216 appeals had been closed. Of the 216 appeals closed, one resulted in a higher benefit amount and 215 resulted in no change in benefits.

**Table 7: Profile of a US Airways Terminated Pension Plan**

<b>Plan sponsor: US Airways Inc.</b>	
<b>Plan name: Retirement Income Plan for Pilots of US Airways Inc.</b>	
• Date of plan termination:	3/31/2003
• Date of trusteeship:	3/31/2003
• Date plan valuation complete:	8/3/2006
• Number of individuals associated with the plan:	8,990
• Number of cases (primary participants):	7,050
• Total amount of unfunded nonguaranteed benefits:	\$1,692,381,669

**Context for termination:**

US Airways began as All American Aviation in May 1939 as the first airmail service for many small western Pennsylvania and Ohio Valley communities. It evolved through various mergers and name changes until becoming US Airways in 1997, under the parent holding company of US Airways Group, Inc. In 2002, it was the seventh largest US air carrier, transporting passengers, property and mail on a network focused primarily in the Northeast, with some international operations. Over a 9-month period in 2002, US Airways and US Airways Express served almost 47 million passengers.

In 2000, a general economic downturn led US Airways to propose a merger with United Air Lines, however, the merger proposal was blocked. Subsequently, US Airways' weak economic position was exacerbated by the events of September 11, 2001, and in March 2002, a new management team was hired to formulate a restructuring plan. To implement the plan, significant labor, aircraft lease, and vendor cost concessions were negotiated. However, in August 2002, US Airways Group, Inc., filed voluntary petitions in bankruptcy court seeking reorganization relief under Chapter 11, and in January 2003, US Airways notified PBGC of its intent to terminate its Pilots' Retirement Income Plan (and seven other plans covering various employees of its eight wholly-owned subsidiaries), citing "a serious funding shortfall."

After US Airways gained the consent of the pilots' union (the Air Line Pilots Association, International) to terminate the plan, the company entered into an agreement with the PBGC setting March 31, 2003, as the plan's termination date. Prior to the termination date, US Airways, as the pretermination plan administrator, was responsible for revising benefit payments under the plan from then-current levels to what it estimated would be the amount of benefits that would be covered by plan assets or guaranteed by the PBGC following termination. US Airways completed these determinations and informed plan participants of their estimated post-termination benefits by letters dated March 28, 2003.

<b>Groups affected by guarantee limits:</b>	<b>Number</b>	<b>Description</b>
• Accrued-at-normal limit	51	Former Shuttle Plan participants who had a "non-level benefit stream."
• Maximum limit	5,171	Five groups were affected by the maximum limit: <ol style="list-style-type: none"> <li>1. Non-Shuttle deferreds. Participants who were not in pay status and were not members of the Shuttle Plan prior to its 2/1/2000 merger into US Airways (4,409 affected).</li> <li>2. Shuttle deferreds. Participants who were not in pay status and were members of the plan prior to the merger (59 affected).</li> <li>3. Enhanced Retirement Incentive Program (ERIP) retirees. Participants and beneficiaries who retired under this 1998 program (339 affected).</li> <li>4. Non-ERIP retirees. Pre-termination participants and beneficiaries other than the ERIP retirees (327 affected).</li> <li>5. Total and Permanent Disability participants (37 affected).</li> </ol>

**Appendix V: Profiles of Three Large, Complex Plans**

	<b>Number</b>	<b>Description</b>			
<ul style="list-style-type: none"> <li>Phase-in limit</li> </ul>	175	Groups affected by the following four changes: <ol style="list-style-type: none"> <li>The merger of the Shuttle Plan into the US Airways Pilots' Plan effective 2/1/2000: \$60/60% phase-in (76 affected).</li> <li>The cost-of-living adjustment increase for former Piedmont participants effective at the beginning of each calendar year: \$/% varied (97 affected).</li> <li>Increases in benefit limits under Internal Revenue Code section 415 and compensation limits under section 401(a)(17) effective more than 5 years before termination, but subsequent automatic increases subject to the limit (1 affected).</li> <li>Benefit increases provided by ERIP effective 5/1/1998: \$80/80% phase in (1 affected).</li> </ol>			
			<b>Maximum</b>	<b>Minimum</b>	<b>Mean</b>
<b>PBGC processing time (from trusteeship to issuance of benefit determination letters):</b>			5.8 years	3.4 months	3.6 years
<ul style="list-style-type: none"> <li>Number of cases taking 4 or more years (including cases pending as of February 2009): 866</li> </ul>					<b>Median</b>
					3.5 years
<b>Overpayments (total amount, per case):<sup>a</sup></b>			about	less than \$20	about \$8,900
<ul style="list-style-type: none"> <li>Estimated total amount of overpayments for plan: \$1.0 million</li> </ul>			\$95,000 <sup>b</sup>		about \$4,300
<b>Recoupments (monthly benefit reduction due to recoupment, per individual):</b>			\$930	less than \$1	\$93
<ul style="list-style-type: none"> <li>Number of cases with recoupments: 111</li> </ul>					\$48
<b>Appeals:</b>			<b>Number</b>		
<ul style="list-style-type: none"> <li>Cases with appeals:</li> </ul>			871		
<ul style="list-style-type: none"> <li>Appeals cases pending as of April 2009:</li> </ul>			15		
<ul style="list-style-type: none"> <li>Appeals closed:</li> </ul>			856		
<ul style="list-style-type: none"> <li>Closed appeals resulting in a higher benefit amount:</li> </ul>			104		
<ul style="list-style-type: none"> <li>Closed appeals resulting in a lower benefit amount:</li> </ul>			1		
<ul style="list-style-type: none"> <li>Closed appeals resulting in no change in benefits:</li> </ul>			751		

Source: GAO analysis of PBGC data and documents.

<sup>a</sup>Data reliability issues prevented us from conducting a more definitive analysis of total overpayment amounts. For a more detailed discussion of these data limitations, see appendix I.

<sup>b</sup>Amount of maximum overpayment for this case, based on calculations using data provided in PBGC's individual level data set: \$95,090. Amount of overpayment for this case, verified in case records: \$95,218.

# Appendix VI: Three Categories of Large, Complex Plans

**Table 8: Ten Plans Most Affected by Guaranteed Benefit Limits**

Plan sponsor (name)	Total number of participants	Unfunded nonguaranteed benefits	Percentage of total unfunded nonguaranteed benefits (\$8,522,175,078) <sup>a</sup>	Cumulative percentage
Delta Air Lines Inc.	13,435	\$2,958,936,274	34.7%	34.7% <sup>b</sup>
US Airways Inc. (pilots' plan)	7,050	1,692,381,669	19.9%	54.6%
United Air Lines Inc. (management, administrative, and public contact plan)	46,645	744,800,000	8.7%	63.3% <sup>b</sup>
LTV Steel Company Inc. (hourly plan)	68,124	672,467,408	7.9%	71.2%
Bethlehem Steel Corp.	92,924	537,500,000	6.3%	77.5% <sup>b</sup>
United Air Lines (flight attendants plan)	28,416	273,600,000	3.2%	80.7% <sup>b</sup>
Weirton Steel	9,757	205,022,166	2.4%	83.1%
National Steel Corporation (hourly plan)	10,433	149,076,504	1.7%	84.9%
RTI (USWA)	4,289	77,190,131	0.9%	85.8%
National Steel Corporation (retirement plan)	5,783	73,293,054	0.9%	86.7%

Source: GAO analysis of PBGC data and documents as of February 2009 for participants in plans terminated and trustee during fiscal years 2000 through 2008.

<sup>a</sup>Total calculated based on the 668 plans with data indicating a balance of unfunded nonguaranteed benefits (for 362 plans, data indicated there were no unfunded nonguaranteed benefits; and for 59 plans, the data were insufficient to do the analysis).

<sup>b</sup>Data on these plans are based on estimates as of February 2009, as the financial valuations of the plans were not yet complete.

**Table 9: Ten Plans Most Affected by Long Processing Times**

Plan sponsor (name)	Total number of participants	Number of participants with benefit determinations that took more than 4 years	Percentage of total number of participants with benefit determinations that took more than 4 years (78,553)	Cumulative percentage
Bethlehem Steel Corp.	92,924	25,619	32.6%	32.6%
LTV Steel Company Inc. (hourly plan)	68,124	4,678	6.0%	38.6%
Horizon NR, LLC	4,722	4,356	5.5%	44.1%
Kaiser Aluminum and Chemical Corp. (hourly plan)	10,300	4,201	5.3%	49.5%
RTI (USWA plan)	4,289	3,819	4.9%	54.3%
J.A. Jones, Inc.	5,514	3,380	4.3%	58.6%
Kaiser Aluminum and Chemical Corp. (salaried plan)	5,299	3,042	3.9%	62.5%
Cone Mills Corporation	6,365	2,956	3.8%	66.3%
Weirton Steel	9,757	2,741	3.5%	69.8%
Reliance Insurance Company	7,280	2,366	3.0%	72.8%

Source: GAO analysis of PBGC data and documents as of February 2009 for participants in plans terminated and trustee during fiscal years 2000 through 2008.

**Appendix VI: Three Categories of Large,  
Complex Plans**

**Table 10: Ten Plans Most Affected by Overpayments**

<b>Plan sponsor (name)</b>	<b>Total number of participants</b>	<b>Number of participants with recoupments</b>	<b>Percentage of total number of participants with recoupments (22,623)</b>	<b>Cumulative percentage</b>
LTV Steel Company Inc. (hourly plan)	68,124	4,442	19.6%	19.6%
Bethlehem Steel Corp.	92,924	2,487	11.0%	30.6%
Weirton Steel	9,757	1,997	8.8%	39.5%
RTI (USWA plan)	4,289	1,508	6.7%	46.1%
National Steel Corporation (hourly plan)	10,433	1,075	4.8%	50.9%
LTV Steel Company Inc. (salary plan)	13,450	913	4.0%	54.9%
RTI (USS/KOBE plan)	2,299	730	3.2%	58.1%
Outboard Marine	9,744	614	2.7%	60.8%
LTV Steel Mining Company, Inc.	3,416	548	2.4%	63.3%
Northwestern Steel & Wire (plan A)	3,576	450	2.0%	65.3%

Source: GAO analysis of PBGC data and documents as of February 2009 for participants in plans terminated and trustee during fiscal years 2000 through 2008.

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# Appendix VII: Sample Benefit Determination Letter

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To illustrate the complexity of some benefit calculations, this appendix provides a sample benefit determination letter that PBGC sent to an RTI (USWA) participant, as well as a 5-page benefit statement and a recoupment summary that were provided as attachments.

Appendix VII: Sample Benefit Determination Letter

 PBGC/Insurance Operations Department  
P.O. Box 151750  
Alexandria VA 22315-1750

403  
November 04, 2008

PBGC Case Number:   
Plan Name: REPUBLIC TECHNOLOGIES INTERNATIONAL LLC - USWA  
DEFINED BENEFIT PLAN

Dear :

This letter is about changes in the amount of your monthly payment from the Pension Benefit Guaranty Corporation ("PBGC").

As you know, the PBGC assumed responsibility for the REPUBLIC TECHNOLOGIES INTERNATIONAL LLC - USWA DEFINED BENEFIT PLAN. Because federal law limits the benefits the PBGC can pay, we are required to conduct a comprehensive review of all benefits payable under the pension plan. While this review is underway, the benefit amounts paid by the PBGC represent our best estimate of the final benefit amount. We have been paying you an estimated amount of \$548.89. The PBGC calls this the estimated benefit amount.

The review process is now complete. Under your pension plan and the limits set by law, the monthly benefit amount that you are entitled to receive from PBGC is \$397.85. This is less than the estimated benefit amount you have been receiving. In accordance with the provisions of the plan your monthly benefit will change to \$342.16 beginning 06/01/2012.

PBGC is required to apply the legal limits to all benefits you received after June 14, 2002, the date as of which your plan was terminated. As a result, there is a \$11932.16 overpayment balance that PBGC must now recover. The PBGC charges no interest on this overpayment. Please see the enclosed Recoupment Summary sheet for a detailed history of your pension payments.

PBGC will recover this overpayment balance by making deductions in future benefit payments. The new monthly amount of \$358.06 that you will receive until 05/01/2012 reflects a deduction of \$39.79 from your final benefit amount. The monthly amount of \$307.94 that you will receive from 06/01/2012 until 07/01/2037 reflects a deduction of \$34.22 from your final benefit amount. After that date, monthly payments made to you will be increased to your final benefit amount of \$342.16. This final benefit is the amount that the PBGC is legally allowed to pay you. It was calculated by determining the benefit you are entitled to under your plan and then applying the limits spelled out in federal pension law.

Your benefit is paid in the form of a Joint and 50% Survivor Annuity with a Surviving Spouse Benefit. The Joint and 50% Survivor Annuity provides you with a reduced monthly benefit for the rest of your life. Thereafter, your surviving beneficiary will receive 50% of your benefit. The Surviving Spouse Benefit is payable if your spouse meets the eligibility requirements defined by the pension plan.

**Pension Benefit Guaranty Corporation  
U.S. Government Agency**

Appendix VII: Sample Benefit Determination  
Letter

The Surviving Spouse Benefit will provide your spouse with a benefit equal to 50% of your basic benefit until age 60. After age 60, the pension plan requires us to recalculate the benefit and reduce the benefit 50% of the Social Security Widow's benefit.

The enclosed Benefit Statement and Question and Answer sheet offer more detail on these calculations. If you have questions about your final benefit or overpayment amount, please contact us. The PBGC benefit specialists will be happy to answer any questions that you may have.

We understand that this is a complicated situation and you may have questions. You may call our Customer Contact Center at 1 (800) 400-7242, Monday through Friday, 8:00 a.m. – 7:00 p. ET. If you use a TTY/TDD, call 1 (800)-877-8339, and ask the relay operator to call our telephone number. Or, you may write to: PBGC/Benefits Administration and Payment Department, P.O. Box 151750, Alexandria, VA 22315-1750. Please include your Social Security number, PBGC case number, [redacted] and a daytime telephone number.

This is PBGC's formal determination of your benefit. If you have a question about how your benefit was calculated, please call us for an explanation. If you still disagree with the benefit determination, you have the right to appeal. Your appeal must state the specific reason you believe the determination is wrong, and must be made in writing within 45 days of the date of this letter. The enclosed pamphlet, *Your Right to Appeal*, explains more about filing an appeal.

If you do not appeal this determination, we anticipate that your benefit will be reduced as of 02/01/2009. If you choose to appeal, your benefit will not change until the PBGC Appeals Board reaches a decision.

Please keep this letter in your records for future reference.

Sincerely,

[redacted]

FBA Pension Benefit Analyst  
Field Benefit Administration

Enclosure:  
Your Right to Appeal  
PACS Calculation Sheet  
(Manual Insert) Benefit Statement

Pension Benefit Guaranty Corporation  
U.S. Government Agency



Privacy Act Data

## Benefit Statement

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REPUBLIC TECHNOLOGIES INTERNATIONAL LLC-USWA DB PL

PBGC Case Number:  
Date of Plan Termination:

June 14, 2002

Participant's Name:

Participant's Information

Social Security Number:  
Gender:  
Date of Birth:  
Credit Service Date:  
Date of Termination of Employment:  
Normal Retirement Date (NRD):

02/03/1969  
02/28/2002  
06/01/2014

Summary of Participant's Benefit

Actual Retirement Date (ARD):	03/01/2002
Current Monthly Benefit:	\$548.89
PBGC Monthly Benefit Before 06/01/2012:	\$397.85
PBGC Monthly Benefit After 06/01/2012:	\$342.16
PBGC Form of Annuity:	5-Year Certain Then Joint and 50% Survivor Annuity
PBGC Monthly Surviving Spouse Benefit Before Spouse Age 60:	\$198.92
PBGC Monthly Surviving Spouse Benefit After Spouse Age 60:	\$97.31

Your Current Monthly Benefit of \$548.89 will change to benefits listed above due to pension law limitations that apply to your benefit. See the Benefit Calculation section below for details.

Beneficiary's Information

Beneficiary Name:

Appendix VII: Sample Benefit Determination  
Letter

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[Redacted]

Social Security Number:  
Date of Birth:

[Redacted]  
07/01/1954

Participant's Pension Information for Benefit Calculation

Years of Credited Service (CS):	33.0833
Benefit Rate (BR):	35.0000
5-Year Certain End Date:	02/28/2007
New Plan Temporary Monthly Supplement (SUPP):	\$200.00
New Plan Supplement End Date:	05/31/2012
Plant Code and Plant Location:	151-Massillon Hot Roll
Retirement Type:	30 YEAR

Benefit under Provisions Effective June 1, 1993 (The Old Plan):

(1) Net LTV DBP Benefit Payable at NRD as a Straight Life Annuity:	\$381.57
(2) RESI DCP Monthly Benefit Offset:	\$203.98
(3) Plan Monthly Benefit: \$33.3334 x CS, Maximum 30 = \$33.3334 x 30.0000 =	\$1,000.00
(4) Net Plan Monthly Benefit at NRD as a 5-Year Certain Then Straight Life Annuity: (3) - (2) - (1) = \$1,000.00 - \$203.98 - \$381.57 =	\$414.45
(5) Adjustment Factor for Early Retirement:	0.3827
(6) Adjustment Factor for Joint and Survivor Annuity:	0.8600
(7) Plan Monthly Benefit at ARD as a Joint and 50% Survivor Annuity (4) x (5) x (6) = \$414.45 x 0.3827 x 0.8600 =	\$136.40

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Because your benefit provisions under the Old Plan did not include the New Plan's Surviving Spouse Benefit and 5 Year Certain and Continuous features, we have to adjust this benefit to the same survivor benefit and form of benefit in order to make correct comparisons (the normalized benefit).

(8)	Normalization factor for New Plan's Surviving Spouse Benefit and 5 Year Certain and Continuous Feature:	0.9256
(9)	Normalized Monthly Benefit at ARD: (7) x (8) = \$136.40 x 0.9256 =	\$126.25

**Benefit under Provisions Effective September 8, 1998 (The New Plan):**

(10)	Plan Monthly Benefit: BR x CS = \$35.0000 x 33.0833 =	\$1,157.92
(11)	Net Plan Monthly Benefit at NRD as a 5-Year Certain Then Straight Life Annuity: (10) - (2) - (1) = \$1,157.92 - \$203.98 - \$381.57 =	\$572.37
(12)	Adjustment Factor for Joint and Survivor Annuity:	0.8600
(13)	Plan Monthly Benefit at ARD: (11) x (12) = \$572.37 x 0.8600 =	\$492.24
(14)	Plan Monthly Benefit Before 03/01/2007: (11) + SUPP = \$572.37 + \$200.00 =	\$772.37
(15)	Plan Monthly Benefit After 03/01/2007 and Before 06/01/2011: (13) + SUPP = \$492.24 + \$200.00 =	\$692.24
(16)	Plan Monthly Benefit After 06/01/2011 and Before 06/01/2012: (13) + SUPP = \$492.24 + \$200.00 =	\$692.24

Appendix VII: Sample Benefit Determination  
Letter

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[Redacted]

(17) Plan Monthly Benefit After 06/01/2012:  
Same as (13) = \$492.24

When plans have provisions for supplemental benefits before age 65, the benefit is limited to the monthly benefit payable to you as a straight life annuity at NRD (Age 65). This is called the PBGC Accrued-at-Normal Limit. See the next line for application of this limit.

(18) PBGC Accrued-at-Normal Limit:  
Same as (11): \$572.37

(19) PBGC Monthly Benefit Before 03/01/2007:  
The Lesser of (18) and (14) = The Lesser of \$572.37 and \$772.37 = \$572.37

(20) PBGC Monthly Benefit After 03/01/2007 and Before 06/01/2011:  
[The Lesser of (18) and (15)] = [The Lesser of \$572.37 and \$692.24] = \$572.37

(21) PBGC Monthly Benefit After 06/01/2011 and Before 06/01/2012:  
[The Lesser of (18) and (16)] = [The Lesser of \$572.37 and \$692.24] = \$572.37

(22) PBGC Monthly Benefit After 06/01/2012:  
Same as (17) = \$492.24

(23) PBGC Levelizing Factor for Benefit Payable After 06/14/2002 but Before 06/01/2012: 0.4844

Because your supplement is not payable for your lifetime, it is necessary for the PBGC to convert the supplement to an equivalent lifetime benefit (your level-life benefit). This conversion is necessary to determined limitations on your benefit. Once all limitations have been applied to your level-life benefit, your PBGC guaranteed benefit is then converted back to a lifetime benefit and supplement.

(24) Levelized PBGC Monthly Benefit:  
[(21) - (22)] x (23) + (22) =

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Letter

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$[\$572.37 - \$492.24] \times 0.4844 + \$492.24 =$	\$531.06
--	----------

**Calculation of PBGC Benefit:**

Your plan increased benefits within the 5 years before the plan terminated, but PBGC only guarantees a part of the increase. For each FULL year that the benefit increase was in effect, PBGC guarantees 20% of the increase or \$20, whichever is greater.

(25)	Benefit Increase under Provisions Effective September 8, 1998: (24) - (9) = \$531.06 - \$126.25 =	\$404.81
(26)	Phased-In Benefit Increase: The Lesser of (25) or [The Greater of \$60.00 or 60% x (25)] = The Lesser of \$404.81 or [The Greater of \$60.00 or \$242.89] =	\$242.89
(27)	Levelized Monthly Benefit after Phase-in Limit: (9) + (26) = \$126.25 + \$242.89 =	\$369.14
(28)	Guarantee Ratio: (27) / (24) = \$369.14 / \$531.06 =	0.695100
(29)	PBGC Monthly Benefit Before 03/01/2007: (19) x (28) = \$572.37 x 0.695100 =	\$397.85
(30)	PBGC Monthly Benefit After 03/01/2007 and Before 06/01/2011: (20) x (28) = \$572.37 x 0.695100 =	\$397.85
(31)	PBGC Monthly Benefit After 06/01/2011 and Before 06/01/2012: (21) x (28) = \$572.37 x 0.695100 =	\$397.85
(32)	PBGC Monthly Benefit After 06/01/2012: (22) x (28) = \$492.24 x 0.695100 =	\$342.16



PRIVACY ACT DATA

RECOUPMENT SUMMARY

Plan Name: REPUBLIC TECHNOLOGIES INTERNATIONAL LLC – USWA  
DEFINED BENEFIT PLAN

Case Number:

Participant:  Prepared by:   
Social Security Number:  Date Prepared: November 4, 2008  
Cust Id:  IPS Document Type: Benefit Calculations

Date of Plan Termination: 06/14/2002  
Overpayment Accrual Commencement Date: 06/14/2002  
Target Adjustment Date: 02/01/2009  
Present Value of Termination Benefit: \$67,217.00  
Maximum Guaranteeable Monthly Benefit: \$3,579.55  
Total Number of Months for Calculation: 421

Recoupment Data:  
Total Amount of Money Subject to Recoupment: \$11,932.16  
Expected Number of Months over which Recoupment will Occur: 342  
Recoupment End Date: 07/01/2037

Correct Entitlements Entered:		Actual Pay Entered/Used:	
07/01/2002 – 05/01/2012	\$397.85 ✓	07/01/2002 – 01/01/2009	\$548.89 ✓
06/01/2012 – 12/01/2099	\$342.16 ✓		

Recoupment Percent and Amount Information:			
Pay Dates	Recoup. %	Recoup. Amt.	Reduced Pay Amt.
02/01/2009 – 05/01/2012	10 %	\$39.79	\$358.06
06/01/2012 – 07/01/2037	10 %	\$34.22	\$307.94

This calculation uses interest rates that were updated more than 45 days before the Target Payment Date for this transaction. Per PBGC regulation, this result is valid for payment.

# Appendix VIII: 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

July 31, 2009

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 GAO report entitled, *PENSION BENEFIT GUARANTY CORPORATION--More Strategic Approach Needed for Processing Complex Plans Prone to Delays and Overpayments* (GAO-09-716). GAO's efforts in performing this important work are certainly appreciated. We welcome the report's acknowledgement of the many positive comments about PBGC made by plan participants, and its conclusion that PBGC is able to timely complete and issue benefit determination letters within three years for most plans. We agree that more can be done when PBGC terminates large, complex plans, and are committed to doing so. PBGC is in general agreement with the report's recommendations, and we look forward to updating your office as we make progress toward their implementation.

PBGC guarantees the basic pension benefits covering 44 million individuals in more than 30,000 private-sector defined benefit plans. Since 1974, when Congress created PBGC to guarantee payment of defined benefit pensions, more than 1.1 million workers and retirees in 3,860 terminated pension plans, and more than 120,000 participants in multiemployer plans receiving financial assistance, have relied on PBGC for their retirement income. In Fiscal Year 2008 alone, PBGC paid about \$4.3 billion to more than 640,000 participants in terminated pension plans.

PBGC pays benefits according to the provisions of each individual pension plan within statutory limits and ensures that benefits remain uninterrupted for those already receiving benefits when a plan is terminated. PBGC makes every effort to ensure that participants receive what they are entitled to under their plan, and most participants of plans taken over by PBGC receive the full benefit due under their respective plans. As the report notes, most plans are completed timely; however, PBGC has terminated some plans that are particularly complex, such as plans with multiple benefit formulas due to mergers, or which have data-quality issues, and some that involve more than 100,000 participants. In the time period studied by GAO, there have been 10 such large plans. In order to better address issues associated with these plans, PBGC recently created a Business Process Management Unit reporting directly to the Chief Operating Officer. This group has coordinated the performance of business-process reengineering efforts, leveraging Lean principles, to streamline our processes. Multiple processes have been reengineered in both BAPD and the Appeals Division since 2008. We look forward to further improving our existing

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**Appendix VIII: Comments from the Pension  
Benefit Guaranty Corporation**

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processes, so that PBGC is able to maintain its strong rating from the American Customer Satisfaction Index. For FY 2008, PBGC received a score of 88 in customer satisfaction of retirees receiving benefits from PBGC—one of the highest scores received by a federal government entity.

In the paragraphs below, we provide our specific responses to the report's recommendations, which we expect to implement over the next fiscal year:

**Recommendation:**

PBGC should set goals for timeliness and monitor the progress made in finalizing benefit determinations for large complex plans separately from other plans.

**Response:**

We agree. PBGC has already started to implement steps for tracking and monitoring the tasks associated with case-processing activities for large, complex plans. For example, PBGC today uses detailed project-management software to track timeliness and monitor progress for large, complex plans.

**Recommendation:**

To reduce the number and size of overpayments in large complex plans, PBGC should prioritize the calculation of estimated benefits for retirees subject to statutory limits and adjust estimates, as needed, throughout the benefit determination process. To reduce increased overpayments due to appeals, PBGC should prioritize the processing of appeals for those already receiving benefits and should consider implementing the final benefit determination for retirees during the appeals process.

**Response:**

We agree. PBGC generally does already identify and prioritize those cases where adjustment may be likely, and makes estimated adjustments accordingly. Given the special nature of these large, complex plans, PBGC is intent on focusing keenly on them as we move forward. Certainly, we will continue to look for ways to improve our processes in order to minimize the impact of overpayments on participants affected by the statutory limitations. As to the second part of this recommendation, we have legal concerns about the effect that implementing the final benefit determination before the completion of the administrative appeals process would have on our requirement that participants exhaust PBGC's administrative review procedure before resorting to court. These concerns arise from Section 704 of the Administrative Procedure Act, which permits an agency to require exhaustion of its administrative appeal procedures as a prerequisite to a lawsuit only where the action that is subject to administrative appeal "meanwhile is inoperative." Nonetheless, as noted above, we are willing to explore options for making earlier adjustments in appropriate cases, while seeking to avoid subjecting participants to multiple revisions of their benefit payment. Finally, we note that, as two thirds of our appeals are from participants already receiving benefits, we are substantially in compliance with the balance of the recommendation.

**Recommendation:**

PBGC should develop improved procedures for adapting and reviewing letters to participants in large complex plans, such as by (1) providing more specific information in letters to participants who receive benefit reductions describing which limits were applied and why; (2) ensuring all letters to participants involving benefit reductions are reviewed for accuracy and coherence before being sent; and (3) establishing processes to more frequently communicate with participants who are experiencing delays in receiving final benefits determinations.

**Response:**

We agree. Regarding the first part of your recommendation, PBGC has just completed a six month effort to improve our letters and is near complete in revising the guidelines for our benefit statements to better communicate the complexities of PBGC benefits and to better manage expectations of plan participants. On the second part of your recommendation, we will evaluate and make necessary modifications to our process for reviewing benefit determination letters before issuance to ensure that letters to participants involving benefit reductions are accurate and coherent. On the third part of your recommendation, PBGC is committed to researching and establishing cost-effective processes to more frequently—and more clearly—communicate with participants who may be experiencing delays in receiving final benefit determinations.

**Recommendation:**

PBGC should provide information or resources to help participants in large complex plans better understand their benefit calculations and also to avoid any unnecessary appeals. Specifically, PBGC's benefit determination letters should provide information, such as how participants can obtain additional information by using the Freedom of Information Act or other resources.

**Response:**

We agree. PBGC has already established working groups to examine several aspects of our communications with participants, and we certainly want to help them avoid unnecessary appeals. While we are unsure that encouraging participants to obtain the wealth of technical information in their files will clarify their understanding of their benefit determination letter, and may create unnecessary Freedom of Information Act (FOIA) requests, we are willing to be more proactive in informing participants about the availability of FOIA in connection with review of their benefit determinations. Accordingly, we will amend the appeals brochure to include information about the FOIA process and a link to our FOIA page on our web site.

PBGC continues to press forward in addressing the issues related to our most complex plans. By way of update, as of June 30, 2009 (the end of the 3rd Qtr of FY09), there were 376 RTI-USWA cases with appeals. Of these 376 appeals opened, only 160 appeals remain pending, and 216 of the appeals are now closed.

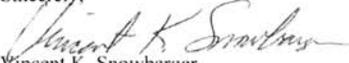
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**Appendix VIII: Comments from the Pension  
Benefit Guaranty Corporation**

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Your efforts and those of your staff in preparing this important report are valued. Again, thank you for the opportunity to comment.

Sincerely,

  
Vincent K. Snowbarger  
Acting Director

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# Appendix IX: GAO Contact and Staff Acknowledgments

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## GAO Contact

Barbara D. Bovbjerg, (202) 512-7215 or [bovbjergb@gao.gov](mailto:bovbjergb@gao.gov)

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## Staff Acknowledgments

In addition to the contact named above, Blake L. Ainsworth, Assistant Director; Margie K. Shields, Analyst-in-Charge; Kristen W. Jones; and Wayne Turowski made significant contributions to this report. Joseph A. Applebaum, Jeffrey L. Bernstein, Susan C. Bernstein, Jena Y. Sinkfield, Walter K. Vance, and Craig H. Winslow also made important contributions.

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*Pension Benefit Guaranty Corporation: Financial Challenges Highlight Need for Improved Governance and Management*, [GAO-09-702T](#) (Washington, D.C.: May 20, 2009).

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*Defined Benefit Pensions: Survey Results of the Nation's Largest Private Defined Benefit Plan Sponsors*, [GAO-09-291](#) (Washington, D.C.: March 30, 2009).

*Pension Benefit Guaranty Corporation: Improvements Needed to Address Financial and Management Challenges*, [GAO-08-1162T](#) (Washington, D.C.: September 24, 2008).

*Pension Benefit Guaranty Corporation: Some Steps Have Been Taken to Improve Contracting, but a More Strategic Approach Is Needed*, [GAO-08-871](#) (Washington, D.C.: August 18, 2008).

*Defined Benefit Pensions: Plan Freezes Affect Millions of Participants and May Pose Retirement Income Challenges*, [GAO-08-817](#) (Washington, D.C.: July 21, 2008).

*Pension Benefit Guaranty Corporation: A More Strategic Approach Could Improve Human Capital Management*, [GAO-08-624](#) (Washington, D.C.: June 12, 2008).

*Pension Benefit Guaranty Corporation: Governance Structure Needs Improvements to Ensure Policy Direction and Oversight*, [GAO-07-808](#) (Washington, D.C.: July 6, 2007).

*Private Pensions: Timely and Accurate Information Is Needed to Identify and Track Frozen Defined Benefit Plans*, [GAO-04-200R](#) (Washington, D.C.: December 17, 2003).

*Pension Benefit Guaranty Corporation Single-Employer Insurance Program: Long-Term Vulnerabilities Warrant "High Risk" Designation*, [GAO-03-1050SP](#) (Washington, D.C.: July 23, 2003).

*Pension Plans: Benefits Lost When Plans Terminate*, [T-HRD-92-58](#) (Washington, D.C.: September 24, 1992).

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