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**Comptroller General
of the United States**

**United States General Accounting Office
Washington, DC 20548**

Decision

Matter of: Pension Benefit Guaranty Corp.—Court Admission Fees

File: B-289219

Date: October 29, 2002

DIGEST

Under 5 U.S.C. § 5757(a), agencies may, at their discretion, use appropriated funds to pay expenses incurred by employees to obtain professional credentials. If the Pension Benefit Guaranty Corporation (PBGC) determines that payment of court admission fees required of its attorneys for admission to practice before federal courts is necessary to carry out its statutory mission and wishes to pay the fees pursuant to the discretion granted the agency under section 5757(a), the General Accounting Office will not object to the PBGC's using appropriated funds to pay the fees.

DECISION

The General Counsel of the Pension Benefit Guaranty Corporation (PBGC) asks whether the PBGC may pay court admission fees incurred by its attorneys when they litigate matters under authority of the Employee Retirement Income Security Act (ERISA) of 1974. For the reasons that follow, we conclude that the PBGC may, at its discretion, pay the court admission fees.

BACKGROUND

Unlike most federal agencies, the PBGC has independent authority under its authorizing legislation to sue and be sued, to complain and defend, in its corporate name and through its own counsel in state and federal courts. 29 U.S.C. § 1302(b)(1). The PBGC employs approximately 80 attorneys, all of whom work out of the headquarters building in Washington, D.C. The PBGC attorneys primarily litigate ERISA matters involving pension plan termination and trusteeship, although they may on occasion litigate other matters. The PBGC attorneys are responsible for litigating ERISA cases throughout the country in every judicial circuit where

litigation is required. Many of the courts charge a one-time fee that all attorneys, including PBGC attorneys, must pay before they can be admitted to practice before a particular court.

The General Counsel states that PBGC attorneys would be unable to carry out the agency's statutory mission without paying the fees required for admission to the various courts where they must litigate ERISA matters. The General Counsel states that the practical benefits derived from paying court admission fees in multiple jurisdictions inures to the PBGC and not to the individual attorneys. Therefore, the General Counsel urges our Office to approve the PBGC's payment of the fees.

DISCUSSION

The PBGC is a nonprofit, wholly-owned government corporation within the Department of Labor, whose purpose is to insure that participants in private pension plans have guaranteed pension benefits should the plans under which they are covered terminate with insufficient assets. 29 U.S.C. § 1302; B-223146, Oct. 7, 1986. The PBGC serves in its corporate capacity as an insurer of the plans covered under the laws it administers. 29 U.S.C. §§ 1322, 1322a. Under its enabling legislation, the PBGC is authorized to litigate in its corporate name using its own attorneys. 29 U.S.C. § 1302(b)(1). When acting in this capacity, the PBGC serves primarily the interests of the United States, and its costs are financed through revolving funds under 13 U.S.C. § 1305. Revolving funds, including those of the PBGC, are appropriated funds subject to statutory restrictions governing appropriated monies. 65 Comp. Gen. 226 n.1 (1986); see also B-275525, Nov. 30, 1994, and 63 Comp. Gen. 31 (1983).

When the PBGC initiates the termination of a covered pension plan with unfunded benefit liabilities, the PBGC may take over as the plan's trustee.¹ B-286026, June 12, 2001. Once the PBGC becomes the trustee of a plan that has not yet terminated, the PBGC assumes the same duties and powers as a nongovernmental party appointed to the position. 29 U.S.C. § 1342(d)(1)(A); B-223146, Oct. 7, 1986. As trustee of plans after termination, the PBGC has broad authority, 29 U.S.C. §§ 1342(a), (d), and may commence, prosecute, or defend on behalf of the plan any suit or proceeding involving the plan. 29 U.S.C. § 1342(d)(1)(B)(iv).

In the past, we consistently held that, absent specific statutory authority to charge appropriated funds for the expense, agencies could not use appropriated funds to pay fees incurred by attorneys employed by the agency for admission to practice before various courts. See, for example, 47 Comp. Gen. 116 (1967). Our reasoning

¹ In some cases, a federal district court appoints the PBGC as trustee. 29 U.S.C. §§ 1342(b), (c). In other cases, the PBGC and plan administrators may agree to the PBGC's appointment without court action. 29 U.S.C. § 1342(b)(3).

was that an officer or employee of the government has upon his own shoulders the duty of qualifying himself for the performance of his official duties and that, if a personal license is necessary to render him competent therefor, he must procure it at his own expense. 22 Comp. Gen. 460 (1942). Even where the agency attorney applied for admission and paid the court fee for the purpose of representing the agency in a case pending before the court, we reasoned that the expense related to the attorney qualifying himself for the performance of his official duties with respect to such case, and, therefore, was a personal obligation of the attorney employee rather than the United States. Id.

However, a recently enacted statute gives agencies the discretion to use appropriated funds to pay the expenses their employees incur for obtaining professional credentials. Section 1112 of the National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107 (December 28, 2001) amends chapter 57 of title 5, United States Code, by adding a new section 5757(a), which provides for the payment of expenses to obtain professional credentials as follow:

“An agency may use appropriated funds or funds otherwise available to the agency to pay for—

- (1) expenses for employees to obtain professional credentials, including expenses for professional accreditation, State-imposed and professional licenses, and professional certification; and
- (2) examinations to obtain such credentials.”

As noted above, the PBGC is a wholly-owned government corporation within the Department of Labor listed in the Government Corporation Control Act, as amended. 29 U.S.C. § 1302(a); 31 U.S.C. § 9101(3)(J). As a wholly-owned government corporation, the PBGC is considered an executive agency covered by the personnel laws in title 5 of the United States Code. 5 U.S.C. § 105. Therefore, the provisions of 5 U.S.C. § 5757(a) are applicable to the PBGC.

Neither Section 1112 of the National Defense Authorization Act for Fiscal Year 2002, 5 U.S.C. § 5757(a), nor its legislative history define what was intended by the terms “professional credentials,” “professional accreditation,” or “professional certification.” Nor did we find specific limitations imposed upon those terms. Agencies have discretion to determine what types of professional expenses may be paid under the statute.

We understand that PBGC attorneys represent the PBGC in litigation before the United States bankruptcy courts, district courts, and circuit courts of appeals, and that many of the courts charge fees to practice before them. Since the fees are prerequisite to practicing in the federal courts, the fees are an obligatory qualification that PBGC attorneys must satisfy in order to do their work, and we believe that the court admission fees fall within the scope of the term “professional

credentials” as used in section 5757(a). It is necessary for PBGC attorneys to pay the court-imposed fees for admission to practice before the many different courts where the PBGC is a party to litigation, in order to protect the PBGC’s interests as well as the interests of pension plan participants and beneficiaries. As the PBGC General Counsel points out, without admission to the courts, PBGC’s attorneys would not be able to carry out the agency’s statutory mission, and any benefits of court admission inure to the agency not the individual attorneys. In view of these circumstances, if the PBGC determines that payment of court admission fees is necessary to carry out its statutory mission and wishes to pay the fees pursuant to the discretion granted the agency under section 5757(a), our Office will not object to the PBGC using its appropriated funds to pay them. If the PBGC makes the requisite determination, it may assume such payments as of the date of the act, providing that funds are available.

CONCLUSION

Under 5 U.S.C. § 5757(a), agencies may, at their discretion, use appropriated funds to pay expenses incurred by employees to obtain professional credentials, state-imposed and professional licenses, and professional certifications. Therefore, if the PBGC determines that the fees PBGC attorneys must pay for admission to practice before federal courts are in the nature of professional credentials or certifications and are necessary to carry out the PBGC’s statutory mission, our Office will not object to the PBGC’s paying those fees out of its appropriated funds.

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General Counsel