OFFICE OF THE GENERAL COUNSEL
Division of Operations-Management

MEMORANDUM OM 94-61 July 19, 1994

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: William G. Stack, Associate General Counsel

SUBJECT: Claims for Employee Benefit Contributions in Bankruptcy Cases

A unique problem has arisen in pursuing claims for employee benefit plan contributions in bankruptcy--overlapping claims with another governmental agency, the Pension Benefit Guaranty Corporation (the "PBGC"). The PBGC is a wholly-owned corporation of the United States government created by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1301-1461. Under ERISA, the PBGC is responsible for seeking the ERISA-based liability that may exist for unfunded or underfunded pension benefits. The PBGC, however, also functions somewhat like the FDIC, and is responsible for insuring any difference between the amount it receives and the total amount necessary to correct the underfunding.

Creative debtors or other parties in interest may seek to pit one agency against another, or attempt to disallow the Board's claim on the basis that a settlement by the PBGC of its claim under ERISA also satisfies any claim for benefit contributions by the Board. While a potential for overlap does exist, it can be avoided by coordinating efforts with the PBGC. Accordingly, in any bankruptcy case which involves a pension claim by the Region, please ascertain whether the PBGC is also a creditor. If the PBGC is a creditor, the Regions should call Special Litigation immediately.

W. G. S.