

**SUPPORTING STATEMENT
REQUEST FOR EXTENSION OF A CURRENTLY APPROVED COLLECTION**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination of Single Employer Plans; Missing Participants; 29 CFR Parts 4041 and 4050; PBGC Forms 500-501, 600-602, Schedule MP and attachments

STATUS: Request for Extension of a Currently Approved Collection with Modifications (OMB control No. 1212-0036; expires December 31, 2013)

CONTACT: Catherine B. Klion (326-4400, ext. 3041) or Jo Amato Burns (326-4400, ext. 3072)

1. Need for collection. Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR Part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed ("missing participants"), the plan administrator is subject to the requirements of section 4050 of ERISA and PBGC's missing participants regulation (29 CFR Part 4050).

OMB approval of the existing information requirements expires December 31, 2013. PBGC is requesting that OMB extend its approval of this information collection, with modifications, for three years.

The substantive changes PBGC is making to the forms and instructions in this information collection are described below. In addition, PBGC is also making updating, clarifying, simplifying, and editorial changes to the existing forms and instructions.

Standard terminations

PBGC is requiring the plan administrator to attach copies of Notice of Intent to Terminate and sample Notices of Participant Benefits to the Standard Termination Notice (Form 500) submitted to PBGC. During post-termination audits, PBGC periodically finds that some notices to participants or beneficiaries are not provided, or that notices that are provided do not comply with regulatory requirements. This change to the information collection will strengthen PBGC's enforcement of these requirements. It will not impose any additional burden on plan administrators; they will simply be required to send PBGC copies of notices that they already must provide to affected parties.

Distress terminations

PBGC is reorganizing the distress termination forms and instructions, including removing information items that PBGC no longer needs or can gather in other ways, adding a few information items that PBGC typically has been requesting as additional information under 29 CFR § 4041.45(c), and moving some information items from one form to another. The changes will reduce the burden on plan administrators, ensure that PBGC obtains the information it needs when the information is most useful, expedite the distress termination process, and make clearer to plan administrators their obligations during the termination process. The specific changes are described below.

Revise Form 600 to focus on whether distress criteria are met.

Plan administrators that file for distress terminations must focus early in the process on whether each contributing sponsor, and each member of each contributing sponsor's controlled group, meets one of the statutory distress criteria (*see* section 4041(c)(2)(B) of ERISA and 29 CFR § 4041.41(c)). Accordingly, PBGC is revising the Form 600 and its attached schedules - the first form submitted to PBGC - to focus on providing information and documents that address this issue.

The revised Form 600 will collect information on the plan administrator, remind plan administrators of their duties during the termination process (*e.g.*, the need to cut back benefit payments to Title IV limits as of the proposed termination date and ensure that a notice of intent to terminate is issued to each affected party), and collect the plan administrator's certification that it has complied with the latter duty.

A new Schedule P will gather plan information and documents regarding the plan. A new Schedule F will collect financial information on each contributing sponsor and each member of its controlled group so that PBGC can determine whether each entity meets one of the distress criteria under 29 CFR § 4041.41(c)(1)-(4).

PBGC is eliminating the current Schedule REP-D (designation of a representative to act on plan administrator's behalf with respect to the termination); the designation will be captured on the revised Form 600 (Section D).

PBGC is removing items from existing forms, and revising and moving items among existing forms, as well as to the new Schedules F or P. For example, PBGC is removing questions 2f and 2g (on the contributing sponsor's tax year and 6-digit business code) from the

Form 600, and moving the Designation of Representative item to Section D of Form 600 (previously, this item was Schedule REP-D, an attachment to Form 600).

Streamline the submission of information and documents to PBGC.

After PBGC reviews a Form 600, in virtually all cases it contacts the plan administrator to request additional information and documents needed to determine if a distress termination can go forward. In addition, under PBGC's current instructions, although PBGC requests that information and documents related to documenting the satisfaction of distress criteria be submitted when the Form 600 (and attachments) is submitted, that information may be filed separately within 60 days of filing the Form 600.

In either situation, there may be a delay in the time when PBGC can decide whether a distress termination may go forward. To expedite the process, PBGC is requiring that all of the information and documents currently requested as part of PBGC's follow-up letter to the Form 600 be collected as part of the Form 600 (and its attached schedules), thereby eliminating the 60-day time lag documenting that distress tests have been met. These changes do not require that the plan administrator provide additional information or documents. They do require that plan administrators be ready to support the assertion that each contributing sponsor and each member of each contributing sponsor's controlled group meets one of the statutory distress tests at the time they file the Form 600.

Missing Participants

Currently, the Missing Participant Payment Voucher ("Payment Voucher") is used both for payment of designated benefits and other amounts owed to PBGC for missing participants and for payment of interest assessed by PBGC for the late payment of designated benefits.

(Under 29 CFR § 4050.6(b)(2), PBGC assesses interest only to the extent the payment of designated benefits is made more than 90 days after the deemed distribution deadline.)

To enable PBGC to separately account for interest paid, PBGC is modifying the Payment Voucher to include a box indicating, where applicable, that the amount being paid to PBGC is solely interest on the late payment of designated benefits.

2. Use of information.

a. Information required. Certain information must be provided to PBGC and to third parties (*e.g.*, participants and beneficiaries) for all types of terminations. For both standard and distress terminations, the plan administrator is required to submit to PBGC certain identifying information, confirmation that the required notices have been properly issued to plan participants and beneficiaries, and the level of funding of the plan. The plan administrator must also provide certain information to third parties, including a notice of intent to terminate.

Standard terminations and sufficient distress terminations. In the case of a standard termination (*i.e.*, a plan that is sufficient for all benefits) or a “sufficient” distress termination (*i.e.*, a plan that is sufficient for at least all guaranteed benefits but not for all benefits and will close out in a private-sector, the plan administrator must provide PBGC and third parties with certain additional information relating to the distribution of plan assets. In particular, the plan administrator must provide PBGC summary information relating to the benefits distributed and, for a standard termination, certain information regarding residual assets. The plan administrator is also required to provide certain additional information to third parties, including: (1) a notice of plan benefits (for standard terminations) or of benefit distribution (for distress terminations);

(2) annuity information, including information on identity of insurers and on state guaranty association coverage of annuities; and (3) if applicable, an annuity contract or certificate.

Distress terminations. For distress terminations, the plan administrator must also provide PBGC with information demonstrating that each contributing sponsor, and each member of each contributing sponsor's controlled group, meets one of the statutory distress criteria (*see* § 4041(c)(2)(B) of ERISA and 29 CFR § 4041.41(c)).

Missing participants. If an annuity is purchased for some or all missing participants, the plan administrator must file identifying information about the insurer, the total number of annuities purchased, the amount transferred to the insurer, and each missing participant's annuity certificate number and monthly benefit. The plan administrator must file Schedule MP and Attachment A as attachments to either Form 501 (if the termination is a standard termination) or Form 602 (if the termination is a sufficient distress termination).

If an annuity is not purchased for a missing participant, the plan administrator must transfer an amount (the "designated benefit") to PBGC for the participant. The plan administrator must file Schedule MP and, for each missing participant for whom a designated benefit is transferred, a separate Attachment B. Attachment B provides identifying information about the missing participant, describes the type and form of the missing participant's benefit, and reports the amounts being transferred to PBGC. As with the Attachment A, the Schedule MP and Attachments B are filed as attachments to either the Form 501 or Form 602.

In either case, the plan administrator must have conducted a diligent search (as defined in PBGC regulations) and been unable to locate the participant before the individual may be treated as a missing participant.

The plan administrator must also file a Schedule MP (with applicable attachments) to report payment to PBGC or the purchase of an annuity for a missing participant who is owed residual assets or voluntary employee contributions. In addition, the plan administrator may be required to file a Schedule MP (with applicable attachments) pursuant to a PBGC audit of a plan termination.

b. PBGC and third party need for information. PBGC needs, and has routinely used, the information required to be submitted to it to: (1) determine whether the statutory and regulatory requirements for a standard or distress termination have been met; (2) in a standard termination, determine whether the reversion of any plan assets to the employer meets the requirements of Title IV of ERISA; (3) in a distress termination, determine whether the plan should be trusteeed by PBGC or permitted to close out in a private-sector distribution; (4) in a distress termination, estimate the amount of employer liability to PBGC under section 4062 of ERISA and 29 CFR Part 4068; and (5) locate and pay missing participants or, where annuities were purchased for missing participants, refer them to the insurer who issued the annuities to be paid. PBGC refers to the Department of Labor the identity-of-insurer information submitted as part of the post-distribution certification, and may audit insurer selections for compliance with the fiduciary standards of Title I of ERISA.

Participants need the information required to be disclosed to them so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination.

The information on state guaranty association coverage helps participants and beneficiaries understand the importance of the plan administrator's selection of an insurer and

enables them to make a better informed choice about whether to elect a lump sum or an annuity. In the case of a missing participant for whom an annuity is purchased from an insurance company, PBGC uses the retirement benefit information to respond to inquiries and to target its search efforts.

3. Reducing the burden and information technology. In certain circumstances, the regulations allow electronic filing with PBGC and electronic issuance of notices to third parties. The Missing Participants Filing Package provides instructions for those who want to use wire transfers for payments for missing participants.

In addition, PBGC is continuing to work to make all of the termination and missing participants forms available on its website as fillable and savable PDF documents. PBGC expects that fillable and savable PDF versions of the forms will reduce the amount of time required of respondents to correct and complete the forms. It also will enhance the forms' accuracy, thereby saving PBGC time as well.

4. Identifying duplication. A limited amount of the information required to be submitted to PBGC in response to this collection of information may already be in the possession of the government. However, there is no timely and reliable way to locate the required documents, particularly since the reporting entity may have changed its name or tax identifying number, or submitted to the government some, but not all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in agencies' files than to simply submit the information to PBGC.

Participants and beneficiaries may find information similar to some of the information required to be disclosed under the termination regulation (*e.g.*, a description of PBGC's

guarantee) in other documents provided at various times to them or to other Federal agencies. However, such information is scattered throughout a number of documents, and it is presented and organized to accomplish other purposes. One purpose of the termination regulation is to ensure that affected parties receive meaningful, timely, and useful information. Requiring participants and beneficiaries to retrieve bits of information that have been provided to them or to the government at other times, for other purposes, would be inconsistent with this purpose.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. Since this collection of information occurs only with respect to a proposed plan termination and, therefore, normally occurs only once in the life of a pension plan, the collection cannot be conducted less frequently unless the information were not collected at all. If this information were not collected at all, PBGC would not be able to fulfill its statutory mandate to oversee the termination of plans covered by PBGC's insurance program, and participants and beneficiaries would not receive meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. Upon review of a standard termination notice, PBGC may, but very rarely does, require the plan administrator to submit additional information relevant to the termination proceeding. The additional information normally is due within 30 days after PBGC makes a written request. PBGC may in its discretion shorten the time period for responding to a written request for additional information, but only where it determines that the interests of PBGC or participants may be prejudiced by a delay in the receipt of the information. To monitor

and facilitate compliance, the time period runs from the date of the request rather than the date of receipt.

In a distress termination proceeding, information in addition to that required by Form 600 and Form 601 may be due in a short time period to permit PBGC to take prompt action (*e.g.*, institution of involuntary termination or trusteeship proceedings) to protect participants or premium payers.

Respondents are required to retain certain records for six years. PBGC notes that most or all of the records required to be retained under the termination regulation already must be retained for six years for other purposes under section 107 of Title I of ERISA. Retention of records for six years is necessary because PBGC has at least six years following a termination to bring a civil action to enforce the provisions of Title IV of ERISA with respect to that termination (*see* section 4003(e)(6) of ERISA).

8. Outside input. The PBGC published a 60-day notice on September 9, 2013, 78 Fed. Reg. 55121. No public comments were received in response to the 60-day notice.

9. Payments and gifts. There are no payments or gifts made in connection with this collection of information.

10. Confidentiality. Confidentiality of information is that afforded by the Freedom of Information Act and the Privacy Act. PBGC's rules that provide and restrict access to its records are set forth in 29 CFR Parts 4901 and 4902, respectively.

11. Sensitive questions. This collection of information does not call for submission of information of a sensitive or private nature.

12. Burden on the public. PBGC based its estimates in items 12 and 13 on its experience. For purposes of this submission, a termination constitutes a “response.”

PBGC's burden estimates assume that much of the plan termination work will be done for Internal Revenue Service purposes (*e.g.*, Forms 5310 and 6088). In addition, much of the termination work will be done in the normal course of closing out a plan.

Standard terminations.

PBGC estimates that it will process 1,409 standard terminations annually over the next three years. PBGC anticipates that 1,287 of the plans terminating in a standard termination will be small plans (100 or fewer participants) and 122 of the plans will be mid-sized or large plans (more than 100 participants). Very large plans rarely terminate as standard terminations.

PBGC estimates that, for a standard termination, it will take an average of 3.5 hours for each small plan and 8 hours for each mid-sized or large plan to prepare and file the required information with PBGC and to prepare and distribute the third-party notices to affected parties. The total number of burden hours is 5,481 hours: (1,287 small plans x 3.5 hours per plan = 4,505 hours) + (122 medium and large plans x 8 hours per plan = 976 hours).

In addition, PBGC estimates that about 179 of the 1,409 plans terminating in a standard termination will have missing participants. The estimates are high enough to include the few, if any, distress terminations that are sufficient (*i.e.*, those that distribute in accordance with standard termination rules).

PBGC estimates that each year about 39 plans with missing participants will purchase annuities for these missing participants, 133 plans will transfer these missing participants' benefits to PBGC, and 8 will do both. PBGC estimates that the average time required for a plan

to comply with the collection of information requirements relating to missing participants will be 1.5 hours for a plan that purchases annuities for its missing participants and 2 hours for a plan transferring benefits of missing participants to PBGC. The total annual burden hours associated with missing participants is 353 hours, rounded: (39 plans purchasing annuities x 1.5 hour = 58.5 hours) + (133 plans transferring benefits x 2 hours = 266 hours) + (8 plans doing both x 3.5 hours = 28 hours). The burden of associated recordkeeping requirements is too small to require independent estimation and is included in the foregoing figures.

The total annual burden for standard terminations will be 5,834 hours (5,481 hours for standard terminations + 353 hours for missing participants). PBGC assumes that 10 percent of the work will be performed by the respondent and that 90 percent will be contracted to third parties. Thus, the total average annual hourly burden for respondents will be 583 hours (.10 x 5,834 hours). The average annual hourly burden per respondent will be 25 minutes (583 hours/1,409 plans).

Distress terminations. PBGC estimates 21 terminations will be concluded as distress terminations annually over the next three years. PBGC estimates that 4 of the plans terminating in a distress termination will terminate under Distress Criterion 1 (liquidation in bankruptcy or insolvency proceeding), and that 17 will terminate under Distress Criteria 2 – 4 (reorganization in bankruptcy or insolvency proceeding, termination required to enable payment of debts or to avoid unreasonable pension costs). Any burden associated with missing participants in sufficient distress terminations is accounted for in the burden estimates for missing participants in standard terminations.

PBGC estimates that it will take an average of 80 hours for a plan terminating in a distress termination under Distress Criterion 1 and 300 hours for a plan terminating in a distress termination under Distress Criteria 2 - 4 to prepare and file the required information with PBGC and to prepare and distribute the third-party notices to affected parties. The total annual burden for distress terminations is estimated to be 5,420 hours: (80 hours x 4 = 320 hours) + (300 hours x 17 = 5,100 hours). PBGC estimates that the respondents will perform 20 percent of the work, 1,084 hours, and contractors will perform 80 percent, 4,336 hours. The hourly burden on respondents (performing 20 percent of the work) averages 52 hours per plan (1,084/21) and breaks down to an average burden per plan based on Distress Criteria of:

Plans terminating under Criterion 1	16 hours
Plans terminating under Criteria 2 – 4	60 hours

Total hourly burden on respondents. The annual burden of complying with this collection of information for both standard and distress terminations over the next three years will average 1,667 hours for respondents (583 hours for standard terminations (including missing participant time) + 1,084 hours for distress terminations).

13. Cost.

Standard terminations. As stated in Item 12, the total annual burden for standard terminations is estimated to be 5,835 hours. PBGC estimates that the respondents will perform 10 percent of the work and contractors will perform 90 percent (5,250 hours). Assuming an average rate of \$200 per hour for contracted services (including professional time, support assistance, overhead, and other costs, but excluding postage), PBGC estimates that the annual

cost to plans for contracted services will be \$1,050,000 (5,250 hours x \$200 per hour). The average cost per plan for contracted services will be \$745 ($\$1,050,000/1,409$ plans).

Distress terminations. As stated in Item 12, the total annual burden for distress terminations is estimated to be 5,420 hours. PBGC estimates that the respondents will perform 20 percent of the work, 1,084 hours, and contractors will perform 80 percent (4,336 hours). Assuming an average rate of \$375 per hour for contracted services (including professional time, support assistance, overhead, and other costs, but excluding postage), PBGC estimates that the annual cost to plans for contracted services will be \$1,626,000 ($4,336 \text{ hours} \times \375 per hour). The average cost per plan for contracted services will be \$77,429 ($\$1,626,000/21$ plans).

Total cost to plans. The above cost estimates do not include postage, which PBGC estimates to be annually \$85,000. PBGC estimates the annual combined cost to plans for standard and distress terminations will be \$2,761,200 ($\$1,050,200$ (contracted costs for standard terminations) + $\$1,626,000$ (contracted costs for distress terminations) + $\$85,000$ postage).

14. Cost to federal government.

Standard terminations. PBGC estimates that PBGC staff time required to process standard termination filings annually will average 2.5 hours per plan (before taking missing participants into account) for a total cost across 1,409 plans of \$101,200. For plans with missing participants, an estimated additional 2.5 hours will be required to process a plan (whether the plan purchases annuities for missing participants or transfers missing participants' benefits to PBGC), for a total cost across 179 plans with missing participants of \$51,401 (this includes the search and postage costs over the projected period that searches will continue for missing participants who are taken in each year; this is estimated at \$125 for each plan with missing

participants.). In addition to PBGC staff costs, PBGC estimates that it will incur annual contractor costs of \$117,000, for an annual total cost of \$168,401.

Distress terminations. PBGC estimates that PBGC staff time required to process distress terminations will be 120 hours for a filing under Criterion 1, and 400 hours for a filing under Criteria 2 – 4. PBGC estimates its annual cost for distress terminations will be \$669,760 (\$92 per hour x 7,280 hours. The 7,280 hours derives from 480 hours for plans terminating under Criterion 1 (4 plans x 120 hours) and 6,800 hours for plans terminating under Criteria 2 - 4 (17 plans x 400 hours).

Total PBGC costs. PBGC estimates its annual combined cost for standard (including costs of plans with missing participants) and distress terminations will be \$838,161 (\$101,200 (standard terminations) + \$168,401 (missing participants) + \$669,760 (distress terminations)).

15. Change in burden. The change in the estimated annual burden of this collection of information (from 2,161 hours in the current OMB inventory to 1,667 hours requested) is primarily attributable to a downward revision in PBGC's estimates of (1) the number of hours needed by respondents to prepare and file standard terminations with PBGC and to prepare and distribute the third-party notices to affected parties (small plan estimate declined from 5 hours and 10 minutes to 3.5 hours; mid- to large-size plan estimate declined from 10 hours and 40 minutes to 8 hours), and (2) the percentage of work that will be done by respondents, rather than contractors retained by respondents (from 20 percent to 10 percent). These revisions are unrelated to program changes; the revised estimates are the result of information gathered by PBGC from a small group of practitioners (less than 10).

As to cost, the estimated annual cost burden of this collection, including postage has declined from \$3,098,441 in the current OMB inventory to the \$2,761,200 reported in this submission.

16. Publication. There are no plans for tabulation or publication.

17. Display of expiration dates. PBGC is not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Exception to certification statement. There are no exceptions to the certification statement.