

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR PART 1320**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Reportable Events (29 CFR Part 4043)

STATUS: Request for renewal of a revision of a currently approved collection of information (OMB control no. 1212-0013; expires March 31, 2015)

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1. Need for collection. Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's reportable events regulation (29 CFR part 4043) require plan administrators and plan sponsors to report certain plan and corporate events to PBGC. The reporting requirements give PBGC timely notice of events that indicate plan or contributing sponsor financial problems.

The Pension Protection Act of 2006 (PPA 2006), as implemented by PBGC regulations, made changes that affect the test for whether advance reporting of certain reportable events is required. In 2013, PBGC issued a proposed rule to amend the regulation to conform the advance reporting test to the new legal requirements, as well as make other changes, primarily to waiver provisions. This new proposed rule took into account both comments from the pension community on a prior proposal and the President's direction to improve regulations under Executive Order 13563. PBGC received comments from the public on the proposed rule and is in the process of developing a final rule in response to those comments.

Pending the applicability of a final rule, PBGC is proposing the following changes to the information collection requirements under 29 CFR Part 4043:

- PBGC proposes to revise Forms 10 and 10-A to separate the filer's title from the filer's name to ensure the title is included.
- PBGC proposes to add to Forms 10 and 10-A the filer's email address to allow for another method of contact with the filer.
- PBGC proposes to require filers to check the boxes of items they are including in the filing to encourage complete filings and so PBGC can better understand what is missing.
- PBGC proposes to add a field for the filer to explain why information may be missing from the filing. This will also help PBGC understand whether PBGC should consider the filing complete. PBGC is able to assess penalties for late filings if the filings are incomplete.
- For all events in which actuarial information is requested, PBGC proposes to modify the requirement to include not only the most recent Actuarial Valuation Report (AVR), but also a list of changes since the most recent AVR, most recent plan assets, and a specific list of items that must be provided if not included in the AVR. PBGC needs this information for higher risk events to understand PBGC's potential financial exposure as soon as possible. Actuarial information includes information for all plans in the controlled group.
- For missed contribution events, PBGC proposes to add a list of cumulative amounts missed since the most recently filed Schedule SB to help PBGC better understand how behind the company is on contributions. Since companies often make partial payments but do not specifically identify how much was paid, PBGC proposes to require the filer to list the date and amount of any contribution made related to the missed amount reported. PBGC also proposes to add a requirement to describe the reason for not making the contribution by the due date. PBGC often has to follow up to find out this information which is difficult and potentially costly. If the reason is related to financial difficulty, PBGC will immediately open a case and assign an analyst. PBGC can also better understand how swiftly it needs to move to protect the plan, if necessary.
- For controlled group change events, PBGC proposes to require filers to provide financial information on Form 10 and Form 10-A. (Although the current regulation lists financial information under "initial information required" to be filed, that information is not currently required on Form 10 or Form 10-A.

- For liquidation events, PBGC proposes to require filers to provide actuarial information. If a company is liquidating, the situation is dire and PBGC needs this information as soon as possible. Further, if the company is expected to cease operations, PBGC requires information to move forward with termination as soon as possible. Thus, PBGC also proposes to require Form 10 filings to include the expected date of cessation, plan document, addresses of controlled group members, and determination letter to ensure it is a covered plan. Currently, PBGC has to follow-up to obtain all this information which results in delays that may lead to lower plan asset recoveries.
- For loan default events, PBGC proposes to require the submission of additional documentation of important information, including waivers, amendments, and cross-defaults. This will help PBGC better understand the extent of financial stress the plan sponsor is under and how quickly a lender may accelerate payment or force a liquidation. PBGC also proposes to require actuarial information to be provided, given the severity of the event type.
- PBGC proposes to require Form 10-A filings include the proposed revised actuarial information requirement. For these filings PBGC has the ability to take action before the event occurs and only has 30 days to do so. Because actuarial information is typically included in an application for a minimum funding waiver, PBGC is proposing that such actuarial information be separately provided with Form 10-A only if the information was not included in the minimum funding waiver application.
- PBGC proposes to add a line to Form 10 and Form 10-A to state the date of the event so PBGC can easily see when the event occurred.
- PBGC proposes to require filers to provide the notice due date, notice filing date, and any filing extension claimed so PBGC can more accurately see whether an information penalty applies. (However, for penalty purposes, the filing date will be the date PBGC received the filing).
- PBGC proposes to require an explanation of why a filing is late or an extension is claimed. This will help PBGC more quickly determine whether it should assess a penalty for late filing.
- PBGC proposes to require a signature and certification to Forms 10 and 10-A. PBGC believes such a requirement will lead to greater accountability for the content of the form and easier identification of the person who actually files the form. PBGC often receives incomplete forms and believes adding a signature will encourage filers to better ensure filing information is complete and correct.
- PBGC proposes to include a note to the Form 10-A instructions that filers should expect a request for additional information promptly after filing a Form 10-A. PBGC's experience has been that it almost always requests additional information from Form

10-A filers and PBGC hopes this note will encourage voluntary submissions of additional information with the initial filing to avoid delays in analyzing the filing.

- PBGC proposes to replace current information requirements for bankruptcy events with a requirement that filers simply identify the court where the insolvency proceeding was filed or will be filed and the docket number of the filing (if known).

2. Use of information. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under ERISA section 4042 to ensure the continued payment of benefits to plan participants and their beneficiaries and/or to prevent unreasonable increases in its losses.

3. Information technology. PBGC permits reportable event notices to be filed by electronic transmission to the address specified in the instructions to the appropriate form on PBGC's Web site.

4. Duplicate or similar information. Some of the required information may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to Federal agencies some, but fewer than 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 other agencies' files than simply to submit the information to PBGC.

To the extent PBGC has the information through another filing, respondents may identify that other filing rather than refile the information. Furthermore, one party may file on behalf of all those who are required to file.

The reportable event notice requirement for a failure to make required minimum funding payments is satisfied if a timely and complete Form 200 is submitted with respect to the same

failure (see 29 CFR § 4043.25(d)).

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Not applicable. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequences of no or less frequent collection. The statutory requirement to notify PBGC is triggered by the occurrence of infrequent or nonrecurring events. No reporting, or less frequent or timely notice, could impair PBGC's ability to fulfill its statutory responsibilities.

7. Special circumstances. Reporting is required whenever a reportable event occurs. In unusual cases, a respondent could incur more than one reportable event within a quarter, thereby requiring reporting more frequently than quarterly.

In some cases, PBGC may require the submission of additional information. In general, the submission of additional information is required within 30 days after PBGC makes a written request. However, for advance reporting, the additional information is required within 7 days of the written request. This is necessary to ensure that PBGC has sufficient time to evaluate the event and determine if action is required before the event becomes effective (*i.e.*, 30 days after the initial report). In addition, PBGC may shorten either the 30-day or 7-day time period 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.

In all other respects, this collection of information is not conducted in any manner described in 5 CFR § 1320.5(d)(2).

8. Outside input. On January 23, 2015, PBGC published a 60-day notice (80 FR 3664) soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d). No

public comments were received in response to the notice. On March 30, 2015, PBGC published a 30-day notice (80 FR 16703) pursuant to 5 CFR § 1320.5(a)(1) soliciting further public comment on this collection of information.

9. Payments to respondents. PBGC provides no payments or gifts to respondents in connection with this collection of information.

10. Confidentiality. In accordance with ERISA section 4043(f) and 29 CFR § 4901.21(a)(3), any information or documentary material that is submitted to PBGC pursuant to section 4043 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) (FOIA) and will not be made public, except as may be relevant to an administrative or judicial action or proceeding. (ERISA section 4043(f), like FOIA section 552(d), does not prevent disclosure to Congress, or to an authorized congressional committee or subcommittee.)

11. Personal questions. This collection of information does not call for submission of information of a personal nature.

12. Burden on the public. PBGC estimates that over the next three years there will be approximately 868 post-event and advance reportable event filings per year. (In light of the small number of advance-report filings, PBGC combined the data for post-event and advance-report filings; PBGC expects 43 advance-report event filings per year.)

PBGC estimates that for post-event reporting and advance reporting, the average hour burden per response will be about 5.2 hours and the total annual hour burden on the public will be about 4,500 hours. PBGC estimates that the dollar equivalent of the hour burden would be an annual total cost of approximately \$346,320 for an average annual cost of approximately \$400 per respondent.

PBGC assumes an average rate of \$76.96 per hour for in-house costs (entirely at the compensation and benefits manager level). This estimate is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.¹
- All of the in-house hours will be performed by a compensation and benefits manager (occupational code 11-3111, mean hourly wage rate \$53.87 per hour, \$76.96 per hour including benefits).

13. Costs. PBGC estimates that over the next three years, respondents will contract out 2,605 hours annually (868 filings times 3 hours per filing). The total estimated annual cost burden of the collection of information is approximately \$214,470 (\$82.33 per hour x 2,605 hours). This estimate is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.²
- The outside consultant hours will be performed by a combination of professional lawyers (occupational code 23-1011 at a mean hourly wage rate of \$63.46, \$90.66 per hour including benefits) and actuaries (occupational code 15-2011 at a mean hourly wage rate of \$51.80, \$74.00 per hour including benefits).³ This comes to a blended hourly wage of \$57.63, \$82.33 per hour including benefits.

14. Costs to the Federal government. PBGC estimates that over the next three years the total annual cost to it for processing filings will be about \$214,000, based on an estimated annual hour burden of 3,335 hours (three hours for each post-event notice x 825 notices + 20 hours for each advance-event notice x 43 notices). PBGC estimates are based on the following:

- 0.5 hours of staff time for processing post-event and advance-event notices will be performed by administrative staff (range of salary GS 6-8, average GS 7 step 5; assuming a blended rate of \$33.51 per hour (\$23.46 attributable to wages⁴ and \$10.05 attributable to benefits).

¹ <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

² <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

³ <http://www.bls.gov/oes/current/oes231011.htm> and <http://www.bls.gov/oes/current/oes152011.htm>.

⁴ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf.

- 1.875 hours of staff time per response for processing a post-event notice will be performed by a combination of in-house attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5; assuming a blended rate of \$70.70 per hour (\$49.49 attributable to wages⁵ and \$21.21 attributable to benefits)).
- 0.625 hours of outside contractor time for processing a post-event notice will be performed by financial analysts (occupation code 13-2051; assuming a mean hourly wage rate of \$44.05, \$62.93 per hour including benefits)).
- 14.625 hours of staff time per response for processing an advance-event notice will be performed by a combination of attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5).
- 4.875 hours of outside contractor time for processing an advance-event notice will be performed by financial analysts.

Thus, PBGC estimates that the total annual cost to the government is \$214,008.85:

- ✓ $0.5 \times 868 \times \$33.51 = \$14,543.34 +$
- ✓ $1.875 \times 825 \times 70.70 = \$109,364.06 +$
- ✓ $0.625 \times 825 \times 62.93 = \$32,448.28 +$
- ✓ $14.625 \times 43 \times 70.70 = \$44,461.46 +$
- ✓ $4.875 \times 43 \times 62.93 = \$13,191.70.$

15. Change in burden. The cost burden of this collection of information has decreased from \$821,826 to \$214,470. These changes are the result of a decrease in the number of expected filings based upon anticipated changes in economic conditions, and PBGC's use of different assumptions for estimating costs.

16. Publication plans. PBGC does not plan to publish the results of this collection of information.

17. Approval for omitting expiration date. PBGC is not seeking OMB approval to omit the expiration date.

⁵ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf.

18. Exceptions to certification statement. There are no exceptions to the certification statement for this submission.