

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

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Disclosure to Participants (29 CFR Part 4011)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0050; expires December 31, 2006)

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A. Justification.

1. Need for collection. Section 4011 of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. § 1311), was added by the Retirement Protection Act of 1994. Section 4011 requires plan administrators of certain underfunded single-employer pension plans to provide notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR Part 4011) prescribes when plan administrators are subject to the notice requirement, who is entitled to receive the notice, and the time, form and manner of issuance of the notice. The regulation includes a model notice plan administrators may use.

Under the regulation, the notice ("Participant Notice") must include (1) certain identifying information; (2) information on the plan's funding status (including information on certain missed contributions and minimum funding waivers); (3) information on the PBGC's guarantee; and (4) information on how to obtain the booklet "Your Guaranteed Pension," which contains further information about the PBGC's guarantee.

The Pension Protection Act of 2006 (PPA) repealed section 4011 of ERISA for plan years starting after 2006. See discussion in item 11 below.

2. Use of Information. The purpose of the collection of information in Part 4011, which requires a disclosure to third parties, is to ensure that participants and beneficiaries in underfunded plans are provided meaningful, understandable, and timely information about their plan's funding status and the risk of their loss of benefits in the event their plan terminates. The information disclosed under Part 4011 will help participants and beneficiaries be better informed about their plans and assist them in their financial planning.

3. Reducing the Burden. A plan administrator may issue the Participant Notice by electronic means, if use of electronic means is reasonably calculated to ensure actual receipt. The PBGC also permits plan administrators to include in the Participant Notice a statement that the booklet "Your Guaranteed Pension" may be obtained electronically from the PBGC's Web site at www.pbgc.gov.

The PBGC has minimized the burden of this collection by: (1) allowing plan administrators to use prior year data to determine whether they are subject to the notice requirement; (2) allowing plan administrators of small plans to use information taken directly from their Form 5500 (filed with the Internal Revenue Service), with optional simple adjustments, to determine whether they are subject to the notice requirement; (3) allowing plan administrators to select the date as of which to determine who is entitled to receive the notice for a plan year; (4) providing a model notice that plan administrators may use; (5) allowing plan administrators to issue the notice together with another document such as the plan's summary annual report required under § 104(b)(3) of ERISA, as long as the notice is in a separate

document; and (6) allowing plan administrators to issue the notice for a plan year late in that plan year.

4. Duplicate or similar information. Participants and beneficiaries can find information similar to some of the information required to be disclosed under Part 4011 (*i.e.*, funding percentage, funding waivers, missed contributions) in other assorted documents provided at various times to them or to the government. However, such information is scattered throughout a number of documents, and it is presented and organized to accomplish other purposes. The PBGC believes that it is important that all of the information required to be included in the Participant Notice be presented together in a single document. Requiring recipients to retrieve information from a variety of documents that have been provided to them, or to the government, at other times for different purposes would be inconsistent with the statutory purpose of providing participants and beneficiaries with such information in a meaningful, understandable, and timely fashion.

The PBGC has coordinated the Part 4011 disclosure requirements with the Title I disclosure requirements. The Department of Labor has advised the PBGC that it will treat a plan administrator that provides a Participant Notice as having complied with the requirement to disclose a plan's funding percentage (if less than 70 percent) in the plan's summary annual report under § 104(b)(3) of ERISA. The Department of Labor has further advised the PBGC that, in the absence of final regulations implementing § 101(d) of ERISA (requiring notice of failure to meet minimum funding standards), it will treat a plan administrator that provides a Participant Notice as having satisfied § 101(d) with respect to any missed contributions identified in the Participant Notice.

5. Consequence of reduced collection. This collection of information implements

§ 4011 of ERISA, which requires that a plan administrator provide a Participant Notice for each year that the plan is subject to the notice requirement. If this collection of information were required less frequently, participants and beneficiaries in underfunded plans would not receive reasonably current information about their plan's funding status; as a result, they might not know that their benefits were at risk in sufficient time to plan accordingly.

6. Consistency with guidelines. This collection of information is consistent with the guidelines in 5 CFR § 1320.6.

7. Outside input. Pursuant to OMB regulations, PBGC published Federal Register notices soliciting public comment on this collection of information on May 31, 2006, at 71 FR 30968, and on November 24, 2006, at 71 FR 67932. No public comments were received in response to May 2006 notice. The comment period for the November 2006 notices expires December 26, 2006.

8. Payment to respondents. The PBGC provides no payments or gifts to respondents in connection with this collection of information.

9. Confidentiality. Confidentiality of information is that afforded by the Freedom of Information Act and the Privacy Act. The PBGC's rules that provide and restrict access to its records are set forth in 29 CFR Part 4901.

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

11. Burden on the public. The PBGC based its estimates in items 11 and 12 on its experience. A plan administrator's burden of responding to this collection of information will vary depending on several factors, including whether the plan is large or small and whether the

plan administrator is required to disclose information on funding waivers and missed contributions.

As mentioned above, PPA repealed section 4011 of ERISA for plan years beginning after December 31, 2006. However, plan administrators of non-calendar year plans required to provide a Participant Notice for the 2006 plan year will, in most cases, provide those notices in calendar year 2007. In addition, PBGC expects that during the next three years a small number of plan administrators will issue late or corrected Participant Notices for 2006 or earlier plan years.

For 2007, PBGC estimates that 1,991 plan administrators with non-calendar year plan years — 726 plan administrators of large plans (plans with more than 100 participants) and 1,265 plan administrators of small plans (plans with 100 or fewer participants) — will provide Participant Notices. Based on the most recent data available on funding waivers and missed contributions, the PBGC expects that of large plan administrators required to provide Participant Notices, 35% of them ($726 \times .35 = 254$) will be required to include information on funding waivers or missed contributions; of small plan administrators required to provide Participant Notices, PBGC estimates that 45% of them ($1,265 \times .45 = 569$) will be required to include information on funding waivers or missed contributions.

For 2008 and 2009, the only plans that will be providing Participant Notices are those issuing delayed, corrected or revised notices from earlier years. Based on past experience, PBGC estimates that 100 plan administrators of large plans and 50 plan administrators of small plans will provide Participant Notices in each year. For plan administrators of both large and small plans that provide Participant Notices, PBGC estimates that 5% of them will be required to include information on funding waivers or missed contributions, so that approximately five large

plans and three small plans will be including information on funding waivers or missed contributions in their Participant Notices in each year.

The PBGC anticipates that most plan administrators will mail the Participant Notice with another document such as the Summary Annual Report. Accordingly, any additional postage costs will be *de minimis*.

The PBGC's burden estimate assumes that virtually all plan administrators subject to the Participant Notice requirement will use the model notice. The estimate is high enough to account for the burden on those few plan administrators that are expected to draft their own notice for the first time.

The PBGC estimates that it will take an average of two hours for a plan administrator of each small plan and three hours for a plan administrator of each large plan to prepare and distribute the Participant Notice. In addition, the PBGC estimates that the average time required for a plan administrator to comply with the information requirements relating to funding waivers or missed contributions (or both) will be an additional one hour per Participant Notice.

The yearly hourly burden for providing Participant Notices for the period 2007 to 2009 is estimated to be:

2007: Large plans, 726 Participant Notices x three hours per Notice = 2,178 hours

Small plans, 1,265 Participant Notices x two hours per Notice = 2,530 hours

Additional time for funding waiver/missed contribution information = 823 (254+569)

Total time burden: 5,531 hours for 1,991 Participant Notices

2008: Large plans, 100 Participant Notices x three hours per Notice = 300 hours

Small plans, 50 Participant Notices x two hours per Notice = 100 hours

Additional time for funding waiver/missed contribution information = 7.5 (5+2.5)

Total time burden: 407.5 hours for 150 Participant Notices

2009: Same as for 2008.

The total burden for providing Participant Notices for the three-year period, 2007-2009, will be 6,346 hours (5,508 hours for the basic notice, plus 838 hours for information on funding waivers or missed contributions or both) for 2,291 Participant Notices; the average annual hour burden across the three-year period will be approximately 2,115 hours ($6,346 \div 3$) for 764 Participant Notices ($2,291 \div 3$). PBGC assumes that 50 percent of the work will be performed by the respondent and that 50 percent will be contracted to third parties. Thus, the annual hour burden for respondents will be 1,057 hours ($2,115 \div 2$). The hour burden per Participant Notice will be 1.38 hours ($1,057 \div 764$).

12. Costs. As stated in Item 11, the PBGC assumes that 50 percent of the total annual burden of 2,115 hours (1,057) will be contracted to third parties, with plan administrators handling the remainder. Assuming an average rate of \$275 per hour for contracted services (including professional time, support assistance, overhead, and other costs, but excluding postage), the PBGC estimates that the annual cost for contracted services per Participant Notice will be \$290,675 (1,057 hours x \$275 per hour). The annual cost for contracted services will be approximately \$380 per plan ($\$290,675 \div 764$).

13. Costs to the Federal government. Because the notices will not be filed with the PBGC, there will be no costs to the PBGC attributable to this collection of information.

14. Adjustments. The change in the estimate of the annual burden of this collection of information — from 8,428 hours and \$579,000 in the current OMB inventory to 1,057 hours and \$290,675 requested — reflects revisions in the PBGC's estimates of:

- the number of plans expected to be subject to the Participant Notice requirement per year from 3,917 plans per year to 764 plans per year;
- the percentage of the work expected to be contracted to third parties from 20 percent to 50 percent;
- the percentage of plan administrators of large plans that are subject to the Participant Notice requirement that are expected to be required to report missed funding contributions or funding waivers from 39 percent to 35 percent for 2007, and to 5 percent for 2008-2009 (weighted average across the three-year period: 29 percent $(264 [254 + 5 + 5] \div 926 [726 + 100 + 100])$); and
- the percentage of plan administrators of small plans that are subject to the Participant Notice requirement that are expected to be required to report missed funding contributions or funding waivers from 42 percent to 45 percent for 2007, and to 5 percent for 2008-2009 (weighted average across the three-year period: 42 percent $(574 [569 + 2.5 + 2.5] \div 1,365 [1,265 + 50 + 50])$).

Most of the above revisions are due to PPA's repeal of section 4011 of ERISA for plan years beginning after December 31, 2006. However, some revisions are due to changes in assumptions that are unrelated to program changes.

15. Publication plans. The PBGC does not intend to publish the results of this collection of information.

16. Display of expiration date. The PBGC is not seeking approval to not display the expiration date for OMB approval of this information collection.

17. Exceptions to certification statement. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

This collection of information is not intended for statistical analysis or publication.