

**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

**STATUS:** Request for Extension of a Currently Approved Collection (OMB control No. 1212-0036; expires September 30, 2007)

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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 September 30, 2007.

PBGC is requesting that OMB extend its approval for three years.

PBGC has made updating, clarifying, simplifying, and editorial changes to the existing forms and instructions. PBGC has also made changes to the instructions resulting from the enactment of the Pension Protection Act of 2006 (PPA) on August 17, 2006, such as the expansion of the Missing Participant program and the disclosure of certain termination information that must be made to participants (discussed below in item 2.a.). The PPA expanded the Missing Participants program to cover multiemployer plans, small professional service employer plans (25 or fewer active participants), and individual account plans (effective after PBGC issues final regulations). PBGC expects to issue a proposed regulation on the expanded Missing Participants program in 2008.

For distress terminations, the timing of when certain information may or must be provided to PBGC has been changed in two respects:

(1) ERISA section 4041(c)(2)(B) and 29 CFR § 4041.41(c) provide that a plan may terminate in a distress termination only if each contributing sponsor, and each member of each contributing sponsor's controlled group, meets at least one of the distress tests described in 29 CFR § 4041.41(c). Previously, a plan administrator was required to submit a statement identifying the distress test met by each entity, and submit documentation supporting the statement, as part of the PBGC Form 601 filing. PBGC Form 601 may be filed as late as the 120<sup>th</sup> day after the proposed termination date with the result that PBGC seldom received the statement and supporting documentation information until well after the commencement of the distress termination case.

The revised instructions for distress terminations key the submission of this distress test information to the filing of PBGC Form 600. The Form 600 must be filed at least 60 days, but not more than 90 days, before the proposed termination date. So that the filing of the Form 600 is not delayed, PBGC will allow the distress test information to be filed separately from the Form 600 up to 60 days after the filing of the Form 600 (an extension of this deadline may be requested of PBGC).

(2) To further facilitate an earlier determination by PBGC that each contributing sponsor and each member of each contributing sponsor's controlled group, meets at least one of the distress tests described in 29 CFR § 4041.41(c), the revised instructions give plan administrators the option of providing supporting documentation to PBGC earlier than is required by the distress termination forms and instructions. Once such information is submitted to PBGC, it need not be re-submitted with a later filed form that requires its submission.

In addition, for distress terminations under the business continuation test, PBGC has increased the number of years (from three to five years) for which information on (1) minimum funding requirements and (2) projections of future revenues, expenses, and cash flow must be provided. This change makes the number of years for which this information for which this information must be provided consistent with that for other types of information under the business continuation test.

The revised forms and instructions are attached to this supporting statement.

2. Use of information.

a. Information required. Certain information must be provided to PBGC and to third parties irrespective of the type of termination. Thus, 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, for all terminations, provide certain information to third parties, including: (1) a notice of intent to terminate; and (2) if the termination is invalidated, a notice that the plan is not going to terminate (or, if applicable, that the termination was invalid but that a new notice of intent to terminate is being issued).

The distress termination instructions include a note saying that they do not yet reflect the changes made by section 506(a)(1) of the PPA relating to the provision of additional information to third parties. Section 506(a)(1) of the PPA added section 4041(c)(2)(D) to ERISA. This provision requires the plan administrator in the case of a distress termination to provide affected parties upon request with any information provided to PBGC in connection with the proposed termination. This provision is applicable to any distress termination for which the notice of intent to terminate is filed after August 17, 2006. PBGC expects to issue a final regulation on this provision in 2008.

Standard terminations and sufficient distress terminations. In the case of a standard termination (in which all benefits must be provided) or a "sufficient" distress termination (*i.e.*, one for which PBGC issues a distribution notice based on its finding that the plan is sufficient for

at least all guaranteed benefits and that closes out in a private sector distribution in the same manner as a standard termination), 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) a notice of identity of insurer; (3) information regarding state guaranty association coverage; and (4) if applicable, a notice of annuity contract.

Distress terminations. For all 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 tests (*see* section 4041(c)(2)(B) of ERISA and 29 CFR § 4041.41(c)). In addition, for insufficient distress terminations, the plan administrator must submit certain participant and beneficiary information to enable PBGC to pay benefits as required under Title IV of ERISA.

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 tried to locate the participant through the participant's beneficiaries, if any, and by using a commercial locator service.

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. 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) determine whether, in a standard termination, the reversion of any plan assets to the employer meets the requirements of Title IV of ERISA; (3) determine whether, in a distress termination, the plan should be trustee 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 insurer selection decision 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 working to make all of the attached forms available on its Web site as fillable and savable pdf documents. PBGC expects that fillable and savable pdf versions of the forms would reduce the amount of time required of respondents to correct and complete the forms. It also would 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. 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 the purpose of the termination regulation to ensure that affected parties receive meaningful, timely, and useful information.

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 the notice of intent to terminate or the distress termination notice may be due in a shorter time period, so that PBGC may 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. Attached is a copy of a Federal Register notice, soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d), that was published on May 16, 2007, at 72 FR 27596. No public comments were received in response to the 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 1,247 standard terminations annually over the next three years. PBGC anticipates that 1,155 of the plans terminating in a standard termination will be small plans (100 or fewer participants) and 92 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 5 hours and 10 minutes for each small plan and 10 hours and 40 minutes 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 6,953 hours: (1,155 small plans x 5 1/6 hours per plan) + (92 medium and large plans x 10 2/3 hours per plan).

In addition, PBGC estimates that about 152 of the 1,247 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 24 plans with missing participants will purchase annuities for these missing participants, 122 plans will transfer these missing participants' benefits to PBGC, and 6 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 one hour for a plan that purchases annuities for its missing participants and 2.5 hours for a plan transferring benefits of missing participants to PBGC. The total annual burden hours associated with missing participants is 350 hours: (24 plans purchasing annuities x 1 hour) + (122 plans transferring benefits x 2.5 hours) + (6 plans doing both x 3.5 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 7,303 hours (6,953 hours + 350 hours for missing participants). PBGC assumes that 20 percent of the work will be performed by

the respondent and that 80 percent will be contracted to third parties. Thus, the total average annual burden for respondents will be 1,461 hours ( $.20 \times 7,303$  hours). The average annual burden per respondent will be 1.17 hours (1,461 hours/1,247 plans).

Distress terminations. PBGC estimates 12 terminations will be concluded as distress terminations annually. PBGC expects that one of the plans terminating in a distress termination will be a small plan and that 11 of the plans will be mid-sized or large plans. PBGC anticipates that 11 of the plans terminating in a distress termination will terminate under distress criteria 1 or 2 (liquidation or reorganization in bankruptcy or insolvency proceedings), and that one will terminate under distress criteria 3 or 4 (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 30.5 hours for a small plan and 277.6 hours for a 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. In addition, all plans that terminate under distress criteria 3 or 4 will incur an additional burden of 14.4 hours per plan. The total annual burden for distress terminations is 3,099 hours:  $(30.5 \times 1) + (277.6 \times 11) + (14.4 \times 1)$ . PBGC estimates that the respondents will perform 20 percent of the work (620 hours) and contractors will perform 80 percent (2,479 hours). The hourly burden on respondents averages 51.67 hours per plan (620/12) and breaks down to an average burden per plan of:

Plans with 100 or fewer participants --	
Bankruptcy or insolvency.....	6.1 hours
Other distress criteria .....	9.0 hours
Plans with more than 100 participants --	
Bankruptcy or insolvency.....	55.5 hours
Other distress criteria .....	58.4 hours

Total 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 2,081 hours for respondents (1,461 hours for standard terminations + 620 hours for distress terminations). Assuming an average rate of \$325 per hour for work performed by respondents (including professional time, support assistance, overhead and other costs, but excluding postage), the annual cost to respondents associated with the work performed in house will be \$676,325 (\$474,825 for standard terminations and \$201,500 for distress terminations).

13. Cost.

Standard terminations. As stated in Item 12, the total annual burden for standard terminations is estimated to be 7,303 hours. PBGC estimates that the respondents will perform 20 percent of the work and contractors will perform 80 percent (5,842 hours). Assuming an average rate of \$325 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 \$1,898,650 (5,842 hours x \$325 per hour). The average cost per plan for contracted services will be \$1,523 (\$1,898,650/1,247 plans).

Distress terminations. As stated in Item 12, the total annual burden for distress terminations is estimated to be 3,099 hours. PBGC estimates that the respondents will perform

20 percent of the work and contractors will perform 80 percent (2,479 hours). Assuming an average rate of \$325 per hour for contracted services, PBGC estimates that the annual cost to plans for contracted services will be \$805,675 (2,479 hours x \$325 per hour). The average cost per plan for contracted services will be \$67,140 (\$805,675/12 plans).

Total cost to plans. The above cost estimates do not include postage, which PBGC estimates to be no more than \$62,354 annually. PBGC estimates the annual combined cost to plans for standard and distress terminations will be \$2,766,679 (\$1,898,650 contracted costs for standard + \$805,675 contracted costs for distress + \$62,354 postage).

#### 14. Cost to federal government.

Standard terminations. PBGC estimates that PBGC staff time required to process standard termination filings will average 1.6 hours per plan, before taking missing participants into account. For plans with missing participants, an estimated additional 27.33 hours will be required to process a plan, whether the plan purchases annuities for missing participants or transfers missing participants' benefits to PBGC. In addition, annual search and postage costs over the projected period that searches will continue for missing participants taken in each year are estimated at \$100 for each plan with missing participants.

At a blended rate of \$41 per hour for staff time, PBGC estimates its annual cost for standard terminations will be \$267,324: \$41 per hour x ((1,247 plans x 1.6 hours per plan) + (152 missing participant plans x 27.33 hour per plan)) + (152 missing participant plans x \$100).

Distress terminations. PBGC estimates that PBGC staff time required to process distress terminations will be 140 hours for a filing under criteria 1 and 2 (liquidation or reorganization in

bankruptcy or insolvency proceedings), and 220 hours under criteria 3 and 4 (termination required to enable payment of debts or to avoid unreasonable pension costs). At a blended rate of \$80 per hour for staff time, PBGC estimates its annual cost for distress terminations will be \$140,800: \$80 per hour x ((11 criteria 1&2 plans x 140 hours) + (1 criteria 3&4 plan x 220 hours)).

Total PBGC costs. PBGC estimates its annual combined cost for standard and distress terminations will be \$ 408,124 (\$ 267,324 standard + \$140,800 distress).

15. Change in burden. The change in the estimated annual burden of this collection of information (from 1,743 hours in the current OMB inventory to 2,081 hours requested) is primarily attributable to an upward revision in PBGC's estimate of the number of distress terminations per year. The expected increase is for reasons unrelated to program changes.

For standard terminations, PBGC has (1) increased its estimate of the number of terminating plans that will be large plans, (2) decreased its estimate of the number of plans with missing participants, and (3) decreased its estimate of the number of plans transferring missing participants' benefits to PBGC. The net effect of these revised estimates, which are unrelated to program changes, is a very slight decrease, from 1.19 to 1.17 hours, in the estimated amount of time per response for standard terminations.

For distress terminations, PBGC has (1) increased its estimate of the number of terminating plans that will be large plans, and (2) decreased its estimate of the number of plans terminating under distress criteria 3 or 4. The net effect of these revised estimates, which are

unrelated to program changes, is an increase, from 50.11 to 51.67 hours, in the estimated amount of time per response for distress terminations.

Coupled with the increase in the average hourly rate paid to outside contractors (from \$275 to \$325), the estimated annual cost burden of this collection, including postage has increased from \$1,973,075 in the current OMB inventory to \$2,766,679 requested 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.