Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination Premium

STATUS: New collection

1. Need for collection. Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 8101(b) of the Deficit Reduction Act of 2005, Pub.L. 109-171 (DRA 2005), added section 4006(a)(7) to ERISA to create a new "termination premium" (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations that occur after 2005. Sections 401(b) and 402(g)(2)(B) of the Pension Protection Act of 2006, Pub.L. 109-280 (PPA 2006), made changes to the termination premium rules established by DRA 2005. To implement the termination premium, PBGC proposes to amend its regulations on Premium Rates (29 CFR Part 4006) and Payment of Premiums (29 CFR Part 4007). The proposed rule was published February 20, 2007, at 72 FR 7755. Sections 4007.3 and 4007.13(b) of the amended premium payment regulation would require the filing of termination premium information and payments with PBGC. PBGC proposes to collect the termination premium information using a new Form T.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. Pursuant to DRA 2005, the amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to $1,250 times the number of participants. However, the rate is increased from $1,250 to $2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

Section 4007.3 and proposed § 4007.13(b) of the premium payment regulation require the filing of termination premiums and related information; Form T may be filed by any person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined (pursuant to DRA 2005) on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

2. Use of information. PBGC will use the information in Form T to identify the plan for which a termination premium is paid to PBGC, to verify the determination of the premium, and to identify the persons liable for the premium. That information and the retained records will be used for audit purposes.

3. Information technology. PBGC has not developed information technology applications to deal with termination premiums. The volume of filings is not expected to be high enough to justify development of an electronic filing method. PBGC is exempting termination premium filings from mandatory premium e-filing under the premium payment regulation.

4. Duplicate or similar information. The information required in termination premium filings is not available from any other source. Although a plan's participant count and the identity of members of its sponsor group may be reported as of other dates for other purposes, this information is subject to change over time, and only Form T requests the information as of the day before the plan's termination date.

5. Reducing the burden on small entities. No special methods are to be used to reduce burden on small entities. The termination premium will not affect a substantial number of entities of any size.

6. Consequence of reduced collection. Since the information collected is essential to proper administration of PBGC's insurance programs, including auditing of termination premium filings, failure to collect it would seriously impair PBGC's program operations. Termination

premiums are payable once a year for three years. The timing of Form T filings must match the termination premium due dates.

7. Special circumstances. The proposed amendment to the premium payment regulation requires "designated recordkeepers" to retain information necessary to support termination premium filings for six years. This is necessary to ensure that records are available during the period within which PBGC may bring an action to collect premiums under ERISA section 4003(e)(6). The six-year period also corresponds to the record retention requirement under Title I (section 107) of ERISA.

In unusual circumstances, 29 CFR § 4007.10 may require submission of information in less than 30 days. This provision would accommodate a situation where PBGC determined that the payment of the termination premium (or any associated interest or penalty) would otherwise be jeopardized, *e.g.*, because a statutory limitations period was about to expire.

In other respects, this collection of information is not conducted in a manner inconsistent with 5 CFR § 1320.5(d)(2).

8. Outside input. PBGC's proposed rule amending its regulations to implement the termination premium informs the public of the submission of this collection of information to OMB for review and solicits public comment.

9. Payment to respondents. PBGC provides no payments or gifts to respondents 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 Part 4901.

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

12. Hour burden on the public. Based on its experience with distress and involuntary termination cases where one or more contributing sponsors and/or controlled group members continue after plan termination, PBGC anticipates that an average of about 25 plans, maintained by an average of about 15 plan sponsor groups, will terminate each year under circumstances subject to the termination premium. (Some sponsor groups have more than one plan.) Thus, PBGC expects to receive about 25 first-year termination premium filings in the first year of the termination premium program; about 25 first-year and 25 second-year filings in the second year; and about 25 first-year, 25 second-year, and 25 third-year filings in the third year and each subsequent year. Accordingly, over the first three years of the termination premium program, PBGC expects to receive an average of about 25 first-year and 25 second- and third-year termination premium filings each year from an average of about 30 plan sponsor groups. Of these, PBGC estimates that 1 first-year and 1 second- or third-year filing (about 5 percent) will be prepared in-house and that preparation of the other filings will be contracted out. This percentage estimate corresponds to the estimate historically used for purposes of estimating flat- and variable-rate premium filing burdens and may be changed as PBGC gains experience with the termination premium.

Most of the filing burden will be associated with determining the participant count and making a list of contributing sponsors and controlled group members. The task of determining the participant count is likely to be facilitated in many or most cases by the ability to "roll back" data determined as of the termination date for other purposes (determination of benefits and allocation of assets) by accounting for individuals who became or ceased to be participants between the termination date and the preceding day. The task of making the list of contributing sponsors and controlled group members is likely to be facilitated in some cases because filings describing the plan's controlled group have been made within the preceding year under section 4010 of ERISA.

PBGC estimates that the hour burden for a first-year filing is about 30 hours and for a second- or third-year filing about 10 hours. These estimates include the burden of recordkeeping. The smaller estimate for second- and third-year filings reflects the fact that the participant count need not be redetermined after the first year and that the list of contributing sponsors and controlled group members need only be updated to reflect attrition. Thus the total estimated annual hour burden for the first three years of the termination premium program is about 40 hours. The annualized cost to respondents for these burden hours is $11,000 (based on an average hourly rate of $275).

13. <u>Cost burden on the public.</u> PBGC estimates the cost burden on the public for the approximately 95 percent of termination premium filings that are contracted out to be $264,000. The costs are based on an hourly rate of $275.

14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government of processing this collection of information will be about $10,000 for the first year of the termination premium program, $20,000 for the second year, and $30,000 for the third year and each subsequent year. Thus, over the first three years of the termination premium program, the estimated annual cost to the Federal Government is about $20,000.

15. Change in burden. This is a new collection.

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

17. Display of expiration date. PBGC is not requesting approval to omit from Form T the date OMB's paperwork approval expires.

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