

## **SUPPORTING STATEMENT**

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Disclosure of Termination Information; 29 CFR Parts 4041 and 4042

**STATUS:** New collection

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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, as amended (“ERISA”), 29 U.S.C § 1301-1461. Sections 4041 and 4042 of ERISA govern the termination of single-employer defined benefit pension plans that are subject to Title IV. A plan administrator may initiate a distress termination by sending a notice of intent to terminate to all affected parties pursuant to section 4041(a)(2). Under section 4042 of ERISA, PBGC may itself initiate proceedings to terminate a pension plan if it determines that certain conditions are present. For distress terminations, pursuant to ERISA section 4041(c) 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 affected parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of any termination initiated by PBGC under section 4042 of ERISA, a plan administrator, in response to a request by PBGC, provides PBGC with certain information, e.g., the value of plan assets and liabilities.

Section 506 of the Pension Protection Act of 2006, Pub. L. 109-280 (“PPA 2006”), which was enacted August 17, 2006, adds disclosure provisions to both sections 4041 and 4042 of ERISA requiring that information submitted to PBGC in conjunction with a termination (either a distress or PBGC-initiated termination) must be provided to an affected party upon request. “Affected party” is defined in section 4001(a)(21) of ERISA to include each participant in the plan, each beneficiary under the plan, each employee organization representing plan participants, and PBGC.

With respect to distress terminations, the new provisions require that a plan administrator that has filed a Notice of Intent to Terminate must provide to an affected party, upon request, information that it has submitted to PBGC in conjunction with the distress termination. With respect to PBGC-initiated terminations, the new provisions require that, following receipt by the plan administrator of a Notice of Determination, the plan sponsor and plan administrator, and PBGC must provide information submitted to PBGC to an affected party upon request. The new provisions also require PBGC, in a PBGC-initiated termination, to provide its administrative record, including the trusteeship decision record, to an affected party upon request.

The information requested must be provided to an affected party by a plan administrator, plan sponsor, or PBGC not later than 15 days after receipt of the request. The new provisions are applicable to terminations initiated on or after August 17, 2006.

PBGC is requesting OMB’s approval of the information requirements described above for three years. A description of the disclosure requirements will be included with PBGC’s Distress Termination Filing Instructions or notice of determination (NOD) issued by PBGC that

a plan must be terminated under section 4042 of ERISA, as applicable. The descriptions, along with the Paperwork Reduction Act Notice, are attached to this supporting statement.

2. Use of information.

a. Information required. With regard to distress terminations, certain information is provided by plan administrators to affected parties without request, 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). For a “sufficient” distress termination (*i.e.*, one where the plan is sufficient for at least all guaranteed benefits and closes out in a private sector distribution), the plan administrator also must provide: (3) a notice of benefit distribution; (4) a notice of identity of insurer; (5) information regarding state guaranty association coverage; and (6) if applicable, a notice of annuity contract.

However, other information submitted to PBGC as part of a distress termination generally is not provided to affected parties, including (1) information demonstrating that each contributing sponsor, and each member of each contributing sponsor’s controlled group, meets one of the statutory distress tests; and (2) for insufficient distress terminations, certain participant and beneficiary information that enables PBGC to pay benefits as required under Title IV of ERISA. Under PPA 2006, that information must be provided to an affected party upon request.

With regard to PBGC-initiated terminations, information submitted to PBGC in response to requests by PBGC under section 4042(c)(2) of ERISA (previously section 4042(c)(3) prior to its re-designation by PPA 2006 as 4042(c)(2)) is generally not provided to affected parties.

However, under PPA 2006, any information that a plan administrator or plan sponsor submits to PBGC must be provided to an affected party upon request.

To obtain termination information under PPA 2006, a written request from an affected party must be directed to the plan administrator, or, if the request relates to a PBGC-initiated termination, to the plan administrator, plan sponsor, or PBGC. The request must be signed by the affected party and state:

- the name of the person making the request;
- the name of the plan;
- that the request to the plan administrator or plan sponsor is for information submitted to PBGC with respect to a distress or a PBGC-initiated termination for the plan, or, if the request is directed to PBGC, that the request is for the administrative record relating to a Notice of Determination issued by PBGC;
- the requester's relationship to the plan (e.g., plan participant or beneficiary); and
- that the requester meets the definition of affected party under 29 CFR § 4001.2.

b. Need for information. Affected parties need the information required to be disclosed to them by plan administrators and plan sponsors so that they will be informed about the proposed termination of their plan and, in the case of a PBGC-initiated termination, the information relied upon by PBGC in determining that the plan should must be terminated.

Plan administrators, plan sponsors, or PBGC need the information from affected parties so that they can confirm the requester is a person who is entitled to the termination information under ERISA § 4041(c)(2)(D) or ERISA § 4042(c)(3).

3. Reducing the burden and information technology. Plan administrators and plan sponsors must provide termination information in accordance with PBGC's rules on Issuance, subpart B of 29 CFR part 4000. These rules allow use of any method of issuance that is reasonably calculated to ensure actual receipt of the material by the intended recipient. The rules provide a safe-harbor method for electronic issuance.

PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

4. Identifying duplication. A limited amount of the information required to be provided to affected parties may have already been provided to the affected party before the affected party requested the information. However, there is no simple or efficient way to advise affected parties that they have already received some of the requested information they have requested. Moreover, requiring affected parties to retrieve bits of information that have been provided to them at earlier times for other purposes would be inconsistent with the purpose of the PPA 2006 provisions to ensure that affected parties receive meaningful, timely, and useful information that is keyed to their request.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. Since this provision 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 provision of information cannot be done less frequently unless the information were not provided at all. If this information were not provided at all, participants and beneficiaries would receive less meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. None.

8. Outside input. PBGC's proposed rule amending its regulations to implement the new disclosure of termination information provisions informs the public of the submission of this collection of information to OMB for review and solicits public comment. See 72 FR 68542, (Dec. 5, 2007).

9. Payments and gifts. There are no payments or gifts made in connection with this collection of information. Section 4041(c)(2)(D)(iii)(II) of ERISA provides, in the case of a distress termination, that a plan administrator may charge a reasonable fee for any information provided in other than electronic form; section 4042(c)(3)(D)(ii) provides that a plan sponsor may also do so in the case of a PBGC-initiated termination.

10. Confidentiality. A plan administrator, in a distress termination, and a plan administrator, plan sponsor or PBGC, in a PBGC-initiated termination, must not provide information that might, directly or indirectly, be associated with or otherwise identify an individual participant or beneficiary. In addition, a plan administrator or a plan sponsor may seek a court order under which confidential information described in 5 USC § 552(b): (1) will be disclosed only to authorized representatives (any employee organization representing participants in the plan) that agree to ensure the confidentiality of such information, and (2) will not be disclosed to other affected parties.

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

12. Burden on the public. For purposes of this submission, a response is a response to a request by an affected party. To date, PBGC is not aware of any requests by affected parties that

have been made under the new PPA 2006 provision. PBGC is basing its estimates in items 12 and 13 on the number of distress terminations and PBGC-initiated terminations that it anticipates will occur annually over the next three years, and the number of participants and beneficiaries (the largest class of persons who would meet the definition of affected party under 29 CFR § 4001.2) that it anticipates will be covered by such terminations.

PBGC estimates that over the next three years, 100 plans with a total of 100,000 participants and beneficiaries will terminate in a distress or involuntary termination annually, and that 10% of the affected parties in these plans will request that termination information submitted to PBGC be provided to them, resulting in 10,000 requests for information each year.

PBGC's estimates assume a fixed burden of 15 hours per termination (to develop procedures for handling requests, set up a database, transmit information, and perform other administrative and clerical tasks) and 1.5 hours per request (an hour to review the request and 30 minutes to mail, fax or email the information). Thus, PBGC estimates the total burden of to be 30,000 hours ((15 hours x 100 plans) + (1.5 hours x 10,000 requests)).

These estimates do not include any burden associated with seeking a court order to limit disclosure. Nor do they include any burden on affected parties.

13. Cost. PBGC expects that the plan administrators and sponsors will perform the work described above in-house. Thus, the primary cost for plan administrators and plan sponsors of responding to information requests from affected parties is expected to be the copying and transmittal costs associated with the requests. PBGC estimates that approximately 2,000 requests will relate to distress terminations and that the remainder, 8,000 requests, will relate to PBGC-initiated terminations. PBGC estimates that 250 pages will be copied and transmitted

with regard to each request that relates to a distress termination, and 150 pages for each request that relates to a PBGC-initiated termination, for an annual total of 1,700,000 pages: (2,000 requests related to distress terminations x 250 pages per request) + (8,000 requests relating to PBGC-initiated termination x 150 pages per request). At an estimated cost of 15 cents per page, the total annual cost is estimated to be \$255,000. This estimate is high enough to include the cost of postage for those affected parties for whom mail would be the only method of issuance that would be reasonably calculated to ensure actual receipt of the material by the intended recipient. Because plan administrators and plan sponsors may charge a reasonable fee for non-electronic disclosure, PBGC anticipates that the number of affected parties electing electronic delivery of requested information will increase over time.

14. Cost to federal government. Affected parties may request a copy of PBGC's administrative record for the termination only where PBGC initiates a termination under section 4042 of ERISA. PBGC estimates that of the 100 plans that will terminate in a distress or PBGC-initiated termination annually, 80 terminations will begin as PBGC-initiated terminations and that PBGC will take action to terminate another ten plans under section 4042 of ERISA where the termination began as a distress termination. (The remaining 10 will terminate as distress terminations.) Of these 90 PBGC-initiated terminations, PBGC estimates that participants in 10% of the plans will request PBGC's administrative record of the termination. PBGC staff time required to process these administrative record requests is estimated to be 60 hours per plan. At a blended rate of \$85 per hour for staff time, PBGC estimates its annual cost to respond to requests for its administrative record for PBGC-initiated terminations will be \$45,900 (9 plans x 60 hours x \$85 per hour). This estimate does not include any cost that may be incurred by



PBGC if a plan administrator or plan sponsor were to seek a court order to limit PBGC's disclosure of its administrative record due to confidentiality concerns.

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

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

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