Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Financial and Actuarial Information Reporting
(29 CFR Part 4010)

STATUS: Request for Approval of a Revision of a Currently Approved Collection of Information (OMB control number 1212-0049; expires February 29, 2008)

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A. Justification.

1. Need for collection.

Overview

Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) requires each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. Pursuant to ERISA section 4010, PBGC issued its regulation on Annual Financial and Actuarial Information Reporting in 1995 (29 CFR Part 4010). The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010. PBGC reviews the information that is filed and enters it into an electronic database for more detailed analysis. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information and do not reflect a plan's termination liability, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

Corporate events such as spin-offs and sales of business segments increase the risk of pension plan underfunding and can result in losses to plan participants and PBGC. The information submitted under the section 4010 regulation allows PBGC: (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities or significantly increase the controlled group's risk profile. With this information, PBGC is able to act quickly to negotiate agreements for contributing sponsors and their controlled group members to provide additional plan funding or take other action, including the termination of underfunded plans, to protect PBGC's claims against the controlled group's assets.

Section 4010 specifies that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. Section 4010 also specifies that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans. All non-public information submitted is protected from disclosure.

In March of 2005, PBGC amended part 4010 to require electronic reporting and to make other less significant changes. Reporting is now accomplished through PBGC's secure e-4010 web-based application.

Changes made by PPA 2006

The Pension Protection Act of 2006, Pub.L. 109-280 ("PPA 2006") changed the standards for determining which persons are required to report under ERISA section 4010 (Authority to Require Certain Information) and made other changes to the reporting requirements. Until the PPA 2006 changes take effect, Section 4010 requires each member of a controlled group to submit financial and actuarial information to PBGC: (1) if the aggregate unfunded vested benefits of all defined benefit pension plans maintained by the controlled group exceed $50 million, (2) if the controlled group maintains any plan with missed contributions aggregating more than $1 million (unless paid within a ten-day grace period), or (3) if the controlled group maintains any plan with funding waivers in excess of $1 million and any portion is still outstanding (taking into account certain credit balances in the funding standard account).

Section 505 of PPA 2006 amended ERISA section 4010, replacing the $50 Million Gateway Test with a test that requires reporting if the funding target attainment percentage of a plan maintained by the contributing sponsor or any member of its controlled group is less than 80 percent.

PBGC's proposed rule would implement that change (and other less significant changes) made to ERISA section 4010 by PPA 2006. In addition, PBGC also is proposing: (1) to waive reporting in certain cases for controlled groups with aggregate underfunding of $15 million or less; (2) to modify the standards for determining which plans are exempted from reporting actuarial information; (3) to modify the reporting requirements in light of the PPA 2006 changes;

and (4) to make other clarifications (for instance, the proposed rule would provide guidance for reporting for multiple employer plans and for dealing with certain unusual timing issues with respect to plan years and information years).

The proposed rule, in general, would be applicable to information years beginning after December 31, 2007. However, certain changes made to the actuarial reporting requirements are effective only for plan years beginning after December 31, 2007.

Under PPA 2006, PBGC is required to submit to Congress an annual summary report of the section 4010 information submitted to PBGC.

Changes under proposed rule to actuarial reporting

The current regulation requires the controlled group to file each plan's actuarial valuation report ("AVR"), certain participant information, and a determination of the amount of benefit liabilities. The actuarial information required under the current regulation is prepared routinely by plan actuaries. The one significant exception is the calculation of benefit liabilities, which is needed to assess exposure to risk of loss for participants and the termination insurance program. (Reporting of this information is now statutorily required.) The calculation of benefit liabilities is similar to the calculation of pension obligations that an employer makes for its financial statements, except that benefit liabilities are calculated using PBGC termination assumptions for benefits payable as annuities rather than the employer's assumptions. The proposed rule provides clarification on how this amount is to be determined.

As with the current rule, the proposed rule would require submission of the actuarial valuation report for the plan year ending within the filer's information year and would specify what information must be included in or attached to the report. PBGC is proposing to modify the required items of information to better suit the new funding structure instituted by PPA 2006. The required information is information that PBGC expects most actuaries would include in valuation reports once PPA 2006 takes effect (*e.g.*, target normal cost, information on shortfall amortization bases, information on funding assumptions, an age/service scatter). However, because the funding rules have changed so dramatically as a result of PPA 2006, and because Treasury regulations implementing the new funding rules are not yet final, the list of required items may exclude some relevant actuarial information. To allow PBGC to expand the list of required items as it gains more experience with the new funding requirements under PPA 2006, the proposed rule would provide that the online instructions to PBGC's secure e-4010 web-based application may require that additional items be included in (or attached to) the valuation report. PBGC expects that any additional items would be items typically required to be reported on the Form 5500 schedule for defined benefit plan actuarial information (Schedule SB).

PPA 2006 amended ERISA section 4010 to add two new reporting requirements. Filers must provide: (1) the funding target of the plan determined as if the plan has been in at-risk status for at least 5 plan years; and (2) the funding target attainment percentage of the plan. These requirements are reflected in the proposed rule.

Under the current regulation, A plan that has fewer than 500 participants or that is fully funded is exempt from the actuarial reporting requirements unless the plan has outstanding funding waivers (taking into account certain credit balances in the funding standard account) or missed minimum funding contributions (unless paid within a ten-day grace period). The proposed rule would modify this rule to require that the plan also have underfunding of less than $15 million.

Reduced reporting

The proposed regulation would significantly reduce the filing requirements of ERISA section 4010. For employers that are required to report based on the funding target attainment percentage gateway test, the proposed regulation would waive reporting if the aggregate plan underfunding for the controlled group does not exceed $15 million (disregarding those plans with no underfunding). In addition, the proposed rule would reduce the reporting requirements for multiple employer plans in a number of ways. For example, the proposed rule would provide that, in general, only information on employers that are among the 10 largest employers in terms of participants (for hourly plans) or contributions (for salaried plans) would need to be provided.

Many aspects of the proposed rule remain unchanged from the current regulation and would continue to reduce reporting. The regulation waives the filing of financial information if a controlled group member has filed the information with the Securities and Exchange Commission or has otherwise made the information publicly available. The regulation gives PBGC authority to waive or further reduce financial and actuarial information requirements if a waiver or reduction is justified. The parent entity of a controlled group may satisfy the financial reporting requirements for all of the members of the controlled group by submitting the controlled group's consolidated financial statements and, for any controlled group member that sponsors an underfunded defined benefit plan with 500 or more participants, limited additional financial information (specifically, three pieces of financial information: revenues, operating income, and assets). A controlled group member need not submit or be included in reports if it has no (or only exempt) plans and its revenue, net assets, and operating income are five percent or less of aggregate controlled group amounts (or, for assets and operating income, $5 million or less). (This exemption was added to the 1995 final rule in response to comments on the 1995 proposed rule that it would be unnecessarily burdensome to require filers to report on small, non-sponsor entities.)

As noted above, under the proposed rule, a plan that has no underfunding or has fewer than 500 participants and underfunding of less than $15 million is exempt from the filing requirements unless the plan has outstanding funding waivers (taking into account certain credit balances in the funding standard account) or missed minimum funding contributions (unless paid within a ten-day grace period).

PBGC is requesting that OMB approve the changes in the proposed rule. PBGC expects that Section 4010, as proposed, would affect about 300 controlled groups.

2. Use of information. PBGC uses the information submitted to identify controlled groups with severely underfunded pension plans, to determine the financial status of contributing sponsors and other controlled group members, to evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which contributing sponsors and their controlled group members would provide additional plan funding. Without this information, PBGC could not effectively carry out its responsibilities to protect plan benefits and control insurance program costs.

3. Information technology. The proposed rule would continue to require electronic filing in a standardized format (except as otherwise provided by PBGC), in accordance with instructions on PBGC's Web site (www.PBGC.gov). Electronic filing enables PBGC to simplify the reporting process and to improve the accuracy, completeness, and timeliness of the information it receives. PBGC is able to access the information quickly and in a complete manner from its data base, while imposing very little additional burden on filers. Almost all 4010 filers are large corporations accustomed to submitting electronic filings with other government agencies, such as with the Securities and Exchange Commission using EDGAR. PBGC believes that electronic filing reduces the burden on the public.

4. Duplicate or similar information. To avoid duplication, the regulation provides that companies do not have to submit information previously submitted to PBGC or publicly available and provides that a single filing may be made for all members of a controlled group. Although the Form 5500 and PBGC Form 1 provide certain plan information, those filings do not include controlled group financial information nor is the plan information sufficiently current or detailed to allow PBGC to analyze controlled group transactions and evaluate the risk of loss to the group's pension plans and to PBGC.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Failure to receive the required information would impair significantly PBGC's ability to assess exposure for participants and the termination insurance program and to identify particular situations that present risks to the pension insurance system. It would also diminish PBGC's ability to negotiate agreements with sponsor groups to

reduce those risks and to decide on necessary legal action, including plan termination. As recognized by the statute, PBGC needs current, detailed financial and actuarial information to carry out its responsibilities. The financial health of companies and plans can change quickly. Increasing the statutory one-year reporting interval would force PBGC to rely on less current and thus less meaningful information.

7. Consistency with guidelines. The collection of information is to be conducted in a manner consistent with the guidelines in 5 CFR § 1320.6, with one exception (relating to the 30-day guideline in § 1320.6(b)). Under § 4010.6(b), PBGC may require respondents to furnish additional information (within the scope of the statutory reporting requirement) within ten days or such other time as PBGC may specify. PBGC has a substantial need for the shorter time limit because of the limited time that PBGC may have to analyze an impending controlled group transaction.

8. Outside input. In the proposed rule published in the Federal Register on February 20, 2008 (93 FR 9243), PBGC has informed the public of the submission of this collection of information to OMB for review and has solicited public comment.

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

10. Confidentiality. ERISA section 4010(c) provides:

> Any information or documentary material submitted to the [PBGC] pursuant to this section shall be exempt from disclosure under [the Freedom of Information Act], and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

Section 4010.12 of the regulation provides:

> In accordance with § 4901.21(a)(3) of this chapter [part of PBGC's regulation on Examination and Copying of PBGC Records] and section 4010(c) of ERISA, any information or documentary material that is not publicly available and is submitted to PBGC pursuant to this part shall not be made public, except as may be relevant to any administrative or judicial action or proceeding or for disclosures to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

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

Note: Items 12-14 reflect PBGC's estimates once the PPA 2006 and implementing regulatory changes take effect.

12. Hour burden on the public. Based on its experience, PBGC estimates that approximately 300 controlled groups will be subject to the requirements of the regulation.[1] PBGC expects that about 30 large international companies with foreign parents, about 68 privately held companies, and about 202 publicly held domestic companies. The time needed by a particular controlled group to respond to the collection of information varies depending on the size, nature, and organizational structure of the controlled group, whether the controlled group is publicly or privately held, and whether the controlled group includes international companies with foreign affiliates. The collection of information requires responses of three types: (1) identifying information, (2) financial information, and (3) actuarial information. PBGC expects that identifying and financial information will be prepared in house. On the other hand,

[1] It is difficult to estimate the number of filers because the new 4010 reporting requirements are based upon new funding rules for which there is no experience. Moreover, controlled group behavior in electing to waive or reduce credit balances affects 4010 reporting, and PBGC has no basis for predicting this behavior.

PBGC expects that actuarial information will be prepared by outside actuarial consultants (see item 13).

PBGC estimates that the time needed to identify controlled group members and pension plans sponsored by the controlled group will be about 8 hours for each of the 40 international groups and about 2 hours for each of the other 360 groups, a total of about 1,040 hours annually.

PBGC estimates that the time needed to prepare the submission of financial information will be about 16 hours for each of the 40 international groups, about 8 hours for each of the 90 private groups, and about 4 hours for each of the 270 publicly held groups, a total of about 2,440 hours annually.

Based on the foregoing, PBGC estimates that the total annual time required to submit information required under the regulation is about 2.600 hours annually.

13. Cost burden on the public. PBGC estimates that the time needed to prepare actuarial information submitted under the regulation is about 15,900 hours annually (53 hours per controlled group) and that this work is done by outside actuarial consultants. Assuming an average rate of $ 325 per hour (including professional time, support assistance, overhead, and other costs), PBGC estimates the total annual cost at $5,167,500.

14. Cost to the government. PBGC estimates its cost of processing filings to be about $22,300 per year, based on about 215 hours of clerical time at $20 per hour and about 300 hours of professional time at about $60 per hour.

15. Explanation of burden changes. The hour burden and cost burden have both decreased based upon a reduction in the estimated number of filers from 400 to 300. A small

portion of this decrease is offset by a slight increase in the estimated burden hours because the preparation of actuarial information is estimated to take slightly longer under the new rules.

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

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

18. Exceptions to certification statement. There are no exceptions to the certification statement in item 19 of Form 83-I.

B. Collection of Information Employing Statistical Methods.

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