

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)

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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 initial 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. Before its amendment by PPA 2006, ERISA section 4010 required 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, disregarding plans with no unfunded vested benefits (the “\$50 Million Gateway Test”); (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. PPA 2006 also 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. Under PPA 2006, PBGC is required to submit to Congress an annual summary report of the section 4010 information submitted to PBGC.

Regulatory changes

PBGC published a proposed rule on February 20, 2008 (93 FR 9243) to implement the PPA 2006 changes and shortly thereafter submitted the proposed rule changes to the 4010 information collection to OMB. On March 25, OMB extended approval of the current 4010 information collection for three years (approval would otherwise have expired in early 2008) and filed a comment on the proposed rule changes directing PBGC to resubmit the request in conjunction with the final rule. PBGC received four public comments on the proposed regulation.

The final regulation (which is nearly the same as the proposed regulation) –

- Provides guidance on how to determine whether 4010 reporting is required based on a plan's funding target attainment percentage;
 - Makes conforming changes to the current regulation to address the PPA 2006 reporting triggers based on the imposition of certain liens or on the granting of minimum funding waivers;
 - Waives reporting in certain cases for controlled groups with aggregate underfunding of \$15 million or less;
 - Modifies the standards for determining which plans are exempt from reporting actuarial information;
 - Modifies the reporting requirements primarily to implement the PPA 2006 changes;
 - Provides guidance on reporting requirements for sponsors of multiple employer plans;
- and

- Makes other clarifications.

The regulatory changes and changes from the proposed regulation to the final regulation are discussed in detail in the final rule preamble. The final regulation is applicable to information years beginning after 2007, with the first filings under the new regulation due April 15, 2009.

The final regulation significantly reduces the filing requirements of ERISA section 4010. For employers that are required to report based on the funding target attainment percentage gateway test, the final regulation waives reporting if the aggregate plan underfunding for the controlled group does not exceed \$15 million (disregarding those plans with no underfunding).

In addition, the final rule provides an alternative method of compliance for certain sponsors of multiple employer plans. An eligible contributing sponsor (defined as a contributing sponsor of a multiple employer plan that would not be subject to reporting if the plan were disregarded in applying the gateway tests) satisfies the section 4010 requirements if any contributing sponsor of the plan provides a timely filing for an information year that coincides with or overlaps with the eligible contributing sponsor's information year. PBGC may request some or all of the information that would otherwise be required from an eligible contributing sponsor. For most multiple employer plans, the alternative method of compliance will have the effect of a full waiver of reporting for all but one of the contributing sponsors.

Many aspects of the final rule remain unchanged from the current regulation and will 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 each member of the filer's 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.)

Finally under the final 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).

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 final rule will 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. PBGC's proposed rule amending its regulation to implement the new PPA 2006 actuarial and financial disclosure provisions informed the public of the submission of this collection of information to OMB for review and solicited public comments. 93 FR 9243 (Feb. 20, 2008). Four public comments were received in response to the proposed rule; no

comments were received with respect to the information collection requirements of the proposed rule.

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 4010.13 of the final 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 ERISA section 4010(c), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to this part will 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 final regulation does not call for submission of information of a sensitive or private nature.

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

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.

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, 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.