

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR PART 1320**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: PBGC Form 200, Notice of Failure to Make Required Contributions
(29 CFR 4043.81)

STATUS: Request for renewal of a currently approved collection (with modifications) of
information (OMB control no. 1212-0041; expires February 28, 2009)

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A. Justification.

1. Need for collection. Section 303(k) of the Employee Retirement Income Security Act of 1974 (“ERISA”) and section 430(k) of the Internal Revenue Code of 1986 (“Code”) impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds \$1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons

committing payment failures to notify PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR § 4043.81. The form and instructions have been revised to remove information that is no longer applicable in light of changes made by the Pension Protection Act of 2006.

2. Use of information. PBGC uses the information it obtains to make decisions regarding enforcement of liens created under ERISA section 303(k)(1) and Code section 430(k)(1). This information enables PBGC staff to determine the amount of the statutory lien and to evaluate the funding status of the plan and the financial condition of the person(s) responsible for its funding. Without this information, PBGC could not efficiently and effectively use the statutory lien provisions in carrying out its responsibilities to protect plan benefits and control insurance program costs.

3. Use of technological collection techniques. PBGC permits Form 200 filings to be made by electronic transmission to the address specified in the instructions to the form on PBGC's Web site.

4. Duplication and similar information. PBGC avoids potential duplication by permitting a filer to respond to an item that calls for documentation or other information previously submitted to PBGC (in an earlier Form 200 or another context) by identifying the previous submission in which the response was provided.

In addition, to the extent that PBGC staff can use information from documents prepared for other purposes (including reports and other filings with Federal agencies and in judicial proceedings) in lien-enforcement decision making, Form 200 calls for the submission of copies of those documents. Other items also call for information that already is available to respondents.

A failure that triggers this notification requirement also may be a reportable event (see section 4043(c)(5) of ERISA and 29 CFR § 4043.25). The reportable event notice requirement is satisfied if a timely and complete Form 200 is submitted with respect to the same failure (see 29 CFR § 4043.25(d)).

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Small businesses. Not applicable.

6. Consequences of no or less frequent collection. ERISA establishes when PBGC collects information by requiring that PBGC be notified of each failure to make a required funding payment by the due date. If PBGC were notified less frequently, or not at all, it would not have the information that it needs to make timely lien-enforcement decisions.

7. Special Circumstances. The statutory notification requirement is tied to the minimum funding standards, which may require payments more often than quarterly. Consequently, failure to make a required payment may trigger the statutory notification requirement more often than quarterly.

Although Form 200 is not prepared in response to a PBGC solicitation of information, the statutory requirement does provide that PBGC must be notified within 10 days of a payment due

date. However, persons who may be required to notify PBGC can familiarize themselves with Form 200, and even begin preparing responses, before a payment failure that triggers the statutory notification requirement. In some cases, PBGC may require the submission of additional information. In general, the submission of additional information is required within 7 days after PBGC makes a written request. The 7-day period is necessary to ensure that PBGC has sufficient time to act to enforce the statutory liens. Any delay may result in financial loss to PBGC (see Item 2). In addition, PBGC may 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.

In all other respects, this collection of information is not conducted in any manner described in item 7 of the general instructions for the supporting statement.

8. Outside input. On November 21, 2008 (73 FR 70681), PBGC published a notice soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d). No public comments were received in response to the notice.

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

10. Confidentiality. In accordance with section 4043(f) of ERISA and 29 CFR § 4901.21(a)(3), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to section 4043 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) (“FOIA”) and may not be made public, except as may be relevant to an administrative or judicial action or proceeding. (ERISA section 4043(f), like

FOIA section 552(d), does not prevent disclosure to Congress, or to an authorized congressional committee or subcommittee.)

11. Sensitive questions. This collection of information involves no questions of a sensitive nature.

12. Burden on the public. PBGC anticipates that this collection of information requirement will apply, annually, with respect to up to 185 single-employer plans. When a payment failure first results in a total of unpaid balances (including interest) that exceeds \$1 million, PBGC estimates that the average response time for the initial filing will be 2.9 hours. When there is a subsequent payment failure and the total of unpaid balances (including interest) continues to exceed \$1 million, PBGC estimates that the average response time for the subsequent filing will be 1.4 hours. These times are averages that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan.

PBGC's estimates assume an average of one initial and 1.3 subsequent filings annually with respect to each of the 185 plans. Based on these assumptions, PBGC estimates that the total annual burden on the public will be 873 hours $((2.9)(1)(185) + (1.4)(1.3)(185))$, or a total annual cost of \$305,550 $((873)(\$350))$.

At a rate of \$350 per hour, PBGC estimates the per plan costs of responding at \$1,015 $((2.9)(\$350))$ and \$637 $((1.4)(1.3)(\$350))$ for initial and subsequent filings, respectively, for a total annual cost of \$1,652 per respondent.

13. Costs. PBGC estimates that an additional 873 hours will be contracted out. Assuming the same average rate of \$350, PBGC estimates that the annual cost under the Form 200 for purchase of services will be \$305,550. Because failures to make required contributions occur infrequently and on a nonrecurring basis, there are no capital and start-up costs.

14. Costs to the Federal government. PBGC estimates the cost of processing filings based on 671 hours of PBGC employees' time annually: 2 hours for each of 185 initial filings (0.5 and 1.5 hours of clerical and professional staff time, respectively) and 1.25 hours for each of 241 subsequent filings (0.5 and 0.75 hours of clerical and professional staff time, respectively). At a cost of \$23 and \$70 per hour for clerical and professional time, respectively, PBGC's estimated annual cost is \$36,976.50 $((\$11.50 + \$105)(185) + (\$11.50 + \$52.50)((185)(1.3)))$.

15. Change in burden. The adjustment in burden is the result of an increase in the number of expected filings based upon PBGC's experience in the last three years, and an increase in the hourly contracting rate from \$275 to \$350.

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

17. Approval for omitting expiration date. Not applicable. PBGC is not seeking OMB approval to omit the expiration date.

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