

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

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Notice of Failure to Make Required Contributions (PBGC Form 200 and instructions) (29 CFR Part 4043 Subparts A and D)

STATUS: Request for approval of revision of currently approved collection of information (OMB control no. 1212-0041; expires March 31, 2012)

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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 under Title IV of ERISA 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.*, each contributing sponsor and each member of the contributing sponsor's controlled group).

Only Pension Benefit Guaranty Corporation (PBGC) (or, at its direction, the plan's contributing sponsor or a member of its 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.

Subparts A and (especially) D (§ 4043.81) of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), and PBGC Form 200, Notice of Failure to Make Required Contributions, implement ERISA section 303(k) and Code section 430(k). PBGC is proposing to amend the reportable events regulation in several ways (not primarily focused on Subpart D). In connection with the proposed amendments, PBGC is proposing to make changes to the information collection requirements under ERISA section 303(k) and Code section 430(k) and Subparts A and D of the reportable events regulation (PBGC Form 200 and related filing instructions) (OMB control number 1212-0041). The main substantive changes are as follows:

- PBGC proposes to eliminate the "partial electronic filing" provision because computer technology has progressed to the point where it is no longer necessary.
- There is sometimes a credit balance that is available for application to a contribution that is due. PBGC needs to be able to determine whether all or a portion of the credit balance has been properly applied toward payment of the contribution. Accordingly, PBGC proposes to require filers of Form 200 to indicate how much (if any) of the carryover balance or prefunding balance was used for partial payment of the missed contribution and submit copies of election letters relating to application of the carryover balance and prefunding balance to the contribution.
- PBGC proposes to provide instructions for computing interest on prior missed contributions.

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.

3. Information technology. PBGC's filing instructions would describe electronic filing options and requirements for e-filing large files.

4. Duplication or similar information. Some of the required information may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to Federal agencies some, but fewer than all, of the required documents. In most cases, it would take a respondent more time to help PBGC track down and verify documents in other agencies' files than simply to submit the information to PBGC. In general, information that has been formatted for other purposes (such as for submission to another agency) need not be reformatted for submission to PBGC; copies of documents prepared for other purposes may be used.

If PBGC already has information required for a Form 200 filing from a previous submission, the filer may identify the previous submission rather than refile the information.

The reportable event notice requirement for a failure to make required minimum funding payments (29 CFR § 4043.25) is satisfied if a timely and complete Form 200 is submitted with respect to the same failure.

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. Reducing the burden on small entities. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequences of no or less frequent collection. ERISA requires 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 enforce

liens arising under ERISA section 303(k) and Code section 430(k) and otherwise efficiently and effectively use the statutory lien provisions in carrying out its responsibilities to protect plan benefits and control insurance program costs.

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.

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. 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 5 CFR § 1320.5(d)(2).

8. Outside input. On November 23, 2009 (74 FR 61248), PBGC published a proposed rule to amend the reportable events regulation that solicited public comment on this collection of information pursuant to 5 CFR § 1320.11(a).

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

10. Confidentiality. Confidentiality is governed by the provisions of the Freedom of Information Act (5 U.S.C. 552) (FOIA). See PBGC's regulation on Examination and Copying of Pension Benefit Guaranty Corporation Records (29 CFR Part 4901).

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

12. Hour burden on the public. PBGC estimates that preparation of a Form 200 filing takes about 24 hours if the filing is a plan's first Form 200 filing (an "initial" filing) and 20 hours if the filing is a "subsequent" filing, and that half the work on each filing is done in-house by the filer and half by outside professionals.

PBGC estimates that about 300 plans will make Form 200 filings each year. Of this number, PBGC estimates that about 200 will file for the first time and that these first-time filers will account for 200 initial filings and about 260 subsequent filings. PBGC further estimates that the approximately 100 non-first-time filers will account for 260 subsequent filings.

Thus, PBGC expects to receive about 200 initial filings and about 520 subsequent filings each year. Accordingly, PBGC estimates that the annual hour burden will be about 2,400 hours for initial filings and about 5,200 hours for subsequent filings, or a total of about 7,600 hours.

13. Cost burden on the public. PBGC assumes an average cost of \$350 per hour (including professional time, support assistance, overhead, postage and other costs) for work on Form 200 filings that is contracted out. Thus, PBGC estimates that the average cost burden per response will be approximately \$4,200 for initial filings and approximately \$3,500 for subsequent filings. PBGC therefore estimates that the annual cost burden will be approximately \$840,000 for initial filings and \$1,820,000 for subsequent filings.

Thus PBGC estimates that the total annual cost burden will be approximately \$2,660,000.

14. Cost to the Federal government. PBGC estimates that its processing and reviewing of a Form 200 filing requires about one-half hour of clerical time and about one and a half hours (for an initial filing) or three-quarters of an hour (for a subsequent filing) of professional time. PBGC further estimates that the cost to the government is about \$23 per hour for clerical employees and about \$70 per hour for professional employees.

Thus, PBGC estimates that its annual cost to process and review Form 200 filings is about \$23,300 for initial filings and about \$33,280 for subsequent filings, or a total of about \$56,580 per year.

15. Change in burden. The change in burden reflects changes in PBGC's estimate of the number of filings, the breakdown between initial and subsequent filings, and the amount of time spent on each filing.

Plan funding requirements have become more stringent and the economic downturn has led to reductions in plan funding levels. Accordingly, PBGC is projecting that it will receive about 70 percent more total filings than previously estimated. PBGC is also assuming that there will be more repeat filers, and is reducing the assumed ratio between initial filings and subsequent filings by half (from about 76 percent to about 38 percent).

PBGC has also reviewed its estimates of the amount of time required to prepare filings. PBGC has concluded that its previous estimates of 5.8 hours for an initial filing and 2.8 hours for a subsequent filing are too low, and is now using estimates of 24 hours per initial filing and 20 hours per subsequent filing. In part, this change reflects the greater complexity of calculating interest on unpaid contributions and late payments under recent changes in the law.

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

17. Approval for omitting expiration date. 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.