

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

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Reportable Events (29 CFR part 4043 subparts A - C) (Forms 10 and 10-Advance and instructions)

STATUS: Request for approval of revision of currently approved collection of information (OMB control no. 1212-0013; expires March 31, 2012)

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1. Need for collection. Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to Pension Benefit Guaranty Corporation (PBGC). The reports give PBGC notice of events that indicate plan or contributing sponsor financial problems.

Subparts A - C of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR part 4043), and PBGC Forms 10 and 10-Advance, implement ERISA section 4043. PBGC is proposing to amend the reportable events regulation in several ways. In connection with the proposed amendments, PBGC is proposing to make changes to the information collection requirements under ERISA section 4043 and subparts A - C of the reportable events regulation (Forms 10 and 10-Advance and related instructions) (OMB control number 1212-0013). (The information collection requirements under subpart D of the regulation are covered by OMB control number 1212-0041 and are the subject of a separate submission.) The main substantive changes are as follows:

- PBGC proposes to eliminate most automatic filing waivers and extensions.

- PBGC proposes to create two new reportable events dealing with low adjusted funding target attainment percentages (AFTAPs) and with transfers of “excess” plan assets to retiree health accounts under section 420(f) of the Internal Revenue Code of 1986 (Code).
- To promote uniformity in the reporting process, PBGC proposes to require that all reportable events filings be made using PBGC forms.
- PBGC proposes to eliminate the “partial electronic filing” provision because computer technology has progressed to the point where it is no longer necessary.
- PBGC’s experience is that in order to assess the significance of virtually every reportable events filing, it must obtain from the filer the most recent month-end statement of the market value of plan assets, the most recent AFTAP certification, and the most recent actuarial valuation report that contains or is supplemented with all the items of information described in § 4010.8(a)(11) of PBGC’s regulation on Annual Financial and Actuarial Information Reporting (29 CFR part 4010). Accordingly, PBGC proposes to require that every reportable events filing include these items.
- To provide better identification of controlled group members, PBGC proposes to require that lists of controlled group members include addresses as well as names.
- PBGC has found that some filers that should file Form 200 under § 4043.81 of the reportable events regulation (missed contributions totaling over \$1 million) file only Form 10 under § 4043.25 (missed contributions of any amount). This has led to delays in enforcing liens under former section 302(f) of ERISA and section 412(n) of the Code (current section 303(k) of ERISA and section 430(k) of the Code). To address this issue, PBGC proposes that the information collections under the reportable events regulation include a requirement to report the aggregate outstanding balance (with interest) of all prior contributions not timely made and to provide instructions for computing interest.
- In missed contribution cases, 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 both Form 10 and 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.
- To help PBGC assess the impact of a change in contributing sponsor or controlled group, PBGC proposes to require submission of “before-and-after” financial statements for post-event as well as advance reporting. Where the event is the

loss of one or more controlled group members, financial statements would be required for the controlled group before and after the loss of the departing member(s). Where the event is a transfer of a plan to another controlled group, financial statements would be required for the old and new controlled groups. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)

- To help PBGC assess the significance of a loan default or an extraordinary distribution or stock redemption, PBGC proposes to require filings for these events to include financial statements for all controlled group members to the extent not publicly available.
- PBGC Form 10-Advance (used for advance reporting under subpart C of the reportable events regulation) currently includes a requirement for the benefit liability transfer event that both the transferor and the transferee (and contributing sponsors) be identified. Form 10 (used for post-event reporting under subpart B) calls only for the identity of the transferee. PBGC proposes to change the Form 10 requirement to correspond to the requirement of Form 10-Advance.
- To help PBGC assess the impact of a transfer of benefit liabilities, PBGC proposes to require submission of financial statements for both the transferor controlled group and the transferee controlled group. (Filers would not be penalized if they were unable to obtain financial statements from controlled groups other than their own.)
- PBGC Form 10 currently requires for the bankruptcy event that the bankruptcy petition and docket (or similar documents) be submitted. Form 10-Advance requires that all documents filed in the relevant proceeding be submitted. Both forms require that the last date for filing claims be reported if known. PBGC proposes to replace these requirements with a requirement that filers simply identify the judicial district where the bankruptcy petition was filed and the docket number of the filing.
- When an advance report of an extraordinary dividend or stock redemption is made, PBGC has a 30-day window in which to determine whether there is a basis for taking action before the dividend is paid and, if so, to act. In order to do so, PBGC needs information about contributing sponsors' financial health. Accordingly, PBGC proposes to add a requirement for contributing sponsor financial statements to the information submission requirements for advance reporting of extraordinary dividends and stock redemptions.
- PBGC proposes to require that the notice of a low adjusted funding target attainment percentage certified by an enrolled actuary include a copy of the enrolled actuary's certification.

- If a section 420(f) transfer of \$10 million or more is made, PBGC proposes to require that the notice to PBGC include a calculation demonstrating that the transfer does not reduce pension assets below 120 percent of liabilities for pension benefits.
- If, following a section 420(f) transfer of \$10 million or more, the funded ratio falls below 120 percent during the transfer period, PBGC proposes to require that the notice to PBGC include a calculation demonstrating how (by making additional pension plan contributions or by transferring assets back from the health benefits account to the pension plan) pension assets were restored to an amount not less than 120 percent of liabilities for pension benefits.

2. Use of information. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries and/or to prevent unreasonable increases in its losses.

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

4. Duplicate 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.

To the extent that PBGC itself has the information pursuant to another filing, respondents may identify the other filing rather than refile the information. Furthermore, one party may file on behalf of all those who are required to file.

PBGC's proposed amendments to the reportable events regulation would provide, with respect to the active participant reduction event (29 CFR § 4043.23), (1) that active participant reductions properly reported under ERISA sections 4062(e) and 4063(a) may be ignored in determining whether a reportable event has occurred and (2) that reports need not be made more than once a year.

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 reportable event. If PBGC were notified less frequently, or not at all, its ability to fulfill its statutory responsibilities would be impaired.

7. Special circumstances. Reporting is required whenever a reportable event occurs. More than one reportable event may occur within a quarter, thereby requiring reporting more frequently than quarterly. However, as noted above, PBGC's proposed amendments to the

reportable events regulation would provide, with respect to the active participant reduction event (29 CFR § 4043.23), that reports need not be made more than once a year.

In some cases, PBGC may require the submission of additional information. In general, the submission of additional information is required within 30 days after PBGC makes a written request. However, for advance reporting, the additional information is required within 7 days of the written request. This is necessary to ensure that PBGC has sufficient time to evaluate the event and determine if action is required before the event becomes effective (*i.e.*, 30 days after the initial report). In addition, PBGC may shorten either the 30-day or 7-day time period, 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 (at 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. 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. 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 there will be approximately 2,150 post-event reportable event filings and approximately 50 advance reportable event filings per year.

For post-event reporting (the Form 10), PBGC estimates that each response will take about 12 hours to prepare and that half the work will be done in-house by filers and half will be contracted out. Thus the average hour burden per response will be approximately 6 hours and the annual hour burden will be approximately 12,900 hours.

For advance reporting (the Form 10-Advance), PBGC estimates that each response will take about 18 hours to prepare and that two-thirds of the work will be done in-house by filers and one-third will be contracted out. Thus the average hour burden per response will be approximately 12 hours and the annual hour burden will be approximately 600 hours.

PBGC thus estimates that the total annual hour burden will be approximately 13,500 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 reportable events filings that is contracted out. Thus, PBGC estimates that the average cost burden per response will be approximately \$2,100. PBGC therefore estimates that the annual

cost burden will be approximately \$4,515,000 for post-event reporting (the Form 10) and approximately \$105,000 for advance reporting (the Form 10-Advance).

Thus PBGC estimates that the total annual cost burden will be approximately \$4,620,000.

14. Cost to the Federal government. PBGC estimates that Federal employees spend four hours reviewing each post-event reportable event filing and 40 hours reviewing each advance reportable event filing, at a cost to the government of about \$70 per hour. Thus, PBGC estimates that the government's cost to process 2,150 post-event reportable event filings and 50 advance reportable event filings per year will be approximately \$742,000.

15. Change in burden. The change in burden reflects changes in PBGC's estimate of the number of filings, the amount of time spent on each filing, and (for advance reporting) the split between work performed in-house and by contractors.

PBGC is proposing to eliminate most automatic waivers and to add two new reportable events. In addition, plan funding requirements have become more stringent and the economic downturn has led to reductions in plan funding levels. Accordingly, PBGC is projecting that, in comparison to previous estimates, the annual number of post-event notice filings will be about 3.4 times as great and the annual number of advance notice filings will be about 5 times as great.

PBGC has also reviewed its estimates of the amount of time required to prepare filings and the allocation of that time between in-house employees of the filer and outside contractors. PBGC has concluded that its previous estimate of 8.2 hours for a post-event notice is too low, and is now using an estimate of 12 hours per filing. Advance notices call for more or less the same documentation as post-event notices, but because the event being reported has not yet occurred, some additional work is required to describe the event. Thus PBGC believes that an

estimate of 18 hours per advance notice is more reasonable than the 21 hours it previously used. And PBGC now believes that the burden for advance notice preparation is probably split two-thirds in-house and one-third outside (rather than half-and-half).

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.