

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

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Administrative Appeals

STATUS: Request for renewal of a currently approved collection of information (OMB control no. 1212-0061; expires February 28, 2010)

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A. Justification.

1. Need for collection. 1PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes regulations on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Under the regulation, an appeal must: (1) be in writing; (2) be clearly designated as an appeal; (3) contain a statement of the grounds upon which it is brought and the relief sought; (4) reference all pertinent information already in the possession of PBGC and include any additional information believed to be relevant; (5) state whether the appellant desires to appear in person or through a representative before the Appeals Board; and (6) state whether the appellant desires to present witnesses to testify before the Appeals Board, and, if so, why the presence of witnesses will further the decision-making process. Under the regulation, where the appellant believes that another person may be aggrieved if PBGC grants the relief sought, the appeal must

include the name(s) and address(es) (if known) of such other person(s). In addition, PBGC requires from individual appellants: (1) their Social Security Number; (2) the name of the pension plan; (3) the PBGC case number assigned to the plan; (4) their daytime telephone number; (4) the name and Social Security Number of the plan participant, if the appellant is not the participant; (5) a list of information requests for which the appellant is awaiting PBGC's response; (6) and, if possible, a copy of the PBGC formal determination letter and benefit statement. Further, PBGC requests from appellants: (1) copies of documents that provide additional information that the Appeals Board should consider, especially if they support the appellant's claim; (2) a description of relevant information that the appellant believes is known by PBGC; and (3) the appellant's e-mail address.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under ERISA section 4021 or employer liability under ERISA sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or e-mail. For appeals of benefit determinations, PBGC has developed optional forms for filing appeals and requests for extensions of time to appeal.

2. Use of Information. The purpose of the collection of information is to enable affected individuals and employers to appeal initial determinations made by PBGC. The information used by PBGC's Appeals Board to resolve matters raised in such appeals.

3. Reducing the Burden. By creating optional forms for individual appellants, PBGC has reduced the burden for individuals to furnish the information required for appeals. The optional forms are available on PBGC's Web site, www.pbgc.gov.

4. Duplicate or similar information. Most of the information collected is not otherwise available to the PBGC Appeals Board. Even for those items of information that have otherwise been provided to other parts of PBGC, the relatively small burden associated with this collection is far offset by the greater assurance that appeals will be processed correctly.

5. Consequence of reduced collection. This collection of information is necessary for individuals and employers to file appeals of initial determinations by PBGC. If this collection of information were required less frequently or not at all, individuals and employers would not be able to file appeals.

6. Consistency with guidelines. This collection of information is consistent with the guidelines in 5 CFR § 1320.6.

7. Outside input. Pursuant to OMB regulations, PBGC published Federal Register notices soliciting public comment on this collection of information on December 9, 2009, at 74 FR 65167, and on February 18, 2010, at 75 FR 7295. No public comments were received in response to the December 2009 notice. The comment period for the February 2010 notice expires March 22, 2010.

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

9. Confidentiality. Confidentiality of information is that afforded by the Freedom of Information Act and the Privacy Act. PBGC's rules that provide and restrict access to its records are set forth in 29 CFR Part 4901.

10. Sensitive Questions. This collection of information does not call for submission of information of a sensitive or private nature.

11. Burden on the public. PBGC based its estimates in items 11 and 12 on its experience. The burden on the appellant will vary depending on whether the appellant is an individual or an employer, whether the appellant hires professionals, and whether the appellant uses the optional forms. In addition, the burden for filing an appeal will differ from the burden for filing of an extension request.

PBGC estimates that in each of the next three years there will be 700 appeals and 200 extension requests and that 99.5 percent of the filers in each category will be individuals and 0.5 percent will be employers. PBGC further estimates that of the individuals who file appeals and extension requests, 90 percent in each category will make the filings themselves and 10 percent will hire professionals, and that all employers filing appeals will hire professionals. PBGC estimates that 30 percent of individual appellants will use the optional forms for filing appeals and 60 percent will use the form for filing extension requests, and that no employers filing appeals or extension requests will use either of the optional forms.

For individual appellants not hiring professionals, the burden estimate takes into account only the hour burden. For appeals, PBGC estimates that the burden will be one hour if a form is not used and 45 minutes if a form is used. For extension requests, PBGC estimates that the burden will be 30 minutes if a form is not used and 15 minutes if a form is used.

Based on these estimates, PBGC estimates that, for each of the next three years, an average of 696.5 individuals (700×0.995) and 3.5 employers (700×0.005) will file appeals. 626.85 of the individuals (696.5×0.9) will file the appeals themselves, while 69.65 of them (696.5×0.1) will hire professionals. Of the 626.85 individuals filing appeals themselves, 188.06 (626.85×0.3) will use the optional forms, while 438.79 (626.85×0.7) will not.

The hour burden for the 188.06 individuals who file appeals themselves (without using professionals) using the forms is estimated to be 0.75 hours per individual, for a total of 141.05 hours (188.06×0.75 hours). The hour burden for the 438.79 individuals who file appeals themselves without using forms is estimated to be 1 hour per individual, for a total of 438.79 hours (438.79×1 hour). Thus the total hour burden for individuals filing appeals themselves is estimated to be 579.84 hours ($141.05 + 438.79$).

PBGC estimates that an average of 199 individuals (200×0.995) and 1 employer (200×0.005) per year will file extension requests. Ninety percent of these 199 individuals (179.1) will file extension requests themselves (without using professionals), and ten percent (19.9) will hire professionals. The employer will hire a professional. Of the 179.1 individuals who file appeals themselves, 107.46 (179.1×0.6) will use the optional extension request form, and 71.64 (179.1×0.4) will not. The hour burden for the 107.46 individuals who use the optional extension request form is estimated to be 0.25 hours, for a total burden of 26.87 hours (107.46×0.25 hours). The hour burden for the 71.64 individuals who do not use the optional extension request form is estimated to be 0.5 hours, for a total burden of 35.82 hours (71.64×0.5). Thus, the total burden for individuals not using professionals to file extension requests is estimated to be 62.69 hours ($26.87 + 35.82$).

Thus, the total annual hour burden for filing of appeals and extension requests is estimated to be 579.84 hours + 62.69 hours = 642.53 hours. For 900 appellants, this is an average hour burden of 0.71 hours.

12. Costs. For appellants hiring professionals, PBGC assumes that there is no hour burden on the appellant and that the cost burden on the appellant will be the same regardless of whether the optional forms are used. For individuals hiring professionals, PBGC estimates that

the cost of filing an appeal will be \$600 (3 hours x \$200/hour) and the cost of filing an extension request will be \$100 (0.5 hours x \$200/hour). For employers hiring professionals, PBGC estimates that the cost of filing an appeal will be \$800 (4 hours x \$200/hour) and the cost of filing an extension request will be \$100 (0.5 hours x \$200/hour).

The cost burden for the 69.65 individuals filing appeals who hire professionals is estimated to be \$41,790 (69.65 x \$600). The cost burden for the 3.5 plans filing appeals is estimated to be \$2,800 (3.5 x \$800). The total annual cost burden for appeals is estimated to be \$44,590.

The cost burden for the 19.90 individuals filing extension requests who hire professionals is estimated to be \$1,990 (19.9 x \$100). The cost burden for the 1.0 employers filing extension requests is estimated to be \$100 (1.0 x \$100). The total annual cost burden for extension requests is estimated to be \$2,090.

Thus, the total annual cost burden for all appellants hiring professionals is estimated to be $\$44,590 + \$2,090 = \$46,680$. For 900 appellants, this is an average annual cost burden of \$51.86.

13. Costs to the Federal government. PBGC estimates that the annual cost to the government of this collection of information will be \$45,000. This estimate is based on an average cost of \$50 per filing multiplied by 900 total filings, including administrative staff time and prorated cost of equipment for reading the incoming information, sending it for imaging, adding it to PBGC's software system, and sending a letter to filing acknowledging receipt.

14. Adjustments. The changes in the estimated number of responses per year and estimated annual burden and cost (compared to the current inventory of 850 responses per year, 590 hours per year, and \$46,004 dollars) reflect an increase in the estimated number of annual

extension requests, a decrease in the estimated percentage of individuals filing appeals who use the optional form, and a decrease in the estimated percentage of employers filing extension requests that use the optional form.

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

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

17. Exceptions to certification statement. There are no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods.

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