

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Termination Premium

**STATUS:** Currently approved collection (unchanged)

1. Need for collection. Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4006(a)(7) of ERISA provides for a “termination premium” (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations. PBGC’s regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the termination premium. Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premium information and payments with PBGC. PBGC has promulgated Form T and instructions for paying the termination premium. In connection with this request for extension of OMB approval, Form T has been reformatted without substantive change, and current burden data and instructions for the hearing impaired have been added to the Form T instructions.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not

apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. The amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to \$1,250 times the number of participants. However, the rate is increased from \$1,250 to \$2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premiums and related information. A filing must be made by a person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

2. Use of information. The information in Form T identifies the plan for which a termination premium is paid to PBGC and the persons liable for the premium and provides a basis for verifying the amount of the premium. That information and the retained records may be used for audit purposes.

3. Information technology. PBGC has not developed information technology applications to deal with termination premiums. The volume of filings is not high enough to justify development of an electronic filing method. Termination premium filings are exempt from mandatory premium e-filing under the premium payment regulation. Form T is designed to be filled out on a computer screen, but it must be printed out for signature and submission.

4. Duplicate or similar information. The information required in termination premium filings is not available from any other source. Although a plan's participant count and the identity of members of its sponsor group may be reported as of other dates for other purposes, this information is subject to change over time, and only Form T requests the information as of the day before the plan's termination date.

5. Reducing the burden on small entities. No special methods are used to reduce burden on small entities. The termination premium does not affect a substantial number of entities of any size.

6. Consequence of reduced collection. By statute, termination premiums are payable once a year for three years. Form T filings are required on the same schedule. Collecting the information on a different schedule would impair the proper administration of the pension plan termination insurance program.

7. Special circumstances. The premium payment regulation requires “designated recordkeepers” to retain information necessary to support termination premium filings for six years. This is necessary to ensure that records are available during the period within which PBGC may bring an action to collect premiums under ERISA section 4003(e)(6). The six-year period also corresponds to the record retention requirement under title I (section 107) of ERISA.

In unusual circumstances, § 4007.10 of the premium payment regulation may require submission of information in less than 30 days. This provision would accommodate a situation where PBGC determined that the payment of the termination premium (or any associated interest or penalty) would otherwise be jeopardized, *e.g.*, because a statutory limitations period was about to expire.

In other respects, this collection of information is conducted in a manner consistent with 5 CFR § 1320.5(d)(2).

8. Outside input. On June 8, 2010 (at 75 FR 32517), 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. Payment to respondents. PBGC provides no payments or gifts to respondents in connection with this collection of information.

10. 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.

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

12. Hour burden on the public. When a pension plan terminates in a distress or involuntary termination, PBGC typically determines and seeks to collect liability for any unpaid contributions, plan underfunding, and unpaid flat-rate and variable-rate premiums in addition to any liability for termination premiums. Negotiation and settlement of claims for these liabilities typically leads to determination of a single amount that represents a composite of the various individual types of liability. Form T is not typically filed. Thus, although PBGC actively enforces the termination premium requirement, PBGC assumes, for purposes of this request for extension of OMB approval of Form T and instructions, that Form T filings will be made with respect to only one termination per year. Accordingly, over the next three years, PBGC assumes that it will receive each year an average of about one first-year, one second-year, and one third-year termination premium filing from an average of about three plan sponsor groups.

Most of the filing burden is associated with determining the participant count and making a list of contributing sponsors and controlled group members. The participant count determined as of the termination date for other purposes (determination of benefits and allocation of assets) can generally be “rolled back” to the day before by accounting for individuals who became or ceased to be participants between the termination date and the preceding day. Where a filing under section 4010 of ERISA has been made within the preceding year, it may be possible to use information from the section 4010 filing as a basis for the list of contributing sponsors and controlled group members required for a Form T filing.

PBGC estimates that it takes about 30 hours to prepare a first-year filing and about 10 hours for a second- or third-year filing. These estimates include the burden of recordkeeping. The smaller estimate for second- and third-year filings reflects the fact that the participant count

need not be redetermined after the first year and that the list of contributing sponsors and controlled group members need only be updated to reflect attrition. PBGC estimates that about five percent of the work of preparing filings will be done in-house and that 95 percent of the work will be contracted out.

Thus the total estimated annual hour burden is about two-and-a-half hours.

13. Cost burden on the public. PBGC estimates the cost burden on the public for the approximately 95 percent of the work involved in preparing termination premium filings that is contracted out to be \$16,625. The costs are based on an hourly rate of \$350.

14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government of processing this collection of information is about \$1,200 (about \$400 per filing).

15. Change in burden. Estimated hour and cost burden on the public have gone down from 40 hours to two-and-a-half hours and from \$264,000 to \$16,625 since this collection of information was first submitted for OMB approval three years ago. The change reflects primarily a lower estimate of the number of filings, based on PBGC's experience that most termination premium liability is settled through negotiation without the filing of Form T. The resultant decrease in the estimated cost burden is somewhat offset by an increase in the assumed hourly cost for outside consultants (from \$275 to \$350).

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

17. Display of expiration date. PBGC is not requesting approval to omit from Form T the date OMB's paperwork approval expires.

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