

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

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Liability for Termination of Single-Employer Plans (29 CFR part 4062)

**STATUS:** Request for regular review and extension of currently approved collection (OMB control No. 1212-0017; expires March 31, 2011)

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A. Justification.

1. Need for collection. Section 4062 of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) (29 U.S.C. § 1362), provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (the “employer”) incur liability (“employer liability”) to the Pension Benefit Guaranty Corporation (“PBGC”) if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The determination of the amount of employer liability that is subject to PBGC’s statutory lien and the payment terms for employer liability are dependent on the employer's net worth. Specifically, for each of these matters it is necessary to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group that believes employer liability upon plan termination

exceeds 30 percent of the employer's net worth to so notify PBGC and submit to PBGC net worth information. Net worth information with respect to a person includes: (1) an estimate of the person's net worth on the net worth record date and a statement of the basis of the estimate; (2) the person's financial statements for the five full fiscal years plus any partial fiscal year preceding the net worth record date; (3) a statement of all sales and copies of all offers or agreements to buy or sell specified percentages of the person's assets, stock, or partnership interest, made on or about the net worth record date; (4) a statement of the person's current financial condition and business history; (5) a statement of the person's business plans; (6) any appraisal of the person's fixed and intangible assets made on or about the net worth record date; and (7) a copy of any plan of reorganization involving the person and occurring within five calendar years prior to or any time after the net worth record date. This information is necessary to enable PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

2. Use of information. The information that is collected under 29 CFR 4062.6 is used by PBGC to determine the net worth of the employer that maintained an insufficient plan. The information is needed to ensure that PBGC's rights with respect to its lien and the employer's statutory rights with respect to payment terms are fully protected.

3. Reducing the burden. PBGC will accept this information in an electronic format, but not all of the information is typically maintained in an easily retrievable electronic form. Moreover, the universe of respondents is very small (only five employers). However, PBGC will continue to explore whether broader use of electronic alternatives is practicable. PBGC has attempted to minimize the burden of this collection of information by requiring the minimum information needed to determine net worth.

4. Duplicate or similar information. Some of the required information (e.g., a copy of a plan of reorganization) 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 reporting person may have changed its name or tax identifying number, or have submitted to Federal agencies some, but not all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies' files than simply to submit the information to PBGC.

Some of the required information may previously have been submitted to PBGC. If so, a person may respond to this collection of information by identifying the previous submission in which that information was provided (section 4062.6(a)(4)).

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. Inapplicable.

6. Consequence of reduced collection. Since each collection of information occurs only upon plan termination and, therefore, normally occurs only once in the life of a pension plan, the collection cannot be conducted less frequently unless it were not conducted at all. If this information were not collected, PBGC would not be able to determine whether employer liability upon plan termination exceeded 30 percent of the employer's net worth and therefore would not be able to ensure that PBGC's rights with respect to its lien and the employer's statutory rights with respect to payment terms were fully protected.

7. Consistency with guidelines. Under section 4062.6(a), the deadline for submitting net worth information is the 120th day after the proposed termination date or, if no notice of intent to terminate is filed and PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the termination date. However, PBGC may require a respondent to submit net worth information in a shorter period, but only when "PBGC believes that its ability to obtain information or payment of liability is in jeopardy." PBGC may require a respondent to submit additional

information within 30 days, or a different specified time, after a written request.

Thus, in some circumstances, a respondent may be required to prepare a written response to a collection of information in fewer than 30 days. This is necessary to protect PBGC's ability to obtain information or payment of liability.

In all other respects, this collection of information is not conducted in a manner inconsistent with 5 CFR 1320.5(d)(2).

8. Outside input. A Federal Register notice, soliciting public comment on this collection of information pursuant to 5 CFR 1320.8(d), was published on November 19, 2010, at 75 FR 70955. No public comments were received in response to the notice. Another Federal Register notice informing the public of this submission to OMB was published on January 26, 2011, at 76 FR 4741.

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

12. Burden on the public. PBGC estimates that there will be an average of five responses per year to this collection of information. An employer generally would respond to this collection of information at about the time the plan is trustee by PBGC. For each of the next three years, PBGC expects that, on average, it will become trustee of 100 plans. Based on its recent experience concerning the number of plans maintained and terminated by each employer, PBGC estimates that 60 employers per year potentially could respond to this collection of information. (Although an employer may terminate several plans, normally it is required to submit net worth information only once.) However, many of these employers will not respond to this collection of information because, e.g., the plan is abandoned, the employer is involved in a no-assets bankruptcy, PBGC has reached a settlement of employer liability with the employer, or PBGC already has concluded that the employer has no net worth. Based on these factors, PBGC estimates that five employers per year will respond to this collection of information.

PBGC estimates that the average amount of time required to respond to this collection of information will be 24 hours. It has been PBGC's experience that there is great diversity in the character of the employers involved and the effort required to compile and submit the information. Net worth information often has been compiled by the employer for other business purposes and, in the case of a distress termination, some of the net

worth information required by this collection of information already will have been submitted to PBGC to comply with the distress termination regulations (Part 4041). (As noted in item 4 above, any information previously submitted to PBGC may be referenced as part of a response to this collection of information.) Therefore, in many cases, only copying and transmission of existing data is needed. If net worth information has not been compiled, the information generally is in the possession of and readily available to the employer.

Based on the foregoing, PBGC estimates the total annual burden will be 120 hours. PBGC assumes that 50 percent of the work will be performed by respondents and 50 percent will be contracted to third parties. Thus, the total average annual hour burden for respondents will be 60 hours ( $.50 \times 120$  hours). The hour burden per respondent will be 12 hours (60 hours for 5 respondents).

13. Costs. As stated in Item 12, PBGC assumes that 50 percent of the total annual burden of 120 hours will be contracted to third parties. Assuming an average rate of \$333 per hour for contracted services (including professional time, support assistance, overhead, and other costs), PBGC estimates that the annual cost to plans for contracted services will be \$19,980 ( $.50 \times 120$  hours  $\times$  \$333 per hour). The average cost per plan for contracted services will be \$3,996 (\$19,980 for 5 respondents).

14. Costs to the Federal government. The estimated total annual cost to the government is \$1,850, based on an estimated five hours of staff time per response at a blended rate of \$74 per hour, including salaries and overhead (5 responses x 5 hours x \$74 per hour).

15. Adjustments. The change in the estimate of the annual burden of this collection of information (from 60 hours and \$18,180 in the current OMB inventory to 60 hours and \$19,980 requested) reflects revisions in PBGC's estimates of the costs of contracted services (from \$303 an hour to \$333 per hour). The change in the cost to the Federal government, from \$66 to \$74 per hour, reflects revisions in pay in 2008, 2009 and 2010.

These revisions are unrelated to program changes.

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

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

18. 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.