SUPPORTING STATEMENT
REQUEST FOR EXTENSION OF A CURRENTLY APPROVED COLLECTION

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination of Single Employer Plans; Missing Participants; 29 CFR Parts 4041 and 4050; PBGC Forms 500-501, 600-602, Schedule MP and attachments

STATUS: Request for Extension of Currently Approved Collection, with Proposed Rule Modifications (OMB control No. 1212-0036; expires December 31, 2013)

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1. Need for collection. Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b) (for standard terminations) and section 4041(c) (for distress terminations), and PBGC's termination regulation (29 CFR Part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed ("missing participants"), the plan administrator is subject to the requirements of Section 4050 of ERISA and PBGC's missing participants regulation (29 CFR Part 4050).

Provisions of the Pension Protection Act of 2006 (PPA 2006) changed the rules for determining benefits upon the termination of certain pension plans known as statutory hybrid plans, such as cash balance plans. The plan administrator of a plan that is terminating in a standard or distress termination must determine the benefits owed to participants and beneficiaries in accordance with all applicable requirements under the Code and ERISA, including those that apply to statutory hybrid plans. The proposed rule describes what plan administrators would need to do to comply with the applicable requirements.

Specifically, the proposed rule would provide guidance to plan administrators in implementing the PPA 2006 provisions relating to statutory hybrid plans for PBGC purposes, including guidance on determining:

- The interest rate to be used to determine accrued benefits when the plan terminates if the plan used a variable rate before termination.
- The allocation of assets and the amount of benefits payable under Title IV of ERISA for statutory hybrid plans that are terminated and trusteed by PBGC.
- The present value of the accrued benefit under a statutory hybrid plan.
- Benefits payable under a statutory hybrid plan that terminates in a standard termination;
- Whether the plan may treat a participant's hypothetical account balance, or the accumulated percentage of the participant's final average compensation, as the lump sum value for distributions made after the enactment of PPA 2006.

The changes made by the PPA 2006 provisions are effective for years beginning after December 31, 2007, unless a plan sponsor elects the earlier application of such requirements for any period after June 29, 2005.

OMB approval of the existing information requirements expires on December 31, 2013. PBGC is requesting that OMB approve this submission for the same period. The current information collection informs plan administrators that PPA 2006 changed the rules for determining benefits when statutory hybrid plans terminate and of their need to comply with such changes; the changes that are the subject of this submission would implement PBGC's proposed rule implementing the PPA 2006 changes.

2. Use of information.

a. Information required. Certain information must be provided to PBGC and to third parties regardless of the type of termination. Thus, for both standard and distress terminations, the plan administrator is required to submit to PBGC certain identifying information; confirmation that the required notices have been properly issued to plan participants and beneficiaries; and the level of funding of the plan. The plan administrator must also provide certain information to third parties, including a notice of intent to terminate.

Standard terminations and sufficient distress terminations. In the case of a standard termination (plan provides all benefits) or a “sufficient” distress termination (plan provides at least guaranteed benefits and closes out in the private sector), the plan administrator must provide PBGC and third parties with certain additional information. In particular, the plan administrator must provide PBGC summary information relating to the benefits distributed and, for a standard termination, certain information regarding residual assets. The plan administrator is also required to provide certain additional information to third parties, including: (1) a notice of plan benefits (for standard terminations) or of benefit distribution (for distress terminations); (2) annuity information, including information on identity of insurers and on state guaranty association coverage of annuities; and (3) if applicable, an annuity contract or certificate.

Distress terminations. For all distress terminations, the plan administrator must also provide PBGC with information demonstrating that each contributing sponsor, and each member of each contributing sponsor’s controlled group, meets one of the statutory distress tests (*see* section 4041(c)(2)(B) of ERISA and 29 CFR § 4041.41(c)). In addition, for insufficient distress terminations, the plan administrator must submit certain participant and beneficiary information to enable PBGC to pay benefits as required under Title IV of ERISA.

Missing participants. If an annuity is purchased for some or all missing participants, the plan administrator must file identifying information about the insurer, the total number of annuities purchased, the amount transferred to the insurer, and each missing participant's annuity certificate number and monthly benefit. The plan administrator must file Schedule MP and Attachment A as attachments to either Form 501 (if the termination is a standard termination) or Form 602 (if the termination is a sufficient distress termination).

If an annuity is not purchased for a missing participant, the plan administrator must transfer an amount (the “designated benefit") to PBGC for the participant. The plan administrator must file Schedule MP and, for each missing participant for whom a designated benefit is transferred, a separate Attachment B. Attachment B provides identifying information about the missing participant, describes the type and form of the missing participant's benefit, and reports the amounts being transferred to PBGC. As with the Attachment A, the Schedule MP and Attachments B are filed as attachments to either the Form 501 or Form 602.

In either case, the plan administrator must have conducted a diligent search (as defined in PBGC regulations) and been unable to locate the participant before the individual may be treated as a missing participant.

The plan administrator must also file a Schedule MP (with applicable attachments) to report payment to PBGC or the purchase of an annuity for a missing participant who is owed residual assets. In addition, the plan administrator may be required to file a Schedule MP (with applicable attachments) pursuant to a PBGC audit of a plan termination.

b. PBGC and third party need for information. PBGC needs, and has routinely used, the information required to be submitted to it to: (1) determine whether the statutory and regulatory requirements for a standard or distress termination have been met; (2) in a standard termination, determine whether the reversion of any plan assets to the employer meets the requirements of Title IV of ERISA; (3) in a distress termination, determine whether the plan should be trusteed by PBGC or permitted to close out in a private-sector distribution; (4) in a distress termination, estimate the amount of employer liability to PBGC under section 4062 of ERISA and 29 CFR Part 4068; and (5) locate and pay missing participants or, where annuities were purchased for missing participants, refer them to the insurer who issued the annuities to be paid. PBGC refers to the Department of Labor the identity-of-insurer information submitted as part of the post-distribution certification, and may audit insurer selections for compliance with the fiduciary standards of Title I of ERISA.

Participants need the information required to be disclosed to them so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination.

The information on state guaranty association coverage helps participants and beneficiaries understand the importance of the plan administrator's selection of an insurer so that they may make a more informed choice about whether to elect a lump sum or an annuity. In the case of a missing participant for whom an annuity is purchased from an insurance company, PBGC uses the retirement benefit information to respond to inquiries and assist missing participants in their search efforts.

3. Reducing the burden and information technology. In certain circumstances, the regulations allow electronic filing with PBGC and electronic issuance of notices to third parties.

The Missing Participants Filing Package provides instructions for those who want to use wire transfers for payments for missing participants.

In addition, PBGC is working to make all of the termination and missing participant forms available on its Web site as fillable and savable PDF documents. PBGC expects that fillable and savable PDF versions of the forms will reduce the amount of time required of respondents to correct and complete the forms. It also will enhance the forms' accuracy, thereby saving PBGC time as well.

4. Identifying duplication. A limited amount of the information required to be submitted to PBGC in response to this collection of information may already be in the possession of the government. However, there is no timely and reliable way to locate the required documents, particularly since the reporting entity may have changed its name or tax identifying number, or submitted to the government 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 agencies' files than to simply submit the information to PBGC.

Participants and beneficiaries may find information similar to some of the information required to be disclosed under the termination regulation (*e.g.*, a description of PBGC's guarantee) in other documents provided at various times to them or to other Federal agencies. However, such information is scattered throughout a number of documents, and it is presented and organized to accomplish other purposes. Requiring participants and beneficiaries to retrieve bits of information that have been provided to them, or to the government, at other times for other purposes, would be inconsistent with the purpose of the termination regulation to ensure that affected parties receive meaningful, timely, and useful information.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. Since this collection of information occurs only with respect to a proposed plan termination and, therefore, normally occurs only once in the life of a pension plan, the collection cannot be conducted less frequently unless the information were not collected at all. If this information were not collected at all, PBGC would not be able to fulfill its statutory mandate to oversee the termination of plans covered by PBGC's insurance program, and participants and beneficiaries would not receive meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. Upon review of a standard termination notice, PBGC may, but very rarely does, require the plan administrator to submit additional information relevant to the termination proceeding. The additional information normally is due within 30 days after PBGC makes a written request. PBGC may in its discretion 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. To monitor and facilitate compliance, the time period runs from the date of the request rather than the date of receipt of the request by the plan administrator.

In a distress termination proceeding, information in addition to the notice of intent to terminate or the distress termination notice may be due in a shorter time period, so that PBGC may take prompt action (*e.g.*, institution of involuntary termination or trusteeship proceedings) to protect participants or premium payers.

Respondents are required to retain certain records for six years. PBGC notes that most or all of the records required to be retained under the termination regulation already must be retained for six years for other purposes under section 107 of Title I of ERISA. Retention of records for six years is necessary because PBGC has at least six years following a termination to bring a civil action to enforce the provisions of Title IV of ERISA with respect to that termination (*see* § 4003(e)(6) of ERISA).

8. Outside input. The PBGC published the proposed rule on October 31, 2011, 76 Fed. Reg. 67,105.

9. Payments and gifts. There are no payments or gifts made 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 Parts 4901 and 4902, respectively.

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 based its estimates in items 12 and 13 on its experience. For purposes of this submission, a termination constitutes a “response.”

PBGC's burden estimates assume that much of the plan termination work will be done for Internal Revenue Service purposes (*e.g.*, Forms 5310 and 6088). In addition, much of the termination work will be done in the normal course of closing out a plan.

Standard terminations. PBGC estimates that it will process 1,366 standard terminations annually over the next three years. PBGC anticipates that 1,216 of the plans terminating in a standard termination will be small plans (100 or fewer participants) and 150 of the plans will be mid-sized or large plans (more than 100 participants). Very large plans rarely terminate as standard terminations.

PBGC estimates that, for a standard termination, it will take an average of 5 hours and 10 minutes for each small plan and 10 hours and 40 minutes for each mid-sized or large plan to prepare and file the required information with PBGC and to prepare and distribute the third-party notices to affected parties. The total number of burden hours is 7,887 hours: (1,216 small plans x 5 1/6 hours per plan = 6,287 hours) + (150 medium and large plans x 10 2/3 hours per plan = 1,600 hours).

In addition, PBGC estimates that about 179 of the 1,366 plans terminating in a standard termination will have missing participants. The estimates are high enough to include the few, if any, distress terminations that are sufficient (*i.e.*, those that distribute in accordance with standard termination rules).

PBGC estimates that each year about 37 plans with missing participants will purchase annuities for these missing participants, 136 plans will transfer these missing participants' benefits to PBGC, and 7 will do both. PBGC estimates that the average time required for a plan to comply with the collection of information requirements relating to missing participants will be one hour for a plan that purchases annuities for its missing participants and 2.5 hours for a plan transferring benefits of missing participants to PBGC. The total annual burden hours associated with missing participants is 402 hours: (37 plans purchasing annuities x 1 hour = 37 hours) + (136 plans transferring benefits x 2.5 hours = 340 hours) + (7 plans doing both x 3.5 hours = 25 hours, rounded). The burden of associated recordkeeping requirements is too small to require independent estimation and is included in the foregoing figures.

The total annual burden for standard terminations will be 8,289 hours (7,887 hours for standard terminations + 402 hours for missing participants). PBGC assumes that 20 percent of the work will be performed by the respondent and that 80 percent will be contracted to third parties. Thus, the total average annual burden for respondents will be 1,658 hours (.20 x 8,289 hours). The average annual burden per respondent will be 1.21 hours (1,658 hours/ 1,366 plans).

Distress terminations. PBGC estimates 13 terminations will be concluded as distress terminations annually. PBGC expects that five of the plans terminating in a distress termination will be small plans and that 8 of the plans will be mid-sized or large plans. PBGC anticipates that four of the plans terminating in a distress termination will terminate under distress criteria 1 or 2 (liquidation or reorganization in bankruptcy or insolvency proceedings), and that nine will terminate under distress criteria 3 or 4 (termination required to enable payment of debts or to avoid unreasonable pension costs). Any burden associated with missing participants in sufficient distress terminations is accounted for in the burden estimates for missing participants in standard terminations.

PBGC estimates that it will take an average of 31.4 hours for a small plan and 278.5 hours for a mid-sized or large plan to prepare and file the required information with PBGC and to prepare and distribute the third-party notices to affected parties. In addition, all plans that terminate under distress criteria 3 or 4 will incur an additional burden of 14.4 hours per plan. The total annual burden for distress terminations is estimated to be 2,515 hours: (31.4 hours x 5 = 157 hours) + (278.5 hours x 8 = 2,228 hours) + (14.4 hours x 9 = 130 hours, rounded). PBGC estimates that the respondents will perform 20 percent of the work, 503 hours, and contractors will perform 80 percent, 2,012 hours. The hourly burden on respondents averages 38.69 hours per plan (503/13) and breaks down to an average burden per plan of:

Plans with 100 or fewer participants --
Bankruptcy or insolvency.. 6.3 hours
Other distress criteria.. 9.2 hours

Plans with more than 100 participants --

Bankruptcy or insolvency.. 55.7 hours
Other distress criteria.. 58.6 hours

Total hourly burden on respondents. The annual burden of complying with this collection of information for both standard and distress terminations over the next three years will average 2,161 hours for respondents (1,658 hours for standard terminations (including missing participant time) + 503 hours for distress terminations).

13. Cost.

Standard terminations. As stated in item 12, the total annual burden for standard terminations is estimated to be 8,289 hours. PBGC estimates that the respondents will perform 20 percent of the work and contractors will perform 80 percent (6,631 hours). Assuming an average rate of $350 per hour for contracted services (including professional time, support assistance, overhead, and other costs, but excluding postage), PBGC estimates that the annual cost to plans for contracted services will be $2,320,850 (6,631 hours x $350 per hour). The average cost per plan for contracted services will be $1,699 ($ 2,320,850/1,366 plans).

Distress terminations. As stated in item 12, the total annual burden for distress terminations is estimated to be 2,515 hours. PBGC estimates that the respondents will perform 20 percent of the work, 503 hours, and contractors will perform 80 percent (2,012 hours). Assuming an average rate of $350 per hour for contracted services, PBGC estimates that the annual cost to plans for contracted services will be $704,200 (2,012 hours x $350 per hour). The average cost per plan for contracted services will be $54,169 ($704,200/13 plans).

Total cost to plans. The above cost estimates do not include postage, which PBGC estimates to be no more than $73,391 annually. PBGC estimates the annual combined cost to plans for standard and distress terminations will be $3,098,441 ($ 2,320,850 contracted costs for standard + $704,200 contracted costs for distress + $73,391 postage).

14. Cost to federal government.

Standard terminations. PBGC estimates that PBGC staff time required to process standard termination filings will average 1.6 hours per plan, before taking missing participants into account. For plans with missing participants, an estimated additional 27.33 hours will be required to process a plan, whether the plan purchases annuities for missing participants or transfers missing participants' benefits to PBGC**.** In addition, annual search and postage costs over the projected period that searches will continue for missing participants taken in each year are estimated at $125 for each plan with missing participants.

At a blended rate of $44 per hour for staff time, PBGC estimates its annual cost for standard terminations (including costs of plans with missing participants) will be $333,807: $44 per hour times 7,078 hours = $311,432, plus $22,375 (179 missing participant plans x $125). The 7,078 hours derives from 2,186 hours for standard terminations (1,366 plans x 1.6 hours per plan), and 4,892 hours for plans with missing participants (179 missing participant plans x 27.33 hour per plan).

Distress terminations. PBGC estimates that PBGC staff time required to process distress terminations will be 140.25 hours for a filing under criteria 1 and 2 (liquidation or reorganization in bankruptcy or insolvency proceedings), and 220.25 hours under criteria 3 and 4 (termination required to enable payment of debts or to avoid unreasonable pension costs). At a blended rate of $86 per hour for staff time, PBGC estimates its annual cost for distress terminations will be $218,698: $86 per hour x 2,543 hours. The 2,543 hours derives from 561 hours for plans terminating under criteria 1 or 2 (4 plans x 140.25 hours) and 1,982 hours for plans terminating under criteria 3 or 4 (9 plans x 220.25 hours, rounded).

Total PBGC costs. PBGC estimates its annual combined cost for standard and distress terminations will be $552,505 ($333,807 standard + $218,698 distress).

14. Change in burden. There is no change in the estimated annual burden or cost of this collection of information: the estimated annual burden remains at 2,161 hours and the estimated annual cost at $3,098,441, the number of hours and cost currently reported in OMB's inventory.

15. Publication. There are no plans for tabulation or publication.

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

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