

**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)

**STATUS:** Request for approval of a revision of a currently approved collection of information (OMB control no. 1212-0013; expires March 31, 2015)

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1. Need for collection. Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's reportable events regulation (29 CFR part 4043) require plan administrators and plan sponsors to report certain plan and corporate events to PBGC. The reporting requirements give PBGC timely notice of events that indicate plan or contributing sponsor financial problems.

The Pension Protection Act of 2006 (PPA 2006), as implemented by PBGC regulations, made changes that affect the test for whether advance reporting of certain reportable events is required. PBGC is now proposing to amend the regulation to conform the advance reporting test to the new legal requirements, as well as make other changes, primarily to waiver provisions. In 2009, PBGC issued a proposed rule on Reportable Events that would have eliminated most of the reporting waivers in the regulation. Employers and practitioners objected to those proposed regulatory changes primarily because they would increase burden and require reporting where the risk is minimal. This new proposed rule takes into account both comments from the pension community and the President's direction to improve regulations under Executive Order 13563.

Under the new proposal, reporting would be waived for most events currently covered by funding-based waivers if a plan or its sponsor comes within a financial soundness safe harbor

based on widely available measures already used in business. Waivers for small plans and some other existing waiver provisions would be retained with modifications; other waivers would be eliminated.

In connection with the proposed rule, PBGC is proposing the following changes to the information collection requirements under 29 CFR Part 4043:

- PBGC encourages electronic filing under the existing regulation and now proposes to make it mandatory as part of PBGC's ongoing implementation of the Government Paperwork Elimination Act. Electronic filing has become the norm for PBGC's regulated community and is already mandatory for reporting for other purposes: (e.g., annual financial and actuarial information reporting under ERISA section 4010 (starting with 2005 information years), PBGC premiums (starting with 2007 plan years for all plans), and Form 5500 (starting with 2009 plan years)). However, PBGC would be able to waive electronic filing for voluminous paper documents to relieve filers of the need to scan them, pursuant to § 4043.4(a) (case-by-case waivers). The current versions of PBGC Form 10 and Form 10-Advance are already available in "fillable" format; in connection with the change to electronic filing, new versions of these forms will be available in "fillable" format to facilitate electronic filing.
- PBGC's experience is that in order to assess the significance of virtually every post-event filing for a missed contribution, inability to pay benefits, loan default, liquidation, or insolvency, it must obtain from the filer certain actuarial, financial, and controlled group information. Filers are currently required to submit some of this information for some events, but PBGC wants to make its information collection for all these events more uniform. Accordingly, PBGC proposes to require that every post-event filing for one of these events include these items (except that financial information is unnecessary for reports of insolvency because PBGC can typically obtain most of the information from court records). Actuarial information would no longer have to be submitted with post-event notices of other events. (1) The actuarial information required would be a copy of the most recent actuarial valuation report for the plan, a statement of subsequent material changes, and the most recent month-end market value of plan assets. (2) The financial information required would be copies of audited financial statements for the most recent fiscal year. (If audited statements were not immediately available, copies of unaudited financial statements (if available) or tax returns would be required, to be followed up with required financial statements when available.) (3) The controlled group information required would be tailored to the event being reported and would generally include identifying information for each plan maintained by any member of the controlled group, a description of the controlled group with members' names, and the status of members (for example, liquidating or in bankruptcy).
- Similarly, PBGC has found that it needs the same actuarial, financial, and controlled group information for advance-notice filings. For notices of funding waiver requests, the

information can typically be gleaned from the copy of the request that accompanies the reportable event notice. And financial information is unnecessary for reports of insolvency because PBGC can typically obtain most of the information from court records. With these exceptions, PBGC proposes to require that every advance notice filing include these items.

- Controlled group changes and benefit liability transfers involve both an “old” controlled group and a “new” controlled group. PBGC already requires submission of controlled group information with notices of controlled group changes, and now proposes to do the same for benefit liability transfers.
- Because extraordinary distributions raise questions about controlled group finances, PBGC proposes to require submission of financial information with notices of events of this type.
- Inability to pay benefits and liquidation both raise the specter of imminent sponsor shutdown and plan termination. Accordingly, for notices of these two events (including advance notices of liquidation events), PBGC proposes to require submission of copies of the most recent plan documents and IRS qualification letter, the date or expected date of shutdown, and the identity of the plan actuary if different from the actuary reported on the most recent Form 5500 Schedule SB. Plan documents would no longer be required with notices for other events.
- PBGC proposes to require e-mail addresses for plan administrators, sponsors, and designated contact persons.
- PBGC proposes to require that both post-event and advance report filings state explicitly the date of the event or the actual or anticipated effective date of the event (as applicable). This requirement will avoid the potential for confusion or ambiguity in the description of the event regarding this date.
- PBGC has found that it often does not need the actuarial valuation report that must currently be included with notice of a substantial owner distribution and thus proposes to eliminate that requirement. However, PBGC proposes to add a requirement that notices of this event give the reason for the distribution to help PBGC analyze its significance.
- For both post-event and advance notices of loan defaults, PBGC proposes to require that any cross-defaults or anticipated cross-defaults be described.
- 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 ERISA section 302(f) and Code section 412(n) (corresponding to ERISA section 303(k) and Code section 430(k) as amended by PPA 2006). To address this issue, PBGC proposes that Form 10 filings for missed contributions include the amount and date of all missed contributions since the most recent Schedule SB.

- PBGC Form 10 currently requires for the bankruptcy/insolvency 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 court where the insolvency proceeding was filed or will be filed and the docket number of the filing (if known).
- In conjunction with the company financial soundness waiver provided in the proposed rule, PBGC's reportable events filing instructions will include one or more examples of scores by commercial credit reporting companies commonly used in the business community that indicate a low likelihood that a company will default on its obligations.

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 ERISA section 4042 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 is proposing to require electronic filing of reportable events notices. The current versions of PBGC Form 10 and Form 10-Advance are already available in “fillable” format; in connection with the change to electronic filing, new versions of these forms will be available in “fillable” format to facilitate electronic filing.

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 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.

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

The reportable event notice requirement for a failure to make required minimum funding payments is satisfied if a timely and complete Form 200 is submitted with respect to the same failure (see 29 CFR § 4043.25(d)).

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. Not applicable. This information collection does not have a significant economic impact on a substantial number of small entities. However, PBGC is proposing to provide more waivers for small plans (under 100 participants) than under the current regulation and to extend some due dates for such plans.

6. Consequences of no or less frequent collection. The statutory requirement to notify PBGC is triggered by the occurrence of infrequent or nonrecurring events. No reporting, or less frequent or timely notice, could impair PBGC's ability to fulfill its statutory responsibilities. PBGC proposes to modify waivers and extensions in the reportable events regulation to more effectively target troubled plans and sponsors while reducing burden for sponsors that are financially sound.

7. Special circumstances. Reporting is required whenever a reportable event occurs. In unusual cases, a respondent could incur more than one reportable event within a quarter, thereby requiring reporting more frequently than quarterly.

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 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.

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 April 3, 2013, PBGC published a proposed rule (78 FR 20039) soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d). To encourage public participation in the development of the regulation, PBGC has also scheduled a public hearing on Tuesday, June 18, 2013, beginning at 2 pm, in the PBGC Training Institute, 1200 K Street, NW, Washington, DC, shortly after the close of the comment period.

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

10. Confidentiality. In accordance with ERISA section 4043(f) 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 will 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 personal nature.

12. Burden on the public. PBGC estimates that over the next three years there will be approximately 1,085 post-event and advance reportable event filings per year. (In light of the small number of advance-report filings, PBGC combined the data for post-event and advance-report filings; PBGC expects fewer than 20 advance-report event filings per year.)

PBGC estimates that for post-event reporting and advance reporting, the average hour burden per response will be about 5.3 hours and the total annual hour burden on the public will be about 5,740 hours. Assuming an average rate of \$320 (including professional time, support assistance, overhead, postage and other costs) for mid-size and large plans (*i.e.*, plans with greater than 100 participants), and an average rate of \$130 for small plans (*i.e.*, plans with less than or equal to 100 participants), PBGC estimates that the dollar equivalent of the hour burden would be an annual total cost of \$1,567,330, for an average annual cost of \$1,445 per respondent.

13. Costs. PBGC estimates that over the next three years, respondents will contract out 3,250 hours annually (1,085 filings times 3 hours per filing). Assuming an average rate of \$320 for large plans' contractor costs and \$130 for small plans' contractor costs, PBGC estimates the total annual cost will be \$857,195, for an average annual cost of \$790 per respondent. No capital or start-up costs are necessary for reportable events notices.

14. Costs to the Federal government. PBGC estimates that over the next three years the total annual cost to it for processing filings will be about \$128,030, based on an estimated annual hour burden of 2,170 hours — 1,085 filings times 2 hours per filing (0.25 hours of clerical staff time plus 1.75 hours of professional staff time) — and an estimated hourly cost of \$59 (blended rate based on administrative staff costs of \$44 an hour and professional staff costs of \$61 an hour).

15. Change in burden. The changes in burden and cost are the result of an increase in the number of expected filings based upon the proposed rule changes, anticipated changes in economic conditions, and a revised estimate (based on a small survey of practitioners) in the hourly contracting rate from \$350 for all plans to \$320 for large plans and \$130 for small plans. In addition, in light of the small number of advance-report filings, PBGC combined the data for post-event reporting (the Form 10) and advance reporting (the Form-10 Advance).

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.