

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

AGENCY: Pension Benefit Guaranty Corporation

TITLE: PBGC Form 200, Notice of Failure to Make Required Contributions
(29 CFR § 4043.81)

STATUS: Request for approval of a revision of a currently approved collection of
information (OMB control no. 1212-0041; expires March 31, 2015)

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A. Justification.

1. Need for collection. Section 303(k) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an underfunded single-employer plan that is covered by PBGC's termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds \$1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons that fail to make payments to notify PBGC within 10 days of the due date whenever there is a failure

to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR § 4043.81.

In connection with a proposed rule amending various parts of PBGC's reportable events regulation under 29 CFR part 4043, PBGC is proposing the following changes to the information collection requirements under 29 CFR part 4043 relating to PBGC's Form 200:

- PBGC proposes to add an appendix to the Form 200 instructions that describes how the aggregate outstanding balance of required funding payments, including interest, must be computed.
- 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).
- In missed contribution cases, there is sometimes a credit balance that is available for application to a contribution that is due. PBGC needs to be able to determine whether all or a portion of the credit balance has been properly applied toward payment of the contribution. Accordingly, PBGC proposes to require filers to indicate how much (if any) of the carryover balance or prefunding balance was used for partial payment of the missed contribution and submit copies of election letters relating to the application of the carryover balance and prefunding balance to the contribution.
- PBGC proposes to require a statement of any material changes in liabilities since the most recent actuarial valuation report and most recent month-end market value of plan assets to ensure that PBGC can accurately calculate underfunding for lien assessments.
- PBGC proposes to require the submission of information about all controlled-group real property and the identity of controlled group head offices for lien assessment purposes.

- PBGC proposes to require e-mail addresses for plan administrators, sponsors, designated contact persons and certifying enrolled actuaries.
- PBGC proposes to eliminate Form 200 information submission requirements for documents that PBGC typically can now obtain timely on its own and to add new information submission requirements to help it analyze the seriousness of the plan's status and perfect statutory liens triggered by large missed contributions. Documentation to be eliminated would be copies of Form 5500 Schedule SB, SEC filings, and documents connected with bankruptcy, liquidation, receivership, and similar proceedings. New information to be required would be a statement of material changes in liabilities since the most recent actuarial valuation report, most recent month-end market value of plan assets, description of each controlled group member's operational status (in Chapter 7 proceedings, liquidating outside of bankruptcy, on-going, etc.), information about all controlled group real property, and identity of controlled group head offices. The form and instructions are also being revised to remove information that is no longer applicable in light of changes made by the Pension Protection Act of 2006.

2. Use of information. PBGC uses the information it obtains to make decisions regarding the perfection and enforcement of liens created under ERISA section 303(k)(1) and Code section 430(k)(1). This information enables PBGC staff to determine the amount of the statutory lien and to evaluate the funding status of the plan and the financial condition of the person(s) responsible for its funding. Without this information, PBGC could not efficiently and effectively use the statutory lien provisions in carrying out its responsibilities to protect plan benefits and control insurance program costs.

3. Use of technological collection techniques. PBGC is proposing to require electronic filing of Form 200 filings.

4. Duplication and similar information. PBGC avoids potential duplication by permitting a filer to respond to an item that calls for documentation or other information previously submitted to PBGC (in an earlier Form 200 or another context) by identifying the previous submission in which the response was provided.

In addition, to the extent that PBGC staff can use information from documents prepared for other purposes (including reports and other filings with Federal agencies and in judicial

proceedings) in perfecting liens and lien-enforcement decision making, Form 200 calls for the submission of copies of those documents.

A failure that triggers this notification requirement also may be a reportable event (see ERISA section 4043(c)(5) and 29 CFR § 4043.25). The reportable event notice requirement 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. Small businesses. Not applicable. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequences of no or less frequent collection. ERISA establishes when PBGC collects information by requiring that PBGC be notified of each failure to make a required funding payment as described below in Item 7 by the due date. If PBGC were notified less frequently, or not at all, it would not have the information that it needs to timely perfect liens or make lien-enforcement decisions.

7. Special circumstances. The statutory notification requirement is tied to the minimum funding standards, under which payments may be due more often than quarterly. Consequently, failure to make a required payment may trigger the statutory notification requirement more often than quarterly.

Under ERISA and the Code, a person must notify PBGC within 10 days of a payment due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million. A person must use PBGC Form 200 for this notification (29 CFR § 4043.81). Persons that may be required to notify PBGC can familiarize

themselves with Form 200, and even begin preparing responses, before a payment failure that triggers the statutory notification requirement. In some cases, PBGC may require the submission of additional information.

In general, the submission of additional information is required within 7 days after PBGC makes a written request. The 7-day period is necessary to ensure that PBGC has sufficient time to act to enforce the statutory liens. Any delay may result in financial loss to PBGC (see item 2). In addition, PBGC may 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.

In all other respects, this collection of information is not conducted in a 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).

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

10. Confidentiality. Information provided to PBGC is confidential to the extent provided by the Freedom of Information Act and the Privacy Act.

11. Sensitive questions. This collection of information involves no questions of a personal nature.

12. Burden on the public. PBGC anticipates that over the next three years this collection-of-information requirement will apply each year to 136 filings from about 63 single-employer plan respondents. PBGC estimates that the average response time for the filing will be 6 hours. This time is an average that will vary depending on the nature and organizational

structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan. PBGC estimates that over the next three years the total annual burden on the public will be 816 hours (136 filings times 6 hours per filing).

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 more than 100 participants), and an average rate of \$130 for small plans (*i.e.*, plans with 100 or fewer participants), PBGC estimates that the dollar equivalent of the hour burden will be an annual total cost of \$250,000, for an average annual cost of \$1,840 per respondent.

13. Costs. PBGC estimates that over the next three years, respondents will contract out an additional 408 hours annually (136 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 that the total annual cost under the Form 200 for purchase of services will be \$125,000, for an average annual cost of \$920 per respondent. No capital or start-up costs are necessary for the Form 200 notice.

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 \$16,050, based upon an estimated annual hour burden of 272 hours — 136 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 a decrease in the number of expected filings based upon PBGC's experience in the last three years, 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 filings, PBGC is no longer assuming that when there is a subsequent payment failure and a subsequent filing due from the same filer, the average response time for the subsequent filing would be less.

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

17. Approval for omitting expiration date. Not applicable. 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.