

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Payment of Premiums (29 CFR Part 4007) and PBGC forms and instructions thereunder

STATUS: Request for approval of revision of currently approved collection (OMB control number 1212-0009; expires October 31, 2015)

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1. Need for collection. Section 4007 of Title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”) requires the Pension Benefit Guaranty Corporation (“PBGC”) to collect premiums from pension plans covered under Title IV pension insurance programs. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC (premium-related data and information about plan identity, status, and events).

Premium information is filed electronically using “My Plan Administration Account” (“My PAA”) through PBGC’s web site. Premium filings must be made annually. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Section 4006 of ERISA, implemented by PBGC’s regulation on Premium Rates (29 CFR Part 4006), sets premium rates. All plans covered by Title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium (VRP) based on the plan’s unfunded vested benefits (UVBs). The VRP is subject to a cap added

by the Moving Ahead for Progress in the 21st Century Act (MAP-21). Premium rates and the level of the cap are adjusted for inflation pursuant to MAP-21.

PBGC is proposing to amend its premium regulations in ways that will affect premium filings. PBGC's proposed rule describes the changes and the reasons and effects associated with them.

Premium due dates currently depend on plan size. Large plans pay the flat-rate premium early in the premium payment year and the VRP later in the year. Mid-size plans pay both the flat- and variable-rate premiums by that same later due date. Small plans pay the flat- and variable-rate premiums in the following year. PBGC proposes to simplify the due-date rules by providing that all annual premiums for plans of all sizes will be due on the same day in the premium payment year — the VRP due date (October 15 for calendar-year plans) that applied to all premium filers before PBGC amended its regulations, effective 2008, to accommodate statutory changes under the Pension Protection Act of 2006.

For a plan terminating in a standard termination, the final premium may come due months after the plan closes its books. To avoid this, PBGC proposes to set the final premium due date no later than the post-distribution certification. Conforming changes to other due date rules are also proposed.

Some small plans determine funding level too late in the year to be able to use current-year figures for the VRP by the new uniform due date. To address this problem, PBGC proposes that small plans generally use prior-year figures for the VRP. (The definition of "small plan" would be slightly changed to correspond more closely with the definition used for funding

purposes.) To facilitate the due date changes, no VRP would generally be owed for a plan's first year of coverage or for the year in which a plan completed a standard termination.

New small plans resulting from non-*de minimis* consolidations and spinoffs would not use prior-year data for the VRP and would have a special due date extension to provide at least 90 days for calculating the premium. A due date extension for newly covered plans — eliminated when the adoption of the current premium filing schedule made it unnecessary — would again serve a purpose and would be restored.

PBGC assesses late premium payment penalties at 1 percent per month for filers that self-correct and 5 percent per month for those that do not. But both penalty schedules have the same cap — 100 percent of the underpayment. To preserve the self-correction incentive and reward for long-overdue premiums, PBGC proposes to reduce the 1 percent penalty cap from 100 percent to 50 percent.

PBGC also proposes to codify in its regulations the penalty relief policy for payments made not more than seven days late that it established in a Federal Register notice in September 2011 and to give itself more flexibility in exercising its authority to waive premium penalties.

The elaborate system of penalty safe harbors associated with the early flat-rate premium due date for large plans would no longer be needed and would be eliminated.

In addition, PBGC proposes to amend its regulations to avoid retroactivity of PBGC's rule on plan liability for premiums in distress and involuntary terminations.

The proposed rule would also clarify some points, correct some errors, and revise the definition of "newly covered plan" to permit a plan to qualify as both new and newly covered and thus take advantage of special rules applicable to both categories.

PBGC proposes to revise its premium forms and instructions to reflect the amendments under the proposed rule.

PBGC is proposing only small changes to the data filers are required to submit. Since there would no longer be three plan size categories — but instead simply some special rules for small plans — plans would have to indicate only whether or not they were small. New data items would indicate whether the plan was a new small plan created by non-*de minimis* consolidation or spinoff and whether an exemption from the VRP was claimed under one of the proposed new exemption rules. Among the changes to the filing instructions would be clarification of how to calculate premiums (including information about MAP-21) and explanation of the new due date rules and changes to the penalty policy.

Most of the changes to the information collection would result from the proposed rule changes, but there would also be one unrelated change in the data being collected, as well as a few other unrelated changes to simplify premium administration processes. The data change would require that the participant count (on which the flat-rate premium is based) be broken down into three categories: retired, terminated vested, and active. PBGC believes that plan valuation software uniformly calculates these three numbers in the process of generating the flat-rate premium participant-count and that the burden associated with this change is accordingly negligible.

The participant-count breakdown will alert PBGC to drops in terminated vested or retired participants that may reflect lump sum windows and related decreases in liability or increases in underfunding that might suggest that PBGC should monitor the situation in case quick intervention may be called for. A drop in the number of active participants may signal the

occurrence of an event that could trigger liability to provide security for the plan under ERISA section 4062(e) or may reflect a shrinking or restructuring of the plan sponsor group, foreshadowing possible plan funding problems. The participant-count breakdown will also help PBGC better understand the universe of plans it covers and make projections about the effect of events such as plan freezes.

2. Use of information. PBGC uses information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, and to keep PBGC's insured-plan inventory up to date. That information and the retained records are used for audit purposes.

3. Information technology. Electronic filing is required under PBGC's regulations. PBGC provides for premium filing through the "My PAA" electronic facility on PBGC's Web site. In addition, PBGC offers two electronic filing options that allow filers to use private-sector premium-filing-preparation software compatible with My PAA: (1) a filer can draft a premium filing and then import it into My PAA's data entry and editing screens for review, certification, and submission to PBGC; and (2) a filer can create a premium filing and then upload it directly to PBGC via the My PAA application. Filers can pay premiums and receive premium refunds by electronic funds transfer. The proposed rule would make no changes to the electronic filing requirements.

4. Duplicate or similar information. In general, the information required in premium filings is not routinely filed with, and available from, any other Federal Government agency, and

there is no similar information that can be used “as is” instead of the information reported in premium filings.

Participant count breakdown

The numbers of retired, terminated vested, and active participants are in the annual report that plans submit using Form 5500, but the number of active participants reported there would not match the number reported on the premium form, because PBGC uses a more restrictive definition of active participant for premium purposes than the definition used for the annual report. PBGC’s uses for the participant-count breakdown are much better served by getting all three numbers at the same time in the same place.

VRP Data

In some cases, asset and/or liability figures on which the VRP is based may also be reported on Schedule SB to Form 5500, the annual report form filed with the Internal Revenue Service, Department of Labor, and PBGC. But since the premium numbers may not be the same as the Schedule SB numbers, PBGC needs to know what the premium numbers are, even if they happen to coincide with the Schedule SB numbers.

Frozen plan data

Plans can be “frozen” in several different ways (for example, by ceasing accrual of benefits or admission of new participants). To predict and address the impact of plan freezes on PBGC’s future premium revenues and net financial position, PBGC needs to know which of the plans that PBGC covers have been frozen and the exact nature of the freeze.

PBGC currently collects plan freeze information on ERISA section 4010 filings because it needs the information as early as possible for the small group of 4010 filers, and the

information is reported in section 4010 filings before it is reported in premium filings. PBGC has considered exempting 4010 filers from reporting this information again in the premium filing, but concluded that there would be a control problem if the agency's premium database were not internally consistent.

Form 5500 collects general information on whether a plan has been frozen, but only for the most severe type of freeze (when all accruals cease for all participants) and only for the year before the current year. The Form 5500 data are thus too little and too late for PBGC's purposes.

Plan transfer data

PBGC's plan transfer questions ask about transfers *to* and *from* other plans, as well as transfer types (merger, consolidation, or spin-off), to save PBGC (and filers) the administrative burden of determining why plans have failed to file when expected or have filed information inexplicably different from the previous year. Form 5500 collects information about assets and/or liabilities transferred *from* a plan to another plan (or plans) during the plan year, but not data on transfer types. Plans must submit information to the Internal Revenue Service about transfers *to* and *from* other plans on Form 5310-A, but only for non-*de minimis* transactions; PBGC needs this information regardless of transaction size. Furthermore, Form 5310-A information is not available to PBGC as promptly as PBGC needs it.

Final filing data

Form 5500 collects general information on whether a plan was terminated in a standard or distress termination; whether PBGC became trustee of a plan; and whether a plan is covered by PBGC. However, the Form 5500 data often do not adequately explain why filings have ceased in cases where plans merge out of existence. In addition, terminated or merged plans

often do not submit a final Form 5500, especially when the final plan year is short. Thus, these sources of information on plan disappearances do not adequately satisfy PBGC's need to know why plans have stopped filing.

5. Reducing the burden on small entities. For small plans, the proposed combination of the new due date and the use of prior-year data to compute the VRP would mean not only that the premium due date would align with the Form 5500 due date (as typically extended), but that the due dates that would align would correspond to the same valuation (because the Form 5500 for a plan year is filed one year later than the premium filing for that plan year would be made under the proposal). This would accommodate the desire of many small plan sponsors to defer the plan valuation until several months after the beginning of the year following the valuation date, when they have the financial information for the valuation year (such as net profits) to decide how much to contribute to their plans. First-year filings for most small plans would be simplified by the first-year exemption from the VRP.

The VRP is already capped for certain plans of small employers (those with 25 or fewer employees). (This cap is generally lower than the MAP-21 cap that applies to all VRP filers.) Plans that qualify for the small-employer VRP cap and pay the full amount of the cap do not need to determine or report UVBs.

6. Consequence of reduced collection. Since the information collected is essential to proper administration of PBGC's insurance programs, including auditing of premium filings, failure to collect it would seriously impair PBGC's program operations. Further, the premium payable to PBGC is an annual premium. Therefore, premium filings cannot be made less often

than annually, and under the proposed amendment, filings would typically be made just once per year, even for large plans.

PBGC allows plans to make estimated VRP filings and then reconcile the estimated premium at a later date without a late premium payment penalty. PBGC makes this accommodation because unusual circumstances could make an accurate VRP filing by the due date inconvenient. In some cases, therefore, plans may make two filings a year, rather than one.

7. Special circumstances. PBGC requires plan administrators to retain information necessary to support premium filings for six years. The six-year period corresponds to the record retention requirement of Title I of ERISA and is needed to ensure that records are available during the statutory limitations period within which PBGC may bring an action to collect premiums.

In unusual circumstances, PBGC may require submission of information in less than 30 days in connection with an audit. This would accommodate a situation where PBGC determines that its interests may be prejudiced by a delay in the receipt of the information, such as where collection of unpaid premiums (or any associated interest or penalties) would otherwise be jeopardized.

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

8. Outside input. PBGC's proposed rule to amend the premium regulations as described above informs the public of PBGC's request for OMB review and approval of the collection of information under its premium payment regulation, as revised in accordance with the proposed

rule, and invites public comment. The citation and publication date of the proposed rule are set forth in the request for approval of the information collection.

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 personal nature.

12. Hour burden on the public. Under the amended premium regulations, PBGC estimates that it will receive one premium filing per year from each of about 25,700 respondents. (For simplicity, PBGC is disregarding the possibility that plans will make estimated VRP filings followed up by reconciliation filings. Under the current regulation, only 128 plans chose that two-filing option for 2011.) Of these 25,700 filings, PBGC estimates, based on its experience under the current regulations, that about 20,000 will report UVBs and 5,700 will not. Based on inquiries made to pension practitioners, PBGC estimates that filings that report UVBs take about seven hours to prepare, and that those that do not take about half that time (three and a half hours). Thus the total time spent on premium filings is about 160,000 hours (20,000 x 7 plus 5,700 x 3.5).

The proportion of that time contracted out varies widely, with smaller plans generally contracting out virtually all of it and some large plans performing all the work in-house. Since most filers are smaller plans, PBGC makes a simplifying assumption that 95 percent of the time

is contracted out. Thus the estimated hour burden on the public is approximately 8,000 hours (5 percent of 160,000 hours). The dollar equivalent of this hour burden, based on an assumed average hourly rate of \$350 for actuarial services, is \$2,800,000.

PBGC's burden estimates are based on the most recent data available as of October 2012.

The recordkeeping requirement for premium information is not expected to impose any significant burden, since most of the records covered by this requirement must already be retained under ERISA section 107. Since this recordkeeping burden is nominal, it is included in the estimated reporting burden, and no separate estimate of burden is made for recordkeeping under the regulation.

13. Cost burden on the public. If 152,000 hours of filing preparation work (95 percent of 160,000 hours) is contracted out, then at an assumed hourly rate of \$350 for actuarial services, the estimated hour burden on the public is approximately \$53,200,000 (152,000 hours at \$350 per hour).

14. Costs to the Federal government. Based on its operational costs, personnel salaries, and overhead, PBGC estimates that the annual cost to the Federal Government of processing this collection of information is about \$12.5 million.

15. Change in burden. The change in the estimated annual burden of this collection of information from about 8,200 hours and about \$54,387,000 (the currently approved burden) to about 8,000 hours and about \$53,200,000 (the burden for which approval is requested) is attributable to an upward adjustment of about 1,550 hours and about \$10,413,000 due to re-estimation and a downward change of about 1,750 hours and about \$11,600,000 resulting from the amendments in PBGC's proposed rule.

The upward adjustment and downward change both reflect remarks made by practicing actuaries when the topic of premium due dates and their impact on the burden of filing was raised during a session on PBGC premiums at an actuaries' meeting. Heretofore, PBGC has relied on burden estimates by PBGC staff actuaries familiar with the work required to prepare premium filings. PBGC believes that the views of actuaries currently in private practice are an appropriate "real-world" source to draw from in estimating the burden of this information collection (both in its current form and as it would be changed by the proposed rule).

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

17. Display of expiration date. OMB has previously granted approval to omit the expiration date from the premium forms and instructions.

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