

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination Premium

STATUS: Currently approved collection (modified)

1. Need for collection. The Pension Benefit Guaranty Corporation (PBGC) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4006(a)(7) of ERISA provides for a “termination premium” (in addition to the flat-rate and variable-rate premiums under section 4006(a)(3)(A) and (E) of ERISA) that is payable for three years following certain distress and involuntary plan terminations. PBGC’s regulations on Premium Rates (29 CFR part 4006) and Payment of Premiums (29 CFR part 4007) implement the termination premium. Sections 4007.3 and 4007.13(b) of the premium payment regulation require the filing of termination premium information and payments with PBGC. PBGC has promulgated Form T and instructions for paying the termination premium.

In general, the termination premium applies where a single-employer plan terminates in a distress termination under ERISA section 4041(c) (unless contributing sponsors and controlled group members meet the bankruptcy liquidation requirements of ERISA section 4041(c)(2)(B)(i)) or in an involuntary termination under ERISA section 4042, and the termination date under section 4048 of ERISA is after 2005. The termination premium does not apply in certain cases where termination occurs during a bankruptcy proceeding filed before October 18, 2005.

The termination premium is payable for three years. The same amount is payable each year. The amount of each payment is based on the number of participants in the plan as of the day before the termination date. In general, the amount of each payment is equal to \$1,250 times the number of participants. However, the rate is increased from \$1,250 to \$2,500 in certain cases involving commercial airline or airline catering service plans. The termination premium is due on the 30th day of each of three consecutive 12-month periods. The first 12-month period generally begins shortly after the termination date or after the conclusion of bankruptcy proceedings in certain cases.

The termination premium and related information must be filed by a person liable for the termination premium. The persons liable for the termination premium are contributing sponsors and members of their controlled groups, determined on the day before the plan termination date. Interest on late termination premiums is charged at the rate imposed under section 6601(a) of the Internal Revenue Code, compounded daily, from the due date to the payment date. Penalties based on facts and circumstances may be assessed both for failure to timely pay the termination premium and for failure to timely file required related information and may be waived in appropriate circumstances. A penalty for late payment will not exceed the amount of termination premium paid late. Section 4007.10 of the premium payment regulation requires the retention of records supporting or validating the computation of premiums paid and requires that the records be made available to PBGC.

In connection with this request for extension of OMB approval, PBGC proposes to eliminate from Form T and instructions the requirement to report the method of payment, which helps PBGC match up a form and payment that are filed separately. PBGC has learned that this

reporting requirement may discourage submission of Form T where the required payment is not being made (for example, where the plan sponsor is bankrupt). PBGC is also making minor editorial changes to the form and instructions.

2. Use of information. The information in Form T identifies the plan for which a termination premium is paid to PBGC and the persons liable for the premium and provides a basis for verifying the amount of the premium. That information and the retained records may be used for audit purposes.

3. Information technology. PBGC has not developed information technology applications to deal with termination premiums. The volume of filings is not high enough to justify development of an electronic filing method. Termination premium filings are exempt from mandatory premium e-filing under the premium payment regulation. Form T is designed to be filled out on a computer screen, but it must be printed out for signature and submission.

4. Duplicate or similar information. The information required in termination premium filings is not available from any other source. Although a plan's participant count and the identity of members of its sponsor group may be reported as of other dates for other purposes, this information is subject to change over time, and only Form T requests the information as of the day before the plan's termination date.

5. Reducing the burden on small entities. No special methods are used to reduce burden on small entities. The termination premium does not affect a substantial number of entities of any size.

6. Consequence of reduced collection. By statute, termination premiums are payable once a year for three years. Form T filings are required on the same schedule. Collecting the

information on a different schedule would impair the proper administration of the pension plan termination insurance program.

7. Special circumstances. The premium payment regulation requires “designated recordkeepers” to retain information necessary to support termination premium filings for six years. This is necessary to ensure that records are available during the period within which PBGC may bring an action to collect premiums under ERISA section 4003(e)(6). The six-year period also corresponds to the record retention requirement under title I (section 107) of ERISA.

In unusual circumstances, § 4007.10 of the premium payment regulation may require submission of information in less than 30 days. This provision would accommodate a situation where PBGC determined that the payment of the termination premium (or any associated interest or penalty) would otherwise be jeopardized, *e.g.*, because a statutory limitations period was about to expire.

In other respects, this collection of information is conducted in a manner consistent with 5 CFR § 1320.5(d)(2).

8. Outside input. On September 9, 2013 (at 78 FR 55120), PBGC published a notice soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d). No public comments were received in response to the notice.

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. Personal questions. The collection of information does not call for submission of information of a sensitive or private nature.

12. Hour burden on the public. Three years ago, when PBGC last requested extension of OMB approval of this information collection, it was receiving essentially no filings on Form T and assumed for purposes of its request for OMB approval of the Form T that it would receive only one first-year, one second-year, and one third-year termination premium filing annually. Sponsors of terminating plans subject to the termination premium have begun using Form T, and in 2012 PBGC received 11 first-year filings, 5 second-year filings, and 2 third-year filings. For 2013, PBGC estimates that it will receive 15 first-year filings, 11 second-year filings, and 5 third-year filings.

For purposes of estimating burden, PBGC assumes continuation of the recent trend — about five more first-year filings each year than the year before. In other words, PBGC assumes that the number of first-, second-, and third-year filings will be: for 2014, 20, 15, and 11; for 2015, 25, 20, and 15; and for 2016, 30, 25, and 20. Over the next three years, then, PBGC expects to receive on average 25 first-year, 20 second-year, and 15 third-year filings each year from a total of 60 respondents.

Three years ago, PBGC estimated that it would take about 30 hours to prepare a first-year filing and about 10 hours for a second- or third-year filing, including recordkeeping. PBGC assumed that 95 percent of the work would be contracted out and thus estimated the annual hour burden as two-and-a-half hours.

For this submission, PBGC contacted a filer and a pension professional who has prepared several Form T filings. Both people have prepared second- and third-year filings as well as first-

year filings. Both people estimated the hour burden for all three filings as about 10 minutes. Both said that all the records they consulted to fill out Form T were maintained for other purposes.

For the 60 filings that PBGC estimates it will receive each year, therefore, the estimated hour burden is 10 hours. The dollar equivalent of 10 hours at \$350 an hour is \$3,500.

13. Cost burden on the public. The filer that PBGC contacted had no controlled group information to report and incurred no dollar burden. The pension professional that PBGC contacted had clients with controlled group information to report and estimated billings of \$240 for a first-year filing and \$80 for a second- or third-year filing. To be conservative, PBGC assumes that all filers incur expenses of this magnitude. PBGC thus estimates the annual cost burden of Form T is \$6,000 (25 filings at \$240 apiece) for first-year filings and \$2,800 (35 filings at \$80 apiece) for second- and third-year filings, a total of \$8,800.

14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government of processing this collection of information is about \$5,400 (about \$90 per filing).

15. Change in burden. Estimated hour and cost burden on the public have gone up from two-and-a-half hours to ten hours and down from \$16,625 to \$8,800 since this collection of information was submitted for OMB approval three years ago. The change reflects a higher estimate of the number of filings, based on PBGC's experience, and a lower estimate of per-plan burden, based on information from persons actually involved in filing Form T.

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

17. Display of expiration date. PBGC is not requesting approval to omit from Form T the date OMB's paperwork approval expires.

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