

**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 renewal of a revision of a currently approved collection of
information (OMB control no. 1212-0041; expires March 31, 2015)

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ext. 3041)

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.

Pending the effective date of a final rule amending various parts of PBGC's regulation on Reportable Events and Certain Other Notification Requirements (29 CFR Part 4043), PBGC is proposing the following changes to the information collection requirements under subpart D of that part, relating to PBGC's Form 200:

- PBGC proposes to streamline the form to two pages and modify the form to look more like the proposed revised Form 10 and Form 10-A.
- PBGC proposes to remove information items PBGC can obtain publicly such as Form 5500s and documents filed with the Securities and Exchange Commission.
- PBGC proposes to add a requirement to state the reason for a late contribution so PBGC can better understand the underlying financial health of the sponsor and reasons for missing payments.
- PBGC proposes to add an appendix to the instructions to the Form 200 that provides an example on how to describe the aggregate unpaid balance of required funding payments.

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 permits Form 200 filings to be made by electronic transmission to the address specified in the filing instructions on PBGC's Web site.

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 January 23, 2015, PBGC published a 60-day notice (80 FR 3664) 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. On March 30, 2015, PBGC published a 30-day notice (80 FR 16703) pursuant to 5 CFR § 1320.5(a)(1) soliciting further public comment on this collection of information.

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

10. Confidentiality. Information will be kept private to the extent permitted by law. 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 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 165 filings from 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 990 hours (165 filings times 6 hours per filing). PBGC estimates that the dollar equivalent of the hour burden will be an annual total cost of approximately \$76,190, for an average annual cost of approximately \$460 per respondent.

13. Costs. PBGC estimates that over the next three years, respondents will contract out 495 hours annually (165 filings times 3 hours per filing). The total estimated annual cost burden of the collection of information is approximately \$40,755 (\$82.33 per hour x 495 hours). This estimate is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.¹
- The outside consultant hours will be performed by a combination of professional lawyers (occupational code 23-1011 at a mean hourly wage rate of \$63.46, \$90.66 per hour including benefits) and actuaries (occupational code 15-2011 at a mean hourly wage rate of \$51.80, \$74.00 per hour including benefits).² This comes to a blended hourly wage of \$57.63, \$82.33 per hour including benefits.

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 \$42,500, based on an estimated annual hour burden of 660 hours (or four hours per filing (660 hours divided by 165 filings)). PBGC estimates are based on the following:

- 0.5 hours of staff time for processing a Form 200 notice will be performed by administrative staff (range of salary GS 6-8, average GS 7 step 5; assuming a blended rate of \$33.51 per hour (\$23.46 attributable to wages³ and \$10.05 attributable to benefits)).
- 2.625 hours of staff time per response for processing a Form 200 notice will be performed by a combination of in-house attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5; assuming a blended rate of \$70.70 per hour (\$49.49 attributable to wages⁴ and \$21.21 attributable to benefits)).
- 0.875 hours of outside contractor time for processing a Form 200 notice will be performed by financial analysts (occupation code 13-2051; assuming a mean hourly wage rate of \$44.05, \$62.93 per hour including benefits)).

Thus, PBGC estimates that the total annual cost to the government is \$42,472.03:

$$\checkmark 0.5 \times 165 \times \$33.51 = \$2,764.58 +$$

¹ <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

² <http://www.bls.gov/oes/current/oes231011.htm> and <http://www.bls.gov/oes/current/oes152011.htm>.

³ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf.

⁴ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf.

✓ $2.625 \times 165 \times \$70.70 = \$30,621.94 +$

✓ $0.875 \times 165 \times \$62.93 = \$9,085.52.$

15. Change in burden. The cost burden of this collection of information has decreased from \$125,000 to \$40,755 (though the number of expected filings is expected to increase based on the actual number of filings received by PBGC over the last three years). This change is the result of PBGC's use of different assumptions for estimating costs.

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.