

**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 May 31, 2018)

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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.

On [insert], 2015 (80 FR [insert]), PBGC published a final rule that amended part 4043 to change the waiver provisions and make other changes. PBGC published proposed rules in 2009 and 2013. The final rule takes into account both comments from the pension community and Executive Order 13563 on Improving Regulation and Regulatory Review (2011).

Under the final rule, reporting is waived for most events currently covered by funding-based waivers if a plan meets a new funding-based waiver *or* its sponsor comes within a low-default risk waiver based on widely available measures already used in business. Existing waivers for well-funded plans, public companies that report events on Securities and Exchange Commission filings, and small plans provisions would be retained with modifications or expanded; other waivers would be eliminated.

In connection with the final rule, PBGC has made the following changes to the information collection requirements under 29 CFR Part 4043:

- Electronic filing is now 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—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). PBGC may waive the electronic filing requirement, including 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 were previously required to submit some of this information for some events, but PBGC has made its information collection for all these events more uniform. Accordingly, in connection with the final rule, PBGC now requires that every post-event filing for one of these events include the following financial and controlled group information (actuarial information was already required):
 1. The financial information required will 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.)
 2. The controlled group information required will be tailored to the event being reported and will generally include identifying information for each plan maintained by any member of the controlled group and a description of the controlled group with members’ names.
- Similarly, PBGC has found that it needs the same financial and controlled group information for advance-notice filings (in addition to actuarial information already required). For notices of applications for funding waiver requests, the information can typically be gleaned from the copy of the application that accompanies the reportable event notice. With this exception, PBGC is requiring that every advance notice filing include these items (unless the information is publicly available).
- Controlled group changes and benefit liability transfers involve both an “old” controlled group and a “new” controlled group. PBGC had already required submission of controlled group information with notices of controlled group changes under the old regulation and is now also requiring the same for benefit liability transfers.
- Because extraordinary distributions raise questions about controlled group finances, PBGC now requires submission of financial information with notices of events of this type.

- PBGC now requires that notices of substantial owner distributions give the reason for the distribution to help PBGC analyze its significance.
- Inability to pay benefits raises the specter of imminent sponsor shutdown and plan termination. Accordingly, for notice of this event, PBGC now requires submission of copies of the most recent plan documents and IRS qualification letter.

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. The final rule makes electronic filing of reportable events notices mandatory. 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. The regulation as amended by the final rule provides more waivers for small plans (under 100 participants) than under the previous regulation and extends some due dates for small 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 final regulation, PBGC held a public hearing on June 18, 2013, shortly after the close of the comment period. Comments on the information requirements included concerns about moving information requirements from the regulation to the forms and instructions, requiring increased information be initially reported, and making electronic filing mandatory. PBGC's addressed these comments in the preamble to the final rule.

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 816 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 40 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 5.5 hours and the total annual hour burden on the public will be about 4,496 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 \$1,091,170, for an average annual cost of \$1,337 per respondent.

13. Costs. PBGC estimates that over the next three years, respondents will contract out 2,448 hours annually (816 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 \$607,570, for an average annual cost of \$740 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 \$201,861, based on an estimated annual hour burden of 3,142 hours: 775 post-event filings times 3 hours per filing (0.5 hours of clerical staff time plus 1.875 hours of professional staff time plus 0.625 hours of contractor time) and 40 advance filings times 20 hours per filing (0.5 hours of clerical staff time plus 14.625 hours of professional staff time plus 4.875 contractor time). The estimated hourly cost is \$33.51 an hour of clerical staff time, \$70.70 an hour of professional time, and \$62.93 an hour of contractor time.

15. Change in burden. These changes are the result of a slight decrease in the number of expected filings based upon the changes to the waiver provisions of the regulation contained in the final rule and 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. 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.