

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Annual Financial and Actuarial Information Reporting
(29 CFR Part 4010)

STATUS: Request for approval of a revision to a currently approved collection of information (OMB control number 1212-0049)

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A. Justification.

1. Need for collection. Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010) require each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. Section 4010 specifies that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. Section 4010 also specifies that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans.

The regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010, through PBGC's secure e-4010 web-based application. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the

section 4010 information and do not reflect a plan's termination liability, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

Corporate events such as spin-offs and sales of business segments increase the risk of pension plan underfunding and can result in losses to plan participants and PBGC. The information submitted under the section 4010 regulation allows PBGC: (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities or significantly increase the controlled group's risk profile. With this information, PBGC is able to act quickly to negotiate agreements for contributing sponsors and their controlled group members to provide additional plan funding or take other action, including the termination of underfunded plans, to protect PBGC's claims against the controlled group's assets.

On July 27, 2015 (80 FR 44312), PBGC published a proposed rule that would amend the 4010 regulation to codify the interest rate stabilization provisions of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Highway and Transportation and Funding Act of 2014 (HATFA) and related guidance that affect reporting under ERISA section 4010.¹ In addition, the proposed rule would have limited the reporting waiver under the current regulation tied to aggregate plan underfunding of \$15 million or less to smaller plans (the "\$15 million aggregate underfunding waiver") and added reporting waivers for plans that must file solely on

¹ MAP-21 provided that the stabilized interest rate provisions would begin phasing-out in 2013. HATFA delayed the start of that phase-out until 2018. The Bipartisan Budget Act of 2015 further delayed the start of the phase-out of these provisions.

the basis of either a statutory lien resulting from missed contributions over \$1 million or outstanding minimum funding waivers exceeding the same amount (provided the missed contributions or funding waivers were previously reported to PBGC). The proposed rule would also have made some technical changes to the regulation.

PBGC received ten comment letters (from a total of twelve entities) on the proposed rule. On March 23, 2016 (81 FR 15432), PBGC published a final rule amending its regulation on annual financial and actuarial information reporting. The final rule made some changes from the proposed rule in response to comments. The final rule modifies the \$15 million aggregate underfunding waiver to be based on non-stabilized interest rates. The final rule retains from the proposed rule the new reporting waivers for plans that must file solely on the basis of either a statutory lien resulting from missed contributions over \$1 million or outstanding minimum funding waivers exceeding the same amount (provided the missed contributions or applications for minimum funding waivers were previously reported to PBGC). In addition, the final rule adds a new waiver for smaller plans based solely on participant count.

The collection of information has been approved by OMB under control number 1212-0049 through July 31, 2018. PBGC is now requesting that OMB approve changes under the final rule to the collection of information.

Since publication of the proposed rule, PBGC has expanded the secure e-4010 web-based application to include modules for other filings (reportable events, Form 200, and certain multiemployer filings) and renamed it PBGC's "e-filing portal." The introductory screens and corresponding instructions (largely related to setting up accounts and logging in) that apply to all

filings prepared using the e-filing portal will be removed from the e-4010 module and will instead be posted on PBGC's website. PBGC's website will also provide information for filers that are required to file under the old regulation after the e-4010 module is updated and for certain Schedule FG filers. (When a 4010 filing is required for an information year but is not required for the following information year, the filer must submit Schedule FG to explain why a 4010 filing is no longer required.)

2. Use of information. PBGC uses the information submitted to identify controlled groups with severely underfunded pension plans, to determine the financial status of contributing sponsors and other controlled group members, to evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which contributing sponsors and their controlled group members would provide additional plan funding. Without this information, PBGC could not effectively carry out its responsibilities to protect plan benefits and control insurance program costs.

3. Information technology. PBGC requires electronic filing in a standardized format, in accordance with instructions on PBGC's website (www.pbgc.gov). Electronic filing enables PBGC to simplify the reporting process and to improve the accuracy, completeness, and timeliness of the information it receives. PBGC is able to access the information quickly and in a complete manner from its data base, while imposing very little additional burden on filers. Almost all 4010 filers are large corporations accustomed to submitting electronic filings with other government agencies, such as with the Securities and Exchange Commission using EDGAR. PBGC believes that electronic filing reduces the burden on the public.

4. Duplicate or similar information. To avoid duplication, the regulation provides that companies do not have to submit information previously submitted to PBGC or publicly available and provides that a single filing may be made for all members of a controlled group. Although the Form 5500 and PBGC Form 1 provide certain plan information, those filings do not include controlled group financial information nor is the plan information sufficiently current or detailed to allow PBGC to analyze controlled group transactions and evaluate the risk of loss to the group's pension plans and to PBGC.

5. Reducing the burden on small entities. Inapplicable. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequence of no or less frequent collection. Failure to receive the required information would impair significantly PBGC's ability to assess exposure for participants and the termination insurance program and to identify particular situations that present risks to the pension insurance system. It would also diminish PBGC's ability to negotiate agreements with sponsor groups to reduce those risks and to decide on necessary legal action, including plan termination. As recognized by the statute, PBGC needs current, detailed financial and actuarial information to carry out its responsibilities. The financial health of companies and plans can change quickly. Increasing the statutory one-year reporting interval would force PBGC to rely on less current and thus less meaningful information.

7. Special circumstances. The collection of information is to be conducted in a manner consistent with the guidelines in 5 CFR § 1320.6, with one exception (relating to the 30-day guideline in § 1320.6(b)). Under § 4010.6(b), PBGC may require respondents to furnish

additional information (within the scope of the statutory reporting requirement) within ten days or such other time as PBGC may specify. PBGC has a substantial need for the shorter time limit because of the limited time that PBGC may have to analyze an impending controlled group transaction.

8. Outside input. The July 27, 2015 proposed rule solicits public comment on this collection of information pursuant to 5 CFR § 1320.8(d). PBGC received ten comment letters (from a total of twelve entities) on the proposed rule. The commenters represented several professional and business trade organizations, pension plan consultants, plan sponsors, and a law firm. Generally, commenters opposed the proposal to limit the \$15 million aggregate underfunding waiver to small plans while supporting PBGC's effort to add other waivers. Commenters provided suggestions on the proposal and on other matters under the regulation. The final rule made a number of changes from the proposed rule in response to comments.

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

10. Confidentiality. In accordance with ERISA section 4010(c), 29 CFR § 4010.13, and 29 CFR § 4901.21(a)(3), any information or documentary material submitted to PBGC pursuant to section 4010 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) (FOIA), and may not be made public, except as may be relevant to an administrative or judicial action or proceeding. (ERISA section 4010(c), like FOIA section 552(d), does not prevent disclosure to Congress or to any duly authorized congressional committee or subcommittee.)

11. Sensitive questions. The final regulation does not call for submission of information of a sensitive or private nature.

12. Burden on the public. PBGC estimates that over the next three years approximately 410 controlled groups will be subject to the requirements of the regulation. PBGC expects that about 41 large international companies with foreign parents, about 96 privately held companies, and about 273 publicly held domestic companies. The time needed by a particular controlled group to respond to the collection of information varies depending on the size, nature, and organizational structure of the controlled group, whether the controlled group is publicly or privately held, and whether the controlled group includes international companies with foreign affiliates. The collection of information requires responses of three types: (1) identifying information, (2) financial information, and (3) actuarial information. PBGC expects that identifying and financial information will be prepared in house. PBGC expects that actuarial information will be prepared by outside actuarial consultants (see item 13).

PBGC estimates that the time needed to identify controlled group members and pension plans sponsored by the controlled group will be about 8 hours for each of the 41 international groups and about 2 hours for each of the other 369 groups, a total of about 1,066 hours annually.

PBGC estimates that the time needed to prepare the submission of financial information will be about 16 hours for each of the 41 international groups, about 8 hours for each of the 96 private groups, and about 4 hours for each of the 273 publicly held groups, a total of about 2,516 hours annually.

Based on the foregoing, PBGC estimates that the total annual time required to submit information required under the regulation is about 3,600 hours annually.

Assuming an average rate of \$320 (including professional time, support assistance, overhead, postage and other costs), PBGC estimates the dollar equivalent of the annual hour burden will be \$1,146,240 for an average annual amount of approximately \$2,796 per respondent.

13. Costs. PBGC estimates that over the next three years the time needed to prepare actuarial information required under the regulation will be 20,500 hours annually (50 hours per controlled group). This work is done by outside actuarial consultants. Assuming an average rate of \$320 per hour (including professional time, support assistance, overhead, and other costs), PBGC estimates the total annual cost at \$6,560,000.

14. Costs to the Federal government. PBGC estimates that over the next three years the total annual cost to it for processing filings, providing technical support to filers, organizing data, auditing and contacting filers for missing information, and internal analysis, will be about \$23,580. This is based on an estimated annual burden of 262 hours of professional staff time and an estimated hourly professional staff cost of \$90.00 an hour. There are also costs associated with work performed by outside contractors. These costs are estimated to be \$17,050 per year. This work includes organizing data and auditing and contacting filers for missing information. The total costs to the government are estimated to be \$40,630.

15. Change in burden. Changes to the burden estimates reflect a net increase in burden largely due to the revision to the \$15 million aggregate underfunding waiver under the final rule,

offset by a small reduction in burden as a result of adding new waivers and providing for alternative methods of compliance for certain information items under the final rule.

16. Publication plans. PBGC does not intend 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.

B. Collection of Information Employing Statistical Methods.

This collection of information is not intended for statistical analysis or publication.