

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination Premium

STATUS: Currently approved collection (unmodified)

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.

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 November 22, 2016 (at 81 FR 83882), 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. Form T filings have declined significantly, and PBGC now estimates, based on recent experience, that over the next three years it will receive one first-

year, one second-year, and one third-year termination premium filing annually from a total of three respondents.

Three years ago, PBGC contacted a filer with no controlled group information to report and a pension professional who had prepared several Form T filings where there was controlled group information to report. Both people had prepared second- and third-year filings as well as first-year filings. Both people said that all the records they consulted to fill out Form T were maintained for other purposes. Both estimated the hour burden for each of the three filings as about 10 minutes. The pension professional estimated that the amount billed for preparing Form T was \$240 for a first-year filing and \$80 for a second- or third-year filing.

PBGC tried unsuccessfully to obtain more recent burden data from current filers and is therefore using the data from three years ago. From the information provided by the pension professional, PBGC concludes that the estimated cost of preparing controlled group data (which is done for the first filing) is about \$160 and that the estimated cost of filling out Form T is about \$80.

For each of the three filings that PBGC estimates it will receive each year, therefore, the estimated hour burden is 10 minutes if the form is prepared in-house, with a dollar equivalent of \$80. PBGC assumes that Form T filings are prepared in-house if there is no controlled group and — based on recent filing experience — that not more than half of all filers have controlled groups. Thus the estimated annual average hour burden is 15 minutes (one-half of three filings at 10 minutes per filing).

13. Cost burden on the public. If all filers had controlled groups and preparation of all filings were contracted out, the estimated annual dollar burden would be about \$400 (\$240 for

the first-year filing plus \$80 each for the second- and third-year filings). On the assumption that only half of all filers have controlled groups, PBGC estimates that the annual dollar burden will be about \$200.

14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government of processing this collection of information is about \$270 (about \$90 per filing).

15. Change in burden. Estimated hour and cost burden on the public have gone down from ten hours to 15 minutes and down from \$8,800 to \$200. The difference reflects primarily a significant drop in Form T filings. Part of the difference represents changes in the assumptions and methods used in calculating the burden, notably the assumption that half (rather than all) of Form T filers have controlled groups.

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.