

SUPPORTING STATEMENT

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Disclosure of Information in Distress and PBGC-initiated Terminations; 29 CFR Parts 4041 and 4042

STATUS: Request for Reinstatement of Approval of a Collection (OMB control number 1212-0065)

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1. Need for collection. PBGC administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C § 1301-1461. Sections 4041 and 4042 of ERISA govern the termination of single-employer defined benefit pension plans that are subject to Title IV. A plan administrator may initiate a distress termination by sending a notice of intent to terminate to all affected parties pursuant to section 4041(a)(2). Under section 4042 of ERISA, PBGC may itself initiate proceedings to terminate a pension plan if it determines that certain conditions are present. For distress terminations, pursuant to ERISA section 4041(c) and PBGC’s termination regulation (29 CFR Part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to affected parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of any termination initiated by PBGC under section 4042 of ERISA, a plan administrator, in response to a request by PBGC, provides PBGC with certain information, *e.g.*, the value of plan assets and liabilities.

Section 506 of the Pension Protection Act of 2006, Pub. L. 109-280 (“PPA 2006”), added disclosure provisions to both sections 4041 and 4042 of ERISA requiring that information

submitted to PBGC in conjunction with a termination (either a distress or PBGC-initiated termination) must be provided to an affected party upon request. “Affected party” is defined in section 4001(a)(21) of ERISA to include each participant in the plan, each beneficiary under the plan, each employee organization representing plan participants, and PBGC.

With respect to distress terminations, the PPA 2006 disclosure provisions require that a plan administrator that has filed a Notice of Intent to Terminate must provide information that it has submitted to PBGC in conjunction with the distress termination to an affected party upon the party’s request. With respect to PBGC-initiated terminations, the disclosure provisions require that, following receipt by the plan administrator of a Notice of Determination from PBGC, the plan sponsor, plan administrator, or both, must provide, upon request, any information that has been submitted to PBGC in connection with the plan termination. The PPA 2006 disclosure provisions also require PBGC to disclose the administrative record of its determination that the plan should be terminated to an affected party upon request.

The information requested must be provided to an affected party by a plan administrator or plan sponsor, and by PBGC (depending upon to whom the request was directed) not later than the 15th business day after receipt of the request.

PBGC is requesting that OMB reinstate approval of the information requirements described above (without change) for three years.

2. Use of information.

a. Information required. With regard to distress terminations, certain information is provided by plan administrators to affected parties automatically, including: (1) a notice of intent to terminate; and (2) if the termination is invalidated, a notice that the plan is not going to terminate (or, if applicable, that the termination was invalid but that a new notice of intent to

terminate is being issued). For a “sufficient” distress termination (*i.e.*, one where the plan is sufficient for at least all guaranteed benefits and closes out in a private sector distribution), the plan administrator also must provide: (3) a notice of benefit distribution; (4) a notice of identity of insurer; (5) information regarding state guaranty association coverage; and (6) if applicable, a notice of annuity contract.

However, other information submitted to PBGC as part of a distress termination generally is not provided to affected parties, including (1) information demonstrating that each contributing sponsor, and each member of each contributing sponsor’s controlled group, meets one of the statutory distress tests; and (2) for insufficient distress terminations, certain participant and beneficiary information that enables PBGC to pay benefits as required under Title IV of ERISA. Under PPA 2006, that information must be provided to an affected party upon request.

With regard to PBGC-initiated terminations, information submitted to PBGC in response to requests by PBGC under section 4042(c)(2) of ERISA (previously section 4042(c)(3) prior to its re-designation by PPA 2006) is generally not automatically provided to affected parties. However, under PPA 2006, any information that a plan administrator or plan sponsor submits to PBGC must be provided to an affected party upon request.

To obtain termination information under PPA 2006, a written request from an affected party must be directed to the plan administrator, or, if the request relates to a PBGC-initiated termination, to the plan administrator, plan sponsor, as well as PBGC. The request must be signed by the affected party and state:

- the name of the person making the request;
- the name of the plan;

- that the request to the plan administrator or plan sponsor is for information submitted to PBGC with respect to a distress or a PBGC-initiated termination for the plan, or, if the request is directed to PBGC, that the request is for the administrative record relating to a Notice of Determination issued by PBGC;
- the requester's relationship to the plan (e.g., plan participant or beneficiary); and
- that the requester meets the definition of affected party under 29 CFR § 4001.2.

b. Need for information. Affected parties need the information required to be disclosed to them by plan administrators and plan sponsors so that they will be informed about the proposed termination of their plan and, in the case of a PBGC-initiated termination, the information relied upon by PBGC in determining that the plan should be terminated.

Plan administrators, plan sponsors, or PBGC need the information from affected parties so that they can confirm the requester is a person who is entitled to the termination information under ERISA § 4041(c)(2)(D) or ERISA § 4042(c)(3).

3. Reducing the burden and information technology. Plan administrators and plan sponsors must provide termination information in accordance with PBGC's rules on Issuance, subpart B of 29 CFR part 4000. These rules allow use of any method of issuance that is reasonably calculated to ensure actual receipt of the material by the intended recipient. The rules provide a safe-harbor method for electronic issuance.

PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

4. Identifying duplication. A limited amount of the information required to be provided to affected parties may have already been provided to the affected party before the affected party requested the information. However, there is no simple or efficient way to advise affected

parties that they have already received some of the requested information that they have requested. Moreover, requiring affected parties to retrieve bits of information that have been provided to them at earlier times for other purposes would be inconsistent with the purpose of the PPA 2006 provisions to ensure that affected parties receive meaningful, timely, and useful information that is keyed to their request.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. This provision of information occurs only with respect to a proposed plan termination and normally occurs only once in the life of a pension plan. The provision of information cannot be done less frequently unless the information were not provided at all. If this information were not provided at all, participants and beneficiaries would receive less meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. None.

8. Outside input. PBGC published a 60-day notice on September 7, 2017, 82 FR 42366. No public comments were received in response to the 60-day notice.

9. Payments and gifts. There are no payments or gifts made to respondents in connection with this collection of information. Section 4041(c)(2)(D)(iii)(II) of ERISA provides, in the case of a distress termination, that a plan administrator may charge a reasonable fee for any information provided in other than electronic form; section 4042(c)(3)(D)(ii) provides that a plan sponsor may also do so in the case of information provided in a PBGC-initiated termination.

10. Confidentiality. A plan administrator, in a distress termination, and a plan administrator, plan sponsor or PBGC, in a PBGC-initiated termination, must not provide information that might, directly or indirectly, be associated with or otherwise identify an

individual participant or beneficiary. See ERISA §§ 4041(c)(2)(D)(ii)(I), 4042(c)(3)(C). In addition, a plan administrator or a plan sponsor may seek a court order under which confidential information described in 5 USC § 552(b): (1) will be disclosed only to authorized representatives (any employee organization representing participants in the plan) that agree to ensure the confidentiality of such information, and (2) will not be disclosed to other affected parties.

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

12. Burden on the public. For purposes of this submission, a response is a response to a request by an affected party. Based on information for calendar years 2014-2016, PBGC estimates that approximately 75 plans will terminate as distress or PBGC-initiated terminations each year.

A survey conducted by PBGC of nine plans found that two of the nine plans surveyed received requests for termination information. Based on the foregoing, PBGC estimates that two participants or other affected parties of every nine distress terminations or PBGC-initiated terminations filed will annually make requests for termination information, or 2/9 of 75 (approximately 17 per year).

Based on information derived from the survey of nine plans, PBGC estimates that the hourly burden for each request will be about 20 hours. The aggregate annual burden is estimated to be 340 hours (17 plans*20 hours). Based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time per hour, the estimated dollar equivalent of the hour burden is \$25,500 (340 hours*\$75 per hour).

The hourly estimate is based on the time to review all pertinent termination documents and to determine which, if any, of the documents may not be released (or released only in part) in

response to the request due to confidentiality concerns. This estimate does not include any burden associated with seeking a court order to limit disclosure due to confidentiality concerns.

13. Cost. PBGC expects that the plan administrators and sponsors will perform the work described above in-house. PBGC does not anticipate that plan administrators and sponsors will contract the work out to third parties. PBGC expects costs to be recovered from affected parties because plan administrators and plan sponsors may charge a reasonable fee for non-electronic disclosure. Therefore, the annual cost is estimated to be \$0.

14. Cost to federal government. Affected parties may request a copy of PBGC's administrative record for the termination only where PBGC initiates a termination under section 4042 of ERISA. Based on PBGC's experience, PBGC estimates that two requests will be received each year. PBGC staff time required to process these administrative record requests is estimated to be 15 hours per request, and PBGC estimates there will be approximately two requests annually.

Because all the work will be performed by PBGC existing staff as part of their other duties, the annual cost to the government is estimated to be \$0.

15. Change in burden. The change in the estimated annual hourly burden of this collection of information (from 30 hours in the most recent OMB inventory to the 340 hours requested) is primarily attributable to an upward revision in PBGC's estimate of the annual number of requests from two to 17 based on the survey described in item 12. This was a change in methodology from prior submissions.

The estimated annual cost burden of this collection has decreased from \$600 in the most recent OMB inventory to \$0 reported in this submission. This decrease is primarily attributable to PBGC's assumption that all the work will be performed by the staff of plan administrators and

sponsors and that any costs will be recoverable by plan administrators and sponsors charging reasonable fees for non-electronic disclosure.

16. Publication. There are no plans for tabulation or publication.

17. Display of expiration dates. PBGC is not seeking approval to not display the expiration date for OMB approval of the information collection.

18. Exception to certification statement. There are no exceptions to the certification statement.