

**SUPPORTING STATEMENT
REQUEST FOR APPROVAL OF A COLLECTION OF INFORMATION**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination of Single Employer Plans; Missing Participants; 29 CFR Parts 4041 and 4050; PBGC Forms 500-501, 600-602, Schedule MP and attachments

STATUS: Request for OMB approval with modifications (OMB control No. 1212-0036)

CONTACT: Stephanie Cibinic (326-4400, ext. 6352) or Jo Amato Burns (326-4400, ext. 3072)

1. Need for collection. Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended, a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to ERISA section 4041(b), for standard terminations, and section 4041(c), for distress terminations, 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 third parties (participants, beneficiaries, alternate payees, and employee organizations). In the case of a plan with participants or beneficiaries who cannot be located when their benefits are to be distributed ("missing participants"), the plan administrator is subject to the requirements of section 4050 of ERISA and PBGC's missing participants regulation (29 CFR Part 4050).

OMB approval of the existing information requirements expired November 30, 2017. PBGC is requesting that OMB reinstate its approval and extend it for three years from date of approval, with modifications.

The substantive changes PBGC is making to the forms and instructions in this information collection are described below. In addition, PBGC is making updating, clarifying, simplifying, and editorial changes to the forms and instructions.

PBGC is proposing to provide that the plan administrator of a plan terminating in a standard termination, or a distress termination that closes out in the private sector, may submit termination forms electronically (scanned and emailed or faxed), rather than by mail or personal delivery only. PBGC is proposing these new options to increase the ease of submission for plan administrators.

In addition, for distress termination filings, PBGC is proposing to include an invitation for plan sponsors to contact PBGC for a pre-filing consultation to discuss the filing process and ensure the filing of a distress termination is appropriate given the sponsor's specific circumstances. This consultation will assist PBGC and the plan sponsor in exploring whether a waiver of one or more filing obligations is appropriate, identifying potential issues preventing a distress termination of a particular plan, and may indicate that commencement of an agency-initiated termination of the pension plan is warranted. This consultation will be voluntary and will result in little or no added burden on the plan sponsor.

2. Use of information.

a. Information required. Certain information must be provided to PBGC and to third parties (*e.g.*, participants and beneficiaries) for all types of terminations. For both standard and distress terminations, the plan administrator is required to submit to PBGC certain identifying information, confirmation that the required notices have been properly issued to plan participants

and beneficiaries, and the level of funding of the plan. The plan administrator must also provide certain information to third parties, including a notice of intent to terminate.

Standard terminations and sufficient distress terminations. In the case of a standard termination (*i.e.*, a plan that is sufficient for all benefits) or a “sufficient” distress termination (*i.e.*, a plan that is sufficient for at least all guaranteed benefits but not for all benefits and will close out in the private sector), the plan administrator must provide PBGC and third parties with certain additional information relating to the distribution of plan assets. In particular, the plan administrator must provide PBGC summary information relating to the benefits distributed and, for a standard termination, certain information regarding residual assets. See PBGC Forms 500 and 501. The plan administrator is also required to provide certain additional information to third parties, including: (1) a notice of plan benefits (for standard terminations) or of benefit distribution (for distress terminations); (2) annuity information, including information on identity of insurers and on state guaranty association coverage of annuities; and (3) if applicable, an annuity contract or certificate.

Distress terminations. For distress terminations, the plan administrator must also provide PBGC with information demonstrating that each contributing sponsor, and each member of each contributing sponsor’s controlled group, meets one of the statutory distress criteria (*see* § 4041(c)(2)(B) of ERISA and 29 CFR § 4041.41(c)). See PBGC Forms 600 and 601.

Missing participants (of plans that terminated on or before December 31, 2017). If an annuity is purchased for some or all missing participants, the plan administrator must file identifying information about the insurer, the total number of annuities purchased, the amount transferred to the insurer, and each missing participant's annuity certificate number and monthly

benefit. The plan administrator must file Schedule MP and Attachment A as attachments to either Form 501 (if the termination is a standard termination) or Form 602 (if the termination is a sufficient distress termination).

If an annuity is not purchased for a missing participant, the plan administrator must transfer an amount (the "designated benefit") to PBGC for the participant. The plan administrator must file Schedule MP and, for each missing participant for whom a designated benefit is transferred, a separate Attachment B. Attachment B provides identifying information about the missing participant, describes the type and form of the missing participant's benefit, and reports the amounts being transferred to PBGC. The Schedule MP and Attachments B are filed as attachments to either the Form 501 or Form 602.

The plan administrator must also file a Schedule MP (with applicable attachments) to report payment to PBGC or the purchase of an annuity for a missing participant who is owed residual assets or voluntary employee contributions. In addition, the plan administrator may be required to file a Schedule MP (with applicable attachments) pursuant to a PBGC audit of a plan termination.

The missing participant forms and instructions under this information collection are applicable only to plans that terminated on or before December 31, 2017. There is a new control number for the collection of information under the expanded missing participants program, effective on January 22, 2018, and applicable to plans that terminate on or after January 1, 2018 (OMB Control No.1212-0069; expires 1/31/2021). The expanded program includes not only missing participants from single-employer plans covered by title IV, but also defined contribution and other plans not covered by title IV.

b. PBGC and third party need for information. PBGC needs, and has routinely used, the information required to be submitted to it to: (1) determine whether the statutory and regulatory requirements for a standard or distress termination have been met; (2) in a standard termination, determine whether the reversion of any plan assets to the employer meets the requirements of title IV of ERISA; (3) in a distress termination, determine whether the plan should be trusted by PBGC or permitted to close out in a private-sector distribution; (4) in a distress termination, estimate the amount of employer liability to PBGC under section 4062 of ERISA and 29 CFR Part 4068; and (5) attempt to locate and pay missing participants or, where annuities were purchased for missing participants, attempt to locate and refer them to the insurer who issued the annuities to be paid.

Participants need the information required to be disclosed to them so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination. The information on state guaranty association coverage helps participants and beneficiaries understand the importance of the plan administrator's selection of an insurer and enables them to make a better-informed choice about whether to elect a lump sum or an annuity.

3. Reducing the burden and information technology. In certain circumstances, PBGC's regulations allow for electronic filing with PBGC and electronic issuance of notices to third parties. The Missing Participants Filing Package provides instructions for those who want to use wire transfers for payments for missing participants.

As noted above, in this submission, PBGC is proposing that plan administrators may submit termination forms electronically (scanned and emailed or faxed), rather than by mail or personal delivery only.

In addition, PBGC has made termination and missing participants forms available on its website as fillable and savable PDF documents. PBGC expects that fillable and savable PDF versions of the forms will reduce the amount of time required of respondents to correct and complete the forms. It also will enhance the forms' accuracy, thereby saving PBGC time as well.

4. Identifying duplication. A limited amount of the information required to be submitted to PBGC in response to this collection of information may already be in the possession of the government. However, there is no timely and reliable way to locate the required documents, particularly since the reporting entity may have changed its name or tax identifying number, or submitted to the government some, but not all, of the documents required under this information collection. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in agencies' files than to simply submit the information to PBGC.

Participants and beneficiaries may find information similar to some of the information required to be disclosed under the termination regulation (*e.g.*, a description of PBGC's guarantee) in other documents provided at various times to them or to other Federal agencies to accomplish other purposes. However, one purpose of the termination regulation is to ensure that affected parties receive meaningful information about their plan's termination in a timely manner. Requiring participants and beneficiaries to retrieve bits of information that have been provided to them or to the government at other times, for other purposes, would be inconsistent with this purpose.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. Since this collection of information occurs only with respect to a proposed plan termination and, therefore, normally occurs only once in the

life of a pension plan, the collection cannot be conducted less frequently unless the information were not collected at all. If this information were not collected at all, PBGC would not be able to fulfill its statutory mandate to oversee the termination of plans covered by PBGC's insurance program, and participants and beneficiaries would not receive meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. Upon review of a standard termination notice, PBGC may, but very rarely does, require the plan administrator to submit additional information relevant to the termination proceeding. The additional information normally is due within 30 days after PBGC makes a written request. PBGC may in its discretion shorten the 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. To monitor and facilitate compliance, the time period runs from the date of the request by PBGC rather than the date of receipt of the request by the plan administrator.

In a distress termination proceeding, information in addition to that required by Form 600 and Form 601 may be due in a short time period to permit PBGC to take prompt action (*e.g.*, institution of involuntary termination or trusteeship proceedings) to protect participants or premium payers.

Respondents are required to retain certain records for six years. PBGC notes that most or all of the records required to be retained under the termination regulation already must be retained for six years for other purposes under section 107 of title I of ERISA. Retention of records for six years is necessary because PBGC has at least six years following a termination to

bring a civil action to enforce the provisions of title IV of ERISA with respect to that termination (*see* section 4003(e)(6) of ERISA).

8. Outside input. PBGC published a 60-day notice on October 2, 2017 (82 FR 45912).

No public comments were received in response to the 60-day notice.

9. Payments and gifts. No payments or gifts were made 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 Parts 4901 and 4902, respectively.

11. Sensitive questions. This 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 information collection, a termination submitted constitutes a “response.”

PBGC's burden estimates assume that much of the plan termination work will be done for Internal Revenue Service purposes (*e.g.*, Forms 5310 and 6088). In addition, much of the termination work will be done in the normal course of closing out a plan.

Standard terminations.

PBGC estimates that it will process 1,416 standard terminations annually over the next three years. In addition, PBGC estimates that about 158 plans terminating in a standard termination will have missing participants (rounded from 158.3, average over last three years). Because few, if any, plans terminate in distress terminations that are sufficient, (*i.e.*, those that

distribute in accordance with standard termination rules), they are not included for purposes of this estimate.

To obtain burden estimates, PBGC contacted a sample of respondents, *i.e.*, nine plans for which standard terminations were filed and which had missing participants. Based on the information from these contacts, PBGC estimates that the hourly burden for each response will be approximately 20 hours. The aggregate annual burden is estimated to be 28,300 hours (1,416 plans x 20 hours, rounded to 100s). For each response, the estimated dollar equivalence of the hourly burden to the plan sponsor for its staff's work is \$3,000; the aggregate annual dollar equivalence is \$4,248,000 (\$3,000 per plan x 1,416 plans per hour).

For missing participants, PBGC estimated that about 158 of the 1,416 plans terminating as standard terminations will have missing participants. Based on its inquiries, PBGC estimates that the average time required for a plan to comply with the collection of information requirements relating to missing participants will be five hours. The aggregate annual burden hours associated with missing participants is 790 hours (5 hours x 158 plans with missing participants). The average dollar cost equivalence associated with missing participants is \$300, with an aggregate dollar cost equivalence of \$47,400 (\$300 x 158 plans).

The aggregate annual hourly burden for standard terminations and missing participants is estimated to be 29,090 hours (28,300 hours for standard terminations + 790 hours for missing participants). The average annual hourly burden across all standard terminations with missing participants is estimated to be 21 hours (29,090 hours ÷ 1,416 plans), rounded.

Distress terminations.

PBGC estimates 10 terminations will be concluded as distress terminations annually over the next three years. Of these 10, PBGC estimates that almost all will terminate under Distress Criteria 2 – 4 (reorganization in bankruptcy or insolvency proceeding, termination required to enable payment of debts, or to avoid unreasonable pension costs). Virtually all terminations filed under Criterion 1 (liquidation in bankruptcy or insolvency proceeding) end up converting to PBGC-initiated terminations, rather than being distress terminations

As it did for standard terminations, PBGC contacted nine plans for which distress terminations were filed. Based on information from these contacts, PBGC estimates that the hourly burden for distress terminations to be approximately 80 hours. The aggregate annual hourly burden for all distress terminations is estimated to be 800: (80 hours x 10 plans = 800 hours).

For each response, the estimated dollar equivalence of the hourly burden to the plan sponsor for its staff's work is \$5,800; the aggregate annual dollar equivalence is \$58,000 (\$5,800 per plan x 10 plans).

Total annual hourly burden on all respondents. The annual burden of complying with this collection of information for both standard and distress terminations over the next three years is estimated to average 29,890 hours: 29,090 hours for standard terminations (including missing participant hours) + 800 hours for distress terminations.

13. Cost.

Standard terminations.

As stated in item 12, PBGC contacted nine plans for which standard terminations were filed and which had missing participants. In addition to collecting information on the hourly burden, PBGC also collected information on the cost burden of contracting out work required to complete the terminations. Based on that information, PBGC estimates that the average cost burden for each response will be approximately \$4,000. The aggregate annual cost burden is estimated to be \$5,664,000 (1,416 plans x \$4,000 per plan).

As to the cost burden for missing participants, PBGC estimated that about 158 of the 1,416 plans terminating in a standard termination will have missing participants. Based on its inquiries, PBGC estimates that the cost to the plan sponsor of contracting out work for a plan to comply with the collection of information requirements relating to missing participants will be approximately \$900 for a terminating plan. The aggregate annual cost burden associated with missing participants is estimated to be \$142,200 (\$900 per plan x 158).

The aggregate annual cost burden for standard terminations and missing participants is estimated to be \$5,806,200 (\$5,664,000 for standard terminations + \$142,200 for missing participants). The average annual cost burden across all standard terminations with missing participants is estimated to be \$4,100 ($\$5,806,200 \div 1,416$ plans, rounded to 100s).

Distress terminations.

As stated in item 12, PBGC contacted nine plans for which distress terminations were filed. In addition to collecting information on the hourly burden, PBGC also collected information on the cost burden of contracting out work required to complete the terminations.

Based on that information, PBGC estimates that the cost burden for each distress termination will be approximately \$15,720. The aggregate cost is estimated to be \$157,200 (\$15,720 x 10 plans).

Total annual cost burden on all respondents. The annual cost burden of complying with this collection of information for both standard and distress terminations over the next three years is estimated to be \$5,963,400: \$5,806,200 for standard terminations (including missing participant costs) + \$157,200 for distress terminations.

14. Cost to federal government.

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

15. Change in burden. The change in the estimated annual burden of this collection of information (from 1,708 hours in the current OMB inventory to 29,890 hours requested, and from \$1,721,391 to \$5,963,400) is attributable to a change in methodology in estimating burden. These changes are unrelated to program changes; the revised burden estimates are the result of information gathered by PBGC from two small groups of practitioners, each less than 10, who filed standard and distress terminations in the past.

In prior submissions, PBGC's estimates were based on PBGC's assumptions of the number of hours expended by plan sponsors and the cost incurred by them in contracting work out to complete the terminations. The estimates reported in the 60-day Federal Register notice (1,560 hours and cost of \$1,350,400) were based on that methodology. The estimates reported in the 30-day Federal Register notice, and in this document, are based on the results from the two small groups of practitioners who were surveyed.

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.