

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: PBGC Form 200, Notice of Failure to Make Required Contributions
(29 CFR 4043.81)

STATUS: Request for extension of approval of a collection of information (OMB control no. 1212-0041; expires November 30, 2018)

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1. Need for collection. Section 303(k) of the Employee Retirement Income Security Act of 1974 (ERISA) and section 430(k) of the Internal Revenue Code of 1986 (Code) impose a lien in favor of an underfunded single-employer plan that is covered by PBGC's termination insurance program if (1) any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds \$1 million. (For this purpose, a plan is underfunded if its funding target attainment percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons that are liable for required contributions (i.e., a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. ERISA and the Code require persons that fail to make payments to notify PBGC within 10 days of the due date whenever there is a failure

to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR 4043.81 (Subpart D of PBGC's regulation on Reportable Events and Other Notification Requirements, 29 CFR part 4043).

PBGC is proposing only a few non-substantive changes. These changes are:

Form. PBGC proposes to add to the Form 200 under a heading "Filing Information," lines for the notice due date and the notice filing date, and if the filing is late, space for an explanation, similar to the lines on the Form 10 and 10-Advance. This information is needed to determine whether a late filing penalty would apply and whether to waive the penalty.

Instructions. PBGC proposes to update the instructions to reflect information on its web site that filers may file the Form 200 electronically through PBGC's e-filing portal, which was made available in 2016 and is accessible on its web site (<http://www.pbgc.gov>). The information would appear in sections dealing with "What's New," how to file, filing date, and questions. Electronic filing is required for reportable event reports and has typically been done by email. PBGC believes the option of filing through the e-filing portal provides filers with a secure, simple, and effective means of electronically submitting the Form 200.

PBGC also proposes to clarify the notice filing date description to be closer to the language in its electronic filing regulation (29 CFR 4000.29), to update outdated penalty language under "Effect of Failure to Timely File," to include under "Definitions" "notice due date" and "notice filing date," and to update the dates used in the example in the Appendix. The note on Simplified Reporting was revised to explain that the filer include the reason the contribution was not made, and that PBGC may request evidence the contribution was made.

2. Use of information. PBGC uses the information submitted to make decisions regarding the perfection and enforcement of liens created under ERISA section 303(k)(1) and Code section 430(k)(1). This information enables PBGC staff to determine the amount of the statutory lien and to evaluate the funding status of the plan and the financial condition of the person(s) responsible for its funding. Without this information, PBGC could not efficiently and effectively use the statutory lien provisions in carrying out its responsibilities to protect plan benefits and control insurance program costs.

3. Information technology. The Form 200 is filed electronically by email or through PBGC's e-filing portal.

4. Duplicate or similar information. PBGC avoids potential duplication by permitting a filer to respond to an item that calls for documentation or other information previously submitted to PBGC (in an earlier Form 200 or another context) by identifying the previous submission in which the response was provided.

In addition, to the extent that PBGC staff can use information from documents prepared for other purposes (including reports and other filings with Federal agencies and in judicial proceedings) in perfecting liens and lien-enforcement decision making, Form 200 calls for the submission of copies of those documents.

A failure that triggers this notification requirement also may be a reportable event (see ERISA section 4043(c)(5) and 29 CFR 4043.25). The reportable event notice requirement is satisfied if a timely and complete Form 200 is submitted with respect to the same failure (see 29 CFR 4043.25(b)).

PBGC believes that there is no information similar to that required under the regulation that could be used instead for the purposes of 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.

6. Consequences of reduced collection. ERISA establishes when PBGC collects information by requiring that PBGC be notified of each failure to make a required funding payment as described below in Item 7 by the due date. If PBGC were notified less frequently, or not at all, it would not have the information that it needs to timely perfect liens or make lien-enforcement decisions.

7. Special circumstances. The statutory notification requirement is tied to the minimum funding standards, under which payments may be due more often than quarterly. Consequently, failure to make a required payment may trigger the statutory notification requirement more often than quarterly.

Under ERISA and the Code, a person must notify PBGC within 10 days of a payment due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds \$1 million. A person must use PBGC Form 200 for this notification (29 CFR 4043.81). Persons that may be required to notify PBGC can familiarize themselves with Form 200, and even begin preparing responses, before a payment failure that triggers the statutory notification requirement. In some cases, PBGC may require the submission of additional information.

In general, the submission of additional information is required within 7 days after PBGC makes a written request. The 7-day period is necessary to ensure that PBGC has sufficient time

to act to enforce the statutory liens. Any delay may result in financial loss to PBGC (see item 2). In addition, PBGC may shorten the time 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.

In all other respects, this collection of information is not conducted in a manner described in 5 CFR 1320.5(d)(2).

8. Outside input. On July 24, 2018, PBGC published in the Federal Register (at 83 FR 35031) a notice of its intent to request OMB approval to renew this information collection with modifications and solicited public comment. No comments were received.

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

10. Confidentiality. Information provided to PBGC is confidential to the extent provided 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. This collection of information does not call for submission of information of a personal nature.

12. Hour burden on the public. Based on a review of filings, PBGC anticipates that there will be approximately 100 filings from single-employer plan respondents. PBGC estimates that the average response time for the filing will be one hour. This time is an average that will vary depending on the nature and organizational structure of persons liable for plan contributions (in particular, whether the plan's contributing sponsor is a member of a controlled group and, if so, the size of that group) and on the funding history of the plan. PBGC estimates that the total

average annual burden on the public will be 100 hours. PBGC estimates that the dollar equivalent of the hour burden will be an average annual cost of approximately \$167 per respondent and an annual total cost of approximately \$16,700.

13. Cost burden on the public. PBGC estimates that filers will incur an average annual cost of \$725 for actuarial and/or third-party administrator costs. This results in a total average annual cost of approximately \$72,500.

14. Costs to the Federal government. Because work on processing this information will be performed by existing staff as part of their regular duties, there is no cost to the federal government.

15. Change in burden. The change in the estimated annual burden of this collection of information is attributable to a trend over the last three years to fewer overall filings, and the adoption of experience-based burden estimation. PBGC previously estimated the time spent to prepare the information collection and relied on public comments received, if any, on the burden estimates.

PBGC has switched to using “experience-based” burden where possible. (For new collections, there is no filer experience to use. In some cases, PBGC is unsuccessful in getting data from filers.) Experience-based burden uses actual filer experience — of time and money spent and of the cost of time — to arrive at estimated burden figures. The information on filer experience is gathered by contacting nine or fewer filers. The resultant burden figures may be higher or lower than PBGC’s previous estimated figures — sometimes much higher or lower — and may fluctuate as time goes by and more filer reports are available.

16. Publication plans. PBGC does not plan to publish the results of this collection of information.

17. Display of expiration date. Not applicable. PBGC is not seeking OMB approval to omit displaying the expiration date.

18. Exceptions to certification statement. There are no exceptions to the certification statement for this submission.