

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Reportable Events (29 CFR part 4043); Forms 10 and 10-Advance

**STATUS:** Request for extension of approval of a collection of information (OMB control number 1212-0013; expires November 30, 2018)

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1. Need for collection. Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's reportable events regulation (29 CFR part 4043) require plan administrators and plan sponsors to report certain plan and corporate events to PBGC. The reporting requirements give PBGC notice of events that may indicate plan or contributing sponsor financial problems. Filing is done on Form 10 (for post-event reporting) and Form 10-Advance (for advance reporting).

PBGC proposes to make limited changes to the information collection under the reportable events regulation.

*Forms.* PBGC is proposing in this renewal request that all reportable events filings include controlled group information, company financial statements, and the plan's actuarial valuation report. Currently there are five reportable events where some or all of that information isn't required. All three types of information would be added to two of these events ("Active Participant Reduction" and "Distribution to a Substantial Owner"). One type of information would be added to two events ("Transfer of Benefit Liabilities" and "Change in Contributing Sponsor or Controlled Group"), and two types to one event ("Extraordinary Dividend or Stock

Redemption”). These reporting requirements give PBGC notice of events that may indicate plan or employer financial problems. The additional information is needed to help PBGC determine a sponsor’s ability to continue to maintain a pension plan.

We are proposing to remove the 4<sup>th</sup> check box under “Liquidation” which had been inadvertently included on the current Form 10.

For the Form 10-Advance, we propose to add “or extension” to “Reason for Late Filing” on the last page of the Form to conform with the same field on the Form 10.

*Instructions.* Under 29 CFR 4043.3(d), which is reflected in PBGC’s instructions to the Form 10 and 10-Advance, PBGC may require a filer to submit additional relevant information in response to a written request from PBGC. We think it would be helpful to convey in the instructions the types of additional information PBGC may request of a filer that is liquidating or in an insolvency or similar settlement. We may follow up with a filer particularly where there is an out-of-court or state court proceeding and PBGC is having difficulty obtaining information to determine whether it needs to take action to protect the pension plan. The types of information that may be requested are noted under the specific event type (B. Liquidation and G. Insolvency or Similar Settlement) in the instructions.

PBGC proposes to update the instructions to reflect information on its web site that filers may file the Form 10 and 10-Advance 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 10 and 10-Advance.

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,” and to add “Notice filing date” to the definitions section. For the Form 10, we also propose to include in the instructions reference to PBGC Technical Update 17-1 (September 15, 2017), which is relevant to active participant reduction events (see A. Active Participant Reduction, “Attrition event”).

2. Use of information. PBGC uses the information provided in determining what, if any, action it needs to take. For example, PBGC might need to institute proceedings to terminate a plan (placing it in trusteeship) under ERISA section 4042 to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

3. Information technology. The Form 10 and 10-Advance are required to be filed electronically by email or through PBGC’s e-filing portal.

4. Duplicate or similar information. Some of the required information may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to Federal agencies some, but fewer than all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies’ files than simply to submit the information to PBGC.

To the extent that PBGC has information through another filing, respondents may identify that other filing rather than refile the information. Furthermore, one party may file on behalf of all those who are required to file.

The requirement for a reportable event notice of a failure to make required minimum funding payments is satisfied if a timely and complete Form 200 (for failure to make required contributions over \$1 million) is submitted with respect to the same failure.

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information 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. The statutory requirement to notify PBGC is triggered by the occurrence of infrequent and typically nonrecurring events. No reporting, or less frequent or timely reporting, could impair PBGC's ability to fulfill its statutory responsibilities.

7. Special circumstances. Reporting is required whenever a reportable event occurs. In unusual cases, a respondent could incur more than one reportable event within a quarter, thereby requiring reporting more frequently than quarterly.

In some cases, PBGC may require the submission of additional information. In general, the submission of additional information is required within 30 days after PBGC makes a written request. However, for advance reporting, the additional information is required within 7 days of the written request. This is necessary to ensure that PBGC has sufficient time to evaluate the event and determine if action is required before the event becomes effective (i.e., 30 days after the initial report). In addition, PBGC may shorten either the 30-day or 7-day time period 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 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. In accordance with ERISA section 4043(f) and 29 CFR § 4901.21(a)(3), any information or documentary material that is not publicly available and is submitted to PBGC pursuant to section 4043 will not be made public, except as may be relevant to an administrative or judicial action or proceeding. (ERISA section 4043(f), like FOIA section 552(d), does not prevent disclosure to Congress, or to an authorized congressional committee or subcommittee.)

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 590 reportable events filings from single-employer plan respondents per year. PBGC estimates that the average response time for filing will be three hours for Form 10 filers and Form 10-advance filers. PBGC estimates an additional 30 minutes for an estimated 30 percent of Form 10 filers that may need to provide controlled group information, company financial statements, and the plan's actuarial valuation report (as described in number one above). PBGC estimates that the total average annual burden will be 1,855 hours. PBGC estimates that the dollar equivalent of the hour burden will be a weighted average annual cost of approximately \$379 per respondent and an annual total cost of approximately \$223,780.

13. Cost burden on the public. PBGC estimates that filers will incur an average annual cost of \$745 for actuarial and/or third-party administrator costs. This results in a total average annual cost of approximately \$439,500.

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.