

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation
TITLE: Reconsideration of Initial Determinations
STATUS: Request for an extension without change of a currently approved collection of information under the Paperwork Reduction Act (OMB Control number 1212-0063)
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A. Justification.

1. Need for collection. PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Subpart A of the regulation specifies which initial determinations are subject to reconsideration. Subpart C prescribes rules on who may request reconsideration, when to make such a request, where to submit it, form and content of reconsideration requests, and other matters relating to reconsiderations.

Any person aggrieved by an initial determination of PBGC under § 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), § 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA), or § 4003.1(b)(5) (determinations with respect to penalties under section 4071 of ERISA) may request reconsideration of the initial determination. Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information.

Most requests for reconsideration filed with PBGC are filed by plans in connection with premium penalty determinations. A small number of requests for reconsideration are filed in connection with reconsideration of coverage determinations, audit determinations, standard termination nullification, and interest and section 4071 of ERISA penalty reconsiderations.

2. Use of Information. The purpose of the collection of information is to enable affected parties to file requests for reconsideration of initial determinations made by PBGC. The information is used by relevant persons at PBGC to resolve issues raised in such requests for reconsideration.

3. Information technology. PBGC utilizes information technology by allowing persons requesting reconsideration to file requests for reconsideration electronically, in addition to allowing for the filing of requests for reconsideration by hand, mail, or commercial delivery services.

4. Duplicate or similar information. The bulk of the information collected is not otherwise available to PBGC. Even for those items of information that have otherwise been provided to other parts of PBGC, the relatively small burden associated with this collection is far offset by the greater assurance that requests for reconsideration will be processed correctly.

5. Reducing the Burden. Respondents may submit requests for reconsideration electronically.

6. Consequence of reduced collection. This collection of information is necessary for persons to file requests for reconsideration of initial determinations by PBGC. If this collection of information were required less frequently or not at all, persons would not be able to file requests for reconsideration.

7. Consistency with guidelines. This collection of information is consistent with the guidelines in 5 CFR § 1320.6.

8. Outside input. PBGC published a Federal Register notice soliciting public comment on this collection of information on April 29, 2019, at 84 FR 18093. No 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. Sensitive Questions. This collection of information does not call for submission of information of a sensitive or private nature.

12. Hour Burden on the public. PBGC bases its estimates in items 12 and 13 on its experience and on the experience of those who request reconsideration of initial determinations. The burden of filing a reconsideration request will vary depending on the nature of the initial determination and whether the person hires professionals to prepare the request.

PBGC estimates that in each of the next three years, there will be 155 requests for reconsideration of determinations under § 4003.1(b)(2) (relating to premiums, interest, and late payment penalties). PBGC further estimates that the annual number of requests for reconsideration under the remaining reconsideration categories of § 4003.1(b) will be 29. This number includes approximately 4 for reconsideration of coverage determinations, 13 for reconsideration of audit determinations, 9 for standard termination nullifications, and 3 for interest and 4071 penalty reconsiderations. Thus, PBGC estimates that there will be an average of about 184 reconsideration requests per year over the next three years.

PBGC further estimates that of the plan administrators filing reconsideration requests, 57 percent of the reconsideration requests under § 4003.1(b)(2) will be made without professional

assistance. PBGC further estimates that of the reconsideration requests under the remaining reconsideration categories, 13 percent will be made without professional assistance.

Based on these estimates, PBGC estimates that for each of the next three years, an average of 88 (155×0.57) reconsideration requests under § 4003.1(b)(2) will be filed without professional help. PBGC estimates that for each of the next three years, for the remaining reconsideration categories, an average of four (29×0.13) reconsideration requests will be made without professional assistance.

For reconsideration requests under § 4003.1(b)(2), PBGC estimates that the hour burden will be one hour. For reconsideration requests under the remaining reconsideration categories, PBGC estimates that each such request will require three hours to complete.

The hour burden for the 88 plan administrators who file reconsideration requests under § 4003.1(b)(2) by themselves is estimated to be a total of 88 hours (88×1). The hour burden for those filing requests themselves under the remaining reconsideration categories is estimated to be 12 hours (4×3). Thus, the total annual hour burden for filing reconsideration requests is estimated to be 100 hours ($88 + 12$). For the 184 reconsideration requests, this is an average hour burden of about one-half hour per reconsideration request.

13. Cost burden on the public. PBGC estimates that 67 of the reconsideration requests (155×0.43) will be made with professional assistance to prepare, submit, and respond to questions from PBGC, and that the professional time per request will be 2.5 hours, for a total of 168 hours (67×2.5). PBGC further estimates that about 25 requests for reconsideration under the remaining reconsideration categories will be made with the help of a professional, and that the professional time per request will be about 7 hours, for a total of about 175 hours (25×7). Thus, PBGC estimates that the total annual amount of professional time spent on reconsideration requests will be 343 hours ($168 + 175$). PBGC estimates that the average cost of hiring a professional will be \$350 per hour. PBGC estimates that the total annual cost burden for the 92 reconsideration requests who hire professionals

is estimated to be \$120,050 (343 x \$350). For 184 reconsideration requests, this is an average annual cost burden of \$652 (\$120,050 / 184) per reconsideration request.

14. Costs to the Federal government. Because work on processing reconsideration requests will be performed by the department issuing the final decision as part of their regular duties, there is no cost to the federal government.

15. Explanation of burden adjustments. The change in the estimated annual hour and cost burden of this collection of information (from 112 hours and \$141,400 to 100 hours and \$120,000), is attributable to multiple changes. First, PBGC had included premium penalty waivers for persons eligible for disaster relief in the total count for requests for reconsideration under § 4003.1(b)(2) (relating to premiums, interest, and late payment penalties). PBGC announced a change in its disaster relief practice on July 2, 2018 that extends the premium due date to the last day of the disaster relief period. Therefore, the estimated number of requests for reconsideration expected to be received under § 4003.1(b)(2) has been reduced because the total no longer includes claims for disaster relief.

Second, PBGC has adopted an experience-based burden estimation. PBGC previously estimated the time spent to prepare the information collection and relied on public comments received, if any, for the burden estimates. PBGC has switched to using “experience-based” burden where possible. (For new collections, there is no experience to use. In some cases, PBGC is unsuccessful in getting data from respondents.) Experience-based burden uses actual 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 people who filed requests for reconsideration with PBGC. 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 experience is available.

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

17. Display of expiration date. PBGC will display the expiration date.

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