

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Notices Under Section 4062(e) of ERISA

**STATUS:** Request for approval of a proposed collection of information

**CONTACT:** Melissa Rifkin (202-326-4400, ext. 6563)

1. Need for collection. Section 4062(e) of the Employee Retirement Income Security Act of 1974 (ERISA) imposes reporting obligations in the event of a “substantial cessation of operations.” A substantial cessation of operations occurs when a permanent cessation at a facility causes a separation from employment of more than 15 percent of all “eligible employees.” “Eligible employees” are employees eligible to participate in any of the facility’s employer’s employee pension benefit plans, whether defined benefit or defined contribution. Following a substantial cessation of operations, the facility’s employer, unless exempt under section 4062(e)(3), is treated, with respect to its single employer pension plans covered by title IV of ERISA (“title IV plans”) that are covering participants at the facility, as if the employer were a withdrawing substantial employer under a multiple-employer plan. Under section 4063(a) of ERISA, PBGC must receive notice of the substantial cessation of operations and a request to determine the employer’s resulting liability.

To fulfill any resulting liability, the employer may elect, under section 4062(e)(4)(A) of ERISA, to make additional contributions annually to the title IV plans covering participants at the facility where the substantial cessation of operations took place. Following this election, the obligation for additional contributions continues for 7 years from the election or until the plan’s variable-rate premium funded status is 90 percent or greater for the plan year. Under sections 4062(e)(4)(E)(i)(I), (II), (III), (IV), and (V) respectively, an employer that is making the election

for annual additional contributions must give notice to PBGC of: (1) its decision to make the election, (2) its payment of an annual additional contribution, (3) its failure to pay an annual additional contribution, (4) its receipt of a funding waiver from the Internal Revenue Service (“IRS”), and (5) the ending of its obligation to make annual additional contributions.

PBGC is proposing a series of forms, entitled Form 4062(e)-01, Form 4062(e)-02, Form 4062(e)-03, and Form 4062(e)-04 that would be used to fulfill these reporting obligations.

2. Use of information.

a. Form 4062(e)-01

Form 4062(e)-01 would be used to notify PBGC of a substantial cessation of operations and request that PBGC determine the employer’s resulting liability. PBGC needs the information on this form to verify that an event rising to the level of a substantial cessation operations in fact occurred, such that the employer at the facility where the cessation took place may face liability. Further, PBGC would use the information to confirm that the substantial cessation occurred on the date as reported by the filer, so that PBGC can verify whether the form has been filed within 60 days of the event as required by statute.

This form would be completed by either the employer at the facility where the substantial cessation of operations took place or plan administrator of a title IV plan covering participants at the facility. In accordance with section 4063(a)(1) of ERISA, Form 4062(e)-01 would be due for submission to PBGC within 60 days of the substantial cessation. When completing this form, the filer would be required to provide identifying information about the plan (such as name, EIN, and plan number), the filer, and the contact person. Also, the filer would be required to offer information about the substantial cessation of operations by: (1) checking a box describing its

cause, (2) writing a brief narrative statement about its pertinent facts, (3) filling in the date(s) of the decision to implement the cessation and of the first employee's separation from employment, and (4) giving the number of employees separated from employment because of the substantial cessation and the number of the eligible employees. Then, the filer would calculate the "participant reduction fraction" (the number of separated employees divided by the number of total eligible employees). In addition to the written information on the form, the filer would need to attach the following documents:

- Description of the plan's controlled group structure, including the name of each controlled group member;
- Controlled group financial information;
- Actuarial information;
- Name of each employee pension benefit plan maintained by any member of the plan's controlled group, its contributing sponsor(s), and its EIN/PN;
- Date and copy of each WARN Act notice, press release, and other written announcement of the cessation;
- Any funding waiver issued by the IRS under Internal Revenue Code section 302(c) with respect to the plan for the year in which the substantial cessation occurred or any later year.

PBGC expects that most, if not all, of the information required will be readily available and accessible to a plan administrator or an employer.

b. Form 4062(e)-02

Form 4062(e)-02, completed by the employer, would be used to notify PBGC that the employer is electing, under section 4062(e)(4) of ERISA, to satisfy its liability by making annual additional contributions to a title IV plan covering employees at the facility where the substantial cessation took place. PBGC needs the information on this form, so that it is aware that the employer is making this election and thereby taking on additional notification requirements under section 4062(e)(4). This information also allows PBGC to determine the maximum

amount of the employer's annual additional contributions to the title IV plan under section 4062(e)(4)(B).

In accordance with 4062(e)(4)(E)(i)(I), this form would be due the earlier of 30 days after the filing of Form 4062(e)-01 or 30 days after PBGC makes a determination that a substantial cessation of operations took place. When completing this form, the employer would be required to provide identifying information about the plan that is receiving the contributions (such as name, EIN, and plan number), the filer, and the contact person. Also, the employer would be required to state whether, in the year of the substantial cessation, the plan's variable-rate premium funded status was 90 percent or greater. In addition, the employer would be required to offer information necessary to calculate an additional contribution due for a year during the 7-year election period. The necessary information is (1) the beginning date of the plan year in which the cessation occurred, (2) the date on which the cessation occurred, (3) the "participant reduction fraction" (the number of separated employees divided by the number of total eligible employees), (4) the maximum additional contribution (one-seventh of the product of the unfunded vested benefit for the plan year immediately preceding plan year in which cessation occurred times the participant reduction fraction), and (5) the date on which the first annual contribution is due. Finally, the employer would be required to provide, if not provided to PBGC before, the plan's actuarial information and any funding waiver issued by the IRS under Internal Revenue Code section 302(c) with respect to the plan for the year in which the cessation occurred or any later year.

PBGC expects that most, if not all, of the information required will be readily available and accessible to a plan sponsor or a plan administrator.

c. Form 4062(e)-03

Form 4062(e)-03, completed by the employer, would be used to notify PBGC that the employer (who has made an election under section 4062(e)(4) of ERISA): (1) has made an additional annual contribution, (2) is no longer required to make additional contributions, or (3) has received a funding waiver from the IRS under section 302(c) with respect to the plan for a plan year during the seven-year election period. The due date of the form would depend on the event that the employer is reporting. PBGC needs the information in Form 4062(e)-03, so that it can verify that the employer has made timely payment of the required amount to the plan for the year, is not required to make a payment for the year because of a funding waiver from the IRS, or is no longer obligated to make future payments because the plan is sufficiently funded.

The employer, regardless of the event being reported, would be required to provide identifying information about the plan that is receiving the contributions (such as name, EIN, and plan number), the filer, and the contact person. Also, the employer would provide: the dates of the plan year during which the contribution was made, the placement of the year within the 7-year period following the cessation, whether the plan's variable-rate premium funded status was 90 percent or greater during the applicable plan year, and whether the employer has received an IRS funding waiver.

An employer that is using the form to report payment of an additional annual contribution would be required to provide further information, specifically the figures used to calculate the amount of the additional contribution for the year, which is the lesser of: (1) the minimum required contributions for the applicable plan year minus 25 percent of the unfunded vested benefits for plan year prior to applicable plan year, or (2) the maximum additional annual

contribution (calculated on Form 4062(e)-02). Also, the employer would be required to provide the due date of the contribution and the date of payment of the contribute.

PBGC expects that most, if not all, of the information required will be readily available and accessible to a plan sponsor or a plan administrator.

In accordance with section 4062(e)(4)(E)(i)(II), an employer that is reporting an annual additional contribution must submit the form within 10 days of payment. In accordance with section 4062(e)(4)(E)(i)(IV), an employer that is reporting a funding waiver from the IRS must submit the form within 30 days after the funding waiver is granted. In accordance with section 4062(e)(4)(E)(i)(V), an employer that is no longer required to make annual additional contributions must submit the form within 10 days of the due date of the first annual additional contribution which is no longer required.

#### d. Form 4062(e)-04

Form 4062(e)-04, completed by the employer, would be used to notify PBGC that the employer (who has made an election under section 4062(e)(4) of ERISA) of its failure to pay a required additional annual contribution by its due date. PBGC needs the information on this form so that it is aware that the employer is not complying with its payment obligations under section 4062(e)(4) of ERISA. With this information, PBGC may accelerate the balance due for the remainder of the election period or otherwise bring civil action.

In accordance with section 4062(e)(4)(E)(i)(III), this form would be due 10 after the contribution's due date. The employer would be required to provide identifying information about the plan that is receiving the contributions (such as name, EIN, and plan number), the filer,

and the contact person. Also, the employer would provide the due date of the additional contribution, the amount that was due, and the explanation for the failure of timely payment.

3. Information technology. PBGC will permit Forms 4062(e)-01, 4062(e)-02, 4062(e)-03 and 4062(e)-04 to be made by electronic transmission to the address specified in the instructions for this form series.

4. Duplicate or similar information. PBGC believes that there is no information similar to that required in Forms 4062(e)-01, 4062(e)-02, 4062(e)-03, and 4062(e)-04 that could be used instead of the required information for the purposes of this form series. The instructions provide that filers may refer to information that has been provided to PBGC in connection with another filing, instead of resubmitting the information.

5. Reducing the burden on small entities. Not applicable. Forms 4062(e)-01, 4062(e)-02, 4062(e)-03 and 4062(e)-04 will not have a significant impact on a substantial number of small entities.

6. Consequence of reduced collection. Without Forms 4062(e)-01, 4062(e)-02, 4062(e)-03 and 4062(e)-04, an employer or plan administrator would have no standard means to transmit the notifications required by sections 4063(a) and sections 4062(e)(4)(E)(i)(I), (II), (III), (IV), and (V) of ERISA. Without the information provided on this form, PBGC would have no way to know if a substantial cessation of operations has occurred, whether the employer has made the election of annual additional contributions, and whether an electing employer is complying with its contribution requirements.

7. Consistency with guidelines. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Outside input. On May 15, 2019, PBGC published (at 84 FR 21840) a notice of its intent to request that OMB approve this collection of information. PBGC did not receive any comments about this collection of information.

9. Payment to respondents. PBGC will provide no payments or gifts to the 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 providing and restricting access to its records are set forth in 29 CFR part 4901.

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

12. Hour burden on the public. PBGC estimates that over the next three years that approximately 70 forms (10 Forms 4062(e)-01, 10 Forms 4062(e)-02, 49 Forms 4062(e)-03, and 1 Form 4062(e)-04) would be submitted each year. PBGC further estimates that the average burden of this collection of information will be 4.5 hours per filer, with a total annual burden of 315 hours (4.5 hours times 70 plans). The majority of the time spent on this collection will be applied to gathering plan information and making required calculations. The estimated dollar equivalent of this hour burden, based on an assumed blended average hourly rate of \$75 for administrative, clerical, and supervisory time, is \$23,625.

13. Cost burden on the public. PBGC estimates that over the next three years, respondents will contract out 265 hours annually (3.79 hours times 70 plans) to complete forms in this series. Assuming an average rate of \$350 for plan attorney and actuary costs, PBGC estimates the total annual cost of preparing forms in this series will be \$92,750 (265 hours times



\$350) for an average annual cost of \$1,325 per respondent. No capital or start-up costs are necessary for this form.

14. Cost to the government. The cost to the government for the Forms 4062(e)-01, 4062(e)-02, 4062(e)-03 and 4062(e)-04 is \$0.

15. Explanation of burden changes. There are no burden changes as this is an initial information collection.

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

17. Display of expiration date. PBGC is not seeking approval to avoid displaying the expiration date for OMB approval of this information collection.

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