

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Payment of Premiums (29 CFR Part 4007) and PBGC forms and instructions thereunder

STATUS: Request for approval of revision of currently approved collection (OMB control number 1212-0009; expires June 30, 2021)

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

1. Need for collection. Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires the Pension Benefit Guaranty Corporation (PBGC) to collect premiums from pension plans covered under title IV pension insurance programs. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC (premium-related data and information about plan identity, status, and events).

Premium information is filed electronically using “My Plan Administration Account” (My PAA) through PBGC’s web site. Premium filings must be made annually. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Section 4006 of ERISA, implemented by PBGC’s regulation on Premium Rates (29 CFR Part 4006), sets premium rates. All plans covered by title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium

(VRP) based on the plan's unfunded vested benefits (UVBs). The VRP is subject to a cap. The cap on the VRP, and the premium rates for both single-employer and multiemployer plans, are adjusted annually for inflation.

PBGC intends to modify the 2020 filing and instructions as follows.

- a. PBGC will require that plans offering a lump sum window separately report the number of participants in pay status who were offered and elected a lump sum in addition to the related current requirement with respect to participants not in pay status. This change reflects recent guidance issued by the Internal Revenue Service, Notice 2019-18, 2019-13 I.R.B. 915.
- b. PBGC will change the reporting period for risk transfer activity (lump sum windows and annuity purchases). Rather than the period falling between 60 days before the prior filing and 60 days before the current filing, the reporting period will be the prior premium payment year.
- c. PBGC will modify the filing instructions for a plan that reports that a premium filing will be the last for the plan and checks the "cessation of covered status" box as the reason. Currently, such a plan must provide an explanation as to why they believe coverage has ceased, and then PBGC typically contacts the plan to verify that coverage has ceased. PBGC will add a line to the instructions to alert plans in this situation that they should complete a coverage determination request.
- d. PBGC will clarify the filing instructions for situations that result in the Participant Count Date being the first day of the premium payment year instead of the last day of the prior premium payment year.

- e. PBGC will clarify the filing instructions with respect to the impact on premiums of a non de minimis beginning of year transfer of assets and liabilities from one plan to another plan.
- f. In certain specified situations, plans with short plan years pay only a prorated premium. Currently, the instructions about when premiums are prorated are in one section and the instructions about how to prorate are in another. PBGC will reorganize the instructions so that all of the instructions related to premium proration are in one, clearly marked, place.

In addition, PBGC intends to update the premium rates and make conforming, clarifying, and editorial changes to the premium filing instructions.

- 2. Use of information. PBGC uses information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, to keep PBGC's insured-plan inventory up to date, to project premium income, to improve financial projections, and to respond to inquiries from other executive agencies and other branches of government.

The reported information and the retained records may be used for audit purposes.

- 3. Information technology. Electronic filing is required under PBGC's regulations. PBGC provides data entry and editing screens for premium filing through the My PAA electronic application on PBGC's Web site. In addition, PBGC offers two electronic filing options that allow filers to use private-sector premium-filing-preparation software compatible with My PAA: (1) a filer can draft a premium filing and then import it into My PAA's data entry and editing

screens for review, certification, and submission to PBGC; and (2) a filer can create a premium filing and then upload it directly to PBGC via the My PAA application. Filers can pay premiums and receive premium refunds by electronic funds transfer.

4. Duplicate or similar information. In general, the information required in premium filings is not routinely filed with, and available from, any other Federal Government agency, and there is no similar information that can be used “as is” instead of the information reported in premium filings.

Participant count breakdown

Numbers of retired, terminated vested, and active participants are in the annual report that plans submit using Form 5500, and PBGC is willing to accept numbers determined using the same methodology for assigning participants to one or another category as for Form 5500. However, “participant” is defined differently for premium purposes than for reporting on Form 5500, so that the actual numbers reported on the two forms can be expected to be different. Moreover, for Form 5500 and premium filings due at the same time, the participant-count information on the Form 5500 filing is a year older than that on the premium filing. PBGC’s uses for the participant-count breakdown are much better served by getting current data.

VRP Data

Under the look-back rule, many plans’ asset values that are reported on premium filings are often also available from Form 5500. However, PBGC’s electronic premium-filing system automatically calculates premiums based on input data, and this feature could not work if assets were not reported. And for plans not using the look-back rule, there would be a one-year lag

until the Form 5500 figures became available. Using Form 5500 assets data instead of having premium filers report it directly would thus be inconvenient for both filers and PBGC and would save filers little time or effort.

Frozen plan data

“Freezes” can affect a plan in several different ways (for example, by ceasing accrual of benefits or admission of new participants). To predict and address the impact of plan freezes on PBGC’s future premium revenues and net financial position, PBGC needs to know which of the plans that PBGC covers have been affected by freezes and the exact nature of each freeze.

PBGC currently collects freeze information on ERISA section 4010 filings because it needs the information as early as possible for the small group of 4010 filers, and the information is reported in section 4010 filings before it is reported in premium filings. PBGC has considered exempting 4010 filers from reporting this information again in the premium filing, but concluded that there would be a control problem if the agency’s premium database were not internally consistent.

Form 5500 collects general information on whether a plan has been frozen, but only for the most severe type of freeze (when all accruals cease for all participants) and only for the year before the current year. The Form 5500 data are thus too little and too late for PBGC’s purposes.

Plan transfer data

PBGC’s plan transfer questions ask about transfers *to* and *from* other plans, as well as transfer types (merger, consolidation, or spin-off), to save PBGC (and filers) the administrative burden of determining why plans have failed to file when expected or have filed information

inexplicably different from the previous year. Form 5500 collects information about assets and/or liabilities transferred *from* a plan to another plan (or plans) during the plan year, but not data on transfer types. Plans must submit information to the Internal Revenue Service about transfers *to* and *from* other plans on Form 5310-A, but only for non-*de minimis* transactions; PBGC needs this information regardless of transaction size. Furthermore, Form 5310-A information is not available to PBGC as promptly as PBGC needs it.

Final filing data

Form 5500 collects general information on whether a plan was terminated in a standard or distress termination; whether PBGC became trustee of a plan; and whether a plan is covered by PBGC. However, the Form 5500 data often do not adequately explain why filings have ceased in cases where plans merge out of existence. In addition, terminated or merged plans often do not submit a final Form 5500, especially when the final plan year is short. Thus, these sources of information on plan disappearances do not adequately satisfy PBGC's need to know why plans have stopped filing.

5. Reducing the burden on small entities. Small plans use prior-year data to compute the VRP, which means that the VRP and Form 5500 due dates for the same year are aligned. (The flat-rate premium is based on more recent data — the participant count — but the participant count is relatively easy to determine.) First-year filings for most small plans are simplified by a first-year exemption from the VRP.

In addition to the inflation-adjusted cap that applies to all VRP filers, another (generally lower) cap applies to the VRP of certain plans of small employers (those with 25 or fewer

employees). Plans that both qualify for the small-employer VRP cap and pay the full amount of the cap do not need to determine or report UVBs.

6. Consequence of reduced collection. Since the information collected is essential to proper administration of PBGC's insurance programs, including auditing of premium filings, and to estimate PBGC's future capability to provide guaranteed benefits, failure to collect it would seriously impair PBGC's program operations. Further, the premium payable to PBGC is an annual premium. Therefore, premium filings cannot be made less often than annually. PBGC allows a plan to make an estimated VRP filing and then reconcile the estimated premium at a later date without a late premium payment penalty. This practice accommodates unusual circumstances that could make an accurate VRP filing by the due date inconvenient. In infrequent cases, therefore, a plan may make two filings for a year, rather than one.

7. Special circumstances. PBGC requires plan administrators to retain information necessary to support premium filings for six years. The six-year period corresponds to the record retention requirement of title I of ERISA and is needed to ensure that records are available during the statutory limitations period within which PBGC may bring an action to collect premiums.

In unusual circumstances, PBGC may require submission of information in less than 30 days in connection with an audit. This would accommodate a situation where PBGC finds that its interests may be prejudiced by a delay in the receipt of information, such as where collection of unpaid premiums (or associated interest or penalties) would otherwise be jeopardized. In

other respects, this collection of information is not conducted in a manner inconsistent with 5 CFR § 1320.5(d)(2).

8. Outside input. On August 1, 2019 (at 84 FR 37694), PBGC published a notice of its intention to request OMB approval of this collection of information, soliciting public comment. No comments were received.

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 personal nature.

12. Hour burden on the public. The burden estimates for this information collection are based on inquiries about filing burden directed to fewer than ten premium filers. PBGC asked each filer how much time was spent by employees of the filer in preparing and submitting the filing and what the estimated monetary equivalent of that time was — that is, the cost to the filer to have its employees do the work. The results were averaged. PBGC estimates that it will receive 31,245 premium filings per year from 31,245 plan administrators. Averaging the information obtained from filers, PBGC estimates that the annual hour burden of this collection of information is 13,540 hours with a cost equivalence of \$1,015,500.

13. Cost burden on the public. Averaging the information obtained from filers, PBGC estimates that the annual cost burden of this collection of information is \$21,621,540.
14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government of processing this collection of information will be about \$12,000,000 in contractor costs.
15. Change in burden. PBGC previously estimated the burden on the public by using estimates of PBGC staff members of the time required to do one filing and of the percentage of work done in-house or contracted out. The estimated time to do one filing was multiplied by the in-house percentage to arrive at the hour burden and was multiplied by the contracted-out percentage to arrive at the assumed consultant time. The consultant time was then multiplied by an assumed per-hour charge to arrive at the dollar burden. The hour burden was multiplied by a different assumed per-hour cost to arrive at the cost equivalent of the hour burden. This approach was very complex but ultimately reflected PBGC staff estimates rather than actual filer experience.

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.

The change in the estimated annual burden of this collection of information is attributable to the adoption of experience-based burden estimation and an increase in projected filers. The changes to the information collection described in section 1 do not have an effect on the burden calculation.

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

17. Display of expiration date. OMB has previously granted approval to omit the expiration date from the premium forms and instructions.

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