

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Annual Financial and Actuarial Information Reporting  
(29 CFR Part 4010)

**STATUS:** Request for modification of currently-approved collection of information (OMB control number 1212-0049; expires May 31, 2022)

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1. Need for collection. Section 4010 of the Employee Retirement Income Security Act of 1974 (ERISA) and PBGC's regulation on Annual Financial and Actuarial Information Reporting (29 CFR Part 4010; the "4010 reporting regulation") require each member of a controlled group to submit financial and actuarial information to PBGC under certain circumstances. Section 4010 specifies that each controlled group member must provide PBGC with certain financial information, including audited (if available) or (if not) unaudited financial statements. Section 4010 also specifies that the controlled group must provide PBGC with certain actuarial information necessary to determine the liabilities and assets for all PBGC-covered plans.

The 4010 reporting regulation specifies the items of identifying, financial, and actuarial information that filers must submit under section 4010 of ERISA, through PBGC's secure web-based application. Computer-assisted analysis of this information helps PBGC to anticipate possible major demands on the pension insurance system and to focus PBGC resources on situations that pose the greatest risks to that system. Because other sources of information are usually not as current as the section 4010 information and do not reflect a plan's termination

liability, the section 4010 filing plays a major role in PBGC's ability to protect participant and premium-payer interests.

Corporate events such as spin-offs and sales of business segments increase the risk of pension plan underfunding and can result in losses to plan participants and PBGC. The information submitted under the 4010 reporting regulation allows PBGC: (1) to detect and monitor financial problems with the contributing sponsors that maintain severely underfunded pension plans and their controlled group members, and (2) to respond quickly when it learns that a controlled group with severely underfunded pension plans intends to engage in a transaction that may significantly reduce the assets available to pay plan liabilities or significantly increase the controlled group's risk profile. With this information, PBGC is able to act quickly to negotiate agreements for contributing sponsors and their controlled group members to provide additional plan funding or take other action, including the termination of underfunded plans, to protect PBGC's claims against the controlled group's assets.

On February 4, 2020, PBGC published a final rule at 85 FR 6046 to make miscellaneous corrections, clarifications, and improvements to several PBGC regulations, including to the 4010 reporting regulation. The final rule amends part 4010 to eliminate a requirement to provide individual financial information for each controlled group member, clarify reporting waivers, provide guidance on assumptions for valuing benefit liabilities for cash balance plans, and streamline the identification of legal relationships of members within a filer's controlled group, among other clarifications and updates.

PBGC's instructions to the 4010 module for the e-filing portal and the module itself are being updated, as necessary or helpful, to reflect the clarifications being made by the final rule. The clarifications will replace or augment existing language but will not create additional filing

burden. However, PBGC estimates that the final rule will reduce filer burden by eliminating the requirement of § 4010.9(b)(2) to provide the revenues, operating income, and net assets for each controlled group member if a filer is submitting consolidated financial information. Eliminating this requirement is reflected in the revised burden estimate in questions 12 and 13. Other minor conforming and editorial changes are being made to the filing instructions

2. Use of information. PBGC uses the information submitted to identify controlled groups with severely underfunded pension plans, to determine the financial status of contributing sponsors and other controlled group members, to evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which contributing sponsors and their controlled group members would provide additional plan funding. Without this information, PBGC could not effectively carry out its responsibilities to protect plan benefits and control insurance program costs.

3. Information technology. PBGC requires electronic filing in a standardized format using its secure e-filing portal accessible through PBGC's website ([www.pbgc.gov](http://www.pbgc.gov)). Electronic filing enables PBGC to simplify the reporting process and to improve the accuracy, completeness, and timeliness of the information it receives. PBGC is able to access the information quickly and in a complete manner from its data base, while imposing very little additional burden on filers. Almost all 4010 filers are large corporations accustomed to submitting electronic filings with other government agencies, such as with the Securities and Exchange Commission using EDGAR. PBGC believes that electronic filing reduces the burden on the public.

4. Duplicate or similar information. To avoid duplication, the 4010 reporting regulation provides that companies do not have to submit information previously submitted to PBGC or

publicly available and provides that a single filing may be made for all members of a controlled group. Although the Annual Return/Report of Employee Benefit Plan (Form 5500 series) and the PBGC Comprehensive Premium Filing provide certain plan information, those filings do not include controlled group financial information nor is the plan information sufficiently current or detailed to allow PBGC to analyze controlled group transactions and evaluate the risk of loss to the group's pension plans and to PBGC.

5. Reducing the burden on small entities. Inapplicable. This information collection does not have a significant economic impact on a substantial number of small entities.

6. Consequence of reduced collection. Failure to receive the required information would impair significantly PBGC's ability to assess exposure for participants and the termination insurance program and to identify particular situations that present risks to the pension insurance system. It would also diminish PBGC's ability to negotiate agreements with sponsor groups to reduce those risks and to decide on necessary legal action, including plan termination. As recognized by the statute, PBGC needs current, detailed financial and actuarial information to carry out its responsibilities. The financial health of companies and plans can change quickly. Increasing the statutory one-year reporting interval would force PBGC to rely on less current and thus less meaningful information.

7. Consistency with guidelines. The collection of information is to be conducted in a manner consistent with the guidelines in 5 CFR 1320.6, with one exception (relating to the 30-day guideline in § 1320.6(b)). Under § 4010.6(b), PBGC may require respondents to furnish additional information (within the scope of the statutory reporting requirement) within ten days or such other time as PBGC may specify. PBGC has a substantial need for the shorter time limit

because of the limited time that PBGC may have to analyze an impending controlled group transaction.

8. Outside input. On June 26, 2019 (84 FR 30666), PBGC published a proposed rule that would make miscellaneous corrections, clarifications, and improvements to several sections of part 4010 (as well as to other PBGC regulations). Five organizations submitted comment letters on the proposed rule, four of which contained specific comments on the amendments to the 4010 reporting regulation. In general, commenters were supportive of PBGC's regulatory review efforts and expressed that the clarifications and updates proposed would improve filer compliance and reduce reporting burden.

All four commenters supported PBGC's proposal to eliminate the requirement to submit controlled group member-specific financial information, which PBGC adopted in the final rule.

The final rule, like the proposed, also provides a simplified method for filers in larger controlled groups to satisfy the requirement to provide the legal relationships of controlled group members. Instead of manually entering "parent," "subsidiary," or other relationship for each member, filers would submit only an organizational chart showing the relationships. Three commenters agreed that an organizational chart would likely streamline the requirement and reduce reporting burden. Two of the three suggested that the chart be optional. PBGC considered these comments and decided not to make the suggested change in the final rule. Submitting a chart, which commenters agreed is something most companies already have, reduces burden by streamlining this reporting requirement for most filers. While it may add some initial burden for a minority of filers that do not already have such diagrams, having controlled group member relationships more clearly presented benefits filers overall and PBGC by, for example, reducing follow-up questions to clarify the information as well as by reducing

errors in data entry of information. The final rule discusses the comments received and PBGC's responses.

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

10. Confidentiality. In accordance with section 4010(c) of ERISA, § 4010.13, and 29 CFR 4901.21(a)(3), any information or documentary material submitted to PBGC pursuant to section 4010 is exempt from disclosure under the Freedom of Information Act (5 U.S.C. § 552) (FOIA), and may not be made public, except as may be relevant to an administrative or judicial action or proceeding. (Section 4010(c) of ERISA, like section 552(d) of FOIA, does not prevent disclosure to Congress or to any duly authorized congressional committee or subcommittee.)

11. Personal questions. This collection of information does not include any questions of a personal or sensitive nature.

12. Hour burden on the public. Based on a review of filings, PBGC estimates that approximately 560 controlled groups will be subject to the requirements of the 4010 reporting regulation annually. The collection of information requires responses of three types: (1) identifying information, (2) financial information, and (3) actuarial information. PBGC expects that about half of filers will prepare identifying and financial information in-house. (PBGC estimates that about half of filers will have this information prepared by outside consultants and that all filers will have actuarial information prepared by outside consultants. See item 13 for these costs.)

PBGC estimates that the in-house time needed to identify controlled group members and pension plans sponsored by the controlled group will be about 1.4 hours per filing and a total of about 392 hours annually. The estimated dollar equivalent of this in-house hour burden is

approximately \$235.5 per filing, and the total cost to prepare identifying information is estimated to be \$65,940 ( $\$235.5 \times 280$  filers).

PBGC estimates that the time needed to prepare the submission of financial information will be about 30 minutes per filing and a total of about 140 hours annually. The estimated dollar equivalent of this in-house hour burden is approximately \$89 per filing, and the total cost to prepare this financial information is estimated to be \$24,920 ( $\$89 \times 280$  filers).

#### *Final rule*

As discussed in question one above, the final rule eliminates the requirement in § 4010.9(b)(2) to provide the revenues, net operating income, and net assets for each controlled group member where a filer submits consolidated financial information (including separate consolidated statements of U.S. entities if the filer's ultimate parent is a foreign entity). (The member-specific information requirement was in Question 2 on Schedule F, Section II, of the e-4010 module of PBGC's e-filing portal). PBGC estimates that approximately 62 percent of a projected 560 filers per year (347.2 filers) are required to file Question 2 financial information. About half of those filers are estimated to prepare financial information in-house (173.6 filers). PBGC estimates that about 20% of the 30 minutes per filing on average is to prepare Question 2 information. PBGC estimates that by eliminating this requirement, the final rule will reduce total average annual filer burden by approximately 17 hours ( $0.1 \text{ hours} \times 173.6$  filers).

PBGC estimates the aggregate annual hour burden on the public will be approximately 515 hours (392 for identifying information + 123 (140 – 17) hours for financial information). PBGC estimates the dollar equivalent of the aggregate annual hour burden will be \$89,347 ( $\$65,940 + (\$24,920 - \$1,513)$ ).

13. Cost burden on the public. PBGC expects that about half of filers will have outside consultants prepare identifying and financial information, and that all filers will have actuarial information prepared by outside actuarial consultants. PBGC estimates that the cost to prepare identifying and financial information would be \$147 and \$223 respectively for a total estimated annual cost burden for this preparation of \$103,600 ( $\$370 \times 280$  filers).

PBGC estimates that the cost to prepare actuarial information required under the regulation will be approximately \$22,800 for a filing with a projected total annual cost of \$12,768,000 ( $\$22,800 \times 560$  filers).

*Final rule*

As stated in question 1 and 12 above, the final rule eliminates the requirement in § 4010.9(b)(2) to provide the revenues, net operating income, and net assets for each controlled group member where a filer submits consolidated financial information (including separate consolidated statements of U.S. entities if the filer's ultimate parent is a foreign entity). (The member-specific information requirement was in Question 2 on Schedule F, Section II, of the e-4010 module of PBGC's e-filing portal). About half of the approximately 347.2 filers completing Question 2 information are estimated to have outside consultants prepare financial information (173.6 filers). PBGC estimates that about 20% of the average \$223 per filing is to prepare Question 2 information. PBGC estimates that by eliminating this requirement, the final rule will reduce total average annual filer cost burden by approximately \$7,742.56 ( $\$44.6 \times 173.6$  filers).

Therefore, the aggregate annual cost burden on the public is estimated to be approximately \$12,863,858 ( $\$12,768,000 + (\$103,600 - \$7,742)$ ).

14. Costs to the Federal government. PBGC estimates that the total annual cost associated with work performed by outside contractors will be \$20,600 per year. This work includes organizing data and auditing and contacting filers for missing information. This cost burden excludes costs for work performed by existing PBGC staff as part of their regular duties.

15. Explanation of burden changes. The change in the estimated total annual burden of this collection of information (from 532 hours and \$12,871,040 in the current inventory to 515 hours and \$12,863,858) is a result of the final rule.

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.