

**SUPPORTING STATEMENT
REQUEST FOR APPROVAL OF PROPOSED COLLECTION**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Missing Participants; 29 CFR Part 4050; PBGC Forms MP100, MP200, MP300 and MP400, and schedules

STATUS: Request for approval of new information collection under a new control number.

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1. Need for collection. The Pension Benefit Guaranty Corporation (PBGC) administers the pension insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). The title IV insurance program applies to most defined benefit (DB) pension plans. (Among the DB plans not covered by title IV are small plans of professional service employers.) If a covered plan terminates underfunded, PBGC steps in to guarantee benefits up to specified limits. PBGC also oversees the termination of well-funded plans.

The process of closing out a terminated retirement plan involves the disposition of plan assets to satisfy the benefits of plan participants and beneficiaries. One difficulty faced by plan administrators in closing out terminated plans is how to provide for the benefits of missing persons. Title IV includes a provision (section 4050 of ERISA) under which PBGC holds retirement benefits for missing participants and beneficiaries in terminated pension plans and seeks to reunite those participants and beneficiaries with the benefits being held for them.

Alternatively, if a plan buys an annuity contract to provide a missing person's benefit, PBGC keeps information about the annuity contract that can be provided to the person when located.

This missing participants program is currently limited to single-employer DB plans covered by title IV of ERISA.

The Pension Protection Act of 2006 provides for expansion of the missing participants program, and PBGC by final rule is extending the program to —

- defined contribution (DC) plans (not covered by title IV¹),
- small professional service DB plans (not covered by title IV), and
- multiemployer DB plans (covered by title IV).

PBGC's final rule also redesigns its existing missing participants program (for single-employer DB plans covered by title IV). The citation and publication date of PBGC's final rule are set forth in the ROCIS submission for this collection of information.

All four programs follow the same basic design. The most prominent difference among them lies in the mandatory or voluntary nature of the programs. For plans covered by the title IV insurance program, participation in the program is mandatory. However, DB plans covered by the title IV insurance program have the choice — for each missing participant — of transferring the benefit to PBGC or purchasing an annuity contract and providing PBGC with information on the annuity (information needed by the missing participant to access the benefit). For plans not covered by title IV, PBGC's final rule permits, but does not require, such plans to participate in PBGC's missing participants program.

If a plan not covered by title IV decides to participate, it must then elect to be a transferring plan or a notifying plan. Under the final rule, a transferring plan must transfer benefits for all missing participants to PBGC. A notifying plan does not transfer benefits to PBGC; instead, it makes other dispositions of the missing participants' benefits (for example, by

¹ Eligibility for the missing participants program under ERISA section 4050 is not by itself considered coverage by title IV or ERISA.

transfer to an account with a financial institution) and notifies PBGC of the disposition for some or all of the missing individuals.

PBGC needs information from plans that participate in the missing participants program to identify the plans and the missing participants and beneficiaries, to search for missing participants and beneficiaries, to determine the persons entitled to benefits that the plans transfer to PBGC and the form and amount of benefits payable, and to refer claimants of benefits being held elsewhere to the institutions holding the benefits.

Because PBGC's current missing participants program applies only to single-employer plans covered by title IV, the information collection requirements for the program are integrated with information collection requirements related to the title IV insurance program and approved by OMB under control number 1212-0036 (expiring November 30, 2017). Under PBGC's final rule, PBGC anticipates that most plans using the missing participants program will be DC plans not covered by title IV. Therefore, PBGC is seeking a new control number for the collection of information under the final rule.

2. Use of information. PBGC will use the information collected under the program to identify reporting plans, search for missing participants and beneficiaries, identify persons entitled to benefits and the amount and form of benefits payable, and refer claimants to institutions other than PBGC that hold benefits for missing participants and beneficiaries.

3. Information technology. The final rule would allow filers to make some of the calculations needed to value benefits to be transferred to PBGC by use of a spreadsheet accessible on PBGC's website. The forms are fillable PDF documents. Payments to PBGC for missing participants may be made by wire transfers or online through pay.gov.

4. Identifying duplication. The information required in the missing participant filings is not routinely filed with, and available from, any other Federal Government agency, and there is no similar information that is available instead of the information reported in these filings.

5. Reducing the burden on small entities. The final rule would reduce burden on all terminating plans, including small plans, by providing a solution to the problem of distributing the benefits of missing participants and beneficiaries upon close-out.

6. Consequences of less frequent reporting. This collection of information occurs only once in the life of a pension plan covered by section 4050 of ERISA — upon close-out in connection with plan termination. Therefore, the collection could be conducted less frequently only if it were not conducted at all. If this information were not collected at all, PBGC would not be able to fulfill its duties under the missing participants program provided for in section 4050 of ERISA.

7. Disfavored requirements. This collection of information does not involve any requirement listed in 5 CFR § 1320.5(d)(2).

8. Outside input. PBGC's proposed rulemaking (81 FR 64700, September 20, 2016) solicited public comment on the regulation and this collection of information. PBGC received 14 comment letters and incorporated some changes in the final regulation, and where appropriate in the instructions and the forms, in response to the comments. Those comments and responses are discussed in the preamble to the final rule.

One letter included comments on the paperwork burden estimate. The commenter noted a difference in the total hour burden estimated to collect this information as stated in one place in the preamble and discussed in another. PBGC has corrected that discrepancy in its revised

numbers in the Paperwork Reduction Act section of the final rulemaking. The same commenter appreciated PBGC's recognition of overhead costs and the skill level of human resource managers in its burden estimate, but said that PBGC should reflect similar overhead costs and assume the same skill level of labor for both in-house and contract work.

PBGC assumed in its estimates that contractors at a higher skill level would perform the bulk of the substantive work to complete the forms and that in-house administrative support staff would provide clerical support for the filings. PBGC translates hours into dollars the same way for in-house burden and contracted-out burden. But whereas for hour burden, the dollar equivalent is only a measure of the value of the time spent, for dollar burden the dollar equivalent of the time spent is only part of the estimation process, because the amount billed by a contractor typically includes other amounts (such as profit) that do not represent the value of labor. PBGC refers to those other amounts as "overhead."

The commenter also suggested that PBGC should include "regulatory familiarization costs" in its analysis. The costs of complying with the missing participants program only occur once for a plan — when it terminates and closes out. Thus, regulatory familiarization costs are simply part of the burden of compliance with the forms and instructions.

9. Payments and gifts. There are no payments or gifts made 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 Parts 4901 and 4902.

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. About 200 single-employer plans covered by title IV use the current missing participants program each year; PBGC assumes that figure will remain more or less steady. The number of covered multiemployer plans and non-covered DB plans using the new program is expected to be negligible and assumed to be zero. There is a dearth of data on which to base an estimate of the number of DC plans that will participate; PBGC assumes there will be 3,100 per year. Thus the total number of respondents is estimated at 3,300 per year.

Using current missing participants burden estimates (which are for DB plans only and thus likely higher than for the projected mix of DB and DC plans), the per-plan filing burden is two hours. But PBGC has significantly simplified its forms, reducing the number of items by a quarter. PBGC thus estimates that the burden of compliance for the new program will be 75 percent of the burden for the current program. For about 3,300 respondents each year, the total hours spent on the information collection would be 4,950 (3,300 respondents x 1.5 hours (or 75 percent of 6,600 hours)). PBGC estimates that 20 percent of the work will be done in-house and 80 percent contracted out – the same percentages used for the current program. Thus, the hour burden for plans is estimated at about 990 hours (20 percent of 4,950 hours).

The monetary equivalent of this in-house time is estimated at \$23,760, using an average hourly rate of \$24, based on the following assumptions:

- Wage rates account for approximately 70% of total labor costs, with the remaining 30% attributable to benefits costs.²

² <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

- The in-house hours are primarily performed by office and administrative support staff (occupational code 43-0000),³ at a mean hourly wage rate of \$17.08 per hour, approximately \$24 per hour including benefits).

13. Dollar burden on the public. PBGC estimates that 3,960 hours (80 percent of 4,950 hours) of the time required for missing participants filings will be contracted out. This translates into an estimated dollar burden of about \$621,750, using an average hourly rate of \$157, based on the following assumptions:

- Wage rates account for approximately 70 percent of total labor costs, with the remaining 30 percent attributable to benefits costs:⁴
- Consulting is performed by compensation and benefits managers (occupational code 11-3111) at a mean hourly cost of \$81.50 (an hourly wage rate of \$57.05 plus \$24.45 in benefits) and actuaries (occupational code 15-2011) at a mean hourly cost of \$75.61 (an hourly wage rate of \$52.93 plus \$15.88 in benefits). Weighting these two rates equally results in a blended rate for professional consulting services of approximately \$78.50.⁵
- The hourly rate is doubled to provide for overhead and other costs, for a total hourly cost of approximately \$157.

14. Cost to federal government. PBGC has estimated and set fees not to exceed its out-of-pocket costs for the performance of non-governmental functions in support of the missing participants program, such as periodically looking for participants and paying benefits. There is zero annual cost to the government.

³ http://www.bls.gov/oes/current/oes_nat.htm (see “Office and Administrative Support Occupations”).

⁴ <http://www.bls.gov/news.release/ecec.nr0.htm>.

⁵ Occupational Employment and Wages, May 2014, 11-3111 Compensation and Benefits Managers <http://www.bls.gov/oes/current/oes113111.htm>, and Occupational Employment and Wages, May 2014, 15-2011 Actuaries, <http://www.bls.gov/oes/current/oes152011.htm>.

15. Change in burden. This is a new collection.
16. Publication. There are no plans for tabulation or publication.
17. Display of expiration dates. PBGC is not seeking approval to not display the expiration date for OMB approval of the information collection.
18. Exception to certification statement. There are no exceptions to the certifications described in 5 CFR § 1320.9.