

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR PART 1320**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Liability for Termination of Single-Employer Plans (29 CFR part 4062)

STATUS: Request for regular review and extension of currently approved collection (OMB control No. 1212-0017; expires August 31, 2020)

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1. Need for collection. Section 4062 of the Employee Retirement Income Security Act of 1974 (“ERISA”) provides that the contributing sponsor of a single-employer pension plan and members of the sponsor’s controlled group (the “employer”) incur liability (“employer liability”) to the Pension Benefit Guaranty Corporation (“PBGC”) if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The determination of the amount of employer liability that is subject to PBGC’s statutory lien and the payment terms for employer liability are dependent on the employer’s net worth. Specifically, for each of these matters it is necessary to determine whether and to what extent employer liability exceeds 30 percent of the employer’s net worth.

Section 4062.6 of PBGC’s employer liability regulation (29 CFR § 4062.6) requires a contributing sponsor or member of the contributing sponsors controlled group that believes employer liability upon plan termination exceeds 30 percent of the employer’s net worth to so notify PBGC and submit net worth information to PBGC. Net worth information with respect to a person consists of: (1) an estimate of the persons net worth on the net worth record date and a statement of the basis of the estimate; (2) the persons financial statements for the five full fiscal years plus any partial fiscal year preceding the net worth record date; (3) a statement of all sales

and copies of all offers or agreements to buy or sell specified percentages of the persons assets, stock, or partnership interest, made on or about the net worth record date; (4) a statement of the persons current financial condition and business history; (5) a statement of the persons business plans; (6) any appraisal of the persons fixed and intangible assets made on or about the net worth record date; and (7) a copy of any plan of reorganization involving the person and occurring within five calendar years prior to or any time after the net worth record date. This information is necessary to enable PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

2. Use of information. The information that is collected under 29 CFR § 4062.6 is used by PBGC to determine the net worth of the employer that maintained an insufficient plan. The information is needed to ensure that PBGC's rights with respect to its lien and the employer's statutory rights with respect to payment terms are fully protected.

3. Reducing the burden. PBGC will accept this information in an electronic format, but not all of the information is typically maintained in an easily retrievable electronic form. Moreover, the number of respondents is very small (only 29 employers). However, PBGC will continue to explore whether broader use of electronic alternatives is practicable. PBGC has attempted to minimize the burden of this collection of information by requiring the minimum information needed to determine net worth.

4. Duplicate or similar information. Some of the required information (*e.g.*, a copy of a plan of reorganization) may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the reporting person may have changed its name or tax identifying number, or have submitted to

Federal agencies some, but not all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies files than simply to submit the information to PBGC.

Some of the required information may previously have been submitted to PBGC. If so, a person may respond to this collection of information by identifying the previous submission in which that information was provided (§ 4062.6(a)(4)).

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Typically, this collection of information occurs only once in the life of a pension plan — at its termination. Therefore, the collection cannot be conducted less frequently unless it were not conducted at all. If this information were not collected, PBGC would not be able to determine whether employer liability upon plan termination exceeded 30 percent of the employer’s net worth and therefore would not be able to ensure that PBGC’s rights with respect to its lien and the employer’s statutory rights with respect to payment terms were fully protected.

7. Special circumstances. Under § 4062.6(a), the deadline for submitting net worth information is the 120th day after the proposed termination date or, if no notice of intent to terminate is filed and PBGC institutes proceedings under § 4042 of ERISA, within 120 days after the establishment of the termination date. However, PBGC may require a respondent to submit net worth information in a shorter period, but only when “PBGC believes that its ability to obtain information or payment of liability is in jeopardy.” PBGC may require a respondent to

submit additional information within 30 days, or a different specified time, after a written request.

Thus, in some circumstances, a respondent may be required to prepare a written response to a collection of information in fewer than 30 days. This is necessary to protect PBGC's ability to obtain information or payment of liability.

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

8. Outside input. A Federal Register notice, soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d), was published on March 10, 2020, at 85 FR 13953. One public comment was received in response to the notice. The commenter suggested that PBGC require a contributing sponsor to submit the following information to show its net worth: (1) all transfers of assets from the contributing sponsor within the five years prior to plan termination, including sale of assets, revaluation of assets, and other financial steps which have materially affected the employer's net worth; and (2) all encumbrances, debt, or new material obligations which have had any material impact on the contributing sponsor's net worth in the five years prior to plan termination. Another Federal Register notice, soliciting public on this collection of information, was published on June 10, 2020, at 85 FR 35445. One public comment was received, and it was from the same individual who commented in response on the first Federal Register notice. The commenter's second comment included the substantively the same suggestion as the first comment, namely that PBGC require financial information covering five years prior to the date of submission. The information that the commenter suggested in his first and second comments is already encompassed in § 4062.6(b)(2), which requires the

submission of “A copy of the person's audited...financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date [including] balance sheets, income statements, and statements of changes in financial position.” Thus, PBGC already requires this information, and no change to the information collection is needed.

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. Burden on the public. An employer generally would respond to this collection of information at about the time the plan is trustee by PBGC. For each of the next three years, PBGC expects that, on average, it will become trustee of 66 plans. Many of these employers will not respond to this collection of information because, *e.g.*, the plan is abandoned, the employer is involved in a no-assets bankruptcy, or PBGC already has concluded that the employer has no net worth. Also, while an employer may terminate several plans, normally it is required to submit net worth information only once. Based on these factors, PBGC estimates that 29 employers per year will respond to this collection of information.

PBGC estimates that the average amount of time required to respond to this collection of information will be 24 hours. It has been PBGC’s experience that there is great diversity in the character of the employers involved and the effort required to compile and submit the

information. Net worth information often has been compiled by the employer for other business purposes and, in the case of a distress termination, some of the net worth information required by this collection of information already will have been submitted to PBGC to comply with the distress termination regulations (Part 4041). (As noted in item 4 above, any information previously submitted to PBGC may be referred to as part of a response to this collection of information.) Therefore, in many cases, only copying and transmission of existing data is needed. If net worth information has not been compiled, the information generally is in the possession of and readily available to the employer.

PBGC assumes that half of the work (12 hours) will be performed by respondents and half (12 hours) will be contracted to third parties. Thus, the estimated average annual hour burden per respondent will be 12 hours. The total estimated average annual hour burden for all respondents will be 348 hours (12 hours x 29 respondents).

PBGC assumes an average rate of \$77 per hour for in-house costs (primarily mid-level administrative staff). The total dollar equivalent of the respondents in-house hourly burden will be \$26,796 (348 hours x \$77 per hour). The dollar equivalent of the annual hourly burden per respondent will be \$924 (\$26,796 divided by 29 respondents).

13. Costs. As stated in Item 12, PBGC assumes that half of the estimated annual work of 696 hours will be contracted to third parties. Assuming an average rate of approximately \$450 per hour for contracted services (including professional time, support assistance, overhead, and other costs), PBGC estimates that the annual cost per respondent for contracted services will be \$5,400 (12 hours x \$450 per hour). The total estimated average cost for contracted services will be \$156,600 (29 respondents x \$5,400 per respondent).

14. Costs to the Federal government. The cost to the government for this information collection is \$0.
15. Change in burden. The change in the estimate of the annual dollar burden of this collection of information (from \$133,300 in the current OMB inventory to \$156,600 requested) reflects revisions in PBGC's estimates of the costs of contracted services (from \$370 an hour to \$450 per hour). These changes are unrelated to program changes.
16. Publication plans. PBGC does not intend to publish the results of this collection of information.
17. Display of expiration date. PBGC is not seeking approval to not display the expiration date for OMB approval of this information collection.
18. Exceptions to certification statement. There are no exceptions to the certification statement.