

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination of Single Employer Plans; 29 CFR part 4041; PBGC Forms 500-501, 600-602, Schedule MP and attachments

STATUS: Request for modification of a currently-approved collection of information (OMB control No. 1212-0036; expires March 31, 2021)

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1. Need for collection. Under section 4041 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), a single-employer pension plan may terminate voluntarily only if it satisfies the requirements for either a standard or a distress termination. Pursuant to section 4041(b) of ERISA, for standard terminations, and section 4041(c), for distress terminations, and PBGC's termination regulation (29 CFR part 4041), a plan administrator wishing to terminate a plan is required to submit specified information to PBGC in support of the proposed termination and to provide specified information regarding the proposed termination to third parties (participants, beneficiaries, alternate payees, and employee organizations).

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 termination of single-employer plans regulation. The final rule amends § 4041.29, regarding the standard termination process, to provide an alternative filing option for plan administrators who need more time to complete the Form 501 (the post-distribution certification). Instead of filing a completed Form 501 within 30 days after the last distribution date, this new option will permit a plan administrator to submit a completed Form 501 within 60 days after the last distribution date

for any affected party if the plan administrator certifies to PBGC within 30 days after that last distribution date that all assets have been distributed in accordance with section 4044 of ERISA and 29 CFR part 4044.

PBGC is revising the filing instructions for the Form 501 to describe the option and extended due date, and to include instruction on how to file if using this alternative. A corresponding non-substantive revision is being made to the Schedule MP where the due date for filing of the Form 501 is mentioned.

2. Use of information.

a. Information required. Certain information must be provided to PBGC and to third parties (e.g., participants and beneficiaries) for all types of terminations. For both standard and distress terminations, the plan administrator is required to submit to PBGC certain identifying information, confirmation that the required notices have been properly issued to plan participants and beneficiaries, and the level of funding of the plan. The plan administrator must also provide certain information to third parties, including a notice of intent to terminate.

Standard terminations and sufficient distress terminations. In the case of a standard termination (i.e., a plan that is sufficient for all benefits) or a “sufficient” distress termination (i.e., a plan that is sufficient for at least all guaranteed benefits but not for all benefits and will close out in the private sector), the plan administrator must provide PBGC and third parties with certain additional information relating to the distribution of plan assets. In particular, the plan administrator must provide PBGC summary information relating to the benefits distributed and, for a standard termination, certain information regarding residual assets. See PBGC Forms 500 and 501. The plan administrator is also required to provide certain additional information to

third parties, including: (1) a notice of plan benefits (for standard terminations) or of benefit distribution (for distress terminations); (2) annuity information, including information on identity of insurers and on state guaranty association coverage of annuities; and (3) if applicable, an annuity contract or certificate.

Distress terminations. For distress terminations, the plan administrator must also provide PBGC with information demonstrating that each contributing sponsor, and each member of each contributing sponsor's controlled group, meets one of the statutory distress criteria. See section 4041(c)(2)(B) of ERISA and 29 CFR 4041.41(c), and PBGC Forms 600 and 601.

Missing participants of plans that terminated on or before December 31, 2017. If an annuity is purchased for some or all missing participants, the plan administrator must file identifying information about the insurer, the total number of annuities purchased, the amount transferred to the insurer, and each missing participant's annuity certificate number and monthly benefit. The plan administrator must file Schedule MP and Attachment A as attachments to either Form 501 (if the termination is a standard termination) or Form 602 (if the termination is a sufficient distress termination).

If an annuity is not purchased for a missing participant, the plan administrator must transfer an amount (the "designated benefit") to PBGC for the participant. The plan administrator must file Schedule MP and, for each missing participant for whom a designated benefit is transferred, a separate Attachment B. Attachment B provides identifying information about the missing participant, describes the type and form of the missing participant's benefit, and reports the amounts being transferred to PBGC. The Schedule MP and Attachments B are filed with either the Form 501 or Form 602.

The plan administrator must also file a Schedule MP (with applicable attachments) to report payment to PBGC or the purchase of an annuity for a missing participant who is owed residual assets or voluntary employee contributions. In addition, the plan administrator may be required to file a Schedule MP (with applicable attachments) pursuant to a PBGC audit of a plan termination.

The Schedule MP is applicable only to plans that terminated on or before December 31, 2017. There is a new control number for the collection of information under the expanded missing participants program, effective on January 22, 2018, and applicable to plans that terminated on or after January 1, 2018 (OMB Control No.1212-0069; expires 1/31/2021). The expanded program includes not only missing participants from single-employer plans covered by title IV, but also defined contribution and other plans not covered by title IV and multiemployer plans covered by title IV.

b. PBGC and third party need for information. PBGC needs, and has routinely used, the information required to be submitted to it: (1) to determine whether the statutory and regulatory requirements for a standard or distress termination have been met; (2) in a standard termination, to determine whether the reversion of any plan assets to the employer meets the requirements of title IV of ERISA; (3) in a distress termination, to determine whether the plan should be trustee by PBGC or permitted to close out in a private-sector distribution; (4) in a distress termination, to estimate the amount of employer liability to PBGC under section 4062 of ERISA and 29 CFR part 4068; and (5) to attempt to locate and pay missing participants or, where annuities were purchased for missing participants, attempt to locate and refer them to the insurer who issued the annuities to be paid.

Participants need the information required to be disclosed to them so that they will be informed about the status of the proposed termination of their plan and about their benefits upon termination. The information on state guaranty association coverage helps participants and beneficiaries understand the importance of the plan administrator's selection of an insurer and enables them to make a better-informed choice about whether to elect a lump sum or an annuity.

3. Information technology. In certain circumstances, PBGC's regulations allow for electronic filing with PBGC and electronic issuance of notices to third parties. Plan administrators may submit termination forms electronically by email, rather than by mail, fax, or personal delivery only.

In addition, PBGC has made termination forms available on its website as fillable and savable PDF documents. PBGC expects that fillable and savable PDF versions of the forms reduces the amount of time required of respondents to correct and complete the forms. It also enhances the forms' accuracy, thereby saving PBGC time as well.

4. Duplicate or similar information. A limited amount of the information required to be submitted to PBGC in response to this collection of information may already be in the possession of the government. However, there is no timely and reliable way to locate the required documents, particularly since the reporting entity may have changed its name or tax identifying number, or submitted to the government some, but not all, of the documents required under this information collection. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in agencies' files than to simply submit the information to PBGC.

Participants and beneficiaries may find information similar to some of the information required to be disclosed under the termination regulation (e.g., a description of PBGC's guarantee) in other documents provided at various times to them or to other Federal agencies to accomplish other purposes. However, one purpose of the termination regulation is to ensure that affected parties receive meaningful information about their plan's termination in a timely manner. Requiring participants and beneficiaries to retrieve bits of information that have been provided to them or to the government at other times, for other purposes, would be inconsistent with this purpose.

5. Reducing the burden on small entities. Inapplicable.

6. Consequences of less frequent reporting. Since this collection of information occurs only with respect to a proposed plan termination and, therefore, normally occurs only once in the life of a pension plan, the collection cannot be conducted less frequently unless the information were not collected at all. If this information were not collected at all, PBGC would not be able to fulfill its statutory mandate to oversee the termination of plans covered by PBGC's insurance program, and participants and beneficiaries would not receive meaningful, timely, and useful information about the status of their plan's proposed termination or about their benefits upon termination.

7. Special circumstances. Upon review of a standard termination notice, PBGC may, but very rarely does, require the plan administrator to submit additional information relevant to the termination proceeding. The additional information normally is due within 30 days after PBGC makes a written request. PBGC may in its discretion shorten the period for responding to a written request for additional information, but only where it determines that the interests of

PBGC or participants may be prejudiced by a delay in the receipt of the information. To monitor and facilitate compliance, the time period runs from the date of the request by PBGC rather than the date of receipt of the request by the plan administrator.

In a distress termination proceeding, information in addition to that required by Form 600 and Form 601 may be due in a short time period to permit PBGC to take prompt action (e.g., institution of involuntary termination or trusteeship proceedings) to protect participants or premium payers.

Respondents are required to retain certain records for six years. PBGC notes that most or all of the records required to be retained under the termination regulation already must be retained for six years for other purposes under section 107 of title I of ERISA. Retention of records for six years is necessary because PBGC has at least six years following a termination to bring a civil action to enforce the provisions of title IV of ERISA with respect to that termination (see section 4003(e)(6) of ERISA).

8. Outside input. On June 27, 2019 (84 FR 30666), PBGC published a proposed rule that would make miscellaneous corrections, clarifications, and improvements to several PBGC regulations, including § 4041.29 of the termination of single-employer plans regulation. Five organizations submitted comment letters on the proposed rule, one of which contained specific comments on the amendments to § 4041.29. The commenter expressed support for the additional time to submit a Form 501. (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.) The final rule discusses the comments received and PBGC's responses.

9. Payments and gifts. No payments or gifts were 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, respectively.

11. Personal questions. This collection of information does not call for submission of information of a sensitive nature.

12. Hour burden on the public. For purposes of this information collection, a termination submitted constitutes a "response."

PBGC's burden estimates assume that much of the plan termination work will be done for Internal Revenue Service purposes (e.g., Forms 5310 and 6088). In addition, much of the termination work will be done in the normal course of closing out a plan.

Standard terminations.

Based on its experience, PBGC anticipates that it will process 1,503 standard terminations annually. Because few, if any, plans terminate in distress terminations that are sufficient, (i.e., those that distribute in accordance with standard termination rules), they are not included for purposes of this estimate.

Based on plan experience, PBGC estimated that the hourly burden for each response will be approximately 20 hours. The aggregate annual burden is estimated to be 30,060 hours (1,503 plans x 20 hours). For each response, the estimated dollar equivalence of the hourly burden is \$3,000; the aggregate annual dollar equivalence is \$4,509,000 (\$3,000 x 1,503 plans).

There are only 270 plans terminating in a standard termination with a termination date before January 1, 2018. Based on PBGC's experience, only about 30 of these plans would be required to complete a Schedule MP. Based on plan experience, PBGC had estimated that the average time required for a plan to comply with the collection of information requirements relating to the Schedule MP is 5 hours. Annualized over three years, the aggregate hour burden per year for the remaining 30 plans would be 50 hours (10 plans per year x 5 hours). The estimated average dollar cost equivalence associated with the Schedule MP is \$300. Annualized over three years, the aggregate dollar cost equivalence for the remaining 30 plans would be \$3,000 (10 plans per year x \$300).

Final rule. The final rule revises § 4041.29 to provide plan administrators of plans terminating in a standard termination the option of more time to complete a Form 501. This alternative would require, first, certifying to PBGC in an email that distributions have been made timely. PBGC estimates up to 5 minutes of time — for those plan administrators who choose this option — to review the instructions and send an email to PBGC's standard termination filings email address to certify that distributions have been made timely. There is no change in the information requirements contained in Form 501.

PBGC estimates that approximately 25 percent of 1,503 standard termination filers will choose this option per year (which is about 375 plans). The total additional average hourly burden for the information collection because of this final rule will be approximately 31 hours (375 plans x 5 mins per plan (0.083 hours)). While PBGC projects this minimal additional time to review and send an email under the new option, overall compliance for plan administrators will be eased by extending the time to file a Form 501.

PBGC estimates that the aggregate annual hourly burden for standard terminations will be approximately 30,141 hours (30,110 hours (30,060 + 50) + 31 hours because of the final rule).

Distress terminations.

The final rule makes no changes to distress termination filings.

PBGC estimated 10 terminations will be concluded as distress terminations annually. Of these 10, PBGC estimated that almost all will terminate under Distress Criteria 2 – 4 (reorganization in bankruptcy or insolvency proceeding, termination required to enable payment of debts, or to avoid unreasonable pension costs). Virtually all terminations filed under Criterion 1 (liquidation in bankruptcy or insolvency proceeding) end up converting to PBGC-initiated terminations, rather than being distress terminations

Based on plan experience, PBGC estimated that the hourly burden for distress terminations to be approximately 80 hours. The aggregate annual hourly burden for all distress terminations is estimated to be 800 (80 hours x 10 plans = 800 hours). For each response, the estimated dollar equivalence of the hourly burden is \$5,800; the aggregate annual dollar equivalence is \$58,000 (\$5,800 per plan x 10 plans).

Total annual hourly burden on all respondents (standard and distress terminations).

The annual burden of complying with this collection of information for both standard and distress terminations is estimated to average 30,941 hours (30,141 hours for standard terminations + 800 hours for distress terminations).

13. Cost.

Standard terminations. Based on plan experience, PBGC estimated that the average cost burden for each response would be approximately \$4,000, for an estimated aggregate cost burden

of \$6,012,000 (1,503 plans x \$4,000). Based on plan experience, PBGC estimated the cost burden for completing a Schedule MP would be approximately \$900. Annualized over three years, the aggregate annual cost burden per year for the remaining 30 plans would be \$9,000 (10 plans per year x \$900).

Distress terminations. Based on plan experience, PBGC estimated that the cost burden for each distress termination will be approximately \$15,720. Therefore, the aggregate annual cost burden is approximately \$157,200 (\$15,720 x 10 plans).

Total annual cost burden on all respondents (standard and distress terminations). The annual cost burden of complying with this collection of information for both standard and distress terminations is estimated to be \$6,178,200 (\$6,021,000 for standard terminations (\$6,012,000 + \$9,000) + \$157,200 for distress terminations).

14. Cost to federal government. Because all the work of processing filings will be performed by PBGC existing staff as part of their regular duties, the annual cost to the government is estimated to be \$0.

15. Change in burden. The small change in the estimated annual hour burden and cost burden of this collection of information (from 29,890 hours in the current OMB inventory to 30,941 hours requested; and from \$5,963,400 in the current OMB inventory to \$6,178,200 requested) is attributable to several changes: a negligible estimated increase in hour burden because of the final rule, a projected increase in the number of standard terminations completed per year, and a decrease in the number of filers who must complete a Schedule MP.

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

17. Display of expiration dates. PBGC will display the expiration date.

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