

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

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

STATUS: Request for extension with modification of a currently approved information collection (OMB Control No. 1212-0069; expires January 31, 2021)

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1. Need for collection. 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 of ERISA includes a provision (section 4050 of ERISA) under which the Pension Benefit Guaranty Corporation (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.

The missing participants program was limited to single-employer DB plans covered by the title IV insurance program. The Pension Protection Act of 2006 authorized expansion of the missing participants program, and PBGC by final rule published on December 22, 2017 (82 FR 60800), extended 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).

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

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. For plans not covered by title IV, PBGC's regulation permits, but does not require, such plans to participate in PBGC's missing participants program.

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.

PBGC intends to modify its information collection to require additional information about missing participants in two categories in order to properly withhold taxes when such participants are located and their benefits claimed and paid. For DC plans that permit Roth accounts, PBGC intends to require a breakdown of qualified and non-qualified Roth amounts transferred to PBGC (if any), and if non-qualified Roth amounts are being transferred, the date the first Roth contribution was made. Where relevant for DB and DC plans, PBGC intends to require identification of the portion of a participant's benefit transfer amount treated as foreign-source income, and if so, for DB plans how that determination was made. PBGC as administrator of the Missing Participants Program relies on information provided and certified to by the plan administrator or plan sponsor as applicable. PBGC is making other conforming, clarifying, and editorial changes to the instructions.

2. Use of information. PBGC uses 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 program allows 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 program reduces 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. On September 1, 2020 at 85 FR 54433, PBGC published a notice of its intention to request OMB approval of this collection of information and solicited public comment. No comments were received.

On December 8, 2020, PBGC published a notice at 85 FR 79047 informing the public that it is requesting that OMB approve this collection of information and requesting public comment. The comment period ended on January 7, 2021, and one comment was received. The commenter describes the missing participants program's requirement that a plan administrator transfer the full value of a pension benefit on behalf of a missing participant, even if taxes were previously withheld to the Internal Revenue Service (IRS). The commenter states that recent formal and informal IRS guidance suggest that IRS' views have changed regarding refunds of withholding in missing participant situations, making it less likely that the plan sponsor could get a refund of those withheld amounts from the IRS. PBGC appreciates wanting clarity on missing participant issues generally. But whether a plan sponsor decides to seek a refund from IRS is solely the plan sponsor's decision in conjunction with IRS guidance, which is outside the scope of the missing participants program itself and these 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. PBGC estimates the hour and cost burden for the projected number of filings it expects each year over the next three years. These projections are based on filing experience over the previous fiscal years since the program's inception in January 2018 for the four types of plans eligible to use the missing participants program. PBGC estimates a total average of 226 filings per year over the next three years.

Based on filer experience and an estimate of negligible time for very few filers to provide additional information, the average per-plan filing burden is estimated to be 3.8 hours. Based on filer experience, PBGC estimates that approximately 75 percent of the work to complete and submit the filing will be done in-house and 25 percent contracted out. Thus, the total hour burden is estimated at about 646 hours (75 percent of 226 filers x 3.8 hours).

The total average monetary cost of this in-house time based on filer experience is estimated at \$85,850.

13. Dollar burden on the public. PBGC estimates based on filer experience and negligible time for very few filers to provide additional information, that 25 percent of filings will be contracted out at \$2,029 per filing. The total dollar burden is estimated at approximately \$115,650 (25 percent of 226 filers x \$2,029).

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.

15. Change in burden. PBGC had previously estimated the hour and cost burden for this new collection of information based on its estimates for similar missing participant information collected in the former single-employer DB plan program and on assumptions (based on a dearth of data) about the participation of DC plans. Burden estimates for this request to extend the collection are based on filer experience – of time and money spent and of the cost of time – to arrive at estimated burden figures. PBGC uses “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. 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 experience-based burden estimation. There is negligible burden for the two modifications that affect very few filers.

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.