

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Payment of Premiums (29 CFR Part 4007) and PBGC forms and instructions thereunder

**STATUS:** Request for approval of revision of currently approved collection (OMB control number 1212-0009; expires February 29, 2024)

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1. Need for collection. Section 4007 of title IV of the Employee Retirement Income Security Act of 1974 (ERISA) requires the Pension Benefit Guaranty Corporation (PBGC) to collect premiums from pension plans covered under title IV pension insurance programs. Pursuant to section 4007, PBGC has issued its regulation on Payment of Premiums (29 CFR Part 4007). Under § 4007.3 of the premium payment regulation, plan administrators are required to file premium payments and information prescribed by PBGC (premium-related data and information about plan identity, status, and events).

Premium information is filed electronically using “My Plan Administration Account” (My PAA) through PBGC’s website. Premium filings must be made annually. Under § 4007.10 of the premium payment regulation, plan administrators are required to retain records about premiums and information submitted in premium filings.

Section 4006 of ERISA, implemented by PBGC’s regulation on Premium Rates (29 CFR Part 4006), sets premium rates. All plans covered by title IV of ERISA pay a flat-rate per-participant premium. An underfunded single-employer plan also pays a variable-rate premium

(VRP) based on the plan's unfunded vested benefits (UVBs). The VRP is subject to a cap. The cap on the VRP, and the flat premium rates for both single-employer and multiemployer plans, are adjusted annually for inflation.

PBGC intends to modify the Comprehensive Premium Filing Instructions for 2024 as follows.

- a. Adding language explaining that the VRP amounts are no longer indexed for inflation and will remain at \$52 per \$1,000 of UVBs (or 5.2%), to implement section 349 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act),<sup>1</sup> which ended indexing for the VRP beginning in 2024.
- b. Modifying two examples that reference a hypothetical plan's mandatory cashout provision to increase the threshold amount for the hypothetical plan from \$5,000 to \$7,000 to be consistent with the maximum threshold permitted under section 203(e)(1) of ERISA and section 411(a)(11)(A) of the Internal Revenue Code for distributions after December 31, 2023, as amended by section 304 of the SECURE 2.0 Act.

In addition, PBGC intends to update the flat rate premium amounts, update due dates and other relevant dates, and make minor editorial changes to the premium filing instructions.

2. Use of information. PBGC uses information from premium filings to identify the plans for which premiums are paid, to verify whether the amounts paid are correct, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help track the creation of new plans and transfer of participants and plan assets and liabilities among plans, to keep PBGC's insured-plan inventory up to date, to project premium income, to improve

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<sup>1</sup>Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328 (Dec. 29, 2022).

financial projections, and to respond to inquiries from other executive agencies and other branches of government.

The reported information and the retained records may be used for audit purposes.

3. Information technology. Electronic filing is required under PBGC's regulations. PBGC provides data entry and editing screens for premium filing through the My PAA electronic application on PBGC's website. In addition, PBGC offers another electronic filing option that allows filers to use private-sector premium-filing-preparation software compatible with My PAA. A filer can create a premium filing and then upload it directly to PBGC via the My PAA application. Filers can pay premiums and receive premium refunds by electronic funds transfer.

4. Duplicate or similar information. In general, the information required in premium filings is not routinely filed with, and available from, any other Federal Government agency, and there is no similar information that can be used "as is" instead of the information reported in premium filings.

#### *Participant count breakdown*

Numbers of retired, terminated vested, and active participants are in the annual report that plans submit using Form 5500, and PBGC is willing to accept numbers determined using the same methodology for assigning participants to one or another category as for Form 5500. However, "participant" is defined differently for premium purposes than for reporting on Form 5500, so that the actual numbers reported on the two forms might be different. Moreover, for Form 5500 and premium filings due at the same time, the participant-count information on the

Form 5500 filing is a year older than that on the premium filing. PBGC's uses for the participant-count breakdown are much better served by getting current data.

#### *VRP data*

For small plans that use the look-back rule, the asset values reported on the premium filing are also reported on Form 5500. However, PBGC's electronic premium-filing system automatically calculates premiums based on input data, and this feature could not work if assets were not reported. And for plans not using the look-back rule, there would be a one-year lag until the Form 5500 figures became available. Using Form 5500 assets data instead of having premium filers report it directly would thus be inconvenient for both filers and PBGC and would save filers little time or effort.

#### *Frozen plan data*

"Freezes" can affect a plan in several different ways (for example, by ceasing accrual of benefits or admission of new participants). To predict and address the impact of plan freezes on PBGC's future premium revenues and net financial position, PBGC needs to know which of the plans that PBGC covers have been affected by freezes and the exact nature of each freeze.

PBGC currently collects freeze information on ERISA section 4010 filings because it needs the information as early as possible for the small group of 4010 filers, and the information is reported in section 4010 filings before it is reported in premium filings. PBGC has considered exempting 4010 filers from reporting this information again in the premium filing, but concluded that there would be a control problem if the agency's premium and 4010 databases were not internally consistent.

Form 5500 collects general information on whether a plan has been frozen, but only for the most severe type of freeze (when all accruals cease for all participants). The Form 5500 data are thus too little and too late for PBGC's purposes.

#### *Plan transfer data*

PBGC's plan transfer questions ask about transfers *to* and *from* other plans, as well as transfer types (merger, consolidation, or spin-off), to save PBGC (and filers) the administrative burden of determining why plans have failed to file when expected or have filed information inexplicably different from the previous year. Form 5500 collects information about assets and/or liabilities transferred *from* a plan to another plan (or plans) during the plan year, but not data on transfer types. Plans must submit information to the Internal Revenue Service about transfers *to* and *from* other plans on Form 5310-A, but only for non-*de minimis* transactions; PBGC needs this information regardless of transaction size, as it might affect a plan's participant count. Furthermore, Form 5310-A information is not available to PBGC as promptly as PBGC needs it.

#### *Final filing data*

Form 5500 collects general information on whether a plan was terminated in a standard or distress termination; whether PBGC became trustee of a plan; and whether a plan is covered by PBGC. However, the Form 5500 data often do not adequately explain why filings have ceased in cases where plans merge out of existence. In addition, terminated or merged plans often do not submit a final Form 5500, especially when the final plan year is short. Thus, these sources of information on plan disappearances do not adequately satisfy PBGC's need to know why plans have stopped filing.

5. Reducing the burden on small entities. Small plans use prior-year data to compute the VRP, which means that the VRP and Form 5500 due dates for the same year are aligned. (The flat-rate premium is based on more recent data — the participant count — but the participant count is relatively easy to determine.) First-year filings for most small plans are simplified by a first-year exemption from the VRP.

In addition to the inflation-adjusted cap that applies to all VRP filers, another (generally lower) cap applies to the VRP of certain plans of small employers (those with 25 or fewer employees). Plans that both qualify for the small-employer VRP cap and pay the full amount of the cap do not need to determine or report UVBs.

6. Consequence of reduced collection. Since the information collected is essential to proper administration of PBGC's insurance programs, including auditing of premium filings, and to estimate PBGC's future capability to provide guaranteed benefits, failure to collect it would seriously impair PBGC's program operations. Further, the premium payable to PBGC is an annual premium. Therefore, premium filings cannot be made less often than annually.

7. Special circumstances. PBGC requires plan administrators to retain information necessary to support premium filings for six years. The six-year period corresponds to the record retention requirement of title I of ERISA and is needed to ensure that records are available during the statutory limitations period within which PBGC may bring an action to collect premiums.

In unusual circumstances, PBGC may require submission of information in less than 30 days in connection with an audit. This would accommodate a situation where PBGC finds that its interests may be prejudiced by a delay in the receipt of information, such as where collection

of unpaid premiums (or associated interest or penalties) would otherwise be jeopardized.

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

8. Outside input. On August 3, 2023 (at 88 FR 51359), PBGC published a notice of its intention to request OMB approval of this collection of information, soliciting public comment. PBGC did not receive any comments.

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 personal nature.

12. Hour burden on the public. PBGC estimates that it will receive 31,303 premium filings per year. Based on its experience and reaching out to no more than 10 premium filers to obtain filing burden, PBGC estimates that the average annual hour burden of this collection of information is 13,565 hours with a cost equivalence of \$1,017,375.

13. Cost burden on the public. Based on its experience and reaching out to no more than 10 premium filers to obtain filing burden, PBGC estimates that the average annual cost burden of this collection of information is \$21,661,676.

14. Costs to the Federal government. PBGC estimates that the annual cost to the Federal Government is \$8.23 million.

15. Change in burden. The changes to the cost and hour burdens are due to an expected increase in the number of annual filings, based on PBGC's experience.

16. Publication plans. PBGC does not plan to publish the results of this collection of information.

17. Display of expiration date. OMB has previously granted approval to omit the expiration date from the premium forms and instructions.

18. Exceptions to certification statement. There are no exceptions to the certification statement for this submission.