Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Request for Coverage Determination; Section 4021 of ERISA

STATUS: Request for extension of a previously-approved collection of information, with modifications (OMB control number 1212-0072; expires June 30, 2025)

CONTACT: Monica O'Donnell (202-229-8706)

1. Need for collection. The Pension Benefit Guaranty Corporation (PBGC) insures and collects premiums from defined benefit pension plans that are covered under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). A defined benefit pension plan is covered under title IV if it is described in section 4021(a) of ERISA and does not meet one of the exemptions from coverage listed in section 4021(b)(1)-(13).

To be described in section 4021(a) of ERISA a plan must:

- (1) be an employee pension benefit plan that is established or maintained by a commercial employer, an employee organization, or both; and (2) have in practice met the requirements of part I of subchapter D of chapter 1 of the Internal Revenue Code (Code) for the proceeding 5 years; or
- (1) be, or have been determined by the Secretary of the Treasury to be, a plan described in section 401(a) of the Code; or, (2) meet, or have been determined by the Secretary of the Treasury to meet, the requirements of section 404(a)(2) of the Code.

A plan is not covered if it is:

- an individual account plan (section 4021(b)(1)) of ERISA;
- established and maintained by a government entity (section 4021(b)(2) of ERISA);
- governed by the Railroad Retirement Act of 1935 or 1937 and financed by contributions under that Act (section 4021(b)(2) of ERISA);
- a church plan as defined in section 414(e) of the Code unless it has made an election for coverage under section 410(d) of the Code and has notified PBGC in accordance with procedures prescribed by PBGC that it wishes to have title IV apply to it (section 4021(b)(3) of ERISA);
- established and maintained by a Fraternal Beneficiary Society or a Voluntary Employees' Beneficiary Association and is not funded by employer contributions (section 4021(b)(4) of ERISA);

- a plan that contains an Employee Pension Trust created before June 25, 1959 (section 4021(b)(4) of ERISA);
- a plan that since September 2, 1974, does not provide for employer contributions (section 4021(b)(5) of ERISA);
- an unfunded "top hat" plan maintained primarily to defer compensation for a select group of management or highly compensated employees (section 4021(b)(6) of ERISA);
- established and maintained outside of the United States primarily for the benefit of nonresident aliens (section 4021(b)(7) of ERISA);
- maintained by an employer to provide retirement benefits in excess of the limitations of section 415 of the Code (section 4021(b)(8) of ERISA);
- established and maintained exclusively for substantial owners (section 4021(b)(9) of ERISA);
- of an international organization exempt from taxation under the International Organizations Immunities Act (section 4021(b)(10) of ERISA);
- maintained solely to comply with workers' compensation, unemployment compensation or disability insurance law (section 4021(b)(11) of ERISA);
- a defined benefit plan to the extent that it is treated as an individual account plan under section 3(35)(B) of ERISA (section 4021(b)(12) of ERISA); or
- established and maintained by a professional service employer and, since September 2, 1974, has not had over 25 active participants (section 4021(b)(13) of ERISA).

PBGC provides a Request for Coverage Determination form and instructions for use by a plan sponsor or plan administrator when they are uncertain of a plan's title IV coverage. The plan sponsor or plan administrator may use this form and instructions to request that PBGC determine under section 4021(a) and (b) of ERISA whether the plan is covered.

PBGC's pilot program that specifically provided for a prospective plan to request a coverage determination when the plan was proposed but not yet established expired September 30, 2022. PBGC is removing outdated references to the pilot program in question 4 of Part II of the form and instructions. PBGC is also proposing to revise question 3 of Part III of the form, relating to substantial owners plans, to require a list of all the limited liability company's (LLC) members (if the sponsor is an LLC) rather than a statement of how the LLC is treated for federal tax purposes for clarity. Lastly, PBGC is proposing editorial changes to question 4 of part III and question 3 of part V of the form and parts II, III, and IV of the instructions to provide greater clarity to filers.

2. Use of information.

a. Information required. While a plan is not required to request a coverage determination, in order to obtain one, it must provide certain information.

When completing a Request for Coverage Determination form, a plan sponsor or plan administrator is required to provide identifying information about the plan (such as name and address), the plan document, and any correspondence with the Internal Revenue Service that is relevant to the plan's qualification under section 401(a) of the Code. Also, the requester is asked to state (1) whether the plan received a coverage determination before and, if so, the changes to the plan's organization or operations since the prior determination and (2) whether the plan is already established or proposed but not yet established. Further, the requester is permitted, but not required, to submit a narrative statement supporting the plan's position of its title IV coverage or non-coverage. The requester is provided the opportunity to explain the absence of any required information.

Additional information is required if the requester is seeking a determination of whether a plan is: (1) a substantial owners plan, (2) a small professional service employer plan, (3) a church plan, or (4) a Puerto Rico-based plan.

A plan sponsor or plan administrator requesting a determination of whether a plan is a substantial owners plan, as described in section 4021(b)(9) of ERISA, is required to state whether the plan covers an individual who is not a substantial owner.[1] Further, the requester is required to submit: (1) a list of the names of all the participants (active, retired, and term vested) in the plan; (2) documents showing the percentage of ownership interest that each participant currently holds or has held in the plan sponsor during the 60 months before the completion of the form; (3) documents reflecting any stock options for the plan sponsor (if the plan sponsor is a corporation); (4) the partnership agreement or other document (e.g., partnership meeting minutes, state government filing) naming the partners (if the plan sponsor is a partnership); (5) documents indicating whether the owner's spouse is an employee, director, or manager (if the plan sponsor is a corporation); (6) a description of any family relationships between the owner(s) of the plan sponsor and other participants of the plan and the names and the dates of birth of the owners' children (if such family relationships exist); (7) documentation (e.g., a spreadsheet) showing dates and amounts paid to participants (providing their names) within the past six years; and (8) date of termination or planned date of termination (if the plan has or will be terminated). In addition, the requester is informed that PBGC may request: (1) the plan's last three Form

1 For purposes of section 4021(b)(9) of ERISA, a substantial owner is an individual who at some point during the past 60 months was: (1) the owner of the entire interest in an unincorporated trade or business, (2) a partner who owns more than 10 percent of profit or capital interest if the business is a partnership, or (3) an owner of more than 10 percent of the voting stock or of all the stock if the business is a corporation. See section 4021(d) of ERISA.

5500s (if not available through EFAST2), (2) the plan's most recent Actuarial Valuation Report, and (3) the plan sponsor's federal tax returns for the last 5 years.

A plan sponsor or plan administrator requesting a determination of whether a plan is a small professional service employer plan, as described in section 4021(b)(13) of ERISA, is required to state whether the plan at any time, since September 2, 1974, has had more than 25 active participants. Further, the requester is required to submit: (1) the address of the plan sponsor's website (if any); (2) name, principal business, services performed, and organizational structure of every employer involved in establishing and maintaining the plan; [2] (3) a percentage breakdown of the services performed, including the amount of revenue generated from each service (if the plan sponsor provides multiple services); (4) names, occupations, levels of education, and percentages and periods of ownership of all current owners of the plan sponsor; (5) names, occupations, levels of education, and titles of all individuals who control, manage, or direct the plan sponsor; and (6) educational requirements for the plan sponsor's profession and qualifications such as course work, graduate school, specific state licenses, or similar requirements. In addition, the requester is informed that PBGC may request: (1) the plan's last three Form 5500s (if not available through EFAST2); (2) the plan's most recent Actuarial Valuation Report; (3) the plan sponsor's most recent federal tax return; (4) licenses, degrees, or certifications of all individuals who control, manage, or direct the plan sponsor and whose professions are not listed in section 4021(c)(2) of ERISA; (5) documents showing percentages and periods of ownership for all current owners of the plan sponsor; (6) documents supporting the positions of all individuals who control, manage, or direct the plan sponsor; and (7) if the

2 For purposes of section 4021(b)(13) of ERISA, a professional service employer is owned or controlled by and offers the services of physicians, dentists, attorneys, public accountants, or other professional individuals. See section 4021(c) of ERISA.

plan sponsor provides multiple services, documents supporting the percentage breakdown of the services performed.

A plan sponsor or plan administrator requesting a determination for a church plan, as described in section 4021(b)(3) of ERISA, is required to submit the determination from the Internal Revenue Service that the plan is recognized as a church plan under section 414(e) of the Code. The requester is required to state whether the plan has made an election for coverage under section 410(d) of the Code. If such an election has been made, the requester is required to state whether it wishes to have title IV of ERISA apply to it and provide a copy of the election under section 410(d) of the Code.

A plan sponsor or plan administrator requesting a determination for a Puerto Rico-based plan, as described in section 1022(i)(1) of ERISA,[3] is required to state: (1) whether each participant in the plan resides or works primarily in Puerto Rico, and (2) whether the plan made an election for PBGC coverage under 26 CFR 1.401(a)-50. Further, the requester is required to submit: (1) documents of the election made under 26 CFR 1.401(a)-50 (if such an election had been made); (2) the trust document or agreement, group annuity contract, or other financial document(s) funding the plan; (3) the name and location of the trust and trustee (if the plan is funded by a trust); (4) the name of the contract holder (if the plan is funded by a group annuity contract; (5) the master trust agreement (if the plan is part of such an agreement); (6) documentation appointing the plan administrator; (7) whether the plan administrator is an individual, entity, or committee; (8) the plan qualification letter(s) from the Puerto Rico Department of Treasury; and (9) documentation transferring the plan trust to Puerto Rico from

3 Under section 1022(i)(1) of ERISA, a Puerto Rico-based plan generally is not described in section 4021. However, it can make election for coverage under section 1022(i)(2) of ERISA and 26 CFR 1.401(a)-50, and, if it otherwise satisfies the qualification requirements, it will be covered under title IV of ERISA.

elsewhere in the United States and the date when this transfer occurred (if such a transfer had taken place).

PBGC expects that most, if not all, of the information required under this subsection will be readily available and accessible to a plan sponsor or a plan administrator.

b. Need for information. PBGC needs the information to determine whether a plan is covered under title IV and thus insured by PBGC.

3. Information technology. PBGC requires forms to be made by electronic transmission to the address specified in the instructions for the Request for Coverage Determination.

4. Duplicate or similar information. PBGC believes that there is no information similar to that required for the Request for Coverage Determination that could be used instead of the required information for the purposes of this form. The form allows a requester to reference previously submitted information without resubmitting it.

5. Reducing the burden on small entities. PBGC recognizes that some respondents of the Request for Coverage Determination form may be small businesses. This form is intended to assist such respondents by providing a clear, straightforward means to request that PBGC assess a plan's title IV coverage. In addition, this form is drafted to be simple and to request only necessary information.

6. Consequence of reduced collection. Without a Request for Coverage Determination form, a plan sponsor or plan administrator would have no standard means to request a determination of a plan's title IV coverage. Without the information provided on this form, PBGC would have no way to make such a determination.

7. Consistency with guidelines. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Outside input. On March 10, 2025, PBGC published (at 90 FR 11632) a notice of its intent to request that OMB extend its approval of this collection of information. No comments were received.

9. Payment to respondents. 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. The collection of information does not call for submission of information of a sensitive or private nature.

12. Hour burden on the public. PBGC estimates that each year, over the next 3 years, there will be 295 plans that submit a Request for Coverage Determination form. PBGC further estimates that the average burden of this collection of information will be 1.5 hours per plan, with a total annual burden of 442.5 hours (1.5 hours x 295 plans). The majority of the time spent on this collection will be applied to gathering plan information and other supporting documentation. The estimated dollar equivalent of this hour burden, based on an assumed blended average hourly rate of $75 for administrative, clerical, and supervisory time, is $33,188.

13. Cost burden on the public. PBGC estimates that over the next 3 years, each respondent will spend an average of $300 in contractor costs, meaning attorney and actuary fees, to prepare a Request for Coverage Determination form, and the estimated total cost burden is

$88,500 (295 plans x $300). No capital or start-up costs are necessary for this form, and not all respondents will incur contractor costs in preparing this form.

14. Cost to the government. The cost to the government for the Request for Coverage Determination form is $0.

15. Explanation of burden changes. The changes to the estimates of hour and cost burdens of this collection of information are due primarily to the slight decrease in PBGC's estimate of the number of Request for Coverage Determination forms it expects to receive annually.

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

17. Display of expiration date. PBGC is not seeking approval to avoid displaying the expiration date for OMB approval of this information collection.

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