

Additional Information

Some commenters questioned the provision under which the PBGC may require filers to submit additional information within ten days. Commenters suggested that the response time be lengthened, that the type of information that may be requested be limited, or that the provision be deleted.

It is the PBGC's ability to get the additional information quickly that allows the PBGC to limit the information that controlled groups must submit on a routine basis. The PBGC will grant extensions of time to respond where a filer demonstrates that it is making a reasonable and good faith effort to respond to the information request.

In response to comments, the final regulation clarifies that this additional information is information that could have been required annually (i.e., information that is necessary to determine a plan's assets and liabilities, or the financial status of a filer, for any period through the end of the information year).

Confidentiality

Some commenters expressed concern about the confidentiality of filer tax information. The regulation does not require the submission of a filer's tax return as part of an annual report; it merely permits the filer to substitute its tax return for the audited or unaudited financial statements required by the statute. Moreover, the statute and regulation provide for confidentiality of information similar to that afforded to Hart-Scott-Rodino antitrust submissions. Filers may request that information they submit not be disclosed to other members of their controlled group.

Information Year

One commenter suggested that the regulation eliminate the concept of an information year and that filers instead be required to use the same reporting year as they use for Form 5500. The information year is a simplifying measuring period that does not require any new reports. For most controlled groups the information year will be the same as the fiscal year on which they prepare their consolidated returns. (The Form 5500 reporting year is based on each plan's plan year, which may not match the plan years of other plans or the fiscal years of controlled group members.)

In response to comments, the final regulation excludes the fiscal years of exempt entities in determining the information year for a controlled group.

The final regulation clarifies that the controlled group need not restate consolidated financial statements solely because they include information on entities that are not members of the controlled group or that are exempt entities.

Due Date

Commenters questioned the due date for information—105 days after the close of a filer's information year. This due date is coordinated with the Securities and Exchange Commission's annual reporting date for public companies. In most instances, controlled groups will have prepared audited financial statements prior to that date for public filing and can simply refer to those filings in their submissions to the PBGC. The actuarial information required by that date is similar to pension information required by Financial Accounting Standard 87 that must be included in those financial statements. (The regulation generally allows other actuarial information to be delayed until 15 days after the filing deadline for the Form 5500.)

If the due date presents problems for non-public companies or in other unusual circumstances, filers should request extensions of the deadlines. Filers experiencing problems in preparing or submitting required information should apply for extensions as early as possible, rather than shortly before the due date.

E.O. 12866 and Regulatory Flexibility Act

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The provisions of this regulation implement policy decisions made by Congress in requiring filers to provide audited financial statements and other required information annually to the PBGC. The provisions reflect the PBGC's interpretation of the statutory standards and prescribe the form, time, and manner in which the required information should be submitted.

Under section 605(b) of the Regulatory Flexibility Act, the PBGC certifies (for the reasons stated in the proposed rule at 60 FR 35308, 35310, July 6, 1995) that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), sections 603 and 604 do not apply.

Paperwork Reduction Act

The collection of information requirements in this regulation have been approved by the Office of Management and Budget under control number 1212-0049. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Responses to this collection of information are mandatory. (See ERISA sections 4002(b)(3) and 4010.) The PBGC needs this information, and will use it, to identify controlled groups with severely underfunded plans, to determine the financial status of controlled group members and evaluate the potential risk of future losses resulting from corporate transactions and the need to take legal action, and to negotiate agreements under which controlled groups would provide additional plan funding. Confidentiality of information submitted is provided for in § 2628.12 of the regulation. (See ERISA section 4010(c).)

The PBGC estimates that the average annual burden for this collection of information will be 13.2 hours and \$24,315 for each of approximately 100 controlled groups. Comments concerning the accuracy of this burden estimate and any suggestions for reducing the burden of this collection of information should be submitted to the PBGC's Office of General Counsel, 1200 K Street, NW, Suite 340, Washington, DC 20005-4026.

List of Subjects in 29 CFR Part 2628

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending subchapter C, chapter XXVI of 29 CFR by adding a new part 2628 to read as follows:

PART 2628—ANNUAL FINANCIAL AND ACTUARIAL INFORMATION REPORTING

Sec.	
2628.1	Purpose and scope.
2628.2	Definitions.
2628.3	Filing requirement.
2628.4	Filers.
2628.5	Information year.
2628.6	Information to be filed.
2628.7	Identifying information.
2628.8	Plan actuarial information.
2628.9	Financial information.
2628.10	Due date and filing with the PBGC.
2628.11	Waivers and extensions.
2628.12	Confidentiality of information submitted.
2628.13	Penalties.
2628.14	OMB control number.
Authority: 29 U.S.C. 1302(b)(3); 29 U.S.C. 1310	