



[Billing Code 7709-02-P]

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collections for OMB Review; Comment Request; Multiemployer Plan Regulations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval of information collections.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) intends to request that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of collections of information in PBGC's regulations on multiemployer plans under the Employee Retirement Income Security Act of 1974 (ERISA). This notice informs the public of PBGC's intent and solicits public comment on the collections of information.

DATES: Comments must be submitted by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments may be submitted by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the Web site instructions for submitting comments.

E-mail: paperwork.comments@pbgc.gov.

Fax: 202-326-4224.

Mail or Hand Delivery: Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026.

PBGC will make all comments available on its Web site, www.pbgc.gov.

Copies of the collections of information may also be obtained without charge by writing

to the Disclosure Division of the Office of the General Counsel of PBGC at the above address or by visiting the Disclosure Division or calling 202-326-4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4040.) PBGC's regulations on multiemployer plans may be accessed on PBGC's Web site at www.pbgc.gov.

FOR FURTHER INFORMATION CONTACT: Donald McCabe, Attorney, or Catherine B. Klion, Assistant General Counsel, Regulatory Affairs Group, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005-4026, 202-326-4024. (For TTY and TDD, call 800-877-8339 and request connection to 202-326-4024).

SUPPLEMENTARY INFORMATION: OMB has approved and issued control numbers for eleven collections of information in PBGC's regulations relating to multiemployer plans. These collections of information are described below.

OMB approvals for these collections of information expire March 31, 2014, April 30, 2014, or July 31, 2014 (as specified below). PBGC intends to request that OMB extend its approval of these collections of information for three years. 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.

PBGC is soliciting public comments to —

- evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information, including the validity of the methodologies and assumptions used;

- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should identify the specific part number(s) of the regulation(s) they relate to.

1. Termination of Multiemployer Plans (29 CFR Part 4041A) (OMB control number 1212-0020) (expires March 31, 2014)

Section 4041A(f)(2) of ERISA authorizes PBGC to prescribe reporting requirements for and other “rules and standards for the administration of” terminated multiemployer plans.

Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than \$1,750 or of nonvested plan benefits unless authorized by PBGC.

The regulation requires the plan sponsor of a terminated plan to submit a notice of termination to PBGC. It also requires the plan sponsor of a mass-withdrawal-terminated plan that is closing out to give notices to participants regarding the election of alternative forms of benefit distribution and, if the plan is not closing out, to obtain PBGC approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits.

PBGC uses the information in a notice of termination to assess the likelihood that PBGC financial assistance will be needed. Plan participants and beneficiaries use the information on alternative forms of benefit to make personal financial decisions. PBGC uses the information in an application for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits to determine whether such payments should be permitted.

PBGC estimates that each year plan sponsors submit notices of termination for ten plans, distribute election notices to participants in five of those plans, and submit requests to pay

benefits or benefit forms not otherwise permitted for one of those plans. The estimated annual burden of the collection of information is 19.2 hours and \$18,436.50.

2. Extension of Special Withdrawal Liability Rules (29 CFR Part 4203) (OMB control number 1212-0023) (expires March 31, 2014)

Sections 4203(f) and 4208(e)(3) of ERISA allow PBGC to permit a multiemployer plan to adopt special rules for determining whether a withdrawal from the plan has occurred, subject to PBGC approval.

The regulation specifies the information that a plan that adopts special rules must submit to PBGC about the rules, the plan, and the industry in which the plan operates. PBGC uses the information to determine whether the rules are appropriate for the industry in which the plan functions and do not pose a significant risk to the insurance system.

PBGC estimates that at most one plan sponsor submits a request each year under this regulation. The estimated annual burden of the collection of information is one hour and \$5,600.

3. Variances for Sale of Assets (29 CFR Part 4204) (OMB control number 1212-0021) (expires March 31, 2014)

If an employer's covered operations or contribution obligation under a plan ceases, the employer must generally pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide for secondary liability of the seller.

The regulation establishes general variances (rules for avoiding the bond/escrow and sale-contract requirements) and authorizes plans to determine whether the variances apply in particular cases. It also allows buyers and sellers to request individual variances from PBGC.

Plans and PBGC use the information to determine whether employers qualify for variances.

PBGC estimates that each year, eleven employers submit, and eleven plans respond to, variance requests under the regulation, and one employer submits a variance request to PBGC.

The estimated annual burden of the collection of information is 2.75 hours and \$5,513.

4. Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207) (OMB control number 1212-0044) (expires March 31, 2014)

Section 4207 of ERISA allows PBGC to provide for abatement of an employer's complete withdrawal liability, and for plan adoption of alternative abatement rules, where appropriate.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 100 employers submit, and 100 plans respond to, applications for abatement of complete withdrawal liability, and one plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 25.5 hours and \$35,000.

5. Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208) (OMB control number 1212-0039) (expires July 31, 2014)

Section 4208 of ERISA provides for abatement, in certain circumstances, of an employer's partial withdrawal liability and authorizes PBGC to issue additional partial withdrawal liability abatement rules.

Under the regulation, an employer applies to a plan for an abatement determination, providing information the plan needs to determine whether withdrawal liability should be abated, and the plan notifies the employer of its determination. The employer may, pending plan action, furnish a bond or escrow instead of making withdrawal liability payments, and must notify the plan if it does so. When the plan then makes its determination, it must so notify the bonding or escrow agent.

The regulation also permits plans to adopt their own abatement rules and request PBGC approval. PBGC uses the information in such a request to determine whether the amendment should be approved.

PBGC estimates that each year, 1,000 employers submit, and 1,000 plans respond to, applications for abatement of partial withdrawal liability and one plan sponsor requests approval of plan abatement rules from PBGC. The estimated annual burden of the collection of information is 250.5 hours and \$350,000.

6. Allocating Unfunded Vested Benefits to Withdrawing Employers (29 CFR Part 4211) (OMB control number 1212-0035) (expires April 30, 2014)

Section 4211(c)(5)(A) of ERISA requires PBGC to prescribe how plans can, with PBGC approval, change the way they allocate unfunded vested benefits to withdrawing employers for purposes of calculating withdrawal liability.

The regulation prescribes the information that must be submitted to PBGC by a plan seeking such approval. PBGC uses the information to determine how the amendment changes the way the plan allocates unfunded vested benefits and how it will affect the risk of loss to plan participants and PBGC.

PBGC estimates that ten plan sponsors submit approval requests each year under this regulation. The estimated annual burden of the collection of information is 20 hours.

7. Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219) (OMB control number 1212-0034) (expires April 30, 2014)

Section 4219(c)(1)(D) of ERISA requires that PBGC prescribe regulations for the allocation of a plan's total unfunded vested benefits in the event of a "mass withdrawal." ERISA section 4209(c) deals with an employer's liability for de minimis amounts if the employer withdraws in a "substantial withdrawal."

The reporting requirements in the regulation give employers notice of a mass withdrawal or substantial withdrawal and advise them of their rights and liabilities. They also provide notice to PBGC so that it can monitor the plan, and they help PBGC assess the possible impact of a withdrawal event on participants and the multiemployer plan insurance program.

PBGC estimates that there are six mass withdrawals and three substantial withdrawals per year. The plan sponsor of a plan subject to a withdrawal covered by the regulation provides notices of the withdrawal to PBGC and to employers covered by the plan, liability assessments to the employers, and a certification to PBGC that assessments have been made. (For a mass withdrawal, there are two assessments and two certifications that deal with two different types of liability. For a substantial withdrawal, there is one assessment and one certification (combined

with the withdrawal notice to PBGC).) The estimated annual burden of the collection of information is 18.43 hours and \$50,744.95.

8. Procedures for PBGC Approval of Plan Amendments (29 CFR Part 4220) (OMB control number 1212-0031) (expires March 31, 2014)

Under section 4220 of ERISA, a plan may within certain limits adopt special plan rules regarding when a withdrawal from the plan occurs and how the withdrawing employer's withdrawal liability is determined. Any such special rule is effective only if, within 90 days after receiving notice and a copy of the rule, PBGC either approves or fails to disapprove the rule.

The regulation provides rules for requesting PBGC's approval of an amendment. PBGC needs the required information to identify the plan, evaluate the risk of loss, if any, posed by the plan amendment, and determine whether to approve or disapprove the amendment.

PBGC estimates that at most one plan sponsor submits an approval request per year under this regulation. The estimated annual burden of the collection of information is 0.5 hours and zero dollars.

9. Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231) (OMB control number 1212-0022) (expires March 31, 2014)

Section 4231(a) and (b) of ERISA requires plans that are involved in a merger or transfer to give PBGC 120 days' notice of the transaction and provides that if PBGC determines that specified requirements are satisfied, the transaction will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

This regulation sets forth the procedures for giving notice of a merger or transfer under section 4231 and for requesting a determination that a transaction complies with section 4231.

PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of ERISA section 4231 and the regulation.

PBGC estimates that there are 21 transactions each year for which plan sponsors submit notices and approval requests under this regulation. The estimated annual burden of the collection of information is 5.25 hours and \$6,903.75.

10. Notice of Insolvency (29 CFR Part 4245) (OMB control number 1212-0033) (expires April 30, 2014)

If the plan sponsor of a plan in reorganization under ERISA section 4241 determines that the plan may become insolvent, ERISA section 4245(e) requires the plan sponsor to give a “notice of insolvency” to PBGC, contributing employers, and plan participants and their unions in accordance with PBGC rules.

For each insolvency year under ERISA section 4245(b)(4), ERISA section 4245(e) also requires the plan sponsor to give a “notice of insolvency benefit level” to the same parties.

This regulation establishes the procedure for giving these notices. PBGC uses the information submitted to estimate cash needs for financial assistance to troubled plans. Employers and unions use the information to decide whether additional plan contributions will be made to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information in personal financial decisions.

PBGC estimates that at most one plan sponsor of an ongoing plan gives notices each year under this regulation. The estimated annual burden of the collection of information is one hour and \$2,693.

11. Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) (OMB control number 1212-0032) (expires May 31, 2014)

Section 4281 of ERISA provides rules for plans that have terminated by mass withdrawal. Under section 4281, if nonforfeitable benefits exceed plan assets, the plan sponsor must amend the plan to reduce benefits. If the plan nevertheless becomes insolvent, the plan sponsor must suspend certain benefits that cannot be paid. If available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC.

The regulation requires a plan sponsor to give notices of benefit reduction, notices of insolvency and annual updates, and notices of insolvency benefit level to PBGC and to participants and beneficiaries and, if necessary, to apply to PBGC for financial assistance.

PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

PBGC estimates that plan sponsors of terminated plans each year give benefit reduction notices for three plans and give notices of insolvency benefit level and annual updates, and submit requests for financial assistance, for 54 plans. Of those 54 plans, PBGC estimates that plan sponsors each year will submit 255 requests (ranging from monthly to annual) for financial assistance. PBGC estimates that plan sponsors each year give notices of insolvency for seven plans. The estimated annual burden of the collection of information is one hour and \$694,089.

Issued in Washington, DC, this 21st day of November, 2013.

Judith R. Starr,
General Counsel,
Pension Benefit Guaranty Corporation.

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