

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Termination of Multiemployer Plans (29 CFR Part 4041A)

**STATUS:** Request for regular review and extension of currently approved collection (OMB control number 1212-0020; expires March 31, 2008)

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1. Need for collection. This collection of information is necessary for proper performance of agency functions under section 4041A(f) of the Employee Retirement Income Security Act of 1974 (ERISA), dealing with the termination of 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. Section 4041A(f)(2) authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to PBGC. PBGC's regulation on Termination of Multiemployer Plans (29 CFR Part 4041A) implements these provisions.

Subpart B of the regulation (" 4041A.11 and 4041A.12) requires the plan sponsor of a terminated multiemployer plan to submit a notice of termination containing basic information necessary to alert PBGC to possible

demands on the multiemployer insurance program. Where termination results from a plan=s loss of its entire contribution base through mass withdrawal of all contributing employers, the regulation requires submission of additional information that PBGC needs to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Subparts C and D prescribe (among other things) rules under which the plan sponsor of a mass-withdrawal-terminated multiemployer plan that is closing out must give notices to participants regarding the election of alternative forms of benefit (' 4041A.43) and may apply to PBGC for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits (' 4041A.27).

For all termination notices under subpart B, the plan sponsor must submit (1) information identifying the plan, the plan sponsor, the plan sponsor=s representative (if any), and the post-termination plan administrator (if other than the plan sponsor), so that PBGC knows who these parties are; (2) information on when the plan terminated, to assure PBGC that the plan has filed the notice timely and to permit the calculation of relevant time periods, if necessary (see below); and (3) a copy of the plan=s most recent annual report (Form 5500), so that PBGC can check for evidence of financial difficulties that might adversely affect participants and/or PBGC.

In addition, for mass withdrawal termination notices, the plan sponsor must submit (1) copies of plan provisions covering the last five years, so

that PBGC can determine to what extent the benefit guarantee phase-in rule under ERISA section 4022A applies; (2) documentation of the plan sponsor=s authority to operate the plan, so that PBGC can determine who is responsible for performing functions required under ERISA and PBGC regulations for terminated plans; (3) a copy of the plan=s most recent actuarial valuation and a statement of any subsequent material changes, to provide additional data regarding financial difficulties that might adversely affect participants and/or PBGC; (4) copies of Internal Revenue Service determination letters, so that PBGC can determine whether the plan is covered by Title IV of ERISA pursuant to ERISA section 4021 and whether PBGC=s guarantee is affected by any tax disqualification pursuant to ERISA section 4022A; (5) information on the plan=s ability to pay benefits for the next year, to help PBGC determine whether the plan may be insolvent; (6) information on the proposed distribution of plan assets (if all nonforfeitable benefits can be satisfied), so that PBGC can determine whether the plan may pose a risk to PBGC and whether the distribution appears to comply with the requirements of Title IV of ERISA; and (7) identification of contributing employers for the last three years (if nonforfeitable benefits cannot be fully satisfied), to help PBGC determine compliance with the withdrawal liability rules and the extent of its exposure for guaranteed benefits.

The rules in " 4041A.27 and 4041A.43 are necessary to ensure the consistency and adequate quality of notices required by law and to enable

PBGC to determine whether the payment of benefits other than nonforfeitable benefits or benefits valued at more than \$1,750 in other than annuity form is permissible.

2. Use of information. When a multiemployer pension plan terminates and submits a termination notice, the information in the notice is used by PBGC to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Somewhat more information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases. When PBGC receives a plan sponsor's application for approval to pay benefits or benefit forms not otherwise permitted, it uses the information to determine, as required by ERISA, whether such payments should be permitted. When plan participants and beneficiaries receive notices from a plan sponsor regarding the election of alternative forms of benefit, they use the information to make personal financial decisions.

3. Information technology. No consideration has been given to the use of improved information technology to reduce burden. The reporting volume under the regulation is too low to warrant the use of high technology.

4. Duplicate or similar information. Terminating plans' most recent Form 5500s (which must be included in termination notices) are submitted

by plans to a government contractor under a Form 5500 processing arrangement (the Electronic Filing Acceptance System, or “EFAST”) managed by the Department of Labor. The contractor receives and processes Form 5500 filings and distributes the Form 5500 data in electronic format to the Department of Labor, the Internal Revenue Service, and PBGC (the “ERISA agencies”). However, the contractor does not process and distribute Form 5500 filings immediately upon receipt of a filing. During peak filing periods, the contract provides 90 to 150 days for processing. As a result, PBGC currently does not obtain Form 5500 information in a timely manner and therefore must continue to require terminating plans to submit Form 5500 with their termination notices. Eliminating the requirement that terminating plans submit Form 5500 with their termination notices would impair PBGC's ability to protect the interests of plan participants and beneficiaries and prevent unreasonable loss to itself.

The current EFAST arrangement is expected to be replaced starting for 2009 plan-year filings with an arrangement known as EFAST2, which will require electronic submission by filers and allow almost immediate electronic distribution of data to the ERISA agencies. It is expected that the EFAST 2 vendor will have the capability to process electronic filings starting on January 1, 2010. Under current rules, 2009 calendar-year plan filers typically would be required to file by October 15, 2010. Once PBGC has confirmed that the EFAST2 arrangement is fully operational, PBGC will consider modifying this information collection.

To avoid duplication where feasible, ' 4041A.12(d) of the regulation provides that information otherwise required to be included in a termination notice need not be supplied if it duplicates information in the Form 5500 submitted with the notice.

Some of the other items required in termination notices submitted by mass-withdrawal-terminated plans may already be in the possession of other Federal agencies C for example, copies of plan and trust documents or Internal Revenue Service determination letters. However, there is no timely and reliable way to locate the required documents, particularly in view of the possibility that the reporting plan has been involved in one or more mergers or spinoffs, has changed its name or identifying number, or has submitted to Federal agencies some, but fewer than all, of the documents required under this regulation. The time lost by PBGC in tracking down and verifying documents in other agencies= files would also impair its ability to protect the interests of plan participants and beneficiaries and prevent unreasonable loss to itself.

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Because notices and applications under this regulation are prepared only in connection with a

plan termination, each collection of information under the regulation occurs only once. If the information were not reported, PBGC=s ability to protect the interests of plan participants and beneficiaries and to prevent unreasonable loss to PBGC with respect to terminated multiemployer plans would be significantly impaired.

7. Consistency with guidelines. The information collection is not conducted in a manner inconsistent with 5 CFR ' 1320.5(d)(2).

8. Outside input. PBGC published two Federal Register notices soliciting public comment on this and other collections of information, one pursuant to 5 CFR ' 1320.8(d) (November 26, 2007, at 72 FR 65989), and the other pursuant to 5 CFR ' 1320.5(a)(1)(iv) (February 25, 2008, at 73 FR 10071). No public comments were received in response to the November 2007 notice.

9. Payment to respondents. PBGC provides no payments or gifts to respondents in connection with this collection of information.

10. Confidentiality. The regulation gives no assurance of confidentiality, but information submitted to PBGC under the regulation is accessible only in accordance with applicable law and regulations. PBGC=s rules providing and restricting access to its records are set forth in 29 CFR Part 4901.

11. Personal questions. The regulation does not call for submission of information of a sensitive nature.

12. Hour burden on the public. Based on experience, PBGC estimates that it receives 10 notices of termination from sponsors of multiemployer pension plans annually; that 2 of these terminations result from plan amendments and 8 from mass withdrawals; and that 3 of the plans terminating by mass withdrawal will be sufficient (*i.e.*, will be capable of closing out by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan, although some of them may initially continue as sufficient trusts). Based on experience, we expect that 5 of these terminating plans (the 3 sufficient mass-withdrawal-terminated plans and both of the plans that terminate by amendment) will eventually close out and will be required to send notices of election to participants, and that we will receive 1 request per year to pay lump sums greater than \$1,750 or to pay nonvested plan benefits.

PBGC further estimates (1) that a notice of termination for a plan terminating by amendment requires 1 hour of managerial time to prepare and that the more detailed notice for a plan terminating by mass withdrawal requires 2 hours of managerial time and 4 hours of professional time to prepare; (2) that a request for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits requires 8 hours of professional time to prepare; and (3) that the preparation and distribution of benefit



election notices for a plan that is closing out requires 45 minutes of managerial time and 3 hours and 20 minutes of clerical time, based on an estimate that a sufficient plan that is closing out offers benefit elections to 200 participants.

The estimated annual time required to prepare and submit or distribute notices and requests under the regulation is therefore 21 hours and 45 minutes of managerial time, 40 hours of professional time, and 16 hours and 40 minutes of clerical time for a total of 78 hours and 25 minutes.

However, PBGC also believes, based on its experience, that virtually all of the professional services involved, and about half of the managerial and clerical services, are performed by outside consultants. Accordingly, PBGC estimates that the annual hour burden of this collection of information is 19 hours and 10 minutes, with an estimated cost to respondents of \$1,783.

13. Cost burden on the public. PBGC estimates the cost of postage and supplies for distributing election notices to participants at 58 cents per participant, and assumes a cost of \$350 per professional hour, \$115 per managerial hour, and \$64 per clerical hour for the services of outside consultants. Based on the estimates in item 12, therefore, the estimated annual cost burden of the collection of information is \$16,363.

14. Cost to the government. As noted in item 12, PBGC estimates that it receives annually 10 notices of termination and 1 application to pay

lump sums greater than \$1,750 or to pay nonvested plan benefits. PBGC=s estimated average cost to process either type of submission is \$396 (an average of 4 hours of staff time at \$99 per hour), for a total estimated annual cost of \$4,356.

15. Explanation of burden changes. The estimated number of terminations remains unchanged at 10 per year, and the mix of anticipated termination types is also unchanged. However,, the estimated cost of outside consultants= services has increased (from \$275 to \$350 per professional hour, from \$90 to \$115 per managerial hour, and from \$50 to \$64 per clerical hour). In addition, postal rates have increased from 50 cents to 58 cents per item.

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

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

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