

### **Justification for Non-material/Non-substantive Change Submission**

In 2008, 2009, and 2010, PBGC submitted non-material, nonsubstantive change requests for the Form 5500 instructions for these years, which were approved by OMB. On September 17, 2010, PBGC submitted a rollover request to extend OMB approval of the ICR for three years. OMB approved this extension of the ICR on April 25, 2011; the expiration date is April 30, 2014.

PBGC is hereby submitting a non-material, nonsubstantive change request for the 2011 Form 5500 schedules and instructions. Only minor non-material, nonsubstantive changes that largely reflect the Pension Relief Act and the IRS guidance described below have been made to the schedules and instructions since PBGC's most recent submission was approved by OMB.

PBGC has updated the cost burden associated with the ICR to reflect its most recent data on Form 5500 filings. This resulted in a reduction in the cost burden from \$1,250,000 to \$1, 210,000. There is no change in the hour burden of 1,200 hours.

As explained in PBGC's rollover request, the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (Pension Relief Act), Pub. L. No. 111-102), enacted on June 25, 2010, amended the Internal Revenue Code (Code) to provide funding relief to sponsors of defined benefit pension plans. The IRS issued guidance on the application of the special funding rules under the Pension Relief Act for multiemployer plans in Notice 2010-83 (2010-51 I.R.B. 862) on November 26, 2010 and for single-employer plans in Notice 2011-03(2011-2 I.R.B. 263) on December 17, 2010. The IRS Notices include technical revisions to the Form 5500 to conform the actuarial information required to be reported on the Schedule MB (Multiemployer Defined Benefit Plan and certain Money Purchase Plans Actuarial Information) and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) to reflect the funding relief alternatives retroactively available to defined benefit plans in connection with their 2008, 2009, and 2010 plan years.

The availability of retroactive funding relief under the Pension Relief Act for sponsors of defined benefit plans created an immediate need for changes to the Schedules MB and SB reporting requirements. Without these changes, filers that elected funding relief would have been unable to file accurate and complete Schedules MB and SB. Also, the additional information was essential for the Agencies to monitor and enforce compliance with the Pension Relief Act. A relatively small number of Form 5500 filers - only defined benefit plans electing the optional relief - were affected by the Schedule MB and SB changes.

The IRS Notices 2010-83 and 2011-3, including the guidance superseding portions of the instructions to Schedule MB and SB for the 2008, 2009, and 2010 have already been approved under the Paperwork Reduction Act and released to the public. The Department of Labor issued a notice in the Federal Register on April 5, 2011 (76 FR 18649), announcing how the technical revisions to Schedule MB and SB adopted in the

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IRS Notices described above impact the reporting requirements under Title I of ERISA. Information related to the technical changes affecting the actuarial schedules for 2008, 2009, and 2010 Form 5500 described above also will be required to be provided on the 2011 Form 5500 with respect to those plans that elect funding relief.

Specifically, the following changes are being made to the forms, schedules, and instructions:

1. **Authorized Service Provider Signatures.** The instructions for the Form 5500 and Form 5500-SF have been updated to include the information in ERISA Filing Acceptance System (EFAST2) Frequently Asked Questions explaining the circumstances under which a service provider who manages the filing process for the plan can get EFAST2 signing credentials and submit the electronic Form 5500 for the plan.
2. **Puerto Rico Plans.** The instructions for the Form 5500 and the Form 5500-SF clarify the reporting requirements for certain Puerto Rico plans.
3. **Schedule C (Payments by Employers that Contribute to Multiemployer and Multiple-employer Plans).** The Schedule C instructions have been updated to advise that in the case of a multiemployer or multiple-employer plan where the “plan sponsor” would be the joint board of trustees for the plan, payments by contributing employers, directly or through an employer association or by participating employee organizations, should be treated the same as payments by a plan sponsor.
4. **Delinquent Contributions.** The instructions for the Form 5500-SF and the Schedule I instructions have been updated to advise that in the case of a plan with fewer than 100 participants at the beginning of the plan year, any amount deposited with such plan not later than the 7<sup>th</sup> business day following the day on which such amount is received by the employer (in the case of amounts that a participant or beneficiary pays to an employer), or on the 7<sup>th</sup> business day following the day on which such amount would otherwise have been payable to the participant in cash (in the case of amounts withheld by an employer from a participant’s wages), shall be deemed to be contributed or repaid to such plan on the earliest date on which such contributions or participant loan repayments can be reasonably segregated from the employer’s general assets. See 29 CFR 2510.3-102(a)(2).
5. **Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information).** The Schedule MB instructions have been updated to reflect the provisions of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (Pension Relief Act of 2010).
6. **Schedule SB (Single Employer Defined Benefit Plan Actuarial Information).** Schedule SB form and instructions have been updated to reflect the provisions of the Pension Relief Act of 2010. Additional changes have been made to reflect changes

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under recent guidance, including final regulations under certain portions of Code section 430 (sections 430(d), 430(f), 430(g), 430(h), and 430(i)), and Code section 436 which were published in the Federal Register on October 15, 2009, (74 FR 53004).