

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL  
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR PART 1320**

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Qualified Domestic Relations Orders Submitted to PBGC

**STATUS:** Request for approval of a collection of information under the Paperwork Reduction Act; OMB control number 1212-0054, expires August 31, 2012

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A. Justification.

1. Need for collection. The Pension Benefit Guaranty Corporation (“PBGC”) is requesting that the Office of Management and Budget (“OMB”) extend its approval of the information collection under its booklet, *Qualified Domestic Relations Orders & PBGC*, for a three-year period under the Paperwork Reduction Act.

PBGC is a federal agency that insures the benefits of over 44 million American workers and retirees in about 27,000 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, up to certain legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. However, Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or the marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the

domestic relations order meets specific legal requirements that make it qualified, i.e., a qualified domestic relations order, or "QDRO." ERISA provides that pension plans are required to comply with only those domestic relations orders which are QDROs, and that the decision as to whether a domestic relations order is a QDRO is made by the plan administrator. Thus, as statutory trustee of terminated plans, PBGC must first determine whether any domestic relations order submitted to PBGC is qualified – i.e., is a QDRO – before any obligation to comply is triggered.

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. For several years PBGC has provided the public with model QDROs and accompanying guidance in the booklet, *Qualified Domestic Relations Orders & PBGC*, to assist attorneys, other professionals, participants and alternate payees in preparing orders for plans trusteeed by PBGC.

Before providing the model forms and the QDRO booklet, PBGC received many inquiries on QDRO requirements and PBGC's procedures for handling orders submitted for a qualification determination. In addition, many domestic relations orders, both in draft and final form, did not meet the applicable requirements under ERISA. PBGC worked with practitioners, participants and alternate payees on a case-by-case basis to ensure that their orders were amended to meet applicable requirements. This process was time-consuming for all parties and for PBGC.

Since making the booklet and the model forms available, PBGC has experienced a decrease in (1) the number of inquiries about QDRO requirements, (2) the number of orders that do not meet the applicable requirements, and (3) the amount of time that practitioners, participants and alternate payees spend to ensure that the orders meet the applicable

requirements, and the time PBGC spends to assist them in meeting the requirements. The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements.

Based on its experience in reviewing and processing domestic relations orders, PBGC is making the following changes to the QDRO booklet:

- For a participant who is already in pay status, PBGC will not suspend benefits upon receipt of a draft domestic relations order or any pleading intended to add PBGC as a party to a domestic relations action, including a request for joinder. PBGC will suspend benefits only upon receipt of an original signed domestic relations order or a certified or authenticated copy.
- For a participant who is not in pay status, but whose application is pending, PBGC will place a hold on putting the participant in pay status's application for benefits upon receipt of a draft order or any pleading intended to add PBGC as a party to a domestic relations action, including a request for joinder.
- If a separate interest order is silent as to what happens if an alternate payee dies before commencing benefits, PBGC will treat the separate interest as reverting to the participant, not being forfeited to PBGC.

PBGC is also making other simplifying and clarifying changes to the QDRO booklet.

2. Use of information. PBGC uses the information it obtains from domestic relations orders that it has qualified to determine the proper amount and timing of benefit payments to participants and alternate payees.

3. Information technology. For informal review of a draft order, PBGC will accept a draft that is submitted electronically (by fax or email). However, the use of other technology is impracticable for domestic relations orders that are submitted to PBGC for official qualification determinations. Official qualification determinations require original signed orders (or certified or authenticated copies) issued by a state court, agency, or other instrumentality with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law. Since few, if any, states currently have technology in place to submit such orders to PBGC

electronically, they must be submitted to PBGC by mail or commercial delivery service.

4. Duplication and similar information. All information required to be submitted under this collection of information is statutorily required in order for any part of a participant's benefit to be assigned to an alternate payee, or for a former spouse of the participant to be treated as the participant's surviving spouse for benefit payment purposes. The information requested is not available from another federal agency or another source.

5. Small businesses. Not applicable.

6. Consequences of no or less frequent collection. In the absence of a domestic relations order qualified by PBGC, PBGC would be prohibited from making benefit payments to an alternate payee.

7. Special circumstances. No special circumstances apply to how this collection of information is conducted.

8. Outside input. On June 6, 2012, PBGC published a 60-day notice (77 FR 33497) of intent to request an extension of this collection of information, as revised, and invited public comment by August 6, 2012. PBGC received one comment from a law firm relating to what benefit may a separate interest order assign to an alternate payee if the participant dies before his/her earliest retirement age and prior to the alternate payee's commencement of payments. (The comment is included with this submission and is posted on [www.pbgc.gov](http://www.pbgc.gov) and [www.regulations.gov](http://www.regulations.gov).)

The commenter requests that PBGC preclude an alternate payee from receiving a separate interest benefit if the participant dies prior to the earliest retirement age and prior to the alternate payee's commencement of payments. The commenter further requests that PBGC clarify that under these circumstances, the only benefit payable to the alternate payee is a qualified pre-retirement survivor annuity ("QPSA") death benefit, which the alternate payee may receive only if her or she married to the participant for at least a year and is designated in the domestic relations order ("DRO") as the spouse for the purposes of death benefits under the plan.

After carefully considering the comment, PBGC is not making these changes.

Under PBGC's existing policy, PBGC already requires that for an alternate payee to be awarded a QPSA, the order must explicitly state that the alternate payee is to be treated as the participant's spouse. Also under PBGC's existing policy, once a separate interest order is qualified by PBGC, the alternate payee will receive the separate interest benefit, even if the participant dies before his or her earliest retirement age. Alternatively, or in addition, a QDRO may also provide a QPSA to the alternate payee.

Although Treas. Reg. §1.401(a)-13(g)(4)(iii)(A) states that a plan is not required to provide additional vesting or benefits because of a QDRO, a plan is not prohibited from doing so, and plan administrators vary in their approach to this matter. And although a plan may provide that a QJSA or QPSA will not be provided unless the parties are married for at least a year, a plan is not required to impose a one-year rule. See ERISA §§ 205(f)(1) and 206(d)(3)(F).

PBGC is not changing its policy at this time because it does not want to be more restrictive in its future qualification of orders than plan administrators might be based on their plans' terms.

PBGC published a 30-day notice on August 24, 2012 (77 FR 51582).

9. Payments and Gifts. There are no payments or gifts made in connection with this collection of information.

10. Confidentiality. Confidentiality is governed by the provisions of the Freedom of Information Act and the Privacy Act.

11. Sensitive questions. This collection of information involves no questions of a sensitive nature.

12. Burden on the public. PBGC expects to receive an average of 1,361 domestic relations orders annually, and estimates 1,024 of these will be prepared by attorneys or other professionals. The average hour burden for the alternate payee or participant is .75 hours if the order is prepared by a professional. In the case where the alternate payee or participant prepares the order, the average hour burden is estimated to be 10 hours. The total annual hour burden for alternate payees and participants is thus 4,138 hours  $((1,024 \times .75 \text{ hour} = 768) + (337 \times 10 = 3,370) = 4,138 \text{ hours})$ .

13. Costs. PBGC estimates the cost burden per order to be between 2.5 and 4 hours of professional time spent preparing an order and obtaining its qualification, at an hourly rate of \$200 to \$300. Based on these estimates, the cost burden per order is estimated to be between \$500  $(\$200 \times 2.5)$  and \$1,200  $(\$300 \times 4)$ , with \$850 as the midpoint of this range used as the average of professional fees for each of the estimated 1,024 orders that are prepared by professionals; there is no additional cost burden for the 337 orders that PBGC anticipates will be prepared by the alternate payee or participant. PBGC arrived at its estimate of \$500 to \$1,200 based on surveying costs and fees reported by QDRO attorneys and providers on the internet.

Therefore, the total annual cost is estimated to be \$870,400  $(\$850 \times 1,024)$ . Because

domestic relation orders are submitted infrequently and on a nonrecurring basis, there are no capital and start-up costs.

14. Costs to the Federal government. PBGC estimates the total annual cost to it of reviewing and processing orders and responding to inquiries from participants, alternate payees, and attorneys retained by either party is approximately \$254,994 based on:

- Approximately 2.3 professional hours to review and process each order at a rate of \$32.75 per hour, with PBGC estimating it will receive 1,361 orders annually, for a total of \$104,613 (1,361 orders x 2.3 hours x \$32.75).
- Approximately .6 of an hour to respond to each QDRO inquiry directed to PBGC at a blended (professional and clerical) hourly rate of \$31 per hour, with PBGC estimating it will handle 8,085 inquiries annually, for a total of \$150,381 (8,085 inquiries x .6 hour x \$31.00).

These estimates are based on PBGC's experience in reviewing and processing orders and responding to inquiries regarding orders.

15. Change in burden and costs. The change in annual hourly burden (from 2,105 hours and \$495,060 in the current inventory to 4,138 hours and \$870,400 requested) is due to PBGC's revised estimates of (1) the number of orders it will receive each year, (2) the number of orders that participants and alternate payees are expected to prepare themselves (from 155 to 337), and (3) professional fees (from \$669 to \$850 per order) incurred by participants and alternate payees who retain professionals to prepare their orders.

The estimated number of orders that PBGC expects to receive annually has increased over 50 percent (from 895 to 1,361). Because PBGC expects that more orders will be prepared by participants and alternate payees (as opposed to professionals), the estimated hourly burden has increased in the aggregate for participants and alternate payees from 1,550 to 3,370 hours, an increase of over 50 percent. The estimated cost burden per order for those who retain professionals has increased from \$669 to \$850, an increase of over 25 percent. However, the

estimated increase in aggregate cost has increased over 75 percent due to the increase in the estimated number of orders that will be prepared by professionals (from 740 to 1,024) and the increase in professional fees (from \$669 to \$850 per order) incurred by participants and alternate payees who retain professionals to prepare their orders.

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

17. Omission of expiration date. Not applicable. PBGC will display the expiration date.

18. Exceptions to certification statement. Not applicable. There are no exceptions to the certification in Item 19 of Form 83-1.