

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231)

**STATUS:** Request for approval of revision of currently approved collection (OMB control number 1212-0022; expires March 31, 2014)

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1. Need for collection. Section 4231(a) and (b) of the Employee Retirement Income Security Act of 1974 (ERISA) imposes four requirements on multiemployer plans that are involved in mergers and transfers (“[u]nless otherwise provided in regulations prescribed by the corporation”):

1. Notice must be given to the Pension Benefit Guaranty Corporation (PBGC) at least 120 days before the transaction.
2. No reduction in accrued benefits of participants may occur.
3. Benefits must not be placed at risk of suspension due to plan insolvency.
4. An actuarial valuation must be performed in the plan year preceding the transaction.

ERISA section 4231(c) provides that if PBGC determines that these requirements are satisfied, the merger or transfer will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions). Pursuant to section 4231, PBGC has promulgated its regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231), which sets forth (in §§ 4231.3, 4231.8, and 4231.9) the procedures a plan sponsor must follow to

give PBGC notice of a merger or transfer under section 4231 or to request a PBGC determination that a merger or transfer complies with the requirements of section 4231.

To provide a basis for determining whether a merger or transfer appears not to satisfy any of the four requirements noted above, a merger or transfer notice must include:

(1) identifying information, including types of plans involved and the type and effective date of the transaction; (2) copies of plan provisions that preserve accrued benefits; (3) enrolled actuary certification(s) that benefits are considered not to be at risk of suspension (with supporting data for any plan significantly affected by the transaction); and (4) copies of the most recent required actuarial valuations, unless the transaction is *de minimis* and does not involve a mass-withdrawal-terminated plan.

A request for a compliance determination must provide additional information to enable PBGC to make an explicit finding that the merger/transfer requirements have been satisfied. For a transaction that is not *de minimis*, the request must include: (1) a copy of the merger or transfer agreement (to assure that its terms are consistent with the merger/transfer requirements); (2) a summary of calculations supporting the conclusion that benefits are not at risk of suspension (for double-checking); and (3) for any plan significantly affected by a transaction (unless the plan is significantly affected only because the transaction involves a mass-withdrawal-terminated plan), copies of all actuarial valuations from the last five years (to place the transaction in historical context).

On January 29, 2014, PBGC published a proposed rule that would amend its multiemployer regulations to make the provision of information to PBGC and plan participants

more efficient and effective and to reduce the burden on plans and sponsors. 79 Fed. Reg. 4642 (Jan. 29, 2014). One of the proposed changes would shorten the period for providing advance notice of a merger from 120 to 45 days for transactions that do not involve a compliance determination under § 4231.9. The current requirement to provide 120 days advance notice would remain in effect where a compliance determination is requested and for transactions involving a transfer of plan assets or benefit liabilities.

2. Use of information. 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.

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. The regulation imposes a special purpose information submission requirement that is triggered by the occurrence of a relatively uncommon event (a merger or transfer between multiemployer plans), and this is the only such requirement imposed by PBGC for that event.

The actuarial reports called for by the regulation are routinely prepared for other purposes (but not otherwise routinely sent to PBGC). Although information submitted by pension plans to the Internal Revenue Service is, in some cases, similar to information requested in this regulation, that information is not required to be filed with the IRS until seven months or

more after the close of a plan year, and the IRS is therefore not a source of current data for evaluating a merger or transfer of assets and liabilities.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Submission of information under the regulation is required only upon the occurrence of a specified event (a merger or transfer between multiemployer plans) that is relatively uncommon and occurs only by choice of the plans involved. If the information were not collected, PBGC would be significantly hindered in the performance of its statutory duties and plan sponsors might be unable to obtain assurance that mergers and transfers met the requirements of section 4231 and the regulation.

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

8. Outside input. The proposed rule was published in the Federal Register at 79 Fed. Reg. 4642 (Jan. 29, 2014), with a request for public comments by March 31, 2014.

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. PBGC estimates that under the proposal, submissions will be made for about 21 transactions each year under the amended regulation, no more than three of which will involve spin-offs or significantly affected plans.

PBGC estimates that it will take an average of 15 minutes each of managerial and professional time to prepare a submission that does not involve a spin-off or a significantly affected plan and 3 hours of professional time and 30 minutes of managerial time to prepare a submission that involves a spin-off or a significantly affected plan.

PBGC believes that virtually all of the professional services involved, and about half of the managerial services, are performed by outside consultants. Accordingly, PBGC estimates that the annual hour burden of this collection of information is 3 hours, at with an estimated annual cost to respondents of \$345.

These numbers result from the following calculations. Managerial time consumed by the plans consists of .125 hours for each of the 18 submissions not involving spin-off or significantly affected plans, and .25 hours for each of the 3 submissions involving spin-off or significantly affected plans. These numbers add up to 3 hours at \$115 per hour of managerial time. .

13. Cost burden on the public. Based on the estimates in item 12, and assuming a cost of \$350 per professional hour and \$115 per managerial hour for preparation of a submission by

outside consultants, the total estimated annual cost burden of the collection of information is \$5,070. This number results from the following calculations. Managerial time expended is 50% of 6 hours (.25 hours for each of 18 submissions not involving spin-off or significantly affected plans, and .5 hours for each of 3 submissions involving spin-off or significantly affected plans). 50% of 6 hours is 3 hours. The cost of 3 hours of managerial time is \$345. Professional time expended is 13.5 hours (.25 hours for each of 18 submissions not involving spin-off or significantly affected plans, and 3 hours for each of 3 submissions involving spin-off or significantly affected plans). The cost of 13.25 hours of professional time is \$4,725. \$345 plus \$4,725 is \$5,070.

14. Cost to the government. PBGC expects to process about 21 cases annually under the amended regulation, of which not more than 3 will involve spin-offs or significantly affected plans. Processing a notice of merger involving no significantly affected plans requires about 14.75 hours of PBGC staff time at \$107 per hour. Processing a notice of a spin-off or a transaction involving significantly affected plans requires about 30 staff hours at the same rate. Thus, PBGC estimates that the annual cost to the government of this collection of information will be \$38,038.50.

15. Explanation of burden changes. The change in the estimated annual burden of this collection of information (from 5 hours and \$6,700 in the current inventory to 3 hours and \$5,070 requested) is due to the proposal to reduce the required notice period for most

transactions subject to this information collection and to an increase in the estimated annual number of transactions from 20 to 21.

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.