

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281)

STATUS: Request for approval of revision of currently approved collection (OMB control number 1212-0032; expires May 31, 2014)

CONTACT: Donald F. McCabe (326-4400 x3872) or Daniel S. Liebman (326-4400 x6510)

1. Need for collection. Section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA) provides rules for multiemployer pension plans that have terminated by mass withdrawal under section 4041A of ERISA. Under section 4281, if the annual valuation of a plan shows that plan assets are not sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must amend the plan to eliminate benefits that are not eligible for PBGC's guarantee to the extent necessary to ensure that plan assets are sufficient (as determined and certified in accordance with PBGC regulations) for all remaining nonforfeitable benefits (subsection (c)). If, after such an amendment, the plan becomes insolvent (*i.e.*, unable to pay benefits when due for a plan year), the plan sponsor must suspend benefits in excess of guaranteed benefits to the extent that their payment cannot be supported by the plan's available resources. If the plan's available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC (see also sections 4245(f) and 4261).

Section 4281 also requires PBGC to issue regulations governing the exercise of the plan sponsor's powers and duties thereunder (subsection (d)(3)). In addition, section 4041A(f)(2) of

ERISA authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect plan participants and beneficiaries or to prevent unreasonable loss to PBGC.

PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) implements the requirements of section 4281. The regulation prescribes rules under which plan sponsors must: (1) give notices of benefit reduction (*i.e.*, of the adoption of a plan amendment reducing benefits) to PBGC and to affected participants and beneficiaries, and a notice to PBGC of any restoration of benefits (§§ 4281.32 and 4281.33); (2) give notices to PBGC and to participants and beneficiaries that a plan is, or will be, insolvent, and annual updates to PBGC and to participants and beneficiaries who do not received notices of insolvency benefit level (§§ 4281.43 and 4281.44); (3) give notices of insolvency benefit level to PBGC and to participants and beneficiaries who are in pay status or may reasonably be expected to enter pay status during the year (§§ 4281.45 and 4281.46); and (4) submit an application to PBGC for financial assistance if a plan is, or will be, unable to pay guaranteed benefits when due (§ 4281.47).

These rules are necessary to assure the consistency and adequate quality of notices required by law and to enable PBGC to provide financial assistance to terminated plans in a timely manner.

On January 29, 2014, PBGC published a proposed rule that would make provisions of information to PBGC and plan participants under its multiemployer regulations more efficient and effective and reduce the burden on plans and sponsors. 79 Fed. Reg. 4642 (Jan. 29, 2014).

One of the proposed changes would be to eliminate the requirement for annual updates of insolvency notices. At the time this regulation was first issued, PBGC anticipated that a plan's insolvency would be short in duration and that it could financially recover. However, PBGC's experience has been that once a multiemployer plan becomes insolvent, it will remain so. Thus, once a plan has made the initial notices, there is little need to require similar subsequent notices.

2. Use of information. 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.

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. Under ' 4281.44(a)(7) and (8), a plan sponsor may provide the date of a prior submission of a plan document or actuarial valuation rather than resubmit the document. PBGC's proposed rule would eliminate the requirement for annual updates of insolvency notices.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs an early warning of threatened insolvency, and its consequent impact on benefit payments, to be able to estimate PBGC's cash

needs to provide financial assistance to insolvent terminated plans. Once a plan sponsor determines that an insolvency situation may arise, a lack of expeditious notification or application could delay PBGC assistance. Delay in notification may also interfere with the financial decisions of participants and beneficiaries and delay their search for alternative income sources. Further, without this regulation, the notices required by ERISA section 4281 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations of the law.

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

8. Outside input. As mentioned above, on Jan. 29, 2014, PBGC published a proposed rule that would affect this information collection. The deadline for public comments on the proposed rule is 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. Most insufficient mass-withdrawal-terminated plans become insolvent over the course of time and, once insolvent, do not regain solvency. Analysis of recent data indicates that about 7 mass-withdrawal-terminated plans will become insolvent each year over the next three years, and each of these plans will issue notices of insolvency; 3 plans per year are expected to issue benefit reduction notices. There currently are 47 insolvency cases, in each of which PBGC is providing financial assistance. Based on these data, PBGC estimates that over the next three years an average of 54 insolvent plans per year will issue notices of insolvency benefit level and submit quarterly financial assistance requests. (PBGC has never received a benefit restoration notice, and none are expected.)

Based on its experience, PBGC believes that virtually all of these notices and applications are prepared by outside consultants. Consequently, plan administrators spend only a trivial amount of their own time on these transactions. PBGC estimates that the total annual hour burden of this collection of information will be 0 hours, at a cost of \$0.

13. Cost burden on the public. PBGC assumes that the average multiemployer plan subject to the regulation has about 2,329 participants, about 605 of whom are retirees. PBGC estimates the consultants' time needed to prepare, file, and distribute each notice or application as follows:

(1) For a notice of benefit reduction (5 per year): 1 hour of professional time and 7 hours of clerical time per year, or a total of 5 hours of professional time and 35 hours of clerical time per year;

(2) For a notice of insolvency (10 per year): 1 hour of managerial time, 1 hour of professional time, and 7 hours of clerical time per notice, or a total of 10 hours of managerial time, 10 hours of professional time, and 70 hours of clerical time per year;

(3) For a notice of insolvency benefit level (54 per year): 75 hours and 40 minutes of managerial time, one hour of professional time, and 15 hours and 8 minutes of clerical time per notice, or a total of 4,086 hours managerial time, 54 hours of professional time, and 817 hours and 12 minutes of clerical time per year;

(4) For an initial application for financial assistance (7 per year): 4 hours of managerial time per application, or a total of 28 hours of managerial time per year; and

(5) For non-initial applications for financial assistance (248 per year): 2 hours of managerial time per application, or a total of 496 hours of managerial time per year.

Based on experience, PBGC estimates costs of \$350 per professional hour, \$115 per managerial hour, and \$64 per clerical hour for the services of outside consultants. Thus PBGC estimates that the total annual consultants' costs will be \$612,194. PBGC estimates the annual cost of postage and supplies for distributing notices to participants to be 61 cents per participant, with a total annual cost of \$18,393. Thus, the estimated annual cost burden of the collection of information is \$630,587.

14. Cost to the government. As discussed in item 13, PBGC estimates that on average, it will annually receive 5 benefit reduction notices; 10 notices of insolvency; 54 notices of insolvency benefit level; 7 initial applications for financial assistance; and 248 non-initial applications for financial assistance.

PBGC assumes that it will take 8 hours of staff time for an initial application for financial assistance, 2 hours of staff time for non-initial applications for financial assistance, and 4 hours of staff time for other submissions. Thus, PBGC expects to spend 828 hours per year processing collections of information under the regulation. Thus, PBGC's estimated annual costs, based on a rate of \$107 per hour for PBGC staff time, is \$88,596.

15. Explanation of burden changes. The change in the estimated annual burden of this collection of information (from one hour and \$681,500 in the current OMB inventory to 0 hours and \$630,587 requested) is largely due to the proposed elimination of the requirement for annual updates of notices of insolvency.

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.

