

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Variances for Sale of Assets (29 CFR Part 4204)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0021; expires June 30, 2014)

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1. Need for collection. PBGC's regulation on Variances for Sale of Assets (29 CFR Part 4204) provides methods for relieving burdens that would otherwise be imposed by statute on parties involved in a sale of assets of a business covered by a multiemployer pension plan. Under Part 1 of Subtitle E of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (sections 4201-4225), if an employer's covered operations or obligation to contribute under a multiemployer plan ceases, the employer is generally liable to pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide that the seller will be secondarily liable if the buyer withdraws within a specified period after the sale and fails to pay withdrawal liability (section 4204(a)(1)(B) and (C)).

The regulation is issued pursuant to section 4204(c), which authorizes PBGC to vary the bond/escrow and sale-contract requirements by regulation if the variance would "more effectively or equitably carry out the purposes of [Title IV]" and to grant individual or class variances or exemptions from those requirements when warranted. Subpart B of the regulation

establishes general variances of the bond/escrow and sale-contract requirements and authorizes plans to determine whether the variances apply in particular cases. Subpart C of the regulation establishes procedures for buyers and sellers to request individual variances of the requirements from PBGC. The information collection requirements in the regulation, § 4204.11(c) and § 4204.21(d) and (e), are necessary to give to plans and PBGC, respectively, the information needed to act on variance requests.

2. Use of information. The information required by the regulation is used by plans and PBGC to determine whether employers qualify for variances of the statutory requirements.

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. Each transaction under ERISA section 4204 is unique, and the regulation requires only one submission of information per transaction. PBGC imposes no other similar reporting requirement, and no information similar to that required by the regulation exists. The information that is required, *e.g.*, specific financial information on the purchaser, cannot be obtained by PBGC or plans from any other source.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Since each transaction under ERISA section 4204 is unique, each collection of information under the regulation occurs only once. Without this collection of information, plans and PBGC would be unable to act on requests for variances and

exemptions from the bond/escrow and sale-contract requirements, and sales of the assets of businesses covered by multiemployer plans would be discouraged or made more costly by the need to comply with these requirements to avoid withdrawal liability.

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) (December 2, 2013, at 78 FR 72128), and the other pursuant to 5 CFR § 1320.5(a)(1)(iv) (March 19, 2014, at 79 FR 15361). No public comments were received in response to either notice.

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

10. Confidentiality. Under § 4204.21(a), an employer that is unwilling to disclose confidential financial information to a plan can apply to PBGC for a variance, rather than to the plan. 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 its experience, PBGC estimates that employers submit 11 variance requests per year to plans under § 4204.11 and 1 request per year to PBGC under § 4204.21. Based on its experience, PBGC believes that virtually all of these submissions – except for the plan responses to variance requests – are prepared by outside consultants and estimates that a plan administrator spends no more than 15 minutes of managerial time to respond to each of the 11 variance requests made to them. Accordingly, PBGC estimates that the annual hour burden of this collection of information is two hours and 45 minutes, with an estimated cost to respondents of \$211.64.

PBGC assumes an average rate of \$76.96 per hour for in-house costs at the compensation and benefits manager level. This estimate is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.¹
- The in-house hours performed by a compensation and benefits manager (occupational code 11-3111) are at a mean hourly wage rate \$53.87 per hour, \$76.96 per hour including benefits.²

Accordingly, PBGC estimates that the annual hour burden of this collection of information is 2 hours and 45 minutes, with an estimated cost to respondents of \$211.64 (2.75 x \$76.96 = \$211.64).

¹ <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

² <http://www.bls.gov/oes/current/oes113111.htm>.

13. Cost burden on the public. The total estimated annual cost burden of the collection of information is \$1,296.70 based on 15.75 hours of outside professional time). This estimate is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.³
- The outside consultant hours will be performed by a combination of professional lawyers (occupational code 23-1011 at a mean hourly wage rate of \$63.46, \$90.66 per hour including benefits) and actuaries (occupational code 15-2011 at a mean hourly wage rate of \$51.80, \$74.00 per hour including benefits).⁴ This comes to a blended hourly wage of \$57.63, \$82.33 per hour including benefits.

PBGC estimates that the completion of each request to a plan takes 1 hour of professional time, that the completion of the plan's response takes 15 minutes of professional time, and that the completion of a request to PBGC takes 2 hours of professional time, or a total of 15.75 hours of outside professional time. Thus, the total cost of outside professional time is \$1,296.70 (\$82.33 x 15.75 hours).estimate.

14. Cost to the government. As noted in item 12, PBGC estimates that employers submit 1 variance request per year to PBGC. PBGC estimates that the processing of each request by PBGC takes 10 hours and performed by a combination of attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5). Assuming a blended rate of \$69.76 per hour (\$48.83 attributable to wages⁵ and \$20.93 attributable to benefits), PBGC estimates that the total annual cost to the government is \$697.60 (1 request x 10 hours x \$69.76 per hour).

³ <http://www.bls.gov/news.release/ecec.nr0.htm> (see first paragraph).

⁴ <http://www.bls.gov/oes/current/oes231011.htm> and <http://www.bls.gov/oes/current/oes152011.htm>.

⁵ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf .

15. Explanation of burden changes. The hour burden has not changed from the current inventory. The cost burden has decreased from \$5,513 to \$1,296.70, due to PBGC's use of different assumptions for estimating costs.

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.