

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0034; expires June 30, 2014)

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1. Need for collection. Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 (“ERISA”) requires that the Pension Benefit Guaranty Corporation (“PBGC”) prescribe regulations for the allocation of a multiemployer plan’s total unfunded vested benefits in the event of a “mass withdrawal,” *i.e.*, either (1) a plan termination due to the withdrawal of every employer or (2) a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. Pursuant to this statutory requirement, PBGC has promulgated subpart B (Redetermination of Withdrawal Liability Upon Mass Withdrawal) of its regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219). Subpart B also provides rules under ERISA section 4209(c), dealing with an employer’s liability for *de minimis* amounts if the employer withdraws in a “substantial withdrawal,” *i.e.*, a withdrawal of substantially all employers within one year (without regard to whether there is an agreement or arrangement to withdraw).

The purpose of subpart B is to protect plan participants and beneficiaries against loss of nonguaranteed vested benefits, and the multiemployer plan insurance program against large claims, by requiring that all unfunded vested benefits be allocated to withdrawing employers. In

a non-termination mass withdrawal case, the allocation of unfunded vested benefits to withdrawing employers also reduces the burden on employers that remain in the plan, thus encouraging continuation of the plan. The reporting requirements in the regulation further these purposes by giving employers timely notice of the mass withdrawal or substantial withdrawal and advising them of their rights and liabilities arising therefrom and by providing notice to PBGC so that it can monitor the plan.

Submissions to PBGC under the regulation are of two types: notices (that a mass withdrawal or substantial withdrawal has occurred) and certifications (that liability of a particular kind arising from the withdrawal has been determined and assessed). All notices and certifications must include information to identify the plan, the plan sponsor, and any representative authorized to act for the plan sponsor. In addition, each notice must identify the time when the mass withdrawal or substantial withdrawal occurred and describe the withdrawal and its effects on the plan. This information identifies the specific event covered by the notice (since a plan may undergo more than one of either type of withdrawal covered by the regulation), permits verification of the notice's timeliness, and helps PBGC assess the possible impact of the event on participants and the multiemployer plan insurance program. Each certification informs PBGC that a specific type of liability under the regulation has been determined and assessed to employers.

For a substantial withdrawal, the required notice and certification are combined. For a mass withdrawal, where assessments of liability to employers are typically made after the notice of mass withdrawal is due, certifications are made separately, and must identify which of the two types of mass withdrawal liability they relate to. For liability that must be based on a new

determination of a plan's unfunded vested benefits ("UVBs"), the certification must also tell PBGC that the UVBs were properly determined and must include a copy of any special plan rules for allocating the UVBs among employers, to enable PBGC to see how the allocation differs from that provided for in the regulation.

Notices to employers under the regulation are also of two types: notices that a mass withdrawal or substantial withdrawal has occurred and notices assessing liability of a particular kind arising from the withdrawal. A notice of withdrawal must identify when the mass withdrawal or substantial withdrawal occurred, describe the effects of the withdrawal, and state that any withdrawal liability payments currently being made should continue. This information identifies the specific event covered by the notice (since a plan may undergo more than one of either type of withdrawal covered by the regulation) and helps employers understand the withdrawal and assess its impact on them.

Notices of liability to employers must state the type and amount of liability being assessed, the schedule for paying the liability, and a demand for payment. The first liability notice for a mass withdrawal must also state when the plan expects to issue the second liability notice (there are two types of liability assessed, and one is determined earlier than the other). In addition, if an employer receives a notice of mass withdrawal but is determined not to be liable for one or both types of mass withdrawal liability, the plan sponsor must give the employer a notice of that fact.

Notices of withdrawal for concurrent mass and substantial withdrawals may be combined, and the first mass withdrawal liability notice may also be combined with the notice of

liability for a substantial withdrawal or with a notice of initial withdrawal liability under ERISA section 4219(b)(1).

2. Use of information. PBGC uses the information submitted under the regulation to identify plans that have undergone mass withdrawals or substantial withdrawals, and to monitor plans' compliance with the provisions of the regulation and ERISA dealing with mass withdrawal liability and liability for *de minimis* amounts by employers that withdraw from a plan in a plan year in which a substantial withdrawal occurs.

The notices of withdrawal to employers alert them that they may have to pay additional withdrawal liability. The subsequent liability notices to employers tell them the amount (if any) of that liability (broken down by type) and the schedule for paying it. The formal demand for payment in the notices of liability initiates the employer liability assessment and collection process and triggers an employer's rights to review of its assessment.

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. To avoid duplication, the regulation provides that the notice of termination required to be filed with PBGC in accordance with 29 CFR Part 4041A, Subpart B, will serve as the notice of mass withdrawal to PBGC for a mass-withdrawal-terminated plan. The remaining notices and certifications are unique and are not duplicative of any other reporting requirement. No information similar to that required by the regulation exists.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Because submission of information under the regulation is required only upon the occurrence of specified events that occur relatively rarely, each collection of information under the regulation occurs only once.

Without the information reported to PBGC, PBGC's ability to monitor plans' compliance with the provisions of the regulation and ERISA dealing with mass withdrawal liability and liability for *de minimis* amounts by employers that withdraw from a plan in a plan year in which a substantial withdrawal occurs would be significantly impaired. A delay in reporting would leave PBGC without timely notice of events that could adversely affect the insurance system.

Without the information reported to employers, employers would not know how much liability to pay or when to pay it, and plans would not receive funds needed to pay benefits to participants and beneficiaries. A delay in providing the required information could jeopardize collection from employers with financial difficulties.

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 the December 2013 notice or the March 2014 notice.

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. The hour burden and cost burden estimates herein are based on the following assumptions:

(1) There are 6 mass withdrawals and 3 substantial withdrawals subject to the requirements of the regulation each year. (Notice of a mass withdrawal that results in plan termination is given under 29 CFR Part 4041A (OMB control number 1212-0020) rather than under this regulation.)

(2) All reporting requirements for a mass withdrawal are completed within a year following the occurrence of the mass withdrawal.

(3) A multiemployer plan subject to the requirements of the regulation has about 35 employers.

(4) All employers in a plan that undergoes a mass withdrawal are liable for redetermination liability (although in fact many are typically not so liable).

(5) Since any notice to an employer of non-assessment of mass withdrawal liability is given in place of one of the liability notices that would otherwise go to that employer (and be less burdensome to give), such notices may be ignored for purposes of estimating burden.

As far as in-house labor is concerned, the time needed to fulfill the reporting requirements for each mass withdrawal subject to the regulation is estimated as follows:

(1) For the notices of mass withdrawal to employers, 15 minutes of managerial time and 17.5 minutes of clerical time.

(2) For the assessment of redetermination liability to employers, 30 minutes of managerial time and 17.5 minutes of clerical time.

(3) For the assessment of reallocation liability to employers, 30 minutes of managerial time and 17.5 minutes of clerical time.

(4) For the notice of mass withdrawal to PBGC, 20 minutes of managerial time.

(5) For the certification to PBGC that redetermination liability has been determined and assessed, 5 minutes of managerial time.

(6) For the certification to PBGC that reallocation liability has been determined and assessed, 5 minutes of managerial time.

The time needed to fulfill the reporting requirements for each substantial withdrawal subject to the regulation is estimated as follows:

(1) For the notices of withdrawal to employers, 15 minutes of managerial time and 17.5 minutes of clerical time.

(2) For the notices of liability to employers, 30 minutes of managerial time and 17.5 minutes of clerical time.

(3) For the combined notice and certification to PBGC, 5 minutes of managerial time.

PBGC assumes an average rate of \$76.96 per hour for in-house costs at the compensation and benefits manager level and an average rate of \$21.37 per hour for in-house costs at the office and administrative staff support 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 of \$53.87 per hour, \$76.96 per hour including benefits.

The in-house hours performed by office and administrative support staff (occupational code 43-9000), are at a mean hourly wage rate \$14.96 per hour, \$21.37 per hour including benefits).²

Accordingly, PBGC estimates that the annual hour burden of this collection of information is ((6 mass withdrawals x 1.75 hours of managerial time) + (3 substantial withdrawals x .833 hours of managerial time) + (6 mass withdrawals x .875 hours of clerical time) + (3 substantial withdrawals x .583 hours of clerical time)) = 20 hours, with an estimated cost to respondents of (7 x \$21.37) + (13 x \$76.96) = \$149.59 + \$1,000.48 = \$1,150.07 .

13. Cost burden on the public. PBGC estimates the cost of postage and supplies for distributing notices to employers at 61 cents per employer, and assumes a cost of \$82.33 per professional hour, \$76.96 per managerial hour, and \$35.74 per clerical hour for the services of outside consultants, based on the following assumptions:

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

² http://www.bls.gov/oes/current/oes_nat.htm#43-0000 (see "Office and Administrative Support Workers).

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.³
- Outside consultant hours 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 Weighting these two rates equally results in a blended rate for professional consulting services of \$82.33.
- Outside consultant hours performed by a compensation and benefits manager (occupational code 11-311, are at a mean hourly wage rate \$53.87 per hour, \$76.96 per hour including benefits).⁵
- Outside consultant hours performed by a legal clerical support staff (occupational code 23-2000, are at a mean hourly wage rate \$25.02 per hour, \$35.74 per hour including benefits).⁶.

The outside consultant time needed to fulfill the reporting requirements for each mass withdrawal subject to the regulation is estimated as follows:

- (1) For the notices of mass withdrawal to employers, 15 minutes of managerial time and 17.5 minutes of clerical time.
- (2) For the assessment of redetermination liability to employers, 30 minutes of managerial time, 2 hours and 30 minutes of professional time, and 17.5 minutes of clerical time.
- (3) For the assessment of reallocation liability to employers, 30 minutes of managerial time, 19 hours and 30 minutes of professional time, and 17.5 minutes of clerical time.
- (4) For the notice of mass withdrawal to PBGC, 20 minutes of managerial time.
- (5) For the certification to PBGC that redetermination liability has been determined and assessed, 5 minutes of managerial time.
- (6) For the certification to PBGC that reallocation liability has been determined and assessed, 5 minutes of managerial time, and 5 minutes of professional time.

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.bls.gov/oes/current/oes113111.htm>

⁶ http://www.bls.gov/oes/current/oes_nat.htm#23-0000 (see “Legal Support Workers”).

The outside consultant time needed to fulfill the reporting requirements for each substantial withdrawal subject to the regulation is estimated as follows:

(1) For the notices of withdrawal to employers, 15 minutes of managerial time and 17.5 minutes of clerical time.

(2) For the notices of liability to employers, 30 minutes of managerial time, 2 hours and 30 minutes of professional time, and 17.5 minutes of clerical time.

(3) For the combined notice and certification to PBGC, 5 minutes of managerial time.

Based on the estimates in item 12, therefore, the estimated annual cost burden of the collection of information is $(531 \times \$0.61) + (7 \times \$35.74) + (13 \times \$76.96) + (140 \times \$82.33) = \$323.91 + \$250.18 + \$1,000.48 + \$11,526.20 = \$13,100.77$.

14. Cost to the government. PBGC assumes that as noted in item 12, it receives 6 notices and 6 certifications per year for a single mass withdrawal and 3 combination notice and certifications per year for a single substantial withdrawal and performed by a combination of attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5). PBGC estimates that it takes $(6 \times 6 \text{ hours}) + (6 \times 6 \text{ hours}) + (6 \times 6 \text{ hours}) + (3 \times 6 \text{ hours}) = 36 + 36 + 36 + 18 \text{ hours} = 126 \text{ hours}$ of staff time to process these submissions. Assuming a blended rate of \$69.76 per hour (\$48.83 attributable to wages⁷ and \$20.93 attributable to benefits), PBGC estimates that the total annual cost to the government is \$8,789.76 (126 hours x \$69.76 per hour).

15. Explanation of burden changes. The hour burden has increased (from 12 to 20 hours) due to an increase in the number of mass withdrawals per year (from 3 to 6 per year). The cost

⁷ http://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/14Tables/pdf/DCB_h.pdf .

burden has decreased from \$50,744.95 to \$13,100.77 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.