

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0044; expires June 30, 2014)

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

1. Need for collection. Section 4207 of the Employee Retirement Income Security Act of 1974 (“ERISA”) provides for the Pension Benefit Guaranty Corporation (“PBGC”) to promulgate regulations for the reduction or elimination of an employer’s complete withdrawal liability under certain circumstances and for the adoption by plans of alternative rules for the abatement of complete withdrawal liability. Pursuant to section 4207, PBGC has promulgated its regulation on Reduction or Waiver of Complete Withdrawal Liability (29 CFR Part 4207).

Under the regulation, an employer that believes it meets the requirements for abatement makes application to the plan for an abatement determination (§§ 4207.3(a) and 4207.9(a)). When the plan makes its determination, it so notifies the employer (§§ 4207.3(b) and 4207.9(a)). An employer that has re-entered a plan may furnish a bond or escrow for the benefit of the plan, instead of making withdrawal liability payments, pending a later plan determination as to whether all the abatement requirements are met. An employer that furnishes a bond or escrow must so notify the plan (§ 4207.4(c)). When the plan makes an abatement determination following the furnishing of a bond or escrow, it must so notify the bonding or escrow agent (§§ 4207.3(b) and 4207.9(a)).

Applications for abatement simply identify the employer and the withdrawal and set forth the basis for the employer's entitlement to abatement of its liability. A plan's notice to the employer in response to the abatement application states whether or not the liability has been abated and explains the consequences of the decision. An employer's notice to a plan that a bond or escrow has been furnished identifies the bonding or escrow agent and the withdrawal liability payments that the employer is withholding, and states the amount of the bond or escrow. A plan's notice to a bonding or escrow agent of an abatement determination may be simply a copy of the plan's notice to the employer.

The regulation permits plans to adopt abatement rules tailored to their particular circumstances, and also sets forth the standards under which PBGC will approve plan rules and the procedures for requesting such approval (§ 4207.10).

A request for PBGC approval of plan abatement rules must identify the plan and include copies of the new rules, the plan's most recent actuarial valuation (to assure that the rules are not adverse to the interests of plan participants and the PBGC insurance program), and a certification that notice of the rules and the application has been given to contributing employers and participants' collective bargaining representatives.

2. Use of information. Plans use the information in employers' abatement applications to determine whether complete withdrawal liability should be abated. The other notices provided for in the abatement application process serve to inform the plan, the employer, and the bonding or escrow agent of other parties' actions.

PBGC uses the information in an application for approval of plan abatement rules to evaluate the rules in the context of the plan's particular circumstances and financial condition and to determine whether the amendment is adverse to the interests of plan participants and beneficiaries or will significantly increase PBGC's risk of loss with respect to the plan.

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 application and notice required under the regulation is triggered by a unique event (an abatement situation, or a plan's adoption of abatement rules covered by the regulation), and thus duplication is not an issue. Other than the actuarial report required as part of a plan's application for PBGC approval of abatement rules, no information similar to that required by the regulation exists. The actuarial report called for is the plan's most recent, which is routinely prepared for other purposes (but is not otherwise routinely sent to PBGC).

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Reporting under the regulation is required only upon the occurrence of a specified event (an abatement situation, or a plan's adoption of abatement rules covered by the regulation) that occurs relatively rarely. Without the information required by the regulation, employers and plans would be hindered in making and processing abatement requests, and PBGC would be hindered in the performance of its statutory duties.

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. 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 100 employers apply to plans each year for abatement of complete withdrawal liability. PBGC estimates that a plan's response to an employer's abatement application (including a notice to a bond/escrow agent if required) takes about 15 minutes of in-house managerial time to prepare.

Based on experience, PBGC estimates that it will receive 1 request per year for approval of plan abatement rules under the regulation and that a request takes 30 minutes of in-house managerial time to prepare. This time estimate includes the time needed to give notices to employers and unions of an application for PBGC approval of plan abatement rules, which would typically be part of the notices regarding the adoption of the new rules as required under ERISA section 4214.

PBGC also believes, based on its experience, that virtually all of the professional services involved in preparing these applications are performed by plans' outside consultants. Accordingly, PBGC estimates that the annual hour burden of this collection of information is $(100 \times .25 \text{ hours}) + (1 \times .5 \text{ hours}) = 25 \text{ hours} + .5 \text{ hours} = 25 \text{ hours and } 30 \text{ minutes}$, with an estimated cost to respondents of \$1,962.48.

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

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. Based on the estimate in item 12 that professional consultants spend 1 hour in preparing each of 100 applications under the regulation, the total annual cost burden under the regulation is estimated to be $100 \times \$82.33 = \$8,233$.

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.

14. Cost to the government. PBGC assumes that, as noted in item 12, it will receive 1 submission per year under the regulation. PBGC estimates that it takes 8 hours of staff time to process a submission 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 \$558.08 (1 request x 8 hours x \$80 per hour).

15. Explanation of burden changes. The hour burden has not changed from the current inventory. The cost burden has decreased from \$35,000 to \$8,233, due to PBGC's use of different assumptions for estimating costs.

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 .

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.