

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 a revision of a currently approved collection (OMB control number 1212-0022; expires June 30, 2017)

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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 May 28, 2014, PBGC published a final rule that amended 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. 30459). One of the changes shortened 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 requirement to provide 120 days advance notice remains in effect where a compliance determination is requested and for transactions involving a transfer of plan assets or benefit liabilities. The final rule will be effective June 27, 2014.

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 on January 29, 2014 (79 FR 4642). No comments were received on the information collection request.

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 \$230.88.

These numbers result from the following calculations: managerial time expended within the plan is one half of .25 hours times 18 = $\frac{1}{2} \times 9$ hours for notices relating to mergers (or 2.25 hours), plus one half of 3 plans times .5 hours per plan for notices relating to spin-offs or significantly affected plans (or .75 hours) for a total of 3 hours (2.25 hours + .75 hours). 3 hours times \$76.96 per hour of managerial time equals a cost of \$230.88.

PBGC assumes an average rate of \$76.96 per hour for in-house costs (entirely 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
- All of the in-house hours will be performed by a compensation and benefits manager (occupational code 11-3111, mean hourly wage rate \$53.87 per hour using a load factor of 1.43, \$76.96 per hour including benefits).

13. Cost burden on the public. The total estimated annual cost burden of the collection of information is \$1,342.34 based on 16.5 hours of outside consultant 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.²
- 3.0 of the 16.5 outside consultant hours will be 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).³
- 13.5 of the 16.5 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.

The total cost of managerial time is 3.0 x \$76.96, or \$230.88 and the total cost of professional time is 13.5 x \$82.33, or \$1,111.46. Thus, the total cost of outside consultant time is \$1,342.34 (\$230.88 + \$1,111.46).

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

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

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

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

14. Cost to the government. As discussed in item 12, 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.

PBGC estimates are based on the following:

- 15 hours of staff time per response for processing a notice of merger involving a non-significantly affected plan will be performed by a combination of attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5).
- 30 hours of staff time per response for processing a spin-off or a transaction involving a significantly affected plan will be 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 \$40,809.60 ((3 merger notice responses x 15 hours x \$69.76 per hour) + (18 spin-off notice responses x 30 hours x \$69.76)).

15. Explanation of burden changes. The cost burden of this collection of information has decreased from \$1,885.97 to \$1,342.34 due to the reduction of the notice period for mergers under the final rule.

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.

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

18. Exceptions to certification statement. There are no exceptions to the certification statement.