

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 a revision of a currently approved collection (OMB control number 1212-0032; expires June 30, 2017)

CONTACT: 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, (§§ 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 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). Among other changes, the final rule eliminated the requirement under §§ 4281.43 and 4281.44 that sponsors provide annual updates to the notice of insolvency to PBGC and to participants and

beneficiaries who did not receive notices of insolvency benefit level. The final rule will be effective June 27, 2014.

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 note the date of a prior submission of a plan document or actuarial valuation rather than resubmitting the document. After issuance of a notice of insolvency, a plan sponsor need only issue an abbreviated annual update for subsequent insolvency years. Also, no annual update for an insolvency year is required for participants and beneficiaries who receive a notice of insolvency benefit level for that year.

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. 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. 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 10 mass-withdrawal-terminated plans will become insolvent each year over the next three years, and each of these plans will issue notices of insolvency; 5 plans per year are expected to issue benefit reduction notices. There currently are 51 insolvency cases, in each of which PBGC is providing financial assistance. Based on this data, PBGC estimates that an average of 54 insolvent plans per year will issue notices of insolvency benefit level, and will submit quarterly financial assistance requests, over the next three years.

(PBGC has never received a benefit restoration notice, and none are expected.)

PBGC believes, based on its experience, that virtually all of these notices and applications are prepared by outside consultants and estimates that a plan administrator spends no more than a few minutes in engaging the services of such consultants. Accordingly, PBGC estimates that the annual hour burden of this collection of information is less than one hour.

13. Cost burden on the public. PBGC estimates the cost of postage and supplies for distributing notices to participants at 61 cents per participant. The cost burden calculation is based on the following assumptions:

- Wage rates account for 70% of total labor costs, with the remaining 30% attributable to benefits costs.¹
- 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

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

of \$51.80 using a load factor of 1.43, \$74.00 per hour including benefits).² 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).³
- 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).⁴

Based on the assumption that the average multiemployer plan subject to the regulation has about 2,329 participants, about 605 of whom are retirees, PBGC estimates the 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.

² <http://www.bls.gov/oes/current/oes231011.htm> and <http://www.bls.gov/oes/current/oes152011.htm>

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

⁴ http://www.bls.gov/oes/current/oes_nat.htm#23-0000 (see “Legal Support Workers”).

(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.

(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.

Therefore, the estimated annual cost burden of the collection of information is $(922.2 \times \$35.74) + (4,620 \times \$76.96) + (69 \times \$82.33) + (21,243 \times \$0.61) = \$32,959.43 + \$355,555.20 + \$5,680.77 + \$12,958.23 = \$407,153.63$.

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 expects to spend 828 hours per year processing collections of information under the regulation based on the following assumptions:

- Eight hours of staff time for an initial application for financial assistance performed by an auditor (range of salary GS 11-14, average GS 13 step 5).
- Two hours of staff time for non-initial applications for financial assistance performed by an auditor (range of salary GS 11-14, average GS 13 step 5).
- Four hours of staff time for other submissions performed by an auditor (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 \$57,761.28 ((7 responses for initial applications for financial assistance x 8 hours at 69.76 per hour) + (248 responses for non-initial applications for financial assistance x 2 hours x \$69.76 per hour) + (69 responses for other submissions x 4 hours x \$69.76 per hour)).

15. Explanation of burden changes. The cost burden has decreased from \$441,454.97 to \$407,153.63, due to the elimination under the final rule of the annual update requirement.

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.

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