

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Notice of Insolvency (29 CFR Part 4245)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0033; expires June 30, 2017)

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1. Need for collection. ERISA section 4245(e) requires two types of notice: a “notice of insolvency,” stating a plan sponsor’s determination that the plan is or may become insolvent, and a “notice of insolvency benefit level,” stating the level of benefits that will be paid during an insolvency year. Section 4245(e)(4) provides that these notices are to be given in accordance with rules promulgated by PBGC. PBGC’s regulation on Notice of Insolvency, 29 CFR Part 4245, establishes the procedure for complying with these notice requirements. The regulation allows a single notice of insolvency to cover more than one plan year, thereby generally permitting plan sponsors to file only a single notice (a notice of insolvency benefit level) for any future year. The regulation also prescribes the contents of these notices, the manner in which they must be given, and the time limits for their issuance. The recipients of these notices are PBGC, contributing employers, employee organizations representing participants, and participants and beneficiaries.

On April 3, 2015 (80 Fed. Reg. 18172), PBGC published a proposed rule that would require that plans file notices of insolvency and of insolvency benefit level under this regulation electronically, starting 2016.

2. Use of information. PBGC uses the information submitted under the regulation to estimate cash needs for financial assistance to troubled plans. The collective bargaining parties use the information to decide whether additional contributions will be made to the plan in order to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information to make personal financial decisions.

3. Information technology. PBGC has proposed that notices that are filed with PBGC under this regulation be filed electronically, starting 2016.

4. Duplicate or similar information. To avoid duplication, the regulation permits plan sponsors to note the date of a prior submission to PBGC of identical information, rather than requiring resubmission. Duplication has also been avoided by allowing a single notice of insolvency to cover more than one plan year.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs early warning of threatened insolvencies, and their impact on benefit payments, in order to be able to estimate its cash needs for providing financial assistance to troubled plans. Once a plan sponsor determines that a plan is or may become insolvent, a lack of expeditious notification may delay PBGC assistance. Less than prompt notice to the collective bargaining parties can also hinder chances for bargaining to increase contributions to the plan. Also, delay in notification may interfere with the financial decisions of participants and beneficiaries and delay their search for alternative income sources. In any event, the regulation reduces the frequency of notices that would otherwise be required under the statute by permitting a single notice of insolvency to cover more than one plan year.

7. Consistency with guidelines. The information collection is not conducted in a manner inconsistent with 5 CFR § 1320.5(d)(2).

8. Outside input. On April 3, 2015 (80 Fed. Reg. 18172), PBGC published a proposed rule that would require electronic filing of notices with PBGC under this regulation. Comments are due by June 2, 2015.

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's experience has been that virtually all multiemployer plans that become insolvent are plans terminated by mass withdrawal, and thus expects that all of the plans that become insolvent over the next three years will be mass-withdrawal-terminated plans. Plans terminated by mass withdrawal that become insolvent are subject to the notice requirements in section 4281 of ERISA rather than section 4245. Accordingly, PBGC expects that no plans will issue new notices of insolvency under section 4245 during the next three years. Currently, there is only one insolvent plan that has not terminated by mass withdrawal and thus is subject to the requirement to issue annual insolvency

benefit level notices under section 4245, and PBGC expects this plan to continue issuing such notices for the next three years.

For purposes of estimating the time required to comply with the regulation, PBGC assumes (based on experience) that plans subject to the regulation generally submit a single notice of insolvency, covering all future years (although that does not mean that every future year will necessarily be an insolvency year), and provide notices of insolvency benefit level for the first insolvency year only to retirees, as permitted by the regulation. PBGC also estimates that the average plan subject to the regulation covers employees represented by 2 unions and has about 35 contributing employers and 1,316 participants, about 707 of whom are retirees.

However, PBGC also believes, based on its experience, that virtually all of these notices are prepared and distributed 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 a small fraction of an hour, with an estimated cost to respondents of \$0. Thus, the reduction of time resulting from mandatory e-filing need not be taken into account. 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 percent of total labor costs, with the remaining 30 percent 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.

The cost burden calculation is based on the following assumptions:

- Wage rates account for 70 percent of total labor costs, with the remaining 30 percent 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

At its last submission of this collection, PBGC estimated that the time required to prepare notices under the regulation was (1) for notices of insolvency, 1 hour of managerial time and 1 hour of professional time, (2) for first-year notices of insolvency benefit level, 58 hours and 55 minutes of managerial time and 1 hour of professional time, and (3) for subsequent-year notices of insolvency benefit level, 1 hour of professional time and 1 hour of managerial time. PBGC further estimated that the clerical time required for distributing notices under the regulation (about 1 minute per distributee) was 22 hours and 30 minutes for notices of insolvency and first-year notices of insolvency benefit level (which would be issued together) and 22 hours and 30 minutes for subsequent-year notices of insolvency benefit level.

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”).

Accordingly, PBGC estimated the average time required to prepare and distribute notices under the regulation each year at about 84 hours and 30 minutes for a plan filing for the first time (59 hours and 55 minutes of managerial time, 2 hours of professional time, and 22 hours and 33 minutes of clerical time) and about 24 hours and 30 minutes for a non-first-time filer (1 hour each of managerial and professional time and 22 hours and 30 minutes of clerical time).

Because PBGC assumed no first-time filers and only one non-first-time filer each year for the next three years, PBGC estimated that the total average annual time spent in preparing and distributing these notices would be 24 hours and 30 minutes (1 hour of managerial time, 1 hour of professional time, and 22 hours and 30 minutes of clerical time) at an annual cost of \$963.44 ($(1 \times 76.96) + (1 \times 82.33) + 22.5 \times 35.74$)).

With the proposed rule changes, PBGC estimates that these costs will be reduced by 25 percent, from \$963.44 to \$722.58.

Postage and supplies are estimated at 61 cents per distributee for a single notice and 78 cents per distributee for a notice of insolvency and a first-year notice of insolvency benefit level that are sent together. As estimated in item 12, the notices are distributed to 1,316 participants, 35 employers, and 2 unions. Thus, the estimated annual cost of postage and supplies for distributing notices under the regulation is about \$825.

Accordingly, the estimated annual cost burden of the regulation is \$1547.58 (\$722.58 + \$825).

14. Cost to the government. As noted in item 12, PBGC estimates that it will receive a submission from one plan per year under the regulation. PBGC's estimates that it will take 8

hours of staff time to process one submission under the regulation (either a notice of insolvency and a notice of insolvency benefit level from a plan filing for the first time or a notice of insolvency benefit level alone) 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 wages⁷ 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 change in burden estimates is a result of the proposed rule changes and a change in PBGC's 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.

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