

Supporting Statement

OMB# 1545-2260

Temporary Regulations [REG-102648-15]

Temporary Regulations [REG-123640-15]

Revenue Procedure [2015-34]

Suspension of Benefits under the
Multiemployer Pension Reform Act of 2014

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

On June 19, 2015, the Treasury Department and the IRS published temporary and proposed regulations under section 201(c) of the Multiemployer Pension Reform Act of 2014 (MPRA) and IRC § 432(e)(9). The collection of information contained in those regulations implements the provisions under § 432(e)(9) allowing a multiemployer defined benefit pension plan in critical and declining status to suspend benefits, following application to the Treasury Department for approval of the proposed suspension and final authorization by the Treasury Department.

Section 432(e)(9)(H) requires that, prior to final authorization, a participant vote must be conducted. These temporary regulations, which modify the existing collection of information approved by the OMB under control number 1545-2260, specify the procedures for conducting the vote. The prior set of regulations reserved most of those provisions, and no burden information on the vote was included in the OMB submission. Accordingly, this submission is necessary to inform the OMB of the change in the burden information under the existing collection.

2. USE OF DATA

The information collected is generally required to conduct a vote, pursuant to § 432(e)(9)(H), of participants and other eligible voters regarding whether to move forward with implementing an approved suspension of pension benefits under a multiemployer defined benefit pension plan in critical and declining status. This is a one-time collection for each plan sponsor/respondent. As required under MPRA, the information in the collection (other than any personally identifiable information with respect to participants and beneficiaries) will be shared with interested parties and the general public via the Federal Register and/or the Treasury website.

These temporary regulations provide guidance on the following responsibilities of the plan sponsor/respondent related to the participant vote: providing the ballot to the Treasury

Department or to the Treasury Department's contracted service provider¹; furnishing a list of eligible voters; furnishing the eligible voters' last known postal and email addresses; and furnishing the individualized estimate provided to all eligible voters as part of the earlier notice described in § 432(e)(9)(F) (or, if the individualized estimate is no longer accurate for an eligible voter, a corrected version of that estimate) so that it can be included with the ballot. These materials must be provided no later than 7 days after the date the Treasury Department has approved an application for a suspension of benefits. The temporary regulations also require plan sponsors to make reasonable efforts to locate eligible voters whose mailed ballots were returned as undeliverable.

These temporary regulations provide that the plan sponsor is responsible for paying all costs associated with the ballot package, including the costs associated with printing, assembling and mailing the ballot, even though some of those tasks are performed by the Treasury Department or the contracted service provider.

In addition to responsibilities associated with assembling and distributing the ballot package, the temporary regulations specify procedures for the counting and tabulation of the vote and the determination of whether a majority of eligible voters have voted to approve or reject the proposed suspension. These responsibilities and associated costs are borne by the Treasury Department and its contracted service provider rather than by the plan sponsors/respondents.

The temporary regulations also provide that the plan sponsor must notify certain eligible voters (using an electronic communication method) that the ballot package is being mailed by first-class U.S. mail. The eligible voters who must be notified under this rule are those who received the notice of the proposed suspension under § 432(e)(9)(F) in electronic form and those who regularly receive electronic communications from the plan sponsor. The plan sponsor is also permitted to send this notification to any other eligible voters for whom the plan sponsor has an electronic mailing address. This notification must be sent promptly after the plan sponsor is informed of the distribution date of the ballot. This notification in electronic form ensures that those eligible voters who ordinarily expect to receive communications from the plan sponsor in electronic form are aware that a ballot package will arrive via first-class U.S. mail. Under these temporary regulations, this notification is sent by the plan sponsor, rather than a service provider, so that the communication comes from a familiar source, which would make it less likely that the communication is delivered to a "spam" or "junk" mail folder.

¹ The earlier set of regulations under this collection require the plan sponsor to draft, and obtain approval from the Secretary of the Treasury, of the ballot as part of the application process. Accordingly, the time and cost attributable to drafting the ballot have already been reported to and approved by the OMB.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The temporary regulations provide that the plan sponsor must notify certain eligible voters (using an electronic communication method) that the ballot package is being mailed by first-class U.S. mail. The eligible voters who must be notified under this rule are those who received the notice of the proposed suspension under § 432(e)(9)(F) in electronic form and those who regularly receive electronic communications from the plan sponsor. The plan sponsor is also permitted to send this notification to any other eligible voters for whom the plan sponsor has an electronic mailing address. This notification must be sent promptly after the plan sponsor is informed of the distribution date of the ballot. This notification in electronic form ensures that those eligible voters who ordinarily expect to receive communications from the plan sponsor in electronic form are aware that a ballot package will arrive via first-class U.S. mail. Under these temporary regulations, this notification is sent by the plan sponsor, rather than a service provider, so that the communication comes from a familiar source, which would make it less likely that the communication is delivered to a “spam” or “junk” mail folder.

4. EFFORTS TO AVOID DUPLICATION

It is expected that the plan sponsor’s list of eligible voters, their last-known addresses, and their individualized benefit cut estimates will be derived from the information assembled and distributed to the affected individuals as part of the notice required under § 432(e)(9)(F). The plan sponsor will need to update the information to the extent necessary, but it is expected that any update would be minimal as the vote should occur not long after the notice is provided.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

No burden is imposed on small businesses. (Small businesses contribute to these multiemployer plans on behalf of employees who participate in the plans, and will be affected by the final ruling on the proposed benefit suspension. However, they have no role in the process described in this collection of information and therefore no burden is imposed on them.)

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

If the information collection is not made then respondents cannot receive the relief they have applied for and for which they may be eligible under the statute. Therefore the statutory requirements would not be satisfied. The Treasury Department would not be able to deliver program benefits or timely implement the new program. The MPRA application is filed once per relief requested.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(0) (2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5 (d) (2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On February 18, 2015, the Treasury Department issued a Request for Information on benefit suspensions under the MPRA in the Federal Register (80 FR 8578). In response to the Request for Information we received approximately 1,410 comments, most of them duplicates. Treasury has also met with several tax-exempt interested parties to listen to their input.

On June 19, 2015, the Treasury Department published temporary and proposed regulations in which comments were solicited. The comment period will close on August 18, 2015. A public hearing is scheduled for September 10, 2015.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103. However, IRC § 432(e)(9)(G)(ii) specifically requires each application to be published on the Treasury website and for Treasury to solicit comments. The revenue procedure provides that the application and notice must not include personally identifiable information with respect to participants and beneficiaries. In addition, a summary of comments (which will be publicly available) that are opposed to approval of benefit suspension is required to be provided to individuals voting on suspension. We have conducted a privacy threshold analysis and have concluded that the information under this collection is information that is required by the statute to be made public.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The burden estimates provided below do not change any of the burden estimates already provided to the OMB as part of collection number 1545-2260.

The estimated number of respondents remains 28.

We estimate that the average additional burden per respondent under this collection of information will be 2 hours: 1) 40 minutes to update the list of eligible voters and their addresses for new information since the notice required under § 432(e)(9)(F) notice was provided; 2) 40 minutes to update the individualized estimates if necessary; 3) 20 minutes to draft the statement in support of the suspension of benefits; and 4) 20 minutes to assemble and post the above information to the Treasury Department or contracted service provider.

This submission modifies the number of burden hours. The *previously estimated* burden is 13,944 hours. This submission estimates the additional burden hours as 56 (28 respondents x 2 hours = 56 hours). Accordingly, the total burden hours associated with collection number 1545-2260 should be reported as 14,000 (that is, 13,944 hours plus 56 hours = 14,000).

We estimate that an average of 1 in-house hour (plan trustees, administrators and clerical) will be spent on this collection, at an estimated average cost of \$ 200. The total in-house cost in hours is estimated at \$5,600 (\$200 x 28 respondents).

In addition, we estimate the cost in postage for distributing the ballot package, which must be paid by the plan sponsors/respondents, is \$1 per ballot package. We estimate that the total number of ballot packages that will be distributed under this collection is 168,520 (the number of participants or other eligible voters in the 28 respondent plans). Accordingly, we estimate that the total postage cost under this collection is \$168,520 (168,520 mailings x \$1). The average cost of postage per plan sponsor is not available at this time on account of the variance in number of eligible voters with respect to each plan.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

We estimate that the additional hour burden that will be contracted out by respondents to plan counsel and plan actuaries will average 1 hour per plan sponsor/respondent and that the average contracted cost will be \$400. Accordingly, we estimate that the total cost burden of the additional contracted hours will be \$11,200 (\$400 x 28 plan sponsors/respondents).

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost of the additional collection of information to the federal government available at this time.

15. REASONS FOR CHANGE IN BURDEN

The change in burden hours is attributable to the issuance of additional temporary regulations under the MPRA.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement for this collection.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

19. REASON FOR EMERGENCY SUBMISSION

There are two reasons for requesting emergency approval. First, the Treasury Department would like to issue an RFP and contract with a service provider, as permitted under the temporary regulations, by the end of the 2015 fiscal year (September 30, 2015). Second, we would like to issue the temporary regulations in time for the public to comment on them at the hearing scheduled on the prior set of regulations for September 10, 2010.

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