

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Termination of Multiemployer Plans (29 CFR Part 4041A)

STATUS: Request for modification of currently-approved collection of information (OMB control number 1212-0020; expires June 30, 2017)

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1. Need for collection. This collection of information is necessary for proper performance of agency functions under section 4041A(f) of the Employee Retirement Income Security Act of 1974 (“ERISA”), dealing with the termination of multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than \$1,750 or of nonvested plan benefits unless authorized by PBGC. Section 4041A(f)(2) authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to PBGC. PBGC’s regulation on Termination of Multiemployer Plans (29 CFR Part 4041A) implements these provisions.

Subpart B of the regulation (§§ 4041A.11 and 4041A.12) requires the plan sponsor of a terminated multiemployer plan to submit a notice of termination containing basic information necessary to alert PBGC to possible demands on the multiemployer insurance program. Where termination results from a plan’s loss of its entire contribution base through mass withdrawal of all contributing employers, the regulation requires submission of additional information that

PBGC needs to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Subparts C and D prescribe (among other things) rules under which the plan sponsor of a mass-withdrawal-terminated multiemployer plan that is closing out must give notices to participants regarding the election of alternative forms of benefit (§ 4041A.43) and may apply to PBGC for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits (§ 4041A.27).

For all termination notices under subpart B, the plan sponsor must submit:

1. Information identifying the plan, the plan sponsor, the plan sponsor's representative (if any), and the post-termination plan administrator (if other than the plan sponsor), so that PBGC knows who these parties are.
2. Information on when the plan terminated, to assure PBGC that the plan has filed the notice timely and to permit the calculation of relevant time periods, if necessary (see below).
3. A copy of the plan's most recent annual report (Form 5500), so that PBGC can check for evidence of financial difficulties that might adversely affect participants and/or PBGC.

In addition, for mass withdrawal termination notices, the plan sponsor must submit:

1. Copies of plan provisions covering the last five years, so that PBGC can determine to what extent the benefit guarantee phase-in rule under ERISA section 4022A applies.
2. Documentation of the plan sponsor's authority to operate the plan, so that PBGC can determine who is responsible for performing functions required under ERISA and PBGC regulations for terminated plans.
3. A copy of the plan's most recent actuarial valuation and a statement of any subsequent material changes, to provide additional data regarding financial difficulties that might adversely affect participants and/or PBGC.
4. Copies of Internal Revenue Service determination letters, so that PBGC can determine whether the plan is covered by Title IV of ERISA pursuant to ERISA section 4021 and whether PBGC's guarantee is affected by any tax disqualification pursuant to ERISA section 4022A.

5. Information on the plan's ability to pay benefits for the next year, to help PBGC determine whether the plan may be insolvent.
6. Information on the proposed distribution of plan assets (if all nonforfeitable benefits can be satisfied), so that PBGC can determine whether the plan may pose a risk to PBGC and whether the distribution appears to comply with the requirements of Title IV of ERISA.
7. Identification of contributing employers for the last three years (if nonforfeitable benefits cannot be fully satisfied), to help PBGC determine compliance with the withdrawal liability rules and the extent of its exposure for guaranteed benefits.

The rules in §§ 4041A.27 and 4041A.43 are necessary to ensure the consistency and adequate quality of notices required by law and to enable PBGC to determine whether the payment of benefits other than nonforfeitable benefits or benefits valued at more than \$1,750 in other than annuity form is permissible.

On April 3, 2015 (80 Fed. Reg. 18172), PBGC published a proposed rule that would require that plans file notices under this regulation electronically, starting 2016. No comments were received. On August __, 2015 (80 Fed. Reg. _____), PBGC finalized the proposed regulation without change.

2. Use of information. When a multiemployer pension plan terminates and submits a termination notice, the information in the notice is used by PBGC to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Somewhat more information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases. When PBGC receives a plan sponsor's application for approval to pay benefits or benefit forms not otherwise permitted, it uses the information to determine, as required by ERISA, whether such payments should be

permitted. When plan participants and beneficiaries receive notices from a plan sponsor regarding the election of alternative forms of benefit, they use the information to make personal financial decisions.

3. Information technology. Under the final rule, PBGC requires that notices of plan termination filed with PBGC under this regulation be filed electronically, starting 2016.

4. Duplicate or similar information. Terminating plans' most recent Form 5500s (which must be included in termination notices) are submitted by plans to a government contractor under a Form 5500 processing arrangement (known as "ERISA Filing Acceptance System 2" "EFAST2"), an all-electronic filing system that commenced January 1, 2010, and that is managed by the Department of Labor. EFAST2 receives and displays Form 5500 filings that PBGC (and the public) can usually access within one day of submission.

To avoid duplication where feasible, § 4041A.12(d) of the regulation provides that information otherwise required to be included in a termination notice need not be supplied if it duplicates information in the Form 5500 submitted with the notice.

Some of the other items required in termination notices submitted by mass-withdrawal-terminated plans may already be in the possession of other Federal agencies, for example, copies of plan and trust documents or Internal Revenue Service determination letters. However, there is no timely and reliable way to locate the required documents, particularly in view of the possibility that the reporting plan has been involved in one or more mergers or spinoffs, has changed its name or identifying number, or has submitted to Federal agencies some, but fewer than all, of the documents required under this regulation. The time lost

by PBGC in tracking down and verifying documents in other agencies' files would also impair its ability to protect the interests of plan participants and beneficiaries and prevent unreasonable loss to itself.

PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Because notices and applications under this regulation are prepared only in connection with a plan termination, each collection of information under the regulation occurs only once. If the information were not reported, PBGC's ability to protect the interests of plan participants and beneficiaries and to prevent unreasonable loss to PBGC with respect to terminated multiemployer plans would be significantly impaired.

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 under this regulation. No comments were received on the proposed rule or information collection.

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. Based on its experience, PBGC estimates that it receives 10 notices of termination from sponsors of multiemployer pension plans annually; that two of these terminations result from plan amendments and eight from mass withdrawals; and that three of the plans terminating by mass withdrawal will be sufficient (*i.e.*, will be capable of closing out by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan, although some of them may initially continue as sufficient trusts). Based on its experience, PBGC further estimates that five of these terminating plans (the three sufficient mass-withdrawal-terminated plans and both of the plans that terminate by amendment) will eventually close out and will be required to send notices of election to participants, and that PBGC will receive one request per year to pay lump sums greater than \$1,750 or to pay nonvested plan benefits.

Based on its experience, PBGC believes that virtually all of the professional services involved, and about half of the managerial and clerical services, are performed by outside consultants.

Before the final rule changes, PBGC estimated that a notice of termination for a plan terminating by amendment requires 0.5 hours of managerial time to prepare and that the more detailed notice for a plan terminating by mass withdrawal requires one hour of managerial time. PBGC also estimated that the preparation and distribution of benefit election notices for a plan that is closing out requires 22.5 minutes of managerial time and one hour and 40 minutes of clerical time, based on an estimate that a sufficient plan that is closing out offers benefit elections to 870 participants.

With the final rule changes, the second estimate (for the preparation and distribution of benefit election notices) is unchanged. However, the first estimate (for the preparation of notices of plan termination) is reduced by 25 percent (to 0.375 hours for normal termination notices, and 0.75 hours for mass withdrawal termination notices) because of the greater efficiency of e-filing.

Before the final rule changes, the estimated time required to prepare and submit or distribute notices and requests annually was therefore 10 hours and 52.5 minutes of managerial time and eight hours and 20 minutes of clerical time for a total of 19 hours and 12.5 minutes. However, the final rule changes reduce the managerial time required by 2.25 hours, to eight hours and 12.5 minutes. The total time required is thereby reduced to approximately 17 hours.

PBGC assumes an average rate of \$76.96 per hour for in-house costs at the compensation and benefits manager level and an average rate of \$21.37 per hour for in-house costs at the office and administrative staff support 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

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

- 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.
- The in-house hours performed by office and administrative support staff (occupational code 43-9000), are at a mean hourly wage rate \$14.96 per hour, \$21.37 per hour including benefits).²

Before the final rule changes, PBGC estimates that the annual hour burden of this collection of information is 19 hours and 12.5 minutes. However, the final rule changes reduce this estimate to 17 hours, with an estimated total cost to respondents of $(8.625 \times \$76.96) + (8.33 \times \$21.37) = \$663.69 + \$297.71 = \$961.69$.

13. Cost burden on the public. Based on the estimates in item 12, the estimated annual cost burden of the collection of information is \$3,850. PBGC estimates the cost of postage and supplies for distributing election notices to participants at 61 cents per participant, and assumes a cost of \$82.33 per professional hour, \$76.96 per managerial hour, and \$35.74 per clerical hour for the services of outside consultant, 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.

² http://www.bls.gov/oes/current/oes_nat.htm#43-0000 (see “Office and Administrative Support Workers).

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>

- 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

Before the final rule changes, PBGC estimated:

1. A notice of termination for a plan terminating by amendment requires 0.5 hours of managerial time to prepare and that the more detailed notice for a plan terminating by mass withdrawal requires one hour of managerial time and four hours of professional time to prepare.
2. A request for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits requires eight hours of professional time to prepare.
3. The preparation and distribution of benefit election notices for a plan that is closing out requires 22.5 minutes of managerial time and one hour and 40 minutes of clerical time (based on an estimate that a sufficient plan that is closing out offers benefit elections to 870 participants).

PBGC estimates that the final rule changes reduce these costs of professional, managerial, and clerical time by 25 percent. This cost to be reduced is \$4,427.85 [(10.875 x \$76.96) + (8.33 x \$35.74) + (40 x 82.33) = \$836.94 + \$297.71 + \$3,293.20]. Seventy-five percent of \$4,427.85 is \$3,320.89. The cost of sending notices to participants must then be added to the \$3,320.89 cost of professional, managerial, and clerical time. The cost of sending notices is \$530.70 (870 x \$0.61). \$3,320.89 + \$530.70 equals approximately \$3,850, for the total cost.

14. Cost to the government. As noted in item 12, PBGC estimates that it receives annually 10 notices of termination and one application to pay lump sums greater than \$1,750 or

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”).

to pay nonvested plan benefits performed by a combination of attorneys and actuaries (range of salary GS 11-14, average GS 13 step 5). PBGC estimates that it takes an average of 4 hours of professional staff time to process either submission. Assuming a blended rate of \$69.76 per hour (\$48.83 attributable to wages⁷ and \$20.93 attributable to benefits), PBGC estimates the total cost to the government to be \$3,069.44 (11 x 4 hours x \$69.76).

15. Explanation of burden changes. The change in burden estimates is a result of the final rule changes, an increase in the number of participants entitled to notices, 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 .