

**SUPPORTING STATEMENT FOR REQUEST FOR OMB APPROVAL
UNDER THE PAPERWORK REDUCTION ACT AND 5 CFR PART 1320**

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Qualified Domestic Relations Orders Submitted to PBGC

STATUS: Request for approval of a collection of information under the Paperwork Reduction Act; OMB control number 1212-0054, expires October 31, 2015.

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A. Justification.

1. Need for collection. The Pension Benefit Guaranty Corporation (“PBGC”) is requesting that the Office of Management and Budget (“OMB”) extend its approval of the information collection under its booklet, *Qualified Domestic Relations Orders & PBGC*, for a three-year period under the Paperwork Reduction Act.

PBGC is a federal agency that insures the benefits of over 41 million American workers and retirees in about 23,400 private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, up to certain legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. However, Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or the marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the

domestic relations order meets specific legal requirements that make it qualified, i.e., a qualified domestic relations order, or "QDRO." ERISA provides that pension plans are required to comply with only those domestic relations orders which are QDROs, and that the decision as to whether a domestic relations order is a QDRO is made by the plan administrator. Thus, as statutory trustee of terminated plans, PBGC must first determine whether any domestic relations order submitted to PBGC is qualified – i.e., is a QDRO – before any obligation to comply is triggered.

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. For several years PBGC has provided the public with model QDROs and accompanying guidance in the booklet, *Qualified Domestic Relations Orders & PBGC*, to assist attorneys, other professionals, participants and alternate payees in preparing orders for plans trusteeed by PBGC.

Before providing the model forms and the QDRO booklet, PBGC received many inquiries on QDRO requirements and PBGC's procedures for handling orders submitted for a qualification determination. In addition, many domestic relations orders, both in draft and final form, did not meet the applicable requirements under ERISA. PBGC worked with practitioners, participants and alternate payees on a case-by-case basis to ensure that their orders were amended to meet applicable requirements. This process was time-consuming for all parties and for PBGC.

Since making the booklet and the model forms available, PBGC has experienced a decrease in (1) the number of inquiries about QDRO requirements, (2) the number of orders that do not meet the applicable requirements, and (3) the amount of time that practitioners, participants and alternate payees spend to ensure that the orders meet the applicable

requirements, and the time PBGC spends to assist them in meeting the requirements. The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements.

Based on its experience in reviewing and processing domestic relations orders, PBGC is making the following changes to the QDRO booklet:

- Modifying sections relating to separate interest orders to clarify how they are administered by PBGC. Specifically, when PBGC administers a separate interest, it uses a totally severed approach, dividing the participant's benefit into two separate parts – one for the participant and one for the alternate payee. Once the order is qualified, the alternate payee's right to lifetime benefits will not be affected by the participant's death.
- Clarifying how PBGC apportions adjustments required by ERISA's limitations on benefits between an alternate payee and a participant. The clarification more fully explains the consequences of such adjustments on the benefits received by each party.

PBGC is also making other simplifying and clarifying changes to the QDRO booklet.

2. Use of information. PBGC uses the information it obtains from domestic relations orders that it has qualified to determine the proper amount and timing of benefit payments to participants and alternate payees.

3. Information technology. For informal review of a draft order, PBGC will accept a draft that is submitted electronically (by fax or email). However, the use of other technology is impracticable for domestic relations orders that are submitted to PBGC for official qualification determinations. Official qualification determinations require original signed orders (or certified or authenticated copies) issued by a state court, agency, or other instrumentality with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law. Since few, if any, states currently have technology in place to submit such orders to PBGC electronically, they must be submitted to PBGC by mail or commercial delivery service.

4. Duplication and similar information. All information required to be submitted under

this collection of information is statutorily required in order for any part of a participant's benefit to be assigned to an alternate payee, or for a former spouse of the participant to be treated as the participant's surviving spouse for benefit payment purposes. The information requested is not available from another federal agency or another source.

5. Small businesses. Not applicable.

6. Consequences of no or less frequent collection. In the absence of a domestic relations order qualified by PBGC, PBGC is prohibited from making benefit payments to an alternate payee.

7. Special circumstances. No special circumstances apply to how this collection of information is conducted.

8. Outside input. On July 10, 2015, PBGC published a 60-day notice (80 FR 39806) of intent to request an extension of this collection of information, as revised, and invited public comment by September 8, 2015. No comments were received.

PBGC published a 30-day notice on October 22, 2015 (80 FR 64026).

9. Payments and Gifts. There are no payments or gifts made in connection with this collection of information.

10. Confidentiality. Confidentiality is governed by the provisions of the Freedom of Information Act and the Privacy Act.

11. Sensitive questions. This collection of information involves no questions of a sensitive nature.

12. Hour burden on the public. PBGC expects to receive an average of 1,170 domestic relations orders annually, and estimates 1,036 of these will be prepared by attorneys or other professionals. The average hour burden for the alternate payee or participant is 0.75 hours if the

order is prepared by a professional. In the case where the alternate payee or participant prepares the order, the average hour burden is estimated to be 10 hours. The total annual hour burden for alternate payees and participants is thus 2,117 hours $((1,036 \times .75 \text{ hour} = 777) + (134 \times 10 = 1,340) = 2,117 \text{ hours})$.

13. Costs. PBGC estimates the cost burden per order to be between 2.5 and 4 hours of professional time spent preparing an order and obtaining its qualification, at an hourly rate of \$160 to \$240. Based on these estimates, the cost burden per order is estimated to be between \$400 (approximately \$160 per hour \times 2.5 hours) and \$960 (appropriately \$240 per hour \times 4 hours), with \$680 as the midpoint of this range. This midpoint was used as the average professional fees for each of the estimated 1,036 orders prepared by professionals, for a total cost of approximately \$704,500 (1,036 plans per \$680 per plan; rounded to nearest \$100). There is no additional cost burden for the 136 orders that PBGC anticipates will be prepared by the alternate payee or participant.

PBGC arrived at its estimate of \$160 to \$240 per hour based on the following data from the Bureau of Labor Statistics:

- Lawyers (occupational code 23-1011) are paid a median (50th percentile) hourly wage of \$55.27 and a 75th percentile hourly wage of \$82.95.¹
- Wage rates are about 70 percent of total labor costs (with the remaining 30 percent attributable to benefits costs). Thus total labor costs equal approximately the hourly wage rates divided by 70 percent (0.7).²

For a median hourly wage rate of \$51.80, the total labor cost would thus be approximately \$80 per hour, and for the 75th percentile the total labor cost would be approximately \$120 per hour. However, the preceding estimates do not include the cost of overhead that professionals factor into their fees. PBGC assumed an overhead cost of 100%.

1 <http://www.bls.gov/oes/current/oes231011.htm>

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

Adding this overhead cost to total labor costs and rounding to nearest \$10 resulted in hourly costs of \$160 (for 50th percentile) and \$240 (for 75th percentile).

14. Costs to the Federal government. PBGC estimates the total annual cost to it of reviewing and processing orders and responding to inquiries from participants, alternate payees, and attorneys retained by either party is approximately \$234,200 based on:

- Approximately 3.5 professional hours to review and process each order at a blended (professional and clerical) hourly rate of \$36.80 per hour, with PBGC estimating it will receive 1,170 orders annually, for a total of approximately \$149,500 (1,170 orders x 3.5 hours x \$38.31)(rounded to nearest \$100).
- Approximately .57 of an hour (34 minutes) to respond to each QDRO inquiry directed to PBGC at a blended (professional and clerical) hourly rate of \$53.30 per hour, with PBGC estimating it will handle 2,789 inquiries annually, for a total of approximately \$84,700 (2,789 inquiries x .57 hour x \$53.30)(rounded to nearest \$100).

These estimates are based on PBGC's experience in reviewing and processing orders and in responding to inquiries regarding orders.

15. Change in burden and costs. The change in annual hourly burden (from 4,138 hours and \$870,400 in the current inventory to 2,117 hours and \$704,500 requested) is due to PBGC's revised estimates of (1) the number of orders that it expects to receive each year (from 1,361 to 1,170), (2) the number of orders that participants and alternate payees are expected to prepare themselves (from 337 to 134), and (3) professional fees (from \$850 to \$680 per order) incurred by participants and alternate payees who retain professionals to prepare their orders. The last change is attributable to a change in how PBGC estimated the cost of retaining attorneys to draft orders. Bureau of Labor Statistics data for attorneys was used rather than surveying costs and fees reported by QDRO attorneys and providers on the internet

The estimated number of orders that PBGC expects participants and alternate payees will prepare themselves (from 337 to 134), declined by over 203 orders, resulting in a decline in

hours of 2,030 (each order prepared by an alternate payee or participant is estimated to take 10 hours). This drop in self-prepared orders accounts for essentially all of the drop in hours from 4,138 to 2,117 (2,021).

16. Publication plans. PBGC does not plan to publish the results of this collection of information.

17. Omission of expiration date. Not applicable. PBGC will display the expiration date.

18. Exceptions to certification statement. Not applicable. There are no exceptions to the certification in Item 19 of Form 83-1.