

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Partitions of Eligible Multiemployer Plans; 29 CFR Part 4233

STATUS: Request for extension of a previously-approved collection of information, with modifications (OMB control number 1212-0068; expires December 31, 2015)

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1. Need for collection. Pension Benefit Guaranty Corporation (“PBGC”) administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), 29 U.S.C § 1301-1461. PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry, such as construction or trucking, where workers may move from employer to employer on a regular basis. Under PBGC’s multiemployer plan insurance program, when a multiemployer plan becomes insolvent, PBGC provides financial assistance in the form of loans directly to the insolvent plan sufficient to pay guarantee benefit amounts to participants and beneficiaries.

In response to the prospect of insolvency faced some financially distressed multiemployer plans, Congress enacted the Multiemployer Pension Reform Act of 2014 (“MPRA”),¹ which, among other things, amended section 4233 of ERISA to provide new partition authority to PBGC.

¹ Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 (Dec. 16, 2014.)

Before MPRA, PBGC could partition a multiemployer plan likely to become insolvent (*i.e.*, separate part of the plan's liabilities into a new plan) in certain limited circumstances involving employer bankruptcies, and the liabilities transferred were restricted to the nonforfeitable benefits directly attributable to service with bankrupt employers, along with an equitable share of assets. The participants whose benefits had been transferred to the new plan would receive their benefits, but reduced to the PBGC guarantee level. Meanwhile, participants in the ongoing plan would continue to receive unreduced plan benefits. Due in part to the eligibility limitations for partition, PBGC partitioned only a few plans prior to the enactment of MPRA.

Section 122 of MPRA created a new statutory framework for partition that provides eligibility requirements as well as new conditions and obligations that apply both before and after a partition. Now, a plan that is critical and declining status, as defined in section 305 of ERISA, may apply to PBGC to partition the plan as a way to ensure the solvency of the plan.

New section 4233(b) of ERISA contains five statutory conditions that must be satisfied before PBGC may order a partition:

- The plan must be in critical and declining status as defined in section 305(b)(6) of ERISA.
- PBGC must determine, after consultation with the Participant and Plan Sponsor Advocate,² that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9) of ERISA, if applicable.
- PBGC must reasonably expect that partition will reduce PBGC's expected long-term loss with respect to the plan and partition is necessary for the plan to remain solvent.

²The Participant and Plan Sponsor Advocate position was created in 2012 by the Moving Ahead for Progress in the 21st Century Act (MAP-21). See section 4004 of ERISA for the rules governing this position.

- PBGC must certify to the United States Congress that PBGC's ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition.
- The cost to PBGC arising from the partition must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.

Upon approval of an application for partition by PBGC, section 4233(c) provides that PBGC's partition order shall provide for a transfer to the plan created by the partition order (the successor plan) of the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent.

MPRA requires PBGC to make a determination on an application for partition not later than 270 days after the date the application was filed (or, if later, the date such application was completed), in accordance with regulations promulgated by PBGC. In addition, section 4233(a)(2) states that not later than 30 days after submitting an application for partition under section 4233(a)(1), the plan sponsor shall notify the participants and beneficiaries of such application, in the form and manner prescribed by regulations issued by PBGC.

On June 19, 2015 (at 80 FR 35220), PBGC published an interim final rule that added a new Part 4233 to PBGC's regulations to provide guidance on the necessary information required by PBGC to process an application for partition of eligible multiemployer plans and comply with the statutory conditions required for a partition order. For the reasons explained in the interim final rule, the rule needed to go into effect and the information collection needed to be approved upon publication. Accordingly, PBGC requested OMB's approval of the information requirements described in the interim final rule on an emergency basis. OMB approved the collection of information through December 31, 2015.

On December 23, 2015 (at 80 FR 79687), PBGC published a final rule that made minor changes to the interim final regulation in response to public comments received on the interim final rule and clarified certain information requirements, including the following:

- The final rule provides that PBGC will complete its initial review of an application for partition within 14 calendar days. This change will provide plan sponsors, participants, and beneficiaries with more certainty on when the 270-day statutory review period, and 30-day statutory notice period begin.
- The final rule clarifies that PBGC retains the discretion to determine that an application is complete even if a plan sponsor is not able to provide all of the information required under the final rule.
- The final rule clarifies certain requirements relating to the conditional determination process for plan sponsors who file applications for partition and suspension of benefits.

2. Use of information.

a. Information required. The interim final rule includes regulatory text describing the information required to be included in a partition application and notices to interested parties of the application. Section 4233.5 of the regulation identifies the various plan-related information required for an application to be complete, such as formal plan documents, trust agreements, summary plan descriptions, summaries of material modifications, rehabilitation plans, Forms 5500, a current listing of contributing employers who contribute to the plan, and the approximate number of participants for whom each employer is currently making contributions. PBGC expects that most, if not all, of the information required under this subsection will be readily available and accessible by plan sponsors.

Section 4233.6 of the regulation identifies information needed to evaluate the partition proposed by the plan sponsor, including the proposed structure, effective date, and a detailed description of any larger integrated transaction of which the proposed partition is a part. If

applicable, the plan sponsor must also submit a copy of its application for suspension of benefits under section 305(e)(9)(G) of ERISA (including all attachments and exhibits). In addition, the plan sponsor must provide a detailed description of all measures the plan sponsor has taken (or is taking concurrently) to avoid insolvency, as well as those measures the plan sponsor determined to be unreasonable, including the factor(s) the plan sponsor considered in making these determinations, consistent with MPRA's new section 4233(b)(2) of ERISA.

Section 4233.6 of the regulation also requires the plan sponsor to provide a detailed description of the estimated minimum amount of guarantee benefit amounts the plan sponsor proposes to be transferred in a partition, including:

- The estimated number of participants and beneficiaries whose benefits (or any portion thereof) would be transferred, including the number of retirees receiving payments (if any), terminated vested participants (if any), and active participants (if any).
- All supporting data, calculations, assumptions, and methods used to determine the estimated minimum amount of benefit liabilities.
- If applicable, a description of any classifications or specific group(s) of participants and beneficiaries whose benefits the plan sponsor proposes to transfer, and the plan sponsor's rationale or basis for selecting those classifications or groups.

Section 4233.7 of the regulation identifies required actuarial and financial information items. Some of the information requirements relate to plan actuarial reports and actuarial certification requirements, which should ordinarily be within the possession of the plan sponsor or plan actuary. Other information items required under this section are specific to the proposed partition, and necessary for PBGC to evaluate whether a partition is necessary for the plan to remain solvent.

Section 4233.8 of the regulation identifies the types of participant census data to include with an application for partition.

Section 4233.9 of the regulation requires the submission of certain information relevant to an application for financial assistance.

Section 4233.11(b) of the regulation prescribes the content of the notice of application for partition that is required to be sent by plan sponsors to interested parties. The information required to be included in the notice is necessary to ensure that it provides adequate notice to interested parties on the meaning of a partition; the condition of the plan; and the effect of a partition on the plan, participants and beneficiaries, the plan sponsor, and contributing employers. In addition, the notice must include contact information for the plan sponsor, PBGC, and the Participant and Plan Sponsor Advocate. Appendix A of the regulation contains a model notice that may be used by a plan sponsor.

b. Need for information. PBGC needs the information to determine whether a plan is eligible for partition and whether a proposed partition would comply with the statutory conditions required before PBGC may order a partition.

3. Information technology. PBGC will permit partition applications to be made by electronic transmission to the address specified in the filing instructions on PBGC's Web site.

4. Duplicate or similar information. Some of the required information may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to Federal agencies some, but fewer than all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies' files than simply to submit the information to PBGC. 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. Since PBGC expects an eligible multiemployer plan to apply for partition only once, no reporting, or less frequent or timely notice, would prevent PBGC from fulfilling its statutory responsibilities.

7. Consistency with guidelines. The collection of information is conducted in a manner consistent with the guidelines in 5 CFR § 1320.5(d)(2).

8. Outside input. On February 18, 2015, PBGC published in the Federal Register (see 80 FR 8712) a request for information (RFI) to solicit information from interested parties on issues PBGC should consider in implementing sections 4231 and 4233 of ERISA, and received 20 comments in response to the RFI.³ PBGC reviewed these comments and the interim final rule reflected a number of the suggestions contained in those comments. The interim final rule provided a 60-day comment period for public comment on the rule and the collection of information.

PBGC received nine comments on the interim final rule. The final rule makes some minor changes in response to those comments, as described in the final rule.

9. Payment to respondents. PBGC will provide no payments or gifts to the respondents in connection with this collection of information.

³The RFI and comments can be found at <http://www.pbgc.gov/prac/pg/other/guidance/multiemployer-notices.html>.

10. Confidentiality. A plan sponsor submitting information may request that specific information be treated as confidential under the Freedom of Information Act, 5 U.S.C. § 552, the Privacy Act, 5 U.S.C. § 552a, or 29 CFR Part 4901.11.

11. Personal questions. The collection of information does not call for submission of information of a sensitive or private nature.

12. Hour burden on the public. PBGC estimates that over the next three years six plans will respond to this collection of information each year. PBGC further estimates that the average burden of this collection of information will be 13 hours per plan (11 hours on a partition application and 2 hours on associated notices to interested parties of the partition application), with an average total burden of 78 hours. The majority of the time spent on this collection will be applied to providing the plan and financial assistance information portions of the partition application. The estimated dollar equivalent of this hour burden, based on an assumed a blended average hourly rate of \$75 for administrative, clerical, and supervisory time, is \$5,850.

The hour burden associated with benefit estimates will be accounted for in Treasury information collections.

13. Cost burden on the public. PBGC estimates that over the next three years, respondents will contract out 150 hours annually (6 filings times 25 hours contracted out per filing) to compile partition information, actuarial and financial information, and participant census data information performed by attorneys and actuaries. Further, respondents will contract out 6 hours annually for review of the notice to interested parties of the partition application (6 notices times 1 hour per notice). Assuming an average rate of \$350 for multiemployer plan contractor costs, PBGC estimates the total annual cost of preparing the partition application and

notice information will be \$54,600, for an average annual cost of \$9,100 per respondent. In addition, PBGC estimates that \$700 will be spent on postage and supplies associated with the notice to interested parties based on the median number of participants in a multiemployer plan of 1,400 x \$0.50 (approximately) for first class postage for each mailing. Thus, the total annual cost of the information collection is estimated to be \$58,800. No capital or start-up costs are necessary for partition applications.

The cost burden associated with benefit estimates will be accounted for in Treasury information collections.

14. Cost to the government. PBGC estimates that over the next three years the total annual cost to it for processing filings will be about \$31,920 based on an estimated annual hour burden of 540 hours – 6 filings times 90 hours per filing (10 hours of clerical staff time at \$44 an hour plus 80 hours of professional staff time at \$61 an hour).

15. Explanation of burden changes. Inapplicable.

16. Publication plans. There are no plans for tabulation or publication.

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.