

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Mergers and Transfers Between Multiemployer Plans (29 CFR Part 4231)

STATUS: Request for approval of a revision of a currently approved collection (OMB control number 1212-0022; expires July 31, 2017)

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1. Need for collection. Section 4231(a) and (b) of the Employee Retirement Income Security Act of 1974 (“ERISA”) imposes four requirements on multiemployer plans that are involved in mergers and transfers (“[u]nless otherwise provided in regulations prescribed by the corporation”):

1. Notice must be given to the Pension Benefit Guaranty Corporation (“PBGC”) at least 120 days before the transaction.
2. No reduction in accrued benefits of participants or beneficiaries may occur.
3. Benefits must not be reasonably expected to be at risk of suspension due to plan insolvency.
4. An actuarial valuation must be performed in the plan year preceding the transaction.

Section 4231(c) of ERISA provides that if PBGC determines that these requirements are satisfied, the merger or transfer will be deemed not to be in violation of section 406(a) or (b)(2) of ERISA (dealing with prohibited transactions). Pursuant to section 4231, PBGC has promulgated its regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR

Part 4231), which sets forth (in §§ 4231.3, 4231.8, and 4231.9) the procedures a plan sponsor must follow to give PBGC notice of a merger or transfer under section 4231 or to request a PBGC determination that a merger or transfer complies with the requirements of section 4231.

To provide a basis for determining whether a merger or transfer appears not to satisfy any of the four requirements noted above, a merger or transfer notice must include: (1) identifying information, including the types of plans involved and the type and effective date of the transaction; (2) copies of plan provisions that preserve accrued benefits; (3) enrolled actuary certification(s) that benefits are not reasonably expected to be at risk of suspension (with supporting data for any plan not satisfying a solvency test in § 4231.6); and (4) copies of the most recent required actuarial valuations, unless the transaction is *de minimis* and does not involve a mass-withdrawal-terminated plan.

A request for a compliance determination must provide additional information to enable PBGC to make an explicit finding that the merger/transfer requirements have been satisfied. For a transaction that is not *de minimis*, the request must include: (1) a copy of the merger or transfer agreement (to assure that its terms are consistent with the merger/transfer requirements); (2) a summary of calculations supporting the certification that the plan satisfies a solvency test in § 4231.6; and (3) for any plan significantly affected by a transaction (unless the plan is significantly affected only because the transaction involves a mass-withdrawal-terminated plan), copies of all actuarial valuations from the last five years (to place the transaction in historical context).

The Multiemployer Pension Reform Act of 2014 (“MPRA”)¹ contains a number of statutory reforms to assist financially troubled multiemployer plans, and to improve the financial condition of PBGC’s multiemployer insurance program. One of these reforms includes amendments to the existing rules under section 4231 of ERISA by adding a new section 4231(e), which clarifies PBGC’s authority to facilitate the merger (a “facilitated merger”) of two or more multiemployer plans if certain statutory requirements are met. For purposes of section 4231(e), “facilitation” may include training, technical assistance, mediation, communication with stakeholders, and support with related requests to other government agencies. In addition, subject to the requirements of section 4231(e)(2), PBGC may provide financial assistance (within the meaning of section 4261 of ERISA) to facilitate a merger (a “financial assistance merger”) it determines is necessary to enable one or more of the plans involved to avoid or postpone insolvency.

PBGC is publishing in the Federal Register² a proposed rule that would provide guidance on the process for requesting a facilitated merger under section 4231(e) of ERISA, including a request for a financial assistance merger under section 4231(e)(2). In the case of a facilitated merger, the proposed rule would amend § 4231.8(a) to require that notice of a proposed facilitated merger be filed not less than 270 days before the proposed effective date of a

¹ Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Pub. L. 113-235 (2014).

² The publication date and citation are in the ROCIS submission.

facilitated merger. A request for a facilitated merger, including a financial assistance merger, must include the information described in § 4231.12 of the proposed rule. A request for a financial assistance merger must also contain the information described in new § 4231.13 (plan information), new § 4231.14 (description of financial assistance merger), new § 4231.15 (actuarial and financial information), and new § 4231.16 (participant census data).

PBGC may require additional information to determine whether the requirements of section 4231(e) of ERISA are met or to enable it to facilitate the merger. In addition, the proposed rule allows plan representatives to informally consult with PBGC in advance of a potential merger or transfer. Importantly, this informal consultation process would allow plan sponsors considering a financial assistance merger and PBGC to gauge whether certain criteria could be satisfied—such as the condition that the financial assistance would not impair PBGC’s ability to meet existing financial assistance obligations to other plans. By doing so, plan sponsors of plans for which a financial assistance merger is not viable would be spared the burden of the information collection.

The proposed rule would also reorganize and update the existing regulation. For example, the proposed rule would change the definition of “significantly affected plan” to include a plan in endangered or critical status, as defined in section 305(b) of ERISA, that engages in a non-*de minimis* transfer and would broaden certain plan solvency tests under § 4231.6(a) and (b) to be based on ten year periods rather than five years, as under the existing regulation. The proposed rule also would change the amortization period in § 4231.6(b)(4)(i)

from 25 to 15 years—the amortization period generally applicable to changes in funding of multiemployer plans under the Pension Protection Act of 2006.

Amendments under the proposed rule that affect areas under the existing regulation (*i.e.*, for mergers and transfers that are not subject to the new requirements for facilitated mergers) are not expected to have a significant impact on the burden of the information collection.

2. Use of information. PBGC uses information submitted by plan sponsors under the regulation to determine whether mergers and transfers conform to the requirements of section 4231 of ERISA and the regulation.

3. Information technology. No consideration has been given to the use of improved information technology to reduce burden. The reporting volume under the regulation is too low to warrant the use of high technology. However, PBGC expects that most, if not all, plan sponsors and their representatives will use email and electronic versions of documents to provide the various notice and information requirements to PBGC under the regulation.

4. Duplicate or similar information. The regulation imposes a special purpose information submission requirement that is triggered by the occurrence of a relatively uncommon event (a merger or transfer between multiemployer plans), and this is the only such requirement imposed by PBGC for that event.

The actuarial reports called for by the regulation are routinely prepared for other purposes (but not otherwise routinely sent to PBGC). Although information submitted by pension plans to

the Internal Revenue Service is, in some cases, similar to information requested in this regulation, that information is not required to be filed with the IRS until seven months or more after the close of a plan year. Therefore, the IRS is not a source of current data for evaluating a merger or transfer of assets and liabilities.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Submission of information under the regulation is required only upon the occurrence of a specified event (a merger or transfer between multiemployer plans) that is relatively uncommon and occurs only by choice of the plans involved. If the information were not collected, PBGC would be significantly hindered in the performance of its statutory duties and plan sponsors might be unable to obtain assurance that mergers and transfers meet the requirements of section 4231 and the regulation.

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 February 18, 2015, PBGC published in the Federal Register (80 FR 8712) a request for information (the “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 The proposed rule discusses comments on issues relating to the merger regulation and reflects public input on facilitated mergers.

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

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 estimates that under the proposal, submissions will be made for about 28 transactions each year under the amended regulation, no more than three of which will involve spin-offs or significantly affected plans. For purposes of determining the information collection burden under the proposed rule, PBGC assumes that it will receive six applications for a financial assistance merger⁴ and eight applications for non-financial assistance facilitated mergers.

PBGC further estimates that the average hour burden of this information collection will be: 2.375 hours (0.125 hours x 19 notices) for notices relating to non-facilitated mergers and

⁴Based on a review of the requirements plans and PBGC must comply with for both partitions under amended section 4233 of ERISA and financial assistance mergers under amended section 4231 of ERISA, particularly the requirement that PBGC not impair its ability to meet existing financial assistance obligations to other plans, PBGC expects that about six plans per year would be approved for either partition or financial assistance merger. Thus, it is possible that PBGC may receive less than six applications for a financial assistance merger per year.

non-financial assistance facilitated mergers; 0.75 hours (0.25 hours x 3 notices) for notices relating to spin-offs or significantly affected plans; and 60 hours (10 hours x 6 notices) for financial assistance mergers. Thus, the total average hour burden of this collection of information will be 63.125 hours. The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time is \$4,725 (\$4,500 for financial assistance mergers in the aggregate or \$750 per respondent; and approximately \$235 in the aggregate for all other collections of information under this regulation or approximately \$11.15 per respondent).

13. Cost burden on the public. PBGC estimates that over the next three years, respondents will contract out a total of 485.7 hours annually to compile merger and transfer transaction information, plan information, actuarial and financial information, and participant census data information depending on the type of notice sent to PBGC. The outside contractors involved in the collection of information will include attorneys and actuaries. This estimate is based on 450 hours contracted out for financial assistance mergers (75 hours per respondent), 24 hours contracted out for non-financial assistance facilitated mergers (3 hours per respondent) and 11.7 hours contracted out for all other collections of information under this regulation (approximately 0.85 hours per respondent).

Assuming an average rate of \$350 for multiemployer plan contractor costs, PBGC estimates the total annual cost burden of the collection of information is \$169,995 (485.7 hours x \$350).

14. Cost to the government. As discussed in item 12, PBGC expects to process about 28 cases annually under the amended regulation, of which not more than 3 will involve spin-offs or significantly affected plans, six will be assumed to be requests for financial assistance mergers, and eight will be assumed to be requests for non-financial assistance facilitated mergers. PBGC estimates that over the next three years the total annual cost to PBGC will be about 1,373 hours and \$82,733.

PBGC estimates are based on the following:

- 15 hours of staff time per response for processing a notice of merger involving a non-significantly affected plan will be performed by a combination of attorneys and actuaries at \$61 an hour.
- 30 hours of staff time per response for processing a spin-off or a transaction involving a significantly affected plan will be performed by a combination of attorneys and actuaries at \$61 an hour.
- 10 hours of clerical staff time per response for processing a financial assistance merger request at \$44 an hour.
- 1 hour of staff time per response for analyzing the impact of a non-financial assistance facilitated merger on participants and beneficiaries will be performed by a combination of attorneys, financial analysts, and actuaries at \$61 an hour.
- 120 hours of staff time per response for processing a financial assistance merger will be performed by a combination of attorneys, financial analysts, and actuaries at \$61 an hour.

15. Explanation of burden changes. The cost and hour burden of this collection of information has increased from \$1,342.34 to \$169,995 and from three to 63.125 hours due primarily to the addition of new information requirements for facilitated mergers (including financial assistance mergers) and to a change in outside contractor cost assumptions.

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.