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 revision of 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 may occur.

3. Benefits must not be placed at risk of suspension due to plan insolvency.

4. An actuarial valuation must be performed in the plan year preceding the transaction.

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. ERISA section 4231(c) provides that if PBGC determines that

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the requirements are satisfied, the merger or transfer will be deemed not to be in violation of ERISA section 406(a) or (b)(2) (dealing with prohibited transactions).

A merger or transfer notice must include: (1) identifying information, including 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).

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 ERISA section 4231 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 on the basis of experience 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, and the IRS is therefore 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 met the requirements of section 4231 and the regulation.

7. <u>Consistency with guidelines.</u> The information collection is not conducted in a manner inconsistent with 5 CFR § 1320.5(d)(2).

8. <u>Outside input.</u> PBGC published a Federal Register notice soliciting public comment on this collection of information pursuant to 5 CFR § 1320.8(d) (April 28, 2017, at 82 FR 19762). No public comments were received in response to the notice.

9. <u>Payment to respondents.</u> PBGC provides no payments or gifts to respondents in connection with this collection of information.

10. <u>Confidentiality.</u> 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. <u>Personal questions.</u> The regulation does not call for submission of information of a sensitive nature.

12. <u>Hour burden on the public.</u> PBGC estimates that submissions will be made for about 14 transactions each year, with no more than five of the transactions involving complex mergers, transfers, and significantly affected plans.

PBGC further estimates that the hour burden of this information collection for personnel to compile merger and transaction information will be: 4.50 hours (30 minutes x 9 notices) for notices relating to mergers of two plans and five hours (1.0 hour x 5 notices) for notices relating to other transactions. The total hour burden of this collection of information will be 9.50 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 $712.50.

13. Cost burden on the public. Virtually all of the professional services involved in preparing the notice and information submitted with the notice are performed by outside attorneys and actuaries. The cost varies depending on the complexity of the transaction. PBGC estimates that the annual cost burden of the collection of information is $42,800 assuming an average hourly rate of $400 for contractor costs. The estimate is based on 27 contracted hours for mergers involving two plans (9 transaction x 3 hours) and 80 hours for transactions involving complex mergers, transfers, and significantly affected plans (5 transactions x 16 hours).

14. Cost to the government. As discussed in item 12, PBGC expects staff to process about 14 cases annually. The annual cost to the government is $0.

15. Explanation of burden changes. The cost and hour burden of this collection of information has increased from $1,342 to $42,800 and from 5 to 9.50 hours primarily due to a change in methodology for estimating the cost and hour burden.

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.