

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Annual Return/Report of Employee Benefit Plan (Form 5500)

**OMB CONTROL NUMBER:** 1212-0057

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### A. Justification

1. Need for collection. The Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions – in Title I (Labor provisions), Title II (Internal Revenue Code (Code) provisions), and Title IV (Pension Benefit Guaranty Corporation provisions) – requiring administrators of employee pension and welfare benefit plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

The Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (IRS), and the Department of Labor (DOL) (collectively the Agencies) work together to produce the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan (Form 5500 Series), through which the regulated public can satisfy the combined annual reporting/filing requirements applicable to employee benefit plans.

The collection of information has been approved by OMB under control number 1212-0057 through August 31, 2020. PBGC requests that OMB extend its approval for three years from the date of approval, with modifications.

PBGC is proposing three modifications to the 2018 Schedule MB (Multiemployer Defined

Benefit Plan Actuarial Information) instructions, one modification to the Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information) instructions, and one modification to the Schedule SB form. These modifications affect some, but not all, multiemployer defined benefit plans and relatively few single-employer defined benefit plans covered by Title IV of ERISA.

### **Changes proposed to Schedule MB instructions**

PBGC is proposing to change the instructions to require new attachments in two situations, and to provide guidance where required information is not known.

1) Attachment to Line 3. Ongoing contributions are expected annually from ongoing employers. Withdrawal liability payments are contributions paid by employers that have withdrawn from the plan and thus, at some point, will stop contributing. Currently, contributions reported as being made to a multiemployer plan include amounts owed for withdrawal liability. PBGC is proposing to require plan administrators to report for each reported contribution (in an attachment to Line 3), the aggregate amount of withdrawal liability payments included in such contribution. Separating these payments from contributions will assist in projections of future ongoing contributions.

2) Attachment to Line 4f. For multiemployer plans in critical status or critical and declining status (i.e., where Code C or Code D is entered on Line 4b), plans currently report the year the plan is projected to become insolvent or emerge from troubled status on Line 4f. However, they are not required to provide supporting documentation for these projections. PBGC is proposing that basic supporting documentation be included as an attachment to Line 4f unless the plan is projected to emerge from critical status within 30 years.

If required, the attachment would include:

- a) Year-by-year cash flow projections for the period ending with the year the plan is projected to become insolvent (or the 20th year after the valuation year if earlier), and
- b) A summary of the assumptions underlying the projections.

PBGC is proposing to require documentation in such cases to enable PBGC to better project the impact on participants and PBGC's insurance system.

3) Guidance for Line 4f. With respect to troubled plans that are neither projected to emerge from critical status nor become insolvent within 30 years, the date of projected insolvency or emergence may be unknown. For plans in this situation, PBGC is proposing that "9999" be entered in line 4f.

#### **Changes proposed to Schedule SB instructions and form**

With regard to the Schedule SB instructions and form, PBGC is proposing to change the instructions related to an attachment that is currently required of plans for which the IRS has granted permission to use a substitute mortality table. The current instructions for Schedule SB, line 23, describe the information that is to be included in the attachment. Those instructions reflect IRS regulations on the use of substitute mortality tables (26 CFR 1.430(h)(3)-2) as they pertain to plan years beginning before January 1, 2018. Those rules have changed with respect to plan years beginning on or after January 1, 2018.

In its 60-day notice, PBGC proposed requiring plans to report additional information (consistent with the amended IRS regulation) as part of the line 23 attachment, thereby allowing PBGC to reconstruct the substitute table for which the plan has sought IRS approval, and enable PBGC to better predict future funding requirements and the impact on participants and the insurance system.

After PBGC published its 60-day notice, the IRS finalized its mortality table regulation, which set forth the prescribed mortality tables for plan years beginning in or after 2018. Unlike the proposed rule, the final rule provides an option to delay use of the new mortality tables until 2019 if the plan sponsor determines that using the new tables for 2018 would be “administratively impracticable or would result in an adverse business impact that is greater than de minimis... .” As a result of this change, PBGC is proposing a change to Schedule SB, line 23 (one that was not included in the 60-day notice), as well as to the related instructions as explained below.

Currently, plans check one of three boxes on Schedule SB to indicate whether they used one of two versions of the prescribed mortality table or a substitute table. Instead of having three choices as to which mortality table is used for 2018, plans will have six choices: three options if they delay the use of the new tables and three options if they do not delay. For this reason, PBGC is proposing that six checkboxes appear on the 2018 Schedule SB instead of three.

It is anticipated that the information requested will be available to the plan and that the plan would simply copy information it already has into the attachments described, and check one of six checkboxes.

2. Use of information. The Form 5500 Series is the principal source of information and data available to the Agencies concerning the operations of employee benefit plans. For this reason, the Form 5500 Series is an integral part of the Agencies’ enforcement, research, and policy formulation. Regarding enforcement, the Form 5500 Series provides a means by which the Agencies can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the Agencies’ investigatory contacts with the vast majority of plans, and

enabling the Agencies to make the best use of their limited resources. The Form 5500 Series also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans. Furthermore, public disclosure of the Form 5500 Series is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

Regarding research and policy formulation, the Form 5500 Series represents the primary source of data available to federal agencies, Congress, and the private sector for assessing employee benefit, tax, and economic trends and for development and implementation of national pension policies.

In addition to providing the Agencies with important enforcement, research, and policy information, the Form 5500 Series represents the only source of detailed financial information available to plan participants and beneficiaries who, upon written request, must be furnished a copy of the plan's latest annual report by the plan administrator (ERISA section 104(b)(1)(B)(4)).

Approximately 833,000 pension and welfare benefit plans must file the Form 5500 Series under Title I and IV of ERISA and the Internal Revenue Code (Code). These plans cover an estimated 150 million participants and hold an estimated \$9.3 trillion in assets. The Form 5500 Series is therefore an important tool for protecting the benefits of American workers. (PBGC's portion of the information collection applies to only a small subset of the 833,000 pension and welfare benefit plans because PBGC's insurance program does not apply to welfare plans or defined contribution plans. There are approximately 23,900 defined benefit plans required to file and that are covered by PBGC's insurance program.)

3. Reducing the burden. The Agencies currently use an automated processing system, the ERISA Filing Acceptance System 2, or EFAST2, to process the Form 5500 Series filings.

4. Duplicate or similar information. The Agencies have developed and use a consolidated annual report that allows filers to satisfy the information collection requirements of all three agencies through a single filing, without duplication of effort or information collection. This eliminates the duplicative reporting that would otherwise result from application of the statutory provisions as written. In addition, while certain information concerning assets (including employee benefit plan assets) held by banks, insurance companies and other investment entities may be separately reported to state and federal regulatory authorities, those reports are not structured to provide meaningful information about assets specifically attributable to any employee benefit plan. Therefore, there is no similar information gathered or maintained by any state or federal agency or other source that the Agencies would consider adequate for effectively monitoring the activities of employee benefit plans.

5. Reducing the burden on small entities. Not applicable. PBGC's portion of the information collection will not have a significant impact on a substantial number of small entities.

6. Consequences of reduced collection. ERISA and the Code specifically require the filing of reports or returns by employee benefit plans on an annual basis. A less frequent information collection could contravene statutory requirements and would impair and inhibit the administration and enforcement of the statute by the Agencies.

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

8. Outside input. PBGC published the notice required by 5 CFR § 1320.8(d) soliciting comments on the information collection in the Federal Register on September 19, 2017 (82 FR 43798). The public was provided with 60 days to comment on the submission in response to the solicitation. Three comments were received. (The comments are included with this submission and are posted on [www.pbgc.gov/prac/pg/other/guidance/paperwork-notices](http://www.pbgc.gov/prac/pg/other/guidance/paperwork-notices) and [www.regulations.gov](http://www.regulations.gov).)

One commenter indicated he had no objection to the modifications proposed by PBGC. Two commenters provided comments solely to PBGC's proposed changes to the Schedule MB; no comments were submitted with respect to PBGC's proposed changes to the Schedule SB. A summary of the comments received, and the changes made to the proposal in response to the comments follows:

**Schedule MB — Line 3**

PBGC proposed requiring multiemployer plans whose contributions reported in Line 3 include amounts owed for withdrawal liability, to attach a list of withdrawal liability payments and the dates such amounts were contributed to enable PBGC to allocate the reported contributions between regular contributions and withdrawal liability payments. Commenters expressed support for this change. PBGC is adopting the change as proposed.

One commenter suggested PBGC go further and require that the withdrawal liability payments reported on the attachment be separated into two categories: periodic payments and lump sum payments to settle withdrawal liability. While PBGC agrees that distinguishing ongoing periodic payments from one-time settlements is valuable information, in the interest of minimizing the burden on practitioners, we are not adopting that suggestion.

### **Schedule MB — Line 4f attachment (cash-flow projections)**

As noted in item 1 of this statement, plans in Critical or Critical and Declining Status are currently required to report the year of projected emergence or insolvency in line 4f, but there is no requirement to provide supporting documentation.

In its 60-day notice, PBGC proposed requiring all multiemployer plans in Critical or Critical and Declining Status to attach an illustration showing year-by-year cash flow projections for a specified number of years.

One commenter (Commenter 1) expressed general support for this proposal stating that “the additional information will not result in a significant burden for most plan actuaries, as they will have already performed the calculations requested,” but noted that the level of detail requested might not be readily available for plans in Critical Status that are projected to emerge from Critical Status and suggested that the attachment not be required for those plans.

The other commenter (Commenter 2) asserted that actuaries generally do not prepare cash flow projections for plans in Critical Status and for that reason supported the requested illustration only for plans in Critical and Declining Status.

PBGC finds credible the assertion that year-by-year cash flow projections might not be readily available for Critical Status plans that are projected to emerge from Critical Status. However, with respect to other Critical Status plans, unless a year-by-year cash flow projection has been done, it would be challenging to demonstrate that such a plan is in Critical Status, but not in Critical and Declining Status. Like Commenter 1, PBGC expects such plans will have already done the requisite projections.



Commenter 2 suggested that although Critical and Declining Status plans have 20-year cash flow projections readily available, extending that period beyond a few years might be burdensome.

Based on the foregoing, and because PBGC believes that the attachment would be of significantly less value to PBGC and other parties for Critical plans projected to emerge from Critical Status, PBGC is modifying its proposed changes to exempt such plans from this requirement. In addition, with respect to plans that will be required to attach a cash flow projection, PBGC is modifying its proposal to require no more than a 20-year projection. In summary, the attachment is required only for plans in Critical and Declining Status and plans in Critical Status that are not projected to emerge from Critical Status within 30 years.

#### **Schedule MB — Other**

Although PBGC did not propose making changes to the line 4f instructions other than with respect to the new cash-flow projection attachment, one commenter noted that the current instructions are unclear about which year should be entered in line 4f if the plan is neither projected to emerge from critical status nor become insolvent within 30 years and requested the instructions be modified to include guidance for such plans. As noted in item 1 of this statement, PBGC finds this suggestion to be reasonable and is proposing, for plans in this situation, that “9999” be entered in line 4f.

Commenters made other suggestions with respect to other Schedule MB items. PBGC is not making any additional changes in response to those comments.

9. Payments to respondents. PBGC provides no payments or gifts to respondents in connection with this information collection.

10. Confidentiality. The Form 5500 Series filings are available for public inspection. PBGC provides no assurance of confidentiality to respondents.

11. Personal questions. The information collection does not include any questions of a personal or sensitive nature.

12. Hour burden on the public. Because the Form 5500 Series combines the information collection requests of three federal agencies (DOL, IRS, and PBGC) into a single return/report, each of the Agencies submits its own ICR and maintains its own OMB approval for the portion of the paperwork burden arising out of the Form 5500 Series that pertains to its own information collections. However, since 1999, the Agencies have adopted a unified approach and methodology for estimating paperwork burden, which is conducted by DOL with input from PBGC and the IRS. This request is for approval of only the portion of the total paperwork burden of the Form 5500 Series that is attributed to PBGC, although it includes some information on the other portions of the total paperwork burden. The discussion below describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the Form 5500 Series as a whole, but requests approval only of PBGC's portion of that burden.

PBGC estimates, based on data derived from the 2015 Form 5500 filings (the most recent accurate information available), that a total of about 833,000 respondents will file annual reports using the Form 5500 Series. As noted above, PBGC's portion of the information collection applies only to a small subset of these 833,000 respondents, i.e., approximately 23,900 defined benefit plans covered under Title IV of ERISA.

The paperwork burden allocated to PBGC includes a portion of the general instructions, basic plan identification information, a portion of Schedule MB and Schedule SB (Actuarial

Information), and a portion of Schedule R (Retirement Plan Information). PBGC's portion of the annual aggregate hour burden generated by the Form 5500 Series is estimated at 1,300 hours for 2018, 2019, and 2020 with the equivalent cost burden of approximately \$119,000 for each of these years (assuming a compensation rate of \$93.86 per hour for services of a financial professional).

13. Cost burden on the public. As noted in the answer to item 12 above, the Agencies have adopted a unified approach and methodology for estimating paperwork burden, which is conducted by DOL with input from PBGC and IRS. Based on that unified methodology, the annual cost burden attributable to PBGC is estimated at \$1.613 million for 2018, 2019, and 2020.

14. Costs to the Federal government. The total annual processing cost for all Form 5500 Series filings during the period covered by this ICR extension request is estimated to average \$12.2 million annually (including oversight), in accordance with the terms of the EFAST2 vendor contracts. These costs are allocated among the agencies (DOL, PBGC, and IRS) according to the EFAST2 Cost Allocation Model, which was approved by the agencies at the beginning of EFAST2 operations in 2015 as the methodology that would be used for identifying agencies' shares of EFAST2 costs. Under the model, the agencies pay for their relative share of the total filing volume. Therefore, PBGC's share of the total cost is approximately \$691,000. Federal FTE costs are excluded.

15. Adjustments. Changes to the hour and cost burdens primarily result from two changes: 1) PBGC's proposed changes to the Schedule SB and MB; and 2) an adjustment to the Department of Labor's methodology for calculating overhead, which resulted in a slight decrease in wage rates, which produced a slight decrease in the monetization of the hour burden and a

slight decrease in the cost burden. Additionally, the updated burden estimates also reflect updated data on the number of filings anticipated to be received by PBGC as estimated by DOL.

16. Publication plans. PBGC has no plans for publication of the results of this information collection.

17. Display of expiration date. OMB previously granted approval to omit the expiration date from the Form 5500. PBGC requests continued approval to omit the expiration date.

18. Exceptions to certification statement. The information collection is consistent with 5 CFR § 1320.9.

**B. Collections of Information Employing Statistical Methods**

Not applicable.