

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Survey of Multiemployer Pension Plan Withdrawal Liability Information

STATUS: Request for approval of a proposed collection of information

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1. Need for collection. Section 4219 of the Employee Retirement Income Security Act of 1974 (ERISA) requires a multiemployer plan sponsor to determine and collect withdrawal liability from employers withdrawing from the plan. Withdrawal liability represents the withdrawing employer's share of unfunded vested benefits. The plan sponsor assesses withdrawal liability by issuing a notice to an employer, including the amount of the employer's liability and a schedule of payments. PBGC's regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR part 4219) requires the plan sponsor of a terminated or an insolvent plan to file with PBGC a certification that notices have been provided to employers.

Section 4008 of ERISA requires PBGC, as soon as practicable after the close of each fiscal year, to transmit a report to the President and the Congress, including financial statements setting forth the finances of the corporation at the end of the fiscal year and the result of its operations (including the source and application of its funds) for the fiscal year. Withdrawal liability payments and settlements affect PBGC's multiemployer plan liabilities reported on its financial statements.

PBGC is proposing to collect information from terminated multiemployer plans and insolvent multiemployer plans about withdrawal liability that has not yet been assessed and withdrawal liability that contributing employers owe (or owed). Under section 4041A(f)(2) of ERISA, PBGC may prescribe reporting requirements for terminated multiemployer pension plans, which PBGC considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to the corporation. Under section 4261(b)(1) of ERISA, PBGC provides financial assistance to insolvent plans under such conditions as the corporation determines are equitable and are appropriate to prevent unreasonable loss to the corporation with respect to the plan.

To collect the information, PBGC would distribute a survey that certain insolvent plans receiving financial assistance and terminated plans not yet receiving financial assistance would be required to complete and return to PBGC. Plans with less than 500 participants would not be required to complete the survey. PBGC excluded smaller plans because these plans represent a small portion of PBGC's multiemployer program liabilities.

PBGC needs the information from the survey about withdrawal liability payments and settlements, and whether employers have withdrawn from the plan but have not yet been assessed withdrawal liability, to estimate with more precision PBGC's multiemployer liabilities for purposes of its financial statements. PBGC would also use the information for its Multiemployer Pension Insurance Modelling System assumptions on collection of withdrawal liability.

2. Use of information.

a. Information required. The first two sections of the survey ask for contact information and general information about the plan and withdrawal liability not assessed. The questions ask: (1) what industry the plan primarily covers; (2) for an explanation of any withdrawal liability that has not been assessed; (3) how many employers that have withdrawn from the plan in the last 10 years were not assessed withdrawal liability; (4) for an estimate of the total withdrawal liability not assessed for the employers that have withdrawn from the plan in the last 10 years that were not assessed withdrawal liability, if known; and (5) for any additional comments.

The third section of the survey requires a plan to provide a withdrawal liability schedule for employers that have withdrawn from the plan and owe or owed withdrawal liability. The information includes for each employer: the employer's name, the date of withdrawal, employer identification number, the amount of unfunded vested benefits allocated to the employer, the scheduled years of payments for the initial withdrawal liability (maximum of 20 years), the date of mass withdrawal (if any), the additional mass withdrawal liability, the years of payment after a mass withdrawal, the statutory annual withdrawal liability payment under section 4219(c)(1) of ERISA, and the actual annual withdrawal liability amount (if different). If there has been a settlement of withdrawal liability, the plan must report, for each employer, the amount settled and the settlement date. If an employer has a payment schedule, the plan must report, for each employer, whether the employer is current on payments. If the employer is not current on payments, the plan must report the date of last payment and the total payments received.

b. Need for information. When PBGC receives withdrawal liability information, it uses the information to determine its liabilities under the multiemployer program and to provide

financial assistance to plans. PBGC will use the information from the survey about withdrawal liability not yet assessed and withdrawal liability that contributing employers owe or owed to update current assumptions and formulate new assumptions regarding withdrawal liability payments. These assumptions are important for purposes of estimating with more precision PBGC's current and projected future financial assistance needs and the financial position of the multiemployer insurance program (including under its Multiemployer Pension Insurance Modelling System). PBGC needs information about the industries that individual plans cover because different industries may have characteristics that PBGC would need to model separately. PBGC will use the employer identification information to corroborate filed survey information to financial assistance request records, as well as other plan records PBGC already has access to. This will allow for more utility of information received, especially in future years as it may be difficult to identify employers later on if plan personnel change. In addition, PBGC will use the information to perform financial analysis for a better understanding of the challenges contributing employers and plans face.

3. Information technology. Plans may file withdrawal liability survey information electronically with PBGC by email.

4. Duplicate or similar information. PBGC believes that there is no information similar to that required under the survey that could be used instead of the required information for the purposes of the survey.

5. Reducing the burden on small entities. Not applicable. This information collection does not have a significant economic impact on a substantial number of small entities. Plans with less than 500 participants would not be required to complete the survey.

6. Consequence of reduced collection. Withdrawal liability information required by this survey would be prepared only by terminated and insolvent multiemployer plans. Plans with less than 500 participants would not be required to complete the survey. If the information were not reported, PBGC's ability to report its multiemployer liabilities accurately, to protect the interests of plan participants and beneficiaries, and to prevent unreasonable loss to PBGC with respect to terminated and insolvent multiemployer plans would be significantly impaired.

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 June 21, 2018, PBGC published (at 83 FR 28871) a notice of its intent to request OMB approval of the survey of multiemployer pension plan withdrawal liability information described above. No comments were received on the proposed submission of information collection.

PBGC also sent the survey to four plans to obtain input on the survey questions and on PBGC's burden estimate. PBGC did not make any changes to the proposed survey template based on this input; however, PBGC received information on the burden estimate that varied depending on the number of employers participating in the plan and the age of the plan records. PBGC revised its burden estimate based on this plan experience.

On August 28, 2018, PBGC published (at 83 FR 43911) a 30-day notice notifying the public that PBGC is requesting that OMB approve the survey of multiemployer pension plan withdrawal liability information. One commenter submitted comments to OMB's Office of Information and Regulatory Affairs on the proposed survey.

The commenter supported PBGC's immediate need for this information collection, but made several suggestions and comments for clarification. The commenter is concerned that PBGC could have duplicate reporting requirements in the future, noting that on July 16, 2018, PBGC issued a proposed rule (83 FR 32815) that would require certain plans to file similar information. Specifically, the commenter suggested that PBGC clarify the survey so that a plan that responded to the survey questions would not also need to satisfy PBGC's reporting requirements under the final rule for the same plan year. PBGC is not making changes to the proposed survey in response to this comment. PBGC does not intend to require duplicative reporting. While similar, the withdrawal liability information that would be required to be reported under the proposed survey and the proposed rule are not identical. In addition, as noted in the commenter's letter, and as stated in the preamble to the proposed rule and the proposed instructions and withdrawal liability form, plans would not be required to file withdrawal liability information if there is no updated information to file with PBGC. PBGC believes that if further clarification is needed, it would be better addressed in the information collection that is part of the final rule.

The commenter noted that the proposed rule specifies an annual filing date but that the proposed survey does not specify a filing deadline. While the proposed rule would provide for an annual filing requirement and annual filing deadline, the proposed survey does not have an annual filing requirement. The 30-day notice for the proposed survey makes it clear that PBGC would initially send the survey to approximately 65 plans and that after the survey is sent initially, PBGC expects to send the survey to fewer than 10 newly terminated and insolvent plans per year. Therefore, there is no need for an annual filing deadline.

The commenter is concerned that the scope of the withdrawal liability information required by the survey is ambiguous because the survey does not define how far back a plan must go to provide information on its withdrawal liability experience. PBGC disagrees that the survey time period is ambiguous. The proposed survey template specifies that aggregate information is to be reported for the last 10 years. The questions ask: (1) how many employers that have withdrawn from the plan in the last 10 years were not assessed withdrawal liability; and (2) estimate the total withdrawal liability not assessed for the employers that have withdrawn from the plan in the last 10 years that were not assessed withdrawal liability, if known.

The withdrawal liability schedule requested for all contributing employers that owe or owed withdrawal liability does not specify a time period because PBGC did not intend to limit this information by a time period. PBGC sent the survey to four plans to test the survey questions and the plans were able to provide the information requested. While PBGC believes that the plans required to complete the information will have the information available and accessible, PBGC recognizes that older records may be more burdensome to retrieve and provide. Accordingly, PBGC is modifying the withdrawal liability schedule to require it to be completed for all contributing employers that “owe withdrawal liability, or owed withdrawal liability in the last 10 years (or for a longer period if records are available).”

The commenter requests that PBGC clarify in its notice how PBGC intends to handle information provided by plans and the extent to which the agency believes 29 CFR part 4901 would apply. PBGC’s rules providing and restricting access to its records are set forth in 29 CFR part 4901. PBGC is adding to the proposed Paperwork Reduction Act notice the statement, “If PBGC receives a request for confidential information, it will notify the submitter of the

records, and afford them a reasonable period of time to object to the disclosure, pursuant to PBGC procedures and as required under Executive Order 12600. If PBGC decides to sustain a submitter's objection in any request, it will provide the submitter with a written statement explaining why it has determined to disclose within a reasonable number of days before a specified disclosure date."

Finally, the commenter states that the information collected on why employers may not have been assessed withdrawal liability suggests that PBGC may use the information for purposes outside of its authority. PBGC's authority for and use of this information collection are explained above in Question 1.

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

10. Confidentiality. The survey gives no assurance of confidentiality, but information submitted to PBGC under the survey is accessible only in accordance with the Freedom of Information Act and the Privacy Act. PBGC's rules providing and restricting access to its records are set forth in 29 CFR part 4901.

11. Personal questions. The survey does not call for submission of information of a sensitive nature.

12. Hour burden on the public. Based on PBGC's FY 2017 Annual Report, there are approximately 140 terminated and insolvent multiemployer plans. Smaller plans with less than 500 participants would not be required to complete the survey. Excluding those plans, PBGC expects to send the survey to approximately 65 plans, which represent approximately 90 percent

of net PBGC liability. After the survey is sent initially, PBGC expects to send the survey to fewer than 10 newly terminated and insolvent plans per year.

PBGC expects that the withdrawal liability information required by the survey will be available and accessible by plans. PBGC estimates that each survey would require approximately 20 hours to complete and return to PBGC by a combination of pension fund office staff (50%) and outside professionals (attorneys and actuaries) (50%). PBGC estimates an hour burden of 650 hours (10 hours of pension fund office time x 65 plans). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of \$75 for administrative, clerical, and supervisory time is \$48,750.

13. Cost burden on the public. As explained above, PBGC expects that plans would use a combination of pension fund office staff (50%) and outside professionals (attorneys and actuaries) (50%) to prepare and file the withdrawal liability survey information. The total cost burden for preparing and filing the withdrawal liability survey information would be approximately \$260,000 based on 650 contracted hours (10 hours x 65 plans) assuming an average hourly rate of \$400.

14. Cost to the government. The cost to the government for the withdrawal liability survey is \$0.

15. Explanation of burden changes. There are no burden changes as this is an initial information collection.

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.