

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation (PBGC)

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 September 30, 2020)

CONTACT: Hilary Duke (326-4400 x3839)

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.The plan sponsor must notify 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 of each of the affected plans must be performed in the plan year preceding the transaction.

Section 4231(a) of ERISA grants PBGC authority to vary these requirements by regulation. PBGC’s regulation on Mergers and Transfers Between Multiemployer Plans (29 CFR part 4231) implements and interprets these requirements by providing procedures under which plan sponsors must notify PBGC of any merger or transfer between multiemployer plans and may request from PBGC a compliance determination. The regulations specify the information that must be included in a merger or transfer notice. 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. ERISA section 4231(c) provides that if PBGC determines that 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).

The Multiemployer Pension Reform Act of 2014 (“MPRA”)¹ added a new section 4231(e), which clarifies PBGC’s authority to facilitate a 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 final rule providing guidance on the process and information requirements for a voluntary request for a facilitated merger under section 4231(e) of ERISA, including a financial assistance merger. In addition, the final rule allows plan representatives to informally consult with PBGC in advance of a potential merger or transfer. Importantly, this informal consultation process will 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 will not impair PBGC’s ability to meet existing

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.

financial assistance obligations to other plans. By doing so, plan sponsors of plans for which a financial assistance merger is not viable will be spared the burden of the information collection.

The final rule also reorganizes and updates the existing regulation. Amendments under the final 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 an impact on the burden of the information collection.

2. Use of information.

a. Information required. A plan sponsor must notify PBGC of any merger or transfer between multiemployer plans and include in the notice the information described under § 4231.9 of the final rule: (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) about plan solvency; (4) copies of the most recent required actuarial valuations, except for certain *de minimis* transactions; and (5) information used by the enrolled actuary in making the plan solvency determination under § 4231.6(b).

A request for a compliance determination described under § 4231.10 of the final rule 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); and (2) for each plan significantly affected by the 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).

In the case of a facilitated merger, the final rule amends § 4231.8(a) to require that notice of the proposed merger and a request for facilitation (and, if applicable, a request for a compliance determination) be filed not less than 270 days before the proposed effective date of the facilitated merger. A request for a facilitated merger, including a financial assistance merger, must include the information described in § 4231.12 of the final rule. A request for a financial assistance merger must also contain the information described in § 4231.13 (plan information), § 4231.14 (description of financial assistance merger), § 4231.15 (actuarial and financial information), and § 4231.16 (participant census data) of the final rule.

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.

b. Need for 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 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. 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 (RFI) to solicit information on issues PBGC should

consider for a proposed rule. PBGC received 20 comments in response to the RFI.³ On June 6, 2016, PBGC published (81 FR 36229) a proposed rule to amend its regulation on Mergers and Transfers Between Multiemployer Plans to solicit comments from interested parties. PBGC provided a 60-day comment period for the proposed rule and received 10 comments.⁴ The final rule discusses comments on issues relating to the merger regulation and reflects public input on facilitated mergers.

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 submissions will be made for about 14 transactions each year (excluding financial assistance mergers), with no more than 5 of the transactions involving complex mergers, transfers, and significantly affected plans. PBGC further estimates that for transactions other than financial assisted mergers, the hour burden of this information collection for personnel to compile merger and transaction information will be:

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

⁴ The proposed rule and comments are accessible at <https://www.pbgc.gov/prac/pg/other/guidance/pending-proposed-rules>.

4.50 hours (30 minutes x 9 notices) for notices relating to mergers of 2 plans and 5 hours (1.0 hour x 5 notices) for notices relating to other transactions.

For purposes of determining the information collection burden for financial assistance mergers, PBGC assumes that it will receive six requests for financial assistance mergers per year.⁵ PBGC estimates the hour burden for personnel to compile the required merger information will be 60 hours (10 hours x 6 requests).

The total hour burden of this collection of information for 20 transactions (14 + 6) will be approximately 70 hours (4.5 + 5.0 + 60). The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is \$5,250.

13. Cost burden on the public. Virtually all of the professional services involved in preparing the notices and information submitted with the notices are performed by outside attorneys and actuaries. The cost varies depending on the complexity of the transaction.

PBGC estimates that the annual cost burden for transactions that are not financial assistance mergers is \$42,800 assuming an average hourly rate of \$400 for contractor costs. The estimate is based on 27 contracted hours for mergers involving 2 plans (9 transactions x 3 hours) and 80 hours for transactions involving complex mergers, transfers, and significantly affected plans (5 transactions x 16 hours).

⁵ Based 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 will be approved for either partition or financial assistance merger. Thus, it is possible that PBGC may receive less than six requests for a financial assistance merger per year.

PBGC estimates that the annual cost burden for financial assistance mergers is \$180,000 (\$30,000 per request) assuming an average hourly rate of \$400 for contractor costs. The estimate is based on 450 contracted hours for work by attorneys and actuaries (6 requests x 75 hours).

The total annual cost burden of this collection of information will be \$222,800 (\$180,000 + \$42,800).

14. Cost to the government. As discussed in item 12, PBGC expects staff to process about 20 cases annually, including 6 requests for financial assistance mergers. The requests for financial assistance mergers will be processed by PBGC staff with support from outside contractors. PBGC estimates that contractor costs to the government will be approximately \$240,000 per year (\$40,000 x 6 requests).

15. Explanation of burden changes. The hour and cost burden of this collection of information on the public has increased from 10 hours to 70 hours and from \$42,800 to \$222,800 due to the addition of new information requirements for an estimated 6 financial assistance mergers per year. The cost to the government has increased from \$0 to \$240,000 due to the cost of outside contractors to assist in processing the new financial assistance mergers.

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.

