

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Partitions of Eligible Multiemployer Plans; 29 CFR Part 4233

**STATUS:** Request for extension of a previously-approved collection of information, with modifications (OMB control number 1212-0068; expires December 31, 2018)

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1. Need for collection. Pension Benefit Guaranty Corporation (“PBGC”) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). PBGC administers two insurance programs—one for single-employer defined benefit pension plans and a second for multiemployer defined benefit pension plans. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry, such as construction or trucking, where workers may move from employer to employer on a regular basis. Under PBGC’s multiemployer plan insurance program, when a multiemployer plan becomes insolvent, PBGC provides financial assistance in the form of loans directly to the insolvent plan sufficient to pay guarantee benefit amounts to participants and beneficiaries.

The Multiemployer Pension Reform Act of 2014 (“MPRA”)<sup>1</sup> amended section 4233 of ERISA to provide partition authority to PBGC. Under section 4233(a) of ERISA, the plan sponsor of an eligible plan may apply to PBGC for a partition of the plan. Section 4233(b) of ERISA states five conditions that must be satisfied for PBGC to order a partition:

- The plan must be in critical and declining status as defined in section 305(b)(6) of ERISA.

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<sup>1</sup> Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 (Dec. 16, 2014).

- PBGC must determine, after consultation with the Participant and Plan Sponsor Advocate,<sup>2</sup> that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9) of ERISA, if applicable.
- PBGC must reasonably expect that partition will reduce PBGC's expected long-term loss with respect to the plan and partition is necessary for the plan to remain solvent.
- PBGC must certify to the United States Congress that PBGC's ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition.
- The cost to PBGC arising from the partition must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.

Under section 4233(c) of ERISA, a partition order will provide for a transfer to the plan created by the partition order (the successor plan) of the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent.

Section 4233(a)(1) of ERISA requires PBGC to make a determination on an application for partition not later than 270 days after the date it was filed (or, if later, the date such application was completed), in accordance with regulations promulgated by PBGC. In addition, section 4233(a)(2) of ERISA states that, not later than 30 days after submitting an application for partition, the plan sponsor must notify the participants and beneficiaries of this application, in the form and manner prescribed by regulations issued by PBGC.

## 2. Use of information.

a. Information required. PBGC's partition regulation (29 CFR part 4233) gives the requirements for a partition application and notices to interested parties of the application.

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<sup>2</sup>The Participant and Plan Sponsor Advocate position was created in 2012 by the Moving Ahead for Progress in the 21st Century Act (MAP-21). See section 4004 of ERISA for the rules governing this position.

Section 4233.5 of the regulation identifies information required to be included in an application, such as plan document, trust agreement, summary plan description with summaries of material modifications, rehabilitation plan, most recent Form 5500, a current listing of contributing employers, and approximate number of participants for whom each employer is currently making contributions. PBGC expects that most, if not all, of the information required under this subsection will be readily available and accessible to a plan sponsor.

Section 4233.6 of the regulation identifies information needed to evaluate the partition proposed by the plan sponsor, including the proposed structure, the effective date, and a detailed description of any larger integrated transaction of which the proposed partition is a part. If applicable, the plan sponsor must also submit a copy of its application for suspension of benefits under section 305(e)(9)(G) of ERISA (including all attachments and exhibits). In addition, the plan sponsor must provide a detailed description of all measures that it has taken (or is taking concurrently) to avoid insolvency, the measures that it considered but did not take, and the factor(s) that it used in making these determinations, consistent with section 4233(b)(2) of ERISA.

Section 4233.6 of the regulation also requires the plan sponsor to provide a detailed description of the estimated minimum amount of guarantee benefit amounts the plan sponsor proposes to be transferred in a partition, including:

- The estimated number of participants and beneficiaries whose benefits (or any portion thereof) would be transferred, including the number of retirees receiving payments (if any), terminated vested participants (if any), and active participants (if any).
- All supporting data, calculations, assumptions, and methods used to determine the estimated minimum amount of benefit liabilities.

- If applicable, a description of any classifications or specific group(s) of participants and beneficiaries whose benefits the plan sponsor proposes to transfer, and the plan sponsor's rationale or basis for selecting those classifications or groups.

Section 4233.7 of the regulation identifies the actuarial and financial information required for a partition application. Some of these items – plan actuarial reports and actuarial certification requirements – are likely within the possession of the plan sponsor or plan actuary. Other items required are specific to the proposed partition and are essential for PBGC to evaluate whether a partition is necessary for the plan to remain solvent.

Section 4233.8 of the regulation identifies the categories of participant census data to include with an application for partition.

Section 4233.9 of the regulation states the information to include in an application for financial assistance.

Section 4233.11(b) of the regulation provides the information that a plan sponsor must include in a notice of an application for a partition to interested parties of the application. These requirements ensure that interested parties are adequately informed of the meaning of a partition; the condition of the plan; and the effect of a partition on the plan, participants and beneficiaries, the plan sponsor, and contributing employers. In addition, the notice must include contact information for the plan sponsor, PBGC, and the Participant and Plan Sponsor Advocate.

Appendix A of the regulation contains a model notice that a plan sponsor may use.

b. Need for information. PBGC needs the information to determine whether a plan is eligible for partition and whether a proposed partition complies with the statutory conditions required before PBGC may order a partition.

3. Information technology. PBGC will permit partition applications to be made by electronic transmission to the address specified in the filing instructions on PBGC's web site.

4. Duplicate or similar information. Some of the required information may already be in the possession of other federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to federal agencies some, but fewer than all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies' files than simply to submit the information to PBGC. PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Since PBGC expects an eligible multiemployer plan to apply for partition only once, no reporting, or less frequent or timely notice, would prevent PBGC from fulfilling its statutory responsibilities.

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 August 17, 2018, PBGC published (at 83 FR 41113) a notice of its intent to request that OMB extend approval of this collection of information. It did not receive any comments about this collection of information.

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

10. Confidentiality. Information provided to PBGC is confidential to the extent provided under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

11. Personal questions. The collection of information does not call for submission of information of a sensitive or private nature.

12. Hour burden on the public. PBGC estimates that over the next three years six plans will respond to this collection of information each year. PBGC further estimates that the average burden of this collection of information will be 13 hours per plan (11 hours on a partition application and 2 hours on associated notices to interested parties of the partition application), with a total annual burden of 78 hours (13 hours times 6 plans). The majority of the time spent on this collection will be applied to providing the plan and financial assistance information portions of the partition application. The estimated dollar equivalent of this hour burden, based on an assumed a blended average hourly rate of \$75 for administrative, clerical, and supervisory time, is \$5,850.

The hour burden associated with benefit estimates will be accounted for in Treasury information collections.

13. Cost burden on the public. PBGC estimates that over the next three years, respondents will contract out 678 hours annually (113 hours times 6 plans) to compile partition information, actuarial and financial information, and participant census data information performed by attorneys and actuaries. Further, respondents will contract out 6 hours annually for review of the notice to interested parties of the partition application (6 notices times 1 hour per notice). Assuming an average rate of \$350 for multiemployer plan contractor costs, PBGC estimates the total annual cost of preparing the partition application and notice information will

be \$239,400 (684 hours times \$350) for an average annual cost or \$39,900 per respondent. No capital or start-up costs are necessary for partition applications.

The cost burden associated with benefit estimates will be accounted for in Treasury information collections.

14. Cost to the government. Partition requests will be processed by PBGC staff with support from outside contractors. PBGC estimates that contractor costs to the government will be approximately \$150,000 per year (\$25,000 x 6 plans).

15. Explanation of burden changes. The cost burden has increased from \$58,800 to \$239,400. The change in the estimated annual burden of this collection of information is attributable to the adoption of experience-based burden estimation. PBGC previously estimated the time spent to prepare the information collection and relied on public comments received, if any, on the burden estimates.

PBGC has switched to using “experience-based” burden where possible. (For new collections, there is no experience to use. In some cases, PBGC is unsuccessful in getting data.) Experience-based burden uses actual experience, when available, of time and money spent and of the cost of time, to arrive at estimated burden figures. The information on plan experience is gathered by contacting nine or fewer plan representatives. The resultant burden figures may be higher or lower than PBGC’s previous estimated figures — sometimes much higher or lower — and may fluctuate as time goes by and more experience is available.

16. Publication plans. There are no plans for tabulation or publication.

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.