

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

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

STATUS: Request for extension of a previously approved collection of information, with modifications, under the Paperwork Reduction Act (OMB Control number 1212-0057, expires March 31, 2018)

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1. Need for collection. The Pension Benefit Guaranty Corporation (“PBGC”) is requesting approval with modifications to a collection of information under the Paperwork Reduction Act. 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 (PBGC provisions) – requiring administrators of most employee pension and welfare benefit plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government. PBGC, the Internal Revenue Service (IRS), and the Department of Labor (DOL) (collectively the Agencies) have jointly promulgated the Form 5500 Series, which includes the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan. The regulated public uses the Form 5500 Series to satisfy the combined annual reporting/filing requirements.

PBGC is proposing modifications to the previously approved information collection, including to the: 2019 Schedule R (Retirement Plan Information), Form 5500-SF, and Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), and their related instructions. These proposed modifications affect some, but not all, single-employer defined benefit plans covered by title IV of ERISA. PBGC also is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information.

- **Changes proposed to Schedule R form and instructions**

PBGC proposes to add a new line 20 to the 2019 Schedule R to obtain information related to unpaid minimum required contributions from PBGC-insured single-employer plans.

Single-employer plans that fail to make certain required contributions are required to report the amount of unpaid minimum required contributions and other information to PBGC under section 4043 of ERISA unless one of PBGC's regulatory waivers applies, or in the case of missed contributions over \$1 million, under section 303(k) of ERISA. PBGC forms 10 or 200 are used for this purpose. PBGC has found that there is a lack of compliance with these reporting requirements (i.e., a significant number of plans that are required to file these PBGC form(s) do not). As part of its enforcement effort, PBGC regularly contacts plans that report unpaid contributions on Schedule SB if the applicable PBGC form is not received. With limited exception, PBGC cannot distinguish between plans that were required to report missed contributions and those that qualified for a regulatory waiver, and as a result, PBGC ends up contacting many plans for which reporting was waived. PBGC is proposing this addition of information on line 20 to enable PBGC to limit its contact to plans that did not qualify for the 29 CFR 4043.25(c)(2) waiver (i.e., the 30-day grace period).

As proposed, line 20a on the Schedule R will require single-employer plans to check either "Yes" or "No" to indicate whether they reported unpaid minimum required contributions on Schedule SB, line 40. A plan that checks "Yes" must complete line 20b to report whether: (1) it has notified PBGC of the amount of unpaid minimum required contributions, and if not, whether, (2) the reporting requirement was waived (e.g., if the contribution was made within 30 days of the due date); (3) the 30-day period has not yet ended and the sponsor intends to make a

contribution equal to or exceeding the unpaid minimum required contribution by the 30th day after the due date; or, (4) another explanation is applicable.

- **Changes proposed to Form 5500-SF and instructions**

Because plans that file Form 5500-SF are not required to complete Schedule R, PBGC is proposing to revise line 11 of the 2019 Form 5500-SF to obtain the same information from PBGC-covered single-employer plans that do not have to complete Schedule R.

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

On line 23 of Schedule SB, plans indicate which mortality table was used to determine the funding target and target normal cost by checking the applicable box. PBGC is proposing to revise line 23 to eliminate the mortality table options that are not available for plan years after 2018.

Currently, line 23 requires all single-employer defined benefit plans to choose among options concerning the use of a mortality table, pursuant to IRS' mortality table regulation. It provided an option to delay the use of the new mortality tables until 2019 if the plan sponsor determined 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..." PBGC changed the 2018 Schedule SB, line 23 to provide plans with six checkboxes that included options that allowed for the delay in use of the new tables and options that used the new tables. For plan years beginning on or after 2018, IRS guidance provides that all plans must use a mortality table provided under the current regulation (26 CFR 1.430(h)(3)-1). Therefore, the proposed revision for the 2019 Schedule SB deletes the extra checkboxes representing choices related to mortality table options provided under the prior regulation that were included on the 2018 Schedule SB.

- **Other changes proposed to Form 5500 Series instructions**

PBGC is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information. For the 2019 Form 5500, line 2d, it is proposing to revise the instructions to clarify the requested business code description. Currently, the instructions say to report the code that best describes the nature of the plan sponsor’s business. PBGC has found that some plans enter the code for “Insurance & Employee Benefit Funds” or “Labor Unions and Similar Labor Organizations” instead of entering the code that best describes the primary nature of the plan sponsor’s business (in the case of a single-employer plan) and best describes the predominant industry in which the active participants are employed (in the case of a multiemployer plan). PBGC is proposing to modify the instructions for line 2d to better explain which code should be entered.

PBGC also is proposing to revise the instructions for Schedule MB’s line 2b to better explain the data that needs to be reported regarding the number of participants and beneficiaries per category (e.g., terminated vested participants) and the current liability. PBGC has found several filings where a filer failed to report data of part of item 2 (i.e., left an item blank) when other data reported makes it clear that this entry should have been completed. The revised language is intended to result in filers being more likely to report the correct data.

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 the 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 804,000 pension and welfare benefit plans must file the Form 5500 Series under titles I and IV of ERISA and the Code. These plans cover an estimated 134.9 million participants and hold an estimated \$8.4 trillion in assets. The Form 5500 Series is therefore an

important tool for protecting the benefits of American workers. (Note PBGC's portion of the information collection applies to only a small subset of the 804,000 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 that are required to file and covered by PBGC's insurance program.)

3. Information technology. 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 August 20, 2018 (83 FR 42172). The public was provided with 60 days to comment on the submission in response to the solicitation. PBGC received one comment in support of the collection of information. The comment is included with this submission and is posted on:

www.pbgc.gov/prac/pg/other/guidance/paperwork-notices and www.regulations.gov. No changes were made to the proposal in response to this comment.

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

10. Confidentiality. Confidentiality of information is that afforded by the Freedom of Information Act and the Privacy Act. PBGC's rules that provide and restrict access to its records are set forth in 29 CFR Part 4901.

11. Personal questions. This collection of information 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 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 2016 Form 5500 filings (the most recent accurate information available), that a total of about 804,000 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 804,000 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 1,217 hours for 2019, 2020, and 2021 with the equivalent cost burden of approximately \$114,262 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 \$1.531 million for 2019, 2020, and 2021.

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 \$12.5 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 \$750,000. Federal FTE costs are excluded.

15. Explanation of burden changes. PBGC's changes to the Schedule R, Schedule MB, and Schedule SB increase the hour burden. Additionally, PBGC is updating the hour and cost burden to reflect updated data on filing counts and wage rates as estimated by DOL. This results in an overall decrease in the hour and cost burden.

16. Publication plans. PBGC does not intend to publish the results of this collection of information.

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.