

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Qualified Domestic Relations Orders Submitted to PBGC

**STATUS:** Request for extension of a previously-approved collection of information, with modifications (OMB Control number 1212-0054; expires December 31, 2018)

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1. Need for collection. The Pension Benefit Guaranty Corporation (“PBGC”) is requesting that the Office of Management and Budget (“OMB”) extend its approval under the Paperwork Reduction Act of the information collection in PBGC’s booklet, *Qualified Domestic Relations Orders & PBGC*.

PBGC is a federal agency that insures the benefits of workers, retirees, and beneficiaries participating in qualified, private-sector defined benefit pension plans. A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, PBGC becomes trustee of the plan and pays benefits, up to certain legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. However, title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or the marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it qualified, i.e., a qualified domestic relations order, or “QDRO.” ERISA provides that pension plans are required to

comply with only those domestic relations orders which are QDROs, and that the decision as to whether a domestic relations order is a QDRO is made by the plan administrator. Thus, as statutory trustee of terminated plans, PBGC must first determine whether any domestic relations order submitted to PBGC is qualified, i.e., is a QDRO, before any obligation to comply is triggered.

When PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. PBGC has provided the public with model QDROs and accompanying guidance in the booklet, *Qualified Domestic Relations Orders & PBGC*, to assist attorneys, other professionals, participants, and alternate payees in preparing orders for plans trusted by PBGC.

Before providing the model forms and the QDRO booklet, PBGC received many inquiries on QDRO requirements and PBGC's procedures for handling orders submitted for a qualification determination. In addition, many domestic relations orders, both in draft and final form, did not meet the applicable requirements under ERISA. PBGC worked with practitioners, participants, and alternate payees on a case-by-case basis to ensure that their orders were amended to meet applicable requirements. This process was time-consuming for all parties and for PBGC.

Since making the booklet and the model forms available, PBGC has experienced a decrease in (1) the number of inquiries about QDRO requirements, (2) the number of orders that do not meet the applicable requirements, and (3) the amount of time that practitioners, participants, and alternate payees spend to ensure that the orders meet the applicable requirements and the time PBGC spends to assist them in meeting the requirements. The

requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements.

Based on its experience in reviewing and processing domestic relations orders, PBGC is making the following non-material changes to the QDRO booklet:

- Deleting Appendix G and incorporating early retirement subsidy language from that Appendix into both the model for separate interest QDROs and the instructions to facilitate the use of this model language in the preparation of separate interest QDROs.
- Adding definitions to the Glossary for the terms “early retirement benefit” and “early retirement subsidy” and modifying the definition of “subsidized early retirement benefit” to help booklet users better understand the incorporated terminology.
- Deleting language in Appendix F that provided that PBGC may apply an actuarial charge against the participant’s benefit when a contingent alternate payee is identified in a QDRO because PBGC applies no such actuarial charge in practice.
- Removing the notarization requirement from “Appendix G —How to Obtain Certain Participant Information from PBGC,” because PBGC imposes no such notarization requirement.

PBGC is also making other clarifying changes to the QDRO booklet.

2. Use of information. PBGC uses the information it obtains from domestic relations orders that it has qualified to determine the proper amount and timing of benefit payments to participants and alternate payees.

3. Information technology. For informal review of a draft order, PBGC will accept a draft

that is submitted electronically (by fax or email). However, the use of other technology is impracticable for domestic relations orders that are submitted to PBGC for official qualification determinations. Official qualification determinations require original signed orders (or certified or authenticated copies) issued by a state court, agency, or other instrumentality with the authority to issue judgments, decrees, or orders pursuant to state domestic relations law. Since few, if any, states currently have technology in place to submit such orders to PBGC electronically, they must be submitted to PBGC by mail or commercial delivery service.

4. Duplicate or similar information. All information required to be submitted under this collection of information is statutorily required in order for any part of a participant's benefit to be assigned to an alternate payee, or for a former spouse of the participant to be treated as the participant's surviving spouse for benefit payment purposes. The information requested is not available from another federal agency or another source.

5. Small businesses. Not applicable.

6. Consequence of reduced collection. In the absence of a domestic relations order qualified by PBGC, PBGC is prohibited from making benefit payments to an alternate payee.

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

8. Outside input. On August 31, 2018, PBGC published a 60-day notice (83 FR 44681) of intent to request an extension of this collection of information, as revised, and invited public comment by October 31, 2018. No comments were received.

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. PBGC expects to receive an average of 630 domestic relations orders annually. Based on calls to up to nine respondents, PBGC expects the overwhelming majority, if not all, of the domestic relations orders submitted to PBGC for qualification to be prepared primarily by a professional, rather than by an alternate payee or participant solely on his or her own. Nonetheless, the estimated average hour burden for the alternate payee or participant is estimated to be 0.75 hours. The estimated total average annual hour burden is 473 hours (0.75 hours per order x 630 orders).

13. Cost burden on the public. PBGC estimates the cost burden per order to be six hours of professional time spent preparing an order and obtaining its qualification, at an average hourly rate of \$250. Based on these estimates, the estimated cost burden per order is \$1,500 (\$250 per hour x 6 hours). This cost burden per order was used as the average professional fees for each of the estimated 630 orders prepared by professionals, for a total annual cost of approximately \$945,000 (\$1,500 per order x 630 orders).

14. Cost to the government. Because work on processing this information will be performed by existing staff as part of their regular duties, there is no cost to the federal government.

15. Explanation of burden changes. The change in the estimated annual hourly and cost

burden of this collection of information (from 2,117 hours and \$704,500 to 430 hours and \$945,500 respectively) is attributable to several changes. First, the trend over the last three years has been to fewer overall filings (from approximately 1,170 to 630 orders filed). Second, there has been a projected decrease to approximately zero of the number of participants and alternate payees who self-prepare orders (from approximately 134 orders estimated to be self-prepared in 2015). Third, PBGC estimates the average hourly professional rate has increased to approximately \$250 from an hourly rate of approximately \$160 to \$240 per hour, as estimated in 2015. Taken together, these changes result in an estimated decrease in the total average hourly burden and an estimated increase in the total average cost of this information collection. Lastly, PBGC has adopted an 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 from respondents.) Experience-based burden uses actual experience — of time and money spent and of the cost of time — to arrive at estimated burden figures. The information on participant and alternate payee experience is gathered by contacting nine or fewer people who submitted orders to PBGC. 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. PBGC does not plan to publish the results of this collection of information.

17. Display of expiration date. PBGC will display the expiration date.

18. Exceptions to certification statement. There are no exceptions to the certification statement.