

SUPPORTING STATEMENT
Internal Revenue Service
Benefit suspensions for multiemployer plans
in critical and declining status
OMB# 1545-2260

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Multiemployer Pension Reform Act of 2014 (“MPRA”), which was enacted by Congress as part of the Consolidated and Further Continuing Appropriations Act of 2015, relates to multiemployer defined benefit pension plans that are projected to have insufficient funds, within a specified timeframe, to pay the full plan benefits to which individuals will be entitled (referred to as plans in “critical and declining status”).

Under MPRA, the sponsor of a plan in critical and declining status is permitted to reduce the pension benefits payable to plan participants and beneficiaries if certain conditions and limitations are satisfied (referred to in MPRA as a “suspension of benefits”). MPRA requires the Secretary of the Treasury (Treasury Department), in consultation with the Pension Benefit Guaranty Corporation (PBGC) and the Secretary of Labor (Labor Department), to approve or deny applications by sponsors of these plans to reduce benefits.

These regulations affect active, retired, and deferred vested participants and beneficiaries of multiemployer plans that are in critical and declining status as well as employers contributing to, and sponsors and administrators of, those plans.

2. USE OF DATA

Revenue Procedure 2016-27 (2016-19 I.R.B. 725), published May 9, 2016, prescribes procedures for applying for approval of a proposed suspension of benefits, including information that must be included in the application. A plan sponsor may be required to provide additional information with respect to any application after it is submitted. For example, the plan sponsor may be required to provide individual participant data that would permit the Secretary to confirm that the sample and actuarial calculations provided in the application, such as those provided for purposes of section 4 of this revenue procedure, are accurate and applied in a consistent manner.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The final regulations provide that ballot packages will be distributed to eligible voters by first-class U.S. mail. A supplemental copy of the ballot package that includes the same content as the mailed ballot package may also be sent by an electronic communication to an eligible voter who has consented to receive electronic notifications. The plan sponsor is permitted to send this notification to any other eligible voters for whom the plan sponsor has an electronic mailing address.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source. It is expected that the plan sponsor's list of eligible voters, their last-known addresses, and their individualized benefit cut estimates will be derived from the information assembled and distributed to the affected individuals as part of the notice required under § 432(e)(9)(F). The plan sponsor will need to update the information to the extent necessary, but it is expected that any update would be minimal as the vote should occur not long after the notice is provided.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. In this case, the IRS and Treasury believe that the regulations likely would not have a "significant economic impact on a substantial number of small entities." 5 U.S.C. 605. This certification is based on the fact that the number of small entities affected by this rule is unlikely to be substantial because it is unlikely that a substantial number of small multiemployer plans in critical and declining status will suspend benefits under section 432(e)(9). Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

If the information collection is not made, then respondents cannot receive the relief they have applied for and for which they may be eligible under the statute. Therefore, the statutory requirements would not be satisfied. The Treasury Department would not be able to deliver program benefits or timely implement the program.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On February 18, 2015, the Department of the Treasury issued a Request for Information on Suspensions of Benefits under the Multiemployer Pension Reform Act of 2014 in the Federal Register (80 FR 8578) (request for information). The request for information

included questions focusing on certain matters to be addressed in guidance implementing section 432(e)(9) and indicated that multiemployer plans should not submit applications for suspensions of benefits prior to a date specified in such future guidance.

On June 19, 2015, the Treasury Department and the IRS published temporary (TD 9723) and proposed regulations (REG–102648–15) under section 432(e)(9) in the Federal Register at 80 FR 35207 and 80 FR 35262, respectively (June 2015 regulations). The June 2015 regulations provide guidance regarding section 432(e)(9), setting forth the requirements for a plan sponsor to apply for a suspension of benefits and for the Treasury Department to process such an application. The June 2015 regulations reflect consideration of comments received in response to the request for information. The preamble to the June 2015 temporary regulations states that it is expected that no application proposing a benefit suspension will be approved prior to the issuance of final regulations, and that, if a plan sponsor chooses to submit an application for approval of a proposed benefit suspension before the issuance of final regulations, then the plan sponsor may need to revise the proposed suspension (and potentially the related notices to plan participants) or supplement the application to take into account any differences in the final regulations.

On June 19, 2015, the IRS also released Rev. Proc. 2015–34, 2015–27 I.R.B. 4. The revenue procedure details application procedures for a proposed suspension of benefits and also contains a model notice under section 432(e)(9)(F). On September 2, 2015, the Treasury Department and the IRS published temporary (TD 9735) and proposed regulations (REG–123640–15) on the voting provisions under section 432(e)(9)(H) in the Federal Register at 80 FR 52972 and 80 FR 53068, respectively (September 2015 regulations). The September 2015 regulations reflect consideration of comments received pursuant to the request for information.

On September 10, 2015, the Treasury Department and the IRS conducted a public hearing on the June 2015 regulations, at which speakers also commented on the September 2015 regulations. A public hearing on the September 2015 regulations was held on December 18, 2015.

On February 11, 2016, the Treasury Department and the IRS published proposed regulations (REG–101701–16) regarding the specific limitation on a suspension of benefits under section 432(e)(9)(D)(vii) in the Federal Register at 81 FR 7253 (February 2016 regulations). This specific limitation governs the application of a suspension of benefits under any plan that includes benefits directly attributable to a participant's service with any employer that has, prior to December 16, 2014, withdrawn from the plan in a complete withdrawal, paid its full withdrawal liability, and, pursuant to a collective bargaining agreement, assumed liability for providing benefits to participants and beneficiaries equal to any benefits for such participants and beneficiaries reduced as a result of the financial status of the plan. A public hearing on the February 2016 regulations was held on March 22, 2016.

After consideration of the comments received, the provisions of the June 2015 proposed regulations and the September 2015 proposed regulations (collectively, “2015 regulations”) are adopted by this Treasury decision, subject to certain changes that are summarized in this preamble. This Treasury decision also removes the temporary regulations under 432(e)(9) that were published in June 2015 and September 2015. This Treasury decision does not contain final action on the February 2016 regulations. On May 9, 2016 the IRS released Rev. Proc. 2016– 27, 2016–19 I.R.B. 725, which updates the application procedures and model notice set forth in Rev. Proc. 2015–34.

The Treasury Department consulted with PBGC and the Labor Department in developing these regulations and other guidance.

In response to the **Federal** register notice dated February 4, 2019 (84 FR 1533), we received no comments during the comment period regarding this collection.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103. However, IRC § 432(e)(9)(G)(ii) specifically requires each application to be published on the Treasury website and for Treasury to solicit comments. The revenue procedure provides that the application and notice must not include personally identifiable information with respect to participants and beneficiaries. In addition, a summary of comments (which will be publicly available) that are opposed to approval of benefit suspension is required to be provided to individuals voting on suspension. We have conducted a privacy threshold analysis and have concluded that the information under this collection is information that is required by the statute to be made public.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collections of information in this revenue procedure appear in Appendix B (sample Power of Attorney form) and Appendix C (checklist for completeness of the application). Burden estimates with respect to information described in sections 2, 3, 4, 5, 6 and 7 of this revenue procedure are reported in the preamble to the proposed regulations under § 1.432(e)(9)–1. We estimate the total number of respondents to be 28. We estimate it will take 2 hours to comply. The estimated total annual and/or recordkeeping burden is 56 hours.

The burden estimate is as follows:

OMB Collection	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545-2260	CFR 1.432(e)(9)-1	---	28	500	14,000
	IRS TOTAL		28		14,000

The following regulations impose no additional burden. Please continue to assign OMB number 1545-2260 to these regulations.

1.432(e)(9)-1

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated February 4, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, we estimate that the total annual cost of contracted hours to respondents will be \$2,648,020.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.