

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Termination of Multiemployer Plans (29 CFR part 4041A)

**STATUS:** Request for modification of currently-approved collection of information (OMB control number 1212-0020; expires November 30, 2021)

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1. Need for collection. This collection of information is necessary for proper performance of agency functions under section 4041A(f) of the Employee Retirement Income Security Act of 1974 (“ERISA”), dealing with the termination of multiemployer plans. Section 4041A(c) and (f)(1) of ERISA prohibit the payment by a mass-withdrawal-terminated plan of lump sums greater than \$1,750 or of nonvested plan benefits unless authorized by PBGC. Section 4041A(f)(2) authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect the interests of plan participants and beneficiaries or to prevent unreasonable loss to PBGC. PBGC’s regulation on Termination of Multiemployer Plans (29 CFR part 4041A) implements these provisions.

Subpart B of the regulation (§§ 4041A.11 and 4041A.12) requires the plan sponsor of a terminated multiemployer plan to submit a notice of termination containing basic information necessary to alert PBGC to possible demands on the multiemployer insurance program. Where termination results from a plan’s loss of its entire contribution base through mass withdrawal of all contributing employers, the termination notice requires submission of additional information

that PBGC needs to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Subparts C and D prescribe (among other things) rules under which the plan sponsor of a mass-withdrawal-terminated multiemployer plan that is closing out must give notices to participants regarding the election of alternative forms of benefit (§ 4041A.43) and may apply to PBGC for approval to pay lump sums greater than \$1,750 or to pay nonvested plan benefits (§ 4041A.27).

For all termination notices under subpart B, the plan sponsor must submit:

1. Information identifying the plan, the plan sponsor, the plan sponsor's representative (if any), and the post-termination plan administrator (if other than the plan sponsor), so that PBGC knows who these parties are.
2. Information on when the plan terminated, to assure PBGC that the plan has filed the notice timely and to permit the calculation of relevant time periods, if necessary (see below).
3. A copy of the plan's most recent annual report (Form 5500), so that PBGC can check for evidence of financial difficulties that might adversely affect participants and/or PBGC.

In addition, for mass withdrawal termination notices, the plan sponsor must submit:

1. Copies of plan provisions covering the last five years, so that PBGC can determine to what extent the benefit guarantee phase-in rule under ERISA section 4022A applies.
2. Documentation of the plan sponsor's authority to operate the plan, so that PBGC can determine who is responsible for performing functions required under ERISA and PBGC regulations for terminated plans.
3. A copy of the plan's most recent actuarial valuation and a statement of any subsequent material changes, to provide additional data regarding financial difficulties that might adversely affect participants and/or PBGC.
4. Copies of Internal Revenue Service determination letters, so that PBGC can determine whether the plan is covered by Title IV of ERISA pursuant to ERISA section 4021 and whether PBGC's guarantee is affected by any tax disqualification pursuant to ERISA section 4022A.

5. Information on the plan's ability to pay benefits for the next year, to help PBGC determine whether the plan may be insolvent.
6. Information on the proposed distribution of plan assets (if all nonforfeitable benefits can be satisfied), so that PBGC can determine whether the plan may pose a risk to PBGC and whether the distribution appears to comply with the requirements of Title IV of ERISA.
7. Identification of contributing employers for the last three years (if nonforfeitable benefits cannot be fully satisfied), to help PBGC determine compliance with the withdrawal liability rules and the extent of its exposure for guaranteed benefits.

The rules in §§ 4041A.27 and 4041A.43 are necessary to ensure the consistency and adequate quality of notices required by law and to enable PBGC to determine whether the payment of benefits other than nonforfeitable benefits or benefits valued at more than \$1,750 in other than annuity form is permissible.

PBGC is publishing in the Federal Register a final rule<sup>1</sup> that will require plans terminated by mass withdrawal, plans terminated by plan amendment that are expected to become insolvent, and insolvent plans under part 4245 receiving financial assistance from PBGC (whether terminated or not terminated) to file with PBGC withdrawal liability information (§ 4041A.23) and actuarial valuations or, for smaller plans receiving financial assistance where the present value of the plan's nonforfeitable benefits is \$50 million or less, alternative information (§ 4041A.24). PBGC needs the withdrawal liability and actuarial valuation information to estimate PBGC's multiemployer liabilities for purposes of its financial statements and to provide financial assistance to plans that become insolvent.

For each employer that has withdrawn but has not yet been assessed withdrawal liability, the plan is required to file information, including the name of the employer, the contribution

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<sup>1</sup> The publication date and citation are in the ROCIS submission.

owed in the plan year before withdrawal, and the reasons the employer has not yet been assessed withdrawal liability. For each employer assessed withdrawal liability, information required to be filed includes the name of the employer and whether there are scheduled periodic payments or there has been a lump-sum settlement. For periodic payments, information would include the start date, end date, frequency of payment (monthly, quarterly, annually), amount of payment, and whether the employer is current on making its payments. For lump sum settlements, information would include the amount and date of payment. Plans also file aggregate information about lump sum settlement payments and periodic payments.

Plans must file an actuarial valuation for the plan year. Plans receiving financial assistance where the value of nonforfeitable benefits is \$50 million or less may file alternative information, including the last actuarial valuation prepared for the plan and a participant data schedule with specified information for each participant and beneficiary in pay status or reasonably expected to enter pay status during the valuation year and for each deferred vested participant.

2. Use of information. When a multiemployer pension plan terminates and submits a termination notice, the information in the notice is used by PBGC to assess the likelihood of benefit reductions or suspensions under the plan and the need for PBGC financial assistance to the plan. Somewhat more information is required with respect to mass withdrawal terminations because the risk of plan insolvency is greater in these cases. When PBGC receives a plan sponsor's application for approval to pay benefits or benefit forms not otherwise permitted, it uses the information to determine, as required by ERISA, whether such payments should be permitted. When PBGC receives withdrawal liability and valuation information, it uses the

information to determine its liabilities under the multiemployer program and to provide financial assistance to plans. When plan participants and beneficiaries receive notices from a plan sponsor regarding the election of alternative forms of benefit, they use the information to make personal financial decisions.

3. Information technology. PBGC requires notices of plan termination, withdrawal liability information, and plan valuation information to be filed electronically with PBGC.

4. Duplicate or similar information. Terminating plans' most recent Form 5500s (which must be included in termination notices) are submitted by plans to a government contractor under a Form 5500 processing arrangement (known as "ERISA Filing Acceptance System 2" "EFAST2"). EFAST2 receives and displays Form 5500 filings that PBGC (and the public) can usually access within one day of submission.

To avoid duplication where feasible, the termination notice instructions provide that information otherwise required to be included in a termination notice need not be supplied if it duplicates information in the Form 5500 submitted with the notice. To satisfy the requirement to file withdrawal liability payment information for employers assessed withdrawal liability, plans would be able to file documents already prepared containing the required information. The instructions also specify that a plan sponsor is not required to file withdrawal liability already filed with PBGC. To satisfy the requirement to file an actuarial valuation, a plan would be able to use an actuarial valuation for 5 years where the present value of the plan's nonforfeitable benefits is \$50 million or less. In addition, where the present value of the plan's nonforfeitable benefits is \$50 million or less, a plan receiving financial assistance from PBGC could comply

with the actuarial valuation requirement by filing alternative information specified in the valuation instructions on PBGC's website.

Some of the other items required by the regulation are routinely prepared for other purposes (but not otherwise routinely sent to PBGC). For example, actuarial valuations, copies of plan and trust documents, or Internal Revenue Service determination letters. However, there is no timely and reliable way to locate the required documents, particularly in view of the possibility that the reporting plan has been involved in one or more mergers or spinoffs, has changed its name or identifying number, or has submitted to Federal agencies some, but fewer than all, of the documents required under this regulation. The time lost by PBGC in tracking down and verifying documents in other agencies' files would also impair its ability to protect the interests of plan participants and beneficiaries and prevent unreasonable loss to itself.

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. Notices and applications under this regulation are prepared only in connection with a plan termination or insolvency. If the information were not reported, PBGC's ability to protect the interests of plan participants and beneficiaries and to prevent unreasonable loss to PBGC with respect to terminated and insolvent multiemployer plans would be significantly impaired.

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 July 16, 2018 (83 Fed. Reg. 32815), PBGC published a proposed rule that would change the actuarial valuation requirements and require filing of actuarial valuations and withdrawal liability payment information. PBGC received two comments on the proposed rule and collections of information associated with the proposed rule. The final rule discusses the comments received and PBGC's responses to the comments.

Two commenters expressed concerns about the scope of the withdrawal liability information required to be filed with PBGC, including whether a plan is required to provide information as to its entire historical experience. PBGC made changes to the withdrawal liability instructions in response to these comments to clarify that withdrawal liability information for plan years ending before the effective date of the final rule will not be required to be filed and that plan sponsors are not required to file withdrawal liability information already filed with PBGC. The commenters also expressed concerns about the withdrawal liability information becoming publicly available. In response to these comments, PBGC added an explanation about its rules providing and restricting access to records to the Paperwork Reduction Act notice included with the instructions.

With respect to the requirement to file actuarial valuations, one commenter supported PBGC's proposed change to allow plan sponsors of plans terminated by mass withdrawal to use an actuarial valuation for 5 years if the present value of the plan's nonforfeitable benefits is \$50 million or less. A second commenter raised concerns about the actuarial valuation requirement for plan sponsors of insolvent plans receiving financial assistance from PBGC. PBGC considered the comment, its need for data to measure its liabilities, and the minimal cost of

requiring plans to file actuarial valuations, and decided to adopt in the final rule its proposed changes to the annual actuarial valuation requirements.

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. Based on its experience, PBGC estimates that it receives 10 notices of termination from sponsors of multiemployer pension plans annually; that two of these terminations result from plan amendments and eight from mass withdrawals; and that one of the plans terminating by mass withdrawal will be sufficient (*i.e.*, will be capable of closing out by distributing plan assets in full satisfaction of all nonforfeitable benefits under the plan, although some of them may initially continue as sufficient trusts). Based on its experience, PBGC further estimates that three of these terminating plans (the one sufficient mass-withdrawal-terminated plans and both of the plans that terminate by amendment) will eventually close out and will be required to send notices of election to participants, and that PBGC will receive at the most one request per year to pay lump sums greater than \$1,750 or to pay



nonvested plan benefits. PBGC estimates that the average plan subject to the regulation covers 1,000 participants, about 700 of whom are in pay status.

Based on plan experience, PBGC believes that virtually all of the professional services involved are performed by outside attorneys and actuaries. PBGC estimates that a notice of termination for a plan terminating by amendment requires 0.5 hours of fund office time to prepare and that the more detailed notice for a plan terminating by mass withdrawal requires one hour of plan office time. PBGC also estimates that the preparation and distribution of benefit election notices for a plan that is closing out requires 20.0 hours of fund office time.

The estimated time required to prepare and submit or distribute notices and requests annually is therefore 69 hours  $((2 \times 0.5) + (8 \times 1) + (3 \times 20))$ .

Under the final rule, PBGC estimates that approximately 40 plans that are terminated or insolvent (28 plans with nonforfeitable benefits that exceed \$50 million plus 12 plans with nonforfeitable benefits of \$50 million or less) will file actuarial valuations and that it will take each plan 30 minutes to file the actuarial valuation electronically. PBGC estimates that approximately 10 plans receiving financial assistance from PBGC will file alternative valuation information and that it will take each plan 2 hours to file the information. PBGC further estimates that the filings will be completed by a combination of fund office staff (50%) and outside attorneys (50%). The total estimated hour burden to file the actuarial valuations and to complete and file the alternative valuation information is approximately 20 hours of fund office time  $((20 + 20) \times 0.5)$ .

Under the final rule, PBGC expects to receive withdrawal liability payment information from approximately 140 plans.<sup>2</sup> PBGC estimates that the withdrawal liability information will take approximately 2 hours to compile and electronically file by a combination of fund office staff (50%) and outside attorneys (50%). The total estimated hour burden to file the withdrawal liability information is approximately 140 hours of fund office time.

The total hour burden is 229 hours (69+140+20). The estimated dollar equivalent of this hour burden, based on an assumed hourly rate of \$75 for administrative, clerical, and supervisory time is increased from \$5,175 to \$17,175.

13. Cost burden on the public. Based on the estimates in item 12 and plan experience, the notice of termination, request for approval to pay lump sums greater than \$1,750 (0-1 per year), and benefit election notices are prepared by attorneys and actuaries. The approximate cost of preparing the notices and requests is \$5,000 per plan for an annual cost burden of \$50,000.

Under the final rule, PBGC expects that some plans will use outside attorneys to prepare and file the withdrawal liability and actuarial valuation information. The total cost burden for filing the withdrawal liability information will be approximately \$56,000 based on 140 contracted hours assuming an average hourly rate of \$400. The total cost burden for filing the actuarial valuations and alternative information will be approximately \$8,000 (based on 20 contracted hours assuming an average hourly rate of \$400).

The total annual cost burden for the collection of information is estimated to increase from \$50,000 to \$114,000 (\$50,000+\$56,000+\$8,000).

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<sup>2</sup> PBGC expects that 20% of the 140 plans will file withdrawal liability information only once stating that the plan does not receive withdrawal liability payments and does not have any employers that have withdrawn and have not yet been assessed withdrawal liability.

14. Cost to the government. As noted in item 12, PBGC estimates that it receives annually 10 notices of termination and one application to pay lump sums greater than \$1,750 or to pay nonvested plan benefits. The cost to the government for the termination notices and application is \$0. Under the final rule, PBGC each year will receive withdrawal liability payment information from approximately 140 plans, valuations from approximately 40 plans, and alternative valuation information from approximately 10 plans. The only cost to the government is with respect to the alternative valuation information. PBGC pays an outside contractor to prepare valuations using the information received from plans at an approximate cost of \$3,000 per plan or \$30,000.

15. Explanation of burden changes. The change in the estimated annual burden of this collection of information is a result of final rule changes, including the new filing requirements for withdrawal liability and actuarial valuation information. PBGC estimates that the annual hour burden will increase from 69 hours to 229 hours and the annual cost burden will increase from \$50,000 to \$114,000.

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.

