

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281)

STATUS: Request for modification of currently-approved collection of information (OMB control number 1212-0032; expires November 30, 2021)

CONTACT: Hilary Duke (202-326-4400 x3839)

1. Need for collection. Section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA) provides rules for multiemployer pension plans that have terminated by mass withdrawal under section 4041A of ERISA. Under section 4281, if the annual valuation of a plan shows that plan assets are not sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must amend the plan to eliminate benefits that are not eligible for PBGC's guarantee to the extent necessary to ensure that plan assets are sufficient (as determined and certified in accordance with PBGC regulations) for all remaining nonforfeitable benefits (subsection (c)). If, after such an amendment, the plan becomes insolvent (*i.e.*, unable to pay benefits when due for a plan year), the plan sponsor must suspend benefits in excess of guaranteed benefits to the extent that their payment cannot be supported by the plan's available resources. If the plan's available resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC (see also sections 4245(f) and 4261).

Section 4281 also requires PBGC to issue regulations governing the exercise of the plan sponsor's powers and duties thereunder (subsection (d)(3)). In addition, section 4041A(f)(2) of

ERISA authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect plan participants and beneficiaries or to prevent unreasonable loss to PBGC.

PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) implements the requirements of section 4281. The regulation prescribes rules under which plan sponsors must: (1) give notices of benefit reduction (*i.e.*, of the adoption of a plan amendment reducing benefits) to PBGC and to affected participants and beneficiaries, and a notice to PBGC of any restoration of benefits (§§ 4281.32 and 4281.33); (2) give notices to PBGC and to participants and beneficiaries that a plan is, or will be, insolvent, (§§ 4281.43 and 4281.44); (3) give notices of insolvency benefit level to PBGC and to participants and beneficiaries (§§ 4281.45 and 4281.46); and (4) submit an application to PBGC for financial assistance if a plan is, or will be, unable to pay guaranteed benefits when due (§ 4281.47).

These rules are necessary to assure the consistency and adequate quality of notices required by law and to enable PBGC to provide financial assistance to terminated plans in a timely manner.

PBGC is publishing in the Federal Register a final rule¹ that will reduce filing requirements by allowing a plan sponsor to combine the notice of insolvency and notice of insolvency benefit level and by eliminating most of the annual updates to the notice of insolvency benefit level. The plan sponsor would provide an updated notice to participant and beneficiaries only if there is a change in the amount of benefits paid to participants and

¹ The publication date and citation are in the ROCIS submission.

beneficiaries. The final rule moves the content requirements for the notices required to be filed with PBGC from the rule to instructions on PBGC's website. The final rule also makes changes to the content of the notices by eliminating outdated information and changing the permissible methods of issuance to alternate payees.

2. Use of information. PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

3. Information technology. PBGC requires notices of insolvency and insolvency benefit level and applications for financial assistance to be filed electronically with PBGC.

4. Duplicate or similar information. To avoid duplication, plan sponsors may note the date of a prior submission to PBGC of identical information, rather than requiring submission. Under the final rule, duplication is avoided by allowing the notice of insolvency to be combined with the notice of insolvency benefit level and by eliminating most annual updates to the notice of insolvency benefit level.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs an early warning of threatened insolvency, and its consequent impact on benefit payments, to be able to estimate PBGC's cash needs to provide financial assistance to insolvent terminated plans. Once a plan sponsor determines that an insolvency situation may arise, a lack of expeditious notification or application could delay PBGC assistance. Delay in notification may also interfere with the

financial decisions of participants and beneficiaries and delay their search for alternative income sources. Further, without this regulation, the notices required by ERISA section 4281 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations of the law.

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 remove certain insolvency notice and update requirements. PBGC received two comments on the proposed rule and collections of information associated with the proposed rule. With respect to the notice of insolvency and notice of insolvency benefit level changes, one commenter encouraged PBGC to finalize the proposed changes to eliminate redundant notice requirements for terminated plans and insolvent plans. Another commenter expressed concern that moving the content of the notices from the rule to the instructions would not give interested parties enough notice to comment on recommended changes. The final rule discusses the comments received and PBGC's responses to the comments.

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 experience, PBGC expects to receive the following notices under this section per year for each of the next three years: 1 notice of benefit reduction; 10 notices of insolvency; 55 notices of insolvency benefit level; 10 initial applications for financial assistance; and 300 non-initial applications for financial assistance. This is a total of 376 notices per year. Under the final rule, most of the annual updates to the notice of insolvency benefit level would be eliminated unless there is a change in benefit level. PBGC assumes this change will reduce the number of plans issuing notices of insolvency benefit level to approximately 5, reducing the total number of notices to 326.

PBGC has never received a benefit restoration notice, and none are expected, as most insufficient mass-withdrawal-terminated plans become insolvent over the course of time and, once insolvent, do not regain solvency.

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 assumes that the notice of benefit reduction and applications for financial assistance are prepared by attorneys.

The notice of insolvency and notice of insolvency benefit level are prepared by outside attorneys and actuaries using information compiled by the plan office and are distributed by the plan office. The time to prepare and distribute the notices can vary significantly by plan size. PBGC estimates that without the final rule, a plan spends approximately 20.0 hours compiling information for the notices and distribution of the notices. The estimated annual hour burden,

without the final rule, for the notice of insolvency is 200 hours and for the notice of insolvency benefit level is 1,100 hours.

The final rule will reduce the hour burden by allowing plans to combine the notice of insolvency and the notice of insolvency benefit level and by eliminating the annual update to the notice of insolvency benefit level unless there is a change in benefit level. PBGC estimates that under the final rule that a plan office will spend approximately 16.0 hours compiling information for the notices and distribution of the notices. The estimated hour burden is 160 hours for the notice of insolvency and 80 hours for the notice of insolvency benefit level.

The total estimated hourly burden without the final rule changes is 1,300 hours (200+1,100). With the final rule changes, the total estimated hourly burden is 240 hours (160+80). The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is reduced from \$97,500 to \$18,000.

13. Cost burden on the public. Based on the assumption that the average multiemployer plan subject to the final rule has about 1,000 participants, about 700 of whom are in pay status, and that the notices and applications are prepared by a combination of attorneys and actuaries, PBGC estimates the cost to prepare and file each notice or application as follows:

1. For a notice of benefit reduction (1 per year): 1 hour of professional time at a cost of \$400. The final rule does not make changes that affect this burden estimate.
2. For a notice of insolvency (10 per year) and the notice of insolvency benefit level (55 per year): The cost of attorney and actuary time to prepare the notices varies significantly by plan size from \$2,500 to \$26,000. PBGC estimates that the cost of preparing the initial notices to be \$12,000 and subsequent notices of insolvency benefit level to be about \$5,000 because not all of the notices require calculations of a change in benefit level.

The annual estimated cost is \$395,000.

PBGC estimates that the final rule will reduce the cost by eliminating the annual update to participants and beneficiaries unless there is a change in benefit level and by allowing plans to file a combined notice. PBGC estimates that this will reduce the number of plans distributing the notice of insolvency benefit level to participants and beneficiaries to approximately 5 plans. PBGC estimates that the cost of preparing the notices will be \$10,000 per plan with an annual estimated cost of \$150,000.

3. For an initial application for financial assistance (10 per year): \$10,000 per application, or a total of \$100,000. The final rule does not make changes that affect this burden estimate.
4. For non-initial applications for financial assistance (300 per year): \$400 per application, or a total of \$120,000. The final rule does not make changes that affect this burden estimate.

Therefore, the estimated annual cost burden of the collection of information before the final rule is approximately \$615,400. The estimated annual cost burden of the collection of information with the final rule is \$370,400.

14. Cost to the government. As discussed in item 13, PBGC estimates that on average, it will annually receive 1 benefit reduction notices; 10 notices of insolvency; 55 notices of insolvency benefit level; 10 initial applications for financial assistance; and 300 non-initial applications for financial assistance. PBGC estimates that the total annual cost to the government is \$0.

15. Explanation of burden changes. The change in the estimated annual burden of this collection of information is a result of final rule changes. PBGC estimates that the annual hour burden will be reduced from 1,300 hours to 240 hours and the annual cost burden will be reduced from \$615,400 to \$370,400.

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.