

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation
TITLE: Administrative Appeals
STATUS: Request for renewal of a currently approved collection of information under the Paperwork Reduction Act (OMB Control number 1212-0061, expires August 31, 2019)
CONTACT: Karen B. Levin (202-326-4400 ext. 3559) (levin.karen@pbgc.gov)

1. Need for collection. PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Under the regulation, an appeal must: (1) be in writing; (2) be clearly designated as an appeal; (3) contain a statement of the grounds upon which it is brought and the relief sought; (4) reference all pertinent information already in the possession of PBGC and include any additional information believed to be relevant; (5) state whether the appellant desires to appear in person or through a representative before the Appeals Board; and (6) state whether the appellant desires to present witnesses to testify before the Appeals Board, and, if so, why the presence of witnesses will further the decision-making process. Under the regulation, where the appellant believes that another person may be aggrieved if PBGC grants the relief sought, the appeal must include the name(s) and address(es) (if known) of such other person(s). In addition, PBGC requires from individual appellants: (1) his or her Social Security Number; (2) the name of the pension plan; (3) the PBGC case number assigned to the plan; (4) a daytime telephone number; (4) the name and Social Security Number of the plan participant, if the appellant is not the participant; (5) a list of information

requests for which the appellant is awaiting PBGC's response; (6) and, if possible, a copy of the PBGC formal determination letter and benefit statement. Further, PBGC requests from appellants: (1) copies of documents that provide additional information that the Appeals Board should consider, especially if they support the appellant's claim; (2) a description of relevant information that the appellant believes is known by PBGC; and (3) the appellant's e-mail address.

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by employers in connection with other matters, such as plan coverage under section 4021 of ERISA or employer liability under sections 4062(b)(1), 4063, or 4064. Appeals may be filed by hand, mail, commercial delivery service, fax or e-mail. For appeals of benefit determinations, PBGC has developed optional forms for filing appeals and requesting extensions of time to appeal.

2. Use of Information. The purpose of the collection of information is to enable affected individuals and employers to appeal initial determinations made by PBGC. The information is used by PBGC's Appeals Board to resolve matters raised in such appeals.

3. Information technology. PBGC utilizes information technology by allowing for appellants to file appeals by fax or email, in addition to appeals filed by hand, mail, or commercial delivery services.

4. Duplicate or similar information. Most of the information collected is not otherwise available to the PBGC Appeals Board. Even for those items of information that have otherwise been provided to other parts of PBGC, the relatively small burden associated with this collection is far offset by the greater assurance that appeals will be processed correctly.

5. Reducing the burden on small entities. Not applicable.

6. Consequences of reduced collection. This collection of information is necessary for individuals and employers to file appeals of initial determinations by PBGC. If this collection of

information were required less frequently or not at all, individuals and employers would not be able to file appeals.

7. Consistency with guidelines. This collection of information is consistent with the guidelines in 5 CFR § 1320.5(d)(2).

8. Outside input. PBGC published a Federal Register notice soliciting public comment on this collection of information on March 21, 2019, at 84 FR 10554. No public comments were received in response to the notice.

9. Payment 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 call for submission of information of a sensitive or private nature.

12. Hour Burden on the public. PBGC based its estimates in items 12 and 13 on its experience and appellants' experience. The burden on an appellant will vary depending on whether the appellant is an individual or an employer, whether the appellant hires professionals, and whether the appellant uses the optional forms. In addition, the burden for filing an appeal will differ from the burden for filing of an extension request.

PBGC estimates that in each of the next three years, there will be 500 appeals and 100 extension requests annually and that 99.5 percent of the filers in each category will be individuals and 0.5 percent will be employers. PBGC further estimates that of the individuals who file appeals and extension requests, 90 percent in each category will make the filings themselves and 10 percent will hire professionals, and that all employers filing appeals will hire professionals. PBGC estimates

that 50 percent of individual appellants will use the optional form for filing appeals and 75 percent will use the optional form for filing extension requests, and that no employers filing appeals or extension requests will use either of the optional forms.

PBGC's burden estimate for individual appellants not hiring professionals takes into account only the hour burden. For appeals, PBGC estimates that the burden will be 30 minutes if a form is not used and 20 minutes if a form is used. For extension requests, PBGC estimates that the burden will be 25 minutes if a form is not used and 15 minutes if a form is used.

Based on these estimates, PBGC estimates that for each of the next three years, an average of 497 individuals (500×0.995) and 3 employers (500×0.005) will file appeals. 447 of the individuals (497×0.9) will file the appeals themselves, while 50 of them (497×0.1) will hire professionals. Of the 447 individuals filing appeals themselves, 223.5 (447×0.5) will use the optional forms, and 223.5 (447×0.5) will not.

The hour burden for the 223.5 individuals who file appeals themselves (without using professionals) using the form is estimated to be 0.33 hours per individual, for a total of 73.76 hours (223.5×0.33 hours). The hour burden for the 223.5 individuals who file appeals themselves without using the form is estimated to be 0.5 hour per individual, for a total of 111.75 hours (223.5×0.5 hour). Thus, the total hour burden for individuals filing appeals themselves is estimated to be 185.51 hours ($73.76 + 111.75$).

PBGC estimates that an average of 99.5 individuals (100×0.995) and 0.5 employer (100×0.005) per year will file extension requests. Ninety percent of these 99.5 individuals (89.6) will file extension requests themselves (without using professionals), and ten percent (9.9) will hire professionals. The employer will hire a professional. Of the 89.6 individuals who file appeals themselves, 67.2 (89.6×0.75) will use the optional extension request form and 22.4 (89.6×0.25) will not. The hour burden for the 67.2 individuals who use the optional extension request form is

estimated to be 0.25 hours, for a total burden of 16.8 hours (67.2×0.25 hours). The hour burden for the 22.4 individuals who do not use the optional extension request form is estimated to be 0.42 hours, for a total burden of 9.41 hours (22.4×0.42). Thus, the total burden for individuals not using professionals to file extension requests is estimated to be 26.21 hours ($16.8 + 9.41$).

Thus, the total annual hour burden for filing of appeals and extension requests is estimated to be $185.51 \text{ hours} + 26.21 \text{ hours} = 211.72 \text{ hours}$.

13. Cost burden on the public. For appellants hiring professionals, PBGC assumes that there is no hour burden on the appellant and that the cost burden on the appellant will be the same regardless of whether the optional forms are used. For individuals hiring professionals, PBGC estimates that the cost of filing an appeal will be \$600 ($3 \text{ hours} \times \$200/\text{hour}$) and the cost of filing an extension request will be \$100 ($0.5 \text{ hours} \times \$200/\text{hour}$). For employers hiring professionals, PBGC estimates that the cost of filing an appeal will be \$800 ($4 \text{ hours} \times \$200/\text{hour}$) and the cost of filing an extension request will be \$100 ($0.5 \text{ hours} \times \$200/\text{hour}$).

The cost burden for the 50 individuals filing appeals who hire professionals is estimated to be \$30,000 ($50 \times \600). The cost burden for the 3 plans filing appeals is estimated to be \$2,400 ($3 \times \800). The total annual cost burden for appeals is estimated to be \$32,400.

The cost burden for the 9.9 individuals filing extension requests who hire professionals is estimated to be \$990 ($9.9 \times \100). The cost burden for the 0.5 employer filing an extension request is estimated to be \$50 ($0.5 \times \100). The total annual cost burden for extension requests is estimated to be \$1,040.

Thus, the total annual cost burden for all appellants hiring professionals is estimated to be $\$32,400 + \$1,040 = \$33,440$.

14. Costs to the Federal government. Because work on processing submitted appeals will be performed by Appeals Board staff as part of their regular duties, there is no cost to the federal government.

15. Explanation of burden adjustment. The change in the estimated annual hourly and cost burden of this collection of information (from 643 hours and \$46,680 to 211.72 hours and \$33,440) is attributable to several changes. First, there is a decrease in the estimate of the total average number of appellants that will respond to this collection of information, decreasing from an average of 900 appellants per year to an average of 600 appellants. Second, there is a decrease in the estimate of the average annual burden of this collection of information, with the average amount of time per appellant decreasing (from forty-five minutes to twenty minutes). Taken together, these changes result in an estimated decrease in the total average hourly burden and cost burden of this information collection. Lastly, PBGC has adopted an experience-based burden.

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 — to arrive at estimated burden figures. The information is gathered by contacting nine or fewer people who file appeals and extension requests at 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 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.