

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Variances for Sale of Assets (29 CFR Part 4204)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0021; expires August 31, 2020)

CONTACT: Hilary Duke (326-4400 x3839)

1. Need for collection. PBGC's regulation on Variances for Sale of Assets (29 CFR Part 4204) provides methods for relieving burdens that would otherwise be imposed by statute on parties involved in a sale of assets of a business covered by a multiemployer pension plan. Under Part 1 of Subtitle E of Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA") (sections 4201-4225), if an employer's covered operations or obligation to contribute under a multiemployer plan ceases, the employer is generally liable to pay withdrawal liability to the plan. Section 4204 of ERISA provides an exception, under certain conditions, where the cessation results from a sale of assets. Among other things, the buyer must furnish a bond or escrow, and the sale contract must provide that the seller will be secondarily liable if the buyer withdraws within a specified period after the sale and fails to pay withdrawal liability (section 4204(a)(1)(B) and (C)).

The regulation is issued pursuant to section 4204(c), which authorizes PBGC to vary the bond/escrow and sale-contract requirements by regulation if the variance would "more effectively or equitably carry out the purposes of [Title IV]" and to grant individual or class variances or exemptions from those requirements when warranted. Subpart B of the regulation

establishes general variances of the bond/escrow and sale-contract requirements and authorizes plans to determine whether the variances apply in particular cases. Subpart C of the regulation establishes procedures for buyers and sellers to request individual variances of the requirements from PBGC. The information collection requirements in the regulation, § 4204.11(c) and § 4204.21(d) and (e), are necessary to give to plans and PBGC, respectively, the information needed to act on variance requests.

2. Use of information. The information required by the regulation is used by plans and PBGC to determine whether employers qualify for variances of the statutory requirements.

3. Information technology. No consideration has been given to the use of improved information technology to reduce burden. The reporting volume under the regulation is too low to warrant the use of high technology. However, PBGC expects that most, if not all, employers and their representatives will use email and electronic versions of documents to provide the information required to PBGC under the regulation.

4. Duplicate or similar information. Each transaction under ERISA section 4204 is unique, and the regulation requires only one submission of information per transaction. PBGC imposes no other similar reporting requirement, and no information similar to that required by the regulation exists. The information that is required, *e.g.*, specific financial information on the purchaser, cannot be obtained by PBGC or plans from any other source.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Since each transaction under ERISA section 4204 is unique, each collection of information under the regulation occurs only once. Without this collection of information, plans and PBGC would be unable to act on requests for variances and

exemptions from the bond/escrow and sale-contract requirements, and sales of the assets of businesses covered by multiemployer plans would be discouraged or made more costly by the need to comply with these requirements to avoid withdrawal liability.

7. Consistency with guidelines. The information collection is not conducted in a manner inconsistent with 5 CFR § 1320.5(d)(2).

8. Outside input. PBGC published a Federal Register notice soliciting public comment on this and other collections of information pursuant to 5 CFR § 1320.8(d) (February 11, 2020, at 85 FR 7803). 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. Under § 4204.21(a), an employer that is unwilling to disclose confidential financial information to a plan can apply to PBGC for a variance, rather than to the plan. 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 the experience of attorneys preparing the variance requests for employers, PBGC estimates that employers submit 100 variance requests per year to plans under § 4204.11 and 1 request per year to PBGC under § 4204.21. The hour burden varies depending on whether the employer requesting a variance is a public or private company. PBGC estimates that an employer spends approximately 10 hours compiling the

financial and other information required for a variance request and that a plan administrator spends approximately 0.50 hours preparing a response. The same information is used for a request to PBGC. Accordingly, there is no additional hour burden for a request to PBGC. PBGC estimates that the annual hour burden of this collection of information is 1,050 hours. The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is \$78,750.

13. Cost burden on the public. Employers use outside attorneys to prepare variance requests to submit to a plan or to PBGC. Based on attorney experience, PBGC estimates that the cost burden for a variance request to a plan is \$5,000 and for a variance request to PBGC is \$1,000. The total estimated annual cost burden of the collection of information is \$501,000.

14. Cost to the government. As noted in item 12, PBGC estimates that employers submit 1 variance request per year to PBGC that is processed by staff. PBGC estimates that the total annual cost to the government is \$0.

15. Explanation of burden changes. There is no change to the estimated hour and cost burden.

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.