

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208)

**STATUS:** Request for regular review and extension of currently approved collection (OMB control number 1212-0039; expires August 31, 2020)

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

1. Need for collection. Section 4208 of the Employee Retirement Income Security Act of 1974 (“ERISA”) contains rules for the reduction or elimination of an employer’s partial withdrawal liability under certain circumstances and authorizes the Pension Benefit Guaranty Corporation (“PBGC”) to promulgate additional partial withdrawal abatement rules. Pursuant to section 4208, PBGC has promulgated its regulation on Reduction or Waiver of Partial Withdrawal Liability (29 CFR Part 4208). Under both the statutory and the PBGC abatement rules, reduction or waiver of an employer’s partial withdrawal liability is predicated on the employer’s restoring to the multiemployer plan from which it has partially withdrawn some or all of the contributions for covered work whose cessation caused the partial withdrawal.

Under the regulation, an employer that believes it meets the requirements for abatement makes application to the plan for an abatement determination (§ 4208.3(a)). When the plan makes its determination, it so notifies the employer (§§ 4208.3(b) and 4208.5(e)). An employer that has met certain of the abatement requirements may furnish a bond or escrow for the benefit of the plan, instead of making partial withdrawal liability payments, pending a later plan determination as to whether all the abatement requirements are met. An employer that furnishes

a bond or escrow must so notify the plan (§ 4208.5(c)). When the plan makes an abatement determination following the furnishing of a bond or escrow, it must so notify the bonding or escrow agent (§§ 4208.3(b) and 4208.5(b) and (e)).

Applications for abatement simply identify the employer and the partial withdrawal and set forth the basis for the employer's entitlement to abatement of its liability. A plan's notice to the employer in response to the abatement application states whether or not the liability has been abated and explains the consequences of the decision. An employer's notice to a plan that a bond or escrow has been furnished identifies the bonding or escrow agent and the partial withdrawal liability payments that the employer is withholding, and states the amount of the bond or escrow. A plan's notice to a bonding or escrow agent of an abatement determination may be simply a copy of the plan's notice to the employer.

The regulation permits plans to adopt abatement rules tailored to their particular circumstances, and also sets forth the standards under which PBGC will approve plan rules and the procedures for requesting such approval (§ 4208.9).

A request for PBGC approval of plan abatement rules must identify the plan and include copies of the new rules, the plan's most recent actuarial valuation (to assure that the rules are not adverse to the interests of plan participants and the PBGC insurance program), and a certification that notice of the rules and the application has been given to contributing employers and participants' collective bargaining representatives.

2. Use of information. Plans use the information in employers' abatement applications to determine whether partial withdrawal liability should be abated. The other notices provided for in the abatement application process serve to inform the plan, the employer, and the bonding or escrow agent of other parties' actions.

PBGC uses the information in applications for approval of plan abatement rules to evaluate the rules in the context of the plan's particular circumstances and financial condition and to determine whether the amendment is adverse to the interests of plan participants and beneficiaries or will significantly increase PBGC's risk of loss with respect to the plan.

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, plan sponsors 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 application and notice required under the regulation is triggered by a unique event (an abatement situation, or a plan's adoption of abatement rules covered by the regulation), and thus duplication is not an issue. Other than the actuarial report required as part of a plan's application for PBGC approval of abatement rules, no information similar to that required by the regulation exists. The actuarial report called for is the plan's most recent, which is routinely prepared for other purposes (but is not otherwise routinely sent to PBGC).

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Reporting under the regulation is required only upon the occurrence of a specified event (an abatement situation, or a plan's adoption of abatement rules covered by the regulation) that occurs relatively rarely. Without the information required by the regulation, employers and plans would be hindered in making and processing abatement requests, and PBGC would be hindered in the performance of its statutory duties.

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. 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. PBGC estimates that one employer applies to a plan each year for abatement of partial withdrawal liability and that outside professionals prepare the application. PBGC estimates that a plan's response to an employer's abatement application (including a notice to a bond/escrow agent if required) takes about 30 minutes of in-house managerial time to prepare.

Based on experience, PBGC does not expect to receive any requests for approval of plan abatement rules under the regulation.

Accordingly, PBGC estimates that the annual hour burden of this collection of information is 0.50 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 \$37.50.

13. Cost burden on the public. Employers use outside attorneys and actuaries to prepare an application under the regulation. PBGC estimates that one hour is spent preparing an application and that the annual cost burden of the collection of information is \$450.

14. Cost to the government. As noted in item 12, PBGC does not expect to receive any submissions under the regulation. PBGC estimates that the total annual cost to the government is \$0.

15. Explanation of burden changes. There is no change in the hour burden. The cost burden has increased from \$400 to \$450. The increase in the hour burden is due to an increase in the estimated cost per hour for actuarial/attorney time.

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.