

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Annual Return/Report of Employee Benefit Plan (Form 5500)

STATUS: Request for extension of a previously approved collection of information, with modifications, under the Paperwork Reduction Act (OMB Control number 1212-0057, expires January 31, 2022)

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1. Need for collection. The Pension Benefit Guaranty Corporation (“PBGC”) is requesting approval with modifications to a collection of information under the Paperwork Reduction Act. The Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions – in Title I (Labor provisions), Title II (Internal Revenue Code (Code) provisions), and Title IV (PBGC provisions) – requiring administrators of most employee pension and welfare benefit plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government. PBGC, the Internal Revenue Service (IRS), and the Department of Labor (DOL) (collectively the Agencies) have jointly promulgated the Form 5500 Series, which includes the Form 5500 Annual Return/Report of Employee Benefit Plan and the Form 5500-SF Short Form Annual Return/Report of Small Employee Benefit Plan. The regulated public uses the Form 5500 Series to satisfy the combined annual reporting/filing requirements.

PBGC is proposing modifications to the previously approved information collection relating to the 2020 Schedule R (Retirement Plan Information) and its related instructions. These proposed modifications affect multiemployer defined benefit plans covered by title IV of ERISA. PBGC also is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information.

- **Changes proposed to line 14 on Schedule R and instructions**

A multiemployer defined benefit plan is required under section 103(f)(2)(C) of ERISA to include in its annual report, “[t]he number of participants under the plan on whose behalf no contributions were by an employer as an employer of the participant for such plan year and for each of the 2 preceding plan years.” Line 14a of Schedule R requires the plan to report these participant counts for the current plan year’s filing. Lines 14b and 14c require the plan to report these participant counts for the previous two respective plan years. PBGC has found a majority of plans that are required to report do not provide accurate information on line 14 of Schedule R.

Line 14 of Schedule R and the current instructions for it require multiemployer plans to count inactive participants using the last contributing employer counting method. Under the last contributing employer method, a plan counts only those inactive participants whose last contributing employer withdrew from the plan by the beginning of the relevant plan year for which the Form 5500 relates. The plan does not count any inactive participants whose most recent employers had not withdrawn from the plan.

PBGC is proposing to modify line 14 of Schedule R and the instructions to provide multiemployer plans with a choice of using the current last contributing employer counting method and two other proposed counting methods: the alternative method and the reasonable approximation method. PBGC anticipates that providing plans with three available counting methods will allow each plan to choose the counting method that will be most accurate and least burdensome for the plan to count its inactive participants.

Under the alternative method, a plan would count only those inactive participants whose last contributing employer and all prior contributing employers had withdrawn from the plan by the beginning of the relevant plan year. Under this method, the plan would review the list of all

contributing employers (employers that had not withdrawn from the plan by the beginning of the relevant plan year), and include on lines 14a, 14b, and 14c only those inactive participants who had no covered service with any of these employers.

Under the reasonable approximation method, a plan that is unable to use the other two counting methods must make a reasonable, good faith effort to count inactive participants to satisfy the requirements of section 103(f)(2)(C) of ERISA. The plan would also be required to provide an attachment that explains the plan's approximation method, including a description of the data and a breakdown describing the number of clearly identified inactive participants and the number of estimated inactive participants.

PBGC is also proposing that when a plan reports a number on line 14b or 14c that differs from the number it reported for the plan year immediately preceding the current plan year, it would be required to submit an attachment with an explanation of the reason for the change.

Both attachments will provide PBGC with data to be used in its Pension Insurance Modeling System (PIMS). PBGC's evaluation of the data submitted in the attachments will allow PBGC to review the integrity of the data.

- **Other changes proposed to Form 5500 Series instructions**

PBGC also is proposing minor modifications to the Form 5500 Series to improve the accuracy of reported information. For Schedule H (Financial Information), line 5c, it is proposing to revise both the schedule and its instructions to clarify that "Yes" should be checked if the plan was a defined benefit plan covered under the PBGC insurance program at any time during the plan year. Currently, the instructions ask for "Yes" to be checked if the plan is a defined benefit plan covered under the PBGC insurance program. PBGC has found that some

plans who were covered on the first day of the plan year but ceased coverage on or before the end of the last day of the plan year, checked the “No” response and failed to enter the My PAA confirmation number for the submission of required contributions. The revised language is intended to result in filers being more likely to report the correct data. PBGC is also proposing to modify line 5c to note that a church defined benefit pension plan that has made an election under Internal Revenue Code (Code) section 410(d) should see www.pbgc.gov for the procedures prescribed by PBGC on how to notify PBGC that it wishes to have title IV of ERISA apply to it.

PBGC also is proposing the same modifications to Schedule I (Financial Information – Small Plan), line 5c, and its instructions. The revised language in both Schedules H and I is intended to result in filers being more likely to report the correct data to PBGC.

2. Use of information. The Form 5500 Series is the principal source of information and data available to the Agencies concerning the operations of employee benefit plans. For this reason, the Form 5500 Series is an integral part of the Agencies’ enforcement, research, and policy formulation. Regarding enforcement, the Form 5500 Series provides a means by which the Agencies can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the Agencies’ investigatory contacts with the vast majority of plans and enabling the Agencies to make the best use of their limited resources. The Form 5500 Series also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans. Furthermore, public disclosure of the Form 5500 Series is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

Regarding research and policy formulation, the Form 5500 Series represents the primary

source of data available to the Agencies, Congress, and the private sector for assessing employee benefits, taxes, and economic trends and for development and implementation of national pension policies.

In addition to providing the Agencies with important enforcement, research, and policy information, the Form 5500 Series represents the only source of detailed financial information available to plan participants and beneficiaries who, upon written request, must be furnished a copy of the plan's latest annual report by the plan administrator (ERISA section 104(b)(1)(B) (4)).

Approximately 814,000 pension and welfare benefit plans must file the Form 5500 Series under titles I and IV of ERISA and the Code. These plans cover an estimated 154 million workers, retirees, and dependents of private sector pension and welfare plans with estimated assets of \$10.6 trillion. The Form 5500 Series is therefore an important tool for protecting the benefits of American workers. (Note PBGC's portion of the information collection applies to only a small subset of the 814,000 pension and welfare benefit plans because PBGC's insurance program does not apply to welfare plans or defined contribution plans. There are approximately 24,800 defined benefit plans that are required to file and covered by PBGC's insurance program.)

3. Information technology. The Agencies currently use an automated processing system, the ERISA Filing Acceptance System 2, or EFAST2, to process the Form 5500 Series filings.

4. Duplicate or similar information. The Agencies have developed and use a consolidated annual report that allows filers to satisfy the information collection requirements of all three agencies through a single filing, without duplication of effort or information collection. This eliminates the duplicative reporting that would otherwise result from application of the statutory provisions as written. In addition, while certain information concerning assets (including employee benefit plan assets) held by banks, insurance companies and other investment entities may be separately reported to state and federal regulatory authorities, those reports are not structured to provide meaningful information about assets specifically attributable to any employee benefit plan. Therefore, there is no similar information gathered or maintained by any state or federal agency or other source that the Agencies would consider adequate for effectively monitoring the activities of employee benefit plans.

5. Reducing the burden on small entities. Not applicable. PBGC's portion of the information collection will not have a significant impact on a substantial number of small entities.

6. Consequences of reduced collection. ERISA and the Code specifically require the filing of reports or returns by employee benefit plans on an annual basis. A less frequent information collection could contravene statutory requirements and would impair and inhibit the administration and enforcement of the statute by the Agencies.

7. Consistency with guidelines. This collection of information is conducted in a manner consistent with 5 CFR 1320.5(d)(2).

8. Outside input. PBGC published the notice required by 5 CFR 1320.8(d) soliciting comments on the information collection in the Federal Register on August 20, 2019 (84 FR 43189). The public was provided with 60 days to comment on the submission in response to the solicitation. PBGC received one comment in support of the collection of information. The comment is included with this submission and is posted on:

www.pbgc.gov/prac/pg/other/guidance/paperwork-notice and www.regulations.gov. No changes were made to the proposal in response to this comment.

9. Payments 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 include any questions of a personal or sensitive nature.

12. Hour burden on the public. Because the Form 5500 Series combines the information collection requests of three federal agencies (DOL, IRS, and PBGC) into a single return/report, each of the Agencies submits its own ICR and maintains its own OMB approval for the portion of the paperwork burden arising out of the Form 5500 Series that pertains to its own information collections. However, since 1999, the Agencies have adopted a unified approach and methodology for estimating paperwork burden, which is conducted by DOL with input from PBGC and IRS. This request is for approval of only the portion of the total paperwork burden of the Form 5500 Series that is attributed to PBGC, although it includes some information on the

other portions of the total paperwork burden. The discussion below describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the Form 5500 Series as a whole, but requests approval only of PBGC's portion of that burden.

PBGC estimates, based on data derived from the 2017 Form 5500 filings (the most recent accurate information available), that a total of about 814,000 respondents will file annual reports using the Form 5500 Series. As noted above, PBGC's portion of the information collection applies only to a small subset of these 814,000 respondents, i.e., approximately 24,800 defined benefit plans covered under title IV of ERISA.

The paperwork burden allocated to PBGC includes a portion of the general instructions, and basic plan identification information. PBGC's portion of the annual aggregate hour burden generated by the Form 5500 Series is estimated at 1,200 hours for 2020, 2021, and 2022 with the equivalent cost burden of approximately \$124,709 for each of these years (assuming a compensation rate of \$100.74 per hour for services of a financial professional).

13. Cost burden on the public. As noted in the answer to item 12 above, the Agencies have adopted a unified approach and methodology for estimating paperwork burden, which is conducted by DOL with input from PBGC and IRS. Based on that unified methodology, the annual cost burden attributable to PBGC is estimated at \$1.664 million for 2020, 2021, and 2022.

14. Costs to the Federal government. The total annual processing cost for all Form 5500

Series filings is estimated as \$14.4 million annually (including oversight) based on FY2019 costs. These costs are allocated among the agencies (DOL, PBGC, and IRS) according to the EFAST2 Cost Allocation Model, which was approved by the agencies at the beginning of EFAST2 operations in 2015 as the methodology that would be used for identifying agencies' shares of EFAST2 costs. Under the model, the agencies pay for their relative share of the total filing volume. Therefore, PBGC's share of the total cost is approximately \$866,000. Federal FTE costs are excluded.

15. Explanation of burden changes. PBGC's estimates that the proposed changes to the Schedule R would have an offsetting effect and would not change the hour or cost burden for the Schedule R. PBGC is updating the hour and cost burden to reflect updated data on filing counts and wage rates as estimated by DOL. This results in an overall increase in the 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. OMB previously granted approval to omit the expiration date from the Form 5500. PBGC requests continued approval to omit the expiration date.

18. Exceptions to certification statement. The information collection is consistent with 5 CFR 1320.9.