

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Partitions of Eligible Multiemployer Plans; 29 CFR Part 4233

STATUS: Request for extension of a previously-approved collection of information, without modifications (OMB control number 1212-0068; expires February 28, 2022)

CONTACT: Melissa Rifkin (202-229-6563)

1. Need for collection.

The Multiemployer Pension Reform Act of 2014 (“MPRA”)¹ amended section 4233 of ERISA to provide partition authority to the Pension Guaranty Benefit Corporation (PBGC). Under section 4233(a) of ERISA, the plan sponsor of an eligible multiemployer plan may apply to PBGC for a partition of the plan. Section 4233(b) of ERISA states five conditions that must be satisfied for PBGC to order a partition:

- The plan must be in critical and declining status as defined in section 305(b)(6) of ERISA.
- PBGC must determine, after consultation with the Participant and Plan Sponsor Advocate,² that the plan sponsor has taken (or is taking concurrently with an application for partition) all reasonable measures to avoid insolvency, including the maximum benefit suspensions under section 305(e)(9) of ERISA, if applicable.
- PBGC must reasonably expect that partition will reduce PBGC’s expected long-term loss with respect to the plan and partition is necessary for the plan to remain solvent.
- PBGC must certify to the United States Congress that PBGC’s ability to meet existing financial assistance obligations to other plans (including any liabilities associated with multiemployer plans that are insolvent or that are projected to become insolvent within 10 years) will not be impaired by the partition.
- The cost to PBGC arising from the partition must be paid exclusively from the PBGC fund for basic benefits guaranteed for multiemployer plans.

¹ Division O of the Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113-235 (Dec. 16, 2014).

² The Participant and Plan Sponsor Advocate position was created in 2012 by the Moving Ahead for Progress in the 21st Century Act (MAP-21). See section 4004 of ERISA for the rules governing this position.

Under section 4233(c) of ERISA, a partition order will provide for a transfer to the plan created by the partition order (the successor plan) of the minimum amount of the original plan's liabilities necessary for the original plan to remain solvent.

Section 4233(a)(1) of ERISA requires PBGC to make a determination on an application for partition not later than 270 days after the date it was filed (or, if later, the date such application was completed), in accordance with regulations promulgated by PBGC. In addition, section 4233(a)(2) of ERISA states that, not later than 30 days after submitting an application for partition, the plan sponsor must notify the participants and beneficiaries of this application, in the form and manner prescribed by regulations issued by PBGC.

2. Use of information.

a. Information required. PBGC's partition regulation (29 CFR part 4233) gives the requirements for a partition application and notices to interested parties of the application.

Section 4233.5 of the regulation identifies information required to be included in an application, such as plan document, trust agreement, summary plan description with summaries of material modifications, rehabilitation plan, most recent Form 5500, a current listing of contributing employers, and approximate number of participants for whom each employer is currently making contributions. PBGC expects that most, if not all, of the information required under this subsection will be readily available and accessible to a plan sponsor.

Section 4233.6 of the regulation identifies information needed to evaluate the partition proposed by the plan sponsor, including the proposed structure, the effective date, and a detailed description of any larger integrated transaction of which the proposed partition is a part. If applicable, the plan sponsor must also submit a copy of its application for suspension of benefits

under section 305(e)(9)(G) of ERISA (including all attachments and exhibits). In addition, the plan sponsor must provide a detailed description of all measures that it has taken (or is taking concurrently) to avoid insolvency, the measures that it considered but did not take, and the factor(s) that it used in making these determinations, consistent with section 4233(b)(2) of ERISA.

Section 4233.6 of the regulation also requires the plan sponsor to provide a detailed description of the estimated minimum amount of guarantee benefit amounts the plan sponsor proposes to be transferred in a partition, including:

- The estimated number of participants and beneficiaries whose benefits (or any portion thereof) would be transferred, including the number of retirees receiving payments (if any), terminated vested participants (if any), and active participants (if any).
- All supporting data, calculations, assumptions, and methods used to determine the estimated minimum amount of benefit liabilities.
- If applicable, a description of any classifications or specific group(s) of participants and beneficiaries whose benefits the plan sponsor proposes to transfer, and the plan sponsor's rationale or basis for selecting those classifications or groups.

Section 4233.7 of the regulation identifies the actuarial and financial information required for a partition application. Some of these items – plan actuarial reports and actuarial certification requirements – are likely within the possession of the plan sponsor or plan actuary. Other items required are specific to the proposed partition and are essential for PBGC to evaluate whether a partition is necessary for the plan to remain solvent.

Section 4233.8 of the regulation identifies the categories of participant census data to include with an application for partition.

Section 4233.9 of the regulation states the information to include in an application for financial assistance.

Section 4233.11(b) of the regulation provides the information that a plan sponsor must include in a notice of an application for a partition to interested parties of the application. These requirements ensure that interested parties are adequately informed of the meaning of a partition; the condition of the plan; and the effect of a partition on the plan, participants and beneficiaries, the plan sponsor, and contributing employers. In addition, the notice must include contact information for the plan sponsor, PBGC, and the Participant and Plan Sponsor Advocate. Appendix A of the regulation contains a model notice that a plan sponsor may use.

b. Need for information. PBGC needs the information to determine whether a plan is eligible for partition and whether a proposed partition complies with the statutory conditions required before PBGC may order a partition.

3. Information technology. PBGC will permit partition applications to be made by electronic transmission to the address specified in the filing instructions on PBGC's web site.

4. Duplicate or similar information. Some of the required information may already be in the possession of other federal agencies. However, there is no timely and reliable way to locate the required documents, particularly since the person reporting may have submitted to federal agencies some, but fewer than all, of the documents required under this regulation. In most cases, it would take a respondent more time to assist PBGC in tracking down and verifying documents in other agencies' files than simply to submit the information to PBGC. PBGC believes that there is no information similar to that required under the regulation that could be used instead of the required information for the purposes served by the regulation.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Since PBGC expects an eligible multiemployer plan to apply for partition only once, no reporting, or less frequent or timely notice, would prevent PBGC from fulfilling its statutory responsibilities.

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

8. Outside input. On October 18, 2021, PBGC published (at 86 FR 57706) a notice of its intent to request that OMB extend approval of this collection of information. It did not receive any comments about this collection of information.

9. Payment to respondents. PBGC will provide no payments or gifts to the respondents in connection with this collection of information.

10. Confidentiality. Information provided to PBGC is confidential to the extent provided under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552a.

11. Personal questions. The collection of information does not call for submission of information of a sensitive or private nature.

12. Hour burden on the public. PBGC estimates that over the next 3 years 1 plan will respond to this collection of information each year. PBGC further estimates that the average burden of this collection of information for the single respondent will be 13 hours total (11 hours on a partition application and 2 hours on associated notices to interested parties of the partition application). The estimated dollar equivalent of this hour burden, based on an assumed a blended average hourly rate of \$75 for administrative, clerical, and supervisory time, is \$975 (13 x \$75).

The hour burden associated with benefit estimates will be accounted for in Treasury information collections.

13. Cost burden on the public. PBGC estimates that over the next 3 years, the single respondent will contract out 113 hours annually to attorneys and actuaries to compile partition, actuarial, financial, and participant census data information. Further, the respondent will contract out 1 hour annually for review of the notice to interested parties of the partition application. Assuming an average hourly rate of \$400 for contractor costs, PBGC estimates the total annual cost of preparing the 1 expected partition application and notice information will be \$45,600 (114 hours times \$400).

The cost burden associated with benefit estimates will be accounted for in Treasury information collections.

14. Cost to the government. Because all the work of processing this information will be performed by existing staff as part of their regular duties, the annual cost to the government is estimated to be \$0.

15. Explanation of burden changes. Due to the Special Financial Assistance Program enacted in the American Rescue Plan Act to assist underfunded multiemployer plans, PBGC has lowered its estimate of partition requests that it expects to receive annually from 6 to 1.

16. Publication plans. There are no plans for tabulation or publication.

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.