

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Duties of Plan Sponsor of an Insolvent Plan (29 CFR part 4245)

STATUS: Request for modification of currently-approved collection of information (OMB control number 1212-0033; expires June 30, 2022)

CONTACT: Karen Levin (202-229-3559)

1. Need for collection. ERISA section 4245(e) requires two types of notice: a “notice of insolvency,” stating a plan sponsor’s determination that the plan is or may become insolvent, and a “notice of insolvency benefit level,” stating the level of benefits that will be paid during an insolvency year. Section 4245(e)(4) provides that these notices are to be given in accordance with rules promulgated by PBGC. PBGC’s regulation on Duties of Plan Sponsor of an Insolvent Plan, 29 CFR part 4245, establishes the procedure for complying with these notice requirements and allows a plan sponsor to combine the notice of insolvency and notice of insolvency benefit level. The recipients of these notices are PBGC, contributing employers, employee organizations representing participants, and participants and beneficiaries. The plan sponsor provides an updated notice to participants and beneficiaries only if there is a change in the amount of benefits paid to participants and beneficiaries.

2. Use of information. PBGC uses the information submitted under the regulation to estimate cash needs for financial assistance to troubled plans. The collective bargaining parties use the information to decide whether additional contributions will be made to the plan to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information to make personal financial decisions.

3. Information technology. PBGC requires notices under this regulation to be filed electronically with PBGC.

4. Duplicate or similar information. To avoid duplication, plan sponsors may note the date of a prior submission to PBGC of identical information, rather than requiring resubmission. Duplication is avoided by allowing the notice of insolvency to be combined with the notice of insolvency benefit level and by eliminating most annual updates to the notice of insolvency benefit level.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs early warning of threatened insolvencies, and their impact on benefit payments, to be able to estimate its cash needs for providing financial assistance to troubled plans. Once a plan sponsor determines that a plan is or may become insolvent, a lack of expeditious notification may delay PBGC assistance. Less than prompt notice to the collective bargaining parties can also hinder chances for bargaining to increase contributions to the plan. Also, delay in notification may interfere with the financial decisions of participants and beneficiaries and delay their search for alternative income sources.

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

8. Outside input. On March 9, 2022, PBGC published a 60-day notice (87 FR 13020) of intent to request an extension of this collection of information, as revised, and invited public comment by *May 9, 2022*. No comments were received.

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's experience has been that virtually all multiemployer plans that become insolvent are plans terminated by mass withdrawal, and thus expects that almost all of the plans that become insolvent over the next 3 years will be mass-withdrawal-terminated plans. Plans terminated by mass withdrawal that become insolvent are subject to the notice requirements in section 4281 of ERISA rather than section 4245. Accordingly, PBGC expects that at most 1 plan will issue new notices of insolvency each year under section 4245.

For purposes of estimating the time required to comply with the regulation, PBGC assumes (based on experience) that plans subject to the regulation generally submit a single notice of insolvency and provide notices of insolvency benefit level for the first insolvency year only to retirees, as permitted by the regulation. PBGC also estimates that the average plan subject to the regulation covers employees represented by 2 unions and has about 35 contributing employers and 1,000 participants, about 700 of whom are in pay status.

Based on plan experience, the notices are prepared by outside attorneys and actuaries using information compiled by the plan office and are distributed by the plan office. The time to prepare and distribute the notices can vary significantly by plan size. Plans can combine the

notice of insolvency and the notice of insolvency benefit level. PBGC estimates that the plan will spend approximately 16.0 hours compiling information for the notices and distribution of the notices. The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is \$1,200.

13. Cost burden on the public. Based on plan experience, the cost of attorney and actuary time to prepare the notices varies significantly by plan size from \$2,500 to \$26,000. The notices of insolvency benefit level require participant benefit calculations. PBGC estimates that the cost of preparing the combined notices is \$10,000.

14. Cost to the government. As noted in item 12, PBGC estimates that it will receive a submission from one plan per year 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 estimated annual burden of this collection of information.

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.