

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Administrative Appeals

STATUS: Request for extension of a currently approved collection of information under the Paperwork Reduction Act (OMB Control number 1212-0061, expires July 31, 2022)

CONTACT: Melissa Rifkin (202-229-6563) (rifkin.melissa@pbgc.gov)

1. Need for collection. PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations. Certain types of initial determinations are subject to administrative appeals, which are covered in subpart D of the regulation. Subpart D prescribes rules on who may file appeals, when and where to file appeals, contents of appeals, and other matters relating to appeals.

Under § 4003.54, an appeal must: (1) be in writing; (2) be clearly designated as an appeal; (3) specifically explain why PBGC's determination is wrong and the result the appellant is seeking; (4) describe the relevant information the appellant believes is known by PBGC, and summarize any other information the appellant believes is relevant; (5) state whether the appellant desires to appear in person or through a representative before the Appeals Board; and (6) state whether the appellant desires to present witnesses to testify before the Appeals Board, and if so, state why the presence of witnesses will further the decision-making process. Under the regulation, where the appellant believes that another person may be aggrieved if PBGC grants the relief sought, the appeal must include the name(s) and address(es) (if known) of such other person(s).

Most appeals filed with PBGC are filed by individuals (participants, beneficiaries, and alternate payees) in connection with benefit entitlement or amounts. A small number of appeals are filed by businesses in connection with other matters, such as plan coverage under section 4021 of ERISA or employer liability under sections 4062(b)(1), 4063, or 4064.

PBGC has developed optional forms for filing appeals and requesting extensions of time to appeal. Optional Form 724, Appeal of a PBGC Benefit Determination, requests the appellant's identifying and contact information, the appellant's plan information, a narrative of the appellant's position of why the benefit determination is incorrect, supporting documentation, and contact information for the appellant's representative (if any). Optional Form 723, Request for Additional Time to File an Appeal of a PBGC Determination, requests the appellant's identifying and contact information, the appellant's plan information, a narrative of why the appellant needs additional time, the number of additional days requested, and contact information for the appellant's representative (if any).

2. Use of Information. The purpose of the collection of information is to enable affected individuals and businesses to appeal initial determinations made by PBGC. The information is used by PBGC's Appeals Board to resolve matters raised in such appeals.

3. Information technology. With this renewal PBGC is updating Forms 723 and 724, such that they will be fillable online. In addition, PBGC will continue to accept these forms via e-mail.

4. Duplicate or similar information. Some of the information collected (e.g., Plan Name, Customer ID #) is otherwise available to the PBGC Appeals Board. However, to ensure that the Appeals Board is reviewing information regarding the correct individual, the relatively small

burden of providing duplicate information is far offset by the greater assurance that appeals will be processed correctly.

5. Reducing the burden on small entities. PBGC recognizes that this information collection is applicable to individuals and businesses. Accordingly, it provides Forms 723 and 724 that list all required information and give clear directions for filing. The forms are optional for appellants and potential appellants, and they are intended to simplify and help reduce the paperwork burden for the appeal process. In addition, with this extension, PBGC is making these forms electronically fillable.

6. Consequences of reduced collection. This collection of information is necessary for individuals and businesses to file appeals of initial determinations by PBGC. If this collection of information were required less frequently or not at all, individuals and businesses would not be able to file appeals.

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

8. Outside input. PBGC published a Federal Register notice soliciting public comment on this collection of information on March 30, 2022, at 87 FR 18402. 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. 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 call for submission of information of a sensitive or private nature.

12. Hour Burden on the public. PBGC estimates that in each of the next three years, there will be 300 appeals and 75 extension requests annually. PBGC further estimates that of the individuals and businesses who file appeals and extension requests, 90 percent in each category will make the filings themselves (270 appeals and 68 extension requests) and 10 percent will hire professionals (30 appeals and 7 extension requests). The estimated average burdens for an appeal and an extension request are 60 minutes per appellant and 20 minutes per appellant respectively, for a total annual burden of 293 hours $((270 \text{ appeals} \times 60 \text{ minutes}) + (68 \text{ extension requests} \times 20 \text{ minutes}) = 17,560 \text{ minutes} / 60 = 292.67 \text{ hours, rounded to 293 hours})$.

13. Cost burden on the public. For individuals and businesses hiring professionals, PBGC estimates that the cost of filing an appeal will be \$1200 (3 hours x \$400/hour) and the cost of filing an extension request will be \$200 (0.5 hours x \$400/hour). Thus, the total annual cost burden for all appellants hiring professionals is estimated to be \$37,400 $(30 \text{ appeals} \times \$1200) + (7 \text{ extension requests} \times \$200) = \$37,400$.

14. Costs to the Federal government. Because work on processing submitted appeals will be performed by Appeals Board staff as part of their regular duties, there is no cost to the federal government.

15. Explanation of burden adjustment. The increase in hour burden is due to an increase in the estimated time needed to file an appeal and extension request. The increase in cost burden is due to the rising estimates of hourly fees of professionals with the expertise to prepare and file appeals and requests for extension.

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.