

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Special Financial Assistance by PBGC; 29 CFR Part 4262

**STATUS:** Request for emergency approval of modifications of a previously approved collection of information (OMB control number 1212-0074; expires January 31, 2026)

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1. Need for collection.

Under section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA), PBGC operates a special financial assistance (SFA) program to provide support to financially troubled multiemployer plans. Section 4262 of ERISA sets forth the requirements for the SFA program including specifying which plans are eligible to apply, the cutoff date for applications, actuarial assumptions, determinations on applications, restrictions and conditions on plans that receive SFA, and the requirements for certain plans with suspended benefits<sup>1</sup> to reinstate those benefits and provide make-up payments to restore previously suspended benefits. Unlike financial assistance under section 4261 of ERISA, which is provided in the form of a loan, a plan receiving SFA from PBGC under section 4262 has no obligation to repay SFA.

Part 4262 of PBGC's regulations, titled Special Financial Assistance by PBGC, implements the SFA program, including the filing and notice requirements. PBGC issued this part as an interim final rule on July 9, 2021, and as a final rule on July 8, 2022. On January 26, 2023, at 88 FR 4900, PBGC published a final rule (January 2023 final rule) that amended part 4262 by adding a new request for a determination as described below.

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<sup>1</sup> Plans with suspended benefits pursuant to sections 305(e)(9) and 4245(a) of ERISA.

Sections 4262.6 through 4262.8 of the regulation set forth the information that the plan sponsor of an eligible multiemployer plan is required to provide in a plan's application for SFA; § 4262.9 sets forth additional application requirements for a plan partitioned under section 4233 of ERISA. The application instructions, including the addendums, templates, and checklists, provide additional guidance and instruct plan sponsors and practitioners how to prepare and file the required application information. In addition, PBGC's SFA assumptions guidance provides guidelines for changes to certain assumptions that plans may use for purposes of determining eligibility for SFA and the amount of SFA. This guidance, along with the instructions and templates, provide guidance to multiemployer plan practitioners on how to prepare and file the required application information for SFA. The required identifying information, actuarial information, and financial information and documentation are used by PBGC to verify a plan's eligibility and requested amount of SFA.

Plans in certain situations are required to submit additional information with their application to PBGC as described in Addendums A, C, and D. Addendum A is required for a plan that engaged in one or more events described in § 4262.4(f) during the period beginning on July 9, 2021, and ending on the plan's SFA measurement date.<sup>2</sup> Addendum C is required for a plan that and received SFA under the interim final rule and seeks to supplement its application for additional SFA under the final rule and/or for the final rule changes to permissible investments in § 4262.14 and the withdrawal liability condition in § 4262.16(g)(2) to apply to the plan. Addendum D is required for a "MPRA plan," meaning a plan that has suspended benefits under section 305(e)(9) of ERISA as of March 11, 2021, to provide additional information and

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2. SFA measurement means the last day of the third calendar month immediately preceding the date the plan's initial SFA application was filed. See § 4262.2.

calculations concerning the different methodology used to determine the plan's amount of SFA under § 4262.4(a).

Addendum B is required for a plan sponsor of a plan with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA. It provides instructions on how to issue notices of reinstatement, required under § 4262.15(c), to participants and beneficiaries.

In addition, a plan sponsor may submit an optional lock-in application under § 4262.10(g). The lock-in application is a pro forma initial application that allows a plan to lock in its base data (i.e., SFA measurement date, census data, non-SFA interest rate assumption, and SFA interest rate assumption) on a particular date and file a revised application with that base data at a later date. The lock-in application requests basic plan information, a plan trustee's signed certification, and, if submitted on or before March 11, 2023, information to demonstrate that the plan is in priority group 5 or 6. PBGC needs the information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data.

Under § 4262.16(i), a plan that receives SFA must file an Annual Statement of Compliance with PBGC for each plan year through the last plan year ending in 2051. In the statement, the plan must assert that it is complying with all restrictions imposed on plans that receive SFA, including the requirement to reinstate suspended benefits (and pay make-up payments) for plans that had suspended benefits under section 305(e)(9) of ERISA or because of insolvency under section 4245(a) of ERISA. If applicable, the plan is required to submit withdrawal liability calculations and withdrawal liability settlement information, so that PBGC can ensure that the plan is complying with the conditions concerning withdrawal liability in § 4262.16(g)(2) and (h). PBGC also requires documentation of the plan's investments of SFA

funds, so that PBGC can ensure that the plan is complying with the investment restrictions in section 4262(l) and § 4262.14(d), and documentation of the plan's most recent zone certification and cash flow projections, so that PBGC can evaluate the overall health of the plan and the effectiveness of the SFA program.

Plans that receive SFA may also request a determination from PBGC for approval for an exception under certain circumstances to SFA conditions under § 4262.16 relating to benefit increases, reductions in contributions, allocation of contributions, transfers or mergers, proposed reallocation of contributions between employee benefit plans, and settlement of withdrawal liability. Under the January 2023 final rule, PBGC added § 4262.16(g)(3) to add a request for a determination from PBGC for approval of an exception from the conditions affecting the calculation of withdrawal liability under § 4262.16(g)(1) and (2). PBGC needs the information required for a request for a determination to determine whether to approve an exception from each of the specified conditions.

With the exception of the lock-in application and the notice of reinstatement as noted in “3. Information technology,” a filer must submit the application and other components of the information collection through PBGC's e-Filing portal. Multiemployer plan filers are already familiar with PBGC's e-Filing portal, which is required for submitting most multiemployer plan filings with PBGC.

The information requirements in part 4262 and the forms and instructions are the minimum necessary plan, actuarial, and financial information that PBGC needs to approve or deny an application for SFA within the 120-day review period<sup>3</sup> and to administer other

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3. See section 4262(g) of ERISA.

requirements of the SFA program. The information requirements for a request for a determination from PBGC for approval of an exception to the withdrawal liability conditions added by the January 2023 final rule are the minimum necessary information that PBGC needs to review the request. A plan eligible for SFA may apply for an exception to the withdrawal conditions before the plan files its SFA application. It is in the interest of a plan eligible to apply during the priority period to be able to determine if the plan should apply for an exception to the withdrawal liability conditions. Any delay in the effective date of the added information collection requirements would be contrary to the interests of the plan's participants and beneficiaries and could cause a delay in the submission of the plan's application and the plan's receipt of SFA. PBGC, therefore, is asking for approval of this information collection, with modifications, on an emergency basis, under OMB Control No. 1212-0074.

2. Use of information.

PBGC will use the information in the application for SFA to review a plan's eligibility for SFA, priority group status (if applicable), and amount of requested SFA. It will use the information in Addendum A to determine the amount of SFA applicable to plans that have engaged in certain events that occur between July 9, 2021, and the plan's SFA measurement date. It will use the information in Addendum C to determine that the plan is eligible for additional SFA under the terms of the final rule and that the permissible investments and withdrawal liability conditions under the final rule apply to the plan. It will use the information in Addendum D to determine the amount of SFA for a MPRA plan.

PBGC will use the information in the lock-in application to record the filing date that establishes the plan's base data. Also, PBGC will use the information in a lock-in application

submitted on or before March 11, 2023, to verify that the plan is in priority group 5 or 6, and eligible to file a lock-in application during those priority periods.

PBGC will use the information in the Annual Statement of Compliance to ensure that a plan is complying with the statutory and regulatory terms and conditions of receiving SFA and to evaluate the effectiveness of the SFA program.

PBGC will use the information in a “request for a determination” to determine whether it should allow a plan that has received SFA to engage in a transaction that is otherwise prohibited under § 4262.16, to settle withdrawal liability under § 4262.16(h), or to calculate withdrawal liability without applying the conditions under § 4262.16(g)(1) and (2).

Addendum B provides instructions to plan sponsors of plans that have implemented a benefit suspension for issuing notices of reinstatement. Participants and beneficiaries will use the information in these notices to gain an understanding of the calculation and timing of their reinstated benefits and, if applicable, make-up payments.

3. Information technology. PBGC requires applications for SFA (including templates, addendums and checklists), annual statements of compliance, and requests for determinations on certain condition exceptions to be filed electronically through PBGC’s e-Filing portal, which provides a secure, easy-to-use system for submitting information to PBGC. Notices to participants and beneficiaries of benefit reinstatements must be furnished in accordance with PBGC’s issuance rules in 29 CFR part 4000, subpart B, which provide a safe harbor for plans to issue notices electronically. Lock-in applications must be transmitted to PBGC by email.

4. Duplicate or similar information. Information that has already been submitted through PBGC’s e-Filing portal or submitted through any means on behalf of an insolvent plan or a

partitioned plan need not be submitted again. Also, a plan that previously filed as an emergency filer does not have to submit previously filed information. For other required information, some of it may already be in the possession of other Federal agencies. However, there is no timely and reliable way to locate those required documents, particularly since the filer may have submitted only some, and not all, of the documents required under this information collection. In most cases, it would take a filer more time to assist PBGC in tracking down and verifying documents in other agencies' files than simply to submit the information to PBGC. Under section 4262(g) of ERISA, a plan's application for SFA may be denied by PBGC within 120 days of the filing of the application if the application is incomplete. In order to determine completeness and accuracy of information within the statutory time constraints for processing applications, PBGC is requiring information to be filed with the plan's SFA application. PBGC believes that there is no collection of information similar to what is required under the SFA program that could be used instead of the required information for the purposes served by the program.

5. Reducing the burden on small entities. Under part 4262, some of the information requirements are based on plan size, which reduces burden on smaller plans. Only plans with 10,000 or more participants are required to file a listing of the 15 largest contributing employers and the contribution amounts for each for the most recently completed plan year. Only a plan in critical and declining status with 350,000 or more participants is required to file participant census data utilized by the plan actuary in developing the cash flow projections included in the application.

6. Consequence of reduced collection. As required by section 4262(c)(1) of ERISA, PBGC is requiring the minimum information necessary to make a determination on an

application for SFA. Without the information collected in a plan's SFA application and its accompanying addendums, PBGC would be unable to determine if a multiemployer plan is eligible for SFA and the amount of SFA for which it is eligible. PBGC thus would be unable to properly administer the SFA program, as it is statutorily required to do under section 4262 of ERISA. Without the form for a lock-in application, a plan would not be able to establish the date of its initial application and lock-in its base data before it submits its complete SFA application.

With respect to the annual statements of compliance, annual reporting is needed for PBGC to monitor a plan's compliance with the terms and conditions imposed on plans that receive SFA. Any reduced or less frequent collection of this information would render PBGC unable to adequately determine if the plan is continuing to comply with the restrictions and conditions under section 4262 of ERISA and part 4262. This could increase risk to participants and beneficiaries in multiemployer plans and PBGC's multiemployer insurance program.

With respect to notices of reinstatement issued to participants and beneficiaries, recipients need the information in these notices to have a full understanding of the calculation and timing of their reinstated benefits and make-up payments. The notices are issued once and only to participants and beneficiaries of plans with previously suspended benefits (insolvent plans and plans that suspended benefits under section 305(e)(9) of ERISA). Any less frequent or reduced collection would mean recipients would not receive necessary and helpful information about their reinstated benefits and make-up payments.

With respect to requests for a determination from PBGC for an exception from certain conditions specified in § 4262.16, the required information submitted for a request is needed only if a plan proposes an increase in benefits, a reduction in or reallocation of contributions,



transfer or merger, calculation of withdrawal liability, or settlement of withdrawal liability otherwise prohibited under § 4262.16. PBGC expects these events to be infrequent. PBGC needs the information before the proposed event or transaction occurs to determine whether to approve the exception to the respective condition.

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 July 8, 2022, PBGC published (at 87 FR 40968) a final rule that amended part 4262 and requested comments on the condition requiring a phased recognition of SFA in a plan's calculation of withdrawal liability. PBGC received six comment letters on the withdrawal liability conditions and, in response to the comments, amended the regulation at 88 FR 4900 to add an exception process for certain withdrawal liability conditions that apply to a plan that receives SFA.

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

10. Confidentiality. Information filed with PBGC in an application for SFA is confidential only to the extent provided in the Privacy Act. PBGC may post an application for SFA and any documents and information filed for the application on its website, or otherwise publicly disclose the application, documents, and information, except information that is confidential under the Privacy Act. For the other information requirements within this information collection, 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 an annual average of 59 plan sponsors will file applications for SFA over the next 3 years. PBGC further estimates that the average burden of this collection of information will be 10 hours of in-house fund time per application, with a total annual burden of 590 hours.

PBGC estimates that an annual average of 23 plan sponsors will file lock-in applications over the next 3 years. PBGC estimates that the average burden of this form will be 1 hour of in-house fund time per application, with a total annual burden of 23 hours.

PBGC estimates that an annual average of 120 plan sponsors will file Annual Statements of Compliance over the next 3 years. PBGC estimates that each Annual Statement of Compliance requires 2 hours of in-house fund time, with a total annual burden of 240 hours.

PBGC estimates that an annual average of 5 plans will be required to send notices to participants with suspended benefits over the next 3 years. PBGC estimates that the burden to prepare required notices is 2 hours of in-house fund time, with a total annual burden of 10 hours.

PBGC estimates that it will receive over the next 3 years an annual average of 3.2 requests for determinations concerning: a proposed transfer of assets or liabilities (including a spinoff) or merger (1), the calculation of withdrawal liability (1), a withdrawal liability settlement greater than \$50 million (1), or a contribution decrease (.2). PBGC estimates an average annual hour burden (employer and fund office hours) per request of:

- 1.6 hours (8 hours x .2) of employer and in-house fund time for a proposed contribution change;

- 8 hours of in-house fund time for a proposed calculation of withdrawal liability
- 4 hours of in-house fund time for a proposed transfer or merger; and
- 2 hours of in-house fund time for a proposed withdrawal liability settlement.

PBGC estimates that for the 3.2 determination requests, the aggregated average annual hour burden for 2023-2025 will be 15.6 hours (1.6 + 8 + 4 + 2 in-house fund hours). PBGC estimates an average annual hour burden for the 3-year period of this extension of 15.6 hours.

Thus, the aggregate estimated annual hour burden is 878.6 hours (590 + 23 + 240 + 10 + 15.6). The cost equivalent is \$65,895 assuming a blended hourly rate of \$75 for employer and fund office administrative, clerical, and supervisory time.

A plan may not request an exception from the condition concerning prospective and retrospective benefit increases until 10 years after the end of the plan year in which it received SFA and may not request an exception from the condition concerning reallocation of contributions until 5 years after the end of the plan year in which it received SFA. Because these types of requests will not be submitted during the 3-year period of this extension, PBGC is not including them in the burden calculation.

13. Cost burden on the public. PBGC estimates that an annual average of 59 plan sponsors will file applications for SFA, with an average cost burden for contractor costs of \$30,000 per application and a total annual cost burden of \$1,770,000.

PBGC estimates that an annual average of 23 plan sponsors will file lock-in applications, with an average cost burden for contractor costs of \$800 per application and a total annual cost burden of \$18,400.

PBGC estimates that an annual average of 120 plan sponsors will file Annual Statements of Compliance, with an average annual cost burden for contractor costs of \$2,400 per application and a total annual cost burden of \$288,000.

PBGC estimates that an annual average of 5 plans will be required to send notices to participants with suspended benefits, with an average cost burden for contractor costs of \$2,000 to prepare required notices and a total annual cost burden of \$10,000.

PBGC estimates that, PBGC will receive an annual average of 3.2 requests for determinations concerning a transfer of assets or liabilities (including a spinoff) or merger; a withdrawal liability settlement greater than \$50 million; or a contribution decrease. PBGC estimates an average annual hour burden (employer and fund office hours) per request of:

- \$5,000 ( $\$25,000 \times .2$ ) for a proposed contribution change;
- \$25,000 for a proposed calculation of withdrawal liability;
- \$12,000 for a proposed transfer or merger; and
- \$2,000 for a proposed settlement of withdrawal liability

PBGC estimates that for the 3.2 determination requests, the aggregated average annual cost burden will be \$44,000.

Thus, the aggregate estimated cost burden, for contract costs for work done by outside attorneys and actuaries, is \$2,130,400 ( $\$1,770,000 + \$18,400 + \$288,000 + \$10,000 + \$44,000$ ). Assuming an average hourly rate of \$400, then approximately 5,326 hours of work will be completed by outside actuaries and attorneys.

14. Cost to the government. PBGC estimates that the annual cost (per fiscal year) to the Federal Government to administer the SFA program will be about \$15.17 million (( $\$15.75$  million +  $\$15.00$  million +  $\$14.75$  million) / 3).

15. Explanation of burden changes. The increases in hourly and cost burden are attributable to the addition of the request for an exception to the conditions concerning the calculation of withdrawal liability.

16. Publication plans. On its website, PBGC posts copies of applications received; dates of receipt; and whether they have been approved, denied, or withdrawn.

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.