

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 extension with modifications of previously approved collections of information (OMB control number 1212-0074; expires July 31, 2023)

CONTACT: Hilary Duke (202-229-3839) or Melissa Rifkin (202-229-6563)

1. Need for collection. Under section 4262 of the Employee Retirement Income Security Act of 1974 (ERISA), PBGC administers a special financial assistance (SFA) program designed to support 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 benefits¹ 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.

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. In addition, PBGC's SFA assumptions guidance provides guidelines for changes to certain assumptions that plans may use for purposes of determining the amount of SFA. The

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

assumptions guidance, instructions and addendums, templates, and checklists, provide guidance to multiemployer plan practitioners on how to prepare and file the required application information for SFA. PBGC uses the required actuarial and financial information and documentation to verify a plan's eligibility and requested amount of SFA.

In this renewal, PBGC is modifying the instructions of the application for SFA to require that plans provide full census data of all terminated vested participants that were included in the SFA projections. Plans must provide this data in Excel, or an Excel-compatible format, and include only names and Social Security Numbers. PBGC will conduct an independent death audit on this file. PBGC is also adding a procedure to allow plans that have filed lock-in applications to submit full census data of all terminated vested participants that were included in the SFA projections and request that PBGC conduct the independent death audit before the plans submit their full revised application. In addition, PBGC is adding a new template to the instructions for plans to list the assumptions and methods used for certain certifications and projections in the application. This template is intended to improve the organization of information and allow for a more efficient review by PBGC. Also, PBGC is removing references to SFA eligibility in the SFA assumptions guidance to clarify that this document may be used only for determining amount of SFA. Finally, PBGC is adding a cover letter for a plan, in certain circumstances, to request expedited review of a revised application. By using this cover letter, a plan simultaneously withdraws its previous application and submits a revised one. A plan may use this cover letter if: the plan has not yet withdrawn its most recently filed application and less than 100 days have elapsed since the plan filed its previous application. Also, the revised application must contain corrections that are only as a result of: inaccurate

information, arithmetic errors, input errors, formula errors, and small to moderate assumption adjustments reflecting feedback from PBGC staff on the assumptions used in the application.

This cover lever is intended to increase the efficiency of PBGC’s review of revised applications.

Plans in certain defined 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.² Addendum C is required for a plan that 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 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 includes 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

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.

data at a later date. The lock-in application requests basic plan information and a plan trustee's signed certification. PBGC needs the information in the lock-in application to ensure that a plan sponsor intends to lock-in the plan's data. In this renewal, PBGC is modifying language in the lock-in application's form and instructions to add information for filing a "revised lock-in application." A revised lock-in application may be used by a plan that was not eligible for SFA on the filing date of the plan's earlier lock-in application, based on the information available on that date. In addition, PBGC is removing information relevant to plans that were eligible to submit lock-in applications on or before March 11, 2023.

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)(1), (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 status certification and cash flow projections, so that PBGC can evaluate the overall financial health of the plan and the effectiveness of the SFA program. In this renewal, PBGC is clarifying the types of documents

filers need to attach to the Annual Statement of Compliance and adding a template that filers may use to submit the required account and investment information. These changes are intended to simplify responses and decrease filing errors.

Plans that receive SFA may also request a determination from PBGC for approval of 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, settlement of withdrawal liability, or calculation of withdrawal liability. PBGC needs this information to determine whether to approve an exception from each of the specified conditions.

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 period³ and to administer other requirements of the SFA program.

2. Use of information. PBGC will use the information in the application for SFA, including the new required census data for terminated vested participants that were included in the SFA projections, and the new assumption summaries template, as described above in item 1. 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

³ See section 4262(g) of ERISA.

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.

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. The information in these notices is intended to help participants and beneficiaries understand 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, 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, annual statements of compliance, and other requested information 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. While some required information may be in the possession of other Federal agencies, 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. 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. To determine the 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.

6. Consequence of reduced collection. As mandated 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 or review the amount of SFA requested by the plan. 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 the optional lock-in application, a plan would not be able to lock-in its base data before it submits its revised SFA application (non-lock-in).

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 of loss 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 collections of information are conducted in a manner consistent with the guidelines in 5 CFR 1320.5(d)(2).

8. Outside input. On February 15, 2023 (at 88 FR 9914), PBGC published a notice of its intention to request OMB approval of the collections of information, soliciting public comment. No comments were received.

On May 31, 2023 (at 88 FR 34906), PBGC published a notice of its submission of the collections of information for OMB approval and solicited public comment. PBGC received one comment in response. A summary of the commenter's suggestions and PBGC's responses are listed below.

- a. The commenter noted that the new cover letter to request expedited review of a revised application is available only if less than 100 days have elapsed since the filing of the previous application. The commenter suggested that PBGC communicate any issues regarding the previous application to the plan sponsor "as soon as practicable." PBGC recognizes the importance and mutual benefits of offering timely feedback to plan sponsors on SFA applications. Since the beginning of the SFA program, PBGC has informed plan sponsors of problems with applications as soon as it is able to do so. It will continue this practice going forward.

- b. The commenter noted PBGC's new procedure to allow plan sponsors that have filed lock-in applications to submit full census data of all terminated vested participants that were included in the SFA projections and request that PBGC conduct an independent death audit before the plan sponsor submits their full revised application. The commenter was concerned that plan sponsors who filed lock-in applications and are on the SFA application waiting list, and that take advantage of this procedure, have sufficient time to prepare a full revised application. PBGC continues to be mindful of the time needed to prepare an SFA application and of the time limitation stated in the SFA Application Guidance for Non-Priority Group Plans, and it will give priority to plans with higher spots on the waiting list when conducting these independent death audits.
- c. The commenter noted that PBGC is modifying language in the lock-in application's form and instructions to add information for filing a "revised lock-in application" and requested confirmation that a plan sponsor that submits a revised lock-in application would retain, if it has one, its spot on the waiting list. PBGC responds that submitting a revised lock-in application has no effect on a plan sponsor's position on the waiting list.
- d. The commenter noted the requirement in the Annual Statement of Compliance to provide copies of withdrawal liability settlement agreements made by the plan during the prior plan year. The commenter also noted PBGC's statement in the Paperwork Reduction Act Notice that information filed with PBGC under these requirements is confidential to the extent provided in the Freedom of Information Act (FOIA) and the

Privacy Act. The commenter expressed concern about disclosure despite these stated protections. PBGC has obligations under FOIA regarding the treatment of confidential commercial information submitted to PBGC and submitters of information have certain rights. PBGC maintains that its adherence to Executive Order 12600 – Predisclosure notification procedures for confidential commercial information, and the relevant section of PBGC’s regulation implementing FOIA, 29 CFR 4901.24 – “Special rules for trade secrets and confidential commercial or financial information submitted to PBGC,” provide adequate protection of proprietary information in this situation. If PBGC determines that it may be required to disclose documents that contain confidential commercial information, then it will notify the submitter of the documents and allow full opportunity for the submitter to object to the disclosure.

9. Payment to respondents. PBGC provides no payments or gifts to respondents in connection with the collections 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. The collections of information do not require 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 11 hours of in-house fund time per application, with a total annual burden of 649 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 937.6 hours (649 + 23 + 240 + 10 + 15.6). The cost equivalent is \$71,520 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 \$32,000 per application and a total annual cost burden of \$1,888,000.

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 \$2,248,400 ($\$1,888,000 + \$18,400 + \$288,000 + \$10,000 + \$44,000$). Assuming an average hourly rate of \$400, then approximately 5,701 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 ($(\$15.75 \text{ million} + \$15.00 \text{ million} + \$14.75 \text{ million}) / 3$).

15. Explanation of burden changes. The increases in hourly and cost burden are attributable to the additions of the new template and the request for census data for terminated vested participants to the SFA application.

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.