

## Supporting Statement for Paperwork Reduction Act Submission

**AGENCY:** Pension Benefit Guaranty Corporation

**TITLE:** Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281)

**STATUS:** Request for regular review and extension of currently approved collection (OMB control number 1212-0032; expires March 31, 2008)

**CONTACT:** Donald F. McCabe (326-4223 x3872) or Catherine B. Klion (326-4223 x3041)

1. Need for collection. Section 4281 of the Employee Retirement Income Security Act of 1974 (ERISA) provides rules for multiemployer pension plans that have terminated by mass withdrawal under section 4041A of ERISA. Under section 4281, if the annual valuation of a plan shows that plan assets are not sufficient to satisfy all nonforfeitable benefits under the plan, the plan sponsor must amend the plan to eliminate benefits that are not eligible for PBGC's guarantee to the extent necessary to ensure that plan assets are sufficient (as determined and certified in accordance with PBGC regulations) for all remaining nonforfeitable benefits (subsection (c)). If, after such an amendment, the plan becomes insolvent (*i.e.*, unable to pay benefits when due for a plan year), the plan sponsor must suspend benefits in excess of guaranteed benefits to the extent that their payment cannot be supported by the plan's available resources. If the plan's available

resources are inadequate to pay guaranteed benefits, the plan sponsor must request financial assistance from PBGC (see also sections 4245(f) and 4261).

Section 4281 also requires PBGC to issue regulations governing the exercise of the plan sponsor's powers and duties thereunder (subsection (d)(3)). In addition, section 4041A(f)(2) of ERISA authorizes PBGC to prescribe such reporting requirements and other rules and standards for administering terminated plans as it considers appropriate to protect plan participants and beneficiaries or to prevent unreasonable loss to PBGC.

PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR Part 4281) implements the requirements of section 4281. The regulation prescribes rules under which plan sponsors must: (1) give notices of benefit reduction (*i.e.*, of the adoption of a plan amendment reducing benefits) to PBGC and to affected participants and beneficiaries, and a notice to PBGC of any restoration of benefits (" 4281.32 and 4281.33); (2) give notices to PBGC and to participants and beneficiaries that a plan is, or will be, insolvent, and annual updates to PBGC and to participants and beneficiaries who do not receive notices of insolvency benefit level (" 4281.43 and 4281.44); (3) give notices of insolvency benefit level to PBGC and to participants and beneficiaries who are in pay status or may reasonably be expected to enter pay status during the year (" 4281.45 and

4281.46); and (4) submit an application to PBGC for financial assistance if a plan is, or will be, unable to pay guaranteed benefits when due (' 4281.47).

These rules are necessary to assure the consistency and adequate quality of notices required by law and to enable PBGC to provide financial assistance to terminated plans in a timely manner.

2. Use of information. PBGC uses the information it receives to make determinations required by ERISA, to identify and estimate the cash needed for financial assistance to terminated plans, and to verify the appropriateness of financial assistance payments. Plan participants and beneficiaries use the information to make personal financial decisions.

3. Information technology. No consideration has been given to the use of improved information technology to reduce burden. The reporting volume under the regulation is too low to warrant the use of high technology.

4. Duplicate or similar information. Under ' 4281.44(a)(7) and (8), a plan sponsor may note the date of a prior submission of a plan document or actuarial valuation rather than resubmitting the document. After issuance of a notice of insolvency, a plan sponsor need only issue an abbreviated annual update for subsequent insolvency years. Also, no annual update for an insolvency year is

required for participants and beneficiaries who receive a notice of insolvency benefit level for that year.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs an early warning of threatened insolvency, and its consequent impact on benefit payments, to be able to estimate PBGC's cash needs to provide financial assistance to insolvent terminated plans. Once a plan sponsor determines that an insolvency situation may arise, a lack of expeditious notification or application could delay PBGC assistance. Delay in notification may also interfere with the financial decisions of participants and beneficiaries and delay their search for alternative income sources. Further, without this regulation, the notices required by ERISA section 4281 would be inconsistently given and of varying quality, as plan sponsors applied their individual interpretations of the law.

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

8. Outside input. PBGC published two Federal Register notices soliciting public comment on this and other collections of information, one pursuant to 5

CFR ' 1320.8(d) (November 26, 2007, at 72 FR 65989), and the other pursuant to 5 CFR ' 1320.5(a)(1)(iv) (February 25, 2008, at 73 FR 10071). No public comments were received in response to the November 2007 notice.

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. Most insufficient mass-withdrawal-terminated plans become insolvent over the course of time and, once insolvent, do not regain solvency. Analysis of recent data indicates that about 4 mass-withdrawal-terminated plans will become insolvent each year over the next three years, and each of these plans will issue notices of insolvency; 2 plans per year are expected to issue benefit reduction notices. There currently are

28 insolvency cases, in each of which PBGC is providing financial assistance. Based on these data, PBGC estimates that an average of 32 insolvent plans per year will issue notices of insolvency benefit level and annual updates, and will submit quarterly financial assistance requests, over the next three years (28 the first year, 32 the second year, and 36 the third year).

(PBGC has never received a benefit restoration notice, and none are expected.)

Based on the assumption that the average multiemployer plan subject to the regulation has about 2,560 participants, about 1,570 of whom are retirees, PBGC estimates the time needed to prepare, file, and distribute each notice or application as follows:

(1) For a notice of benefit reduction (2 per year): 1 hour of professional time and 42 hours and 40 minutes of clerical time per year, or a total of 2 hours of professional time and 85 hours and 20 minutes of clerical time per year;

(2) For a notice of insolvency (4 per year): 1 hour of managerial time, 1 hour of professional time, and 42 hours and 40 minutes of clerical time per notice, or a total of 4 hours of managerial time, 4 hours of professional time, and 170 hours and 40 minutes of clerical time per year;

(3) For an annual update (32 per year): 1 hour of managerial time, one hour of professional time, and 16 hours and 30 minutes of clerical time per update, or a total of 32 hours of managerial time, 32 hours of professional time, and 528 hours of clerical time per year;

(4) For a notice of insolvency benefit level (32 per year): 130 hours and 50 minutes of managerial time, one hour of professional time, and 26 hours and 10 minutes of clerical time per notice, or a total of 4,186 hours and 40 minutes of managerial time, 32 hours of professional time, and 837 hours and 20 minutes of clerical time per year;

(5) For an initial application for financial assistance (4 per year): 4 hours of managerial time per application, or a total of 16 hours of managerial time per year; and

(6) For a quarterly (non-initial) application for financial assistance (128 per year): 2 hours of managerial time per application, or a total of 256 hours of managerial time per year.

However, PBGC also believes, based on its experience, that virtually all of these notices and applications are prepared by outside consultants and estimates that a plan administrator spends no more than a few minutes in engaging the services of such consultants. Accordingly, PBGC estimates that the annual hour

burden of this collection of information is at most one hour, with an estimated cost to respondents of \$115.

13. Cost burden on the public. PBGC estimates the cost of postage and supplies for distributing notices to participants at 58 cents per participant, and assumes a cost of \$350 per professional hour, \$115 per managerial hour, and \$64 per clerical hour for the services of outside consultants. Based on the estimates in item 12, therefore, the estimated annual cost burden of the collection of information is \$701,574.

14. Cost to the government. As discussed in item 12, PBGC estimates that on average, it will annually receive 2 benefit reduction notices; 4 notices of insolvency; 32 annual updates and 32 notices of insolvency benefit level; 4 initial applications for financial assistance; and 128 quarterly (non-initial) applications for financial assistance.

PBGC estimates the cost to the agency of processing these submissions based on 8 hours of staff time for an initial application for financial assistance, 2 hours of staff time for a quarterly (non-initial) application for financial assistance, and 4 hours of staff time for other submissions. On this basis, PBGC expects to spend 568 hours per year processing collections of information under the

regulation. Thus, PBGC=s estimated annual processing cost, based on a rate of \$99 per hour for professional staff time, is \$56,232.

15. Explanation of burden changes. The cost burden has increased from \$553,477 to \$701,574, due to increases in the estimated hourly rates associated with services performed by outside consultants (from \$275 to \$350 per professional hour, from \$90 to \$115 per managerial hour, and from \$50 to \$64 per clerical hour). In addition, postal rates have increased from 50 cents to 58 cents per item.

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.