

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219)

STATUS: Request for regular review and extension of currently approved collection (OMB control number 1212-0034; expires March 31, 2008)

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1. Need for collection. Section 4219(c)(1)(D) of the Employee Retirement Income Security Act of 1974 (ERISA) requires that the Pension Benefit Guaranty Corporation (PBGC) prescribe regulations for the allocation of a multiemployer plan's total unfunded vested benefits in the event of a mass withdrawal, *i.e.*, either (1) a plan termination due to the withdrawal of every employer or (2) a withdrawal of substantially all employers pursuant to an agreement or arrangement to withdraw. Pursuant to this statutory requirement, PBGC has promulgated subpart B (Redetermination of Withdrawal Liability Upon Mass Withdrawal) of its regulation on Notice, Collection, and Redetermination of Withdrawal Liability (29 CFR Part 4219). Subpart B also provides rules under ERISA section 4209(c), dealing with an employer's liability for *de minimis* amounts if the employer withdraws in a substantial withdrawal, *i.e.*, a withdrawal of

substantially all employers within one year (without regard to whether there is an agreement or arrangement to withdraw).

The purpose of subpart B is to protect plan participants and beneficiaries against loss of nonguaranteed vested benefits, and the multiemployer plan insurance program against large claims, by requiring that all unfunded vested benefits be allocated to withdrawing employers. In a non-termination mass withdrawal case, the allocation of unfunded vested benefits to withdrawing employers also reduces the burden on employers that remain in the plan, thus encouraging continuation of the plan. The reporting requirements in the regulation further these purposes by giving employers timely notice of the mass withdrawal or substantial withdrawal and advising them of their rights and liabilities arising therefrom and by providing notice to PBGC so that it can monitor the plan.

Submissions to PBGC under the regulation are of two types: notices (that a mass withdrawal or substantial withdrawal has occurred) and certifications (that liability of a particular kind arising from the withdrawal has been determined and assessed). All notices and certifications must include information to identify the plan, the plan sponsor, and any representative authorized to act for the plan sponsor. In addition, each notice must identify the time when the mass

withdrawal or substantial withdrawal occurred and describe the withdrawal and its effects on the plan. This information identifies the specific event covered by the notice (since a plan may undergo more than one of either type of withdrawal covered by the regulation), permits verification of the notice's timeliness, and helps PBGC assess the possible impact of the event on participants and the multiemployer plan insurance program. Each certification informs PBGC that a specific type of liability under the regulation has been determined and assessed to employers.

For a substantial withdrawal, the required notice and certification are combined. For a mass withdrawal, where assessments of liability to employers are typically made after the notice of mass withdrawal is due, certifications are made separately, and must identify which of the two types of mass withdrawal liability they relate to. For liability that must be based on a new determination of a plan's unfunded vested benefits (AUVBs@), the certification must also tell PBGC that the UVBs were properly determined and must include a copy of any special plan rules for allocating the UVBs among employers, to enable PBGC to see how the allocation differs from that provided for in the regulation.

Notices to employers under the regulation are also of two types: notices that a mass withdrawal or substantial withdrawal has occurred and notices assessing

liability of a particular kind arising from the withdrawal. A notice of withdrawal must identify when the mass withdrawal or substantial withdrawal occurred, describe the effects of the withdrawal, and state that any withdrawal liability payments currently being made should continue. This information identifies the specific event covered by the notice (since a plan may undergo more than one of either type of withdrawal covered by the regulation) and helps employers understand the withdrawal and assess its impact on them.

Notices of liability to employers must state the type and amount of liability being assessed, the schedule for paying the liability, and a demand for payment. The first liability notice for a mass withdrawal must also state when the plan expects to issue the second liability notice (there are two types of liability assessed, and one is determined earlier than the other). In addition, if an employer receives a notice of mass withdrawal but is determined not to be liable for one or both types of mass withdrawal liability, the plan sponsor must give the employer a notice of that fact.

Notices of withdrawal for concurrent mass and substantial withdrawals may be combined, and the first mass withdrawal liability notice may also be combined with the notice of liability for a substantial withdrawal or with a notice of initial withdrawal liability under ERISA section 4219(b)(1).

2. Use of information. PBGC uses the information submitted under the regulation to identify plans that have undergone mass withdrawals or substantial withdrawals, and to monitor plans= compliance with the provisions of the regulation and ERISA dealing with mass withdrawal liability and liability for *de minimis* amounts by employers that withdraw from a plan in a plan year in which a substantial withdrawal occurs.

The notices of withdrawal to employers alert them that they may have to pay additional withdrawal liability. The subsequent liability notices to employers tell them the amount (if any) of that liability (broken down by type) and the schedule for paying it. The formal demand for payment in the notices of liability initiates the employer liability assessment and collection process and triggers an employer=s rights to review of its assessment.

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. To avoid duplication, the regulation provides that the notice of termination required to be filed with PBGC in accordance with 29 CFR Part 4041A, Subpart B, will serve as the notice of mass

withdrawal to PBGC for a mass-withdrawal-terminated plan. The remaining notices and certifications are unique and are not duplicative of any other reporting requirement. No information similar to that required by the regulation exists.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. Because submission of information under the regulation is required only upon the occurrence of specified events that occur relatively rarely, each collection of information under the regulation occurs only once.

Without the information reported to PBGC, PBGC's ability to monitor plans' compliance with the provisions of the regulation and ERISA dealing with mass withdrawal liability and liability for *de minimis* amounts by employers that withdraw from a plan in a plan year in which a substantial withdrawal occurs would be significantly impaired. A delay in reporting would leave PBGC without timely notice of events that could adversely affect the insurance system.

Without the information reported to employers, employers would not know how much liability to pay or when to pay it, and plans would not receive funds needed to pay benefits to participants and beneficiaries. A delay in providing the

required information could jeopardize collection from employers with financial difficulties.

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. The hour burden and cost burden estimates herein are based on the following assumptions:

(1) There is at most 1 mass withdrawal and 1 substantial withdrawal subject to the requirements of the regulation each year. (In PBGC=s experience, mass withdrawals and substantial withdrawals subject to the requirements of the regulation occur at a rate of less than one per year.) (Notice of a mass withdrawal that results in plan termination is given under 29 CFR Part 4041A (OMB control number 1212-0020) rather than under this regulation.)

(2) All reporting requirements for a mass withdrawal are completed within a year following the occurrence of the mass withdrawal.

(3) A multiemployer plan subject to the requirements of the regulation has about 35 employers.

(4) All employers in a plan that undergoes a mass withdrawal are liable for redetermination liability (although in fact many are typically not so liable).

(5) Since any notice to an employer of non-assessment of mass withdrawal liability is given in place of one of the liability notices that would otherwise go to that employer (and be less burdensome to give), such notices may be ignored for purposes of estimating burden.

The time needed to fulfill the reporting requirements for each mass withdrawal subject to the regulation is estimated as follows:

(1) For the notices of mass withdrawal to employers, 30 minutes of managerial time and 35 minutes of clerical time.

(2) For the assessment of redetermination liability to employers, 1 hour of managerial time, 2 hours and 30 minutes of professional time, and 35 minutes of clerical time.

(3) For the assessment of reallocation liability to employers, 1 hour of managerial time, 19 hours and 30 minutes of professional time, and 35 minutes of clerical time.

(4) For the notice of mass withdrawal to PBGC, 40 minutes of managerial time.

(5) For the certification to PBGC that redetermination liability has been determined and assessed, 10 minutes of managerial time.

(6) For the certification to PBGC that reallocation liability has been determined and assessed, 10 minutes of managerial time and 5 minutes of professional time.

The time needed to fulfill the reporting requirements for each substantial withdrawal subject to the regulation is estimated as follows:

(1) For the notices of withdrawal to employers, 30 minutes of managerial time and 35 minutes of clerical time.

(2) For the notices of liability to employers, 1 hour of managerial time, 2 hours and 30 minutes of professional time, and 35 minutes of clerical time.

(3) For the combined notice and certification to PBGC, 10 minutes of managerial time.

However, PBGC also believes, based on its experience, that virtually all of the professional services involved, and about half of the managerial and clerical services, are performed by outside consultants. Accordingly, PBGC estimates that the annual hour burden of this collection of information is 4 hours, with an estimated cost to respondents of \$389.

13. Cost burden on the public. PBGC estimates the cost of postage and supplies for distributing notices to employers at 58 cents per employer, 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 \$9,095.

14. Cost to the government. PBGC assumes that its staff time costs an average of \$99 per hour and, as noted in item 12, that it receives at most 1 notice and 2 certifications per year for a single mass withdrawal and 1 combination notice and certification per year for a single substantial withdrawal. PBGC estimates that it takes 24 hours of staff time to process these submissions. Accordingly, PBGC's annual cost of processing submissions under the regulation is \$2,376.

15. Explanation of burden changes. The cost burden has increased (from \$7,152 to \$9,095) due to an increase (from \$275 to \$350 per professional hour, from \$90 to \$115 per managerial hour, and from \$50 to \$64 per clerical hour) in the estimated hourly rates associated with services performed by outside consultants. 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.