

Supporting Statement for Paperwork Reduction Act Submission

AGENCY: Pension Benefit Guaranty Corporation

TITLE: Duties of Plan Sponsor of an Insolvent Plan (29 CFR part 4245)

STATUS: Request for modification of currently-approved collection of information (OMB control number 1212-0033; expires November 30, 2021)

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1. Need for collection. ERISA section 4245(e) requires two types of notice: a “notice of insolvency,” stating a plan sponsor’s determination that the plan is or may become insolvent, and a “notice of insolvency benefit level,” stating the level of benefits that will be paid during an insolvency year. Section 4245(e)(4) provides that these notices are to be given in accordance with rules promulgated by PBGC. PBGC’s regulation on Notice of Insolvency, 29 CFR part 4245, establishes the procedure for complying with these notice requirements. The regulation prescribes the contents of these notices, the manner in which they must be given, and the time limits for their issuance. The recipients of these notices are PBGC, contributing employers, employee organizations representing participants, and participants and beneficiaries.

PBGC is publishing in the Federal Register a final rule¹ that reduces filing requirements by allowing a plan sponsor to combine the notice of insolvency and notice of insolvency benefit level and by eliminating most of the annual updates to the notice of insolvency benefit level. The plan sponsor would provide an updated notice to participants and beneficiaries only if there is a change in the amount of benefits paid to participants and beneficiaries. The final rule moves the content requirements for the notices required to be filed with PBGC from the rule to

¹ The publication date and citation are in the ROCIS submission.

instructions on PBGC's website. The final rule also makes changes to the content of the notices by eliminating outdated information and changing the permissible methods of issuance to alternate payees.

2. Use of information. PBGC uses the information submitted under the regulation to estimate cash needs for financial assistance to troubled plans. The collective bargaining parties use the information to decide whether additional contributions will be made to the plan in order to avoid the insolvency and consequent benefit suspensions. Plan participants and beneficiaries use the information to make personal financial decisions.

3. Information technology. PBGC requires notices under this regulation to be filed electronically with PBGC.

4. Duplicate or similar information. To avoid duplication, plan sponsors may note the date of a prior submission to PBGC of identical information, rather than requiring resubmission. Under the final rule, duplication is avoided by allowing the notice of insolvency to be combined with the notice of insolvency benefit level and by eliminating most annual updates to the notice of insolvency benefit level.

5. Reducing the burden on small entities. Inapplicable.

6. Consequence of reduced collection. PBGC needs early warning of threatened insolvencies, and their impact on benefit payments, to be able to estimate its cash needs for providing financial assistance to troubled plans. Once a plan sponsor determines that a plan is or may become insolvent, a lack of expeditious notification may delay PBGC assistance. Less than prompt notice to the collective bargaining parties can also hinder chances for bargaining to

increase contributions to the plan. Also, delay in notification may interfere with the financial decisions of participants and beneficiaries and delay their search for alternative income sources.

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

8. Outside input. On July 16, 2018 (83 Fed. Reg. 32815), PBGC published a proposed rule that would remove certain insolvency notice and update requirements. PBGC received two comments on the proposed rule and collections of information associated with the proposed rule. With respect to the notices, one commenter encouraged PBGC to finalize the proposed changes to eliminate redundant notice requirements for terminated plans and insolvent plans. Another commenter expressed concern that moving the content of the notices from the rule to the instructions would not give interested parties enough notice to comment on recommended changes. The final rule discusses the comments received and PBGC's responses to the comments.

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. PBGC's experience has been that virtually all multiemployer plans that become insolvent are plans terminated by mass withdrawal, and thus expects that almost all of the plans that become insolvent over the next three years will be mass-withdrawal-terminated plans. Plans terminated by mass withdrawal that become insolvent are subject to the notice requirements in section 4281 of ERISA rather than section 4245. Accordingly, PBGC expects that at most one plan will issue new notices of insolvency each year under section 4245.

For purposes of estimating the time required to comply with the regulation, PBGC assumes (based on experience) that plans subject to the regulation generally submit a single notice of insolvency and provide notices of insolvency benefit level for the first insolvency year only to retirees, as permitted by the regulation. PBGC also estimates that the average plan subject to the regulation covers employees represented by 2 unions and has about 35 contributing employers and 1,000 participants, about 700 of whom are in pay status.

Based on plan experience, the notices are prepared by outside attorneys and actuaries using information compiled by the plan office and are distributed by the plan office. The time to prepare and distribute the notices can vary significantly by plan size. PBGC estimates that without the final rule the annual hour burden would be 20.0 hours. The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is \$1,500.

The final rule will reduce the hour burden by allowing plans to combine the notice of insolvency and the notice of insolvency benefit level and by eliminating the annual update to participants and beneficiaries. PBGC estimates that under the final rule the plan will spend

approximately 16.0 hours compiling information for the notices and distribution of the notices.

The estimated dollar equivalent of this hour burden, based on an assumed blended hourly rate of \$75 for administrative, clerical, and supervisory time, is \$1,200.

13. Cost burden on the public. Based on plan experience, the cost of attorney and actuary time to prepare the notices varies significantly by plan size from \$2,500 to \$26,000. The notices of insolvency benefit level require participant benefit calculations. PBGC estimates that without the final rule the cost of preparing the notices would be \$12,000. The final rule will reduce the cost by eliminating most of the annual updates to participants and beneficiaries unless there is a change in benefit level. PBGC estimates that the cost of preparing the combined notices with the final rule will be \$10,000.

14. Cost to the government. As noted in item 12, PBGC estimates that it will receive a submission from one plan per year under the regulation. PBGC estimates that the total annual cost to the government is \$0.

15. Explanation of burden changes. The change in the estimated annual burden of this collection of information is a result of final rule changes. PBGC estimates that the annual hour burden will be reduced from 20 hours to 16 hours and the annual cost burden will be reduced from \$12,000 to \$10,000.

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.