

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, 2025)

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 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 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.

In accordance with section 4262(c) of ERISA, on July 9, 2021, PBGC issued an interim final rule, which was published in the Federal Register on July 12, 2021, at 86 FR 36598, adding a new part 4262 to PBGC's regulations (29 CFR part 4262). PBGC's interim final rule set forth the requirements on plan eligibility for SFA, calculation of the amount of SFA, the content of an application for SFA, the process of applying (including priority categories), PBGC's review of

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

applications, and restrictions and conditions. The interim final rule also contained information requirements necessary to implement the SFA program, specifically the SFA application, the notification of benefit reinstatement, the annual statement of compliance, and the request for a determination for an exception to specified conditions.

For the reasons explained in the interim final rule, new part 4262 was effective immediately upon publication. Accordingly, PBGC requested OMB's approval of the information requirements described in its interim final rule on an emergency basis. OMB approved the information collection through January 31, 2022, under OMB Control No. 1212-0074. Then OMB approved a renewal of the information collection, through January 31, 2025, that included non-material changes from the information collection approved with the interim final rule.

PBGC published a final rule that amends part 4262. The final rule modifies the information requirements implemented under the interim final rule and adds new requirements. With the final rule, PBGC is issuing revised application requirements and instructions necessary for the sponsor of an eligible plan to apply for SFA, including a supplemented application for plans that received SFA under the terms of the interim final rule. The revised information collection also includes a new lock-in application, a revised annual compliance statement, additional requests for a determination for an exception from certain conditions, and editorial changes to the notice to participants and beneficiaries whose benefits will be reinstated. All components of this revised ICR are necessary or helpful for plan sponsors to know before applying for SFA under the final rule and therefore are integral to the application process. PBGC, therefore, is asking for approval of this information collection, with modifications, on an

emergency basis, under OMB Control No. 1212-0074.

Sections 4262.6 through 4262.8 of PBGC's final rule set forth the information that the plan sponsor of an eligible multiemployer plan is required to provide in a plan's application for SFA. The application instructions, including the templates, addendums, and checklists, supplement the final rule and provide guidance to plan sponsors and practitioners on how to prepare and file the required application information. 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.

Section 4262.9 of PBGC's final rule sets forth application requirements for plans partitioned under section 4233 of ERISA. In addition to the information required to be filed under §§ 4262.6 – 4262.8, partitioned plans must include a statement in the plan's application that the plan was partitioned under section 4233 of ERISA and must amend the plan document to remove any provisions or amendments that were required to be adopted under the partition order. The executed plan amendment must be included with the plan's application to show the rescission of the partition order.

Under § 4262.16(i), a plan that receives SFA must file an annual statement of compliance with PBGC each year through 2051. In the statement, the plan must assert that it is complying with all restrictions and conditions (on use of assets, investment of assets, benefit increases, allocation of assets, contribution decreases, allocation of contributions and other practices, mergers and transfers of assets, and withdrawal liability) 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.

The information requirements that existed under the interim final rule are listed below with descriptions of modifications, if any, that incorporate changes from the final rule.

- An application for SFA (including calculating the amount of SFA) that the plan sponsor of an eligible multiemployer plan must file with PBGC to receive payment of SFA. Also, the plan sponsor must provide several SFA-related documents including: an executed plan amendment ensuring that the plan will be administered in accordance with the SFA restrictions and conditions, if applicable, a proposed plan amendment to reinstate benefits along with a certification that the amendment will be duly adopted. Model amendments and a model certification are available at PBGC's website, www.pbgc.gov. PBGC is modifying the SFA application to accommodate changes to § 4262.2 and § 4262.4, and § 4262.8 including the definition of SFA measurement date, the determination of eligibility for SFA, and other changes to the methodology used to calculate SFA.
- Addendum A of the application for SFA, which is relevant for plans that engaged in one or more events described in § 4262.4(f) of PBGC's SFA regulation during the period beginning on July 9, 2021, and ending on the plan's SFA measurement date. PBGC is making editorial changes to Addendum A for clarity.
- Addendum B of the application for SFA, which provides instructions for issuing notices of reinstatement. For a plan with benefits that were suspended under sections 305(e)(9) or 4245(a) of ERISA, upon the plan's receipt of SFA, the plan sponsor is required to issue notices of reinstatement to participants and beneficiaries. PBGC is making editorial changes to Addendum B for clarity.

- An Annual Statement of Compliance that a plan sponsor of a plan that has received SFA must submit to PBGC to attest to compliance with the restrictions and conditions under section 4262 of ERISA and part 4262. PBGC is modifying the Annual Statement of Compliance to incorporate changes to § 4262.14 relating to permissible investments of SFA funds and changes to § 4262.16 relating to: waivers of conditions applicable to merged plans, waiver of conditions applicable to benefit increases, allocation of assets, allocation of contributions, and withdrawal liability.
- A request for a determination from PBGC for approval for an exception under certain circumstances for SFA conditions under § 4262.16 relating to benefit increases, reductions in contributions, allocation of contributions, transfers or mergers, and settlement of withdrawal liability. PBGC needs the information required for a request for determination to determine whether to approve an exception from the specified condition. PBGC is expanding the approvals a plan may seek under a request for a determination to include exceptions made allowable under the final rule by: § 4262.16(b)(3) relating to retrospective benefit increases, § 4262.16(e) related to proposed reallocation of contributions between employee benefit plans, and by § 4262.16(f) related to the restrictions and conditions imposed on a merged plan.

In addition to modifying existing components of this information collection, PBGC is adding some new components that incorporate changes to part 4262 under the final rule. The new components are described below.

- An optional lock-in application under § 4262.10(g) that will be submitted via email and will be considered the plan's initial application, establishing the filing date and locking in

the plan’s “base data” (i.e., SFA measurement date, census data, non-SFA interest rate assumption, and SFA interest rate assumption). The lock-in application is a pro forma initial application that allows a plan to lock in its base data on a particular date and file a revised application with that base data at a later date. During the priority group period, a lock-in application will be available to plans in priority groups 5 and 6, and any additional priority group PBGC may add before March 11, 2023, when they are eligible to apply for SFA and only when PBGC temporarily closes the e-Filing portal. After March 11, 2023, the lock-in application will be available to all plans eligible to apply for SFA whether the e-Filing portal is open or temporarily closed. 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.

- Addendum C of the application for SFA is a supplemented application submitted under § 4262.4(g), by a plan sponsor for a plan that applied for and received SFA under the terms of the interim final rule and subsequently supplements its application to apply for additional SFA under the final rule. Addendum C requests calculations to determine if the plan is eligible for, and the amount of, additional SFA.
- Addendum D of the application for SFA is submitted by a MPRA plan to provide additional information and calculations to PBGC concerning the different methodology used to calculate the amount of SFA for the plan under § 4262.4(a). A MPRA plan’s SFA is the greatest of: (1) the amount of SFA calculated for the plan as if it were not a MPRA plan; (2) the least amount of SFA to ensure that the plan will project rising assets

at the end of the 2051 plan year; and (3) an amount of SFA equal to the present value of reinstated benefits (including make-up payments and any restoration of benefits under 26 CFR 1.432(e)(9)-1(e)(3)).

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 specified in the final rule and instructions is the minimum necessary plan, actuarial, and financial information that PBGC requires to approve or deny an application for SFA within the 120-day review window permitted under section 4262(g) of ERISA.

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 whether a plan that applied for and received SFA under the terms of the interim final rule is entitled to additional SFA under the terms of the final rule. It will use the information in Addendum D and 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 (or any additional priority group PBGC may add before March 11, 2023), 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 abiding by the statutory and regulatory terms and conditions of receiving SFA.

PBGC will use the information in a “request for a determination” on exceptions to certain conditions to determine whether it should allow a plan that has received SFA to engage in a transaction that is otherwise prohibited under § 4262.16.

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 the final rule and 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 at an earlier date 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 abide by 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, 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 12, 2021, PBGC published the interim final rule and requested comments. Over 100 comments were received, which PBGC considered in drafting the final rule and revised information collection. In addition, when seeking extension of OMB approval received with the interim final rule, PBGC published notices of its intent and solicited public comment on September 27, 2021 (at 86 FR 53354) and December 6, 2021 (at 86 FR 69105). No comments were received.

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 78 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 780 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 106 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 212 (2 x 106) hours.

PBGC estimates that an annual average of 11.33 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 22.66 hours.

PBGC estimates beginning in 2023 that it will receive a total of 2.2 (an average of 0.73 per year) requests for determinations concerning: a proposed transfer of assets or liabilities (including a spinoff) or merger (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;
- 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 2.2 determination requests, the aggregated average annual hour burden for 2023-2024 will be 7.6 hours (1.6 + 4 + 2, in-house fund hours). PBGC estimates an average annual hour burden for the 3-year period of this extension of 5.07 hours $((7.6 + 7.6) / 3)$.

Thus, the aggregate estimated annual hour burden is 1,042.73 hours $(780 + 23 + 212 + 22.66 + 5.07)$. The cost equivalent is \$78,205 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 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 78 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 \$2,340,000.

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 106 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 \$254,400.

PBGC estimates that an annual average of 11.33 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 \$22,667.

PBGC estimates that, PBGC will receive a total of 2.2 requests (average 0.73 per year) 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;
- \$12,000 for a proposed transfer or merger; and
- \$2,000 for a proposed settlement of withdrawal liability

PBGC estimates that for the 2.2 determination requests, the aggregated average annual cost burden will be \$19,000 ($\$5,000 + \$12,000 + \$2,000$ in contractor costs). PBGC estimates an average annual cost burden of \$12,667 ($(\$19,000 + \$19,000) / 3$).

Thus, the aggregate estimated cost burden, for contract costs for work done by outside attorneys and actuaries, is \$2,648,134 ($\$2,340,000 + \$18,400 + \$254,400 + \$22,667 + \$12,667$).

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 \$16 million (((\$17.50 million + \$15.75 million + \$15.00 million) / 3).

15. Explanation of burden changes. The changes in burden are due to changes to part 4262 of PBGC's regulations implemented by PBGC's final rule and changes to the information collection requirements.

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.