



June 29, 2023

Submitted electronically: www.reginfo.gov/public/do/PRAMain

Hilary Duke
Assistant General Counsel for Regulatory Affairs
Pension Benefit Guaranty Corporation
445 12th Street, SW
Washington DC 20554

**Re: Notice of request for extension of OMB approval of information collections under
OMB control number 1212-0074**

Dear Ms. Duke:

On behalf of Segal, we respectfully submit this comment letter regarding the Pension Benefit Guaranty Corporation's (PBGC) notice of request for extension of Office of Management and Budget (OMB) approval of collections of information contained in PBGC's regulation on special financial assistance (SFA), published at 88 Fed. Reg. 34906 (May 31, 2023) (Notice). The purpose of the information collections is to gather information necessary for PBGC to operate the SFA program. The Notice was published with a 30-day public comment period. Documents associated with the Notice are available on the Office of Information and Regulatory Affairs (OIRA), OMB website.¹

Segal is a provider of actuarial, employee benefits, and human capital consulting services to employers and employee benefit plans throughout the United States and provides actuarial services to more multiemployer pension plans than any other consulting firm. Segal has assisted numerous plans in applying for SFA and continues to advise plan sponsors regarding the SFA program.

We fully support PBGC's latest efforts to refine its guidance to multiemployer pension plan sponsors on eligibility, determining the amount of SFA, content of an SFA application, the process of applying, PBGC's review of applications, restrictions and conditions, and withdrawal liability and other reporting and notice requirements. Our comments that follow include our observations regarding suggested enhancements to the clarity of information provided and the efficiency of the processes described in PBGC's guidance as set forth in the SFA Application Amendment Cover Letter, the General Instructions, and the revised Lock-In Applications. Our comments also include our concerns regarding the protection of confidential information related

¹ See generally https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202305-1212-002&icID=247975. See also: Lock-In Applications (https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202305-1212-002&icID=254199); Annual Statement of Compliance (https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202305-1212-002&icID=247976); Assumptions Guidance (https://www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202305-1212-002); Addendum B (https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202208-1212-001&icID=247977) and Request for Determination (https://www.reginfo.gov/public/do/PRAViewIC?ref_nbr=202208-1212-001).

to withdrawal liability settlement agreements required to be attached to the Annual Statement of Compliance.

Observations, suggested enhancements, and concerns

SFA Application Amendment Cover Letter: Request for Withdrawal and Expedited Review of Revised Application

PBGC has proposed a new cover letter and procedure that allows a plan to withdraw its most recently filed SFA application, amend the application, and request an expedited review of the revised application. The ability to use this procedure is limited (e.g., correction of inaccurate information, arithmetic errors, input errors, formula errors, and small to moderate assumption changes reflecting feedback from PBGC). Other requirements also must be met, the most significant of which is that less than 100 days have elapsed since the plan sponsor filed the plan's previous application. If the plan's application is amended under the procedure and the plan sponsor meets other requirements (including electronically filing a revised application in accordance with PBGC's instructions) PBGC will complete its review on an expedited schedule unless PBGC determines that it cannot complete such review. In that case, the statutory 120-day review period begins again.

Segal supports PBGC's efforts to streamline the procedure by which certain applications may be revised and granted an expedited review. We respectfully suggest that PBGC engage in productive conversations with plan sponsors as soon as practicable after the filing date, such as by the 75th day rather than as late as the 99th day, so that plan sponsors have sufficient time to address PBGC's concerns and minimize the risk of resetting the review period. PBGC may wish to provide plan sponsors with a complete list of issues within 75-85 days of filing or instead may prefer to identify issues on a continuing basis up to that target date. Either approach would allow plan sponsors and their actuaries time needed to consider the suggested changes and take corrective action, provided that apparent issues are identified by PBGC early and discussed with the plan sponsor.

General Instructions for Multiemployer Plans Applying for SFA

The General Instructions for applying for SFA have been modified to enhance documentation of the plan's "death audit" completed on census data used for SFA purposes. If a plan's death audit identifies deaths that occurred before the date of the census data used for determining SFA amounts, and the plan does not have evidence that participants are still alive, the plan's actuary is required to provide a statement certifying that the deaths have been reflected for SFA calculation purposes.

The General Instructions also have been modified to require that plans submit the complete census data for all terminated vested participants that were included in the calculation of SFA amounts. Plans that have filed a Lock-In Application may submit the plan's terminated vested

census data and request that PBGC conduct an independent death audit before the plan submits its full revised (not Lock-In) application.

Segal believes the enhanced documentation of death audits effectively addresses PBGC's administrative interest in ensuring the accuracy of the calculation of SFA amounts. We also strongly support the ability of plans that have filed Lock-In Applications to submit terminated vested census data early in the process. While it is in the interest of all plans to submit such census data early, it is of particular interest for those plans that have filed a Lock-In Application and that are on the waiting list. Once notified by PBGC that the plan may file a revised application, plans on the waiting list have only seven calendar days, starting on the date the e-filing portal is opened, to submit a complete application. PBGC may wish to clarify in the General Instructions that PBGC will prioritize conducting its independent audit of terminated vested census data for those plans that filed a Lock-In Application and that are on the waiting list. PBGC may also consider modifying the General Instructions to provide that such plans will receive audit results back from PBGC as soon as practicable but no later than several weeks before the e-filing portal is estimated to open. PBGC may wish to further modify the General Instructions to provide that PBGC will conduct its independent audit in accordance with the waiting list ordering system.

Lock-In Applications

The general information regarding Lock-In Applications has been modified to account for revised Lock-In Applications. If a plan becomes aware before filing a revised application for PBGC review that the plan did not meet the eligibility requirements for SFA as of the Lock-In Application filing date, the plan may file a revised Lock-In Application when it subsequently becomes eligible. PBGC should confirm that plans already on the waiting list that file a revised Lock-In Application retain their position on the waiting list.

Annual Statement of Compliance

The Annual Statement of Compliance is being modified to clarify the types of documents that are required to be attached to demonstrate compliance with the restrictions and conditions related to the investment of SFA assets. The Annual Statement of Compliance also will require plans to indicate whether, during the plan year, the plan had settled withdrawal liability in any amount and, if so, the plan is required to attach a copy of the withdrawal liability settlement agreement.

The "Paperwork Reduction Act Notice" section of the Annual Statement of Compliance provides that the information reported on, and attached to, the Annual Statement of Compliance, including withdrawal liability information and settlement agreements, are subject to the protections of the Freedom of Information Act and the Privacy Act, as well as PBGC's rules on providing and restricting access to its records as set forth in PBGC's regulation on Examination and Copying of PBGC Records (29 C.F.R. part 4901). The "Paperwork Reduction Act Notice" section also provides that information reported on and attached to the Annual Statement of Compliance will be shared with both the Department of Labor and the Treasury Department (collectively, the Agencies).

Despite protections regarding disclosure of the Annual Statement of Compliance and accompanying withdrawal liability documents, Segal remains very concerned that disclosure of such information to individuals or entities other than the Agencies may nonetheless include proprietary information related to the plan sponsor's deliberative process including, but not limited to, the assessment of employer financial viability and other settlement considerations. Release of such information does not further any policy goal nor benefit the SFA program and may, among other things, harm an employer's ability to conduct business and hamper with the plan sponsor's ability to negotiate future withdrawal liability settlements. Rather than requiring withdrawal liability settlement agreements be submitted with the Annual Statement of Compliance, PBGC may wish to instead require that withdrawal liability information and settlement agreements be submitted directly to PBGC (separate and apart from the Annual Statement of Compliance) subject to a non-disclosure agreement that PBGC would provide specifically for this purpose.

Closing

As an employee benefits consulting firm that has provided actuarial services to multiemployer plans for many decades and that has and continues to assist plans in applying for SFA, Segal appreciates the opportunity to express its views regarding the Notice. We thank PBGC for considering our suggested enhancements to the SFA guidance and welcome further discussions with PBGC on any of the points we have raised in this comment letter.

Sincerely,



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Retirement Practice Leader



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