

**Regulatory Flexibility Act**

We certify that this final rule will not have a significant economic impact on a substantial number of small entities as it affects individuals only. Therefore, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act, as amended.

**Paperwork Reduction Act**

This rule does not create any new or affect any existing collections and, therefore, does not require OMB approval under the Paperwork Reduction Act.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income.)

**List of Subjects****20 CFR Part 404**

Administrative practice and procedure; Blind, Disability benefits; Old-age, Survivors and Disability Insurance; Reporting and recordkeeping requirements; Social Security.

**20 CFR Part 416**

Administrative practice and procedure; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: March 29, 2011.

**Michael J. Astrue,**

*Commissioner of Social Security.*

For the reasons stated in the preamble, we are revising subpart J of part 404 and subpart N of part 416 of title 20 of the Code of Federal Regulations as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950—)**

**Subpart J—[Amended]**

■ 1. The authority citation for subpart J of part 404 continues to read as follows:

**Authority:** Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 223(i), 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 423(i), 425, and 902(a)(5)); sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 2. In § 404.942, revise paragraphs (f)(1) and (g) to read as follows:

**§ 404.942 Prehearing proceedings and decisions by attorney advisors.**

\* \* \* \* \*

(f) \* \* \*

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 404.1520a, 404.1526, 404.1527, and 404.1546.

\* \* \* \* \*

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

**PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

**Subpart N—[Amended]**

■ 3. The authority citation for subpart N continues to read as follows:

**Authority:** Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); sec. 202, Pub. L. 108–203, 118 Stat. 509 (42 U.S.C. 902 note).

■ 4. In § 416.1442, revise paragraphs (f)(1) and (g) to read as follows:

**§ 416.1442 Prehearing proceedings and decisions by attorney advisors.**

\* \* \* \* \*

(f) \* \* \*

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 416.920a, 416.924(g), 416.926, 416.926a(n), 416.927, and 416.946.

\* \* \* \* \*

(g) *Sunset provision.* The provisions of this section will no longer be effective on August 9, 2013, unless we terminate them earlier or extend them beyond that date by notice of a final rule in the **Federal Register**.

[FR Doc. 2011–7898 Filed 4–1–11; 8:45 am]

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**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 301**

[TD 9520]

RIN 1545–BG13

**Withdrawal of Regulations Related to Validity and Priority of Federal Tax Lien**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations related to the validity and priority of the Federal tax lien against certain persons under section 6323 of

the Internal Revenue Code (the Code). The final regulations update the corresponding Treasury Regulations to reflect changes in the law and in IRS practice.

**DATES:** *Effective Date:* These regulations are effective on April 4, 2011.

*Applicability Date:* These regulations apply to any notice of Federal tax lien filed on or after April 4, 2011.

**FOR FURTHER INFORMATION CONTACT:** Debra A. Kohn at (202) 622–3600 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****Background**

This document contains final regulations that amend the Procedure and Administration Regulations (26 CFR part 301) under section 6323 of the Code. If any person liable for tax neglects or refuses to pay after demand, the amount of that tax is a lien in favor of the United States against all property and rights to property of such person under section 6321. Section 6323 provides that a Federal tax lien is only valid against certain persons if a notice of Federal tax lien (NFTL) is filed and addresses generally the validity and priority of the Federal tax lien against such persons. Section 6323(b) and (c) addresses the protection of certain interests even though an NFTL has been filed. Section 6323(f) prescribes the place for filing and the form of an NFTL. Section 6323(g) addresses the refiling of an NFTL. Section 6323(h) contains definitions of certain terms used throughout section 6323.

Since 1976, there have been numerous amendments to section 6323 that are not reflected in the existing regulations. There have also been several changes to IRS practice that thus far have not been reflected in the regulations. On April 17, 2008, a notice of proposed rulemaking (REG–141998–06) to reflect these changes in law and practice was published in the **Federal Register** (73 FR 20877–01). No comments were received and no public hearing was requested or held. Accordingly, in this Treasury Decision, the proposed regulations are adopted substantially without change with the exception of one revision described in this preamble.

**Explanation of Revision**

Section 301.6323(g)–1(a) sets forth general principles pertaining to refiling NFTLs. Most NFTLs now contain a certificate of release that automatically becomes effective on the date prescribed in the NFTL, which is the date the required refiling period ends. Therefore, if an NFTL that contains a certificate of

release is not timely refiled in each jurisdiction where it was originally filed, the lien self-releases and is extinguished in all jurisdictions. See IRC § 6325(f)(1)(A). The extinguishment of the lien invalidates NFTLs filed in other jurisdictions and requires the IRS to file certificates of revocation, as well as new NFTLs, in each jurisdiction where NFTLs were previously filed.

The proposed regulations contemplated amending § 301.6323(g)–1(a)(3) to provide generally that, with respect to an NFTL that includes a certificate of release, failure to timely refile the NFTL in any jurisdiction where it was originally filed extinguishes the lien and renders the NFTL ineffective with respect to property that is the subject matter of a suit to which the United States is a party that is commenced before the required filing period expires, and property that has been levied upon by the United States before the refiling period expires. Further consideration led to the determination that failure to timely refile the NFTL should not render the NFTL ineffective under these circumstances. Accordingly, the final regulations provide that neither failure to timely refile the NFTL, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Debra A. Kohn of the Office of the Associate Chief Counsel (Procedure and Administration).

### List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

### PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** Section 301.6323(b)–1 is amended as follows:

- 1. Paragraph (d)(1) is revised.
- 2. Paragraph (d)(3) *Examples 1* and *3* are revised.
- 3. Paragraphs (g)(1) and (g)(2) *Examples 1, 2, and 3* are revised.
- 4. Paragraphs (i)(1)(iii) and (j) are revised.

The revisions read as follows:

#### § 301.6323(b)–1 Protection for certain interests even though notice filed.

\* \* \* \* \*

(d) *Personal property purchased in casual sale*—(1) *In general.* Even though a notice of lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a purchaser (as defined in § 301.6323(h)–1(f)) of household goods, personal effects, or other tangible personal property of a type described in § 301.6334–1 (which includes wearing apparel, school books, fuel, provisions, furniture, arms for personal use, livestock, and poultry (whether or not the seller is the head of a family); and books and tools of a trade, business, or profession (whether or not the trade, business, or profession of the seller)), purchased, other than for resale, in a casual sale for less than \$1,380, effective for 2010 and adjusted each year based on the rate of inflation (excluding interest and expenses described in § 301.6323(e)–1).

\* \* \* \* \*

(3) \* \* \*

*Example 1.* A, an attorney's widow, sells a set of law books for \$200 to B, for B's own use. Prior to the sale a notice of lien was filed with respect to A's delinquent tax liability in accordance with § 301.6323(f)–1. B has no actual notice or knowledge of the tax lien. In

addition, B does not know that the sale is one of a series of sales. Because the sale is a casual sale for less than \$1,380 and involves books of a profession (tangible personal property of a type described in § 301.6334–1, irrespective of the fact that A has never engaged in the legal profession), the tax lien is not valid against B even though a notice of lien was filed prior to the time of B's purchase.

\* \* \* \* \*

*Example 3.* In an advertisement appearing in a local newspaper, G indicates that he is offering for sale a lawn mower, a used television set, a desk, a refrigerator, and certain used dining room furniture. In response to the advertisement, H purchases the dining room furniture for \$200. H does not receive any information which would impart notice of a lien, or that the sale is one of a series of sales, beyond the information contained in the advertisement. Prior to the sale a notice of lien was filed with respect to G's delinquent tax liability in accordance with § 301.6323(f)–1. Because H had no actual notice or knowledge that substantially all of G's household goods were being sold or that the sale is one of a series of sales, and because the sale is a casual sale for less than \$1,380, H does not purchase the dining room furniture subject to the lien. The household goods are of a type described in § 301.6334–1(a)(2) irrespective of whether G is the head of a family or whether all such household goods offered for sale exceed \$8,250 in value.

\* \* \* \* \*

(g) *Residential property subject to a mechanic's lien for certain repairs and improvements*—(1) *In general.* Even though a notice of a lien imposed by section 6321 is filed in accordance with § 301.6323(f)–1, the lien is not valid against a mechanic's lien or (as defined in § 301.6323(h)–1(b)) who holds a lien for the repair or improvement of a personal residence if—

(i) The residence is occupied by the owner and contains no more than four dwelling units; and

(ii) The contract price on the prime contract with the owner for the repair or improvement (excluding interest and expenses described in § 301.6323(e)–1) is not more than \$6,890, effective for 2010 and adjusted each year based on the rate of inflation.

(iii) For purposes of paragraph (g)(1)(ii) of this section, the amounts of subcontracts under the prime contract with the owner are not to be taken into consideration for purposes of computing the \$6,890 prime contract price. It is immaterial that the notice of tax lien was filed before the contractor undertakes his work or that he knew of the lien before undertaking his work.

(2) \* \* \*

*Example 1.* A owns a building containing four apartments, one of which he occupies as his personal residence. A notice of lien which affects the building is filed in accordance with § 301.6323(f)–1. Thereafter,

A enters into a contract with B in the amount of \$800, which includes labor and materials, to repair the roof of the building. B purchases roofing shingles from C for \$300. B completes the work and A fails to pay B the agreed amount. In turn, B fails to pay C for the shingles. Under local law, B and C acquire mechanic's liens on A's building. Because the contract price on the prime contract with A is not more than \$6,890 and under local law B and C acquire mechanic's liens on A's building, the liens of B and C have priority over the Federal tax lien.

*Example 2.* Assume the same facts as in *Example 1*, except that the amount of the prime contract between A and B is \$7,100. Because the amount of the prime contract with the owner, A, is in excess of \$6,890, the tax lien has priority over the entire amount of each of the mechanic's liens of B and C, even though the amount of the contract between B and C is \$300.

*Example 3.* Assume the same facts as in *Example 1*, except that A and B do not agree in advance upon the amount due under the prime contract but agree that B will perform the work for the cost of materials and labor plus 10 percent of such cost. When the work is completed, it is determined that the total amount due is \$850. Because the prime contract price is not more than \$6,890 and under local law B and C acquire mechanic's liens on A's residence, the liens of B and C have priority over the Federal tax lien.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(iii) After the satisfaction of a levy pursuant to section 6332(b), unless and until the Internal Revenue Service delivers to the insuring organization a notice (for example, another notice of levy, a letter, etc.) executed after the date of such satisfaction, that the lien exists.

\* \* \* \* \*

(j) *Effective/applicability date.* This section applies to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 3.** Section 301.6323(c)-2 is amended as follows:

■ 1. Paragraph (d) *Example 1, 2, 3, 4, and 5* is revised.

■ 2. Paragraph (e) is added.

The revisions and addition read as follows:

**§ 301.6323(c)-2 Protection for real property construction or improvement financing agreements.**

\* \* \* \* \*

(d) \* \* \*

*Example 1.* A, in order to finance the construction of a dwelling on a lot owned by him, mortgages the property to B. The mortgage, executed January 4, 2006, includes an agreement that B will make cash disbursements to A as the construction progresses. On February 1, 2006, in accordance with § 301.6323(f)-1, a notice of

lien is filed and recorded in the public index with respect to A's delinquent tax liability. A continues the construction, and B makes cash disbursements on June 15, 2006, and December 15, 2006. Under local law B's security interest arising by virtue of the disbursements is protected against a judgment lien arising February 1, 2006 (the date of tax lien filing) out of an unsecured obligation. Because B is the holder of a security interest coming into existence by reason of cash disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance the construction of real property, and because B's security interest is protected, under local law, against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, B's security interest has priority over the tax lien.

*Example 2.* (i) C is awarded a contract for the demolition of several buildings. On March 3, 2004, C enters into a written agreement with D which provides that D will make cash disbursements to finance the demolition and also provides that repayment of the disbursements is secured by any sums due C under the contract. On April 1, 2004, in accordance with § 301.6323(f)-1, a notice of lien is filed with respect to C's delinquent tax liability. With actual notice of the tax lien, D makes cash disbursements to C on August 13, September 13, and October 13, 2004. Under local law D's security interest in the proceeds of the contract with respect to the disbursements is entitled to priority over a judgment lien arising on April 1, 2004 (the date of tax lien filing) out of an unsecured obligation.

(ii) Because D's security interest arose by reason of disbursements made pursuant to a written agreement, entered into before tax lien filing, to make cash disbursements to finance a contract to demolish real property, and because D's security interest is valid under local law against a judgment lien arising as of the time of tax lien filed out of an unsecured obligation, the tax lien is not valid with respect to D's security interest in the proceeds of the demolition contract.

*Example 3.* Assume the same facts as in *Example 2* and, in addition, assume that, as further security for the cash disbursements, the March 3, 2004, agreement also provides for a security interest in all of C's demolition equipment. Because the protection of the security interest arising from the disbursements made after tax lien filing under the agreement is limited under section 6323(c)(3) to the proceeds of the demolition contract and because, under the circumstances, the security interest in the equipment is not otherwise protected under section 6323, the tax lien will have priority over D's security interest in the equipment.

*Example 4.* (i) On January 3, 2006, F and G enter into a written agreement, whereby F agrees to provide G with cash disbursements, seed, fertilizer, and insecticides as needed by G, in order to finance the raising and harvesting of a crop on a farm owned by G. Under the terms of the agreement F is to have a security interest in the crop, the farm, and all other property then owned or thereafter acquired by G. In accordance with § 301.6323(f)-1, on January 10, 2006, a notice

of lien is filed and recorded in the public index with respect to G's delinquent tax liability. On March 3, 2006, with actual notice of the tax lien, F makes a cash disbursement of \$5,000 to G and furnishes him seed, fertilizer, and insecticides having a value of \$10,000. Under local law F's security interest, coming into existence by reason of the cash disbursement and the furnishing of goods, has priority over a judgment lien arising January 10, 2006 (the date of tax lien filing and recording in the public index) out of an unsecured obligation.

(ii) Because F's security interest arose by reason of a disbursement (including the furnishing of goods) made under a written agreement which was entered into before tax lien filing and which constitutes an agreement to finance the raising or harvesting of a farm crop, and because F's security interest is valid under local law against a judgment lien arising as of the time of tax lien filing out of an unsecured obligation, the tax lien is not valid with respect to F's security interest in the crop even though a notice of lien was filed before the security interest arose. Furthermore, because the farm is property subject to the tax lien at the time of tax lien filing, F's security interest with respect to the farm also has priority over the tax lien.

*Example 5.* Assume the same facts as in *Example 4* and in addition that on October 2, 2006, G acquires several tractors to which F's security interest attaches under the terms of the agreement. Because the tractors are not property subject to the tax lien at the time of tax lien filing, the tax lien has priority over F's security interest in the tractors.

(e) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 4.** Section 301.6323(f)-1 is amended as follows:

■ 1. Paragraph (d)(2) is revised.

■ 2. Paragraph (f) is added.

The revision and addition read as follows:

**§ 301.6323(f)-1 Place for filing notice; form.**

\* \* \* \* \*

(d) \* \* \*

(2) *Form 668 defined.* The term *Form 668* means either a paper form or a form transmitted electronically, including a form transmitted by facsimile (fax) or electronic mail (e-mail). A Form 668 must identify the taxpayer, the tax liability giving rise to the lien, and the date the assessment arose regardless of the method used to file the notice of Federal tax lien.

\* \* \* \* \*

(f) *Effective/applicability date.* This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 5.** Section 301.6323(g)-1 is amended as follows:

■ 1. Paragraphs (a)(1), (a)(3) introductory text, (a)(3)(i), and (a)(3)(ii),

(a)(4), (b)(3) introductory text, (b)(3) *Example 1*, and (b)(3) *Example 5* are revised.

- 2. The undesignated text following paragraph (a)(3)(ii) is removed.
- 3. Paragraph (c)(1) is revised.
- 4. Paragraph (c)(2) is removed.
- 5. Paragraph (c)(3) is redesignated as paragraph (c)(2) and revised.
- 6. Paragraph (d) is added.

The revisions and additions read as follows:

**§ 301.6323(g)–1 Refiling of notice of tax lien.**

(a) *In general*—(1) *Requirement to refile*. In order to continue the effect of a notice of lien, the notice must be refiled in the place described in paragraph (b) of this section during the required refiling period (described in paragraph (c) of this section). If two or more notices of lien are filed with respect to a particular tax assessment, and each notice of lien contains a certificate of release that releases the lien when the required refiling period ends, the failure to comply with the provisions of paragraphs (b)(1)(i) and (c) of this section in respect to one of the notices of lien releases the lien and renders ineffective the refiling of any other notice of lien.

\* \* \* \* \*

(3) *Effect of failure to refile*—If the Internal Revenue Service fails to refile a notice of lien in the manner described in paragraphs (b) and (c) of this section, the notice is not effective, after the expiration of the required refiling period, as against any person described in section 6323(a), without regard to when the interest of the person in the property subject to the lien was acquired. If a notice of lien contains a certificate of release that provides that the lien is released at the end of the required refiling period unless the notice of lien is refiled, and the notice of lien is not refiled, then the lien is extinguished and the notice of lien is ineffective.

(i) However, neither the failure to refile before the expiration of the refiling period, nor the release of the lien, shall alter or impair any right of the United States to property or its proceeds that is the subject of a levy or judicial proceeding commenced prior to the end of the refiling period or the release of the lien, except to the extent that a person acquires an interest in the property for adequate consideration after the commencement of the proceeding and does not have notice of, and is not bound by, the outcome of the proceeding.

(ii) If a suit or levy referred to in the preceding sentence is dismissed or

released and the property is subject to the lien at such time, a notice of lien with respect to the property is not effective after the suit or levy is dismissed or released unless refiled during the required refiling period.

(4) *Filing of new notice*. If a notice of lien is not refiled, and the notice of lien contains a certificate of release that automatically releases the lien when the required refiling period ends, the lien is released as of that date and is no longer in existence. The Internal Revenue Service must revoke the release before it can file a new notice of lien. This new filing must meet the requirements of section 6323(f) and § 301.6323(f)–1 and is effective from the date on which such filing is made.

(b) \* \* \*

(3) *Examples*. The following examples illustrate the provisions of this section:

*Example 1*. A, a delinquent taxpayer, is a resident of State M and owns real property in State N. In accordance with § 301.6323(f)–1, notices of lien are filed in States M and N. The notices of lien contain certificates of release that release the lien at the end of the required refiling period. In order to continue the effect of the notice of lien filed in either M or N, the Internal Revenue Service must refile, during the required refiling period, the notice of lien with the appropriate office in M as well as with the appropriate office in N.

\* \* \* \* \*

*Example 5*. D, a delinquent taxpayer, is a resident of State M and owns real property in States N and O. In accordance with § 301.6323(f)–1, the Internal Revenue Service files notices of lien in M, N, and O States. Nine years and 6 months after the date of the assessment shown on the notice of lien, D establishes his residence in P, and at that time the Internal Revenue Service receives from D a notification of his change in residence in accordance with the provisions of paragraph (b)(2) of this section. On a date which is 9 years and 7 months after the date of the assessment shown on the notice of lien, the Internal Revenue Service properly refiles notices of lien in M, N, and O which refilings are sufficient to continue the effect of each of the notices of lien. The Internal Revenue Service is not required to file a notice of lien in P because D did not notify the Internal Revenue Service of his change of residence to P more than 89 days prior to the date each of the refilings in M, N, and O was completed.

\* \* \* \* \*

(c) *Required refiling period*—(1) *In general*. For the purpose of this section, except as provided in paragraph (c)(2) of this section, the term *required refiling period* means—

- (i) The 1-year period ending 30 days after the expiration of 10 years after the date of the assessment of the tax; and
- (ii) The 1-year period ending with the expiration of 10 years after the close of

the preceding required refiling period for such notice of lien.

(2) *Examples*. The following examples illustrate the provisions of this paragraph:

*Example 1*. On March 10, 1998, an assessment of tax is made against B, a delinquent taxpayer, and a lien for the amount of the assessment arises on that date. On July 10, 1998, in accordance with § 301.6323(f)–1, a notice of lien is filed. The notice of lien filed on July 10, 1998, is effective through April 9, 2008. The first required refiling period for the notice of lien begins on April 10, 2007, and ends on April 9, 2008. A refiling of the notice of lien during that period will extend the effectiveness of the notice of lien filed on July 10, 1998, through April 9, 2018. The second required refiling period for the notice of lien begins on April 10, 2017, and ends on April 9, 2018.

*Example 2*. Assume the same facts as in *Example 1*, except that the Internal Revenue Service fails to refile a notice of lien during the first required refiling period (April 10, 2007, through April 9, 2008). A notice of lien is filed on June 9, 2009, in accordance with § 301.6323(f)–1. This notice is ineffective if the original notice contained a certificate of release, as the certificate of release would have had the effect of extinguishing the lien as of April 10, 2008. The Internal Revenue Service could revoke the release and file a new notice of lien, which would be effective as of the date it was filed.

(d) *Effective/applicability date*. This section applies with respect to any notice of Federal tax lien filed on or after April 4, 2011.

■ **Par. 6.** Section 301.6323(h)–1 is amended as follows:

- 1. Paragraphs (a)(2)(ii) and (a)(3) are revised.
- 2. A new paragraph (h) is added.

The revisions and addition read as follows:

**§ 301.6323(h)–1 Definitions.**

(a) \* \* \*

(2) \* \* \*

(ii) The following example illustrates the application of paragraph (a)(2):

*Example*. (i) Under the law of State X, a security interest in certificated securities, negotiable documents, or instruments may be perfected, and hence protected against a judgment lien, by filing or by the secured party taking possession of the collateral. However, a security interest in such intangible personal property is considered to be temporarily perfected for a period of 20 days from the time the security interest attaches, to the extent that it arises for new value given under an authenticated security agreement. Under the law of X, a security interest attaches to such collateral when there is an agreement between the creditor and debtor that the interest attaches, the debtor has rights in the property, and consideration is given by the creditor. Under the law of X, in the case of temporary perfection, the security interest in such

property is protected during the 20-day period against a judgment lien arising, after the security interest attaches, out of an unsecured obligation. Upon expiration of the 20-day period, the holder of the security interest must perfect its security interest under local law.

(ii) Because the security interest is perfected during the 20-day period against a subsequent judgment lien arising out of an unsecured obligation, and because filing or the taking of possession before the conclusion of the period of temporary perfection is not considered, for purposes of paragraph (a)(2)(i) of this section, to be a requisite action which relates back to the beginning of such period, the requirements of this paragraph are satisfied. Because filing or taking possession is a condition precedent to continued perfection, filing or taking possession of the collateral is a requisite action to establish such priority after expiration of the period of temporary perfection. If there is a lapse of perfection for failure to file or take possession, the determination of when the security interest exists (for purposes of protection against the tax lien) is made without regard to the period of temporary perfection.

(3) *Money or money's worth.* For purposes of this paragraph, the term *money or money's worth* includes money, a security (as defined in paragraph (d) of this section), tangible or intangible property, services, and other consideration reducible to a money value. Money or money's worth also includes any consideration which otherwise would constitute money or money's worth under the preceding sentence which was parted with before the security interest would otherwise exist if, under local law, past consideration is sufficient to support an agreement giving rise to a security interest, and provided that the grant of the security interest is not a fraudulent transfer under local law or 28 U.S.C. § 3304(a)(2). A firm commitment to part with money, a security, tangible or intangible property, services, or other consideration reducible to a money value does not, in itself, constitute a consideration in money or money's worth. A relinquishing or promised relinquishment of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights is not a consideration in money or money's worth. Nor is love and affection, promise of marriage, or any other consideration not reducible to a money value a consideration in money or money's worth.

\* \* \* \* \*

(h) *Effective/applicability date.* This section applies as of April 4, 2011.

**Steven T. Miller,**  
*Deputy Commissioner for Services and Enforcement.*

Approved: March 25, 2011.

**Michael Mundaca,**  
*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. 2011-7933 Filed 4-1-11; 8:45 am]

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## PENSION BENEFIT GUARANTY CORPORATION

### 29 CFR Part 4042

#### Single-Employer Plan Termination Initiated by PBGC

##### *CFR Correction*

In Title 29 of the Code of Federal Regulations, Part 1927 to End, revised as of July 1, 2010, on page 973, § 4042.5 is added to read as follows:

#### **§ 4042.5 Disclosure of administrative record by PBGC.**

(a) *Request for Administrative Record*—(1) *In general.* Beginning on the third business day (as defined in § 4000.22 of this chapter) after PBGC has issued a notice under section 4042 of ERISA that a plan should be terminated, an affected party with respect to the plan may make a request to PBGC for the administrative record of PBGC's determination that the plan should be terminated.

(2) *Requirements.* A request under paragraph (a) of this section must:

- (i) Be in writing;
- (ii) State the name of the plan and that the request is for the administrative record with respect to a notice issued by PBGC under section 4042 of ERISA that a plan should be terminated;
- (iii) State the name of the person making the request, the person's relationship to the plan (e.g., plan participant), and that such relationship meets the definition of affected party under § 4001.2 of this chapter; and
- (iv) Be signed by the person making the request.

(3) A request under paragraph (a) of this section must be sent to PBGC's Disclosure Officer at the address provided on PBGC's Web site. To expedite processing, the request should be prominently identified as an "Administrative Record Request."

(b) *PBGC Response to Request for Administrative Record*—(1) *Notification of plan administrator and plan sponsor.* Upon receipt of a request under paragraph (a) of this section, PBGC will

promptly notify the plan administrator and plan sponsor that it has received a request for the administrative record, and the date by which PBGC will provide the information to the affected party that made the request.

(2) *Confidential information.* (i) In responding to a request under paragraph (a) of this section, PBGC will not disclose any portions of the administrative record that are prohibited from disclosure under the Privacy Act, 5 U.S.C. 552a.

(ii) A plan administrator or plan sponsor that has received notification pursuant to paragraph (b)(1) of this section may seek a court order under which those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code—

(A) Will be disclosed only to authorized representatives (within the meaning of section 4041(c)(2)(D)(iv) of ERISA) that agree to ensure the confidentiality of such information, and

(B) Will not be disclosed to other affected parties.

(iii) If, before the 15th business day (as defined in § 4000.22 of this chapter) after PBGC has received a request under paragraph (a), PBGC receives a court order as described in paragraph (b)(2)(ii) of this section, PBGC will disclose those portions of the administrative record that contain confidential information described in section 552(b) of title 5, United States Code, only as provided in the order.

(3) *Timing of response.* PBGC will send the administrative record to the affected party that made the request not later than the 15th business day (as defined in § 4000.22 of this chapter) after it receives the request.

(4) *Form and manner.* PBGC will provide the administrative record using measures (including electronic measures) reasonably calculated to ensure actual receipt of the material by the intended recipient.

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