

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.

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(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]

**BILLING CODE 4830-01-P**

## **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.

[FR Doc. 2011-8007 Filed 4-1-11; 8:45 am]

**BILLING CODE 1505-01-D**