PENSION BENEFIT GUARANTY CORPORATION

Customer Satisfaction Survey for Pension Practitioners

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of submission for OMB review; comment request.

SUMMARY: The Pension Benefit Guaranty Corporation has requested that the Office of Management and Budget approve a new collection of information under the Paperwork Reduction Act for a voluntary collection of information which is not contained in a regulation. The collection consists of an annual mail survey which will help the PBGC measure the satisfaction of its pension practitioner customers. Responses to the survey are voluntary.

DATES: Written comments should be submitted to OMB at the below address within 30 days after April 25, 1997.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. The request for approval and copies of the proposed collection of information will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Marc L. Jordan, Attorney, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Executive Order 12862, Setting Customer Service Standards, states that, in order to carry out the principles of the National Performance Review, the Federal Government must be customer-driven. It directs all executive departments and agencies that provide significant services directly to the public to provide those services in a manner that seeks to meet the customer service standards established in the Executive Order. It further requires those executive departments and agencies to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.

The PBGC has decided to measure the satisfaction of its pension practitioner customers through the use of an annual mail survey. The survey will be sent to a sampling of pension practitioners drawn from the following sources: 800 from plan administrators who filed voluntary termination forms; 800 from plan administrators who filed premium forms; and 800 from the directory of enrolled actuaries as maintained by the Society of Actuaries. The PBGC estimates the total annual burden to respondents to be 480 hours.

On January 31, 1997, the PBGC published in the **Federal Register** a notice of intention to request OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, DC, this 21st day of April, 1997.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 97–10708 Filed 4–24–97; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Exemption From the Bond/Escrow Requirement Relating to the Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Brylane, L.P.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: This notice advises interested persons that the Pension Benefit Guaranty Corporation has received a request from Brylane, L.P. for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended, with respect to the ILGWU National Retirement Fund. Section 4204(a)(1) provides that the sale of assets by an employer that contributes to a multiemployer pension plan will not constitute a complete or partial withdrawal from the plan if certain conditions are met. One of these conditions is that the purchaser post a bond or deposit money in escrow for the five-plan-year period beginning after the sale. The PBGC is authorized to grant individual and class exemptions from this requirement. Before granting an exemption the PBGC is required to give interested persons an opportunity to comment on the exemption request. The purpose of this notice is to advise interested persons of the exemption request and solicit their views on it.

DATES: Comments must be submitted on or before June 9, 1997.

ADDRESSES: All written comments (at least three copies) should be addressed to: Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026. The non-confidential portions of the request for an exemption and the comments received will be available for public inspection at the PBGC Communications and Public Affairs Department, Suite 240, at the above address, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Shaswat K. Das, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone (202) 326–4020, ext. 3022, (202) 326–4179 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''ERISA'' or ''the Act''), provides that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1) (A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contributions base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's required annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation (''PBGC'') to grant individual or class variances or exemptions from the purchaser's bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S.1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1).

Under the PBGC's regulation on variances for sales of assets (29 CFR part 4204), a request for a variance or waiver of the bond/escrow requirement under any of the tests established in the regulation (§§ 4204.12–4204.13) is to be made to the plan in question. The PBGC will consider waiver requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 4204.22 of the regulation, the PBGC shall approve a request for a variance or exemption if it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of Title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 4204.22(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Request

The PBGC has received a request from Brylane, L.P. (the ''Buyer'') for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to the ILGWU National Retirement Fund (the ''Fund'') in connection with its purchase of certain of the assets of Chadwick's, Inc. and CDM Corp., a wholly-owned subsidiary of Chadwick's, Inc. (collectively the ''Seller'') on December 2, 1996. In the request, the Buyer represents among other things that:

1. Under the terms of the asset purchase agreement, the Buyer will pay the Seller $222.8 million in cash, and will issue to Seller a Convertible Subordinated Note in the principal amount of $20 million, which will mature in the year 2006, and which will be convertible at the Seller's option into partnership units of the Buyer.

2. The Buyer is obligated to contribute to the Fund for the purchased operations for substantially the same number of contribution base units as the Seller.

3. The Seller has agreed to be secondarily liable for any withdrawal liability it would have had with respect to the sold operations (if not for section 4204) should the Buyer withdraw from the Fund within the five plan years following the sale and fail to pay withdrawal liability.

4. The estimated amount of the unfunded vested benefits allocable to the Seller with respect to the operations sold is about $800,000.

5. The amount of the bond/escrow required under section 4204(a)(1)(B) is $1,550,000.

6. The Buyer's average net income for the three fiscal years preceding the sale is $25.3 million, and the average net income for the purchased operations over that period is $7.4 million. The interest expense incurred by the Buyer in connection with the sale is $44.1 million per year. Thus, the average net income of the Buyer, reduced by the interest expense incurred in connection with the sale, would not exceed 150% of the amount of the bond/escrow, as required under 29 CFR 4204.13(a)(1). However, according to the request, if the interest expense were adjusted by the income tax deduction to which the Buyer is entitled per year, the net interest expense would be approximately $28.7 million per year. Therefore, the average net income for the Buyer (including the purchased operations) for the three years preceding the sale ($32.7 million), reduced by the net interest expense ($28.7 million), would be about $4 million ($32.7 million minus $28.7 million), which is more than 150% of the bond/escrow amount.

7. A complete copy of the request was sent to the Fund and to the collective bargaining representative of the Seller's employees.

Comments

All interested persons are invited to submit written comments on the pending exemption request to the above address. All comments will be made a part of the record. Comments received, as well as the relevant non-confidential information submitted in support of the request, will be available for public inspection at the address set forth above.

Issued at Washington, DC, on this 21st day of April 1997.

John Seal,

Acting Executive Director.

[FR Doc. 97–10709 Filed 4–24–97; 8:45 am]

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POSTAL SERVICE

Sunshine Act Meeting; Board of Governors

TIMES AND DATES: 10:30 a.m., Monday, May 5, 1997; 8:30 a.m., Tuesday, May 6, 1997.

PLACE: Washington, D.C., at the U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: May 5 (Closed); May 6 (Open).

MATTERS TO BE CONSIDERED:

Monday, May 5—10:30 a.m. (Closed)

1. Consideration of Postal Rate Commission Opinion and Recommended Decision in Docket No. MC96–3, Special Services.
2. Consideration of Postal Rate Commission Opinion and Recommended Decision in Docket No. MC97–1, Experimental Fees for Nonletter-Size Business Reply Mail, 1996.
3. Rate Case Planning Process (Part 2 of 3).
4. Capital Investments.
   a. Mail Transport Equipment Service Center (MTESC) Network.
   b. Modification Request for Church Street Station, New York.

Tuesday, May 6—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, April 7–8, 1997.
2. Remarks of the Postmaster General/Chief Executive Officer.