

## **SUPPORTING STATEMENT**

### **1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The notice and regulation are needed to provide guidance to plan administrators, plan sponsor, etc., as a result of changes to §401(k)(3) and §401(m)(2) of the Internal Revenue Code (the "Code") made by §1433 of the Small Business Job Protection Act of 1996 "SBJPA"), Pub. L. No. 104-188.

The changes to §401(k)(3) and §401(m)(2) of the Code are effective for years beginning after December 31, 1996. These changes alter the nondiscrimination rules under §401(k)(3) and §401(m)(2), which together limit the amount of elective deferrals, employee contributions, and matching contributions that can be made on behalf of highly compensated employees to qualified retirement plans.

### **2. USE OF DATA**

The data will be used by the Service to determine whether a favorable determination letter should be issued for the retirement plan as amended.

### **3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

### **4. EFFORTS TO IDENTIFY DUPLICATION**

We have attempted to eliminate duplication within the agency wherever possible.

### **5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES**

The notice and regulation were drafted as a result SBJPA changes in the law concerning the method of discrimination testing of certain qualified retirement plans, primarily §401(k) plans - the predominant type of retirement plan maintained by small businesses. Prior to the SBJPA changes, the contributions that could be made on behalf of highly

compensated employees were limited to how much contributions were made on behalf of the employer's nonhighly compensated employees for the same year. The SBJPA changes permit employers maintaining these retirement plans to determine, at the beginning of each year, how much retirement contributions can be made on behalf of highly compensated employees for the year by looking at the contributions made no behalf of nonhighly compensated employees for the prior year. In the notice and regulation, this is called the "prior year testing method," as opposed to the "current year testing method," the only method of discrimination testing permitted under §401(k) and §401(m) prior to the SBJPA changes. This notice and regulation provide the information needed by employers to take advantage of the new testing method. In addition, because the notice and regulation will not be issued until after many employers have already made certain decisions regarding the funding of their retirement plans, transition relief is provided that relaxes some of the restrictions on switching from current year to prior year testing.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

Notice 98-1 was published in the Internal Revenue Bulletin on January 20, 1998 (1998-3 IRB 42).

REG-108639-99 (Final) was published in the Federal Register on December 29, 2004 (69 FR 78144).

We received no comments during the comment period in response to the **Federal Register** notice dated February 1, 2007 (72 FR 4768).

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The notice and regulation involve one type of information collection.

We estimate that 147,000 plans will be amended. The estimated burden per recordkeeper is 20 minutes for a total estimated burden of 49,000 hours.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our **Federal Register** notice dated February 1, 2007 (72 FR 4768), requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.