

# **<sup>1</sup>SUPPORTING STATEMENT (REG-155608-02)**

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

Section 72(p)(2)(A)(i) of the Internal Revenue Code requires certain retirement plans including section 403(b) plans to limit outstanding plan loans for an employee to amounts no greater than the lesser of \$50,000 or half the employee's accrued benefit under the plan. As noted in the attached Notice 2001-56, 2001-2 C.B. 277, section 636(a) of the Economic Growth and Tax Relief Reconciliation Act of 2001 requires the IRS to modify its hardship distributions regulations for section 401(k) plans [and section 403(b) plans which use the same hardship distribution rules] to provide that the time period during which an employee who had received a hardship distribution from the plan is prohibited from making elective deferrals in his/her plan account is 6 months instead of 12 months in order for the hardship distribution to be deemed necessary to satisfy a financial need.

The new collection of information requirement makes it easier for employers to respond to an IRS inquiry or audit, for example, if assets are transferred to an insurance carrier or mutual fund that has no subsequent connection to the plan or the employer. IRS audits and related investigations have revealed that employers encounter substantial difficulty in demonstrating compliance with the above-described hardship withdrawal and loan rules in those cases in which individuals' benefits under section 403(b) are invested in contracts issued by several issuers. Such multiple contract issuers are commonly associated with plans in which exchanges have occurred under the prior more permissive regulatory regime. In other words, the new requirement relating to loans and hardship distribution from the section 403(b) arrangement is intended to ensure compliance with the above-described legal requirements relating to loans and hardship distributions from section 403(b) plans.

## **2. USE OF DATA**

The data will primarily be used by the section 403(b) plan sponsor or administrator to ensure that a plan participant receives a loan or hardship distribution from his plan account in accordance with the statutory limitations and requirements applying to these provisions. In addition, the data will be used by the Service to determine whether the eligible employer sponsoring the section 403(b) arrangement has

complied with the statutory loan and hardship distribution requirements and other requirements of section 403(b) for the benefit of the plan participants and beneficiaries.

**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**

Not applicable.

**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**

The notice of proposed rulemaking regarding the revised regulations under section 403(b) was published in the Federal Register for November 14, 2004 (69 FR 67073) and it provided the public an adequate period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing was on February 15, 2005, at which a dozen witnesses discussed various aspects of the proposed regulations. A large number of commentators protested the NPRM's provision to resolve the compliance issues plaguing loan and hardship

distributions by barring in-service transfers to outside vendors. In response to the plan sponsors' request to retain their right to permit such transfers even if additional measures were needed to assure compliance, the final regulations retain their right to permit such transfers provided they comply with the new collection of information requirement which is intended to resolve the compliance issues.

As discussed in the preamble to the final section 403(b) regulations, the IRS and Treasury made a number of additional revisions concerning matters not relating to collection of information in response to public comments.

In response to the **Federal Register Notice** dated **January 25, 2007 (72 FR 3483)**, we received no comments during the comment period regarding REG-155608-02.

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

Not applicable.

**10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

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

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

Not applicable.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Section 1.403(b)-10(b)(2) requires section 403(b) sponsors who want to permit in-service contract exchanges with outside vendors to enter into agreements with these vendors to exchange certain information with them regarding the exchanged section 403(b) contracts. The burden of the collection of information required by § 1.403(b)-10(b)(2) is estimated to be 45,000 hours with an average burden to each respondent of 4.1 hours. The estimated number of respondents is 11,000.

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 **January 25, 2007 (72 FR 3483)**, 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**

Not applicable.

**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 regulation sunsets 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.