

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Provisions enacted in sections 521 and 522 of the Unemployment Compensation Amendments of 1992 ("UCA") (Pub. L. 102-318) impose mandatory 20 percent income tax withholding upon the taxable portion of certain distributions from a qualified pension plan or a tax-sheltered annuity that can be rolled over tax-free to another eligible retirement plan unless such amounts are transferred directly to such other plan in a "direct rollover" transaction. These provisions also require qualified pension plans and tax-sheltered annuities to offer their participants the option to elect to make "direct rollovers" of their distributions and to provide distributees with a written explanation of the tax laws regarding their distributions and their option to elect such a rollover.

### 2. USE OF DATA

Form 1099R has been and will be used by plan administrators, payors, and employers to report all distributions including "direct rollovers" to participants.

The Internal Revenue Service will use these forms to foster and monitor the distributees' compliance with the tax laws, including UCA, requiring them to either roll over their distributions on a tax-free basis to another eligible retirement plan or to report them as taxable income. If such information was not required, then the Service would not be able to achieve these objectives.

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

We estimate that 50% of the reports required by Q/A-5 of section 31.3405(c)-1 of this regulation will be provided electronically. This represents approximately 1.2% of the total responses required by the regulation.

### 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

A notice of proposed rulemaking was published simultaneously with temporary regulations in the **Federal Register** on October 22, 1992 (57 FR 48194). A public hearing was held on January 15, 1993. The final regulations were published in the **Federal Register** on September 22, 1995 (60 FR 49199).

We received no comments during the comment period in response to the **Federal Register** notice (72 FR 39898), dated July 20, 2007.

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

Sections 1.401(a)(31)-1 and 1.403(b)-2 of the regulation implement the requirements of section 401(a)(31) as enacted by section 522(a) of UCA and its legislative history that qualified retirement plans and tax-sheltered annuities provide recipients of certain distributions the option to elect a tax-free direct rollover to an eligible retirement plan and that distributees provide adequate information to the employer, plan administrator, or employer to ensure that

such rollovers are in fact paid to eligible retirement plans.

Q&A-13 of §1.402(c)-2 provides that, in order for a contribution of an eligible rollover distribution to an individual retirement plan to constitute a rollover and, thus, to qualify for current exclusion from gross income, a distributee must elect at the time the contribution is made to treat the contribution as a rollover contribution. An election is made by designating to the trustee, issuer, or custodian of the eligible retirement plan that the contribution is a rollover contribution. This designation is only required in the case of a rollover by the distributee and not in the case of a direct rollover. We estimate that 37,800 distributees will make this election and delegation. We further estimate that it will take an average of .02 hours to make each designation, resulting in an estimated burden of 756 hours.

Sections 1.402(c)-2 and 1.402(f)-1 of the regulation implement the requirements of section 402(f) as revised by section 521(a) of UCA that plan administrators and employers provide distributees of eligible rollover distributions a timely written explanation of certain provisions. This requirement can be met by presenting a model explanation that the Internal Revenue Service is required to publish under section 521(d) of UCA. We estimate that 1,260,000 employers or plan administrators will present the notice required under section 402(f) to 12,600,000 distributees, requiring .05 hour for the employer or administrator to prepare each notice with an estimated total burden of 630,000 hours.

We estimate that 8,900,000 distributees will make the direct rollover election under section 401(a)(31), as enacted by section 522(a) of UCA, requiring an average of .167 hour per election made with an estimated total of 1,486,300 hours to gather and furnish the "adequate information" mandated by the legislative history of UCA and required by section 31.3405(c)-1 of this regulation.

The burdens for the Form 1099R reporting requirement under §31.3405(c)-1 of this regulation will be reflected in the burden estimate for Form 1099R. The regulation requires plans to report all distributions, including eligible rollover distributions paid in direct rollovers, on Form 1099R in accordance with the instructions for Form 1099R. The burdens for the Form 5498 reporting requirement under section 31.3405(c)-1 of this regulation will also be reflected in the burden estimate for Form 5498. The

regulation requires individual retirement plans that receive eligible retirement distributions in direct rollovers to report such receipts on Form 5498 in accordance with the instructions for Form 5498.

Section 3405(d)(2) provides that the plan administrator is liable for the withholding required under section 3405 unless the plan administrator directs the payor to withhold such tax and provides the payor with such information as the Secretary may require in regulations. These final regulations provide in Q/A-5 of section 31.3405(c)-1 that the plan administrator must inform the payor of the information that would be reportable on Form 1099R (or inform the payor that information is not applicable) with appropriate adjustments, including the plan administrator's identification of amounts that constitute required minimum distributions. We estimate that 126,000 plan administrators will direct the payor to withhold the tax required under section 3405(c) with respect to a total of 252,000 distributees. We further estimate that it will take .05 hour for a plan administrator to prepare a report for each distributee, resulting in an estimated additional burden of 12,600 hours. We estimate that 50% of plan administrators will provide this report electronically.

Section 3402(p) provides that, with regard to any payment from which the Secretary finds withholding to be appropriate, the Secretary is authorized to permit by regulation the person making the payment to enter into a withholding agreement with the person receiving the payment. These final regulations in Q/A-3 of section 31.3405(c)-1 permit the plan administrator or payor to enter into such an agreement with respect to additional withholding from an eligible rollover distribution. The regulations provide that the additional withholding must be in accordance with applicable forms and instructions. The regulations also provide that the agreement can be terminated by either party by informing the other party in writing. Because the agreement must be made in accordance with applicable forms and instructions, the increased burden from the agreement is included in the applicable forms. With respect to the statement terminating the agreement, we estimate that 126 distributees will terminate the agreement, and that .1 hours will be required to prepare each request, resulting in a total burden of 12.6 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 July 20, 2007, 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 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.