

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 102(b) of the Pension Funding Equity Act of 2004 (the Act) provides certain eligible employers, i.e, those that are (1) a commercial passenger airline, (2) primarily in the production or manufacture of a steel mill product, or the processing of iron ore pellets, or (3) described in section 501(c)(5) of the Code that established a plan on June 30, 1955, to make election to make an alternative deficit reduction contribution.

Announcement 2004-38 implements section 102(b) of the Act and provides guidelines by which the Internal Revenue Service may monitor whether defined benefit pension plans are operating within the framework of the law and congressional intent.

Announcement 2004-43 addresses the notice provisions contained in the parallel section of ERISA, i.e., section 302(d)(12) of ERISA. In addition, that section provides that notice of an election must be given within 30 days from the date of the making an election by an employer to make an alternative deficit reduction contribution to plan participants, their beneficiaries, and the Pension Benefit Guaranty Corporation. Consistent with section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, the Act provides that the notice of the election will be made in time and manner prescribed by Treasury.

Since the publication of these announcements questions have arisen regarding what transpires when there is an amendment and/or an election in Year 1 and/or Year 2 or a combination of these items after an alternative deficit reduction contribution election. This notice addresses the more immediate questions.

### 2. USE OF DATA

The data will be used by the Service to monitor whether the plan or plans of an employer that make an alternative deficit reduction contribution election and/or plan amendment are complying with the statute (which was enacted on April 10, 2004). This data may be shared with the Pension Benefit Guaranty Corporation and the Employee Benefits Security Administration of the U.S. Department of Labor in the enforcement of the provisions of the Employee Retirement Income Security Act of 1974.

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

IRS Publications, regulations, published guidance, e.g., revenue rulings and revenue procedures, notices, letters, and letter rulings 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

This notice follows the congressional directive where employers that elect an alternative deficit reduction contribution must do so in a time and manner as prescribed by the Secretary of the Treasury (or his delegate). An amendment is a method by which an employer may elect out of a previously chosen election.

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

Not applicable.

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

The statute requires, in general, that notice must be given within 30 days from the date of an election to make an alternative deficit reduction contribution. This notice sets the filing date for certification as on or before the date for filing the Form 5500 for the plan year. As a result, the filing of a certification may be earlier than the date prescribed in the guidelines.

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

In response to the Federal Register Notice dated August 16, 2007 (72 F. R. 46128), we received no comments during the comment period regarding Notice 2004-59.

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

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Submissions under this notice are considered tax returns and tax return information, which are confidential as required by 26 U.S.C. § 6103. In general, certain matters relating to taxability and deductibility are disclosable under 26 U.S.C. § 6110.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Q&A-4 of the notice requires certification to the Service where there has been a restricted amendment (as that term is defined in the notice) during a plan year that must be filed with the Service to ascertain whether there has been an election and/or a restricted amendment in a plan year by a plan. The certification must be made by the plan's enrolled actuary.

The total estimated average annual burden varies from 3 hours to 5 hours with a total estimated average burden of 4 hours on 100 respondents for a total of 400 hours annually.

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 August 16, 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 service 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 leading taxpayers to believe that the revenue procedure will sunset as of the expiration date. Taxpayers are not likely to be aware that the Service may 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 FOPM 83-I

Not applicable.

**Note:** The following paragraph applies to all 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 the 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.