

**SUPPORTING STATEMENT**  
**(REG-146459-05)**

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

The proposed regulations set forth rules for taxation of distributions of Designated Roth Accounts from 401(k) and 403(b) plans.

(a) An employer which maintains a 401(k) plan or a 403 (b) plan may accept designated Roth contributions. The earnings on distributions of these amounts may or may not be taxable upon distribution, depending upon several factors. One of the factors is whether the employee has had contributions in the plan for five taxable years. The plan administrator or other responsible party with respect to a plan with a designated Roth account is responsible for keeping track of the 5-taxable-year period of participation for each employee and the amount of investment in the contract on behalf of each employee. This requirement is found in sec.1.402A-2, Q&A-1 of the proposed regulations.

(b) A participant may receive a distribution paid directly to him. If a participant receives a distribution paid directly to him, he may request a statement from the plan administrator or responsible party indicating the portion of the distribution that is attributable to investment in the contract under section 72 or a statement that the distribution is a qualified distribution. This requirement is found in sec. 1.402A-2 of the proposed regulations, Q&A-2 (2).

(c) A participant may elect to have a distribution paid directly to a new employer which has a plan with a designated Roth account feature in a direct rollover. In order for the recipient employer to know what it is receiving, sec. 1.402A, Q&A-2 (1) of the proposed regulations requires that the distributing plan administrator or other responsible party must provide to the plan administrator or responsible party of the recipient plan either a statement indicating the first year of the 5-taxable year period and the portion of the distribution that is attributable to investment in the contract under section 72, or a statement that the distribution is a qualified distribution.

(d) The proposed regulations permit an employee to receive a distribution from a designated Roth account and roll over the earnings from such account to a new employer's plan which also has a designated Roth account feature within sixty days of the distribution. In order for the Internal Revenue Service to know what is being transferred, sec.1.402A-2, Q&A -3 of the proposed regulations require that the recipient plan furnish the Internal Revenue Service the employee's name and social security number, the amount rolled over, the year in which the rollover contribution

was made and such other information as the Commissioner in revenue rulings, notices or other published guidance in the Internal Revenue Bulletin may require in order to determine that the amount rolled over is a valid rollover.

2. **USE OF DATA**

(a) The information maintained by the plan administrator in Prop. Reg. sec. 1.402A-2, Q&A-1 will enable the plan administrator to tell the employee upon separation from service or a new employer the number of years the employee has had a designated Roth account and the total amount of investment in the contract. This will enable the employee to know the amount of investment in the contract and whether he is receiving a qualified distribution. It will also enable the new employer to know how long the employee has had a designated Roth account and the investment in the contract.

(b) The information received by the distributee in Prop. Treas. Reg. sec. 1.402A-2, Q&A 2 will enable the distributee to verify the amount of the investment in the contract under section 72 of the Internal Revenue Code or that it is a qualified distribution and he does not owe any tax on it.

(c) The information received by the transferee employer in Prop. Treas. Reg. sec. 1.402A, Q&A- 2(2) will enable the recipient employer to verify the first year of participation in the Roth designated account and the portion of the distribution that is attributable to investment in the contract under section 72, or that the distribution is a qualified distribution. This information will enable the transferee employer to furnish correct information to the employee when another distribution takes place.

(d) The information received by the Internal Revenue Service in Prop. Treas. Reg. sec. 1.402A, Q&A 3 will enable the Internal Revenue Service to monitor 60 day rollovers to plans to make sure that an employee does not rollover the same amount more than once.

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

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

4. **EFFORTS TO IDENTIFY DUPLICATION**

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

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

Not applicable.

6. **CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS**

Not applicable.

7. **SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5CFR 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**

Final regulations under section 401(k) were issued on December 29, 2004 (69 FR 78144). Those final regulations reserved § 1.401(k)-1(f) for special rules for designated Roth contributions. On January 3, 2006, final regulations were issued that fill in that reserved paragraph and provide additional rules applicable to designated Roth contributions (71 FR 6).

On January 26, 2006, a notice of proposed rulemaking (REG-146459-05) under section 402A was published in the **Federal Register** (71 FR 4322). A public hearing was held on July 26, 2006. After consideration of all comments, the final regulations published in the **Federal Register** on **April 30, 2007 (72 FR 21103)**, adopted the provisions of the proposed regulations with certain modifications. These final regulations under section 402A are intended to provide comprehensive guidance on the taxation of distributions from designated Roth accounts under section 401(k) and section 403(b) plans.

In response to the **Federal Register Notice** dated **October 30, 2008 (73 FR 64663)** and corrected **Federal Register Notice** dated **November 20, 2008 (73 FR 70410)**, we received no comments during the comment period regarding REG-146459-05.

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**

(a) We estimate that 157,000 employers will maintain plans which have designated Roth accounts. We estimate that the average employer will have 200 employees who will have designated Roth accounts. We estimate it will take each employer four hours to keep track of the first year of contributions of Roth contributions and the amount of investment in the contract. Therefore, the total burden will be 628,000 hours.

(b) Section 1.402A , Q&A -2 (2) of the proposed regulations requires that the plan administrator or other responsible party give to each distributee who receives a distribution a statement setting forth the portion of the distribution attributable to investment in the contract under section 72 or a statement that the distribution is a qualified distribution. We estimate 157,000 employers will maintain plans which have designated Roth accounts. We estimate that 80,000 of these employers will have employees who receive distributions. We estimate that each employer will have 5 employees who will receive distributions and that it will take each employer one hour to comply. Therefore, the total burden will be 80,000 hours.

(c) We estimate 80,000 employers will be requested to make direct rollovers to another plan. We estimate that each employer will have three employees who will make this request. Therefore, there will be a total of 240,000 responses. We estimate that each employer will spend a total of one hour making this information available to the transferee employer. Therefore, the total number of hours requested is 80,000.

(d) We estimate that 40,000 employers will accept 60 day rollover contributions from employees who had designated Roth accounts with another employer. We estimate that each employer will have 5 employees who will make 60 day rollovers and that it will take each employer one hour to comply. Therefore, the total burden will be 40,000 hours.

We estimate the total burden for this regulation to be as follows. There will be 357,000 respondents. The total number of responses will be 32,240,000. The total amount of time spent will be 828,000 hours.

13. **ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

As suggested by OMB, our **Federal Register Notice** dated **October 30, 2008 (73 FR 64663)** and corrected **Federal Register Notice** dated **November 20, 2008 (73 FR 70410)**, requested public comments on estimates of cost burden purchase of services to provide information. However, we did not receive any response from taxpayers, during the comment period on this subject. As a result, estimates of the cost burdens are not available at this time.

14. **ESTIMATED ANNUALIZED COST TO 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. **EXCEPTION TO THE CERTIFICATION STATEMENT ON OMB FORM 83-1**

Not applicable.

**Note:** The following paragraph applies to all of the collection 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 it 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.