

**1SUPPORTING STATEMENT  
REG-105885-99  
(T.D. 9075)**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Provisions enacted in section 1448 of the Small Business Job Protection Act of 1996 ("SBJPA") (Pub. L. 102-318) require state and local governments, effective on or before January 1, 1999, to hold all assets and income of eligible section 457 deferred compensation plans in trust, or in custodial accounts or annuity contracts described in section 401(f) of the Internal Revenue Code for the exclusive benefit of their participants and beneficiaries. The requirement to establish written trusts, custodial accounts or annuity contracts is intended to ensure compliance with the SBJPA's trust requirement. The requirement that certain new non-bank custodians submit applications to be approved to serve as custodians of section 457 accounts is intended to ensure that section 457 plan assets held in custodial accounts are safeguarded for the exclusive benefit of their participants and beneficiaries.

**2. USE OF DATA**

The data will be used by the Service to determine whether the state or local government sponsoring the eligible deferred compensation plan has complied with the statutory requirement to hold its assets and income in trust for the exclusive benefit of its 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**

Notice 98-8 was published in the Internal Revenue Bulletin on January 26, 1998 (1998-4 IRB 6). The regulation replaced the notice.

The notice of proposed rulemaking was published in the Federal Register on May 8, 2002 (67 FR 30826). A public hearing was held on August 28, 2003. The final regulations were published in the Federal Register on July 11, 2003 (68 FR 41230).

We received no comments during the comment period in response to the Federal Register notice dated February 26, 2010 [75 FR 9027].

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 1.457-8 requires State and local governments to establish a written trust, custodial account, or annuity contract to hold the assets and income of their section 457 plans for the exclusive benefit of their participants and beneficiaries. The burden of the collection of information required by §1.457-8 is estimated to be a one-time 10,250 hours with a one-time estimated average burden to each respondent of 1 hour. The estimated number of respondents is 10,250.

Section 1.457-8 requires certain non-bank custodians who had not previously been approved by the Internal Revenue Service to serve as custodians of certain custodial accounts to submit a written application to the Service pursuant to established procedures for such approval. The collection of information required by Section 457-8 is estimated to be a one-time 350 hours with a one-time estimated average burden to each respondent of 35 hours. The estimated number of respondents is 10.

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 26, 2010, [75 FR 9027] 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.**