

## **SUPPORTING STATEMENT** **(Regulation EE-12-78)**

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

Section 408(a)(2) permits an institution other than a bank to be the trustee of an individual retirement account. Section 1.408-2(e)(1) of the Income Tax Regulations provides that such an institution must file a written application with the Service demonstrating its ability to act as trustee. Section 1.408-2(e)(2) requires an applicant to demonstrate in detail in his written application the ability to act within the accepted rules of fiduciary conduct.

Certain reporting and recordkeeping requirements 1) must be demonstrated by an applicant in his written application and 2) are imposed in connection with the ongoing activities of a nonbank trustee. These are:

26 CFR 1.408-2(e)(5)(iii)(C)

This regulation imposes a continuing requirement that applicants must have their books and records audited on an annual basis. A report of the audit must be included in the written application. Also, the report must be made part of the applicant's records.

26 CFR 1.408-2(e)(5)(vii)

This regulation requires applicants and approved nonbank trustees to keep their fiduciary records separate and distinct from other records. Also, the fiduciary records must contain full information relative to each account. Records must be kept of all pending litigation in which the nonbank trustee is a part as a result of the exercise of its fiduciary powers.

26 CFR 1.408-2(e)(6)(iv)

This regulation requires that applicants or previously approved nonbank trustees notify the Commissioner in writing of any change that affects the continuing accuracy of any representation made in the application, whether the change occurs before or after the applicant receives a notice of approval.

26 CFR 1.408-2(e)(7)(iii)

This regulation provides that an applicant must not accept a fiduciary account until after the plan administrator or person establishing the account is furnished with a copy of the written notice of approval issued by the IRS. Section 1.408-2(e)(7)(iv) of the Regulations provides, in part, that the notice of approval issued to an applicant will be revoked if the Commissioner determines that the applicant is unwilling or unable to administer fiduciary accounts in a manner consistent with the nonbank trustee requirements.

#### 26 CRF 1.408-2(e)(7)(v)(B)

This regulation affords an applicant 60 days after the receipt of a proposed revocation to submit a written statement of facts, law, and argument opposing such action. The applicant also has the right to request a conference in the National Office.

## **2. USE OF DATA**

The IRS uses the information contained in the written application in order to decide whether a particular applicant has the capability to act as a nonbank trustee. After the IRS approves an applicant to act as a nonbank trustee, certain recordkeeping requirements are imposed. The IRS uses these requirements to insure that accounts are administered according to sound fiduciary principles. An annual independent audit is required to insure that the nonbank trustee records are accurate and complete. If the IRS revokes a previously issued notice of approval to act as a nonbank trustee, certain appeal procedures are provided, and the IRS uses the information so gathered to decide the disposition of the revocation action.

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

We have no plans to offer electronic filing. IRS publication, 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**

We have been unable to reduce the burden for small businesses.

**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 initially published in the Federal Register on October 16, 1975 (40 FR 48514). At that time the public was given a 60-day period in which to review and refer comments relating to any aspect of the proposed regulations. A public hearing was not held because one was not requested. The final regulations (TD 7611) were published in the Federal Register on April 20, 1979 (44 FR 23519). TD 8635 (EE-38-94) redesignated regulation section 1.401-12(n) as regulation section 1.408-2(e).

In response to the **Federal Register Notice** dated August 1, 2013 (78 FR 46691), we received no comments during the comment period regarding Regulation EE-12-78.

**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**

No personally identifiable information (PII) is collected.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

We estimate that the burden for the recordkeeping and reporting requirements in these existing regulations is as

follows:

Recordkeeping

<u>Regulation</u>	<u>Number of Recordkeepers</u>	<u>Annual hrs./ Recordkeeper</u>	<u>Total Hours</u>	<u>Retention Period</u>
26 CFR 1.408-2(e) (5) (iii)(C)	9	.25	2	6 yrs.
26 CFR 1.408-2(e) (5) (vii)	<u>9</u>	.25	<u>2</u>	6 yrs.
	18		4	

Reporting

<u>Regulations</u>	<u>Number of Responses</u>	<u>Number of Re-Porting Hours</u>	<u>Average Hours Per responses</u>
26 CFR 1.408-2(e) (6) (iv)	12	3	.25
26 CFR 1.408-2(e) (7)(iii)	9	2	.25
26 CFR 1.408-2(e) (7)(v)(B)	<u>2</u>	<u>4</u>	2.0
Total	23	9	

These burden estimates were prepared after consultation with persons knowledgeable in the appropriate areas of the Internal Revenue Code.

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 1, 2013, 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 responses from taxpayers on this subject. As a result, estimates of these 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.