

**SUPPORTING STATEMENT**  
Internal Revenue Service  
Annual Certification for Multiemployer Defined Benefit Plans  
OMB # **1545-2111**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

This collection covers proposed Income Tax Regulations (26 CFR part 1) under section 432, as added to the Internal Revenue Code by the Pension Protection Act of 2006 (PPA 06), Public Law 109–280, 120 Stat 780.

Section 412 contains minimum funding rules that generally apply to pension plans. Section 431 sets forth the funding rules that apply specifically to multiemployer defined benefit plans. Section 432 sets forth additional rules that apply to multiemployer plans in effect on July 16, 2006, that are in endangered or critical status<sup>1</sup>.

Section 432(b)(3)(A) requires an actuarial certification of whether a multiemployer plan is in endangered status, and whether a multiemployer plan is or will be in critical status, for each plan year. This certification must be completed by the 90th day of the plan year and must be provided to the Secretary of the Treasury and to the plan sponsor. If the certification is with respect to a plan year that is within the plan's funding improvement period or rehabilitation period arising from a prior certification of endangered or critical status, the actuary must also certify whether the plan is making scheduled progress in meeting the requirements of its funding improvement or rehabilitation plan.

The proposed regulations provide guidance relating to a multiemployer plan that is in either endangered or critical status. This action is necessary to implement the new rules set forth in section 432 that are effective for plan years beginning after 2007. These proposed regulations would affect sponsors of, and participants and beneficiaries in, multiemployer defined benefit pension plans. Additional information on the Multiemployer Actuarial Certification can be located at <https://www.irs.gov/retirement-plans/multiemployer-actuarial-certification>.

2. USE OF DATA

This information is required for a qualified multiemployer defined benefit plan's enrolled actuary to provide a timely certification of the plan's funding status. In addition, if it is certified that a plan is or will be in critical or endangered status, the plan sponsor is required to notify the Department of Labor, the Pension Benefit Guaranty Corporation, the bargaining parties, participants, and beneficiaries of the status designation.

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<sup>1</sup> Section 302 and section 304 of the Employee Retirement Income Security Act of 1974, as amended (ERISA) sets forth funding rules that are parallel to those in section 412 and section 431 of the Code. Section 305 of ERISA sets forth additional rules for multiemployer plans that are parallel to those in section 432 of the Code. Under section 101 of Reorganization Plan No. 4 of 1978 (43 FR 47713) and section 302 of ERISA, the Secretary of the Treasury has interpretive jurisdiction over the subject matter addressed in these proposed regulations for purposes of ERISA, as well as the Code. Thus, these Treasury Department regulations issued under section 432 of the Code apply as well for purposes of ERISA section 305.

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.

Certification should be submitted once per year using only one of the following methods.

Mail the form to:

Department of the Treasury  
Internal Revenue Service  
Employee Plans Compliance Unit (EPCU: 7602)  
Room 1700 - 17th Floor  
230 S. Dearborn St.  
Chicago, IL 60604

Fax the form to EPCU at 855-215-7122

Email the form to EPCU at [EPCU@irs.gov](mailto:EPCU@irs.gov) with *Multiemployer Certification* in the subject line.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source. We have attempted to eliminate duplication within the agency wherever possible.

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

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information imposed by these proposed regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

The estimated burden imposed by the collection of information contained in these proposed regulations is 0.75 hours per respondent. Moreover, most of this burden is attributable to the requirement for a qualified multiemployer defined benefit plan's enrolled actuary to provide a timely certification of the plan's funding status. In addition, if a plan is certified that it is or will be in critical or endangered status, the plan sponsor is required to notify the Department of Labor, the Pension Benefit Guaranty Corporation, the bargaining parties, participants, and beneficiaries of the status designation. For plans

in critical status, the plan sponsor is required to include an explanation of the possibility that adjustable benefits may be reduced and that certain benefits are restricted as of the date the notice is sent. Pursuant to section 7805(f) of the Internal Revenue Code, this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

Section 432 is effective for plan years beginning on or after January 1, 2008. Section 212(e)(2) of PPA '06 provides a special rule permitting a plan to provide the notice described in section 432(b)(3)(D) on an early basis. Specifically, if the plan actuary certifies that the plan is reasonably expected to be in critical status for the first plan year beginning after 2007, the plan is permitted to provide the notice described in section 432(b)(3)(D) at any time between the enactment of PPA '06 and the date the notice is otherwise required to be provided.

Failure of the plan's actuary to certify the status of the plan is treated as a failure to file the annual report under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA). Thus, a penalty of up to \$1,100 per day applies.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

3. 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 in the Federal Register on March 18, 2008, (73 FR 19451) proposing amendments to the regulations under section 432. These proposed regulations affect sponsors and administrators of, and participants in multiemployer plans that are in either endangered or critical status. These regulations are necessary to implement the new rules set forth in section 432 that are effective for plan years beginning after 2007.

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments that were submitted timely to the IRS. The IRS and the Treasury Department requested comments on the clarity of the proposed rules and how they may be made easier to understand. All comments were available for public inspection and copying. A public hearing was scheduled on July 31, 2008.

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of

Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding the requirements outlined in these regulations.

As part of its continuing effort to reduce paperwork and respondent burden, the IRS has invited the public and other Federal agencies to take this opportunity to comment on this proposed information collection. In response to the Federal Register notice (85 FR 38020), dated June 24, 2020, we received 3 comment letters during the comment period regarding these proposed regulations and draft form.

These comment letters were forwarded to the appropriate office for review and consideration. After a thorough read through it was determined that the comments, for the most part, included the same or similar suggestions. For consistency purposes, a combined more comprehensive itemized response has been [attached](#) to this supporting statement to address these comments.

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

No payment or gift has been provided to any respondents.

5. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

6. JUSTIFICATION OF SENSITIVE QUESTIONS

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Multi Employer Certification Application, (MECA)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 50.222 Tax Exempt/Government Entities (TE/GE) Case Management Records. The Internal Revenue Service PIAs can be found at <http://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems

7. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in this regulation is in § 1.432(b)–1(d) and (e). This information is required for a qualified multiemployer defined benefit plan’s enrolled actuary to provide a timely certification of the plan’s funding status. In addition, if it is certified that a plan is or will be in critical or endangered status, the plan sponsor is

required to notify the Department of Labor, the Pension Benefit Guaranty Corporation, the bargaining parties, participants, and beneficiaries of the status designation.

For plans in critical status, the plan sponsor is required to include in the notice an explanation of the possibility that adjustable benefits may be reduced later and that certain benefits are restricted as of the date the notice is sent. The annual certification by the enrolled actuary for the plan will be used to provide an accurate determination and certification of the plan’s funded status and to provide notice to the required parties of the status designation. The collection of information is mandatory. The collection of information is mandatory under IRC 432(b)(3). The likely respondents are multiemployer plan sponsors and enrolled actuaries.

The total combined reporting and recordkeeping burden is 900 hours.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
1.432(b)-1(d) and (e)	Determination of status and adoption of a plan.	1,200	1	1,200	.75	900
<b>Totals</b>		<b>1,200</b>		<b>1,200</b>		<b>900</b>

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-2111 to this regulation.

1.432(b)-1

8. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice will request 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 currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

9. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There are no known annualized costs to the federal government.

10. REASONS FOR CHANGE IN BURDEN

This is a new request for a proposed form for actuaries to report the funding status of

multiemployer defined benefit retirement plans. Actuaries have been required to submit certifications regarding plans' funding statuses since 2008 under IRC 432, but we are proposing a form to encourage consistency of the format of certifications submitted annually and to simplify the process.

**ICR Summary of Burden**

	<b>Total Approved</b>	<b>Previously Approved</b>	<b>Change Due to New Statute</b>	<b>Change Due to Agency Discretion</b>	<b>Change Due to Adjustment in Estimate</b>	<b>Change Due to Potential Violation of the PRA</b>
Annual Number of Responses	1,200	0	0	0	0	1,200
Annual Time Burden (Hours)	900	0	0	0	0	900
Annual Cost Burden (Dollars)	0	0	0	0	0	0

11. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis and publication.

12. 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.

13. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

Note: The following paragraph applies to all 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 if 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.