

## SUPPORTING STATEMENT NOTICE 2005-40

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 104 of the Pension Funding Equity Act of 2004 (“PFEA’04”), permits certain multiemployer plans to elect to defer a net experience loss charge under § 412(b)(7) of the Internal Revenue Code (the “Code”) and section 302(b)(7) of the Employee Retirement Income Security Act of 1974 (“ERISA”). Section 104 of PFEA’04 added § 412(b)(7)(F) to the Code and section 302(b)(7)(F) to ERISA. Section 412(b)(7) of the Code permits certain charges to the funding standard account of certain multiemployer plans under § 412(b)(7)(F) to elect to defer to the charges to the funding standard account from either of the two plan years immediately succeeding the plan year for which the charge would otherwise be made.

The attached notice implements the aforementioned section 104 and provides guidelines by which the Internal Revenue Service may monitor whether multiemployer plans are operating within the framework of the law and congressional intent.

Consistent with section 101 of Reorganization Plan No. 4 of 1978, 1979-1 C.B. 480, and section 104(a) of the PFEA’04, notice of the election will be made in time and manner prescribed by Treasury while the Employee Benefits Security Administration (“EBSA”) of the U.S. Department of Labor has civil enforcement authority under section 502(c)(4) of ERISA.

### 2. USE OF DATA

The data will be used by the Service to determine if a multiemployer plan meets the criteria for a net experience loss deferral under section 104 PFEA’04. The data will be used by the Pension Benefit Guaranty Corporation (“PBGC”) to monitor whether the multiemployer plans subject to title IV of the Employee Retirement Income Security Act of 1974 (“ERISA”) that make an election to defer a net experience loss charge give adequate notification to plan participants and beneficiaries, labor organizations, contributing employers and the PBGC. This data may be shared with the EBSA in the enforcement of the provisions of ERISA.

### 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 that following the election of a multiemployer plan sponsor to defer a net experience loss charge under section 104 of the Pension Funding Equity Act of 2004, must be filed with the Service and that certain certifications by the multiemployer plan's enrolled actuary must, depending on the particular facts and circumstances, be filed with the election or subsequent thereto. In addition, notice of that election must be given to plan participants and beneficiaries, labor organizations, contributing employers and, if applicable, the PBGC in a time and manner prescribed by the Secretary of the Treasury (or his delegate). The notice contains model notifications to employees, beneficiaries, affected labor organizations, affected employers and the PBGC.

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 defer a portion of a net experience loss charge incurred by a multiemployer plan.

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

This notice was published in the Internal Revenue Bulletin (2005-21 I.R.B. 1088) on May 23, 2005.

We received no comments during the comment period in response to the **Federal Register Notice dated July 26, 2011, (76 FR 44657)**.

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-11, Q&A-14, Q&A-15, and Q&A-17 of the notice request certain information of the plan sponsor or the enrolled actuary of an eligible multiemployer plan that elects to defer part of a net experience loss charge. This information, which must be filed with the Service includes the name of the plan sponsor of the eligible multiemployer plan, the tax identification number of the plan sponsor, the name of the plan, the applicable plan year for which the election is being made, and the plan year to which the deferral of a net experience loss is being made. Once this election is filed with the Service, timely notice must be given to the plan's participants and beneficiaries (as well as their labor organization), contributing employers, and, if applicable the Pension Benefit Guaranty Corporation.

The estimated average annual burden varies from 40 hours to 160 hours with an estimated average burden of 100 hours on 8 respondents for a total of 800 hours annually.

Q&A-27 provides that if a plan amendment is a fully funded amendment, certification must be filed with the Service if an eligible multiemployer plan adopts an amendment the terms of which provides that contributions to the multiemployer plan while the net experience loss deferral election is in effect will exceed the minimum amount referred to in the notice as the section 412(b)(7)(F) (iii) minimum amount.

The estimated average annual burden varies from 10 hours to 70 hours with an estimated average burden of 40 hours on 4 respondents for a total of 160 hours annually.

The total estimated average annual burden varies from 60 hours to 180 hours with a total estimated burden of 80 hours on 12 respondents for a total of 960 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, **Federal Register Notice dated July 26, 2011, (76 FR 44657)**, 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 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 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 leading taxpayers to believe that the notice 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 FORM 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.