

SUPPORTING STATEMENT

(REG-115699-09)

1. CIRCUMSTANCES NECESSITATING THE COLLECTION OF INFORMATION

Section 401(k)(3)(A)(ii) sets forth a special nondiscrimination test for 401(k) plans. Section 401(k)(12) provides a safe harbor alternative to the regular 401(k) nondiscrimination test. One of the requirements of the safe harbor alternative is to furnish either matching contributions or nonelective contributions to employees. The proposed regulations allow an employer to reduce or suspend safe harbor nonelective contributions if it is experiencing a business hardship. Before the employer reduces or suspends safe harbor nonelective contributions, it must inform its employees.

The requirement to furnish a notice is in section 401(k)(12)(A)(ii) of the Code and in Prop. §1.401(k)-3(g)(1)(ii)(C) of this regulation.

2. USE OF DATA

The notice furnished to employees will inform them that their employer will reduce or eliminate safe-harbor nonelective contributions.

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 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

This notice of proposed rulemaking was published in the Federal Register 74 FR 23135 on May 18, 2009, to provide the public a 60-day period in which to review and provide public comments relating to any aspect of the proposed regulation. A public hearing will be held with respect to the NPRM if any person who has submitted written comments requests one.

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

We estimate 5,000 employers will wish to reduce or suspend safe harbor nonelective contributions. We estimate it will take each employer two hours to inform its employees about this change. Thus, this burden will be 10,000 hours.

13. ESTIMATED ANNUAL COST TO RESPONDENTS

Estimates of capital or start-up costs of operations, maintenance and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED FEDERAL COST TO FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

This is a new information collection.

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 return and tax return information are confidential, as required by 26 U.C.S.C. 6103.