Election for Multiemployer Plan to Defer Net Experience Loss Charge

Notice 2005–40

I. Purpose and Background

This notice sets forth guidance regarding the election that can be made for certain multiemployer plans to defer charges with respect to net experience losses pursuant to § 412(b)(7)(F) of the Internal Revenue Code (Code) and section 302(b)(7)(F) of the Employee Retirement Income Security Act of 1974 (ERISA), as added by section 104 of the Pension Funding Equity Act of 2004 (PFEA), Pub. L. 108–218.

Section 412 of the Code sets forth minimum funding standards that apply to defined benefit plans. The minimum funding standards are implemented by a series of charges and credits to a funding standard account as described in § 412(b). One of the charges to the funding standard account specified in § 412(b) pertains to net experience losses. Section 412(b)(2)(B)(iv) requires that net experience losses for any plan year be amortized in equal annual installments. The amortization period for net experience losses for multiemployer plans is 15 years.

Section 412(b)(7)(F) provides an election for certain multiemployer plans that permits the deferral of a portion of the amortization charge arising from the net experience loss for the first plan year beginning after December 31, 2001 (the 2002 loss). The § 412(b)(7)(F) election to defer a portion of the amortization charge of the 2002 loss is available for an eligible multiemployer plan (as that term is described below) with respect to plan years beginning after June 30, 2003, and before July 1, 2005. Section 412(b)(7)(F)(iii) contains restrictions on plan amendments that increase benefit liabilities during the period the § 412(b)(7)(F) deferral election is in effect.

Section 302 of ERISA contains minimum funding standard requirements that are parallel to those under § 412 of the Code, and section 302(b)(7)(F) of ERISA provides an election that is parallel to the election under § 412(b)(7)(F) of the Code. Under section 101 of Reorganization Plan No. 4 of 1978, 1979–1 C.B. 480, the Secretary of the Treasury has sole interpretive authority over the subject matter addressed in this Notice 2005–40. Accordingly, unless otherwise specified, all references in this Notice 2005–40 to § 412 of the Code also apply to the parallel provisions of section 302 of ERISA.

Section 302(b)(7)(F)(vi) of ERISA requires that, if a plan sponsor elects to defer a net experience loss charge under section 302(b)(7) of ERISA and § 412(b)(7) of the Code for any plan year, the plan administrator must provide written notices of the election to: (1) the participants and beneficiaries under the plan, (2) each labor organization representing such participants or beneficiaries, (3) each employer that has an obligation to contribute under the plan, and (4) the Pension Benefit Guaranty Corporation (PBGC). The notices must be provided within 30 days of the filing of the election for such year, and the notices of the election must include specified information. Section 104(a)(2) of PFEA amended section 502(c)(4) of ERISA to provide that, if any person fails to provide any of these notices required under section 302(b)(7)(F)(vi) of ERISA on a timely basis that person may be liable to the Department of Labor (DOL) for a penalty of up to $1,000 a day from the date of the failure to provide the proper notice.

Section 1.412(c)(3)–1(d)(1)(i) of the Income Tax Regulations provides that, except as otherwise provided by the Commissioner, a reasonable funding method does not anticipate changes in plan benefits that become effective, whether or not retroactively, in a future plan year or that become effective after the first day of, but during, a current plan year.

Rev. Rul. 77–2, 1977–1 C.B. 120, provides guidance regarding the minimum funding requirements with respect to a change in the benefit structure of a qualified pension plan that becomes effective during a plan year. Section 2.02 of Rev. Rul. 77–2 provides that, in the case of a change in the benefit structure that becomes effective as of a date during a plan year (but subsequent to the first day in such plan year), the charges and credits to the funding standard account shall not reflect the change in such benefit structure for the portion of such plan year prior to

the effective date of such change, and shall reflect the change in such benefit structure for the portion of the plan year subsequent to the effective date of the change. Section 3 of Rev. Rul. 77–2 provides that, in determining the charges and credits for the plan year, in lieu of using the rule of section 2.02 of Rev. Rul. 77–2, a plan is permitted to disregard a change in benefit structure that is adopted after the valuation date for the year.

Section 412(c)(8) of the Code provides that any amendment applying to a plan year that is adopted after the close of the plan year but no later than 2½ months after the close of the plan year and that does not reduce the accrued benefit of any participant determined as of the beginning of the first plan year to which the amendment relates is, at the election of the plan administrator, deemed to have been made on the first day of such plan year (subject to additional restrictions on plan amendments that reduce benefits). Pursuant to Rev. Rul. 79–325, 1979–2 C.B. 190, and Rev. Proc. 94–42, 1994–1 C.B. 717, § 412(c)(8) also applies to plan amendments adopted during the plan year to which the amendment relates.

II. Questions and Answers

A. *Plans That Are Eligible to Defer a Net Experience Loss Charge*

Q–1. Which plans are eligible for the election to defer a net experience loss charge under § 412(b)(7)(F) for a plan year?

A–1. A plan is eligible for the election to defer a net experience loss charge under § 412(b)(7)(F) for a plan year if it is a multiemployer plan within the meaning of § 414(f) of the Code that is an eligible multiemployer plan as described in Q&A–2 of this notice for the plan year.

Q–2. Which plans are eligible multiemployer plans for a plan year?

A–2. A plan is an eligible multiemployer plan for a plan year if it satisfies all of the following conditions: (1) for the first plan year beginning after December 31, 2001, the plan had a net investment loss of at least 10 percent, as determined pursuant to Q&A–4 of this notice, (2) the plan's enrolled actuary makes a certification in accordance with Q&A–6 of this notice that the plan is projected to have an accumulated funding deficiency within the meaning of § 412(a) for any plan year beginning after June 30, 2003, and before July 1, 2006, and (3) the plan is not ineligible for the election pursuant to § 412(b)(7)(F)(v) for the plan year, as described in Q&A–3 of this notice.

Q–3. Which plans are ineligible for the election under § 412(b)(7)(F)(v) for a plan year?

A–3. For a plan year a plan is ineligible for an election under § 412(b)(7)(F)(v) if: (1) for any taxable year beginning during the 10-year period preceding the particular plan year, any employer required to contribute to the plan failed to timely pay any excise tax under § 4971 with respect to that plan; or (2) for any plan year beginning after June 30, 1993, and before the particular plan year, (a) the average contribution required to be made to the plan by all employers did not exceed 10 cents per hour, (b) no employer contributions were required, (c) a waiver of the minimum funding standards under § 412(d) was granted or (d) an extension of the amortization period under § 412(e) was granted.

Q–4. How is it determined whether the plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001?

A–4. A plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001, if the plan's net investment return for that plan year as determined under Q&A–5 of this notice was less than or equal to negative 10 percent.

Q–5. How is the net investment return for a plan year determined for purposes of Q&A–4 of this notice?

A–5. For purposes of determining whether a plan had a net investment loss of at least 10 percent for the first plan year beginning after December 31, 2001, the net investment return for a plan year is equal to the amount determined using the following formula: $2I_{(m)}/(A+B-I_{(m)})$. Under this formula, A equals the fair market value of plan assets at the beginning of the plan year, B equals the fair market value of plan assets at the end of the plan year, and $I_{(m)}$ equals B-(A+C-D), where C equals the total amount of contributions made during the plan year and D equals the total amount of benefit distributions made during that plan year.

Q–6. What rules must the plan's enrolled actuary apply in projecting, for purposes of the certification required under § 412(b)(7)(F)(iv)(II), that the plan will have an accumulated funding deficiency for a specific plan year?

A–6. In order to certify that a plan will have an accumulated funding deficiency for a specific plan year, the plan's enrolled actuary must project the charges and credits to the plan's funding standard account through the end of that specific plan year using valuation data and results from the most recently completed valuation. The projection of charges and credits is made using actuarial assumptions that applied in the actuarial valuation for the last plan year ending before April 10, 2004. For example, if a plan has a beginning of the year valuation date, the enrolled actuary must assume that the investment return for a year will equal the product of the market value of assets as measured for purposes of the most recently completed valuation and the assumed interest rate under § 412(b)(5)(A) used for the valuation for the last plan year ending before April 10, 2004, and must then determine the actuarial value of assets under the asset valuation method that is part of the plan's funding method. In addition, the enrolled actuary must assume that there will be no new entrants to the plan and no plan amendments after the most recently completed valuation (other than new entrants or plan amendments taken into account under that valuation) and must disregard the effect of any election for the current plan year or future plan year to defer a net experience loss charge that is made in accordance with this notice.

B. *Effect of a § 412(b)(7)(F) Deferral Election*

Q–7. What is the effect of an election for a plan year under § 412(b)(7)(F)?

A–7. The effect of an election for a plan year under § 412(b)(7)(F) is to defer up to 80 percent of the otherwise applicable amortization charge under § 412(b)(2)(B)(iv) with respect to the net experience loss for the first plan year beginning after December 31, 2001. Thus, the amount that is deferred is not charged to the funding standard account for the year of the election, but is instead charged to the funding standard account for a

later year. The amount of the amortization charge that is deferred under the § 412(b)(7)(F) election, increased with interest pursuant to Q&A–9 of this notice, must be charged to the funding standard account for either of the two plan years that immediately succeed the plan year for which the election is made, as selected by the plan sponsor. A plan for which the election is made is subject to the limitations on benefit increases described in Q&A–19 through Q&A–29 of this notice.

Q–8. For what plan years can an eligible multiemployer plan make a § 412(b)(7)(F) deferral election?

A–8. The § 412(b)(7)(F) deferral election is only permitted to be made for plan years that begin after June 30, 2003, and before July 1, 2005. A separate election is permitted for each plan year.

Q–9. What interest rate applies to an amortization charge that is deferred under the § 412(b)(7)(F) election?

A–9. The interest rate described in § 6621(b) applies to the amount deferred under a § 412(b)(7)(F) election. This interest rate applies until the valuation date for the plan year in which the amount deferred is charged.

C. *Method of Making a § 412(b)(7)(F) Deferral Election*

Q–10. Who makes the § 412(b)(7)(F) deferral election for a plan year with respect to a net experience loss charge of an eligible multiemployer plan?

A–10. The joint board of trustees of an eligible multiemployer plan (or its authorized delegate) makes the § 412(b)(7)(F) deferral election for a plan year.

Q–11. How is the § 412(b)(7)(F) deferral election made for a plan year?

A–11. A § 412(b)(7)(F) deferral election for a plan year is made by filing the election with the Service. The election must include (1) the name of the plan sponsor, (2) the tax identification number of the plan sponsor, (3) the name of the plan, (4) the number of the plan, (5) the plan year of the election to defer a net experience loss charge, (6) the amount of net experience loss charge being deferred, (7) the plan year to which that net experience loss charge is being deferred, and (8) a statement that the notice requirements of section 302(b)(7)(F) of ERISA have been or will be satisfied. In addition, the election must be accompanied by the § 412(b)(7)(F)(iv)(II) certification from the plan's enrolled actuary that the plan is projected to have an accumulated funding deficiency that is made in accordance with Q&A–6 of this notice. The § 412(b)(7)(F) deferral election that is filed for a plan year is permitted to include a certification that an amendment is a fully funded amendment as described in Q&A–27 of this notice.

The address for filing elections and certifications with the Service is as follows:

Internal Revenue Service
Commissioner, Tax Exempt and Government Entities Division
Attention: SE:T:EP:RA:T
Deferral of Net Experience Loss Charge Election and/or Amendment Certification
P.O. Box 27063
McPherson Station
Washington, D.C. 20038

Q–12. When must the § 412(b)(7)(F) deferral election for a plan year be filed with the Service?

A–12. In general, a § 412(b)(7)(F) deferral election for a plan year must be filed with the Service before the end of the plan year. However, an election made after the end of the plan year will nonetheless be treated as timely filed for a plan year if it is filed with the Service by June 30, 2005.

D. *Notification Requirements*

Q–13. Who must be provided notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–13. Each participant of the electing eligible multiemployer plan, each beneficiary receiving benefits under the plan, each labor organization representing the participants and beneficiaries under the plan, each employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained, and the PBGC must be provided written notice that a § 412(b)(7)(F) election to defer a net experience loss charge has been filed with the Service. The determination of which participants, beneficiaries, labor organizations and employers are required to receive the notice is permitted to be made as of any one date within the plan year for which the election is made.

Q–14. How does a plan provide notice of the § 412(b)(7)(F) deferral election for a plan year to parties other than the PBGC?

A–14. A plan satisfies the requirement to provide notice of a § 412(b)(7)(F) deferral election to parties other than the PBGC for a plan year if the notice is mailed to the last known address of each participant, beneficiary, labor organization, and employer who must be provided notice of the § 412(b)(7)(F) deferral election pursuant to Q&A–13 of this notice.

Q–15. How is notice of a § 412(b)(7)(F) deferral election for a plan year made to the PBGC?

A–15. All notifications to the PBGC must be furnished in a manner consistent with the requirements of Part 4000 of the PBGC's regulations (29 CFR Part 4000).

Q–16. When must the notice be provided that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–16. Notice of a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge must be provided within 30 days of filing the election with the Service.

Q–17. What must be contained in the notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service?

A–17. A notice that a § 412(b)(7)(F) election for a plan year to defer a net experience loss charge has been filed with the Service must set forth certain information described in section 302(b)(7)(F)(vi) of ERISA and the context in which the information is being provided. If the notice includes the following language with the appropriate insertions this requirement is satisfied:

1. As permitted under the Pension Funding Equity Act of 2004, the Board of Trustees of [enter name of eligible multiemployer plan] has made a special election that reduces the amount of contributions that are required to be made for [enter plan year of election]. The reduction in contributions is [enter amount]. This amount, with interest, will be added to the contribution required to be made for the [enter plan year to which the amount deferred is to be charged] plan year.

2. If a multiemployer plan becomes insolvent, the following benefit payments are guaranteed by the PBGC. [Insert the description of the benefit payments guaranteed by the PBGC as contained in the heading under "Benefit Payments Guaranteed by the PBGC" in the Appendix to proposed rules issued by the DOL under § 2520.101–4 at 70 Fed. Reg. 6306, 6312 (Feb. 4, 2005).]

Q–18. What is the sanction if a plan administrator fails to comply with the notice requirement?

A–18. The DOL may assess a civil penalty of not more than $1,000 a day for each violation by any person of the notice requirements of section 302(b)(7)(F)(vi) of ERISA.

E. *Restrictions on Benefit Increases*

Q–19. What are the restrictions on plan amendments for a plan for which the § 412(b)(7)(F) deferral election for a plan year is made?

A–19. Section 412(b)(7)(F)(iii) of the Code provides a restriction on benefit increases in the case of a plan making a § 412(b)(7)(F) deferral election for a plan year. If a § 412(b)(7)(F) deferral election for a plan year is in effect, the § 412(b)(7)(F)(iii) benefit restriction generally prohibits the adoption of any plan amendment that increases benefit liabilities (including a plan amendment increasing an early retirement benefit or retirement-type subsidy, changing the accrual of benefits in a manner that results in increased accruals, or changing the rate at which benefits become nonforfeitable in a manner that results in faster vesting). However, the § 412(b)(7)(F)(iii) benefit restriction does not apply if (1) the amendment is the result of a collective bargaining agreement in effect on April 10, 2004, or (2) the enrolled actuary certifies in accordance with Q&A–27 of this notice that the amendment is a fully funded amendment as described in Q&A–21 of this notice.

Annual cost-of-living adjustments to statutory limits that are implemented pursuant to plan terms that were adopted before April 10, 2004, are not treated as plan amendments that are subject to the requirements of § 412(b)(7)(F)(iii). Thus, annual cost-of-living adjustments to the § 401(a)(17) limit and the § 415(b)(1)(A) dollar limit that are automatically put into effect pursuant to plan terms that were adopted before April 10, 2004, are not treated as plan amendments to which the § 412(b)(7)(F)(iii) benefit restrictions apply.

Q–20. For what plan years does the § 412(b)(7)(F)(iii) benefit restriction apply?

A–20. The § 412(b)(7)(F)(iii) benefit restriction applies to each § 412(b)(7)(F) deferral election that is made and applies for the period the deferral is in effect. Thus, for example, if the plan sponsor with a calendar plan year makes the § 412(b)(7)(F) election to defer a net experience loss charge for the 2004 plan year (with the amount instead charged in the 2006 plan year), a plan amendment that increases benefit liabilities is not permitted in 2004 unless it is required pursuant to a collective bargaining agreement in effect on April 10, 2004 (regardless of when a corresponding plan amendment is made), or it is a fully funded amendment as described in Q&A–21 of this notice. Furthermore, the same restriction on plan amendments increasing benefit liabilities applies in 2005 regardless whether the § 412(b)(7)(F) deferral election is made for 2005.

For purposes of determining whether a plan amendment is subject to a § 412(b)(7)(F)(iii) benefit restriction, a plan amendment is considered adopted at the later of the time it is adopted or made effective. Thus, a plan amendment with different benefit increases that become effective during different plan years is considered adopted during each plan year in which each benefit increase becomes effective (but no earlier than the plan year for which the amendment is added to the plan).

Q–21. What is a fully funded amendment that is not prohibited by the benefit restrictions of § 412(b)(7)(F)(iii)?

A–21. An amendment is a fully funded amendment if it includes terms that require that contributions to the plan will exceed the § 412(b)(7)(F)(iii) minimum amount described in Q&A–22 of this notice for the period described in Q&A–23 of this notice. A plan amendment is permitted to satisfy this requirement by reflecting the formula for the § 412(b)(7)(F)(iii) minimum amount set forth in Q&A–22. Alternatively, a plan amendment is permitted to satisfy this requirement by providing for a dollar amount of contributions or for some other method of determining contributions, provided that the amount of contributions specified in the plan exceeds the § 412(b)(7)(F)(iii) minimum amount. For purposes of determining whether an amendment is a fully funded amendment and for purposes of an enrolled actuary's certification under Q&A–27 of this notice, the terms of a collective bargaining agreement pursuant to which a plan is maintained are deemed to be included in plan terms.

Q–22. How is the § 412(b)(7)(F)(iii) minimum amount determined?

A–22. The § 412(b)(7)(F)(iii) minimum amount is equal to the sum of the minimum required contribution under § 412 determined as if the amendment had not been made (taking into account the § 412(b)(7)(F) deferral election to defer a net experience loss charge) plus the incremental amendment amount. The incremental amendment amount is equal to the difference between the required minimum contribution under § 412 that would have been due taking into account the amendment and the required minimum contribution under § 412 that would have been due disregarding the amendment. The determination of the required minimum contribution under § 412 that would have been due taking into account the amendment must be computed in accordance with the special rules set forth in Q&A–24 of this notice.

Q–23. For what years must an amendment provide that the § 412(b)(7)(F)(iii) minimum amounts are required to be contributed in order to be a fully funded amendment?

A–23. In order to be a fully funded amendment, an amendment must provide that the § 412(b)(7)(F)(iii) minimum amount is required to be contributed for each plan year in the period an election to defer a net experience loss charge is in effect. For example, if a plan sponsor with a calendar plan year made a § 412(b)(7)(F) deferral election to defer a net experience loss charge for the 2004 plan year, with the amount instead charged in the 2006 plan year, and adopted a plan amendment increasing benefit liabilities in 2004, the amendment is a fully funded plan amendment only if the § 412(b)(7)(F)(iii)

minimum amounts are required to be contributed in 2004 and 2005. For rules regarding the treatment of a credit balance generated as a result of contributions made with respect to the § 412(b)(7)(F)(iii) minimum amount for the prior plan year, see Q&A–26 of this notice.

Q–24. If an amendment is adopted after the first day of the plan year, what special rules apply in determining the required minimum contribution under § 412 that would have been due taking into account the amendment?

A–24. For purposes of determining the incremental amendment amount, if an amendment is adopted after the first day of the plan year, the calculation of the required minimum contribution under § 412 that would have been due taking into account the amendment generally is made as if the amendment had been adopted and made effective on the first day of the plan year (*i.e.*, the amendment must be fully reflected in plan costs for this purpose). However, if the amendment does not provide for benefit increases attributable to service prior to the beginning of the plan year, and is not effective as of the first day of the plan year, the determination of the required minimum contribution under § 412 that would have been due taking into account the amendment is permitted to be made in accordance with the rules of section 2.02 of Rev. Rul. 77–2.

Q–25. How does the § 412(b)(7)(F)(iii) minimum amount affect the application of the minimum funding requirements of § 412?

A–25. The § 412(b)(7)(F)(iii) minimum amount does not affect the computation of minimum required contributions under § 412. If an amount in excess of minimum required contributions is contributed for a plan year on account of the § 412(b)(7)(F)(iii) minimum amount, the plan's funding standard account will reflect a credit balance on account of the excess.

Q–26. How does a credit balance generated as a result of contributions made with respect to the § 412(b)(7)(F)(iii) minimum amount for the first plan year a § 412(b)(7)(F) deferral election is in effect affect the computation of the § 412(b)(7)(F)(iii) minimum amount for the second plan year a § 412(b)(7)(F) deferral election is in effect?

A–26. If an amendment was adopted in a plan year for which the § 412(b)(7)(F) deferral election was made, the credit balance resulting from the excess of the § 412(b)(7)(F)(iii) minimum amount for that plan year over the minimum required contribution for that plan year must be disregarded in computing the § 412(b)(7)(F)(iii) minimum amount for the second plan year the § 412(b)(7)(F) deferral election is in effect. Thus, for example, if a plan sponsor with a calendar plan year made a § 412(b)(7)(F) deferral election to defer a net experience loss charge for the 2004 plan year, with the amount instead charged in the 2006 plan year, and then adopts a plan amendment increasing benefit liabilities in 2004, the credit balance resulting from the excess of the § 412(b)(7)(F)(iii) minimum amount for the 2004 plan year over the minimum required contribution for the 2004 plan year must be disregarded in computing the § 412(b)(7)(F)(iii) minimum amount for 2005. However, if the contributions made for the 2004 plan year exceed the § 412(b)(7)(F)(iii) minimum amount for that plan year, the credit balance attributable to that excess can be taken into account in determining the § 412(b)(7)(F)(iii) minimum amount for 2005.

Q–27. How does the plan's enrolled actuary certify that an amendment is a fully funded amendment?

A–27. The plan's enrolled actuary certifies that an amendment is a fully funded amendment by filing a certification with the Service that, following the adoption of the plan amendment, the plan includes terms to the effect that contributions to the plan while the net experience loss charge deferral election is in effect will exceed the § 412(b)(7)(F)(iii) minimum amount described in Q&A–22 of this notice. The certification may be based either on plan terms incorporating the formula described in Q&A–22 of this notice or on plan terms providing for either an amount of contributions or an alternative formula for contributions under which contributions for the plan year will exceed the § 412(b)(7)(F)(iii) minimum amount. The certification must also provide the derivation of the § 412(b)(7)(F)(iii) minimum amount as well as the amount of contributions required under the terms of the plan (if determined under an alternative formula).

If the certification that an amendment is a fully funded amendment has not been included with the § 412(b)(7)(F) deferral election described in Q&A–11 of this notice, a separate certification must be filed by the due date for the filing of Form 5500 for the plan year (or June 30, 2005, if later). The certification must be filed at the address described in Q&A–11 of this notice.

Q–28. What is the effect of the adoption of an amendment that increases benefit liabilities in violation of the § 412(b)(7)(F)(iii) benefit restrictions?

A–28. The adoption of an amendment that increases benefit liabilities in violation of the § 412(b)(7)(F)(iii) benefit restrictions will invalidate a § 412(b)(7)(F) deferral election beginning with the plan year the amendment is adopted.

Q–29. What are the consequences of failure to contribute the amount required under a fully funded amendment?

A–29. If the contributions required under the terms of a fully funded amendment are not made on or before the due date for contributions for the plan year, the failure to contribute the § 412(b)(7)(F)(iii) minimum amount invalidates the § 412(b)(7)(F) deferral election.

III. Paperwork Reduction Act

The collection of information contained in this notice has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1935.

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.

The collection of information in this notice is in Q&A–11, Q&A–14, Q&A–15, Q&A–17, and Q&A–27 of section II. This information is required to enable delegates of the Commissioner, Tax Exempt and Government Entities Division of the Internal Revenue Service to monitor and make valid determinations with respect to whether a multiemployer plan may elect to defer certain charges to the multiemployer plan's funding standard account. As a result of such elections, the net ex-

perience loss of a multiemployer plan's funding standard account will be deferred and charges for these multiemployer plans will be based on amounts specified under § 412(b)(7) of the Code and section 302(b)(7) of ERISA. Such an election may cause the excise tax for failure to meet the minimum funding standards not to be incurred. The likely respondents are businesses and other for-profit institutions or nonprofit institutions.

The estimated total annual reporting and/or recordkeeping burden is 960 hours.

The estimated annual burden per respondent/recordkeeper varies from 60 to 180 hours, depending on individual circumstances, with an estimated average of 80 hours. The estimated number of respondents and/or recordkeepers is 12.

The estimated frequency of responses is occasional.

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.

Drafting Information

The principal authors of this notice are Michael Rubin of the Employee Plans, Tax Exempt and Government Entities Division and Linda S. F. Marshall of the Office of the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). Mr. Rubin may be reached at 202–283–9888 (not a toll-free number).