

**SUPPORTING STATEMENT  
NOTICE OF PROPOSED RULEMAKING  
REG-100194-10 & Notice 2010-85**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The notice of proposed rulemaking containing this collection of information implements the statutory requirement under new section 6011(e)(3) of the Internal Revenue Code for specified tax return preparers (STRPs) to file individual income tax returns (returns) using magnetic media (electronically) for individuals, estates, and trusts if the STRPs prepare and file the returns. These proposed regulations reflect changes to the law made by the Worker, Homeownership, and Business Assistance Act of 2009 (Act). Under section 6011(e)(3) and as further defined in proposed § 301.6011-6, an STRP generally means any person who is a tax return preparer, as defined in section 7701(a)(36) and § 301.7701-15, unless that person reasonably expects to file 10 or fewer returns in the calendar year (fewer than 100 in calendar year 2011). If a person who is a tax return preparer is a member of a firm, that person is a specified tax return preparer unless the person's firm members in the aggregate reasonably expect to file 10 or fewer individual income tax returns in a calendar year (fewer than 100 in calendar year 2011). Tax return preparers only qualify as STRPs if they reasonably expect (if they are members of a firm, the firm's members in the aggregate reasonably expect) to file, *i.e.*, themselves submit or deliver to the IRS, more than 10 returns (100 or more in calendar year 2011). Even if they do file more than 10 returns (100 or more in calendar year 2011) and qualify as STRPs, the preparers need not electronically file a return if they (or their firm) do not file the return with the IRS. The Act's amendment to section 6011(e)(3) requires the Secretary to issue regulations to implement the statute, as amended.

As proposed, § 301.6011-6(a)(4) and (b) provides that an STRP is not required to electronically file returns that taxpayers choose to file in paper format and which the taxpayers file with the IRS themselves. Section 301.6011-6(a)(4)(ii) provides that an individual income tax return will not be considered to be filed by a tax return preparer or STRP if the tax return preparer or STRP who prepared the return obtains, on or prior to the date the return is filed, a signed and dated written statement from the taxpayer that states (1) the taxpayer chooses to file the return in paper format, and (2) that the taxpayer and not the preparer will submit the paper return to the IRS. Section 301.6011-6(a)(4)(ii) also states that the IRS may provide guidance through forms, instructions, or other appropriate guidance. A notice of proposed revenue procedure has been published contemporaneously with the notice of proposed rulemaking. This revenue procedure provides further guidance regarding how tax return preparers can

document when a taxpayer chooses to file the taxpayer's return in paper format. The provision for a statement referenced in the proposed regulations involves a collection of information. This collection of information is voluntary to obtain a benefit, *i.e.*, to demonstrate that the related return filed in paper format was not required to be filed electronically pursuant to section 6011(e)(3) and the proposed regulations.

The Act requires returns filed after December 31, 2010, by STRPs be filed electronically. The proposed regulations are to be effective on January 1, 2011; however, to promote the effective and efficient administration of the new requirements, they provide a phased-in application period. The proposed regulations apply on January 1, 2011, to every STRP who reasonably expects (if the preparer is a member of a firm, the firm's members in the aggregate reasonably expect) to file 100 or more returns in calendar year 2011. The proposed regulations apply to all other STRPs beginning January 1, 2012. The Treasury Department and the IRS anticipate that final regulations under section 6011(e)(3) and the revenue procedure will be published in January 2011.

2. USE OF DATA

The information regarding taxpayer choice is to be used by tax return preparers to demonstrate that the related paper return was not subject to the electronic filing requirement because (1) the taxpayer chose to file the return in paper format, and (2) the return was prepared by the preparer but filed by the taxpayer.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The recordkeeping burden associated with keeping documentation of a taxpayer choice to file in paper format is very minimal. A tax return preparer generally will not be submitting this documentation to the IRS. The IRS use of information technology in that regard is inapplicable and unnecessary.

There are no plans to provide online applications for undue hardship waiver requests because online processing may not be appropriate for the collection of this information in this submission. Form 8944, "Preparer e-file Hardship Waiver Request", will be available for download at [www.irs.gov](http://www.irs.gov) once approved.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible. The IRS will make all reasonable efforts to identify and eliminate duplication in the collection of information from tax return preparers.

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

The recordkeeping burden associated with documenting and keeping documentation of a taxpayer choice to file in paper format is very minimal. A tax return preparer generally will not be submitting this documentation to the IRS.

The Treasury Department and IRS have considered but are not aware of any methods to further minimize any burden on small entities.

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

The notice of proposed rulemaking has been published in the Federal Register. A notice of a proposed revenue procedure was published contemporaneously with the notice of proposed rulemaking. The NPRM and notice solicit comments from the public, including comments on the collection of information. A public hearing will be held with respect to the NPRM and proposed revenue procedure and is currently scheduled for January 7, 2011.

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

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, the information collected is confidential as required by the Privacy Act of 1974, 5 U.S.C. § 552a.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

None.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The estimated total annual recordkeeping burden for this collection of information is 1,222,815 hours in calendar year 2011, and 1,689,930 hours in calendar year 2012. The estimated average annual burden hours per respondent are 9.06 hours (per firm) in calendar year 2011 and 5.42 hours (per firm) in calendar year 2012. The estimated number of respondents is 135,000 in calendar year 2011 and 312,000 in calendar year 2012.

For Notice 2010-85, the estimated total annual reporting burden is 3,949 total hours for waiver requests for calendar year 2011, and 7,328 total hours for waiver requests for calendar year 2012. The estimated annual burden per respondent/recordkeeper varies from 15 minutes to 2 hours, depending on individual circumstances, with an estimated average of 1 hour. We calculated 15 minutes of preparation for a basic waiver without attachments and minimal explanation (e.g. federal disaster declaration); 31 minutes for a bankruptcy waiver with attachments; 51 minutes for "other" waiver with attachments and detailed explanation; and 2 hours for an economic hardship waiver with attachments. We estimated 6 minutes for recordkeeping, consisting of maintaining a copy of the information submitted for the respondent's records. The estimated number of respondents and/or recordkeepers is 3,949 for waiver requests for calendar year 2011 and 7,328 for waiver requests for calendar year 2012. The estimated annual frequency of responses (used for reporting requirements only) is no more than once per respondent.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The proposed regulations request public comments on estimates of capital or start-up costs and the costs of operation, maintenance, and purchase of services to provide information. Estimates of the annualized cost to respondents for the time spent obtaining documentation of taxpayers' choices to file in paper format are not available at this time. It is expected, however, that these costs should be de minimis because they generally should be limited to the cost of paper for the written statement to be signed by their taxpayer-clients.

14. ESTIMATED ANNUAL COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS, AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

Displaying the expiration date of an OMB control number is inappropriate because it could cause confusion by leading tax return preparers and the public to believe that the regulations sunset as of the expiration date. Tax return preparers and the general public are unlikely to be aware that the IRS intends to request renewal of the OMB approval and to obtain a new expiration date before the approval expires.

18. EXCEPTIONS TO THE CERTIFICATION REQUIREMENT OF OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to 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 information are confidential, as required by 26 U.S.C. 6103.