

SUPPORTING STATEMENT
REG-100194-10 & Notice 2010-85,
Form 8944 and Form 8948

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.

Notice 2010-85 will explain the circumstances when someone who is a tax return preparer (for returns filed after 12/31/10, IRC 6011(e)(3)(B) defines a "specified tax return preparer" as any tax preparer, unless such preparer reasonably expects to file 10 or fewer individual income tax returns during a calendar year) qualifies for an administrative exemption from filing a certain tax return electronically. Specified tax return preparers use Form 8944 to request an undue hardship waiver from the section 6011(e)(3) requirement to electronically file returns of income tax imposed by subtitle A on individuals, estates, or trusts. Form 8948 is to be used only by specified tax return preparers that are required to e-file the covered returns they prepare that are able to be filed electronically. Form 8948 is used to explain which exception applies when a covered return is prepared and filed on paper.

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 once approved.

Form 8948 is used to explain which exception applies when a covered return is prepared and filed on paper.

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

<u>Form</u>	<u>Number of Responses</u>	<u>Time per Response</u>	<u>Total Hours</u>
8944	90,000	7.99	719,100
8948	8,820,000	1.99	17,551,800

Estimates of the annualized cost to respondents for the hour burdens are not available at this time.

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

The primary cost to the government consists of the cost of printing Form 8944 and Form 8948. We estimate that the cost of printing the form is \$60,000.

15. REASONS FOR CHANGE IN BURDEN

REG-100194-10 (approved under 1545-2201) and Notice 2010-85, detail how, starting Jan. 1, 2011, paid tax return preparers can comply with a new law that requires paid tax return preparers who meet the definition of "specified tax return preparer" under the new law to electronically file (e-file) federal income tax returns that they prepare and file for individuals, trusts and estates. Starting Jan. 1, 2011, paid preparers who prepare income tax returns for individuals, trusts and estates, such as Forms 1040, 1040A, 1040EZ, and Forms 1041, and who reasonably expect to file 100 or more of these income tax returns in 2011 are specified tax return preparers required to file these returns electronically. Tax return preparers who are members of a firm are specified tax return preparers and must electronically file the income tax returns they prepare and file if the firm's preparers, in the aggregate, expect to file 100 or more of these income tax returns in 2011. Starting Jan. 1, 2012, the 100-return threshold will be reduced to 11 or more income tax returns that the preparer, or the preparer's firm in the aggregate, expect to file in 2012 for individuals, trusts and estates. To comply with this law and new form 8948, we estimate an increase of 8,820,000 responses and 17,551,800 burden hours.

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.