

SUPPORTING STATEMENT
REG-148500-12, Shared Responsibility Payment for
Not Maintaining Minimum Essential Coverage

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The final regulations provide guidance on the requirement to maintain minimum essential coverage under section 5000A of the Internal Revenue Code, enacted by the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, as amended by the TRICARE Affirmation Act and Public Law 111-173. The final regulations will affect all individuals subject to the federal income tax.

Liability for the penalty for failing to maintain minimum essential coverage is reported on a federal income tax return. The notice of proposed rulemaking (NPRM) REG-148500-12, published February 1, 2013, stated that the actual collection of information and the associated burden would be reflected on a form to be created by the IRS (since identified as Form 8965). At the time of publication of the NPRM, it was envisioned that OMB clearance would be sought as part of the process of developing the form. Development of the form has not progressed as rapidly as originally envisioned, and OMB clearance for Form 8965 has not yet been submitted. The regulations are scheduled to be published by the end of August. The information collection requirements are contained in §1.5000A-3 (exemption certification completed on a federal income tax return) and §1.5000A-4 (recordkeeping and computation required in order to complete penalty computation).

With regard to the collection contained in §1.5000A-3, certain individuals are exempt from the shared responsibility payment. In general any collection of information or recordkeeping requirement with regard to establishing eligibility for an exemption resides with the Department of Health and Human Services (HHS), as described more fully below. However, an exemption authorized by HHS is claimed on a federal income tax return and certain income-based exemptions, such as the exemption for lack of affordable coverage, are claimed exclusively on a federal income tax return. Section 1.5000A-3 provides the authority for the IRS to require that a taxpayer maintain the exemption certification issued by HHS in order to claim an exemption from 5000A. In addition, §1.5000A-3 provides the authority for the IRS to require that a taxpayer provide certain information on the individual federal income tax return and maintain adequate records to substantiate and claim an exemption from 5000A.

With regard to the collection of information contained in §1.5000A-4, under §1.5000-4(a) a non-exempt taxpayer subject to the penalty for failure to maintain minimum essential coverage must maintain information to substantiate the sum of the monthly national average bronze premiums applicable to the taxpayer.

As mentioned above, in general any collection of information or recordkeeping requirement with regard to establishing eligibility for an exemption from section 5000A resides with the Department of Health and Human Services (HHS). Section 1311(d)(4)(H) of the Affordable Care Act (42 U.S.C. 18031(d)(4)(H)) directs the new health insurance marketplaces, called Affordable Insurance Exchanges (Exchanges), to issue certifications of exemption from the individual shared responsibility payment to eligible individuals. Section 1411 of the Affordable Care Act (42 U.S.C. 18081) generally provides procedures for determining an

individual's eligibility for various benefits relating to health coverage, including exemptions from the application of section 5000A. The standards and processes under which the Exchange will conduct eligibility determinations for, and grant certificates of exemption from, the individual shared responsibility payment are provided in final regulations under 45 CFR Parts 155 and 156 on determining eligibility for and granting certificates of exemption from the individual shared responsibility payment published by HHS on July 1, 2013 (CMS-9958-F). As part of its rulemaking process, HHS submitted a copy of their final rule to OMB for its review of the rules information collection and recordkeeping requirements.

2. USE OF DATA

The exemption certificate number (ECN) issued by an Exchange and included on a federal income tax return notifies the IRS that an exemption certificate has been issued to an individual by an Exchange and the individual without minimum essential coverage is eligible for an exemption from section 5000A. Additionally, a taxpayer's identification on a federal income tax return, most likely through checking a box identifying the exemption or exemptions that apply, notifies the IRS that the taxpayer is claiming an exemption an exemption from section 5000A.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The ECN will be available electronically to the IRS to allow electronic validation of the taxpayer's claimed exemption and eliminates the requirement that a taxpayer file additional records with a federal income tax return. It is envisioned that HHS will provide electronic access to data listing monthly national average bronze premium amounts. Finally, the information collected on a federal income tax return will be collected electronically to the extent federal income tax filing requirements permit electronic filing.

4. EFFORTS TO IDENTIFY DUPLICATION

Although the statute expressly divides authority for granting exemptions from section 5000A between HHS and the Treasury Department, the two agencies closely coordinated their relevant regulations in order to avoid any unnecessary duplication of effort on the part of taxpayers seeking an exemption from section 5000A.

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

N/A. Section 5000A applies only to individuals.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Without annual reporting on an individual income tax return, there is no way for the IRS to be made aware of an individual's eligibility for an exemption for a taxable year.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

The collection of information authorized in the final section 5000A regulations is not inconsistent with guidelines in 5 CFR 1320.5(d)(2).

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

On February 1, 2013, the IRS published a notice of proposed rulemaking (REG-148500-12) in the Federal Register (78 FR 7314), providing guidance on the liability for the section 5000A shared responsibility payment for not maintaining minimum essential coverage.

The IRS received numerous written comments in response to the proposed regulations and held a public hearing on May 29, 2013. After considering all the comment letters and statements made at the public hearing, the IRS is issuing final regulations.

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

N/A

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

All statements included as a part of a return of federal income tax are subject to the confidentiality and disclosure restrictions imposed by 26 USC § 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

N/A

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The information collection requirements are contained in §1.5000A-3 (exemption certification completed on a federal income tax return) and §1.5000A-4 (recordkeeping and computation required in order to complete penalty computation).

The likely respondents are individuals or households.

Regulation section	Number of respondents	Average burden per response (hours)	Total annual burden (hours)
§1.5000A-3	30,000,000	0.20	6,000,000
§1.5000A-4	6,000,000	0.25	1,500,000
Total			7,500,000

- Estimated annual burden hours per respondent varies between .1 and .5 hours, depending on individual circumstances, with an estimated average of .2 hours for §1.5000A-3 and .25 hours for § 1.5000A-4.
- Estimated frequency responses: Annually.

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.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

N/A

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

N/A

15. REASONS FOR CHANGE IN BURDEN

This is a new collection.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

N/A

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 regulations sunset 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. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB PRA SUBMISSION FORM

N/A

19. REASONS FOR EMERGENCY SUBMISSION

At the time the NPRM (REG-148500-12) was published, it was thought that a form on which individuals would provide their exemption certification numbers with their federal income tax return would be finalized as of the issuance of the final regulations. Now that the regulations are in the final clearance process, it is evident that the form will not be completed in time, and it is necessary to reflect the burden associated with the collection of exemption certificate numbers in the final regulations.