

**Supporting Statement for
Forms SSA-L-93-SM, SSA-L-94-SM, SSA-95-SM, and SSA-97-SM
Missing and Discrepant Wage Reports Letters and Questionnaires
26 CFR 31.6051-2**

OMB No. 0960-0432

A. Justification

1. Introduction/Authoring Law and Regulations

Section 205(c)(2)(A) of the *Social Security Act (Act)* requires the Commissioner of Social Security to establish and maintain records of the amounts of wages paid to each individual.

The Internal Revenue Code requires filing a tax return or statement in accordance with prescribed regulations. Every employer who is required to file with the Internal Revenue Service (IRS) must supply the Social Security Administration (SSA) with a copy of Form W-2 (Wage and Tax Statement) information supplied to their employees, as stated in 26 CFR 31.6051-2 of the *Code of Federal Regulations*. This regulation is issued pursuant to Section 232 of the Act. Under an agreement with IRS (Joint Stipulation and Agreement, National Committee to Preserve Social Security and Medicare v. Louis W. Sullivan, M.D., et al., C.A. No. 88-0974 AER.), SSA will attempt to contact employers two times to obtain the missing or discrepant information. Employers not responding to SSA's inquiry will have their case referred to the IRS for penalty assessment purposes.

SSA finds that approximately 500,000 employers a year have reports that are discrepant with IRS records, or the employer did not file with SSA. These reporting errors are discovered by matching SSA's W-2 processed records with IRS' Form 941 (Employer's QUARTERLY Tax Return), Form 943 (Employer's Annual Federal Tax Return for Agricultural Employees), Form 944 (Employer's ANNUAL Federal Tax Return), or Schedule H (Household Employment Taxes) FICA tax receipt records.

2. Description of Collection

Each year employers report the wage amounts they paid their employees to the IRS for tax purposes, and separately to SSA for retirement and disability coverage purposes. These reported amounts should equal each other. However, each year some employer wage reports SSA receives are less than the wage amounts employers report to the IRS. SSA uses Forms SSA-L-93-SM, SSA-L-94-SM, SSA-95-SM, and SSA-97-SM to ensure employees receive full credit for their wages.

- Forms SSA-L-93-SM and SSA-L-94-SM are cover letters requesting the employer complete the enclosed questionnaire (SSA-95-SM and SSA-97-SM);
- Form SSA-95-SM (first and second request) is the questionnaire we use when there is no record of an employer wage report; and,
- Form SSA-97-SM (first and second request) is the questionnaire we use when there are discrepancies between IRS and SSA employer-reported wages.

An employer can submit the paper version of the forms or the electronic wage reports to SSA themselves, or a third party may submit for them. The respondents are employers who reported lower wage amounts to SSA than they reported to the IRS.

3. Use of Information Technology to Collect the Information

SSA offers an alternative method for wage reporting through our Business Services Online (BSO) website (OMB No. 0960-0626). Through this website, employers are able to fill in the necessary information and submit their wage reports to SSA in a fully electronic format. This electronic format consists of accessing several electronic applications including Social Security Number Verification Services (OMB No. 0960-0660), the IRS W-2 and W-2c online forms (OMB No. 1545-0008), and SSA's instructions as to how to submit wage reports online. SSA estimates the majority of the respondents use BSO; however, we still have some who will only submit paper wage reports.

4. Why We Cannot Use Duplicate Information

The nature of the information we are collecting and the manner in which we are collecting it preclude duplication. SSA does not use another collection instrument to obtain similar data.

5. Minimizing Burden on Small Respondents

This collection does not significantly affect small businesses or other small entities. However, if we did not impose this burden, we would be unable to obtain the wage information necessary to properly post employee wages and maintain accurate earnings records. We minimized the burden by carefully reviewing the form and ensuring that we only ask small businesses/entities to complete relevant and necessary questions. A tolerance has been adopted to eliminate the smallest businesses and entities from the information collection process. The tolerance is an amount less than a quarter of coverage, the minimum amount which can be credited towards benefit eligibility (\$1,160 in 2013).

6. Consequence of Not Collecting Information or Collecting it Less Frequently

If we did not use the information that Forms SSA-L-93-SM, SSA-L-94-SM, SSA-95-SM, and SSA-97-SM collect, we would be unable to obtain missing and discrepant earnings information, which could result in incorrect payments to beneficiaries. Because we collect this information on an as needed basis, we cannot collect it less frequently.

There are no technical or legal obstacles to burden reduction.

7. Special Circumstances

There are no special circumstances that would cause SSA to conduct this information collection in a manner inconsistent with 5 *CFR* 1320.5.

8. Solicitation of Public Comment and Other Consultations with the Public

SSA published the 60-day advance Federal Register Notice on November 25, 2013 at 78 FR 70391, and SSA has received no public comments. We published the 30-day Notice on January 30, 2014 at 79 FR 5014. If we receive any comments on the second Notice, we will forward them to OMB.

We did not consult with the public in the revision/maintenance of this form.

9. Payment or Gifts to Respondents

SSA does not provide payments or gifts to the respondents.

10. Assurances of Confidentiality

SSA protects and holds confidential the information it collects in accordance with 42 U.S.C. 1306, 20 CFR 401 and 402, 5 U.S.C. 552 (*Freedom of Information Act*), 5 U.S.C. 552a (*Privacy Act of 1974*) and OMB Circular No. A-130.

11. Justification for Sensitive Questions

The information collection does not contain any questions of a sensitive nature.

12. Estimates of Public Reporting Burden

Approximately 360,000 respondents take 30 minutes each to complete questionnaires SSA-95-SM and SSA-97-SM each year. Accordingly, the burden is 180,000 hours. This figure represents burden hours, and we did not calculate a separate cost burden.

13. Annual Cost to the Respondents (Other)

This collection does not impose a known cost burden on the respondents.

14. Annual Cost To Federal Government

The annual cost to the Federal Government is approximately \$554,400. This estimate is a projection of the costs for printing and distributing the collection instrument and for collecting the information.

15. Program Changes or Adjustments to the Information Collection Request

There are no changes to the public reporting burden.

16. Plans for Publication Information Collection Results

SSA will not publish the results of the information collection.

17. Displaying the OMB Approval Expiration Date

OMB granted SSA an exemption from the requirement to print the OMB expiration date on its program forms. SSA produces millions of public-use forms with life cycles exceeding those of an OMB approval. Since SSA does not periodically revise and reprint its public-use forms (e.g., on an annual basis), OMB granted this exemption so SSA would not have to destroy stocks of otherwise useable forms with expired OMB approval dates, avoiding Government waste.

18. Exceptions to Certification Statement

SSA is not requesting an exception to the certification requirements at 5 *CFR* 1320.9 and related provisions at 5 *CFR* 1320.8(b)(3).

B. Collections of Information Employing Statistical Methods

SSA does not use statistical methods for this information collection.