

SUPPORTING STATEMENT
Notice 2017-9
De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties
OMB No. 1545-2270

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 202 of the Protecting Americans from Tax Hikes Act of 2015 (P.L. 114-113) (PATH Act) amended sections 6721 and 6722 of the Internal Revenue Code (Code) to establish a safe harbor from penalties for failure to file correct information returns and failure to furnish correct payee statements for certain de minimis errors. The penalties apply when a person is required to file an information return, or furnish a payee statement, but the person fails to do so on or before the prescribed date, fails to include all of the information required to be shown, or includes incorrect information. Under the safe harbor, an error on an information return or payee statement is not required to be corrected, and no penalty is imposed, if the error relates to an incorrect dollar amount and the error differs from the correct amount by no more than \$100 (\$25 in the case of an error with respect to an amount of tax withheld).

Section 6722(c)(3)(B) provides that the safe harbor does not apply to any payee statement if the payee makes an election at such time and in such manner as the Secretary may prescribe that the safe harbor not apply. Section 6721(c)(3)(B) provides that the safe harbor does not apply with respect to any incorrect dollar amount to the extent that such an error on an information return relates to an amount with respect to which an election is made under Section 6722(c)(3)(B).

This notice provides requirements for the election under section 6722(c)(3)(B), including the time and manner for making the election. This notice also provides that the de minimis error safe harbor does not apply with respect to Forms W-2, (Wage and Tax Statement), Form W-2c, (Corrected Wage and Tax Statement), and Form 1095-C, (Employer-Provided Health Coverage).

2. USE OF DATA

The voluntary third party disclosure requirements, in the notice, provide the means for a payee to make the election provided for by section 6722(c)(3)(B) or to retract that election. The mandatory record keeping requirement is necessary to facilitate compliance (i.e., enforcement by the IRS) with information reporting requirements.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The notice allows payees significant flexibility in making the election under section 6722(c)(3)(B), including the use of electronic media where the payor is in agreement, leading to reduced burden.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

Small businesses should not be disadvantaged as the requirements have been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

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

A less frequent collection could result in the taxpayer being unable to support the election or the retraction of the election provided for by section 6722(c)(3)(B). The mandatory record keeping requirement is necessary to facilitate compliance (i.e., enforcement by the IRS) with information reporting requirements.

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

There are no special circumstances requiring data collection to be 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

In response to the Federal Register notice dated April 11, 2017 (82 FR 17522), we received no comments during the comment period regarding Notice 2017-9.

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

No payment or gift will be provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The annual number of respondents is estimated to be 8,307,625. This volume is a result of the applicability of the notice to penalties applicable to a wide array of information reporting

returns and payee statement, billions of which are filed and/or furnished annually. See Pub. 6961 (e.g. Form 1099-B, of which 1,434,809,803 were filed for TY 2015). The total responses are estimated to be 8,984,600. This number includes responses for each type of response included within the collection of information: elections made by payees, retractions made by payees, records of elections retained by payors, records of retractions retained by payors. The annual hour burden is estimated to be 760,569 hours. This burden was estimated by taking the data regarding the number of information returns projected to be filed for TY 2016 from Pub. 6961 (most recent data) and the number of unique filers of information returns for TY2014 (most recent data) and estimating from that data the number of elections and retractions that payees would make on an annual basis. Considerations of business practice, in light of the flexibility allowed in the notice for making the election, are the basis for the burden estimates for each response. The burden estimate is 6 minutes/response for the election, 2 minutes/response for the retraction, and 1 minute/response for the record retention, with the average being 5 minutes. This average estimate is dependent on the response type (elections made by payees, retractions made by payees, records of elections retained by payors, records of retractions retained by payors).

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
6722(c)(3)(B)	Election	8,307,625	1.0814883	8,984,600	.08	760,569
Totals				8,984,600		760,569

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of the annual cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COSTS TO THE FEDERAL GOVERNMENT

There are no known annualized costs to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

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 notice sunsets as of the expiration date. Taxpayers are not likely to be aware that the IRS 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

There are no exceptions to the certification statement.

Note: The following applies to all of the 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 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 USC 6103.