

SUPPORTING STATEMENT
Internal Revenue Service
1545-1643
REG-209484-87 TD 8814
Federal Insurance Contributions Act (FICA) Taxation of Amounts
Under Employee Benefit Plans

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

These regulations amend the Employment Tax Regulations (26 CFR part 31) under section 3121(v)(2). Section 3121(v)(2) was added to the Internal Revenue Code (Code) by section 324 of the Social Security Amendments of 1983 (1983 Amendments). Section 2662(f)(2) of the Deficit Reduction Act of 1984 (DEFRA) amended section 324 of the 1983 Amendments.

Notice 94-96 (1994-2 C.B. 564) provides that until final regulations are issued, the IRS will not challenge an employer's determination of FICA tax liability with respect to a nonqualified deferred compensation plan for periods before the effective date of any final regulations if the determination is based on a reasonable, good faith interpretation of section 3121(v)(2). On January 25, 1996, a notice of proposed rulemaking (EE-142-87) under section 3121(v)(2) was published in the Federal Register (61 FR 2194), providing guidance related to the Federal Insurance Contributions Act (FICA) tax treatment of amounts deferred under or paid from certain nonqualified deferred compensation plans. On December 24, 1997, a notice of proposed rulemaking (REG-209484-87 and REG-209807-95) under section 3121(v)(2) extending the proposed general effective date of the regulations to January 1, 1998, was published in the Federal Register (62 FR 67304).

Comments regarding the 1996 proposed regulations were received from the public, and on June 24, 1996, the IRS held a public hearing concerning the proposed amendments. After consideration of the public comments received and the statements made at the public hearing, the proposed regulations are adopted as revised by this Treasury decision.

2. USE OF DATA

The information is used by the Service to identify the material terms of a plan to determine the correct amount of FICA tax.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998. IRS intends to offer electronic filing to the extent it is practicable however in this case it isn't practicable because of the evaluative nature of the determination.

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

The collections of information in these regulations will not have a significant economic impact on a substantial number of small entities.

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

Consequences of less frequent collection of the information would not allow the Service to identify the material terms of a plan to determine the correct amount of FICA tax thereby making it unable to meet its mission.

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

A notice of proposed rulemaking was published in the Federal Register on January 25, 1996 (61 FR 2194), a public hearing was held on June 24, 1996. The final regulations were published in the Federal Register on January 29, 1999 (64 FR 4542).

We received no comments during the comment period in response to the Federal Register notice dated October 24, 2017 (82 FR 49266).

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

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

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

11. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no sensitive personally identifiable information (PII) in this collection.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Under § 31.3121(v)(2)-1(b)(2), the material terms of the plan must be set forth in writing. The IRS estimates that the annual number of respondents will be 2,500; the burden per respondent varies from 2 hours to 10 hours, depending on the individual circumstances, with an estimated average of 5 hours; the estimated total reporting burden is 12,500 hours; and that the estimated frequency of responses is on time per respondent.

Under §31.3121(v)(2)-1(f), and employer withholding under the estimated method will make corrections for prior periods on Form 941, Employer’s Quarterly Federal Tax Return, Form 941C, Supporting Statement To Correct Information, Form W-2, Wage and Tax Statement, and Form W-2C, Statement of Corrected Income and Tax Amounts. Similarly, under §31.3121(v)(2)-1(g), and employer making optional adjustments for prior periods must report the adjustments on Form 941, Form 941C, Form W-2 and Form W-2C. The burden for these requirements is reflected on these forms.

Burden associated with specific elections are identified on the attached burden table and the total burden identified is:

Authority	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
§3121	2,500	1	2,500	5	12,500
Total	2,500		2,500		12,500

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

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology

it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

15. REASONS FOR CHANGE IN BURDEN

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

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	2,500	0	0	0	0	2,500
Annual Time Burden (Hr)	12,500	0	0	0	0	12,500

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

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets 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 FORM 83-I

There are no exceptions to the certification statement.

Note: The following paragraph 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 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.