

Supporting Statement
Internal Revenue Service
TD 9734 (REG-120282-10) and Form 1042, Form 1042-S, and Form 1042-T
Dividend Equivalents from Sources within the United States
OMB Control Number 1545-0096

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

On March 18, 2010, the HIRE Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) was enacted. The HIRE Act added new § 871(m) to the Internal Revenue Code, which provides that certain dividend equivalent payments are treated as U.S.-source dividends that are FDAP payments. Sections 1441 and 1442 require payers of FDAP to nonresident aliens, foreign partnerships, and foreign corporations to deduct and withhold this tax. Withholding agents use Form 1042 to report tax withheld at source and deposited for foreign payees, if such withholdings are reported to the payee on Form 1042-S. Form 1042-S is an information return that withholding agents use to report certain income and tax withheld at the source to foreign payees and Form 1042-T is used to transmit Forms 1042-S to the IRS. This final regulation clarifies how withholding agents must determine the amount of a dividend equivalent and collect information regarding those payments made to foreign taxpayers. The information needed for this final regulation is similar to the information being collected with respect to other types of FDAP payments.

These final regulations also provide rules that relate to a collection of information pursuant to the Qualified Intermediary Agreement (QI agreement). These regulations provide that the QI agreement in Rev. Proc. 2014-39 will be revised to accommodate qualified intermediaries who will be treated as qualified derivatives dealers (QDD). To become a QDD, a foreign person must amend or enter into a QI agreement with the IRS, as described in Rev. Proc. 2014-39. A foreign person who becomes a QDD will be required to collect information and perform information reporting; this collection is voluntary for entities seeking the benefits of the QDD regime. The requirements of the QDD regime were incorporated into the QI agreement that was most recently published in Rev. Proc. 2017-15. The addition of the QDD regime was made in response to public comments. The burden associated with the QI agreement is reflected in OMB # 1545-1597.

With respect to section 1.871-15(p), any party to a section 871(m) transaction may request information regarding that transaction from another party to that transaction. There is no prescribed form required. Any statement required by section 1.871-15(p) may be provided in paper or electronic form. The rule allows taxpayers to share information in any reasonable manner. See 1.815-15(p)(3)(i) (providing that information may be provided “(A) By telephone, and confirmed in writing; (B) By written statement sent by first class mail to the address provided by the requesting party; (C) By electronic publication available to all persons

entitled to request information; or (D) By any other method agreed to by the parties, and confirmed in writing.”).

2. **USE OF DATA**

The information will be used by the IRS to ensure compliance with the U.S. withholding system under the 1441 and 1442 regulations. The collection of information also will be used by withholding agents to determine the amount, if any, of U.S. withholding tax to collect and pay.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS publication, 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. Forms 1042, 1042-S, and 1042-T can be filled out and filed online.

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**

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6). es. This certification is based on the fact that few, if any, small entities will be affected by these regulations. The regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

The requirements of the collections of information required in the final regulations described in section 1 above are necessary to determine when withholding at source requirements apply, which, in turn, relates to when the payments subject to withholding are to be reflected on Forms 1042 and 1042-S. As a result, less frequent collections of information were not deemed feasible based on the requirements of the final regulations.

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 August 2, 2019, (84 FR 37952), we received no comments during the comment period regarding the collection of information from the regulation and forms.

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**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the following systems:

“Business Master File (BMF)”

“Withholding & Refund (W&R)”

“Payer Master File (PMF)”

“FATCA Withholding & Refund, FATCA W&R”

“International Compliance Management Model, ICMM”

Privacy Act System of Records notice (SORN) have been issued for these systems under:

IRS 24.046-Customer Account Data Engine Business Master File

IRS 2.017-International Enforcement Program File

IRS 2.021-Compliance Programs and Project Files

IRS 24.030-Customer Account Data Engine Individual Master File

IRS 34.037-IRS Audit Trail and Security Records System

IRS 22.026-Form 1042 Name Directory

The Internal Revenue Service PIAs can be found at <https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The information will be used by the IRS to ensure compliance with the U.S. withholding system under the 1441 and 1442 regulations. The collection of information also will be used by approximately 3,611,200 withholding agents to determine the amount, if any, of U.S. withholding tax to collect and pay totaling 2,945,594 hours of burden.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 1441 1442	Form 1042	36,400	1	36,400	18.05	657,020
IRC 1441 1442	Form 1042-S	3,525,300	1	3,525,300	.58	2,044,674
IRC 1441 1442	Form 1042-T	19,500	1	19,500	.20	3,900
IRC 1441 1442	REG-120282-10	30,000	1	30,000	8.00	240,000
Totals		3,611,200		3,611,200		2,945,594

With respect to the withholding agreements pursuant to Rev. Proc. 2014-39, we estimate that the QDD requirement will affect 1,000 respondents (this total includes new qualified intermediaries and existing qualified intermediaries amending an existing agreement to become a QDD), and is estimated to take 1 hour for a total of 1,000. This burden is currently being reflected in OMB #1545-1597.

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**

Product	Aggregate Cost per Product (factor applied)		Printing and Distribution		Government Cost Estimate per Product
Form 1042	35,750	+	3,717	=	40,411
Form 1042 Instructions	5,958	+	1,243	=	7,202
Form 1042-S	35,750	+	0	=	35,750
Form 1042-S Instructions	5,958	+	0	=	5,958
Form 1042-T	11,917	+	0	=	11,917
Form 1042-T Instructions	11,917	+	0	=	11,917
Grand Total	0		0		0
Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications					
* New product costs will be included in the next collection update.					

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden associated with this information collection. We are making this submission for renewal purposes.

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

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.