

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
New Technologies in Retirement Plans
(TD 8873)
OMB Number 1545-1632

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 1510 of the Taxpayer Relief Act of 1997 directed the Secretary of Treasury to issue guidance designed to interpret the notice, election, consent, disclosure, time and related recordkeeping requirements under the Internal Revenue Code and the Employee Retirement Security Income Act of 1974 regarding the use of new technologies by plan sponsors and administrators of retirement plans and to clarify the extent to which writing requirements under the Code relating to retirement plans permit “paperless” transactions.

Certain provisions in the Code and the Income Tax Regulations provide that plan administrators must give plan participants certain notices and obtain consents prior to making distributions from the plan. The Regulations prescribe that the notices be provided no less than 30 and no more than 90 days before the date of a distribution.

Treasury decision 8873 contains amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans. Specifically, these regulations set forth applicable standards for the transmission of those notices and consents through electronic media and modify the timing requirements for providing certain distribution-related notices. The regulations provide guidance to plan sponsors and administrators by interpreting the notice and consent requirements in the context of the electronic administration of retirement plans. The regulations affect retirement plan sponsors, administrators, and participants.

On March 13, 2020, the President of the United States issued an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in response to the ongoing Coronavirus Disease 2019 (COVID-19) pandemic, beginning March 1, 2020 (COVID-19 Emergency). In response to this unprecedented public health emergency, and the related social distancing that has been implemented, Notice 2020-XX provides temporary relief from the physical presence requirement in § 1.401(a)-21(d)(6) of the Income Tax Regulations for participant elections required to be witnessed by a plan representative or a notary public, such as a spousal consent required under § 417 of the Internal Revenue Code (the Code). While this temporary relief, which covers the period from January 1, 2020, through December 31, 2020, is intended to facilitate the use of coronavirus-related distributions and plan loans to qualified individuals, as permitted by section 2202 of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020) (CARES Act), the temporary relief applies to any participant election that requires the signature of the individual making the election to be witnessed in the physical presence of a plan representative or notary.

One of the conditions for receiving the temporary relief from the physical presence requirement in § 1.401(a)-21(d) is for the plan representative to acknowledge that he or she has witnessed the signature and transmit the signed document, including the acknowledgement, back to the person under a system that satisfies the applicable notice requirements under § 1.401(a)-21.

This is similar to the confirmation requirement for participant elections in § 1.401(a)-21(d), requiring that the individual making a participant election, within a reasonable time period, receive a confirmation of the election through either a written paper document or an electronic medium under a system that satisfies the applicable notice requirements under § 1.401(a)-21(c). We have determined that the plan representative's acknowledgment that he or she witnessed the signature of the participant election is a minor modification to the control number 1545-1632 and should not result in any additional paperwork burden.

2. USE OF DATA

The information will be used to help recipients of certain distributions from retirement plans, individual retirement accounts, and annuities make informed decisions regarding their distributions and is third party reporting, and not collected by the service.

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. The guidance is designed to facilitate the use of new technologies by plan sponsors, thereby reducing burden on employers by offering electronic transmission of notices and consents.

4. EFFORTS TO IDENTIFY DUPLICATION

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

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

Businesses should not be disadvantaged as the requirements are structured to request the least amount of information and still satisfy the requirements of the statute. This regulation minimizes burdens on small businesses by allowing plans to provide these notices or elections electronically instead of on paper, unless the employee requests a notice in writing. This should greatly reduce the costs and burdens on small employers.

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

The information required is needed to verify compliance with section 402 and 411 of the Internal Revenue Code of the Treasury Regulations. Regulations provide that plan administrators must give plan participants certain notices and obtain consents prior to making distributions from the plan therefore, a less frequent collection of taxes would not be possible.

1. 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

Due to the Coronavirus Disease 2019 (COVID-19) pandemic, the agency is seeking emergency clearance for this collection and cannot reasonably solicit public comment during the period of OMB review. A Federal Register notice will be published within 3 months to solicit public comment.

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

No personally identifiable information (PII) is being collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 402(f) of the Code and sec. 1.402(f)-1 of the regulations require that plan administrators and employers provide recipients of certain distributions from qualified retirement plans timely written explanations of certain provisions. This regulation provides that if a full written paper explanation was previously given, a written paper or electronic summary of the explanation may be provided to participants in lieu of the full explanation within the requisite time.

We estimate that 315,000 plan administrators or employers will provide the paper or electronic summary to 10,012,500 distributees, requiring an average of .05 hour per explanation, with an estimated total burden of 472,500 hours.

Section 1411(a)(11) of the regulations require employers or plan administrators of qualified retirement plans to provide certain notices to and obtain consents and elections from distributees. We estimate that 46,875 employers or plan administrators will provide the summary required by § 411(a)(11) electronically to 562,500 distributees, requiring an average of .003 hours per summary, with an estimated total of 1,688 hours.

Regulation section 1.411(a)-11 requires that a confirmation of the terms of the distribution be provided to each participant who consents to a distribution through an electronic medium. We estimate that 93,750 employers or plan administrators will be required to provide confirmations to 1,125,000 distributees, requiring an average of .003 hours per confirmation, with an estimated total of 3,375 hours.

The total burden for the above requirements is an estimated 477,563 hours.

The total number of responses is an estimated 11,700,000.

The above totals represent the full burden for requirements under the existing regulations. IRS has determined that the temporary relief provisions contained in the CARES Act are minor modifications that should not result in any additional paperwork burden.

	Description	# Respondents	# Responses Per Respondent	Total Annual Responses	Hours Per Response	Total Burden
1.402	paper or electronic summary	315,000	32 (approx.)	10,012,500	.05	472,500
1.411(a)	notices to and obtain consents and elections	46,875	12	562,500	.003	1,688
1.411(a)	a confirmation of the terms of the distribution	93,750	12	1,125,000	.003	3,375
Totals		455,625		11,700,000		477,563

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

Since the government does not receive this information or print forms, there are no government costs associated with this collection.

1. REASONS FOR CHANGE IN BURDEN

The OMB approval for this collection lapsed on 12/31/2014. The agency is making this submission to request reinstatement of the control number in order to comply with the CARES Act, as well as restore Paperwork Reduction Act compliance for the underlying regulations. The revised CARES Act provisions are not expected to have a material effect on the time burden, so IRS is requesting the same total burden hours that were previously approved by OMB.

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

The IRS believes that displaying the OMB expiration date is inappropriate because it could cause

confusion by leading taxpayers to believe that the form 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.