

**1SUPPORTING STATEMENT**  
**Internal Revenue Service**  
**Notice 2017-9**  
**De Minimis Error Safe Harbor to the I.R.C. §§ 6721 and 6722 Penalties**  
**OMB Control Number 1545-XXX**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Notice 2017–09, De Minimis Error Safe Harbor provides guidance to implementing PL 114-113 (Protecting Americans from Tax Hikes Act) regarding the de minimis error safe harbor exceptions from information reporting penalties under Internal Revenue Code (IRC) sections 6721 and 6722.

Section 6721 imposes a penalty when a person fails to file an information return on or before the prescribed date, fails to include all of the information required to be shown on the information return, or includes incorrect information on the information return.

Section 6722 imposes a penalty when a person fails to furnish a payee statement on or before the prescribed date, fails to include all of the information required to be shown on the payee statement, or includes incorrect information on the payee statement.

The collection of information in the notice of this Treasury Decision (TD) facilitates the making of this election through a voluntary third-party disclosure. This third-party disclosure is necessary for payees to be able to make the election provided for by section 6722(c)(3)(B). The collection of information also facilitates the revocation of this election, so that elections are not permanently binding. The revocation is also a voluntary third-party disclosure. The voluntary notification by filers to payees regarding reasonable alternative manners to make the election also facilitates the election. This notification is also a voluntary third-party disclosure. Finally, the collection of information in the TD includes the specified retention of record requirement that filers retain records of any election, revocation, or notification for as long as that information may be relevant to the administration of any internal revenue law. This mandatory record keeping requirement is necessary to facilitate compliance with information reporting requirements.

**2. USE OF DATA**

The voluntary third-party disclosure requirements in the notice provides the means for a payee to make the election provided for by section 6722(c)(3)(B) or to revoke that election, and for filers to provide notification of reasonable alternative manners for the election. The mandatory record keeping requirement is necessary to facilitate compliance (i.e., enforcement by the IRS) with information reporting requirements. The agency does not receive any information under this collection of information.

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

Payees can make their safe harbor election electronically.

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 IRS proactively works with both internal and external stakeholders to minimize the burden on small businesses, while maintaining tax compliance. The Agency also seeks input regarding the burden estimates from the public via notices and tax product instructions. The filers can make their election to have the safe harbor not apply electronically, which further reduces any burden to small businesses.

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

A less frequent collection would result in taxpayers 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 the Agency's ability to maintain voluntary compliance.

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**

The TD preamble for Reg. 118826-16 solicited comments regarding the rules contained in the notice and any potential abuse of the de minimis error safe harbor exceptions. In response to the notice, the Treasury Department and IRS received 11 comments. The Treasury Department and IRS have considered all of the comments and addressed them in this preamble.

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 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 “Business Master File, BMF” and a Privacy Act System of Records notice (SORN) has been issued for these systems under IRS 24.046 BMF and IRS 34.047 Audit Trail and Security Records System. 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**

It is anticipated that there will be 16,123,292 respondents annually and the per response time would be 3.7 minutes per respondent. Resulting in an annual total burden of 992,102 hours.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
6721 & 6722(c) (3)(B)	Election	10,057,746	1.603072099	16,123,292	.0615322	992,102
<b>Totals</b>				<b>16,123,292</b>		<b>992,102</b>

The following regulations impose no additional burden. Please continue to assign OMB number 1545-XXXX to these regulations.

- 301.6721-1
- 301.6722-1
- 301.6724-1
- 1.6045-1

**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**

This is a new information collection implementing PL 114-113 (Protecting Americans from Tax Hikes Act) regarding the de minimis error safe harbor exceptions from information reporting penalties under Internal Revenue Code (IRC) sections 6721 and 6722.

**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 this notice 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 for this collection.

**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.