

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, W-8IMY
OMB Control Number 1545-1621

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulations under Internal Revenue Code (IRC) sections 1441, 1442, 1443, 1445, and 1446 provide the manner in which foreign persons (individuals, businesses and other for-profit organizations, foreign governments, international organizations, partnerships, and tax-exempt organizations) must submit certifications to a withholding agent for reduction of, or exemption from, U.S. tax withholding.

In general, foreign persons are subject to U.S. tax at a 30% rate on income they received from U.S. sources that consists of interest, dividends, rents, premiums, annuities, compensation for services performed, or other fixed or determinable annual or periodical gains, profits, or income. Income that is effectively connected with the conduct of a trade or business within the United States is also subject to such withholding. This tax is imposed on the gross amount paid and is generally collected by way of withholding on that amount. A payment is considered to have been made whether it is made directly to the beneficial owner of the income or to another person, such as an intermediary, agent, or partnership for the benefit of the beneficial owner.

Form W-8BEN is used for certain types of income to establish that the person is a foreign person, is the beneficial owner of the income for which Form W-8BEN is being provided and, if applicable, to claim a reduced rate of, or exemption from, withholding as a resident of a foreign country with which the United States has an income tax treaty.

Form W-8BEN-E allows foreign financial institutions (FFIs) paying U.S. source income or gross proceeds to the party providing the Form W-8BEN-E to document its account holders who are foreign entities, both for FATCA purposes as well as for pre-FATCA withholding tax purposes. Form W-8BEN-E will also be used by foreign entities that are receiving a payment of U.S. source fixed or determinable annual or periodical income for which they are claiming a reduced rate of (or exemption from) withholding under an applicable income tax treaty.

Form W-8ECI is used to establish that the person is a foreign person, is the beneficial owner of the income for which Form W-8ECI is being provided, and to claim that the income is effectively connected with the conduct of a trade or business within the United States.

Form W-8EXP is used by a foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, or foreign private foundation, or a government of a U.S. territory. The form is used by such persons to establish foreign status, to claim that the person is the beneficial owner of the income for which Form W-8EXP is given and, if applicable, to claim a reduced rate of, or exemption from, withholding. In addition, a withholding qualified holder under IRC section 1445 may use a Form W-8EXP to establish that it is treated as a U.S. person and claim an exemption to withholding pursuant to IRC section 897(l) (relating to qualified foreign pension funds).

Form W-8IMY is provided to a withholding agent or payer by a foreign intermediary, foreign partnership, and certain U.S. branches to make representations regarding the status of beneficial owners or to transmit appropriate documentation to the withholding agent.

Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and/or W-8IMY must be given to the withholding agent. Generally, the withholding agent will be the person from whom the payment is received or who credits the account of the beneficial owner. The forms(s) must be given to the withholding agent before the income is paid or credited to the account. If the appropriate forms(s) is not provided, the withholding agent may have to withhold at a 30% rate (nonresident alien withholding) or 28% (backup withholding) rate.

Treasury Decision (TD) 9926 contains the final regulations that provide guidance related to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in a trade or business within the United States. The final regulations affect certain foreign persons that recognize gain or loss from the sale or exchange of an interest in a partnership that is engaged in a trade or business within the United States, and persons that acquire those interests. The final regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

TD 9971 contains final regulations regarding gain or loss of a qualified foreign pension fund attributable to certain interests in United States real property. The final regulations also include rules for certifying that a qualified foreign pension fund is not subject to withholding on certain dispositions of, and distributions with respect to, certain interests in United States real property. The final regulations affect certain holders of interests in United States real property and withholding agents that are required to withhold tax on dispositions of, and distributions with respect to, such property.

2. USE OF DATA

The information will be used by the withholding agent to ascertain the status of the beneficial owner or beneficial owner's intermediary as a foreign person, and to apply correct withholding rates based on information provided on the form(s) and applicable statute and treaty. The information will be used by the IRS for compliance purposes to verify that a withholding agent or intermediary has received all necessary information to enable the correct withholding rate to be applied and has collected and remitted the proper amount of withholding for a foreign person. The withholding agent may be liable for the tax if the proper amount is not withheld.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Treasury Regulations section 1.1441-1(e)(4)(iv) provides that a withholding agent may establish a system for a beneficial owner to electronically furnish a Form W-8 or an acceptable substitute Form W-8. The IRS works with withholding agents to develop electronic systems for beneficial owners to furnish Forms W-8 electronically and validate these forms through an automated process.

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 form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the IRS.

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

A less frequent collection will not enable the IRS to verify that a withholding agent or intermediary has received all necessary information to enable the correct withholding rate to be applied and has collected and remitted the proper amount of withholding for a foreign person. The withholding agent may be liable for the tax if the proper amount is not withheld.

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 proposed regulations (REG-109826-17), published on June 7, 2019 (84 FR 26605), contained a request for comment, including comments specifically with respect to this collection of information. Per the final regulations published on December 29, 2022 (87 FR 80042), no comments were received pertaining to the information collection requirements. The IRS is publishing a 30-day notice to solicit additional feedback for the collection requirements.

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 U.S.C. 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No sensitive personally identifiable information is being collected by the agency. Information is being shared between the entity and the withholding agent. Information is only provided to the IRS during an inquiry or audit.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

IRC sections 1441, 1442, 1443, 1445, and 1446 provide withholding requirements and exceptions to withholding tax on certain foreign entities. Treasury Regulations under these IRC sections provide the manner in which certain foreign entities certify with the withholding agent that they qualify for reduced withholding or an exemption from withholding. Foreign entities submit Forms W-8BEN, W-8BEN-E, W-8ECI, W-8EXP, and/or W-8IMY to the withholding agent to certify an exception. The estimated burden is shown below:

| Description | # of Respondents | # Responses per Respondent | Annual Responses | Hours per Response | Total Burden Hours |
|---------------|------------------|----------------------------|------------------|--------------------|--------------------|
| Form W-8BEN | 2,970,000 | 1 | 2,970,000 | 7.42 | 22,037,400 |
| Form W-8BEN-E | 170,000 | 1 | 170,000 | 26.93 | 4,578,100 |
| Form W-8ECI | 180,000 | 1 | 180,000 | 10.22 | 1,839,600 |
| Form W-8EXP | 300 | 1 | 300 | 21.34 | 6,402 |
| Form W-8IMY | 70,400 | 1 | 70,400 | 29.85 | 2,101,400 |
| Totals | 3,390,700 | | 3,390,700 | | 30,562,902 |

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1621 to these regulations:

| | | |
|---------------|-------------|-------------|
| 1.864(c)(8)-1 | 1.1446-1 | 1.1446(f)-5 |
| 1.864(c)(8)-2 | 1.1446(f)-1 | 1.1446(f)-6 |
| 1.1445-2 | 1.1446(f)-2 | 1.1446(f)-7 |
| 1.1445-5 | 1.1446(f)-3 | |
| 1.1445-8 | 1.1446(f)-4 | |

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

There is no cost burden to respondents or record keepers resulting from this collection of information. The information provided to withholding agents is kept as part of customary and usual business practices.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

The federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized startup expenses, operating and maintenance expenses, and distribution of the product that collects the information. These costs do not include any activities such as taxpayer assistance and enforcement.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables, such as complexity, number of pages, type of product, and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries, and other outlets. The result is the government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

| Product | Aggregate Cost per Product (factor applied) | | Printing and Distribution | | Government Cost Estimate per Product |
|--|--|----------|----------------------------------|----------|---|
| Form W-8BEN | \$23,994 | + | \$0 | = | \$23,994 |
| Form W-8BEN Instructions | \$7,634 | + | \$0 | = | \$7,634 |
| Form W-8BEN-E | \$20,135 | + | \$0 | = | \$20,135 |
| Form W-8BEN-E Instructions | \$18,457 | + | \$0 | = | \$18,457 |
| Form W-8ECI | \$23,994 | + | \$0 | = | \$23,994 |
| Form W-8ECI Instructions | \$5,034 | + | \$0 | = | \$5,034 |
| Form W-8EXP | \$26,175 | + | \$0 | = | \$26,175 |
| Form W-8EXP Instructions | \$6,544 | + | \$0 | = | \$6,544 |
| Form W-8IMY | \$26,175 | + | \$0 | = | \$26,175 |
| Form W-8IMY Instructions | \$7,634 | + | \$0 | = | \$7,634 |
| Grand Total | \$165,776 | + | \$0 | = | \$165,776 |
| Table costs are based on 2022 actuals obtained from IRS Chief Financial Officer and Media and Publications | | | | | |

15. REASONS FOR CHANGE IN BURDEN

The IRS added language and six checkboxes to Form W-8EXP to allow a withholding qualified holder under IRC section 1445 to use the form to establish that it is treated as a U.S. person and claim an exemption to withholding pursuant to IRC section 897(l). This increases the estimated number of responses by 60 and the estimated burden hours by 1,474 annually due to Agency Discretion.

| | Total Requested | Change Due to New Statute | Change Due to Agency Discretion | Change Due to Adjustment in Estimate | Change Due to Potential Violation of the PRA | Previously Approved |
|----------------------------|------------------------|----------------------------------|--|---|---|----------------------------|
| Annual Number of Responses | 3,390,700 | 0 | 60 | 0 | 0 | 3,390,640 |
| Annual Time Burden (Hr) | 30,562,942 | 0 | 1,474 | 0 | 0 | 30,561,468 |

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 forms expire 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 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.