

SUPPORTING STATEMENT

Internal Revenue Service (IRS)

Form 5309

Application for Determination of Employee Stock Ownership Plan

OMB Control Number 1545-0284

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Internal Revenue Code (IRC) 409 defines the tax credit qualifications for employee stock ownership plans (ESOP). An ESOP is an individually designed stock bonus plan, which is qualified under Internal Revenue Code Section 401(a), or a stock bonus and a money purchase plan both of which are qualified under IRC Section 401(a), and which are designed to invest primarily in qualifying employer securities. An ESOP may form a portion of a plan the balance of which includes a tax-qualified pension, profit-sharing, or stock bonus plan which is not an ESOP. ESOPs generally have participation, vesting and allocation features common to all qualified plans. ESOPs are subject to the distribution provisions of IRC Section 401(a)(14) but must also comply with the distribution and payment requirements of IRC Section 409(o).

ESOPs generally are also required to:

- provide participants with the right to demand distributions in the form of employer securities;
- prohibit allocations of certain securities acquired in a sale to which IRC Section 1042 applies;
- prohibit allocations of securities in an S corporation under certain circumstances; and
- provide certain voting rights if the employer has a registration-type class of securities. In addition, ESOPs may have distinctive features, for example:
 - plan provisions related to the debt-financed acquisition of stock to generate cash for the employer's corporation; and
 - plan provisions related to a C corporation plan sponsor's ability to deduct dividends paid on stock held by the ESOP.

IRC Section 4957(e)(7) defines the required criteria a defined contribution plan must meet to be classified as an employee stock ownership plan.

Form 5309 is used to apply for a determination letter for an ESOP that meets the requirements of section 4975(e)(7). Form 5309 is attached to Form 5300¹, Application for Determination for Employee Benefit Plan.

2. USE OF DATA

¹ Form 5300 is approved by the Office of Management and Budget (OMB) under OMB Control Number 1545-0197.

An Internal Revenue Service (IRS) team of ESOP specialists reviews all ESOP determination letter applications to ensure that the plan document meets applicable requirements under the IRC and related regulations.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The IRS has no plan at this time to offer electronic filing due to the low number of filers.

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 collection of information requirement will not have a significant economic impact on a substantial number of small businesses or other small entities.

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

Consequences of a less frequent collection of the information will prevent the IRS from making a determination that the contribution plan documents meet the requirements to be classified as an employee stock ownership plan under section 4957(e)(7) of the code thereby engendering the ability of the IRS 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

In response to the Federal Register notice dated March 25, 2024 (89 FR 20763), IRS received no comments during the comment period regarding Form 5309.

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

No gifts or 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 “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account Data Engine Business Master File. 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

IRC Section 4957(e)(7) defines the required criteria a defined contribution plan must meet to be classified as an employee stock ownership plan.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 4975(e)(7)	Form 5309	3,655	1	3,655	10.79	39,437
Totals		3,655		3,655		39,437

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-0284 to this regulation:

54.4975-11

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

From our Federal Register notice, dated March 25, 2024, no comments on the estimates of capital or start-up costs and cost operation, maintenance, and purchase of services to provide were received. However, 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

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.

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.

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>		<u>Printing and Distribution</u>		<u>Government Cost Estimate per Product</u>
Form 5309	\$20,892	+	\$0	=	\$20,892
Grand Total	\$20,892	+	\$0	=	\$20,892
Table costs are based on 2023 actuals obtained from IRS Chief Financial Office and Media and Publications					

15. REASONS FOR CHANGE IN BURDEN

Changes to the burden estimates of Form 5309 are due to an increase in the number of filers (from 2,500 to 3,655) based on the most recent filing data. This updated filing data increases the total burden hours from 26,975 to 39,437.

Form 5309	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	3,655	0	0	1155	0	2500

Annual Time Burden (Hrs.)	39,437	0	0	12,462	0	26,975
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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 form sunsets 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 for this collection.

Note: The following paragraph applies to all 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.