

SUPPORTING STATEMENT
Internal Revenue Service (IRS)
Section 139E – Tribal general welfare benefits
OMB Control Number 1545-NEW

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 139E was added to the Internal Revenue Code (Code) by The Tribal General Welfare Exclusion Act of 2014, Pub. L. 113-168, 128 Stat. 1883 (2014) (the Act), enacted on September 26, 2014. Under section 139E, gross income does not include the value of any Indian general welfare benefit. Section 139E(b) defines an Indian general welfare benefit as any payment made or services provided to or on behalf of a member of an Indian tribe (or any spouse or dependent of such a member) pursuant to an Indian Tribal government program, but only if: (1) the program is administered under specified guidelines and does not discriminate in favor of members of the governing body of the tribe, and (2) the benefits provided under such program are (A) available to any tribal member who meets such guidelines, (B) for the promotion of general welfare, (C) not lavish or extravagant, and (D) not compensation for services. Further, section 139E(c)(5) provides that any items of cultural significance, reimbursement of costs, or cash honorarium for participation in cultural or ceremonial activities for the transmission of tribal culture shall not be treated as compensation for services.

The recordkeeping requirements in proposed §1.139E-1(c)(3) provide that Indian tribal government programs must be administered under specified guidelines and the proposed rules provide general requirements on what such guidelines should contain. Under proposed §1.139E-1(c)(3), the specified guidelines must, at a minimum, describe the program, the benefits provided, the eligibility requirements of the program, and the process for receiving benefits. Written specified guidelines are not required. These proposed regulations do not prescribe the specific method to keep these records. Indian Tribal government programs should keep these records in the manner they deem appropriate in order to substantiate that the program qualifies as a general welfare program under section 139E and these proposed regulations, and to assist Tribal program participants with determining the program's benefit qualifies as excluded from income under section 139E and these proposed regulations. Additionally, Indian tribal government programs should keep records they deem appropriate to substantiate that the Tribal general welfare benefits are distributed without discriminating in favor of the governing body of the Tribe as described in proposed §1.139E-1(c)(4), are not lavish or extravagant, as described in proposed §1.139E-1(d)(4), and are not compensation for services, as described in proposed §1.139E-1(d)(5).

The recordkeeping requirements in proposed §1.139E-1(d)(4) would provide that whether a benefit is lavish or extravagant is based on the facts and circumstances at the time the benefit is provided. Proposed §1.139E-1(d)(4) would provide that a benefit will be presumed not to be lavish or extravagant if the Indian tribal government establishes the general welfare program in writing and provides the benefit in accordance with the program's written specified guidelines. This presumption in §1.139E-1(d)(4) for a benefit provided in accordance with the program's written specified guidelines would be an optional rule and an Indian Tribal Government may

choose not to apply such rule. This information will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing general welfare benefits in accordance with proposed §1.139E-1(d)(4).

A third-party disclosure requirement may apply to Indian Tribal governments that choose to provide notification to Tribal program participants that an Indian Tribal government program exists for which Tribal program participants may apply for benefits. These proposed regulations would not prescribe a specific method that Indian Tribal governments must use to announce the existence of a program. An Indian Tribal government may announce general welfare programs in any manner it deems appropriate.

2. USE OF DATA

The recordkeeping required by § 1.139E-1(c)(3) is necessary to ensure that an Indian Tribal government program is administered in accordance with specified guidelines. This information will generally be used by the IRS to assist with tax compliance to ensure that benefits distributed from Indian tribal government programs in accordance with proposed §1.139E-1.

The third-party disclosure requirement in proposed §1.139E-1(d)(3) is intended to ensure that Tribal program participants have an effective opportunity to apply for and receive benefits. This information may be used by the IRS for tax compliance purposes to ensure that the availability requirement is met.

The recordkeeping requirements in §1.139E-1(d)(4) will generally be used by the IRS for tax compliance purposes to ensure that Indian Tribal governments are distributing Tribal general welfare benefits in accordance with this section.

The affected public is expected to be individuals and households and Indian Tribal governments.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The IRS has no plans to offer electronic enabling, as the burdens in these proposed regulations relate to recordkeeping and/or third-party disclosures.

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

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 Agency will continue to as applicable find ways to reduce the burden on small businesses or other small

entities.

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

The information required is needed to verify compliance with Section 139E of the Internal Revenue Code. A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with the Internal Revenue Code and hinder the IRS from meeting its mission.

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 TD 9187**

A notice of proposed rulemaking (NPRM) published on September 17, 2024 at 89 FR 75990, solicits comments and announces a public hearing. Comments will be addressed in the final rule.

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**

There is no personally identifiable information being collected as the burden requirements are for recordkeeping and third-party disclosure.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The burden for the recordkeeping and third-party disclosures (detailed in question 1) affect Tribal governments. IRS based the burden estimates, on the number of Federally recognized Tribes (574) and used an estimate of 3 agencies and instrumentalities of each Federally recognized Tribe to calculate the affected number of respondents. Therefore, the total number of respondents is 2,296 (3 agencies + 1 tribe = 4 respondents per tribe and 574 Federally recognized tribes x 4 respondents per tribe = 2,296 total respondents). It is estimated to take 2

hours per response, resulting in an overall burden of 4,592 hours.

26 USC / 26 CFR	Description	Total Annual Responses	Hours Per Response	Total Burden
§139E	Indian Tribal Governments	2,296	2	4,592
	Totals	2,296	2	4,592

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

There are no costs to the Federal government as these are third-party disclosures and recordkeeping requirements.

1. REASONS FOR CHANGE IN BURDEN

This is a new collection of information in connection with the NPRM.

2. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

There are no plans for tabulation, statistical analysis, and publication.

3. 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 collection 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.

4. 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.