

SUPPORTING STATEMENT
Internal Revenue Service
REG-116017-24
Recordkeeping for an Election to Exclude Applicable Unincorporated Organizations from the
Application of Subchapter K
OMB Control No. 1545-NEW

9. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6417 was added to the Internal Revenue Code (IRC) by section 13801(a) of Public Law 117-169, 136 Stat. 1818, 2003 (August 16, 2022), commonly referred to as the Inflation Reduction Act of 2022 (IRA). Section 6417 allows an “applicable entity” (including tax-exempt organizations, the District of Columbia, State and local governments, Indian Tribal governments, Alaska Native Corporations, the Tennessee Valley Authority, rural electric cooperatives, and certain agencies and instrumentalities) to make an election to treat an “applicable credit” (as defined in section 6417(b)) determined with respect to such entity as making a payment by such entity against the tax imposed by subtitle A of the Code, for the taxable year with respect to which such credit is determined, equal to the amount of such credit. Section 6417 also provides special rules relating to partnerships and directs the Secretary to provide rules for making elections under section 6417. The regulations under section 6417 provide special rules with respect to partnerships that have made an election under IRC section 761(a) to be excluded from partnership tax rules. IRC Section 761(a) provides, in part, an express grant of regulatory authority for section 761(a) stating, “[u]nder regulations the Secretary may, at the election of all the members of an unincorporated organization, exclude such organization from the application of all or a part of this subchapter.” The proposed regulations (REG-116017-24) modify certain procedures related to making section 761(a) election by organizations at least one member of which will make an election under section 6417(a) with respect to property directly owned by the organization.

After an organization has made an election under 26 U.S.C. §761(a) to be excluded from partnership tax rules, its members can change without notification to the IRS. The IRS is empowered and compelled by IRC sections 6417(d)(5) and 6417(h) to track these members to ensure the propriety of payments under § 6417(a).

IRC Section 761(a) gives Treasury/IRS the power to issue regulations shaping the rules for elections under section 761(a). The reporting of the section 761(a) election will be approved by the Office of Management and Budget (OMB) under 1545-0123 for business filers and 1545-0047 for tax-exempt organizations and will not be mentioned again herein. In order to be able to report these elections, members of such organizations will need to notify the organization of any transfers of interest within the organization. Therefore, the proposed regulations include recordkeeping requirements, for certain organizations that have made a section 761(a) election, to keep track of the transfers of interests in the organization.

This new request for a new OMB control number pertains to the requirement for organizations to identify any transfers of interests in that organization. The burden for these recordkeeping requirements will be included within these new OMB control number.

- 10. USE OF DATA**
The taxpayers will use these recordkeeping requirements to validate whether they need to file a new section 761(a) election. Treasury Department and the IRS will not receive the recordkeeping, except upon audit to substantiate the new section 761(a) election and to ensure the propriety of payments under § 6417(a).
- 11. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**
Taxpayers can maintain these records through any means, including electronically. IRS has no plans to offer electronic filing as these are recordkeeping requirements.
- 12. EFFORTS TO IDENTIFY DUPLICATION**
The information obtained through this collection is unique and is not already available for use or adaption from another source.
- 13. 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.
- 14. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES**
Less frequent collection would prevent the IRS from verifying the owners of certain organizations to ensure that payments under section 6417(a) are made correctly. The IRS is required and empowered to issue regulations to achieve this goal under §§ 6417(d)(5) and (h).
- 15. 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).
- 16. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS**
A notice of proposed rulemaking (NPRM) was published on November 20, 2024, at 89 FR 91617, soliciting comments. Substantive comments will be addressed in the final rule.
- 17. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**
No payment or gift has been provided to any respondents.
- 18. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**
Generally, tax returns and tax return information are confidential as required by 26 USC 6103.
- 19. JUSTIFICATION OF SENSITIVE QUESTIONS**
These are recordkeeping requirements. There is no Personally Identifiable Information (PII) is being collected by IRS. Therefore, this collection is not impacted by the Privacy Act and does not require a Privacy Impact Assessment (PIA) or System of Records Notice (SORN).

20. ESTIMATED BURDEN OF INFORMATION COLLECTION and
21. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

The proposed regulations would affect unincorporated organizations that elect out of subchapter K in connection with an election under section 6417, as well as the members of such organizations. Data is not readily available about these organizations. To arrive at the burden estimate, IRS identified several comparable groups of entities, including (1) the number of e-filers of Form 1065 identified as having made a section 761(a) election in recent years (which ranged from 101-135 from taxable years 2020-2023), (2) the total number of partnerships in industries with relevant NAICS codes (under 1,200 in 2022, of which fewer than 25 had partners who filed a Form 990, 990-EZ, 990-T, or 990-PF), and (3) the estimated number of respondents to the final regulations for section 6417 (20,000). IRS determined that the number of responses per year as a result of the new requirement would likely be a small fraction of the total number of respondents to the section 6417 regulations, given that those regulations apply to all entities that make a section 6417 election, rather than just those who make the election with respect to property directly held by an unincorporated organization, make a section 761(a) election with respect to the unincorporated organization, and transfer their interest in the unincorporated organization. Based on this data, IRS estimates that the total number of affected entities could be 1,000. IRS estimates that the wage rate for the respondents could be from \$37.50 - \$102.08 per hours, with a mean wage of \$58.50.

The burden estimate is as follows:

<u>Authorities</u>	<u>CFR</u>	<u>Number of Respondents</u>	<u>Hours per Response</u>	<u>Total Hours</u>	<u>Monetized Burden Cost</u>
26 U.S.C. §761(a)	26 CFR § 1.761-2(a)(4)(iv)	1,000	1	1,000	\$58,500
	Totals	1,000		1,000	

22. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no cost to the Federal government for these recordkeeping requirements.

23. REASONS FOR CHANGE IN BURDEN

These recordkeeping requirements are a new collection of information.

24. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

25. 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 OMB approval and obtain a new expiration date before the old one expires.

26. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.