

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

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Regulations under Section 1441, 1442, and 1443 of the Internal Revenue Code have changed 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. 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. 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.

The IRS EW-8 MOU Program, a collaborative process between the withholding agent and IRS, is open to all withholding agents. 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. The IRS EW-8 MOU Program provides withholding agents with the opportunity to coordinate the development and improvement of their EW-8 systems with the IRS and to obtain an EW-8 MOU. The goal of this process is to provide withholding agents with feedback concerning the sufficiency of their electronic system and provide withholding agents with assurances that their system meets the requirements of Treasury regulations. An EW-8 MOU is a document that details the extent of the IRS' approval of a

specific EW-8 system.

On May 13, 2019, REG-105476-18 (84 FR 21198) was released to the public. This document contains proposed regulations implementing certain sections of the Internal Revenue Code, including sections added to the Internal Revenue Code by the Tax Cuts and Jobs Act, that relate to the withholding of tax and information reporting with respect to certain dispositions of interests in partnerships engaged in the conduct of a trade or business within the United States. The proposed 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 the conduct of a trade or business within the United States, and persons that acquire those interests. The proposed regulations also affect partnerships that, directly or indirectly, have foreign persons as partners.

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

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 Service.

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-105476-18), released May 13, 2019 (84 FR 21198), provided for written or electronic comments. Any comments and requests for a public hearing had to be received by July 12, 2019. A summary of these comments or requests will be included with the release of any final regulations.

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**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "insert (PIA) Title(s)e.g. " Information Returns Master File (IRMF) " , "Informant Claims Examination (ICE)" System and Privacy Act System of Records Notices (SORN) has been issued for these systems under Treasury/IRS insert SORN number and title(s), e.g. 24.030-Customer Account Data Engine Individual Master File; Treas/IRS IRS 42.017 International Enforcement Program Information File, Treas/IRS 42.021 Compliance Programs and Projects Files. The Internal Revenue Service PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

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**

The burden estimate is as follows:



The collection of information in proposed section 1.1446(f)-2(b)(7) is provided by the transferor by submitting a certification and Form W-8BEN or W-8BEN-E to the transferee and is optional. The information will be used by the transferor to determine whether an exception to withholding applies based on an income tax treaty.

The information in proposed section 1.1446(f)-2(c)(2)(iv) (C) by the transferor to the transferee is provided on Form W-8IMY and is optional. This information will be used by the transferee to determine the modified amount realized.

The collection of information provided in proposed section 1.1446(f)-4(a)(2)(i) from certain U.S. branches of foreign persons and qualified intermediaries to the broker that effected the transfer of an interest described in section 864(c)(8) and proposed section 1.1446(f)-4 will be provided on Form W-8IMY. This information will be used by the broker to determine its withholding obligation under section 1446(f)(1) and proposed § 1.1446(f)-4.

The collection of information in proposed section 1.1446(f)-4(b)(6) is provided by the transferor by submitting a certification and Form W-8BEN or W-8BEN-E to the broker and is optional. The information will be used by the broker to determine whether an exception to withholding applies based on an income tax treaty.

The information in proposed section 1.1446(f)-4(c)(2)(ii) (C) by the transferor to the broker is provided on Form W-8IMY and is optional. This information will be used by the broker to determine the modified amount realized.

Data for Forms W-8BEN, W-8BEN-E, and W-8IMY represent preliminary estimates of the total number of interests in partnerships, other than publicly traded partnership interests, engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons.

This will increase the Form W-8BEN estimated returns by 70,000 and the estimated annual burden by 502,600 hours. The Form W-8BEN-E estimated returns will also be 70,000 and the estimated annual burden by 1,851,500 hours. For the

Form W-8IMY the increase in burden will be 70,000 responses and an estimated burden increase of 1,811,600 hours. Forms will be updated in the next revision cycle.

	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	3,390,640	210,000 0	0	0 0	0 0	3,180,640
Annual Time Burden (Hr)	29,291,380	4,165,700 0	0	0 0	0 0	25,125,680

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

We believe 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 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

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 if 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.

