

Supporting Statement
Internal Revenue Service
TD 9734 (REG-120282-10) and Form 1042, Form 1042-S, and Form 1042-T
Dividend Equivalents from Sources within the United States
OMB Control Number 1545-0096

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

On March 18, 2010, the HIRE Act, Pub. L. No. 111-147, 124 Stat. 71 (2010) was enacted. The HIRE Act added new § 871(m) to the Internal Revenue Code, which provides that certain dividend equivalent payments are treated as U.S.-source dividends that are FDAP payments. Sections 1441 and 1442 require payers of FDAP to nonresident aliens, foreign partnerships, and foreign corporations to deduct and withhold this tax. Withholding agents use Form 1042 to report tax withheld at source and deposited for foreign payees, if such withholdings are reported to the payee on Form 1042-S. Form 1042-S is an information return that withholding agents use to report certain income and tax withheld at the source to foreign payees and Form 1042-T is used to transmit Forms 1042-S to the IRS. This final regulation clarifies how withholding agents must determine the amount of a dividend equivalent and collect information regarding those payments made to foreign taxpayers. The information needed for this final regulation is similar to the information being collected with respect to other types of FDAP payments.

These final regulations also provide rules that relate to a collection of information pursuant to the Qualified Intermediary Agreement (QI agreement). These regulations provide that the QI agreement in Rev. Proc. 2014-39 will be revised to accommodate qualified intermediaries who will be treated as qualified derivatives dealers (QDD). To become a QDD, a foreign person must amend or enter into a QI agreement with the IRS, as described in Rev. Proc. 2014-39. A foreign person who becomes a QDD will be required to collect information and perform information reporting; this collection is voluntary for entities seeking the benefits of the QDD regime. The requirements of the QDD regime were incorporated into the QI agreement that was most recently published in Rev. Proc. 2017-15. The addition of the QDD regime was made in response to public comments. The burden associated with the QI agreement is reflected in OMB # 1545-1597.

With respect to section 1.871-15(p), any party to a section 871(m) transaction may request information regarding that transaction from another party to that transaction. There is no prescribed form required. Any statement required by section 1.871-15(p) may be provided in paper or electronic form. The rule allows taxpayers to share information in any reasonable manner. See 1.815-15(p)(3)(i) (providing that information may be provided “(A) By telephone, and confirmed in writing; (B) By written statement sent by first class mail to the address provided by the requesting party; (C) By electronic publication available to all persons

entitled to request information; or (D) By any other method agreed to by the parties, and confirmed in writing.”).

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 IRS to ensure compliance with the U.S. withholding system under the 1441 and 1442 regulations. The collection of information also will be used by withholding agents to determine the amount, if any, of U.S. withholding tax to collect and pay.

3. **USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998. Forms 1042, 1042-S, and 1042-T can be filled out and filed online.

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**

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6). es. This certification is based on the fact that few, if any, small entities will be affected by these regulations. The regulations will primarily affect multinational financial institutions, which tend to be larger businesses, and foreign entities. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

The requirements of the collections of information required in the final regulations described in section 1 above are necessary to determine when withholding at source requirements apply, which, in turn, relates to when the payments subject to withholding are to be reflected on Forms 1042 and 1042-S. As a result, less frequent collections of information were not deemed feasible based on the requirements of the final regulations.

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 following systems:

“Business Master File (BMF)”

“Withholding & Refund (W&R)”

“Payer Master File (PMF)”

“FATCA Withholding & Refund, FATCA W&R”

“International Compliance Management Model, ICMM”

Privacy Act System of Records notice (SORN) have been issued for these systems under:

- IRS 24.046-Customer Account Data Engine Business Master File
- IRS 2.017-International Enforcement Program File
- IRS 2.021-Compliance Programs and Project Files
- IRS 24.030-Customer Account Data Engine Individual Master File
- IRS 34.037-IRS Audit Trail and Security Records System
- IRS 22.026-Form 1042 Name Directory

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

The information will be used by the IRS to ensure compliance with the U.S. withholding system under the 1441 and 1442 regulations. The collection of information also will be used by approximately 3,617,200 withholding agents to determine the amount, if any, of U.S. withholding tax to collect and pay totaling 2,949,074 hours of burden.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
IRC 1441 1442	Form 1042	36,400	1	36,400	18.05	657,020
IRC 1441 1442	Form 1042-S	3,531,300	1	3,531,300	.58	2,048,154
IRC 1441 1442	Form 1042-T	19,500	1	19,500	.20	3,900
IRC 1441 1442	REG-120282-10	30,000	1	30,000	8.00	240,000
Totals		3,617,200		3,617,200		2,949,074

With respect to the withholding agreements pursuant to Rev. Proc. 2014-39, we estimate that the QDD requirement will affect 1,000 respondents (this total includes new qualified intermediaries and existing qualified intermediaries amending an existing agreement to become a QDD) and is estimated to take 1 hour for a total of 1,000. This burden is currently being reflected in OMB #1545-1597.

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

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>		<u>Printing and Distribution</u>		<u>Government Cost Estimate per Product</u>
Form 1042	35,750	+	3,717	=	40,411
Form 1042 Instructions	5,958	+	1,243	=	7,202
Form 1042-S	35,750	+	0	=	35,750
Form 1042-S Instructions	5,958	+	0	=	5,958
Form 1042-T	11,917	+	0	=	11,917
Form 1042-T Instructions	11,917	+	0	=	11,917
Grand Total	107250		4960		113155
Table costs are based on 2018 actuals obtained from IRS Chief Financial Office and Media and Publications					
* New product costs will be included in the next collection update.					

15. REASONS FOR CHANGE IN BURDEN

REG-105476-18 (84 FR 21198), proposes 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 information in proposed § 1.1446(f)–4(d) will be provided on Forms 1042 and 1042–S submitted by the broker to the IRS and is mandatory if the broker withholds tax under section 1446(f)(1) or if it applies the exception described in proposed § 1.1446(f)–4(b)(6). These forms will be used to report and pay any tax under section 1446(f)(1) and proposed § 1.1446(f)–4.

The information in proposed § 1.1446(f)–4(e)(2) provided by the transferor to the IRS will be used to claim a credit for an amount withheld under section 1446(f)(1) and proposed § 1.1446(f)–4, and will be satisfied by submitting Form 1042–S with an income tax return (Form 1040NR or 1120–F) to the IRS.

Data for Form 1042–S represent preliminary estimates of the total number of interests in publicly traded partnership engaged in the conduct of a trade or business in the United States that will be transferred by foreign persons. This will increase the 1042-S estimated returns by 6,000 and the estimated annual burden by 3,480 hours. Forms will be updated in the next revision cycle.

	Requested	Program Change	Program Change	Change Due to	Change Due to	Previously
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		Due to New Statute	Due to Agency Discretion	Adjustment in Agency Estimate	Potential Violation of the PRA	Approved
Annual Number of Responses	3,617,200	6,000 0	0	0 0	0 0	3,611,200
Annual Time Burden (Hr)	2,949,074	3,480 0	0	0 0	0 0	2,945,594

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 regulation 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.