

Description: Through the Native American CDFI Assistance Program, the CDFI Fund will provide technical assistance to CDFIs already serving Native American communities as well as technical assistance to help Native American Communities form new CDFIs.

Estimated Total Burden Hours: 8,000 hours.

CDFI Fund Clearance Officer: Michael Jones, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (202) 622-2461.

OMB Reviewer: Shagufta Ahmed, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; (202) 395-7873.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011-1517 Filed 1-24-11; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE, Form 1040A, Form 1040EZ, Form 1040NR, Form 1040NR-EZ, Form 1040X, and All Attachments to These Forms

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by individual taxpayers: Form 1040, U.S. Individual Income Tax Return, and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR-EZ; Form 1040X; and all attachments to these forms (*see* the Appendix to this notice).

DATES: Written comments should be received on or before March 28, 2011 to be assured of consideration.

ADDRESSES: Direct all written comments to The OMB Unit, SE:W:CAR:MP:T:T:SP, Internal Revenue

Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information should be directed to Chief, RAS:R:TAM, NCA 7th Floor, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

PRA Approval of Forms Used by Individual Taxpayers

Under the PRA, OMB assigns a control number to each "collection of information" that it reviews and approves for use by an agency. The PRA also requires agencies to estimate the burden for each collection of information. Burden estimates for each control number are displayed in (1) PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) OMB's database of approved information collections.

Taxpayer Burden Model

The Individual Taxpayer Burden Model (ITBM) estimates burden experienced by individual taxpayers when complying with Federal tax laws and incorporates results from a survey of tax year 2007 individual taxpayers, conducted in 2008 and 2009. The approach to measuring burden focuses on the characteristics and activities undertaken by individual taxpayers in meeting their tax return filing obligations.

Burden is defined as the time and out-of-pocket costs incurred by taxpayers in complying with the Federal tax system and are estimated separately. Out-of-pocket costs include any expenses incurred by taxpayers to prepare and submit their tax returns. Examples include tax return preparation fees, the purchase price of tax preparation software, submission fees, photocopying costs, postage, and phone calls (if not toll-free).

The methodology distinguishes among preparation method, taxpayer activities, taxpayer type, filing method, and income level. Indicators of tax law and administrative complexity, as reflected in the tax forms and instructions, are incorporated into the model.

Preparation methods reflected in the model are as follows:

- Self-prepared without software,
- Self-prepared with software, and
- Use of a paid preparer or tax professional.

Types of taxpayer activities reflected in the model are as follows:

- Recordkeeping,

- Tax planning,
- Gathering tax materials,
- Use of services (IRS and other),
- Form completion, and
- Form submission (electronic and paper).

Taxpayer Burden Estimates

Summary level results using this methodology are presented in Table 1 below. The data shown are the best forward-looking estimates available for income tax returns filed for tax year 2010. Note that the estimates presented in this table differ from those published in the tax form instructions and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

Table 1 shows burden estimates by form type and type of taxpayer. Time burden is further broken out by taxpayer activity. The largest component of time burden for all taxpayers is recordkeeping, as opposed to form completion and submission. In addition, the time burden associated with form completion and submission activities is closely tied to preparation method.

Both time and cost burdens are national averages and do not necessarily reflect a "typical" case. For instance, the average time burden for all taxpayers filing a 1040, 1040A, or 1040EZ is estimated at 19 hours, with an average cost of \$250 per return. This average includes all associated forms and schedules, across all preparation methods and all taxpayer activities. Taxpayers filing Form 1040 have an expected average burden of about 24 hours and \$310; the average burden for taxpayers filing Form 1040A is about 9 hours and \$130; and the average for Form 1040EZ filers is about 7 hours and \$60. However, within each of these estimates, there is significant variation in taxpayer activity. Similarly, tax preparation fees vary extensively depending on the taxpayer's tax situation and issues, the type of professional preparer, and the geographic area.

The estimates include burden for activities up through and including filing a return but do not include burden associated with post-filing activities. However, operational IRS data indicate that electronically prepared and e-filed returns have fewer arithmetic errors, implying a lower associated post-filing burden.

Proposed PRA Submission to OMB

Title: U.S. Individual Income Tax Return.

OMB Number: 1545-0074.

Form Numbers: Form 1040 and Schedules A, B, C, C-EZ, D, D-1, E, EIC, F, H, J, R, and SE; Form 1040A; Form 1040EZ; Form 1040NR; Form 1040NR-EZ, Form 1040X; and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by individuals to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistical use.

Current Actions: Changes in aggregate compliance burden estimates are explained in terms of three major components: Technical Adjustments, Statutory Changes, and Agency (IRS) Discretionary Changes and are presented in Table 2 below.

Technical Adjustments

Technical changes include refinements to the modeling methodology using the new survey data as well as the effects of the economic recovery and an increase in the number of taxpayers projected.

Statutory Changes

The primary drivers for the statutory changes are newly enacted legislation along with the expiration of many provisions of the American Recovery and Reinvestment Act of 2009. New legislation includes the Small Business Jobs Act of 2010; the Patient Protection

and Affordable Care Act; the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010; and related legislations.

IRS Discretionary Changes

IRS discretionary changes include redesign of Form 1040X, fees associated with new paid professional licensing requirements, changes in the delivery of form instructions and publications to taxpayers, and delayed filing resulting from late legislation.

These changes have resulted in an overall increase of 270,000,000 total hours and \$650,000,000 in taxpayer burden previously approved by OMB.

Type of Review: Revision of currently approved collections.

Affected Public: Individuals or households.

Estimated Number of Respondents: 146,700,000.

Total Estimated Time: 2.701 billion hours (2,701,000,000 hours).

Estimated Time per Respondent: 19 hours.

Total Estimated Out-of-Pocket Costs: \$35.193 billion (\$35,193,000,000).

Estimated Out-of-Pocket Cost per Respondent: \$250.

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.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: January 14, 2011.

Yvette Lawrence,

IRS Supervisory Tax Analyst.

TABLE 1—ESTIMATED AVERAGE TAXPAYER BURDEN FOR INDIVIDUALS BY ACTIVITY

[The average time and costs required to complete and file Form 1040, Form 1040A, Form 1040EZ, their schedules, and accompanying forms will vary depending on individual circumstances. The estimated averages are.]

Primary form filed or type of taxpayer	Percentage of returns	Average time burden (hours)						Average cost (dollars)**
		Total time*	Record keeping	Tax planning	Form completion	Form submission	All other	
All taxpayers	100	19.0	9.0	2.0	4.0	1.0	3.0	\$250
Primary forms filed:								
1040	70	24.0	11.0	3.0	5.0	1.0	3.0	310
1040A	19	9.0	3.0	1.0	2.0	1.0	1.0	130
1040EZ	11	7.0	2.0	1.0	2.0	1.0	1.0	60
Nonbusiness***	69	12.0	5.0	2.0	3.0	1.0	2.0	160
Business***	31	34.0	18.0	4.0	6.0	1.0	4.0	430

* Detail may not add to total time due to rounding.

** Dollars rounded to the nearest \$10.

*** You are considered a "business" filer if you file one or more of the following with Form 1040: Schedule C, C-EZ, E, or F or Form 2106 or 2106-EZ. You are considered a "nonbusiness" filer if you did not file any of those schedules or forms with Form 1040 or if you file Form 1040A or 1040EZ.

Note: Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

TABLE 2—ICB ESTIMATES FOR THE 1040/A/EZ/NR/NR–EZ/X SERIES OF RETURNS AND SUPPORTING FORMS AND SCHEDULES [FY 2011]

	Previously approved FY10	Program change due to adjustment	Program change due to new legislation	Program change due to agency	FY11
Number of Taxpayers	143,400,000	3,300,000	-	-	146,700,000
Burden in Hours	2,431,000,000	292,000,000	(25,000,000)	3,000,000	2,701,000,000
Burden in Dollars	31,543,000,000	3,986,000,000	(370,000,000)	34,000,000	35,193,000,000

Note: Estimates presented in this table differ from those published in the tax forms and publications. Revised estimates presented herein reflect legislation approved after the IRS Forms and Publications print deadline.

APPENDIX

Forms	Filed by individuals and others	Title
673		Statement for Claiming Exemption from Withholding on Foreign Earned Income Eligible for the Exclusions Provided by Section 911.
926	X	Return by a U.S. Transferor of Property to a Foreign Corporation.
970	X	Application To Use LIFO Inventory Method.
972	X	Consent of Shareholder To Include Specific Amount in Gross Income.
982	X	Reduction of Tax Attributes Due To Discharge of Indebtedness (and Section 1082 Basis Adjustment).
1040		U.S. Individual Income Tax Return.
1040 SCH A		Itemized Deductions.
1040 SCH B		Interest and Ordinary Dividends.
1040 SCH C	X	Profit or Loss From Business.
1040 SCH C–EZ	X	Net Profit From Business.
1040 SCH D		Capital Gains and Losses.
1040 SCH D–1		Continuation Sheet for Schedule D.
1040 SCH E	X	Supplemental Income and Loss.
1040 SCH EIC		Earned Income Credit.
1040 SCH F	X	Profit or Loss From Farming.
1040 SCH H	X	Household Employment Taxes.
1040 SCH J		Income Averaging for Farmers and Fishermen.
1040 SCH R		Credit for the Elderly or the Disabled.
1040 SCH SE		Self-Employment Tax.
1040 A		U.S. Individual Income Tax Return.
1040ES (NR)		U.S. Estimated Tax for Nonresident Alien Individuals.
1040ES (PR)		Estimated Federal Tax on Self Employment Income and on Household Employees (Residents of Puerto Rico).
1040 ES–OCR–V		Payment Voucher.
1040 ES–OTC		Estimated Tax for Individuals.
1040 EZ		Income Tax Return for Single and Joint Filers With No Dependents.
1040 NR		U.S. Nonresident Alien Income Tax Return.
1040 NR–EZ		U.S. Income Tax Return for Certain Nonresident Aliens With No Dependents.
1040 V		Payment Voucher.
1040 V–OCR–ES		Payment Voucher.
1040 X		Amended U.S. Individual Income Tax Return.
1045	X	Application for Tentative Refund.
1116	X	Foreign Tax Credit.
1127	X	Application For Extension of Time For Payment of Tax.
1128	X	Application To Adopt, Change, or Retain a Tax Year.
1310		Statement of Person Claiming Refund Due a Deceased Taxpayer.
2106		Employee Business Expenses.
2106 EZ		Unreimbursed Employee Business Expenses.
2120		Multiple Support Declaration.
2210	X	Underpayment of Estimated Tax by Individuals, Estates, and Trusts.
2210 F	X	Underpayment of Estimated Tax by Farmers and Fishermen.
2350		Application for Extension of Time To File U.S. Income Tax Return.
2350 SP		Solicitud de Prórroga para Presentar la Declaración del Impuesto Personal sobre el Ingreso de los Estados Unidos.
2439	X	Notice to Shareholder of Undistributed Long-Term Capital Gains.
2441		Child and Dependent Care Expenses.
2555		Foreign Earned Income.
2555 EZ		Foreign Earned Income Exclusion.
2848	X	Power of Attorney and Declaration of Representative.
3115	X	Application for Change in Accounting Method.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
3468	X	Investment Credit.
3520	X	Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
3800	X	General Business Credit.
3903		Moving Expenses.
4029		Application for Exemption From Social Security and Medicare Taxes and Waiver of Benefits.
4070 A		Employee's Daily Record of Tips.
4136	X	Credit for Federal Tax Paid On Fuels.
4137		Social Security and Medicare Tax on Unreported Tip Income.
4255	X	Recapture of Investment Credit.
4361		Application for Exemption From Self-Employment Tax for Use by Ministers, Members of Religious Orders, and Christian Science Practitioners.
4562	X	Depreciation and Amortization.
4563		Exclusion of Income for Bona Fide Residents of American Samoa.
4684	X	Casualties and Thefts.
4797	X	Sales of Business Property.
4835		Farm Rental Income and Expenses.
4852	X	Substitute for Form W-2, Wage and Tax Statement or Form 1099-R, Distributions From Pension Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.
4868		Application for Automatic Extension of Time To File Individual U.S. Income Tax Return.
4868 SP		Solicitud de Prórroga Automática para Presentar la Declaración del Impuesto sobre el Ingreso Personal de los Estados Unidos.
4952	X	Investment Interest Expense Deduction.
4970	X	Tax on Accumulation Distribution of Trusts.
4972	X	Tax on Lump-Sum Distributions.
5074		Allocation of Individual Income Tax To Guam or the Commonwealth of the Northern Mariana Islands (CNMI).
5213	X	Election To Postpone Determination as To Whether the Presumption Applies That an Activity Is Engaged in for Profit.
5329		Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts.
5405		First-Time Homebuyer Credit.
5471	X	Information Return of U.S. Persons With Respect To Certain Foreign Corporations.
5471 SCH J	X	Accumulated Earnings and Profits (E&P) of Controlled Foreign Corporation.
5471 SCH M	X	Transactions Between Controlled Foreign Corporation and Shareholders or Other Related Persons.
5471 SCH O	X	Organization or Reorganization of Foreign Corporation, and Acquisitions and Dispositions of Its Stock.
5695		Residential Energy Credits.
5713	X	International Boycott Report.
5713 SCH A	X	International Boycott Factor (Section 999(c)(1)).
5713 SCH B	X	Specifically Attributable Taxes and Income (Section 999(c)(2)).
5713 SCH C	X	Tax Effect of the International Boycott Provisions.
5754	X	Statement by Person(s) Receiving Gambling Winnings.
5884	X	Work Opportunity Credit.
6198	X	At-Risk Limitations.
6251		Alternative Minimum Tax—Individuals.
6252	X	Installment Sale Income.
6478	X	Credit for Alcohol Used as Fuel.
6765	X	Credit for Increasing Research Activities.
6781	X	Gains and Losses From Section 1256 Contracts and Straddles.
8082	X	Notice of Inconsistent Treatment or Administrative Adjustment Request (AAR).
8275	X	Disclosure Statement.
8275 R	X	Regulation Disclosure Statement.
8283	X	Noncash Charitable Contributions.
8332		Release of Claim to Exemption for Child of Divorced or Separated Parents.
8379		Injured Spouse Claim and Allocation.
8396		Mortgage Interest Credit.
8453		U.S. Individual Income Tax Declaration for an IRS e-file Return.
8582	X	Passive Activity Loss Limitations.
8582 CR	X	Passive Activity Credit Limitations.
8586	X	Low-Income Housing Credit.

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8594	X	Asset Acquisition Statement.
8606		Nondeductible IRAs.
8609-A	X	Annual Statement for Low-Income Housing Credit.
8611	X	Recapture of Low-Income Housing Credit.
8615		Tax for Certain Children Who Have Investment Income of More Than \$1,800.
8621	X	Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.
8621-A	X	Late Deemed Dividend or Deemed Sale Election by a Passive Foreign Investment Company.
8689		Allocation of Individual Income Tax To the Virgin Islands.
8693	X	Low-Income Housing Credit Disposition Bond.
8697	X	Interest Computation Under the Look-Back Method for Completed Long-Term Contracts.
8801	X	Credit for Prior Year Minimum Tax—Individuals, Estates, and Trusts.
8812		Additional Child Tax Credit.
8814		Parents' Election To Report Child's Interest and Dividends.
8815		Exclusion of Interest From Series EE and I U.S. Savings Bonds Issued After 1989.
8818		Optional Form To Record Redemption of Series EE and I U.S. Savings Bonds Issued After 1989.
8820	X	Orphan Drug Credit.
8821	X	Tax Information Authorization.
8822	X	Change of Address.
8824	X	Like-Kind Exchanges.
8826	X	Disabled Access Credit.
8828		Recapture of Federal Mortgage Subsidy.
8829		Expenses for Business Use of Your Home.
8832	X	Entity Classification Election.
8833	X	Treaty-Based Return Position Disclosure Under Section 6114 or 7701(b).
8834	X	Qualified Electric Vehicle Credit.
8835	X	Renewable Electricity and Refined Coal Production Credit.
8838	X	Consent To Extend the Time To Assess Tax Under Section 367—Gain Recognition Statement.
8839		Qualified Adoption Expenses.
8840		Closer Connection Exception Statement for Aliens.
8843		Statement for Exempt Individuals and Individuals With a Medical Condition.
8844	X	Empowerment Zone and Renewal Community Employment Credit.
8845	X	Indian Employment Credit.
8846	X	Credit for Employer Social Security and Medicare Taxes Paid on Certain Employee Tips.
8847	X	Credit for Contributions to Selected Community Development Corporations.
8853		Archer MSAs and Long-Term Care Insurance Contracts.
8854		Initial and Annual Expatriation Information Statement.
8858	X	Information Return of U.S. Persons With Respect to Foreign Disregarded Entities.
8858 SCH M	X	Transactions Between Controlled Foreign Disregarded Entity and Filer or Other Related Entities.
8859		District of Columbia First-Time Homebuyer Credit.
8860	X	Qualified Zone Academy Bond Credit.
8861	X	Welfare-to-Work Credit.
8862		Information to Claim Earned Income Credit After Disallowance.
8863		Education Credits.
8864	X	Biodiesel Fuels Credit.
8865	X	Return of U.S. Persons With Respect To Certain Foreign Partnerships.
8865 SCH K-1	X	Partner's Share of Income, Credits, Deductions, etc.
8865 SCH O	X	Transfer of Property to a Foreign Partnership.
8865 SCH P	X	Acquisitions, Dispositions, and Changes of Interests in a Foreign Partnership.
8866	X	Interest Computation Under the Look-Back Method for Property Depreciated Under the Income Forecast Method.
8873	X	Extraterritorial Income Exclusion.
8874	X	New Markets Credit.
8878		IRS e-file Signature Authorization for Form 4868 or Form 2350.
8878 SP		Autorizacion de firma para presentar por medio del IRS e-file para el Formulario 4868(SP) o el Formulario 2350(SP).

APPENDIX—Continued

Forms	Filed by individuals and others	Title
8879		IRS e-file Signature Authorization.
8879 SP		Autorizacion de firma para presentar la Declaracion por medio del IRS e-file.
8880		Credit for Qualified Retirement Savings Contributions.
8881	X	Credit for Small Employer Pension Plan Startup Costs.
8882	X	Credit for Employer-Provided Childcare Facilities and Services.
8885		Health Coverage Tax Credit.
8886	X	Reportable Transaction Disclosure Statement.
8888		Allocation of Refund (Including Savings Bond Purchases).
8889		Health Savings Accounts (HSAs).
8891		U.S. Information Return for Beneficiaries of Certain Canadian Registered Retirement Plans.
8896	X	Low Sulfur Diesel Fuel Production Credit.
8898		Statement for Individuals Who Begin or End Bona Fide Residence in a U.S. Possession.
8900	X	Qualified Railroad Track Maintenance Credit.
8903	X	Domestic Production Activities Deduction.
8906		Distills Spirits Credit.
8907		Nonconventional Source Fuel Credit.
8908		Energy Efficient Home Credit.
8910		Alternative Motor Vehicle Credit.
8911		Alternative Fuel Vehicle Refueling Property Credit.
8914		Exemption Amount for Taxpayers Housing Midwestern Displaced Individuals.
8915		Qualified Hurricane Retirement Plan Distribution and Repayments.
8917		Tuition and Fees Deduction.
8919		Uncollected Social Security and Medicare Tax on Wages.
8925	X	Report of Employer-Owned Life Insurance Contracts.
8931	X	Agricultural Chemicals Security Credit.
8932	X	Credit for Employer Differential Wage Payments.
9465		Installment Agreement Request.
9465 SP		Solicitud para un Plan de Pagos a Plazos.
Notice 2006-52		
Notice 160920-05		Deduction for Energy Efficient Commercial Buildings.
Pub 972 Tables		Child Tax Credit.
REG-149856-03		Notice of Proposed Rulemaking Dependent Child of Divorced or Separated Parents or Parents Who Live Apart.
SS-4	X	Application for Employer Identification Number.
SS-8	X	Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding.
T (Timber)	X	Forest Activities Schedules.
W-4		Employee's Withholding Allowance Certificate.
W-4 P		Withholding Certificate for Pension or Annuity Payments.
W-4 S		Request for Federal Income Tax Withholding From Sick Pay.
W-4 SP		Certificado de Exencion de la Retencion del Empleado.
W-4 V		Voluntary Withholding Request.
W-7		Application for IRS Individual Taxpayer Identification Number.
W-7 A		Application for Taxpayer Identification Number for Pending U.S. Adoptions.
W-7 SP		Solicitud de Numero de Identificacion Personal del Contribuyente del Servicio de Impuestos Internos.

<p>Forms Removed from this ICR:</p> <p>W-5/W-5SP</p> <p>1040 ES/V OCR</p> <p>4070</p> <p>Forms Added to this ICR:</p> <p>W-7(COA)</p> <p>5884-B</p>	<p>Reason for removal:</p> <p>AEIC is not valid for tax years beginning after 12/31/2010. P.L. 111-226, sec. 219.</p> <p>Obsolete.</p> <p>Obsolete.</p> <p>Justification for Addition:</p> <p>T.D. 8671, 1996-1 C.B.314.</p> <p>P.L. 111-147, section 102.</p>
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DEPARTMENT OF VETERANS AFFAIRS

Summary of Precedent Opinions of the General Counsel

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Office of General Counsel involving Veterans' benefits under laws administered by VA. This interpretation is considered precedential by VA and will be followed by VA officials and employees in future claim matters involving the same legal issues. The summary is published to provide the public, and, in particular, Veterans' benefits claimants and their representatives, with notice of VA's interpretations regarding the legal matters at issue.

FOR FURTHER INFORMATION CONTACT: Susan P. Sokoll, Law Librarian, Department of Veterans Affairs, 810 Vermont Avenue, NW. (026H), Washington, DC 20420, (202) 461-7623.

SUPPLEMENTARY INFORMATION: A VA regulation at 38 CFR 2.6(e)(8) delegates to the General Counsel the power to designate an opinion as precedential and 38 CFR 14.507(b) specifies that precedential opinions involving Veterans' benefits are binding on VA officials and employees in subsequent matters involving the legal issue decided in the precedent opinion. The interpretation of the General Counsel on legal matters, contained in such opinions, is conclusive as to all VA officials and employees, not only in the matter at issue, but also in future adjudications and appeals involving the same legal issues, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist Veterans' benefits claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above or by accessing the opinions on the Internet at <http://www4.va.gov/ogc/precedentopinions.asp>.

VAOPGCPREC 5-2010

Questions Presented:

Does 38 U.S.C. 3677(c)(7), which provides that "[n]o course of training will be considered bona fide if given to an eligible veteran or person who is already qualified by training and experience for the job" preclude approval of an on-the-job training (OJT) program for employees of State approving agencies (SAA) who are identified by contract as professional staff members responsible for approving programs of education or training?

Held:

Section 3677(c)(7) precludes approval of an OJT program for SAA employees who are identified by contract as professional staff members responsible for approving programs of education or training are already qualified by training and experience for the job and, therefore, are not eligible for participation in an OJT program, it is not necessary to address the additional questions presented in B1 and B2 of your request.

Effective Date: September 10, 2010

VAOPGCPREC 6-2010

Questions Presented:

a. How does the June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" affect Department of Veterans Affairs (VA) benefit payments?

b. Does the Presidential Memorandum override in any way the procedural protections that are provided for in VA law and regulations, particularly the notice to claimants and beneficiaries and the opportunity for them to be heard that is afforded in connection with adjudicative actions denying their claims or reducing or discontinuing their current awards?

c. Does the Computer Matching and Privacy Protection Act of 1988 apply to the database matching requirements of the Presidential memorandum?

Held:

a. The June 18, 2010, Presidential Memorandum on Enhancing Payment Accuracy Through a "Do Not Pay List" requires Federal agencies, including the Department of Veterans Affairs (VA), to review pre-payment and pre-award

procedures and ensure that a thorough review of available databases with relevant information on eligibility occurs before the release of Federal funds. The Presidential Memorandum relates only to the procedures VA must follow before making benefit payments or awards, not the statutory or regulatory criteria for determining eligibility for, or entitlement to, any benefit.

b. VA would treat the information obtained from the database review pursuant to the Presidential Memorandum in the same manner as information obtained from other sources. For a claimant denied an award or payment as a result of information disclosed in a database review, VA must summarize the information obtained through the database review in its decision notification and any statement of the case. In the case of information obtained from the database review that would result in the reduction or discontinuance of, or otherwise adversely affect, a current award of compensation, pension, or dependency and indemnity compensation, with certain exceptions, VA must, before issuing a decision, advise the beneficiary of the information received, the proposed effect that the information would have on the beneficiary's VA benefits, and the beneficiary's opportunity to submit evidence or have a hearing. Among the exceptions is that VA will send written notice to the beneficiary at the same time it takes an adverse action if the evidence reasonably indicates that a beneficiary is deceased.

c. The Computer Matching and Privacy Protection Act of 1988 applies to the database matching requirements of the Presidential Memorandum to the extent the databases that make up the Do Not Pay List are used to verify eligibility for, or entitlement to, VA benefits by virtue of a computerized comparison of two automated systems of records.

Effective Date: September 12, 2010.

Dated: January 19, 2011.

By Direction of the Secretary.

Will A. Gunn,

General Counsel, Department of Veterans Affairs.

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