

**SUPPORTING STATEMENT**  
**Form 8938, Statement of Foreign Financial Assets**

1. **CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

**P.L. 111-147 (H.R. 2847) “Hiring Incentives to Restore Employment Act,” Date of Enactment (DOE) – March 18, 2010**

**TITLE V—OFFSET PROVISIONS**

**Subtitle A—Foreign Account Tax Compliance**

**Sec 511 Disclosure of Information with Respect to Foreign Financial Assets**

Sec 511 creates new Code section 6038D, which provides that any individual who, during any taxable year, holds any interest in a specified foreign financial asset shall attach to such person's return of tax imposed by subtitle A of the Code for such taxable year the information described in new Code section 6038D(c) with respect to each such asset if the aggregate value of all such assets exceeds \$50,000 (or such higher dollar amount as the Secretary may prescribe).

The information described in new Code section 6038D(c) with respect to any asset is:

- (1) in the case of any account, the name and address of the financial institution in which such account is maintained and the number of such account;
- (2) in the case of any stock or security, the name and address of the issuer and such information as is necessary to identify the class or issue of which such stock or security is a part;
- (3) in the case of any other instrument, contract, or interest—
  - (A) such information as is necessary to identify such instrument, contract, or interest, and
  - (B) the names and addresses of all issuers and counterparties with respect to such instrument, contract, or interest; and
- (4) the maximum value of the asset during the taxable year.

If any individual fails to furnish the information described in new Code section 6038D(c) with respect to any taxable year at the time and in the manner described in new Code section 6038D(a), such person pays a penalty of \$10,000. If any failure described in new Code section 6038D(d)(1) continues for more than 90 days after the day on which the Secretary mails notice of such failure to the individual, such individual pays a penalty (in addition to the penalties under new Code section 6038D(d)(1)) of \$10,000 for each 30-day period (or fraction thereof) during which such failure continues after the expiration of such 90-day period. The penalty imposed under new Code section 6038D(2) with respect to any failure does not exceed \$50,000.

2. USE OF DATA

Indicate how, by whom, and for what purpose the information is to be used.

The collection of information in new Form 8938 will be the means by which taxpayers will comply with self-reporting obligations imposed under section 6038D with respect to foreign financial assets.

The IRS will use the information to determine whether to audit this taxpayer or transaction, including whether to impose penalties. The information is also required to begin the running of the statute of limitations under section 6501.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The Act mandates that this form be available for electronic filing. The Act is effective for taxable years beginning after March 18, 2010, and, therefore will impact the 2012 filing season for the 2011 taxable years.

4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

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

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

This request is being submitted as an emergency request for clearance. Upon approval by OMB, we will publish a notice in the *Federal Register* to solicit public comments on Form 8938.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

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

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Form	Number of <u>Responses</u>	Hours per <u>Response</u>	Total <u>Hours</u>
8938	350,000	1.08	378,000

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

This is a new form.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attached.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

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.