

## **SUPPORTING STATEMENT**

### 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

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

Electronic filing is going to be provided because electronic filing is appropriate for the collection of information.

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

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these

meetings, there is an opportunity for those attending to make comments regarding (Form 8938).

In response to the Federal Register notice (75 FR 67166), dated November 1, 2010, we received numerous comments relating to Form 8938. These comments have been forwarded to the originating offices for consideration and feedback. A summation of the comments and their responses' have been provided within the supplementary material of this submission.

On April 11, 2011, a meeting was held to provide representatives of the American Citizens (ACA) Information of this meeting is supplied via an email within the supplementary material of this submission.

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.

9. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

10. ESTIMATED BURDEN OF INFORMATION COLLECTION

| Form | Number of Responses | Hours per Response | Total Hours. |
|------|---------------------|--------------------|--------------|
| 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.

11. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register Notice dated November 1, 2010, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

12. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

13. REASONS FOR CHANGE IN BURDEN

There were no changes made to the burden previously reported to OMB. We are making this submission to renew the OMB approval

14. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

15. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

See attached.

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

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.