

SUPPORTING STATEMENT

Internal Revenue Service
AJCA Modifications to the
Section 6112 Regulations
OMB # **1545-1686**

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 6112, as amended by the American Jobs Creation Act of 2004, P.L. 108–357, 188 Stat. 1418, requires that each material advisor with respect to any reportable transaction shall maintain (in such manner as the Secretary may by regulations prescribe) a list identifying each person with respect to whom the advisor acted as a material advisor with respect to the transaction and containing other information as the Secretary may, by regulations, require.

Under § 301.6112–1(a), material advisors are required to prepare and maintain a list as described in the regulations and are required to furnish the list to the IRS upon written request by the IRS.

Revenue Procedure 2008-20 provides guidance relating to the obligation of material advisors to prepare and maintain lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This revenue procedure allows material advisors to use a form (Form 13976), available on the Internal Revenue Service website for maintaining the itemized statement component of the list under § 6112. See section 301.6112–1(b)(3)(i) of the Procedure and Administration Regulations.

The form is not required to be used by a material advisor for that material advisor to comply with the requirements of § 301.6112–1, but is offered as an option for maintaining the list.

2. USE OF DATA

The information will be used to administer and enforce section 6112 of the Internal Revenue Code. Responses to the collections of information are required by the IRS to monitor compliance with the tax laws by giving the Treasury Department earlier notification of transactions that may not comport with the tax laws.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide electronic filing because electronic filing is not appropriate for the collection of information in this submission because of the evaluative nature of the determination..

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

There are no small entities affected by this collection.

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

If any component of the list is not in a form that enables the IRS to determine without undue delay or difficulty the required information, the material advisor will not be considered to have complied with the list maintenance provisions in section 6112 and regulation section 301.6112-1.

Failure to collect and retain the information outlined in the regulations will complicate the taxpayer's ability to receive the proper tax credit and the IRS's ability to verify its' accuracy and hinder the IRS from meeting its mission.

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

On November 1, 2006, the IRS and Treasury Department issued a notice of proposed rulemaking and temporary and final regulations under sections 6011, 6111, and 6112 (REG–103038–05, 2006–49 I.R.B. 1049, REG–103039–05, 2006–49 I.R.B. 1057, REG–103043–05, 2006–49 I.R.B 1063, T.D. 9295, 2006–49 I.R.B. 1030) (the November 2006 regulations). The November 2006 regulations were published in the Federal Register (71 FR 64488, 71 FR 64496, 71 FR 64501, 71 FR 64458) on November 2, 2006.

The IRS and Treasury Department received written public comments responding to the proposed regulations and held a public hearing regarding the proposed rules on March 20, 2007. After consideration of the comments received and comments made at the hearing, the proposed regulations are adopted as revised by TD 9352. These final regulations generally retain the provisions of the proposed regulations but include some modifications based on recommendations in the public comments.

On September 10, 2009, the IRS and Treasury Department issued a notice of proposed rulemaking under sections 6011, 6111, and 6112 (REG–136563–07) (the September 2009 proposed regulations). The September 2009 proposed regulations were published in the Federal Register (74 FR 46705) on September 11, 2009.

In response to the September 2009 proposed regulations, the IRS and Treasury Department received two written public comments. A public hearing was not requested. After consideration of the comments received, the IRS and Treasury Department are adopting the proposed regulations without change in TD 9556 (76 FR 70340) on November 13, 2011.

In response to the *Federal Register* notice dated October 20, 2017 (82 FR 48899), we received no comments during the comment period regarding this collection effort.

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

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

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 “Business Master File (BMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.046-Customer Account

Data Engine Business Master File. The Internal Revenue Service PIAs can be found at <http://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

Section 301.6112-1(b)(3) provides guidance as to which investors must be included on the list, enumerates the items that must be included in the list, and provides a procedure for asserting a claim of privilege. We estimate that this burden will be 100 hours per respondent due to the time it takes to gather the required information. Accordingly, we estimate that 500 persons annually will be required to maintain lists and that the burden will be 100 hours per person, for a total burden of 50,000 recordkeeping hours.

OMB Collectio n	Authority	Form	Annual Responses	Hours per Response	Total Burden
1545- 1686	301.6112-1	13976	500	100	50,000
	IRS TOTAL		500		50,000

Please continue to assign OMB number 1545-1686 to these regulations.

301.6112-1

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

After consultation with various functions within the Service, we have determined that the cost of developing, printing, processing, distribution and overhead for the Form is \$4,864.

15. REASONS FOR CHANGE IN BURDEN

There are no changes being made to the burden previously approved. However, IRS is

removing 1 response previously used as a placeholder and never removed with the creation of the form.

This submission is being made for renewal purposes.

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

It is the view of the IRS that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the form and / or 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 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.