

SUPPORTING STATEMENT
Internal Revenue Service
Disclosure of reportable transactions
OMB# 1545-0865

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Internal Revenue Code (IRC) 6111 requires a sub-set of promoters called “material advisors” to disclose information about the promotion of certain types of transactions called “reportable transactions.”

A material advisor is a person who provides any material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any “reportable transaction”, and who directly or indirectly derives gross income in excess of the following threshold amounts (IRC 6111(b)(1), 6112(a)):

- Individuals promoting non-listed reportable transactions--\$50,000
- Individuals promoting listed transactions--\$10,000
- Non-individuals (corporations, partnerships, etc.) promoting non-reportable transactions--\$250,000
- Non-individuals promoting listed transactions--\$25,000

TD 9351 (72 F.R. 43154), published August 3, 2007, contains final regulations under section 6111 of the Internal Revenue Code that provide the rules relating to the disclosure of reportable transactions by material advisors. These regulations affect material advisors responsible for disclosing reportable transactions under section 6111 and material advisors responsible for keeping lists under section 6112.

TD 9556 (76 F.R. 70340), published November 14, 2011, contains final regulations that provide rules relating to the disclosure of listed transactions and transactions of interest with respect to the generation-skipping transfer tax under section 6011 of the Internal Revenue Code (Code), conforming amendments under sections 6111 and 6112, and rules relating to the preparation and maintenance of lists with respect to reportable transactions under section 6112.

Material advisors to any reportable transaction must disclose certain information about the reportable transaction by filing a Form 8918 with the IRS. Material advisors who file a Form 8918 will receive a reportable transaction number from the IRS. Material advisors must provide the reportable transaction number to all taxpayers and material advisors for whom the material advisor acts as a material advisor.

2. USE OF DATA

- Generally, a Material Advisor must maintain a list identifying each entity or individual with respect to whom the advisor acted as a Material Advisor with respect to a reportable transaction.
- A Material Advisor is not required to keep a list if the entity or individual entered into a listed transaction or Transaction of Interest more than 6 years before the transaction was identified in published guidance as a listed transaction or Transaction of Interest.
- A separate list must be prepared and maintained for each transaction or group of substantially similar transactions. This list must be maintained for 7 years following the earlier of the date on which the Material Advisor last made a tax statement relating to the transaction, or the date the transaction was last entered.
- [Form 13976, Itemized Statement Component of Advisee List \(April 2008\)](#), (OMB# 1545-1686), may be used by Material Advisors for preparing and maintaining lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This form isn't required to be used under § 301.6112-1 of the Procedure and Administration Regulations but is offered as an option for maintaining the transaction participants list. It may be used by Material Advisors for preparing and maintaining lists with respect to reportable transactions under § 6112 of the Internal Revenue Code. This form is not required to be used under § 301.6112-1 of the Procedure and Administration Regulations but is offered as an option for maintaining the transaction participants list.
- [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 and provides that Material Advisors may use the Form 13976, “Itemized Statement Component of Advisee List” (or successor form) to maintain the itemized statement component of the list.
- Taxpayers are not required to submit this list with the filing of the Form 8918; however, the IRS may make a written request for this information. If taxpayers receive this request they are required to fulfill the request within 20 business days or be subject to a penalty of \$10,000 for each day they are late.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Form 8918 cannot be filed electronically, since its relatively low volume does not justify the cost electronic enabling.

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 has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It

has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that most of the material advisors affected by these regulations are not small entities and for those material advisors that are small entities most of the information is already required under the current regulations. Any additional recordkeeping burdens on material advisors that result from this regulation are insubstantial.

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

The Office of Tax Shelter Analysis (OTSA) in the Large Business & International (LB&I) Division collects and analyzes information about abusive tax shelters and transactions, and coordinates LB&I's tax shelter planning and operation. The office is taking steps to combat abusive tax shelters and transactions. A comprehensive strategy is in place to:

- Identify and deter participation and promotion of abusive tax transactions through audits, summons enforcement, litigation and alternative methods.
- Publish taxpayer guidance on abusive transactions and tax shelters
- Promote reportable transaction disclosure filings by those who participate or promote abusive transactions.

Consequences of less frequent collection on federal programs or policy activities would result in: Material advisors not reporting the reportable transactions or tax benefits to the IRS.

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

In response to the AJCA, the IRS and Treasury Department issued interim guidance on section 6111 in Notice 2004-80, 2004-2 C.B. 963; Notice 2005-17, 2005-1 C.B. 606; Notice 2005-22, 2005-1 C.B. 756; and Notice 2006-6, 2006-1 C.B. 385 (see §601.601(d)(2)). 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 in TD 9351 (72 F.R. 43154), published August 3, 2007.

On July 31, 2007, the IRS and Treasury Department issued final regulations under section 6011 (T.D. 9350, 72 FR 43146) 6111 (T.D. 9351, 72 FR 43157) and 6112 (T.D. 9352, 72 FR 43154) (the July 2007 regulations) that were published in the Federal Register on August 3, 2007. In the July 2007 regulations, the IRS and Treasury Department amended 26 CFR parts 20, 25, 31, 53, 54, and 56 to provide that certain taxpayers would be required to disclose transactions of interest, in addition to listed transactions, on their Federal tax returns under section 6011. 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 adopted the proposed regulations without change (TD 9556 (76 F.R. 70340)), published November 14, 2011.

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 8918.

In response to the **Federal Register** notice dated December 4, 2018 (83 FR 62674), we received no comments during the comment period regarding Form 8918.

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 “Business Master File (BMF)” and “Individual Master File (IMF)” systems, and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS Treas/IRS 24.046 BMF, Treas/IRS 34.047 Audit Trail and Security Records, and Treas/IRS 24.030 CADE Individual Master File. 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

Internal Revenue Code (IRC) 6111 requires a sub-set of promoters called “material advisors” to disclose information about the promotion of certain types of transactions called “reportable transactions.” It is anticipated that there will be 350 respondents annually and the per response time would be 14 hours and approximately 34 minutes per respondent.

The burden estimate is as follows:

OMB Collection	Authority	Form	Annual Responses	Hours per Response	Total Burden
IRS 1545-0865	IRC 6111	8918	35	14.56	510
	IRS TOTAL		35		510

The following regulations impose no additional burden. Please continue to assign OMB number 1545-0865 to these regulations.

1.6001-1 301.6111-1T 301.6111-2 301.6112-1
 301.6707-1 301.6708-1T

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

The Federal government cost estimate is based on a model that considers the following three cost factors for each information product: aggregate labor costs for development, including annualized start up expenses, operating and maintenance expenses, and distribution of the product that collects the information.

The government computes cost using a multi-step process. First, the government creates a weighted factor for the level of effort to create each information collection product based on variables such as; complexity, number of pages, type of product and frequency of revision. Second, the total costs associated with developing the product such as labor cost, and operating expenses associated with the downstream impact such as support functions, are added together to obtain the aggregated total cost. Then, the aggregated total cost and factor are multiplied together to obtain the aggregated cost per product. Lastly, the aggregated cost per product is added to the cost of shipping and printing each product to IRS offices, National Distribution Center, libraries and other outlets. The result is the Government cost estimate per product.

The government cost estimate for this collection is summarized in the table below.

<u>Product</u>	<u>Aggregate Cost per Product (factor applied)</u>	<u>Printing and Distribution</u>	<u>Government Cost Estimate per Product</u>
Form 8918	\$ 10,936	0	\$ 10,936
Form 8918 Instructions	\$ 2,734	0	\$ 2,734
Grand Total	\$13,670.00		\$13,670.00
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

There are no changes to the collection however the estimates are being updated to eliminate double counting associated with the business collection.

The information collection requirements and burden associated business for Form 8918 is accounted for in OMB control number 1545-0123, U. S. Business Income Tax Return and has been removed from this information collection 1545-0865.

	<u>Requested</u>	<u>Program Change Due to New Statute</u>	<u>Program Change Due to Agency Discretion</u>	<u>Change Due to Adjustment in Agency Estimate</u>	<u>Change Due to Potential Violation of the PRA</u>	<u>Previously Approved</u>
Annual Number of Responses for this IC	35	0	-315	0	0	350
Annual IC Time Burden (Hours)	510	0	-4586	0	0	5096

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 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 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.