

**Internal Revenue Service**  
**SUPPORTING STATEMENT**  
**(IA-38-90/ TD 9436)**  
**1545-1231**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

The collection of information is necessary as a result of the final amendments to several regulations adopted to implement the amendments to tax return preparer penalties under sections 6694 and 6695 of the Internal Revenue Code (and the related provisions under sections 6060, 6107, 6109, 6696, and 7701(a)(36)) made by section 8246 of the Small Business and Work Opportunity Tax Act of 2007, Title VIII–B of Public Law 110–28 (121 Stat. 190) (May 25, 2007) (the 2007 Act) and section 506 of the Tax Extenders and Alternative Minimum Tax Relief Act of 2008, Div. C of Public Law 110–343 (122 Stat. 3765) (October 3, 2008) (the 2008 Act). For the complete list of affected regulations, see 9436. The information to be collected pursuant to this document is the recording of the name, taxpayer identification number, and principal place of work of each employed tax return preparer consistent with Code section 6060, require each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue or his delegate consistent with Code section 6107, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under Code section 6694.

Section 8246 of the 2007 Act amended sections 6694 and 7701(a)(36) and made conforming changes to other Code provisions to make tax return preparer penalties applicable to a broader range of tax returns and claims for refund. The 2007 Act’s amendments to section 6694 also changed the standards of conduct that tax return preparers must meet in order to avoid imposition of penalties in the event that a return prepared results in an understatement of tax. The burden associated with meeting these standards is the circumstances necessitating this information collection.

**2. USE OF DATA**

The information collected will be used by the IRS to enforce compliance with the guidelines outlined in the regulations. This information is necessary to require recording of the name, taxpayer identification number, and principal place of work of each employed tax return preparer consistent with Code section 6060, which require each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue or his delegate consistent with Code section 6107, and to document that the tax return preparer advised the taxpayer of the penalty standards applicable to the taxpayer in order for the tax return preparer to avoid penalties under Code section 6694. This will help reduce tax evasion or abuse situations and ensure tax return preparers maintain the proper records as outlined in the Code.

**3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN**

Because there are no reporting requirements associated with this information collection, electronic filing is not possible. IRS Publications, Regulations, Notices and Letters are to be electronically enabled on an as practicable basis in accordance with the IRS Reform and Restructuring Act of 1998.

**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 methods to minimize burden on small businesses or other small entities as these Regulations are applicable to many small businesses.

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

The consequences of less frequent collection on the programs or activities relating to these regulations would prevent the IRS access to needed information regarding each employed tax return preparer consistent with Code section 6060, which require each return or claim for refund prepared available for inspection by the Commissioner of Internal Revenue or his delegate consistent with Code section 6107.

**2. 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).

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

The Treasury Department and the IRS released Notice 2008–13 (2008–3 IRB 282) on December 31, 2007, to provide interim guidance under the 2007 Act. Additional guidance was simultaneously provided in Notice 2008–12 (2008–3 IRB 280) with respect to the implementation of the tax return preparer signature requirement of section 6695(b), and in Notice 2008–11 (2008–3 IRB 279), which clarified the earlier transition relief provided in Notice 2007–54 (2007–27 IRB 12 (July 2, 2007)). Notice 2008–46 (2008–18

IRB

868) was released on April 16, 2008, to add certain returns and documents to Exhibits 1, 2, and 3 of Notice 2008–13.

On June 17, 2008, the Treasury Department and the IRS published in the Federal Register (73 FR 34560) proposed amendments to the regulations (REG–129243–07) reflecting amendments made by the 2007 Act and comments received on the notices. A public hearing was held on these proposals on August 18, 2008. Written public comments responding to the proposed regulations were received. After consideration of the public comments and the amendments made by the 2008 Act, the proposed regulations were adopted as revised by TD 9436 (73 FR 78430), published on December 22, 2008.

In response to the **Federal Register Notice** dated April 22, 2019, (84 FR 16760), IRS received no comments during the comment period regarding TD 9436.

**4. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS**

No payment or gift has been provided to any respondents.

**5. ASSURANCE OF CONFIDENTIALITY OF RESPONSES**

Generally, tax returns and 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.

**1. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Authority	Description	# of Respondents	# Responses per Respondent	Annual Responses	Hours per Response	Total Burden
Public Law 110-28 (121 Stat. 190)	TD 9436	684,268	186.77	127,800,734	(.08 hours) 5 minutes	10,224,059
<b>Totals</b>				<b>127,800,734</b>		<b>10,224,059</b>

The IRS estimates the total annual reporting burden is 10,224,059 hours, based on the estimate that it would take 10,191,694 hours to copy or prepare a list of returns prepared (Treas. Reg. § 1.6107), 31,950 hours to prepare and retain a list of return preparers (Treas. Reg. § 1.6060-1), and 415 hours to document preparers advising taxpayers of standards of care in lieu of preparing Forms 8275 and 8275-R.

### **13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

There are no, start-up costs associated with this collection. As suggested by OMB, our **Federal Register Notice** dated April 22, 2019, 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 of operation, maintenance, and purchase of services to provide information. However, IRS did not receive any response from taxpayers on this subject. As a result, estimates of these cost burdens are not available at this time.

#### **1. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT**

There is no estimated annualized cost to the federal government.

### **15. REASONS FOR CHANGE IN BURDEN**

IRS is making this submission to renew the OMB approval. The changes to the burden are due to a rounding correction, which changed the burden hours from 106,793,320 to 102,240,059.

#### **1. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION**

There are no plans for tabulation, statistical analysis and publication.

#### **2. 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 the OMB approval and obtain a new expiration date before the old one expires.

3. **EXCEPTIONS TO THE CERTIFICATION STATEMENT**

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.