

SUPPORTING STATEMENT

Internal Revenue Service
Requirements for Investments to Qualify under Section 936(d)(4)
as Investments in Qualified Caribbean Basin Countries
OMB # 1545-1138

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Internal Revenue Code (IRC) Section 936(d)(4) expands the definition of "qualified possession source investment income" by providing that an investment in a qualified financial institution will, subject to such conditions as the Secretary of the Treasury prescribes pursuant to regulations, be treated as used in Puerto Rico to the extent used by such financial institution for investment in accordance with the goals and purposes of the Caribbean Basin Economic Recovery Act (P.L. 98-67 (Aug. 5, 1983)), in active business assets or development projects in a qualified Caribbean Basin country. Income that is qualified possession source investment income is entitled to a quasi-tax exemption by reason of the U.S. possessions tax credit under section 936(a) and substantial tax exemptions in Puerto Rico. Section 936(d)(4)(C) places certification requirements on the recipient of the investment and the qualified financial institution; and recordkeeping requirements on the financial institution and the recipient of the investment funds to enable the Secretary to ensure that the requirements of section 936(d)(4) are being fulfilled. Sections 1.936-10(c)(12) and (13) enumerate these certifications and continuing due diligence requirements.

2. USE OF DATA

The certification and recordkeeping requirements that sections 1.936-10(c)(12) and (13) place on the recipients of investments and the qualified financial institutions are used by the IRS to verify that the investment funds are being used properly and in accordance with the purposes of the Caribbean Basin Economic Recovery Act.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

Because there are no reporting requirements associated with TD 8350, electronic filing is not possible. IRS publication, 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

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

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

Small businesses should not be disadvantaged as the requirements are structured to

request the least amount of information and still satisfy the requirements of the statute and the needs of the Service. It was determined in TD 8350 (56 FR 21926), that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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

A less frequent collection will not enable the IRS to verify that the investment funds are being used properly and in accordance with the purposes of the Caribbean Basin Economic Recovery Act.

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

On September 22, 1989, the Federal Register published proposed and temporary Income Tax Regulations (26 CFR part 1) [T.D. 8268, 1989-2 C.B. 134] under section 936(d)(4) of the Internal Revenue Code of 1986, which section was enacted by section 1231(c) of the Tax Reform Act of 1986 (100 Stat. 2085). Written comments responding to the notice of proposed amendment were received. Also, a request for public hearings was received and hearings were held on March 19, 1990. After consideration of all comments regarding the proposed amendments, many of those amendments were adopted by Treasury Decision 8350 (56 FR 21926, May 13, 1991), some with revisions. The significant comments and suggestions were described in TD 8350.

We received no comments during the comment period in response to the **Federal Register** notice (84 FR 61137), dated November 12, 2019.

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 tax return information are confidential as required by 26 USC 6103.

6. JUSTIFICATION OF SENSITIVE QUESTIONS

There is no personally identifiable information (PII) in this collection.

7. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 1.936-10(c)(12) provides that the certification responsibility placed on the recipient of the investment and the financial institution is satisfied if the financial institution submits a certificate to both the Assistant Commissioner (International) and to the Commissioner of Financial Institutions of Puerto Rico upon authorization of the investment by the Commissioner of Financial Institutions and, in any event, prior to the first disbursement of the loan proceeds to the qualified recipient or to the financial intermediary (if any). Section 1.936-10(c)(13)(i) requires the recipient of the investment to submit annually to the qualified financial institution certain information concerning use of the loan proceeds. Section 1.936-10(c)(13)(ii) specifies the documents and information that the financial institution must maintain and have available for inspection by the Secretary or the Commissioner of Financial Institutions of Puerto Rico. The total burden for these requirements is estimated to be 1,500 hours.

	CFR Citation	Respondents	# Recordkeepers Per Respondent	Annual Recordkeepers	Recordkeeping Hours Per Respondent	Total Annual Burden
1	1.936-10(C)(12), -(13)	50	1	50	30.00	1,500

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-1138 to this regulation.

1.936-10

8. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated November 12, 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 and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

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.

9. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no annualized cost to the federal government.

10. REASONS FOR CHANGE IN BURDEN

There is no change in the paperwork burden previously approved by OMB. We are making this submission to renew the OMB approval.

11. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

12. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe 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.

13. 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.