

**SUPPORTING STATEMENT**  
Internal Revenue Service  
Section 6708, Failure to Maintain List of Advisees  
with Respect to Reportable Transactions  
OMB # 1545-2245

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 6112 requires material advisors to maintain lists of advisees and other information with respect to reportable transactions and to make that information available to the Secretary upon written request. Section 6708 imposes a penalty on a person required to maintain a list under section 6112 (a “material advisor”) who fails to make the list available to the IRS upon written request. Under section 6708(a)(1), if a material advisor fails to comply with a written request for the section 6112 list within 20 business days after the request is made, the material advisor is subject to a penalty in the amount of \$10,000 for each day of the failure after the 20th business day. The collection of information in the final regulations is in section 301.6708–1(c)(3)(ii). This information is required for the IRS to determine whether good cause exists to grant a person affected by these regulations an extension of the legislatively established 20-business-day period to furnish a lawfully requested list to the IRS. The collection of information is elective to obtain a benefit. The likely respondents are persons (individuals and entities) who qualify as material advisors, as defined in section 6111, who are unable to respond to a valid and statutorily authorized section 6112 list request within the statutory period of time provided by section 6708.

**2. USE OF DATA**

This information is required for the IRS to determine whether good cause exists to grant a person affected by these regulations an extension of the legislatively established 20-business-day period to furnish a lawfully requested list to the IRS.

**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.

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

**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**

The consequences are that the IRS will be unable to verify proper tax reporting and will need to collect this data through other means. This will compromise the Agency's ability to enforce tax compliance and ensure proper tax reporting by taxpayers. This could result in tax penalties to the taxpayers and inconsistent reporting of data. Tax compliance is a vital part of the government's ability to meet its' mission and serve the public.

**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 March 8, 2013, a notice of proposed rulemaking (REG-160873-04) relating to the penalty under section 6708 was published in the Federal Register (78 FR 14939). A public hearing was scheduled for July 2, 2013. The IRS did not receive any requests to testify at the public hearing, and the hearing was cancelled. Two comments were received in response to the notice of proposed rulemaking. After considering the comments, the Treasury Department and the IRS adopted the proposed regulations as amended by Treasury Decision 9764 (81 FR 25328), published on April 28, 2016.

In response to the Federal Register Notice dated October 16, 2018 (83 F.R. 52301), we received no comments during the comment period regarding these regulations

**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. Information is to be supplied to a state regulatory authority that would control the confidentiality of the information.

## **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**

The collection of information is in proposed regulation §301.6708-1(c)(3)(ii). The estimated total annual reporting burden for this collection of information is 200 hours and the estimated average annual burden hours per respondent is 8 hours. Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

<b>OMB Collection</b>	<b>Authority</b>	<b>Form</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRS 1545-2245	IRC 6708		25	8	200
	<b>IRS TOTAL</b>		<b>25</b>		<b>200</b>

Please continue to assign OMB number 1545-2245 to these regulations.

301.6708-1

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

As suggested by OMB, our Federal Register notice dated October 16, 2018, 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, 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 nominal.

**15. REASONS FOR CHANGE IN BURDEN**

There is no change in the paperwork burden previously approved by OMB.

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**

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset 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 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 information are confidential, as required by 26 U.S.C. 6103.