



VIA ELECTRONIC SUBMISSION

Andres Garcia
Internal Revenue Service, Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

November 18, 2024

Re: Federal Register 2024-21515; Proposed Collection; Comment Request for Information Collection Tool Relating to the Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund; OMB Number 1545-1002

Dear Mr. Garcia,

Democrats Abroad appreciates the opportunity to comment on the Information Collection Request (“ICR”) submitted by the Internal Revenue Service (the “Agency”, “IRS”) for renewal of Form 8621, the Information Return by a Shareholder of a Passive Foreign Investment Company (“PFIC”). As the largest Americans abroad organization in the world, with hundreds of thousands of U.S. citizen members living outside the United States, we can provide firsthand insight into how Form 8621 Information Collection poses an undue burden, is applied more broadly than necessary or reasonable, and results in disparate access to financial services based solely on where a U.S. citizen lives.

Although this Information Collection Request (ICR) is not directed towards individual taxpayers, we are commenting on this ICR on behalf of individual taxpayers to raise awareness of the very real burden and impact on individuals. The only other opportunity for individuals to comment on this form would be in the omnibus 1545-0074 ICR filing (related to Form 1040) – where the individual burden imposed by this form is “averaged out” and any comments on Form 8621 would be too specific for the broad nature of that information collection. We hope that the burden on individual international taxpayers will be considered in this ICR process, as they are an underserved community recognized by both the Agency¹ and its watchdog, the Taxpayer Advocate Service.²

The impacts of this Information Collection are severe, resulting in:

- Substantial tax preparation costs that are disproportionate to taxes ultimately owed;
- A practical inability to make safe and responsible investments such as those available to middle-class Americans living in the United States;³
- A major life choice between not saving for the future, falling out of tax compliance, or relinquishing citizenship to address what is commonly perceived as an otherwise unsolvable issue.

In Appendix A we provide comment on the specific questions posed in the Federal Register Notice. We summarize our major concerns here:

- IRS regulatory guidance and taxpayer education efforts around Form 8621 are lacking. Form 8621 is mentioned nowhere in IRS Publication 54, the authoritative guide for International Taxpayers, nor are the form’s instructions in line with the reading comprehension levels of the average taxpayer.
- The burden placed on individual taxpayers is, in absolute terms, as large as the burden on non-individual taxpayers, but the former have less expertise and financial means to complete the

¹ [IRS Taxpayer First Act Report to Congress. Page 63](#)

² [Taxpayer Advocate Service, 2023 Most Serious Problem #9](#)

³ This is commonly the result of a conflict between extraterritorial U.S. law, imposed based on citizenship, and foreign law based on residency. This typically eliminates opportunities for investment in U.S. financial products (that would not be PFICs) and leaves only local financial products that would be subject to a punitive filing burden that all-but-ensures a net financial loss each year. Foreign governments commonly express that a relaxation of U.S. rules on its non-resident citizens is the only possibility for improvement in this area.

form. Curiously, the burden on individuals is omitted from both this ICR and the omnibus 1545-0074 ICR that it is supposedly aggregated into.

- A discrepancy of how many people file Form 8621 and the time estimate required to file the form.

Within the context of the Paperwork Reduction Act (“PRA”) and ICR, we request that the IRS:

1. Provide accessible educational materials for individual international taxpayers that describe whether commonly encountered financial products like foreign ETFs and mutual funds are PFICs, and what the taxpayer must do if they own one;
2. Publish instructions for Form 8621 that are understandable to non-professionals with an average level of reading and financial literacy;
3. Provide an automated tool for calculating and e-filing Form 8621.

We further propose, outside the specific context of the PRA, that the IRS undertake rulemaking to provide regulatory relief to individual taxpayers, which could include any or all of the following measures:

- Broadening de-minimis rules to apply a less burdensome calculation and reporting method for distributions below a certain threshold;
- Broadening eligibility for QEF status to automatically include distributing-class ETFs and Mutual Funds that are regulated in a secretary-approved jurisdiction and for which clear dividend and cost-basis information is available via either the fund or brokerage;
- Exempting international taxpayers holding approved classes of foreign investments, domiciled in approved jurisdictions, from PFIC reporting, and instead applying the standard capital gains and dividend tax regimes;
- Not requiring Form 8621 reporting in cases where no tax is due and the asset’s value is already subject to reporting on Form 8938 and via automatic institutional reporting under a FATCA IGA.

It is desirable, from the perspective of both American competitiveness and preventing an undue burden to the public, that all Americans be able to save for retirement and their general self-sufficiency. The application of the PFIC regime to Americans living abroad interferes with this, and we believe that a serious paperwork reduction and regulatory relief effort should be made to address this unintended barrier to saving and investing by international taxpayers.

Thank you for your consideration of our comments.

Sincerely,

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Appendix A: Detailed Response to the IRS Questions

Is the collection of information necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility?

While the calculation of the appropriate tax due for a PFIC is undeniably complex, the burden of Form 8621 is significant in itself.

We see opportunities for the IRS to:

- Publish a simpler “effective annual rate” that is equivalent to daily compounding interest spread over each year.⁴ This would reduce the granularity of calculations needed and the amount of research necessary to handle the backdated interest charge.
- Permit individuals to declare their transactions and to either have the IRS compute the appropriate tax due, or to pay a modest over-estimate of tax due that would avoid complex calculations.
- Implement safe harbor rules that permit certain benign investments – namely funds in foreign retirement accounts and in dividend-distributing publicly-offered investment products held by residents of the jurisdiction where the product is regulated – to instead report their PFICs either as QEFs or as ordinary assets subject to simple capital gains treatment.

Given that each fund (or each vintage of shares held in a particular fund) held by a taxpayer results in a separate 49 hour reporting burden and hundreds of dollars in accounting expenses, the agency should seek to implement a less burdensome alternative to the current Form 8621 that still allows it to collect revenue.

Is the agency’s estimate of the burden of the collection of information accurate?

We have three concerns about the accuracy of the information-collection burden:

- The burden imposed on individuals by this Information Collection is neither estimated nor described in its totality anywhere by the IRS. The control number for Form 8621 omits such estimates, noting that individual taxpayers are covered by the omnibus 1545-0074 control number for the individual tax return.⁵ 1545-0074 does not include per-form burden estimates or the total individual burden generated by each form, while this control number specifically excludes individuals, effectively erasing all evidence of their burden. **OMB should be informed how many individuals file this form each year and at what public time burden and cost.**
- The specific burdens of form 8621 vary wildly by reporting method used; for example, a QEF election has roughly 1/100th the burden of the default Section 1291 reporting basis for a PFIC. There is substantial public value in splitting form 8621 into three subforms, each with a separate burden estimate, and then reporting the total count of each subform filed.
- Although our primary focus is on individual taxpayers, we would like to draw attention to a discrepancy in the number of responses estimated for Form 8621. In its supporting statement to OMB on Form 8621 in 2022, the IRS estimated an increase in the number of responses to 1,372,333 with no change in the estimated per-form burden, resulting in an increase of 67 million hours. The Notice of Action, however, indicated that the “Terms of the previous clearance remain in effect. OIRA will re-review upon finalization of the rule.”⁶
 - The regulation was implemented as proposed, causing the expected number of responses to increase by three orders of magnitude from just over a thousand responses to over a million, but this has not been recognized in this newly started ICR process.

⁴ e.g. a daily compounding rate of 3.5% per year is equivalent to a yearly compounded rate of 3.562%

⁵ <https://omb.report/icr/202203-1545-003/doc/119295700>

⁶ https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202203-1545-003#

- The reversion to the earlier estimated 1,333 responses is materially incorrect and the 1,372,333 figure is likely to be closer to the actual number of responses.
- Furthermore, based on the erroneous figure, point 3 of the 2022 ICR supporting statement notes that the “IRS has no plans at this time to offer electronic filing at this time [sic] due to the low number of filers.”⁷

View ICR - OIRA Conclusion

OMB Control No: 1545-1002

Status: Historical Inactive

Agency/Subagency: TREAS/IRS

Title: Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund

Type of Information Collection: Revision of a currently approved collection

Type of Review Request: Regular

OIRA Conclusion Action: Comment filed on proposed rule and continue

Retrieve Notice of Action (NOA)

Terms of Clearance: OIRA will re-review upon finalization of the rule.

ICR Reference No: 202203-1545-003

Previous ICR Reference No: [202109-1545-003](#)

Agency Tracking No:

Common Form ICR: No

Conclusion Date: 06/24/2022

Date Received in OIRA: 03/08/2022

	Inventory as of this Action	Requested	Previously Approved
Expiration Date	02/28/2025	36 Months From Approved	02/28/2025
Responses	1,333	0	1,333
Time Burden (Hours)	65,304	0	65,304
Cost Burden (Dollars)	0	0	0

Burden increases because of Program Change due to Agency Discretion: Yes

Burden Increase Due to: Changing Regulations

Burden decreases because of Program Change due to Agency Discretion: No

Burden Reduction Due to:

Short Statement: In general, proposed §§1.1295-1(d)(2)(i)(A), 1.1295-1(d)(2)(ii)(A), 1.1296-1(h)(1)(i), and 1.1298-1(b)(1) shift the burden of making QEF and MTM elections, and filing an annual Form 8621 with respect to a PFIC, from domestic partnerships and S corporations that own PFIC stock to their partners and shareholders, respectively. There is an increase in burden as the estimated number of responses/respondents has changed from 1,333 to 1,371,000, for a total of 1,372,333 responses. The estimated time to complete the form remains the same (48.99), but due to the increase in the number of responses, the overall time burden estimate has increased by 67,165,290 hours (65,304 to 67,230,594).

Screenshot illustrating the proposed change in burden for this ICR in 2022⁸

How can the quality, utility, and clarity of the information to be collected be enhanced?

It is difficult for an individual taxpayer to figure out what the PFIC rules are because the instructions to Form 8621 are incomplete and difficult to understand, seemingly not intended for individuals. IRS Publication 54, intended as the definitive source of information for international taxpayers, makes no mention of PFICs, what PFICs are, and what may trigger a PFIC reporting obligation.

Research into the details of the Internal Revenue Code should not be the starting point for individuals to understand what forms must be filed in their tax return, just as an estimated 11.5 hours of research to begin completing a single Form 8621 is too much for the general public.⁹

We believe it would be improper for the IRS to certify to the OMB that the language used for the documentation related to Form 8621 is plain, coherent, and unambiguous because:

- The agency gives no plain-language guidance to international taxpayers around Form 8621 and it assumes a professional level of knowledge in stipulating the time investment to become capable of filing this form.
- “Who Must File” guidance is in abstract terms not understandable by ordinary individuals. It starts by defining types of entities that are to be reported, followed by jargon-heavy references to U.S. persons. Instructions should be clear enough for an individual at a 7th to 8th grade reading level, the U.S. average, to identify that they might own a PFIC and that they need to report it.
- The Definitions and Special Rules section of the instructions defines PFICs in a way that is impenetrable for a non-expert.
- A close reading of statutes and an expert level of understanding are necessary to determine which reporting regime is applicable to the individual’s PFIC, and therefore the complexity of the filing. It is counterproductive for the agency to impose an 11.5 hour education burden for basic QEF or Mark-to-Market filings.

⁷ <https://omb.report/icr/202203-1545-003/doc/119295700>
⁸ https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202203-1545-003#.
⁹ <https://www.irs.gov/instructions/i8621#idm140003523055104>

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- The definition of an excess distribution, based on varying-length lookback windows, averages of “distributions”, and the per-share basis are indecipherable to average taxpayers who may have stumbled into owning a PFIC through no fault of their own.

Given the imposition of Form 8621 filing obligations on individual taxpayers, the IRS should provide instructions tailored to their average reading and financial comprehension level.

If simplifying the current instructions is not possible, for example due to the complexity of the underlying statutes and regulations, this could be provided on a non-authoritative basis, referring to the existing “professional instructions” where appropriate. We envision the simpler instructions containing plain language guidance along the lines of “If you are an individual taxpayer that owns a mutual fund or ETF that is not domiciled in the United States, you may have a Form 8621 obligation. Please consult the professional instructions or a qualified professional for specific and authoritative answers”.

How can the burden of the collection of information on respondents be reduced, including through the use of automated collection techniques or other forms of information technology?

Much of the Form 8621 reporting burden consists of 1) information retrieval of transactions, exchange rates, and interest rates, and 2) calculations that are difficult to program into a spreadsheet (even by a data-science expert) because of their complexity.

Companies such as ["PFIC Pro Form 8621 Calculator" by Expat Tax Tools](#) offer an automated version of Form 8621 that can be filled out by average taxpayers, with a level of difficulty that we estimate to be roughly in line with that of entering data from a Form 1099-B and/or 1099-DIV. While an average taxpayer with whom we tested this tool was unable to understand the Form 8621 instructions, they were able to plug in their PFIC information and arrive at a result identical to a form that was professionally prepared.

Specialized software like PFIC Pro is prohibitively expensive for individual filers, costing \$75/form that needs to be filed. Reporting a foreign pension that contains multiple PFICs and which is lacking treaty-based reporting relief quickly incurs hundreds of dollars in preparation costs each year, even using the most economical self-preparation software available.

Existing consumer-facing tax preparation software (e.g. TaxAct, TurboTax, H&R Block) does not adequately support this form, generally providing no assistance, producing incorrect results, or not allowing Form 8621 to be filed at all using the software.

This demonstrates that:

- Form 8621 filing is complicated because the guidance and instructions are excessively complex.
- Much of the “education” and “understand the mechanics” burden can be eliminated through automation.
- The high financial burden of using a paid tax preparer can be mitigated through software
- More affordable or free software support for Form 8621 is needed to bring the cost of this Information Collection down to acceptable levels.

If a version of this form were made widely available that automated the extremely complicated calculations for Section 1291, we estimate that the completion time for this form would be reduced from 49 hours to below 30 minutes.

This could be implemented by way of a Free-Fillable-Form that includes calculation logic, Direct File, or through mandates for Free-File-Alliance members to provide a minimum level of automation and assistance in preparing this form. We estimate that this would also reduce agency burden through a reduction in math errors requiring substantial additional followup.

Appendix B: Individual burden analysis for completion of Form 8621

In this table we present a common set of tasks for individuals to file Form 8621. This example is based on the real experiences of many taxpayers abroad and condensed for illustration. In this example, the taxpayer uses common tax preparation software to file their U.S. tax return. Because the tax rate in their country of residence is higher than that in the U.S., they typically will not owe any tax to the United States due to the Foreign Tax Credit.

The taxpayer invested in a single non-U.S. mutual fund, and then happened to read on social media that non-U.S. mutual funds are claimed to be classified as PFICs. They read Publication 54, which makes no mention of such a possibility, and had been informed by the (compliance-oriented) bank when making the investment that Schedule B was the correct place to declare income from the mutual fund. The taxpayer sought guidance from the IRS instructions, but was unable to find a mention of non-U.S. mutual funds. Upon consulting with a tax preparer, they were advised that filing Form 8621 would be necessary.

The following table describes the steps involved in completing Form 8621. After carrying out these steps, the taxpayer realized that it was no longer possible to self-file the return. Their compliance cost increased by over \$1,000 to report a single mutual fund. Their tax liability remained \$0 after these highly burdensome steps.

Individual taxpayer burden elements	Task that is beyond the capability of a non-expert	Task requiring moderate spreadsheet capability	Task requiring skill and experience with exchange rates	Task requiring ability to carry out sophisticated financial calculations	Notes
Determine whether an investment is in fact a PFIC.	x				There is little plain-language guidance from the IRS confirming that commonly-encountered foreign ETFs or mutual funds are subject to the PFIC regime.
Determine whether the asset held is categorically exempt from PFIC reporting and taxation, e.g., due to being in a retirement account recognized under a tax treaty ¹⁰	x				
Determine whether the PFIC is eligible for the de-minimis \$25,000 reporting exclusion.			x		Foreign exchange rates & dividend distributions commonly disqualify from de-minimis rules
Determine whether the fund is "marketable" to determine whether to use "Mark-to-Market" reporting or the punitive 1291 reporting regime. If falling under 1291, continue with the following:	x				Requires an ability to read complex statutes & regulations
Count the days the investment was held in each tax year		x			

¹⁰ Account qualification under tax treaties is its own source of ambiguity, often requiring professional advice. We note that a lack of authoritative regulatory guidance from the IRS often results in conservative over-reporting guidance from professionals due to the risk associated with an incorrect determination of qualification for treaty benefits.

Determine the date taxes were hypothetically due	x				Requires an ability to read complex statutes & regulations
Specify the date that the taxes are being paid	x				
Count the number of days that the tax payment was late		x			
Allocate the total gain to each tax year. Determine whether it is necessary to amend previous tax returns, or whether the form can simply be backdated for interest calculations with the tax liability paid with the 2023 return.	x	x		x	Requires the ability to perform complex calculations in addition to understanding statutes & regulations.
Determine the maximum tax rate for each tax year		x			
Calculate the tax before interest for each tax year		x			
Determine the interest rate charged by the IRS for each quarter		x			This information is not readily available from the IRS website
Calculate the interest charged for each tax quarter with daily compounding. That the interest rate changes quarterly dramatically increases the difficulty of developing a spreadsheet for the calculations. As many taxpayers lack the skill to calculate the interest, many use a heuristic in which a higher interest rate is used to ensure that the interest amount is more than what is being charged. This then requires the IRS to redo the calculations working from a non-standard schedule prepared by the taxpayer and issue a refund check.		x		x	