

STATE BAR OF CALIFORNIA TAXATION SECTION
INTERNATIONAL COMMITTEE

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**URGENT NEED FOR U.S. CITIZENS RESIDING OUTSIDE
THE U.S. TO BE ABLE TO OBTAIN A TAXPAYER
IDENTIFICATION NUMBER OTHER THAN A SOCIAL
SECURITY NUMBER**

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EXECUTIVE SUMMARY

All United States citizens (“USCs”) must have a social security number (“SSN”) under current law as their TIN to file a federal income tax return.¹ The U.S. tax law imposing taxation on the worldwide income of USCs² residing overseas has created a dilemma that prejudices these USCs without a SSN. This strict SSN/TIN regulatory rule undermines the basic tax administration system and discourages tax compliance for those USCs who never obtained a SSN. This dilemma affects numerous USCs throughout the world, which is now compounded by the certification and reporting requirements of USCs and third parties, such as FFIs and NFFEs³ under the Foreign Account Tax Compliance Act (“FATCA”).

This dilemma is a creature of the Title 26 regulatory law⁴ and how the Social Security Administration (“SSA”) imposes strict requirements on the issuance of SSNs to residents overseas.⁵ One essential step to obtaining a SSN requires the USC overseas must have an in-person interview, with a designated individual (who are typically U.S. Department of State employees and some designated military personnel). They are located in only a few cities around the world.⁶ Some USCs need to travel thousands of miles to merely apply for a SSN; and many are not even issued after thousands of miles of travel and thousands of dollars of expenses, days and time invested and piles of supporting documents; due to some technical foot fault from these SSA and U.S. Department of State rules.

Meanwhile, the IRS’ increased focus on international tax compliance and the imposition of penalties has made clear that USCs residing overseas have U.S. tax return filing obligations, even if they have no assets, no income, or no real personal connections in or with the U.S. See IRS notice from 2011 which addresses numerous aspects of tax compliance for USCs overseas, including various penalties under the law⁷:

... U.S. Citizens or Dual Citizens Residing Outside the U.S. ...

*The IRS is aware that some taxpayers who are dual citizens of the United States and a foreign country may have failed to timely file United States federal income tax returns or Reports of Foreign Bank and Financial Accounts (FBARs), **despite being required to do so...** 2. Penalties imposed for failure to file income tax returns or to pay tax . . . 3. Possible additional penalties that may apply in particular cases . . . 6. Possible penalties for failure to file FBAR . . . 7. New reporting requirement for foreign financial assets . . . [emphases added]*

USCs residing overseas are subject to the range of tax penalties that apply to all individual taxpayers (e.g., negligence penalties, failure to file penalties, late payment or failure to pay penalties, etc.).⁸ Additionally, USCs residing overseas are subject to other, typically much harsher penalties for not timely filing U.S. federal information returns regarding assets located outside the U.S.⁹ and alluded to above in the IRS 2011 notice.¹⁰

¹ See, IRC § 6109(a) and Treas. Reg. § 301.6109-1.

² See, IRC § 61 and Treas. Reg. §§ 1.1-1(b) and 1.1-1(a)(1).

³ See, IRC §§ 1471 et. seq. and the regulations thereunder which define “foreign financial institutions” (“FFIs”) and “non-financial foreign entity” (“NFFEs”).

⁴ See, Treas. Reg. § 301.6109-1(a)(1)(ii)(A).

⁵ See, 7 FAM 534.3 Applications for a Social Security Number (Form SS-5-FS).

⁶ *Id.*, page 7 FAM 534.3 Applications for a Social Security Number (Form SS-5-FS).

⁷ See, IRS FS-2011-13, December 2011, updated February, 2014.

⁸ See, IRS FS-2011-13 and as a sample of some of the many statutory penalties that could typically apply, IRC §§ 6048, 6652(f), 6677, 6654, 6655, 6698, 6699, 6166, 6653, 6675, 6715, 6715A, 6717, 6718, 6719, 6720A, 6725, et. seq.

⁹ See, IRC §§ 6038, 6038B, 6038D, 6039F, 6039G, 6046, 6046A, 6048, et. seq.

¹⁰ See, IRS FS-2011-13, December 2011, updated February, 2014.

These civil penalties typically are a minimum of \$10,000 per statutory violation.¹¹ USC's who live outside the U.S. necessarily have assets, such as financial accounts in their country of residence.¹²

The IRS will not process federal tax returns and "International Information Returns", as defined below, without a valid TIN¹³; which currently must be a SSN for a USC. No exception to this rule currently exists. Late filed, or incomplete International Information Returns and tax returns (e.g., lacking a SSN) will typically subject USC's to these penalties even in those cases when the taxpayer has no federal income tax liability.¹⁴

The author therefore proposes adoption of a new and simple regulatory rule that allows USC's residing overseas, who have no SSN, the option to apply for an individual taxpayer identification number ("ITIN") for their TIN in lieu of a SSN.

¹¹ See, IRC §§ 6038, 6038B, 6038D, 6039F, 6039G, 6046, 6046A, 6048, et. seq.

¹² These Title 26 information reporting requirements are referred to herein as "International Information Returns."

¹³ See, IRS website, - <http://www.irs.gov/Individuals/General-ITIN-Information> - "IRS no longer accepts, and will not process, forms showing "SSA", 205c", "applied for", "NRA", & blanks, etc."

¹⁴ See, IRC §§ 911 (foreign earned income exclusion – "FEIE") and 901 (foreign tax credit – "FTC"), et seq. A USC residing overseas may have no actual federal income tax liability (for various reasons), typically due to the FEIE and/or FTC calculation, but still be required to file International Information Returns and hence be subject to penalties.

DISCUSSION

I. PROBLEM: CURRENT REGULATORY LAW AND REASONS FOR PROPOSED CHANGE

The current regulations obligate a USC to have a SSN as their TIN for all federal tax returns, statements and documents, which includes International Information Returns.¹⁵ There are no exceptions to this strict SSN/TIN rule for USCs residing overseas who have no SSN.

In contrast, FBARs are not tax returns, statements or documents under Title 26, but rather are reporting obligations under Title 31. Ironically, FBARs can be filed by USCs without a TIN. The FBAR line item instructions provide as follows: *“Item 3. Provide the filer’s U.S. Taxpayer Identification Number (TIN). Generally, this is the filer’s Social Security Number (SSN), Individual Taxpayer Identification Number (ITIN), or Employer Identification Number (EIN). If the filer does NOT have a U.S. TIN, complete Item 4. [which provides for other identification, such as passport number or foreign TIN, or “Other”].*

However, if a USC without a SSN cannot file a U.S. federal tax return, it is unlikely they will ever learn of the FBAR reporting requirement. IRS Form 1040, Schedule B, Part III, Lines 7a and 7b ask whether the taxpayer had an interest in a foreign bank account at any time during the tax year (a relevant portion of the return follows).

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.		Yes	No
Part III Foreign Accounts and Trusts <small>(See instructions on back.)</small>	7a At any time during 2013, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country? See instructions		
	If “Yes,” are you required to file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR), formerly TD F 90-22.1, to report that financial interest or signature authority? See FinCEN Form 114 and its instructions for filing requirements and exceptions to those requirements		
	b If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located ▶		
	8 During 2013, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If “Yes,” you may have to file Form 3520. See instructions on back		

For Paperwork Reduction Act Notice, see your tax return instructions. Cat. No. 17146N **Schedule B (Form 1040A or 1040) 2013**

The IRS publication repeats the general statutory rule and makes clear that a “. . . TIN must be furnished on returns, statements, and other tax related documents. For example a number must be furnished:

- *When filing your tax returns.*
- *When claiming treaty benefits.*¹⁶

This dilemma puts USCs in a terrible position, where they can be subject to various tax and International Information Return penalties as a matter of law, since they cannot file a federal tax return, tax statement or tax document without a SSN.

Importantly, the general statutory rule under Section 6109(a)(1)¹⁷ which requires all taxpayers to have a TIN, does not require a USC to have a SSN as their TIN:

¹⁵ See, IRC § 6109(a) and Treas. Reg. § 301.6109(a)(1)(ii)(A).

¹⁶ See, IRS publication regarding “Taxpayer Identification Numbers (TIN)” [http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-\(TIN\)](http://www.irs.gov/Individuals/International-Taxpayers/Taxpayer-Identification-Numbers-(TIN)).

¹⁷ Unless otherwise provided, all references to the IRC are references to the Internal Revenue Code of 1986, as amended, 26 U.S.C. §§ 1 et seq., as in effect during the relevant period, and references to “sections” are references to the IRC.

“Any person required under the authority of this title to make a return, statement, or other document shall include in such return, statement, or other document such identifying number as may be prescribed for securing proper identification of such person.”

It is the Treasury/IRS that subsequently imposed the SSN requirement in Treasury regulations for USCs.¹⁸

The regulations provide the specific rule that all USCs must have a SSN¹⁹ as their TIN. There are no general exceptions in the regulations to the requirement that a USC must have a SSN as their TIN.

This regulatory requirement specifically directs the USC to the forms that must be completed and filed with the SSA, in order to obtain a SSN, as follows:²⁰

*(1) Social security number. Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. **He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement.** The form, together with any supplementary statement, shall be prepared and filed in accordance with the form, instructions, and regulations applicable thereto, and shall set forth fully and clearly the data therein called for. **Individuals who are ineligible for or do not wish to participate in the benefits of the social security program shall nevertheless obtain a social security number if they are required to furnish such a number pursuant to paragraph (b) of this section.** [emphasis added]*

These Title 26 regulations discuss individuals requesting forms from “any Social Security Administration or Internal Revenue Service office” which clearly implies that the SSA and the IRS have offices overseas.

Unfortunately, this is not the case, as the IRS recently announced it is closing its full-time walk-in offices in London, Frankfurt and Paris, as the office in Beijing, China was closed in 2014.²¹ Similarly, the SSA has no overseas offices, but does have limited field office operations in Canada, the British Virgin Islands and Samoa.²²

Therefore, it is clear that the above regulations are speaking to individuals who reside and live in the U.S., and not USCs residing overseas when it requires USCs to “ . . . **make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement.**”²³

¹⁸ It is also the Treasury/IRS rules that currently prohibit a USC residing overseas from applying for an ITIN.

¹⁹ See, Treas. Reg. § 301.6109-1(a)(1)(ii)(A).

²⁰ See, Treas. Reg. § 301.6109-1(d)(1).

²¹ See, Bloomberg article, 14 January 2015 by Kocieniewski, *IRS Will Shut Last Overseas Taxpayer-Assistance Centers*: “After budget reductions over the last four consecutive years, the IRS is forced to make tough choices during this period of fiscal austerity and these closures have relatively little impact on taxpayers and treaty partners,” said Julianne Breitbeil, an IRS spokeswoman. Also, see IRS website that still reflects the London and Paris offices as open <http://www.irs.gov/uac/Contact-My-Local-Office-Internationally>.

²² See, SSA website, Service Around the World, <http://www.ssa.gov/foreign/>

²³ See, Treas. Reg. § 301.6109-1(d)(1).

These Title 26 regulations require the application be made well in advance of any tax filing requirements are not realistic for USC's residing overseas as is explained herein. This author has seen the issuance of SSNs take more than 6 months, even when the USC could have an interview in their country of residence.

More importantly, there are very few countries (only 17) where in-person interviews can even be held. See, discussion below.

USCs who have lived most, if not all of their lives outside the U.S., commonly do not have a SSN. The procedural requirements imposed by the SSA to obtain a SSN in these cases are complicated and unrealistic for USC's living overseas.²⁴ This author has seen cases where USC's residing overseas have even spent the money and resources and time to travel to the U.S. to apply for a SSN, yet were turned away by the SSA, due to various procedural requirements which were not satisfied.

Often times obtaining a SSN overseas is nearly impossible, depending upon which country and where within that country the USC resides.

A. Obtaining a SSN Outside the US by a USC – Much More than Just Filing SSA Form SS-5

The SSA does not have offices outside the U.S. although they have a so-called "Office of International Operations."²⁵ The focus of OIO is the administration of social security benefits, not obtaining SSNs for USC's residing overseas. Since the SSA is assisted by the U.S. Department of State (who are not SSN experts), USC's have to rely upon various U.S. embassies and consulate offices around the world, as they try to obtain a SSN.

B. Tax Return Filing Requirements - Minimum Gross Income

Any USC individual is obligated under the U.S. federal tax law to file a federal income tax return IRS Form 1040 if they meet minimum thresholds of income. For the tax year 2015, the thresholds are low, and are reached once the gross income is at least the sum of (i) the "exemption" amount (currently \$4,000) and (ii) the "standard deduction" amount (currently \$6,300 for single and married filing jointly and \$12,600 for married couples filing jointly).²⁶

This is true, even if all of the income is earned income and eligible for the foreign earned income exclusion, which is \$100,800 for the tax year 2015.²⁷

Additionally, USC's living overseas necessarily have a U.S. tax return filing requirement, when they meet these low thresholds of gross income. In these cases, tax returns that are not filed by the 15th of June are not considered timely filed.²⁸

²⁴ See discussion below, regarding requirements to obtain a SSN. I.II, I.I, The Social Security Administration Rules Make it Nearly Impossible for Many USC's Overseas to Reasonably Obtain a SSN

²⁵ See SSA website, "Office of International Operations" - <http://www.ssa.gov/foreign/> "Service Around the World - Welcome to SSA's Office of International Operations (OIO) home page. The purpose of this site is to assist Social Security customers who are outside the U.S. or planning to leave the U.S. OIO is responsible for administering the Social Security program outside the U.S. and for the implementation of the benefit provisions of international agreements. Since SSA has no offices outside the U.S., OIO is assisted by the Department of State's embassies and consulates throughout the world."

²⁶ See, IR-2014-104, Oct. 30, 2014 and IRS Publication 501.

²⁷ See, IRC § 911 and IRS Publication 54.

²⁸ See, Treas. Reg. § 1.6081-5.

II. The Social Security Administration Rules Make it Nearly Impossible for Many USCs Overseas to Reasonably Obtain a SSN

The policy and procedures of the SSA regarding issuing SSNs have changed significantly over the years.²⁹ The Social Security Administration (SSA) provides a detailed chronology of the major changes in policy and procedures regarding filing for and obtaining a SSN.³⁰ One of the most significant revisions in the last decade came from *The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458)*, which imposes various standards for the verification of documents or records submitted by an individual.

A. Only a Few Countries Around the World have Personnel at U.S. Embassies or Consulate Offices that Can Process SSN Applications – SSA Form SS-5-FS

Applying for SSNs overseas is severely restricted compared to an application in the U.S.

According to the U.S. Department of State, Foreign Affairs Manual (“FAM”), only certain “Claims-Taking Posts” in specific countries “may” include “processing applications for Social Security Numbers.”³¹

These 17 countries (and a city in the case of Jerusalem) with Claims-Taking Posts include:

“Austria, Argentina, Costa Rica, Dominican Republic, France, Germany, Greece, Ireland, Italy, Japan, Jerusalem, Mexico, Norway, Philippines, Poland, Portugal, Spain, and the United Kingdom.”

Noticeably absent are many Western European countries, virtually all of Latin America, virtually all of Asia, virtually all of Eastern Europe, all of the Middle East (except Jerusalem), all of the African continent, all of the Australian continent and surrounding island countries and Russia, among many other significant countries, including OECD member countries.³²

Nothing in the FAM requires any of these “Claims-Taking Posts” to actually process applications for a SSN. Plus, there are of course hundreds of other countries throughout the world, not listed above, which do not have such a U.S. Department of State Post. For these reasons, USCs in countries such as China must travel to a U.S. Department of State Post (e.g., the Philippines) which is able to process applications for SSNs.

B. In Person Interview Required for Individuals Older than 11 Years Old

Individuals who are older than 11 years old must personally go to the U.S. Embassy or Consulate with a Claims-Taking Post.

²⁹ See, SSA website, *The Story of the Social Security Number*, by Carolyn Puckett, Social Security Bulletin, Vol. 69 NO. 2, 2009 (<http://ssa.gov/policy/docs/ssb/v69n2/v69n2p55.html>).

³⁰ See, SSA website, [Significant Milestones in Social Security Number Policy](http://www.ssa.gov/history/ssn/ssnchron.html). A detailed chronology of the major changes in policy and procedures. <http://www.ssa.gov/history/ssn/ssnchron.html>.

³¹ See 7 FAM 530, page 2 of 64.

³² In contrast to these 17 countries (and one city – Jerusalem) where a USC residing overseas must travel to apply for a SSN, the Treasury Department has announced it has around 100 countries that have signed, or “have reached agreements in substance” a FATCA IGA. USCs throughout the world are required by the Foreign Account Tax Compliance Act (“FACTA”) to provide their U.S. TIN to financial institutions throughout the world (on IRS Form W-9, or its equivalent), which under current law necessarily must be a SSN. Of course, if they have no SSN, they cannot sign IRS Form W-9 which provides in Part II: “**Under penalties of perjury, I certify that: 1. The number shown on this form is my correct taxpayer identification number . . .**”

Imagine how much time a USC residing in Johannesburg, South Africa will need to obtain a SSN, especially if they have to travel to the closest Embassy or Consulate that might have an authorized person available for the in-person interview. Presumably, the closest office would be Jerusalem (just shy of 10,000 kilometers of travel) or Lisbon, Portugal (just shy of 12,000 kilometers of travel). A trip via car or public transportation to either of these locations would be nearly impossible, and surely an unrealistic expectation of a USC to comply with their U.S. tax obligations. Yet, this is what the law requires.

Similar examples can be easily identified throughout the world. A USC in Moscow will have a closer location, e.g., Warsaw, Poland, but is still 1,251 kilometers of travel by car or public transportation. Australians have to travel thousands upon thousands of kilometers. Someone from Sydney will need to apparently travel to Manila, Philippines, which is more than 6,000 kilometers, necessarily requiring travel by boat or airplane. Someone from Lima, Peru could travel to Argentina, about 4,500 kilometers away, consisting of several days of travel, unless they are wealthy enough to afford air travel.

A USC in India will need to travel thousands of kilometers to make it to a U.S. embassy or consulate to have an in person interview; apparently Manila again would be the closest for all locations within India. Manila is some 3,500 kilometers from West Bengal, India. A boat or airplane is required.

Also, for political or legal reasons in various regions, one country might be the physically shortest distance of travel, but simply may not be available to the particular USC. For instance, a USC who is also a dual national of Egypt or Saudia Arabia may find travel to Jerusalem difficult or nearly impossible.

One country may not permit the departure of the USC from their country, but more likely it may be difficult or impossible for such an individual to obtain a visa to travel to a particular country.

Also, the above focuses on major metropolitan regions, where international travel is easier. What about the USC who lives in a more rural region, that might take days just to travel to the capital city of their country of residence, to then embark on a travel to a country far away?

Moreover, the SSN application and documentation requirements are extensive and set forth in the FAM. See Exhibit A. One of the most significant (of the dozens of requirements) is that the USCs residing overseas, if they are older than 11 years of age, must have an in-person interview.³³

For instance, a 13 year old girl born and living in China all of her life, who was born to a mother who is now 48 years old (who was born in the U.S. in the 1960s and lived there for 6 years, before returning with her family to China) will have derivative U.S. citizenship. This 13 year old girl will be required to travel to one of the 17 countries (or Jerusalem) for an in person interview in order for her to be able to obtain a SSN. This assumes she will be successful.

If this 13 year old girl has a relatively small amount of gross income and also inherits a \$10M fortune from her Chinese grandfather, she will need to file and report this \$10M inheritance on IRS Form 3520. If she fails to timely file this form, she will be subject to a \$2.5M penalty payable to the IRS.³⁴

C. Travel to the U.S. is Also Not An Option for a USC without a SSN, Due to 22 CFR § 53.1 Requiring a U.S. Passport

A possible solution to this TIN/SSN dilemma may appear to be a trip to the U.S. by the USC to apply for a SSN in the U.S. Unfortunately, this simply creates another dilemma, since the USC must have a U.S. passport to travel to the U.S. The immigration law regulations 22 CFR § 53.1 require that a U.S. citizen have a U.S. passport to enter or depart the United States. The relevant part of the regulations is § 53.1(a) which provides as follows:

³³ See, 7 FAM 534.3 e.

³⁴ See, IRC § 6039F.

Passport requirement; definitions.

(a) It is unlawful for a citizen of the United States, unless excepted under 22 CFR 53.2,³⁵ to enter or depart, or attempt to enter or depart, the United States, without a valid U.S. passport.

These regulations were first published in 2006 and unfortunately, simply create another dilemma for the USC residing overseas without a SSN. This additional dilemma is that an application³⁶ for a U.S. passport requires the individual have a SSN; a vicious circle back to the inability to obtain a SSN.

III. USCs Overseas Cannot Complete W-9 Correctly as Required by FATCA

The TIN/SSN dilemma explained herein is further exacerbated by the regulatory provisions of FATCA that have largely gone into effect in 2011, 2012, 2014 and 2015.³⁷ These FATCA provisions have increased the reporting requirements for USCs with foreign assets, which by definition includes all USCs residing outside the U.S.³⁸ The reporting necessarily requires the USC to have a SSN. For instance, see *IRS Form 8938* - Statement of Specified Foreign Financial Assets, which requires a TIN be reflected on the second line of the form.³⁹

In addition, other provisions of FATCA require a U.S. TIN be provided by the individual (e.g., in the case of foreign entities with “substantial U.S. owners”), in order to avoid the 30% withholding tax on the gross proceeds under FATCA. Often times, these documents and information requiring the SSN, are to be provided by a third party,⁴⁰ and not the USC individual.⁴¹

³⁵ The exceptions set forth in this regulation would not generally be applicable in the case of USCs residing overseas without a SSN.

³⁶ Application for a U.S. Passport - <http://www.state.gov/documents/organization/212239.pdf>.

³⁷ Pub.L. No. 111-14. See, IRC § 6038D and various provisions of the FATCA regulations, such as Treas. Reg. § 1.1471-1(b)(133), which defines TIN with reference to Section 6109, whereby those Section 6109 regulations mandates that USCs have a SSN:

(133) *TIN*. The term *TIN* means the tax identifying number assigned to a person under section 6109.

Further, the regulations regarding liability for withheld tax and withholding agent reporting, requires a SSN be provided by any U.S. individual. See, § 1.1474-1(i)(2)(i) and (ii), requiring the following information be reported:

- (i) *Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs—*
* * *
- (2) (i) Name of the NFFE that is owned by a substantial U.S. owner;
- (ii) The name, address, and TIN of each substantial U.S. owner of such NFFE;

³⁸ FATCA added a new Chapter 4 to Subtitle A of the Code, entitled “Taxes to Enforce Reporting on Certain Foreign Accounts”, Sections 1471 through 1474.

³⁹ See, IRC § 6038D and the regulations thereunder.

⁴⁰ See the FATCA regulations which impose withholding or other adverse tax consequences on various parties if the U.S. owner does not provide a “TIN”. For instance, Treas. Reg. § 1.1471-3T(d)(12) regarding identification of payee requires the payee to provide a “. . . written certification (contained on a withholding certificate or in a written statement) that it does not have any substantial U.S. owners or the name, address, and TIN of each substantial U.S. owner of the NFFE, to avoid being withheld upon under § 1.1472-1(b) . . . “ [emphasis added].

IV. Information Return Filing Requirements – Significant Penalties for USCs without SSNs

The SSN/TIN dilemma further prejudices USCs residing overseas who do not have SSNs, when they have assets in their country of residence (or any other country outside the U.S.) that are subject to the myriad of International Information Returns.⁴² If they have no SSN, they cannot file a U.S. federal tax return and further cannot file International Information Returns, which are required to be filed, even if the USC owes no U.S. federal income tax due to various tax deductions, credits or exemptions, specifically including the FEIE and/or FTC.

The types of International Information Returns, which typically cause a minimum of a \$10,000 penalty for each failure to file or late filed return, are as follows:

IRS Form	IRC Section
IRS Form 5471	§ 6038
IRS Form 926	§ 6038B
IRS Form 8938	§ 6038D
IRS Form 8854	§ 6039G
IRS Form 5471	§ 6046
IRS Form 8621	§§ 1296 and 1298
IRS Form 8854	§§ 877, 877A, et. seq.
IRS Form 8865	§ 6046A
IRS Forms 3520 and 3520-A	§ 6048
IRS Form 8858	(No Statutory or Regulatory Authority)
IRS Form 708	(Not Yet Finalized) § 2801 ⁴³

These penalties are mandated by the law, which can increase substantially when multiple years are required to be filed and/or multiple forms (e.g., with ownership interests in various private companies). A summary of each form, its basic purpose, and the penalties are set forth below:

⁴¹ See Treas. Reg. § 1.1474-1(i)(2)(i) and (ii) which requires a SSN be provided by any USC, to a “foreign entity” and “owner documented FFI”:

- (ii) *Additional reporting requirements with respect to U.S. owned foreign entities and owner-documented FFIs—*
* * *
- (2) (i) Name of the NFFE that is owned by a substantial U.S. owner;
- (ii) The **name, address, and TIN of each substantial U.S. owner** of such NFFE;
[emphasis added]

⁴² See, IRC §§ 6038, 6038B, 6038D, 6039F, 6039G, 6046, 6046A, 6048, et. seq.

⁴³ See, IRS Announcement 2009-57.

TYPE OF INTERNATIONAL TRANSACTION	IRS FORM
Ownership in specified foreign financial assets	IRS Form 8938 - Statement of Specified Foreign Financial Assets
Receipt of large gifts from foreign persons (including inheritances from foreign estates)	IRS Form 3520 - Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
Ownership interest in a foreign corporation	IRS Form 5471 - Information Return of U.S. Persons With Respect to Certain Foreign Corporations
Ownership interest in a foreign partnership	IRS Form 8865 - Return of U.S. Persons With Respect to Certain Foreign Partnerships
Transfers of certain interests in a foreign partnership	IRS Form 8865 - Return of U.S. Persons With Respect to Certain Foreign Partnerships
Transfers to a foreign trust	IRS Form 3520 - Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts
Foreign trust with a U.S. owner	IRS Form 3520-A - Annual Information Return of Foreign Trust With a U.S. Owner (Under Section 6048(b))
Transfers of assets to a foreign corporation	IRS Form 926 - Return by a U.S. Transferor of Property to a Foreign Corporation
Officers and directors of certain foreign corporations	IRS Form 5471 - Information Return of U.S. Persons With Respect to Certain Foreign Corporations
Ownership interest in and transfer of certain foreign disregarded entities	IRS Form 8858 - Information Return of U.S. Persons With Respect To Foreign Disregarded Entities
U.S. citizens who renounce their citizenship and certain lawful permanent residents who abandon immigration status;	IRS Form 8854 - Initial and Annual Expatriation Statement
Annual return of activities of a foreign trust with a U.S. owner	IRS Form 3520-A - Annual Information Return of Foreign Trusts with a U.S. Owner

The penalties that fall on the USC residing overseas who fails to file these International Information Returns are summarized below, by IRS Form:

IRS/TREASURY FORM	POTENTIAL PENALTY EXPOSURE FOR FAILURE TO FILE AND REPORT INTERNATIONAL TRANSACTION
IRS Form 8938 - Statement of Specified Foreign Financial Assets	\$10,000 for each failure to file, and an additional penalty of up to \$50,000 for continued failure and a 40% penalty on understatement of tax attributed to assets

IRS Form 3520 - Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	Up to 25% of the value of the tax-free gift or inheritance received from the foreign person and up to 35% of the value of the distribution from trust
IRS Form 5471 - Information Return of U.S. Persons With Respect to Certain Foreign Corporations	\$10,000 for each failure to file; and a \$10,000 per month continuation penalty up to \$50,000 in total penalties for a single violation
IRS Form 8865 - Return of U.S. Persons With Respect to Certain Foreign Partnerships	\$10,000 for each failure to file; and a \$10,000 per month continuation penalty up to \$50,000 in total penalties for a single violation
IRS Form 3520 - Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts	Up to 35% of the value of the transfer of properties to the foreign trust (even if the transfers are income tax-free)
IRS Form 926 - Return by a U.S. Transferor of Property to a Foreign Corporation	10% of the value of the property transferred up to \$100,000 maximum
IRS Form 8858 - Information Return of U.S. Persons With Respect To Foreign Disregarded Entities	\$10,000 for each failure to file
IRS Form 8854 - Initial and Annual Expatriation Statement	Various
IRS Form 3520-A - Annual Information Return of Foreign Trusts with a U.S. Owner	5% of the gross value of the trust assets (even if there is no taxable income) per year, which has no limit; e.g., 10 years of non-filing of IRS Form 3520-A would give rise to a 50% penalty based upon the value of the trust assets

In some cases, the penalty is a percentage of the assets involved (e.g., 35% in the case of transfers to or from a foreign trust or 25% of the assets of a tax-free gift or inheritance from a foreign person).⁴⁴

The IRS website provides detailed examples of how these penalties could apply and how they can rack up to amounts far in excess of the foreign asset values.⁴⁵ In one example, the IRS uses a deposit of \$1,000,000

⁴⁴ See, IRC §§ 6048 and 6039F, respectively. Furthermore, 6039F(c)(1)(A) provides that the Secretary will determine the tax consequence of the receipt of such gift if the information return (IRS Form 3520) is not filed timely. Obviously, a USC which has no SSN cannot file a return timely after the receipt of such gift.

⁴⁵ See, IRS website: **Offshore Voluntary Disclosure Program Frequently Asked Questions and Answers (Posted 06/26/2012)** <http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-and-Answers>.

** *

that is assumed not unreported income at the time of the deposit. Several years later, at the relevant time,

<p>How does the Offshore Penalty framework work? Can you give us an example?</p>	<p>The values of foreign accounts and other foreign assets are aggregated for each year and the penalty is calculated at 27.5 percent of the highest year's aggregate value during the period covered by the voluntary disclosure. If the taxpayer has multiple accounts or assets where the highest value of some accounts or assets is in different years, the values of accounts and other assets are aggregated for each year and a single penalty is calculated at 27.5 percent of the highest year's aggregate value. For example, assume the taxpayer has the following amounts in a foreign account over the period covered by his voluntary disclosure. It is assumed for purposes of the example that the \$1,000,000 was in the account before 2003 and was not unreported income in 2003.</p>																																				
	<table border="1"> <thead> <tr> <th>Year</th> <th>Amount on Deposit</th> <th>Interest Income</th> <th>Account Balance</th> </tr> </thead> <tbody> <tr> <td>2003</td> <td>\$1,000,000</td> <td>\$50,000</td> <td>\$1,050,000</td> </tr> <tr> <td>2004</td> <td></td> <td>\$50,000</td> <td>\$1,100,000</td> </tr> <tr> <td>2005</td> <td></td> <td>\$50,000</td> <td>\$1,150,000</td> </tr> <tr> <td>2006</td> <td></td> <td>\$50,000</td> <td>\$1,200,000</td> </tr> <tr> <td>2007</td> <td></td> <td>\$50,000</td> <td>\$1,250,000</td> </tr> <tr> <td>2008</td> <td></td> <td>\$50,000</td> <td>\$1,300,000</td> </tr> <tr> <td>2009</td> <td></td> <td>\$50,000</td> <td>\$1,350,000</td> </tr> <tr> <td>2010</td> <td></td> <td>\$50,000</td> <td>\$1,400,000</td> </tr> </tbody> </table>	Year	Amount on Deposit	Interest Income	Account Balance	2003	\$1,000,000	\$50,000	\$1,050,000	2004		\$50,000	\$1,100,000	2005		\$50,000	\$1,150,000	2006		\$50,000	\$1,200,000	2007		\$50,000	\$1,250,000	2008		\$50,000	\$1,300,000	2009		\$50,000	\$1,350,000	2010		\$50,000	\$1,400,000
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2010		\$50,000	\$1,400,000																																		
	<p>(NOTE: This example does not provide for compounded interest, and assumes the taxpayer is in the 35-percent tax bracket, does not have an investment in a Passive Foreign Investment Company (PFIC), files a return but does not include the foreign account or the interest income on the return, and the maximum applicable penalties are imposed.)</p> <p>If the taxpayers in the above example come forward and their voluntary disclosure is accepted by the IRS, they face this potential scenario: They would pay \$518,000 plus interest. This includes:</p> <ul style="list-style-type: none"> • Tax of \$140,000 (8 years at \$17,500) plus interest, • An accuracy-related penalty of \$28,000 (i.e., \$140,000 x 20%), and • An additional penalty, in lieu of the FBAR and other potential penalties that may apply, of \$385,000 (i.e., \$1,400,000 x 27.5%). <p>If the taxpayers didn't come forward, when the IRS discovered their offshore activities, they would face up to \$4,543,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayers would also be liable for interest and possibly additional penalties, and an examination could lead to criminal prosecution.</p> <p>The civil liabilities outside the Offshore Voluntary Disclosure Program potentially include:</p> <ul style="list-style-type: none"> • The tax, accuracy-related penalties, and, if applicable, the failure to file and failure to pay penalties, plus interest, as described above, • FBAR penalties totaling up to \$3,825,000 for willful failures to file complete and correct FBARs (2005 - \$575,000, 2006 - \$600,000, 2007 - \$625,000, 2008 - \$650,000, and 2009 - \$675,000, and 2010 - \$700,000), • The potential of having the fraud penalty (75 percent) apply, and • The potential of substantial additional information return penalties if the foreign account or assets is held through a foreign entity such as a trust or corporation and required information returns were not filed. <p>Note that if the foreign activity started before 2003, the Service may examine tax years prior to 2003 if the taxpayer is not part of the OVDP. [emphasis added]</p>																																				

the amount has grown to \$1.4M. The IRS demonstrates in its website how the taxpayer with an account outside the U.S. that never produced more than \$400,000 of income and never exceeded \$1.4M in that time period of years " . . . would face up to \$4,543,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayers would also be liable for interest and possibly additional penalties. . . "

This is not a typographical error and indeed the IRS has assessed multiple year FBAR civil willfulness penalties against taxpayers, including Mr. Zwerner.⁴⁶ In that case, which went to trial, the government argued he owed a total of \$3,630,119.29 on an account that had a maximum value of approximately \$1.69M.⁴⁷

USCs residing overseas without SSNs will wonder if they will have a similar fate, especially if they do not travel thousands of miles to another country to obtain a SSN (for those who do not have eligible employees of the U.S. Department of State in a U.S. Embassy or U.S. Consulate in their country of residence).

Moreover, USCs residing overseas who do not file complete and accurate tax returns, including these International Information Returns, never have closure regarding their U.S. tax obligations. A tax can be assessed at any time after the date prescribed for filing the return.⁴⁸ In addition, amendments by the HIRE Act allow the IRS to examine all aspects of a past return, without time limitation, where foreign information reporting forms were not filed.⁴⁹

A. Large Number of Taxpayers Impacted

Hundreds of thousands, if not millions of USC individuals are adversely affected by this SSN/TIN rule, as they never obtained a SSN and live outside the U.S. There are millions of USCs residing outside the U.S.⁵⁰ First, many people are simply not aware they are USCs. The 14th Amendment automatically grants citizenship to anyone born in the U.S. and many foreign families give birth to children in the U.S. before returning to their home country. Second, many foreign born persons are automatically USCs under a complex web of immigration laws that grants derivative citizenship depending upon a number of factors (e.g., date of birth, nationality of one or both parents and the number of days one or more parent spent in the U.S. or a U.S. territory).

Therefore, every individual who is born to a parent who is or was a USC must consider whether they too are a USC as a matter of law via "derivative citizenship." i.e., "derived" from a USC parent pursuant to the U.S. Immigration and Nationality Act. The U.S. Citizenship and Immigration Services (USCIS) has a "*Nationality Chart 1, for Children Born Outside U.S.*" to help determine if the individual was a USC at birth.⁵¹

As previously explained, there are millions of USCs residing abroad. No one seems to know exactly how many USCs reside overseas. The National Taxpayer Advocate Report to Congress estimated the number at 6.32 million (not including U.S. military personnel).⁵²

As reported throughout, all USCs must have a SSN under current law to even be able to file a tax return. This current regulatory rule discourages compliance with the tax law. The Taxpayer Advocate Service's ("TAS") 2012 report noted that while " . . . an estimated 6.32 million U.S. citizens reside abroad, the IRS

⁴⁶ See, *United States v. Zwerner* (SD FL No. 13-cv-22082-CMA).

⁴⁷ See, numbered paragraph "57." of the government's [Motion for Summary Judgment](#).

⁴⁸ See, IRC §§ 6501(c)(3).

⁴⁹ See, IRC §§ 6501(c)(8) and 6501(e)(1)(A)(ii) for extensions of the statute of limitations for omissions of gross income attributable to "foreign financial assets."

⁵⁰ See, statistics and comments in this paper for more detail on the estimated number of U.S. citizens residing abroad.

⁵¹ See, <http://www.uscis.gov/policymanual/PDF/NationalityChart1.pdf>

⁵² See, 2012 National Taxpayer Advocate Annual Report to Congress, Challenges Persist for International Taxpayers as the IRS Moves Slowly to Address Their Needs; <http://www.taxpayeradvocate.irs.gov/2012-Annual-Report/FY-2012-Annual-Report-To-Congress-Full-Report.html>.

received only about 700,000 returns from these individuals in TY 2010. Despite publicizing the reporting requirements for foreign financial accounts for years since 2007, the IRS received only 741,249 FBARs in 2011.⁵³

In addition to USCs living overseas, there are numerous lawful permanent residents (“LPRs”). There were approximately 13.3 million LPRs, many of whom will have U.S. tax return filing obligations (even if they reside outside the U.S.)⁵⁴ No one seems to know or report on how many of these LPRs are principally residing outside the U.S., and hence have a U.S. tax return filing obligation. The TAS reports only 700,000 federal tax returns were filed by overseas residents.

It is not clear whether the 700,000 returns referred to in the TAS report are USCs only, or also include other taxpayers residing overseas, e.g., LPRs.

B. No Data or Reports of USCs Living Overseas without a SSN and No Incentive to File for a SSN

This author is unaware of any reports or studies that indicate or estimate how many USCs living overseas do not have SSNs.

It is not obligatory to file for a SSN at birth.⁵⁵

There is little incentive for a USC residing overseas to obtain a SSN, since they will generally not be eligible for social security retirement benefits, unless employed by a U.S. employer.⁵⁶ A non-U.S. based employee is only subject to social security taxes (old age, survivors, and disability insurance - OASDI) and “Medicare tax” on “wages” from a U.S. employer.⁵⁷ USCs residing overseas who are self-employed, are required to file and pay OASDI⁵⁸ and Medicare taxes but obviously cannot make such a filing without a TIN, which currently must be a SSN.

C. USC Taxpayers Will Not Comply with Title 26 (nor Title 31) IF They Cannot Obtain a TIN

USCs residing overseas who do not have a SSN will necessarily not comply with Title 26, as they are prohibited from filing a valid tax return and International Information Returns as a matter of law. In addition, if they cannot file U.S. federal tax returns and International Information Returns, it is highly unlikely they will file FBARs as required under Title 31.

⁵³ See, page 270 of the 2012 National Taxpayer Advocate Annual Report to Congress.

⁵⁴ See, Rytina, Nancy; *Estimates of the Legal Permanent Resident Population in 20012*, Office of Immigration Statistics (July 2013).

⁵⁵ See, SSA Publication – “Social Security Numbers For Children” <http://www.ssa.gov/pubs/EN-05-10023.pdf>, page 2, *It is not obligatory to file for a SSN at birth. “Must my child have a Social Security number? No. Getting a Social Security number for your newborn is voluntary. But, it is a good idea to get a number when your child is born. . . .*

⁵⁶ It would be highly unusual for a USC living outside the U.S. to be employed by a U.S. employer, even if it is a U.S. based company. Most U.S. based companies have foreign subsidiaries through which they operate their non-U.S. business operations. The Social Security law has complex vesting requirements of employment or self-employment.

⁵⁷ See, IRC § 3401 and Martin & Mejia, *Comparative Overview of U.S. and Mexican Federal Employment Taxes*, **International Tax Journal**, Nov-Dec. 2009.

⁵⁸ See, IRS website regarding self-employment tax that summarizes the statutory law of IRC §§ 1401, et. Seq. - <http://www.irs.gov/Individuals/International-Taxpayers/Self-Employment-Tax> - “The Internal Revenue Code imposes the self-employment tax **on the self-employment income of any U.S. citizen** or resident alien who has such self-employment income.” [emphasis added.]

A law that cannot be complied with is surely a bad law, the same as a " . . . law that cannot be enforced is a bad law."⁵⁹

V. DISPROPORTIONATE GOVERNMENT FOCUS AND RESOURCES REGARDING INTERNATIONAL TAX ENFORCEMENT MAKE AMENDING THE 6109 REGULATIONS A PRIORITY

Congress, the IRS⁶⁰ and the U.S. Department of Justice have made U.S. international tax enforcement a high priority over the last few years.

A. Tremendous Focus on International Individual Taxpayers – Chronology

The following is a brief chronology of some of the many enforcement efforts that have been made by the government.

- *Year 2006*

U.S. Senate Permanent Subcommittee on Investigations, published their report on *August 1, 2006*, entitled *Tax Haven Abuses: The Enablers, The Tools & Secrecy*.⁶¹

Little direct action was taken by the IRS or Justice Department in that year. It was the year 2008, where the direct hearings lead to more specific actions taken.

- *Year 2008*

U.S. Senate Permanent Subcommittee on Investigations, headed by Chairman Carl Levin, published their report on *July 16, 2008*, entitled *Tax Haven Banks and U.S. Tax Compliance*.⁶²

November 2008, a U.S. federal grand jury indicted the Chairman and CEO of UBS Global Wealth Management and Business Banking.⁶³

- *Year 2009*

U.S. Senate Permanent Subcommittee on Investigations, headed by Chairman Carl Levin, published their report on *March 4, 2009*, entitled *Tax Haven Banks and U. S. Tax Compliance – Obtaining the Names of U.S. Clients with Swiss Accounts*.⁶⁴

UBS agrees in February 2009 to pay a \$780M fine to the U.S. government and enter into a deferred prosecution agreement on charges of conspiring to defraud the United States⁶⁵ by impeding the Internal Revenue Service.

⁵⁹ See, [The Case Against Taxing Citizens](#), Reuven S. Avi-Yonah (March 31, 2010), University of Michigan School of Law, Law & Economics Working Papers.

⁶⁰ See, former IRS Commissioner Schulman's comments in 2009, which continue to be updated by the IRS (*Page Last Reviewed or Updated: 19-Feb-2015*). <http://www.irs.gov/uac/Commissioner-Schulman%27s-Senate-Finance-Testimony-on-Ponzi-Schemes-and-Offshore-Tax-Evasion-Legislation>

⁶¹ See, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/tax-haven-abuses-the-enablers-the-tools-and-secrecy>.

⁶² See, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/tax-haven-banks-and-u-s-tax-compliance>.

⁶³ See, <http://www.justice.gov/tax/txdv081001.htm>.

⁶⁴ See, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/tax-haven-banks-and-u-s-tax-compliance-obtaining-the-names-of-us-clients-with-swiss-accounts>.

IRS Implements first Offshore Voluntary Disclosure Program (“OVDP”) on March 26, 2009.⁶⁶

- *Year 2010*

On October 1, 2010, the former Large and Mid-Size Business (LMSB) division became the Large Business and International (LB&I) division. That reorganization was designed to centralize the IRS’s international tax compliance initiatives, demonstrating the agency’s heightened concern with international tax issues.

Numerous taxpayers and several Swiss bankers were indicted and/or plead guilty to various tax crimes charges; mostly directly related to UBS. See, website of U.S. Department of Justice – *Offshore Compliance Initiative*.⁶⁷

Congress passes and the President signs into law, FATCA in 2010 as part of the **Hiring Incentives to Restore Employment (HIRE) Act**. The Treasury summarizes the purpose of FATCA and why it was enacted on its website:

*FATCA was enacted in 2010 by Congress to target non-compliance by U.S. taxpayers using foreign accounts. FATCA requires foreign financial institutions (FFIs) to report to the IRS information about financial accounts held by U.S. taxpayers, or by foreign entities in which U.S. taxpayers hold a substantial ownership interest . . .*⁶⁸

Nothing in the law of FATCA, the legislative history, or IRS notices or regulations, exclude USCs residing overseas from this legislation. USCs without SSNs are subject to FATCA, even if they cannot comply with the basic requirement to file a U.S. federal tax return.

- *Year 2011*

IRS Implements its second Offshore Voluntary Disclosure Initiative (“OVDI”) in 2011.⁶⁹

- *Year 2012*

IRS creates an open ended OVDP program in 2012⁷⁰ that continues; with modifications made in 2014.

The Treasury Department obtains commitments from various countries to sign various FATCA, intergovernmental Agreements (“IGAs”) for automatic exchange of financial information; France, Germany, Italy, Spain, United Kingdom, Denmark and Mexico.⁷¹

- *Year 2013*

The Treasury Department obtains more commitments for signed FATCA IGAs with various countries for the automatic exchange of financial information.⁷²

- *Year 2014*

⁶⁵ See, <http://www.justice.gov/opa/pr/ubs-enters-deferred-prosecution-agreement>.

⁶⁶ See, <http://www.irs.gov/uac/2009-Offshore-Voluntary-Disclosure-Program>

⁶⁷ See, http://www.justice.gov/tax/offshore_compliance_initiative.htm.

⁶⁸ See, <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA.aspx>.

⁶⁹ See, <http://www.irs.gov/Businesses/International-Businesses/2011-Offshore-Voluntary-Disclosure-Initiative-Frequently-Asked-Questions-and-Answers>

⁷⁰ See, <http://www.irs.gov/uac/2012-Offshore-Voluntary-Disclosure-Program>.

⁷¹ See, <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>.

⁷² *Id.*

Treasury announces approximately 100 countries have signed FATCA IGAs or “have reached agreements in substance”.⁷³

U.S. Senate Permanent Subcommittee on Investigations, headed by Chairman Carl Levin, published their report on *February 26, 2014* Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts⁷⁴

Although these initial efforts were not focusing on USCs residing overseas, the later Congressional reports have turned their focus to include “U.S. Nationals Living Outside the U.S.”

B. USCs Residing Overseas – Focus or Not of These Efforts?

Will USCs residing overseas who have no SSN be a focal point of these government enforcement efforts?

Current law makes it a misdemeanor crime to fail to timely (1) file a return, (2) pay an estimated tax, (3) keep records or (4) supply information.⁷⁵ The penalty for violation of this provision is a misdemeanor that gives rise to a penalty of up to one year imprisonment and a maximum fine for individuals of \$25,000.⁷⁶ However, those USCs who also have a trade or business and receive more than \$10,000 in cash in one or more related transactions (including in foreign currency) are required to file an information return⁷⁷ and the penalty for failure to file (or for so-called “structuring transactions”) includes up to five years in prison.⁷⁸ USCs residing overseas are not exempted from these statutory rules.

The policy of the Tax Division of the Justice Department is that a taxpayer who commits the more serious act of tax evasion or obstruction should be charged with those felonies and not a misdemeanor violation of failure to file returns, so that such a person not be given more lenient treatment than someone who fails to pay a portion of the taxes due.⁷⁹

There is little comfort for USCs residing overseas without a SSN who are not timely filing IRS Form 1040, since they have no SSN and are prohibited from making such a return.

In addition, those USCs are not in compliance with the regulatory rule that requires them to make an application for an SSN in advance of their tax compliance requirements:⁸⁰

*(1) Social security number. Any individual required to furnish a social security number pursuant to paragraph (b) of this section shall apply for one, if he has not done so previously, on Form SS-5, which may be obtained from any Social Security Administration or Internal Revenue Service office. **He shall make such application far enough in advance of the first required use of such number to permit issuance of the number in time for compliance with such requirement.** [emphasis added]*

Furthermore, see the Senate *Permanent Subcommittee on Investigations* report that focused extensively on Swiss accounts opened by “U.S. Nationals Living Outside the U.S.”; the specific category of USCs that are

⁷³ See, <http://www.treasury.gov/resource-center/tax-policy/treaties/Pages/FATCA-Archive.aspx>.

⁷⁴ See, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/offshore-tax-evasion-the-effort-to-collect-unpaid-taxes-on-billions-in-hidden-offshore-accounts>.

⁷⁵ See, IRC § 7203.

⁷⁶ See, IRC § 7203.

⁷⁷ See, IRS Form 8300.

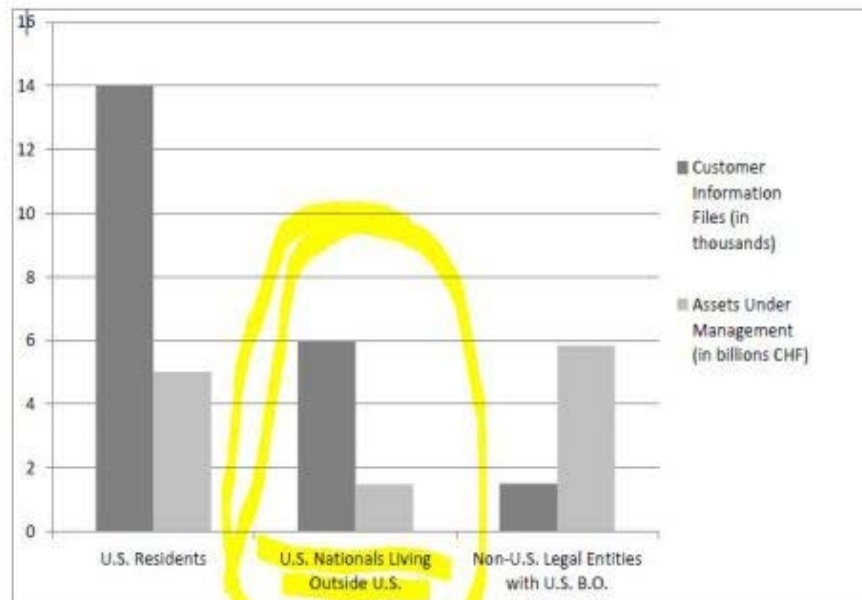
⁷⁸ See, IRC §§ 7202, 7203 and 6050I.

⁷⁹ See, § 10.00 Failure to File, Supply Information or Pay Tax of the 2008 Criminal Tax Manual of the Tax Division of the Justice Department; <http://www.justice.gov/tax/readingroom/2008ctm/CTM%20Chapter%2010.htm>.

⁸⁰ See, Treas. Reg. § 301.6109-1(d)(1).

the subject of this proposal, to the extent they have no SSN.⁸¹ –

Categories of U.S.-Linked Accounts in Switzerland – 2007



Source: Credit Suisse presentation. Update on Development of AuM and Accounts of U.S. Clients to the Senate

The above diagram (with emphasis) comes from the report that identifies thousands of USC's residing outside the U.S. who were identified with accounts in Switzerland.⁸²

VI. AMENDING THE 6109 REGULATIONS

Currently, a USC cannot obtain an ITIN as explained in IRS Publication 1915.⁸³ From the perspective of the USC residing overseas, a simple solution will be to allow them to file for an ITIN, in those cases where they have no SSN and reside outside the U.S.

The proposal would require amending the regulations to allow a USC to apply for an ITIN, in the same manner as overseas resident individuals (who are not USC's) can apply for an ITIN.⁸⁴

A. No Loss of U.S. Taxes as a Result Of Proposed Modification to Issue ITINs to USC's Overseas

The current rule is untenable, since a USC who has no SSN, will never be able to file federal income tax returns. Obviously, the Treasury is currently losing tax dollars and taxpayer information on USC's who have no SSN. By allowing USC's residing overseas to file for an obtain an ITIN, they will be able to file tax returns, pay taxes owing, including self-employment taxes (OASDI, the "Medicare tax," etc.) and generally comply with the range of International Information Returns required under the law.

⁸¹ See, The full report can be read from the subcommittee - REPORT: Offshore Tax Evasion: The Effort to Collect Unpaid Taxes on Billions in Hidden Offshore Accounts (February 26, 2014) - <http://www.hsgac.senate.gov/download/?id=0ab0921c-af4a-4430-b054-d86cd4a3e73e>.

⁸² *Id.*

⁸³ See, IRS publication 1915, page 6: "Persons eligible to receive a Social Security Number are not eligible to receive an ITIN. Treasury regulations governing Internal Revenue Code Section 6109 require a valid taxpayer identification number for each person listed on the tax return. <http://www.irs.gov/pub/irs-pdf/p1915.pdf>.

⁸⁴ See, Treas. Reg. § 301.6109-1(a)(1)(ii)(B) and (d).

Current tax return statistics indicate low compliance of USCs residing overseas. For instance, the IRS reports that in 2006, there were only 30,067 Canadian origin U.S. federal income tax returns filed claiming the FEIE. Even fewer Mexican origin returns in this category were filed; 6,112.⁸⁵ These are the two countries where the largest populations of USCs reside. Specifically, dated estimates from the U.S. Department of State reflect 4.1 million (non-military) USCs living outside the U.S. as of 1999.⁸⁶

Mexico is the country where more USCs reside, according to the State Department, and Canada is number two on the list. Approximately 1 million of these people lived in Mexico, while 687,000 were in Canada. Other countries with large numbers of Americans included the United Kingdom (224,000), Germany (211,000), Israel (184,000), Italy (169,000), Philippines (105,000), Australia (103,000), France (102,000), and Spain (95,000). According to State Department data, these ten countries contain about 70% of all USCs living abroad.⁸⁷

B. Amending - Treas. Reg. § 301.6109

There are a few sentences that will need to be modified in the regulations, specifically Treas. Reg. § 301.6109. A new sentence could be added to paragraph Treas. Reg. § 301.6109(a)(1)(ii)(B) to read in its entirety with added language set forth in italics below:

(B) Except as otherwise provided in paragraph (a)(1)(ii)(D) of this section and § 301.6109-3, an individual required to furnish a taxpayer identifying number but who is not eligible to obtain a social security number must use an IRS individual taxpayer identification number. *Notwithstanding the preceding sentence, a U.S. citizen who has no social security number and resides outside the U.S., shall not be required to apply for a social security number and may otherwise apply for an IRS individual taxpayer identification number.* [Italicized language added]

In addition, Treas. Reg. § 301.61091(d)(3)(ii) can be modified with additional language set forth in italics below:

(ii) General rule for obtaining number. Any individual who is not eligible to obtain a social security number, *or is a United States citizen who has never obtained a social security number and is residing outside the United States and elects not to apply for a social security number,* and is required to furnish a taxpayer identifying number must apply for an IRS individual taxpayer identification number on Form W-7, Application for IRS Individual Taxpayer

⁸⁵ See, IRS SOI Tax Stats – Individual Foreign Earned Income. Table 2. Individual Income Tax Returns With Form 2555: Foreign-Earned Income Exclusion, Housing Exclusion, and Housing Deduction, by Country or Region, Tax Year 2006. <http://www.irs.gov/taxstats/indtaxstats/article/0,,id=96621,00.html>. See other sample return data: return data:

Country or region – Number of returns
Africa, total - 9,697
Asia, total - 138,795

Country or region – Number of returns
Australia - 6,420
Hong Kong - 10,792

⁸⁶ See, *Estimation Of Emigration From The United States* by Jason P. Schachter, Ph.D, page 6, referencing the State Department estimates.

⁸⁷ See, presentation of Jason P. Schachter. Senior Statistician, Bureau of Statistics, ILO Geneva at the United Nations Expert Group Meeting on Migration Statistics, New York, NY, December 4-7, 2006.

Identification Number, or such other form as may be prescribed by the Internal Revenue Service. Form W-7 may be obtained from any office of the Internal Revenue Service, U.S. consular office abroad, or any acceptance agent described in paragraph (d)(3)(iv) of this section. The individual shall furnish the information [Italicized language added]

These amendments in the regulations should be sufficient to allow USC's a means by which to reasonably obtain a TIN. Of course, some modifications will need to be made to certain IRS Forms, such as IRS Form W-7.

VII. CONCLUSION

Since USC's residing overseas cannot reasonably obtain a SSN they also cannot obtain a TIN under current regulatory law. This means they will necessarily be non-compliant with Title 26 and be subject to multiple penalties, including those for not filing returns or International Information Returns. In one example provided by the IRS, it uses a \$1M account example (with US\$400,000 of income over many years) that causes the USC to " . . . face up to \$4,543,000 in tax, accuracy-related penalty, and FBAR penalty. The taxpayers would also be liable for interest and possibly additional penalties. . . "

USC's will be deterred from complying with Title 26 and Title 31 if they cannot obtain the most basic of requirements; a TIN, without spending thousands of dollars and possibly weeks of time to travel long distances in the hope of a successful SSN application with a U.S. Embassy or U.S. Consulate, available in only 17 countries and Jerusalem.

A relatively simple solution, to this terrible dilemma facing USC's residing overseas, is to amend the regulations (Treas. Reg. § 301.6109) to allow such USC's to elect to file for and obtain an ITIN for their TIN, in lieu of a SSN.

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EXHIBIT "A" – 7 FAM 534.3

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7 FAM 534.3 Applications for a Social Security Number (Form SS-5-FS)
(CT:CON-503; 02-07-2014)

- a. Completed SSA Form SS-5-FS, Application for a Social Security Card:
- (1) Everyone who applies for an original SSN must complete (type or clearly block print in blue or black ink) and sign an Form SS-5-FS... (This form is also used for those applying for a replacement or corrected card.) In the rare case where a question cannot be answered, "unknown" should be entered.
 - (2) Social Security Numbers for U.S. Citizen Minors Born Abroad: The combined application for a Social Security Number and a Consular Report of Birth Abroad of a Citizen of the United States was abolished effective November 20, 2006 following the enactment of the REAL ID Act of 2005 (Public Law 109-13, 119 Statutes at Large 231) and the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), Public Law 108-458, 118 Statutes at Large 3638 (42 U.S.C. 405, 22 U.S.C. 4805 and 22 U.S.C. 4808). (See 7 FAM 1440 for guidance about applications for a Consular Report of Birth Abroad of a Citizen of the United States.)

NOTE: An in-person interview must be conducted if the applicant is age 12 or older and applying for an original Social Security Number (SSN) as explained in 7 FAM 534.3e.

- b. Evidentiary Requirements: SSA requirements regarding evidence of identity for an SSN card in the SSA Program Operations Manual System (POMS) on the SSA Policy Information Internet site. POMS are the internal operating instructions used by SSA field employees when processing claims for Social Security benefits. Your RFBO will provide specific guidance about SSA requirements. In summary:
- (1) All applicants for an original SSN (including those under age 12) must submit documentary evidence of:
 - (a) Age;
 - (b) Identity (including legal name); and
 - (c) U.S. citizenship; current, lawful work authorized legal alien status; or a current valid need for an SSN as explained in 7 FAM 534.2 b.
 - (2) Applicants are required to produce at least two different documents to establish identity, age, and citizenship/alien status. Oftentimes, a single document, i.e., a valid passport, fulfills more than one evidentiary requirement. Information on the documents that applicants must submit to establish age, identity and citizenship and work-authorized legal alien status is shown in 7 FAM 534.3 b (4) (5) and (6) below.

- (3) Although originals of evidentiary documents may be sent to SSA, copies of originals certified by the posts and military personnel are preferred to avoid the loss of originals. Post certification of evidentiary documents is not a notary service, and no fee is charged. Foreign language documents are acceptable, and may be translated by post or U.S. military personnel. SSA will determine whether or not the evidence submitted meets SSA's requirements for issuance of a Social Security number.
- (4) Evidence of Age: All applicants for an original SSN must submit evidence of their age. In general, SSA prefers that the applicant submit a public birth record established before the age of 5 as evidence of age. If the applicant does not have a public birth record or cannot readily obtain one, ask him or her to submit other evidence of age as follows:
 - (a) Religious record established before age 5 which shows the applicant's age or date of birth
 - (b) Form FS-240 (Consular Report of Birth Abroad of a Citizen of the U.S.) established before age 5
 - (c) Form DS-1350 (Certification of Report of Birth);
 - (d) Hospital record of birth made at the time of the applicant's birth;
 - (e) Birth record established at or after age 5;
 - (f) U.S. immigration document or record;
 - (g) U.S. naturalization record;
 - (h) Passport; and
 - (i) Final adoption decree showing the applicant's name and date of birth.

If none of the above evidence is available, ask the claimant to submit other evidence. Some of the evidence that SSA may accept is:

- (j) Marriage record;
 - (k) Driver's license;
 - (l) Birth certificate of applicant's child showing applicant's date of birth or age at the time of the child's birth; and/or
 - (m) Identity card.
- (5) Evidence of Identity – General Requirements:
 - (a) All applicants for original or replacement SSN cards must submit evidence of their identity. Generally, SSA prefers to see documents issued in the United States.
 - (b) Applicants applying outside the United States may submit foreign- issued documents. Only certain documents may be acceptable to SSA based on the person's age and citizenship status.

- (c) Documents submitted to establish identity must contain the applicant's legal name and provide biographical information (i.e., date of birth, age or parents' names) and/or a physical description.

NOTE: For the purposes of 7 FAM 530, for SSA. Generally, a person's legal name is the name shown on his or her birth certificate unless changed by a legal action such as marriage, divorce or court order.

- (d) If the applicant submits a picture identity card, but does not appear in person, the document must also show his or her biographical information.
 - (e) Identity documents must be of recent issuance. Thus, documents such as passports and U.S. immigration documents must be unexpired if submitted as evidence of identity. Documents without an expiration date should have been issued within the past 2 years for adults or within the past 4 years for children.
 - (f) Consider the basis of issuance of the document. Documents should be based on acceptable documentary evidence.
 - (g) Ask the applicant to submit his or her unexpired U.S. driver's license; U.S. State-issued non-driver identity card; or U.S. passport.
 - (h) If the applicant does not have one of these documents, ask him or her to submit various combined other documents such as: U.S. immigration document (current); Foreign passport (unexpired); Foreign Driver's license (unexpired); U.S. military ID card; U.S. Employee ID card; Foreign ID card; Life insurance policy; Final adoption decree (if not used to establish age or date of birth); Marriage/divorce records.
 - (i) SSA may accept medical records (clinic, doctor, or hospital) as long as the medical provider maintains them. SSA may also accept school ID cards and school records maintained by the school.
 - (j) If the applicant is not a U.S. citizen we must see current U.S. immigration document, foreign passport, foreign driver's license or foreign ID card with biographical information.
 - (k) SSA cannot accept a birth certificate/record, hospital souvenir birth certificate, Social Security Card or card stub, or Social Security record as evidence of identity.
- (6) Evidence of Citizenship or Alien Status
- (a) If the applicant is a U.S. citizen, SSA may accept the applicant's U.S. public birth certificate established before age 5; U.S. passport (expired passport is acceptable); Consular Report of Birth Abroad; Certificate of Citizenship; Certificate of Naturalization; or U.S. consular official's statement for derivative citizenship (this is acceptable evidence only for an applicant outside the United States)
 - (b) If the applicant is not a U.S. citizen, he or she must submit a current document issued by DHS showing the applicant's immigration status, such as a Form I-

551 or Form I-766. SSA cannot accept a receipt showing that the applicant has applied for one of these documents.

- (c) If the applicant does not have DHS authorization to work in the U.S., SSA can issue an SSN or replacement card only if he or she has a current valid non-work reason for the card (see 7 FAM 534.2 b).

c. Application for an original SSN for a person under age 18:

- (1) Both parents' SSNs must be provided on an application for an original SSN for a child under age 18, unless the applicant has an acceptable reason for not providing it.
- (2) Acceptable reasons for not providing both parents' SSNs on a child's application for an original SSN card are:
 - (a) The parent is deceased;
 - (b) The parent does not have an SSN and is not applying for one; or
 - (c) The parent's SSN is not known or the applicant is not a parent of the child and cannot be expected to be able to obtain the SSN.
- (3) If the applicant has an acceptable reason for not providing a parent's SSN, check "unknown SSN or None" in 9.B. or 10.B. as appropriate. Annotate the entry, "FSP WRITE-IN."
- (4) Do not enter "unknown" unless one of the reasons above applies.
- (5) If the parent has an SSN, but does not know it, he or she must provide the following information about him or herself on an SSA-295 or on a separate sheet:
 - (a) Reason why you are not providing your SSN
 - I do not have an SSN
 - I do not know my SSN
 - Other (explain)
 - (b) Your identifying information (This allows SSA to search its records for an SSN):
 - Your full first, middle, and last name:
 - Your date of birth:
 - Your place of birth:
 - Your mother's full first, middle, and maiden name:
 - Your father's full first, middle, and last name:
 - (c) Reason why you are not providing the other parent's SSN:
 - Other parent does not have an SSN

Other parent's SSN is not known

Other (explain)

- (d) Other parent's identifying information (This allows SSA to search its records for an SSN)

Other parent's full first, middle, and last name:

Other parent's date of birth:

Other parent's place of birth:

Other parent's mother's full first, middle, and maiden name:

Other parent's father's full first, middle, and last name:

NOTE: SSA will search its records for the parents' SSNs. If the parent is unwilling to supply his or her SSN or the identifying information requested above, forward the application to SSA indicating that he or she is unwilling to provide the necessary information.

- (6) When the applicant is not the parent, obtain the following information on an SSA-795 or on a separate page:

(a) Mother's SSN not provided: Mother does not have an SSN. Mother's SSN is not known. Other (explain)

(b) Father's SSN not provided: Father does not have a SSN. Father's SSN is not known. Other (explain)

NOTE: If a parent is filing for a Social Security Number at the same time as his/her child, send both applications to SSA at the same time. Do not hold up the child's application for issuance of an SSN to the parent.

d. Signing the Application:

- (1) The applicant's name should be signed the way he or she usually writes it. Applicants age 18 or over who are physically and mentally capable of reading and completing Form SS-5-FS must sign the application on their own behalf. If an individual is unable to file an application on his or her own behalf, a Form SS-5-FS may be signed by the applicant who can establish relationship to and custody/responsibility for the individual, and who is highest on the priority list below:

(a) A court-appointed legal guardian (individual or an agency) always has priority over any other proper applicants;

(b) A parent (natural, adoptive or step) with custody of a child;

(c) Administrator of an individual's (adult or child) estate;

(d) A brother, sister, grandparent, aunt, or uncle with custody of a child;

(e) A State agency (including State foster care and child protective service agencies, State mental institutions or hospitals or State adoption agencies) or a

State licensed agency (including State contractors and private adoption agencies) if it has legal custody of the individual (adult or child); or

- (f) An individual who applies on behalf of another individual (adult or child) who can establish relationship and responsibility. In such cases, evidence of the signer's authority to sign on behalf of the person to whom the card will be issued (e.g., a minor child's birth certificate establishes the authority of a parent to sign on behalf of the child) must be submitted with the application. In addition, different documents must be submitted as proof of identity for both the applicant and the person to whom the card will be issued.
 - (2) The applicant must sign and date the form. Item 2 must show a complete and legible address to which the card is to be mailed.
 - (3) A child of any age may sign the application if physically or mentally able to do so.
 - (4) An application signed by a mark ("X") must be witnessed by you. (Other witnesses are not necessary when signed before a Consular Officer.)
- e. In-Person Interview:
- (1) All applicants for an original SSN (i.e., the person to whom the SSN is to be assigned) who are age 12 and older must be interviewed in person by:
 - (a) A consular or diplomatic officer;
 - (b) A consular associate;
 - (c) A consular agent;
 - (d) An SSA Regional Federal Benefits Officer (RFBO);
 - (e) A locally employed staff (LE staff) in the Federal Benefits Unit (FBU); or
 - (f) A designated U.S. military personnel abroad.
 - (2) The in-person interview is intended to:
 - (a) Locate a prior SSN by helping the applicant recall circumstances under which an SSN may have been issued to him or her (e.g., an SSN may have been obtained for employment, a bank account, driver's license, or school in the United States); and
 - (b) Prevent the assignment of an SSN to an individual assuming a false identity.
 - (3) The interviewer will corroborate statements and evidence supporting the application. The interviewer will complete and sign the Mandatory In- Person Interview Worksheet (7 FAM Exhibit 530 (D)) to indicate whether the:
 - (a) Applicant was personally interviewed;
 - (b) Applicant's identity was verified (e.g., with a Government-issued ID);

- (c) Applicant did/did not provide any information that would indicate that an SSN might have been issued to him or her (provide information on situations in which an SSN may have been issued); and
 - (d) Applicant did/did not provide adequate responses to the interview questions (report any problems with the interview responses).
 - (4) Forward the Mandatory In-Person Interview Worksheet along with the completed SS-5-FS and documentation to SSA according to 7 FAM 534.3 g.
- f. If an applicant fails to appear for his/her interview, the application will be denied.
- g. Sending Applications for SSNs to SSA:
 - (1) Review each Form SS-5-FS for completeness before forwarding it to the office shown below. A form that is incomplete or not signed by the applicant should be returned to the applicant for completion. Advise him or her why the application is being returned. Do NOT give the completed Form SS-5-FS and copies of the supporting evidence to the applicant to forward to SSA, the RFBO or another post.
 - (2) Send completed Form SS-5-FSs and certified copies of the supporting documents to the office servicing the area where the application was filed as follows:
 - (a) Canada and Mexico: SSA field office currently assigned to your post. (This may change pursuant to local conditions. Your SSA contact will keep you apprised of any changes.)
 - (b) Philippines:

Social Security Administration
U.S. Embassy Manila 1201 Roxas Boulevard
Ermita 0930 Manila, Philippines
 - (c) All others locations: (Unless RFBO instructions state otherwise.)

Office of International Operations
P.O. Box 17775
Baltimore, MD 21235-7758
- h. Advise applicants (or persons completing applications for such persons) who were born in the United States that there will be a delay in issuing them SSN cards. SSA must verify the U.S. birth record with the custodian of the record before it can process the SSN application. For purposes of this definition, the United States includes the 50 States, the District of Columbia, American Samoa, Guam, the Northern Marianas, Puerto Rico and the U.S. Virgin Islands.
- i. SSA will mail the Social Security card directly to the applicant at the address shown in Item 2 of the completed Form SS-5-FS...
- j. Limits on Replacement Social Security Cards
 - (1) The Intelligence Reform and Terrorism Prevention Act of 2004 (Public Law 108-458) limits the number of replacement SSN cards a person may receive to 3 replacement cards in a year and 10 during his or her lifetime. This limit is effective with cards issued after December 16, 2005.

- (2) Legal name changes and changes in immigration status that result in a change to, or removal of, a restrictive legend on the SSN card will not count towards these limits. Also, SSA has the authority to allow for exceptions and issue a replacement SSN card beyond the limits. Valid exceptions include name changes, legend change, non-receipt of an SSN card, SSA mistake and if the person can prove that the card is needed to avoid significant hardship.
- (3) Although a post may not be aware that a person has met the yearly or lifetime limits until after the application and evidence have been submitted to SSA, it is important to be aware of the limits.
- (4) If the individual wants a change in his or her identifying information (e.g., date of birth) on SSA's record but does not need a replacement card, SSA can make the change, assuming the necessary application and evidence are submitted, and suppress the SSN card.

NOTE: Generally, only U.S. citizens and permanent resident aliens will be issued a replacement Social Security card.

- k. Replacement SSN Card - Same Name and Number as Previous Card: Requirements: Completed Form SS-5-FS... (Typed or clearly block printed in black or blue ink):
 - (1) Applicants must submit proof of identity (in the legal name);
 - (2) Foreign-born U.S. citizens must also submit evidence of their U.S. citizenship;
 - (3) Aliens must submit, in addition to evidence of identity, proof of current permanent work-authorized legal alien status (i.e., Form I-551, Permanent Resident Card) or a new (different), current valid nonwork need for a Social Security card. (NOTE: Legal permanent residents can apply for a replacement SSN card through the regular Form SS-5-FS process while outside the United States; nonimmigrants can apply only if they have a new (different) current valid non-work need for a Social Security card (e.g., entitlement to title II benefits.) See 7 FAM 534.2b;
 - (4) All applicants must sign and date the form (e.g., a child of any age may sign the application if physically or mentally able to do so);
 - (5) If the applicant is unsure if a prior SSN application was processed; or if an application was submitted, but no SSN card received, treat as a new application.
- l. Replacement SSN Card - Change of Information: Same Number but Different Name than Previous Card: Requirements: Completed Form SS-5-FS (typed or clearly block printed in black or blue ink). Anyone who has been assigned a Social Security Number can apply for a replacement card for name change provided acceptable evidence of a legal name change is submitted. A replacement SSN card showing the legal name will be issued in all instances except to nonimmigrant aliens who do not submit evidence of a new (different), current valid need for a replacement card. However, their Social Security records will be updated.
- m. Evidence of Legal Name Change: When the applicant requests an SSN card in a name different from the name on the latest SSA record, ask the person to submit one of the following documents as evidence of a legal name change:
 - (1) Marriage document or marriage record;
 - (2) Divorce decree;

-
- (3) Certificate of Naturalization;
 - (4) Court order for a name change; or
 - (5) Amended/corrected birth certificate
 - (6) All applicants must submit proof of identity. That is:
 - (a) One legal name-change document with both the applicant's old name shown on SSA's records and the new name (e.g., a marriage or divorce record or a court order of name change); The document must also show either (1) a description or picture of the person or (2) biographical information (i.e., date of birth, age or parents' names) that can be compared to SSA's records. Generally, when the legal name change document shows biographical information and meets the general identity requirements of 7 FAM 534.3 (b)(5); it is also acceptable as an identity document and the person does not need to also submit an additional document as listed in 7 FAM 534.3 (b)(5); or
 - (b) Generally, if the name change document does not show either a picture of the person or biographical information or does not meet the general identity requirements (7 FAM 534.3 (b) (5)), the applicant must submit two identity documents, one showing his/her old name and one showing the new name. The identity documents must show either a picture of the person or biographical information that can be compared with SSA's records.
 - (c) If the applicant does not have evidence of his/her old name or does not provide evidence to resolve the discrepancy, contact your RFBO for assistance.
 - (d) Aliens must also submit proof of current permanent work-authorized legal alien status (i.e., Form I-551, Permanent Resident Card) or a current valid non-work need for a Social Security card.
 - (e) Foreign-born U.S. citizens must also submit evidence of their U.S. citizenship.
 - (f) The applicant must sign and date the application (a child of any age may sign the application if physically or mentally able to do so).