Summary of and Response to Comment Letters

I. Comment Letter from **Stop Extraterritorial American Taxation (SEAT)**

1. **Comment**: Passive Foreign Investment Company (PFIC) rules are punitive and unfair to U.S. citizens living abroad.
   (i) **IRS Response**: The PFIC rules in sections 1291 through 1298[1] were enacted to discourage U.S. persons from investing in foreign funds to achieve deferral. Further, a U.S. citizen, regardless of where the person lives, is subject to U.S. income tax on income from all sources under sections 1 and 61. All legislative power, including the enactment of sections 1, 61, and sections 1291 through 1298, is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process.
2. **Comment**: PFIC rules / Form 8621 are burdensome, too complex, and costly.
   (i) **IRS Response**: Section 1298(f) and the regulations thereunder provide that a U.S. person that is a shareholder of a PFIC is required to file Form 8621. Thus, the authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. Legislative power to enact and amend sections 1291 through 1298 is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. The IRS has updated and revised Form 8621 and accompanying instructions to reflect the section 1298(f) reporting requirement and any amendments to the relevant regulations. Form 8621 provides information with respect to PFIC shares held by the shareholder, any election made, any income from a Qualified Electing Fund (QEF), gain or loss from mark-to-market election, or distributions from and dispositions of stock of a section 1291 fund. All of such information is essential for the IRS to ensure accurate reporting and tax compliance with respect to taxpayers' investments in PFICs as required under sections 1291 through 1298 and the regulations thereunder. Thus, the IRS and Treasury do not have discretion to modify any requirements related to Form 8621 (including who must file Form 8621 and what should be reported in Form 8621).
3. **Comment**: Provide regulatory relief for U.S citizens living abroad.
   (i) Provide an exception for U.S. citizens who meet the section 911 "bona fide residence test" in investing in any mutual fund or pension plan organized under the country of the residence.
      - **IRS Response**: The authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and

[1] All "section" references are to the Internal Revenue Code (26 U.S.C.), and all "Treas. Reg. §" references are to Treasury regulations (26 C.F.R.).

the regulations thereunder. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. This comment requires amendments to the current regulations. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. Any comment on amending a regulatory requirement should be submitted to the Federal Register during a rulemaking process to be considered.

(ii) Provide an exception for investing in a financial product identified in Annex II of FATCA IGAs.

- **IRS Response**: The authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. This comment requires amendments to the current regulations. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. Any comment on amending a regulatory requirement should be submitted to the Federal Register during a rulemaking process to be considered.

(iii) Raise the threshold of the de minimis exception in Treas. Reg. §1.1298-1(c)(2)(i)(A)(1) from $25,000 to $1,000,000.

- **IRS Response**: The authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. This comment requires amendments to the current regulations. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. Any comment on amending a regulatory requirement should be submitted to the Federal Register during a rulemaking process to be considered.

4. **Comment**: Improve the instructions and Form 8621.

(i) Line 15: Under section 1291(b)(3)(E), if the distributions are received in a foreign currency, the determination of whether a distribution is an "excess distribution" is made in such currency. The instructions and the Form 8621 should be updated to clarify this.

- **IRS Response**: The IRS will update the instructions and Form 8621 with respect to Line 15 for taxable year 2025 to clarify that the determination of whether a distribution is an "excess distribution" is made in the currency of such distribution and the amount of any excess distribution is then translated into dollars under section 1291(b)(3)(E).

(ii) Line 16d: The FTC rules are very complicated. Separate the rules applying to domestic corporations from the rules for individuals and provide better and more examples to explain how the FTC rules apply in the instructions.

- **IRS Response**: We agree that the FTC rules are complex. However, we believe that the current instructions for Form 8621 on the FTC

rules are written as plainly as possible to simplify the complicated FTC rules. In addition, there is other publicly available guidance for individual taxpayers on the FTC rules (e.g., the instructions for Form 1116). However, we will continue to consider recommendations on for ways to clarify the application of these rules in Form 8621.

5. **How Form 8621 and Form 8621-A are Affected**: Line 15 instructions and Line 15 in Form 8621 will be updated for taxable year 2025 as a result of this comment letter.

II. Comment Letter from **Managed Funds Association (MFA), American Institute of Certified Public Accountants (AICPA), and Alternative Investment Management Association (AIMA)**

1. Comment

(i) The comment letter proposes to redesign Form 8621 to allow for disclosure of more than one PFIC and the relevant elections of each PFIC. It also suggests that we add separate supporting schedules if needed.

- The comment letter states that this suggestion is consistent with the shift towards centralized and uniform reporting on Schedules K-2 and K-3 and can alleviate some of the compliance burden because it is expected that the number of Form 8621 filings will continue to increase, and commercial tax return preparation software may have limited filing capabilities.
- The comment letter attached a draft consolidated Form 8621.

2. IRS Response

(i) All of the information in the current Form 8621 is essential for the IRS to ensure accurate reporting and tax compliance with respect to taxpayers' investments in PFICs as required under sections 1291 through 1298 and the regulations thereunder. The IRS does not believe that a consolidated Form 8621 as suggested in the comment will meaningfully reduce the burden of filing Form 8621 as such consolidated form and its supporting schedules must contain the same information as required in the current Form 8621.

3. **How Form 8621 and Form 8621-A are Affected**: No changes will be made to Form 8621 nor Form 8621-A as a result of this comment.

III. Comment Letter from **American Citizens Abroad, Inc.**

1. **Comment**: PFIC rules are punitive and unfair to U.S. citizens living abroad.

(i) **IRS Response**: The PFIC rules in sections 1291 through 1298 were enacted by the Tax Reform Act of 1986 to discourage U.S. persons from investing in foreign funds to achieve deferral. Further, a U.S. citizen, regardless of where the person lives, is subject to U.S. income tax on income from all sources under sections 1 and 61. All legislative power, including the enactment of sections 1, 61, and sections 1291 through 1298, is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process.

2. **Comment**: PFIC rules / Form 8621 are extremely burdensome, complex, and costly.

(i) **IRS Response**: Section 1298(f) and the regulations thereunder provide that a U.S. person that is a shareholder of a PFIC is required to file Form 8621. Thus, the authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. Legislative power to enact and amend sections 1291 through 1298 is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. The IRS has updated and revised Form 8621 and accompanying instructions to reflect the section 1298(f) reporting requirement and any amendments to the relevant regulations. Form 8621 provides information with respect to PFIC shares held by the shareholder, any election made, any income from a QEF, gain or loss from mark-to-market election, or distributions from and dispositions of stock of a section 1291 fund. All of such information is essential for the IRS to ensure accurate reporting and tax compliance with respect to taxpayers' investments in PFICs as required under sections 1291 through 1298 and the regulations thereunder. Thus, the IRS and Treasury do not have discretion to modify any requirements related to Form 8621 (including who must file Form 8621 and what should be reported in Form 8621).

3. **Comment**: Provide relief from the PFIC rules for U.S. citizens living aboard.
   (i) **IRS Response**: The comment does not suggest any specific relief. In any event, the authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. Legislative power to enact and amend sections 1291 through 1298 is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. Any comment on amending a regulatory requirement should be submitted to the Federal Register during a rulemaking process to be considered.
4. **Comment**: Reform the taxation of U.S. citizens living abroad and adopt the residence-based taxation.
   (i) **IRS Response**: A U.S. citizen, regardless of where the person lives, is subject to U.S. income tax on income from all sources under sections 1 and 61. Such law was enacted by Congress, and the IRS and Treasury do not have discretion to modify it. Such modification is also out of scope for purposes of this comment request.
5. **How Form 8621 and Form 8621-A are Affected**: No changes will be made to Form 8621 nor 8621-A as a result of this comment.

IV. Comment Letter from **Democrats Abroad**

1. **Comment**: PFIC rules are punitive and unfair to U.S. citizens living abroad.
   (i) **IRS Response**: The PFIC rules in sections 1291 through 1298 were enacted by the Tax Reform Act of 1986 to discourage U.S. persons from investing

in foreign funds to achieve deferral. Further, a U.S. citizen, regardless of where the person lives, is subject to U.S. income tax on income from all sources under sections 1 and 61. All legislative power, including the enactment of sections 1, 61, and sections 1291 through 1298, is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process.

2. **Comment**: PFIC rules / Form 8621 are extremely burdensome, complex, and costly.
   (i) Publish a simpler "effective annual rate" equivalent to daily compounding interest spread over each year.
      - **IRS Response**: Congress set forth the rules for computation of the interest in section 1291(c)(3). Such legislative power is vested in Congress, and the IRS and Treasury do not have discretion to modify the rules.

   (ii) Permit individuals to declare their transactions and either to have the IRS compute the appropriate tax due, or to pay a modest over-estimate of tax due.
      - **IRS Response**: Congress set forth the rules for computation of the relevant tax due and the PFIC shareholder's reporting requirement in sections 1291 through 1298. The IRS and Treasury do not have the discretion to overlook, modify, or fail to enforce such statutory rules. In addition, the IRS does not have, or expect to have, this capability.

   (iii) Implement safe harbor rules permitting certain "benign" investments (such as funds in foreign retirement accounts or dividend-distributing publicly offered investment produces) to report as either QEFs or ordinary assets subject to capital gain treatment.
      - **IRS Response**: The authority to collect information with respect to PFICs in Form 8621 comes from sections 1291 through 1298 and the regulations thereunder. The regulatory PFIC rules have been promulgated with the statutory authority given to Treasury by Congress under sections 1291 through 1298. All of the above three comments require amendments to the current regulations. The IRS and Treasury do not have discretion to modify such regulatory requirements without a proper and formal rulemaking process. Any comment on amending a regulatory requirement should be submitted to the Federal Register during a rulemaking process to be considered.

3. **Comment**: The IRS's estimate of the burden is not accurate.
   (i) The burden imposed on individuals is neither estimated nor described in its totality by the IRS. Such information should be provided to OMB.
      - **IRS Response**: To better meet the burden of the reporting requirement of the PRA of 1980, the IRS sponsored a study by Arthur D Little, Inc (ADL) in 1984. ADL built a mathematical model designed to estimate the taxpayer compliance burden (the ADL Model). The ADL Model is used to estimate the burden of the

IRS Forms. The estimate of the burden of the collection of information with respect to Form 8621 is measured in accordance with the ADL Model, which does not break out the burden based on categories.

(ii) The burden varies wildly by the reporting method used (e.g., a QEF election has much less burden than the burden of section 1291 fund reporting). Provide a separate estimate for each of the different reporting methods used.

- **IRS Response**: To better meet the burden of the reporting requirement of the PRA of 1980, the IRS sponsored a study by Arthur D Little, Inc (ADL) in 1984. ADL built a mathematical model designed to estimate the taxpayer compliance burden (the ADL Model). The ADL Model is used to estimate the burden of the IRS Forms. The estimate of the burden of the collection of information with respect to Form 8621 is measured in accordance with the ADL Model, which does not break out the burden based on categories.

(iii) The estimated number of respondents in the Notice of Action[2] is 1,333, and such estimate is incorrect because the supporting statement to OMB on Form 8621 in 2022[3] states that the estimated number of respondents is 1,372,333 and such estimate is likely to be closer to the actual number. The IRS incorrectly concluded that it would not offer electronic filing due to "the low number of filers" because of such error (1,333 instead of 1,372,333).

- **IRS Response**: We agree that the estimated number of respondents in the Notice of Action is incorrect. However, such incorrect number did not result in the IRS incorrectly concluding that it would not offer electronic filing. The IRS does provide electronic filing on Form 8621. IRS is improving its burden evaluations moving from the ADL model towards a taxpayer compliance burden model, as described in Publication 5743. This change in evaluating burden involves consolidating collection requirements and their associated burdens by filer type. The burden for individual, business, tax-exempt organization filers using Form 8621 is included in the new taxpayer compliance burden model. The request for comments was for the trust and estate filers using the Form 8621, as the new burden model was not yet completed. Recently, the IRS has completed the consolidation and burden evaluations for trust and estate filers, and received OMB approval. Therefore, IRS will discontinue OMB #1545-1002 in the future.

[2] https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202203-1545-003#.
[3] https://omb.report/icr/202203-1545-003/doc/119295700.

4. **Comment**: Provide plain language guidance and simplify the instructions so non-professional individual taxpayers can understand.
   (i) IRS Publication 54 makes no mention of the PFIC rules even though it is intended as the definitive source of information for international taxpayers.
      - **IRS Response**: Publication 54 (2024) mentions Form 8621 and provides that Form 8621 must be filed with an individual's Form 1040 if the individual is a U.S. person that is a direct or indirect shareholder of a PFIC. Publication 54 (2024) also provides a link to the Form 8621 page. We will update Publication 54 for taxable year 2025 to add that a foreign mutual fund or ETF may be a PFIC.

   (ii) There is no guidance on Form 8621 for non-professional taxpayers.
      - **IRS Response**: We recognize that the PFIC rules can be complicated, and investments in PFICs do create additional tax implications that may require professional guidance. However, such complexity comes from sections 1291 through 1298 and the regulations thereunder. We believe that the instructions for Form 8621 provide guidance to the public on such complicated PFIC rules in the simplest manner possible.

   (iii) "Who Must File" section in the instructions is not understandable by ordinary individuals.
      - **IRS Response**: We recognize that the PFIC rules can be complicated. However, such complexity comes from sections 1291 through 1298 and the regulations thereunder. We believe that the description in the "Who Must File" section is as simplified as it can be while remaining accurate. Further, the relevant technical terms are explained in the "Definitions and Special Rules" section. If commenters have any suggested language that is clearer, we are willing to consider it.

   (iv) The definitions and special rules section of the instructions is impenetrable for non-experts.
      - **IRS Response**: The complexity of the PFIC rules comes from sections 1291 through 1298 and the regulations thereunder. We believe that the "Definitions and Special Rules" section is as simple as it can be while remaining accurate. If commenters have any suggested language that is clearer, we are willing to consider it.

   (v) Non-professional taxpayers cannot determine which reporting regime is applicable.
      - **IRS Response**: The complexity related to the three separate regimes – the interest charge regime, the QEF election, and the mark-to-market election – comes from sections 1291 through 1296 and the regulations thereunder. We believe that the relevant description in the instructions for Form 8621 is as simple as it can be while remaining accurate. If commenters have any suggested language that is clearer, we are willing to consider it.

   (vi) Determination of whether there is an excess distribution is indecipherable to average taxpayers.
      - **IRS Response**: The complexity related to the determination of whether there is an excess distribution comes from section 1291 and

the regulations thereunder. We believe that the description of such rules in the instructions for Form 8621 is as simple as it can be while remaining accurate. If commenters have any suggested language that is clearer, we are willing to consider it.

5. **Comment**: Offer an automated version of Form 8621 to reduce the taxpayer burden.
   (i) **IRS Response**: We recognize that international taxpayers may not always have access to high quality filing options. We will consider the needs of international taxpayers in any future IRS efforts to expand filing options.
6. **How Form 8621 and Form 8621-A are Affected**: We will update the estimated number of respondents. We will also update Publication 54 for taxable year 2025 to add that a foreign mutual fund or ETF may be a PFIC.

V. Comment Letters from **Individual Expatriates**

1. **Comment**

In addition to the above, we received over 1150 comment letters, almost all of which came from U.S. citizens living and working overseas on a more or less permanent basis. The content of these letters was generally out of scope with respect to the specific concerns for which comments were requested, including, inter alia, whether the collection of information is necessary for the proper performance of the functions of the agency, or whether the information has practical utility. They did not identify ways to enhance the quality, utility, and clarity of the information to be collected or ways to minimize the burden of the collection of information on respondents.

These writers nearly universally protested against the onerous taxation entailed by the PFIC regime and appealed for relief. Many of these investors reported being inadvertently exposed to PFIC taxation due to being unaware that their investments constitute PFICs. They argued that by virtue of living abroad, they are subjected to a different and more punitive tax system than U.S. citizens living inside the United States, who have access to more investment options that do not trigger the PFIC regime.

Nearly all writers protested the need to prepare Form 8621, which in their view poses an intolerable burden due to its complexity. Upon realization of the steps involved in completing Form 8621, many reported that they were unable to prepare the form on their own.

Writers also noted that the complexity of U.S. tax compliance also typically results in incurring professional tax preparer fees that far exceed the cost of preparing the tax returns alone. Many reported incurring substantial tax preparation costs that are disproportionate to taxes ultimately owed, which for many, is often minimal due to the foreign earned income exclusion and foreign tax credits.

Finally, the letter writers almost universally expressed dissatisfaction that the PFIC regime, and more specifically, their determination to avoid investing in PFICs, makes it far more difficult for them to effectively save for retirement than their peers residing within the United States. That is because foreign managed funds, which is the type of managed investment product offering broadly available in their home markets, are generally classified as PFICs for U.S. tax purposes. Meanwhile, these writers report being unable, as a practical matter, to access U.S. managed funds because of the refusal of both U.S. and foreign financial institutions, due to regulatory constraints, to allow them to maintain accounts holding U.S. investments from an overseas address.

Therefore, the writers explain, for American citizens residing overseas, unlike their U.S.-resident counterparts, investment companies registered abroad may be the only investment vehicles they are eligible to acquire. Many writers acknowledged that it is possible to avoid the costs of owning PFICs by purchasing equities directly on a foreign exchange. However, this was regarded as an inadequate solution, as many investors find it difficult to achieve appropriate levels of diversification by investing directly in equities. For many writers, the upshot is that all of their retirement savings end up being deposited in low-yielding savings accounts.

2. **IRS Response**

The foregoing concerns essentially replicate concerns expressed in the three more substantive letters already addressed above (I, III, and IV).

The PFIC rules are arguably working as intended. They are meant to discourage U.S. taxpayers from deferring U.S. income tax by investing in non-U.S. investment companies. Non-U.S. mutual funds may not be subject to rules that require current distribution of realized income, which potentially makes them an attractive vehicle for tax deferral. As a result, virtually all foreign managed funds are treated as PFICs for U.S. tax purposes. Legislative power to enact and amend sections 1291 through 1298 is vested in Congress, and thus, the IRS and Treasury do not have discretion to modify any such law.

Moreover, the PFIC regime is not the sole reason that financial and retirement planning may be burdensome for Americans abroad. As described in the letters, an issue for expatriates is that, while PFICs by design are generally not intended to be suitable investments for U.S. investors, investing directly in U.S.-managed funds may not be a practical alternative for reasons unrelated to the PFIC regime. Many of the writers cited practical constraints, such as U.S. institutions that offer brokerage and mutual fund accounts barring non-U.S. residents from opening a new investment account or maintaining an existing one.

U.S. taxpayers residing abroad can generally avoid the PFIC regime by purchasing shares of non-PFICs directly on a foreign exchange. However, investors may find it difficult to achieve their preferred level of diversification by investing directly in equities. In addition, it may also be possible to avoid the PFIC regime by acquiring interests in U.S.-domiciled ETFs on a foreign exchange.

3. **How Form 8621 and Form 8621-A are Affected**

As discussed, the foregoing concerns replicate concerns expressed in the three more substantive letters addressed above (I, III, and IV). Updates to Form 8621 and 8621-A will be made as described in "How Form 8621 and Form 8621-A are Affected" for those prior comment letters.