

## **SUPPORTING STATEMENT**

Internal Revenue Service  
Golden Parachute Payments  
OMB# 1545-1851

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

A corporation may provide generous severance and other benefits to key personnel on a change in ownership or control of the company. Significant tax consequences are imposed on excessive payments made to certain individuals.

Golden parachute arrangements can provide for payments to be made by:

- The target entity to its own employees;
- The acquiring entity to the target's employees; or
- Interested parties in the takeover to the target's employees

Takeover protection, in the form of golden parachute payments, can be written into an officer's or key employee's employment contract to be triggered in the event of a change in control of the company. It can also be written into a consulting agreement, covenant not to compete, or similar arrangement.

An excess parachute payment is the amount by which a parachute payment exceeds the greater of the base amount allocated to such payment or the portion of the payment the individual establishes by clear and convincing evidence is reasonable compensation for services rendered before the change in ownership or control. An excess parachute payment is the portion of a parachute payment that is disallowed as a compensation deduction to the payor and is subject to the 20% excise tax assessed to the recipient.

Significant tax consequences are imposed on “excess parachute payments” made to disqualified individuals. First, IRC § 280G applies to the corporate payor and disallows the deduction of an excess parachute payment. Second, the recipient of the excess parachute payment is subject to a nondeductible 20% excise tax under IRC § 4999.

### 2. USE OF DATA

This information is a brief description of all material facts concerning all payments which would be parachute payments (but for §1.280G-1, Q/A-6). This information may be used by certain corporations with no readily tradeable stock (assuming certain shareholder approval requirements are also met) to determine if the payments to a disqualified individual are exempt from the definition of parachute payments.

### 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

We have no plans to offer electronic filing. IRS publication, regulations, notices and letters are to be electronically enabled on an as practicable basis in accordance with the

IRS Reform and Restructuring Act of 1998.

4. EFFORTS TO IDENTIFY DUPLICATION

The information obtained through this collection is unique and is not already available for use or adaptation from another source.

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

Section 1.280G–1 of these proposed regulations provides for the collection of information. IRS certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, as indicated in the Paperwork Reduction Act section earlier in the preamble, only 800 small entities are expected to be affected by the regulations annually, and it is unlikely that any small entity would be affected by these regulations more than once or twice in its existence. Therefore, an analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

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

Consequences of less frequent collection on federal programs or policy activities would result in an increase in payments made to a disqualified individual who is exempt from the definition of parachute payment.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

There are no special circumstances requiring data collection to be inconsistent with Guidelines in 5 CFR 1320.5(d)(2).

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

On February 20, 2002, a notice of proposed rulemaking (REG–209114–90, 2002–1 C.B. 576), was published in the Federal Register at 67 FR 7630 (the 2002 proposed regulations) and corrected in the Federal Register at 67 FR 42210 on June 21, 2002 (Ann. 2002–65, 2002–2 C.B. 182). No hearing was requested or held. The IRS received written and electronic comments responding to the notice of proposed rulemaking. After consideration of the comments, the 2002 proposed regulations are adopted as amended by Treasury decision 9083. The significant revisions are discussed this Treasury decision.

In response to the **Federal Register** notice dated April 8, 2019 (84 FR 13990), we received no comments during the comment period regarding this regulation.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

No payment or gift has been provided to any respondents.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

No personally identifiable information (PII) is collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

The collection of information in this regulation is in §1.280G–1, Q/A–7(a). This information is a brief description of all material facts concerning all payments which would be parachute payments (but for §1.280G–1, Q/A–6). This information may be used by certain corporations with no readily tradeable stock (assuming certain shareholder approval requirements are also met) to determine if the payments to a disqualified individual are exempt from the definition of parachute payments. The collection of information is voluntary. The likely respondents are business or other for-profit institutions.

The burden estimate is as follows:

<b>OMB Collection</b>	<b>Authority</b>	<b>Form</b>	<b>Annual Responses</b>	<b>Hours per Response</b>	<b>Total Burden</b>
IRS 1545-1851	CFR 1.280G-1	-----	800	15	12,000
	<b>IRS TOTAL</b>		<b>800</b>		<b>12,000</b>

The following regulations impose no additional burden. Please continue to assign OMB number 1545-1851 to these regulations.

1.280G-1

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated April 8, 2019, requested public comments on estimates of cost burden that are not captured in the estimates of burden hours, i.e., estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. However, we did not receive any responses from taxpayers on this subject. As a result, estimates of these cost burdens are not available currently.

To ensure more accuracy and consistency across its information collections, IRS is currently in the process of revising the methodology it uses to estimate burden and costs. Once this methodology is complete, IRS will update this information collection to reflect a more precise estimate of burden and costs.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost to the federal government.

15. REASONS FOR CHANGE IN BURDEN

There are no changes to the burden.

We are submitting this request for renewal purposes only.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

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

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulation sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT

There are no exceptions to the certification statement.

**Note:** The following paragraph applies to all the collections of information in this submission:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.