

SUPPORTING STATEMENT
Notice 2010-6
OMB No. 1545-2164

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 409A(a) provides that if at any time during a taxable year a nonqualified deferred compensation (NQDC) plan fails to meet the requirements of § 409A(a), or is not operated in accordance with such requirements, employees and non-employee service providers participating in the plan are required to include immediately in income all NQDC deferred under the plan and pay additional taxes on such income (including an additional 20% income tax). Notice 2010-6 provides relief to plan participants permitting the correction of certain inadvertent failures of a NQDC to meet the requirements of § 409A(a) (document failure). Correction of a document failure in accordance with the requirements of Notice 2010-6 will result in either (i) no income inclusion and no additional taxes assessed under § 409A(a) as a result of the document failure, or (ii) in certain circumstances the inclusion of a lesser amount in income and the application of only one additional tax under § 409A(a) as a result of such failure.

Notice 2010-6 requires as an eligibility condition that employers maintaining, and employees (or other non-employee service providers) participating in, NQDC plans must file information statements to report the correction and any amounts required to be included in income as a result of the correction. Under Notice 2010-6, the employer must attach to its federal income tax return an information statement related to the correction of a failure of a nonqualified deferred compensation plan to comply with the written plan document requirements of § 409A(a). The information statement must be attached to the employer's income tax return for the employer's taxable year in which the correction is made, and the subsequent taxable year but only if an affected employee must include an amount in income in such subsequent year as a result of the correction. The employer must also provide an information statement to each affected employee, and such employee must attach an information statement to the employee's federal tax return for the employee's taxable year during which the correction is made, and the subsequent taxable year to the extent an amount is includible in income by the employee in such subsequent year as a condition of the correction.

2. USE OF DATA

The information on the statements required to be filed by the employer and the employees with their federal income tax returns will be used by the IRS to identify corrections and instances where full income inclusion and additional taxes under § 409A(a) are either not applicable or limited although a NQDC plan failed to meet the requirements of § 409A(a).

The information on the statements required to be provided to the employees by the

employer will be used by employees to complete their income tax returns in the year of the correction, and to the extent applicable, the subsequent year if the employee is required to include an amount in income and pay an additional tax under § 409A(a) for that subsequent year as a condition of the correction.

3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

There are no plans to provide 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

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

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

Not applicable.

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

Not applicable.

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

Not applicable.

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

Notice 2010-6 was published in the Internal Revenue Bulletin (2010-3 I.R.B. 275), on January 19, 2010.

In response to the *Federal Register* notice (75 FR 5865), dated February 4, 2010, we received no comments during the comment period regarding Notice 2010-6.

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

Not applicable.

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

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Estimated total annual reporting burden: 5,000 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 10,000.

Estimated annual frequency of responses: on occasion.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our *Federal Register* notice dated February 4, 2010, 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 response from taxpayers on this subject. As a result, estimates of the cost burdens are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

There is no change to the burden associated with the collection of information. This request is being submitted as an extension.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

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

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

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.