

SUPPORTING STATEMENT
OMB 1545-2164
Notice 2008-113
Notice 2010-6

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Notice 2008-113

Section 409A generally provides that unless certain requirements are met, amounts deferred under a nonqualified deferred compensation plan for all taxable years are currently includible in gross income to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a)(1)(A)(i) provides that if at any time during a taxable year a nonqualified deferred compensation plan fails to meet the requirements of § 409A(a)(2), (3) or (4), all compensation deferred under the plan for the taxable year and all preceding taxable years shall be includible in gross income for the taxable year to the extent not subject to a substantial risk of forfeiture and not previously included in gross income. Section 409A(a)(1)(B)(i)(I) provides that if compensation is required to be included in gross income under § 409A(a)(1)(A), the tax imposed on such income is increased by the sum of two additional taxes equal to the amount of interest determined under § 409A(a)(1)(B)(ii) plus an amount equal to 20% of the compensation which is required to be included in gross income. Similar tax consequences apply under § 409A(b)(5) if the requirements of § 409A(b) are not met.

This notice provides procedures under which taxpayers can obtain relief from the full application of the income inclusion and the additional taxes under § 409A with respect to certain failures of a nonqualified deferred compensation plan to comply with § 409A(a) in operation (an operational failure). Information required with respect to correction of an operational failure in the same taxable year as the failure occurs or with respect to relief for certain operation failures require a service recipient to attach to its timely-filed federal income tax return for its taxable year in which the failure occurred or discovered, a statement setting out the information required by Section IX.A of the notice. Service recipient must provide to each service provider affected by such failure or which it discovers such failure, a statement setting out the information required by Section IX.A.

Notice 2010-6

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 will be used by the Service to determine whether the taxpayers claiming the relief set forth in the Notice were eligible for the relief and that the relevant requirements were met.

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

Taxpayers will be able to file the required information electronically if they file their federal income tax returns electronically. Service recipients may use electronic means (such as email) to provide required information to service providers.

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

This information collection does not impact small businesses or other small entities.

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

The information will be used by the Service to determine whether the taxpayers claiming the relief set forth in the Notice were eligible for the relief and that the relevant requirements were met.

A less frequent collection would prevent the IRS from assessing if the taxpayers claiming the relief have met the relevant requirements.

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

There are no special circumstances requiring inconsistencies.

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

On December 22, 2008, the Treasury Department and the IRS issued Notice 2008-113, 2008-51 I.R.B. 1305, as a successor to Notice 2007-100. This notice incorporates, clarifies and expands upon the guidance provided in Notice 2007-100, and accordingly Notice 2007-100 is obsoleted.

Notice 2010-6 was published in the Internal Revenue Bulletin (2010-3 I.R.B. 275), on January 19, 2010. Section XII of this notice provides certain modification to Notice 2008-113, clarifying certain aspects of the notice that are effective for service providers taxable years beginning on or after January 1, 2010.

Notice 2010-80 was published in the Internal Revenue Bulletin (2010-51 I.R.B. 853), on November 30, 2010, and modifies certain provisions of Notice 2008-113 and Notice 2010-6.

In response to the **Federal Register** notice (78 FR 16046), dated March 13, 2013, we received no comments during the comment period.

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

No payments or gifts are being provided.

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 being collected.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Notice 2008-113 (Correct operational failures)

Estimated total annual reporting burden: 5,000 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 10,000.

Notice 2010-6 (Correct document failures)

Estimated total annual reporting burden: 5,000 hours.

Estimated average annual burden hours per respondent: 30 minutes.

Estimated number of respondents: 10,000.

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<u>Guidance</u>	<u>Responses</u>	<u>Time per Respondent</u>	<u>Burden</u>
Notice 2008-113	10,000	.5 hours	5,000 hours
Notice 2010-6	10,000	.5 hours	5,000 hours
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	20,000		10,000 hours

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

No estimated total annual cost burden to respondents is available.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

There is no estimated annualized cost.

15. REASONS FOR CHANGE IN BURDEN

The change in the information collection burden previously approved by OMB is an adjustment to consolidate the information collection requirement of Notice 2008-113 (previously approved under #1545-2086) and Notice 2010-6. Both notices are related to errors in complying with § 409A; however, Notice 2008-113 is intended to correct operational failures, while Notice 2010-6 is intended to correct document failures.

This change will move the burden hours that were previously reported under OMB control #: 1545-2086 under this information collection—OMB control # 1545-2164.

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

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

There are no exceptions.

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.