

**SUPPORTING STATEMENT**  
**Internal Revenue Service (IRS)**  
**Empowerment Zone Employment Credit**  
**EE-175-86 and REG-108639-99**  
**OMB Control Number 1545-1069**

**1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION**

Section 401 (k) of the Internal Revenue Code permits an employee to receive compensation from his employer in cash or put such compensation into an employer's pension plan. These arrangements are referred to as cash or deferred arrangements (CODA's). Amounts which the employee puts into the cash or deferred arrangement are not taxable to the employee until distributed from such arrangement. For most Code purposes, such amounts are treated as employer contributions.

Section 401(k) contain special discrimination tests relating to coverage and contributions/benefits under CODA's. A plan must meet these requirements in order to maintain its qualified tax-exempt status.

The recordkeeping requirement of §1.401(k)-1(e)(8) simply requires the employer to keep records showing compliance with the discrimination requirements of section 401(k).

The amount that highly compensated employees may defer under a CODA is limited by how much nonhighly compensated employees defer. Amounts which exceed the amount that highly compensated employees can defer are referred to as excess contributions.

Section 401(k)(8) of the Internal Revenue Code of 1986 provides that excess contributions may be recharacterized as employee contributions contributed to a pension plan. Thus, such amounts must be included in the employee's income. The Service has decided to permit use of this rule for plan years which begin before January 1, 1987. Since the employee now has additional income, such income must be reported to appropriate persons and institutions just like any other income. This is the reason for the reporting requirements in §1.401(k)-1(f)(3).

If an employer does not correct the excess contributions, there is a ten percent excise tax imposed on such contributions by section 4979 of the Code. Section 4979 also imposes the same tax on excess aggregate contributions (employee contributions and matching contributions made on behalf of highly compensated employees that exceed the amount permitted under section 401(m)). The reporting requirement in §54.4979-1(a)(3) relates to filing the form for the payment of this tax.

The tax of section 4979 is also imposed on employers who maintain simplified employee pensions (SEP's) to which excess contributions are made. Section 54.4979-1(a)(4) exempts the employer from the tax of section 4979 if certain information is furnished to the employees who have excess contributions. Section 54.4979-1(a)(4)(ii) sets forth this information.

The recordkeeping requirement contained in §1.401(m)-1(c)(2) concerns section 401(m). Section 401(m) of the Code sets forth a nondiscrimination test for employee contributions and matching contributions (contributions made by an employer based upon amounts deferred by an employee

under a CODA or amounts which an employee contributes to a plan) similar to the one for CODA's. In addition, other contributions may be used by the employer to help matching contributions and employee contributions meet the requirements of section 401(m). These amounts are qualified nonelective contributions and amounts deferred under a CODA. The recordkeeping requirement of §1.401(m)-1(c)(2) is needed in order for the employer to show compliance with section 401(m) and the regulations under that section.

**2. USE OF DATA**

The information reported will be used by employees to file their income tax returns and will be used by the Internal Revenue Service to assess the correct amount of tax.

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

Form W-2 can be filled and filed electronically. The rest of the burden associated with this collection is record keeping and calculations.

**4. EFFORTS TO IDENTIFY DUPLICATION**

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

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

Small businesses should not be disadvantaged as the form has been structured to request the least amount of information and still satisfy the requirements of the statute and the needs of the Service.

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

The information required is needed to verify compliance with the Internal Revenue Code of the Treasury Regulation 1.401(k) and (m). A less frequent collection of taxes and tax information could adversely affect the government's effectiveness and would reduce the oversight of the public in ensuring compliance with Internal Revenue Code and hinder the IRS from meeting its mission.

**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**

In response to the Federal Register notice dated March 4, 2019 (84 FR 7417), we received no comments during the comment period regarding these regulations.

**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 U.S.C. 6103.

**11. JUSTIFICATION OF SENSITIVE QUESTIONS**

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the "Individual Master File (IMF)" system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.030-CADE Individual Master File and IRS 34.037 IRS Audit Trail and Security Records System. The Internal Revenue Service PIA's can be found at <https://www.irs.gov/uac/Privacy-Impact-Assessments-PIA> .

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

**12. ESTIMATED BURDEN OF INFORMATION COLLECTION**

Under §1.401(k)-1(f)(3), employers may correct excess contributions by recharacterizing such amounts as employee contributions and must file Form 1099-R to indicate such change. The burden for this requirement is being reflected on Form 1099-R.

Under §1.401(k)-1(e)(8), employers must maintain records to demonstrate compliance with the nondiscrimination requirements of section 401(k). We estimate that there are 25,000 employers subject to this requirement and that it will take each of them three hours annually to develop the required records. This will result in a total annual record-keeping burden of 75,000 hours.

Under §1.401(k)-1(f)(3)(ii), employers may correct excess contributions by recharacterizing such amounts as employee contributions and must file certain forms to indicate such change. We estimate that 4,500 employers will be subject to this requirement and that it will take each employer two hours to file such forms. Therefore, we estimate the total reporting burden for recharacterization to be 9,000 hours. The forms which will be filed are a W-2 and a W-2C.

Under §1.401(m)-1(c)(2), employers must keep records to demonstrate compliance with section 401(m) and the applicable regulations. We estimate that 325,000 employers will be subject to this requirement and the annual burden for each will be three hours. Therefore, the total recordkeeping burden will be 975,000 hours annually.

Under section 4979, employers must pay a 10 percent excise tax on excess contributions and excess aggregate contributions if such contributions are not corrected by a certain date. The form used to report this tax is Form 5330. The burden for this requirement has already been accounted for on Form 5330.

The tax of section 4979 will not be imposed on employers who maintain SEP's to which excess contributions are made if certain information is furnished to employees who have made excess contributions. This rule and information required to be furnished to affected employees is in §54.4979-1(a)(4). We estimate that 1,000 employers will want to use these rules and that it will take each employer one hour annually to perform the calculations and notify affected employees. Therefore, the total reporting burden is 1,000 hours.

Regulation	Description	# Respondents	# Responses Per Respondent- Approximate	Total Annual Responses	Hours Per Response	Total Burden
§1.401(k)-1(e)(8)	records to demonstrate compliance with the nondiscrimination requirements of section 401(k)	25,000	1	25,000	3 hours	75,000
§1.401(k)-1(f)(3)(ii)	W-2 and a W-2C	4,500	1	4,500	2 hours	9,000
§1.401(m)-1(c)(2)	keep records to demonstrate compliance with section 401(m) and the applicable regulations	325,000	1	325,000	3 hours	975,000
§54.4979-1(a)(4)	calculations and notify affected employees who have made excess contributions	1,000	1	1,000	1 hour	1,000
TOTAL		355,500		355,500		1,060,000

**13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS**

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**

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.

**15. REASONS FOR CHANGE IN BURDEN**

There have been no changes to the regulations that would affect burden.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	355,500	0	0	0	0	355,500
Annual Time	1,060,000	0	0	0	0	1,060,000

Burden (Hr)						
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**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 regulations sunsets 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 to the certification statement.

Note: The following paragraph applies to all of 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.