

SUPPORTING STATEMENT
Internal Revenue Service
Requirements for qualified domestic trust
OMB # 1545-1443

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

Section 2056(d) and section 2056A were added to the Internal Revenue Code by section 5033 of the Technical and Miscellaneous Revenue Act of 1988. These sections restrict the availability of the estate tax marital deduction when the surviving spouse is not a United States citizen to situations where the marital property passes to a qualified domestic trust (QDOT). An additional estate tax is imposed under section 2056A(b) on certain taxable events (i.e., distributions of property from the QDOT). Section 2056A(e) authorizes the Secretary to prescribe regulations as may be necessary or appropriate to carry out the purposes of the section. The regulations provide amendments to the regulations under the Internal Revenue Code concerning the additional requirements necessary to ensure the collection of the additional estate tax imposed under section 2056A(b) in the case of taxable events involving QDOTs.

Responses to this collection of information, as described below, are required for an estate to be eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

(1) Section 20.2056A-2(d)(1)(i) requires that where the fair market value of the assets passing to a QDOT exceeds \$2 million, the QDOT must either: (1) have a United States bank serving as the trustee of the QDOT; (2) furnish a bond in favor of the IRS in an amount equal to 65 percent of the fair market value of the trust assets; or (3) furnish a letter of credit issued by a bank, as defined in section 581, or issued by a foreign bank and confirmed by a bank as defined in section 581, in favor of the IRS in an amount equal to 65 percent of the fair market value of the trust assets. The bond or letter of credit (and confirmation, if applicable) is to be filed with the decedent's federal estate tax return. The U.S. Trustee must provide a written statement with the bond or letter of credit that provides a list of the assets that will be used to fund the QDOT and the respective value of such assets.

(2) Under section 20.2056A-2(d)(1)(i)(B) and (C), a bond or letter of credit security arrangement with respect to a QDOT must be for a term of at least one year and must be automatically renewable at the end of such term, on an annual basis thereafter, unless notice of failure to renew is received by the IRS at least 60 days prior to the end of the term. In addition, the IRS will not draw on the bond or letter of credit if within 30 days of receipt of notice of failure to renew or closure of the U.S. branch, the U.S. Trustee notifies the IRS that an alternate security arrangement under section 20.2056A-2(d)(1)(i)(A), (B) or (C) has been secured and that such arrangement will take effect immediately prior to or upon expiration of the bond or letter of credit, or closure of the U.S. branch of a foreign bank.

(3) Under section 20.2056A-2(d)(1)(i)(C), if a letter of credit is issued by a U.S. branch of a foreign bank and such U.S. branch is closing, the branch (or foreign bank) must notify the IRS of such closing and the notice of closure must be received at least 60 days prior to the date of closure.

(4) Section 20.2056A-2(d)(iv)(A) provides that the executor of the estate may elect to exclude up to \$600,000 in value with respect to the surviving spouse's personal residence in determining whether the QDOT exceeds the \$2 million threshold under section 20.2056A-2(d)(1)(i) or (ii). The executor of the estate may also elect to exclude, during the term of the QDOT, up to \$600,000 attributable to the surviving spouse's personal residence for purposes of determining the amount of the bond or letter of credit required. Both elections are made by attaching a written statement claiming the exclusion to the estate tax return on which the election is made.

(5) Under section 20.2056A-2(d)(1)(iv)(B) the executor of the estate may elect to exclude up to \$600,000 in value with respect to the surviving spouse's principal residence and one other residence in determining the \$2 million threshold under section 20.2056A-2(d)(1)(i) and (ii) and for purposes of determining the amount of the bond or letter of credit required. The election to exclude \$600,000 in value attributable to the surviving spouse's principal and one other residence for purposes of determining the amount of the bond or letter of credit required may be made at a time other than the filing of the decedent's estate tax return and may be canceled later. Either of these actions are made by attaching to the Form 706 QDT (OMB #1545-1212), a written statement either claiming or canceling the election.

(6) Under section 20.2056A-2(d)(4), taxpayers may submit a request for a private letter ruling for the approval of an alternative plan or arrangement proposed to be adopted in order to ensure the collection of the section 2056A estate tax in lieu of the security options provided in the regulations.

(7) Section 20.2056A-2(d)(6) provides that in certain cases where the settlor of a QDOT is under a legal disability to amend the will or trust or the trust does not provide the U.S. Trustee with a power to amend the trust instrument in order to meet the requirements of section 2056A, the trust is not required to contain the governing instrument requirements contained in section 20.2056A-2(d)(1) if the U.S. Trustee provides a written statement with the federal estate tax return (Form 706 or 706NA) that the trust is being administered (or will be administered) so as to be in actual compliance with section 20.2056A-2(d)(1) for the duration of the trust.

(8) Section 20.2056A-2(d)(3) requires the U.S. Trustee of a QDOT to file an annual statement if the QDOT owns directly, or in some cases, indirectly, any foreign real property on the last day of the taxable year and the QDOT does not satisfy any of the security requirements contained in section 20.2056A-2(d)(1)(i).

2. **USE OF DATA**

The information relating to the bond and letter of credit requirements under section 20.2056A-2(d)(1)(i) will be processed by the IRS and used in the administration of the Internal Revenue laws to ensure that QDOTs in excess of \$2 million have provided the required security arrangements to ensure the collection of the additional estate tax that is imposed under section 2056A(b). The information collected under the annual reporting requirement of section 20.2056A-2(d)(3) will be used to monitor the foreign real property holdings of QDOTs of less than \$2 million and the compliance with the requirements for the availability of the principal residence exclusion contained in section 20.2056A-2(d)(1)(iii).

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**

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

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

There are no small businesses or other small entities affected by this collection. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the notice of proposed rulemaking preceding the regulations was issued prior to March 29, 1996, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply.

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

Responses to this collection of information are required for an estate to be eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

Failure to collect the information will prevent IRS from monitoring compliance requirements and to determine whether taxpayers are eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

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**

Periodic meetings are held between IRS personnel and representatives of the American Bar Association, the National Society of Public Accountants, the American Institute of Certified Public Accountants, and other professional groups to discuss tax law and tax forms. During these meetings, there is an opportunity for those attending to make comments regarding this guidance.

In response to the Federal Register notice dated October 25, 2019, (84 FR 57551), 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**

No personally identifiable information (PII) is collected.

12. **ESTIMATED BURDEN OF INFORMATION COLLECTION**

The collection of information in these regulations is in section 20.2056A-2. The likely respondents are estates and individuals. Responses to this collection of information are required in order for an estate to be eligible for the estate tax marital deduction in cases where the surviving spouse is not a United States citizen.

The estimated annual burden per respondent varies from 30 minutes to 3 hours, depending on individual circumstances, with an estimated average of 1.39 hours. The estimated number of respondents is between 4,000 and 4,500.

Accordingly, the total annual burden for this collection of information requirement will not exceed 6,070 hours.

Para	CFR Citation	Respondents	# Responses Per Respondent	Annual Responses	Hours Per Response	Total Annual Burden
1	20.2056A-2(d)(1)(i)	1,500	1	1,500	3.00	4,500
2	20.2056A-2(d)(1)(i)(B) & (C)	220	1	220	0.50	110
3	20.2056A-2(d)(1)(i)(C)	20	1	20	0.50	10
4	20.2056A-2(d)(iv)(A)	1,000	1	1,000	0.50	500
5	20.2056A-2(d)(iv)(B)	100	1	100	0.50	50
6	20.2056A-2(d)(4)	50	1	50	3.00	150
7	20.2056A-2(d)(6)	200	1	200	0.50	100
8	20.2056A-2(d)(3)	1,300	1	1,300	0.50	650
Totals		4,390	1	4,390	1.382687927	6,070

The following regulation imposes no additional burden. Please continue to assign OMB number 1545-1443 to this regulation.

20.2056A-2

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

As suggested by OMB, our Federal Register notice dated October 25, 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 are no estimated annualized costs to the Federal government.

15. REASONS FOR CHANGE IN BURDEN

There is no change in the estimated burden currently approved. We are making this submission to renew the OMB approval.

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 guidance 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: 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 if 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.