



DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-104591-18]

RIN 1545-BO67

Denial of Deduction for Certain Fines, Penalties, and Other Amounts; Information With Respect To Certain Fines, Penalties, and Other Amounts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance on section 162(f) of the Internal Revenue Code (Code), as amended by legislation enacted in 2017, concerning the deduction of certain fines, penalties, and other amounts. This document also contains proposed regulations that provide guidance relating to the information reporting requirements under new section 6050X of the Code with respect to those fines, penalties, and other amounts. The proposed regulations affect taxpayers that pay or incur amounts to, or at the direction of, governments, governmental entities or certain nongovernmental entities treated as governmental entities (nongovernmental entities) in relation to the violation of a law or investigations or inquiries by such governments, governmental entities, or nongovernmental entities into the potential violation of a law. The proposed regulations also affect governments, governmental entities, and nongovernmental entities subject to the related reporting requirement.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 60 DAYS AFTER PUBLICATION OF THIS DOCUMENT]**

IN THE FEDERAL REGISTER]. Requests for a public hearing must be submitted as prescribed in the “**Comments and Requests for a Public Hearing**” section.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at www.regulations.gov (indicate IRS and REG-104591-18) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The IRS expects to have limited personnel available to process public comments that are submitted on paper through mail. Until further notice, any comments submitted on paper will be considered to the extent practicable. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically, and to the extent practicable on paper, to its public docket.

Send paper submissions to: CC:PA:LPD:PR (REG-104591-18), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations on amended section 162(f), Sharon Y. Horn (202) 317-4426; concerning the information reporting requirement, Nancy L. Rose (202) 317-5147; concerning submissions of comments and/or requests for a public hearing, Regina Johnson, (202) 317-5177 (not toll-free numbers). The phone numbers above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Relay Service toll-free at (800) 877-8339.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed revisions to 26 CFR part 1 under section 162(f) and proposed additions to 26 CFR part 1 under section 6050X. The proposed revisions implement the disallowance of deductions for amounts paid or incurred to, or at the direction of, a government, governmental entity, or nongovernmental entity in relation to the violation, or investigation or inquiry into the potential violation, of a law under section 162(f), as amended by section 13306(a) of Public Law No. 115-97, 131 Stat. 2054 (2017), commonly referred to as the Tax Cuts and Jobs Act (TCJA). The proposed additions implement the reporting requirements, under section 6050X, added to the Code by section 13306(b) of the TCJA.

Prior law under section 162(f) was enacted in 1969. Public Law No. 91-172, 83 Stat. 487 (1969). Unless certain exceptions applied, prior law under section 162(f) disallowed an ordinary and necessary deduction, under section 162(a), for any fine or similar penalty paid to a government for the violation of a law. This provision codified existing case law that denied an ordinary and necessary business expense deduction for fines or similar penalties because “allowance of the deduction would frustrate sharply defined national or State policies proscribing the particular types of conduct evidenced by some governmental declaration thereof.” See S. Rep. No. 552-91 at 273 - 274 (1969). On February 20, 1975, the Treasury Department and the IRS issued final regulations concerning prior law under section 162(f) (TD 7345, 40 FR 7437) (1975 regulations). See §1.162-21. Amendments were published on July 11, 1975 (T.D. 7366, 40 FR 29290). Section 1.162-21(a) of the 1975 regulations describe the term “paid to” a government. Section 1.162-21(b)(1) of the 1975 regulations describes

certain amounts that constitute fines or similar penalties; §1.162-21(b)(2) provides that compensatory damages paid to a government do not constitute a fine or penalty. Section 1.162-21(c) provides examples to illustrate the application of the 1975 regulations.

As amended by section 13306(a)(1) of the TCJA, the general rule of section 162(f)(1) provides that no deduction otherwise allowable under chapter 1 of the Code (chapter 1) shall be allowed for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government, governmental entity, or nongovernmental entity in relation to the violation of a law or the investigation or inquiry by such government or governmental entity into the potential violation of a law.

Section 162(f)(5) describes certain self-regulating nongovernmental entities treated as governmental entities. Because section 162(f)(5) treats these nongovernmental entities as governmental entities, exclusively for purposes of section 162(f) and the related provisions of section 6050X, the term “governmental entities” includes those nongovernmental entities treated as governmental entities.

Section 162(f)(2) provides an exception to the general rule and allows a taxpayer to deduct certain amounts paid or incurred that are otherwise allowable under chapter 1 for restitution, remediation, or paid to come into compliance with a law. Section 162(f)(3) provides an exception to the general rule for amounts paid or incurred with respect to private party suits; section 162(f)(4) provides an exception for certain taxes due.

Under section 162(f)(2)(A)(i) and (ii), section 162(f)(1) shall not disallow a deduction for amounts that (i) the taxpayer establishes were paid or incurred as

restitution (including remediation of property) or to come into compliance with a law (establishment requirement), and (ii) are identified in the court order (order) or settlement agreement (agreement) as restitution, remediation, or amounts paid or incurred to come into compliance with a law (identification requirement).

Section 162(f)(2)(B) states that restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred as reimbursement to a government or governmental entity for the costs of any investigation or litigation.

To the extent that the amount paid would otherwise be deductible under chapter 1, section 162(f)(2)(A)(iii), (f)(3), and (f)(4) provide that section 162(f)(1) shall not disallow a deduction for amounts paid or incurred (1) as restitution for failure to pay any tax imposed under Title 26 had it been timely paid; (2) pursuant to an order or agreement with respect to a suit in which no government or governmental entity is a party; or (3) as taxes due.

Section 13306(b) of the TCJA added new section 6050X. Section 6050X(a)(1) and 6050X(a)(2)(A) requires the appropriate official of any government or any entity described in section 162(f)(5), involved in a suit, agreement, or otherwise to which section 162(f) applies, to file an information return if the aggregate amount involved in all orders or agreements with respect to the violation, investigation, or inquiry is \$600 or more. Section 6050X(a)(2)(B) authorizes the Secretary of the Treasury or his delegate (Secretary) to adjust the threshold amount for filing the information return as necessary to ensure the efficient administration of the internal revenue laws. Pursuant to section 6050X(a)(1), the information return must set forth (1) the amount required to be paid as

a result of the order or agreement; (2) any amount required to be paid as a result of the order or agreement that constitutes restitution or remediation of property; and (3) any amount required to be paid as a result of the order or agreement for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry.

Section 6050X(a)(3) provides that the government or governmental entity shall file the information return at the time the agreement is entered into, as determined by the Secretary. Section 6050X(b) requires the government or governmental entity to furnish to each person who is a party to the suit, agreement, or otherwise a written statement, at the time the information return is filed with the IRS, that includes (1) the name of the government or entity and (2) the information submitted to the IRS.

Under section 13306(a)(2) and (b)(3) of the TCJA, the amendments to section 162(f) and new section 6050X apply to amounts paid or incurred on or after the date of the enactment of the TCJA (December 22, 2017). However, they do not apply to amounts paid or incurred under any binding order or agreement entered into before December 22, 2017 and, if such order or agreement requires court approval, the required approval is obtained before December 22, 2017.

On April 9, 2018, the IRS published Notice 2018-23, 2018-15 I.R.B. 474, to provide transitional guidance on the identification requirement of section 162(f)(2)(A)(ii) and the information reporting requirement under section 6050X. Notice 2018-23 provides that information reporting is not required until the date specified in proposed regulations under section 6050X. Notice 2018-23 also provides that, until the Treasury Department and the IRS issue proposed regulations, the identification requirement is

treated as satisfied if the order or agreement specifically states on its face that an amount is paid or incurred as restitution, remediation, or to come into compliance with a law.

Under these proposed regulations, the identification requirement applies to taxable years beginning on or after the date the proposed regulations are adopted as final regulations. Until that date, taxpayers, governments, and governmental entities may rely on the identification requirement as provided in Notice 2018-23. Alternatively, if taxpayers, governments, and governmental entities, apply the rules in their entirety and in a consistent manner, taxpayers, governments, and governmental entities may rely on the proposed regulations.

Explanation of Provisions

1. Denial of Deduction for Certain Fines, Penalties, and Other Amounts

The proposed regulations revise §1.162-21 and provide operational and definitional guidance concerning the application of section 162(f), as amended by the TCJA. The terms used in section 162(f), and throughout these proposed regulations, are defined in proposed §1.162-21(f) and discussed in this section. In addition, this section describes the exceptions to the general rule of section 162(f)(1). Proposed §1.162-21(g) provides examples for the application of this section.

A. General rule

Proposed §1.162-21(a) provides generally that a taxpayer may not take a deduction under any provision of chapter 1 (see section 161, and the related regulations, concerning items allowed as deductions) for amounts (1) paid or incurred by suit, agreement, or otherwise; (2) to, or at the direction of, a government or

governmental entity; (3) in relation to the violation, or investigation or inquiry into the potential violation, of any civil or criminal law. This general rule applies regardless of whether the taxpayer admits guilt or liability or pays the amount imposed for any other reason, including to avoid the expense or uncertain outcome of an investigation or litigation.

Proposed §1.162-21(b) describes an exception to the general rule, which allows a deduction for certain amounts identified in the order or agreement as restitution, remediation, or paid or incurred to come into compliance with a law and the taxpayer establishes that the amount was paid or incurred for the purpose identified.

In general, section 6050X imposes a reporting requirement on governments and governmental entities with respect to the payment amount identified pursuant to certain suits, agreements, or otherwise. Proposed §1.6050X-1 provides rules for complying with the reporting requirement.

Under sections 162(f) and 6050X and proposed §§1.162-21 and 1.6050X-1, suit, agreement, or otherwise includes, but is not limited to, settlement agreements; non-prosecution agreements; deferred prosecution agreements; judicial proceedings; administrative adjudications; decisions issued by officials, committees, commissions, or boards of a government or governmental entity; and any legal actions or hearings in which a liability for the taxpayer is determined or pursuant to which the taxpayer assumes liability.

B. Definitions

Proposed §1.162-21(f) provides definitions relating to section 162(f).

Government, governmental entity, or nongovernmental entity treated as a governmental entity

The definition of “government or governmental entity” under proposed §1.162-21(f)(1) reflects the term “paid to” a government as described in the 1975 regulations but uses the term “territory” instead of “possession” and “Commonwealth” and includes additional territories. The definition of government or governmental entity under proposed §1.162-21(f)(1) also includes (1) the government of a federally recognized Indian tribal government or a subdivision of an Indian tribal government; (2) a political subdivision of, or corporation or other entity serving as an agency or instrumentality of, any government; or (3) a nongovernmental entity treated as a governmental entity. Under proposed §1.162-21(f)(2)(i), certain nongovernmental entities are treated as governmental entities.

Proposed §1.162-21(f)(2)(ii) adopts the definition of a nongovernmental entity in section 162(f)(5) in its entirety. Proposed §1.162-21(f)(2)(ii) provides that a nongovernmental entity is treated as a governmental entity if it (1) exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)); or (2) exercises self-regulatory powers, including adopting, administering, or enforcing laws and imposing sanctions, as part of performing an essential governmental function. Although nongovernmental entities are not governmental entities, for purposes of proposed §§1.162-21 and 1.6050X-1 only, the term “governmental entities” includes the nongovernmental entities treated as governmental entities.

Restitution and remediation

Under proposed §1.162-21(f)(3)(i), an amount is paid or incurred for restitution or remediation if it restores, in whole or in part, the person, as defined in section 7701(a)(1); the government; the governmental entity; or property harmed by the violation or potential violation of a law. In response to Notice 2018-23, commenters disagreed about whether restitution, for purposes of section 162(f), includes forfeiture and disgorgement.

Forfeiture and disgorgement focus on the unjust enrichment of the wrongdoer, not the harm to the victim. In Kokesh v. Securities and Exchange Commission, 137 S. Ct. 1635, 1643 (2017), the Supreme Court held that disgorgement, when imposed as a sanction for violating a Federal securities law, was treated as a penalty for purposes of the related five-year statute of limitations because “[t]he primary purpose of disgorgement orders is to deter violations of the securities laws by depriving violators of their ill-gotten gains.” In Nacchio v. United States, 824 F.3d 1370 (Fed. Cir. 2016), cert. denied, 137 S. Ct. 2239 (2017), the United States Court of Appeals for the Federal Circuit noted that, “[w]hile restitution seeks to make victims whole by reimbursing them for their losses, forfeiture is meant to punish the defendant by transferring his ill-gotten gains to the United States Department of Justice.” Nacchio, 824 F.3d at 1378 (citing United States v. Joseph, 743 F.3d 1350, 1354 (11th Cir. 2014)).

Section 162(f)(2)(A)(i)(I) provides that restitution and remediation payments relate to the damage or harm caused, or that may be caused, by the violation, or the potential violation, of a law. The statute does not characterize restitution or remediation in connection with an unjust enrichment to a wrongdoer. Consistent with the statutory

language, proposed §1.162-21(f)(3)(i) provides that the purpose of restitution or remediation is to restore the person or property, in whole or in part, to the same or substantially similar position or condition as before the harm caused by the taxpayer's violation, or potential violation, of a law. Hence, under proposed §1.162-21(f)(3)(iii)(B)-(C), restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred which the taxpayer elects to pay in lieu of a fine or penalty or as forfeiture or disgorgement. In addition, under proposed §1.162-21(f)(3)(iii)(D), restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred to an entity; to a fund, including a restitution, remediation, or other fund; to a group; or to a government or governmental entity, to the extent it was not harmed by the taxpayer's violation or potential violation of a law. In addition, proposed §1.162-21(f)(3)(iii)(A) adopts the rule in section 162(f)(2)(B) to exclude any amounts paid or incurred as reimbursement to the government or governmental entity for investigation costs or litigation costs from restitution or remediation.

Coming into compliance with a law

Under proposed §1.162-21(f)(3)(ii), a payment for a specific corrective action, or to provide specific property, is treated as an amount paid to come into compliance with a law. Proposed §1.162-21(f)(3)(iii) lists amounts that will not be treated as paid or incurred to come into compliance with a law.

C. Investigation or inquiry into a potential violation of a law

In response to Notice 2018-23, a commenter requested clarification that an amount paid or incurred in relation to the investigation or inquiry into the potential

violation of a law does not include amounts paid in the ordinary course of business as required by law. In general, section 162(f) does not disallow a deduction for amounts paid or incurred for audits, inspections, or reviews conducted in the ordinary course of business if the payment is otherwise deductible as an ordinary and necessary business expense and is not related to the violation of a law or the investigation or inquiry into the potential violation of a law as described in section 162(f)(1). The Treasury Department and the IRS request comments about specific examples of audits, inspections, or reviews conducted in the ordinary course of business that are not investigations or inquiries of potential violations of law intended to fall within the ambit of section 162(f).

D. Material change

A commenter asked for clarification that an amendment to an order or agreement, entered into before December 22, 2017, that does not change the nature or purpose of the payment obligation or create a new payment obligation, does not cause the order or agreement to be treated as entered into after December 22, 2017.

Proposed §1.162-21(e) provides that, if the parties to an order or agreement, that became binding under applicable law, before December 22, 2017, make a material change to the terms of this original order or agreement on or after the applicability date of the final regulations, proposed §1.162-21(a) will apply to any amounts paid or incurred, or any obligation to provide property or services, after the date of the material change. Material changes are described in proposed §1.162-21(e)(2).

E. Establishment requirement

Section 162(f)(2)(A)(i) requires that a taxpayer establish that an amount was paid as restitution or remediation, or that the amount was paid to come into compliance with a law.

Proposed §1.162-21(b)(3)(i) provides that the taxpayer may satisfy the establishment requirement by providing documentary evidence (1) That the taxpayer was legally obligated to pay the amount the order or agreement identified as restitution, remediation, or to come into compliance with a law; (2) of the amount paid or incurred; and (3) of the date on which the amount was paid or incurred.

Commenters requested that the regulations address the documents, or other evidence, that a taxpayer may present to meet the establishment requirement. In addition, commenters expressed concern that it may be difficult for taxpayers to meet the requirement when the government has control of the information that establishes the amount identified in the order or agreement. Proposed §1.162-21(b)(3)(ii) provides a non-exhaustive list of documents that taxpayers may use to satisfy the establishment requirement. Reporting of the amount by a government or governmental entity under section 6050X and proposed §1.6050X-1(a) alone does not satisfy the establishment requirement. The Treasury Department and the IRS request comments about other evidence and supporting documentation taxpayers may use to meet the establishment requirement.

F. Identification requirement

Section 162(f)(2)(A)(ii) requires an order or agreement to identify an amount paid or incurred as restitution, remediation, or to come into compliance with a law. Under

proposed §1.162-21(b)(2)(i), an order or agreement identifies a payment by stating the nature of, or purpose for, each payment each taxpayer is obligated to pay and the amount of each payment identified.

To satisfy the identification requirement, proposed §1.162-21(b)(2)(ii) requires the order or agreement to specifically state that the payment, and the amount of the payment, constitutes restitution, remediation, or an amount paid to come into compliance with a law. The proposed rule provides that the identification requirement may be met if the order or agreement uses a different form of the requisite words, such as “remediate” or “comply with a law.”

Commenters expressed the concern that it may not be possible to satisfy the identification requirement in an order or agreement that imposes lump-sum judgments or settlements, multiple damage awards, or involves multiple taxpayers because it is unlikely that the order or agreement will distinguish the amount to be paid as restitution, remediation, or to come into compliance with a law from the disallowed amounts, or allocate the payments among the multiple taxpayers. Therefore, the commenters recommended that the regulations exclude these orders and agreements from the identification requirement of section 162(f)(2)(A)(ii) altogether. The proposed regulations do not adopt the commenters’ recommendation because such an exception would be inconsistent with the statute. The Treasury Department and the IRS request comments on how taxpayers may meet the identification requirement with respect to lump-sum payments, multiple damage awards, and multiple taxpayers.

One commenter expressed the concern that it is beyond the expertise of a government or governmental entity to place a value on restitution or remediation costs,

or costs to come into compliance with a law. Another stated that, in general, the compliance or restitution provisions of an order or agreement may not include quantified amounts because neither the up-front, nor ultimate, costs can be determined. The Treasury Department and the IRS request comments about orders or agreements meeting the identification requirement, including when an order or agreement identifies a payment amount which is less than the amount the taxpayer establishes was paid as restitution, remediation, or to come into compliance with a law.

Other commenters explained that an order or agreement may require the taxpayer to provide services, provide property, or undertake specific action, to satisfy the legal obligation. These commenters requested that the regulations provide a rule that an order or agreement may meet the identification requirement if it identifies the in-kind settlement or the specified performance as restitution, remediation, or amount paid to come into compliance with a law, even if an actual payment amount is not identified.

To treat taxpayers that, pursuant to the order or agreement, in whole or in part, discharge their liability in-kind in the same manner as taxpayers who make a monetary payment, and to administer the statute in a manner consistent with congressional intent, proposed §1.162-21(b)(2)(iii) addresses how an order or agreement may meet the identification requirement with respect to any amount paid or incurred that is not identified. The proposed rule provides, if the order or agreement identifies a payment as restitution, remediation, or to come into compliance with a law but does not identify some or all of the aggregate amount the taxpayer must pay, the order or agreement must describe the damage done, harm suffered, or manner of noncompliance with a

law, and describe the action required by the taxpayer (such as incurring costs to provide services or to provide property) with respect to the damage, harm, or noncompliance.

Under proposed §1.162-21(b)(2)(iv), the IRS may challenge the characterization of an amount identified under proposed §1.162-21(b)(2). No deduction is allowable unless the identification requirement is met. H.R. Rep. No. 115-466, at 430 (2017). Reporting of the amount by a government or governmental entity under section 6050X and proposed §1.6050X-1(a) alone does not satisfy the identification requirement.

G. Suits between private parties

If the amount is otherwise deductible under chapter 1, section 162(f)(3) allows a deduction for an amount paid or incurred pursuant to an order or agreement in which no government or governmental entity is a party to a suit. Therefore, section 162(f)(1) disallows a deduction for amounts paid or incurred to, or at the direction of, a government or governmental entity only when a government or governmental entity is a complainant or investigator with respect to the violation or potential violation of a law. A court-directed payment or the entry of a judgment in a lawsuit between private parties is not a payment made at the direction of a government. H.R. Rep. No. 115-466, at 430 (2017). Proposed section 1.162-21(c)(1) provides that section 162(f)(1) does not apply to any amount paid or incurred by reasons of any order or agreement in a suit in which no government or governmental entity is a party.

H. Taxes and related interest

Section 162(f)(4) provides that section 162(f)(1) does not apply to any amount paid or incurred as “taxes due.” “Taxes due” includes interest on taxes but not interest, if any, with respect to any related penalties imposed. See Joint Committee on Taxation,

General Explanation of Public Law 115-97, at 194 (December 2018). Proposed §1.162-21(c)(2) provides that proposed §1.162-21(a) does not apply to amounts paid or incurred as otherwise deductible taxes or related interest. However, if penalties are imposed with respect to those otherwise deductible taxes, proposed §1.162-21(a) disallows a deduction for the interest paid with respect to such penalties.

I. Failure to pay Title 26 tax

In accordance with section 162(f)(2)(A)(iii), proposed §1.162-21(c)(3) provides that, in the case of any amount paid or incurred as restitution for failure to pay tax imposed under Title 26, section 162(f)(1) does not disallow a deduction otherwise allowed under chapter 1. For example, section 162(f)(1) and proposed §1.162-21(a) do not disallow a deduction of an amount paid or incurred as restitution for failure to pay certain excise or employment taxes otherwise deductible under chapter 1. However, a deduction for amounts paid or incurred as restitution for failure to pay a Federal income tax is disallowed because section 275(a)(1) provides that no deduction is allowed for Federal income taxes.

J. Taxable year of deduction

Under proposed §1.162-21(d)(1), deductions allowed under proposed §§1.162-21(b) or (c), are taken into account under the rules of section 461 and the related regulations, or the rules specifically applicable to the allowed deduction, such as the rules of §1.468B-3(c).

K. Tax benefit income

If the deduction allowed under proposed §1.162-21(b) or (c) results in a tax benefit to the taxpayer, proposed §1.162-21(d)(2) requires the taxpayer to include in

income, under sections 61 and 111, the recovery of any amount deducted in a prior taxable year to the extent the prior year's deduction reduced the taxpayer's tax liability.

2. Reporting Information With Respect To Certain Fines, Penalties, and Other Amounts

The purpose of the proposed regulations under section 6050X is to provide appropriate officials of governments or governmental entities the operational, administrative, and definitional rules for complying with the statutory information reporting requirements with respect to certain suits or agreements to which section 162(f) and proposed §1.162-21(f)(4) apply.

In general, under proposed §1.6050X-1(a), if the aggregate amount a payor is required to pay pursuant to an order or agreement with respect to a violation, investigation, or inquiry to which section 162(f) and proposed §1.162-21 apply equals or exceeds the threshold amount under proposed §1.6050X-1(g)(5), the appropriate official of a government or governmental entity that is a party to the order or agreement must file an information return with the IRS with respect to the amounts or incurred paid and any additional information required by the information return and the related instructions, including the payor's taxpayer identification number. The appropriate official of a government or governmental entity that is a party to the order or agreement must also furnish a written statement with the same information to the payor.

Reporting of the amount by a government or governmental entity under section 6050X and proposed §1.6050X-1(a) alone does not satisfy the identification requirement under section 162(f)(2)(A)(ii) and proposed §1.162-21(b)(2)(ii) or the establishment requirement under section 162(f)(2)(A)(i) and proposed §1.162-21(b)(3).

A. Definitions

Government, governmental entity, or nongovernmental entity treated as a governmental entity

To lessen the administrative burden on certain entities, the proposed definition of “government or governmental entity” in §1.6050X-1(g)(2) is narrower than the definition provided in proposed §1.162-21(f)(1) because it requires reporting only from certain of the governments and governmental entities described in proposed §1.162-21(f)(1). Specifically, the government of the United States, a State, or the District of Columbia, under proposed §1.162-21(f)(1)(i), or a political subdivision, or a corporation or other entity serving as an agency or instrumentality, thereof, are each treated under the proposed regulations as a government or governmental entity that must comply with the information reporting requirements of section 6050X and proposed §1.6050X-1. In addition, a nongovernmental entity, under proposed §1.162-21(f)(2), that exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)) or exercises self-regulatory powers, including adopting, administering, or enforcing laws and imposing sanctions, as part of performing an essential governmental function, also must comply with the information reporting requirements of section 6050X and proposed §1.6050X-1.

In contrast, as a result of government-to-government consultation with tribal leaders, the Treasury Department and the IRS have determined that imposing the reporting requirements of section 6050X and proposed §1.6050X-1 on Indian tribal governments, as defined in section 7701(a)(40), subdivisions of Indian tribal governments, as determined in accordance with section 7871(d), or a corporation or other entity serving as an agency or instrumentality of any Indian tribal government

would not contribute to the efficient administration of the internal revenue laws. Additionally, consistent with general principles of comity, the proposed definition of “government or governmental entity” in §1.6050X-1(g)(2) excludes foreign governments, governments of U.S. territories, or any political subdivision, or corporation or other entity serving as an agency or instrumentality, thereof.

Although a particular entity is excluded from the information reporting requirements of section 6050X and proposed §1.6050X-1, amounts paid or incurred to all categories of entities described in proposed §1.162-21(f)(1) are subject to the limitations on deductibility set forth in proposed §1.162-21.

Appropriate official

Section 6050X(c) defines “appropriate official” of a government or governmental entity as the officer or employee having control of the suit, investigation, or inquiry, or an appropriately designated person. Proposed §1.6050X-1(g)(1) adopts this statutory definition and further provides that the appropriate official may instead be the officer or employee of the government or governmental entity assigned to comply with the information reporting requirements of section 6050X.

One commenter observed that more than one government or governmental entity may be involved in the same order or agreement and suggested that the appropriate official be an official from only one government or governmental entity. The Treasury Department and the IRS agree with this comment generally. To minimize the burden on governments or governmental entities from having to report the same amount more than once, and to ensure the efficient administration of the internal revenue laws, proposed §1.6050X-1(g)(1)(ii)(A) provides a general rule that, if more than one

government or governmental entity is a party to an order or agreement, only the appropriate official of the government or governmental entity listed first, for example as the first signatory, on the most recently executed order or agreement is responsible for complying with all section 6050X information reporting and furnishing requirements. To provide governments or governmental entities with greater flexibility, proposed §1.6050X-1(g)(1)(ii)(B) permits the governments or governmental entities to appoint one or more other appropriate officials to be responsible for complying with the information reporting and furnishing requirements. The Treasury Department and the IRS request comments about assigning an appropriate official to comply with the information reporting and furnishing requirements if more than one government or governmental entity are parties to the order or agreement.

Payor

Proposed §1.6050X-1(g)(4) defines “payor” as the person, as defined in section 7701(a)(1), which, pursuant to an order or agreement, has paid or incurred, or is liable to pay or incur, an amount to, or at the direction of, the government or governmental entity in relation to the violation or potential violation of a law. In general, the payor will be the person to which section 162(f) and proposed §1.162-21 apply.

Threshold amount

Section 6050X(a)(2)(B) provides the Secretary with the authority to adjust the statutory reporting threshold of \$600 as necessary to ensure the efficient administration of the internal revenue laws.

Based on comments received from governments and governmental entities concerned about the burden of information reporting and to ensure the efficient

administration of the internal revenue laws, the Treasury Department and the IRS have determined that a threshold higher than \$600 is appropriate to address these concerns. Proposed §1.6050X-1(g)(5) provides that reporting is required for payment amounts equal to or in excess of \$50,000 (threshold amount).

The Treasury Department and the IRS request comments concerning the proposed threshold amount in consideration of the anticipated compliance burden on filers. In particular, the Treasury Department and the IRS request data on the annual number of relevant orders issued, or agreements entered into, by governments or governmental entities as well as the financial, time, and administrative burdens associated with different threshold amounts.

B. Requirement to file return

Under proposed §1.6050X-1(b)(1), the information return filed by the government or governmental entity must provide the aggregate amount a payor is required to pay as a result of the order or agreement, the separate amounts required to be paid as restitution, remediation, or to come into compliance with a law as a result of the order or agreement, and any additional information required by the information return and the related instructions.

Section 6050X(a)(3) requires the information return to be filed at the time the agreement is entered into, as determined by the Secretary. Commenters observed that it would be burdensome and inefficient to file information returns each time an agreement is entered into or an order is issued. In order to reduce the reporting burden, several commenters suggested that the regulations require annual filing of information returns to be made by a specific date in the year following the date the agreement is

entered into or the order is issued. The Treasury Department and the IRS agree with this comment and have adopted it in the proposed regulations. Accordingly, the appropriate official of a government or governmental entity must comply with the information reporting requirement of proposed §1.6050X-1(a) and (b) by filing Form 1098-F, Fines, Penalties, and Other Amounts (or any successor form), with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, on or before the annual due date as provided in proposed §1.6050X-1(b)(2).

Several commenters expressed concerns about the information reporting requirements with respect to an order or agreement pursuant to which payments are made over the course of several years. To minimize the burden on governments or governmental entities and to ensure the efficient administration of the internal revenue laws, proposed §1.6050X-1 does not require an appropriate official to file information returns for each taxable year in which a payor makes a payment pursuant to a single order or agreement. Instead, the appropriate official must file only one information return for the aggregate amount identified in the order or agreement.

C. Requirement to furnish written statement

Proposed §1.6050X-1(c) requires the appropriate official of a government or governmental entity who fulfills the requirement under section 6050X(a) and proposed §1.6050X-1(a)(1) to furnish a written statement to each payor with respect to which it is required to file an information return under paragraphs (a)(1) and (b) of §1.6050X-1. For purposes of tax administration, the requirement to “furnish” written statements requires that those with a reporting obligation must provide statements to certain recipients containing the information reported to the IRS and, in some cases, additional

information. Under section 6050X, the payor is the recipient. The written statement must include the information that was reported on the information return and a legend that identifies the statement as important tax information that is being furnished to the IRS. To minimize the burden on governments or governmental entities, the proposed regulations permit the appropriate official to comply with the requirements under section 6050X(b) and proposed §1.6050X-1(a)(2) by furnishing a copy of Form 1098-F to the payor. Regardless of when the appropriate official furnishes the statement to the payor, the timing of any deduction allowed under proposed §1.162-21 is governed by the general principles of Federal income tax law, as set forth in proposed §1.162-21(d).

D. Due dates

Section 6050X(a)(3) provides that the information return shall be filed at a time the agreement is entered into, as determined by the Secretary. Further, section 6050X(b) requires the written statement to be furnished to the payor at the same time the information return is filed with the IRS. Under proposed §1.6050X-1(b)(2), the information return must be filed on or before January 31 of the year following the calendar year in which the order or agreement becomes binding under applicable law, even if all appeals have not been exhausted with respect to the suit, agreement, or otherwise.

The return is due on or before January 31 whether it is filed on paper or electronically. Although the due date for filing electronic Forms 1098-F under proposed §1.6050X-1(b)(2) differs from the general March 31 due date provided in section 6071(b), which applies with respect to electronically filed information returns under sections 6041 through 6050Y, the specific provisions of section 6050X take

precedence over the general March 31 due date. To ensure that the payor has the information necessary to prepare the payor's income tax return, and as directed by section 6050X(b), proposed §1.6050X-1(c)(3) requires the appropriate official to furnish the written statement, under proposed §1.6050X-1(c)(1), on or before the date that the appropriate official files the Form 1098-F with the IRS (January 31).

E. Rules for multiple payors

Proposed §1.6050X-1(d) describes the application of paragraphs (a), (b), and (c) of §1.6050X-1 if, pursuant to the order or agreement, the aggregate amount multiple payors are required to pay, or the costs to provide the property or the service, equals or exceeds the threshold amount. If, pursuant to the order or agreement, more than one payor is individually liable for some or all of the payment amount, proposed §1.6050X-1(d)(1) requires the appropriate official to file an information return for the separate amount that each individually liable payor is required to pay, even if a payor's payment liability is less than the threshold amount, and to furnish a written statement containing this information to each payor. If more than one person (as defined in section 7701(a)(1)) is a party to an order or agreement, there is no information reporting requirement, or requirement to furnish a written statement, with respect to any person who does not have a payment obligation or obligation for costs to provide services or to provide property.

Proposed §1.6050X-1(d)(2) provides that, if an order or agreement identifies multiple jointly and severally liable payors, the appropriate official must file an information return for each payor reporting the aggregate amount to be paid by all jointly and severally liable payors. The appropriate official must furnish a written statement

containing this information to each of those payors, regardless of which payor makes the payment.

F. Payment amount not identified

Some orders or agreements may identify a payment, or an obligation to provide property or to provide services, as restitution, remediation, or an amount paid to come into compliance with a law, without identifying some or all of the aggregate amount the payor must pay, or some or all of the aggregate cost to provide property or services. Proposed §1.6050X-1(e) provides that, if the government or governmental entity expects, under the facts and circumstances, that the amount the payor must pay, plus any other costs the payor will incur, pursuant to the order or agreement will equal or exceed the threshold amount, the appropriate official of such government or governmental entity must file an information return on Form 1098-F (or any successor form), as provided in the instructions to the Form 1098-F, and furnish a written statement to the payor with the information supplied to the IRS on Form 1098-F. For example, if the United States Environmental Protection Agency (EPA) issues an order requiring a payor to come into compliance with the underlying legal requirements of the Clean Water Act, 33 U.S.C. section 1251 et seq., by undertaking work, and the EPA expects, under the facts and circumstances, that the payor will incur \$50,000 or more of costs to come into compliance with the law, the EPA must file Form 1098-F and furnish a written statement including this information, as directed by the form and form instructions, to the payor.

The Treasury Department and the IRS request comments about reporting of payment amounts that are not identified and the factors governments and governmental

entities may consider to determine if the amounts are expected to equal or exceed the threshold amount.

G. Material change

If there is a material change to the terms of an order or agreement, as defined in proposed §1.162-21(e)(2) for which the appropriate official has filed an information return, proposed §1.6050X-1(f) requires the appropriate official to update the IRS by filing a corrected information return, and to furnish an amended written statement to the payor, with respect to the entire order or agreement, and not just the terms modified. The proposed rules require the appropriate official to file the corrected Form 1098-F, on paper or electronically, as provided by the General Instructions for Certain Information Returns, on or before January 31 of the year following the calendar year in which the parties make a material change to the terms of the order or agreement. The proposed rules also require the appropriate official to furnish an amended written statement to the payor on or before the date that the corrected Form 1098-F is filed with the IRS.

Proposed Applicability Dates

The rules of proposed §1.162-21 are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting the rules of proposed §1.162-21 as final regulations in the **Federal Register**, except that such rules do not apply to amounts paid or incurred under any order or agreement which became binding under applicable law before such date. Until that date, taxpayers may rely on the rules of proposed §1.162-21, for any order or agreement, but only if the taxpayers apply the rules in their entirety and in a consistent manner. See section 7805(b)(7). Additionally, the rules of proposed §1.6050X-1 are proposed to apply only

to orders and agreements that become binding under applicable law on or after January 1, 2022.

Special Analyses

I. Regulatory Planning and Review – Economic Analysis

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The preliminary EO 13771 designation is regulatory.

The proposed regulations have been designated as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Treasury Department and by the Office of Management and Budget (OMB) regarding review of tax regulations. The Office of Information and Regulatory Affairs (OIRA) has designated the proposed rulemaking as significant under section 1(c) of the Memorandum of Agreement. Accordingly, the proposed regulations have been reviewed by OMB.

A. Background

Prior to the TCJA, section 162(f) of the Code disallowed a deduction for any fine or similar penalty paid to a government for the violation of a law. This provision, enacted in 1969, codified existing case law that denied business deductions for fines or similar penalties. The general rule of section 162(f)(1), as amended by section

13306(a) of the TCJA, disallows any deduction for amounts paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity or certain nongovernmental entities treated as governmental entities, in relation to the violation of a law or the investigation or inquiry by such government or entity into the potential violation of a law. Section 13306(a) also provides certain exceptions to this disallowance. Section 162(f)(2) does not disallow deduction for amounts that (1) the taxpayer establishes were paid or incurred as restitution (including remediation of property) or to come into compliance with a law, and (2) are identified in the court order or settlement agreement as restitution, remediation, or to come into compliance with a law.

In addition, under prior law, the Treasury Department and the IRS did not receive information returns from governments or governmental entities that received fines or penalties. Section 6050X of the Code, enacted by section 13306(b) of the TCJA, requires appropriate officials to file an information return if the aggregate amount involved in all orders or agreements with respect to the violation, investigation, or inquiry is \$600 or more. The information return must include (1) The amount required to be paid as a result of the order or agreement; (2) any amount that constitutes restitution or remediation of property; and (3) any amount required to be paid for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry. Section 6050X provides the Secretary with the authority to adjust the \$600 reporting threshold in order to ensure efficient tax administration.

B. Need for the Proposed Regulations

The Treasury Department and the IRS have received several questions and comments from Federal, state, local, and tribal governments, as well as the public, regarding the meaning of various provisions in each section and issues not explicitly addressed in the statute. The Treasury Department and the IRS have determined that such comments warrant the issuance of further guidance.

In addition, the Treasury Department and the IRS have determined that increasing the reporting threshold to reduce the reporting burden and to enhance the efficiency of tax administration is appropriate.

C. Overview of the Proposed Regulations

The proposed regulations provide guidance regarding sections 162(f) and 6050X. The following analysis provides further detail regarding the anticipated impacts of the proposed regulations. Part I.D specifies the baseline for the economic analysis. Part I.E.1. summarizes the economic effects of the rulemaking, relative to this baseline. Part I.E.2. describes the economic effects of specific provisions covering (1) the reporting threshold, (2) the timing of information reporting, and (3) information reporting requirements when payment amounts are not identified.

D. Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the proposed regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these proposed regulations.

E. Economic Analysis of the Proposed Regulation

I. Summary of Economic Effects

The proposed section 162(f) regulations provide definitions for restitution, remediation, and amounts paid to come into compliance with the law. These definitions clarify for taxpayers which amounts paid or incurred may be deductible under the statute. The proposed regulations also clarify (1) how the taxpayer meets the establishment requirement; and (2) how the order or agreement meets the identification requirement. The Treasury Department and the IRS have determined that the burden reduction associated with the proposed regulations for section 162(f) is modest. In addition, while the proposed regulations reduce uncertainty for taxpayers, they are unlikely to affect firms' economic decision-making because most of the amounts to be paid or incurred which are subject to section 162(f) are non-discretionary.

The proposed regulations under section 6050X provide certainty and consistency for affected governments and governmental entities by defining and clarifying the statute's terms and rules. Further, the proposed regulations use the authority provided by the statute to the Secretary to set information reporting requirements to minimize the burden on governments and governmental entities and to ensure the efficient administration of the internal revenue laws. Most importantly, the proposed regulations increase the reporting threshold from \$600 to \$50,000, thereby eliminating information reporting requirements for an estimated 1 to 5 million orders or agreements. Using the midpoint of this range (3 million), the estimated burden reduction from this exercise of regulatory discretion is \$74 million (2018 dollars) per year. The Treasury Department and the IRS acknowledge that limited quantitative data makes estimates of the number

of affected orders and agreements uncertain, and request comments or data that can help improve these estimates.

II. Economic Analysis of Specific Provisions

The effects of the information reporting requirements are discussed in more detail in sections II.A, B, and C. The Treasury Department and the IRS solicit comments on the economics of each of the items discussed subsequently and of any other items of the proposed regulations not discussed in this section. The Treasury Department and the IRS particularly solicit comments that provide data, other evidence, or models that could enhance the rigor of the process by which provisions might be developed for the final regulations.

A. Reporting Threshold

Section 6050X requires governments and governmental entities which enter orders or agreements to which section 162(f) applies to file an information return if the aggregate amount paid or incurred in all orders or agreements with respect to the violation, investigation, or inquiry is equal to or exceeds a threshold of \$600. Section 6050X also provides the Secretary with the authority to adjust the statutory reporting threshold as necessary to ensure efficient tax administration. In response to multiple comments received from governments and governmental entities concerned about the burden of information reporting for smaller payment amounts pursuant to orders or agreements, the proposed regulations raise the reporting threshold to \$50,000. The Treasury Department and the IRS request comments on this proposed threshold amount. In particular, data on the annual number of orders or agreements by governments or governmental entities would be helpful.

The Treasury Department and the IRS considered a range of alternative thresholds including the statutory threshold of \$600, along with much higher thresholds suggested by some commenters. Upon consideration of both the enforcement needs of the IRS and the reporting burden on governments and governmental entities, the Treasury Department and the IRS exercised the authority provided to the Secretary by the statute to set the reporting threshold amount at \$50,000.

The Treasury Department and the IRS do not know of any data on the number of orders or agreements requiring taxpayers to pay amounts to, or at the direction of, governments or governmental entities, or the distribution of these amounts, such as the number that are above or below \$600. Based on communications with stakeholders, the Treasury Department and the IRS estimate that the increase in reporting threshold from \$600 to \$50,000 will reduce the number of required information returns by 1 to 5 million. The Treasury Department and the IRS further estimate that the average time to complete the information return is between 0.387 and 0.687 hours. Using the midpoint of each of these ranges (3 million information returns and .537 hours) and labor cost of \$46 per hour,¹ the Treasury Department and the IRS estimate that increasing the reporting threshold will reduce annual compliance burdens by \$74 million dollars (2018 dollars) per year. It should be noted that many of the lower level fines and penalties are likely to be assessed to non-businesses that are not able to deduct business expenses so they would be unaffected by any reporting requirement.

Increasing the reporting threshold from \$600 to \$50,000 is unlikely to have a significant effect on revenues as fines over \$50,000 likely account for the vast majority

¹ This data point is derived by the IRS as part of the burden analysis described in the Paperwork Reduction Act section below.

of fines and penalties in terms of dollar values. Based on financial reporting values disclosed on tax returns of C corporations, S corporations and Partnerships, firms with over \$50,000 in total fines and penalties account for 99% of all fines and penalties. However, this data should be interpreted with caution. Financial reporting of fines and penalties includes both international and domestic fines, and all fines and penalties are aggregated into yearly totals. Furthermore, firms with less than \$10 million in assets are not required to provide financial reporting values with their tax returns.

The Treasury Department and the IRS solicit comments on this threshold and cost estimates and particularly solicit comments that provide data that would enhance the rigor by which the threshold is decided for the final regulations.

B. Time of Reporting

Section 6050X provides that the government or governmental entity shall file the information return at the time the order or agreement is entered into, as determined by the Secretary. The Treasury Department and the IRS received comments from governments and governmental entities observing that it would be burdensome and inefficient to file information returns each time an order or agreement becomes binding under applicable law. Several commenters suggested that annual filing of information returns would meaningfully reduce this reporting burden. The Treasury Department and the IRS agree with this comment and have adopted it in the proposed regulations.

Several commenters also expressed uncertainty and concern about the information reporting requirements for an order or agreement pursuant to which payments are made over the course of several years. To reduce uncertainty, and to minimize the burden on governments and governmental entities, the proposed

regulations clarify that information reporting is required only for the year in which the order or agreement becomes binding under applicable law, and not required for each taxable year in which a payor makes a payment.

The Treasury Department and the IRS considered requiring information reporting at the time the order is issued or the agreement is entered. The Treasury Department and the IRS also considered requiring information reporting in each year in which an amount is paid or incurred pursuant to the order or agreement. However, both alternative approaches were determined to impose unnecessary burden for governments and governmental entities without creating accompanying benefits for tax administration or for taxpayers.

The Treasury Department and the IRS solicit comments on the timing of reporting and particularly solicit comments that provide data regarding how timing of reporting affects compliance burdens.

C. Payment Amount Not Identified

When the expected amount paid or incurred pursuant to an order or agreement equals or exceeds the threshold amount, section 6050X requires governments or governmental entities to file an information return including (1) The amount required to be paid as a result of the order or agreement; (2) any amount that constitutes restitution or remediation of property; and (3) any amount required to be paid for the purpose of coming into compliance with a law that was violated or involved in the investigation or inquiry. However, some orders or agreements may involve uncertain payments or costs to provide property or services without identifying some or all of the aggregate amount the payor must pay (or some or all of the aggregate cost to provide property or

services). The Treasury Department and the IRS received comments expressing concern that amounts paid or incurred are often difficult to assess, and strict valuation requirements would impose undue burden on governments and governmental entities. For situations in which the amount is not identified, the proposed regulations direct governments and governmental entities to the instructions to Form 1098-F. To address commenters' concerns, these instructions will permit governments and governmental entities to report the threshold amount of \$50,000 when the amount is unknown but expected to equal or exceed \$50,000. This rule is necessary to improve taxpayer compliance.

The Treasury Department and the IRS considered requiring governments and governmental entities to provide an estimate of each amount to be paid or incurred; however this approach was rejected because it would impose significant burden for governments and governmental entities.

D. Summary

In summary, the proposed section 162(f) regulations and section 6050X regulations result in modest burden reduction, with the exception of the increase in the threshold amount, which is estimated to reduce burden by \$74 million (2018 dollars) per year. The Treasury Department and the IRS projected that the proposed regulations, taken together, would have a non-revenue economic effect of less than \$100 million (2018 dollars) per year. The Treasury Department and the IRS request comments on the economic effects of these proposed regulations.

Paperwork Reduction Act

Collection of Information – Form 1098-F

In general, the collection of information in the proposed regulations is required under section 6050X of the Internal Revenue Code (the Code). The collection of information in these proposed regulations is set forth in proposed §1.6050X-1. The IRS intends that the collection of information pursuant to section 6050X will be conducted by way of Form 1098-F, Fines, Penalties, and Other Amounts. For purposes of the PRA, the reporting burden associated with the collection of information with respect to section 6050X will be reflected in the IRS Forms 14029 Paperwork Reduction Act Submission associated with Form 1098-F. Form 1098-F will be used by all governments, governmental entities, and nongovernmental entities treated as governmental entities with a reporting requirement. The Treasury Department and the IRS request comments on all aspects of information collection burdens related to the proposed regulations. In addition, when available, drafts of IRS forms are posted for comment at www.irs.gov/draftforms.

The current status of the PRA submissions related to section 6050X are provided in the following table.

Form	Type of Filer	OMB Number	Status
1098-F	Governments, Governmental Entities, And Certain Nongovernmental Entities	1545-2284	Form 1098-F is approved through 1/31/2023.

Related New or Revised Tax Forms

	New	Revision of Existing Form	Number of Respondents (2018, estimated)
Form 1098-F	Yes		90,100 (85,500 small governmental jurisdictions, 4,500 large governmental jurisdictions and 100 nongovernmental entities).

A reasonable burden estimate for the average time to complete Form 1098-F is between 0.387 and 0.687 hours (approximately 23 to 41 minutes). This estimate is based on survey data collected from similar information return issuers. In addition, the increase in the reporting threshold under section 6050X will lead to a decrease in the number of information returns filed by between 1 million to 5 million returns. Using the midpoint of these ranges, or 3 million and 0.537 hours, the estimated burden reduction is \$74 million per year.

Estimated average time per form: .537 hours.

Estimated number of respondents: 90,100.

Estimated total annual burden hours: 48,383.70.

Estimated change in number of information returns resulting from increased reporting threshold: (3,000,000).

Estimated change in burden (hours): (1,611,150).

Estimated change in burden (Dollars): (\$74,161,235).

The Treasury Department and the IRS request comments on all aspects of these estimates.

Comments on the collection of information in proposed §1.6050X-1(a) should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury at oira_submission@omb.eop.gov or Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS

Reports Clearance Officer, SE:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by **[INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the IRS, including whether the information will have practical utility (including underlying assumptions and methodology);

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. chapter 6) requires agencies to “prepare and make available for public comment an initial regulatory flexibility analysis,” which will “describe the impact of the proposed rule on small entities.” 5 U.S.C. 603(a). Section 605(b) of the RFA allows an agency to certify a rule if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

Pursuant to the RFA, it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities within the meaning of section 601(6) of the RFA.

The RFA generally applies to regulations that affect small businesses, small organizations, and small governmental jurisdictions. For purposes of the RFA, small governmental jurisdictions are governments of cities, counties, towns, townships, villages, school districts, or special districts with a population of less than 50,000. This proposed rule would affect States, as well as local governments, some of which may meet the definition of small governmental jurisdiction. Approximately 90,100 governments, governmental entities, and nongovernmental entities treated as governmental entities may be subject to the reporting requirements of section 6050X. Of those governments and governmental entities, approximately 85,500 (or 95%) are small governmental jurisdictions.

Although the regulations may affect a substantial number of small governmental jurisdictions, the economic impact of the proposed regulations is not likely to be significant. The proposed regulations set a reporting threshold that is higher than the

minimum required by statute and also provide for governments and governmental entities to file annual returns. Both of these provisions reduce the potential burden on small governmental jurisdictions. In particular, the increase in the reporting threshold will lead to a decrease in the number of information returns filed by between 1 million to 5 million returns. Using the midpoint of this range, or 3 million, the estimated burden reduction is \$74 million per year (2018 dollars). It is estimated that after reading and learning about the requirements of the regulations, the burden associated with filing the annual form is approximately 23 to 41 minutes and the average cost per information return is approximately \$24.72, which would not result in a significant economic impact on small entities. The Treasury Department and the IRS request comments on the burden associated with filing the annual form.

Notwithstanding this certification, the Treasury Department and the IRS invite comments on any impact this rule would have on small entities. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small entities.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a state, local, or tribal government, in the aggregate, or by the private sector, of \$100 million in 1995 dollars, updated annually for inflation. This rule does not

include any Federal mandate that may result in expenditures by state, local, or tribal governments, or by the private sector in excess of that threshold.

Executive Order 13132: Federalism

Executive Order 13132 (entitled Federalism) prohibits an agency from publishing any rule that has Federalism implications if the rule either imposes substantial, direct compliance costs on state and local governments, and is not required by statute, or preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. These proposed rules do not have Federalism implications, and do not impose substantial direct compliance costs on state and local governments or preempt state law, within the meaning of the Executive Order. The compliance costs, if any, are imposed on state and local governments by section 6050X, as enacted by the TCJA. Notwithstanding, the Treasury Department and the IRS have engaged in efforts to consult and work cooperatively with affected State and local officials in the process of developing the proposed rules by participating in a teleconference with the National League of Cities on September 27, 2019, and the National Governors Association on October 2, 2019. Pursuant to the requirements set forth in section 8(a) of Executive Order 13132, the Treasury Department and the IRS certify that they have complied with the requirements of Executive Order 13132.

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175 (entitled Consultation and Coordination with Indian Tribal Governments) requires consultation and collaboration with tribal officials in the development of Federal policies that may have tribal implications. In order to obtain tribal input in accordance with Executive Order 13175 and consistent with Treasury's

Tribal Consultation Policy (80 FR 57434, September 23, 2015), the Treasury Department and the IRS held a Tribal Consultation with tribal officials on September 12, 2019. The Treasury Department and the IRS will obtain additional input on the tribal implications of the proposed rules before publishing them as final rules.

Comments and Requests for a Public Hearing

Before these proposed amendments to the regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in the preamble under the “**ADDRESSES**” section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic comments submitted, and to the extent practicable any paper comments submitted, will be made available at www.regulations.gov or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date and time for the public hearing will be published in the **Federal Register**. Announcement 2020-4, 2020-17 IRB 1, provides that until further notice, public hearings conducted by the IRS will be held telephonically. Any telephonic hearing will be made accessible to people with disabilities.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

Drafting Information

The principal author of these regulations is Sharon Y. Horn of Associate Chief Counsel (Income Tax and Accounting), IRS. However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes; Reporting and recordkeeping requirements

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050X-1 also issued under 26 U.S.C. 6050X(a), (b).

Par. 2. Section 1.162-21 is revised to read as follows:

§1.162-21 Denial of deduction for certain fines, penalties, and other amounts.

(a) *Deduction Disallowed.* Except as otherwise provided in this section, no deduction is allowed under chapter 1 of the Internal Revenue Code (Code) for any amount that is paid or incurred--

(1) By suit, settlement agreement (agreement), or otherwise;

(2) To or at the direction of a government or governmental entity, as defined in paragraph (f)(1) of this section, or a nongovernmental entity, as defined in paragraph (f)(2) of this section; and

(3) In relation to the violation, or investigation or inquiry into the potential violation, of any civil or criminal law.

(b) *Exception for restitution, remediation, and amounts paid to come into compliance with a law--(1) In general.* Paragraph (a) of this section does not apply to amounts paid or incurred for restitution, remediation, or to come into compliance with a law, as defined in paragraph (f)(3) of this section, provided that both the identification and the establishment requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Identification requirement--(i) In general.* A court order (order) or an agreement identifies a payment by stating the nature of, or purpose for, each payment each taxpayer is obligated to pay and the amount of each payment identified.

(ii) *Meeting the identification requirement.* The identification requirement is presumed to be met if an order or agreement specifically states that the payment, and the amount of the payment, described in paragraph (b)(2)(i) of this section, constitutes restitution, remediation, or an amount paid to come into compliance with a law or if the order or agreement uses a different form of the required words, such as, “remediate” or “comply with a law.” Meeting the establishment requirement of paragraph (b)(3) of this section alone is not sufficient to meet the identification requirement of paragraph (b)(2) of this section.

(iii) *Payment amount not identified.* If the order or agreement identifies a payment as restitution, remediation, or to come into compliance with a law but does not identify some or all of the aggregate amount the taxpayer must pay, the identification requirement may be met, with respect to any payment amount not identified, if the order or agreement describes the damage done, harm suffered, or manner of noncompliance with a law, and describes the action required of the taxpayer, such as paying or incurring costs to provide services or to provide property.

(iv) *Challenge by the IRS.* The IRS may challenge the characterization of an amount identified under paragraph (b)(2) of this section. To rebut the presumption described in paragraph (b)(2)(ii) of this section, the IRS must develop sufficient contrary evidence that the amount paid or incurred was not for the purpose identified in the order or agreement.

(3) *Establishment requirement*--(i) *Meeting the establishment requirement.* The establishment requirement is met if the taxpayer substantiates, with documentary evidence, the taxpayer's legal obligation, pursuant to the order or agreement, to pay the amount identified as restitution, remediation, or to come into compliance with a law, the amount paid, and the date the amount was paid or incurred. Meeting the identification requirement of paragraph (b)(2) of this section alone is not sufficient to meet the establishment requirement of paragraph (b)(3) of this section.

(ii) *Substantiating the establishment requirement.* The documentary evidence described in paragraph (b)(3)(i) of this section includes, but is not limited to, receipts; the legal or regulatory provision related to the violation or potential violation of a law; documents issued by the government or governmental entity relating to the investigation

or inquiry; documents describing how the amount to be paid was determined; and correspondence exchanged between the taxpayer and the government or governmental entity before the order or agreement became binding under applicable law.

(c) *Other Exceptions--(1) Suits between private parties.* Paragraph (a) of this section does not apply to any amount paid or incurred by reason of any order or agreement in a suit in which no government or governmental entity is a party.

(2) *Taxes and related interest.* Paragraph (a) of this section does not apply to amounts paid or incurred as otherwise deductible taxes or related interest. However, if penalties are imposed with respect to these taxes, paragraph (a) of this section applies to disallow a deduction for any interest payments related to the penalties imposed.

(3) *Failure to pay Title 26 tax.* In the case of any amount paid or incurred as restitution for failure to pay tax imposed under Title 26 of the United States Code, paragraph (a) of this section does not disallow a deduction for Title 26 taxes which is otherwise allowed under chapter 1 of the Code.

(d) *Application of general principles of Federal income tax law--(1) Taxable year of deduction.* If, under paragraph (b) or (c) of this section, the taxpayer is allowed a deduction for the amount paid or incurred pursuant to an order or agreement, the deduction is taken into account under the rules of section 461 and the related regulations, or under a provision specifically applicable to the allowed deduction, such as §1.468B-3(c).

(2) *Tax benefit rule applies.* If the deduction allowed under paragraphs (b) or (c) of this section results in a tax benefit to the taxpayer, the taxpayer must include in

income, under sections 61 and 111, the recovery of any amount deducted in a prior taxable year to the extent the prior year's deduction reduced the taxpayer's tax liability.

(i) A tax benefit to the taxpayer includes a reduction in the taxpayer's tax liability for that year or the creation of a net operating loss carryback or carryover.

(ii) A taxpayer's recovery of any amount deducted in a prior taxable year includes, but is not limited to--

(A) Receiving a refund, recoupment, rebate, reimbursement, or otherwise recovering some or all of the amount the taxpayer paid or incurred, or

(B) Being relieved of some or all of the payment liability under the order or agreement.

(e) *Material change to order or agreement--(1) In general.* If the parties to an order or agreement, entered before December 22, 2017, make a material change to the terms of that order or agreement on or after the applicability date in paragraph (h) of this section, paragraph (a) of this section applies to any amounts paid or incurred, or any obligation to provide property or services, after the date of the material change.

(2) *Material change.* A material change to the terms of an order or agreement under paragraph (e)(1) of this section may include: changing the nature or purpose of a payment obligation; or changing, adding to, or removing a payment obligation, an obligation to provide services, or an obligation to provide property. A material change does not include changing a payment date or changing the address of a party to the order or agreement.

(f) *Definitions.* For purposes of section 162(f) and §1.162-21, the following definitions apply:

(1) *Government or governmental entity.* A government or governmental entity means--

(i) The government of the United States, a State, or the District of Columbia;
(ii) The government of a territory of the United States, including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, or the U.S. Virgin Islands;

(iii) The government of a foreign country;
(iv) An Indian tribal government, as defined in section 7701(a)(40), or a subdivision of an Indian tribal government, as determined in accordance with section 7871(d); or

(v) A political subdivision of (i), (ii), or (iii), or a corporation or other entity serving as an agency or instrumentality of any of paragraph (f)(1)(i)-(f)(iv) of this section.

(2) *Nongovernmental entity treated as a governmental entity.* (i) A nongovernmental entity described in paragraph (f)(2)(ii) of this section is treated as a governmental entity.

(ii) A nongovernmental entity treated as governmental entity is an entity that--

(A) Exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)); or

(B) Exercises self-regulatory powers, including adopting; administering; or enforcing laws and imposing sanctions, as part of performing an essential governmental function.

(3) *Restitution, remediation of property, and amounts paid to come into compliance with a law.* (i) An amount is paid or incurred for restitution or remediation pursuant to paragraph (b)(1) of this section if it restores, in whole or in part, the person,

as defined in section 7701(a)(1); the government; the governmental entity; or property harmed by the violation or potential violation of a law described in paragraph (a)(3) of this section.

(ii) An amount is paid or incurred to come into compliance with a law that the taxpayer has violated, or is alleged to have violated, by performing services; taking action, such as modifying equipment; providing property; or doing any combination thereof.

(iii) Regardless of whether the order or agreement identifies them as such, restitution, remediation, and amounts paid to come into compliance with a law do not include any amount paid or incurred--

(A) To reimburse the government or governmental entity for investigation costs or litigation costs;

(B) At the payor's election, in lieu of a fine or penalty;

(C) As forfeiture or disgorgement; or

(D) To the extent the payment or contribution does not meet the requirements of paragraph (f)(3)(i) or (ii) of this section, to an entity; fund, including a restitution, remediation, or other fund; group; government or governmental entity .

(4) *Suit, agreement, or otherwise.* A suit, agreement, or otherwise includes, but is not limited to, settlement agreements, non-prosecution agreements, deferred prosecution agreements, judicial proceedings, administrative adjudications, decisions issued by officials, committees, commissions, boards of a government or governmental entity, and any legal actions or hearings which impose a liability on the taxpayer or pursuant to which the taxpayer assumes liability.

(g) *Examples.* The application of this section may be illustrated by the following examples.

(1) *Example 1. Identification and establishment requirements--(i) Facts.* Corp. A enters into an agreement with State Y's environmental enforcement agency (Agency) for violating state environmental laws. Under the terms of the agreement, Corp. A must pay \$40,000 to the Agency in civil penalties, \$80,000 in restitution for environmental harm, \$50,000 for remediation of contaminated sites, and \$60,000 to conduct comprehensive upgrades to Corp. A's operations to come into compliance with the state environmental laws.

(ii) *Analysis.* The identification requirement is satisfied for those amounts the agreement identifies as restitution, remediation, or to come into compliance with a law. If Corp. A establishes, as provided in paragraph (b)(3) of this section, that the amounts it paid or incurred are for restitution, remediation, and to come into compliance with state environmental laws, paragraph (a) of this section does not preclude Corp. A from deducting \$190,000. Under paragraph (a) of this section, Corp. A may not deduct the \$40,000 in civil penalties. Section 162(f) and §1.162-21(a) will not disallow Corp. A's deduction for the \$60,000 paid to come into compliance with the state environmental laws. However, Corp. A may deduct the \$60,000 paid only if, under the facts and circumstances, the payment would be otherwise deductible under chapter 1 of the Code. See section 161, concerning items allowed as deductions, and section 261, concerning items for which no deduction is allowed, and the regulations related to sections 161 and 261.

(2) *Example 2. Restitution--(i) Facts.* Corp. A enters into an agreement with State T's securities agency (Agency) for violating a securities law by inducing B to make a \$100,000 investment in Corp. C stock, which B lost when the Corp. C stock became worthless. As part of the agreement, Corp. A agrees to pay \$100,000 to B as restitution for B's investment loss, incurred as a result of Corp. A's actions. The agreement specifically states that the \$100,000 payment by Corp. A to B is restitution. The agreement also requires Corp. A to pay a \$40,000 fine to the Agency as a result of Corp. A's misconduct.

(ii) *Analysis.* Corp. A's \$100,000 payment to B is identified in the agreement as restitution. If Corp. A establishes, as provided in paragraph (b)(3) of this section, that the amount paid was for that purpose, Corp. A may deduct the \$100,000 payment. Paragraph (a) of this section precludes Corp. A from deducting its payment of \$40,000 to the Agency because the payment of a fine is not treated as restitution, remediation, or as paid to come into compliance with a law.

(3) *Example 3. Amount paid to come into compliance with a law--(i) Facts.* Corp. B, an accrual method taxpayer, is under investigation by State X's environmental enforcement agency for a potential violation of State X's law governing emissions standards. Corp. B enters into an agreement with State X under which it agrees to upgrade the engines in a fleet of vehicles that Corp. B operates to come into compliance with State X's law. Although the agreement does not provide the specific amount Corp. B will incur to upgrade the engines to come into compliance with State X's law, it identifies that Corp. B must upgrade existing engines to lower certain emissions. Under the agreement, Corp. B also agrees to bring certain machinery,

already in compliance with State X law, up to a standard higher than that which the law requires, and to construct a nature center in a local park for the benefit of the community. Corp. B presents evidence, as described in paragraph (b)(3)(ii) of this section, to substantiate that the expenses Corp. B will incur to upgrade the engines will be amounts paid to come into compliance with State X's law.

(ii) *Analysis.* Because the agreement describes the specific action Corp. B must take to come into compliance with State X's law, and Corp. B presents invoices to establish that the agreement obligates it to incur costs to come into compliance with a law, paragraph (a) of this section would not preclude a deduction for the amounts Corp. B incurs to come into compliance. However, Corp. B may not deduct the amounts paid to bring its machinery up to a higher standard than required by State X's law or to construct the nature center because no facts exist to establish that either amount was paid to come into compliance with a law or as restitution or remediation.

(4) *Example 4. At the direction of a government*--(i) *Facts.* Corp. D enters into an agreement with governmental entity, Consumer Board, for violating consumer protection laws by failing to provide debt-relief services it promised its customers. The agreement requires Corp. D to pay \$60,000 as restitution to the customers harmed by Corp. D's violation of the law.

(ii) *Analysis.* At the direction of Consumer Board, Corp. D must pay \$60,000 to its customers as a result of its violation of the law. The agreement identifies the \$60,000 as restitution. Provided Corp. D establishes, under paragraph (b)(3) of this section, that the \$60,000 constitutes restitution, paragraph (a) does not apply.

(h) *Applicability date.* The rules of this section are proposed to apply to taxable years beginning on or after the date of publication of the Treasury decision adopting these rules as final regulations is published in the **Federal Register**, except that such rules do not apply to amounts paid or incurred under any order or agreement that became binding under applicable law before such date. Until that date, taxpayers may rely on these proposed rules for any order or agreement, but only if the taxpayers apply the rules in their entirety and in a consistent manner.

Par. 3. Add §1.6050X-1 to read as follows:

§1.6050X-1 Information reporting for fines, penalties, and other amounts by governments, governmental entities, and nongovernmental entities treated as governmental entities.

(a) *Information reporting requirement.* The appropriate official (as described in paragraph (g)(1) of this section) of a government or governmental entity (as described in paragraph (g)(2) of this section) or nongovernmental entity treated as a governmental entity (as described in paragraph (g)(3) of this section) that is a party to a suit, agreement, or otherwise to which section 162(f) and §1.162-21(f)(4) apply, must--

(1) File an information return (as described in paragraph (b) of this section) if the aggregate amount the payor (as described in paragraph (g)(4) of this section) is required to pay pursuant to all court orders (orders) and settlement agreements (agreements), with respect to the violation of a law, or the investigation or inquiry into the potential violation of a law, equals or exceeds the threshold amount provided in paragraph (g)(5) of this section; and

(2) Furnish a written statement as described in paragraph (c) of this section to each payor.

(b) *Requirement to file return--(1) Content of information return.* The information return must provide the following:

(i) The aggregate amount required to be paid to, or at the direction of, a government or governmental entity as a result of the order or agreement;

(ii) The separate amounts required to be paid as restitution, remediation, or to come into compliance with a law, as defined in §1.162-21(f)(3), as a result of the order or agreement; and

(iii) Any additional information required by the information return and the related instructions.

(2) *Form, manner, and time of reporting.* The appropriate official required, under paragraph (a)(1) of this section, to file an information return must file Form 1098-F, Fines, Penalties, and Other Amounts, (or any successor form), with Form 1096, Annual Summary and Transmittal of U.S. Information Returns. The information return must be filed with the Internal Revenue Service (IRS) on or before January 31 of the year following the calendar year in which the order or agreement becomes binding under applicable law. The January 31 due date applies to both paper and electronically filed information returns.

(c) *Requirement to furnish written statement--(1) In general.* The appropriate official must furnish a written statement to each payor with respect to which it is required to file an information return under paragraphs (a)(1) and (b) of this section. The written statement must include:

(i) The information that was reported to the IRS with respect to such payor; and

(ii) A legend that identifies the statement as important tax information that is being furnished to the IRS.

(2) *Copy of the Form 1098-F.* The appropriate official may satisfy the requirement of this paragraph (c) by furnishing a copy of the Form 1098-F (or any successor form) filed with respect to the payor, or another document that contains the information required by paragraph (c)(1) of this section if the document conforms to applicable revenue procedures (see §601.601) or other guidance relating to substitute statements.

(3) *Time for furnishing written statement.* The appropriate official must furnish the written statement to the payor on or before the date that the appropriate official files the Form 1098-F with the IRS, as provided in paragraph (b)(2) of this section.

(d) *Rules for multiple payors--(1) Multiple payors -- individual liability.* If, pursuant to an order or agreement, the sum of the aggregate amount that multiple individually liable payors must pay with respect to a violation, investigation, or inquiry equals, or exceeds, the threshold amount under paragraph (g)(5) of this section, the appropriate official must file an information return under paragraphs (a)(1) and (b) of this section to report the amount required to be paid by each payor, even if a payor's payment liability is less than the threshold amount. The appropriate official must furnish a written statement, under paragraph (c) of this section, to each payor. If more than one person (as defined in section 7701(a)(1)) is a party to an order or agreement, there is no information reporting requirement, or requirement to furnish a written statement, with respect to any person who does not have a payment obligation or obligation for costs to provide services or to provide property.

(2) *Multiple payors -- joint and several liability.* If, pursuant to an order or agreement, multiple payors are jointly and severally liable to pay an amount that, in the aggregate, equals or exceeds the threshold amount under paragraph (g)(5) of this section, the appropriate official must file an information return, under paragraphs (a)(1) and (b) of this section for each of the jointly and severally liable payors. Each information return must report the aggregate amount required to be paid by all of the payors. The appropriate official must furnish a written statement, under paragraph (c) of this section, to each of the jointly and severally liable payors.

(e) *Payment amount not identified.* If, as provided by §1.162-21(b)(2)(iii), the order or agreement identifies a payment (or the cost to provide property or to provide services) as restitution, remediation, or an amount paid to come into compliance with a law (as defined in §1.162-21(f)(3)), but does not identify some or all of the aggregate amount the payor must pay (or some or all of the aggregate cost to provide property or to provide services) and, under the facts and circumstances, the government or governmental entity expects the amount to equal or exceed the threshold amount under paragraph (g)(5) of this section, for purposes of paragraphs (a), (b), and (c) of this section, the appropriate official must file an information return, and furnish the written statement to the payor, as provided by the instructions to Form 1098-F (or any successor form), including instructions as to the amounts (if any) to include on Form 1098-F.

(f) *Material change.* If the parties make a material change, as described in §1.162-21(e)(2), to the terms of an order or agreement for which an appropriate official has filed Form 1098-F (or any successor form), the appropriate official must update the

IRS by filing a corrected Form 1098-F (or any successor form), as provided by the form instructions, with respect to the entire amended order or agreement, not just the terms modified. The appropriate official must file the corrected Form 1098-F with the IRS on or before January 31 of the year following the calendar year in which the parties make a material change to the terms of the order or agreement. The appropriate official must furnish an amended written statement to the payor on or before the date that the appropriate official files the corrected Form 1098-F with the IRS.

(g) *Definitions.* For purposes of this section, the following definitions apply--

(1) *Appropriate official--(i) One government or governmental entity.* If the government or governmental entity has not assigned one of its officers or employees to comply with the reporting requirements of paragraphs (a), (b), and (c) of this section, the term “appropriate official” means the officer or employee of a government or governmental entity having control of the suit, investigation, or inquiry. If the government or governmental entity has assigned one of its officers or employees to comply with the reporting requirements of paragraphs (a), (b), and (c) of this section, such officer or employee is the appropriate official.

(ii) *More than one government or governmental entity--(A) In general.* If more than one government or governmental entity is a party to an order or agreement, only the appropriate official of the government or governmental entity listed first on the most recently executed order or agreement is responsible for complying with all reporting requirements under paragraphs (a), (b), and (c) of this section, unless another appropriate official is appointed by agreement under paragraph (g)(1)(ii)(B) of this section.

(B) *By agreement.* The governments or governmental entities that are parties to an order or agreement may agree to appoint one or more other appropriate officials to be responsible for complying with the information reporting requirements of paragraphs (a), (b), and (c) of this section.

(2) *Government or governmental entity.* For purposes of this section, government or governmental entity means--

- (i) The government of the United States, a State, or the District of Columbia; or
- (ii) A political subdivision of, or a corporation or other entity serving as an agency or instrumentality of any of paragraph (g)(2)(i) of this section.

(3) *Nongovernmental entity treated as governmental entity.* For purposes of this section, the definition of nongovernmental entity set forth in §1.162-21(f)(2) applies.

(4) *Payor.* The payor is the person (as defined in section 7701(a)(1)) who, pursuant to an order or agreement has paid or incurred, or is liable to pay or incur, an amount to, or at the direction of, a government or governmental entity in relation to the violation or potential violation of a law. In general, the payor will be the person to which section 162(f) and §1.162-21 of the regulations apply.

(5) *Threshold amount.* The *threshold amount* is \$50,000.

(h) *Applicability date.* The rules of this section are proposed to apply only to orders and agreements that become binding under applicable law on or after January 1, 2022.

Sunita Lough

Deputy Commissioner for Services and Enforcement.

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