

Internal Revenue Code

**§ 280G Golden parachute payments.**

(a) General rule.

No deduction shall be allowed under this chapter for any excess parachute payment.

(b) Excess parachute payment.

For purposes of this section —

(1) In general.

The term “excess parachute payment” means an amount equal to the excess of any parachute payment over the portion of the base amount allocated to such payment.

(2) Parachute payment defined.

(A) In general. The term “parachute payment” means any payment in the nature of compensation to (or for the benefit of) a disqualified individual if—

(i) such payment is contingent on a change—

(I) in the ownership or effective control of the corporation, or

(II) in the ownership of a substantial portion of the assets of the corporation, and

(ii) the aggregate present value of the payments in the nature of compensation to (or for the benefit of) such individual which are contingent on such change equals or exceeds an amount equal to 3 times the base amount.

For purposes of clause (ii), payments not treated as parachute payments under paragraph (4)(A), (5), or (6) shall not be taken into account.

(B) Agreements. The term “parachute payment” shall also include any payment in the nature of compensation to (or for the benefit of) a disqualified individual if such payment is made pursuant to an agreement which violates any generally enforced securities laws or regulations. In any proceeding involving the issue of whether any payment made to a disqualified individual is a parachute payment on account of a violation of any generally enforced securities laws or regulations, the burden of proof with respect to establishing the occurrence of a violation of such a law or regulation shall be upon the Secretary.

(C) Treatment of certain agreements entered into within 1 year before change of ownership. For purposes of subparagraph (A)(i), any payment pursuant to—

(i) an agreement entered into within 1 year before the change described in subparagraph (A)(i), or

(ii) an amendment made within such 1-year period of a previous agreement,

shall be presumed to be contingent on such change unless the contrary is established by clear and convincing evidence.

(3) Base amount.

(A) In general. The term “base amount” means the individual's annualized includible compensation for the base period.

(B) Allocation. The portion of the base amount allocated to any parachute payment shall be an amount which bears the same ratio to the base amount as—

(i) the present value of such payment, bears to

(ii) the aggregate present value of all such payments.

(4) Treatment of amounts which taxpayer establishes as reasonable compensation. In the case of any payment described in paragraph (2)(A) —

- (A) the amount treated as a parachute payment shall not include the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services to be rendered on or after the date of the change described in paragraph (2)(A)(i) , and
- (B) the amount treated as an excess parachute payment shall be reduced by the portion of such payment which the taxpayer establishes by clear and convincing evidence is reasonable compensation for personal services actually rendered before the date of the change described in paragraph (2)(A)(i) .

For purposes of subparagraph (B) , reasonable compensation for services actually rendered before the date of the change described in paragraph (2)(A)(i) shall be first offset against the base amount.

(5) Exemption for small business corporations, etc.

(A) In general. Notwithstanding paragraph (2) , the term “parachute payment” does not include—

- (i) any payment to a disqualified individual with respect to a corporation which (immediately before the change described in paragraph (2)(A)(i) ) was a small business corporation (as defined in section 1361(b) , but without regard to paragraph (1)(C) thereof ) , and
- (ii) any payment to a disqualified individual with respect to a corporation (other than a corporation described in clause (i) ) if—
  - (I) immediately before the change described in paragraph (2)(A)(i) , no stock in such corporation was readily tradeable on an established securities market or otherwise, and
  - (II) the shareholder approval requirements of subparagraph (B) are met with respect to such payment.

The Secretary may, by regulations, prescribe that the requirements of subclause (I) of clause (ii) are not met where a substantial portion of the assets of any entity consists (directly or indirectly) of stock in such corporation and interests in such other entity are readily tradeable on an established securities market, or otherwise. Stock described in section 1504(a)(4) shall not be taken into account under clause (ii)(I) if the payment does not adversely affect the shareholder's redemption and liquidation rights.

(B) Shareholder approval requirements. The shareholder approval requirements of this subparagraph are met with respect to any payment if—

- (i) such payment was approved by a vote of the persons who owned, immediately before the change described in paragraph (2)(A)(i) , more than 75 percent of the voting power of all outstanding stock of the corporation, and
- (ii) there was adequate disclosure to shareholders of all material facts concerning all payments which (but for this paragraph ) would be parachute payments with respect to a disqualified individual.

The regulations prescribed under subsection (e) shall include regulations providing for the application of this subparagraph in the case of shareholders which are not individuals (including the treatment of nonvoting interests in an entity which is a shareholder) and where an entity holds a de minimis amount of stock in the corporation.

(6) Exemption for payments under qualified plans.

Notwithstanding paragraph (2) , the term “parachute payment” shall not include any payment to or from—

- (A) a plan described in section 401(a) which includes a trust exempt from tax under section 501(a) ,
- (B) an annuity plan described in section 403(a) ,
- (C) a simplified employee pension (as defined in section 408(k) ) , or
- (D) a simple retirement account described in section 408(p) .

(c) Disqualified individuals.

For purposes of this section , the term “disqualified individual” means any individual who is—

- (1) an employee, independent contractor, or other person specified in regulations by the Secretary who performs personal services for any corporation, and
- (2) is an officer, shareholder, or highly-compensated individual.

For purposes of this section , a personal service corporation (or similar entity) shall be treated as an individual. For purposes of paragraph (2) , the term “highly-compensated individual” only includes an individual who is (or would be if the individual were an employee) a member of the group consisting of the highest paid 1 percent of the employees of the corporation or, if less, the highest paid 250 employees of the corporation.

(d) Other definitions and special rules.

For purposes of this section —

(1) Annualized includible compensation for base period.

The term “annualized includible compensation for the base period” means the average annual compensation which—

- (A) was payable by the corporation with respect to which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs, and
- (B) was includible in the gross income of the disqualified individual for taxable years in the base period.

(2) Base period.

The term “base period” means the period consisting of the most recent 5 taxable years ending before the date on which the change in ownership or control described in paragraph (2)(A) of subsection (b) occurs (or such portion of such period during which the disqualified individual performed personal services for the corporation).

(3) Property transfers.

Any transfer of property—

- (A) shall be treated as a payment, and
- (B) shall be taken into account as its fair market value.

(4) Present value.

Present value shall be determined by using a discount rate equal to 120 percent of the applicable Federal rate (determined under section 1274(d) ), compounded semiannually.

(5) Treatment of affiliated groups.

Except as otherwise provided in regulations, all members of the same affiliated group (as defined in section 1504 , determined without regard to section 1504(b) ) shall be treated as 1 corporation for purposes of this section . Any person who is an officer of any member of such group shall be treated as an officer of such 1 corporation.

(e) Special rule for application to employers participating in the troubled assets relief program.

(1) In general.

In the case of the severance from employment of a covered executive of an applicable employer during the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined

under section 120 of such Act), this section shall be applied to payments to such executive with the following modifications:

(A) Any reference to a disqualified individual (other than in subsection (c) ) shall be treated as a reference to a covered executive.

(B) Any reference to a change described in subsection (b)(2)(A)(i) shall be treated as a reference to an applicable severance from employment of a covered executive, and any reference to a payment contingent on such a change shall be treated as a reference to any payment made during an applicable taxable year of the employer on account of such applicable severance from employment.

(C) Any reference to a corporation shall be treated as a reference to an applicable employer.

(D) The provisions of subsections (b)(2)(C) , (b)(4) , (b)(5) , and (d)(5) shall not apply.

(2) Definitions and special rules.

For purposes of this subsection :

(A) Definitions. Any term used in this subsection which is also used in section 162(m)(5) shall have the meaning given such term by such section.

(B) Applicable severance from employment. The term “applicable severance from employment” means any severance from employment of a covered executive—

(i) by reason of an involuntary termination of the executive by the employer, or

(ii) in connection with any bankruptcy, liquidation, or receivership of the employer.

(C) Coordination and other rules.

(i) In general. If a payment which is treated as a parachute payment by reason of this subsection is also a parachute payment determined without regard to this subsection , this subsection shall not apply to such payment.

(ii) Regulatory authority. The Secretary may prescribe such guidance, rules, or regulations as are necessary—

(I) to carry out the purposes of this subsection and the Emergency Economic Stabilization Act of 2008, including the extent to which this subsection applies in the case of any acquisition, merger, or reorganization of an applicable employer,

(II) to apply this section and section 4999 in cases where one or more payments with respect to any individual are treated as parachute payments by reason of this subsection , and other payments with respect to such individual are treated as parachute payments under this section without regard to this subsection , and

(III) to prevent the avoidance of the application of this section through the mischaracterization of a severance from employment as other than an applicable severance from employment.

(f) Regulations.

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section (including regulations for the application of this section in the case of related corporations and in the case of personal service corporations).

