



457(f) and 409(A) REGULATIONS MODIFIED

The IRS has issued revised guidance effective July 1, 2008, with respect to compensation arrangements where a 9 or 10-month employee either elects or is required to be paid over 12 months. Prior guidance considered these arrangements to be deferred compensation subject to Section 457(f) and Section 409(A) regulations regarding deferring compensation earned in one year but received in a subsequent year. You will recall that the prior guidance required 10-month employees who elected to receive their pay over 12 months to complete a form reflecting that choice beginning with the 2008-2009 school year.

The new guidance, which may be relied upon immediately, states that a 9 or 10-month employee receiving pay over 12 months does not defer compensation if:

1) the arrangement does not defer payment of any of the salary beyond the last day of the 13th month following the beginning of the service period (e.g. if the employee begins on August 1, 2008, all compensation for the year must be paid by August 31, 2009); and

2) the arrangement does not defer more than allowed by the IRS (\$15,500 for 2008) using an IRS formula.

The practical effect of this guidance is to exempt employees who elect to be paid over 12 months from the deferred compensation regulations. For example, a 10-month employee who works August 1, 2008 to May 1, 2009 and elects to be paid over 12 months would have to earn more than \$186,000 during the school year to be covered under the deferred compensation regulations (assuming equal salary payments in each month from August 2008 to July 2009).

The Treasury Department and the IRS anticipate that rule changes to Sections 457(f) and 409(A) should exclude from coverage most arrangements for public school teachers and other partial-year employees who either elect or who are required to receive their pay over 12 months. Because this new guidance is effective July 1, 2008, you may disregard our prior recommendation that you have all employees who work less than 12 months complete an election form prior to the start of the 2008-2009 school year indicating their request to be paid over 12- months.

If you have any questions or concerns regarding this matter, please contact Justin Petrarca (x234) or John Fester (x239) in our Chicago office at (312) 565- 3100.

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