

JUNE 30 DEADLINE FOR BONUS DEFERRAL ELECTIONS RAPIDLY APPROACHING

Opportunity to Make Elections for Bonuses Earned in 2005

For plan sponsors with bonus programs based on a calendar year service period, **elections to defer “bonus compensation” earned during the calendar year 2005 must be submitted by no later than June 30, 2005** (i.e., six months before the end of the performance service period). This deadline is the result of Treasury Department guidance provided in Notice 2005-1 pursuant to new Internal Revenue Code section 409A. Many tax practitioners have determined that this guidance permits the timely submission of new deferral elections or supplemental deferral elections for compensation that meets the criteria for “bonus compensation.” However, a number of plan sponsors, as a precautionary measure, have already solicited deferral elections for bonuses earned during 2005. These bonus elections were made prior to the release of Notice 2005-1 in late December 2004, because it was unclear which amounts would qualify for the more lenient deferral election timing rules for this type of compensation. As the June 30 deadline is rapidly approaching, we have included below for your convenience the description previously provided in Clark Consulting’s *Executive Benefits Bulletin* of January 24, 2005 – “Summary of Key Deadlines under Notice 2005-1.”

JUNE 30, 2005 – DEADLINE TO SUBMIT ELECTIONS TO DEFER “BONUS COMPENSATION” ATTRIBUTABLE TO SERVICE PERIODS ENDING 12/31/2005

Until additional guidance is issued, the transition relief provided in Notice 2005-1 will permit a deferral election for “bonus compensation,” which is based on services performed over a period of at least 12 months, to be treated as meeting the requirements of §409A for “performance-based compensation.” As a result, bonus compensation will qualify for the performance-based compensation exception to the deferral election timing rule. Therefore, deferral elections may be made as late as 6 months before the end of the service period. For purposes of this transition relief, “bonus compensation” includes compensation for which (i) the payment of the compensation or the amount of the compensation is contingent on the satisfaction of organizational or individual performance criteria, and (ii) the performance criteria are not substantially certain to be met at the time a deferral election is permitted. (Q&A-22).

Clark Consulting comment:

- It is expected that later in 2005, Treasury will issue additional guidance that sets forth more restrictive requirements for “performance-based compensation.” Following the release of these more restrictive requirements, employers will not be able to rely on the interim definition of “bonus compensation” above for purposes of determining eligibility for the more lenient timing rule. (Q&A-22)

For information on the other important deadlines for plan sponsors contained in Notice 2005-1, including information on the deadline for canceling deferral elections or terminating participation in a nonqualified deferred compensation plan, please refer to Clark Consulting’s *Executive Benefits Bulletin* of January 24, 2005 – “Summary of Key Deadlines under Notice 2005-1.”

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For additional information, please contact your Clark Consulting representative.

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