



June 30 Deadline for Deferred Compensation Elections

June 28, 2005

As discussed in a prior LawFlash, Section 409A of the Internal Revenue Code of 1986, as amended, which was added by the American Jobs Creation Act of 2004, provides that beginning on January 1, 2005, elections to defer compensation must be made prior to the end of the calendar year preceding the year in which services are performed. Section 409A provides an important exception to this general rule: for bonus arrangements in which the bonus is “performance based,” the election may be made not later than six months prior to the end of the performance period. For calendar-year bonus plans for the year 2005, this election must be made not later than June 30, 2005; for bonus plans operating on a fiscal year, the deadline is six months prior to the end of the fiscal year. Notice 2005-1 sets forth a relatively accommodating set of criteria as to what constitutes a performance-based bonus program for the year 2005. Please also note that any such election must be made pursuant to a plan that meets the requirements imposed by Section 409A, including appropriate limitations and forms of distribution, plan provisions and an initial distribution election. For further details, please review [LawFlash Deferred Compensation Election Deadline – March 15, 2005; New Supplemental Withholding Rules for Compensation in Excess of \\$1 Million](#), February 2005.

This performance-based bonus rule can apply to:

- an annual bonus earned during 2005;
- a multi-year bonus payable with reference to 2005;
- an election to defer bonus amounts into non-qualified 401(k) or pension plans.

If you would like further information regarding the issues raised in this LawFlash, or would like assistance in amending plans, please contact your regular Morgan Lewis attorney, or any of the following:

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