

United States Senate
WASHINGTON, DC 20510

December 8, 2004

The Honorable John W. Snow
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Snow:

We are writing to make you aware of our keen interest in ensuring that appropriate guidance and transition relief are issued with respect to the new deferred compensation provisions contained in Internal Revenue Code (“Code”) section 409A.

Recently enacted as part of the American Jobs Creation Act of 2004, the new rules in Code section 409A are significant and far-reaching. They will affect *all* employers, regardless of their size or whether they are public, private, or tax-exempt companies. Thousands of employees, and potentially all employees of employers who maintain broad-based equity compensation programs, will be impacted by these new rules. As a result, employers will need to undertake a comprehensive review of many of their compensation arrangements. In all likelihood, many employers will need to make fundamental changes in their compensation plans.

We, therefore, urge the Department of Treasury to issue prompt guidance in the following areas to assist America’s employers and their employees:

- First, guidance is needed on specific definitional and interpretative issues so that employers may take appropriate actions. (In particular, consideration should be given to stock appreciation rights that are economically equivalent to fair market value stock options, and other forms of broad-based equity compensation programs.)
- Second, until final regulations are promulgated, guidance should apply the “reasonable and good faith” interpretive standard to the extent that answers to other questions cannot be provided readily.
- Lastly, guidance should provide for a grandfather rule that produces fair results and does not alter the fundamental rules with respect to existing transactions.

We greatly appreciate your and your staff's diligent efforts to meet the December 21, 2004 deadline for issuing transition guidance on Code section 409A. Thank you for your consideration of our request.

Sincerely,








