

Congress of the United States

Washington, DC 20515

December 8, 2004

The Honorable John W. Snow
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Snow:

We are writing in regard to the new nonqualified deferred compensation provision contained in Internal Revenue Code (IRC) Section 409A, which was recently enacted into law under H.R. 4520, the *American Jobs Creation Act of 2004*.

IRC Section 409A clarifies the tax treatment of nonqualified deferred compensation by eliminating certain abuses and providing clear cut rules relating to constructive receipt. IRC Section 409A generally applies to "any plan that provides for the deferral of compensation." The statute and the Conference Report explicitly exempt certain types of compensation from the new rules, such as qualified employer plans and fair market value stock options that are currently taxed under IRC Section 83.

The Secretary is granted broad regulatory authority to implement the new rules and to further clarify the definition of a nonqualified deferred compensation plan. The Conference Report specifically indicates that the Secretary may also "address in regulations issues relating to stock appreciation rights." It has recently come to our attention that you have interpreted this sentence as restricting your flexibility to evaluate whether stock appreciation rights should be covered by the new rules.

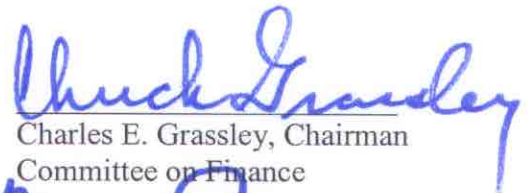
We are writing to clarify that the authority to issue regulations relating to stock appreciation rights was intended to enhance, not restrict, your broad authority to interpret the new law. The conferees intend that all forms of compensation, including stock appreciation rights, should be evaluated by the Treasury to determine whether they should be covered by Section 409A.

We greatly appreciate you and your staff's diligent efforts to issue guidance on IRC Section 409A.

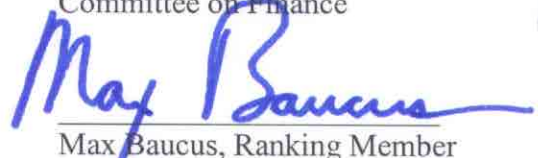


William M. Thomas, Chairman
Committee on Ways and Means

Sincerely,



Charles E. Grassley, Chairman
Committee on Finance



Max Baucus, Ranking Member
Committee on Finance