

Changes Needed to Nonqualified Deferred Comp Provisions in Chairman's Mark

Stock Appreciation Rights (SARs).

- The legislation should be amended to specifically carve out fair market value SARs from the definition of NQDC.
- SARs are economically equivalent to and, under current law, receive the same tax treatment as nonqualified stock options, which are not treated as NQDC. SARs do not involve any “mismatch” or other tax abuse.
- SARs are widely utilized by private companies that cannot readily utilize stock options and by a growing number of public companies because of proposed accounting changes.
- Many companies and their shareholders now view SARs as more attractive than stock options because SARs result in less dilution to shareholders than stock options but provide the same economic results for the employee.
- There is no policy reason to treat SARs differently than stock options.

Supplemental Pension Plans

- The legislation should be amended to provide a narrow exception from the election-timing rules for payments under supplemental retirement plans. This exception would apply only for plans that provide benefits under a formula that is substantially the same as the employer's qualified plan and that pays benefits at the same time and in the same form as under the qualified plan.
- The exception would allow employees to make payout elections under their supplemental retirement plans at the same time and in the same form that the employee elects under the employer's qualified pension plan at retirement.
- Without this change, the thousands of middle management employees who depend upon supplemental retirement plans in addition to their qualified plans will have no meaningful opportunity to make an election as to how retirement benefits will be paid.
- Without this change, it appears that payment elections under supplemental plans could even be required at or near the time the participant begins service under the plan – which could be decades before retirement and before the participant knows whether he or she will be covered by the plan.