

Nonqualified Deferred Compensation Legislation
List of Issues for ABC Member Conference Call

- Possible Senate Finance proposal that any investment options offered under a nonqualified deferred compensation plan be “comparable” to the options available under the employer’s qualified plan.
- Possible Senate Finance proposal prohibiting the deferral of gains attributable to stock options or restricted stock.
- Requirement in Chairman Thomas’ international tax bill (H.R. 2896) that initial deferral elections generally be made before the beginning of the taxable year in which the compensation is earned. (This would have a significant effect on elections to defer annual bonuses, which many plans permit to be made in the latter part of the year in which the bonuses are earned if they would not otherwise be payable until the succeeding year, as well as on long-term incentive payments.)
- Requirement in the new Thomas bill that any subsequent election to delay the timing or form of payment be made at least 12 months before scheduled payment and provide an additional deferral for a period of at least five years from the date of election.
- Possible Senate Finance proposal restricting payments upon a change of control. (Thomas bill would permit such payments to the extent provided in Treasury regulations.)
- Requirement in new Thomas bill that “key employees” of publicly-held corporations (e.g., top 50 officers with compensation over \$130,000) be required to wait 6 months for commencement of payments triggered by separation from service. (Note, this will generally be a broader group than insiders subject to sec. 16 of the ’34 Security Act.)
- Proposal in Thomas bill defining disability under Social Security Act definition, which is a tough definition to satisfy and is inconsistent with common plan practice of using definition under employer’s long-term disability policy.
- Application of effective date of proposals to “amounts deferred” in taxable years beginning after 12/31/03 (e.g., does the deferral occur at the time of election or at time amounts would otherwise be payable; application to

deferral elections made before 2004 with respect to bonuses earned in 2003, and to long-term incentive plans spanning years before and after 12/31/03; application to SERPs and impact on fiscal year plans). Note: Effective Date for Senate bill moved to amounts deferred after 12-31-04 – issues remain the same.

- Proposal in Thomas bill generally eliminating foreign rabbi trusts, except as provided in Treasury regulations. (Note, proposal does not contain the explicit exception included in prior bills for cases where substantially all services to which deferred compensation relates are performed outside the U.S.)
- Whether a violation of new requirements triggers taxation for all plan participants or just affected participants?
- Problems with Form W-2 reporting?
- Lack of an exception in Thomas bill for severance plans.