

# “White Paper” Analysis of Section 409A Deferred Compensation Rules

April 11, 2005

The new tax rules governing non-qualified deferred compensation under section 409A of the Internal Revenue Code took effect on January 1, 2005, and we are well into the transition period for 2005 that was established by IRS Notice 2005-1. Thus, this is an appropriate time for employers and others to take a fresh look at their existing NQDC plans and consider, among other things, how these plans are affected by the definition of deferred compensation in Q&A-4 of the Notice, how the transition rules apply, and what changes might be necessary going forward.

With that in mind, Sutherland’s [White Paper](#) provides a detailed analysis of the rules and open issues under section 409A, as well as the guidance under Notice 2005-1 and its transition rules. In particular, we note that Q&As-19 and -20 of Notice 2005-1 generally permit, for 2005 only:

- cancellation or reduction of deferral elections;
- modification of payment elections; and
- immediate distribution of all or a part of deferred amounts.

These transition rules, which are intended to provide employers and participants with substantial flexibility in 2005, are discussed in detail on pages 18-21 of the White Paper. In addition, Q&A-17 (discussed on pages 16-17) provides rules for identifying amounts that are “grandfathered,” and Q&A-18 allows the cancellation and replacement of a previously granted, but not yet vested, discounted stock option or stock appreciation right during 2005 (as discussed on pages 19-20).

Please click [HERE](#) to view the White Paper, click [HERE](#) to view section 409A, click [HERE](#) to view Notice 2005-1, and click [HERE](#) to view Sutherland’s earlier Legal Alert describing the highlights of Notice 2005-1. Please contact us if you have any questions regarding section 409A and the related IRS guidance.

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