

# The View from Level VII™

## EXECUTIVE BENEFITS

### *Nonqualified Deferred Compensation — How's Your 2005 Legislative Overhaul Going?*

In our last issue we identified how late December's IRS Notice 2005-1 provided preliminary guidance interpreting the nonqualified deferred compensation provision (IRC 409A) included in the American Jobs Creation Act of 2004. Since that time, Treasury has provided new informal guidance which largely identified issues such as "Material Modifications" to Grandfathered Plans; Short-Term Deferrals; Payments "at a Specified Time"; and Plan Document Failures.

Officials have also identified issues that are likely do be addressed in the formal guidance anticipated later this year. Included will be information related to deferral elections and distributions under nonqualified deferred compensation plans; application of 409A to employment agreements; equity compensation programs; and split dollar life insurance arrangements. With respect to split-dollar arrangements, it is unclear whether the AJCA applies at all, given that the AJCA, by its own terms, does not apply to "death benefit plans." Treasury officials are aware that guidance is needed in these areas.

Regardless of when more formal guidance becomes available, companies with deferred compensation plans should currently be reviewing all plans and arrangements that may be subject to 409A. As the first quarter draws to a close, companies should have identified: which plans and amounts are grandfathered under the old rules; and which plans and provisions are subject to the transition rules. Perhaps most importantly is to determine what corporate of benefit objective the identified plans are really meant to meet; e.g., is the plan understood and valued by the executive? If the plans are accomplishing the desired objectives, the next step is to identify what is necessary to make these plans compliant by the end of 2005, with an action plan and timeline. It will also be critical to quickly identify what professional(s) can design for the overall plan objective, as well as provide financing, legal and accounting support as necessary. Time moves quickly...it may be costly if you let it pass by without action.

**Weir Financial Resources**, a financial advisory firm uniquely dedicated to providing solutions for Executive Benefits, stands ready to assist your company with this important planning matter.

William M. Weir, CLU  
Weir Financial Resources, LLC  
[www.WeirResources.com](http://www.WeirResources.com)

## EXECUTIVE COMPENSATION

### *Restricted Stock Plans — Has Their Time Come?*

Only a few years ago restricted stock plans were shunned. Shareholder activists considered restrictive stock awards were almost an obscene give away of company stock. They shuttered at the idea of piling even more rewards on top of large grants of stock options to what they considered overpaid executives. Then came dilution...the watering down effect garnered by over abundant issuance of traditional stock options. With the "bull market" gone and strict new legislation for accounting requirements on traditional stock options, companies and their Boards are rediscovering the advantages of restricted stock. What time can do.

Properly designed, restricted stock plans offer many advantages for executives, companies and compensation committees. Even shareholders support these plans – providing they have adequate restrictions. Here are some of the things they like:

- Awards are usually only made to the executive/senior management team responsible for producing company results.
- Fewer shares are required to provide similar levels of benefits to participants compared to stock options.
- Shares retain value even if the share price declines and may carry dividend and/or voting rights, if the company chooses.
- Performance targets (related to award triggering or vesting), provide strong foundation for recruiting, incentivizing and retention.
- Restricted Stock can align the interests of the management team and investors; increasing dividends and stock price benefits everyone.

Restricted Stock Plans must be well designed to provide mutual benefits to management and investors. They must factor in the complex accounting and tax rules. **Harman & Associates** with its fortune 500 background and extensive national and international experience in executive compensation planning stands ready to assist in developing a Restricted Stock plan that deals with the complex tax rules and establishes mutual benefit for all parties involved.

Ray Harman  
Harman & Associates  
[www.Harman-Associates.com](http://www.Harman-Associates.com)

*In this and/or future issues you will find short, yet meaningful articles on:*

- Human Resources
- Risk Management
- Executive Compensation
- Executive Benefits
- Employee Benefits
- Private Wealth Planning



# *The View* from Level VII™

## EMPLOYEE BENEFITS

### *Prescription Drug Benefit Strategies*

Costs for prescription drug benefits are almost 30% of the total cost for Medical Insurance. The annual "inflationary cost trend" is approximately 18% for prescription drugs, compared to approximately 15% for all other medical services. While these drugs add to the quality of life, they can also be over-utilized. It's important to design financial incentives so employees (and physicians) make effective decisions when considering treatment options. For example, the average cost for a 30 day supply of brand name drugs is approximately \$70, compared to an average cost of approximately \$17 for a 30 day supply of generic drugs.

Our clients have used the following strategies to control prescription drug benefits costs without unreasonable out-of-pocket costs for employees.

- Self-insuring just the prescription drug benefits portion of the total medical insurance plan.
- Implementing reasonable deductibles before any prescription drug benefits are payable.
- Utilizing percentage co-pays for brand name drugs (instead of flat-dollar), so employees know the total costs for prescriptions.
- Educating employees on the differences (real and perceived) between brand name and generic drugs.
- Educating employees and physicians on the most cost effective ways to manage very expensive injectable drugs.

We would be happy to discuss prescription drug benefits strategies with you.

**Benefits Advantage, Inc.** provides consulting and insurance brokerage services for all types of employee benefits programs. Emphasizing *personal service, creative ideas, and positive results*; Benefits Advantage Inc. has 30 years of experience working with employers.

Arthur Georger CLU, CEBS  
Benefits Advantage, Inc.  
[www.BenefitsAdvantageInc.com](http://www.BenefitsAdvantageInc.com)

## HUMAN RESOURCES

### *Bush Proposes More for Enforcing Wage & Hour Rules*

President Bush is proposing an increase to the Department of Labor's (DOL) budget for enforcement of wage and hour regulations from \$195.5 million in 2005 to \$198.4 million in 2006.

The DOL's Wage and Hour Division is responsible for enforcement of a wide range of laws which collectively cover virtually all private and state and local government employment. The Wage and Hour Division ensures compliance with the minimum wage, overtime, child labor, and other employment standards under the Fair Labor Standards Act, Migrant and Seasonal Agricultural Worker Protection Act, certain provisions of the Immigration and Nationality Act, Employee Polygraph Protection Act, the Immigration Nursing Relief Act, the wage garnishment provisions of the Consumer Credit Protection Act, and the Family and Medical Leave Act.

The budget request includes funding for 1,346 full-time equivalent workers at the Wage and Hour Division. The budget request also said the division will continue to review and update regulation to "support the department's goal of ensuring a competitive workplace by promoting family-friendly job flexibility and minimizing unnecessary regulatory burdens."

The Bush proposal also calls on Congress to increase the civil penalties for child labor law violations that result in the death or serious injury of a youth from \$11,000 to \$50,000. The budget request also proposes that civil penalties for repeat and willful violations rise to \$100,000.

Please feel free to contact us with questions related to this, or any other related Human Resource matter. **HR Professional Consultants** provides outsourcing and project based Human Resources consulting services for companies of all types and sizes.

Jim Chwojdak  
HR Professional Consultants, Inc.  
[www.HRProfessionalConsultants.com](http://www.HRProfessionalConsultants.com)

*Visit our website:*  
[www.LevelVIICompanies.com](http://www.LevelVIICompanies.com)

