

Publications

# Update on Nonqualified Deferred Compensation Legislation

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SERVICES

## Nonqualified Deferred Compensation Proposals

Significant changes to the rules that apply to nonqualified deferred compensation arrangements have been pending in Congress as part of Enron-related pension legislation and corporate and international tax reform legislation. Over the last month so, Congressional action on the corporate and international tax reform legislation containing the deferred compensation amendments has picked up steam.

As previously reported, the Senate passed its version of corporate and international tax reform legislation (S. 1637, the “Jumpstart Our Business Strength (JOBS) Act of 2004” ) by a vote of 92-5 on May 11. On June 14, the House Ways and Means Committee approved a new version of its corporate and international tax reform legislation (H.R. 4520, the “American Jobs Creation Act of 2004”), including a slightly-modified version of the nonqualified deferred compensation amendments contained in the version of the legislation (H.R. 2896) approved by the Ways and Means Committee last year. The House passed H.R. 4520 by a vote of 251-178 on June 17.

The pending changes are far-reaching and would have a dramatic effect on a wide variety of compensation arrangements, including many arrangements that traditionally have not been considered to involve deferred compensation as such. Moreover, the proposed changes would take effect almost immediately, with little or no transition time for employers and employees to modify their arrangements. Under the current effective date, the legislation would even be retroactive by applying the deferral election-timing requirements to existing bonus and long-term incentive arrangements.

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