



A Union of Professionals

## Memorandum

American Federation  
of Teachers, AFL-CIO

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AFT Teachers  
AFT PSRP  
AFT Higher Education  
AFT Public Employees  
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To: AFT Higher Education Local Presidents

From: Lawrence Gold, Director, AFT Higher Education  
Bill Cunningham, Senior Associate Director, AFT Legislation

Date: June 19, 2008

Subject: Changes to IRS Regulations on Deferred Compensation

Recent changes to the tax code regarding deferred compensation have raised questions for AFT members who are compensated on the basis of working nine or ten months but are paid over a 12-month period. This memo provides background on that change and what your members need to do if they fall into this category.

### **The Fundamental Question**

The key to this change is whether or not your college or university *gives you a choice* of receiving your salary over 12 months instead of just the school year. If so, *those who choose a 12-month period must provide a written statement to their schools before the start of the new school year electing the 12-month option.*

### **Background**

In 2005, a new provision was added to the tax law, section 409(a), which stated that the salary earned in one tax year cannot be received in another tax year without it being considered “non qualified deferred compensation.” In other words, the law stated that the salary received in one year but not paid in that year is non-qualified deferred compensation and is subject to an additional tax, including an additional 20% income tax.

The original regulation said that taxpayers whose employer required *all employees* to be paid over a 12-month period could continue to do so with no additional tax consequence, but the regulations also established a new procedure exempting employees who voluntarily chose to be paid over 12 months.

Last year, these new regulations for employees who can *choose* a 12-month period required them to submit a written request to their employer before the start of the new school year. In 2007, this new change caused serious problems, and because of the efforts of the AFT and other institutions, the new requirement was delayed to school years starting in 2008.

Under the rules in place now, if your institution gives you a *choice* of a 12-month pay period, ***you must submit a written request to your employer before the start of the new school year in order to participate in the 12-month program***, and this request cannot be revoked during the tax year.

If you wish to continue on a 12-month basis, this initial request would protect you from any additional federal tax penalties. However, after the first year, you may submit another request to go back to the 10-month basis for pay.

If you do not file the form in a timely manner before the start of the new school year, your employer must pay you during the school year only.

Below is the website for the IRS regulations, which explains the issue in detail:

<http://www.irs.gov/newsroom/article/0,,id=172883,00.html>

If you have further questions, please direct them to the AFT Higher Education office at 800-238-1133 / ext. 4426 or [highered@aft.org](mailto:highered@aft.org).

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cc: AFT State Federation Presidents