

The George Washington University Deferred Compensation Election Information

Section 409A of the Internal Revenue Code (the “Code”) established certain requirements for deferred compensation (*i.e.*, amounts earned in one year, but paid in a later year). Effective with the 2008 academic year, section 409A of the Code will apply to faculty members who are paid under a nine-month teaching contract, but voluntarily elect to receive their compensation over a twelve-month period. The election to spread nine months of compensation over a twelve-month period is considered deferred compensation subject to section 409A of the Code because the election results in compensation earned in one calendar year (*i.e.*, between September and December of 2008) to be paid in the following calendar year (*i.e.*, between June and August of 2009). This FAQ briefly describes the changes in the tax laws and the requirements that you must satisfy in order to make an election to receive your compensation earned during a nine-month academic year over a twelve-month period.

Please note this FAQ is a brief summary of a change in the tax laws and how it impacts our payroll practices. This FAQ is not intended to provide you with tax advice. You should consult with your own advisor regarding any questions about the impact of electing to receive your compensation over 12 months.

What is Section 409A of the Code? Section 409A of the Code imposes certain restrictions on an individual’s ability to defer compensation. Specifically, section 409A of the Code only allows an individual to defer the tax on compensation earned in one year, but paid in a later year, if the timing and the form of payment are fixed prior to the time the compensation is earned. Deferred compensation that does not meet the requirements of section 409A of the Code is taxed when earned and is subject to an additional 20% excise tax and interest.

How am I deferring income if I elect to spread my compensation over a twelve-month period? Assume you are earning \$54,000 per academic year. If you are paid over nine months, you would earn \$6,000 per month and would earn \$24,000 between September 1 and December 31 of 2008. You would earn \$30,000 between January 1 and May 31, 2009. If you elect to be paid over a twelve-month period, you would earn \$4,500 per month for 12 months. Accordingly, you would only earn \$18,000 during 2008 and \$36,000 in 2009. Essentially, you deferred \$6,000 earned in 2008 to 2009 (*i.e.*, \$24,000 - \$18,000).

Are all faculty members eligible to spread the payment of their compensation over a twelve month period? No, only full-time faculty members appointed on an academic-year basis who have completed at least one year at GW are eligible to spread their compensation over a twelve-month period. This includes full-time faculty members appointed on an academic-year basis that also have administrative responsibilities throughout the fiscal year.

If I elect to receive my compensation over a twelve-month period, what requirements do I need to satisfy in order to avoid immediate taxation on the amount deferred into 2009 (i.e., \$6,000 in the example above)? Tax liability for any deferred compensation can be deferred until such compensation is paid if you satisfy the following requirements:

1. You elect in writing to spread the payment of your compensation over a twelve-month period. Attached is an election form to be used for this purpose.
2. You make this election prior to the first day of the academic year to which the election applies, i.e., by no later than September 1, 2008 for the 2008-09 academic year.
3. Your election is irrevocable for that year. In other words, once you elect to spread payment of your compensation over a twelve-month period, you cannot later request that you receive payment of your compensation over a nine-month period.
4. Your election must state how your compensation will be paid (e.g., in equal monthly installments or in accordance with payroll practice).

What do I need to consider in regard to my benefits if I choose to be paid over nine months as opposed to twelve? Your benefits coverage continues under the terms of the applicable Plans and the timing of your compensation will not affect these benefits. However, your health, dental and life insurance plan premium deductions will be increased to account for those deductions that were missed over the summer months. The total amount of the missed deductions are divided so that they are taken from the remaining pay periods in September, October, and November. In addition, any associated taxes relating to tuition remission benefits used in the summer would also be added as imputed income and taxed when your pay begins again. (If tuition remission benefits are also used in the fall, any associated taxes for the fall would be taken at the same time.) Your Flexible Spending Account deductions and your Retirement Plan deductions will not be affected by your choice. These deductions are calculated based on your elected pay schedule. As a result, whatever amounts you elect to contribute to these Plans are calculated to be deducted from your pay under whichever payment schedule you choose.

What happens if I do not submit an Academic Compensation Payment Option Election form? If you do not submit a form by September 1, 2008 to have your academic year compensation distributed over a twelve-month period, and you have not previously elected to receive your compensation over 12 months, you will receive your compensation over a 9-month period on the last working day of each month during the academic year.

Can I change my election during the academic year? Your election for that academic year is irrevocable after the commencement of the academic year.

Will I need to complete an election form every year? Your election will remain in effect for all future academic years unless you submit an updated election form indicating a different election prior to the commencement of the ensuing academic year or unless 409A deferral requirements change.

Do I need to complete a new form if I elected to receive my compensation over 12 months in a previous year? No, your election will remain in effect for all future academic years.

However, this election is irrevocable for an academic year once the academic year begins. So, if you want to change your election and receive your compensation over a 9-month period, or if you have previously received your compensation over a 9-month period and wish to receive your compensation during the 2008-09 academic year over a 12-month period, you must submit a new election form indicating your new election prior to the commencement of the academic year.

What happens if I decide to retire or resign at the end of the academic year after electing to receive my academic compensation over 12 months? Any accrued but unpaid compensation will be paid in lump sum upon termination of employment or retirement as soon as administratively possible. A lump sum of any accrued but unpaid compensation may also be paid upon death, disability and in the occurrence of an unforeseeable emergency.

Where should I submit the election form? The election form should be submitted to the Office of Faculty Personnel, Rice Hall, Room 813.

Who should I contact if I have any questions? Please contact the University Tax Department at (202) 994-2556, or the Office of Faculty Personnel, at (202) 994-6512.

Date _____

To: Barbara Marshall
Office of Faculty Personnel
Rice Hall room 813
email: sisbcm@gwu.edu

**The George Washington University
Academic Compensation Payment Option Election Form**

In order to make an irrevocable election to have your academic year compensation paid out over a 12-month period, you must complete and return this form to the Office of Faculty Personnel before the beginning of the academic year September 1, 2008. Your election is irrevocable for the upcoming academic year and cannot be changed after the commencement of the academic year. Changes can be made for future academic years but also must be made in writing and before the commencement of that academic year. *If you do not properly complete this election form and return it to the Office of Faculty Personnel before the first day of the academic year, your compensation will be paid during the 9-month academic year (i.e., between September and May) if you have not previously elected to have your academic year compensation paid out over a 12-month period. If you have previously elected to have your academic year compensation paid out over a 12-month period, and do not wish to change that election, you do not need to return this form.*

In order to process your selection for the 2008-2009 academic year, please complete, sign and return this form to the address above by September 1, 2008.

Name _____ GW Id. No. _____

E-mail Address _____ Department _____

Campus Address _____

_____ I elect to have my 9-month academic year compensation paid to me in 12 rather than 9 monthly installments. All payments shall be made on the last working day of each month.

I understand that 25% of my monthly compensation during the academic year (September through May) will be deferred and paid to be during the following summer (June through August).

My W-2 for a calendar year will reflect the compensation paid to me by December 31st and will not include the sum that has been accrued (but not paid) until the next summer.

_____ I elect to receive my academic year compensation in 9 installments (September through May). All payments shall be made on the last working day of each month.

Signature _____ Date _____