

Prorate Guidelines and Instructions

Employers who allow salary deferral must comply with a revised IRS code section 309A. This section applies to compensation that employees earn in one year but that is not paid until a future year, which is considered nonqualified deferred compensation. Section 409A does not apply to qualified plans (such as a 401(k) plan) or to a section 403(b) plan or a section 457(b) plan. These revisions are applicable beginning in academic year 2009/2010.

Section 409A requires employees to submit advance written notice of the deferral election to the University and that the notice be given to the employer before the employee starts working for the academic year. Also, per the code section, this salary deferral election is irrevocable for the academic year. The general rule under the law is that an employee who wants to defer payment of compensation to be earned in one year but paid in a later year must make an irrevocable election to do that before beginning employment for that year.

Generally, the IRS regulations require the following:

*Beginning with the 2009-2010 academic year employees paid by a 9 month contract, who want their pay deferred in order to receive pay over 12 months must submit a written election form prior to the first date of employment for the 2009-2010 year.

*Once the decision is made to elect salary deferral, that decision is irrevocable for the academic year. Employees may not opt out of salary deferral during the year and may not opt in after the year has started.

*In the case of an employee changing from an Academic 9 Month Prorate to a Fiscal 12 month assignment during the academic year, Payroll will evaluate the balance due on the Prorate assignment, if any, and process a payout. In the case of an employee changing from a Fiscal 12 month assignment to 9 month appointment during the academic year, the remainder of the academic year will be Academic 9 Month Standard and the following academic year will be Academic 9 Month Prorate if they had been Prorate prior to the 12 month assignment.

*Employees who are new to the University and current employees who first become eligible to prorate, can make an initial election to participate no later than (1) thirty (30) days after the employee first becomes eligible to participate, or (2) the date that the Payroll Department runs the first payroll of the academic year, whichever shall occur first.

*In order to stop salary deferral for the following academic year, employees must complete an **ACADEMIC NINE-MONTH PRORATE REVOCATION FORM** and submit it to Human Resources Data Control prior to the processing of the first payroll for the academic year in which prorate is to be stopped. Otherwise, prorate will continue indefinitely. (This enables employees to continue salary deferral from year to year without completing a new form each year).

In the event of a separation from service before the end of the 12-month payment period, employees will be entitled to payment for the amount they have actually earned from the beginning of the 12-month pay period until the date of their separation from service. A lump sum payment will be issued pending final approval.

Separation from service as defined in section 1.409A-1(h) of the Treasury Regulations states that "an employee separates from service with the employer if the employee dies, retires, or otherwise has a termination of employment with the employer. The employment relationship is treated as continuing intact while the individual is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or longer, so long as the individual retains a right to reemployment with the service recipient under an applicable statute or by contract".

The Academic Nine-Month Prorate Authorization Form and Academic Nine-Month Prorate Revocation Form are available on the SIUC website at <http://eforms.siu.edu/siuforms/info/hro3024.html> (Authorization Form) and <http://eforms.siu.edu/siuforms/info/hro3025.html> (Revocation Form). The Authorization and Revocation forms must be completed and mailed to **SIUC Human Resource Data Control, Woody Hall 1st Floor, 900 S. Normal Ave, Carbondale, Illinois 62901 (Mail Code 6520)**