

409A Compliance Deadline Extension Broadened

In Notice 2007-86 ("Notice"), issued October 22, 2007, the IRS extended transition relief for compliance with the final nonqualified compensation regulations under Section 409A of the Internal Revenue Code to **December 31, 2008**. Prior to this Notice, Notice 2007-78 (issued in September, 2007) granted only a documentary extension to December 31, 2008 but required certain interim steps to be completed by December 31, 2007.

Notice 2007-86 provides the transitional relief summarized below:

A plan may provide, or be amended to provide, for new payment elections on or before December 31, 2008, with respect to both time and form of payment, provided that the new election may not apply to amounts that would otherwise be paid in 2008 and may not cause an amount to be paid in 2008 that would not otherwise be payable in 2008.

The ability to link a payment election under a nonqualified deferred compensation plan to an election under a qualified plan has been extended through 2008, provided the link was in effect on October 3, 2007.

The deadline for amending nonqualified deferred compensation plans to comply with Section 409A and the regulations thereunder has been extended to January 1, 2009. In the interim, operation in reasonable, good faith compliance is required. For periods before January 1, 2008, compliance with Notice 2005-1, the proposed regulations or the final regulations will constitute reasonable, good faith compliance. For periods after December 31, 2007 and before January 1, 2009, compliance with Notice 2005-1 or the final regulations (but not the proposed regulations) will constitute reasonable, good faith compliance.

Although the Notice extended the 409A compliance deadline to December 31, 2008, employers may comply with the final 409A regulations earlier. As a result of earlier guidance and related notices, many employers have already made plan design decisions and are in the process of finalizing its 409A compliant documents and elections. If these employers are satisfied with its decisions, they may decide to forge ahead and complete the process this year. Alternatively, employers who have not made decisions or need more time to finalize decisions may rely on the relief granted through the Notice.

Finally, it should be noted that in Notice 2007-89, the IRS announced that W-2 reporting on nonqualified plan deferrals will not be required for 2007.

Any questions concerning compliance with Section 409A should be addressed with your Relationship Manager or ERISA Consultant.