

## IRS Provides Certain Relief Under Section 409A – Documentation Deadline Extended

The IRS has just issued [Notice 2007-78](#), which provides transition relief and additional guidance on the application of Section 409A to nonqualified deferred compensation plans and programs.

The notice provides the following guidance –

- The plan documentation deadline is extended from December 31, 2007 to December 31, 2008. Thus, a plan will be treated as having been timely amended if the plan document contains all the required provisions, effective retroactively to January 1, 2008, including how the plan met the operational requirements on and after January 1, 2008. However, with respect to deferred compensation to be paid after December 31, 2007 (e.g., with respect to a linked plan), the time and form of payment will need to be documented by December 31, 2007, at least for payments commencing before January 1, 2009.
- The January 1, 2008 effective date is otherwise retained. The transition relief provided in Notice 2005-1 and Notice 2006-79 (see our October 23, 2006 [For your Information](#)) is generally no longer available after December 31, 2007.
- The application of Section 409A to employment agreements and cashout features is clarified.
- The IRS intends to implement a voluntary corrections program for certain inadvertent violations of Section 409A.

This notice is welcome news for many employers but, in general, it does not relieve them from having to finalize their plan designs by the end of this year. We will provide more information in a subsequent *For Your Information*.

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*This Newsflash is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.*