

Pension
ANALYST

Compliance Bulletin

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IRS Extends Transition Relief For Nonqualified Deferred Compensation Plans

On October 4, 2006, the IRS extended transition relief for section 409A nonqualified deferred compensation arrangements to December 31, 2007. This extension applies to all arrangements that are subject to Internal Revenue Code section 409A, including 457(f) plans. These rules do not apply to section 457(b) plans.

Background

Section 409A was created by the [American Jobs Creation Act of 2004 \(AJCA\)](#) to provide structure for certain nonqualified deferred compensation plans primarily in the area of deferral and distribution elections. On October 4, 2005, the IRS published [proposed regulations](#) regarding the implementation of these new rules. As part of those regulations, the IRS provided transition relief for compliance with certain aspects of those new rules. That transition relief was scheduled to expire on December 31, 2006. With the issuance of [Notice 2006-79](#), the IRS has extended the transition relief to December 31, 2007.

Overview

The extension of the transition relief to December 31, 2007, means that:

- Plans do not have to be amended to reflect the new section 409A rules until that date. However, a plan sponsor must operate his plan in accordance with a good faith interpretation of the law and IRS guidance.
- Participants may be allowed to change the payment provisions for amounts that are subject to the new rules until the end of 2007, within certain limits.
- Payments made by nonqualified plans may continue to be determined by the payment option selected under a related qualified plan, through the end of 2007.

The IRS expects to issue final regulations before the end of 2006, but they will not be effective before January 1, 2008.

Next Steps

If you have allowed any changes to deferral or distribution elections since the new nonqualified plan rules went into effect in 2005, in compliance with IRS guidance, you should document these changes in some manner in order to ensure that your plan document properly reflects these changes when it is finally amended. When the IRS publishes final regulations, we will provide a detailed analysis in a *Pension Analyst*.

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