

# Nonqualified Deferred Compensation

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## Further Postponement of the Date for Required Amending of Plans

The tax treatment of nonqualified deferred compensation was greatly changed by Section 409A of the Internal Revenue Code of 1986, as amended, which became law near the end of 2004 and was generally effective for deferrals that occur or vest after 2004. For an outline of Section 409A, see [Tax Treatment of Deferred Compensation](#).

The IRS has previously permitted the formal amendment of plans to comply with Section 409A to occur by December 31, 2006. It thereafter announced ([Notice 2006-79](#)) that amendment of plans need not occur until December 31, 2007 provided that there is "reasonable, good faith compliance with the provisions of section 409A and...any other generally applicable guidance...." published by the IRS before that date. This year, final regulations under Section 409A were issued to be effective January 1, 2008. The delayed effective date was to permit taxpayers and representatives time to analyze the regulations and come into compliance.

In response to concerns that it would be difficult to amend plans by December 31, 2007, the IRS has once again announced, in [Notice 2007-78](#), an extension of the time for amending a deferred compensation plan until December 31, 2008, but the amendment must be retroactive to January 1, 2008. Such relief is conditioned on the plan being operated throughout the year in accordance with Section 409A, the final regulations and other guidance.

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