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Certified Public Accountants & Profitability Consultants

*Employee Benefits and Executive Compensation Services
Group*

RSSM Alert

**Nonqualified Deferred Compensation Plan Section 409A
Compliance Deadline Extended Again**

To Clients and Friends of the Firm:

On October 22, 2007, the U.S. Treasury Department and the IRS issued Notice 2007-86, which generally gives employers until December 31, 2008, to bring their nonqualified deferred compensation ("NQDC") plans into compliance with the final NQDC regulations under Section 409A of the Internal Revenue Code. Previously, the deadline was December 31, 2007.

This notice supersedes Notice 2007-78, issued September 10, 2007, which extended only the deadline for bringing plan *documents* into compliance, but kept the effective date of the final regulations at January 1, 2008. The purpose of broadening the extension is to provide employers adequate time to analyze their NQDC plans and make informed, reasoned decisions regarding the changes needed to bring their plans into compliance with the final regulations.

Section 409A applies to a broad variety of deferred compensation arrangements and sets forth requirements that affected plans must satisfy. Any employer with an NQDC plan - a deferred compensation plan that is generally designed to favor certain individuals or groups of individuals - should make sure that the plan is in compliance with the law. The penalties for noncompliance can be severe: Plan participants will be taxed on plan benefits at the time of vesting, and a 20% penalty tax and potential interest charges also will apply.

Employers should identify all plans or arrangements that may be subject to Section 409A and have them reviewed to determine whether they're operationally and administratively Section 409A compliant. If a plan isn't compliant, the employer must bring the plan and plan documents into conformity with Section 409A by December 31, 2008.

Employers must also have operated their plans in "good faith" compliance with Section 409A retroactive to 2005, when the requirements first went into effect.

The Treasury Department and the IRS expect to issue further guidance regarding a limited voluntary compliance program that will help companies correct specific

unintentional operational violations of Section 409A. But no date has been set for issuing that guidance.

Should you have any questions or find out how exactly this IRS notice affects your nonqualified compensation plan, please feel free to contact me at 212-303-1806 or e-mail me at aneumark@rssmcpa.com.

Sincerely,
Rosen Seymour Shapss Martin & Company LLP

Avery E. Neumark, CPA, JD
Partner-in-Charge of Employee Benefits and Executive Compensation

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