

SECTION 409A ACTION ITEMS TO TAKE BEFORE DECEMBER 31, 2007

- Inventory all plans and agreements to determine if they are subject to 409A
 - Do a broad review including employment agreement, annual bonus plans, long-term cash incentive plans, equity-based plans and severance agreements and plans (including change in control severance), as well as "traditional" deferred compensation plans, excess plans and SERPs
 - Do not underestimate difficult and time-consuming nature of review process
- Identify any grandfathered plans and agreements (or portions thereof) that are not subject to 409A
- Prepare and adopt written amendments effective 1/1/2008
 - Amendments do not need to address actions taken before 2008 to comply with 409A under transition rules in prior guidance [Preamble to Final Regulations, Section XIII B]
 - Remove prohibited accelerations
 - Remove problematic deferrals
 - Design to comply with Section 409A
 - Remember that employment and other agreements are likely to need executive's signature to be effective
- If applicable, make amendments to use short-term deferral rule to avoid being subject to 409A in 2008 and future years (e.g., annual bonus plans)
- Take advantage of 2007 transition rules in IRS Notice 2006-79:
 - Changes in time and form of payment may be made by end of 2007 without being made 12 months in advance or requiring a 5-year delay in payment, and can "accelerate payment"
 - Does not apply to amount otherwise payable in 2007
 - Cannot cause amounts to be payable in 2007 if they would otherwise be payable in 2008 or thereafter
 - Fix discount options for non-Section 16 officers by increasing exercise price or providing for fixed exercise date(s)
- Obtain elections from participants as to time and form of payment by December 31.
- Develop and implement policies and administrative procedures by December 31, 2007
- Inform and educate effected individuals and all personnel with compliance responsibilities