

## Client Alert

# Treasury and IRS Issue Long-Awaited Final 409A Regulations

Today, the Treasury Department and Internal Revenue Service issued long-awaited final regulations under Internal Revenue Code Section 409A. The Treasury and IRS have been working on these final regulations for over 18 months, since they issued the proposed regulations under 409A in late September 2005.

The final regulations and commentary total almost 400 pages and cover a number of key areas. To view the new guidance, prior guidance and our client alerts on 409A, [click here](#).

Some highlights of the final regulations:

- ***Transitional Relief Not Extended Beyond 2007.*** The final regulations apply generally for taxable years beginning on or after January 1, 2008. In late 2006, the Treasury and IRS extended certain deadlines for complying with 409A until the end of 2007 (including, for example, the deadline to amend plan documents to comply with 409A). The final regulations do not extend the December 31, 2007 deadline. This means that plans subject to 409A must be amended by the end of 2007 to comply with 409A. Until 2008, plans subject to 409A may operate in good faith compliance with either the final 409A regulations or earlier 409A guidance.
- ***Comprehensive Guidance on Key Topics.*** The final regulations provide comprehensive guidance on deferral elections, payments, compensation for independent contractors and directors, equity-based plans, foreign plans and employees, severance arrangements, identification of key employees, treatment of tax gross-up payments, and supplemental pension and savings plans. The new guidance does not address issues related to partnerships and certain other key issues.
- ***Guidance is Generally Favorable to Companies and Executives.*** The final regulations provide relief on a number of key areas of concern for companies and executives, including, for example, expanded exemptions for certain equity-based arrangements, foreign plans and severance arrangements. Notably, these expanded exemptions would allow companies to extend the exercise period for certain stock options beyond the limited period provided for in the proposed regulations and to include certain “good reason” triggers in employment and separation arrangements without running afoul of 409A.

We are currently analyzing the guidance and will issue additional client alerts in the near future summarizing the final regulations in more detail and outlining what companies will need to do to comply with any deadlines.

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**For Additional Information**

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