

IRC §409 FINAL REGULATIONS – ACTION PLAN

1.	Identify Each Deferred Compensation Plan ("DCP")	<ul style="list-style-type: none"> ♦ Any arrangement that may provide for payment of compensation after 2004, and after the year earned ♦ Non-qualified deferred compensation plans ♦ Supplemental executive retirement plans ♦ Short-term and long-term bonus plans ♦ Employment and change of control agreements ♦ Severance pay arrangements ♦ Other post-termination benefits ♦ Stock option plans ♦ Stock rights (SARs and "phantom stock") ♦ Expense reimbursements, including taxable health benefits
2.	Identify Exempt DCPs	<ul style="list-style-type: none"> ♦ Qualified retirement plans ♦ Restricted stock plans taxable under §83 ♦ Bona fide vacation leave plans ♦ Disability, death benefit and sick leave plans ♦ Short term deferral exceptions ♦ Benefits earned and fully vested before 2005 and not materially amended after October 3, 2004
3.	Review each Non-exempt DCP for compliance with §409A	<ul style="list-style-type: none"> ♦ Deferral fixed before year of performance ♦ Fixed time or schedule for payment, or payment only on death, disability, change in control ("CIC"), separation from service ("SFS") or unforeseeable emergency ♦ No option to accelerate payment, except as allowed by regulations ♦ If employer is publicly traded, delay payment to key employees for six months after SFS ♦ Apply definitions of disability, CIC and SFS under §409A regulations
4.	Re-design payment terms of Non-exempt DCP by 12/31/08	<ul style="list-style-type: none"> ♦ Design payment terms to comply with §409A and add flexibility, and decide on time and form for payments after 2007
5.	Amend detailed documents of Non-exempt DCP by 12/31/08	<ul style="list-style-type: none"> ♦ As necessary to follow new payment design and comply with final §409A regulations, such as definitions of SFS, CIC, disability and other key operating terms
6.	Develop new procedures to comply with §409A after 2008	<ul style="list-style-type: none"> ♦ Develop new Non-exempt DCP administration procedures to comply with final §409A regulations, and implement procedures in 2009
7.	Execute new elections by 12/31/08, to comply with §409A	<ul style="list-style-type: none"> ♦ To defer compensation to be earned after 2008 ♦ To change timing and methods for payments after 2008
8.	Operate Non-exempt DCP to comply with §409A after 2008	<ul style="list-style-type: none"> ♦ Starting January 1, 2009, follow final §409A regulations and the amended document in operating each Non-exempt DCP

Copyright © 2008 Maslon Edelman Borman & Brand, LLP