

Deferred Compensation Plans, Supplemental Executive Retirement Plans (SERPs) and "Mirror" 401(k) Plans

Employers often provide substantial benefits for executives in nonqualified retirement plans due to limits on the benefits that may be provided under tax-qualified retirement plans. Nonqualified plans take various forms, including traditional deferred compensation plans, "mirror" 401(k) plans, and Supplemental Executive Retirement Plans (SERPs).

The American Jobs Creation Act of 2004 (the Act) made far-reaching changes in the federal tax laws that apply to nonqualified deferred compensation plans. For the first time, section 409A of the Internal Revenue Code (IRC) provides specific rules for deferral elections, distributions, and other features of nonqualified deferred compensation plans. The Act also imposes substantial penalties on executives if a plan does not comply with the new rules, significantly raising the stakes for compliance in this area.

Our attorneys were heavily involved in the legislative process leading up to passage of the Act, wrote numerous comment letters to the Internal Revenue Service during the regulation writing process, and assisted clients as they brought their nonqualified plans into compliance. They also develop innovative plan designs and funding arrangements for employers and service providers and ensure that these arrangements are in compliance with applicable tax, Employee Retirement Income Security Act (ERISA) and securities law requirements.