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View from Groom: Recent IRS 409A Guidance Will Impact Employers

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Last month, the IRS issued proposed regulations clarifying 19 mostly narrow issues under existing Code section 409A regulations. Eighteen topics were addressed under the comprehensive final section 409A regulations issued in 2007, and one issue was addressed under the proposed section 409A regulations on the impact of 409A violations issued in 2008. The new IRS guidance generally formalizes informal guidance provided by IRS personnel in recent years.

The new IRS guidance should not require employers to make immediate changes to their plans that are subject to section 409A. However, the new guidance will have a significant impact on employers in certain situations. As described in more detail in the attached article, the proposed regulations will:

- Limit the flexibility employers will have when correcting problems for unvested amounts subject to section 409A (e.g., severance and restricted stock units).
- Allow employers more flexibility with making payments upon the death of a participant or beneficiary.
- Limit the ability of employers to replace stock options or stock appreciation rights (SARs) with replacement equity awards, as often occurs in a merger and acquisition context.

Taxpayers may rely on this guidance immediately, and the IRS will not assert positions contrary to the guidance. Please see the attached article for further information.

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