

**Summary of IRS' 409A Correction Program
For Operational Failures**

Code section 409A imposes detailed requirements for nonqualified plans to receive the desired tax treatment. IRS Notice 2008-113 permits correction of certain operational errors under Code section 409A. There are five separate correction "programs," each addressed in a different section of the Notice. The chart below summarizes some key aspects of each program. The following page summarizes generally applicable requirements for all the programs.

	Same Year Program	Next Year Program	Limited Amount Program	Two Year Program	2009 Transition Program
Available for Section 16 Insiders and Non-Public Company Counterparts?	Yes	No	Yes	Yes	No
Timing of Correction	Same year as error	Year after error	By end of 2 nd year after error	By end of 2 nd year after error	By end of 2009
Limit on Amount Involved	None	None	Errors not exceeding Code § 402(g) limit (\$16,500 for 2009)	None	None
409A Penalty	None	None	20% penalty only on the amount involved	20% penalty only on the amount involved	None
Section of Notice 2008-113	IV	V	VI	VII	VIII

General Requirements for IRS' 409A Correction Program for Operational Failures

- Applies only to operational failures that are inadvertent and unintentional.
- Does not apply to erroneous payments in a year the employer experiences a financial downturn indicating a significant risk that it will not be able to pay amounts deferred.
- Employer must comply with reporting requirements, including the filing of a statement with its own tax return and providing information to employees.
- Employee must file statement with his/her tax return (except for same year corrections).
- Does not apply if the employee's federal income tax return is under examination for the year in which the operational failure occurred (except for same year corrections).
- Employer must take commercially reasonable steps to avoid a recurrence.
- After December 31, 2009, if the same or substantially similar failure has occurred previously, employer must demonstrate that practices and procedures had been established that were reasonably designed to ensure that the failure would not recur.