

IRS Issues Proposed Section 409A Regulations

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The IRS recently issued proposed regulations that would amend the final regulations issued under Section 409A of the Internal Revenue Code. These regulations provide a number of clarifications and changes in response to practitioner comments. For instance, the regulations clarify that the separation pay plan exception may apply to a service provider who had no compensation in the year preceding the year of the separation from service. In such situations, annualized compensation from the year of separation is used. In addition, the term “eligible issuer of service recipient stock” now includes an entity for which a person is reasonably expected to begin, and actually begins, providing services within 12 months after the grant date of a stock right (*i.e.*, an inducement option). The regulations also clarify that (i) a service provider’s right to reimbursement of reasonable attorneys’ fees and other expenses incurred to pursue a bona fide legal claim against his employer with regard to employment is not deferred compensation, (ii) a service recipient can purchase service providers’ stock rights in connection with a transaction, and (iii) a death benefit payment can be made as late as the end of the calendar year following the year of the service provider’s death. Also, payment upon the death, disability, or unforeseeable emergency of a beneficiary after the service provider’s death will not be an acceleration of benefits. The proposed regulations can be relied upon now and are available [here](#).