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**Columbus, OH**

52 East Gay St.  
Post Office Box 1008  
Columbus, Ohio 43216  
tel 614.464.6400  
fax 614.464.6350

**Washington, D.C.**

1828 L Street N.W.  
Suite 1111  
Washington, DC 20036  
tel 202.467.8800  
fax 202.467.8900

**Cleveland, OH**

1375 East Ninth St.  
2100 One Cleveland Ctr.  
Cleveland, Ohio 44114  
tel 216.479.6100  
fax 216.479.6060

**Cincinnati, OH**

221 East Fourth St.  
Suite 2000, Atrium Two  
Post Office Box 0236  
Cincinnati, Ohio 45201  
tel 513.723.4000  
fax 513.723.4056

**Alexandria, VA**

277 South Washington St.  
Suite 310  
Alexandria, VA 22314  
tel 703.837.6999  
fax 703.549.4492

**Akron, OH**

106 South Main St.  
Suite 1100  
Akron, Ohio 44308  
tel 330.208.1000  
fax 330.208.1001

**MIXED RELIEF FOR SECTION 409A:  
IRS EXTENDS DOCUMENTARY COMPLIANCE DEADLINE,  
NOT EFFECTIVE DATE**

Responding to intense criticism from practitioners and companies, the Treasury Department and Internal Revenue Service (IRS) yesterday released Notice 2007-78 extending the deadline for documentary compliance with the nonqualified deferred compensation rules under Section 409A of the Internal Revenue Code to December 31, 2008 from December 31, 2007. Treasury and IRS did not, however, extend the effective date of the final regulations issued under Section 409A, which remains January 1, 2008.

Failing to extend the effective date of the regulations makes the additional transition relief of limited value. Companies sponsoring deferred compensation plans must still require participants to make timely elections as to deferrals and payments and operate the plans as if they had been amended to comply with Section 409A and the final regulations on January 1, 2008. Accordingly, to reduce the likelihood of confusion and inadvertent operational violations of these rules, we strongly recommend that companies amend their deferred compensation plans by December 31, 2007 and take advantage of the additional transition relief only to the extent that they are unable to obtain the requisite board, shareholder or participant approval of the amendments by this time.

***Other Developments***

In the same notice, Treasury and IRS announced plans to create a limited "voluntary compliance program" that companies may use to correct unintentional operational violations of Section 409A and clarified the application of Section 409A to employment agreements and cash-out provisions.

***Resources***

Full text of the announcement is available on the Internal Revenue Service website and may be accessed directly at:

<http://www.irs.gov/newsroom/article/0,,id=173791,00.html>.

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This Client Alert is for general information purposes and should not be regarded as legal advice. If you have any questions about this Client Alert, please contact Anthony C. Ciriaco (614.464.6429), Wendy M. Swary (614.464.6495), Alan D. Duffy (614.464.5425), Amy Swank (614.464.6461), Amy E. Nawrocki (614.464.6272) or your Vorys relationship attorney.

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