



R O B E R T B . S T E V E N S O N<sup>1</sup>  
N A N C Y K E P P E L M A N<sup>1</sup>  
N A N C Y J . S P E Z I A  
T I M O T H Y J . M C G R A W  
A N D R E W W . S T U M P F F<sup>2</sup>  
D E B O R A H W . T H O M P S O N<sup>1</sup>

O F C O U N S E L

N A N C Y H . W E L B E R , P . C .  
A N T H O N Y S . H A R T I I I  
R I C H A R D L . S A N D E R S O N , J R .  
M I C K E Y B A R T L E T T

### **Code Section 409A Relief for Operational Failures of Nonqualified Deferred Compensation Plan**

IRS Notice 2008-113 provides procedures under which taxpayers can obtain relief from the full application of the income inclusion and the additional taxes under Code § 409A with respect to certain operational failures of a nonqualified deferred compensation plan to comply with Code § 409A , including the following:

- Methods for correcting certain operational failures during the service provider's tax year in which the failure occurs and, for certain service providers, also during the subsequent tax year, to avoid income inclusion under Code § 409A.
- Relief limiting the amount includible in income under Code § 409A for certain operational failures during a service provider's taxable year that involve only limited amounts.
- Relief limiting the amount includible in income under Code § 409A for certain operational failures regardless of whether the failure involves only limited amounts, but subject to further required actions to correct the failure.
- Special transition relief for certain operational failures occurring before January 1, 2008.

Notice 2008-113 also states that the IRS is considering whether a relief program in the case of a plan document failure that is brought into compliance with Code § 409A would be both feasible and advisable and is requesting public comments on such a relief program.

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