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## Employee Benefits

### IRS SECTION 409A DOCUMENT COMPLIANCE: Year End Deadline Approaching to Correct Document Failures

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Since December 31, 2008, all nonqualified deferred compensation plans have needed to meet the requirements of Internal Revenue Code Section 409A. On January 18, 2010, the IRS issued Notice 2010-6, providing guidance for plan documents that do not comply with the 409A requirements (commonly referred to as "document failures"). Prior guidance issued by the IRS has provided a correction mechanism for "operational failures" with respect to properly drafted plans.

Section 409A defines nonqualified deferred compensation plans broadly to include top hat plans, severance arrangements, and certain employment agreements. The law places strict limits on the timing of payments under these arrangements. For example, if a plan allows for impermissible payment events or grants the employer or employee impermissible discretion to set payment schedules or accelerate payments, a document failure has occurred. **Under Section 409A, this failure would require the employee to immediately include the full amount of deferred compensation in income, subject to severe penalties.** If you have such a plan and it has not yet been reviewed, time is of the essence. Pursuant to Notice 2010-6, plans that are corrected by December 31, 2010 may be eligible for relief, and in most circumstances the employee will not have taxable income or incur penalties.

For more information on this, including assistance in reviewing plans for compliance (including executive employment and severance agreements), please contact **Kathleen F. Centolella at (315) 701-6468 or by email at [katie@gslaw.com](mailto:katie@gslaw.com).**

Kathleen focuses her practice in the areas of employee benefits, business transactions, and tax planning and advocacy. **Green & Seifter, Attorneys, PLLC Employee Benefits Practice Group** is uniquely qualified to address your needs, answer your questions, and handle your employee benefits matters.

