



# IRS Pilot Program for Section 409A Audits to Focus on Top 10 Highest Paid Employees

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The IRS recently announced a "compliance initiative project" in which the IRS plans to audit 50 employers of varying sizes for Section 409A compliance. As we would expect, the audits will focus on initial deferral elections, subsequent deferral elections, and payouts under Section 409A, including the six-month delay for specified employees.

This is noteworthy for two reasons. First, it suggests that the IRS may devote additional resources to Section 409A audits, after very limited audit activity in recent years. Second, at least for this initial program, the IRS plans to focus on the top ten highest paid employees.

We do not know whether the IRS will continue to ramp up audit activity under Section 409A, or whether future audits will follow the same approach, but it might be advisable to review deferral election and payout histories for your top ten employees sooner rather than later.

Corrections guidance under Section 409A generally permits the voluntary correction of unintentional operational failures until the end of the second year after the failure occurs. The penalties for failures that are corrected in this manner tend to be a fraction of the full cost of a Section 409A failure. However, the voluntary correction program is not available after an audit begins.

## **FOR MORE INFORMATION**

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