



## Annualized School-Year Compensation: Steps to Take Before New School Year

You may remember that there were questions about the application of Internal Revenue Code §409A to annualized school-year compensation (e.g., paying salary over 12 months for employees who work 10 months). Last year, the Internal Revenue Service issued Information Release 2007-142 and related Frequently Asked Questions (attached), which provided guidance and some relief. Under the guidance, districts (and their employees) may need to take action prior to commencement of the 2008-2009 school year to comply with the new law's provisions.

The final regulations under §409A impact school districts that, either as a general policy or pursuant to a collective bargaining agreement, pay teacher or other employee salaries over a period longer than the period the employee actually works. The regulations provide that this type of arrangement will be treated as a deferral of compensation under §409A. If the requirements of the regulations are not met, the amounts deferred will be taxable in the year in which the employee has a vested right to future payment and will be subject to an additional 20% income tax.

If a district pays its teachers or other employees who work 10 months over a 10-month period, with no option to be paid over a 12-month period, §409A does not apply, and no action is required. Note that districts are not required to offer employees the election to be paid over a 12-month period.

If a district offers teachers or other employees who work 10 months a choice between payments over a 10-month or 12-month period, then the following steps must be taken **prior to commencement of the 2008-2009 school year**:

- the district **must** establish a written procedure for the election of the payment period; and
- the employee **must** provide a written election to the district that identifies how the employee wishes to be paid.

The election by the employee must be irrevocable, and it must be made in the school year for which that employee is paid.

If a district pays its teachers or other employees who work 10 months over a 12-month period, with **no option** to be paid over a 10-month period, §409A **does apply** and the district **must** establish a written policy regarding the period of payment prior to commencement of the 2008-2009 school year.

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