

CH-CH-CH-CH-CHANGES

Although nonqualified plan distribution rules are somewhat rigid, Internal Revenue Code (IRC) Section 409(A) does provide some flexibility for participants who are looking to modify their original elections. Plan sponsors must write this flexibility into the plan document and should educate participants about the advantages and disadvantages of making modifications.

Nonqualified deferred compensation plans may allow participants to change the time and form of their originally elected distribution options, subject to 409(A) guidelines. This is sometimes called the *12-12-5 rule*.



The new election must be communicated by the participant to the plan sponsor at least **12 months** before an originally scheduled distribution date.



The new election will not take effect until at least **12 months** after it is requested. The change is disregarded if a distribution event occurs during this waiting period.



The new payment date must be at least **five years** after the originally scheduled date. This includes event-based distribution elections, such as a retirement election.