

Summary of the Required Minimum Distribution Waiver Provision of the Worker, Retiree, and Employer Recovery Act

On December 23, 2008, the Worker, Retiree, and Employer Recovery Act ("Act") was signed into law. The Act gives economic relief to help employers and employees deal with the market downturn. Certain qualified retirement plan participants and individual retirement account holders are required by law to receive a minimum distribution no later than April 1st of the year following attainment of age 70 ½ and each December 31st thereafter. Under the Act, no minimum distribution is required for calendar year 2009 from defined contribution ("DC") plans under sections 401(a), 403(a) and 403(b), governmental section 457(b) plans, and Individual Retirement Accounts ("IRAs"). This relief from required minimum distribution does not apply to defined benefit plans.

The following are key points regarding the waiver and the impact on required minimum distributions ("RMD"):

- Certain qualified plans and IRAs are required to be amended to provide for this relief no later than December 31, 2011. However, as long as the qualified plan or IRA is operated in accordance with the new rules for calendar years beginning after December 31, 2008 they will not fail to be considered as operating in accordance with the terms of the plan.
- A RMD is not required to be taken for 2009. If an individual attained age 70 ½ in 2009 no distribution will be required to be made by April 1, 2010; however, the RMD for 2010 will be required to be made by December 31, 2010.
- If an individual that attained age 70 ½ in 2009 dies on or after April 1, 2010, that individual will be treated as dying on or after the required beginning date for RMD purposes.
- If an account for a deceased individual is being distributed in accordance with the five year rule, under the provision, the five year period is determined without regard to calendar year 2009. For example, if an IRA owner died in 2007 prior to the required beginning date, the end of the five year period is extended to December 31, 2013.
- Required minimum distributions are not eligible for rollover. Since minimum distributions are not required in 2009, distributions from IRAs and DC qualified plans that would have been considered RMDs prior to the Act, are eligible for rollover in 2009. Despite being eligible for rollover in 2009, certain eligible rollover distribution rules that apply to qualified plans do not apply to the portion of the distribution that would have been considered an RMD prior to the Act. These rules are the requirement to provide notice and a written explanation of the direct rollover, and the mandatory 20% withholding requirement. *Special Note: Under section 402(c)(4), a distribution will not qualify as an eligible rollover distribution if it is part of a series of substantially equal periodic payments so even if the distribution is now eligible for rollover as a result of the RMD waiver, it may not be eligible as a result of this rule.*
- We will be updating our qualified plan documents to allow direct rollovers of amounts that would have been RMDs prior to the Act. This means that a qualified plan participant can request that the distribution, including the amount that would have been their 2009 RMD, be rolled directly to another eligible retirement plan (qualified plan, IRA). The formal amendment to our documents is not required until 2011, but if you are a qualified plan sponsor using our documents it is important that you allow these direct rollovers effective January 1, 2009.
- If you chose to make a charitable distribution from your IRA you should calculate what your 2009 RMD would have been for purposes of filing your income taxes at year end.
- At this time, no changes have been made to the 2008 required minimum distribution law. If you reached age 70 ½ during 2008, you are still required to take a distribution by April 1, 2009.