



Retirement Update: 2009 Required Minimum Distribution Relief and Sample Participant Communication

Means & Associates (along with our compliance division, ERISA Compliance Associates) has prepared a sample communication to assist you in advising participants about the recent tax law change that permits participants to suspend their required minimum distributions for 2009. It is important that affected participants be aware of this 2009 waiver as soon as possible, so that they can consider the impact on this year's tax planning and make their elections for 2009.

As background, the "Worker, Retiree and Employer Recovery Act" (WRERA), passed by Congress late in 2008, waives required payouts (called "required minimum distributions" or RMDs) from many types of employer-sponsored plans and IRAs for calendar year 2009. Had the waiver not been granted, many individuals might have had to sell assets at a loss this year to satisfy the 2009 RMD payments.

The waiver applies to retirement plans such as 401(k), profit sharing, 403(b), or government sponsored 457(b) plans, as well as to IRAs; **importantly, no such 2009 RMD suspension was provided for defined benefit plans.** Defined benefit plans must still satisfy the 2009 RMD rules.

Distributions made in 2009 that would otherwise be minimum distributions, but are not required to be made due to the relief, may be rolled over, subject to the usual rules for eligible rollover distributions. In addition, plans will not be required to offer direct rollovers, provide the written notices, or apply the 20% withholding to these amounts.

It is important to note that this relief does not apply to 2008 RMDs, even those made in 2009 to individuals who were eligible to postpone taking their 2008 RMD until April 1, 2009 – former participants and 5% or more owners who turned 70-1/2 in 2008. These individuals must still take their 2008 RMDs by April 1, 2009.

WRERA did not provide guidance regarding how to implement the 2009 RMD waiver. Plan sponsors presumably were charged with determining how to handle this.

To assist our clients, we have drafted the sample employee communication and will continue our standard procedure of notifying our clients of the former participants and 5% owners who would have been subject to the 2009 RMD. We will provide election forms so that each such participant will have the option to elect whether or not to receive a distribution before the end of 2009.

Below is our suggested participant communication, Frequently Asked Questions (FAQs).

Should you have any questions concerning this new law or how it operates, please contact us at 619-696-7284.



Important Information regarding **Required Minimum Distribution (RMD) Relief for 2009**

The “Worker, Retiree and Employer Recovery Act” (WRERA), passed by Congress in late 2008, waives required payouts (called “required minimum distributions” or RMDs) for 2009 from retirement plans, including 401(k), profit sharing, and 403(b) plans, and from IRAs. *The change does not apply to defined benefit plans.* As a result of this change, both terminated participants over age 70-1/2 and 5% or more owners over age 70-1/2, who would typically need to receive a required minimum distribution for 2009, are not required to take payments from their accounts during 2009.

Importantly, the law change does not affect RMDs for 2008. If you attained age 70-1/2 in 2008 and decided to defer your initial 2008 RMD payment until April 1, 2009, you must still receive that distribution.

Will the law change mean a double distribution requirement in 2010?

No. If you decide to skip a distribution for 2009, you will not need to double the amount required for 2010.

How does the law impact payments to beneficiaries?

The 2009 year will not count towards the “five-year” period that certain beneficiaries have to withdraw funds from their accounts, essentially giving these beneficiaries a 6th year to withdraw the funds.

For example, if a participant died in 2006, prior to his or her required beginning date, the end of the 5-year period for distributions to the beneficiary is extended under the RMD relief from December 31, 2011, to December 31, 2012.

If the 2009 minimum distribution is skipped, how is the 2010 RMD calculated?

In 2010, the usual RMD rules apply again. You would use the RMD calculation formula for that year, using the age that you will be in 2010 and applying the IRS life expectancy tables accordingly. Generally, the required payment for a defined contribution plan or for an IRA is calculated for each account by dividing the prior December 31 account balance by a life expectancy factor found in Publication 590, “Individual Retirement Arrangements (IRAs)”. You can download the form or a worksheet from <http://www.irs.gov/pub/irs-pdf/p590.pdf>.

How do participants and beneficiaries suspend their RMD payments if they do not want to receive payments in 2009?

Suspension of the RMD payment for 2009 is not automatic. The Plan Administrator will ask you to elect whether you wish to receive or skip the 2009 distribution. If you elect to receive your 2009 distribution, the amount will be calculated for you, based on the 2008 rules. When you see the 2009 calculated distribution amount, you will still have one more opportunity to elect to skip the 2009 distribution.

If you are receiving installment payments that are automatically being paid from the retirement plan, and you do not wish to receive the payments for 2009, contact the fund provider service center or your Plan Administrator to request information on how to suspend your RMD payments for 2009.

How do the new rules impact rollover distributions?

RMD amounts are not normally eligible for a rollover distribution. With the minimum distribution requirements being suspended for 2009, however, amounts that would typically be included in a participant's RMD for the year *are* eligible for rollover to another eligible retirement plan or to an IRA. Any such distribution that is not rolled over is not, however, subject to the mandatory 20% withholding rule that would otherwise apply.

Why did Congress take this action?

Required Minimum Distributions (RMDs) are distributions that retirement plan participants must withdraw annually when they reach age 70-1/2, or separate from service, if later, (with the special rule for 5% owners). The suspension of RMDs is intended to allow participants to postpone selling their investments and realizing losses in their retirement accounts as a result of lower market values during this unprecedented economic downturn.