



EMPLOYEE BENEFITS CLIENT ALERT

November 2009

2009 REQUIRED MINIMUM DISTRIBUTION WAIVER

In December of 2008 Congress enacted the Worker, Retiree and Employer Recovery Act of 2008 ("WRERA"). The law, designed to provide relief during the economic crisis, provided that distributions normally required annually for 70½ year old retirement plan participants are not required for 2009.

The new law provided little guidance regarding its practical application. As a result, plan sponsors and third-party administrators implemented a number of different approaches. Recently, the IRS issued guidance to answer some open questions and provide sample amendment language.

The guidance contains relief for the manner in which the required minimum distributions have been administered since enactment of WRERA. However, plan sponsors should consider some decisions prior to November 30, 2009.

November 30, 2009 Deadline

Plans must be amended to reflect the 2009 required minimum distribution ("2009 RMD") suspension. This amendment is not required until the end of the 2011 plan year. The amendment will need to reflect how the plan was operated in 2009 (and 2010 and 2011). Fortunately, in issuing the notice the IRS acknowledged that plans and participants have been taking a number of approaches in the absence of guidance on the issue. In response, the IRS has indicated that a plan's treatment of required minimum distributions up until November 30, even if inconsistent with the current plan, or the eventual amendment of the plan, will not disqualify the plan. However, how a plan treats 2009 RMDs in the period beginning **after November 30, 2009** has to be consistent with the amendment of the plan that will need to be adopted before the end of 2011.

In addition, it is now clear that participants who take 2009 RMDs can roll them over to an IRA. Participants who took required minimum distributions may roll their balances over to avoid taxation, even if they took a cash distribution and are beyond the allowable 60-day period for rollover. The extension of the 60-day period is available only until November 30, 2009. Plans can but do not have to facilitate these rollovers of 2009 RMDs.

Suggested Actions

Therefore, by November 30, you and your recordkeeper should **decide**:

- If you are going to give participants the opportunity to elect whether to take the 2009 RMD;
- If a participant does not make an election, are you going to make or not make the distribution; and
- If a participant does take distributions in the amount of the 2009 RMD, will you process the distribution as a direct rollover.

Employers should provide participants the opportunity to make an election mentioned above.

If you have any questions about this guidance or would like a sample participant election form, please contact your regular Kutak Rock representative or any member of our Employee Benefits practice group listed below. For more information on our Employee Benefits and Executive Compensation practice and for recent news and alerts, please visit us at www.kutakrock.com.



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