

Qualified Retirement Plans
Practice Alert
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Suspension of Required Minimum Distributions – Part II

As discussed in the January issue of *Practice Alert*, the Worker, Retiree and Employer Recovery Act of 2008 (WRERA) suspended Required Minimum Distributions (RMDs) for 2009. WRERA actually amends IRC §401(a)(9) to eliminate the requirement for RMDs for 2009. This was due to the extreme losses in most all retirement accounts subject to RMDs allowing account owners an opportunity to recapture some of the losses. Unfortunately WRERA does not address several issues. It is not clear whether the suspension is mandatory or optional on behalf of the account owner. Some account owners may depend on these distributions for sufficient retirement income. If, in fact, the account owner has the option to take RMDs it is not clear what the tax treatment of those distributions should be. Although it is clear that RMDs are not eligible for direct rollover treatment a distribution made in 2009 that would otherwise be considered an RMD is not an RMD, and therefore may be eligible for direct rollover to an IRA or another plan. If a direct rollover is not available in accordance with the plan document the account owner may make an indirect rollover consistent with the 60 day rule. In addition the plan is not required to allow the 2009 distribution to be rolled over but may do so if they choose. It is also not clear if the plan may allow the account owner to choose whether or not a distribution is to be made. If so, how should the account owner be notified of their options, what is the required timing of the notice and does the plan have to be amended to allow for that option?

Another critical issue is whether or not the plan must be amended to take advantage of the 2009 waived RMD. In great part this depends on how the plan deals with the IRC §401(a)(9) rules. Some plans include the provisions of the IRC in the plan document. In that case, since WRERA amended the IRC, the plan may be required to eliminate the 2009 RMD or potentially be out of compliance with their plan document, a possible plan disqualification defect. If that plan prefers to provide flexibility to their participants it would have to be amended to allow for the waived RMD. Other plans do not specifically refer to the IRC provisions but include language requiring compliance with those provisions. In this case the plan may have to be amended if a decision is made to allow a participant to skip the RMD for 2009. WRERA requires plan amendments to comply with the provisions of the bill by the first plan year beginning on or after January 1, 2011.

As the IRS issues guidance on these issues I will update you in subsequent newsletters.

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