

## Required Minimum Distributions In 2009: What The IRS Forgot To Mention

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*This article provides what we believe is the "simplest" approach to dealing with the temporary waiver of the required minimum distribution (RMD) rules and recent IRS guidance on the issue.*

Generally speaking, the Code and regulations require that all qualified retirement plans, IRAs, 403(b) plans and 457(b) plans comply with certain rules pertaining to RMDs. These rules require that RMDs begin shortly after attaining age 70-1/2 and apply to:

- Owner-participants (i.e., those who own more than 5% of the plan sponsor) even if they are still working for the sponsor; and
- Non-owner-participants who have separated from service, but have not yet begun receiving distributions.

In case you missed it, here's what happened since the end of last year on the RMD front:

- At the end of 2008, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) suspended the normal RMD requirements for 2009 for defined contribution plans, 403(b) plans, governmental 457(b) plans and IRAs. As a result of the change, payments from a plan that would have been an RMD in 2009 could be rolled over into an IRA or other tax-qualified plan, or not made at all.
- Although WRERA suspended normal RMDs at the end of 2008, it wasn't until the end of September 2009 that the IRS issued Notice 2009-82 informing retirement plan sponsors how they should deal with this "temporary" change in the law.
- Many retirement plan sponsors, oblivious to or confused by the change, continued to make or commence RMD payments. Remember, RMDs generally must begin no later than April 1 following the year in which a participant attains age 70-1/2.

The fact that the rules were changed for most of the year created a number of problems for retirement plan sponsors and participants who have been receiving RMDs. Below is our simplest advice for plan sponsors who did not suspend RMDs during 2009. If you want to do something more complicated, such as adopt one of the IRS sample amendment approaches, see your benefits adviser.

- #1: If your plan has already made all of the RMD payments to participants that you thought you were required to make under the terms of your plan, don't worry – you're okay despite the WRERA waiver legislation. Although you are not required to do anything else, you might consider a simple notice to those to whom your plan paid RMDs. Inform them that they still have the limited ability to make a tax-free rollover of the distribution they received earlier this year (both the RMD portion as well as any additional amount), **provided that they make the rollover contribution on or before the later of November 30, 2009 or 60 days after the distribution.**
- #2: If you haven't yet made all of the RMD payments that you would normally make during 2009, make the rest of them immediately before November 30, 2009. Doing so allows you to take advantage of the broad IRS relief that basically gives a "pass" to sponsors who made what they thought were RMDs before November 30 regardless of how your plan is eventually amended for 2009. As a courtesy we recommend that you also provide the notice mentioned above.
- #3: If for some reason you can't complete the payment of all of the RMD payments that you would normally make during 2009 by November 30 (or perhaps your plan language does not allow acceleration of payments), we recommend that you continue processing what would have been RMDs during the month of December. In other words, don't do anything different, other than include the recommended rollover notice with each payment. However, because you will have continued your normal administrative practice past the November 30 deadline for remedial relief, you most likely will need to adopt a simple plan amendment before the end of your plan year beginning on January 1, 2011 (2012 for governmental plans) that validates your administrative practice during the end of 2009, despite the WRERA legislation.

Once again, we want to emphasize that these steps are not the only choice available to plan sponsors. However, in light of the fact that the WRERA RMD waiver will disappear at the end of this year, we do not see tremendous value in changing the way you operate your plan now.

Editor's Note: We did the best we could to make sure the information and advice in this article were current as of the date of posting to the web site. Because the laws and the government's rules are changing all the time, you should check with us if you are unsure whether this material is still current. Of course, none of our articles are meant to serve as specific legal advice to you. If you would like that, please call us at (916) 357-5660 or email us at [contactus@seethebenefits.com](mailto:contactus@seethebenefits.com).