

**IRS PROVIDES GUIDANCE TO EMPLOYERS
REGARDING 2009 REQUIRED MINIMUM DISTRIBUTIONS**

November 2, 2009

In late 2008, after account balances had plummeted for individuals with IRAs and accounts in defined contribution plans (such as 401(k) and 403(b) plans), Congress passed the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”). The WRERA included a waiver of required minimum distributions (“RMDs”) for calendar year 2009. The waiver was intended to allow individuals to postpone liquidating some of the investments in their retirement account at a market loss in order to fund the RMD. Now that account balances are on the road to recovery, the IRS in Notice 2009-82 has provided guidance for employers to comply with the RMD waiver for 2009. The IRS guidance requires employers to put appropriate administrative procedures in place by **November 30, 2009**.

REQUIRED MINIMUM DISTRIBUTIONS

Section 401(a)(9) of the Internal Revenue Code, as amended (“Code”), generally requires a participant in a tax-qualified retirement plan to receive a minimum distribution from the plan by April 1 of the calendar year following the later of the year in which the participant attains age 70 ½, or retires (the “required beginning date”). RMDs are also required for beneficiaries of deceased participants. If distributions are made under an annuity or installment form of payment, a minimum annual distribution must be made each year following the required beginning date. Similar RMD rules apply to individual retirement accounts. The RMD rules are designed to prevent the use of retirement plans as a tax shelter by requiring that minimum distributions be made to participants. Consequently, such distributions may not be rolled over to an IRA in order to continue the income tax deferral on the distributed amount.

RMD WAIVER FOR 2009

The WRERA waived the required minimum distribution from IRAs and defined contribution plans (but not defined benefit pension plans) for calendar year 2009. As a result of the waiver, an individual who has a required beginning date in 2009 is not required to receive the 2009 RMD by April 1, 2010, but must receive the 2010 RMD by December 31, 2010. If the required beginning date occurred in 2008, the 2008 RMD was required by April 1, 2009, but no RMD is required for 2009. If the required beginning date occurred prior to 2008, and the individual is receiving distributions in an installment or annuity form of payment, no RMD is required for 2009. The waiver has no effect on individuals whose required beginning date occurs after 2009.

For beneficiaries of deceased participants, any RMD normally payable by December 31, 2009, is waived. If payment of the death benefit must be made to the beneficiary by the end of the fifth year following the participant’s death, the payment period is extended to six years because the 2009 calendar year is not counted for this purpose. Also, if the participant died during 2008, payment of the death benefit over the life expectancy of the beneficiary can be delayed until December 31, 2010.

Amounts that would otherwise be RMDs in 2009 but for the WRERA waiver are eligible to be rolled over to an IRA. However, the employer is not required to offer the direct rollover option to the participant. If the 2009 RMD is distributed to the participant, it is not subject to the mandatory 20% income tax withholding that is normally applied to amounts that are eligible for rollover (but such distributions are subject to 10% voluntary withholding election).

ADMINISTRATIVE ISSUES FOR EMPLOYERS

Pursuant to Notice 2009-82, employers must decide by November 30, 2009, whether to:

- Suspend all RMDs for 2009, unless the participant affirmatively requests the distribution;
- Distribute all RMDs for 2009, unless the participant affirmatively requests the waiver; or
- Continue RMDs for 2009 in accordance with plan provisions without a choice from participants.

In addition, employers will need to decide by November 30, 2009, whether and to what extent direct rollovers of distributions containing 2009 RMDs will be offered to participants.

After November 30, 2009, employers must operate their plans in accordance with such administrative procedures (transition relief is provided for distributions that were made or not made before such date). If a plan amendment is required to reflect the administrative procedures followed for the 2009 RMDs, such amendment must be adopted before the end of the 2011 plan year. Model amendments are provided by the IRS in Notice 2009-82.

COMPLIANCE ASSISTANCE

If you have questions regarding the options available for compliance with the 2009 RMD waiver, please contact one of our Employee Benefits attorneys.

[Womble Carlyle Sandridge & Rice Employee Benefits Lawyers](#)

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