



CLIENT ACTION Bulletin

Employee Benefits

IRS Guidance on 2009 Required Minimum Distributions

SUMMARY

The IRS issued *Notice 2009-82*, providing guidance on the waiver of 2009 required minimum distributions (RMDs) for participants in certain retirement plans in accordance with the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA). The new guidance provides transition relief for plan sponsors, rollover relief for participants and beneficiaries, and two sample plan amendments that plan sponsors may or may not choose to adopt.

These rules apply to 401(k) and other defined contribution (DC) plans, such as stock bonus plans, profit sharing plans, and 403(b) plans, as well as Individual Retirement Accounts (IRA), annuities, and eligible deferred compensation plans under tax code section 457(b). Under the new guidance, the extended rollover deadline for participants and/or beneficiaries who have already received 2009 RMDs is Nov. 30, 2009, or 60 days after a distribution is made, whichever is later. Retirement plans affected by these rules must adopt relevant plan amendments no later than the last day of the first plan year beginning on or after Jan. 1, 2011 (or Jan. 1, 2012, for governmental plans).

DISCUSSION

In 2008, the account balances of most plan participants declined significantly. If participants who were slated to take RMDs went ahead and did so, they would have been forced to sell assets, in effect realizing the losses they experienced rather than allowing time for the markets to rebound and their retirement savings to recover. In an attempt to lessen the negative impact of the 2008 market downturn, WRERA included a waiver of RMDs that were otherwise scheduled for 2009.

In the absence of IRS guidance, plan sponsors have been uncertain whether the waiver of 2009 RMDs was optional or whether participants had to be given a choice to waive or receive the 2009 distribution, particularly in the case of lifetime annuity payments. Due to the uncertainty, some participants were not given the opportunity to waive their 2009 RMD. Adoption of one of the IRS sample amendments will provide participants and beneficiaries the choice to receive or not to receive 2009 RMDs. The guidance provides additional relief, allowing participants to roll over distributions already taken, either back into the distributing plan or into another rollover-eligible plan, such as an IRA. The tax payments normally due on distributions from these tax-deferred accounts can thus be avoided.

Required Minimum Distributions (RMDs)

Participants in certain plans have to begin taking RMDs generally no later than April 1 of the calendar year after the calendar year in which they or the account holders turn age 70-1/2. All subsequent RMDs must be taken by the end of each calendar year. An RMD is generally the smallest annual amount that must be withdrawn from the plan (or IRA) and, under normal circumstances, cannot be rolled over. WRERA waives the RMD requirement for 2009 for DC plans (and IRAs) and allows amounts distributed as 2009 RMDs to be rolled over into an eligible rollover account.

Transition Relief

Although the deadline to adopt plan amendments for the RMD waiver is delayed, the IRS requires operational compliance with the terms of the prospective amendment as of its effective date. The IRS notice provides transition relief, through November 30, 2009, for plans that are not operated in accordance with their terms with respect to optional RMDs. The amendment must describe whether the plan will either continue or discontinue RMDs in the absence of a participant's or beneficiary's choice. Both sample amendments included in the IRS guidance allow participants to choose whether to receive their 2009 RMDs. The default position of

one amendment is to pay the RMD if the participant or beneficiary does not make a choice. The default of the other amendment is not to pay the RMD.

Either of the sample plan amendments may be adopted by individually designed plans, master and prototype (M&P) plans, and volume submitter plans. The sample amendments may be modified, if necessary, to conform to the plan's terms and administrative procedures. Adopting one of the sample amendments (as modified, if necessary) will not jeopardize the plan's reliance on a favorable opinion, advisory, or determination letter. In the case of a master and prototype (M&P) or volume submitter plan, adopting either of these amendments will not jeopardize the plan's "pre-approved" status.

The new IRS guidance specifically provides plan sponsors relief for the period Jan. 1, 2009, to Nov. 30, 2009:

- for paying or not paying RMDs;
- for not giving participants or beneficiaries the choice to receive or not receive RMDs; and
- for offering or not offering a direct rollover option.

Rollover Relief

Participants and beneficiaries who already received an RMD in 2009 now have until Nov. 30, 2009, or 60 days from the date of the distribution, whichever is later, to roll over that amount into an IRA, or if rollovers are accepted, into another retirement plan or back into the original plan. By rolling over the amount, they avoid having to include it in their gross 2009 income and pay taxes on it.

The guidance also clarifies that plan participants who receive 2009 RMDs subsequent to this guidance may elect to roll these amounts directly to another rollover-eligible plan, such as a qualified plan or an IRA.

Under the new IRS guidelines, if the payments received equal the 2009 RMDs or are part of a series of substantially equal distributions (that include the 2009 RMDs) and that are made for the life expectancy of the participants, or the joint life expectancy of the participants and the participants' designated beneficiaries, then the participants and/or beneficiaries can roll over their 2009 RMD amounts into an eligible rollover account.

ACTION

Any 2009 RMDs that are not waived must be made by the end of 2009, so plan sponsors will need to act promptly to provide participants and beneficiaries with their RMD options and to determine the plan's default action. Specifically, plan sponsors must:

- provide plan participants and beneficiaries with their options regarding 2009 RMDs, if an RMD has not yet been distributed;
- inform participants and beneficiaries that they have until Nov. 30, 2009, or 60 days from the receipt of an RMD, whichever is later, to have any RMD already received in 2009 rolled over into an eligible account, if they so choose;
- consider the two sample plan amendments and decide whether to adopt either, and if so, whether the sample plan amendment needs to be modified to conform with their plan; and
- update their administrative systems and procedures to handle participants' responses to the choices they now have regarding the RMD 2009 waiver.

If you have any questions about the new IRS guidance on the waiver of 2009 required minimum distributions, please contact your Milliman consultant.