

# Employee Benefits Briefing

## Suspension of 2009 Required Minimum Distributions—Relief and Guidance from the IRS

The Internal Revenue Service (IRS) has issued guidance regarding the suspension of required minimum distributions (RMDs) for 2009 from defined contribution plans (for example, 401(k) plans) under the Worker, Retiree and Employer Recovery Act of 2008 (WRERA). As discussed in a previous Vedder Price Employee Benefits Briefing (March 2, 2009), WRERA permits plan sponsors to amend their plans to allow participants (or beneficiaries) to forego receiving the RMD for 2009 that would otherwise be required because they are 70½ or older. Alternatively, participants (or beneficiaries) may roll over 2009 RMD payments to another qualified plan or IRA.

IRS Notice 2009-82 (<http://www.irs.gov/pub/irs-drop/n-09-82.pdf>) addresses several open issues related to the implementation and administration of the 2009 RMD suspension and answers some questions that have come up since WRERA's passage. Specifically, the Notice provides transition relief related to the making (or not making) of 2009 RMDs earlier in 2009 and to the offering (or not offering) of a direct rollover option for 2009 RMDs. Additionally, the Notice provides answers to various administrative questions in a Q&A format. Finally, the Notice provides model amendments that plan sponsors may use to adopt the 2009 RMD suspension.

### Transition Relief

*Operational Relief.* The enactment of WRERA late in 2008 made it a challenge for plan sponsors to modify their plan operations early in 2009, especially when some details were unclear. The Notice, however, provides relief to plan sponsors

for actions they may or may not have taken. For the period of January 1, 2009 to November 30, 2009, a plan will not be treated as failing to operate in accordance with its terms because:

- 2009 RMD payments (whether equal to the 2009 RMD amount or as part of a larger distribution or series of distributions) were—or were not—made;
- The option to waive the 2009 RMD was—or was not—given to participants and beneficiaries; or
- The option to elect a direct rollover of the 2009 RMD was—or was not—offered participants and beneficiaries.

In effect, a plan sponsor has assurance from the IRS that actions it did or did not take related to the RMD suspension prior to November 30, 2009, will not affect the plan's qualified status, and there is an opportunity now to correct or adjust prior action or inaction to correspond with the plan sponsor's intent.

*Rollover Relief.* Under WRERA, the 2009 RMD amounts that are distributed from a plan are eligible for direct rollover to another qualified plan or IRA. The transition relief allows participants who already received their 2009 RMD payments the opportunity to roll over those amounts by November 30, 2009, even if the usual 60-day rollover period has expired prior to that date. Therefore, it is not too late for a participant to roll over the 2009 RMD even if he or she was not offered the opportunity to roll over the 2009 RMD prior to its distribution earlier in the year.

## Questions & Answers

The Notice includes nine questions and answers addressing issues or situations a plan sponsor may encounter while administering the 2009 RMD waiver. A few of the issues are discussed below.

*Commencement of Benefits to Beneficiaries.* The Notice discusses when spousal and non-spousal beneficiaries of deceased participants need to make elections regarding when distributions are to commence. Generally, such elections that would otherwise need to be made in 2009 are extended to the end of 2010. For example, if a 50-year-old participant died in 2008 with his sister as the designated beneficiary, and the plan offers an election regarding when benefits are to be paid to a beneficiary, then the sister normally would have until the end of 2009 to make the election. Because of the 2009 RMD suspension, however, the sister has until the end of 2010 to make that election.

*Non-Spouse Direct Rollovers.* If a plan permits direct rollovers by nonspouse designated beneficiaries, and if the participant died in 2008, the beneficiary has until the end of 2010 rather than 2009 to elect the direct rollover.

*Tax Withholding.* The 2009 RMD is not treated as an "eligible rollover distribution" subject to 20% mandatory withholding. Instead, the 2009 RMD is subject to the 10% optional withholding rules. This withholding guidance applies only to 2009 RMDs that are distributed during 2009. For example, if an employee turns 70½ during 2009 and delays the 2009 RMD payment until 2010, the usual RMD withholding rules apply. Also, certain types of distributions, such as monthly distributions that last at least 10 years and include the RMD, are still subject to the periodic-payment optional withholding rules, irrespective of the RMD suspension.

*Ordering of Distributed Amounts.* If more than the 2009 RMD amount is distributed to the participant during 2009, the first amounts distributed in 2009 are attributed to RMDs related to prior years that were not yet distributed and then the 2009 RMD.

## Model Amendments

WRERA requires plan sponsors to amend their plans for the RMD waiver by the last day of the plan year beginning on or after January 1, 2011. To assist plan sponsors with this process, the Notice contains two alternative sample amendments. The first sample amendment provides that, in the absence of a participant (or beneficiary) election, the plan's default procedure will be to distribute the 2009 RMD. The second sample amendment, on the other hand, provides as a default that the 2009 RMD will not be distributed if there is no participant election. Either amendment also offers options regarding direct rollovers, with the default being that a distributed 2009 RMD amount will not be eligible for direct rollover.

As the transition relief period ends November 30, 2009, it is important to promptly review your WRERA RMD waiver procedures and contact affected participants and beneficiaries if you believe there is a correction needed or you wish to communicate additional information, such as regarding direct rollovers. If you have questions or would like assistance with the WRERA RMD waiver, please contact **Paul F. Russell** (312-609-7740), **Philip L. Mowery** (312-609-7642), **Michael C. Joyce** (312-609-7627), or any other Vedder Price attorney with whom you work.

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