



Pension Analyst

Compliance Bulletin

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IRS provides guidance on waivers of 2009 required minimum distributions

In late 2008, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) waived required minimum distributions (RMDs) for 2009 from qualified defined contribution plans, 403(b) plans, governmental section 457(b) plans, and IRAs. In some situations 2009 RMDs were nevertheless paid, either because systems could not be modified quickly enough to prevent payment or because plan sponsors were hesitant to operate their plans contrary to the terms of their written plan documents.

On September 24, 2009, the IRS released Notice 2009-82, which provides relief for individuals who have already received 2009 RMDs, as well as sponsors of plans that may or may not have paid 2009 RMDs.

Rollover relief for individuals

Normally, RMD payments are not eligible for rollover. However, payments made in 2009 that would have been RMDs if WRERA had not been enacted are rollover-eligible. The new IRS guidance extends the standard 60-day rollover deadline for such payments made before October 1, 2009. As a result, individuals now have until the later of November 30, 2009, or 60 days after the date the payment was received to roll over these 2009 RMD payments. This extended deadline applies to both single-sum RMD payments and Extended 2009 RMD payments.

“Extended 2009 RMD” payments are one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and his designated beneficiary, or for a period of at least 10 years. This includes annuity payments as well as installment payments made monthly, quarterly, annually, or at some other interval.

From the plan administration perspective, the IRS Notice also confirms that rollover-eligible 2009 RMD payments are not subject to the standard rollover rules. As a result, they are not subject to the rollover notice requirement (402(f) notices), the direct and default rollover rules, or the 20% withholding requirement.

Plan administration transition relief

In addition, the IRS indicates that it will not penalize a plan solely because it was not operated in compliance with its written provisions from January 1 through November 30, 2009, because it:

- Did or did not make single-sum or Extended 2009 RMD payments;
- Did not give participants and beneficiaries the option of receiving or not receiving RMDs; or
- Did or did not offer direct rollovers for 2009 RMD payments.

Sample plan amendments

In general, plan sponsors must adopt a plan amendment reflecting the plan’s treatment of 2009 RMDs by the last day of the first plan year beginning on or after January 1, 2011. Sponsors of governmental plans must amend their plans by the last day of the first plan year beginning on or after January 1, 2012.

The IRS has now provided two sample plan amendments, which plan sponsors and sponsors of pre-approved prototype and volume submitter plans may adopt on a word-for-word basis or on a customized basis (i.e., by using the IRS sample “as is” or as a basis for drafting their own RMD waiver amendments). Both amendments give participants and

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beneficiaries a choice of receiving or not receiving single-sum or Extended 2009 RMD payments. The difference between the two amendments is the default provision that applies when an individual does not make an affirmative election:

- In the first amendment, an individual who does not make an election regarding 2009 RMD payments will continue to receive RMDs for 2009.
- In the second amendment, an individual who does not make an election regarding 2009 RMDs will not receive RMD payments for 2009.

If an employer has adopted a prototype or volume submitter plan, both the sponsor and the adopting employer must adopt the RMD waiver amendment by the applicable deadline. Adoption of this amendment, whether word-for-word or customized, will not jeopardize a plan's pre-approved status, but must be consistent with the plan's operation during 2009.

It is important to note that Prudential Retirement's response to the RMD waiver provision for qualified plans and governmental section 457(b) plans was a hybrid of the scenarios covered by these sample amendments. In general, participants and beneficiaries who were already receiving RMDs prior to 2009 were informed that they would receive their 2009 RMDs unless they notified us that they did not want to do so. However, participants and beneficiaries who were scheduled to receive their first RMD payments for 2009 (i.e., by April 1, 2010) were informed that they would not receive 2009 RMDs unless they specifically requested those payments.

Prudential is currently working with our prototype, volume submitter and specimen plan vendors to create customized amendments that will accurately reflect plan operation in 2009. When these documents are available for plan sponsor adoption, we will contact affected plan sponsors that use our document services with additional information. Plan sponsors that do not use Prudential's document services should not adopt either IRS sample amendment "as is" but should work with their document providers to draft an amendment that accurately reflects plan administration, as described above.

For participants in 403(b) plans, Prudential took a slightly different approach due to the aggregation option that is available for RMDs due under those plans. If we had made RMD payments to a participant in the past, we made 2009 RMD payments unless the participant asked us to suspend them. If we had not previously made RMD payments to a participant, we assumed those payments were being made from another contract and did not make payments in 2009 unless specifically requested to do so. Prudential is currently working with our 403(b) document vendor to secure the appropriate plan amendments for plans that use our document services.

Additional guidance

In a series of Questions and Answers, the IRS provides the following additional guidance regarding 2009 RMDs:

- Plans may (but are not required to) offer direct rollovers of both single-sum and Extended 2009 RMD payments.
- Distributions that include 2009 RMDs may be rolled over back into the distributing plan, as long as the plan accepts rollover contributions.
- The first distributions made in 2009 are any RMDs due for prior years and not yet distributed, followed by actual 2009 RMD amounts.
- If the deadline for a participant or beneficiary to make an election to apply either the 5-year rule or the life expectancy rule would have been December 31, 2009, it is extended to December 31, 2010.
- If a participant died in 2008, the deadline for a non-spouse beneficiary to make a direct rollover is extended to December 31, 2010.
- A participant in a plan that is subject to the spousal consent rules (i.e., all money purchase pension plans and some profit sharing plans) will need to get spousal consent to the suspension of 2009 RMD payments if the resumption of those payments in 2010 will be considered a new annuity starting date. Generally, for plans administered by Prudential, annuity payments were not suspended for 2009. As a result, this spousal consent requirement would not apply.

The outlook for 2010

So far, there has been no indication that RMD waivers will be permitted for 2010. We will communicate with plan sponsors if there are any developments in this regard.



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