

2009 RMD Waiver Issues

(for Section 201 of the The Worker, Retiree, and Employer Recovery Act of 2008)

1. **Waiver Applicability.** Treasury¹ should clarify the types of plans to which the 2009 RMD waiver applies. For example, Treasury should explain whether the 2009 RMD waiver applies to profit-sharing plans, money purchase pension plans and DC plan participants who annuitized their accounts.
2. **Direct Rollovers and Withholding Rules in 2009.** In 2009, would-be RMDs are treated as “eligible rollover distributions” under Code Section 402(c)(4), as amended by the Act, except for purposes of the section 402(f) notice, mandatory 20% withholding, and the right to a direct rollover. Treasury should confirm that plans are permitted, but not required, to apply one or more of these features to the would-be RMDs, consistent with an explanation in the JCT Report.²

Clarity on this issue is important to allow plans to implement procedures that work best for them. For example, some plans may prefer to apply a uniform withholding regime on all distributions, including would-be RMDs, to minimize confusion and processing mistakes. Some plans may wish to allow terminating participants to directly rollover their entire accounts, including would-be RMDs. Some plans may wish to provide a direct rollover right for would-be RMD amounts, but may not revise their 402(f) notice for this one-year waiver.

3. **IRAs — IRS Traditional Individual Retirement Custodial Account (Form 5305-A).** We recommend that Treasury provide guidance to IRA providers using Form 5305-A on whether any amendment is needed and, if so, provide sample amendment language.
4. **Qualified Plans — Whether Payment Suspension is Required; LRMs and Required Plan Amendments.** Treasury should clarify whether a plan is required to suspend would-be RMD distributions for 2009 and if it does not, what, if any, amendments would be required. While plans vary, Treasury should explain operational steps and publish plan amendments, if any, that would be required for a plan that uses the sample 401(a)(9) language published by the Internal Revenue Service in the List of Required Modifications.
5. **Qualified Plans that Do Not Permit Distributions Other Than RMDs.** In some plans, the only basis for a payment of less than the entire vested account after termination from employment is when a plan

¹ For purposes of this letter, the term “Treasury” means “Treasury and IRS,” unless expressly stated otherwise.

² See Technical Explanation of H.R. 7327, The “Worker, Retiree, and Employer Recovery Act of 2008,” as Passed by the House on December 10, 2008, JCX-85-08, *27 (dated Dec. 11, 2008).

incorporates Code section 401(a)(9) by reference. Treasury should clarify the process these plans should follow (including amendments) in continuing to make would-be RMD payments. To the extent possible, we recommend that Treasury provide relief that does not require plans to expend funds and resources on plan amendments to comply with the temporary waiver.

6. Qualified plans Subject to QJSA Requirements. Treasury should clarify that plans requiring spousal consent for all plan distributions except RMDs should not require spousal consent for would-be RMDs in 2009. Similarly, to minimize costs to plans, we recommend that Treasury provide relief that does not require plan amendments.
7. RMD Waiver and Rollovers. It appears that the only mechanism by which retirees³ may re-contribute funds withdrawn from RMD-eligible accounts in 2009 is through a traditional rollover. Treasury should clarify a number of issues related to rollovers of would-be RMD amounts.
 - a. The 60-day and One IRA Rollover Per a 12-month Period Restrictions. Because the Act was not enacted until late in the year, these rollover restrictions may prevent some retirees from using the waiver. Retirees who use systematic withdrawals may receive 2009 distribution payments before they learn of the 2009 RMD waiver. While providers are doing their best to inform retirees about the waiver and applicable rules, many retirees may not realize immediately that they have 60 days to rollover each distribution, and that they also need to comply with one IRA rollover per a 12-month-period restriction.

Treasury should waive the rollover restrictions that would preclude retirees from using the RMD waiver. At the least, Treasury should waive the 60-day restriction pursuant to section 408(d)(3)(I) of the Code, which permits Treasury to waive the 60-day requirement “where the failure to waive such requirement would be against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”

- b. Inherited IRAs for Non-Spouse Beneficiaries. Code rules do not permit a non-spouse beneficiary of an IRA to rollover funds into or out of an inherited IRA. Because a rollover is the mechanism by which a taxpayer may re-contribute what would have been RMD funds back into a retirement account, the rollover limitation applicable to inherited IRAs appears to prevent beneficiaries of inherited IRAs from being able to use the 2009 RMD waiver if they receive any distributions in 2009. This result could especially be inequitable for beneficiaries set up for systematic payments who may receive their first round(s) of payments in 2009 before they learn of their right to suspend would-be RMD payments. We recommend that Treasury allow non-spouse beneficiaries to rollover would-be RMD funds in the same manner as any other IRA holder.

³ For purposes of this letter, the term “retiree” means an RMD-eligible taxpayer unless stated otherwise.

- c. Rollovers into the “Same” Plan. Treasury should clarify (i) whether a plan that made would-be RMD payments is required and/or permitted to accept those returned distributions, (ii) whether the same interpretation would apply to terminated participants, and (iii) any required procedural steps.
 - d. Rollover Amounts. Treasury should confirm that retirees may rollover any amount (up to the would-be 2009 RMD amount) that was distributed in 2009 that would have been considered an RMD but for the 2009 RMD waiver. Treasury should also explain how retirees should document their RMD rollovers (especially if they make one rollover that aggregates distributions from several RMD-eligible accounts).
 - e. Rollovers by Beneficiaries. Treasury should confirm that a beneficiary may include would-be RMD amounts in a rollover.
8. Systematic Withdrawal Payments and Series of Substantially Equal Payments. Some retirees satisfy their RMD requirements through receiving “a series of substantially equal periodic payments.” Treasury should confirm that (i) these retirees can suspend any payments that would have been for the purpose of satisfying the 2009 RMD requirements; and that (ii) they can benefit from the same rollover rules as any other retirees in 2009. Any other interpretation would be inequitable to this subset of retirees and contrary to Congress’ intent to waive the 2009 RMD obligations for all RMD-eligible individuals.
- Treasury should also confirm that simply because a retiree relies on systematic payments to satisfy his or her RMD obligations, those payments would not be treated as “a series of substantially equal periodic payments” in 2009.
9. Qualified charitable distributions under Code section 408(d)(8). Treasury should confirm that IRA distributions from RMD-eligible accounts made for charitable purposes in accordance with Code section 408(d)(8) will continue to be excludable from gross income.
10. Life expectancy tables. Treasury should confirm that the life expectancy tables in 2010 would apply in the same manner if there were no RMD waiver in 2009.