

# Employee Benefits Update

*January 2009*

## Waiver of Required Minimum Distributions for 2009

Participants in defined contribution retirement plans and individual retirement accounts (IRAs) can avoid taking their 2009 “required minimum distributions” (RMDs). The Worker, Retiree and Employer Recovery Act of 2008 (the “Act”), signed into law in late December, waives, for 2009 only, the requirement to receive RMDs from IRAs and tax-qualified defined contribution plans (including profit-sharing plans, 401(k), 403(b) and 457(b) plans). The waiver does not apply to defined benefit plans.

### Background

Absent the Act’s relief, qualified plan participants and IRA owners generally are required to begin receiving annual distributions no later than their “required beginning date,” which is April 1st of the year following the year in which the participant attains age 70½ (or, if permitted under a qualified employer plan, the later of age 70½ or retirement), and to receive an additional distribution no later than December 31 of the same year and each subsequent year.

### Individuals Who Attained Age 70½ in 2008

The waiver does not apply to the first RMD payable to a participant who attained age 70½ during 2008. Although the participant’s required beginning date is April 1, 2009, the first distribution is actually a 2008 RMD (attributable to the year the participant attained age 70½) and therefore is not covered by the 2009 waiver. The distribution still must be made by April 1, 2009. Absent the Act, the participant also would be required to receive an additional RMD (for 2009) no later than December 31, 2009; the Act waives the requirement to receive this 2009 RMD.

### Individuals Who Attain Age 70½ in 2009

A participant who attains age 70½ in 2009 (or retires in 2009 after age 70½, if the plan so permits) normally would be required to receive a 2009 RMD no later than April 1, 2010. Even though that date does not fall within 2009, the waiver applies because the first RMD in this case is a 2009 RMD. Thus, the participant’s first RMD must be made by December 31, 2010.

### Death Beneficiaries

The Act waives the requirement to make a 2009 RMD to a designated beneficiary of a deceased participant or IRA owner. For IRAs, and plans that permit installment distributions over life expectancy, if a designated beneficiary has elected to receive RMDs over life expectancy, the 2009 waiver applies to the beneficiary in the manner described above. If the life



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expectancy option has not been elected, or is not available in a plan, a beneficiary who is not the participant's spouse is required to receive distribution of the participant's entire benefit by the end of the fifth calendar year following the year of death if the participant died before the required beginning date—often referred to as the “five year rule.” Under the Act, 2009 is not counted as one of the five years, effectively creating a six-year rule for participants who die between 2004 and 2009.

#### “Eligible Rollover Distributions” and Plan Administration

A participant whose 2009 RMD is waived by the Act still may take a distribution for 2009, but is not required to do so. If the participant does take a distribution, it generally will be considered an “eligible rollover distribution,” whereas RMDs are not. When making an eligible rollover distribution, a plan (but not an IRA) generally is required to offer the participant the ability to make a direct rollover, provide a written notice regarding the tax consequences of the distribution and apply mandatory 20% tax withholding to a distribution that is not directly rolled over. To lessen the waiver's administrative burden on plan sponsors, the Act permits a plan sponsor to treat any distributions subject to the waiver, if made, as not being eligible rollover distributions. As a result, 20% mandatory tax withholding does not apply. Instead, waivable withholding applies. If a plan sponsor thus does not offer a direct rollover opportunity for 2009 distributions covered by the RMD waiver, a participant who receives such a distribution is still permitted to make an indirect rollover.

Plan sponsors are not required to amend plan documents to reflect the RMD waiver until the last day of the plan year beginning in 2011 (December 31, 2011 for calendar year plans).

#### Questions or Assistance?

For more information, please contact Ali Haffner at (860) 251-5091 or any other member of the Shipman & Goodwin LLP Employee Benefits Practice Group.

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