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Waiver of 2009 Required Minimum Distributions: What Plan Sponsors Need to Consider Before November 30

Recently, the Internal Revenue Service (the "Service") published much-needed guidance with respect to the permissible waiver of required minimum distributions ("RMDs") for the 2009 calendar year. In general, qualified retirement plans must require that participants who have reached the later of age 70½ or separated from service begin receiving minimum distributions of their accrued benefits. The Worker, Retiree, and Employer Recovery Act of 2008 ("WRERA") provides that such minimum distributions are not required for 2009.

Plan Amendments

Notice 2009-83 provides two model amendments that permit participants and beneficiaries to waive 2009 RMDs, which include RMDs for individuals who attain age 70½ during 2009 and must otherwise receive their first minimum distributions on or before April 1, 2010. Each model amendment includes a default option: one provides an option for participants and beneficiaries to opt out of receiving otherwise payable 2009 minimum distributions, and the other includes an opt-in option. Whichever default amendment is selected, the amendment must be adopted no later than the last day of the plan year beginning in 2011,

if a plan sponsor wishes to extend the relief to affected plan participants.

Transitional Relief

Because the Service did not issue comprehensive guidance on waivers of 2009 RMDs until now, Notice 2009-83 also provides transitional relief for plan sponsors and affected participants and beneficiaries. With respect to operational compliance, plan sponsors have through November 30 to determine how 2009 RMDs will be treated under a plan and to provide affected participants notice of their options with respect to such distributions. A plan permitting waivers of 2009 RMDs must be operationally compliant with the amendment the plan sponsor intends to adopt no later than November 30, 2009.

With respect to participants who received RMDs earlier in 2009, the Service has extended the rollover period for such distributions through November 30, or 60 days after the distribution date, if later. The Service is allowing plan sponsors to provide participants who have not yet received 2009 RMDs a direct rollover option of such distributions.

Action Items

Whether or not a plan sponsor intends to permit participants and beneficiaries to waive 2009 RMDs, plan sponsors should consider notifying participants and beneficiaries who have already or will receive 2009 RMDs of the extended rollover deadline.

Plan sponsors that have or will permit participants and beneficiaries to waive 2009 RMDs should take the following actions before November 30:

- determine which model amendment will apply (opt-in or opt-out default) and notify their third-party administrator or record-keeper of any decision;
- determine whether to permit a direct rollover from the plan of amounts that would otherwise have been RMDs for the 2009 calendar year (optional in both model amendments);
- provide affected participants and beneficiaries notice of the option to waive RMDs and provide a

procedure for participants and beneficiaries to make a valid election in accordance with the elections in the model amendment;

- conform plan operations to selected default and rollover options.

We welcome the opportunity to answer any questions you may have regarding the waiver of 2009 RMDs and Notice 2009-83 or to assist you in assessing your options for complying with these rules.

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