

MEMO# 23818

September 28, 2009

IRS Issues Guidance on 2009 Required Minimum Distributions

[23818]

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TO: PENSION MEMBERS No. 46-09

TRANSFER AGENT ADVISORY COMMITTEE No. 70-09

BANK, TRUST AND RECORDKEEPER ADVISORY COMMITTEE No. 43-09 RE: IRS ISSUES
GUIDANCE ON 2009 REQUIRED MINIMUM DISTRIBUTIONS

IRS Notice 2009-82, issued on September 24, 2009, provides additional guidance on compliance and operational issues related to the waiver of 2009 required minimum distributions (“RMDs”) (codified as new Code section 401(a)(9)(H) by the Worker, Retiree, and Employer Recovery Act of 2008 [\[1\]](#)). [\[2\]](#) In January 2009, IRS published Notice 2009-9 providing guidance to financial institutions on reporting issues related to the waiver. [\[3\]](#) The Institute requested guidance on a number of other compliance and operational issues, and Notice 2009-82 addresses many of these issues. [\[4\]](#) The Notice includes two sample plan amendments, transitional relief, and nine questions and answers on specific issues.

Sample Amendments

Both amendments provide participants and beneficiaries with a choice on whether to receive RMD payments in 2009. One amendment is for plan sponsors that wish to suspend the 2009 RMD payments as a plan default option unless a participant or beneficiary elects otherwise. The other amendment is for plan sponsors that wish to continue making the 2009 RMD payments in the absence of a participant’s or beneficiary’s instruction otherwise. Both amendments also address direct rollover choices related to RMD payments. Amendments must be adopted no later than the last day of the first plan year

beginning on or after January 1, 2011 (January 1, 2012 for governmental plans).

Transition Relief

1. Plan operation relief.

The Notice provides that a plan will not be treated as failing to satisfy the requirement that it be operated in accordance with its terms merely because during the period beginning on January 1, 2009, and ending on November 30, 2009: (1) distributions that equal the 2009 RMDs or that are one or more payments in a series of substantially equal distributions that include the 2009 RMDs ("extended RMDs") were or were not paid, (2) participants and beneficiaries were not given the option of receiving or not receiving distributions that include the 2009 RMDs, or (3) a direct rollover option was or was not offered for 2009 RMDs or for other amounts that can be rolled over (as discussed in the next paragraph).

2. Rollover relief for plans.

- a. Relief for rollovers, including of substantially equal periodic distributions. The Notice states that payments to a plan participant in 2009 will not be treated as ineligible for rollover on account of Code section 402(c)(4)(A) if the payments equal the 2009 RMDs or are one or more payments in a series of substantially equal distributions that include the 2009 RMDs. Accordingly, these payments can be rolled over, provided other rollover rules in Code Section 402(c) are satisfied.
- b. Extension of the 60-day rollover rule for plans. To assist plan participants who have already received distributions in 2009 but may have been unsure of which amounts could be rolled over, the IRS extended the 60-day rollover period so that it ends no earlier than November 30, 2009.

3. Extension of the 60-day rollover rule for IRAs; no relief from the IRA one-rollover-per-year rule. Similar to relief provided to plans, the IRS extended the 60-day rollover period for IRAs so that it ends no earlier than November 30, 2009. However, the IRA one-rollover-per-year rule remained unchanged. Accordingly, no more than one distribution from an IRA in 2009 is eligible for this rollover relief.

Qs and As

The Notice includes nine Qs and As addressing a number of specific issues, including the following:

- IRAs do not need to be amended to reflect the 2009 RMD waiver, pending the issuance of further guidance.
- For those employees or beneficiaries who had until the end of 2009 to choose between receiving a distribution under the 5-year rule or life expectancy rule, the deadline to make the decision is extended until the end of 2010 as a result of Code section 401(a)(9)(H).
- Distributions can be rolled over back into the same plan, provided the plan permits rollovers and the rollovers satisfy the requirements of Code section 402(c).

- For distributions received in 2009 only, if a retiree receives a plan distribution of the entire account balance that includes a 2009 RMD, the portion of the distribution that represents the 2009 RMD is subject to the optional 10% withholding rules under Code section 3405(b) and any remaining portion is subject to the 20% mandatory withholding rule of Code section 3405(c).
- Any distributions received in 2009 are deemed first to be any RMDs from prior years not yet distributed (if any), followed by 2009 RMDs.
- The 2009 RMD waiver does not apply to payments that are part of a series of substantially equal periodic payments determined under the RMD method and designed to satisfy exception to early distribution penalty tax. Accordingly, if the payments are stopped in 2009 (other than because of death or disability) prior to age 59½ (or prior to 5 years from the date of the first payment), all the payments made under the series are subject to a recapture tax under Code section 72(t)(4).

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endnotes

[1] See [Memorandum](#) to Pension Members No. 79-08, Federal Legislation Members No. 17-08 [23123], dated December 12, 2008; and [Memorandum](#) to Pension Members No. 80-08, Federal Legislation Members No. 18-08 [23134], dated December 18, 2008.

[2] A copy of the Notice is available here: <http://www.irs.gov/pub/irs-drop/n-09-82.pdf>.

[3] See [Memorandum](#) to Pension Members No. 5.-09 [23206], dated January 23, 2009.

[4] See [Memorandum](#) to Pension Members No. 10-09, Transfer Agent Advisory Committee No. 12-09, Bank, Trust and Recordkeeper Advisory Committee No. 5-09 [23242], dated February 9, 2009.