

Worker, Retiree and Employer Recovery Act of 2008



New Legislation Suspends Required Minimum Distributions for 2009, Provides PPA Technical Corrections and Freezes Some Contribution Requirements

Summary

Amongst other provisions, the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA 2008), signed into law by President Bush on December 23, eliminates Required Minimum Distributions ("RMDs") for distribution year 2009 for IRAs, qualified employer defined contribution plans (including 401(k) plans, profit sharing plans and money purchase pension plans), 403(b) plans and 457(b) plans.

It is important to note, however, that WRERA 2008 does not affect distribution year 2008 RMDs. If individuals/ participants are required to take RMDs for 2008, they must still do so by December 31, 2008, (or April 1, 2009, for individuals for whom that is their required beginning date ("RBD") because 2008 is the year they attained age 70 1/2 or, for certain employer sponsored plans for which they were not 5% or more owners, the later year in which they retired).

WRERA 2008 also makes technical corrections to certain provisions of The Pension Protection Act of 2006, including mandating non-spousal IRA beneficiary rollovers from qualified plans. It also makes available rollovers of certain airline bankruptcy payments to Roth IRAs for certain airline workers. Single- and multi-employer Defined Benefit plans were also given new funding options.

RMD Provisions

Under WRERA 2008, the following individuals will not have to take RMDs for 2009:

- Account owners currently subject to RMDs;
- Beneficiaries of inherited accounts subject to RMDs; and
- Account owners for whom 2009 would be their first distribution year, i.e., their RBD would be April 1, 2010.

Clients should consult a qualified tax advisor before taking any action.

Please make note, however, of these important considerations:

- WRERA 2008 does not impact 2008 RMDs, which must still be met by December 31, 2008 (or April 1, 2009, for individuals for whom that is their RBD).
- WRERA 2008 does not apply to annuity payments or to payments from defined benefit plans.
- Employer sponsored retirement plan documents must be amended to account for provisions of WRERA 2008 by the end of the 2011 plan year.
- Distributions that would otherwise have been 2009 RMDs and, therefore, are not eligible to be rolled over, may be eligible to be rolled over (subject to fulfilling other rollover requirements).

Without the RMD suspension, many people age 70 1/2 or older would have been required to take RMDs based on December 31, 2008 account values or face a 50% excise tax on the amounts not distributed.

PPA Technical Corrections

- ▶ Plans must include a mandatory provision for non-spousal beneficiary rollovers from employer plans to IRAs, beginning December 31, 2009. This was optional under PPA.
- ▶ Provisions are required for rollovers of defined benefit amounts received in airline bankruptcy to Roth IRAs for airline workers' plans terminated or frozen by bankruptcy between September 11, 2001, and January 1, 2007.

Provisions for Defined Benefit Funding

- ▶ Elimination of the PPA penalty provisions for defined benefit plans that were unable to meet their phase-in pension funding targets (2008 – 92%, 2009 – 94%, 2010 – 96%, 2011 – 98%, 2012 – 100%). PPA's penalty provisions would have required plans that had not meet their funding targets in any year to instead immediately be subject to PPA's 100% funding requirements. While this will provide relief for many defined benefit plans, market losses may still require plan sponsors to make significant contributions to reach the funding targets.
- ▶ Permitting employers to “smooth” the value of pension plan assets over 24 months instead of following Treasury's mathematical average. This change will soften the accounting of 2008 plan losses.
- ▶ Clarifying plans' annual target funding amount to include administrative expenses that are paid out of the plan and any salary increases awarded during the year.
- ▶ Creating an exception for the rule that certain underfunded plans are prohibited from paying out lump-sum distributions to permit lump-sum distributions valued at \$5,000 or less.
- ▶ Permitting certain small plans to apply a 5.5% interest rate assumption in valuing benefits. This provision applies to small business defined benefit plans with the expectation that it will encourage these small plans and benefit their employees. It is applicable to plan years beginning after December 31, 2008.
- ▶ Permitting plans that are less than 60% funded in a year to use prior plan year's funded status for purposes of allowing participants to continue to accrue benefits.

Plan Document Impact for Defined Contribution and Defined Benefit Plans

- ▶ Employer plans may need to amend their plan documents no later than the last day of the first plan year beginning on or after January 1, 2011.
- ▶ The Merrill Lynch Prototype document will be amended as necessary to account for the provisions of the Act.
- ▶ Prototype plans from other providers will likely need to be amended by those providers. Sponsors should check with their providers or legal counsel for advice to ensure their plan documents are up-to-date.

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