

Worker, Retiree, and Employer Recovery Act of 2008

On December 23, 2008, the President signed into law the Worker, Retiree, and Employer Recovery Act of 2008 (H.R. 7327).

Much of the legislation relates to pension plan funding requirements and technical corrections for the 2006 Pension Protection Act. However, one of the most significant provisions in the legislation is the temporary suspension of required minimum distributions (RMDs) for 2009. Provisions relating to direct rollovers from employer plans to Roth IRAs and nonspouse beneficiary rollovers from inherited employer plans are also discussed.

Temporary waiver of required minimum distribution (RMD) rules

The Worker, Retiree, and Employer Recovery Act of 2008 suspends RMDs for 2009. That is, no minimum distribution will be required from IRAs and employer-sponsored defined contribution retirement plans (e.g., qualified stock bonus plans, qualified profit-sharing plans, 401(k) plans, 457(b) plans, and 403(b) plans) for the 2009 calendar year. This applies to both RMDs during a plan participant's or IRA owner's lifetime as well as after-death RMDs to beneficiaries. (The Act does not suspend 2009 RMDs from defined benefit plans.)

An individual who reached age 70½ prior to 2009 would normally be required to take his or her 2009 RMD no later than December 31, 2009. As a result of this legislation, that RMD will not have to be made. An individual who reaches age 70½ in 2009 would normally be required to take his or her first RMD on or before April 1, 2010. As a result of this legislation, no distribution is required for 2009, and thus there is no requirement that a distribution be made by April 1, 2010. However, in both cases, the individual will still be responsible for taking an RMD for the 2010 calendar year on or by December 31, 2010. (Note: Employees who continue to work beyond age 70½ are not required to take RMDs until they separate from service, unless they are 5 percent owners of the employer.)

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Individuals are still required to take an RMD for 2008. Normal RMD rules apply: For individuals who reached age 70½ prior to 2008, 2008 RMDs must generally be made no later than December 31, 2008. An individual who reached age 70½ in 2008 is generally required to take his or her 2008 RMD on or before April 1, 2009. The legislation does not affect this requirement.

If an individual who reaches age 70½ in 2009 dies on or after April 1, 2010, the RMD for the individual's beneficiary will be determined using the rules that apply on or after the individual's required beginning date (generally, based on the beneficiary's life expectancy).

For beneficiaries receiving RMDs from a decedent's account under the "five year rule," the five year period is determined without regard to calendar year 2009. For example, for an account with respect to an individual who died in 2007, under the provision, the five year period ends in 2013 instead of 2012.

Distributions made during 2009 that would have been considered RMDs but for this legislation will not be treated as eligible rollover distributions for purposes of an employer's requirement to offer a direct rollover (and related notification obligations) and mandatory withholding requirements for non-direct rollovers. Therefore employers may, but do not have to, offer a direct rollover and provide related documentation, and the distribution isn't subject to mandatory 20 percent withholding. Even if an employer does not offer a direct rollover, employees may roll over the distribution into another eligible plan within 60 days.

Direct Rollovers from Retirement Plans to Roth IRAs

The Pension Protection Act of 2006 allowed for direct rollovers from qualified retirement plans, 403(b) plans, and governmental 457 plans, to Roth IRAs, subject to the limitations that generally apply to rollovers from traditional IRAs to Roth IRAs (e.g., an adjusted gross income limit). The language in the Pension Protection Act led to some confusion as to whether a direct rollover from a Roth 401(k) or Roth 403(b) account to a Roth IRA would also be subject to an adjusted gross income limitation. A technical correction was expected.

The Worker, Retiree, and Employer Recovery Act of 2008 clarifies that a rollover from a Roth 401(k) or Roth 403(b) account to a Roth IRA is not subject to the adjusted gross income limitation.

Rollovers by Nonspouse Beneficiaries

The Pension Protection Act of 2006 provided that the designated beneficiary of a deceased employee's eligible retirement plan (including qualified retirement plans, governmental 457 plans, and 403(b) plans) could transfer distributions from the plan directly to an IRA without tax consequence. Previously, only surviving spouses had this option. Subsequent interpretation of the provision held that plans could, but were not required to offer this rollover option to nonspouse beneficiaries.

The Worker, Retiree, and Employer Recovery Act of 2008 provides that, for plan years beginning after December 31, 2009, plans must allow nonspouse beneficiaries to roll over funds to an IRA in a direct transfer, provided all requirements are met. Plans must also provide appropriate notice to nonspouse beneficiaries.

Note: The IRA was, and still is, treated as an inherited IRA.