

IRS Issues Guidance on Suspension of Required Distributions for 2009

Highlights of this article:

- [Suspension of required minimum distributions \(RMDs\) for 2009 only](#)
- [Types of retirement plans included in suspension](#)
- [2008 Distribution Calendar Year not affected](#)
- [Effect on 2009 Distribution Calendar Year](#)
- [Eligible rollovers of 2009 distributions](#)
- **UPDATED:** [RMD statements for 2009](#)

Friday, January 9, 2009

On December 23, 2008, the President signed into law H.R. 7327, also known as the *Worker, Retiree and Employer Recovery Act of 2008*. The bill easily passed the House and Senate, receiving wide bipartisan support.

In general, the law provides certain pension funding relief, includes protections for employee benefits, and makes technical corrections to the *Pension Protection Act of 2006*.

Suspension of RMDs for 2009 Only

As we highlighted the potential for this legislation to be passed in the November 2008 issue of IRA Plus, Congress and the President have acted to help seniors, retirees and beneficiaries that are subject to required minimum distributions skip the 2009 RMD. Thus, RMDs will not be required for the 2009 Distribution Calendar Year (DCY), although affected individuals can still take distributions.

Types of Plans Included in Suspension

The suspension of RMDs for 2009 applies to:

- Qualified plans
- §403(b) plans
- §457(b) plans
- Traditional, SEP and SIMPLE IRAs
- Roth IRAs subject to death distributions

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Continued from Page 1

2008 Distribution Calendar Year Not Affected

The Act does not affect RMDs required for the 2008 calendar year. This includes participants who turned age 70½ during 2008 and whose required beginning date is April 1, 2009. In this case, the 2008 RMD is still required to be distributed even if the participant waits until as late as April 1, 2009 to take the 2008 RMD. For these participants, the 2008 RMD is still based on the December 31, 2007 account balance even if the participant delays the 2008 RMD until 2009.

For example, Rhett attains the age of 70½ during 2008 and decides to delay his first year's RMD until April 1, 2009. The Act does not affect Rhett's requirement to withdraw his 2008 RMD no later than April 1, 2009. However, Rhett's 2009 RMD (that would otherwise have been required by December 31, 2009) is not subject to the requirement to withdraw such amount. Rhett's next RMD is required no later than December 31, 2010.

2009 Distribution Calendar Year

If a participant attains the age of 70½ during 2009, and thus has a required beginning date of April 1, 2010, the first year that such participant is required to take an RMD is 2010. Under the Act, the suspension of the 2009 RMD does not change the individual's required beginning date for purposes of determining the RMDs for calendar years after 2009. Thus, if a participant's required beginning date is April 1, 2010, (because he or she attained the age of 70½ during 2009) the RMD for 2010 is still required no later than December 31, 2010.

For example, Hannah will attain the age of 70½ during 2009 making her required beginning date for purposes of the RMD rules April 1, 2010. Although Hannah is not required to withdraw the RMD for 2009 (her first distribution calendar year), April 1, 2010 remains the date that is her required beginning date. Thus, Hannah's 2010 RMD must be made no later than December 31, 2010.

Death Before the Participant's RBD

If a participant dies before his or her required beginning date (RBD), the law requires that a beneficiary either (a) receive the entire balance under the 5-year rule; or (b) if the beneficiary is a "designated beneficiary", the beneficiary must take RMDs based upon the beneficiary's single life expectancy. If the 5-year rule applies with respect to a deceased participant, the Act provides that calendar year 2009 is disregarded in determining when the 5-year period ends.

Continued from Page 2

For example, Margaret died during 2007 prior to her required beginning date and her retirement account is subject to the 5-year rule rather than the life expectancy rule. Rather than the 5-year period ending on December 31, 2012, under the Act the 5-year period ends on December 31, 2013.

Death After the Participant's RBD

If a participant dies after his or her required beginning date (RBD), the law requires that the RMD for the year in which the death occurred be calculated as if the participant were alive all year (generally the Uniform Lifetime Table). For years after the year of the participant's death, RMDs are calculated by using the single life expectancy of the designated beneficiary or the deceased participant, whichever is longer. If 2009 is the year of death, the participant's required beginning date is April 1, 2009 (because the participant attained the age of 70½ during 2008); and the participant dies after April 1, 2009, but on or before December 31, 2009, no RMD is required for 2009. (Such RMD that would have been required for 2009 would have been determined as if the participant had lived throughout the entire year.) However, the beneficiary is required to begin RMDs no later than December 31, 2010, based upon the longer of the life expectancy of the beneficiary or the remaining life expectancy of the deceased participant.

If 2009 is the year of death and the participant's required beginning date occurred prior to calendar year 2009, the beneficiary is already subject to taking RMDs based upon the longer of the life expectancy of the beneficiary or the remaining life expectancy of the deceased participant. However, no RMD is required for calendar year 2009 by the beneficiary. The beneficiary's next RMD is required by December 31, 2010.

For example, Winston attains the age of 70½ during 2008 and his required beginning date is April 1, 2009. Winston does not have an RMD for calendar year 2009, although his required beginning date remains April 1, 2009. Winston's daughter, Sophie, is his beneficiary. If Winston dies after April 1, 2009, but on or before December 31, 2009, Sophie is not subject to taking the RMD that would have been required. However, Sophie must begin life expectancy distributions no later than December 31, 2010.

Assume that Winston attained the age of 70½ during 2007 and his required beginning date was April 1, 2008. Also assume that Winston died in 2008 after April 1, 2008. Sophie was required to have received the 2008 RMD no later than December 31, 2008, determined as if Winston were alive all year. The RMD for calendar year 2009 that would have been required to be determined based on Sophie's life expectancy is not required. The next RMD to Sophie is required no later than December 31, 2010.

Continued from Page 3

Eligible Rollover Distributions

If any portion of a distribution during 2009 is an eligible rollover distribution because it is no longer an RMD under the Act, such distribution may be rolled over to an eligible recipient plan in a direct rollover or a 60-day rollover.

Moreover, if the eligible rollover distribution is being made from an employer's plan, such as a qualified plan or §403(b) plan, the Plan is permitted *but is not required* to offer the employee or beneficiary a direct rollover election and the Plan is not required to provide the §402(f) Rollover Notice to the participant or beneficiary. However, if the participant or spouse beneficiary receives the distribution, the distribution is not subject to the 20% mandatory income tax withholding, and the participant or spouse beneficiary can still roll over the distribution to an eligible plan within 60 days after the date of receipt. (Note: If any distribution is made to a non-spouse beneficiary, whether or not treated as an RMD, such non-spouse beneficiary cannot roll over the distribution within 60 days. However, a non-spouse beneficiary may elect a direct rollover to an inherited IRA in a trustee-to-trustee transfer. See related information.)

RMD Statements for 2009

Trustees, custodians and issuers of IRAs are generally required to provide participants of traditional IRAs, SEP IRAs and SIMPLE IRAs with a notice no later than January 31, 2009, that a minimum distribution is required for calendar year 2009. Form 5498 issued for reporting year 2008 is also required to check the "RMD checkbox" in Box 11. (For a detailed description of these requirements, see the November 2008 issue of *IRA Plus*.)

On Friday, January 9, 2009, the IRS issued **Notice 2009-9**, which provides guidance for IRA trustees and custodians. Notice 2009-9 states that:

- Issuers of the 2008 Form 5498 should **not** put a check in Box 11 (RMD for 2009). Because the IRS recognizes that issuers have little time to make changes, however, the Service will not consider the 2008 Form 5498 to be issued incorrectly solely because of a check in Box 11, provided the issuer notifies the IRA owner that no RMD is required for 2009 no later than March 31, 2009.
- The RMD statement required under Notice 2002-27, 2002-18 I.R.B. 814 is **not** required to be sent to IRA owners for 2009. However, if an issuer sends a separate RMD statement, the issuer must either:
 - * Show the amount of the 2009 RMD as **zero (0)**, or
 - * Report the amount of the RMD that *would* have been required for 2009, were it not for the waiver, along with an explanation of the waiver of the 2009 RMD.

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