



CONGRESS GIVES OLDER OWNERS, RETIRED EMPLOYEES, AND EMPLOYERS A HOLIDAY GIFT

In what amounted to a Holiday gift for older IRA holders, employed older owners, and employers that sponsor qualified retirement plans, both Houses of Congress unanimously passed the Worker, Retiree and Employer Recovery Act (“WRERA”) and the President signed it into law on December 23, 2008. The new law makes some technical corrections to the Pension Protection Act of 2006 (“PPA”), granted temporary relief from strict new PPA funding rules, declares a 2009 holiday from forced retirement distributions to many over the age of 70.5, and offers a few other miscellaneous “Holiday goodies.”

Minimum Distribution 2009 Holiday

Former employees over age 70.5 who still have money in their former employer’s profit sharing, money purchase, ESOP, or 401(k) plans are normally required to receive minimum taxable annual distributions. This requirement also extends to those over 70.5 who own more than 5% of the company sponsoring the plan even though these owners may still be working. Likewise, IRA holders (other than Roth IRAs) who are over 70.5 must take annual taxable distributions. WRERA suspends these distribution requirements for the year 2009, presumably because many would be forced to liquidate already depleted IRA and retirement plan funds in order to make the necessary distributions.

While many had hoped that the relief would also extend to required 2008 distributions, the new law does not and 2008 minimums were required by December 31, 2008 under the usual rules. Furthermore, if someone turned age 70.5 during 2008, the first required minimum distribution is still due to be received no later than April 1, 2009. But the new law did not suspend payments due for employees in defined benefit plans, where the benefits are not reduced due to adverse investment results.

While WRERA eliminates the *requirement* to receive an age 70.5+ distribution, retirement plan participants may *elect* to receive the 2009 distribution. Such a distribution will usually be eligible for rollover to an IRA and will not be subject to the mandatory 20% federal withholding that applies to most distributions elected by participants.

Beneficiaries of plan participants who died prior to receiving required age 70.5 distributions must often receive a complete distribution of their benefits within 5 years following the year of the participant’s death. The WRERA 2009 suspension affects these individuals too. For example, if a participant died in 2007, distribution to his beneficiary normally would be required to be completed by the end of 2012. This is now extended to the end of 2013.

Other Defined Contribution Plan Changes

WRERA eliminates income limits in cases where a 401(k) participant has a Roth account and wishes to rollover the money to a Roth IRA. The \$100,000 income limit still applies for *non-Roth* assets that are rolled over to a Roth IRA before 2010, however.

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So called “gap period earnings” relate to investment earnings on refunds to participants in 401(k) plans for periods after the close of the plan year for which the refunds arise. Gap period earnings are eliminated by WREERA for 2008 and later years.

Sponsors of Automatic Enrollment 401(k) plans may want to have a 90 day “do over period” and be allowed up to six months to test and correct for discrimination failures. If so, these plans are no longer required to use DOL safe harbor investment alternatives (“QDIAs”) as the default investment for the plan.

Plans must allow rollovers to an inherited IRA by non-spouse beneficiaries starting in plan years that begin in 2010. Tax withholding at 20% is required if the beneficiary does not rollover the money.

Defined Benefit Changes

Much of WREERA is focused on providing relief for certain technical elements of defined benefit plan funding. These include limited funding relief to underfunded single employer plans, guidance for plans that use an end of year valuation, and a number of other highly technical funding rules. Underfunded plans that are prohibited or restricted from making lump sum benefit payments are now allowed to make lump sum payments when the total benefit is \$5,000 or less. And, with a nod to adverse investment results, WREERA permits plans to use their prior year funding ratios (AFTAP) to determine whether benefits must be frozen, but only for plan years beginning between October 1, 2008 and September 30, 2009.

What this Means to You

With these law changes, the government will be adding new regulatory guidance in the coming months. As the details emerge, new procedures and compliance steps will be modified. NRS is available to assist in each of these activities.

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