



**Raj Patel, CPA, LLC**  
 Raj Patel, CPA PFS ACA M COM DTP LLB  
 1585 Oak Tree Road, Suite 203  
 Kumar Soni Plaza  
 Iselin, NJ 08830  
 (732) 283-9090  
 Fax: (732) 283-9091  
 Raj@RPatelCPA.com  
 www.RajPatelCPA.com



## The Worker, Retiree, and Employer Recovery Act of 2008

On December 23, 2008, President Bush signed the Worker, Retiree, and Employer Recovery Act of 2008 (the Act, or WRERA) into law. One of the most significant provisions in the legislation is the temporary suspension of required minimum distributions (RMDs) for 2009. Also included in the Act are provisions relating to direct rollovers from employer plans to Roth IRAs, nonspouse beneficiary rollovers from inherited employer plans to IRAs, pension plan funding, and other technical corrections to the Pension Protection Act of 2006 (PPA).



### Temporary waiver of required minimum distribution rules

The Act suspends RMDs for 2009—that is, no minimum distribution will be required from IRAs or from employer-sponsored defined contribution retirement plans (qualified stock bonus, profit-sharing, and 401(k) plans, 457(b) plans, 403(b) plans, SEP and SIMPLE IRA plans) for the 2009 calendar year. This applies to RMDs payable to plan participants and IRA owners during their lifetimes, as well as RMDs payable to beneficiaries after the IRA owner or plan participant's death. (2009 RMDs from defined benefit plans are not suspended.)

If you reached age 70½ *before* 2009, you would normally be required to take your 2009 RMD no later than December 31, 2009. As a result of the Act, however, you will not have to take that RMD at all. Similarly, if you reached age 70½ *in* 2009, you would normally be required to take your first RMD (relating to 2009) on or before April 1, 2010. As a result of the Act, no distribution is required for 2009, and thus there is no requirement that a distribution be made by April 1, 2010.

However, in both of the above cases, you'll still be responsible for taking an RMD for the 2010 calendar year. You're required to take this payment no later than December 31, 2010.

**Note:** *If you continue to work beyond age 70½, you're generally not required to take RMDs from your employer's retirement plan until you separate from service.*

Because 2009 RMDs are waived, it was necessary for Congress to make some corresponding technical changes to certain other RMD rules:

- Even though you're not required to take an RMD for 2009 from employer retirement plans, you can still take a distribution if you're entitled to under the terms of the plan.

### What about 2008 RMDs?

*While the Act suspends RMDs for 2009, it doesn't make any changes to 2008 RMDs. Unfortunately, these were the distributions that posed the biggest problem for some retirees. RMDs for 2008 are based on December 31, 2007, balances—balances that for many investors dropped precipitously during 2008's severe market correction. And taxpayers in many cases were forced to satisfy these suddenly "inflated" RMDs by liquidating stocks and other securities at their lows.*

*It was hoped that Congress or the IRS would provide relief from these troublesome 2008 RMD requirements. However, that proved not to be the case, and the normal RMD rules apply for 2008: if you reached age 70½ prior to 2008, your 2008 RMD generally had to be taken no later than December 31, 2008. And if you reached age 70½ during 2008, you are generally required to take your 2008 RMD no later than April 1, 2009. Again, these payments are based on your December 31, 2007, account balance.*

Your employer isn't required to treat distributions made during 2009—distributions that would have been considered RMDs but for the Act—as eligible rollover distributions. What this means is that your employer isn't required to offer you a direct rollover option (and won't have to withhold 20% of distributions that aren't directly rolled over). But even if your employer doesn't provide a direct rollover option, you can still take a distribution from the plan and roll it over yourself to another eligible plan or IRA within 60 days.

- In certain cases, beneficiaries are required to withdraw their entire inherited amount from an IRA or retirement plan by the end of the year containing the fifth anniversary of the account owner's death (this is often referred to as the "five-year rule"). For these beneficiaries, the five-year period is determined without regard to calendar year 2009. For example, if an IRA owner died in 2007, then under the Act the five-year period will end on December 31, 2013, rather than December 31, 2012.

### Direct rollovers from employer plans to Roth IRAs

Prior to the enactment of the PPA, taxpayers were allowed to

roll over distributions from Roth 401(k) and Roth 403(b) plan accounts to Roth IRAs without limitation. The PPA expanded this, allowing taxpayers to roll over non-Roth distributions from qualified retirement plans, 403(b) plans, and governmental 457(b) plans to Roth IRAs as well. (Previously, to accomplish this, the taxpayer needed to first roll a distribution over to a traditional IRA, and then convert that IRA to a Roth IRA.)

Because these new rollovers were equivalent to a traditional IRA conversion, the PPA required that all rollovers of retirement plan funds to Roth IRAs were generally subject to the same income limits, marital status requirements, and other tax rules that applied to traditional IRA conversions. For example, no rollover is allowed if the taxpayer's adjusted gross income exceeds \$100,000, or if the taxpayer's federal tax filing status is married filing separately. (The \$100,000 limit is the same whether the taxpayer is single, or married filing jointly.)

However, because of the PPA's language, there was significant uncertainty whether direct rollovers from Roth 401(k) or Roth 403(b) accounts to Roth IRAs were also now subject to the \$100,000 income and marital status limitations--even though they weren't before. The WREERA answered this question by clarifying that rollovers from Roth 401(k) and Roth 403(b) accounts to Roth IRAs are not subject to either the \$100,000 income limit or the marital status requirement.

Note that, beginning in 2010, the income limit and marital status requirements are repealed by the Tax Increase Prevention and Reconciliation Act of 2005 (TIPRA). Therefore, beginning in 2010, any taxpayer, regardless of income level or marital status, can convert a traditional IRA to a Roth IRA, and can roll over non-Roth funds from an eligible employer retirement plan to a Roth IRA.

**Rollovers by nonspouse beneficiaries**

Prior to the PPA, nonspouse beneficiaries (in contrast to spouse beneficiaries) had virtually no rollover rights with respect to amounts inherited from IRA owners and employer retirement plan participants. The PPA partially addressed this problem by allowing nonspouse beneficiaries to roll over distributions from employer retirement plans (including qualified retirement plans, 403(b) plans, and governmental 457(b) plans) directly to IRAs. The IRA can't be the nonspouse beneficiary's own IRA, but must be an "inherited" IRA--for example,

an IRA that's established for "Tom Smith as beneficiary of John Smith." As interpreted by the IRS, plans *could*, but weren't *required* to, offer this direct rollover option to nonspouse beneficiaries.

The WREERA provides that, for plan years beginning after December 31, 2009, plans *must* allow nonspouse beneficiaries to directly roll over employer plan distributions to IRAs (provided all requirements are met). (Prior to 2010, the provision remains discretionary with employers.)

The IRS has also clarified that nonspouse beneficiaries (like spouse beneficiaries) can roll over both Roth and non-Roth employer plan distributions into Roth IRAs. In 2009, beneficiaries can roll over non-Roth distributions from employer plans to Roth IRAs only if the beneficiary meets the \$100,000 income limit, and is not married filing separately. And, as noted above, in the case of nonspouse beneficiaries, a rollover is possible only if the plan permits, and only via a direct rollover.

Rollover of employer plan distributions (non-Roth) to:				
	Traditional IRA--2009	Roth IRA--2009	Traditional IRA--2010	Roth IRA--2010
<b>Spouse beneficiary (plan must allow rollover)</b>	Direct or indirect (60-day) rollover  To own or inherited IRA	Direct or indirect rollover  To own or inherited IRA  Income/marital status requirements apply	Direct or indirect rollover  To own or inherited IRA	Direct or indirect rollover  To own or inherited IRA  No income/marital status requirements apply
<b>Nonspouse beneficiary</b>	Direct rollover only  To inherited IRA only  Only if plan allows	Direct rollover only  To inherited IRA only  Only if plan allows  Income/marital status requirements apply	Direct rollover only  To inherited IRA only  Plan must allow	Direct rollover only  To inherited IRA only  No income/marital status requirements apply  Plan must allow

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