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# employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

## Upcoming Funding Regulations

The IRS and the Treasury Department expect to issue final regulations under [§430](#) and [§436](#) in the near future. The final regulations will cover the measurement of assets and liabilities under §430 and the application of the benefit restrictions of §436 for single-employer defined benefit pension plans. Thus, the regulations will provide guidance on the determination of the funding target and the target normal cost, as well as the determination of the adjusted funding target attainment percentage (AFTAP). Under §436, if the actuary for a plan with a calendar plan year does not certify the AFTAP prior to October 1, the plan must restrict benefits as provided in §436. One such restriction is that no lump sum distributions could be paid with respect to annuity starting dates on or after October 1. If so, then §101(j) of Employee Retirement Income Security Act of 1974, as amended, requires that participants and beneficiaries be notified within 30 days thereafter.

The regulations will generally be effective for plan years beginning on or after January 1, 2010. Many practitioners and plan sponsors have asked whether the regulations will allow changes in the interest rates used for purposes of §430 and §436 for 2010 without having to seek approval from the IRS. This question has been raised because the choices with respect to the interest rates that will be available for 2010 may influence the choices that plan sponsors make for the 2009 plan year. Under §430, plan sponsors may choose to use either a full yield curve (which is based on the average of rates during a specified month) or segment rates (which are based on an average over 24 months). In particular, many plan sponsors may want to use the full yield curve with an applicable lookback month for the 2009 plan year but want automatic approval to change to the segment rates for the 2010 plan year.

The *Employee Plans News (EPN)*, [March 2009, Special Edition](#) addressed the use of the full yield curve for plan years prior to the effective date of the final regulations and stated that plan sponsors could use the full yield curve with an applicable lookback month prior to the effective date of the final regulations. For a calendar year plan, the full yield curve would be the month's corporate bond yield curve for: September 2008; October 2008; November 2008; December 2008; or January 2009, based on data for that month.

In order to assist actuaries in issuing the certified AFTAP for 2009, this *EPN*, *September 25, 2009, Special Edition* is providing the following information with respect to the final regulations:

1. The final regulations will provide automatic approval for a new choice of interest rates for the first plan year beginning in 2010 (regardless of what choices were made for earlier plan years); and
2. For plan years beginning after 2009, the final regulations will not allow the use of the full yield curve with a lookback month as permitted by the *EPN*, *March 2009, Special Edition*.

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## **Additional Guidance on 2009 Waiver of Required Minimum Distributions**

On September 24, 2009, the IRS issued [Notice 2009-82](#) that provides guidance, transitional relief, sample plan amendments and answers to questions related to the waiver of 2009 [required minimum distributions](#) (RMDs) from [defined contribution plans](#) (such as [401\(k\)](#) plans, [403\(b\)](#) plans and certain [457\(b\)](#) plans) and from [individual retirement arrangements](#) (IRAs).

[The Worker, Retiree, and Employer Recovery Act of 2008](#) (WRERA) waives RMDs for 2009. WRERA allows plan sponsors to make plan or contract amendments related to the 2009 RMD waiver up to the last day of the first plan year beginning in 2011 (2012 in the case of a governmental plan) as long as the plan or contract operates as if the amendments were in effect from its effective date. Due to the waiver of 2009 RMDs, distributees may roll over any amount they received from a defined contribution plan that would have been an RMD for 2009 but for WRERA and that otherwise meets the definition of an [eligible rollover distribution](#) (ERD). However, the distribution is not treated as an ERD for purposes of requiring the plan to offer a [direct rollover](#) of that amount, mandatory 20% withholding or providing an ERD [notice](#) to the distributee.

### **Plan Amendments**

Notice 2009-82 provides two sample plan amendments that individual or pre-approved plan sponsors may adopt or use to amend their plans. The amendments permit participants to choose to receive or not receive 2009 RMDs, but only if the distribution(s) are:

- equal to the 2009 RMDs; or
- one or more payments in a series of substantially equal distributions (that include the 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary or at least 10 years.

Depending on which sample amendment a plan chooses to adopt, the plan can either:

- cease making 2009 RMDs unless a participant or beneficiary elects otherwise; or
- continue making 2009 RMDs unless a participant or beneficiary elects otherwise.

Both sample amendments provide direct rollover options (in addition to those already offered by the plan) that plan sponsors can choose to offer. Plan sponsors may need to tailor the sample amendment to their plan's particular terms and administrative procedures and must adopt the amendment no later than the last day of the first plan year beginning on or after January 1, 2011 (January 1, 2012, for governmental plans). The IRS will not treat an employer's adoption of one of these sample plan amendments (including necessary modifications) as affecting their [master and prototype](#) or [volume submitter](#) plan's pre-approved status. Nor will such adoption affect the status of an individually designed plan. Thus, such employers can continue to rely on their favorable [opinion](#), [advisory](#) or [determination letters](#).

### **Transitional Relief for Plan Sponsors**

The IRS recognizes that many plans, due to the enactment of WRERA shortly before the beginning of 2009, were unable to timely modify their administrative procedures to stop, or give participants and beneficiaries the choice to stop, 2009 RMDs. Therefore, the IRS will **NOT** consider a plan to have failed to operate in accordance with its terms merely because during the period beginning on January 1, 2009, and ending on November 30, 2009, the plan's operation conflicts with the adopted sample amendment. This transitional relief is granted whether or not a plan:

- paid distributions that equal the 2009 RMDs or that are one or more payments in a series of substantially equal distributions (that include 2009 RMDs) made at least annually and expected to last for the life (or life expectancy) of the participant, the joint lives (or joint life expectancy) of the participant and the participant's designated beneficiary or at least 10 years;
- gave participants and beneficiaries the option of stopping 2009 RMDs;
- gave participants and beneficiaries the option to continue 2009 RMDs; or
- gave participants the option to directly roll over certain RMD-related distributions described in the adopted sample amendment.

## ***Transitional Relief for Plan Participants and IRA Owners***

For plan participants and IRA owners who have already received 2009 RMDs and the 60-day rollover period has expired, the IRS is extending the period to roll over most of such distributions until November 30, 2009. However, for IRAs, only one distribution per IRA will be eligible for this rollover relief due to the [one-rollover-per-year rule](#), which was unchanged by WREERA.

## ***Additional Guidance***

Notice 2009-82 also contains questions and answers addressing issues raised from the public regarding the 2009 RMD waiver. For example, this additional guidance provides that:

- The deadline for an employee or a beneficiary that had until the end of 2009 to choose between receiving distributions under the 5-year or the life expectancy rule is extended until the end of 2010.
- In plans that permit a [nonspouse designated beneficiary](#) to directly roll over a deceased participant's account balance, the special rule in [Notice 2007-7](#) is modified so that, if the employee died in 2008, the nonspouse designated beneficiary has until the end of 2010 to make the direct rollover and use the life expectancy rule.
- Only for 2009, if an individual receives a plan distribution that includes a 2009 RMD, the portion of the distribution that represents the 2009 waived RMD is subject to the optional 10% withholding rules under [§3405\(b\)](#) and any remaining portion is subject to the 20% mandatory withholding rule of [§3405\(c\)](#) (assuming the distribution otherwise qualifies as an ERD). Any distributions made in 2009 are deemed to consist first of any undistributed RMDs from prior years followed by 2009 RMDs.
- The 2009 RMD waiver does not apply to payments that are part of a series of substantially equal periodic payments under the "[RMD method](#)" (a payment method that satisfies the [§72\(t\)\(2\)\(A\)\(iv\)](#) 10% early withdrawal tax exception).