

March 13, 2009
ALERT: Employers' defined-contribution retirement plans'
required minimum distribution waived for 2009

A recently enacted law allowing older and retired adults a one-year opportunity to recoup some of the losses many have seen in their retirement savings **requires a decision from plan sponsors before 2009 required minimum distributions (RMDs) are made.**

Many older and retired adults saw their retirement savings drop sharply with market fluctuations starting in 2008 and still occurring into 2009. To allow those retirees and soon-to-be-retirees more time to potentially recoup those losses, the Worker, Retiree and Employer Recovery Act (the Act) signed into law December 23, 2008, has waived the required minimum distribution for most defined contribution plans (including 401(k), 403(b), 457(b) and IRA accounts) for one year.

Normally, certain individuals 70½ years of age or older are required to take a minimum distribution from their retirement accounts each year. Under the new legislation, this requirement is suspended for 2009, and unless Congress takes additional action, required minimum distributions will resume for 2010. The legislation allows participants to choose to take their distribution if they wish, but they would be not required to do so. **Payment of distributions required for 2008 (some of which would occur in the calendar year 2009) must still be made to avoid the 50% excise tax.**

However, the waiver of the 2009 RMD is not automatic. **A plan sponsor must decide whether to go ahead with RMDs or make them optional before making any RMDs for 2009.** The two courses of action have very different results and requirements for an employer:

If a plan sponsor chooses to proceed with 2009 RMDs as usual: No action is necessary; the plan sponsor may make distributions to those eligible, but they would not be considered "required" distributions.

If a plan decides to make 2009 RMDs optional:

- An amendment to the sponsor's plan document is required. The amendment may be adopted in 2009; however, it must be adopted by the end of the first plan year beginning on or after January 1, 2011.
- If RMDs will be suspended, the plan must be operated in compliance with all of the waiver provisions of the Act during 2009.
- If the employer chooses to make RMDs optional, all **affected** participants (those over 70½ who would normally have an RMD during 2009) must be notified and asked whether they choose to receive their RMD or not in 2009.
- In most plans, partial distributions are not permitted.

NOTE: This material is provided as a courtesy to you and is not intended as advice specific to your situation. If you have any questions about how the Act applies to your plan, please contact your advisor at Allen, Gibbs & Houlik, L.C. or AGH vice president of employee benefits services Brad Bechtel at brad.becht@aghlc.com or (316) 267-7231.