Retirement Plans BULLETIN

2010 Cost-of-Living Adjustments (COLAs)

UNIVERSAL

The IRS issued news release IR-2009-94 on October 15, 2009, containing the much anticipated retirement savings-related limitations for 2010. These limitations include IRA and qualified retirement plan contribution limits, as well as the individual deferral limits for 401(k), 403(b), governmental 457(b), and SIMPLE plans. The economic indices used to calculate annual limitations—particularly the price of oil—decreased enough during the applicable measuring periods to raise speculation that some 2010 limitations might actually decrease. Though strict reliance on indices might have led to decreases for certain employer-sponsored plan limitations, the IRS announced that for most limitations the governing sections of the Internal Revenue Code provide for increases, but not decreases. Therefore, most annual limitations remain the same as for 2009. Following are the limitations for 2010.

Qualified Employer-Sponsored Retirement Plans

Cost-of-Living Adjustments		
	2010	**2009**
Annual Additions Limit	$49,000	$49,000
Compensation Cap	$245,000	$245,000
Defined Benefit Limit	$195,000	$195,000
Highly Compensated Employee (HCE)	$110,000	$110,000
Key Employee Officer Amount	$160,000	$160,000
Minimum Compensation for SEP Plans	$550	$550
402(g) Salary Deferral Limit	$16,500	$16,500
Catch-Up Contribution Limit	$5,500	$5,500
SIMPLE Salary Deferral Limit	$11,500	$11,500
SIMPLE Catch-Up Contribution Limit	$2,500	$2,500
Taxable Wage Base	$106,800	$106,800

2010 Cost-of-Living Adjustments
Continued on Page 2

NOVEMBER 2009

RMD Waiver Guidance Clarified 3
Final Regulations on HSA Employer Comparable Contributions 5
Get the Finest IRA Education Available—Online! 6
Back to Basics: Hardship Distributions....7
QRP Focus 10
IRA Advisor 11
Test Your Knowledge 12

We make a living by what we get, but we make a life by what we give.
—Winston Churchill

800-346-3860
P.O. Box 979, Brainerd, MN 56401
www.ascensus.com

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Traditional and Roth IRA Plans

Annual limitations for IRA contributions, modified adjusted gross income (MAGI) limits for IRA contribution deductibility and Roth IRA eligibility, and MAGI limits for those seeking an income tax credit for retirement saving contributions are determined differently than those used for determining COLAs for employer plans. Some minor adjustments have been made for 2010.

The IRS did not increase the Traditional/Roth IRA contribution limit for 2010, which currently is $5,000 (plus $1,000 for catch-up contributions, which are not subject to COLAs). The 2010 COLAs are as follows.

Traditional IRA Deduction Modified Adjusted Gross Income (MAGI) Ranges

- Single active participant: $56,000–$66,000
- Married active participant filing a joint income tax return: $89,000–$109,000 (unchanged)
- Married active participant filing a separate income tax return: $0–$10,000 (unchanged)
- Spouse of an active participant: $167,000–$177,000

Roth IRA Contribution MAGI Ranges

- Single individual: $105,000–$120,000 (unchanged)
- Married individual filing a joint income tax return: $167,000–$177,000
- Married individual filing a separate income tax return: $0–$10,000 (unchanged)

Saver's Tax Credit

The indexed adjusted gross income limits associated with the saver's income tax credit for IRA contributions and deferrals in retirement plans are listed below.

2010 Adjusted Gross Income*						Applicable percentage
Joint return		Head of household		All other cases		
Over	Not over	Over	Not over	Over	Not over	
	$33,500		$25,125		$16,750	50
33,500	36,000	25,125	27,000	16,750	18,000	20
36,000	55,500	27,000	41,625	18,000	27,750	10
55,500		41,625		27,750		0

*Adjusted gross income includes foreign earned income and income from Guam, American Samoa, North Mariana Islands, and Puerto Rico.

Test Your Knowledge Solution

Answers reading down: F, I, K, G, B, J, L, C, E, D, A, H

RMD Waiver Guidance Clarified

UNIVERSAL

Shortly after enactment of the Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), many practitioners and industry groups analyzed its provisions and posed questions about how to apply the 2009 IRA and retirement plan required minimum distribution (RMD) waiver provisions. IRS Notice 2009-82, issued September 24, 2009, provided much needed detail on the waiver. As is often the case with such guidance, however, some elements required further clarification; several are described below.

Can Plans Mandate Pay or No-Pay?

Upon WRERA's enactment, many assumed that the decision of whether to take 2009 RMD-equivalent distributions from IRAs or retirement plan accounts would be solely a taxpayer decision. This appeared to be legislative intent because the purpose of the provision was to allow preservation of retirement assets in a hard-hit economy. Some in the retirement plan industry actually lobbied for employer choice, noting that setting a uniform policy would allow administrative simplicity. Notice 2009-82 seemed to bear this out. Its preamble states that "… some sponsors may want to give participants and beneficiaries the choice of whether to continue or stop 2009 RMDs …." Similarly, the two IRS-provided sample amendments contained in Notice 2009-82 were described as for "… those plans that want to give participants and beneficiaries an election between receiving and not receiving distributions …."

The retirement plans industry speculated that employers sponsoring retirement plans might be able to force out RMD-equivalent amounts even though statute does not require that 2009 RMDs be taken. Or, conversely, that employers could set a policy that no RMD-equivalent amounts would be paid out. This policy could leave plan participants or beneficiaries who wished to receive a payout in a bind if no other distribution trigger was available in their plan. Ascensus approached the IRS for clarification, and received confirmation that indeed employers may establish plan-wide mandates to distribute or to retain, and not offer participants a choice.

How Many Rollovers?

The good news is that amounts distributed from employer plans or IRAs are eligible to be rolled over into an employer plan or an IRA by the later of November 30, 2009, or the expiration of the 60-day rollover limitation period. Employer-sponsored plan 2009 distributions may be rolled over with no restriction on the number of such transactions, a benefit to those who have received multiple payments (e.g., monthly or quarterly). Notice 2009-82 does state, however, that the one-rollover-per-12 months rule for IRAs was not modified by WRERA. Therefore, only one 2009 distribution from any given IRA may be rolled over. This could be a significant detriment to IRA holders who received multiple 2009 RMD distributions (e.g., monthly installments) before becoming aware of the 2009 RMD waiver.

Roll Over More Than the RMD Amount?

Sec. IV of Notice 2009-82, entitled "Rollover Relief for Plans," implies that a 2009 distribution that is greater than a "true" RMD could potentially be rolled over in its entirety under the terms of the waiver. The notice states that an amount may be eligible for rollover "if the payments equal the 2009 RMDs or are one or more payments in a series of substantially equal distributions (that include the RMDs) made at least annually and expected to last for the … life expectancy … of the participant and the participant's designated beneficiary, or for a period of at least 10 years."

EXAMPLE: A 71-year-old participant has a $10 million plan balance. Though the RMD divisor from the Uniform Lifetime Table in the RMD regulations indicates a life expectancy factor of 26.5 years, this individual has set up a 10-year payout schedule with his employer. This (for simplicity) would yield annual payouts approximating $1 million per year. His "true" RMD for 2009, however, if using the Uniform Lifetime Table, would be only $377,735. May the entire $1 million 2009 distribution be rolled over?

RMD Waiver Guidance Clarified
Continued on Page 4

As confirmed by an IRS representative, under the provisions of Notice 2009-82 the entire $1 million 2009 payout can be rolled over into an eligible employer plan or to an IRA, even though it exceeds a "true" Uniform Lifetime Table-based RMD by $622,265. Furthermore, this principle applies whether a recipient has been receiving her annually scheduled payout in one payment, or at intervals throughout the year.

Prior-Year RMDs

What constitutes a 2009 RMD, and is thus potentially eligible for rollover? Q&A-8 of Notice 2009-82 states that "[t]he first distributions in 2009 are any RMDs from prior years not yet distributed, followed by 2009 RMDs." This rule is significant because prior-year RMDs—for which there is no waiver—are not eligible for rollover, whereas 2009 RMD amounts are. One obvious amount subject to this rule is first-year 2008 RMDs that a taxpayer was permitted to defer receiving until April 1, 2009. These were required to be received, and included in income if taxable. Only distributions exceeding such amounts are considered 2009 RMDs eligible for rollover treatment.

But what is the treatment of older prior-year RMDs that were not taken if the taxpayer has paid the applicable 50 percent excess accumulation excise tax? Some have asked whether payment of the excise tax might remove these amounts from "prior-year RMD" status for purposes of this rule. Or, despite having paid the 50 percent excise tax, is such a 2009 distribution still considered a prior-year RMD?

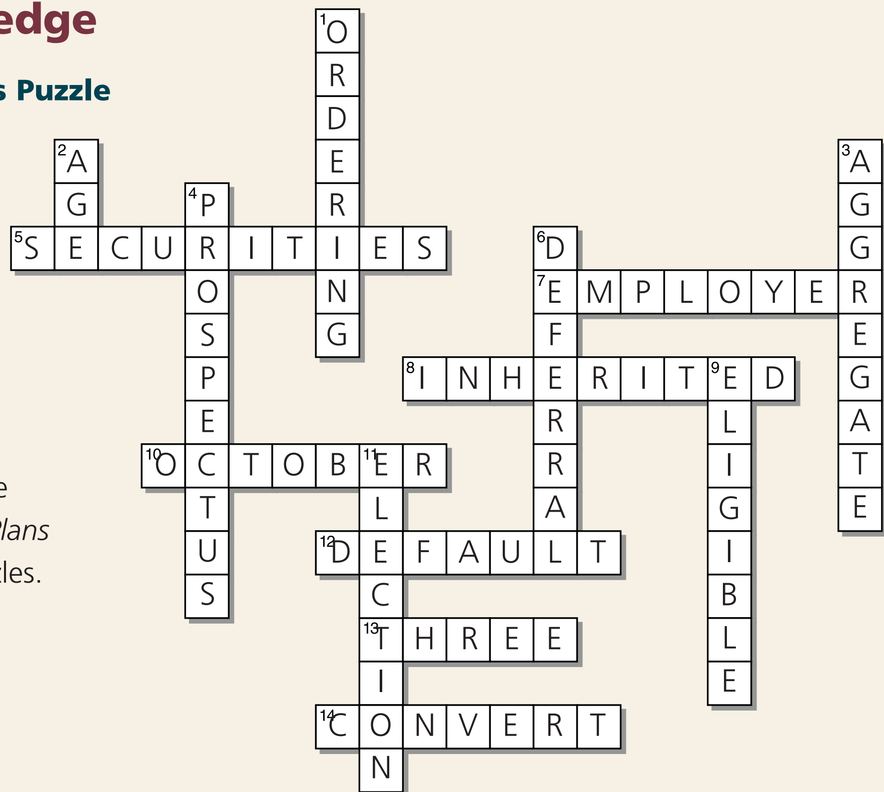
Ascensus has thoroughly examined the RMD requirements found in Treas. Reg. 1.401(a)(9), as well as the rollover restrictions found in IRC Sec. 402(c)(4), and concluded that such prior-year amounts are not eligible for rollover, despite a taxpayer having paid the 50 percent excess accumulation excise tax. ❖

Test Your Knowledge

Answers to Last Month's Puzzle

Thank you to everyone who participated in last month's crossword puzzle, and congratulations to the winner who received one free attendance to a 2009 Ascensus *Fall Forum*.

Be sure to check the last page of each month's *Retirement Plans Bulletin* for new training puzzles.



Final Regulations on HSA Employer Comparable Contributions

HSA

Although employers do not have to meet all the same nondiscrimination testing requirements for health savings account (HSA) contributions that they must meet for qualified retirement plan contributions, they still have a number of nondiscrimination-type rules to understand and comply with. If an employer is going to contribute to HSAs on behalf of its employees outside of a cafeteria plan, the employer must ensure that the contributions are comparable. The IRS continues to issue guidance on HSA comparable contributions, and on September 8, 2009, released final regulations that amend prior final regulations and finalize proposed regulations issued in July 2008. The following information summarizes the final regulations, which are effective for contributions made on or after January 1, 2010.

Calculating Comparable Contributions

Employers may contribute up to the maximum annual HSA contribution amount (based on the employee's high deductible health plan (HDHP) coverage) to the HSAs of those employees that are able to receive an HSA contribution during the last month of the taxable year. This includes employees who become HSA-eligible after January 1 or eligible employees who begin employment after January 1. If an employer chooses to make HSA contributions on behalf of its employees, it must do so on an equal and uniform basis. For example, if an employer contributes the maximum HSA contribution amount for an employee who became HSA-eligible after January 1 (rather than prorating the contribution amount for the months eligible), the employer must make comparable contributions for all comparable participating employees who became HSA-eligible after January 1.

Exception for Nonhighly Compensated Employees

Employers making HSA contributions may not discriminate against nonhighly compensated employees (nonHCEs)—meaning that contributions to HCEs generally may not exceed contributions for nonHCEs. These regulations clarify, however, that employers may make larger contributions for nonHCEs than for HCEs. The comparability rules still apply within each group. So if an employer contributes to the HSA of one nonHCE, the employer must make comparable contributions to the HSAs of all nonHCEs.

IRC Sec. 414(q) defines an HCE as any employee who 1) was a five-percent owner at anytime during the year or the preceding year, or 2) for the preceding year had compensation in excess of $110,000 (for 2009 and for 2010). By employer election, an employee also may be considered an HCE if he is in a group consisting of the top 20 percent of employees ranked by compensation.

Categories of Employees for Comparability Testing

Employers may divide groups of comparable employees (those with self-only or family HDHP coverage) into additional subcategories (such as HCEs and nonHCEs and full-time and part-time employees) for purposes of making comparable contributions. Treas. Reg. 54.4980G-4 allows employers to further subdivide groups of comparable employees with family coverage into additional categories: "self plus one," "self plus two," and "self plus three or more." An employer may vary the contribution amounts made to the various categories, but contributions to the "self plus two" category cannot be less than the employer contribution to the "self plus one" category. Likewise, the contribution to the "self plus three or more" category cannot be less than the contribution to the "self plus two" category.

These final regulations clarify that the comparability rules are not violated if, for example, an employer makes a larger contribution to the "self plus two" category than the "self plus one" category—even if all the employees of the "self plus two" category are HCEs and all of the employees of the "self plus one" category are nonHCEs.

Final Regulations on HSA Contributions
Continued on Page 6

Qualified HSA Distributions

A qualified HSA distribution is a direct rollover of flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) assets to an HSA. If an employer offers qualified HSA distributions to eligible employees who are covered under the employer's HDHP, the employer is not required to offer qualified HSA distributions to eligible employees who are covered under an HDHP that is not employer-provided. But if an employer offers qualified HSA distributions to an eligible employee who is covered under an HDHP that is not employer-provided, the employer must offer qualified HSA distributions to *all* eligible employees who have an HDHP (even if the HDHP is not employer-provided).

Excise Tax and Form Requirements

If an employer makes noncomparable HSA contributions, the employer may be subject to an excise tax equal to 35 percent of the total amount contributed for the year of the failure. Beginning January 1, 2010, employers who must pay the excise tax also must file IRS Form 8928, *Return of Certain Excise Taxes Under Chapter 43 of the Internal Revenue Code*, on or before April 15 of the year following the year in which the employer made the noncomparable contributions. Employer tax return filing extensions do not extend the deadline for filing Form 8928.

Summary

Noncomparable contributions may prove to be a costly mistake for employers. Financial organizations and employers should keep up to date on the guidance for comparable contributions to ensure that employers do not violate the comparability rules and suffer a 35 percent penalty. ❖

Get the Finest IRA Education Available—Online!

It's not too early to start making plans for your IRA education in 2010. The *IRA Online Institute*, delivered in partnership with the American Bankers Association (ABA), is one of Ascensus' most popular training programs—it fills up quickly. This internet-based education is an intensive 12-week program, developed and supported by experienced, professional instructors. The *IRA Online Institute* provides in-depth information on the operational aspects of IRAs (Traditional and Roth), simplified employee pension (SEP) plans, and savings incentive match plans for employees of small employers (SIMPLE) plans. Additionally, the coursework is designed to assist individuals of financial organizations who are planning to test for the Certified IRA Services Professional (CISP) designation or the Certified IRA Professional (CIP) designation.

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Note that Ascensus submits the *IRA Online Institute* for credit approval to the Institute of Certified Bankers and to the National Association of Federal Credit Unions.

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Back to Basics: Hardship Distributions

401(k)/403(b)

Because of current economic difficulties in the U.S., many plan participants are now exploring the various distribution options available in their retirement plans. Lately, even the IRS has acknowledged this trend by running articles in its newsletters (the *employee plans news* and the *Retirement News for Employers*) on basic operational concerns when making hardship distributions. A hardship distribution allows a participant access to her retirement savings while she is still working and before she might otherwise be eligible to take a distribution. Each plan must specifically allow for hardship distributions, so employers must be sure to follow plan provisions to avoid disqualification of the plan.

Overview

If 401(k) or 403(b) plan documents permit, participants may receive distributions of their elective deferrals before reaching a triggering event if they meet the requirements of a financial hardship. Hardship distributions may include earnings on deferrals and qualified nonelective and qualified matching contributions, but only such amounts accrued as of December 31, 1988, or if later, the end of the last plan year ending before July 1, 1989. (For distributions of employer contributions and match contributions, see the QRP FOCUS in this issue.) The limit on elective contributions available for hardship distribution is an aggregate limit that takes into account both pretax elective deferrals and designated Roth deferrals. Any distribution from a designated Roth account—including a hardship distribution—must be a pro rata distribution of basis and earnings. Because of the complexity this proration brings to a distribution of deferrals only (and not earnings), the IRS has stated that a plan can allow all hardship distributions to be taken from only the pretax deferral account, even if Roth deferrals are used to calculate the amount available for the hardship distribution.

According to IRS regulations, hardship distributions of elective deferrals must be limited to situations when a participant can demonstrate an “immediate and heavy financial need” in addition to demonstrating that a hardship distribution of elective deferrals is necessary to satisfy such financial need. To meet this criteria, many 401(k) or 403(b) plan documents contain the following “deemed” hardship provisions (prototype documents must meet the following safe-harbor provisions).

Deemed Immediate and Heavy Financial Need

A distribution is deemed to be on account of an immediate and heavy financial need if the distribution is for one of the following reasons.

- **Medical Care**
  Medical care includes medical care, whether or not already received, that would otherwise be deductible on a taxpayer’s federal income tax return, without regard to whether the expenses exceed 7.5 percent of income. The medical care expenses can be incurred by the participant, his spouse, or dependent (or primary beneficiary, plan permitting).

- **Principal Residence**
  Expenses related to a principal residence only qualify if the hardship distribution is used to purchase a participant’s principal residence. This does not include distributions taken to help pay mortgage payments.

- **Tuition and Related Educational Fees**
  Tuition and related educational fees include amounts related to the post-secondary education needs of the participant, his spouse, or dependent (or primary beneficiary, plan permitting). Participants may take hardship distributions for anticipated educational expenses that may occur up to 12 months beyond the time of distribution.

Hardship Distributions
Continued on Page 8

- **Preventing Eviction or Foreclosure**
  A distribution necessary to prevent the eviction of the participant from her principal residence or the foreclosure on the mortgage for that residence qualifies as a hardship distribution.

- **Funeral Expenses**
  Participants may take a hardship distribution for burial or funeral expenses incurred for the participant's parent, spouse, children, or dependents (or primary beneficiary, plan permitting).

- **Casualty Repair**
  Participants may take a hardship distribution to pay for the repair of damage to the participant's principal residence that would qualify for casualty deduction without regard to whether loss exceeds 10 percent of adjusted gross income.

Clarifications on Deemed Needs

Medical expenses and post-secondary educational expenses for a participant's dependent are deemed heavy financial needs without regard to changes made to the definition of dependent under the Working Families Tax Relief Act of 2004. But the definition of dependent for medical expenses is expanded to include a noncustodial child who would qualify under the special rule of IRC Sec. 152(e).

The final 401(k) regulations added funeral expenses and casualty repair to the list of deemed immediate and heavy financial needs in 2004.

The regulations do not provide specific guidance regarding documentation and employee verification for proof of a hardship, but do emphasize the plan administrator's duty to keep records necessary to demonstrate compliance with plan qualification rules.

In 2006, PPA broadened the availability of certain hardship distributions to include a financial hardship of the participant's primary plan beneficiary, irrespective of whether the beneficiary is a spouse or dependent. This is an optional plan feature. Notice 2007-7 provides that a primary beneficiary does not have to be the sole named beneficiary, but cannot be a secondary or contingent beneficiary to qualify. There do not appear to be any restrictions on how often a participant may change the named primary beneficiary and still qualify for this feature.

Deemed Necessary to Satisfy Financial Need

When not using the "deemed" (safe harbor) method of determining hardship needs, an employer must consider all of a participant's financial resources to ascertain whether a participant needs a hardship distribution of his elective deferrals to satisfy an immediate and heavy financial need. If the following conditions are met, however, a hardship distribution of elective deferrals is deemed necessary, thereby alleviating the need for the employer to consider all of a participant's financial resources.

- **Distribution Not to Exceed Financial Need**
  Although the amount distributed may not exceed the participant's financial need, the amount may include any amounts necessary to pay federal, state, and local income taxes (and any penalties) that the participant is likely to incur as a result of the distribution.

- **Employee Must Obtain All Other Distributions/Loans**
  Under deemed hardship provisions, an employee must receive any other distributions (including in-service distributions) or loans available under the plan before the hardship distribution of deferrals is deemed necessary.

- **Freeze on Deferrals**
  Under this provision, the employee cannot make any elective deferrals (or employee after-tax contributions) under all plans of the employer for a period of six months following the hardship distribution of elective deferrals. (This does not prohibit an employee from making deferrals under an IRC Sec. 125 cafeteria plan.)

Hardship Distributions
Continued on Page 9

Withholding

Hardship distributions of elective deferrals are ineligible for rollover. Consequently, the mandatory 20 percent withholding for eligible rollover distributions does not apply. Hardship distributions are subject to the withholding requirements for nonperiodic distributions: the payer is required to withhold 10 percent at the time of distribution unless the recipient has made an election not to withhold or to withhold more than 10 percent.

Relief for Plan Administrators

Notice 2000-32 clarified three key issues relating to pre-1989 contributions and earnings, consideration of a distribution triggering event other than hardship, and the allocation of basis for a distribution.

Pre-1989 Contributions and Earnings

Under Notice 2000-32, for purposes of determining what portion of a distribution is eligible for rollover, if a plan's records do not segregate a participant's pre-1989 contributions and earnings that are treated as deferrals from other pre-1989 amounts, then the plan must treat all pre-1989 contributions and earnings as deferrals, and thus as ineligible for rollover if distributed as a hardship distribution.

Subsequent Distribution Triggering Event

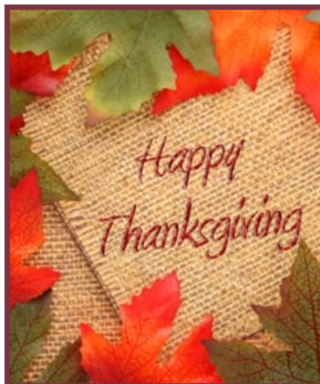
Although Notice 99-5 provided that distributions of elective deferrals taken because of hardship would be eligible for rollover if another distribution triggering event occurred (e.g., separation from service or attainment of age 59½), if a participant begins distributions of elective deferrals because of hardship and continues distributions after another distribution triggering event has occurred, Notice 2000-32 clarified that a plan administrator may continue to treat such distributions as ineligible for rollover treatment.

Allocation of Basis

Notice 2000-32 clarified that if a portion of a distribution cannot be included in gross income (i.e., is a return of basis), and the distribution also includes amounts taken because of hardship, plan administrators may use any reasonable method to allocate the basis between the amounts eligible for rollover and those that are ineligible for rollover. Plan administrators must consistently apply this relief.

Summary

Hardship distributions are one of the most common distribution options that employers use to make plan assets available to participants with financial difficulties. Because of the IRS regulations, employers should have specific operational procedures in place to process hardship requests. An employer may wish to review the IRS information found at http://www.irs.gov/pub/irs-tege/fall09.pdf for a list of items that an employer should consider before completing a hardship distribution. ❖



Thanksgiving Wishes

The associates of Ascensus wish you a happy Thanksgiving. The offices at Ascensus, including the *800 Consulting* service, will be closed on Thursday, November 26, 2009, in celebration of the holiday. The offices will reopen for business on Friday, November 27, 2009.

QRP FOCUS

Ryan Przybilla
FEATURED CONSULTANT

Please send topics for Ascensus' QRP Focus column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

QRP FOCUS ON IN-SERVICE DISTRIBUTIONS

Q Can a participant in a profit sharing plan (including a 401(k) plan) take a distribution while she is still employed?

A In addition to the standard triggering events associated with defined contribution plans (e.g., death, disability, severance of employment, attainment of normal retirement age, and plan termination), profit sharing plans may allow plan participants to take what are often referred to as "in-service distributions." An in-service distribution provision in a profit sharing plan permits employees to take distributions of employer contributions (including matching contributions related to a 401(k) feature) from the plan before the participant incurs a triggering event. The maximum amount that an employee may withdraw as an in-service distribution under any circumstances is the vested portion of her account balance. The amount, however, may be further limited depending on the length of time the employee has been a participant in the plan and depending on whether the in-service distribution is taken because of a financial hardship.

Q What portion of the vested balance may an eligible participant receive?

A Unless a plan participant receives an in-service distribution for financial hardship, the portion of his vested account balance that is eligible for an in-service distribution depends on the length of time the employee has participated in the plan. If an employee has participated in his employer's profit sharing plan for less than five years, the employee cannot receive an in-service distribution of assets that have been credited to his account for less than two years at the time of the in-service distribution. This restriction, sometimes referred to as the "Two-Year-Bake Rule," states that the dollars must, in essence, "bake" in the employee's account for two years before he is eligible to receive the dollars as an in-service distribution if the employee has not participated in the plan for five or more years. If an employee has been a participant in his employer's profit sharing plan for five or more years, the Two-Year-Bake Rule does not apply.

If an employee requests an in-service distribution of profit sharing or employer matching contributions for a financial hardship, the plan need not restrict the amount of the employee's vested account balance in accordance with the Two-Year-Bake Rule. The employer will, however, frequently limit the amount of the in-service distribution to the lesser of the employee's vested balance in her individual account, or the amount of the employee's immediate and heavy financial need. The plan document will define the circumstances that constitute a hardship under the terms of the plan.

Note, however, that an employer could set a specific age (any age) as a distribution trigger for receiving benefits. The employer will, thereby, bypass the Two-Year-Bake Rule. See Revenue Ruling 80-276 for more information.

Q Can a participant in a 401(k) plan take a distribution while she is still employed?

A The in-service distribution restrictions discussed above apply to the profit sharing accounts (and the matching contribution accounts) of 401(k) plans. Elective deferrals under a 401(k) plan, however, are subject to more restrictive provisions than profit sharing dollars. Please see the article in this *Retirement Plans Bulletin* titled "Back to Basics: Hardship Distributions" for more information. ❖

IRA Advisor

Lori Scharenbroich
FEATURED CONSULTANT
Ascensus *800 Consulting* Service

Please send questions for Ascensus' IRA Advisor column to the following address: Editor, *Retirement Plans Bulletin*, Ascensus, Inc., P.O. Box 979, Brainerd, MN 56401. The editor does not guarantee that questions will appear in the column and regrets that no personal responses can be sent.

Q We have several IRA holders who receive their required minimum distributions (RMDs) in monthly installments. Because the legislation that waived the 2009 RMDs was released so late last year, we were unable to avoid processing these distributions in 2009. Consequently, the IRA holders received their 2009 RMDs. May an IRA holder roll over these distributions into an IRA?

A This is a common concern for many financial organizations and IRA holders. The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA), enacted in December 2008, was passed too late for many financial organizations to modify automatic RMD processing and to give IRA holders a chance to decide how to proceed.

Notice 2009-82, released September 24, 2009, provides clarification on these issues. Notice 2009-82 allows IRA holders to roll over RMDs by the later of November 30, 2009, or the end of their 60-day period. Notice 2009-82 also emphasizes, however, that only one distribution per IRA may be rolled over—which puts those who took installments at a disadvantage. Additionally, Notice 2009-82 clarifies that distributions in 2009 first include any undistributed RMDs from previous years (these do not have rollover relief), then the 2009 RMD.

EXAMPLE: Cindy Smith, age 72, received distributions of $4,000 in January 2009, $2,000 in February 2009, and $1,000 in March, April, and May 2009. Cindy's first RMD was due for 2008 (by April 1, 2009) and was $6,000. Cindy's 2009 RMD amount would have been $3,000.

Following the guidance of Notice 2009-82, Cindy may roll over only the $1,000 March 2009 distribution by November 30, 2009. (The $4,000 January 2009 and $2,000 February 2009 distributions are considered her 2008 RMD and are not eligible for rollover. The April and May 2009 distributions represent her 2009 RMD, but were taken in subsequent distributions and are not eligible for rollover because of the one-rollover-per-12 month rule.)

Q Has the December 31, 2009, election deadline for a designated beneficiary been extended?

A Yes. A beneficiary generally must elect a method of payment (life expectancy payments or the five-year rule) by the earlier of December 31 of the year life expectancy payments are required to start, or December 31 of the year containing the fifth anniversary of death. Because of the 2009 RMD waiver, beneficiaries whose applicable deadline is December 31, 2009, have a one-year extension and must make such election on or before December 31, 2010.

Q An IRA holder is taking substantially equal periodic payments using the "RMD method" to calculate distributions. Is he still required to take a distribution in 2009?

A Yes. Substantially equal periodic payments (taken by those under age 59½ to avoid the 10 percent early distribution penalty) are not eligible for a 2009 suspension of distributions, even if they are calculated using the safe harbor "RMD method." ❖

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Test Your Knowledge

Test your knowledge of this month's edition of the *Retirement Plans Bulletin*. Match the correct term in the left column with the description in the right column (taken from the articles within this issue). The answer key is on page 2.

A. IRA Online Institute
B. In-Service Distribution
C. Two-Year Bake Rule
D. Hardship Distribution
E. Cost-of-Living Adjustments
F. Qualified HSA Distribution
G. Comparable Contribution
H. One-Rollover-Per-12-Months Rule
I. 60-Day Rollover Period
J. Nonperiodic Distributions
K. Ordering Rules
L. Beneficiary Election Deadline

______ This is a direct rollover of flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) assets to an HSA.

______ This period has been extended to November 30, 2009, for distributions that would have been 2009 RMDs and that were taken before October 2, 2009.

______ When a 2009 distribution includes any previously undistributed RMD amount, these rules determine whether the distribution includes a 2009 RMD.

______ If an employer contributes the maximum HSA contribution amount to the HSA of an employee who became HSA-eligible after January 1, the employer must make this to the HSAs of all comparable participating employees who became HSA-eligible after January 1.

______ Profit sharing plans (including 401(k) plans) may allow plan participants to take this distribution of employer contributions from the plan before the participant incurs a triggering event.

______ Hardship distributions are subject to the withholding requirements for ____________________.

______ This deadline is the earlier of December 31 of the year life expectancy payments are required to begin, or December 31 of the year containing the fifth anniversary of death.

______ This rule states that the dollars must be left in the employee's account for two years before he is eligible to receive the dollars as an in-service distribution if the employee has not participated in the plan for five or more years.

______ These limitations for IRAs and employer-sponsored plans, for the most part, stayed the same from 2009 to 2010.

______ These distributions must be deemed to be on account of an immediate and heavy financial need.

______ This Internet-based education is an intensive 12-week program, developed and supported by experienced, professional instructors.

______ Notice 2009-82 states that this rule remained unchanged by WRERA.