

To: IRA Custodians/Trustees
From: James M. Carlson, President/Attorney
Date: December 23, 2008
Subject: Need For Revised RMD Notices for 2009

Whatever 2009 RMD Notice(s) you were planning to send to your 70½ and older clients will no longer work. We had written eight (8) various versions of a 2009 RMD Notice. These no longer can be used. We have created two new 2009 RMD Notices to make clear to RMD clients that because of the enactment of the "Worker, Retiree, and Employer Recovery Act of 2008," there is no required distribution for 2009. Version #9 of Form 62 is to be used for living account-holders and version #10 of Form 62 for inheriting IRA beneficiaries.

We expect the IRS will be giving guidance within the next 10-15 business days on how the new law impacts an IRA custodian's RMD Notice requirements. We will keep you informed. I realize that many of you like to send your RMD Notices out the first week of January. We strongly recommend postponing the furnishing of your 2009 RMD Notices until the IRS has issued its guidance. President Bush signed this bill into on December 23, 2008.

Until the IRS issues its guidance, here is our recommended RMD administrative approach.

An IRA custodian should still plan to furnish a 2009 RMD notice by January 31, 2009. IRS rules require the RMD notice to cover three items of information.

1. item #1 was to state the required distribution amount for 2009. This will be \$0.00.
2. Item #2 was to state the deadline for a person taking his or her RMD. With the waiver, there is no deadline.
3. Item #3 was to inform the IRA accountholder that the IRA custodian would be completing the 2008 Form 5498 by checking box 11 to show that the accountholder was subject to the required distribution rules for 2009.

It will be interesting to see if the IRS rules that an IRA custodian may either check box 11 because most IRA custodians will have already programmed their software to check this box or the IRS may allow the box to be left unchecked because there is no RMD for 2009. We can see the IRS adopting either approach, but we tend to think the IRS will allow the box to be checked. Since the 5498 Forms are not filed until May, there is not the time pressure there is with respect to the RMD Notice, with a due date of January 31, 2009.

You will also want to review what form or forms your 70½ and older clients have completed and then decide what administrative steps are to be taken with respect to the periodic distribution schedules they have established. The majority of your clients will have instructed you that they were to be paid only their required distribution. In this situation, you will not make any 2009 distribution to an individual unless he or she instructs that he or she wants to take a non-required distribution. You will want to communicate this approach to your clients. CWF's version #9 will do this.

For those 70½ and older accountholders who have established a periodic distribution schedule exceeding the RMD amount, you should continue to follow such schedule unless the individual would instruct you that he or she wished to revise the periodic distribution schedule. You will want to communicate this policy or approach also. The same two approaches apply to an inheriting IRA beneficiary. Remember that the IRS does not require an IRA custodian to send an RMD Notice to an inheriting IRA beneficiary. You do it for customer service reasons and for limiting liability reasons. We certainly recommend sending RMD Notices to beneficiaries.

Please call us if you have any questions. We will be sending our platform clients these new versions of the Form 62 very soon. We will also have these forms available in print format in the same time frame.