

# THE Pension Digest

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## Special IRA Rollover Relief and Additional 2009 RMD Guidance for IRAs

The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) contained a law change (section 201) waiving required minimum distributions from IRAs and retirement plans that hold participant benefits in individual accounts for 2009. This IRS issued Notice 2009-9 on February 2, 2009 modifying the reporting requirements applicable to RMDs from IRAs to reflect the RMD waiver rule. The original reporting rules had been set forth in Notice 2002-27. In 2010, the original rules will again apply.

The IRS recently issued Notice 2009-82. It was set forth in Internal Revenue Bulletin 2009-41 dated October 13, 2009. This guidance was primarily written for employer sponsored pension plans. However, Notice 2009-82 also set forth guidance for IRAs.

The purpose of this article is to discuss the IRA guidance.

1. Special IRA Rollover Relief. The IRS has chosen to grant special rollover relief to IRA accountholders who were paid their 2009 RMD distributions during the period of January 1 to October 1, 2009. It does not matter if the individual knew or understood at the time the distribution was received that a last

minute law change enacted in December of 2008 meant that all RMDs for 2009 had been waived. The IRS has granted the following special relief. If a person was paid his or her RMD during the period of January 1 to October 1, 2009, then he or she has until November 30, 2009, to rollover all or some portion of the distribution. This relief is obviously retroactive. A person who received a distribution in January of 2009 is able to do a rollover in November of 2009 even though this rollover is taking place long after the 60 day period has passed.

Why is the IRS being "nice" and allowing such rollovers long after the 60 days have passed?

There were some accountholders who did not know about the law change waiving RMDs for 2009 until later in the year. These individuals were paid their required distributions. Some would have elected to not be paid their required distribution if they would have been told that RMDs were waived for 2009.

An IRA accountholder was eligible to rollover his or her distribution because it was not an RMD since all RMDs had been waived for 2009. Many of these individuals learned

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about the law change more than 60 days after they received the distribution. They were ineligible to rollover this distribution.

This rollover relief also applies to an individual who voluntarily was paid an amount equal to what would have been his or her 2009 RMD. That is, the individual knew at the time that he or she did not have an RMD for 2009, but still elected to take a distribution. If this individual has changed his or her mind and now wishes to undo the distribution, he or she may do so by rolling over the funds by November 30, 2009.

This rollover relief does not extend to any amount in excess of the individual's RMD for 2009. For example, an individual who had a required distribution of \$2,000, but who withdrew \$3,000 in February of 2009, is eligible to rollover \$2,000 as long as he does so by November 30, 2009. He cannot rollover the \$3,000.

If a person was paid his or her distributions after October 1, 2009, the person will not need the special relief since he or she has 60 days in which to complete the rollover. For example, John Doe withdraws his 2009 RMD amount on October 2, 2009, his 60-day period will end on November 30, 2009. Or, he withdraws his 2009 RMD amount on October 5, 2009, then his 60-day period will end on December 3, 2009.

Under existing tax law, the IRS has the authority to waive the 60-day period where the failure to do so would be against equity or good conscience, such as in the event of a casualty, disaster, or other event beyond the IRA accountholder's control. The IRS was late in furnishing needed guidance. The IRS concluded it was equitable to extend the 60-day rollover period until November 30, 2009. However, the IRS has not been given the authority to waive the one-rollover-per-year rule or other rules restricting rollovers. Therefore, if an IRA accountholder received more than one distribution from his or her IRA in 2009, no more than one of

these distributions (on a per plan agreement basis) will be eligible for this rollover relief.

If a person in 2009 had an IRA with respect to which there were untaken RMDs from prior years, the first distributions in 2009 are the RMDs from the prior years. These amounts are ineligible to be rolled over. Once those are distributed, the subsequent distributions would be the 2009 RMDs. The 2009 RMD could qualify to be rolled over into the same or a different IRA.

2. The IRS expressly states that this special rollover relief does NOT apply to nonspouse beneficiaries. Since 1983 a nonspouse has had no legal right to rollover a distribution from a decedent's IRA or an inherited IRA to another inherited IRA or to their own IRA. Internal Revenue Code section 408(d)(3)(C) expressly denies rollover treatment for distributions from inherited IRAs. WRERA 2008 did not change this law and the IRS does not have the authority to create an exception.

Apparently, there are some IRA consultants and IRA custodians within the IRA industry stating an IRA beneficiary who was paid his or her beneficiary RMD amount in 2009 has the right to rollover this distribution because of Notice 2009-82 or for some other reason. We at CWF disagree. The IRS makes the express statement - the restrictions on rollovers by nonspouse beneficiaries have not been waived. See page 493 of Internal Revenue Bulletin 2009-41. We suggest that any beneficiary be very cautious in deciding if he or she will follow advice that such a rollover is permissible. A person who makes an impermissible rollover contribution has made an excess contribution and the 6% excise tax will be owed for each and every year the excess amount remains in the inherited IRA.

It is possible that an IRS official gave some IRA industry workers a preliminary opinion that this "rollover" relief would also be extended to distributions to inheriting beneficiaries. However, we believe the IRS looked at the law, and determined

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it had no authority to waive the express statutory law disallowing the rolling over of an inherited IRA distribution. We at CWF certainly could be wrong, because sometimes the IRS does adopt some strange tax positions. In this situation, however, we don't believe the IRS will be issuing additional guidance to allow nonspouse beneficiaries to rollover an RMD distribution.

If there are IRA beneficiaries who thought they would have this rollover right and they made such a rollover, they now need to correct their erroneous rollover as an excess contribution. If your institution allowed them to make such rollovers, you will need to work with them to correct the situation.

3. A spouse beneficiary does qualify for the special rollover relief under Notice 2009-82 as discussed above under item #1. The surviving spouse must rollover the inherited IRA funds into his or her own "personal" IRA. The inherited IRA funds cannot be rolled over into an inherited IRA for the surviving spouse.
4. The IRS has indicated that IRA plan agreement forms do not presently need to be amended for the RMD waiver law change. The IRS has indicated it may furnish further guidance in the future covering the need to amend the IRA plan agreement for this RMD waiver reason and other reasons.

CWF Note. CWF forms already contain a provision waiving the 2009 RMDs. We believed adding this provision was prudent. CWF IRA plan agreements do not yet contain the special rule allowing the rolling over of a 2009 RMD distribution occurring between January 1, 2009 to October 1, 2009 by November 30, 2009. We will be adding this provision in the very near future.

The IRS has indicated it will be issuing revised traditional IRA plan agreement forms (Form 5305, 5305-A) by January 11, 2010 and revised Roth IRA plan agreement forms (Form 5305-R and 5305-RA) by April 30, 2010. CWF expects the IRS will pro-

vide additional guidance explaining when such new forms will be required to be used for new and existing IRA accountholders.

5. When an IRA accountholder dies, an inheriting IRA beneficiary must make certain elections by certain deadlines.

If an IRA accountholder died during 2008, then under the life expectancy rule, the beneficiary is required to commence distributions by December 31 of the following year or December 31, 2009. Since RMDs are waived for 2009, this commencement deadline changes to December 31, 2010. For those accountholders who died prior to 2008, then under the life distribution rule, the beneficiary has no RMD for 2009. The beneficiary will need to take his or her 2010 RMD by December 31, 2010 and each subsequent year's RMD by December 31 of such year.

6. Section 201 of WRERA provides a special rule when the 5-year rule applies for post-death distributions. The 5-year period is determined without regard to 2009. For example, if an IRA accountholder died during 2004, and the inheriting beneficiary had elected the 5-year rule, then the deadline for closing the IRA will change from December 31, 2009 to December 31, 2010. And, if an IRA accountholder died during 2005, then the deadline for closing the IRA will be December 31, 2011 since the 5-year period does not include 2009.
7. On or after January 1, 2007, an inheriting non-spouse beneficiary of an employer plan permitting direct rollovers to an inherited IRA, has the right to change from the 5-year rule to the life distribution rule if two rules are met. First, the nonspouse beneficiary of the inherited IRA must be the same beneficiary as under the plan. Secondly, the plan funds must be directly rolled over before the end of the year following the year of death. This means, a nonspouse beneficiary of a plan partici-

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pant who died in 2008 and who had first elected the 5-year rule, would have had to make the change to the life distribution rule by December 31, 2009. With the RMD waiver for 2009, this deadline changes to December 31, 2010.

8. The rule waiving the 2009 RMD does NOT help the person who has set up a substantially equal periodic payment schedule pursuant to Code section 72(t) by using the RMD method as described in Notice 89-25 and Rev. Rul. 2002-62. Such a distribution is a substantially equal periodic payment distribution and is not an RMD distribution. Any person who fails to take his or her substantially equal periodic payment distribution because he or she believes the RMD waiver applies to this situation is mistaken. He or she will be subject to the tax penalties associated with failing to take or modifying a substantially equal periodic payment schedule.

9. The IRS makes clear that section 201 of WRERA and the special relief granted by Notice 2009-82 only provides relief from certain RMD deadlines and related rollover requirements. It does NOT change the following deadlines or other rules:

A. September 30th of the year following the accountholder's death is used to determine who is a designated beneficiary for RMD purposes;

B. October 31st of the year following the year of death is still the deadline for a trustee to furnish certain information to see if the trust will qualify to use the life distribution rule;

C. The deadline for qualifying to use separate accounting is still the last-day-of-the-year;

D. The one-rollover-per-year rule is not changed in any way;

E. The rule not allowing nonspouse IRA beneficiaries to rollover funds into another or the same IRA is not changed in any way; and

F. The rule restricting the ability to rollover after-tax amounts from an IRA to certain plans continues to apply and is not changed by Notice 2009-82.

Summary. There will be IRA accountholders who will wish to take advantage of this special IRA RMD relief. That is, they are allowed to do a rollover of their 2009 RMD amount even though they failed to comply with the 60-day rule. They will need to act quickly. The rollover must be completed by November 30, 2009. They must comply with the one-rollover-per-year rule. An IRA custodian will want to consider whether it sends a notice of this special rollover relief to all of your RMD accountholders or just to those who took a distribution earlier in the year. CWF has created a special Rollover Certification Form to handle this situation. If your financial institution subscribes to CWF's IRA FormSystem, it will be sent to you by November 7. Other financial institutions may order this form by calling CWF at 1-800-346-3961 or online at [www.pension-specialists.com](http://www.pension-specialists.com). The cost of the form is \$10.00. ♦

## Certification for Rollovers from an IRA, SEP-IRA, or SIMPLE-IRA to an IRA Pursuant to Special IRA Rollover Relief Under Notice 2009-82

### To: Custodian/Trustee

Name \_\_\_\_\_ Date: \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

### From: ☐ Accountholder or ☐ Inheriting Spouse Beneficiary (Check as Applicable)

Name \_\_\_\_\_ Phone: Home \_\_\_\_\_  
Home Address \_\_\_\_\_ Phone: Work \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_ SSN \_\_\_\_\_  
County \_\_\_\_\_ Date of Birth \_\_\_\_\_ Plan No. \_\_\_\_\_

**Re: Irrevocable election to make an IRA rollover contribution in the amount of \$\_\_\_\_\_.**

#### Distributions from an IRA, SEP-IRA or SIMPLE-IRA for Rollover to an IRA.

I hereby certify that the cash or the property I contributed to the IRA referenced above qualifies as a rollover contribution pursuant to Internal Revenue Code section 408(d)(3), the applicable regulations, and Notice 2009-82. If I am the beneficiary of my deceased spouse's IRA, I certify to all of the following except item #1. If I am the IRA accountholder, I certify to all of the following.

1. I will attain age 70½ or older in 2009;
2. I received a distribution of my 2009 RMD in 2009. This amount was \$\_\_\_\_\_. I am rolling over the amount of \$\_\_\_\_\_ which is equal to or less than the RMD amount.
3. I am making this rollover contribution on or before November 30, 2009.
4. I am not rolling over any prior year (before 2009) RMD.
5. I understand the law allows me to do one-rollover-per-year for each IRA plan agreement. I certify my rollover complies with this rule. See the explanation on the reverse side and also refer to IRS publication for an explanation of this rule.
6. If the distribution has occurred from a SIMPLE-IRA, I hereby certify that I am eligible to roll it over to a traditional IRA. That is, the distribution from the SIMPLE-IRA which I am rolling over occurred after the two-year period which commenced on the date a contribution was first made on my behalf to the SIMPLE-IRA or occurred when I am age 59½ or older, or one of the other exceptions set forth in Code section 72(t) applies.

Special Notice to a Nonspouse Beneficiary. In Notice 2009-82, the IRS expressly states that this special rollover relief does NOT apply to nonspouse beneficiaries. Under current law a nonspouse beneficiary has no legal right to rollover a distribution from a decedent's IRA or an inherited IRA to another inherited IRA or to their own IRA.

*I acknowledge that you have instructed me to consult with my legal or tax advisor because of the complexity and importance of this matter. I acknowledge I have read the reverse side. I expressly assume all responsibility for this rollover contribution. I understand that the tax consequences related to depositing funds in an IRA which do not qualify for rollover treatment are extremely harsh and I hold you harmless if I do. I understand my rollover election or instruction is irrevocable. I also expressly acknowledge that if I have rolled over any after-tax employee contributions into my IRA that I am solely responsible to account for such contributions now and in the future.*

Signature of Accountholder  
or Inheriting Spouse Beneficiary \_\_\_\_\_ Date \_\_\_\_\_

Signature of Acknowledgment of Custodian/Trustee \_\_\_\_\_ Date \_\_\_\_\_



## IRA Rollover Rules from Publication 590

### Rollover From One IRA Into Another

You can withdraw, tax free, all or part of the assets from one traditional IRA if you reinvest them within 60 days in the same or another traditional IRA. Because this is a rollover, you cannot deduct the amount that you reinvest in an IRA.



*You may be able to treat a contribution made to one type of IRA as having been made to a different type of IRA. This is called recharacterizing the contribution. See [Recharacterizations](#) in this chapter for more information.*

**Waiting period between rollovers.** Generally, if you make a tax-free rollover of any part of a distribution from a traditional IRA, you cannot, within a 1-year period, make a tax-free rollover of any later distribution from that same IRA. You also cannot make a tax-free rollover of any amount distributed, within the same 1-year period, from the IRA into which you made the tax-free rollover.

The 1-year period begins on the date you receive the IRA distribution, not on the date you roll it over into an IRA.

**Example.** You have two traditional IRAs, IRA-1 and IRA-2. You make a tax-free rollover of a distribution from IRA-1 into a new traditional IRA (IRA-3). You cannot, within 1 year of the distribution from IRA-1, make a tax-free rollover of any distribution from either IRA-1 or IRA-3 into another traditional IRA.

However, the rollover from IRA-1 into IRA-3 does not prevent you from making a tax-free rollover from IRA-2 into any other traditional IRA. This is because you have not, within the last year, rolled over, tax-free, any distribution from IRA-2 or made a tax-free rollover into IRA-2.

**Exception.** There is an exception to the rule that amounts rolled over tax free into an IRA cannot be rolled over tax free again within the 1-year period beginning on the date of the original distribution. The exception applies to a distribution which meets all three of the following requirements.

1. It is made from a failed financial institution by the Federal Deposit Insurance Corporation (FDIC) as receiver for the institution.
2. It was not initiated by either the custodial institution or the depositor.
3. It was made because:
  - a. The custodial institution is insolvent, and
  - b. The receiver is unable to find a buyer for the institution.

**The same property must be rolled over.** If property is distributed to you from an IRA and you complete the rollover by contributing property to an IRA, your rollover is tax free only if the property you contribute is the same property that was distributed to you.

**Partial rollovers.** If you withdraw assets from a traditional IRA, you can roll over part of the withdrawal tax free and

keep the rest of it. The amount you keep will generally be taxable (except for the part that is a return of nondeductible contributions). The amount you keep may be subject to the 10% additional tax on early distributions discussed later under [What Acts Result in Penalties or Additional Taxes](#).

**Required distributions.** Amounts that must be distributed during a particular year under the required distribution rules (discussed later) are not eligible for rollover treatment.

**Inherited IRAs.** If you inherit a traditional IRA from your spouse, you generally can roll it over, or you can choose to make the inherited IRA your own as discussed earlier under [What if You Inherit an IRA](#).

**Not inherited from spouse.** If you inherit a traditional IRA from someone other than your spouse, you cannot roll it over or allow it to receive a rollover contribution. You must withdraw the IRA assets within a certain period. For more information, see [When Must You Withdraw Assets](#), later.

**Reporting rollovers from IRAs.** Report any rollover from one traditional IRA to the same or another traditional IRA on Form 1040, lines 15a and 15b; Form 1040A, lines 11a and 11b; or Form 1040NR, lines 16a and 16b.

Enter the total amount of the distribution on Form 1040, line 15a; Form 1040A, line 11a; or Form 1040NR, line 16a. If the total amount on Form 1040, line 15a; Form 1040A, line 11a; or Form 1040NR, line 16a, was rolled over, enter zero on Form 1040, line 15b; Form 1040A, line 11b; or Form 1040NR, line 16b. If the total distribution was not rolled over, enter the taxable portion of the part that was not rolled over on Form 1040, line 15b; Form 1040A, line 11b; or Form 1040NR, line 16b. Put "Rollover" next to line 15b, Form 1040; line 11b, Form 1040A; or line 16b, Form 1040NR. See the forms' instructions.

If you rolled over the distribution into a qualified plan (other than an IRA) or you make the rollover in 2009, attach a statement explaining what you did.

For information on how to figure the taxable portion, see [Are Distributions Taxable](#), later.

## Interplay of IRA Revocation and IRA Rollover Rules

This article discusses the fact that the IRS has never expressly discussed in writing the interplay of the 7-day right to revoke a new IRA and the IRA rollover rule that a person can only make one rollover per year.

Is a person able to do a "second" rollover in the following situation? An individual, Jane Smith, had been paid an IRA distribution of \$155,000 from financial institution #1 and within her 60 days she had rolled it over into an IRA at institution #2. For whatever reason, Jane Smith decided to exercise her 7-day right of revocation and she withdrew the \$155,000 from institution #2. She now wishes to rollover the \$155,000 into an IRA with financial institution #3. Is she eligible to rollover this \$155,000 or is she ineligible to roll it over since it would be a second rollover?

Here is CWF's response to an IRA custodian on this situation.

The IRA rules are clear that a person is allowed to make only one rollover per twelve month period per IRA plan agreement. See the attached summary from page 25 of the 2008 Publication 590. The Example set forth in the left column deals with your customer's current situation. The only difference is the fact that she exercised her right to revoke the IRA established at institution #2.

Does her revocation of IRA #2 mean IRA #2 never existed so the first rollover is deemed to have never occurred? Thus, the rollover now into IRA #3 would be permissible since it would now be the "first" rollover.

We called the IRS. An IRS employee from the employee plans area told me that this was NOT the IRS' position. The IRS employee referred me to page 25 of Publication 590. The IRS does discuss one exception to the once per year rule. It is the failed institution exception. Three requirements must exist for such an exception to apply. There is no exception for the revocation of an IRA established because of a rollover contribution.

We are not surprised by the answer of the IRS employee. The job of the IRS is to maximize tax revenues. And tax revenues are needed right now. The once per 12 month rule is a statutory rule. An IRA accountholder's revocation right was created by an IRS regulation. The IRS most likely will state they don't have the authority to

modify the once per year rule. This is not a strong argument since the IRS administratively made the change that the once per year rule applies on a per plan agreement basis when the statutory law applies it to all IRAs held by an individual.

The IRS position is that she is ineligible to roll it over because of the once per year rule. Consequently, she is required to include the \$155,000 distribution in her income for 2009. This is a very harsh tax result.

The conservative approach for the IRA custodian is to not accept this rollover contribution. The IRS' position is that it is ineligible to be rolled over. If it was rolled over, it would be an excess contribution subject to the 6% excise tax each year. The less conservative approach for an IRA custodian would be to allow her to make the rollover if she would furnish the bank with a legal or tax opinion stating such rollover was authorized notwithstanding the IRS' position and that she would hold the bank harmless if the IRS would ever impose taxes and penalties with respect to this rollover.

She may wish to discuss this subject with her tax advisor to determine if it would be worthwhile to seek a private letter ruling from the IRS. A ruling would be requested allowing her to do the rollover because she believed the revocation reinstated her rollover right. We at CWF are unaware of the IRS ever having discussed in writing the interplay of the 7 day revocation rule with the once per year rollover rule. We believe she should be permitted to do the rollover since her revocation voided the prior rollover, but as mentioned above, that is not the IRS position. The value of being able to revoke a rollover IRA is greatly diminished by the position which the IRS has adopted.

There is, of course, a filing fee which has to be paid with respect to a private letter ruling.

For future situations such as this one, the IRA accountholder would want to make sure that Institution #2 would be willing to close her IRA and then transfer the funds to Institution #3 rather than trying to do a rollover.

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