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THE TEMPORARY (AND LIMITED) WAIVER OF THE RMD RULES FOR 2009

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Steps that Congress took late last year in response to the economic crisis included amending the minimum distribution requirements under section 401(a)(9)¹ by enacting new section 401(a)(9)(H), and making a related amendment to the tax-free rollover rules under section 402(c), as part of the Worker, Retiree, and Employer Recovery Act of 2008 (“WRERA”).² In general, these amendments temporarily waive the minimum distribution requirements for 2009 and permit payments that otherwise would be required minimum distributions (“RMDs”) for 2009 to be rolled over tax free. As discussed below, this temporary waiver provides only limited relief from the section 401(a)(9) minimum distribution requirements, and it is doubtful that this relief will be expanded legislatively.

The Internal Revenue Service (“IRS”) already has issued one piece of guidance, Notice 2009-9,³ which clarifies the reporting requirements with respect to RMDs from IRAs for 2009. However, as discussed below, a number of issues remain about how this 2009 RMD relief operates. These issues include questions about the application of this relief to amounts that are automatically paid as RMDs each year, amounts under an IRA that are paid as RMDs more frequently than annually, and amounts that are paid as RMDs in the form of annuity payments. There also are questions about whether plans and contracts need to be amended in order to provide this temporary relief. In addition, the 2009 RMD relief might impact certain annuity benefits that interact with the section 401(a)(9) minimum distribution requirements, such as guaranteed minimum withdrawal benefits that are offered under variable deferred annuity contracts that are issued as IRA and section 403(b) contracts.

SECTION 401(A)(9) IN GENERAL

Section 401(a)(9) imposes minimum distribution requirements that apply to an individual’s interest in a qualified plan under section 401(a) (including a defined contribution plan and a defined benefit plan), qualified annuities under section 403(a), section 403(b) contracts (including

a custodial account under section 403(b)(7)), IRAs (including a traditional IRA account, traditional IRA annuity contract, Roth IRA, SEP IRA and SIMPLE IRA), and governmental section 457(b) arrangements. Minimum distributions under this section are required to commence on or before the individual’s “required beginning date,” *i.e.*, generally April 1 of the calendar year following the later of (1) the calendar year in which the individual attains age 70½, and (2) except in the case of an IRA, the calendar year in which the individual retires.⁴ If the individual dies on or after the required beginning date, any remaining interest in the arrangement must be distributed to the “designated beneficiary” (within the meaning of section 401(a)(9)) at least as rapidly as under the method of distribution in effect at the time of the individual’s death (the “at-least-as-rapidly rule”).⁵ If the individual dies prior to the required beginning date, any remaining interest must be distributed to the designated beneficiary either (1) no later than December 31 of the calendar year containing the fifth anniversary of the individual’s death (the “five-year rule”), or (2) over the beneficiary’s life or life expectancy, commencing no later than December 31 of the calendar year following the calendar year of the individual’s death (the “lifetime distribution rule”).⁶

The regulations under section 401(a)(9) set forth two sets of rules for determining the amount of the RMD for a calendar year, depending on whether the arrangement is in the form of an individual account or an annuity contract.⁷ If an individual is not taking RMDs in the form of an annuity that satisfies the annuity rules under the regulations, the RMD for a calendar year is determined under the individual account rules by dividing the “account balance” at the end of the previous calendar year by the applicable distribution period set forth in the regulations.⁸

In the case of an IRA, a non-spouse designated beneficiary may not roll over an amount received under a deceased owner’s IRA, *i.e.*, an “inherited IRA.”⁹ A designated beneficiary who is the surviving spouse of the deceased IRA owner may elect to continue the IRA as his or her own, thereby delaying

the after-death distribution requirements until the surviving spouse dies.¹⁰ Also, the trustee, custodian or issuer of an IRA (collectively, the “issuer”) is required to report information with respect to RMDs from the IRA for each calendar year, as required by the IRS.¹¹ In this regard, Notice 2007-27,¹² provides that if a minimum distribution is required with respect to an IRA for a calendar year and the IRA owner is alive at the beginning of the year, the issuer must provide a statement to the IRA owner by January 31 of the calendar year that either (1) states the amount of the RMD for the calendar year and the date by which it must be distributed, or (2) informs the IRA owner that an RMD is required for the calendar year and the date by which the amount must be distributed, and offers to calculate the RMD upon request. For each calendar year that an issuer maintains an IRA, the issuer must provide the IRA owner and the IRS with a Form 5498, *IRA Contribution Information*, and must check box 11 on the form if an RMD with respect to the IRA is required for the following calendar year.

NEW SECTION 401(A)(9)(H)

The section 401(a)(9) minimum distribution requirements are designed generally to provide for the systematic liquidation of retirement savings that have been accumulated under certain tax-favored retirement arrangements. Unfortunately, the current economic crisis has resulted in significant losses in individuals’ retirement savings. Many retired individuals are now concerned that their savings will be insufficient to provide for their retirement needs.

In response to this concern, new section 401(a)(9)(H) has been added to the Code, temporarily waiving the minimum distribution requirements for 2009. This 2009 RMD relief applies to IRAs and employer-provided qualified retirement plans that are defined contribution plans within the meaning of section 414(i), *i.e.*, defined contribution plans described in sections 401(a), 403(a), and 403(b), and governmental section 457(b) plans.¹³ This relief applies to lifetime RMDs to employees and IRA owners, as well as to after-death RMDs to beneficiaries.¹⁴

For purposes of applying the minimum distribution requirements for calendar years after 2009, an individual’s required beginning date is determined without regard to the relief.¹⁵ So, for instance, if 2009 is the first year for which an individual must take an RMD, so that the individual’s required beginning date is April 1, 2009, no RMD for 2009 is required to be made by that date. However, new section 401(a)(9)(H) does not change the individual’s required beginning date for purposes of determining RMDs for calendar years *after* 2009. Thus, the RMD for 2010 still must be made no later than Dec. 31, 2010. Also, if the individual dies on or after April 1, 2010, any remaining interest of the individual must be distributed under the after-death distribution rules that apply when the individual dies on or after the required beginning date, *i.e.*, in accordance with the at-least-as-rapidly rule.¹⁶

Also, for purposes of the five-year rule that applies in the event of death prior to the required beginning date, described above, the five-year period is determined without regard to calendar year 2009.¹⁷ Thus, for example, if an individual died in 2007, the five-year period that otherwise would expire at the end of 2012 is extended by the 2009 RMD relief through 2013.¹⁸

The 2009 RMD relief is effective for calendar years beginning after Dec. 31, 2008. However, if 2008 is the first calendar year for which an individual must take an RMD, so that the individual’s required beginning date is April 1, 2009, the 2009 RMD relief does not apply to the RMD for 2008 that must be made on or before the required beginning date in 2009. The individual still must take the full 2008 RMD no later than April 1, 2009.¹⁹

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In early January, the IRS issued Notice 2009-9, which provides the following three bits of guidance regarding the RMD reporting requirements with respect to IRAs:

1. Notice 2009-9 clarifies that for IRA issuers required to file a Form 5498 for 2008, box 11 of the form, indicating that an RMD is required for 2009, should not be checked. The IRS recognized that IRA issuers had only a short amount of time to make programming changes necessary to reflect this guidance. Accordingly, the Notice provides that if an IRA issuer issued a 2008 Form 5498 with a check in box 11, the IRS will not consider the form as issued incorrectly if the issuer notifies the IRA owner no later than March 31, 2009, that no RMD is required for 2009.
2. Notice 2009-9 modifies the requirements in Notice 2002-27 that apply if an IRA owner is required to take a minimum distribution for a calendar year. As noted above, the issuer must provide a statement to the IRA owner by January 31 of a calendar year, generally indicating the amount of the RMD for the year or offering to calculate the RMD for the year. Notice 2009-9 clarifies that the issuer need not provide this statement for 2009. If the issuer does send an RMD statement to an IRA owner, either initially or in response to the owners request that the issuer calculate the RMD for 2009, the issuer must show the 2009 RMD as zero. Alternatively, the issuer may send the IRA owner a statement showing the RMD that would have been required absent new section 401(a)(9)(H), together with an explanation of the 2009 RMD relief.
3. Notice 2009-9 states that all IRA issuers are “encouraged” to inform IRA owners who delay taking their 2008 RMD until April 1, 2009, that they are still required to take these RMDs on or before that date. It is interesting to note the WRERA neither

requires nor encourages that notice of the 2009 RMD relief be given to taxpayers.

TAX-FREE ROLLOVER TREATMENT

The Code provides similar, but different, tax-free rollover rules for (1) “eligible rollover distributions” from qualified plans under section 401(a), qualified annuities under section 403(a), section 403(b) contracts, and governmental section 457(b) plans (“non-IRA plans”) and (2) distributions from IRAs. An “eligible rollover distribution” from a non-IRA plan can be rolled over tax free within 60 days to an “eligible retirement plan,” *i.e.*, a non-IRA plan or an IRA.²⁰ An eligible rollover distribution is defined in section 402(c)(4) as any distribution to an employee of all or any portion of the balance to the credit of the employee, except that an eligible rollover distribution does not include:

1. any distribution which is one of a series of substantially equal periodic payments made at least annually for (a) the life (or life expectancy) of the employee or the joint lives (or joint life expectancy) of the employee and the employee’s designated beneficiary, or (b) a specified period of 10 years or more (a “SEPP distribution”),
2. any distribution to the extent it is an RMD, and
3. any distribution which is made upon hardship of the employee (a “hardship distribution”).

If an eligible rollover distribution is made from a non-IRA plan, an amount equal to 20 percent of the distribution must be withheld under section 3405(c) unless the distribution is directly rolled over to an eligible retirement plan. In addition, section 402(f) requires that notice of the rollover rules and mandatory 20 percent withholding requirement must be provided to individuals within a reasonable period of time before an eligible rollover distribution is made. (The rules described herein relating to eligible rollover distributions do not apply to distributions from IRAs.)

WRERA amends the definition of an eligible rollover distribution by adding at the end of section 402(c)(4) language that addresses the tax-free rollover of amounts that otherwise would be RMDs for 2009, and thus otherwise would be ineligible for tax-free rollover treatment. In particular, a distribution from a non-IRA plan for 2009 that would be an RMD for the year, if not for the 2009 RMD relief, nevertheless can be treated as an eligible rollover distribution if it otherwise qualifies as such, *i.e.*, it is not a SEPP distribution or a hardship distribution. The WRERA amendment clarifies that such an eligible rollover distribution will not be subject to the mandatory 20 percent withholding requirement or the section 402(f) notice requirement that otherwise apply to eligible rollover distributions.

For example, if a non-IRA plan distributed an amount to an individual for 2009, the plan is permitted—*but is not required*—to offer the employee a direct rollover of that amount and provide the employee with a written explanation of the requirement. If the employee receives the distribution, it would not be subject to the mandatory 20 percent withholding requirement, and the employee could roll over the distribution by contributing to an eligible retirement plan within 60 days of the distribution.²¹

As mentioned above, these eligible rollover rules do not apply to distributions from an IRA. However, section 408(d)(3) provides generally that, subject to certain limitations and exceptions, a distribution from an IRA can be rolled over tax free within 60 days to an eligible retirement plan, *i.e.*, a non-IRA plan or another IRA. Like RMDs from non-IRA plans, RMDs from IRAs are not entitled to tax-free rollover treatment.²² Also, under the “one-year rule” set forth in section 408(d)(3)(B), if an individual makes a tax-free rollover of a distribution from an IRA, the individual may not make another tax-free rollover of another distribution from that same IRA within a one-year period.

CERTAIN PRACTICAL LIMITATIONS OF THE 2009 RMD RELIEF

It is important to recognize that WRERA provides only limited relief from the section 401(a)(9) required minimum distribution rules. WRERA does not provide RMD relief for 2008, in which the impact of the economic crisis has been perhaps the most substantial. This is because under the individual account rules, mentioned above, an individual’s RMD with respect to an eligible retirement plan for 2008 is determined by dividing the individual’s account balance in the plan as of the end of 2007 by the applicable distribution period set forth in the regulations. Because of the substantial losses incurred by individuals in 2008, they experienced dramatic drops in the account balances of their eligible retirement plans during the year. As a result, an individual’s RMD for 2008, which was determined based on the pre-crisis 2007 year-end account balance, likely is disproportionately high when considered in connection with the individual’s 2008 year-end account balance. However, the RMD relief provided by WRERA applies only for 2009.

In December of last year, Senator Olympia Snowe (R-ME) introduced a bill (S. 3719) that would provide RMD relief for 2008-2010, and Senator Arlen Specter (R-PA) introduced a bill (S. 3720) that would provide RMD relief for 2008 and 2009. No action was taken on either bill. In January, Senators Snowe and Blanche Lincoln (D-AR) introduced a bill (S. 157), and Representative Tim Murphy (R-PA) introduced a bill (H.R. 424), that would provide RMD relief for 2009. However, it appears unlikely that further RMD relief will be forthcoming legislatively.

Also, new section 401(a)(9)(H) will only provide relief to those individuals who are wealthy enough that they do not need to take distributions of amounts that otherwise would be required to be distributed for 2009. Put differently, even though RMD relief is available for 2009, individuals’ finances might be such that they must nevertheless take distributions for the year, and thus are unable to take advan-

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tage of the relief. These individuals would benefit from alternative forms of relief that were mentioned at one time or another, but that never found its way into legislation, such as a proposal that would allow individuals to take RMDs and exclude them from gross income.²³

Moreover, in certain circumstances discussed below, even if a retired individual taking RMDs does not have a need financially to take a distribution for 2009, the RMD relief might be unavailable, and thus the individual nevertheless might be forced to take the distribution for the year.

INABILITY TO ROLL OVER SEPP DISTRIBUTIONS

As explained above, to the extent that a distribution from a non-IRA plan would be an RMD but for the 2009 RMD relief, the recipient may roll over the distribution tax free to another non-IRA plan or an IRA if the distribution otherwise qualifies as an “eligible rollover distribution,” *i.e.*, it is not a SEPP distribution or a hardship distribution. Hence, a distribution from a non-IRA plan will not qualify for tax-free rollover treatment if it is one of a series of substantially equal periodic payments made at least annually for life or life expectancy (or joint lives or joint life expectancy) or for a specified period of at least 10 years. If a taxpayer makes a separate request each year for a withdrawal of the RMD amount for the year, each year’s distribution generally is not treated as one of a series of SEPP distributions and can qualify for tax-free rollover treatment.

However, it seems that RMDs from a non-IRA plan that are made in the form of annuity payments, discussed further below, will not qualify as eligible rollover distributions, except in limited circumstances in which they are paid for a period certain of less than 10 years. It also seems that non-annuity RMD distributions that are automatically determined and paid each year, *e.g.*, under a systematic withdrawal option selected by the owner of a section 403(b) deferred annuity contract, constitute SEPP distributions that do not qualify for eligible rollover distribution treatment. This is because such automatic distributions for a year commonly are computed by

dividing the previous year-end account balance by a particular distribution period (such as the applicable period from the Uniform Lifetime Table under Treas. Reg. section 1.401(a)(9)-9, Q&A-2), and such distributions generally are considered SEPP distributions for purposes of the eligible rollover distribution rules.²⁴ Hence, it appears that absent guidance to the contrary, a taxpayer receiving such periodic payments will be unable to take advantage of the 2009 RMD relief unless the payments are suspended or modified so that they are no longer treated as constituting SEPP distributions.

QUESTIONS ABOUT ANNUITY PAYMENTS

New section 401(a)(9)(H) provides a waiver of the section 401(a)(9) minimum distribution rules for 2009 to certain defined contribution plans and IRAs. On its face, this 2009 RMD relief can be read as applying to annuity payments made under such arrangements. If the 2009 RMD relief does apply to annuity payments, then absent guidance, an individual’s ability to roll over the payments tax free is limited by:

1. the requirement that tax-free rollover treatment for eligible rollover distributions from a non-IRA plan does not apply to certain distributions, like typical RMD annuity payments, which are SEPP distributions,
2. the requirement that only one distribution from an IRA can be rolled over tax free in any one-year period, *e.g.*, where an IRA owner receives his or her RMD in monthly or quarterly installments, rather than in a single lump-sum payment each year, and
3. the rule prohibiting a non-spouse designated beneficiary from rolling over an amount received under an “inherited” IRA.

It should be noted, however, that the Joint Committee on Taxation’s Technical Explanation of new section 401(a)(9)(H) indicates that the relief is aimed at minimum distributions for 2009 that are “otherwise determined by dividing

the account balance by a distribution period.”²⁵ In addition, section 401(a)(9)(H) does not apply to defined benefit plans, and annuity payments under section 401(a)(9) must satisfy the rules in Treas. Reg. section 1.401(a)(9)-6 that apply to distributions from defined benefit plans. Hence, an argument can be made that Congress did not intend for the 2009 RMD relief to apply to annuity payments. If the 2009 RMD relief does not apply to annuity payments, individuals will not be able to roll over their 2009 annuity payments. Also, in the case of an IRA, the issuer presumably must (1) provide the IRA owner with the RMD statement required under Notice 2002-27 no later than Jan. 31, 2009, and (2) check box 11 on the 2008 Form 5498, indicating that an RMD from the IRA is required for 2009.

In this regard, as mentioned above, Notice 2009-9 provides that IRA issuers (1) should not check box 11 of the 2008 Form 5498, and (2) need not provide IRA owners with the statements that otherwise are required under Notice 2002-27 when an RMD is required to be made for a calendar year. Notice 2009-9 does not provide different rules for IRA issuers that make distributions in the form of annuity payments. Perhaps this Notice can be read as indicating that the IRS and the Treasury Department (“Treasury”) interpret the 2009 RMD relief as applying to annuity payments. Nevertheless, there is some uncertainty about whether Congress in WRERA, and the IRS and the Treasury in Notice 2009-9, intended for the 2009 RMD relief to apply to annuity payments, or whether the government failed to contemplate the application of the relief to such payments and would have provided different rules for annuity payments if they had addressed the matter.

NEED FOR RELIEF FROM THE 60-DAY ROLLOVER REQUIREMENT

Tax-free rollover treatment only applies to eligible rollover distributions from non-IRA plans, and certain distributions from IRAs, that are rolled over within 60 days.²⁶ Distributions for 2009 that otherwise could not be rolled over because they are RMDs might qualify for tax-free rollover treatment under the 2009 RMD relief.

Unfortunately, WRERA was not signed into law by President Bush until Dec. 23, 2008, and many individuals receive their annual RMDs early each year. It is possible that the 60-day rollover period will expire for some individuals before they become aware of the 2009 RMD relief, determine whether it applies to them, decide to take advantage of the relief, and actually roll over a distribution. Absent relief, many individuals will be unable to act quickly enough to roll over distributions that qualify for tax-free rollover treatment as a result of the 2009 RMD relief.

Fortunately, the Secretary of the Treasury has statutory authority to waive the 60-day rollover requirement where the failure to waive the requirement would be “against equity or good conscience, including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement.”²⁷ Hence, this issue can be easily resolved through guidance.

IMPACT OF 2009 RMD RELIEF ON CERTAIN ANNUITY BENEFITS

It is possible that the 2009 RMD relief might impact certain annuity benefits that interact with the section 401(a)(9) minimum distribution requirements. For example, a variable deferred annuity contract that is issued as an IRA or section 403(b) contract might offer a guaranteed minimum withdrawal benefit (“GMWB”). A GMWB permits the owner to take withdrawals from the contract for a year up to a guaranteed annual withdrawal amount (“GAWA”), regardless of the amount of the cash value that exists under the contract. If a withdrawal during a year exceeds the GAWA, the GAWA is recalculated and reduced. Generally, the contract will terminate if such an excess withdrawal reduces the cash value of the contract to zero.

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Under some GMWB designs, an RMD that exceeds the GAWA will not be treated as an excess distribution that triggers a recalculation and reduction of the benefit, and the possible termination of the contract. Put differently, a GAWA that is less than the RMD for a year is increased to equal the amount of the RMD. The 2009 RMD relief might result in a reduction in the GAWA in cases in which the GAWA is less than the RMD that would be payable absent the relief. Where the temporary waiver of section 401(a)(9) for 2009 eliminates the RMD for 2009, it also eliminates any excess of the RMD over the GAWA that might have existed absent the waiver, and thus eliminates any increase in the GAWA that otherwise would have occurred absent the waiver.

AMENDING PLANS AND CONTRACTS FOR THE 2009 RMD RELIEF

Section 201(c) of WRERA sets forth special provisions relating to a pension plan or annuity contract that must be amended in order to provide the 2009 RMD relief. In general, if a pension plan or annuity contract needs to be amended to provide this relief, the plan or contract will not fail to be treated as operating in accordance with the terms of the plan where (1) the plan or contract amendment is made on or before the last day of the first plan year beginning on or after Jan. 1, 2011 (or Jan. 1, 2012, in the case of a governmental plan), and (2) during the period beginning on the effective date of the amendment and ending on Dec. 31, 2009, the plan or contract is operated as if the amendment were in effect.

Whether an amendment is necessary will depend on the terms of the arrangement, and will require a review of the plan and/or contract. It is possible that the existing terms of some arrangements are broad enough to be read as permitting the 2009 RMD relief without modification. A plan or contract that incorporates the section 401(a)(9) minimum distribution rules largely by reference, and thus also incorporates the 2009 RMD relief by reference, likely will not need to be amended in order to provide for the relief.

For instance, an issue exists whether it is necessary for an annuity contract that has been approved as to form by the

IRS as a prototype IRA contract to be amended in order to provide for the 2009 RMD relief. Absent guidance, such an amendment to a prototype IRA annuity contract would result in loss of prototype status unless the issuer obtains prototype approval of the amended contract from the IRS. Also, if it is determined that an amendment is required, and the amendment is not timely made, IRA annuity contracts that provide the 2009 RMD relief will be treated as failing to operate in accordance with their terms, and presumably as failing to qualify as IRA annuity contracts. Such a failure results in taxation to the IRA owner.

It appears that the better interpretation is that prototype IRA annuity contracts need not be amended in order to provide the 2009 RMD relief. This is because the section 401(a)(9) minimum distribution rules are imposed generally on IRAs under section 408(b)(3) and the regulations thereunder.²⁸ The model language that the IRS requires to be incorporated into an IRA annuity contract as a condition of granting prototype approval states that notwithstanding any provision of the contract to the contrary, the distribution of the entire interest in the contract must be made in accordance with the applicable requirements of section 408(b)(3) and the regulations thereunder, the provisions of which are incorporated by reference.²⁹ Accordingly, the 2009 RMD relief under new section 401(a)(9)(H) can be viewed as incorporated by reference into, and thus as provided under, a prototype IRA annuity contract. Hopefully, the IRS will clarify this issue by issuing guidance to this effect.

This interpretation is consistent with the IRS's position in Notice 2005-95.³⁰ This guidance addressed minor changes to the temporary regulations under section 401(a)(9) that were made in the final regulations under that section. The IRS took the position in Notice 2005-95 that a prototype IRA annuity contract need not be amended merely to reflect these minor changes in order to retain its prototype status.

CONCLUSION

The steps taken by Congress in WRERA to temporarily waive the section 401(a)(9) minimum distribution require-

ments for 2009, and make a related amendment to the tax-free rollover rules under section 402(c), were helpful steps in response to the economic crisis. Indications are that it is doubtful that Congress will enact further RMD relief. It is important to be aware of the limitations of the 2009 RMD relief, and of the impact that the relief might have on certain annuity benefits that interact with the minimum distribution requirements. As discussed above, a number of issues remain about how this 2009 RMD relief operates, *e.g.*, with

respect to the application of the relief to amounts that are automatically paid as RMDs each year, amounts under an IRA that are paid as RMDs more frequently than annually, and amounts that are paid as RMDs in the form of annuity payments. Also, if the relief is offered under a plan or contract, it will be necessary to determine whether the plan or contract must be amended in order to provide for the relief. Hopefully, the IRS and the Treasury will issue guidance addressing at least some of these issues. ◀

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END NOTES

- ¹ Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended (the "Code").
- ² Pub. L. No. 110-458.
- ³ 2009-5 I.R.B. 419.
- ⁴ Section 401(a)(9)(A) and (C).
- ⁵ Section 401(a)(9)(B)(i); Treas. Reg. section 1.401(a)(9)-5, Q&A-5(a).
- ⁶ Section 401(a)(9)(B)(ii) and (iii); Treas. Reg. section 1.401(a)(9)-5, Q&A-5(b).
- ⁷ See Treas. Reg. section 1.401(a)(9)-5 and Treas. Reg. section 1.401(a)(9)-6.
- ⁸ See Treas. Reg. section 1.401(a)(9)-5, Q&A-1(a) and Q&A-3(a).
- ⁹ Section 408(d)(3)(C).
- ¹⁰ Treas. Reg. section 1.408-8, Q&A-5.
- ¹¹ Treas. Reg. section 1.401(a)(9)-8, Q&A-10.
- ¹² 2002-1 C.B. 814.
- ¹³ Section 401(a)(9)(H)(i); STAFF OF J. COMM. ON TAX'N, 110TH CONG., TECHNICAL EXPLANATION OF H.R. 7327, THE "WORKER, RETIREE, AND EMPLOYER RECOVERY ACT OF 2008," AS PASSED BY THE HOUSE ON DECEMBER 10, 2008, at 26 (J. Comm. Print 2008) (the "Joint Tax Committee Explanation").
- ¹⁴ *Id.*
- ¹⁵ Section 401(a)(9)(H)(ii)(I).
- ¹⁶ Joint Tax Committee Explanation at 26-27.
- ¹⁷ Section 401(a)(9)(H)(ii)(II).
- ¹⁸ Joint Tax Committee Explanation at 27.
- ¹⁹ *Id.*
- ²⁰ See sections 401(a)(31), 402(c), 402(e)(6), 403(a)(4), 403(b)(8), 403(b)(10), 408(d)(3), and 457(e)(16).
- ²¹ Joint Tax Committee Explanation at 27.
- ²² Section 408(d)(3)(E).
- ²³ While campaigning for President in October 2008, Barack Obama suggested giving retired individuals the choice of forgoing RMDs or exempting withdrawals up to the RMD amount. See Emily Brandon et al., "What Obama and McCain's New Plans Mean for You," *U.S. NEWS & WORLD REPORT*, Oct. 14, 2008, available at <http://www.usnews.com/articles/business/retirement/2008/10/14/what-obama-and-mccains-new-plans-mean-for-you.html>.
- ²⁴ See Treas. Reg. section 1.402(c)-2, Q&A-5; Sections 2.01(a) 2.02(a) of Rev. Rul. 2002-62, 2002-2 CB 710.
- ²⁵ Joint Tax Committee Explanation at 26.
- ²⁶ See sections 402(c)(3), 403(a)(4), 403(b)(8), 408(d)(3), and 457(e)(16).
- ²⁷ Section 402(c)(3)(B); section 408(d)(3)(I).
- ²⁸ See Treas. Reg. section 1.408-8, Q&A-1(a).
- ²⁹ See paragraph (15)(a) of the List of Required Modifications and Information Package ("LRMs") for traditional IRA annuity contracts; paragraph (15)(a) of the LRMs for SIMPLE IRA annuity contracts; and paragraph (16)(a) of the LRMs for Roth IRA annuity contracts.
- ³⁰ 2005-2 C.B. 1172.