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**Reminder – 409A
Correction Deadline**

In the April 27, 2009 issue of theHRBenefitsAuthority, we outlined a new correction program the IRS created for nonqualified deferred compensation plans that fail to comply with Section 409A of the Internal Revenue Code ("Section 409A"). Under this program, certain errors can be corrected so that some or all of the harsh tax penalties under Section 409A can be avoided.

The types of corrections available and the amount of the relief provided depend on whether errors are corrected during the year in which they occur or the following year or second following year. Generally, errors cannot be corrected more than two years after they occur. Therefore, as 2009 comes to a close, it is important to review the operation of your nonqualified plans and identify any errors that should be corrected before the end of the year.

Moreover, there is a special transition rule that allows errors that occurred during 2005 and 2006 to be corrected during 2009. Therefore, this will be the last opportunity to correct any errors that occurred during 2005, 2006 or 2007.



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**New Guidance on 2009 Waiver of Required
Minimum Distributions**

Qualified retirement plans are generally required to make annual minimum distributions to plan participants who have reached age 70½. The Worker, Retiree, and Employer Recovery Act of 2008 (WRERA) provides relief from this rule by waiving required minimum distributions (RMDs) for 2009. Recently, the IRS issued new guidance to help plan administrators implement the waiver. The guidance also provides rollover relief for plan participants who have who have already received their 2009 RMDs.

Background. WRERA, enacted in late 2008, suspends the RMD rules for certain retirement plans for 2009. As a result, the 2009 RMDs due by December 2009 (or April 2010 for a participant who turned 70½ in 2009) are waived. However, the RMDs for participants who turned 70½ in 2008 (that were due in April 2009) are not waived, and RMDs will once again be required in 2010. For beneficiaries of deceased participants, 2009 will not be counted as part of the five-year period during which they must take a distribution.

The waiver was intended to help plan participants whose retirement accounts may have been adversely affected by the 2008 financial crisis. However, the waiver has caused confusion for plan administrators who have been unsure of how to implement the waiver under their current plan documents.

New Guidance. The recent guidance from the IRS provides operational relief for plan administrators and rollover relief for plan participants. The guidance also includes two sample plan amendments and the answers to several frequently asked questions about the waiver of 2009 RMDs. A few highlights of the guidance include:

- **Plan Operational Relief.** The guidance provides that a plan will not be treated as failing to operate according to its terms merely because, between January 1, 2009 and November 30, 2009, the plan did not follow its plan provisions with respect to:
 - Paying or not paying 2009 RMDs;
 - Failing to give participants and beneficiaries the option of receiving or not receiving 2009 RMDs; or
 - Offering or not offering a direct rollover option for 2009 RMDs.
- **Rollover Relief and Clarification.** For plan participants and beneficiaries who have already received their 2009 RMDs, the guidance extends the usual 60-day rollover period until November 30, 2009. The guidance clarifies that 2009 RMDs may be rolled over so long as other rollover rules are met. However, plans are not required to offer direct rollovers, provide a rollover notice, or apply the mandatory 20% withholding to these amounts.

- **Sample Plan Amendments.** Plans must adopt plan amendments that reflect the plan's treatment of 2009 RMDs by the last day of the 2011 plan year. Accordingly, the guidance provides two alternative sample plan amendments, both of which allow participants and beneficiaries to choose between receiving and not receiving 2009 RMDs.

Contact Information. For additional information, please contact Toby Walls (404.888.8870).

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