



Green & Seifter, Attorneys, PLLC

Alert

Employee Benefits Practice Group

Possible Plan Amendment Required by December 31, 2011

Syracuse, New York

December 2011

Qualified retirement plans may need an amendment to bring plans into compliance with a section of the Worker Retiree, and Employer Recovery Act (WREERA) that dealt with Required Minimum Distributions (RMDs). Failure to amend for WREERA may jeopardize a plan's qualified status. Some plans may have already been amended for WREERA as a part of an amendment for the Pension Protection Act (PPA) or as a part of an amendment for the Heroes Earnings Assistance and Relief Tax Act (HEART). However, for calendar year plans that have not already been amended, the amendment must be made by **December 31, 2011**.

What to do:

If you use a prototype plan document with an adoption agreement, you probably have seen or will see an amendment prepared by your prototype sponsor to address WREERA. Some prototype sponsors have chosen to adopt an amendment at the prototype plan document level, while others require individual employers to adopt an amendment at the plan level. Green & Seifter, Attorneys, PLLC can assist you in this process by reviewing any amendment that you receive from your prototype sponsor. If you have not yet received an amendment for WREERA, you should contact your prototype sponsor immediately to determine if an amendment is needed by year end.

If your company maintains an Individually Designed or Volume Submitter plan, you will need to talk to your benefits counsel or whomever prepares your plan document to determine whether or not an amendment is necessary to address the WREERA.

Why is an amendment needed?

In response to the economic downturn in 2008, Congress included a provision in WREERA that temporarily waived the RMD rules for calendar year 2009. Plans had the opportunity to choose between several options: (1) forego RMDs that a plan would have been required to distribute if not for WREERA ("2009 RMDs") unless the beneficiary affirmatively elected to receive them, or (2) pay out 2009 RMDs according to the participant's previous election for RMDs unless the beneficiary elected otherwise.

If WREERA affects 2009 RMDs, why amend now?

Although plans were required to decide how they would treat 2009 RMDs in 2009, employers were not required to amend their plans to reflect the 2009 RMD decision up until the last day of the 2011 plan year.

Green & Seifter, Attorneys, PLLC Employee Benefits Practice Group can address your needs, answer your questions, and handle your employee benefits matter.

For more information, please contact:

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