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LEGAL ALERT

Legal Alert: Congress Provides Seniors With Limited Retirement Account Relief

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Last week, Congress passed the Worker, Retiree and Employer Recovery Act of 2008 (the "Act"), which, when signed by the President (it has not been signed as of the time of this writing), will help reduce part of the financial burden facing seniors who have seen their retirement savings shrink dramatically over the past several months. The Act includes a provision that would allow individuals who have reached age 70-1/2 to avoid "locking in" investment losses by withdrawing funds that they are required by law to withdraw.

As most people know, the tax law generally requires an individual to receive "required minimum distributions" (RMDs) from retirement plans and IRAs every year once he or she reaches age 70-1/2. The amount of an individual's RMD generally is based upon the size of the account and the individual's attained age. This rule is intended to prevent individuals from using tax-favored retirement accounts to defer taxes indefinitely, or to pass unlimited tax benefits from one generation to the next. An individual who fails to receive his or her required minimum distribution is penalized by the imposition of a 50% excise tax on the amount that was required to be, but was not, received.

The Act would suspend the RMD requirements for the year 2009. This waiver would be available to anyone regardless of income or account balances, and would apply to all account-balance plans, including 401(k) plans, 403(b) accounts, 457(b) "eligible deferred compensation plans," and IRAs. This suspension would permit individuals to keep more money in their accounts if they choose, and perhaps enable them to recover some of the losses that may have been incurred over the course of 2008.

The suspension would *not* apply to a 2008 required minimum distribution, even if the payment were deferred until the first quarter of 2009 (such as for an individual who reaches age 70-1/2 during 2008). Nor would the suspension apply to later years' RMDs (unless extended). Members of Congress have requested that the Treasury Department take action to relieve seniors from having to take 2008 RMDs, but no such action has yet been taken.

In the case of an employer-sponsored plan (such as a 401(k) plan), if an individual nevertheless receives what would have been a 2009 RMD, that distribution would be eligible for rollover to an "eligible retirement plan" (RMDs are not eligible to be rolled over). However, unlike other eligible rollover distributions, it would not be subject to 20% income tax withholding or to mandatory direct-rollover requirements.

If you have any questions regarding the Notice, or the provisions of the Act, please contact Jeffrey Ashendorf, 212-453-5926, jashendorf@fordharrison.com, or any member of Ford & Harrison's Employee Benefits practice group.