THE Pension Digest

Published Since 1984 Collin W. Fritz & Associates, Inc., *"The Pension Specialists"* November, 1992

Old & New IRA Plan Language: A Comparison

The long-awaited release by the IRS of new IRA plan language has now taken place. Some of the changes are very substantial, others more of a "housekeeping" nature. Based on this new plan language, ALL IRA PLANS MUST BE AMENDED.

Presented below is a comparison of all changes in the various Articles of the 5305 and 5305-A IRA plan documents. A parallel format is used, showing old plan language, new language that replaces it, with a separate discussion section on each change.

Article I (Old)

The Custodian may accept additional cash contributions on behalf of the Depositor for a tax year of the Depositor. The total cash contributions are limited to $2,000 for the tax year unless the contribution is a rollover contribution described in section 402(a)(5), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3) of the Code or an employer contribution to a simplified employee pension plan as described in section 408(k).

Article I (New)

The Custodian may accept additional cash contributions on behalf of the Depositor for a tax year of the Depositor. The total cash contributions are limited to $2,000 for the tax year unless the contribution is a rollover contribution described in section 402(c) (but only after December 31, 1992), 403(a)(4), (403(b)(8), 408(d)(3), or an employer contribution to a simplified employee pension plan as described in section 408(k). Rollover contributions before January 1, 1993, include rollovers described in section 402(a)(5), 402(a)(6), 402(a)(7), 403(a)(4), 403(b)(8), 408(d)(3), or an employer contribution to a simplified employee pension plan as described in section 408(k).

Article I Discussion

The changes made to Article I of the plan were changes in Internal Revenue Code citations. These changes were necessitated by recent changes in the Qualified Plan to IRA rollover rules.

Article II (Old)

The Depositor's interest in the balance in the custodial account is nonforfeitable.

Article II (New)

The Depositor's interest in the balance in the custodial account is nonforfeitable.

Article II Discussion

This article has not changed.

Article III (Old)

1. No part of the custodial funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5) of the Code).
2. No part of the custodial funds may be invested in collectibles (within the meaning of section 408(m) of the Code).

Article III (New)

1. No part of the custodial funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common trust fund or common investment fund (within the meaning of section 408(a)(5)).
2. No part of the custodial funds may be invested in collectibles (within the meaning of section 408(m)) except as otherwise permitted by section 408(m)(3) which provides an exception for certain gold and silver coins and coins issued under the laws of any state.

Article III Discussion

The change in Article II was in the second section. Language has been added that states that certain gold and silver coins are permitted as an IRA investment. These are coins minted by the U.S. government or an individual state.

About This Issue — One of the most important IRA developments in recent years is the release of new plan language by the IRS, which took place on October 29th. Because of the impact this will have on current and new IRA plans, we have chosen to reproduce here an in-depth description of all the changes. This greatly restricts the space available for other topics, thus our decision to produce a Pension Digest EXTRA as a follow-up to this issue. Be watching for it.

Changes to Required Distribution Rules

Article IV sets out the rules for required distributions to accountholders and to beneficiaries. The changes to this article have a major impact on required distribution rules.

Article IV (Old)

1. The Depositor's entire interest in the custodial account must be or begin to be, distributed by the Depositor's required beginning date, the April 1 following the calendar year end in which the Depositor reaches age 70-1/2. By that date, the Depositor may elect, in a manner acceptable to the Custodian to have the balance in the custodial account distributed in:

(a) A single-sum payment.

(b) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the life of the Depositor. The payments must begin by April 1 following the calendar year in which the Depositor reaches age 70-1/2.

(c) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the joint and last survivor lives of the Depositor and his or her designated beneficiary. The payments must begin by the April 1 following the calendar year in which the Depositor reaches age 70-1/2.

(d) Equal or substantially equal annual payments over a specified period that may not be longer than the Depositor's life expectancy.

(e) Equal or substantially equal annual payments over a specified period that may not be longer than the joint life and last survivor expectancy of the Depositor and his or her designated beneficiary.

Even if distributions have begun to be made under option (d) or (e), the Depositor may receive a distribution of the balance in the custodial account at any time by giving written notice to the Custodian. If the Depositor does not choose any of the methods of distribution described above by the April 1 following the calendar year in which he or she reaches age 70-1/2, distribution to the Depositor will be made on that date by a single sum payment. If the Depositor elects as a means of distribution (b) or (c) above, the annuity contract must satisfy the requirements of section 408(b)(1), (3) and (4) of the Code. If the Depositor elects as a means of distribution (d) or (e) above, the annual payment required to be made by the Depositor's required beginning date is for the calendar year the Depositor reached age 70-1/2. Annual payments for subsequent years, including the year the Depositor's required beginning date occurs, must be made by December 31 of that year.

2. If the Depositor dies before his or her entire interest is distributed to him or her, the entire remaining interest will be distributed as follows:

(a) If the Depositor dies on or after the Depositor's required beginning date, distribution must continue to be made in accordance with paragraph 1.

(b) If the Depositor dies before the Depositor's required beginning date, the entire remaining interest will, at the election of the beneficiary or beneficiaries, either

(i) Be distributed by the December 31 of the year containing the fifth anniversary of the Depositor's death, or

Article IV (New)

1. Notwithstanding any provision of this agreement to the contrary, the distribution of the Depositor's interest in the custodial account shall be made in accordance with the following requirements and shall otherwise comply with section 408(a)(6) and Proposed Regulations section 1.408-8, including the incidental death benefit provisions of Proposed Regulations section 1.401(a)(9)-2, the provisions of which are incorporated by reference.

2. Unless otherwise elected by the time distributions are required to begin to the Depositor under paragraph 3, or to the surviving spouse under paragraph 4, other than in the case of a life annuity, life expectancies shall be recalculated annually. Such election shall be irrevocable as to the Depositor and the surviving spouse and shall apply to all subsequent years. The life expectancy of a nonspouse beneficiary may not be recalculated.

3. The Depositor's entire interest in the custodial account must be, or begin to be, distributed by the Depositor's required beginning date (April 1 following the calendar year end in which the Depositor reaches age 70-1/2). By that date, the Depositor may elect, in a manner acceptable to the Custodian, to have the balance in the custodial account distributed in:

(a) A single sum payment.

(b) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the life of the Depositor.

(c) An annuity contract that provides equal or substantially equal monthly, quarterly, or annual payments over the joint and last survivor lives of the Depositor and his or her designated beneficiary.

(d) Equal or substantially equal annual payments over a specified period that may not be longer than the Depositor's life expectancy.

(e) Equal or substantially equal annual payments over a specified period that may not be longer than the joint life and last survivor expectancy of the Depositor and his or her designated beneficiary.

4. If the Depositor dies before his or her entire interest is distributed to him or her, the entire remaining interest will be distributed as follows:

(a) If the Depositor dies on or after distribution of his or her interest has begun, distribution must continue to be made in accordance with paragraph 3.

(b) If the Depositor dies before distribution of his or her interest has begun, the entire remaining interest will, at the election of the Depositor or, if the Depositor has not so elected, at the election of the beneficiary or beneficiaries, either

(i) Be distributed by the December 31 of the year containing the fifth anniversary of the Depositor's death, or

(ii) Be distributed in equal or substantially equal payments over the life or the life expectancy of the designated beneficiary or beneficiaries starting by December 31 of the year

Article IV Discussion

Part 1 — Article IV Controls. The new Article IV states that the rules set out in Article IV will control mandatory distributions, regardless of any other language in the IRA plan. The end result is that if the Custodian/Trustee adds default provisions to Article VIII, they will not be effective unless they are the same as those found in Article IV. Part 1 also incorporates the Minimum Distribution Incidental Benefit rule into the plan language.

Part 2 — Life Expectancy Recalculation. Article IV states that life expectancies will be recalculated unless the accountholder elects otherwise and that th elections made under this article are irrevocable.

Part 3 — Automatic Distribution Default contains a significant change. The old 5305 specified a lump-sum payment if the accountholder did not choose one of the methods of distribution set forth in this section of Article IV. The new plans eliminate the lump-sum requirement. The result of this change is that if no 70-1/2 elections are made a single life expectancy will be used if no beneficiaries are named, and a joint life expectancy is to be used if there are beneficiaries.

Part 4 — Beneficiary Language Retained deals with beneficiary required distributions. The language is basically the same as

Article IV (Old) – Continued

(ii)Be distributed in equal or substantially equal payments over the life or life expectancy of the designated beneficiary or beneficiaries.

The election of either (i) or (ii) must be made by December 31 of the year following the year of the Depositor's death. If the beneficiary or beneficiaries do not elect either of the distribution options described in (i) or (ii), distribution will be made in accordance with (ii) if the beneficiary is the Depositor's surviving spouse and in accordance with (i) if the beneficiary or beneficiaries are or include anyone other than the surviving spouse. In the case of distributions under (ii), distributions must commence by December 31 of the year following the year of the Depositor's death. If the Depositor's spouse is the beneficiary, distributions need not commence until December 31 of the year the Depositor would have attained age 70-1/2, if later.

(c) If the Depositor dies before his or her entire interest has been distributed and if the beneficiary is other than the surviving spouse, no additional cash contributions or rollover contributions may be accepted in the account.

3. In the case of distribution over life expectancy in equal or substantially equal annual payments, to determine the minimum annual payment for each year, divide the Depositor's entire interest in the Custodial account as of the close of business on December 31 of the preceding year by the life expectancy of the Depositor (or the joint life and last survivor expectancy of the Depositor and the Depositor's designated beneficiary, or the life expectancy of the designated beneficiary, whichever applies). In the case of distributions under paragraph (1), determine the initial life expectancy (or joint life and last survivor expectancy) using the attained ages of the Depositor and designated beneficiary as of their birthdays in the year the Depositor reaches age 70-1/2. In the case of distribution in accordance with paragraph (2)(b)(ii), determine life expectancy using the attained age of the designated beneficiary as of the beneficiary's birthday in the year distributions are required to commence. Unless the Depositor (or spouse) elects not to have life expectancy recalculated, the Depositor's life expectancy (and the life expectancy of the Depositor's spouse, if applicable) will be recalculated annually using their attained ages as of their birthdays in the year for which the minimum annual payment is being determined. The life expectancy of the designated beneficiary (other than the spouse) will not be recalculated. The minimum annual payment may be made in a series of installments (e.g. monthly, quarterly, etc.) as long as the total payments for the year made by the date required are not less than the minimum amounts required.

Article IV (New) – Continued

following the year of the Depositor's death. If, however, the beneficiary is the Depositor's surviving spouse, then this distribution is not required to begin before December 31 of the year in which the Depositor would have turned age 70-1/2.

(c) Except where distribution in the form of an annuity meeting the requirements of section 408(b)(3) and its related regulations has irrevocably commenced, distributions are treated as having begun on the Depositor's required beginning date, even though payments may actually have been made before that date.

(d) If the Depositor dies before his or her entire interest has been distributed and if the beneficiary is other than the surviving spouse, no additional cash contributions or rollover contributions may be accepted in the account.

5. In the case of a distribution over life expectancy in equal or substantially equal annual payments, to determine the minimum annual payment for each year, divide the Depositor's entire interest in the Custodial account as of the close of business on December 31 of the preceding year by the life expectancy of the Depositor (or the joint life and last survivor expectancy of the Depositor and the Depositor's designated beneficiary, or the life expectancy of the designated beneficiary, whichever applies). In the case of distributions under paragraph 3, determine the initial life expectancy (or joint life and last survivor expectancy) using the attained ages of the Depositor and designated beneficiary as of their birthdays in the year the Depositor reaches age 70-1/2. In the case of a distribution in accordance with paragraph 4(b)(ii), determine life expectancy using the attained age of the designated beneficiary as of the beneficiary's birthday in the year distributions are required to commence.

6. The owner of two or more individual retirement accounts may use the "alternate method" described in Notice 88-38, 1988-1 C.B. 524, to satisfy the minimum distribution requirements described above. This method permits an individual to satisfy these requirements by taking from one individual retirement account the amount required to satisfy the requirement of another.

Article IV Discussion – *Continued*

was present in the old form.

Part 5 — Distribution Formula Unchanged sets out the minimum distribution formula. This language is unchanged.

Part 6 — "Alternative Method" Distributions states that the "alternative method" can be used to satisfy the distribution requirements. This allows the account-holder to take a distribution from one IRA to satisfy all distribution requirements for a year.

Article V (Old)

Unless the Depositor dies, is disabled (as defined in section 72(m) of the Code), or reaches age 59-1/2 before any amount is distributed from the custodial account, the Custodian must receive from the Depositor a statement explaining how he or she intends to dispose of the amount distributed.

Article V Discussion

The old Article V language has been eliminated. The old Article VI language has now become Article V. This deals with IRA reporting.

Article VI (Old)

1. The Depositor agrees to provide the Custodian with information necessary for the Custodian to prepare any reports required under section 408(i) of the Code and the related regulations.

2. The Custodian agrees to submit reports to the Internal Revenue Service and the Depositor prescribed by the Internal Revenue Service.

Article V (New)

1. The Depositor agrees to provide the Custodian with information necessary for the Custodian to prepare any reports required under section 408(i) and Regulations sections 1.408-5 and 1.408-6.

2. The Custodian agrees to submit reports to the Internal Revenue Service and the Depositor prescribed by the Internal Revenue Service.

Article VI /V Discussion

The old Article VII language has become Article VI. It is unchanged.

Article VII (Old)

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through III and this sentence will be controlling. Any additional articles that are not consistent with section 408(a) of the Code and related regulations will be invalid.

Article VI (New)

Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I though III and this sentence will be controlling. Any additional articles that are not consistent with section 408(a) and the related regulations will be invalid.

Article VII/VI Discussion

The old Article VIII has become Article VII in the new plan. The language is unchanged.

Article VIII (Old)

This agreement may be amended from time to time to comply with provisions of the Code and related regulations. Other amendments may be made with the consent of the persons whose signatures appear below.

Note: The following (Article IX) may be used for any other provision you the Custodian wish to add. If the Custodian does not wish to add any other provisions, draw a line through this space. If the Custodian adds provisions, they must comply with applicable requirements of State law and the Internal Revenue Code.

Article VII (New)

This agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the persons whose signatures appear below.

Note: The following (Article VIII) may be used for any other provision you, the Custodian, wish to add. If the Custodian does not wish to add any other provisions, draw a line through this space. If the Custodian adds provisions, they must comply with applicable requirements of State law and the Internal Revenue Code.

Article VIII/VII Discussion

The old Article VIII has become Article VII in the new plan. The language is unchanged.

Article IX/Article VIII Discussion

Additional Terms and Conditions

Article IX was the optional Article a custodian/trustee could add to the basic 5305/5305-A IRA plan. It specified additional terms and conditions that governed the IRA account. The optional Article has become Article VIII since the IRS eliminated one of the old Articles (Article V).

WE'RE HERE TO ANSWER YOUR QUESTIONS

Please call Collin W. Fritz and Associates with any questions you may have on these plan changes, the process of amending existing plans, and obtaining new plan documents that incorporate these changes for opening new accounts. Call TOLL-FREE at 1-800-346-3961.