



THE Pension Digest

December 2014
Published Since 1984

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"The Pension Specialists"



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tion: \$95 per year.

February 2, 2015 Deadline

January 31, 2015 is a Saturday so the deadline for furnishing required IRA forms is February 2, 2015. An IRA custodian/trustee must furnish (i.e. mail, email, fax or personally deliver) the following to its IRA accountholders and its inheriting IRA beneficiaries. If this deadline would be missed, the IRS may assess the fines discussed at the end of the article.

2014 Form 1099-R

Any person (accountholder or beneficiary) who received a distribution(s) from an IRA totaling more than \$10 for the year must be furnished a 2014 Form 1099-R.

This FMV statement must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three Form 1099-Rs. In addition, there must be a Form 1099-R prepared for each applicable distribution code. For example, if a person has traditional IRA and one distribution required the use of Code "1", one the use of code "3" and one the use of Code "7", then three Form 1099-Rs must be furnished.

When an individual receives more than one copy of the Form 1099-R, then it is mandatory for the IRA custodian/trustee to insert a unique number in the account number box located in the lower left hand corner of the form. Even though there will be times when furnishing this account number is not required,

President Obama Signs the Tax Increase Prevention Act of 2014

Although President Obama had threaten to veto this legislation, he signed the Tax Increase Prevention Act of 2014 before leaving for Hawaii on December 19th.

This bill reauthorized qualified charitable distributions (QCDs) for 2014. There will need to be another tax bill to extend QCDs for 2015. This tax bill extended many tax provisions for 2014. The IRS will again be scrambling to finalize the 2014 federal income tax forms.

Unlike in some prior years, a person must complete his or her 2014 QCD by December 31, 2014. The main requirement, the IRA custodian/trustee must issue or have issued the check to the charity. As in past years, the IRA custodian/trustee prepares the Form 1099-R showing the distribution as taxable and then the individual completes his/her tax return explaining why the distribution was not taxable. There is no special code for form 1099-R purposes. Code 7 is used.

As discussed in last month's newsletter, the next Congress (114th) will be considering IRA and pension law changes. Congress reconvenes on January 5/6, 2015.

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Deadline,
Continued from page 1

the IRS encourages IRA custodian/s trustees to voluntarily furnish it. This account number allows the IRS to process the submissions of any corrected forms.

If the IRA custodian would fail to timely furnish a 2014 Form 1099-R or furnishes one prepared with errors due to its errors, then the IRS may assess a fine of \$100 per form.

Fair Market Value (FMV) statements

An IRA custodian must furnish a FMV statement to each IRA accountholder and each inheriting beneficiary having a balance as of December 31, 2014, to each IRA accountholder who died during 2014, and to any IRA accountholder who made a reportable contribution for 2014 during 2014. The deadline to furnish the FMV statement is February 2, 2015.

This FMV statement must be prepared on a per plan agreement basis. That is, if a person would have two traditional IRAs and one Roth IRA, then he or she would need to be furnished three FMV statements these could be combined as long as there were three separate sections.

There must be a sentence on the statement informing the recipient that the FMV information (Balance as of December 31) will be furnished to the IRS when the 2014 Form 5498 will be filed with the IRS in May of 2015.

The IRA Custodian/trustee may, but is not required, to furnish contribution and earnings (including interest) information on the FMV statement for traditional IRAs, SEP-IRAs and Roth IRAs. However, a special rule applies for SIMPLE-IRAs. In the case of a SIMPLE-IRA, the IRA custodian must furnish a detailed statement listing all contributions (dates, and amounts) made by the employer on behalf of the SIMPLE-IRA accountholders.

Why is it required to furnish the FMV statement? A taxpayer who has basis within a traditional IRA, SEP-IRA or SIMPLE-IRA needs the FMV for purposes of completing the Form 8606 to determine the taxable portion of a distribution and the nontaxable portion.

The IRS may assess a penalty of \$50 for each failure to furnish the FMV statement for traditional IRAs, SEP-IRAs, and Roth IRAs. The penalty is \$100 PER DAY for failing to furnish the FMV statement for a SIMPLE-IRA.

RMD Notice for 2015.

An IRA custodian/trustee must furnish each traditional/SEP/SIMPLE-IRA accountholder who was born on or before June 30, 1935 and who has a balance as of December 31, 2014 with an RMD Notice. This RMD notice must be furnished to ALL such accountholders and not only to those individuals who attain age $70\frac{1}{2}$ in 2015. The RMD notice is not required to be furnished to an individual who only attains age 70 in 2015 (i.e. born between July 1, 1935 and December 31, 2015).

There is no requirement and no need to furnish an RMD Notice to a Roth IRA accountholder since the RMD rules do not apply to a Roth IRA accountholder while he or she is alive.

Three items must be set forth in the required RMD Notice.

First, the deadline applying to the IRA accountholder must be set forth. This will be December 31, 2015, for an individual who is older than age $70\frac{1}{2}$ in 2015 or April , 2015, if the individual does attain age $70\frac{1}{2}$ in 2015. Second, there must a sentence informing the individual that the IRS will be told on the 2014 Form 5498 that he or she is subject to the RMD rules for 2015. Third, the individual must be informed of his or her RMD amount for 2015 or that such amount has not been calculated, but will be if the individual contacts the IRA custodian/trustee and requests that the calculation be made.

Although the RMD laws apply to an inheriting IRA beneficiary of all four types of IRAs, current IRS rules do not require the IRA custodian/trustee to furnish an RMD notice. CWF strongly suggests you do so. The model IRS IRA forms do require that there be an RMD distribution made to an inheriting beneficiary. A beneficiary who fails to take an RMD will owe the 50% tax and may well argue that the custodian/trustee should pay some of this tax for its failure to notify or payout a RMD.

The IRS may assess a fine of \$50.00 for each time an IRA custodian/trustee would fail to furnish a complying RMD notice.

In summary, an IRA custodian/trustee must furnish the 2014 Form 1099-Rs, FMV statements, and 2015 RMD Notices by February 2, 2015 or it will be subject to being fined by the IRS. ♦

A Traditional IRA Beneficiary Is Ineligible to Convert an Inherited/Beneficiary IRA to a Roth IRA

Slowly but surely some individuals with funds in traditional IRAs are making the decision to convert their traditional IRA funds to a Roth IRA. These individuals are pursuing the goal of tax-free income.

Individuals who have inherited a traditional IRA are starting to ask their IRA custodians if they can convert their inherited traditional IRA funds to an inherited Roth IRA.

The answer is, "no." The current conversion rules are primarily based on the standard rollover rules found in Code section 408(d) (3). The law requires that the individual include the taxable amount in his or her income regardless if the conversion is done by rollover, an internal transfer conversion, or an external transfer conversion.

Code section 408(d)(3)(C) expressly denies rollover treatment i.e conversion) for inherited IRAs.

Code section 402 also denies rollover treatment of employer funds into inherited IRAs for nonspouse beneficiaries. That is, if a distribution is made to a nonspouse beneficiary, he or she must include the taxable portion in his or her income as the law does not authorize a rollover contribution. However, the law creating and defining direct rollovers mandates that a nonspouse beneficiary have the same rights as participants to do a direct rollover. In a direct rollover, the plan trustee issues the check to the IRA custodian for benefit of John Doe's inherited traditional IRA and/or John Doe's inherited Roth IRA. A nonspouse beneficiary must be given the right to have a direct rollover of inherited funds into an inherited traditional IRA and/or an inherited Roth IRA.

Admittedly, allowing a nonspouse beneficiary to directly rollover inherited funds into an inherited IRA is logical in the sense that a participant has the direct rollover right. But it is somewhat illogical that a nonspouse beneficiary of a pension plan may convert non-Roth funds within the pension plan to a Roth IRA when he or she is unable to do this for funds within a traditional IRA.

Since different Congresses and different Presidents enact tax laws over many years there will be inconsistencies.

An IRA custodian will need to be ready to inform a beneficiary that the current law does not authorize an individual who has an inherited traditional IRA to convert it to being an inherited Roth IRA.

The 2015 5498 Forms

The IRS has released the 2015 versions of Form 5498, Form 5498-SA, and Form 5498-ESA.

These versions do not contain any new boxes versus the 2014 forms .

2015 Form 5498 (IRA Contribution Information).

2015		VOID		CORRECTED		OMB No. 1545-0747		2015		Form 5498		IRA Contribution Information	
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 IRA contributions (other than amounts in boxes 2-4, 8-10, 13a, and 14a)		\$		2 Rollover contributions		\$		3 Roth IRA conversion amount		4 Recharacterized contributions	
TRUSTEE'S or ISSUER'S federal identification no.		PARTICIPANT'S social security number		5 Fair market value of account		\$		6 Life insurance cost included in box 1		\$		Copy A	
PARTICIPANT'S name		7 IRA SIMPLE SEP		8 SIMPLE contributions		\$		9 SIMPLE contributions		\$		For Internal Revenue Service Center File with Form 1096.	
Street address (including apt. no.)		10 Roth IRA contributions		\$		11 Check if RMD for 2016		12a RMD amount		\$		For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.	
City or town, state or province, country, and ZIP or foreign postal code		12a RMD date		\$		12b RMD amount		13a Year		13b Code			
		13a Postponed contribution		\$		14a Repayments		14b Code					
Account number (see instructions)		15a FMV of certain specified assets		\$		15b Code(s)							

Individuals will have until April 18, 2016 to make a contribution for the 2015 tax year.

May 31, 2016 is the deadline to furnish a copy to the IRS and a copy to the IRA accountholder or inheriting beneficiary.

Completing boxes 15a and 15b is mandatory for 2015 whereas it is optional for 2014. In box 15a is to be reported the FMV of IRA assets not readily traded or what we call hard to value assets. In box 15B a code is to be inserted describing the type of hard to value asset.

2015 5498 Forms,
Continued from page 3

2015 Form 5498-SA (HSA, Archer MSA, or Medicare Advantage MSA Information) .

2727 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1518	
TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Employee or self-employed person's Archer MSA contributions made in 2015 and 2016 for 2015	
		2015	
2 Total contributions made in 2015		Form 5498-SA	
3 Total HSA or Archer MSA contributions made in 2016 for 2015		HSA, Archer MSA, or Medicare Advantage MSA Information	
TRUSTEE'S federal identification number	PARTICIPANT'S social security number	Copy A For Internal Revenue Service Center	
PARTICIPANT'S name		File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.	
Street address (including apt. no.)		4 Rollover contributions	
City or town, state or province, country, and ZIP or foreign postal code		5 Fair market value of HSA, Archer MSA, or MA MSA	
Account number (see instructions)			

Form 5498-SA Cat. No. 38467V www.irs.gov/form5498sa Department of the Treasury - Internal Revenue Service
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Individuals will have until April 18, 2016 to make a contribution for the 2015 tax year.

May 31, 2016 is the deadline to furnish a copy to the IRS and a copy to the HSA owner.

At this time the IRS does not require special reporting for hard to value HSA assets. Since the same investments rules applying to IRAs also apply to HSAs one thinks it is only a matter of time such a change would be made.

2015 Form 5498-ESA
(Coverdell ESA Contribution Information)

7272 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-1815	
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Coverdell ESA contributions	
		2015	
2 Rollover contributions		Form 5498-ESA	
3 Total HSA or Archer MSA contributions made in 2016 for 2015		Coverdell ESA Contribution Information	
TRUSTEE'S/ISSUER'S federal identification no.	BENEFICIARY'S social security number	Copy A For Internal Revenue Service Center	
BENEFICIARY'S name		File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2015 General Instructions for Certain Information Returns.	
Street address (including apt. no.)			
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)			

Form 5498-ESA Cat. No. 34011J www.irs.gov/form5498esa Department of the Treasury - Internal Revenue Service
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Individuals will have until April 18, 2016 to make a contribution for the 2015 tax year.

May 2, 2016 is the deadline to furnish a copy to the Designated Beneficiary as April 30 is a Saturday. May 31, 2016 is the deadline to furnish a copy to the IRS.

Note that the Form 5498-ESA does NOT have a box to report the FMV of the Coverdell ESA. This is inconsistent with the other 5498 forms, but unless there would be substantial growth in CESAs we do not see the IRS changing this.

The 2014 5498 Forms

The IRS previously released the 2014 versions of Form 5498, Form 5498-SA, and Form 5498-ESA.

The IRS did adopt a major change for the Form 5498 as discussed below.

2014 Form 5498 (IRA Contribution Information).

2828 <input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED		OMB No. 1545-0747	
TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 IRA contributions (other than amounts in boxes 2-4, 8-10, 13a, and 14a)	
		2014	
2 Rollover contributions		Form 5498	
3 Roth IRA conversion amount		4 Reclassified contributions	
TRUSTEE'S or ISSUER'S federal identification no.	PARTICIPANT'S social security number	Copy A For Internal Revenue Service Center	
5 Fair market value of account		6 Life insurance cost included in box 1	
PARTICIPANT'S name		7 IRA <input type="checkbox"/> SEP <input type="checkbox"/> SIMPLE <input type="checkbox"/> Roth IRA <input type="checkbox"/>	
Street address (including apt. no.)		8 SEP contributions	
City or town, state or province, country, and ZIP or foreign postal code		9 SIMPLE contributions	
		10 Roth IRA contributions	
		11 Check if RMD for 2015	
		12a RMD date	
		12b RMD amount	
		13a Postponed contribution	
		13b Year	
		13c Code	
		14a Repayments	
		14b Code	
Account number (see instructions)		15a FMV of certain specified assets	
		15b Code(s)	

Form 5498

Individuals will have until April 15, 2015 to make a contribution for the 2014 tax year.

June 1, 2015 is the deadline to furnish a copy to the IRS and a copy to the IRA accountholder or inheriting beneficiary as May 31st is a Sunday.

In order to gather more information on IRA funds invested in hard to value assets the IRS did add boxes 15a and 15b. Completing boxes 15a and 15b is optional for 2014. In box 15a is to be reported the FMV of IRA assets not readily traded or what we call hard to value assets. In box 15B a code is to be inserted describing the type of hard to value asset.

2014 Form 5498-SA (HSA, Archer MSA, or Medicare Advantage MSA Information) .

2727 ☐ VOID ☐ CORRECTED

TRUSTEE'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		1 Employee or self-employed person's Archer MSA contributions made in 2014 and 2015 for 2014	OMB No. 1545-1518
		\$	2014
		\$	
TRUSTEE'S federal identification number		Form 5498-SA	
PARTICIPANT'S social security number		3 Total HSA or Archer MSA contributions made in 2015 for 2014	Copy A For Internal Revenue Service Center File with Form 1096, For Privacy Act and Paperwork Reduction Act Notice, see the 2014 General Instructions for Certain Information Returns.
PARTICIPANT'S name		4 Rollover contributions	
Street address (including apt. no.)		\$	
City or town, state or province, country, and ZIP or foreign postal code		5 Fair market value of HSA, Archer MSA, or MA MSA	
Account number (see instructions)		\$	
		6 HSA <input type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>	

Form 5498-SA Cat. No. 3846/V www.irs.gov/form5498sa Department of the Treasury - Internal Revenue Service
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Individuals will have until April 15, 2015 to make a contribution for the 2014 tax year.

June 1, 2105 is the deadline to furnish a copy to the IRS and a copy to the HSA owner as May 31 is a Sunday.

At this time the IRS does not require special reporting for hard to value HSA assets. Since the same investments rules applying to IRAs also apply to HSAs one thinks it is only a matter of time such a change would be made.

2014 Form 5498-ESA (Coverdell ESA Contribution Information)

7272 ☐ VOID ☐ CORRECTED

TRUSTEE'S or ISSUER'S name, street address, city or town, state or province, country, and ZIP or foreign postal code		1 Coverdell ESA contributions	OMB No. 1545-1815
		\$	2014
		\$	
TRUSTEE'S/ISSUER'S federal identification no.		Form 5498-ESA	
BENEFICIARY'S social security number		Coverdell ESA Contribution Information	
BENEFICIARY'S name		Copy A For Internal Revenue Service Center File with Form 1096, For Privacy Act and Paperwork Reduction Act Notice, see the 2014 General Instructions for Certain Information Returns.	
Street address (including apt. no.)			
City or town, state or province, country, and ZIP or foreign postal code			
Account number (see instructions)			

Form 5498-ESA Cat. No. 34011/J www.irs.gov/form5498esa Department of the Treasury - Internal Revenue Service
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Individuals will have until April 15, 2015 to make a contribution for the 2014 tax year.

April 30, 2015 is the deadline to furnish a copy to the Designated Beneficiary and June 1, 2015 is the deadline to furnish a copy to the IRS.

Note that the Form 5498-ESA does NOT have a box to report the FMV of the Coverdell ESA. This is inconsistent with the other 5498 forms, but unless there would be substantial growth in CESAs we do not see the IRS changing this.

A Revised IRA Rollover Certification Form Must Be Used in 2015

The IRA plan agreement authorizes the IRA custodian/trustee to accept an individual's qualifying rollover contribution. There is no limit to the rollover amount; it may be any amount. A person making an annual contribution is limited to contributing a maximum of \$5,500/\$6,500 for 2015.

A rollover certification form or a rollover review form is used because it requires the individual to provide basic information so that it can be determined the individual's contribution qualifies to be rolled over. The individual certifies that he or she is eligible to make the rollover contribution whether it be a rollover or direct rollover.

A nonqualifying rollover contribution will be an excess contribution subjecting the individual to the 6% annual excess contributions tax. The IRS has the authority to impose fines on an IRA custodian/trustee which knowingly participates in accepting funds not qualifying to be rolled over.

As of January 1, 2015, the new once year rollover rule applies. An IRA custodian/trustee certainly should not be using a rollover form printed before January of 2014 as it will set forth the once per year rule found to be wrong by the U.S. Tax Court. It will most likely state a person is allowed to make one rollover per IRA plan agreement and this will be incorrect.

CWF had revised our rollover forms 65 (traditional), 65-R (Roth) and 965 (SIMPLE) in April of 2014 to inform users of the the new rule and the IRS transition rule applying until January 1, 2015. We have now chosen to update these forms as the discussion of the transition rules is no longer needed and the new version is more concise and specific.

Email Guidance

Mistaken Inherited IRA Distributions

Q-1. We had a customer (Mary Smith) come to the bank wanting to deposit a check made payable to, the Jane Doe trust. The check was issued by a mutual fund company. Is it possible to set up an inherited IRA for the trust and make a rollover contribution?

A-1. No, I am sending some information confirming that a nonspouse beneficiary (including a trust) cannot rollover a distribution from an inherited/beneficiary IRA. The distribution must be included in income.

I am aware of no tax relief for this situation at this point in time. It appears Congress will consider changing the law to allow a beneficiary in this situation to correct the error if certain conditions are met. Senator Hatch had proposed such a change in 2013 and he is the new chairperson of the Senate Finance Committee. Unfortunately, this situation happens more than it should. Some/many brokerage firms do not put beneficiaries on notice that the distribution will be taxable and it is ineligible to be rolled over. Present law does not allow this mistake to be corrected, it does not matter whose fault it is.

It might be this law would be adopted in 2014 under the new Congress. I have no idea to what degree it might be retroactive.

Some individuals try to get the other IRA custodian to take the money back and then try to have treat the distribution as if it never occurred. There is a risk to this approach as the IRS, if it knows about the situation, will argue the distribution occurred and is taxable and would assess penalties for not reporting it.

Rolling Roth IRA to Roth 401(k) Is Impermissible

Q-2. Can a Roth IRA be rolled into a Roth 401(k) plan?

A-2.No, not under existing law.

For confirmation look at the IRS rollover chart in Pub 590, the only place Roth IRA funds may be rolled over is into a Roth IRA.

I am surprised the big investment firms have not sought to change this rule or been able to have it changed.

Reporting a CESA Transfer

Q-3. I have a couple questions today regarding a CESA transaction that I had called you about earlier this year. There are 3 siblings CESAs involved with this transaction. The responsible individual on the oldest child's account took \$2,000 total out of his account and transferred \$1,000 each to the younger 2 siblings. All of these accounts are held at our institution. The oldest did not close his account but just diminished it by the amount that he is not planning on using for educational expenses. I wanted to confirm that this is a non-reportable transfer transaction since we are just moving the money from 1 family member to other family members all within our institution.

A-3. The CESA transfer rules are different from the IRA transfer rules. In general, a transfer must be reported on the 1099-Q and On the 5498-ESA See the attached IRS CESA forms and instructions.

A sentence is set forth, "You should file a separate Form 1099-Q for any trustee-to-trustee transfer." The conservative approach is to prepare 2 Form 1099-Qs, one for each transfer. The IRS instructions for this form are not as clear as they should be and should be improved.

The IRS has never explained why CESA transfers are to be

reported. Your situation is probably why. The funds are moving from one person to a different person (albeit a family member).

It seems inconsistent, but the IRS indicates that changing the name on the account does not need to be reported in [he Form 1099-Q, but the Form 5498-ESA would be prepared using the name of the new designated beneficiary.

Is a Contribution Made After Age 70½ Ever Permissible?

Q-4. I have a customer who will attain age 70½ on 2/15/15. Is he eligible to make a contribution for 2014? Is he eligible to make a contribution for 2015 if he does so before 2/15/15?

A-4. Your customer who will attain age 70½ in February of 2015 is permitted to make an IRA contribution for tax year 2014 as long as he does so by April 15, 2015. He is

Email Q & A,
Continued from page 6

not required to make the contribution before he attains age 70^{1/2}. A person is ineligible to make a traditional IRA contribution for the tax year during which he or she attains age 70^{1/2}. He is ineligible to make a contribution for 2015 even if he makes it before he actually attains age 70^{1/2}.

Is it Possible to Return a 2014 RMD and then do a QCD?

Q-5a. Would you please confirm whether or not an individual can take his/her RMD and a QCD?

A-5a. The QCD rules exist even if there were no RMD rules. Therefore, if a person has already satisfied his or her RMD, the person is still permitted to make a QCD if they would choose to. The IRS was nice in ruling that a person who did a QCD was allowed to count that distribution as satisfying their RMD, but actually taking their RMD does not make them ineligible to make a QCD. The person still could give \$100,000 if they wanted.

Q-5b. I was asked to find out if an individual could return an RMD taken earlier this year and then put the funds towards a QCD.

A-5b. No, an RMD is ineligible to be rolled over. And first money out counts against the RMD.

HSA Questions

Q-6a. I am not real familiar with HSAs as we only have a couple, so I have a really silly question. Can a prior year contribution be made to an HSA if made before April 15th (like an IRA)?

A-6a. All questions are good questions. Yes, in 2015 a person may make a prior year HSA contribution for 2014 as long as she does it by April 15, 2015. The deadline for 2013 contributions was April 15, 2014.

Q-6b. I have a quick question on HSA accounts. A former employee wants to transfer her HSA from our benefits vendor because the fees are \$4.00 a month, now that she no longer has a relationship with them. She wants to transfer it to her HSA account here at our bank, with only \$5.00 per year annual fees. I didn't see a problem, she's just transferring or rolling over the funds. I wanted to run that by you, before I call her back.

A-6b. She may certainly transfer the HSA funds. Or, if she has not used her once per year rollover, she could take a distribution and then roll it over. She might wish to use the rollover approach if the current HSA custodian has a transfer fee.

Rebating IRA Fees

Q-7. Can you please advise if our Bank should accept this check payable to the bank for John Doe's IRA Custodian?

A-7. The previous IRA custodian/trustee has made the business decision to now rebate some of the fees it previously charged John Doe's IRA. This is permissible.

When income is earned by an IRA, such earnings are not reflected on any IRA reporting form. The same is true of any fees being charged. In a sense fees are negative earnings. It is permissible for you to treat the transaction as a nonreportable transfer since the check was made for of his IRA.

myRA Program May or May Not Be Covered By Title I of ERISA

Almost all retirement programs having employer involvement are regulated by the Department of Labor (DOL) and the Internal Revenue Service because they will be a pension plan as defined in Title I of ERISA (Employee Retirement Income Security Act of 1974).

As has been discussed in the Pension Digest, the U.S. Department of the Treasury is in the process of establishing a retirement security program for U.S. employees. It is the myRA retirement program. The government's goal is to provide a savings program for those employees who do not have a retirement plan at their place of work. Another goal is to involve employers in such a program. Under current law an employer's participation must be voluntary. However, there is activity by the current U.S. Treasury Department and others to convince Congress to make an employer's participation in this program or a similar program mandatory. Under current law an employer's participation in any type of retirement program is voluntary and some believe an employer should be required to offer a retirement program.

A main reason a business does not establish a retirement program is due to the the extensive government regulation applying to such plans. Compliance costs can be significant.

As the myRA program is currently structured, there must be employer involvement since an employer must be willing to provide a payroll deduction service. That is, an employer must withdraw funds from an employee's wages and remit such funds to be invested in a myRA Treasury Department retirement savings bond.

On December 15, 2014, the EBSA of the the DOL issued an information letter providing LIMITED SUPPORT to the U.S Department of the Treasury. The myRA program will only succeed if sufficient employers choose to participate.

Some employers have asked the question, will such involvement mean the Title I reporting requirements will apply?

The DOL has issued an Information letter to the Treasury Department stating an employer's "limited" involvement will not require it to comply with the Title I reporting requirements. Of course, certain rules must be met to gain this status. First, an employer is only to offer payroll deduction services. Any employer contribution on behalf of an employee will make the plan subject to ERISA Title I requirements. Any employer communication that the myRA retirement program is an employer benefit plan will make the plan subject to Title I requirements.

The DOL opined that "an employer participating in the myRA program would not be establishing or maintaining an 'employee benefit plan' within the meaning of section 3(2) of ERISA solely on the facts that employees participate through payroll withholding contributions and that the employer distributes information, facilitates employee enrollment, and otherwise encourages employees to make deposits to myRA accounts owned and controlled by employees."

The DOL also stated, "we do not believe Congress intended in enacting ERISA that a federal government retirement savings program created and operated by the U.S. Department of the Treasury would be subject to the extensive reporting, disclosure, fiduciary duty, or other requirements of ERISA which were established to ensure against the possibility that employees' expectations of a promised benefit would be defeated through poor management by the plan sponsor and other plan fiduciaries."

In this Information letter the EBSA/DOL does not address how quickly an employer must remit the withheld funds to the U.S. Treasury or what would be consequences to an employer who was "late."

In summary, an employer's limited involvement in the myRA retirement program as sponsored by the U.S. Department of the Treasury will not subject an employer to the requirements of Title I of ERISA.

Most likely additional guidance will be provided by the DOL and the Treasury Department to encourage employers to participate.