

THE Pension Digest

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Understanding What Forms Are Needed to Establish a SIMPLE IRA Plan And a SIM- PLE IRA

In order to establish its SIMPLE IRA plan, a sponsoring employer must execute either the IRS Model Form 5304-SIMPLE or the Form 5305-SIMPLE.

Each eligible employee must establish his/her own SIMPLE IRA to receive elective deferrals and the employer's matching or non-elective contribution. The IRS has two model forms for this - a Form 5305-S (trust) and a Form 5305-SA (custodial).

CWF Form 941 uses/incorporates Form 5305-S. CWF Forms 940 and 942 use/incorporates the custodial version, Form 5305-SA.

These two forms do not discuss or reference what form the employer completed in order to establish its SIMPLE IRA plan. These forms authorize the trustee or the custodian to accept contributions made on behalf of a participant under the employer's SIMPLE IRA plan.

Some IRA representatives are confused because the IRS does not have a 5304 version for an individual to establish his/her SIMPLE IRA.

One can see a person thinking the IRS might have another 5304 SIMPLE IRA form to be used by the individual, but this form has not been written by the IRS as the IRS does not think it is needed.

SEPs — The Last-Minute Retirement Plan and Tax Deduction

Definitions

SEP — SEP is the acronym for Simplified Employee Pension plan. In order to have a SEP, two requirements must be met. First, an employer must sign a SEP plan document which may be: (1) the IRS model Form 5305-SEP; (2) a SEP prototype; or (3) a SEP plan as written specifically for that employer by an attorney. The employer may be a gigantic corporation or a self employed person. Second, all eligible employees must establish (or have established for them) a SEP-IRA.

SEP-IRA — A SEP-IRA is a standard, traditional IRA established with a financial institution to which an employer has made a SEP-IRA contribution. The IRA custodian is required to report SEP-IRA contributions in box 8 on Form 5498. In all other respects, the standard, traditional IRA rules will apply to administering SEP-IRAs. Contributions to SEP-IRAs are always owned by the employee, once the funds have been contributed to the employee's SEP-IRA.

5305-SEP. The system did not make it clear that the individual either needed to have an existing IRA into which the SEP-IRA contribution would be contributed or a new SEP-IRA must be established. Both forms are needed and so hopefully the vendor will change its system once it is advised that a clarification is needed.

Continued on page 2

IRS statistics show that annual SEP-IRA contributions exceed those of annual traditional IRA contributions. A financial institution will benefit by communicating with its business customers about the benefits of SEP-IRAs.

The tax laws do not require a person who has an existing traditional IRA to set up a new SEP-IRA. Some financial institutions choose for administrative reasons to require a separate IRA, but the tax laws do not require it. If any employee would fail to have a SEP-IRA so the business did not make a SEP contribution for such employee, there would be no SEP and the expected tax benefits would not apply for the sponsoring business and other employees.

In summary, establishing a SEP is easy as long as the two steps above are completed for a one person business and the three steps are completed for a business with employees.

Discussion

SEP plans may be established and funded by the normal tax deadline, plus extensions. A person may come into your institution in July of 2017, and make a SEP contribution of \$53,000, for tax year 2016. If an individual has the proper extension(s) a SEP contribution may be made as late as October 18 of 2017, for tax year 2016.

5305-SEP Form 5305-SEP Department of the Treasury Internal Revenue Service	Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement (Under section 408(k) of the Internal Revenue Code)	OMB No. 1545-0499 Do not file with the Internal Revenue Service
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(Name of employer) _____ makes the following agreement under section 408(k) of the Internal Revenue Code and the instructions to this form.

Article I—Eligibility Requirements (check applicable boxes—see instructions)
 The employer agrees to provide discretionary contributions in each calendar year to the individual retirement account or individual retirement annuity (IRA) of all employees who are at least _____ years old (not to exceed 21 years old) and have performed services for the employer in at least _____ years (not to exceed 3 years) of the immediately preceding 5 years. This simplified employee pension (SEP) ☐ includes ☐ does not include employees covered under a collective bargaining agreement, ☐ includes ☐ does not include certain nonresident aliens, and ☐ includes ☐ does not include employees whose total compensation during the year is less than \$450*.

Article II—SEP Requirements (see instructions)
 The employer agrees that contributions made on behalf of each eligible employee will be:
A. Based only on the first \$205,000* of compensation.
B. The same percentage of compensation for every employee.
C. Limited annually to the smaller of \$41,000* or 25% of compensation.
D. Paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract).

Employer's signature and date _____ Name and title _____

Instructions
 Section references are to the Internal Revenue Code unless otherwise noted.
Purpose of Form
 Form 5305-SEP (Model SEP) is used by an employer to make an initial contribution to a simplified employee pension (SEP) described in section 408(k).
 Do not file Form 5305-SEP with the IRS. Instead, keep it with your records.
 For more information on SEPs and IRAs, see Pub. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans), and Pub. 590, Individual Retirement Arrangements (IRAs).
Instructions to the Employer
Simplified employee pension. A SEP is a pension arrangement (a plan) that provides you with an easy way to make contributions toward your employees' retirement income. Under a SEP, you can contribute to an employee's traditional individual retirement account or annuity (traditional IRA). You make contributions directly to an IRA set up by or for each employee with a bank, insurance company, or other qualified financial institution. When using Form 5305-SEP to establish a SEP, the IRA must be a Model traditional IRA established on an IRS form or a master or prototype traditional IRA for which the IRS has issued a favorable opinion letter. You may not make SEP contributions to a Roth IRA or a SIMPLE IRA. Making the agreement on Form 5305-SEP does not establish an employer IRA described in section 408(c).
When not to use Form 5305-SEP. Do not use this form if you:
 * For 2005 and later years, this amount is subject to annual cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on IRS website at www.irs.gov.
For Paperwork Reduction Act Notice, see page 2. Cat. No. 11825J Form **5305-SEP** (Rev. 12-2004)

IRA — Custodial Account Application — Form 5305-A

Revocation in accordance with the Disclosure Statement should be mailed or delivered to: Custodian's Name _____ Address _____ City _____ State _____ Zip _____ Attn: _____ Phone _____	Deposit Information Date _____ Acct./Inst. No. _____ Deposit Amt. _____ For Tax Yr. _____ Type of Contribution <input type="checkbox"/> Regular or Spousal for: <input type="checkbox"/> Current Year, or <input type="checkbox"/> Prior Year <input type="checkbox"/> Rollover to: <input type="checkbox"/> Regular IRA, or <input type="checkbox"/> SEP IRA <input type="checkbox"/> SEP for: <input type="checkbox"/> Current Year, or <input type="checkbox"/> Prior Year <input type="checkbox"/> Recharacterization <input type="checkbox"/> Transfer—From Another IRA or SEP-IRA Custodian to: <input type="checkbox"/> Regular/Spousal IRA, or <input type="checkbox"/> SEP-IRA <input type="checkbox"/> Transfer—Incident to Divorce <input type="checkbox"/> Transfer—Surviving Spouse Elects to Treat as Own <input type="checkbox"/> Special Rollover regarding Exxon Valdez litigation <input type="checkbox"/> Repayment and Postponed Contributions—Complete CWF Form #54 Your Regular or Spousal Contribution Limit <table border="1"> <tr> <th>Tax Year</th> <th>If Not at Least</th> <th>If Over</th> </tr> <tr> <td>2012</td> <td>\$5,000</td> <td>\$6,000</td> </tr> <tr> <td>2013-2017</td> <td>\$5,500</td> <td>\$6,500</td> </tr> </table> <p>*These limits may be adjusted for cost of living changes after 2016.</p>	Tax Year	If Not at Least	If Over	2012	\$5,000	\$6,000	2013-2017	\$5,500	\$6,500
Tax Year	If Not at Least	If Over								
2012	\$5,000	\$6,000								
2013-2017	\$5,500	\$6,500								

Designation of Beneficiary
 Section 1 of Article VII of the Individual Retirement Custodial Account (Form 5305-A) contains an important disclosure of your right to name primary and contingent beneficiaries. Your designation will revoke all prior IRA beneficiary designations with respect to the referenced IRA account. In the event of your death you hereby direct that any balance in your IRA shall be paid to the following designated beneficiary or beneficiaries. If any primary or contingent beneficiary dies before you, then you wish to have the following result:
☐ the interest of that deceased beneficiary, his or her issue and spouse, if any, shall terminate totally and the percentage share of any surviving beneficiary(ies) shall increase on a pro rata basis; or
☐ the interest of that deceased beneficiary shall be paid to his or her issue who are alive or who have living issue, such issue will take by right of representation the share the deceased beneficiary would have taken if living, and persons of the same class shall share equally. If the deceased beneficiary has no living issue, but does have a surviving spouse, such spouse will receive the deceased beneficiary's share unless the following box is checked ().
 If you do not make the above designation, then you are deemed to have elected the "pro rata" selection. If you designate your spouse as your sole primary beneficiary, and he or she predeceases you, then you intend the funds to be transferred to your contingent beneficiary(ies) who shall become the primary beneficiary(ies) and not pass per stirpes to the issue of your spouse.
 You hereby designate the following individual(s) and/or entity(ies) to be your beneficiary(ies). You must check Primary or Contingent for each beneficiary. If neither is checked, the designated beneficiary will be deemed to be a primary beneficiary.

☐ ☐ Name _____
 Address _____
 City _____ State _____ Zip _____
 SSN _____ Date of Birth _____
 Share % _____ Relationship _____

☐ ☐ Name _____
 Address _____
 City _____ State _____ Zip _____
 SSN _____ Date of Birth _____
 Share % _____ Relationship _____

☐ ☐ Name _____
 Address _____
 City _____ State _____ Zip _____
 SSN _____ Date of Birth _____
 Share % _____ Relationship _____

☐ ☐ Name _____
 Address _____
 City _____ State _____ Zip _____
 SSN _____ Date of Birth _____
 Share % _____ Relationship _____

Spouse's Notice, Certification of Consent and Signature
 I am the spouse of the IRA depositor. I understand that my spouse wishes to name an IRA beneficiary other than or in addition to myself. I hereby agree or consent to my spouse's designation of beneficiary(ies). I expressly understand that my signature indicates my consent and that the legal effect of this signature is to change the character of the ownership of the interest I have in such IRA funds. I understand that I may consult my attorney before deciding to give such consent.
 Spouse's Signature _____
 Date _____

Signatures and Revocation Right
 You have requested that the Custodian establish an Individual Retirement Account (IRA) for you. You certify that your tax identification number (social security number) and other information are correct. In the event that this is a rollover contribution, you hereby irrevocably elect to treat this contribution as a rollover contribution subject to your right to revoke as discussed below. The rules and conditions governing this IRA form are contained in this application and the IRS Model Form 5305-A plan agreement as modified. You acknowledge that you are opening a custodial IRA and that it expressly requires that your IRA funds be invested in various deposit accounts as offered by us (i.e. the Custodian). You acknowledge that the Custodian has furnished you with a copy of the application, and the Individual Retirement Plan and Disclosure Statement. In addition, you have read the disclosure statement and you agree to make an initial contribution to this IRA. The Financial Disclosure is furnished to you using this method:
☐ 1. The financial projection information and tables as shown on the reverse side and on page 28 of the Disclosure Statement.
☐ 2. Special Attachment. For example, a customized disclosure statement or computer printout.
 You have the ability to terminate this IRA which you are establishing if you comply in a timely fashion with the revocation provisions as discussed in section 2 of the Disclosure Statement. In general, you have seven (7) calendar days in which to revoke this IRA plan agreement.
 Depositor's Signature _____ Date _____
 Authorized Signature of Custodian _____ Date _____
 Witness _____
 Use only if signature of the depositor, the custodian, or the spouse is required to be witnessed.

IRA-440-T (1/17) White — Custodian Yellow — Depositor (Accountholder) © 2017 Colin W. Fritz & Associates, Ltd.

What Is The IRA Custodian To Do When a SEP-IRA Owner or a SIMPLE IRA Owner Dies?

The purpose of this article is to discuss various administrative approaches when a SEP-IRA owner or a SIMPLE IRA owner dies.

Must an inherited SEP-IRA or inherited SIMPLE IRA be established or is it permissible for the IRA custodian to establish a standard inherited traditional IRA?

To the best of CWF's knowledge, we don't believe the IRS has ever furnished any written guidance when a SEP-IRA or a SIMPLE IRA owner dies. In Publication 590-B (IRA Distributions) the IRS discusses the tax rules applying when a traditional IRA owner dies or a Roth IRA owner dies. There is no discussion of when a SEP-IRA or a SIMPLE IRA owner dies.

In Publication 560 (Retirement Plans for Small Business - SEP, SIMPLE and Qualified Plans) the IRS on page 8 simply states the distributions from a SEP-IRA are subject to the IRA distribution rules and on page 10 states that distributions from a SIMPLE-IRA are subject to IRA rules. The IRS should improve its discussion.

There is a tax law requiring a person who takes a distribution from his/her traditional, SEP-IRA and/or SIMPLE IRA to aggregate the transactions and balances of all such IRAs in determining the taxation of the distribution(s).

As with traditional IRAs and Roth IRAs, what an IRA custodian for a beneficiary of a SEP-IRA or SIMPLE-IRA is to do is determined by whether the beneficiary is a spouse beneficiary or a non-spouse beneficiary.

Presumably, a surviving spouse beneficiary who is the sole primary beneficiary is able to exercise his/her right to elect to treat their deceased spouse's SEP-IRA or SIMPLE IRA as his or her own SEP-IRA or SIMPLE IRA. Whether or not contributions may be made on behalf of the surviving spouse is a separate issue. Contributions could be made for the spouse only if he or she was otherwise eligible for a SEP-IRA contribution or a SIMPLE IRA contribution.

Most surviving spouses will probably want to move the inherited SEP-IRA funds or SIMPLE IRA funds into their own traditional IRA. A spouse who is the sole primary beneficiary may elect to treat the deceased

spouse's SEP-IRA or SIMPLE-IRA as his or her own traditional IRA. These would be a non-reportable transfer. A spouse who is not a sole primary beneficiary will need to use the rollover rules to move such funds into his or her traditional IRA. The standard rollover rules would need to be met - the 60 day rule, the once per year rule and the required distribution rule.

Most non-spouse beneficiaries will probably want to have the inherited SEP-IRA funds or SIMPLE IRA funds moved by a transfer into an inherited traditional IRA. However, a non-spouse beneficiary could elect to have such funds moved into an inherited SEP-IRA or an inherited SIMPLE-IRA.

Special Transition Rules To Apply From April 10, 2017 to January 1, 2018 For the Fiduciary Rule and Certain Exemptions

The new fiduciary definition applies as of April 10, 2017 unless extended by the DOL under the Trump administration. This extension appears likely.

Not all of the BICE requirements must be met by April 10, 2017. Rather, the deadline is January 1, 2018.

In section IX of the BICE exemption, the DOL created a special rule for transactions occurring between April 10, 2017 and January 1, 2018 where only some of the BICE requirements as set forth below must be met in order to receive relief from the prohibited transaction rules.

1. Standards of Performance Requirements.

The financial institution and its adviser must provide investment advice that is in the best interest of the IRA account holder using the impartial conduct standards. The financial adviser must receive only reasonable compensation. Statements by the financial institution and its advisors about the recommended investments cannot be materially misleading.

2. Recordkeeping transactions must be performed by the financial institution.

3. A contact person must be designated by the financial institution for monitoring and administering the institution's material conflicts of interest policies and monitoring that the individual advisers are adhering to the impartial conduct standards.

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Form 5498,
Continued from page 3

4. Disclosure Requirements.

Prior to or at the same time as the execution of the first recommended transaction occurring during the transition period a single written disclosure must be furnished by the IRA fiduciary to the IRA owner setting forth clearly and prominently the following:

- a. Affirm the financial institution and its representatives are acting as fiduciaries;
- b. Set forth the best interest standard and affirmatively state that it and any adviser has applied this standard in making its investment recommendation;
- c. Describes whether the financial institution has any material conflicts of interest regarding the investment recommendation;
- d. Discloses to the IRA owner whether the financial institution offers proprietary products or receives third party payments, whether investments are restricted and if so, such restrictions must be defined; and
- e. Such disclosure may be provided in person, by mail or electronically. Only one disclosure is required to be furnished during the transition period even if multiple investment recommendations are furnished.

A financial institution has the ability to correct certain disclosure errors which occur if it was acting in good faith and with reasonable diligence if it provides the correct information as soon as practicable, but not later than 30 days after it learns of its error or omission.

Both the DOL and IRS Grant Temporary PT Relief From the New Fiduciary Rules/Exemptions

The IRS and the DOL have recently issued guidance that there will be no enforcement action by the IRS and DOL regarding the new fiduciary rules. Various conditions are discussed below. It appears likely the Trump administration will seek to repeal many of the fiduciary regulations which are in effect now and those that go into effect April 10, 2017.

The new fiduciary rules become effective as of April 10, 2017 unless extended until June 9, 2017. It is possible the DOL could issue a second extension later. The DOL is to announce before April 10 if there will be an extension. It appears there will be an extension until June 9th. If sufficient negative comments are submitted to the current DOL, it may be this regulation will be

revoked in its entirety. Time will tell.

On March 10, 2017 the DOL issued Field Assistance Bulletin 2017-01. The DOL's temporary enforcement policy 2017-01. It addresses the DOL's temporary enforcement policy on the fiduciary rule. Set forth is the temporary enforcement policy:

A. In the event the Department issues a final rule after April 10 implementing a delay in the applicability date of the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution did not satisfy conditions of the rule or the PTEs during the "gap" period in which the rule becomes applicable before a delay is implemented, including a failure to provide retirement investors with disclosures or other documents intended to comply with provisions of the rule or the related PTEs.

B. In the event the Department decides not to issue a delay in the fiduciary duty rule and related PTEs, the Department will not initiate an enforcement action because an adviser or financial institution, as of the April 10 applicability date of the rule, failed to satisfy conditions of the rule or the PTEs provided that the adviser or financial institution satisfies the applicable conditions of the rule or PTEs, including sending out required disclosures or other documents to retirement investors, within a reasonable period after the publication of a decision not to delay the April 10 applicability date. The Department will also treat the 30-day cure period under Section IX(d)(2)(vi) of the SIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption as available to financial institutions that, as of the April 10 applicability date, did not provide to retirement investors the disclosures or other documents described in Section IX(d)(2)(vi) of the SIC Exemption and Section VII(d)(2)(v) of the Principal Transactions Exemption.

To the extent that circumstances surrounding the decision on the proposed delay of the April 10 applicability date give rise to the need for other temporary relief, including prohibited transaction relief, EBSA will consider taking such additional steps as necessary.

This Bulletin is an expression of EBSA's temporary enforcement policy; it should not be read as expressing any view on any decision regarding a final rule on the

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March 2 proposal, and it does not address the rights or obligations of other parties.

On March 28, the IRS issued electronically Announcement 2017- 4. It provides relief from the PT taxes of code section 4975 and any related reporting requirements to conform to the temporary enforcement policy as described by the DOL in Field Assistance Bulletin 2017-01. The IRS guidance indicates that it will not seek to impose any excise tax to any transaction or agreement to which the DOL's temporary enforcement policy, or any subsequent related enforcement guidance would apply.

Reporting IRA Distributions on Form 1099-R

An IRA custodian must report all IRA distributions on Form 1099-R. There are two exceptions.

Exception #1. The distribution was a non-reportable transfer distribution.

Exception #2. There is no requirement to prepare a Form 1099-R for a person if the total of the distributions or is less than \$10.

There is no exception because the person had the distribution for only a very short amount of time (e.g. 1/2 hour, 1 hour, 3 hours, one day. etc.) and there is no exception because someone claims a mistake was made.

The primary rules for reporting IRA distributions are:

1. There must be a separate Form 1099-R prepared whenever a separate distribution code applies. For example, Jane Doe is age 45 and she withdraws funds from her personal IRA and she also withdraws her required distribution with respect to the IRA she inherited from her mother. There must be two 1099-R forms prepared, one would have a code 1 and one would have a code 4.

2. The Form 1099-R must be prepared on a per IRA plan agreement basis. For example, Jane Doe age 61 has two traditional IRAs and she takes a distribution from both IRAs. There must be two 1099-R forms prepared and both would have a code 7 in box 7.

3. The account number box on the Form 1099-R must be completed with an account number whenever more than one Form 1099-R must be prepared.

Can't We Just Treat My IRA Contribution or My IRA Distribution As It Didn't Happen?

We have been informed in a number of consulting calls from IRA custodians that some of their customers, some attorneys and accountants and some core processors believe it is permissible to reverse an IRA contribution or IRA distribution and treat it as if it had never occurred. IRS rules do not permit this. With very limited exceptions, all IRA contributions and all IRA distributions must be reported on Forms 5498 and 1099-R. Remember, the IRS now has the authority to assess a penalty of \$250 (times 2) for any incorrect or non-prepared Form 1099-R and \$50.00 (times 2) for any incorrect or non-prepared Form 5498.

Reporting IRA Contributions

An IRA custodian must report all IRA contributions on Form 5498 except for non-reportable transfer contributions. There is no de minimis IRA contribution rule. All annual contributions must be reported regardless of the size of the contribution or how short of time the contribution was in the IRA. This is also true for the other contribution types - rollovers, Roth IRA conversion, recharacterized contributions, postponed contributions, and reportable transfer contributions.

All contributions means all contributions. There is no exception because the contribution was very small or the contribution was in the IRA for only a short amount of time.

Set forth below is a listing of certain movement of funds which must be reported on the Form 5498 because they are a special type of transfer or they are a direct rollover coming from a 401(k) plan or other employer sponsored plan. Mistakes will happen as a direct rollover looks like a transfer as the check is made payable to the IRA custodian. Even so, it must be reported as a rollover by the IRA custodian.

1. Direct rollover of taxable 401(k) funds into a traditional IRA

2. Direct rollover of taxable 401(k) funds into a Roth IRA

3. Direct rollover of non taxable 401(k) funds into a traditional IRA

Continued on page 6

4. Direct rollover of non taxable 401(k) funds into a Roth IRA

5. Direct rollover of Designated Roth funds into a Roth IRA

6. Converting traditional/SEP/SIMPLE IRA to a Roth IRA

7. Recharacterizing either an annual contribution or a Roth IRA conversion contribution

8. Sending traditional IRA funds to a 401(k) plan (quasi-direct rollover).

9. Sending SEP-IRA funds to a 401(k) plan (quasi-direct rollover).

10. Sending SIMPLE IRA funds to a 401(k) plan (quasi-direct rollover), but only if 2 year requirement met.

Set forth below is a listing of those transfer contributions which are not reportable on Form 1099-R.

1. traditional IRA to traditional IRA

2. Roth IRA to Roth IRA

3. SEP-IRA to SEP-IRA

4. SIMPLE IRA to SIMPLE IRA

5. traditional IRA to SEP-IRA

6. SEP-IRA to traditional IRA

7. SEP-IRA to SIMPLE-IRA, but only if 2 year requirement met

8. SIMPLE IRA to traditional IRA, but only if 2 year rule met

9. SIMPLE IRA to SEP-IRA, but only if 2 year rule met.

The Form 5498 must be prepared on a per IRA plan agreement basis. For example, Jane Doe age 61 has two traditional IRAs, she makes an annual contribution to one and she makes a rollover contribution to the other. There must be two 5498 forms prepared since there are two separate IRA plan agreements. It would certainly be permissible that a person would only have one IRA plan agreement to which the two types of contributions would be made.

In summary, an IRA custodian must report each and every IRA contribution which goes into an IRA regardless of size or length of time within the IRA. Each contribution must be reported in the proper contribution box - annual, rollover, conversion, recharacterization, SEP, SIMPLE or Roth.

It should be remembered that the IRA custodian reports aggregated annual contributions, rollovers, recharacterizations, etc. For example, Jane Doe

rollovers over \$40,000 from her former employer's 401(k) plan and also rollovers \$10,000 from IRA custodian #1 and \$20,000 from IRA custodian #2. In the rollover box (box 2) the amount of \$70,000 is reported. The IRS is not informed of the individual rollover contributions comprising the \$70,000. The distributing plan or IRA will prepare the 1099-R forms reporting the individual distributions.

Reporting HSA Distributions on Form 1099-SA

An HSA custodian must report all HSA distributions on Form 1099-SA, but there are two exceptions.

Exception #1. HSA transfer distributions are not reported on the Form 1099-SA.

Exception #2. If a mistaken distribution is re-contributed to an HSA, this re-contribution is not to be reported on the Form 5498-SA and the original distribution is not to be reported on the Form 1099-SA.

Note there is no \$10 de minimis rule as there is with IRA and pension distributions. An HSA custodian is not allowed to not file Form 5498-SA because the recipient had the distribution only for a very short amount of time. The fact that someone made a mistake does not permit the Form 1099-SA to not be prepared.

The primary rules for reporting HSA distributions are:

1. There must be a separate Form 1099-SA prepared whenever a separate distribution code applies. For example, in 2017 John Doe is age 45 and he withdraws funds from his own HSA and he also withdraws funds from his mother's HSA who died in 2016. There must be two 1099-SA forms prepared, one with a code 1 and one with a code 6 in box 3.

2. The Form 1099-SA must be prepared on a per HSA plan agreement basis. For example, Jane Doe, age 57, has two HSAs and she takes a distribution from both. There must be two 1099-SA forms prepared and both would have a code 1 in box 3.

3. The account number box on the Form 1099-SA must be completed on each Form 1099-SA whenever more than one Form 1099-SA must be prepared.

Why Can't We Just Treat My HSA Contribution or My HSA Distribution As It Didn't Happen?

This discussion of reporting HSA contributions and distributions is very similar to the IRA discussion.

There are some minor differences. Therefore, with very limited exceptions, all HSA contributions and all HSA distributions must be reported on Forms 5498-SA and 1099-SA.

For some reason, some HSA core processors believe it is premissable to reverse HSA contributions and distributions. Maybe IRS rules should permit this, but presently they don't.

Reporting HSA Contributions

An HSA custodian must report all HSA contributions on Form 5498-SA. All annual and rollover contributions must be reported. There is no exception because the contribution was very small or the contribution was in the HSA for only a short amount of time.

There are two exceptions. First, non-reportable HSA transfer contributions are not required to be reported. Second, the recontribution of a mistaken distribution is not required to be reported.

Set forth below is a listing of those transfer contributions which are not reportable on Form 5498-SA:

1. HSA to HSA
2. Archer MSA to HSA

The Form 5498-SA must be prepared on a per IRA plan agreement basis. For example, Jane Doe age 61 has two traditional HSAs; she makes an annual contribution to one and she makes a rollover contribution to the other. There must be two 5498-SA forms prepared since there are two separate HSA plan agreements. It would certainly be permissible that a person would only have one HSA plan agreement to which the two types of contributions would be made.

In summary, an HSA custodian must report each and every HSA contribution (but not non-reportable transfers or the recontribution of a mistaken distribution) which goes into an HSA regardless of size or length of time within the HSA.

Recharacterizing in 2017 a Direct Rollover Occurring In 2016 From a 401(k) Plan Into a Roth IRA

IRA custodians are starting to see clients directly rolling over their funds in their employer's 401(k) plan into their Roth IRA. And some of these clients will decide after doing such a direct rollover that they want to recharacterize all of such direct rollover or a portion.

Here is a real life situation. Jane Roe retired in October of 2016 with a 401(k) balance of \$96,000. She had two types of accounts under the 401(k) plan. She had a pre-tax account. This account was comprised of her elective deferrals, her employer matching contributions and the related earnings. Her balance in this account was \$70,000. She also had a post-tax account with a balance of \$26,000. This account was comprised of her post-tax contributions of \$3,000 plus \$23,000 of earnings as the \$3,000 was contributed over 30 years ago.

Jane completed the 401(k) distribution form to instruct she wanted the taxable dollars to be directly rolled over to her traditional IRA and the non-taxable dollars to her Roth IRA.

The 401(k) administrator who processed her 401(k) distribution sent two checks to ABC Bank as her IRA custodian. One check for \$70,000 was to go into her traditional IRA and the other check for \$26,000 was to go into her Roth IRA. The 401(k) administrator had made a mistake since Jane had instructed that only her non-taxable funds (\$3,000) were to go into her Roth IRA. In fact, \$26,000 had gone into her Roth IRA.

Jane Doe went to her tax preparer in early March of 2017 and was informed she owed \$5,750 ($\$23,000 \times 25\%$) in additional income tax. The tax preparer informed her that she will not owe this amount if she recharacterizes to her traditional IRA the amount of \$23,000 plus the allocable earnings on the \$23,000. For discussion purposes we assume this to be \$4,000 since the stock market has performed well since the November elections. Her recharacterization contribution is \$27,000.

An alternative approach would be to contact the 401(k) administrator and ask for their help in correcting their error. The excess funds in the Roth IRA would have to be corrected by withdrawing the excess to the 401(k) plan. This could be very time consuming. It is going to be easiest to make the correction by doing a recharacterization.

As in with any recharacterization, Jane Doe and her accountant will want to attach a note of explanation regarding the recharacterization and that she does need to include the \$23,000/\$27,000 in her taxable income.

Continued on page 8

Use the Proper Forms for 2016 and 2017 Recharacterizations

With tax season upon us, many individuals will be told by their accountants that, because of income limits, they are not eligible to deduct their traditional IRA contributions made for 2016 or that their 2016 conversion should be undone.

A recharacterization can only be made for 2016, if it is accomplished by the tax-filing deadline of the individual plus six months. The normal tax-filing deadline for most individuals is April 15. Generally, then, an individual has until October 15, 2017, to recharacterize an IRA contribution made for 2016.

It is important to document this recharacterization, so that the custodians of both IRAs are aware of the transaction. CWF has created special forms for this situation.

One form, CWF's Form #54-TR "Notice of Recharacterization of IRA Contribution," is recommended. It collects the following information:

1. Type and amount of the contribution to the first IRA that is to be recharacterized.
2. The date on which the initial contribution was made.
3. A direction to the custodian/trustee of the first IRA to transfer the amount of the contribution, plus the allocable net income, in a trustee-to-trustee transfer to the custodian/trustee of the second IRA.
4. The name of the first and second custodian/trustee.
5. Acknowledgement by the accountholder, and the current and successor custodian, that they understand the situation, and that the recharacterization will be handled and reported correctly.

An institution will also want the accountholder to understand the tax issues associated with a recharacterization, and how the individual must handle it on their tax return. CWF Form #56-TREX for 2015 provides this information.

The income earned on the amount recharacterized must also be transferred with no tax penalty. This is a valuable tax advantage. CWF has created a form to use to calculate the applicable interest on the contribution — Form #67-W.

Of course, the applicable plan agreement must also be completed, if the individual does not already have the correct type of IRA established.

Summary. Recharacterizations are becoming more popular. A financial institution will want to be certain to document these transactions correctly. The forms used must collect the needed information concerning the funds in question, the accountholder, the current IRA custodian/trustee and the successor custodian/trustee. CWF has these special forms available.

Special Explanation to Accountholder for an IRA Recharacterization for the 2016 Tax Year

(Name of Accountholder) _____

The purpose of this special explanation is to provide you with information about your recharacterization. You recharacterized a contribution which you made for the 2016 tax year. You will need to properly report and explain your recharacterization when you file your 2016 federal income tax return. We have furnished to you a copy of the *IRA Recharacterization Form* which you executed. You will also want to review the 2016 instructions for Form 8606. The IRS' instructions require you, as the IRA accountholder, attach an explanation to your income tax return indicating the original contribution amount, the amount which was recharacterized, and the amount of earnings which was recharacterized. You may attach a copy of the *IRA Recharacterization Form* for this purpose.

In some situations you will need to do more than just attach an explanatory statement. If both the original contribution and the recharacterization occurred during 2016, then you must also include on the 2016 tax return the amount deemed distributed from the one IRA on Form 1040, line 15(a) (or similar form). This is the gross amount you recharacterized. You should also complete line 15(b), the taxable amount, with zero. If the recharacterization of the contribution for 2016 occurred in 2017 then you only need to attach the explanatory statement.

Accountholder _____ Date _____

Custodian _____ Date _____

IRA #54-TREX for 2016 (8/15) White — Custodian/Trustee Yellow — Accountholder © 2015 Cullen W. Fink & Associates, Ltd.

Notice of Internal Recharacterization of IRA Contribution

To: Custodian/Trustee
Name _____ Date _____
Address _____ Phone _____
City _____ State _____ Zip _____

From: Depositor or Grantor
Name _____ SSN _____
Address _____ Date of Birth _____
City _____ Phone Home _____ Work _____
State _____ Zip _____

The Original Contribution
Account Number _____
Date of Contribution _____
Amount: _____

The Recharacterized Contribution
Account Number _____
Date of Contribution _____
Amount: _____

Type of Original Contribution (Check only one)
☐ 1. Conversion/Transfer to Roth IRA from a traditional IRA
☐ 2. Conversion to Roth IRA from a SEP-IRA or SIMPLE-IRA
☐ 3. Annual contribution to a traditional IRA for tax year _____
☐ 4. Annual contribution to a traditional IRA for the same tax year as the recharacterization
☐ 5. Conversion/Transfer to Roth IRA from an employer-sponsored plan (other than a rollover of designated Roth funds)

Type of Recharacterized Contribution
☐ 1. Return to the traditional IRA
☐ 2. Return to the SEP-IRA or SIMPLE-IRA
☐ 3. Annual contribution to a traditional IRA for the same tax year as the recharacterization
☐ 4. Annual contribution to a traditional IRA for the same tax year as the recharacterization
☐ 5. Return to a traditional IRA

Instruction & Amount to Recharacterize
☐ Select to recharacterize:
☐ Which is: ☐ All or ☐ a portion of my original contribution.
It is adjusted by:
☐ a. Related Earnings (losses) _____
☐ b. Interest Penalty Fee _____
☐ c. Administrative Fee _____
☐ d. Recharacterized Net Amount _____
☐ e. Other _____

Acknowledgments & Signatures
Depositor or Grantor:
 I acknowledge that you have instructed me to consult with my legal or tax adviser because of the complexity and expense of this matter. I have read the information on the reverse side of this sheet. The recharacterization is being made on or before the due date (including extensions) for filing my individual federal income tax return for the taxable year for which the contribution was made or other applicable deadline. I expressly assume all responsibility for this recharacterization of IRA funds. I realize that my election to recharacterize my contribution is irrevocable.

 Date: _____
IRA Custodian/Trustee:
 We acknowledge receiving your recharacterization instruction. We will report the original contribution on Form 5498. We will report the distribution for recharacterization on Form 1099-R per the current IRS instructions, and we will also report the recharacterization contribution on a Form 5498.

 Date: _____

Special Notice: A person who recharacterizes an IRA contribution must follow the pertinent IRS instructions for recharacterizations set forth for Form 8606. In general, you will need to attach an explanation to your tax return. Your IRA custodian/trustee should be furnishing you a special form to be used to provide this explanation.

IRA #54-TR (8/15) White — Original Custodian/Trustee Yellow — Successor Custodian/Trustee Pink — Depositor/Grantor © 2015 Cullen W. Fink & Associates, Ltd.

Worksheet to Calculate the Income Related to a Recharacterized Contribution

Custodian/Trustee Information
 Name _____
 Address _____
 City _____ State _____ Zip _____
 Phone _____

Accountholder
 Name _____
 Home Address _____
 City _____ State _____ Zip _____
 County _____ Date of Birth _____
 SSN _____ Plan No. _____

IRA Account Information Where Initial Contribution Was Made
 Account Number _____
 Type: ☐ Traditional ☐ Roth

IRA Account Information Where the Recharacterized Contribution is Being Made
 Account Number _____
 Type: ☐ Traditional ☐ Roth

Purpose: This form is used to calculate the interest or other income earned with respect to a current year contribution which is being withdrawn under Internal Revenue Code section 408(a)(5). The IRS has also indicated that it may be used with respect to a recharacterization. The formula set forth in IRC regulation 1.408(a)-5(a)(2) is being used to calculate the income or loss, as applicable for the recharacterized contribution.

Date of Contribution(s) _____
 Amount of Contribution(s) _____
 Date of Recharacterization _____

1. Amount of Current-Year Contribution(s) to be Recharacterized. 1. _____

2. Adjusted Closing Balance:
 a. FMV (immediately prior to withdrawal) 2(a) _____
 b. (FMV + Principal + Interest + Accrued Interest) 2(b) _____
 c. Distributions during computation period 2(c) _____
 d. Total Adjusted Closing Balance (line 2a + 2b) 2(d) _____

3. Adjusted Opening Balance:
 a. FMV (immediately prior to contribution) 3(a) _____
 b. (FMV + Principal + Interest + Accrued Interest) 3(b) _____
 c. Contributions during computation period 3(c) _____
 d. Total Adjusted Opening Balance (line 3a + 3b) 3(d) _____

4. Subtract line 3c from line 2c (this may be a negative number) 4. _____

5. Divide line 4 by line 3c (a quotient to 6 decimal places) 5. _____

6. Income (loss) related to the Current-Year Contribution being Recharacterized (multiply line 5 by line 1) 6. _____

7. Total amount to be Recharacterized (line 1 + 6) 7. _____

Signature of Custodian/Trustee _____ Date _____ Signature of Accountholder _____ Date _____

Additional Discussion — See Reverse Side

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