



THE Pension Digest

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ALSO IN THIS ISSUE –

DOL Fiduciary Rule Vacated
Page 1

Deadlines for 2017 5498 Forms
Page 1

Final Review 2017 5498
Pages 2 - 4

Completing the 2017 Form 5498-SA
Page 5

Establishing A SEP-IRA Plan
Page 5

Special Explanation - For SEP-IRA Accountholders and Accountants
Page 6

No Direct Rollovers From One IRA to Another IRA
Page 7

Email Consulting Guidance, Excess HSA Contributions - Special Procedures When Withdrawing a Prior Year Excess HSA Contribution
Page 8

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"The Pension Specialists"



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DOL Fiduciary Rule Vacated.

On March 15, 2018, the U.S. Court of Appeals for the Fifth Circuit vacated the DOL's Fiduciary Rule.

The case is, Chamber of Commerce of the USA, et al v. U.S. Department of Labor, Case 17-10238, Document 00514388699.

This case is the first victory for opponents of the Fiduciary Rule who argued the DOL exceeded its authority in issuing its new regulation defining various IRA service providers to be a fiduciary investment adviser and any one participating in a rollover transaction to be a fiduciary. Other circuit courts have ruled the DOL had the authority to adopt the regulatory changes it made.

The DOL has announced it will be reviewing the Fifth Circuit's ruling. In the mean time it will not seek to enforce its Fiduciary regulation and related exemptions, including the Best Interest Contract exemption. The new definition of a fiduciary investment adviser had become effective on June 9, 2017. There are interim rules in effect with respect to the Best Interest Contract exemption and the other related exemptions.

The ruling of this case is not effective until May 7, 2018, because the ruling could be stayed if the case would be reheard by all of the judges of the Fifth Circuit. The DOL has 45 days from entry of the judgment to request a rehearing of the case before all of the Fifth Circuit judges. The DOL will need to decide if it will seek a rehearing or if it will appeal the case to the U.S. Supreme Court. The DOL might decide to do neither and let the Fiduciary Rule cease to exist. When a rule is vacated, it means the regulation is treated as if it had never gone into effect. The 5-part 1975 regulation of a fiduciary investment adviser (a fiduciary) would again apply.

This fiduciary topic has been highly political since the Obama administration first proposed its change in 2010. We at CWF hope Congress will decide it should be the branch of government making such new laws and act accordingly. Why is the Department of Labor involved? Very few employers offer any type of employer sponsored IRA programs. IRAs are a tax subject and the IRS (and not the DOL) should be providing better administration. However, we will not be surprised if the DOL proposes some course of action which we would keep it involved with IRAs in addition to its continuing to issue individual prohibited transaction exemptions.

We suggest an IRA custodian/trustee continue with its current approach until more is learned. In general, this means an IRA custodian/trustee should not accept any compensation from third parties regarding its IRA products and services. Most financial institutions did not do so prior to the DOL Fiduciary Rule and most do not do so today. Most financial institutions charge reasonable fees as the law has always permitted. Rollover contributions should continue to be sought.

Deadlines for 2017 5498 Forms

This newsletter contains a number of articles discussing the 2017 IRS Form 5498. The chart below lists the various form types and due dates. We also discuss the completing of the 2017 Form 5498-SA. See page 8.

<u>Type of Account</u>	<u>Type of Form</u>	<u>Due to Owner</u>	<u>Due to IRS</u>
Traditional	5498	5/31/18	5/31/18
Roth	5498	5/31/18	5/31/18
HSA	5498-SA	5/31/18	5/31/18
CESA	5498-ESA	4/30/18	5/31/18

Final Review 2017 Form 5498

2828 ☐ VOID ☐ CORRECTED

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) \$ \$	OMB No. 1545-0747 2017 Form 5498	IRA Contribution Information
TRUSTEE'S or ISSUER'S federal identification no. PARTICIPANT'S social security number		2 Rollover contributions \$	3 Roth IRA conversion amount \$	Copy A For Internal Revenue Service Center File with Form 1096.
PARTICIPANT'S name		4 Recharacterized contributions \$	5 Fair market value of account \$	
Street address (including apt. no.)		6 Life insurance cost included in box 1 \$	7 IRA <input type="checkbox"/> SEP <input type="checkbox"/> SIMPLE <input type="checkbox"/> Roth IRA <input type="checkbox"/>	For Privacy Act and Paperwork Reduction Act Notice, see the 2017 General Instructions for Certain Information Returns.
City or town, state or province, country, and ZIP or foreign postal code		8 SEP contributions \$	9 SIMPLE contributions \$	
Account number (see instructions)		10 Roth IRA contributions \$	11 Check if RMD for 2018 <input type="checkbox"/>	
		12a RMD date \$	12b RMD amount \$	
		13a Postponed contribution \$	13b Year 13c Code	
		14a Repayments \$	14b Code	
		15a FMV of certain specified assets \$	15b Code(s)	

Form 5498 Cat. No. 50010C www.irs.gov/form5498 Department of the Treasury - Internal Revenue Service

Do Not Cut or Separate Forms on This Page — Do Not Cut or Separate Forms on This Page

- 1. On the bottom left** there is an "Account Number" box. The IRA custodian is required to insert an account number in this box when filing more than one Form 5498 for the same person. If your institution wants to earn some bonus points with the IRS, you will complete this box even though it is not required. A unique number should be used. Using such a number helps the IRS to process corrected information accurately. The account number may be a checking or savings account number or some other unique number with respect to an individual. The number must not appear anywhere else on the form (i.e. it cannot be the social security number).
- 2. In Box 7** only one of the 4 boxes must be checked to indicate the type of IRA. A person who has a traditional IRA, SEP IRA and Roth IRA would need to be furnished three 5498 forms.
- 3. Box 1. IRA Contributions** (other than amounts in boxes 2-4, 8-10, 13a and 14a). Enter the amount of the annual contributions made on or after January 1, 2017 through April 17, 2018 as designated for 2017. The IRA custodian is to report the gross amount of the annual contributions even if such contributions are excess contributions, or will be later recharacterized. These are still to be reported. A traditional IRA contribution, which is not properly reported in one of the other traditional IRA boxes as

discussed below, is to be reported in box 1. For example, if a person tries to roll over \$28,000, but does so on day 70 without furnishing a late rollover self-certification form and the IRA custodian learns of this fact prior to filing the current year's Form 5498, then the IRA custodian must report this \$28,000 in box 1. This same procedure would apply if somehow non-IRA funds had been mistakenly transferred into an IRA.

- 4. Box 2. Rollover Contributions.** Enter the amount of the rollover contributions made on or after January 1, 2017 through December 31, 2017. Made means received by the traditional IRA custodian. Also, enter those contributions which are treated as a rollover contribution (i.e. direct rollover).

Do not report late rollover in box 2.

A rollover may either be an indirect rollover or a direct rollover.

An indirect rollover means the paying plan (could be an IRA or an employer plan) issues the distribution check to the individual who then makes a rollover contribution by the 60 day deadline. A 60 day indirect rollover may occur between two traditional IRAs, two SEP-IRAs, or between a traditional IRA and a SEP-IRA or vice versa.

Remember that nonspouse IRA beneficiaries are ineligible to roll over a distribution from one inherited IRA and redeposit it into another inherited IRA.

A direct rollover occurs when an employer plan issues the check to the IRA custodian on behalf of the individual. By definition, a direct rollover cannot occur between IRAs. Employer plan means a qualified plan, section 403(b) plan or a governmental section 457(b) plan. The funds attributable to a nonspouse beneficiary of such plans are eligible to be directly rollover to an inherited IRA and would be reported in Box 2.

- 5. Box 3. Roth IRA Conversion Amount.** This box will be completed when a conversion contribution is made to a Roth IRA.
- 6. Box 4. Recharacterized Contributions.** The IRS instructions are very brief, "Enter any amounts recharacterized plus earnings from one type of IRA to another." If a person had made either an annual

Continued on page 3

contribution or a conversion contribution to a Roth IRA in either 2016 and/or 2017, he or she may elect to recharacterize it as adjusted by earnings or losses to be traditional IRA contribution in 2017. The total amount recharacterized is to be reported in box 4. Although the IRS instructions use the term, "plus earnings," the IRS should use the term, "plus or minus earnings or losses."

7. **Box 5. Fair Market Value of Account.** The IRS instructions for this box are also very brief, "Enter the FMV of the account on December 31."

The IRS added a caution to self-directed and trust IRAs as follows: "Trustees and custodians are responsible for ensuring that all IRA assets (including those not traded on established markets or with otherwise readily determinable market value) are valued annually at their fair market value."

The instruction to report the FMV as of December 31 applies whether there is a living IRA accountholder or an inheriting IRA beneficiary.

If the IRA accountholder or inheriting beneficiary is alive as of December 31, the individual closed his or her IRA during the year by taking a total distribution and he or she made no "reportable contribution," then the IRA custodian is not required to prepare and file the Form 5498. **However, if the IRA accountholder or inheriting beneficiary died during the year, the IRA custodian will need to prepare a final Form 5498 for the deceased IRA accountholder or inheriting beneficiary as discussed below.**

With respect to a deceased accountholder or a deceased inheriting IRA beneficiary, the IRS gives the IRA custodian two options. Option #1 - report the FMV as of the date of death. Option #2 - report the FMV as of the end of the year in which the decedent died. Under Option #2 the value will usually be zero because the IRA custodian will be reporting the end of year value on the Form 5498's for the beneficiary or beneficiaries. If Option #2 is used, the IRA custodian must inform the executor or administrator of the decedent's estate of his or her right to ask for the FMV as of the date of death.

If the IRA custodian does not learn of the individual's death until after the filing deadline for the Form 5498 (i.e May 31), then it is not required to prepare a corrected Form 5498. However, an IRA custodian

must still furnish the FMV as of the date of death if requested to do so.

8. **Box 6. Life Insurance cost included in box 1.** An IRA custodian will normally leave this box blank or will insert a 0.00 since it is only to be completed if there was a contribution to an IRA endowment contract as sold by an insurance company a long time ago.
9. **Box 8. SEP Contributions.** Any SEP contributions made to the IRA custodian during 2017 are to be reported in box 8. Such contributions could have been for 2016 or 2017. Contributions made in 2018 for 2017 are to be reported on the 2018 Form 5498.
10. **Box 9. SIMPLE Contributions.** Any SIMPLE-IRA contributions made during 2017 are to be reported in box 9. Such contributions could have been for 2016 or 2017.
11. **Box 10. Roth IRA Contributions.** Any Roth IRA contributions for 2017 are to be reported in box 10 as long as made between January 1, 2017 and April 17, 2018.
12. **Box 11. Check if RMD for 2018.** An IRA custodian is required to check this box if the IRA accountholder attains or would attain age 70½ or older during 2018. The instructions do not discuss whether or not this box is to be checked for an inheriting traditional IRA beneficiary. It should not be checked for an inherited IRA. Completing this box is necessary only if the IRA custodian is required to prepare a 2017 Form 5498 for a person. This box is not checked with respect to an individual who died during 2017 and who would have attained age 70½ or older during 2018 had he or she lived.
13. **Boxes 12a (RMD date) and 12b (RMD Amount).** An IRA custodian's use of these two boxes is optional, it is not mandatory.

Under current IRS procedures, the IRS does not require the traditional IRA custodian to furnish it with the RMD amount to the IRS. The law is unsettled whether or not the IRS has the legal authority to require that an IRA custodian furnish the RMD amount to the IRS. Since the IRS would like to be furnished this information, the IRS has added boxes 12a and 12b to the Form 5498.

Form 5498,
Continued from page 3

The approach adopted by the IRS is that a traditional IRA custodian by completing boxes 11, 12a and 12b on the Form 5498 and furnishing it to the IRA accountholder will meet the requirement that it must furnish a RMD Notice by January 31. The IRS instructions do permit the IRA custodian to furnish a separate Form 5498 with the only information being furnished is the information for boxes 11, 12a and 12b.

14. Box 13a. Postponed contribution or Late Rollover.

Postponed contributions may arise for various reasons. They may arise on account of a major disaster or for U.S. Forces in designated combat zones.

Report the amount of any postponed contribution made in 2017 for a prior year such as 2014, 2015, or 2016.

If contributions were made in 2017 for more than one prior year (e.g. 2015 and 2016), each year's postponed contribution must be reported on a separate Form 5498.

Also, report the amount of any late rollover contribution made in 2017 as certified by the IRA owner.

If the IRA owner made both a postponed contribution and a late rollover contribution, each must be reported on a separate Form 5498. Because the contribution amount is reported in box 13a, it is not to be reported in box 1 or box 10.

15. Box 13b. Year (Postponed Contribution).

Enter the year for which the postponed contributions in box 13a was made (e.g. 2016). Leave this box blank if there was a late rollover contribution.

16. Box 13c. Code.

Enter FD if the postponed contribution is due to a federally designated area.

Enter EO13239, EO12744, EO13119 as appropriate. See pages 19 and 20 of the IRS instructions.

17. Box 14a. Repayments.

Enter the amount of any repayment of a qualified reservist distribution or of a designated disaster distribution.

A traditional IRA accountholder who has taken a distribution under special disaster rules or who has taken a qualified reservist distribution is eligible to repay the distribution even though such repayment does not qualify as a rollover. Enter the amount of the repayment(s).

18. Box 14b. Code.

Enter QR for the repayment of a qualified reservist distribution.

Enter DD for the repayment of a qualified disaster distribution.

19. Box 15a. FMV of certain specified assets.

Enter the FMV of the investments in the IRA that are specified in the categories identified below.

20. Box 15b. Code(s)

Enter the code for the type(s) of investments held in the IRA for which the FMV is reported in Box 15a. A maximum of two codes can be entered in box 15b. If more than two codes apply, enter code H.

A - Stock or other ownership interest in a corporation that is not readily tradable on an established securities market.

B - Short- or long-term debt obligation that is not traded on an established securities market.

C - Ownership interest in a limited liability company or similar entity (unless the interest is traded on an established securities market).

D - Real estate.

E - Ownership interest in a partnership, trust, or similar entity (unless the interest is traded on an established securities market).

F - Option contract or similar product that is not offered for trade on an established option exchange.

G - Other asset that does not have a readily available FMV.

H - More than two types of assets (listed in A through G) are held in this IRA.

21. Duty To Prepare/Furnish Corrected Form 5498.

An IRA custodian is required to prepare a corrected form 5498 as soon as possible after it learns there is an error on the original form as filed. The IRS furnishes the following example. "If you reported as rollover contributions in box 2, and you later discover that part of the contribution was not eligible to be rolled over and was, therefore, a regular contribution that should have been reported in box 1 (even if the amount exceeds the regular contribution limit), you must file a corrected Form 5498."

Completing the 2017 Form 5498-SA

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 2017 and 2018 for 2017 \$	2017 HSA, Archer MSA, or Medicare Advantage MSA Information Form 5498-SA
		2 Total contributions made in 2017 \$	
TRUSTEE'S federal identification number	PARTICIPANT'S social security number	3 Total HSA or Archer MSA contributions made in 2018 for 2017 \$	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2017 General Instructions for Certain Information Returns.
PARTICIPANT'S name		4 Rollover contributions \$	
Street address (including apt. no.)		5 Fair market value of HSA, Archer MSA, or MA MSA \$	
City or town, state or province, country, and ZIP or foreign postal code		6 HSA <input type="checkbox"/> Archer MSA <input type="checkbox"/> MA MSA <input type="checkbox"/>	
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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Completing the Form 5498-SA is, for the most part, self-evident. This form is used either to report contribution activity to an HSA or to one of the two types of MSAs. This article discusses completing the form for HSA contributions. Set forth below are the IRS instructions as modified by CWF.

1. Statements to participants. If you are required to file Form 5498-SA, you must provide a statement to the participant (generally Copy B) by May 31, 2018. You may, but you are not required to, provide participants with a statement of the December 31, 2017 fair market value.

2. Box 1 will not need to be completed for an HSA, since it applies only to MSA contributions.

3. Box 2 is to be completed with the total of HSA contributions made in 2017. Included are contributions from January 1, 2017, to December 21, 2017, for 2017, including an HSA Funding Distribution/Contribution and HSA contributions made from January 1, 2017, to April 18, 2017, for tax year 2016.

4. Box 3 is to be completed with the total of HSA contributions made from January 1, 2018 to April 17, 2018 for tax year 2017, but not including any HSA Funding Distribution/Contribution. Note the amount in Box 3 on the 2017 Form will be reported a second time in Box 2 on the 2018 Form 5498-SA.

5. Box 4 is to be completed with the total of rollover contributions as originating from an Archer MSA, or an

HSA to an HSA, as received by the HSA custodian during 2017.

6. Box 5 is to be completed with the fair market value of the HSA on December 31, 2017.

7. Box 6 - check the "HSA" box.

Establishing a SEP - IRA Plan

As with any tax procedure, there are certain actions which must be taken in order for any business, including a one person business, to establish a Simplified Employee Pension Plan (SEP). If not properly established, the expected tax benefits will not be realized.

What must be done by the business?

First, there must be written plan agreement. Most businesses will choose to complete and execute the IRS model Form 5305-SEP, Simplified Employee Pension-Individual Retirement Accounts contribution Agreement. See page 6.

A business may set up its SEP for a year (e.g. 2017) as late as the due date including extensions for the tax year. So, a business may establish a SEP for 2017 on June 20, 2018, if it has an extension for its 2017 tax return. The maximum contribution for 2017 is the lesser of: 25% of a person's qualifying compensation or \$54,000.

Second, provide a copy of Form 5305-SEP to each employee, if any. If no employees, then this information is not furnished.

What must be done by each individual?

Third, each eligible employee, including the individual who is the sole proprietor or sole shareholder, must establish a SEP-IRA. A SEP-IRA is a standard traditional IRA to which a SEP contribution has been or will be made. See the standard traditional IRA application on page 6. 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.

Form 5305-SEP (Rev. December 2004) 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 agreement to provide benefits to all eligible employees under 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 written 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:

1. Currently maintain any other qualified retirement plan. This does not prevent you from maintaining another SEP.

2. Have any eligible employees for whom IRAs have not been established.

3. Use the services of leased employees (described in section 414(m)).

4. Are a member of an affiliated service group (described in sections 414(c) and 414(d)), unless all eligible employees of all the members of such groups, trades, or businesses participate in the SEP.

5. Will not pay the cost of the SEP contributions. Do not use Form 5305-SEP for a SEP that provides for elective employee contributions even if the contributions are made under a salary reduction agreement.

Use Form 5305A-SEP, or a nonmodel SEP. Note: SEPs permitting elective deferrals cannot be established after 1996.

Eligible employees. All eligible employees must be allowed to participate in the SEP. An eligible employee is any employee who:

(1) is at least 21 years old, and (2) has performed "services" for you in at least 3 of the immediately preceding 5 years. You can establish less restrictive eligibility requirements, but not more restrictive ones.

Service is any work performed for you for any period of time, however short. If you are a member of an affiliated service group, a controlled group of corporations, or trades or businesses under common control, service includes any work performed for any period of time for any other member of such group, trade, or businesses.

Excludable employees. The following employees do not have to be covered by the

SEP: (1) employees covered by a collective bargaining agreement whose retirement benefits were bargained for in good faith by you and their union, (2) nonresident alien employees who did not earn U.S. source income from you, and (3) employees who received less than \$450* in compensation during the year.

Contribution limits. You may make an annual contribution of up to 25% of the employee's compensation or \$41,000*, whichever is less. Compensation, for this purpose, does not include employer contributions to the SEP or the employee's compensation in excess of \$205,000*. If you also maintain a salary reduction SEP contributions to the two SEPs together may not exceed the smaller of \$41,000* or 25% of compensation for any employee.

You are not required to make contributions every year, but when you do, you must contribute to the SEP-IRAs of all eligible employees who actually performed services during the year of the contribution. This includes eligible employees who die or quit working before the contribution is made.

Contributions cannot discriminate in favor of highly compensated employees. Also, you may not integrate your SEP contributions with, or offset them by, contributions made under the Federal Insurance Contributions Act (FICA).

If this SEP is intended to meet the top-heavy minimum contribution rules of section 416, but it does not cover all your employees who participate in your salary reduction SEP, then you must make minimum contributions to IRAs established on behalf of those employees.

Deducting contributions. You may deduct contributions to a SEP subject to the limits of section 404(h). This SEP is maintained on a calendar year basis and contributions to the

* 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 the 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 _____

Depositor Information

Name _____
Home Address _____
City _____ State _____ Zip _____
County _____ Date of Birth _____
Phone: Home _____ Work _____
SSN _____ Plan No. _____

Adopting this plan agreement constitutes:

- ☐ the initial adoption of an IRA plan agreement, or
☐ the amendment and restatement (i.e. replacement) of a previous IRA plan agreement referenced as follows: _____

Designation of Beneficiary

Section 16 of Article VIII of the Individual Retirement Custodial Account (Form 5305-A) contains an important discussion of your right to name primary and contingent beneficiary(ies). 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, then by checking the following box () you want such spouse to receive such predeceased beneficiary's share.

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) as designated on 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.

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

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

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

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

Deposit Information

Date _____
Acct./Inst. No. _____
Deposit Amt. _____ For Tax Yr. _____

Type of Contribution

- ☐ Regular or Spousal for: ☐ Current Year, or ☐ Prior Year
☐ Rollover for: ☐ Regular IRA, or ☐ SEP-IRA
☐ Late Rollover
☐ SEP for: ☐ Current Year, or ☐ Prior Year
☐ Recharacterization—Complete CWF Form #54-R
☐ Transfer—From Another IRA or SEP-IRA Custodian to:
☐ Regular/Spousal IRA, or ☐ SEP-IRA
☐ Transfer—Incident to Divorce
☐ Transfer—Surviving Spouse Elects to Treat as Own
☐ Special Rollovers and Repayment and Postponed Contributions—Complete CWF Form #54.

Your Regular or Spousal Contribution Limit

Tax Year	If Not Aged 50 or Older	If Aged 50 or Older
2017	\$5,000	\$6,000
2013-2018	\$5,500*	\$6,500*

*These limits may be adjusted for cost of living changes after 2016.

Special Situation—Spouse's Signature/Consent

If you reside in a state with community or marital property laws and you are married and you wish to name a person(s) other than or in addition to your spouse as the beneficiary, then you need to obtain your spouse's consent. Otherwise you do not.

Spouse's Notice, Certification of Consent and Signature

I am the spouse of the IRA depositor, as designated on the Disclosure Statement, and I hereby agree to consent to my spouse's designation of beneficiary(ies) I express and acknowledge that this 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 with 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 you 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 this IRA 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 are modified. You acknowledge that you are opening a custodial IRA and that it expressly requires that your IRA funds be invested in various designated accounts as modified. You acknowledge that you acknowledge that the Custodian has furnished you with a copy of the application, the Individual Retirement Plan and Disclosure Statement. In addition, you have read the disclosure statement and you qualify to make an initial contribution to this IRA. The Financial Disclosure is furnished to you using this method:

- ☐ 1. The financial projection information that is set forth 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 with a timely written request with the revocation provisions set forth in section 2.4 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 _____ Date _____

Signature _____ Date _____

Witness _____

Use only if signature of the depositor, the custodian, or the spouse is required to be witnessed.

Special Explanation — For SEP-IRA Accountholders and Accountants

An IRA custodian may use the following explanation (by making a copy) to explain to your SEP customer how SEP contributions are reported to the IRS.

The purpose of this explanation is to detail how we, as your IRA custodian, are required to report contributions to your SEP-IRA to the IRS on Form 5498.

When we receive a contribution to your SEP-IRA, we are to consider it made by the “employer” for benefit of you, the “employee.” If a business is unincorporated, the “employer” is considered to be self-employed, and will either be an individual (i.e. sole proprietor) or a partnership. When you are self-employed, you are both the “employee” and the “employer.”

We as the SEP-IRA custodian report the SEP-IRA contribution in Box 8 of the Form 5498 for the year in which the contribution is received, regardless of the tax year for which it was contributed. The reason for this is that the employer's deadline for making its SEP contribution is its tax-filing deadline plus extensions.

The April 15 deadline which applies to traditional and Roth IRAs does not apply to SEP-IRA contributions. The “plus extension” rule means that a business (i.e. the employer) may make its contribution for the prior year after May 31 of the current year (e.g. on August 13, 2018, an employer may contribute funds for the 2017 tax year). Note: The Form 5498 is required to be furnished to you, the SEP-IRA accountholder, by May 31 of each year (unless May 31 is a holiday or a Saturday or Sunday; then it must be furnished by the next working day).

The IRS instructions for Box 8 of the 2017 Form 5498 read as follows:

“Enter employer contributions made to a SEP-IRA (including salary deferrals under a SARSEP) during 2017, including contributions made in 2017 for 2016, but not including contributions made in 2018 for 2017. Do not enter employee contributions to an IRA under a SEP plan. Report any employee contributions to an IRA under a SEP plan in box 1. Also include in box 8 SEP contributions made by a self-employed person to his or her own account.”

Tax Reporting by the Employer—The business entity is entitled to claim a tax deduction on the tax return for which the contribution was designated. The Form 5498 does not inform the IRS and the employer of the employer's tax year for which the contribution was made. It merely informs the IRS of the fact that an employer made a contribution on behalf of an employee during a specific calendar year.

No Direct Rollovers From One IRA to Another IRA

An IRA accountholder may move funds from one IRA to another IRA by two different methods. The IRA funds may be transferred from one IRA plan to a second IRA plan. Or, the individual may take a distribution from one IRA and then make a rollover contribution into a second (or the same) IRA. Certain rules must be met for a rollover. Two basic rules are: only one rollover every 12 months and the rollover must be completed within 60 days of the distribution.

The Internal Revenue Code and the Form 1099-R instructions do not authorize directly rollover funds from one IRA to another IRA.

Historical Background. In 1986 the Internal Revenue Code was amended to add Code section 401(a)(31). In the early 1980's there was a severe recession. Many individuals lost their jobs. Many withdrew their retirement funds via a lump sum distribution. At the time, the law allowed pension plan participants to waive federal income tax withholding just as is still the rule for IRA distributions. Many of these individuals had a hard time paying the income taxes they owed with respect to these pension distributions and the IRS presumably had to expend considerable resources to collect these taxes. The IRS convinced Congress that the tax laws for pension distributions needed to be changed. The law was changed: if a person was eligible to roll over his or her pension distribution, but did not do so, then the plan administrator must withhold 20% of such distribution. The individual could avoid the 20% withholding by directly rolling over his or her pension distribution to an IRA or other qualifying plan.

Code section 401(a)(31) defines a direct rollover as the direct transfer of plan funds from a qualified plan, section 403(b) plan or certain governmental 457 plans to an eligible plan. That is, the direct transfer must come from an employer plan. An IRA is not listed as being a plan from which a direct rollover distribution is made.

In order to qualify as a direct rollover, the plan administrator must issue the payment to an IRA custodian or other plan administrator. The check can't be issued to the participant.

In the IRS instructions for Form 1099-R the statement is made, "The direct rollover provisions on page 3 do not apply to distributions from any IRA."

On page 3, the IRS gives guidance as to how to report on the Form 1099-R a direct rollover distribution. In general, Box 1 is completed with the gross amount of the distribution, and Box 2a (taxable amount) is completed with a 0.00. The paying plan administrator knows it sent the check to the other plan and therefore it is not taxable.

Some tax preparers believe that the direct rollover rules do apply to some IRA distributions and they try to argue that Box 2a should be completed with a 0.00. They are wrong. Again, on page 2 of the instructions the statement is made, "The direct rollover provisions on page 3 do not apply to distributions from any IRA."

In summary, the direct rollover rules do not apply to IRA distributions. An individual cannot directly rollover funds from one IRA to another IRA. There is a difference between a transfer and a direct rollover. If an IRA custodian chooses to accommodate an IRA accountholder by agreeing to issue the check to another IRA custodian, but there is no transfer form, the paying IRA custodian must report the distribution on the 1099-R Form as it would any other standard IRA distribution. The reason code would either be a "1" or a "7" depending on the age of recipient. We would suggest an IRA custodian inform its IRA accountholders that they may either do a transfer or take a distribution and then do a rollover. Do not confuse matters by stating or indicating that you will directly rollover these funds to another IRA custodian. Do not use or accept forms from other IRA custodians indicating that IRA funds are being directly rolled over to an IRA.

Email Consulting Guidance - Special Procedures When Withdrawing a Prior Year Excess HSA Contribution

Question. We have an HSA owner who made an excess HSA contribution in 2015 for tax year 2015 and he now wants to withdraw it in March of 2018? Are there any special concerns since he has waited so long to correct his excess HSA contribution?

CWF's discussion. Yes, as discussed below, there are special concerns for the HSA custodian and also for the HSA owner. An HSA owner makes his or her tax situation worse by not correcting an HSA contribution by the first correcting deadline. He has an unwanted tax situation and he needs to talk with his tax adviser. The IRS' position is, an individual who withdraws a prior year excess contribution must include such amount in his income, pay tax at his marginal tax rate and also will owe the 20% penalty tax as the withdrawn funds were not used to pay a qualified medical expense.

A person who makes an excess HSA contribution owes a 6% excise tax for each year the excess remains in the HSA. The 6% tax is not owed if withdrawn by the tax filing deadline. See IRS Forms 5329, 8889 and 1040.

A person who withdraws funds from their HSA for non-qualified medical reasons must include the distribution in income (and pay tax at their applicable marginal tax rate) and also pay a 20% penalty tax unless one of 3 exceptions applies (being age 65 or older or being disabled) or the distribution is to a beneficiary after the HSA owner has died.

There is one major exception. The withdrawal of a current year excess contribution is subject to a special tax rule. The individual is not required to include this amount in his/her income because the contribution is considered to have never been made as long as the following 3 conditions are met: (1) no deduction was claimed for the HSA contribution; (2) the excess contribution is withdrawn by the due date of the individual's tax return including extensions, for the year for which the contributions were made and (3) any income earned by the excess contribution is also withdrawn.

The individual includes this income, if any, on his tax return for the year he took the withdrawal. The HSA owner on his/her tax return reports these earnings as

"other income" and pays tax at his/her applicable marginal tax rate.

The withdrawal of a prior year excess HSA contribution is subject to the general HSA taxation rule. A person who withdraws funds from their HSA for non-qualified medical reasons must include the distribution in income (and pay tax at their applicable marginal tax rate) and also pay a 20% penalty unless one of 3 exceptions applies (being age 65 or older or being disabled) or the distribution is to a beneficiary after the HSA owner has died.

How is the HSA custodian to report the withdrawal of a prior year excess HSA contribution?

This distribution will occur in 2018 and it will be reported on the HSA owner's 2018 Form 1099-SA.

The IRS instructions for the HSA custodian are not as clear as they should be. It is not clear if reason code 2 is only to be used if the excess HSA contribution was a current year excess or whether it is to be used to report the withdrawal of all excesses, including prior year excesses.

Box 2 is used to report the earnings related to an excess which are withdrawn prior to the individual's tax return due date. The individual is not required to withdraw the earnings related to the excess once the due date deadline is missed.

The most conservative approach for the bank is to report the gross amount in box 1, leave box 2 blank and report the reason code 1 in box 3.

The less conservative approach is, the bank reports the gross amount in box 1, leave box 2 blank and reports the reason code 2 in box 3.

9494 ☐ VOID ☐ CORRECTED

TRUSTEE'S/PAYER'S name, street address, city or town, state or province, country, ZIP or foreign postal code, and telephone number		OMB No. 1545-1517	
		2017	
		Form 1099-SA	
PAYER'S federal identification number	RECIPIENT'S identification number	1 Gross distribution \$	2 Earnings on excess cont. \$
RECIPIENT'S name		3 Distribution code	4 FMV on date of death \$
Street address (including apt. no.)		5 HSA <input type="checkbox"/>	Copy A For Internal Revenue Service Center File with Form 1096. For Privacy Act and Paperwork Reduction Act Notice, see the 2017 General Instructions for Certain Information Returns.
City or town, state or province, country, and ZIP or foreign postal code		Archer MSA <input type="checkbox"/>	
Account number (see instructions)		MA MSA <input type="checkbox"/>	

Form 1099-SA Cat. No. 38471D www.irs.gov/form1099sa Department of the Treasury - Internal Revenue Service

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