

Can a Grandparent be the Responsible Individual of a CESA?

Yes, but the IRS model CESA forms must be revised.

Such a revision is permissible. The IRS has written in Article V of its Model Coverdell ESA (CESA) plan agreement form (5305-E and 5305-EA) to require that the individual must be a parent or guardian beneficiary and that there shall only be one responsible individual at any time.

Collin W. Fritz and Associates, Ltd. has chosen to write its current version of the Coverdell ESA plan agreement forms to allow a grandparent or a great grandparent to be the responsible individual. Many grandparents today make contributions to CESAs for their grandchildren. However, many grandparents are frustrated because they would prefer to control the funds by being the depositor and the responsible individual, but they lose this control to their son, daughter-in-law, daughter or son-in-law if the standard IRS Coverdell ESA form is used. Many financial institutions don't understand that there are CESA forms available allowing a grandparent or a great grandparent to serve as the custodian.

The authority for Coverdell Education Savings Accounts is section 530. Nowhere in this tax code section is the term, "responsible individual," mentioned let alone defined. The IRS settled on the approach that an adult needed to act on behalf of the child (i.e. the designated beneficiary) and so wrote the model Coverdell ESA forms to require that a parent or guardian be the responsible individual. He or she is to act on the behalf of the designated child and in some cases on behalf of other family members of the designated beneficiary. Articles V and VI on set forth on the following page.

Article VIII sets forth the procedure that other articles may be added or incorporated into the Coverdell ESA. However, if the additional article would conflict with any of the provision in Article I-III, then the provisions of Articles I through III will control. This means Article V may be revised. Authorizing a grandparent or a great grandparent will not cause problems with the IRS. Nowhere has the IRS ever stated that a grandparent may not serve as the responsible individual. In Chapter 7 of Publication 970, in numerous places the IRS states that a parent or guardian is "generally" the responsible individual. The CESA plan document must authorize a grandparent or a great grandparent to be eligible to be a responsible individual – either in the original document or by adopting an amendment.