

Temporary Suspension of IRS Prototype IRA Opinion Letter Program

Announcement 2022-6

This announcement provides that, effective March 14, 2022, and until further notice, the Internal Revenue Service (IRS) will not accept applications for opinion letters on prototype IRAs (traditional, Roth and SIMPLE IRAs), SEPs (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans. This announcement also provides that, pending issuance of future guidance (1) adopters of prototype IRAs, SEPs, and SIMPLE IRA plans may rely on a previously received favorable opinion letter, and (2) taxpayers may use existing model forms to maintain current plans and accounts or establish new plans and accounts. The temporary suspension in accepting applications for opinion letters on prototype IRAs, SEPs, and SIMPLE IRA plans will allow the IRS to update the prototype IRA opinion letter program, issue revised model forms and Listings of Required Modifications (LRMs), and issue related published guidance to reflect recent legislation, most notably, Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. 116-94, 133 Stat. 2534 (2019), known as the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).

The procedures for submitting to the IRS a request for an opinion letter on a prototype IRA, SEP, or SIMPLE IRA plan generally are described in Rev. Proc. 2010-48, 2010-50 IRB 828, and Rev. Proc. 2022-4, 2022-1 IRB 161.

LRMs, which set forth sample language that the IRS finds acceptable for prototype IRAs, SEPs, and SIMPLE IRA plans, are available on the IRS website at www.irs.gov (search “LRM”).

The following model forms are available on the IRS website at www.irs.gov (search “Retirement Plan Forms and Publications”) for taxpayers that want to use a pre-approved document to establish an IRA, SEP, or SIMPLE IRA plan without using a prototype document: Form 5305, *Traditional Individual Retirement Trust Account*; Form 5305-A, *Traditional Individual Retirement Custodial Account*; Form 5305-R, *Roth Individual Retirement Trust Account*; Form 5305-RA, *Roth Individual Retirement Custodial Account*; Form 5305-RB, *Roth Individual Retirement Annuity Endorsement*; Form 5305-S, *SIMPLE Individual Retirement Trust Account*; Form 5305-SA, *SIMPLE Individual Retirement Custodial Account*; Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - Not for Use With a Designated Financial Institution*; Form 5305-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - for Use With a Designated Financial Institution*; Form 5305-SEP, *Simplified Employee Pension - Individual Retirement Accounts Contribution Agreement*; and Form 5305A-SEP, *Salary Reduction Simplified Employee Pension - Individual Retirement Accounts Contribution Agreement*.

Until further notice, adopters of prototype IRAs, SEPs, and SIMPLE IRA plans may continue to rely on a previously received favorable opinion letter, and sponsors of prototype IRAs, SEPs, and SIMPLE IRA plans are permitted to amend their documents to reflect recent legislation without affecting that reliance. However, the IRS will not accept applications for an opinion letter from prototype IRA, SEP, or SIMPLE IRA plan

sponsors, and will return to the applicant any application submitted. Taxpayers that want to use a pre-approved document without using a prototype document may use the existing model forms listed above to maintain current plans and accounts or establish new plans and accounts.

The IRS intends to issue revised LRMs and model forms with respect to IRAs, SEPs, and SIMPLE IRA plans, and intends to issue a new revenue procedure describing procedures for submitting a request to the IRS for an opinion letter on a prototype IRA, SEP, or SIMPLE IRA plan document. The IRS will announce (1) when applications may be submitted under the revised prototype IRA opinion letter program, and (2) when revised model forms must be used.

DRAFTING INFORMATION

The principal author of this announcement is Gregory Burns of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this announcement, contact Rosamond Ferber of IRS-TE/GE Employee Plans at 202-317-5786 (not a toll-free call).