

IRS Issues Guidance on Updating IRA Documents
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On January 3, 2002, the IRS released Revenue Procedure 2002-10 that provides guidance on amending IRA plan documents and disclosure statements to incorporate the law changes under EGTRRA (the Economic Growth and Tax Relief Reconciliation Act of 2001) and the new minimum required distribution regulations. Most of the EGTRRA changes on IRAs are effective beginning January 1, 2002.

As we anticipated, the *earliest* date that financial organizations will be *required* to have amended IRA documents in place is **JUNE 1, 2002!** PenServ has been reporting on this issue over the last several months and stressing the point that your organization was *not required* to have amended your IRA documents by January 1, 2002. Neither were you required to have sent any updated disclosure statements by January 1, 2002. The IRS has now confirmed that your institution will only need to amend your various IRA documents *one time during 2002!*

This article provides in-depth coverage with respect to the requirements of this revenue procedure. It includes guidance on all of the affected IRA documents (and related disclosure statements), whether your organization uses the IRS Model forms or you use an IRS-approved prototype.

The types of IRA documents needing to be amended for EGTRRA include:

1. Traditional IRA (this includes a "SEP IRA" for the employee)
2. Roth IRA
3. SIMPLE IRA (one for the employer and one for the employee)
4. SEP (for the employer)
5. SARSEP (for the employer)

This revenue procedure does NOT include guidance for the Coverdell Education Savings Account (formerly the Education IRA). PenServ has been told that another department at the IRS is now responsible for the Coverdell ESA and that a separate revenue procedure will be issued on the timing of and the requirement to amend these documents for EGTRRA changes.

Model Plans or Prototype Plans

A Model Plan is a form designed by the IRS and is "pre-approved". An organization can customize any of the Model Plans by adding articles following the articles contained in the Model Plan. IRS will issue amended Model Plans in early 2002.

A Prototype Plan is a document designed by the financial organization (or obtained through a Mass Submitter firm like PenServ) that has been submitted to the IRS for a favorable opinion letter. Prototype Plans must follow certain language requirements published by the IRS in the form of "LRMs" (List of Required Modifications).

Mandatory Submission

If any of your organization's IRA documents are in the form of a Prototype Plan, submissions for new IRS opinion letters for EGTRRA changes and the minimum distribution regulations can begin on **April 1, 2002**, but must be submitted no later than **December 31, 2002**. It is important to determine if any of your IRA documents are Prototype Plans and whether you drafted them yourself or you use a Mass Submitter firm.

Prototype Plans must be submitted to the IRS using the appropriate application form and following the instructions on that form. Form 5306, Application for Approval of Prototype or Employer Sponsored IRA, is used for submitting Prototype traditional IRAs or Prototype Roth IRAs. (Note: the reference to "Employer Sponsored IRA"

means an Employer IRA under §408(c) of the Code.) Form 5306-A, Application for Approval of Prototype SEP or Prototype SIMPLE IRA, is used for Prototype SEPs or Prototype SIMPLE IRAs that are adopted by the employer sponsoring the plan.

(Note: If your organization uses a Prototype Plan designed by a Mass Submitter firm, the Mass Submitter files the appropriate application form listed above on your behalf.)

Sample Language

The IRS will soon issue its List of Required Modifications "LRMs" that they will find acceptable for use in Prototype Plans. In order to receive an opinion letter, Prototype Plans must include certain language that covers every item in the LRMs. Although identical language is not required for the IRS to approve a Prototype Plan, LRM concepts may not merely reference Code sections or include phrases such as "in accordance with law".

Adoption of Amended IRA Plan Documents

If your organization uses any of the IRS Model IRA Plans, the appropriate Model IRA Plan that has been amended for EGTRRA and the minimum distribution regulations must be used to open new IRAs beginning after **June 1, 2002**. Existing Model IRA Plans must be amended for EGTRRA and the minimum distribution regulations and adopted by existing IRA owners no later than **December 31, 2002**.

IRA owners that have an existing currently approved Prototype Plan must adopt the organization's amended prototype document within **180 days** after the date the IRS issues a favorable EGTRRA opinion letter. Alternatively, the IRA owner can adopt an appropriate Model Plan by **December 31, 2002**.

Disclosure Statements

A financial organization that serves as trustee, custodian or issuer of an IRA Annuity must revise the corresponding disclosure statement to reflect the contents of the revised IRA plan document. The financial institution must distribute the amended disclosure statement to each IRA owner at the same time that the amended plan document is provided.

SEPs and SARSEPs

SEPs and SARSEPs must also be amended to reflect the EGTRRA changes and the minimum required distribution regulations. Under a SEP or SARSEP, there are **two different** documents that need to be amended: the employer's plan document and the employee's plan document.

The employer's plan document is the actual agreement that establishes the "SEP Plan". The employee's plan document is the actual agreement that establishes the "SEP IRA" into which the SEP contributions will be made. The employer's SEP Plan document can be either a Model Plan (Form 5305-SEP or Form 5305A-SEP) or an IRS-approved Prototype.

Model SEPs that have been amended for EGTRRA and the minimum distribution regulations must be used to open new SEP Plans beginning after **June 1, 2002**. (Note: New SARSEPs may not be adopted after December 31, 1996.)

Existing Model SEPs or Model SARSEPs must be amended for EGTRRA and the minimum distribution regulations and adopted by the *employer* no later than **December 31, 2002** (for calendar year plans).

The so-called "SEP IRA" (the document established by the employee) is the same IRA document that you use for your "traditional" IRAs. See the previous discussion for the timing of amended traditional IRAs.

Prototype SEPs and SARSEPs

An employer using a currently approved Prototype SEP must adopt an amended document within **180 days** after the date the IRS issues a favorable opinion letter on the amended Prototype SEP. However, all participating employees must be notified of the EGTRRA changes with respect to the Model SEP or Prototype SEP no later than **October 1, 2002**.

SIMPLE IRAs

Under a SIMPLE IRA, there are **two different** documents that need to be amended: the employer's plan document and the employee's plan document.

The employer's plan document is the actual agreement that establishes the "SIMPLE IRA Plan". The employee's plan document is the actual agreement that establishes the "SIMPLE IRA" into which the SIMPLE contributions will be made.

The employer's SIMPLE IRA plan document can be either a Model Plan (Form 5304-SIMPLE or Form 5305-SIMPLE) or an IRS-approved Prototype. The employee's SIMPLE IRA can be either a Model Plan (Form 5305-S or Form 5305-SA) or an IRS-approved Prototype.

Model SIMPLE IRA plan documents for the employer and the employee that have been amended for EGTRRA and the minimum distribution regulations must be used to open new SIMPLE Plans after **June 1, 2002**. Existing Model SIMPLE IRA Plans for the employer must be amended for EGTRRA and adopted by the *employer* no later than **December 31, 2002**. Existing Model SIMPLE IRA Plans for the employee must be adopted by the employee no later than **December 31, 2002**.

Prototype SIMPLE IRAs

An employer using a currently approved Prototype SIMPLE IRA must adopt an amended document within **180 days** after the date the IRS issues a favorable opinion letter on the amended Prototype SIMPLE IRA. However, all participating employees must be notified of the EGTRRA changes with respect to the Model SIMPLE IRA Plan or Prototype SIMPLE IRA no later than **October 1, 2002**.

IRA Annuities

In the case of an issuer of an IRA Annuity and that must apply to one or more state insurance departments for approval of amended documents, the IRS will provide expedited review of these prototypes provided that: (1) the IRS-approved EGTRRA document is submitted to the state insurance department within **90 days** of the date the IRS issues a favorable EGTRRA opinion letter and (2) the prototype sponsor resubmits the document as amended by the state insurance department, to the IRS within **90 days** after it is approved by such state insurance department.

Transitional Relief for Certain Prototypes

An individual and financial organization who establish an IRA after 2001 using a document that has not received an EGTRRA opinion letter will be *deemed* to have established an EGTRRA-approved document provided that: (1) the individual and financial institution used a document provided by a prototype sponsor to establish the IRA; (2) no later than **December 31, 2002**, the prototype sponsor applies to the IRS for an opinion letter; (3) the individual and financial institution adopt the approved document within **180 days** after the date the IRS issues a favorable opinion letter; and (4) the individual and financial institution comply *in operation* at all times with applicable statutory requirements.

An employer who establishes a SEP or SIMPLE IRA Plan using a document that has not received an EGTRRA opinion letter is *deemed* to have established an EGTRRA-approved document provided that: (1) the employer used a document provided by the prototype sponsor to establish the SEP or SIMPLE IRA; (2) no later than **December 31, 2002**, the prototype sponsor applies to the IRS for an opinion letter; (3) the employer adopts the approved document within **180 days** after the IRS issues a favorable opinion letter; and (4) the employer complies *in operation* at all times with the statutory requirements applicable to SEPs or SIMPLE IRAs.

QUICK REFERENCE CHART FOR UPDATING IRA DOCUMENTS

MODEL IRA DOCUMENTS

<u>Document Type</u>	<u>Adopted By</u>	<u>Use for New Accounts</u>	<u>Adopt by Existing Accounts</u>
Form 5305 - Traditional IRA Trust Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-A - Traditional IRA Custodial Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-R Roth IRA Trust Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-RA Roth IRA Custodial Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-S SIMPLE IRA Trust Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-SA SIMPLE IRA Custodial Agreement	Participant	After June 1, 2002	By December 31, 2002
Form 5305-SEP (Regular SEPs)	Employer	After June 1, 2002	By December 31, 2002
Form 5305A-SEP (SARSEP)	Employer	Not Applicable	By December 31, 2002
Form 5304-SIMPLE (Without DFI)	Employer	After June 1, 2002	By December 31, 2002
Form 5305-SIMPLE (With DFI)	Employer	After June 1, 2002	By December 31, 2002

CURRENTLY-APPROVED PROTOTYPE IRA DOCUMENTS

<u>Document Type</u>	<u>Adopted By</u>	<u>Submitted to IRS</u>	<u>Adopt By</u>
Traditional IRA	Participant	By December 31, 2002	180 Days After Letter Issued
Roth IRA	Participant	By December 31, 2002	180 Days After Letter Issued
SEP	Employer	By December 31, 2002	180 Days After Letter Issued
SIMPLE	Employer	By December 31, 2002	180 Days After Letter Issued

IRAs OPENED IN 2002 USING A NON-IRS APPROVED PROTOTYPE DOCUMENT

<u>Document Type</u>	<u>Adopted By</u>	<u>Submitted to IRS</u>	<u>Adopt By</u>
Traditional IRA	Participant	By December 31, 2002	180 Days After Letter Issued
Roth IRA	Participant	By December 31, 2002	180 Days After Letter Issued
SEP	Employer	By December 31, 2002	180 Days After Letter Issued
SIMPLE	Employer	By December 31, 2002	180 Days After Letter Issued

SPECIAL REQUIREMENTS FOR ALL SEPs AND SIMPLES

<u>Document Type</u>	<u>Provided To</u>	<u>Provided By</u>	<u>Provided No Later Than</u>
SEP - Description of Changes	Participant	Employer	October 1, 2002
SARSEP - Description of Changes	Participant	Employer	October 1, 2002
SIMPLE - Description of Changes	Participant	Employer	October 1, 2002

SPECIAL REQUIREMENTS FOR INSURANCE ANNUITIES

<u>Document Type</u>	<u>Submitted to IRS</u>	<u>Submitted to State Ins.</u>	<u>Resubmitted to IRS</u>
All IRA Documents That Provide for IRA Annuity Contracts	By December 31, 2002	Within 90 days of IRS Opinion Letter	With Changes Made By State Insurance Dept. within 90 days after approved by State

SPECIAL REQUIREMENTS FOR DISCLOSURE STATEMENTS

All trustees, custodians and issuers must revise each related disclosure statement associated with the above IRA documents and distribute to each benefited individual at the same time the updated document is provided.

Any reference to "participant" or "benefited individual" includes a beneficiary of a beneficiary-held account.