

MEMO# 14301

January 4, 2002

IRS ISSUES GUIDANCE ON IRA, SEP AND SIMPLE IRA DOCUMENTS

[14301] January 4, 2002 TO: PENSION MEMBERS No. 1-02 PENSION OPERATIONS ADVISORY COMMITTEE No. 1-02 TRANSFER AGENT ADVISORY COMMITTEE No. 1-02 RE: IRS ISSUES GUIDANCE ON IRA, SEP AND SIMPLE IRA DOCUMENTS The Internal Revenue Service has issued Revenue Procedure 2002-10, which addresses the use of IRA, SEP and SIMPLE IRA documents, including model documents issued by the IRS. The revenue procedure is intended to provide guidance in light of the changes made to IRAs and other retirement plans by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) and the pending proposed regulations on required minimum distributions (RMDs) from retirement plans. With regard to the proposed RMD regulations issued in January 2001,¹ the revenue procedure notes that final regulations are expected to be issued "in the near future." This memorandum highlights the guidance provided in the revenue procedure. For additional details regarding the guidance, please see the text of the revenue procedure, which is attached. Adoption of Revised IRAs, SEPs and SIMPLE IRAs Model IRAs, SEPs and SIMPLE IRA Plans. The revenue procedure provides that the IRS expects to issue revised model IRAs in early 2002 containing EGTRRA changes and RMD rules that comply with the final regulations. Revised model SEP and SIMPLE IRA forms containing EGTRRA changes also are expected to be issued in early 2002. Existing model forms may not be used to establish new IRAs, SEPs or SIMPLE IRAs after June 1, 2002. The revenue procedure provides that an individual using an existing model IRA wanting to take advantage of the EGTRRA changes to IRAs in 2002 must adopt a revised model IRA (or an appropriate amended prototype IRA) by the end of 2002. An employer using an existing model SEP wanting to take advantage of the EGTRRA changes to such plans for the first plan year beginning after December 31, 2001, must adopt a revised model plan (or an appropriate amended prototype plan) by the end of such first plan year. An employer using an existing model SIMPLE IRA plan must adopt a revised model plan (or amended prototype plan) 1 See Institute Memorandum to Pension Members No. 2-01, Pension Operations Advisory Committee No. 3-01 and Transfer Agent Advisory Committee No. 4-01, dated January 17, 2001. 2 by the end of 2002. However, participating employees must be notified of the increased EGTRRA contribution limits by October 1, 2002. Prototype IRAs, SEPs and SIMPLE IRAs. An individual using a currently approved prototype IRA must adopt either (1) the prototype sponsor's amended document within 180 days after the date the IRS issues a favorable EGTRRA opinion letter on the amended document or (2) an appropriate model IRA by the end of 2002. With regard to SEPs and SIMPLE IRAs, an employer using a currently approved prototype must adopt the prototype sponsor's amended document within 180 days after the date the IRS issues a favorable opinion letter on the document. Participating employees in prototype SEPs and SIMPLE IRAs also must be notified of the increased EGTRRA contribution limits by October 1, 2002. Disclosure statements. A trustee, issuer or custodian for a model or prototype IRA

must change the corresponding disclosure statement to reflect the contents of the revised IRA. The amended disclosure statement must be distributed to each individual using the revised IRA. Opinion Letters for IRAs, SEPs and SIMPLE IRAs Mandatory Submissions. Beginning April 1, 2002, prototype sponsors may apply for opinion letters on prototype documents that incorporate EGTRRA changes and the final RMD rules. All prototype sponsors with currently approved prototype IRAs, SEPs and SIMPLE IRA plans must amend these documents and submit an application for opinion letters no later than December 31, 2002. The revenue procedure specifies the application forms that must be used. Sample Language. The revenue procedure indicates that a Listing of Required Modifications (LRMs) for prototype documents will be available shortly on the IRS website (www.irs.gov). Prototype documents must include language that addresses every point in the LRMs, unless clearly inapplicable. Identical language is not necessary, but the LRM concepts may not be abbreviated with Code references or phrases such as "in accordance with the law."

Transitional Relief for Prototype Adopters With regard to IRAs, an individual and financial institution that establish a trust, custodial account or annuity contract as an IRA after 2001 using a document that has not received an EGTRRA opinion letter are deemed to have established an IRA using 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) the prototype sponsor applies to the IRS for an opinion letter on the document no later than December 31, 2002; (3) the individual and financial institution adopt the approved document within 180 days after the date the IRS issues a favorable opinion letter on the document to the prototype sponsor; and (4) the individual and financial institution comply in operation with applicable statutory requirements for the period beginning on the date the IRA was established under the original document through the date the IRS- approved document is adopted. Similar transitional relief is provided with regard to prototype SEPs and SIMPLE IRAs, subject to comparable conditions.

3 Effective Date The revenue procedure is effective on January 28, 2002. Thomas T. Kim Associate Counsel Note: Not all recipients receive the attachment. To obtain a copy of the attachment, please visit our members website (<http://members.ici.org>) and search for memo 14301, or call the ICI Library at (202) 326-8304 and request the attachment for memo 14301. Attachment (in .pdf format)