

MEMO# 34080

March 17, 2022

IRS Announces Temporary Suspension of Prototype IRA Opinion Letter Program

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension RE: IRS Announces Temporary Suspension of Prototype IRA Opinion Letter Program

IRS Announcement 2022-6^[1] indicates 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), Simplified Employee Pensions (SEPs) (including salary reduction SEPs (SARSEPs)), and SIMPLE IRA plans. The temporary suspension is intended to allow the IRS to update the prototype IRA opinion letter program,^[2] issue revised model forms and Listings of Required Modifications (LRMs), and issue related guidance to reflect recent legislation, including the Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act).^[3]

In the meantime, the Announcement provides that, until the program is re-opened:

- adopters of prototype IRAs, SEPs, and SIMPLE IRA plans may rely on a previously received favorable opinion letter;
- sponsors of prototype IRAs, SEPs, and SIMPLE IRA plans may amend their documents to reflect recent legislation without affecting that reliance; and
- taxpayers may use existing model forms^[4] to maintain current plans and accounts or establish new plans and accounts.

In addition to revising the model forms and LRMs, the IRS will issue a new revenue procedure for submitting a request to the IRS for an opinion letter on a prototype IRA, SEP, or SIMPLE IRA plan document. The new procedure will indicate (1) when applications may be submitted under the revised prototype IRA opinion letter program, and (2) when revised model forms must be used.

We note that the Announcement does not include any extension of the current deadline (December 31, 2022) for amending IRA documents to reflect SECURE Act changes.

endnotes

[1] Announcement 2022-6 is available at: <https://www.irs.gov/pub/irs-drop/a-22-06.pdf>.

[2] The existing opinion letter program for prototype IRAs, SEPs, and SIMPLE IRA plans is described in Rev. Proc. 2010-48, and Rev. Proc. 2022-4.

[3] For more background on the SECURE Act, see ICI Memorandum No. 32118, dated December 20, 2019, available at <https://www.ici.org/memo32118>.

[4] The model forms include: 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.