

**Keri:** Hello and welcome to our informational IRA session. My name is Keri McCollum. I'm the Wolters Kluwer product manager for our E-Form and Print products. Thank you for joining us today. You've likely heard by now, on September 6<sup>th</sup> the IRS posted updated model Form 5305's to their website. This posting included new model forms for the Traditional, Roth, and SIMPLE IRA contracts.

The purpose of this video is to give you give you information to answer some questions that, we at Wolters Kluwer, are sure you have.

With me today to help answer those questions are Karl Leslie and Mike Schiller. Karl is a principal attorney in our Compliance Center of Excellence and is our lead attorney for our tax-advantaged content. Karl has been an attorney here at Wolters Kluwer for more than 28 years, with a focus on deposit and IRA for about 20 years. Mike is an IRA consultant on our Compliance Solutions team. He has been solely focused on IRA for the last 20 of his 24 years here at Wolters Kluwer.

Welcome, gentlemen!

**Mike:** Thank you, Keri.

**Karl:** Glad to be here.

**Keri:** Karl, let me direct my first question to you. So, what is a "5305" and why is it important?

**Karl:** Thanks, Keri. The model Form 5305's are the IRS' standard contracts used to open any type of tax-advantaged account. The IRS has a different 5305 for each type of account offered. So there are 5305's of traditional IRAs, Roth IRAs, SIMPLE IRAs, HSAs, and Coverdell education accounts. There are also slightly different versions depending on whether an institution is acting as a trustee or as a custodian.

So that's what they are. They are important because they are the contract between the financial organization and the account owner. And because of that, they are a primary component of Wolters Kluwer's Organizers, Booklets, and Amendments.

**Keri:** So this is a pretty important piece of almost all IRA content. Mike, what's the significance of the IRS coming out with new 5305s for the various types of IRAs?

**Mike:** Well, Keri, you use the word "significance" and this truly is a significant event because the last time the IRS made changes to these IRA model 5305's was in 2002, fifteen years ago.

**Keri:** 15 years is a long time to go without changing updating content. But I thought there had been a lot of changes to IRAs in the last 15 years?

**Mike:** Well, you're right, Keri. There have been numerous IRA changes in the last 15 years. And Wolters Kluwer has addressed those changes in its disclosure statement. But we cannot change the core articles of the 5305s. Only the IRS can do that. And these are the first IRA 5305 updates in 15 years.

**Keri:** Karl, can you tell me about this disclosure statement?

**Karl:** Sure. A disclosure statement is another document required by the IRS. It needs to be provided when an IRA is established. It should also be sent as an amendment when there is a change to one of the terms required to be included as part of the disclosure statement. It's meant to be a concise, plain language, explanation of the rules affecting the various types of IRAs, although I'm sure some people would argue with either of those descriptors as the complexity of these rules makes them hard to summarize or turn in to plain language. But, Keri, not to under value the importance of the disclosure statement, this change is more about the fact that we have new IRA 5305s for the first time in 15 years.

**Keri:** Got it, Karl. Thank you. So can you tell us what the changes were to the 5305s?

**Karl:** On the Traditional IRA models, there are 4 primary changes. The IRS replaced the account owner's social security number with an account number. That doesn't mean social security numbers are going away. An SSN still needs to be collected so that IRA transactions can be properly reported to the IRS. It just means the IRS took the SSN off the model form. The IRS also updated article one of the form was to reflect the 2017 maximum contribution limits. Article eight was also modified to clarify that a financial organization cannot imply that any provisions added to that article have been reviewed or preapproved by the IRS. Article eight is used by financial organizations to add information and contract terms specific to that organization. As such, the IRS doesn't review those provisions and doesn't want an organization implying that they have been IRS reviewed or approved. The General Instructions on the form have also been updated, mostly to reflect these changes as well as to list both IRS Pub. 590-A and Pub. 590-B as additional sources of consumer information.

The IRS made even more changes to the Roth IRA model forms. In addition to the same, or equivalent, changes made to the Traditional IRA 5305's, the IRS amended article two on the Roth contract to update the modified adjusted gross income limits – sometimes referred to as the MAGI limits – for being able to make Roth IRA contributions. The IRS also removed language from article two that limited Roth IRA conversion contributions. And, of course, the made corresponding changes to the General Instructions.

On the SIMPLE IRA model 5305's, the IRS added language clarifying when transfers and rollovers from an eligible retirement plan can be accepted into a SIMPLE IRA. As with the Roth IRA, they also made the same changes that were made to the Traditional IRA 5305's, including modifying article eight to clarify that a financial organization cannot imply that any provisions added to that article have been reviewed or preapproved by the IRS. And, naturally, they updated the General Instructions.

**Keri:** Karl, is there one change you can point to that's financial organizations need to be most aware of?

**Karl:** The unique changes to the Roth contracts are fairly significant and the same is true for the unique changes to the SIMPLE contracts. But I think the most important change here is the one that says a financial organization cannot imply that the IRS has reviewed any of the articles drafted by the financial organization. I've yet to see a contract that doesn't make such an implication because the industry standard has basically been to tell people that the 5305s are the IRS's models forms and they've been reviewed and approved by the IRS. I don't think anyone has thought to say anything different, until now.

**Keri:** Mike, can you touch on some of highlights of the IRA changes that we've seen in the last 15 years?

**Mike:** I'd be happy to do that, Keri. In 2010, the IRS itself identified that from 2002 to 2010 there were seventeen events impacting IRAs. Many of those changes are still very relevant today including changes under The Tax Increase Prevention and Reconciliation Act of 2005 or "TIPRA"; the Heroes Earned Retirement Opportunities Act, also known as the "HERO Act"; the Heroes Earnings Assistance and Relief Act of 2008 or the "HEART Act"; and many of you may recall the Pension Protection Act of 2006, affectionately referred to as PPA." The PPA alone was responsible for five of those seventeen changes I just mentioned. And actually four of those still have significant relevance.

**Keri:** But there have been changes since 2010, too, right?

**Mike:** Absolutely. I can show you a long list of changes we've made to our documents since 2010. As a couple of quick examples there were numerous temporary provisions that had to be removed because they no longer applied. For example, a provision was removed that allowed IRA owners to waive the required minimum distribution due to the financial crisis. We added and later amended a provision

relating to rollovers caused by airline carrier bankruptcy. And let's not forget about the case of *Bobrow v. Commissioner* from 2014 that turned the industry's understanding of the one rollover per 12-month rule on its head. That was a really big deal. And, of course, we've had the annual cost-of-living adjustments affecting contributions.

**Keri:** Okay guys. Let's get back to the current changes. Has the IRS said anything about these changes?

**Mike:** Well, Keri, they've actually said very little. A couple weeks after posting the revised 5305s they issued a brief statement noting the availability of the updated IRA Form 5305 series along with a parenthetical that said, "Financial institutions may use these forms immediately."

**Karl:** That's right, Mike. The only other statement dates back to 2010, when we first expected the updates to these IRA 5305s. At that time, the IRS said, and I quote, "[T]he Service recommends adoption of the latest model IRAs."

**Keri:** Are we expecting any further statements or guidance?

**Karl:** It's definitely possible.

**Keri:** That gets me to my next question. I'm sure a lot of our customer want to know whether use of the new IRA 5305s is mandatory.

**Karl:** Great question. Wolters Kluwer's position on whether an organization is required to use a revised model 5305 has always been that a change is mandatory when the IRS says it's mandatory. As Mike and I just pointed out, the IRS has yet to say that. But to be honest, Keri, I think whether use of these forms is mandatory or not is a bit off target.

**Keri:** So can you expand on that thought?

**Karl:** Sure. Simply put, I don't think it matters whether use of the revised forms is mandatory or not. There are so many sound business and legal reasons to open IRAs on the revised contracts that I have a hard time imagining anyone would want to continue using the old contracts. First, the IRS appears to be recommending them based not only on their comment back in 2010 but on their reference to financial organizations being able to begin using them 'immediately.' Along that same line, I expect that examiners and auditors will all be expecting to see new IRAs opened using the revised contracts. And why give anyone a reason to question the enforceability of your contracts? From a business standpoint your competition is probably going to move to the 2017 contract so why would you want to be on a 2002 contract. Look, this is a significant event. It's been 15 years since we last saw new IRA model contracts. I just don't think financial organizations should risk using the old contracts to open new IRAs.

**Keri:** Thanks, Karl. That makes perfect sense to me. Mike, I have a couple of similar questions about sending amendments to existing customers. What are the benefits of sending an amendment? Is sending an amendment required?

**Mike:** Well, Keri, what Karl just said also applies to amendments. Wolters Kluwer's position on is that sending an amendment is mandatory when the IRS says it's mandatory. But there are a lot of good reasons to send amendments. We think it's a best practice to have all account owners on the same agreement. If you don't notify existing customers of a change, you may very well have different subsets of customers with a different understanding of the rules that govern their accounts. The current rules governing IRAs, HSAs, and CESAs are applied equally, but account owners without current agreements and disclosures may not have been informed of the changes.

You will also be helping to ensure the benefits of the most current content apply to all of your accounts. For example, by clarifying that the IRS review and approval of the Form 5305 series does not apply to the articles that are not drafted by the IRS, a financial organization can refute a claim that their contracts imply otherwise.

And, Keri, as I mentioned earlier, there have been a lot of changes over the many years that have been included in the disclosure statement. So the longer it's been since you sent an amendment, the more important it becomes to send one now.

But I also agree with Karl that people shouldn't undervalue the significance of the change about the IRS not reviewing certain articles in the contract. I don't think organizations want contracts out there with that implication. I'd amend.

**Keri:** Okay, to this point we've been completely focused on IRAs. Can we talk about HSAs and Coverdell Education Savings Accounts for a minute?

**Karl:** Right, Keri. In February 2017, the IRS posted updated model Form 5305's to its website for the Health Savings Account contracts as well as the Coverdell Education Savings Account contracts. They all have an October 2016 revision date. The previous HSA model Form 5305's had a December 2011 revision date while the CESA model Form 5305's had an October 2010 revision date. The changes were all minimal but financial organizations will want to make sure they are using the latest contracts for those agreements as well.

**Keri:** Alright guys, anything else you two would like to share with our customers?

**Mike:** Yes. I think we should mention the annual cost of living adjustments. I referred to them earlier when I was talking about past changes. We already have the 2018 COLAs for HSAs and they will be included in our updated organizers. But mid-October is also when we get the COLAs for the IRAs. So we're making sure all our agreements reflect the latest COLA figures.

**Karl:** And Keri I'd like to mention the Disaster Tax Relief and Airport and Airway Extension Act of 2017. That Act was recently signed into law and is designed to help victims of hurricanes Harvey, Irma, and Maria and specifically permits storm victims to take qualified hurricane distributions from their IRAs. That means storm victims can take distributions without penalty, and prorate the income over several years, and they have an extended time to roll over the funds back into an IRA. As a result, we updated the Disaster Tax Relief section in our disclosure statement as part of the agreements to ensure it properly summarizes the requirements of that law.

**Keri:** Thank you Mike and Karl. This has been very enlightening.