

**Education Individual Retirement Custodial Account
Agreement and Disclosure Statement**

THIS DOCUMENT MAY ONLY BE USED WITH A SWS SECURITIES ACCOUNT.

**HOW TO GET STARTED
TO ESTABLISH A SWS SECURITIES
EDUCATION INDIVIDUAL RETIREMENT ACCOUNT (EDUCATION IRA)**

- Complete and sign the **Education IRA Application**.¹ All beneficiary information including Social Security numbers should be completed.
- Submit the completed **Education IRA Application**¹ to your Account Executive.
- Enclose a check made payable to SWS Securities for the initial Education contribution, if applicable. Your check should reference which tax year the contribution should be credited.

CUSTODIAL FEES FOR STANDARD ASSETS

- | | |
|------------------------------------|------------------|
| • Initial Set Up or Acceptance Fee | No Charge |
| • Annual Maintenance Fee | No Charge |
| • Spousal Annual Maintenance Fee | No Charge |
| • Premature Distribution Fee | No Charge |
| • Transfer or Termination Fee | \$25.00 |

The Custodial Fee Schedule for Standard Assets will apply to any SWS Securities IRA Account which is invested in widely held or publicly traded securities, such as Stocks, Bonds, Mutual Funds and/or Fixed Income instruments.

Form **5305-EA**

(January 2000)
Department of the Treasury
Internal Revenue Service

Education Individual Retirement Custodial Account

(Under Section 530 of the Internal Revenue Code)

Article I

- 1.01 The Custodian may accept additional cash contributions. These contributions may be from the Depositor, or from any other individual, for the benefit of the Designated Beneficiary, provided the Designated Beneficiary has not attained the age of 18 as of the date such contributions are made. Total contributions that are not rollover contributions described in section 530(d)(5) are limited to a maximum amount of \$500 for the taxable year.

Article II

- 2.01 The maximum aggregate contribution that an individual may make to the custodial account in any year may not exceed the \$500 in total contributions that the custodial account can receive. In addition, the maximum aggregate contribution that an individual may make to the custodial account in any year is phased out for individuals who have modified adjusted gross income (AGI) between \$95,000 and \$110,000 for the year of the contribution (the phase-out range for married individuals who file joint returns is modified AGI between \$150,000 and \$160,000 for the year of the contribution). Individuals with modified AGI above \$110,000 for the year and married individuals who file joint returns and have modified AGI above \$160,000 for the year may not make a contribution for that year. Modified AGI is defined in section 530(c)(2).

Article III

- 3.01 No part of the custodial account funds may be invested in life insurance contracts, nor may the assets of the custodial account be commingled with other property except in a common custodial account fund or a common investment fund (within the meaning of section 530(b)(1)(D)).

Article IV

- 4.01 Any balance to the credit of the Designated Beneficiary on the date on which such Designated Beneficiary attains age 30 shall be distributed to the Designated Beneficiary within 30 days of such date.
- 4.02 Any balance to the credit of the Designated Beneficiary shall be distributed within 30 days of the date of such Designated Beneficiary's death unless the designated death beneficiary is a family member of the Designated Beneficiary who is under the age of 30 on the date of death. In such a case, the family member shall become the Designated Beneficiary as of the date of death.

Article V

- 5.01 The Depositor shall have the power to direct the Custodian regarding the investment of the above-listed amount assigned to the custodial account (including earnings thereon) in the investment choices offered by the custodian. The Responsible Individual, however, shall have the power to redirect the Custodian regarding the investment of such amounts, as well as the power to direct the Custodian regarding the investment of all additional contributions (including earnings thereon) to the custodial account. In the event that the Responsible Individual does not direct the Custodian regarding the investment of additional contributions (including earnings thereon), the initial investment direction of the Depositor also will govern all additional contributions made to the custodial account until such time as the Responsible Individual otherwise directs the Custodian. Unless otherwise provided in this agreement, the Responsible Individual also shall have the power to direct the Custodian regarding the administration, management, and distribution of the account.

Article VI

- 6.01 The "Responsible Individual" named by the Depositor shall be a parent or guardian of the Designated Beneficiary. The custodial account shall have only one Responsible Individual at any time. If the Responsible Individual becomes incapacitated or dies while the Designated Beneficiary is a minor under state law, the successor Responsible Individual shall be the person named to succeed in that capacity by the preceding Responsible Individual in a witnessed writing or, if no successor is so named, the successor Responsible Individual shall be the Designated Beneficiary's other parent or successor guardian. Unless otherwise directed by checking the option in the Adoption Agreement, at the time that the Designated Beneficiary attains the age of majority under state law, the Designated Beneficiary becomes the Responsible Individual. If a family member under the age of majority under state law becomes the Designated Beneficiary by reason of being a named death beneficiary, the Responsible Individual shall be such Designated Beneficiary's parent or guardian.
- 6.02 If elected in the Adoption Agreement, the Responsible Individual shall continue to serve as the Responsible Individual for the custodial account after the Designated Beneficiary attains the age of majority under state law and until such time as all assets have been distributed from the custodial account and the custodial account terminates. If the Responsible Individual becomes incapacitated or dies after the Designated Beneficiary reaches the age of majority under state law, the Responsible Individual shall be the Designated Beneficiary.

Article VII

- 7.01 If elected in the Adoption Agreement, the Responsible Individual may change the beneficiary designated under this agreement to another member of the Designated Beneficiary's family described in section 529(e)(2) in accordance with the Custodian's procedures.

Article VIII

- 8.01 The Depositor agrees to provide the custodian with the information necessary for the Custodian to prepare any reports required under section 530(h).
- 8.02 The Custodian agrees to submit reports to the Internal Revenue Service and the Responsible Individual as prescribed by the Internal Revenue Service.

Article IX

- 9.01 Notwithstanding any other articles which may be added or incorporated, the provisions of Articles I through IV will be controlling. Any additional articles that are not consistent with section 530 and related regulations will be invalid.

Article X

- 10.01 This agreement will be amended from time to time to comply with the provisions of the Code and related regulations. Other amendments may be made with the consent of the Depositor and the Custodian whose signatures appear on the Adoption Agreement.

Article XI

- 11.01 **Applicable Law:** This Custodial Agreement shall be governed by the laws of the state where the Custodial account has its situs.
- 11.02 **Annual Accounting:** The Custodian shall, at least annually, provide the Designated Beneficiary with an accounting of such Designated Beneficiary's account. Such accounting shall be deemed to be accepted by the Designated Beneficiary, if the Designated Beneficiary does not object in writing within 60 days after the mailing of such accounting.
- 11.03 **Amendment:** The Depositor irrevocably delegates to the Custodian the right and power to amend this Custodial Agreement. Except as hereafter provided, the Custodian will give the Designated Beneficiary 30 days prior written notice of any amendment. In case of a retroactive amendment required by law, the Custodian will provide written notice to the Designated Beneficiary of the amendment within 30 days after the amendment is made, or if later, by the time that notice of the amendment is required to be given under regulations or other guidance provided by the IRS. The Designated Beneficiary shall be deemed to have consented to any such amendment unless the Designated Beneficiary notifies the Custodian to the contrary within 30 days after notice to the Designated Beneficiary and requests a distribution or transfer of the balance in the account.
- 11.04 **Resignation and Removal of Custodian:**
- a.) The Custodian may resign at any time by giving at least 30 days notice to the Designated Beneficiary. The Custodian may resign and appoint a successor trustee or custodian to serve under this agreement or under another governing instrument selected by the successor trustee or custodian by giving the Designated Beneficiary written notice at least 30 days prior to the effective date of such resignation and appointment, which notice shall also include a copy of such other governing instrument, if applicable, and the related disclosure statement. The Designated Beneficiary shall then have 30 days from the date of such notice to either request a complete distribution of the account balance or designate a different successor trustee or custodian. If the Designated Beneficiary does not request distribution of the account or designate a different successor within such 30 days, the Designated Beneficiary shall be deemed to have consented to the appointment of the successor trustee or custodian and the terms of any new governing instrument, and neither the Designated Beneficiary nor the successor shall be required to execute any written document to complete the transfer of the account to the successor trustee or custodian. The successor trustee or custodian may rely on any information, including beneficiary designations, previously provided by the Designated Beneficiary.
- b.) The Designated Beneficiary may at any time remove the Custodian and replace the Custodian with a successor trustee or custodian of the Designated Beneficiary's choice by giving 30 days written notice to the Custodian. In such event, the Custodian shall then deliver the assets of the account as directed by the Designated Beneficiary. However, the Custodian may retain a portion of the assets of the Education IRA as a reserve for payment of any anticipated remaining fees and expenses, and shall pay over any remainder of this reserve to the successor trustee or custodian upon satisfaction of such fees and expenses.

11.05 Custodian's Fees and Expenses:

- a.) The Depositor agrees that the Custodian shall be entitled to receive any and all fees specified in the Custodian's current published fee schedule for establishing and maintaining this Education IRA, including, but not limited to, any fees for distributions from, transfers from, and terminations of this Education IRA. The Custodian may change its fee schedule at any time by giving the Designated Beneficiary 30 days prior written notice.
- b.) The Depositor agrees that the Custodian shall be entitled to reimbursement for any expenses incurred by the Custodian in the performance of its duties in connection with the account. Such expenses include, but

are not limited to, administrative expenses, such as legal and accounting fees, and any taxes of any kind whatsoever that may be levied or assessed with respect to such account.

- c.) All such fees, taxes, and other administrative expenses charged to the account shall be collected either from the assets in the account or from any contributions to or distributions from such account if not paid by the Depositor or Designated Beneficiary, but the Depositor and Designated Beneficiary shall be responsible for any deficiency.
- d.) In the event that for any reason the Custodian is not certain as to who is entitled to receive all or part of the Custodial Funds, the Custodian reserves the right to withhold any payment from the Custodial Account, to request a court ruling to determine the disposition of the Custodial Account assets, and to charge the Custodial Account for any expenses incurred in obtaining such legal determination.
- 11.06 **Withdrawal Requests:** All requests for withdrawal, distribution, or payment from the account shall be in writing on the form provided by the Custodian. Such written request must also specify the reason for the withdrawal, distribution, or payment and the desired method or form of withdrawal, payment, or distribution.
- 11.07 **Responsibilities:** The Depositor represents that all information and instructions given to the Custodian by the Depositor is complete and accurate and that the Custodian shall have no responsibility for any incomplete or inaccurate information provided by the Depositor or Designated Beneficiary. The Depositor agrees to be responsible for all tax consequences arising from contributions to and distributions from this Custodial Account and acknowledges that no tax advice has been provided by the Custodian.
- 11.08 **Change of Designated Beneficiary:**
- (a) If elected in the Adoption Agreement, while the Designated Beneficiary is a minor or otherwise lacks legal capacity, the Responsible Individual may at any time change the Designated Beneficiary for this Education IRA to any member of the family of the original Designated Beneficiary or direct the Custodian to roll over or transfer the funds in this Education IRA to an Education IRA for any member of the family of the original Designated Beneficiary. If elected in the Adoption Agreement, when the Designated Beneficiary has legal capacity, the Designated Beneficiary may at any time change the Designated Beneficiary for this Education IRA to any member of the family of the original Designated Beneficiary or direct the Custodian to roll over or transfer the funds in this Education IRA to an Education IRA for any member of the family of the original Designated Beneficiary.
- (b) Any change of Designated Beneficiary under this Education IRA agreement shall not be treated as a distribution, if the new Designated Beneficiary is a Member of the Family (as defined under section 11.10) and such new Designated Beneficiary has not attained the age of 30, as of the date of such change.
- (c) Notwithstanding Section 4.01, a new Designated Beneficiary may be named within 30 days after the Designated Beneficiary attains the age of 30.
- 11.09 **Designated Beneficiary's Minority or Incapacity:**
- (a) The Responsible Individual shall have, to the exclusion of the Designated Beneficiary, all of the rights, powers, and responsibilities granted to the Designated Beneficiary under this Custodial Agreement, including, without limitation, the right to receive accountings and notices of amendment and resignation, the power to remove and replace the Custodian, the power to direct investments, the power to request withdrawals, distributions, and payments, and the power to direct a rollover or transfer to the trustee or custodian of an Education IRA for the Designated Beneficiary or another member of the family of the Designated Beneficiary.
- (b) In the event the Responsible Individual dies, becomes disabled, or otherwise fails or refuses to act and no successor Responsible Individual has been appointed, or no duly appointed Responsible Individual is willing or able to serve, then a parent of the Designated Beneficiary or the legal guardian or conservator of the estate of the Designated Beneficiary may appoint a Responsible Individual in writing on a form acceptable to and filed with the Custodian.
- 11.10 **Member of the Family:** The term "member of the family of the Designated Beneficiary" includes the Designated Beneficiary's: children and their descendants; stepchildren; brothers and sisters and their children; stepbrothers and stepsisters; parents and their ancestors; brothers and sisters of parents; stepparents; a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law; and spouses of the foregoing.

ARTICLE XII SELF-DIRECTED IRA PROVISIONS

- 12.01 **Investment of Contributions:** At the direction of the Designated Beneficiary (or the direction of the Grantor or the Responsible Individual, whichever applies) the Custodian shall invest all contributions to the account and earnings thereon in investments acceptable to the Custodian, which may include marketable securities traded on a recognized exchange or "over the counter" (excluding any securities issued by the Custodian), covered call options, certificates of deposit, and other investments to which the Custodian consents, in such amounts as are specifically selected and specified in orders to the Custodian in such form as may be acceptable to the Custodian, without any duty to diversify and without regard to whether such property is authorized by the laws of any jurisdiction as a trust investment. The Custodian shall be responsible for the execution of such orders and for maintaining adequate records thereof. However, if any such orders are not received as required, or, if received, are unclear in the opinion of the Custodian, all or a portion of the contribution may be held uninvested without liability for loss of income or appreciation, and without liability for interest pending receipt of such orders or clarification, or the contribution may be returned. The Custodian may, but need not, establish programs under which cash deposits in excess of a minimum set by it will be periodically and automatically

invested in interest-bearing investment funds. The Custodian shall have no duty other than to follow the written investment directions of the Designated Beneficiary (or the Grantor or Responsible Individual), and shall be under no duty to question said instructions and shall not be liable for any investment losses sustained by the Designated Beneficiary.

- 12.02 **Registration:** All assets of the account shall be registered in the name of the Custodian or of a suitable nominee. The same nominee may be used with respect to assets of other investors whether or not held under agreements similar to this one or in any capacity whatsoever. However, each Designated Beneficiary's account shall be separate and distinct; a separate account therefor shall be maintained by the Custodian, and the assets thereof shall be held by the Custodian in individual or bulk segregation either in the Custodian's vaults or in depositories approved by the Securities and Exchange Commission under the Securities Exchange Act of 1934.
- 12.03 **Investment Advisor:** The Designated Beneficiary (or Grantor or Responsible Individual) may appoint an Investment Advisor, qualified under Section 3(38) of the Employee Retirement Income Security Act of 1974, to direct the investment of this Education IRA. The Designated Beneficiary shall notify the Custodian in writing of any such appointment by providing the Custodian a copy of the instruments appointing the Investment Advisor and evidencing the Investment Advisor's acceptance of such appointment, an acknowledgement by the Investment Advisor that it is a fiduciary of the account, and a certificate evidencing the Investment Advisor's current registration under the Investment Advisor's Act of 1940. The Custodian shall comply with any investment directions furnished to it by the Investment Advisor, unless and until it receives written notification from the Designated Beneficiary that the Investment Advisor's appointment has been terminated. The Custodian shall have no duty other than to follow the written investment directions of such Investment Advisor and shall be under no duty to question said instructions, and the Custodian shall not be liable for any investment losses sustained by the Designated Beneficiary.
- 12.04 **No Investment Advice:** The Custodian does not assume any responsibility for rendering advice with respect to the investment and reinvestment of Designated Beneficiary's account and shall not be liable for any loss which results from Designated Beneficiary's exercise of control over his account. The Custodian and Designated Beneficiary may specifically agree in writing that the Custodian shall render such advice, but the Designated Beneficiary shall still have and exercise exclusive responsibility for control over the investment of the assets of his account, and the Custodian shall not have any duty to question his investment directives.
- 12.05 **Prohibited Transactions:** Notwithstanding anything contained herein to the contrary, the Custodian shall not lend any part of the corpus or income of the account to; pay any compensation for personal services rendered to the account to; make any part of its services available on a preferential basis to; acquire for the account any property, other than cash, from; or sell any property to, any Designated Beneficiary, any member of a Designated Beneficiary's family, or a corporation controlled by any Designated Beneficiary through the ownership, directly or indirectly, of 50 percent or more of the total combined voting power of all classes of stock entitled to vote, or of 50 percent or more of the total value of shares of all classes of stock of such corporation.
- 12.06 **Unrelated Business Income Tax:** If the Designated Beneficiary directs investment of the account in any investment which results in unrelated business taxable income, it shall be the responsibility of the Designated Beneficiary to so advise the Custodian and to provide the Custodian with all information necessary to prepare and file any required returns or reports for the account. As the Custodian may deem necessary, and at the Designated Beneficiary's expense, the Custodian may request a taxpayer identification number for the account, file any returns, reports, and applications for extension, and pay any taxes or estimated taxes owed with respect to the account. The Custodian may retain suitable accountants, attorneys, or other agents to assist it in performing such responsibilities.
- 12.07 **Disclosures and Voting:** The Custodian shall deliver, or cause to be executed and delivered, to Designated Beneficiary all notices, prospectuses, financial statements, proxies and proxy soliciting materials relating to assets credited to the account. The Custodian shall not vote any shares of stock or take any other action, pursuant to such documents, with respect to such assets except upon receipt by the Custodian of adequate written instructions from Designated Beneficiary.
- 12.08 **Miscellaneous Expenses:** In addition to those expenses set out in Section 8.05 of this plan, the Designated Beneficiary agrees to pay any and all expenses incurred by the Custodian in connection with the investment of the account, including expenses of preparation and filing any returns and reports with regard to unrelated business income, including taxes and estimated taxes, as well as any transfer taxes incurred in connection with the investment or reinvestment of the assets of the account.
- 12.09 **Nonbank Custodian Provision:** If the Custodian is a nonbank custodian, the Designated Beneficiary shall substitute another trustee or custodian in place of the Custodian upon receipt of notice from the Commissioner of the Internal Revenue Service or his delegate that such substitution is required because the Custodian has failed to comply with the requirements of Income Tax Regulations Section 1.408-2(e), or is not keeping such records, making such returns, or rendering such statements as are required by applicable law, regulations, or other rulings. The successor trustee or custodian shall be a bank, insured credit union, or other person satisfactory to the Secretary of the Treasury pursuant to Section 408(a)(2) of the Code. Upon receipt by the Custodian of written acceptance by its successor of such successor's appointment, Custodian shall transfer and pay over to such successor the assets of the account (less amounts retained pursuant to Section 11.04 of the Custodial Agreement) and all records (or copies thereof) of the Custodian pertaining thereto, provided that the successor trustee or custodian agrees not to dispose of any such records without the Custodian's consent.

General Instructions

(Section references are to the Internal Revenue Code unless otherwise noted.)

Purpose of Form

Form 5305-EA is a model custodial account agreement that meets the requirements of section 530(a) and has been automatically approved by the IRS. An education individual retirement account (Ed IRA) is established after the form is fully executed by both the Depositor and the Custodian. This account must be created in the United States for the exclusive purpose of paying the qualified higher education expenses of an individual who is the Designated Beneficiary.

If the model account is a trust account, get Form 5305-E, Education Individual Retirement Trust Account.

Do not file Form 5305-EA with the IRS. Instead, keep it for record purposes.

For more information, including information about the required disclosure you must get from your Custodian, see Notice 97-60, 1997-2 C.B.310.

Definitions:

Custodian. The Custodian must be a bank or savings and loan association, as defined in section 408(n), or any person who has the approval of the IRS to act as Custodian. Any person who may serve as a Custodian of a traditional IRA may serve as the Custodian of an Ed IRA.

Depositor. The Depositor is the person who establishes the custodial account.

Designated Beneficiary. The Designated Beneficiary is the individual on whose behalf the custodial account has been established.

Family member. Family members of the Designated Beneficiary include the spouse of the Designated Beneficiary. Family members also include a child, grandchild, sibling, parent, niece or nephew, son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the Designated Beneficiary, and the spouse of any such individual.

Responsible Individual. The Responsible Individual, generally, is a parent or guardian of the Designated Beneficiary. However, under certain circumstances, the Responsible Individual may be the Designated Beneficiary.

Identification Numbers

The Depositor and Designated Beneficiary's social security numbers will serve as their identification numbers. If the Depositor is a nonresident alien and does not have an identification number, write "Foreign" in the block where the number is requested. The Designated Beneficiary's social security number is the identification number of his or her Ed IRA. If the Designated Beneficiary is a nonresident alien, the Designated Beneficiary's individual taxpayer identification number is the identification number of his or her Ed IRA. An employer identification number (EIN) is required only for an Ed IRA for which a return is filed to report unrelated business income. An EIN is required for a common fund created for Ed IRAs.

Specific Instructions

Article XI. Article XI and any that follow may incorporate additional provisions that are agreed to by the Depositor and Custodian to complete the agreement. They may include, for example, provisions relating to: definitions, investment powers, voting rights, exculpatory provisions, amendment and termination, removal of the Custodian, Custodian's fees, state law requirements, treatment of excess contributions, and prohibited transactions with the Depositor, Designated Beneficiary, or Responsible Individual, etc. Use additional pages as necessary and attach them to this form.

Optional provisions in Article VI and Article VII. Form 5305-EA may be reproduced in a manner that provides only those optional provisions offered by the Custodian.

Note: Form 5305-EA may be reproduced and reduced in size for adaption to passbook purposes.

EDUCATION IRA DISCLOSURE STATEMENT

GENERAL INFORMATION

Beginning January 1, 1998, taxpayers may deposit up to \$500 per year into an Education IRA for a child under age 18. Parents, grandparents, other family members, friends, and a child him/herself may contribute to the child's Education IRA, provided that the total contributions for the child during the taxable year do not exceed the \$500 limit. Amounts deposited in the account grow tax-free until distributed, and the child will not owe tax on any withdrawal from the account if the child's qualified higher education expenses at an eligible educational institution for the year equal or exceed the amount of the withdrawal. If the child does not need the money for postsecondary education, the account balance can be rolled over to the Education IRA of certain family members who can use it for their higher education. Amounts withdrawn from an Education IRA that exceed the child's qualified higher education expenses in a taxable year are generally subject to income tax and to an additional tax of 10 percent. The Hope Scholarship Credit and Lifetime Learning Credit may not be claimed for a student's expenses in a taxable year in which the student takes a tax-free withdrawal from an Education IRA. This Education IRA Disclosure is reproduced from IRS Notice 97-60.

Q1: What is an Education IRA?

A1: An Education IRA is a trust or custodial account that is created or organized in the United States exclusively for the purpose of paying the qualified higher education expenses of the Designated Beneficiary of the account. The account must be designated as an Education IRA when it is created in order to be treated as an Education IRA for tax purposes.

Q2: For whom may an Education IRA be established?

A2: An Education IRA may be established for the benefit of any child under age 18. Contributions to the Education IRA will not be accepted after the Designated Beneficiary reaches his/her 18th birthday.

Q3: Where may an individual open an Education IRA?

A3: An individual may open an Education IRA with any bank, or other entity that has been approved to serve as a nonbank trustee or custodian of an individual retirement account (IRA), and the bank or entity is offering Education IRAs. Other entities that wish to offer Education IRAs but are not approved to serve as IRA trustees or custodians may seek approval by following the same IRS procedures used for approval of other IRA nonbank trustees, See Notice 97-57, 1997-43 I.R.B. (October 27, 1997).

Q4: When may a taxpayer start contributing to an Education IRA for a child?

A4: A taxpayer may start making contributions on January 1, 1998, or at any time thereafter.

Q5: How much may be contributed to a child's Education IRA?

A5: Up to \$500 per year in aggregate contributions may be made for the benefit of any child. The contributions may be placed in a single Education IRA or in multiple Education IRAs.

Q6: What happens if more than \$500 is contributed to an Education IRA on behalf of a child in a calendar year?

A6: Aggregate contributions for the benefit of a particular child in excess of \$500 for a calendar year are treated as excess contributions. If the excess contributions (and any earnings attributable to them) are not withdrawn from the child's account (or accounts) before the child's tax return for the year is due, the excess contributions are subject to a 6 percent excise tax for each year the excess amount remains in the account. If the child is not required to file a return, then the distribution must be made by the 15th day of the fourth month of the tax year in which the contribution was made.

Q7: May contributions other than cash be made to a child's Education IRA?

A7: No. Education IRAs are permitted to accept contributions made in cash only.

Q8: May contributors take a deduction for contributions made to an Education IRA?

A8: No.

Q9: Are there any restrictions on who can contribute to an Education IRA?

A9: Any individual may contribute up to \$500 to a child's Education IRA if the individual's modified adjusted gross income for the taxable year is no more than \$95,000 (\$150,000 for married taxpayers filing jointly). For purposes of this section, "modified AGI" means the AGI of the taxpayer for the taxable year increased by amounts excluded from gross income under sections 911 (foreign earned income); 931

(income from Guam, American Samoa, or Northern Mariana Islands); and 933 (income from Puerto Rico). The \$500 maximum contribution per child is gradually reduced for individuals with modified adjusted gross income between \$95,000 and \$110,000 (between \$150,000 and \$160,000 for married taxpayers filing jointly). For example, an unmarried taxpayer with modified adjusted gross income of \$96,500 in a taxable year could make a maximum contribution per child of \$450 for that year. Taxpayers with modified adjusted gross income above \$110,000 (\$160,000 for married taxpayers filing jointly) cannot make contributions to anyone's Education IRA.

Q10: May a child contribute to his/her own Education IRA?

A10: Yes.

Q11: Does a taxpayer have to be related to the Designated Beneficiary in order to contribute to the Designated Beneficiary's Education IRA?

A11: No.

Q12: How many Education IRAs may a child have?

A12: There is no limit on the number of Education IRAs that may be established designating a particular child as beneficiary. However, in any given taxable year the total aggregate contributions to all the accounts designating a particular child as beneficiary may not exceed \$500.

Q13: May a Designated Beneficiary take a tax-free withdrawal from an Education IRA to pay qualified higher education expenses if the Designated Beneficiary is enrolled less than full-time at an eligible educational institution?

A13: Yes. Whether the Designated Beneficiary is enrolled full-time, half-time, or less than half-time, he/she may take a tax-free withdrawal to pay qualified higher education expenses.

Q14: What happens when a Designated Beneficiary withdraws assets from an Education IRA to pay for college?

A14: Generally, the withdrawal is tax-free to the Designated Beneficiary to the extent the amount of the withdrawal does not exceed the Designated Beneficiary's qualified higher education expenses.

Q15: What are "qualified higher education expenses"?

A15: "Qualified higher education expenses" mean expenses for tuition, fees, books, supplies, and equipment required for the enrollment or attendance of the Designated Beneficiary at an eligible educational institution. Qualified higher education expenses also include amounts contributed to a qualified state tuition program. Qualified higher education expenses also include room and board (generally the school's posted room and board charge, or \$2,500 per year for students living off-campus and not at home) if the Designated Beneficiary is at least a half-time student at an eligible educational institution. A student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled.

The standards for determining whether a student is enrolled at least half-time are the same as those used for the Hope Scholarship Credit. A student is eligible for the Hope Scholarship Credit if: (1) for at least one academic period (e.g., semester, trimester, quarter) beginning during the calendar year, the student is enrolled at least half-time in a program leading to a degree, certificate, or other recognized educational credential and is enrolled in one of the first two years of postsecondary education, and (2) the student is free of any conviction for a Federal or State felony offense consisting of the possession or distribution of a controlled substance. For purposes of the Hope Scholarship Credit, a student will be considered to be enrolled at least half-time if the student is enrolled for at least half the full-time academic workload for the course of study the student is pursuing as determined under the standards of the institution where the student is enrolled. The institution's standard for a full-time workload must equal or exceed the standards established by the Department of Education under Higher Education Act and set forth in 34 CFR 674.2(b).

Q16: What is an eligible educational institution?

A16: An eligible educational institution is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. (The same eligibility requirements for institutions apply for the Hope Scholarship Credit, the Lifetime Learning Credit, and early withdrawals from IRAs for qualified higher education expenses).

However, if there was a death beneficiary designated, such beneficiary will receive the assets and if such death beneficiary is a Family Member (See Q&As 18&20), the assets may be rolled to an Education IRA with the death beneficiary as the Designated Beneficiary.

Q17: What happens if a Designated Beneficiary withdraws an amount from an Education IRA but does not have any qualified higher education expenses to pay in the taxable year he/she makes the withdrawal?

A17: Generally, if a Designated Beneficiary withdraws an amount from an Education IRA and does not have any qualified higher education expenses during the taxable year, a portion of the distribution is taxable. The taxable portion is the portion that represents earnings that have accumulated tax-free in the account. The taxable portion of the distribution is also subject to a 10 percent additional tax unless an exception applies.

Q18: Is a distribution from an Education IRA taxable if the distribution is contributed to another Education IRA?

A18: Any amount distributed from an Education IRA and rolled over to another Education IRA for the benefit of the same Designated Beneficiary or certain members of the Designated Beneficiary's family is not taxable. An amount is rolled over if it is paid to another Education IRA on a date within 60 days after the date of the distribution. Members of the Designated Beneficiary's family include the Designated Beneficiary's children and their descendants, stepchildren and their descendants, siblings and their children, parents and grandparents, stepparents, and spouses of all the foregoing. The \$500 annual contribution limit to Education IRAs does not apply to these rollover contributions. For example, an older brother who has \$2,000 left in his Education IRA after he graduates from college can roll over the full \$2000 balance to an Education IRA for his younger sister who is still in high school without paying any tax on the transfer.

Q19: What happens to the assets remaining in an Education IRA after the Designated Beneficiary finishes his/her postsecondary education?

A19: There are two options. The amount remaining in the account may be withdrawn for the Designated Beneficiary. The Designated Beneficiary will be subject to both income tax and the additional 10 percent tax on the portion of the amount withdrawn that represents earnings if the Designated Beneficiary does not have any qualified higher education expenses in the same taxable year he/she makes the withdrawal. Alternatively, if the amount in the Designated Beneficiary's Education IRA is withdrawn and rolled over (as described in Q&As18&20 of this section) to another Education IRA for the benefit of a member of the Designated Beneficiary's family, the amount rolled over will not be taxable.

Q20: Rather than rolling over money from one Education IRA to another, may the Designated Beneficiary of the account be changed from one child to another without triggering a tax?

A20: Yes, provided: (1) the terms of the particular trust or custodial account permit a change in designated beneficiaries (each trustee or custodian will control whether options like this one are available in the accounts they offer), and (2) the new Designated Beneficiary has not attained age 30 and is a member of the previous Designated Beneficiary's family. (See Q&A 18 in this section).

Q21: May a student or the student's parents claim the Hope Scholarship Credit or Lifetime Learning Credit for the student's expenses in a taxable year in which the student receives money from an Education IRA on a tax-free basis?

A21: No. If a student is receiving a tax-free distribution from an Education IRA in a particular taxable year, none of that student's expenses may be claimed as the basis for a Hope Scholarship Credit or Lifetime Learning Credit for that year. However, the student may waive the tax-free treatment of the Education IRA distribution and elect to pay any tax that would otherwise be owed on an Education IRA distribution so that the student or the student's parents may claim a Hope Scholarship Credit or Lifetime Learning Credit for expenses paid in the same year the Education IRA distributions are received.

Q22: May contributions be made to both a qualified state tuition program and an Education IRA on behalf of the same Designated Beneficiary in the same taxable year?

A22: No. Any amount contributed to an Education IRA on behalf of a Designated Beneficiary during any taxable year in which an amount is also contributed to a qualified state tuition program on behalf of the same beneficiary will be treated as an excess contribution to the Education IRA. (See Q&A6 in this section for the treatment of excess contributions)

Q23: What happens to the assets remaining in the Education IRA after the death of the Designated Beneficiary?

A23: Generally within 30 days after the death of the Designated Beneficiary, distribution is made to the Designated Beneficiary's estate; or the Responsible Individual may change the name of the Designated Beneficiary to a Family Member of the original Designated Beneficiary, if the agreement permits.

DISTRIBUTIONS

Beginning January 1, 1998, a taxpayer may make withdrawals from an individual retirement account (IRA) to pay the qualified higher education expenses for the taxpayer, the taxpayer's spouse, or the child or grandchild of the taxpayer or taxpayer's spouse at an eligible educational institution. The taxpayer will owe federal income tax on the amount withdrawn, but will not be subject to the 10 percent early withdrawal tax that applies when amounts are withdrawn from an individual retirement account before the account holder reaches age 59 1/2.

Q1: When can an individual first make a withdrawal from an IRA to pay for qualified higher education expenses without paying the 10 percent early withdrawal tax?

A1: On or after January 1, 1998, an individual can make withdrawals from his/her IRA to pay for qualified higher education expense for academic periods beginning on or after January 1, 1998, without paying the 10 percent early withdrawal tax. See Notice 97-53, 1997-40 IRB. The 10 percent early withdrawal tax does not apply to a distribution from an IRA to the extent that the amount of the distribution does not exceed the qualified higher education expenses for the taxpayer, the taxpayer's spouse, and the child or grandchild of the taxpayer or the taxpayer's spouse at an eligible educational institution. For purposes of this rule, the term "qualified higher education expenses" means tuition, fees, books, supplies and equipment required for the enrollment or attendance of the student at an eligible educational institution. Qualified higher education expenses also include room and board if the student is enrolled at least half-time. Qualified higher education expenses paid with an individual's earnings, a loan, a gift, an inheritance given to the student or the individual claiming the credit, or personal savings (including savings from a qualified state tuition program) are included in determining the amount of the IRA withdrawal which is not subject to the 10 percent early withdrawal tax. Qualified higher education expenses paid with a Pell Grant or other tax-free scholarship, a tax-free distribution from an Education IRA, or tax-free employer-provided educational assistance are excluded.

Q2: What are the requirements for an "eligible educational institution"?

A2: An "eligible educational institution" is any college, university, vocational school, or other postsecondary educational institution that is described in section 481 of the Higher Education Act of 1965 (20 U.S.C. 1088) and, therefore, eligible to participate in the student aid programs administered by the Department of Education. This category includes virtually all accredited public, nonprofit, and proprietary postsecondary institutions. (The same eligibility requirements for institutions apply for the Hope Scholarship Credit, the Lifetime Learning Credit, and Education IRAs).

Q3: When are IRA withdrawals usually subject to the 10 percent early withdrawal tax?

A3: Generally, if a taxpayer makes a withdrawal from his/her IRA before reaching age 59 1/2, the taxpayer must pay the 10 percent early withdrawal tax on all or part of the amount withdrawn.

Q4: In addition to the Education IRA, TRA '97 also created the Roth IRA. May a taxpayer make a withdrawal from a Roth IRA to pay for his/her child's qualified higher education expenses?

A4: Yes. A taxpayer may make a withdrawal from a Roth IRA, as they can from other IRAs, to pay qualified higher education expenses without paying the 10 percent early withdrawal tax.

EMPLOYER PROVIDED EDUCATIONAL ASSISTANCE

TRA '97 extends tax-free treatment to employer-provided educational assistance for undergraduate courses that begin before June 1, 2000. Employers may continue to provide up to \$5,250 per year in educational assistance to each employee on a tax-free basis for courses beginning before that date, regardless of whether the education is job-related. This benefit expires for assistance in paying for courses that begin on or after June 1, 2000.

Q1: How does an employee learn whether tax-free educational assistance is available to him/her?

A1: Employers have this information. Employers offering tax-free educational assistance are required to have a written plan describing the benefit and the terms under which it is available.

Q2: Does the employee have to do anything special to avoid being taxed on employer-provided educational assistance, up to the \$5,250 limit?

A2: No. The employer will automatically treat the educational assistance as a tax-free benefit and will not include it as wages on the employee's W-2 form.

Q3: May an employee receive tax-free educational assistance from the employer to attend graduate school?

A3: In general, no. However, employers can provide job-related educational assistance for graduate-level education as a tax-free fringe benefit under certain circumstances. Educational assistance would generally qualify as job-related if it maintains or improves skills required for the employee's current job or satisfies certain express employer-imposed conditions for continued employment. Individuals should consult a tax advisor for help in determining the tax treatment of any assistance the individual may be receiving from an employer for graduate -level education.

Q4: **If a student is enrolled in undergraduate courses in a particular year and owes \$3,000 in qualified tuition and related expenses, and the student's employer pays all of the student's qualified tuition and related expenses, may a Hope Scholarship Credit or a Lifetime Learning Credit be claimed for that student for that year?**

A4: No. Neither the Hope Scholarship Credit nor the Lifetime Learning Credit may be claimed for that student for that year.

Internal Revenue Service

SWS Securities, Inc.
Suite 4300, Renaissance Tower
1201 Elm Street
Dallas, TX 75270

EIN Number: 75-1382137

Ladies and Gentlemen:

In a letter dated July 9, 1992, and subsequent letters, you requested a written notice of approval that SWS Securities, Inc., may serve as a custodian of plans qualified under section 401 of the Internal Revenue Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for individual retirement arrangements (IRAs) established under section 408.

Section 401(f) of the Code provides that a custodial account shall be treated as a qualified trust under this section if such custodial account would, except for the fact it is not a trust, constitute a qualified trust under this section and the custodian is a bank (as defined in section 408(n)) or other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will hold the assets will be consistent with the requirements of section 401. Section 401(f) also provides that in the case of a custodial account treated as a qualified trust by reason of the preceding sentence, the person holding the assets of such account shall be treated as the trustee thereof.

Section 403(b)(7)(A) of the Code requires, in part, that for amounts paid by an employer to a custodial account to be treated as amounts contributed to an annuity contract for his employee, the custodial account must satisfy the requirements of section 401(f)(2). This section also requires, in order for the amounts paid by an employer to be treated as amounts contributed to an annuity contract for his employee, that the amounts are to be invested in regulated investment company stock to be held in that custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59 1/2, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or in the case of contributions made pursuant to a salary reduction agreement (within the meaning of section 3121(a)(1)(D)), encounters financial hardship.

Section 408(a)(2) of the Code requires that a trustee of an IRA be a bank (as defined in section 408(n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the IRA will be consistent with the requirements of section 408.

Section 408(h) of the Code provides that a custodial account shall be treated as a trust under this section if the assets of such account are held by a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the account will be consistent with the requirements of this section, and if the custodial account would, except for the fact that it is not a trust, constitute an IRA described in subsection (a). Section 408(h) also provides that, in the case of a custodial account treated as a trust by reason of the preceding sentence, the custodian of such account shall be treated as the trustee thereof.

The Income Tax Regulations at section 1.401-12(n) provide the criteria for determining the ability of such other person, for purposes of sections 401(f), 403(b)(7), 408(a)(2), and 408(h) of the Code, to act as a trustee or custodian. Section 1.401-12 (n) of the regulations provides that such person must file a written application with the Commissioner demonstrating, as set forth in that section, its ability to act as a trustee or custodian.

Based on all the information submitted to this office and all the representations made in the application we have concluded that SWS Securities, Inc., meets the requirements of section 1.401-12(n) of the regulations and, therefore, is approved to serve as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408.

This letter authorizes SWS Securities, Inc., to serve only as a nonbank trustee or custodian in a fashion similar to a passive nonbank trustee, within the meaning of section 1.401-12(n)(7) of the regulations, that is, it is authorized only to acquire and hold particular investments specified by the owner, it may not serve as trustee or custodian if under the written agreement it has discretion to direct investments of the trust or custodial funds.

This letter while authorizing SWS Securities, Inc., to act as a passive trustee or custodian does not authorize it to pool accounts in a common investment fund (other than a mutual fund) within the meaning of section 1.401-

**Department of the Treasury
Washington, DC 20224****Person to Contact:**

B. Gamerman
Telephone Number:
(202) 622-8400

Refer Reply to:

E:EP:R:7
Date:
December 9, 1992

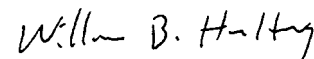
12(n)(6)(viii)(C) of the regulations. SWS Securities, Inc., may not act as a passive trustee or custodian unless it undertakes to act only under trust instruments or custodial agreements that contain a provision to the effect that the owner is to substitute another trustee or custodian upon notification by the Commissioner that such substitution is required because the applicant has failed to comply with the requirements of section 1.401-12(n) of the regulations or is not keeping such records, or making such returns or rendering such statements as are required by forms or regulations.

SWS Securities, Inc., is required to notify the Commissioner of Internal Revenue, Attn: E:EP:R, Internal Revenue Service, Washington, D.C. 20224, in writing, of any change which affects the continuing accuracy of any representations made in its application. Further, the continued approval of its application to act as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, is contingent upon the continued satisfaction of the criteria set forth in section 1.401-12(n) of the regulations.

This approval letter is not transferable to any other entity. An entity that is a member of a controlled group of corporations, within the meaning of section 1563(a) of the Code, may not rely on an approval letter issued to another member of the same controlled group. Furthermore, any entity that goes through a merger, consolidation or other type of reorganization may no longer rely on the approval letter issued to such entity prior to the merger, consolidation or other type of reorganization. Such entity will have to apply for a new determination letter in accordance with section 1.401-12 (n) of the regulations.

This letter constitutes a determination that SWS Securities, Inc., may act as a custodian of plans qualified under section 401 of the Code and of accounts described in section 403(b)(7), and as a passive nonbank trustee or custodian for IRAs established under section 408, and does not bear upon its capacity to act as a trustee or custodian under any other applicable law.

Sincerely yours,



William B. Hulteng
Chief, Employee Plans
Rulings Branch

Retirement Plans are offered through:
SWS Securities, Inc.
Member NASD, NYSE, SIPC
1201 Elm Street
Suite 3500
Dallas, TX 75270