

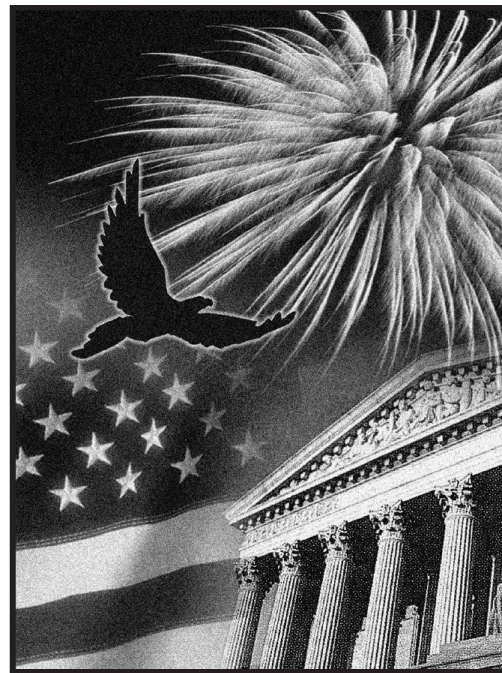
# Publication 560

## Retirement Plans for Small Business

(SEP, SIMPLE, and Qualified Plans)

For use in preparing **2023** Returns

Volume 1 of 3



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# Future Developments

For the latest information about developments related to Pub. 560, such as legislation enacted after it was published, go to [IRS.gov/Pub560](https://www.irs.gov/pub560).

# What's New

## **Compensation limits for 2023 and 2024.**

For 2023, the maximum compensation used for figuring contributions and benefits is \$330,000. This limit increases to \$345,000 for 2024.

**Elective deferral limits for 2023 and 2024.** The limit on elective deferrals, other than catch-up contributions, is \$22,500 for 2023 and \$23,000 for 2024. These limits apply for participants in SARSEPs, 401(k) plans (excluding SIMPLE plans), section 403(b) plans, and section 457(b) plans.

**Defined contribution limits for 2023 and 2024.** The limit on contributions, other than catch-up contributions, for a participant in a defined contribution plan is \$66,000 for 2023 and increases to \$69,000 for 2024.

**Defined benefit limits for 2023 and 2024.** The limit on annual benefits for a participant

in a defined benefit plan is \$265,000 for 2023 and increases to \$275,000 for 2024.

**SIMPLE plan salary reduction contribution limits for 2023 and 2024.**

The limit on salary reduction contributions, other than catch-up contributions, is \$15,500 for 2023 and increases to \$16,000 for 2024.

**Catch-up contribution limits for 2023 and 2024.** A plan can permit participants who are age 50 or over at the end of the calendar year to make catch-up contributions in addition to elective deferrals and SIMPLE plan salary reduction contributions. The catch-up contribution limit for defined contribution plans other than SIMPLE plans is \$7,500 for 2023 and 2024. The catch-up contribution limit for SIMPLE plans is \$3,500 for 2023 and 2024.

A participant's catch-up contributions for a year can't exceed the lesser of the following amounts.



- The catch-up contribution limit.
- The excess of the participant's compensation over the elective deferrals that aren't catch-up contributions.

See *Catch-up contributions* under *Contribution Limits* and *Limit on Elective Deferrals* in chapters 3 and 4, respectively, for more information.

### **Required minimum distributions (RMDs).**

Individuals who reach age 72 after December 31, 2022, may delay receiving their RMDs until April 1 of the year following the year in which they turn age 73. This change in the age for making these beginning RMDs applies to both IRA owners and participants in a qualified retirement plan.

**Plans established after end of taxable year.** For 2023 and later years, a sole-proprietor with no employees can adopt a section 401(k) plan after the end of the

taxable year, provided the plan is adopted by the tax filing deadline (without regard to extensions).

**Increased small employer pension plan startup cost credit.** The Secure 2.0 Act of Division T of the Consolidated Appropriations Act, 2023, P.L. 117-328 (SECURE 2.0 Act), provides that eligible employers with 1–50 employees are eligible for an increased small employer pension plan startup cost credit under section 45E of 100% of qualified startup costs, subject to limitation. The credit for eligible employers with 51–100 employees remains at 50% of qualified startup costs, subject to limitation. See the instructions to Form 3800 and Form 8881 for more information on the startup cost credit.

**Employer contributions credit.** The Secure 2.0 Act added an additional startup cost credit under section 45E available to certain eligible employers, in an amount equal to an applicable percentage of the employer's

contributions (not including an elective deferral, as defined in section 402(g)(3)) to an eligible employer plan, subject to limitation. See the instructions to Form 3800 and Form 8881 for more information on the employer contributions credit.

**Small employer military spouse participation credit.** The Secure 2.0 Act added a new military spouse participation credit under section 45AA available to eligible small employers who maintain defined contribution plans with specific features that benefit military spouses. See the instructions to Form 3800 and Form 8881 for more information on the military spouse participation credit.

**Designated Roth nonelective contributions and designated Roth matching contributions.** The Secure 2.0 Act of 2022 permits certain nonelective contributions and matching contributions that

are made after December 29, 2022, to be designated as Roth contributions.

# Reminders

## **Small employer automatic enrollment credit.**

The Further Consolidated Appropriations Act, 2020, P.L. 116-94, added section 45T. An eligible employer may claim a tax credit if it includes an eligible automatic contribution arrangement under a qualified employer plan. The credit equals \$500 per year over a 3-year period beginning with the first tax year in which it includes the automatic contribution arrangement, and may first be claimed on the employer's return for the year 2020.

## **Increase in credit limitation for small employer plan startup costs.**

The Further Consolidated Appropriations Act, 2020, P.L. 116-94, amended section 45E. For tax years beginning after December 31, 2019, eligible employers can claim a tax credit for the first credit year and each of the 2 tax years immediately following. The credit equals 50% of qualified startup costs, up to the greater of

(a) \$500; or (b) the lesser of (i) \$250 for each employee who is not a “highly compensated employee” eligible to participate in the employer plan, or (ii) \$5,000.

**Note.** The SECURE 2.0 Act further amended section 45E to increase the credit for tax years beginning after December 31, 2022. See *What’s New*.

See the instructions for Form 3800 and Form 8881 for more information on the small employer automatic enrollment credit and the small employer startup cost credit.

**Restriction on conditions of participation.**

Effective for plan years beginning after December 31, 2020, a 401(k) plan can’t require, as a condition of participation, that an employee complete a period of service that extends beyond the close of the earlier of (a) 1 year of service, or (b) the first period of 3 consecutive 12-month periods (excluding 12-month periods beginning before January 1, 2021) during each of which the employee has

completed at least 500 hours of service. Effective for plan years beginning after December 31, 2024, 3 consecutive 12-month periods are reduced to 2 consecutive 12-month periods.

**Retirement savings contributions credit.**

Retirement plan participants (including self-employed individuals) who make contributions to their plan may qualify for the retirement savings contribution credit. The maximum contribution eligible for the credit is \$2,000. To take the credit, use Form 8880, Credit for Qualified Retirement Savings Contributions. For more information on who is eligible for the credit, retirement plan contributions eligible for the credit, and how to figure the credit, see Form 8880 and its instructions or go to [IRS.gov/Retirement-Plans/PlanParticipant-Employee/Retirement-Savings-ContributionsSavers-Credit](https://www.irs.gov/Retirement-Plans/PlanParticipant-Employee/Retirement-Savings-ContributionsSavers-Credit).

**Photographs of missing children.** The IRS is a proud partner with the [National Center](#)

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Photographs of missing children selected by the Center may appear in this publication on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.



# Introduction

This publication discusses retirement plans you can set up and maintain for yourself and your employees. In this publication, “you” refers to the employer. See chapter 1 for the definition of the term “employer” and the definitions of other terms used in this publication. This publication covers the following types of retirement plans.

- SEP (simplified employee pension) plans.
- SIMPLE (savings incentive match plan for employees) plans.
- Qualified plans (also called H.R. 10 plans or Keogh plans when covering self-employed individuals), including 401(k) plans.

SEP, SIMPLE, and qualified plans offer you and your employees a tax-favored way to save for retirement. You can deduct

contributions you make to the plan for your employees. If you are a sole proprietor, you can deduct contributions you make to the plan for yourself. You can also deduct trustees' fees if contributions to the plan don't cover them. Earnings on the contributions are generally tax free until you or your employees receive distributions from the plan.

Under a 401(k) plan, employees can have you contribute limited amounts of their before-tax (after-tax, in the case of a qualified Roth contribution program) pay to the plan. These amounts (and the earnings on them) are generally tax free until your employees receive distributions from the plan or, in the case of a qualified distribution from a designated Roth account, completely tax free.

**What this publication covers.** This publication contains the information you need to understand the following topics.

- What type of plan to set up.

- How to set up a plan.
- How much you can contribute to a plan.
- How much of your contribution is deductible.
- How to treat certain distributions.
- How to report information about the plan to the IRS and your employees.
- Basic features of SEP, SIMPLE, and qualified plans. The key rules for SEP, SIMPLE, and qualified plans are outlined in Table 1.

***SEP plans.*** SEP plans provide a simplified method for you to make contributions to a retirement plan for yourself and your employees. Instead of setting up a profit-sharing or money purchase plan with a trust, you can adopt a SEP agreement and make contributions directly to a traditional individual retirement account or a traditional

individual retirement annuity (SEP-IRA) set up for yourself and each eligible employee.

***SIMPLE plans.*** Generally, if you had 100 or fewer employees who received at least \$5,000 in compensation last year, you can set up a SIMPLE IRA plan. Under a SIMPLE plan, employees can choose to make salary reduction contributions rather than receiving these amounts as part of their regular pay. In addition, you will contribute matching or nonelective contributions. The two types of SIMPLE plans are the SIMPLE IRA plan and the SIMPLE 401(k) plan.

***Qualified plans.*** The qualified plan rules are more complex than the SEP plan and SIMPLE plan rules. However, there are advantages to qualified plans, such as increased flexibility in designing plans and increased contribution and deduction limits in some cases.

Table 1. **Key Retirement Plan Rules for 2023**

Type of Plan	Last Date for Contribution	Maximum Contribution	Maximum Deduction	When To Set Up Plan
<b>SEP</b>	Due date of employer's return (including extensions).	Smaller of \$66,000 or 25% <sup>1</sup> of participant's compensation. <sup>2</sup>	25% <sup>1</sup> of all participants' compensation. <sup>2</sup>	Any time up to the due date of employer's return (including extensions).
<b>SIMPLE IRA and SIMPLE 401(k)</b>	<p><b>Salary reduction contributions:</b> 30 days after the end of the month for which the contributions are to be made.<sup>4</sup></p> <p><b>Matching or nonelective contributions:</b> Due date of employer's return (including extensions).</p>	<p><b>Employee contribution:</b> Salary reduction contribution up to \$15,500; \$19,000 if age 50 or over.</p> <p><b>Employer contribution:</b> <i>Either</i> dollar-for-dollar matching contributions, up to 3% of employee's compensation,<sup>3</sup> <i>or</i> fixed nonelective contributions of 2% of compensation.<sup>2</sup></p>	Same as maximum contribution.	<p>Any time between January 1 and October 1 of the calendar year.</p> <p>For a new employer coming into existence after October 1, as soon as administratively feasible.</p>
<b>Qualified Plan: Defined Contribution Plan</b>	<p><b>Elective deferral:</b> Due date of employer's return (including extensions).<sup>4</sup></p> <p><b>Employer contribution:</b> Profit-Sharing Plan: Due date of employer's return (including extensions). Money Purchase Plan: 8 1/2 months after the end of the plan year.</p>	<p><b>Employee contribution:</b> Elective deferral up to \$22,500; \$30,000 if age 50 or over.</p> <p><b>Employer contribution:</b> Money Purchase Pension Plan: Smaller of \$66,000 or 100%<sup>1</sup> of participant's compensation.<sup>2</sup></p> <p>Profit-Sharing: Smaller of \$66,000 or 100%<sup>1</sup> of participant's compensation.<sup>2</sup></p>	25% <sup>1</sup> of all participants' compensation, <sup>2</sup> plus amount of elective deferrals made.	By the employer's tax-filing due date, including extensions, for the taxable year.
<b>Qualified Plan: Defined Benefit Plan</b>	Contributions must generally be paid in quarterly installments, due 15 days after the end of each quarter, with a final contribution due 8 1/2 months after the end of the plan year. See <a href="#">Minimum Funding Requirement</a> in chapter 4.	Amount needed to provide an annual benefit no larger than the smaller of \$265,000 or 100% of the participant's average compensation for the highest 3 consecutive calendar years.	Based on actuarial assumptions and computations.	By the employer's tax filing due date (although it's not best to set up after the minimum funding due date).
<p><sup>1</sup> Net earnings from self-employment must take the contribution into account. See <i>Deduction Limit for Self-Employed Individuals</i> in chapters 2 and 4.</p> <p><sup>2</sup> Compensation is generally limited to \$330,000 in 2023.</p> <p><sup>3</sup> Under a SIMPLE 401(k) plan, compensation is generally limited to \$330,000 in 2023.</p> <p><sup>4</sup> Certain plans subject to Department of Labor (DOL) rules may have an earlier due date for salary reduction contributions and elective deferrals, such as 401(k) plans. See the "elective deferral" definition in <i>Definitions You Need To Know</i>, later. Solo/self-employed 401(k) plans are non-ERISA plans and don't fall under DOL rules.</p>				

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## **What this publication doesn't cover.**

Although the purpose of this publication is to provide general information about retirement plans you can set up for your employees, it doesn't contain all the rules and exceptions that apply to these plans. You may need professional help and guidance.

Also, this publication doesn't cover all the rules that may be of interest to employees. For example, it doesn't cover the following topics.

- The comprehensive IRA rules an employee needs to know. These rules are covered in Pub. 590-A, Contributions to Individual Retirement Arrangements (IRAs), and Pub. 590-B, Distributions from Individual Retirement Arrangements (IRAs).
- The comprehensive rules that apply to distributions from retirement plans. These rules are covered in Pub. 575, Pension and Annuity Income.

- The comprehensive rules that apply to section 403(b) plans. These rules are covered in Pub. 571, Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations.

**Comments and suggestions.** We welcome your comments about this publication and your suggestions for future editions.

You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments). Or you can write to the Internal Revenue Service, Tax Forms and Publications, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224.

Although we can't respond individually to each comment received, we do appreciate your feedback and will consider your comments and suggestions as we revise our tax forms, instructions, and publications.

**Don't** send tax questions, tax returns, or payments to the above address.



***Getting answers to your tax questions.*** If you have a tax question not answered by this publication or the *How To Get Tax Help* section at the end of this publication, go to the IRS Interactive Tax Assistant page at [IRS.gov/ Help/ITA](https://www.irs.gov/help/ita) where you can find topics by using the search feature or viewing the categories listed.

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***Tax questions.*** If you have a tax question not answered by this publication, check IRS.gov and *How To Get Tax Help* at the end of this publication.

# 1.

## Definitions You Need To Know

Certain terms used in this publication are defined below. The same term used in another publication may have a slightly different meaning.

**Annual additions.** Annual additions are the total of all your contributions in a year, employee contributions (not including rollovers), and forfeitures allocated to a participant's account.

**Annual benefits.** Annual benefits are the benefits to be paid yearly in the form of a straight life annuity (with no extra benefits) under a plan to which employees don't contribute and under which no rollover contributions are made.

**Business.** A business is an activity in which a profit motive is present and economic activity is involved. Service as a newspaper carrier under age 18 or as a public official isn't a business.

**Common-law employee.** A common-law employee is any individual who, under common law, would have the status of an employee. A leased employee can also be a common-law employee.

A common-law employee is a person who performs services for an employer who has the right to control and direct the results of the work and the way in which it is done. For example, the employer:

- Provides the employee's tools, materials, and workplace; and
- Can fire the employee.

Common-law employees aren't self-employed and can't set up retirement plans for income from their work, even if that income is self-

employment income for social security tax purposes. For example, common-law employees who are ministers, members of religious orders, full-time insurance salespeople, and U.S. citizens employed in the United States by foreign governments can't set up retirement plans for their earnings from those employments, even though their earnings are treated as self-employment income.

However, an individual may be a common-law employee and a self-employed person as well. For example, an attorney can be a corporate common-law employee during regular working hours and also practice law in the evening as a self-employed person. In another example, a minister employed by a congregation for a salary is a common-law employee even though the salary is treated as self-employment income for social security tax purposes. However, fees reported on Schedule C (Form 1040), Profit or Loss From

Business, for performing marriages, baptisms, and other personal services are self-employment earnings for qualified plan purposes.

**Compensation.** Compensation for plan allocations is the pay a participant received from you for personal services for a year. You can generally define compensation as including all the following payments.

1. Wages and salaries.
2. Fees for professional services.
3. Other amounts received (cash or noncash) for personal services actually rendered by an employee, including, but not limited to, the following items.
  - a. Commissions and tips.
  - b. Fringe benefits.
  - c. Bonuses.

For a self-employed individual, compensation means the earned income, discussed later, of that individual.

Compensation generally includes amounts deferred at the employee's election in the following employee benefit plans.

- Section 401(k) plans.
- Section 403(b) plans.
- SIMPLE IRA plans.
- SARSEPs.
- Section 457 deferred compensation plans.
- Section 125 cafeteria plans.

However, an employer can choose to exclude elective deferrals under the above plans from the definition of compensation. The limit on elective deferrals is discussed in chapter 2 under *Salary Reduction Simplified Employee Pension (SARSEP)* and in chapter 4.

***Other options.*** In figuring the compensation of a participant, you can treat any of the following amounts as the employee's compensation.

- The employee's wages as defined for income tax withholding purposes.
- The employee's wages you report in box 1 of Form W-2, Wage and Tax Statement.
- The employee's social security wages (including elective deferrals).

Compensation generally can't include either of the following items.

- Nontaxable reimbursements or other expense allowances.
- Deferred compensation (other than elective deferrals).

***SIMPLE plans.*** A special definition of compensation applies for SIMPLE plans. See chapter 3.



**Contribution.** A contribution is an amount you pay into a plan for all those participating in the plan, including self-employed individuals. Limits apply to how much, under the contribution formula of the plan, can be contributed each year for a participant.

**Deduction.** A deduction is the plan contribution you can subtract from gross income on your federal income tax return. Limits apply to the amount deductible.

**Earned income.** Earned income is net earnings from self-employment, discussed later, from a business in which your services materially helped to produce the income.

You can also have earned income from property your personal efforts helped create, such as royalties from your books or inventions. Earned income includes net earnings from selling or otherwise disposing of the property, but it doesn't include capital gains. It includes income from licensing the use of property other than goodwill.

Earned income includes amounts received for services by self-employed members of recognized religious sects opposed to social security benefits who are exempt from self-employment tax.

If you have more than one business, but only one has a retirement plan, only the earned income from that business is considered for that plan.

**Elective deferral.** An elective deferral is the contribution made by employees to a qualified retirement plan.

- Non-owner employees: The employee salary reduction/elective deferral contributions must be elected/ made by the end of the tax year and deposited into the employee's plan account within 7 business days (safe harbor) and no later than 15 days.
- Owner/employees: The employee deferrals must be elected by the end

of the tax year and can then be made by the tax return filing deadline, including extensions.

**Employer.** An employer is generally any person for whom an individual performs or did perform any service, of whatever nature, as an employee. A sole proprietor is treated as its own employer for retirement plan purposes. However, a partner isn't an employer for retirement plan purposes. Instead, the partnership is treated as the employer of each partner.

**Highly compensated employee.** A highly compensated employee is an individual who:

- Owned more than 5% of the interest in your business at any time during the year or the preceding year, regardless of how much compensation that person earned or received; or
- For the preceding year, received compensation from you of more than

\$135,000 (if the preceding year is 2022 and increased to \$150,000 for 2023), more than \$155,000 (if the preceding year is 2024), and, if you so choose, was in the top 20% of employees when ranked by compensation.

**Leased employee.** A leased employee who isn't your common-law employee must generally be treated as your employee for retirement plan purposes if they do all the following.

- Provides services to you under an agreement between you and a leasing organization.
- Has performed services for you (or for you and related persons) substantially full time for at least 1 year.
- Performs services under your primary direction or control.

***Exception.*** A leased employee isn't treated as your employee if all the following conditions are met.

1. Leased employees aren't more than 20% of your non-highly compensated workforce.
2. The employee is covered under the leasing organization's qualified pension plan.
3. The leasing organization's plan is a money purchase pension plan that has all the following provisions.
  - a. Immediate participation. (This requirement doesn't apply to any individual whose compensation from the leasing organization in each plan year during the 4-year period ending with the plan year is less than \$1,000.)
  - b. Full and immediate vesting.

- c. A nonintegrated employer contribution rate of at least 10% of compensation for each participant.

However, if the leased employee is your common-law employee, that employee will be your employee for all purposes, regardless of any pension plan of the leasing organization.

**Net earnings from self-employment.** For SEP and qualified plans, net earnings from self-employment are your gross income from your trade or business (provided your personal services are a material income-producing factor) minus allowable business deductions. Allowable deductions include contributions to SEP and qualified plans for common-law employees and the deduction allowed for the deductible part of your self-employment tax.

Net earnings from self-employment don't include items excluded from gross income (or their related deductions) other than foreign

earned income and foreign housing cost amounts.

For the deduction limits, earned income is net earnings for personal services actually rendered to the business. You take into account the income tax deduction for the deductible part of self-employment tax and the deduction for

## Chapter 1 Definitions You Need To Know

contributions to the plan made on your behalf when figuring net earnings.

Net earnings include a partner's distributive share of partnership income or loss (other than separately stated items, such as capital gains and losses). They don't include income passed through to shareholders of S corporations. Guaranteed payments to limited partners are net earnings from self-employment if they are paid for services to or for the partnership. Distributions of other

income or loss to limited partners aren't net earnings from self-employment.

For SIMPLE plans, net earnings from self-employment are the amount on line 4 of Schedule SE (Form 1040), Self-Employment Tax, before subtracting any contributions made to the SIMPLE plan for yourself.

**Qualified plan.** A qualified plan is a retirement plan that offers a tax-favored way to save for retirement. You can deduct contributions made to the plan for your employees. Earnings on these contributions are generally tax free until distributed at retirement. Profit-sharing, money purchase, and defined benefit plans are qualified plans. A 401(k) plan is also a qualified plan.

**Participant.** A participant is an eligible employee who is covered by your retirement plan. See the discussions, later, of the different types of plans for the definition of an employee eligible to participate in each type of plan.



**Partner.** A partner is an individual who shares ownership of an unincorporated trade or business with one or more persons. For retirement plans, a partner is treated as an employee of the partnership.

**Self-employed individual.** An individual in business for himself or herself, and whose business isn't incorporated, is self-employed. Sole proprietors and partners are self-employed. Self-employment can include part-time work.

Not everyone who has net earnings from self-employment for social security tax purposes is self-employed for qualified plan purposes. See Common-law employee and Net earnings from self-employment, earlier.

In addition, certain fishermen may be considered self-employed for setting up a qualified plan. See Pub. 595, Capital Construction Fund for Commercial Fishermen, for the special rules used to determine whether fishermen are self-employed.

**Sole proprietor.** A sole proprietor is an individual who owns an unincorporated business alone, including a single-member limited liability company that is treated as a disregarded entity for tax purposes. For retirement plans, a sole proprietor is treated as both an employer and an employee.

## **2.**

# **Simplified Employee Pensions (SEPs)**

## **Topics**

This chapter discusses:

- Setting up a SEP
- How much can I contribute
- Deducting contributions • Salary reduction simplified employee pensions (SARSEPs)
- Distributions (withdrawals)
- Additional taxes
- Reporting and disclosure requirements

## **Useful Items**

You may want to see:

## **Publications**

- 590-A Contributions to Individual Retirement Arrangements (IRAs)
- 590-B Distributions from Individual Retirement Arrangements (IRAs)
- **3998** Choosing a Retirement Solution for Your Small Business
  - 4285 SEP Checklist
  - 4286 SARSEP Checklist
- **4333** SEP Retirement Plans for Small Businesses
- **4336** SARSEP for Small Businesses
- **4407** SARSEP—Key Issues and Assistance
- **Forms (and Instructions)**
  - **W-2** Wage and Tax Statement
  - **1040** U.S. Individual Income Tax Return
  - **1040-SR** U.S. Tax Return for Seniors

□ **5305-SEP** Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement

□ **5305A-SEP** Salary Reduction Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement

□ **8880** Credit for Qualified Retirement Savings Contributions

□ **8881** Credit for Small Employer Pension Plan Startup Costs

A SEP is a written plan that allows you to make contributions toward your own retirement and your employees' retirement without getting involved in a more complex qualified plan.

Under a SEP, you make contributions to a traditional individual retirement arrangement (called a SEP-IRA) set up by or for each eligible employee. A SEP-IRA is owned and controlled by the employee, and you make

contributions to the financial institution where the SEP-IRA is maintained.

SEP-IRAs are set up for, at a minimum, each eligible employee (defined below). A SEP-IRA may have to be set up for a leased employee (defined in chapter 1), but doesn't need to be set up for excludable employees (defined later).

**Eligible employee.** An eligible employee is an individual who meets all the following requirements.

- Has reached age 21.
- Has worked for you in at least 3 of the last 5 years.
- Has received at least \$750 in compensation from you in 2023. The amount remains the same for 2023.



*You can use less restrictive participation requirements than those listed, but not more restrictive ones.*

**Excludable employees.** The following employees can be excluded from coverage under a SEP.

- Employees covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees' union and you.
- Nonresident alien employees who have received no U.S. source wages, salaries, or other personal services compensation from you. For more information about nonresident aliens, see Pub. 519, U.S. Tax Guide for Aliens.

# Setting up a SEP

There are three basic steps in setting up a SEP.

1. You must execute a formal written agreement to provide benefits to all eligible employees.
2. You must give each eligible employee certain information about the SEP.
3. A SEP-IRA must be set up by or for each eligible employee.



*Many financial institutions will help you set up a SEP.*

**Formal written agreement.** You must execute a formal written agreement to provide benefits to all eligible employees under a SEP. You can satisfy the written agreement requirement by adopting an IRS model SEP using Form 5305-SEP. However, see *When not to use Form 5305-SEP*, later.



If you adopt an IRS model SEP using Form 5305-SEP, no prior IRS approval or determination letter is required. Keep the original form. Don't file it with the IRS. Also, using Form 5305-SEP will usually relieve you from filing annual retirement plan information returns with the IRS and the Department of Labor. See the Form 5305-SEP instructions for details. If you choose not to use Form 5305-SEP, you should seek professional advice in adopting a SEP.

***When not to use Form 5305-SEP.*** You can't use

Form 5305-SEP if any of the following apply.

1. You currently maintain any other qualified retirement plan other than another SEP.
2. You have any eligible employees for whom IRAs haven't been set up.
3. You use the services of leased employees, who aren't your common-

law employees (as described in chapter 1).

4. You are a member of any of the following unless all eligible employees of all the members of these groups, trades, or businesses participate under the SEP.
  - a. An affiliated service group described in section 414(m).
  - b. A controlled group of corporations described in section 414(b).
  - c. Trades or businesses under common control described in section 414(c).
5. You don't pay the cost of the SEP contributions.

**Information you must give to employees.**

You must give each eligible employee a copy of Form 5305-SEP, its instructions, and the other information listed in the Form 5305-SEP

instructions. An IRS model SEP isn't considered adopted until you give each employee this information.

**Setting up the employee's SEP-IRA.** A SEP-IRA must be set up by or for each eligible employee. SEP-IRAs can be set up with banks, insurance companies, or other qualified financial institutions. You send SEP contributions to the financial institution where the SEP-IRA is maintained.

**Deadline for setting up a SEP.** You can set up a SEP for any year as late as the due date (including extensions) of your income tax return for that year.

# **How Much Can I Contribute?**

The SEP rules permit you to contribute a limited amount of money each year to each employee's SEP-IRA. If you are self-employed, you can contribute to your own SEP-IRA. Contributions must be in the form of money (cash, check, or money order). You can't contribute property. However, participants may be able to transfer or roll over certain property from one retirement plan to another. See Pubs. 590-A and 590-B for more information about rollovers.

You don't have to make contributions every year. But if you make contributions, they must be based on a written allocation formula and must not discriminate in favor of highly compensated employees (defined in chapter 1). When you contribute, you must contribute to the SEP-IRAs of all participants who actually performed personal services during the year for which the contributions are made, including employees who die or

terminate employment before the contributions are made.

Contributions are deductible within limits, as discussed later, and generally aren't taxable to the plan participants.

A SEP-IRA can't be a Roth IRA. Employer contributions to a SEP-IRA won't affect the amount an individual can contribute to a Roth or traditional IRA.

Unlike regular contributions to a traditional IRA before 2020, contributions under a SEP can be made to participants over age 70<sup>1/2</sup>. If you are self-employed, you can also make contributions under the SEP for yourself even if you are over age 70<sup>1/2</sup>. Participants age 72 or over (if age 70<sup>1/2</sup> was reached after December 31, 2019) must take RMDs.

**Note.** Individuals who reach age 72 after December 31, 2022, may delay receiving their RMDs until April 1 of the year following the year in which they reach age 73.

**Time limit for making contributions.** To deduct contributions for a year, you must make the contributions by the due date (including extensions) of your tax return for the year.

## **Contribution Limits**

Contributions you make for 2023 to a common-law employee's SEP-IRA can't exceed the lesser of 25% of the employee's compensation or \$66,000. Compensation generally doesn't include your contributions to the SEP. The SEP plan document will specify how the employer contribution is determined and how it will be allocated to participants.

**Example.** Your employee has earned \$21,000 for 2023. The maximum contribution you can make to your employee's SEP-IRA is \$5,250 (25% (0.25) x \$21,000).

**Contributions for yourself.** The annual limits on your contributions to a common-law employee's SEP-IRA also apply to

contributions you make to your own SEP-IRA. However, special rules apply when figuring your maximum deductible contribution. See *Deduction Limit for Self-Employed Individuals*, later.

**Annual compensation limit.** You can't consider the part of an employee's compensation over \$330,000 when figuring your contribution limit for that employee. However, \$66,000 is the maximum contribution for an eligible employee. These limits increase to \$345,000 and \$69,000, respectively, in 2024.

**Example.** Your employee has earned \$260,000 for 2023. Because of the maximum contribution limit for 2023, you can only contribute \$66,000 to your employee's SEP-IRA.

**More than one plan.** If you contribute to a defined contribution plan (defined in chapter 4), annual additions to an account are limited to the lesser of \$66,000 or 100% of the

participant's compensation. When you figure this limit, you must add your contributions to all defined contribution plans maintained by you. Because a SEP is considered a defined contribution plan for this limit, your contributions to a SEP must be added to your contributions to other defined contribution plans you maintain.

### **Tax treatment of excess contributions.**

Excess contributions are your contributions to an employee's SEP-IRA (or to your own SEP-IRA) for 2023 that exceed the lesser of the following amounts.

- 25% of the employee's compensation (or, for you, 20% of your net earnings from self-employment).
- \$66,000.

Excess contributions are included in the employee's income for the year and are treated as contributions by the employee to their SEP-IRA. For more information on



employee tax treatment of excess contributions, see Pub. 590-A.

**Reporting on Form W-2.** Don't include SEP contributions on your employee's Form W-2 unless contributions were made under a salary reduction arrangement (discussed later).

# **Deducting Contributions**

Generally, you can deduct the contributions you make each year to each employee's SEP-IRA. If you are self-employed, you can deduct the contributions you make each year to your own SEP-IRA.

## **Deduction Limit for Contributions for Participants**

The most you can deduct for your contributions to your or your employee's SEP-IRA is the lesser of the following amounts.

1. Your contributions (including any excess contributions carryover).
2. 25% of the compensation (limited to \$330,000 per participant) paid to the participants during 2023, from the business that has the plan, not to exceed \$66,000 per participant.

In 2024, the amounts in (2) above increase to \$345,000 and \$69,000, respectively.

## **Deduction Limit for Self-Employed Individuals**

If you contribute to your own SEP-IRA, you must make a special computation to figure your maximum deduction for these contributions. When figuring the deduction for contributions made to your own SEP-IRA, compensation is your net earnings from self-employment (defined in chapter 1), which takes into account both the following deductions.

- The deduction for the deductible part of your self-employment tax.
- The deduction for contributions to your own SEP-IRA.

The deduction for contributions to your own SEP-IRA and your net earnings depend on each other. For this reason, you determine

the deduction for contributions to your own SEP-IRA indirectly by reducing the contribution rate called for in your plan. To do this, use the Rate Table for Self-Employed or the Rate Worksheet for Self-Employed, whichever is appropriate for your plan's contribution rate, in chapter 5. Then, figure your maximum deduction by using the Deduction Worksheet for Self-Employed in chapter 5.

## **Carryover of Excess SEP Contributions**

If you made SEP contributions that are more than the deduction limit (nondeductible contributions), you can carry over and deduct the difference in later years. However, the carryover, when combined with the contribution for the later year, is subject to the deduction limit for that year. If you also contributed to a defined benefit plan or defined contribution plan, see *Carryover of*

Excess Contributions under *Employer Deduction* in chapter 4 for the carryover limit.

**Excise tax.** If you made nondeductible (excess) contributions to a SEP, you may be subject to a 10% excise tax. For information about the excise tax, see Excise Tax for Nondeductible (Excess) Contributions under *Employer Deduction* in chapter 4.

## **When To Deduct Contributions**

When you can deduct contributions made for a year depends on the tax year for which the SEP is maintained.

- If the SEP is maintained on a calendar-year basis, you deduct the yearly contributions on your tax return for the year within which the calendar year ends.
- If you file your tax return and maintain the SEP using a fiscal year or short tax year, you deduct contributions made

for a year on your tax return for that year.

***Example.*** You are a fiscal-year taxpayer whose tax year ends June 30. You maintain a SEP on a calendar-year basis. You deduct SEP contributions made for calendar year 2023 on your tax return for your tax year ending June 30, 2024.

## **Where To Deduct Contributions**

Deduct the contributions you make for your common-law employees on your tax return. For example, sole proprietors deduct them on Schedule C (Form 1040) or Schedule F (Form 1040), Profit or Loss From Farming; partnerships deduct them on Form 1065, U.S. Return of Partnership Income; and corporations deduct them on Form 1120, U.S. Corporation Income Tax Return, or Form 1120-S, U.S. Income Tax Return for an S Corporation.

Sole proprietors and partners deduct contributions for themselves on line 15 of Schedule 1 (Form 1040). (If you are a partner, contributions for yourself are shown on the Schedule K-1 (Form 1065), Partner's Share of Income, Deductions, Credits, etc., you receive from the partnership.)



*Remember that sole proprietors and partners can't deduct as a business expense contributions made to a SEP for themselves, only those made for their common-law employees.*

# Salary Reduction Simplified Employee Pensions (SARSEPs)

A SARSEP is a SEP set up before 1997 that includes a salary reduction arrangement. (See the *Caution* next.) Under a SARSEP, your employees can choose to have you contribute part of their pay to their SEP-IRAs rather than receive it in cash. This contribution is called an elective deferral because employees choose (elect) to set aside the money, and they defer the tax on the money until it is distributed to them.



*You aren't allowed to set up a SARSEP after 1996. However, participants (including employees hired after 1996) in a SARSEP set up before 1997 can continue to have you contribute part of their pay to the plan. If you are interested in setting up a retirement plan that includes a salary reduction arrangement, see chapter 3.*



**Who can have a SARSEP?** A SARSEP set up before 1997 is available to you and your eligible employees only if all the following requirements are met.

- At least 50% of your employees eligible to participate choose to make elective deferrals.
- You have 25 or fewer employees who were eligible to participate in the SEP at any time during the preceding year.
- The elective deferrals of your highly compensated employees meet the SARSEP average deferral percentage (ADP) test.

***SARSEP ADP test.*** Under the SARSEP ADP test, the amount deferred each year by each eligible highly compensated employee as a percentage of pay (the deferral percentage) can't be more than 125% of the ADP of all non-highly compensated employees eligible to

participate. A highly compensated employee is defined in chapter 1.

***Deferral percentage.*** The deferral percentage for an employee for a year is figured as follows.

$$\frac{\begin{array}{l} \text{The elective employer contributions} \\ \text{(excluding certain catch-up contributions)} \\ \text{paid to the SEP for the employee for the year} \end{array}}{\begin{array}{l} \text{The employee's compensation} \\ \text{(limited to \$330,000 in 2023)} \end{array}}$$


*The instructions for Form 5305A-SEP have a worksheet you can use to determine whether the elective deferrals of your highly compensated employees meet the SARSEP ADP test.*

***Employee compensation.*** For figuring the deferral percentage, compensation is generally the amount you pay to the employee for the year. Compensation includes the elective deferral and other amounts deferred in certain employee benefit plans. See *Compensation* in chapter 1.

Elective deferrals under the SARSEP are included in figuring your employees' deferral percentage even though they aren't included in the income of your employees for income tax purposes.

***Compensation of self-employed individuals.*** If you are self-employed, compensation is your net earnings from self-employment as defined in chapter 1.

Compensation doesn't include tax-free items (or deductions related to them) other than foreign earned income and housing cost amounts.

***Choice not to treat deferrals as compensation.*** You can choose not to treat elective deferrals (and other amounts deferred in certain employee benefit plans) for a year as compensation under your SARSEP.

## **Limit on Elective Deferrals**

The most a participant can choose to defer for calendar year 2023 is the lesser of the following amounts.

1. 25% of the participant's compensation (limited to \$330,000 of the participant's compensation).
2. \$22,500.

The \$22,500 limit applies to the total elective deferrals the employee makes for the year to a SEP and any of the following.

- Cash or deferred arrangement (section 401(k) plan).
- Salary reduction arrangement under a tax-sheltered annuity plan (section 403(b) plan).
- SIMPLE IRA plan.

In 2024, the \$330,000 limit increases to \$345,000, and the \$22,500 limit increases to \$23,000.

**Catch-up contributions.** A SARSEP can permit participants who are age 50 or over at the end of the calendar year to also make catch-up contributions. The catch-up contribution limit is \$7,500 for 2023 and 2024. Elective deferrals aren't treated as catch-up contributions for 2023 until they exceed the elective deferral limit (the lesser of 25% of compensation, or \$22,500), the SARSEP ADP test limit discussed earlier, or the plan limit (if any). However, the catch-up contribution a participant can make for a year can't exceed the lesser of the following amounts.

- The catch-up contribution limit.
- The excess of the participant's compensation over the elective deferrals that aren't catch-up contributions.

Catch-up contributions aren't subject to the elective deferral limit (the lesser of 25% of compensation, or \$22,500 in 2023 and \$23,000 in 2024).

**Overall limit on SEP contributions.** If you also make nonelective contributions to a SEP-IRA, the total of the nonelective and elective contributions to that SEP-IRA can't exceed the lesser of 25% of the employee's compensation, or \$66,000 for 2023 (\$69,000 for 2024). The same rule applies to contributions you make to your own SEP-IRA. See *Contribution Limits*, earlier.

**Figuring the elective deferral.** For figuring the 25% limit on elective deferrals, compensation doesn't include SEP contributions, including elective deferrals or other amounts deferred in certain employee benefit plans.

# Tax Treatment of Deferrals

Elective deferrals that aren't more than the limits discussed earlier under *Limit on Elective Deferrals* are excluded from your employees' wages subject to federal income tax in the year of deferral. However, these deferrals are included in wages for social security, Medicare, and federal unemployment (FUTA) taxes.

**Excess deferrals.** For 2023, excess deferrals are the elective deferrals for the year that are more than the \$22,500 limit discussed earlier. For a participant who is eligible to make catch-up contributions, excess deferrals are the elective deferrals that are more than \$30,000. The treatment of excess deferrals made under a SARSEP is similar to the treatment of excess deferrals made under a qualified plan. See *Treatment of Excess Deferrals* under *Elective Deferrals (401(k) Plans)* in chapter 4.

**Excess SEP contributions.** Excess SEP contributions are elective deferrals of highly compensated employees that are more than the amount permitted under the SARSEP ADP test. You must notify your highly compensated employees within 2<sup>1</sup>/<sub>2</sub> months after the end of the plan year of their excess SEP contributions. If you don't notify them within this time period, you must pay a 10% tax on the excess. For an explanation of the notification requirements, see Revenue Procedure 91-44, 1991-2 C.B. 733. If you adopted a SARSEP using Form 5305A-SEP, the notification requirements are explained in the instructions for that form.



**Reporting on Form W-2.** Don't include elective deferrals in the "Wages, tips, other compensation" box of Form W-2. You must, however, include them in the "Social security wages" and "Medicare wages and tips" boxes. You must also include them in box 12. Check the "Retirement plan" checkbox in box 13. For more information, see the Form W-2 instructions.

# Distributions (Withdrawals)

As an employer, you can't prohibit distributions from a SEP-IRA. Also, you can't make your contributions on the condition that any part of them must be kept in the account after you have made your contributions to the employee's accounts.

Distributions are subject to IRA rules.

Generally, you or your employee must begin to receive distributions from a SEP-IRA by April 1 of the first year after the calendar year in which you or your employee reaches age 72 (if age 70<sup>1</sup>/<sub>2</sub> was reached after December 31, 2019). For more information about IRA rules, including the tax treatment of

distributions, rollovers, required distributions, and income tax withholding, see Pubs. 590-A and 590-B.

**Note.** Individuals who reach age 72 after December 31, 2022, may delay receiving

their RMDs until April 1 of the year following the year in which they reach age 73.

# Additional Taxes

The tax advantages of using SEP-IRAs for retirement savings can be offset by additional taxes that may be imposed for all the following actions.

- Making excess contributions.
- Making early withdrawals.
- Not making required withdrawals.

For information about these taxes, see Pubs. 590-A and 590-B. Also, a SEP-IRA may be disqualified, or an excise tax may apply, if the account is involved in a prohibited transaction, discussed next.

**Prohibited transaction.** If an employee improperly uses their SEP-IRA, such as by borrowing money from it, the employee has engaged in a prohibited transaction. In that case, the SEP-IRA will no longer qualify as an IRA. For a list of prohibited transactions, see *Prohibited Transactions* in chapter 4.

***Effects on employee.*** If a SEP-IRA is disqualified because of a prohibited transaction, the assets in the account will be treated as having been distributed to the employee on the first day of the year in which the transaction occurred. The employee must include in income the fair market value of the assets (on the first day of the year) that is more than any cost basis in the account. Also, the employee may have to pay the additional tax for making early withdrawals.

# Reporting and Disclosure Requirements

If you set up a SEP using Form 5305-SEP, you must give your eligible employees certain information about the SEP when you set it up. See *Setting Up a SEP*, earlier. Also, you must give your eligible employees a statement each year showing any contributions to their SEP-IRAs. You must also give them notice of any excess contributions. For details about other information you must give them, see the instructions for Form 5305-SEP or Form 5305A-SEP (for a salary SARSEP).

Even if you didn't use Form 5305-SEP or Form 5305A-SEP to set up your SEP, you must give your employees information similar to that described above. For more information, see the instructions for either Form 5305-SEP or Form 5305A-SEP.

# 3.

## **SIMPLE Plans**

### **Topics**

This chapter discusses:

- SIMPLE IRA plans
- SIMPLE 401(k) plans

### **Useful Items**

You may want to see:

### **Publications**

☐ 590-A Contributions to Individual Retirement Arrangements (IRAs)

☐ 590-B Distributions from Individual Retirement

Arrangements (IRAs)

☐ **3998** Choosing a Retirement Solution for Your Small Business

☐ **4284** SIMPLE IRA Plan Checklist

☐ **4334** SIMPLE IRA Plans for Small Businesses

## **Forms (and Instructions)**

☐ **W-2** Wage and Tax Statement

☐ **5304-SIMPLE** Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—Not for Use With a Designated Financial Institution

☐ **5305-SIMPLE** Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)—for

Use With a Designated Financial Institution

☐ 8880 Credit for Qualified Retirement Savings Contributions

☐ 8881 Credit for Small Employer Pension Plan Startup Costs and Auto Enrollment



A SIMPLE plan is a written arrangement that provides you and your employees with a simplified way to make contributions to provide retirement income. Under a SIMPLE plan, employees can choose to make salary reduction contributions to the plan rather than receiving these amounts as part of their regular pay. In addition, you will contribute matching or nonelective contributions.

SIMPLE plans can only be maintained on a calendar-year basis.

A SIMPLE plan can be set up in either of the following ways.

- Using SIMPLE IRAs (SIMPLE IRA plan).
- As part of a 401(k) plan (SIMPLE 401(k) plan).



*Many financial institutions will help you set up a SIMPLE plan.*

# **SIMPLE IRA Plan**

A SIMPLE IRA plan is a retirement plan that uses a SIMPLE IRA for each eligible employee. Under a SIMPLE IRA plan, a SIMPLE IRA must be set up for each eligible employee. For the definition of an eligible employee, see *Who Can Participate in a SIMPLE IRA Plan*, later.

## **Who Can Set up a SIMPLE IRA Plan?**

You can set up a SIMPLE IRA plan if you meet both the following requirements.

- You meet the employee limit.
- You don't maintain another qualified plan unless the other plan is for collective bargaining employees.

**Employee limit.** You can set up a SIMPLE IRA plan only if you had 100 or fewer employees who received \$5,000 or more in compensation from you for the preceding

year. Under this rule, you must take into account all employees employed at any time during the calendar year regardless of whether they are eligible to participate. Employees include self-employed individuals who received earned income and leased employees (defined in chapter 1).

Once you set up a SIMPLE IRA plan, you must continue to meet the 100-employee limit each year you maintain the plan.

***Grace period for employers who cease to meet the 100-employee limit.*** If you maintain the SIMPLE IRA plan for at least 1 year and you cease to meet the 100-employee limit in a later year, you will be treated as meeting it for the 2 calendar years immediately following the calendar year for which you last met it.

A different rule applies if you don't meet the 100-employee limit because of an acquisition, disposition, or similar transaction. Under this rule, the SIMPLE IRA plan will be treated as

meeting the 100-employee limit for the year of the transaction and the 2 following years if both the following conditions are satisfied.

- Coverage under the plan hasn't significantly changed during the grace period.
- The SIMPLE IRA plan would have continued to qualify after the transaction if you had remained a separate employer.



*The grace period for acquisitions, dispositions, and similar transactions also applies if, because of these types of transactions, you don't meet the rules explained under Other qualified plan or Who Can Participate in a SIMPLE IRA Plan, later.*

**Other qualified plan.** The SIMPLE IRA plan must generally be the only retirement plan to which you make contributions, or to which benefits accrue, for service in any year

beginning with the year the SIMPLE IRA plan becomes effective.

***Exception.*** If you maintain a qualified plan for collective bargaining employees, you are permitted to maintain a SIMPLE IRA plan for other employees.

## **Who Can Participate in a SIMPLE IRA Plan?**

**Eligible employee.** Any employee who received at least \$5,000 in compensation during any 2 years preceding the current calendar year and is reasonably expected to receive at least \$5,000 during the current calendar year is eligible to participate. The term “employee” includes a self-employed individual who received earned income.

You can use less restrictive eligibility requirements (but not more restrictive ones) by eliminating or reducing the prior year compensation requirements, the current year compensation requirements, or both. For

example, you can allow participation for employees who received at least \$3,000 in compensation during any preceding calendar year. However, you can't impose any other conditions for participating in a SIMPLE IRA plan.

**Excludable employees.** The following employees don't need to be covered under a SIMPLE IRA plan.

- Employees who are covered by a union agreement and whose retirement benefits were bargained for in good faith by the employees' union and you.
- Nonresident alien employees who have received no U.S. source wages, salaries, or other personal services compensation from you.

**Compensation.** Compensation for employees is the total wages, tips, and other compensation from the employer subject to federal income tax withholding and the

amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority.

Compensation also includes the employee's salary reduction contributions made under this plan and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the employer on Form W-2. If you are self-employed, compensation is your net earnings from self-employment (line 4 of Schedule SE (Form 1040) before subtracting any contributions made to the SIMPLE IRA plan for yourself.

## **How To Set up a SIMPLE IRA Plan**

You can use Form 5304-SIMPLE or Form 5305-SIMPLE to set up a SIMPLE IRA plan. Each form is a model SIMPLE plan document. Which form you use depends on whether you select a financial institution or your

employees select the institution that will receive the contributions.

Use Form 5304-SIMPLE if you allow each plan participant to select the financial institution for receiving their SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require that all contributions under the SIMPLE IRA plan be deposited initially at a designated financial institution.

The SIMPLE IRA plan is adopted when you have completed all appropriate boxes and blanks on the form and you (and the designated financial institution, if any) have signed it. Keep the original form. Don't file it with the IRS.

**Other uses of the forms.** If you set up a SIMPLE IRA plan using Form 5304-SIMPLE or Form 5305-SIMPLE, you can use the form to satisfy other requirements, including the following.



- Meeting employer notification requirements for the SIMPLE IRA plan. Form 5304-SIMPLE and Form 5305-SIMPLE contain a *Model Notification to Eligible Employees* that provides the necessary information to the employee.
- Maintaining the SIMPLE IRA plan records and proving you set up a SIMPLE IRA plan for employees.

## **Deadline for setting up a SIMPLE IRA**

**plan.** You can set up a SIMPLE IRA plan effective on any date from January 1 through October 1 of a year, provided you didn't previously maintain a SIMPLE IRA plan. This requirement doesn't apply if you are a new employer that comes into existence after October 1 of the year the SIMPLE IRA plan is set up and you set up a SIMPLE IRA plan as soon as administratively feasible after your business comes into existence. If you previously maintained a SIMPLE IRA plan, you can set up a SIMPLE IRA plan effective only on January 1 of a year. A SIMPLE IRA plan can't have an effective date that is before the date you actually adopt the plan.

**Setting up a SIMPLE IRA.** SIMPLE IRAs are the individual retirement accounts or annuities into which the contributions are deposited. A SIMPLE IRA must be set up for each eligible employee. Forms 5305-S, SIMPLE Individual Retirement Trust Account,

and 5305-SA, SIMPLE Individual Retirement Custodial Account, are model trust and custodial account documents the participant and the trustee (or custodian) can use for this purpose.

A SIMPLE IRA can't be a Roth IRA. Contributions to a SIMPLE IRA won't affect the amount an individual can contribute to a Roth or traditional IRA.

***Deadline for setting up a SIMPLE IRA.*** A SIMPLE IRA must be set up for an employee before the first date by which a contribution is required to be deposited into the employee's IRA. See *Time limits for contributing funds*, later, under *Contribution Limits*.

## **Notification Requirement**

If you adopt a SIMPLE IRA plan, you must notify each employee of the following information before the beginning of the election period.

1. The employee's opportunity to make or change a salary reduction choice under a SIMPLE IRA plan.
2. Your decision to make either matching contributions or nonelective contributions (discussed later).
3. A summary description provided by the financial institution.
4. Written notice that their balance can be transferred without cost or penalty if they use a designated financial institution.

**Election period.** The election period is generally the 60-day period immediately preceding January 1 of a calendar year (November 2 to December 31 of the preceding calendar year). However, the dates of this period are modified if you set up a SIMPLE IRA plan mid-year (for example, on July 1) or if the 60-day period falls before the

first day an employee becomes eligible to participate in the SIMPLE IRA plan.

A SIMPLE IRA plan can provide longer periods for permitting employees to enter into salary reduction agreements or to modify prior agreements. For example, a SIMPLE IRA plan can provide a 90-day election period instead of the 60-day period. Similarly, in addition to the 60-day period, a SIMPLE IRA plan can provide quarterly election periods during the 30 days before each calendar quarter, other than the first quarter of each year.

## **Contribution Limits**

Contributions are made up of salary reduction contributions and employer contributions. You, as the employer, must make either matching contributions or nonelective contributions, defined later. No other contributions can be made to the SIMPLE IRA plan. These contributions, which you can

deduct, must be made timely. See *Time limits for contributing funds*, later.

**Salary reduction contributions.** The amount the employee chooses to have you contribute to a SIMPLE IRA on their behalf can't be more than \$15,500 for 2023 and increases to \$16,000 for 2024. These contributions must be expressed as a percentage of the employee's compensation unless you permit the employee to express them as a specific dollar amount. You can't place restrictions on the contribution amount (such as limiting the contribution percentage), except to comply with the \$15,500 limit for 2023 (\$16,000 for 2024).