

# SEP and SIMPLE IRA Plans

## Avoiding Pitfalls

The longer I work in the Employee Plans section of the Internal Revenue Service, and the more I meet folks like you and others trying to save for retirement, the more enthusiastic I become in wanting every person in America to have the ability to save for retirement.

We do have a huge coverage gap in this country. We have a tremendous private pension system, with tens of millions of American families benefiting from defined benefit plans, 401(k) plans, other retirement plans, and also from IRAs that are outside the employer-sponsored plan system. However, we also have tens of millions of families not participating in any of those systems. They're not eligible for a 401(k) or retirement plan because their employer – and it is in a voluntary system – has chosen not to adopt a plan.

Recent statistics inform us that more than half – more than half – of the American working population do not have access to a retirement plan. When the statisticians take a deeper look into these numbers, a lot of these workers are employed by firms with fewer than 50 employees. The estimate is that 17 million workers are in the category of working for an employer with fewer than 50 employees but not covered by an

employer-sponsored plan.

And that brings us to today's discussion. There are two popular plan types available to small business employers that they can adopt and cut into this 17 million number. The first one is called a SEP, or a Simplified Employee Pension plan. The SEP plan allows plan sponsors to contribute to traditional IRAs set up for the employees. And a self-employed business can adopt a SEP.

The other plan I will discuss today is the SIMPLE IRA plan. "SIMPLE" stands for Savings Incentive Match Plan for Employees. The SIMPLE IRA plan is ideally suited as a start-up retirement plan for small business employers who currently do not sponsor a retirement plan.

What I'm gonna do today is take you on a tour of both plans, providing to you the similarities and differences when it comes time to choose and establish one of these plans. Then the tour will continue to discuss about the participation requirements of both plans. And finally, as the title suggests, we'll get into the pitfalls or the recurring errors that we find in our examinations of these plans. I will do my best to describe each error and then share with you how to find, fix, and avoid these common errors.

By the end of this presentation, I hope that you will leave the session, contact your clients about choosing and establishing one of these plans, and then assist them in ensuring their plan does not have the recurring errors we discuss here today. And before I move on, if you do not have a retirement plan for yourself or your employees, lead by example and adopt one of these plans when you return to your office.



2015

IRSNationwide

TaxFORUM

# Choosing

	SEP	SIMPLE
Available to	Any size business	≤ 100 Employees
Adopt a	Form 5305-SEP	Form 5304/5305-SIMPLE
Or adopt a	Prototype/Individually designed plan	
Filing requirement	No	No
Employee Contributions	No	Yes

We'll start with choosing between a SEP and a SIMPLE IRA plan. A SEP plan is available to any sized business, while a SIMPLE IRA is generally limited to small businesses with 100 or fewer employees. A growing business with a SIMPLE IRA plan needs to watch that 100-employee limit closely as they expand.

To adopt a SEP or a SIMPLE IRA, we make it very easy. During this presentation, I'm going to be saying "we make it very easy" a lot, reason being we really want these employers to adopt these plans, so we provide a lot of ways to make things easy for them to establish, monitor, and run these plans.

So for a SEP, there is a Form 5305-SEP, called Simplified Employee Pension – Individual Retirement Accounts Contribution Agreement. All they have to do is adopt that, it's on our website, and it's done. For SIMPLE IRA plans, they can adopt the 5305-SIMPLE if they want the employer to choose where the money is initially deposited, or they can use the Form 5304-SIMPLE to set up the SIMPLE IRA plan that allows each employee to choose where the IRA is established.

A couple of notes about these forms. First, these forms are not filed with the IRS. The employer keeps the form in its records. Second, with regard to the Form 5305-SEP, our exam agents are noticing a recurring error in their recent audits. If you choose to use the Form 5305-SEP, you cannot have any other retirement plan, except for another SEP. When an employer adopts a SIMPLE IRA plan, the employer cannot have any other retirement plan regardless of the method used to start the plan.

An employer can also establish a SEP or SIMPLE IRA with a prototype plan through a mutual fund, bank, and insurance company. This financial institution will send a plan in to us, the IRS. We approve it. Then they'll go out and try to sell it to you and your clients to have a prototype plan, and that's what that is called. There is also an individually designed SEP or SIMPLE IRA plan, but we don't see too much of those. Those are very rare.

The reason why people use a prototype document or an individually designed plan rather than the models, the employer can customize their SEP or SIMPLE IRA more the way they would like it.

For both of these plan types, there are no filing requirements. You do not file a Form 5500-series return. Employee contributions are not allowed with SEP plans. SIMPLE IRA plans do allow employee contributions, which I will detail when we reach the operating portion of the tour.



2015

IRSNationwide

TaxFORUM

# Establishing

**SEP**

**SIMPLE**

Select a financial institution

Execute a written agreement

Provide employees information

Set up an IRA for each employee

**TIMING** of establishing plan is different

The next step arrives at explaining the procedures to set up these plans, and for the most part the procedures are very similar for both plans. First the employer needs to select a financial institution to serve as the trustee of respective IRAs that will hold each employee's retirement plan assets. These accounts will receive the contributions you make to the plan.

Now, I mentioned the election period. That is a 60-day period immediately preceding January 1st, the beginning of the next plan year. So in essence, that would be November 2nd to December 31st. However, the dates of this period are modified if you set up a SIMPLE IRA plan in midyear or if the 60-day period falls before the first day an employee becomes eligible to participate in the SIMPLE IRA plan.

Again, to make things easy, if you set up your SIMPLE IRA plan either using the Form 5304-SIMPLE or the Form 5305-SIMPLE models, you can give each employee a copy of the signed form and that'll satisfy this notification requirement.

The timing to set up these plans is different. You can establish a SEP

for a year, as late as the due date, including any extensions, of your business income tax return for the year you want to establish the plan.

Setting up a SIMPLE IRA plan is a little more complex. You can set up a SIMPLE IRA plan effective on any date from January 1st through October 1st of the year. To have a SIMPLE IRA in place for January 1st, 2016, it must be adopted by November 2nd, 2015, to accommodate the 60-day election period. If you previously maintained a SIMPLE IRA plan, you can set up a SIMPLE IRA plan effective only on January 1st of a year.

One difference here would be if the employer chooses to adopt the plan using the 5304-SIMPLE, which allows each participant to select the financial institution for receiving his or her SIMPLE IRA plan contributions. Financial institutions authorized to hold and invest SEP and SIMPLE IRA plan contributions are banks, savings and loan associations, insurance companies, certain regulated investment companies, federally-insured credit unions, and brokerage firms.

The next required item to do for both plans is execute a written agreement to adopt a plan, and that's what we just discussed. You can use the Form 5305-SEP, 5304-SIMPLE, 5305-SIMPLE, or prototype plan.

The next requirement is to notify the eligible employees about the plan. For a SEP plan, the employer is required to notify each eligible employee that the SEP was adopted, the requirements for receiving an allocation, and how the employer contribution will be allocated.

You must also provide the following to each employee: the Form 5305-SEP, if that's what you use to adopt the plan; a statement that IRAs other than the one the employer contributes to may provide different rates of return and contain different terms; a statement that the administrator of the SEP will provide a copy of any amendments within 30 days of the effective date, along with a written explanation of its effects. And the administrator will give written notification to the participant of any employer contributions made to the participant's IRA by January 31st of the following year.

For SIMPLE IRA plans, they're required to have an annual notice for all eligible employees. The employer must notify each employee before the beginning of

the election period of the following: the employee's opportunity to make or change a salary reduction choice under the SIMPLE IRA plan; the employee's ability to select a financial institution that will serve as trustee of the employee's SIMPLE IRA if that's applicable; your decision to make either matching contributions or nonelective contributions; a summary description (and the financial institution usually provides that); and written notice that the employee can transfer his or her balance without cost or penalty if you are using a designated financial institution.



2015

IRSNationwide

TaxFORUM

# Participating

	SEP	SIMPLE
	Age 21	\$5000 Compensation
	Worked 3 of last 5 years	During any 2 prior years &
	\$600 Compensation	Expect \$5000 in current year
Less restrictive OK	Yes	Yes
Exclude employees	Yes	Yes

I'm now going to discuss the participation requirements of these plans, and I'll start with the SEP plans. An eligible employee for a SEP plan is an individual who meets all of the following requirements: has reached age 21; has worked for the employer in at least three of the last five years; and received at least \$600.00 in compensation from the employer during the year.

Two items tonight with this definition. First, employees also include a self-employed individual, and the \$600.00 amount is for this year, 2015. Cost-of-living adjustments could change this amount from year to year. Around mid-October they release any cost-of-living adjustments. You can go to our website to see any changes to any amounts such as this.

To further explain the SEP requirement, allow me to introduce Sephora. Sephora is a freshman at Huxley University, where she is getting her degree in hippology. Does anybody what hippology is? It's the study of a horse. Now, Huxley University and a horse, what movie am I referencing? No Marx Brothers fans here, huh? *Horse Feathers*. The prize goes back in the hopper, sorry.



Sephora worked for Barney's Barns during her summer break in school in the year 2011, 2012, and 2013, but never more than 34 days in any year. Sephora turned 21 in July 2014. In August 2014, Sephora began working for Barney's on a full-time basis, and she earned \$18,000.00 in 2014. So Sephora is an eligible employee for Barney's Barns' SEP for 2014 because she met the minimum age requirement, 21; she worked for Barney in three of the five preceding years; and she met the minimum compensation requirement for 2014.

For a SIMPLE IRA plan, the requirements are different. Any eligible employee would be one who, one, earned at least \$5,000.00 in compensation during any two years before the current calendar year and, two, expects to receive at least \$5,000.00 during the current calendar year. As in a SEP, an individual can be a self-employed individual. Employers cannot impose any other conditions for participating in a SIMPLE IRA plan, such as an age requirement.

Now, both the SEP and the SIMPLE IRA can have less restrictive requirements if they choose. For instance, an employer could have a minimum age of 18 in a SEP, or in a SIMPLE IRA they could make the compensation \$2,000.00, they could make it \$1.00. It's their choice.

Both plans can also exclude certain classes of employees. And these are, one, employees covered by a union agreement and whose retirement benefits were bargained for good faith by the employees' union and the employer; and two, nonresident alien employees who do not have U.S. wages, salaries, or other personal services compensation from the employer. This should be "to note"



2015

IRSNationwide

TaxFORUM

# Operating & Maintaining

## SEP – Employer Contributions

Amounts and Limits

When & Where Made

Withdrawals & Rollovers - Yes

Loans - **No**

Filing & Notice Requirements

Our tour trolley now stops at the operating/maintaining features of these plans, and, again, I'll begin with SEP plans. Let's begin with the contribution amounts and limitations. Remember, no employee contributions are permitted in SEP plans. Employer contributions for each eligible employee is based only on the first \$265,000.00 of compensation. Employers must contribute a uniform percentage of pay for every eligible employee. And for 2015, contributions are limited to the lesser of \$53,000.00 or 25 percent of compensation.

For self-employed individuals, figuring your own SEP IRA contribution gets a little bit more complicated. Compensation is your net earnings from self-employment, less deductions due to contributions to your own SEP IRA, and one-half of your self-employment tax. And, again, to make things easy, we have a Publication 560, called Retirement Plans for Small Business. And this provides detailed explanations and worksheets for these rules, and what I suggest is you use this publication to determine your self-employed contribution amounts.

There is no requirement that a SEP contribution is made in every year. When you do contribute, however, you must contribute to the SEP IRAs

of all eligible participants, including employees who die or terminate employment before the contributions are made. Also, contribution to SEP accounts are always 100 percent vested or owned by the employee.

Employer contributions to a SEP must be made by the due date, including any extensions, for filing your federal income tax return for that year. Once you send the SEP contributions to each eligible employee's IRA, that employee makes all the investment decisions for his or her own account. SEP contributions can be invested in stocks, mutual funds, money market funds, savings accounts, and other similar types of investments. Employees can move their SEP IRA assets from one traditional IRA to another.

Employees could take a distribution from their SEP IRA at any time. Withdrawals are taxable in the year received. If the participant makes a withdrawal before age 59.5, there is a 10 percent additional tax that generally applies. We do have a publication on our website – it's Publication 5036 – that provides a list of the exceptions to that 10 percent additional tax on early distributions. I advise you to go there to look at that to see if any exceptions apply.

I know the financial institutions my parents use are on top of the required minimum distribution rolls, sometimes referred to as RMD rolls. And they do make certain the required minimums are distributed to them. However, on our examinations, we do see where these RMD payments are not made. If you do not take the minimum distribution required, you may have to pay a 50, five-zero, excise tax on the amount distributed as required. And trust me, nobody wants to deal with that tax. So we suggest that you work with your financial institution to ensure these distributions are made as required.

SEP contributions and earnings may be rolled over tax-free to other IRAs and retirement plans. Our website has another tool. It's a rollover chart. It doesn't have a publication number. I suggest on our homepage, go into the search engine and type in "rollover chart," and it will be the first thing that shows up. And it helps you determine whether you can roll over amounts from your SEP IRA and the plan types where the SEP IRA can receive a rollover. Participant loans are never permitted in SEP plans. But contributions can still be made for the employees that have reached age 70.5 .

Again, here is some filing and notice requirements and tips. Remember, the

employer generally has no filing requirements, including the Form 5500-series return. Here's a friendly reminder not to include SEP contributions on the employee's Form W-2. Instead, check the Retirement Plan box, Box 13. And, again, remember, the employer must provide notice to the employees, which includes the Form 5305-SEP or the prototype, any amendments, the requirements for receiving contributions, and the annual contribution statement. Might be easier to have written "seventy and a half."



2015

IRSNationwide

TaxFORUM

# Operating & Maintaining

## SIMPLE – Contributions

Employee Salary Deferrals

Employer Contributions

Withdrawals & Rollovers - Yes

Loans - **No**

Filing & Notice Requirements

Now let's move over to look at the operation of a SIMPLE IRA plan. Again, you're gonna find some similarities and you're gonna find some differences that we discussed with SEP.

The SIMPLE IRA is funded two ways: employee elective deferrals and employer contributions, and we'll start with employer contributions. The employer must annually choose one of the two contribution methods. The employer could either make a fixed contribution of 2 percent of pay for all eligible employees, even for those who do not elect to defer salary into the plan, or they can match employee contributions dollar for dollar, 100 percent, up to 3 percent of compensation. The match can be reduced to as low as 1 percent, but no more than two calendar years out of the five.

The second way a SIMPLE IRA is funded is through employee salary deferrals. The amount the employee can defer for 2015 is \$12,500.00. For employees age 50 or over, a catch-up contribution in the amount of \$3,000.00 is allowed. There are salary deferral limits also for those employees in more than one plan. The elective deferral limit for an employee with more than one plan is \$18,000.00. I suggest you visit our

website for other limitations when employees are participating in more than one plan.

Some employers set up an automatic enrollment feature in a SIMPLE IRA plan. What the automatic enrollment feature allows, it allows the employer to automatically deduct a fixed percentage or amount from the employee's wages and contribute that to the SIMPLE IRA plan, unless the employee has affirmatively chosen to contribute nothing or to contribute a different amount. And these automatic enrollment payments qualify as elective deferrals.

Employees have the option to elect to terminate their salary reduction contributions to a SIMPLE IRA plan at any time. If they do so, the SIMPLE IRA plan may preclude them from resuming salary reduction contributions until the beginning of the next calendar year. Employers that are making non-elective employer contributions must continue to make them on behalf of these employees.

An employer's 3 percent match or 2 percent non-elective contribution is required to be deposited by the due date – again, with any extensions – for filing your federal income tax return for the year. Employee salary reduction contributions are required to be deposited within 30 days after the end of the month for which the amounts would otherwise have been payable to the employee in cash. For a self-employed person, the Schedule C filer, salary reduction contributions must be deposited within 30 days of the end of the plan year, or January 30th.

Withdrawal rules for SIMPLE IRA contributions and earnings are the same as I described the SEP plans, with one minor difference. The 10 percent additional tax increases to 25 percent if the withdrawal occurs within the first two years of participation. Rollovers are permitted between one SIMPLE IRA to another SIMPLE IRA, tax free. A tax-free rollover may also be made from a SIMPLE IRA to an IRA that is not a SIMPLE IRA, but, again, only after two years of participation in the SIMPLE IRA plan.

Also, like SEP plans, loans are never permitted. And, again, there is no Form 5500-series filing requirement. And the notification election period is, again, generally the 60-day period immediately preceding January 1st of the calendar year, November 2nd to December 31st. And the dates of this period are modified if you set up a SIMPLE IRA plan in midyear or if the 60-day period

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



2015

IRSNationwide

TaxFORUM

# Find, Fix, & Avoid Recurring Errors

## Both SEP & SIMPLE

Non and Late Amenders

“Compensation” Definition

Excluding Participants

Related Businesses & Participation

Now we enter the part of the tour that provides the recurring errors our examination agents are finding when they audit SEP and SIMPLE IRA plan. Again, I'll provide details as best as I can and give you tips how to find, fix, and avoid these errors. The first part of this segment is the most common errors we find in both plans.

The first error you see involves plans not being amended at all or not timely. Specifically, there was a law passed called the Economic Growth and Tax Relief Reconciliation Act of 2001, commonly known as EGTRRA. EGTRRA provides higher compensation limits and contribution limits. The plans, when using these new limits, must amend their plans accordingly. So with the SIMPLE IRA plan, for instance, no plan amendment means the employee's not being notified of these new limits.

To find this mistake, if you're using the IRS Form 5305-SEP, 5304-SIMPLE, or 5305-SIMPLE, check the latest revision date in the top left-hand corner. Anything earlier than December 2004 could indicate a problem. You can find these forms on our website. If we have a newer form on the website, check to see if you need to adopt that latest



version. A good chance is that you will.

If the plan's sponsor chose to use a prototype plan, we suggest you contact the financial institution for a current letter noting that the IRS approves the plan for current law. To fix the mistake, you would adopt the current IRS model plan form, or prototype, whichever one you're using, and then complete a Voluntary Correction Program, or VCP, submission. And I'll discuss this program later.

To avoid this mistake, I suggest that the plan sponsor do a yearly check of the plan, whether it be looking for the model form on the website or contacting the financial institution about the prototype plan, to ensure the current plan is in use.

Our examination agents wanted me to add two tips for you. First, for those of you using a prototype plan, please ensure the adoption agreement is signed and dated. An unsigned or undated adoption agreement usually results in the agent determining the plan is not amended for current law. When we talk to taxpayers, they receive it in the mail and they think they just need to add it to their plan and don't do anything else with it. Very important that your client sign and date these adoption agreements.

It's also very useful for the exam agents to have the IRS opinion letter from the financial institution that sold you the prototype plan, 'cause this enables the agent to confirm that the plan is current. Second, be familiar with the plan document and plan terms, and make certain the operation of the plan is in line with the plan language.

And with that, that provides me an easy segue to the next common recurring error in SEP and SIMPLE IRA plans. Exam agents find that the definition of compensation in the plan is not being followed. And specifically, and recently in SIMPLE IRA plans, we're finding that there is a failure to include bonus payments as compensation from the matching employer contribution. We're not sure why this is a recurring error, but we are bringing it up for your attention.

Again, to find this mistake, we suggest a yearly spot-check to confirm that the same compensation as defined by the plan is being used in plan operation. And this is more important if you adopted a prototype plan and it contains a

complicated definition. You have bonuses; you have car allowances; you have expense reimbursements; you have overtime. And these are just a few examples that may or may not be included in the plan definition.

To fix this mistake in a SEP, you would need to make a corrective contribution, which include earnings through the correction date, to each affected employee's SEP IRA. And if you cannot determine the actual investment results, you can use a reasonable rate of interest. The Department of Labor has an online calculator for their Voluntary Correction Program, which uses a reasonable interest rate, and this is a good place to find the interest rate to use.

For an error in a SIMPLE IRA, the correction's a bit more complicated because of elective deferrals. You must make corrective contributions to the employee's SIMPLE IRA equal to the following: one, 50 percent of the employee's elective deferral percentage under the plan times the excluded compensation; plus the employer contribution required under the plan times the excluded compensation. As I mentioned with SEP plans, you would also need to include earnings to the date of correction.

To avoid this error, I would recommend doing the same thing I mentioned for finding the error: continue a yearly review and spot-check a few calculations from the participants to ensure the plan definition is the same as used in operation. If the plan is amended, make sure to change to the compensation definition what the plan sponsor intended and the change is communicated to the people who calculate the contributions. And sometimes what we see as just a simple error where they get a new adoption agreement, and there might be just a wrong check of a box and the employer's not aware that he or she checked the box and it leads to issues, so, again, just do a yearly check to make sure that what's being done according to the adoption agreement's being done in operation.

The next recurring error involves improperly excluding participants from the plan. In SEP plans, this is the most common error found by our exam agents today. Let's revisit the SEP eligibility requirements: reached age 21, has worked for the employer at least three of the last five years, and received at least \$600.00 in compensation from the employer during the year.

Now, in 401(a) plans, such as profit-sharing and 401(k) plans, they usually

require an employee to work 1,000 hours of service to receive a contribution. Our agents are finding administrators using the same requirement for the SEP plans. Remember Sephora in my example? I purposely had her working less than 1,000 hours to make that point. I mentioned she only worked 34 days a year.

Another related finding by the exam agent is employees are excluded because they're labeled as a part-time employee. Again, if the employee meets those three requirements I just mentioned, they should be participating in the plan.

To find this mistake, we suggest that you review payroll data and determine if employees are meeting either the SEP or SIMPLE IRA plan eligibility requirements and if they are included in participating in the plan. If you find any problems in the spot check, I suggest the spot check be expanded to more employees to determine if there is a larger problem that needs fixed.

To fix this error in a SEP plan is the same correction as I mentioned for the compensation definition error. The employer must set up a SEP IRA for the employee and make a contribution equal to all missed contributions plus earnings.

Correction in a SIMPLE IRA is a bit more complicated. First, the employee didn't have a chance to make an election to defer, otherwise known as a missed deferral opportunity. So what the IRS safe harbor correction method assumes, that the employee would've elected to defer 3 percent of compensation. The required corrective contribution to replace the missed deferral opportunity is 50 percent of the missed deferral or 1.5 percent of compensation plus earnings.

In a SIMPLE IRA, if the employer chose the matching option, they must make a 3 percent contribution plus earnings to that employee's SIMPLE IRA. If under the plan the employer contribution is a 2 percent non-elective contribution, then the correction contributions should include a contribution of 2 percent of compensation, again, plus earnings.

Avoiding this error is very similar to the compensation error. Review the participation status of employees at least once a year. And for SIMPLE IRA plans, I suggest that this review be completed prior to the election period that

begins on November 2nd, so you can provide the affected employees the notice as required timely.

The last recurring error found in both plans involves employees of related businesses that are excluded from participating in the plan. Related businesses include controlled groups of corporations that include your business, trades or businesses under common control with your business, and affiliated service groups that include your business. This means, for example, that if you and your family members own a controlling interest in another business, the employees at that other business are employees for purposes of determining who's eligible to participate in the SEP.

To find this mistake, all owners or partners of your business should identify any companies they own or with which they have a financial relationship. If any of these companies a relationship exist, review the controlled group and affiliated service group requirements to ensure that all required employees are included in the plan. Now, this determination of these groups gets very complex at times, so I suggest getting help at making that proper determination if you think you have this situation.

To fix this mistake, you correct the exact same way I mentioned for the excluded participants error. And to avoid this error, we suggest you do an initial assessment, as you would to find the mistake, and then perform a quick assessment each year, especially if you or a family member gets involved in another or new business.



2015

IRSNationwide

TaxFORUM

# Find, Fix, & Avoid Recurring Errors

## SEP

Contribution Allocations

IRC 415 Limits

Allowing Salary Deferrals

So now I'm gonna explain some recurring errors that we're finding in SEP exams. First, contribution allocations are done improperly. Generally, employer contributions to participant SEP IRAs must be equal to the same percentage of compensation for each participant. For instance, every employee gets 7 percent of compensation. What our agents are finding is that higher-paid employees are sometimes receiving a greater percentage of compensation than the lower-paid employees.

Correction would be similar to what I mentioned before. In general, place the affected employees in a position they would've been in had the mistake not occurred, and also remember to include earnings.

Exam agents are also finding SEP IRA contributions are exceeding the maximum limit. You may hear the term "415 limits." That is in reference to the Internal Revenue Code section that sets these limits. And for 2015, the amount of contributions made to an employee's SEP IRA are limited to the lesser of \$53,000.00 or 25 percent of compensation. And, again, remember to review the special calculations in Pub 560 for the self-employed individuals.

The general correction method is distribute any excess from the SEP IRA and return it to the employer. I would suggest that someone verify that none of the allocations exceed these limitations before money is transferred to the SEP IRA.

SEP plans are prohibited from having salary deferrals, but our agents are finding SEP plans that are trying to provide these deferrals. If an employer or one of your clients wishes to have a salary deferral, what we suggest is they terminate the SEP plan and then adopt a SIMPLE IRA plan. We also see some SEP plans that are allowing catch-up contributions. These are not permitted in SEP plans.

Finally, we're also finding that required minimum distributions are not made because the employee is still working. These are required regardless of whether you're still employed.



2015

IRSNationwide

TaxFORUM

# Find, Fix, & Avoid Recurring Errors

## SIMPLE

Matching Contributions

Late Deferral Deposits

60-Day Notice Requirements

The recurring errors we're finding exclusively in SIMPLE IRA plans are becoming very prevalent. Please take a look at your SIMPLE IRA plans for the following. If you remember back to my discussion of operating a SIMPLE IRA, I mentioned the matching limit should not be reduced in more than two calendar years during the five-year period ending with the calendar year. Exam agents are finding this error more in recent audits. So for example, if you only gave a 1 percent match in 2010 and 2011, then for 2012, 2013, and 2014 you must give the full 3 percent match. They're also finding incorrect matching amounts, including none made.



Correction is similar to what I mentioned before. Again, place the affected employees in a position they would've been if the mistake was not made, and, again, include earnings.

Next, we are finding more late deposits of salary deferral payments to IRAs. The Department of Labor, or DOL, requires the transfer at the earliest date which the employer can reasonably segregate the contributions. They also have a seven-day safe harbor to deposit these deferrals. Deposits after that date could lead to corrective contributions

to make up for any lost earnings. The IRS requirement is 30 days following the month in which you withheld deferrals from the employee's salary. If you deposit it beyond the 30 days, it could disqualify the SIMPLE. And a tip: Most SIMPLE IRA plans are subject to the Department of Labor rules I mentioned here.

Finally, exam agents are finding employers are not providing the 60-day notice as required. Items that need to be shared with eligible employees prior to November 2nd include their right to make a salary deferral election, notification of the employer's decision to make a fixed or matching contribution, and the other ones I mentioned earlier in this presentation. Failure to give this notification could lead to some extensive plan corrections. I suggest establishing administrative procedures to provide an alert when it's time to provide this yearly notification.



2015

IRSNationwide

TAX FORUM

ATTENTION:  
PLAN  
SPONSORS!












EMPLOYEE PLANS  
COMPLIANCE RESOLUTION  
SYSTEM

## The EPCRS Menu

What's  
Your  
Choice?

The impact of  
non-compliance left unchecked  
can be costly.

Preventive Maintenance –  
Fix Mistakes Immediately!!

	Audit CAP	Voluntary Correction	Self- Correction
Cost of Correction			
IRS Fees			<b>\$0</b>
Time Involved			
Result			

So I've discussed many errors today that we're finding in SEP and SIMPLE IRA plans. And, again, the reason why we share these errors with you is, you can go back and check your plans or your clients' plans for these errors and make these corrections sooner rather than later.

This is also why we produced what you see on the screen. I suggest you download this slide or this menu and share it with your clients. Again, the message you wanna convey: It is far better to correct errors sooner rather than later. We have three correction programs, and you can see them across the top of the chart: audit CAP, voluntary correction, and self-correction. All of the errors I discussed today can fit into one or more of these programs, depending on many factors. I suggest you visit our Correcting Plan Errors web page for more detailed information. The link can be found on our homepage under the Maintaining Your Plan section.

Getting back to this chart, starting at the far right you can see self-correction. With self-correction, the cost of correction is small because you caught the error early, maybe by using the suggestions I discussed in this presentation today. Correction does not take much time, either,



for the same reasons: you caught it early. Also with self-correction, you can see there are no IRS fees. As a matter of fact, you don't even have to contact the IRS. What better program to use than the self-correction program?

The middle column represents our Voluntary Correction Program. If an error is not eligible for self-correction, and I mentioned the non-amender – I said you have to file a VCP submission – it is not available for self-correction, so you would have to use voluntary correction if it was a non- or late amender. So you would submit your errors to this IRS program.

As you can see from the chart, correction will take a little more money, more time is involved, and you must submit a fee to have the plan correction method approved by the IRS. Again, to make things easier or more apt for someone with a SEP or SIMPLE IRA to do this correction, we've reduced the fee to \$250.00, where other 401(a) plans, such as your profit-sharing or 401(k) with similar amount of employees, their VCP fee could be up to \$2,500.00. So, again, we want corrections made, and we want these plans to run smoothly, and that's why we reduced these fees.

The column on the left represents the Audit Closing Agreement Program, or audit CAP. This is when the IRS agent finds the error while performing an examination of the SEP or SIMPLE IRA plan. The column tells the not-so-feel-good story with this option. Corrections are gonna take more time and money, because this error was not caught immediately. It might go five, six, seven years back.

There is also a sanction amount that is negotiated between the plan sponsor and the IRS, and that amount will always be higher than the \$250.00 that's available under the voluntary correction. So, again, if it helps, the reason why we provide this is for you to download it, show it to your clients, and show them the difference between the three programs, hopefully that they can look for errors immediately, and when they find errors, they can make corrections as soon as possible.



# Correcting Plan Errors Web Resources

[www.irs.gov/retirement](http://www.irs.gov/retirement)

- Correcting Plan Errors website
- Checklists
- Fix-it Guides

I brought up our website throughout this presentation. Some of you might be thinking, "Well, what is this website he's talking about?" We have it here on the screen. It is [www.irs.gov/retirement](http://www.irs.gov/retirement). This is where you'll find the Correcting Plan Errors page, which provides the detailed information about the correction programs I just discussed.

And, again, to make process easier, we do have submission kits and fill-in forms for the Voluntary Correction Program. So if someone wants to use this program, we have a lot of the items right there. They just need to fill them in. And it's easier to do the submission for voluntary correction.

As I said many times today, a retirement plan needs regular care to keep it operating properly. We have a one-page check sheet for SEP and SIMPLE IRA plans, and each checklist links to a fix-it guide with tips on how to find, fix, and avoid each potential error. Now, this checklist is for your use on a voluntary basis. You do not file it with the IRS. We've had some people go over the checklist, and they get all marked yes, and it's "Dear IRS, We have them all yes. There's no need to audit us. We're good." It doesn't really work that way.

Remember the checklists aren't meant as a comprehensive review. It's just an easy way to start. Some of the sample questions include: Has your plan document been updated within the past few years? Are the plan's operations based on the plan document terms? Are all eligible employees participating in the plan? Items we talked about today, and there are others. Answering no to any of these checklist questions tells you that you may have a mistake in the plan operation. The expanded explanation for each question gives you examples of how to correct the mistake.

And then, finally, there are the SEP and SIMPLE IRA fix-it guides. May contain tips on how to find, fix, and avoid common mistakes just as we discussed today. Each guide provides an overview of the rules for each plan type, an overview of the correction programs, the most frequent errors we find in each plan type, and, again, tips on finding, fixing, and avoiding these mistakes. As well with the slide I just mentioned, we encourage you to use and share these tools with your clients.



2015

IRSNationwide

TaxFORUM

# Terminating

	SEP	SIMPLE
Notify IRS?	No	No
Timeframes?	No	Yes
Step 1	Notify financial institution	Notify employees
Step 2	Notify employees (not required)	Notify financial institution
Step 3	X	Keep records

There may come a time when you want to or are required to terminate your plan. Now you're thinking, "Required to? When would that be?" Remember the SIMPLE IRA plan and its limit of 100 employees. If your company is expanding and you need more than 100 employees, the SIMPLE IRA plan can't be used, so you wanna switch to another plan, like a 401(k) plan. For both plans, you are not required to give the IRS notice of the plan termination.

To terminate a SEP, notify the financial institution you will no longer be contributing and you wanna terminate the contract or agreement. It is a good idea to notify your employees that you have discontinued the plan. To terminate a SIMPLE IRA, again, it's a little more complicated than a SEP. I've probably said that four or five times today, and just the irony of saying "with a SIMPLE it's more complicated."

First, notify your employees within a reasonable time before November 2nd that you'll discontinue the SIMPLE IRA plan effective the following January 1st. So for example, if you decide to terminate your plan on November 23rd, 2015, the earliest effective termination date is January 1st, 2017. You cannot terminate your SIMPLE IRA plan in the middle of

a year.

Next, notify your financial institution and payroll provider that you won't be making SIMPLE IRA contributions for the next calendar year and you want to terminate your contributions. And finally, we recommend you keep records of any and all of your actions.

We do our best to keep you current on the latest retirement plan news. On our homepage, we have a box – it's an orange box on the left-hand side – that provides the most current news on retirement plans, program updates, and new law. I suggest you visit there regularly to get the latest news quickly.

Another option to get the news delivered to your inbox, we have two free electronic newsletters that you can subscribe to. The first one is called Employee Plans News, and this is geared towards more the practitioner community, and it's more technically involved than our newsletter geared toward plan sponsors, which is called Retirement News for Employers. It's a Web-based product, and this newsletter will make an excellent reference guide, as we fill them with embedded links to source materials on our website, maybe sometimes a DOL website, et cetera.

Subscribing is easy. On our homepage, on the top left-hand side, there is a link called Retirement Plans A-Z. That's our sitemap. Click on that. On the left-hand side of that page, there is a link called Newsletters. Then either click on Employee Plans News or Retirement News for Employers. You can subscribe to both if you wish. Click on Subscribe and give us your email address, and that's all it takes. We will send you links when we have a new newsletter, and you can go in there and find the information you need.

We also provide monthly webinars on retirement plan topics. Click on the Webinars link on the homepage to find upcoming webinar dates and topics. We also keep an archive of the old webinars, so if there's something that you missed and you can go back and find the transcript, sometimes the audio, along with the PowerPoint, to go back and look at.

We also provide frequently asked questions, or FAQs, on over 25 topics, including SEP and SIMPLE IRA plans and the correction programs. Many of your questions can be answered here. And we also have an Examination and

Enforcement page. If the unlikely event that the SEP or SIMPLE gets selected for audit, you can go here and see the steps that the agent will take, the different forms that he or she will use, the questions they may ask, et cetera, to get you ready for the examination.



2015

IRSNationwide

TaxFORUM

# Web Resources

## [www.irs.gov/retirement](http://www.irs.gov/retirement)

- Latest news
- Webinars
- FAQs
- Newsletters
- Examinations and enforcement