SEP Retirement Plans for Small Businesses
SEP Retirement Plans for Small Businesses is a joint project of the U.S. Department of Labor’s Employee Benefits Security Administration (DOL/EBSA) and the Internal Revenue Service.

It is available on the Internet at: www.dol.gov/ebsa. For a complete list of publications or to speak with a benefits advisor, call toll free: 866-444-EBSA (3272)
Or contact the agency electronically at www.askbsa.dol.gov.

SEP Retirement Plans for Small Businesses (IRS Publication 4333) is also available from the Internal Revenue Service at: 800-TAX-FORM (829-3676) (Please indicate catalog number 38507U when ordering)

This material is available to sensory impaired individuals upon request:
Voice phone 202-693-8664
TDD 202-501-3911

This publication constitutes a small entity compliance guide for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.
Looking for an easy and low-cost retirement plan? Why not consider a SEP?

Simplified Employee Pension plans (SEP) can provide a significant source of income at retirement by allowing employers to set aside money in retirement accounts for themselves and their employees. Under a SEP, an employer contributes directly to traditional individual retirement accounts (SEP-IRAs) for all employees (including the employer). A SEP does not have the start-up and operating costs of a conventional retirement plan and allows for a contribution of up to 25 percent of each employee’s pay.

Advantages of a SEP

- Contributions to a SEP are tax deductible and your business pays no taxes on the earnings on the investments.
- You are not locked into making contributions every year. In fact, you decide each year whether, and how much, to contribute to your employees’ SEP-IRAs.
- Generally, you do not have to file any documents with the government.
- Sole proprietors, partnerships, and corporations, including S corporations, can set up SEPs.
- You may be eligible for a tax credit of up to $500 per year for each of the first 3 years for the cost of starting the plan.
- Administrative costs are low.

As you read through this booklet, here are some definitions you will find helpful:

**Employee** – An “employee” is not only someone who works for you, but also may be a self-employed person as well as an owner-employee who has earned income. In other words, you can contribute to a SEP-IRA on your own behalf. The term also includes employees of certain other businesses you and/or your family own and certain leased employees.

**Eligible Employee** – An eligible employee is an employee who:

1. Is at least 21 years of age, and
2. Has performed service for you in at least 3 of the last 5 years.

All eligible employees must participate in the plan, including part-time employees, seasonal employees, and employees who die or terminate employment during the year.

Your SEP may also cover the following employees, but there is no requirement to cover them:

- Employees covered by a union contract;
- Nonresident alien employees who did not earn income from you;
- Employees who received less than $550 in compensation during the year (subject to cost-of-living adjustments).

**Compensation** – The term generally includes the pay an employee received from you for a year’s work. As the owner/employee, your compensation is the pay you received from the company. Employers must follow the definition of compensation included in the plan document.

**ESTABLISHING THE PLAN**

There are just a few simple steps to establish a SEP.

**Step 1:** Contact a retirement plan professional or a representative of a financial institution that offers retirement plans and choose the IRS model SEP, Form 5305-SEP, *Simplified Employee Pension* –
Individual Retirement Accounts Contribution Agreement, or another plan document offered by the financial institution. Regardless of the SEP document you choose, when filled in, it will include the name of the employer, the requirements for employee participation, the signature of a responsible official, and a written allocation formula for the employer’s contribution.

A SEP may be established as late as the due date (including extensions) of the company’s income tax return for the year you want to establish the plan. For example, if your business’s fiscal year (a corporate entity) ends on December 31 and you filed for the automatic 6-month extension, the company’s tax return for the year ending December 31, 2009, would be due on September 15, 2010, allowing you to make the initial SEP contribution no later than September 15, 2010.

Choosing a financial institution for your SEP is one of the most important decisions you will make, since that entity becomes a trustee to the plan. Trustees work closely with employers and agree to:

- Receive and invest contributions, and
- Provide each participant with a notice of employer contributions made each year and the value of his/her SEP-IRA at the end of the year.

Trustees of SEP-IRAs are generally banks, mutual funds, insurance companies that issue annuity contracts, and certain other financial institutions that have been approved by the IRS.

**Step 2:** Complete and sign Form 5305-SEP (or other plan document, if not using the IRS model form). When it is completed and signed, this form becomes the plan’s basic legal document, describing your employees’ rights and benefits. Do not send it to the IRS; instead, use it as a reference since it sets out the plan’s terms (e.g., eligible employees, compensation, and employer contributions).

**Step 3:** Give your employees a copy of the Form 5305-SEP (or other plan document, if not using the IRS model form) and its instructions, along with certain information about SEP-IRAs (described in Employee Communications below). The model SEP is not considered adopted until each employee is provided with a written statement explaining that:

1. A SEP-IRA may provide different rates of return and contain different terms than other IRAs the employee may have;
2. The administrator of the SEP will provide a copy of any amendment within 30 days of the effective date, along with a written explanation of its effects; and
3. Participating employees will receive a written report of employer contributions made to SEP-IRAs by January 31 of the following year.

**OPERATING THE PLAN**

Once in place, a SEP is simple to operate. Your trustee will take care of depositing the contributions, investments, annual statements, and any required filings with the IRS. You will need to ensure that your plan is kept up to date with the law.

**Contributions to SEP-IRA Accounts**

Your obligation is to forward contributions to your financial institution/trustee for those employees who participate as described in your plan document. You want to keep your financial institution aware of any changes in the status of those employees in the plan. As you hire new employees, for instance, you will include them in the SEP if they satisfy the eligibility criteria described in the plan.

Your contributions to each employee’s SEP-IRA account for a year cannot exceed the lesser of 25 percent of the employee’s compensation for the year or a dollar amount that is subject to cost-of-living adjustments. The dollar amount for 2009 and 2010 is $49,000. These limits apply to your total contributions to this plan and any other defined contribution plans (other SEPs, 401(k), 403(b), profit sharing, or money purchase plan) you have.
You do not have to make contributions every year. When you contribute, you must contribute to the SEP-IRAs of all participants who actually performed work for your business during the year for which the contributions are made, even employees who die or terminate employment before the contributions are made. Contributions for all employees generally must be uniform—for example, the same percentage of compensation.

Employee salary reduction contributions cannot be made under a SEP.

There are special rules if you are a self-employed individual. For more information on the deduction limitations for self-employed individuals, see IRS Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).

**How Does a SEP Work?**

Quincy Chintz Company decides to establish a SEP for its employees. Quincy has chosen a SEP because the chintz industry is cyclical in nature, with good times and down times. In good years, Quincy can make larger contributions for its employees, and in down times it can reduce the amount. Quincy knows that under a SEP, the contribution rate (whether large or small) must be uniform for all employees. The financial institution that Quincy has picked to be the trustee for its SEP has several investment funds for the Quincy employees to choose from. Individual employees have the opportunity to divide their employer’s contributions to their SEP-IRAs among the funds made available to Quincy’s employees.

**Employee Communications**

When employees participate in a SEP, they must receive certain key disclosure documents from you and/or the financial institution/trustee:

- You must give employees a copy of IRS Form 5305-SEP and its instructions (or other document that was used to establish the plan). When new employees become eligible to participate in the plan, they also must receive a copy of the plan.

- You must also provide a written statement containing information about the terms of the SEP, how changes are made to the plan, and when employees are to receive information about contributions to their accounts. (See Step 3 above.)

- Your financial institution must provide each employee participating in the plan with a plain, nontechnical overview of how a SEP operates.

- In addition to the information above, the financial institution provides an annual statement for each participant’s SEP-IRA, reporting the fair market value of that account.

- The financial institution also gives participating employees a copy of the annual statement filed with the IRS containing contribution and fair market value information. (See Reporting to the Government below.)

- When an employee participating in the plan receives distributions from his/her account, the financial institution sends him/her a copy of the form that is filed with the IRS for the individual’s distribution. (See Reporting to the Government below.)

- The financial institution will notify the participant by January 31 of each year when a minimum distribution is required.

**Reporting to the Government**

SEPs generally are not required to file annual financial reports with the Federal government. SEP-IRA contributions are not included on the Form W-2, Wage and Tax Statement.

The financial institution/trustee handling employees’ SEP-IRAs provides the IRS and participating employees with an annual statement containing contribution and fair market value information on Form 5489, IRA Contribution Information.
Your financial institution also will report on Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit Sharing Plans, IRAs, Insurance Contracts, etc., any distributions it makes from participating employees’ accounts. The 1099-R is sent to those receiving distributions and to the IRS.

**Distributions**

Participants cannot take loans from their SEP-IRA. However, participants can make withdrawals at any time. These monies can be rolled over tax free to another SEP-IRA, to another traditional IRA, or to another employer’s qualified retirement plan (provided the other plan allows rollovers).

Money withdrawn from a SEP-IRA (and not rolled over to another plan) is subject to income tax for the year in which an employee receives a distribution. If an employee withdraws money from a SEP-IRA before age 59 1/2, a 10 percent additional tax generally applies.

As with other traditional IRAs, participants in a SEP-IRA must begin withdrawing a specific minimum amount from their accounts by April 1 of the year following the year the participant reaches age 70 1/2, although this distribution is waived for 2009. For the year following the year in which a participant reaches age 70 1/2, he/she must withdraw an additional required minimum distribution amount by December 31 of that year, and annually thereafter. The financial institution/trustee will notify the participant by January 31 of each year when a minimum distribution is required. (See IRS Publication 590, Individual Retirement Arrangements (IRAs), regarding required distributions.)

**Monitoring the Trustee**

As the plan sponsor, you should monitor the financial institution/trustee to assure that it is doing everything it is required to do. You should also ensure that the trustee’s fees are reasonable for the services it is providing. If the trustee is not doing its job properly, or if its fees are not reasonable, you should consider replacing the trustee.

**TERMINATING THE PLAN**

Although SEPs are established with the intention of continuing indefinitely, the time may come when a SEP no longer suits the purposes of your business. When that happens, consult with your financial institution to determine if another type of retirement plan might be a better alternative.

To terminate a SEP, notify the financial institution that you will not make a contribution for the next year and that you want to terminate the contract or agreement. Although not mandatory, it is a good idea to notify your employees that the plan will be discontinued. You do not need to give any notice to the IRS that the SEP has been terminated.

**MISTAKES... AND HOW TO CORRECT THEM**

Even with the best of intentions, mistakes in plan operation can happen. The U.S. Department of Labor and the IRS have correction programs to help employers with SEPs correct plan errors, protect participants’ interests, and keep the plan’s tax benefits. These programs are structured to encourage early error correction. Ongoing review makes it easier to spot and fix mistakes in the plan’s operations. A booklet on the DOL/IRS correction programs is listed in the Resources section below.

**YOUR SEP – A QUICK REVIEW**

- Choose a financial institution to set up your SEP.
- Sign the agreement; set up the SEP-IRAs.
- Inform your employees about the plan.
- Deposit contributions by the due date of your tax return.
- Monitor your financial institution/trustee.
RESOURCES

The U.S. Department of Labor’s (DOL’s) Employee Benefits Security Administration and the IRS feature this booklet and other information on retirement plans on their Web sites:

www.dol.gov/ebsa - Go to “Compliance Assistance for Small Employers” or “Publications/Reports” for additional information to help you understand and operate your SEP retirement plan. This Web site also has information to help your employees understand the importance of saving for retirement through an employer sponsored plan.

www.irs.gov/ep - Go to “Plan Sponsor/Employer.” This Web site is filled with plain-language information that will help you maintain your SEP properly. All the IRS forms and publications mentioned in this booklet are available here.

In addition, the following jointly developed publications are available on the DOL and IRS Web sites and can be ordered through the toll-free numbers listed below:

❑ Choosing a Retirement Solution for Your Small Business, Publication 3998, provides an overview of retirement plans available to small businesses.

❑ Retirement Plan Correction Programs, Publication 4224, provides a brief description of the IRS and DOL correction programs. The publication also includes a description of programs sponsored by the Pension Benefit Guaranty Corporation (PBGC) that apply to defined benefit plans.

❑ Payroll Deduction IRAs for Small Businesses, Publication 4587, describes an arrangement that is an easy way for businesses to give employees an opportunity to save for retirement.

❑ SIMPLE IRA Plans for Small Businesses, Publication 4334, describes another type of retirement plan designed for small businesses.

❑ 401(k) Plans for Small Businesses, Publication 4222, provides detailed information regarding the establishment and operation of a 401(k) plan.

❑ Automatic Enrollment 401(k) Plans for Small Businesses, Publication 4674, explains a type of retirement plan that allows small businesses to increase plan participation.

Order from:
DOL: 866-444-EBSA (866-444-3272)
IRS: 800-TAX-FORM (800-829-3676)

Related materials available from DOL:

DOL sponsors two interactive Web sites – the Small Business Advisor, available at www.dol.gov/elaws/pwbaplan.htm, and, along with the American Institute of Certified Public Accountants (AICPA), www.choosingaretirementsolution.org. These encourage small business owners to choose the appropriate retirement plan for their business with resources on maintaining plans and correcting plan errors.

Related materials available from the IRS:

❑ Publication 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).

❑ Publication 590, Individual Retirement Arrangements (IRAs).

❑ Publication 4405, Have You Had Your Check-Up This Year? for SIMPLE IRAs, SEPs, and Similar Retirement Plans.

❑ The IRS Retirement Plans Navigator, www.retirementplans.irs.gov, encourages small businesses owners to choose the right retirement plan for their business with resources on maintaining plans and correcting plan errors.
5305-SEP
Form (Rev. December 2004)
Department of the Treasury
Internal Revenue Service

Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement
(Under section 408(k) of the Internal Revenue Code)

OMB No. 1540-0499
Do not file with the Internal Revenue Service

(name of employer)

makes the following agreement under section 408(k) of the Internal Revenue Code and the instructions to this form.

Article I—Eligibility Requirements (check applicable box(es)—see instructions)

The employer agrees to provide discretionary contributions in each calendar year to the individual retirement account or individual retirement annuity (IRA) of all employees who are at least 21 years of age and have performed services for the employer in at least 5 years (not to exceed 3 years) of the immediately preceding 5 years. This simplified employee pension (SEP) includes: does not include employees covered under a collective bargaining agreement (include), does not include certain nonresident aliens, and includes (does not include employees whose total compensation during the year is less than $1500).

Article II—SEP Requirements (see instructions)

The employer agrees that contributions made on behalf of each eligible employee will be:

A. Issued only in the form of $20,500.00 or 50% of compensation.
B. The same percentage of compensation for every employee.
C. Limited annually to the smaller of $4,100 or 20% of compensation.
D. Paid to the employees’ IRA trustee, custodian, or insurance company (for an annuity contract).

Brokers’s signature and date

Name and title

Instructions

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

Purpose of Form

Form 5305-SEP (Simplified SEP) is used by an employer to make an agreement to provide benefits to all eligible employees under a simplified employee pension (SEP) described in section 408(k).

I am not the form 5305-SEP with the IRS. Instead, keep it with your records.

For more information on SEPs and IRAs, see Pub. 560, Retirement Plans for Small Business (SEP, SIMPLEs, and Qualified Plans), and Pub. 544, Individual Retirement Arrangements (IRAs).

Instructions to the Employer

Simplified employee pension. A SEP is a written arrangement (a plan) that provides you with an easy way to make contributions toward your employee’s retirement income. Under a SEP, you can contribute to an employee’s traditional individual retirement account or annuity traditional IRA (If you make contributions directly to an IRA set up by you for each employee with a bank, insurance company, or other qualified financial institution, when you form Form 5305-SEP to establish a SEP, the IRA must be a traditional IRA established under an IRA form or a master or prototype traditional IRA for which the IRA has issued a favorable determination letter. You may not make SEP contributions to a Keogh IRA or a SIMPLE IRA. Making the agreement in Form 5305-SEP does not establish an employer IRA described in section 408(k).

When not to use Form 5305-SEP. Do not use this form if you:

1. Currently maintain any other qualified retirement plan. This does not prevent you from maintaining another SEP.
2. Have any eligible employee for whom slides have been established.
3. Use the services of less than five employees (not covered in section 414(i)).
4. Are a member of an affiliated service group (include in section 414(m), a combination of employers, or a group of employers under common control (describe in section 414(b), unless all eligible employees of the group of such employers, trade, or businesses participate in the SEP.
5. Will not pay the cost of the SEP contributions. Do not use Form 5305-SEP for a SEP that provides for elective employee contributions even if the contributions are made under a salary reduction agreement.

Note. SEPs permitting elective deferrals cannot be established after 10/5.

Eligible employees. All eligible employees must be allowed to participate in the SEP. An eligible employee is any employee who, (1) is at least 21 years old, and (2) has performed services for you in at least 5 of the immediately preceding 5 years. You can establish a SEP that provides for elective employee contributions even if the contributions are made under a salary reduction agreement.

Service is performed for you for any period of time, however short, if you are a member of an affiliated service group, are controlled group of corporations, or trade or business under common control, services performed by one or more employees for any period of time by any member of such an affiliated service group, trade, or businesses.

Excludable employees. The following employees do not have to be covered by the SEP:

(1) Employees covered by a collective bargaining agreement whose retirement benefits were bargained for in good faith by you and your union, (2) nonresident alien employees who are not resident in the United States, (3) employees who received less than $4050 in compensation during the year, (4) an employee who received less than $4050 in compensation during the year.

Contribution limits. You may make an annual contribution up to 24% of the employee’s compensation or $41,000, whichever is less. Compensation, for this purpose, does not include employer contributions to the SEP or the employee’s compensation in excess of $255,000. If you also maintain a salary reduction SEP, the total contributions to the two SEPs together may not exceed the smaller of $23,000 or 75% of compensation for any employee.

You are not required to make contributions every year, but when you do, you must contribute to the SEP IRA’s of all eligible employees who actually performed services during the year of the contribution.

Contributions cannot discriminate in favor of highly compensated employees. Also, you may not divert SEP IRA contributions, or defer them in any manner, to persons under the Federal Insurance Contributions Act (FICA).

If this SEP is intended to meet the top-heavy minimum contribution rates of section 416, but it does not cover all your employees who participate in your salary reduction SEP, then you must make minimum contributions to those established on behalf of those employees.

Deducting contributions. You may deduct contributions to a SEP subject to the limits of section 416. This SEP is maintained on a calendar year basis and contributions to the

For Paperwork Reduction Act Notice, see page 2.

Form No. 11990-C
(Rev. 11/01/09)

From 5305-SEP (Rev. 11/01/09)
An employer is not required to make SEP contributions. If it is not contributed, in the form of contributions as required by the SEP agreement.

The Model SEP Form 5306 BCP specifies that the contribution for each eligible employee will be the same percentage of compensation (maximum compensation greater than $20,000) for all employees.

Your employer will provide you with a copy of the agreement containing participation rules and the percentages in which employer contributions may be made in your IRA. Your employer must also provide you with a copy of the completed Form 5306 BCP and a yearly statement showing any contributions made to your IRA.

All contributed additions to your IRA by your employer belong to you even after you stop working for that employer.

Contribution limits. Your employer will determine the amount to be contributed to your IRA each year. However, the amount for any year is limited to the smaller of $41,000 or 25% of your compensation for that year. Compensation does not include any amount that is contributed by your employer to your IRA under the SEP. Your employer is not required to make contributions every year or to maintain a particular level of contributions.

Tax treatment of contributions. Employer contributions to your SEP-IRA are excluded from your income unless there are contributions in excess of the applicable limit. Employer contributions within those limits will not be included on your Form W-2.

Employee contributions. You may make additional IRA contributions to an IRA. However, the amount you can deduct may be reduced or eliminated because, as a participant in a SEP, you are covered by an employer retirement plan.

SEP participation. If your employer does not require you to participate in a SEP or condition of employment, and you elect not to participate, all other employees of your employer may make pretax contributions from their compensation. As a result, the IRS limits the exclusion amount to a maximum of $25,000 for 2019.

An employer may not adopt this IRS Model SEP if the employer maintains another employer-arranged retirement plan that cannot prevent your employer from accepting an annuity, defined benefit, SEP, and any matching or additional SEP contributions or profit-sharing plan of another employer.

SEP IRA amounts—rollover or transfer to another IRA. You can withdraw or receive funds from your SEP-IRA if you meet the requirements on the number of times you may make "first-time" withdrawals. If you arrange to have funds transferred to a custodian or trustee of another IRA, that is a "rollover" and can be done without penalty only once in any 1-year period. However, there are no restrictions on the number of times you may make "non-first-time" withdrawals transferred by another IRA, so you can never have possession of the funds.

Withdrawals. You may make your employer’s contribution at any time, but any amount withdrawn is includible in your income unless rolled over. Also, if withdrawals occur before you reach age 59 1/2, you may be subject to a 10% tax on any withdrawal.

Excess SEP contributions. Contributions exceeding the yearly limitations may be withdrawn without penalty by the due date (plus extensions) for filing your tax return (April 15) but are not includible in your income on your SEP-IRA if later time may have any tax consequences of various options, including a premature withdrawal.

Financial institution requirements. The retirement account in which your IRA is maintained must be a depository institution that complies with the following information:

1. The law that relates to your IRA.

2. The tax consequences of various options including a premature withdrawal.

3. Participation eligibility rules, and rules on the deductibility of retirement savings.

4. Situations and circumstances for revoking your IRA, including the name, address, and telephone number of the person designated to receive notice of revocation. That information must be clearly displayed at the beginning of the statement.

5. A discussion of the penalties that may be assessed because of prohibited activities, including in-service withdrawals.

6. penalties that may be assessed because of prohibited activities, including in-service withdrawals.

7. Federal rules that pertain to the IRA.

8. Instructions on determining annual earnings and charges that may be assessed.

9. Describes whether, and when, the plan information is guaranteed, or will be included in the plan description.

10. States the sales commission for each year expressed as a percentage of $1,000.

In addition, the financial institution must provide you with a financial statement each year. You must keep these statements to evaluate your IRA’s investment performance.

Paperwork Reduction Act Notice. You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act. However, the information displayed on this form displays a valid OMB control number. Books for returns relating to a form or its instructions must be retained as long as we require or maintain the information on which this form is based.

For more information on the Paperwork Reduction Act, see section 1103, as required by section 1103.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 1 hr. 60 min.

Learning about the law or the form

1 hr. 35 min.

Preparing the tax form

1 hr. 14 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Plans Community Committee,INGTON, D.C. 20240. Instead, keep it with your records.