

THE Pension Digest

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August 31, 2020, is the Rollover Deadline for RMDs Which Were Not RMDs

In Notice 2020-51 the IRS granted relief to IRA owners and IRA beneficiaries who were distributed an amount thought to be their 2020 RMD. The distribution could have been made before the enactment of the CARES Act on March 27, 2020 or after and the person failed to meet the 60-day rule generally applying to IRA rollovers. The IRS ruled that a person who rolls over such a distribution will not be required to include that distribution in their income as long as it is repaid into the IRA which made the distribution by August 31, 2020.

If a person fails to complete their rollover by August 31, 2020, the person may wish to consider whether he or she would be eligible under the special disaster repayment rules to make a repayment/rollover contribution.

An IRA Custodian's Reporting of Rollovers and Late Rollovers on the 2020 Form 5498

There will be IRA owners and IRA beneficiaries who made during 2020 or will make during 2020 an IRA rollover after the 60-day time period. How is an IRA custodian/trustee to report these late rollovers and other rollovers on the 2020 Form 5498? There are three ways an IRA custodian is to report rollovers.

1. Box 2 is used to report standard rollovers.

Box 2. Shows any rollover, including a direct rollover to a traditional IRA or Roth IRA, or a qualified rollover contribution (including a military death gratuity or SGLI payment) to a Roth IRA you made in 2020. It does not show any amounts you converted from your traditional IRA, SEP IRA, or SIMPLE IRA to a Roth IRA. They are shown in box 3. It does not show any late rollover contributions. They are shown in box 13a.

2. Late rollovers are reported in boxes 13a and 13c.

Box 13a. Shows the amount of a late rollover contribution (more than 60 days after distribution) made in 2020 and certified by the participant, or a postponed contribution made in 2020 for a prior year. This amount is not reported in box 1 or 2.

Box 13b. Shows the year to which the postponed contribution in box 13a was credited. If a late rollover contribution is shown in box 13a, this box will be blank.

Box 13c. For participants who made a postponed contribution due to an extension of the contribution due date because of a federally designated disaster, shows the code FD.

For a participant who makes a rollover of a qualified plan loan offset, shows the code PO.

For a participant who has used the self-certification procedure for a late rollover contribution, shows the code SC.

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3. Box 14a is used to report certain disaster repayments/rollovers

Box 14a . Shows the amount of any repayment of a qualified reservist distribution, a qualified disaster distribution, or a qualified birth or adoption distribution. See Pub. 590-A for reporting repayments.

Box 14b. Shows the code QR for the repayment of a qualified reservist distribution, code DD for repayment of a qualified disaster distribution, or code BA for repayment of a qualified birth or adoption distribution.

Current IRS guidance does not expressly discuss how an IRA custodian is to report rollovers made after the 60-day limit pursuant to IRS Notice 2020-51. We all must wait to see if the IRS will issue additional guidance.

ROLLOVERS in 2020 after the CARES Act

August 31, 2020 is the deadline for Rolling Over Certain Distributions Thought to be an RMD

In general, the standard rollover rules apply in 2020. However, the IRS has granted relief in limited situations so a distribution which did not meet one or more of the rollover rules still may be rolled over.

The CARES Act was enacted on March 27, 2020. It has impacted the laws applying to rollovers. All RMDs have been waived for 2020. Distributions thought to be RMDs because they were made before March 27, 2020, no longer are required distributions and thus they are eligible to be rolled over.

Rollovers are complicated for many reasons. A main one is, there are many rollover laws. Individuals should be acting on the advice of their tax adviser. An IRA custodian will want the individual to furnish an updated rollover certification form so the individual will certify their eligibility to make a rollover or direct rollover contribution. The IRA plan agreement authorizes a contribution in excess of the limit for an annual contribution (\$6000 or \$7000) only in certain situations. A rollover contribution is the main exception, but another is for a SEP-IRA contribution or for a recharacterization contribution. CWF's rollover certification forms are set forth at the end of this memorandum.

A person generally wants to make a rollover contribution or a direct rollover contribution because they don't want to include the distribution in their income and pay the related tax liability or they want to keep their Designated Roth funds or Roth IRA funds in a Roth IRA. An IRA to IRA rollover is two transactions. First there is a withdrawal from an IRA followed by a rollover contribution into an IRA. By definition a direct rollover does not occur between IRAs. There might be a transfer but not a direct rollover.

A 401(k) to IRA direct rollover is two transactions. First there is a withdrawal from the 401(k) plan and then the 401(k) administrator remits the funds directly to the IRA custodian for the benefit of the individual's IRA. The 401(k) administrator reports the deemed distribution on a Form 1099-R for the individual. The IRA custodian reports the receipt of the direct rollover contribution in box 2 of the individual's Form 5498. In a direct rollover the funds are never made available to the individual. The individual then prepares his or her tax return to explain the distribution is not included in their income because of the rollover or direct rollover.

In a rollover the funds are made available to the individual. A 401(k) to IRA rollover is also two transactions. First there is a distribution from the 401(k) plan to the individual and then the individual makes a rollover contribution into their IRA with their IRA custodian. The 401(k) administrator reports the actual distribution on a Form 1099-R for the individual. The IRA custodian reports the receipt of the rollover contribution in box 2 of the individual's Form 5498.

There are 5 basic IRA to IRA rollover rules:

1. RMDs cannot be rolled over because such distributions are ineligible for rollover treatment.
2. The 60-day rule. There are exceptions.
3. The once per year (365 day) rule. An IRA owners who withdraws an IRA distribution and rolls over such is eligible to rollover a subsequent distribution only if that distribution is one year or longer after the distribution which was rolled over. For example, Jane Doe takes a distribution on April 1, 2020, and rolls it over within the 60-day period. Jane Doe must wait until at least April 1, 2021

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before any subsequent distribution is eligible to be rolled over.

4. The same property rule. If an IRA distribution is comprised of an in-kind asset, that same asset must be comprised the rollover contribution. The asset cannot be sold to the individual or any other party and the proceeds rolled over.
5. A distribution from an inherited IRA to a non-spouse beneficiary is almost always ineligible to be rolled over. Until the CARES Act, there was only one exception. If the IRS has had to return IRA funds it levied on an inherited IRA, then the beneficiary has until the April 15th following the year the IRS repaid the levied funds to make his or her rollover contribution.

Up until COVID-19 the approach of the IRS was, we have the authority to grant relief if someone fails to comply with the 60-day rule; but we have no authority to grant relief if there has been noncompliance with any of the other 4 rules.

As discussed below, the IRS in 2020 has granted limited relief to certain IRA owners and certain IRA beneficiaries. **A person who has not been granted relief must still comply with the standard 5 rules, including the 60-day rule.**

The CARES Act was enacted on March 27, 2020. The CARES Act waived for IRAs all RMDs for 2020. There are IRA accountholders who were paid what was thought to be their 2020 RMD prior to March 27, 2020, who are now asking, "am I able to rollover my distribution which was made to me because it no longer is an RMD?" Similarly, there are IRA beneficiaries who were paid their 2020 RMD prior to March 27, 2020, who are now asking, "am I able to rollover my distribution which was made to me because it no longer is an RMD?"

IRA Distributions from January 1, 2020 to June 23, 2020.

In order to obtain tax relief a qualifying person must complete their rollover by August 31, 2020.

On June 23, 2020, the IRS granted relief in Notice 2020-51 to certain IRA owners and certain IRA beneficiaries with respect to the 60-day rule, the once per year rule and the beneficiary rule. Relief is granted to an

IRA owner or an IRA beneficiary who received on or before June 23, 2020, an IRA distribution which would have been their RMD, but for the CARES Act. The relief is, a person will have a complying rollover as long as such rollover is repaid to the distributing IRA by August 31, 2020 regardless of the 60-day rule, the once per year rule and the beneficiary rule.

IRA Distributions from February 1, 2020 to May 15, 2020.

In order to obtain tax relief a qualifying person must complete their rollover by July 15, 2020.

On April 9, 2020, the IRS granted broad automatic relief in Notice 2020-23 to taxpayers, including certain IRA owners, but not IRA beneficiaries. The tax filing deadline and the IRA contribution deadline for 2019 was changed to be July 15, 2020 from April 15, 2020. And relief was granted with respect to specified time sensitive actions as set forth in Code section 7508A and the regulation. "Affected taxpayers also have until July 15, 2020 to perform all specified time-sensitive actions that are due to be performed on or after April 1, 2020, and before July 15, 2020." A person who took a distribution on February 1 (or later), but who had failed to comply with the 60-day rule had until July 15, 2020 to complete the rollover. The distribution was not required to be an RMD. Any distribution would have qualified for purposes of meeting the 60-day requirement. We believe the IRA owner would have had to comply with the once per year rule. Notice 2020-23 does not grant relief for not complying with the once per year rule.

IRA Distributions which are Qualifying Disaster Distributions.

There are special rollover rules for a disaster distribution. The standard rollover rules do not apply if the disaster rules apply. The IRS uses the terms repayment or recontribution to distinguish these disaster rollovers from standard rollovers.

What are the special rules for a disaster distribution? A disaster distribution(s) on an aggregate basis cannot exceed \$100,000. A person is permitted to take multiple distributions during the disaster relief period. A distribution is taxed as follows, 1/3 in 2020, 1/1 in

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2021 and 1/3 in 2022 unless the person elects to have 100% taxed in 2020. A person who takes a disaster distribution has three years in which to complete the rollover repayment commencing on the date after day of the distribution. There is no once per year rule. There is also no 60-day rule. These two three year rules means a person has great flexibility in using their IRA funds after a distribution and when taxes must be paid and when a rollover can be completed so the distribution or distributions become non-taxable. IRS Form 8915 and instructions should be reviewed because they present the IRS' understanding of the disaster laws.

What distributions qualify as a disaster distribution?

There are two categories. First, those occurring during 2020 on account of COVID-19. Secondly, those occurring from January 1, 2018 to February 28, 2020 on account of an-other-federally declared disaster.

Do all IRA distributions occurring in 2020 qualify as a disaster distribution?

No, but almost all will qualify because most individuals will incur adverse financial consequences on account of COVID-19.

The term "coronavirus-related distribution" means any distribution from an IRA or other eligible retirement plan which meets the following requirements. It must be made on or after January 1, 2020, and before December 31, 2020. It must be made to a person who is described in one or more of the following categories or who lives in the same household with another person who is described in one or more of the following categories:

1. A person diagnosed with the virus SARS-CoV-2 or with the coronavirus disease 2019 (COVID-19) by a test approved by the CDC (Centers for Disease Control and Prevention);
2. whose spouse or dependent is diagnosed with such virus or disease by such a test; or
3. who experiences adverse financial consequences as a result of being quarantined, furloughed, laid off, or being unable to work due to lack of child care, or the closing or reducing of a business owned by the individual due to such virus or disease.

The IRS has been given by statute the express authority to waive the 60-day rule if equity and fairness would require it. The IRS has three procedures with respect to granting a waiver. First, there can be an automatic waiver. Second, a taxpayer and the IRA custodian may follow the certification of a late rollover request. Third, the IRA owner may submit a written request to the IRS for a waiver and the IRS will respond whether or not a waiver is to be granted.

The IRS in the past has adopted the approach such as with respect to the once per year rule that the IRS does not have the authority to waive the once per year rule.

The IRA Custodians Duty To Report Rollovers or Repayments on Form 5498.

How is the IRA custodian to report these rollovers or repayments on the Form 5498? The IRS needs to provide guidance on how the 2020 Form will be completed because the IRS needs to instruct how rollovers made under the special relief rules are to be reported.

The current IRS instructions do not discuss how the rollovers made under the special relief are to be reported. Current IRS instructions discuss three different ways to report a rollover on Form 5498:

1. A standard rollover is reported in box 2;
2. A certified late rollover is reported in boxes 13a and 13c; or
3. A rollover repayment of a disaster distribution is reported in boxes 14a and 14b.

If a person has complied with the 60-day rule and the once per year rule, then the rollover should be reported in box 2.

If an IRA account holder has failed to comply with the 60-day rule, the person may choose to make their rollover by using the certification for late rollover approach.

If an IRA owner or an IRA beneficiary is making their rollover under the special relief of Notice

2020-23 or Notice 2020-51, that is the situation where the IRS must issue additional guidance.

Presumably, such contributions will be reported in box 2.

If an IRA owner is making their rollover under the special disaster rules, then their repayment is reported in

boxes 14a and 14b by using the IRS instructions which need to be updated for the CARES Act.

We suggest that the IRA custodian/trustee have John Doe complete CWF's rollover certification form Form 65A or a similar form. Form 65C is to be used for a certified late rollover. We need to create the rollover repayment form for a disaster distribution.

Additional Discussion - Rolling Over Distributions Believed to be RMDs.

In IRS Notice 2020-51 the IRS granted broad rollover relief for distributions made before the CARES Act and before the issuance of Notice 2020-51 which was issued on June 23, 2020. A person is eligible to rollover such a distribution into the same IRA regardless if the rollover contribution is made after the 60-day limit, regardless if there were multiple distributions and regardless if the distribution was from an inherited IRA.

In some cases, the IRA owner or the IRA beneficiary may have had federal tax withholding and or state withholding. In that situation what must be done to rollover 100% of the distribution? For discussion purposes it is assumed that Jane Doe had her 2020 IRA RMD of \$18,000 distributed to her on February 15, 2020. She had instructed to have 30% or \$5400 withheld for federal income tax purposes and 5% or \$1800 withheld for state income tax purposes. \$10,800 was deposited into her checking account. It is now July and she has learned she may rollover the \$18,000 distribution. She decides to make a rollover contribution of \$18,000. She will have to raise from personal funds or loans the \$18,000 which had been withheld. Assuming other tax matters are equal, she would receive a refund of the \$7200 when she files her 2020 tax return or have her credit balance applied to 2021 taxes.

Additional Discussion of a direct rollover from a 401(k) plan to an IRA

Federal law requires the 401(k) administrator to furnish a special notice to a plan participant explaining the tax rules applying if the person takes a distribution of their vested account balance. This special notice is called a section 402(f) notice. The individual is informed of the following:

1. Relevant information about their vested account balance. What portion is taxable and what portion is not, if any? Has the person made any Designated Roth contributions?
2. If the individual takes an actual distribution, then, in general, 20% of the distribution amount must be withheld for federal income tax purposes. The person may instruct to have more withheld, but not less.
3. That the plan is qualified and the person is eligible to directly rollover their distribution or to rollover their distribution.
4. If the person elects to directly rollover their distribution, then there is no 20% withholding. An IRA custodian wants to try to obtain a copy of the individual's section 402(f) notice. Most likely the 401(k) administrator will not furnish it. The IRA custodian should ask the individual to furnish it. Why is it desirable to have a copy of this form? The 401(k) administrator expressly states the person was eligible to do the direct rollover and that the plan was/is qualified.

Do the five basic rules applying to IRA-to-IRA rollovers apply to 401(k)-to-IRA rollovers?

No. Two of the rules are the same but three are different.

What two rules are the same?

1. RMDs cannot be rolled over.
2. The 60-day rule applies to a rollover transaction but not to a direct rollover transaction.

What three rules are different?

1. The once per year (365 day) rule does not apply. There is no limit as to how many rollover contributions or direct rollover contributions may be made.
2. The same property rule does not apply. If an IRA distribution is comprised of an in-kind asset, that asset may be sold to a qualifying third party and the proceeds may be rolled over. The person could not sell the property distributed from the IRA to herself or himself or any family member.
3. A nonspouse beneficiary is eligible to have a direct

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IRA — Certification for Rollovers to a Traditional IRA, SEP-IRA, or SIMPLE-IRA from a Traditional IRA, SEP-IRA, or SIMPLE-IRA

To: Custodian/Trustee

Name _____ Date: _____
Address _____ Phone _____
City _____ State _____ Zip _____

From: Accountholder

Name _____ Plan No. _____
Home Address _____ Phone _____
City _____ State _____ Zip _____ SSN _____

Purpose. You are to use this form to certify that you have received a distribution from a traditional IRA, SEP-IRA or SIMPLE-IRA and that you are eligible to make a rollover contribution into this traditional IRA, SEP-IRA or SIMPLE-IRA. If you have received a distribution from an employer sponsored plan, you should complete a different certification form such as IRA #65-B.

Re: Irrevocable election to make an IRA rollover contribution in the amount of \$ _____ to my ☐ traditional IRA, my ☐ SEP-IRA or my ☐ SIMPLE-IRA — Account Number _____

I certify that I am eligible to make this rollover contribution because I comply with the following requirements.

1. I am not rolling over any required distribution, if any. I understand an IRA accountholder subject to the RMD rules must satisfy his or her RMD requirement before any amount is eligible to be rollover over. A person is required to aggregate all traditional IRAs, SEP-IRAs and SIMPLE-IRAs when applying this rule.
2. I have made my rollover contribution or contributions within 60 days of the day the IRA funds were distributed to me.
3. I have not taken a distribution from any IRA during the previous 12-month period which I rolled over. That is, I understand a person is eligible to rollover only one distribution during a 12-month period. Normally, this period is comprised of 365 days except for leap year when the period will be 366 days.
4. I must rollover the exact property distributed to me. I do not rollover any other IRA property or assets other than cash. I do not have right to sell the property and rollover the proceeds as I do if the distribution was made by a qualified plan.
5. A non-spouse beneficiary is ineligible to rollover a distribution from an inherited IRA into another inherited IRA or an individual's own personal IRA.
6. A person is eligible to rollover a distribution of traditional IRA funds or SEP-IRA funds into a SIMPLE-IRA only if the 2-year rule applying to SIMPLE-IRA contributions have been met — or vice versa.

The IRS has issued guidance that it has the legal authority to grant relief to a person who has failed to comply with the 60-day rule when equity and fairness require relief be extended.

Other special rollover rules. Check the box if applicable.

- ☐ 1. I qualify to use the special rollover relief granted by the IRS in Notice 2020-23, Notice 2020-50, Notice 2020-51 and/or similar guidance.
- ☐ 2. I have made a rollover contribution because I am using the IRS Self-Certification method for requesting a waiver of the 60-day rule. I have completed the IRS' Self-Certification form and furnished you a copy of this form.
- ☐ 3. I qualify as a victim of a federally declared disaster to make a rollover contribution even though I missed the 60-day rule because the 60-day period is modified for certain victims of federally declared disasters. I will furnish a note of explanation as prepared by my tax accountant or attorney.
- ☐ 4. I have made my rollover contribution or contributions within 120 days of the day the IRA funds were distributed to me. I certify I withdrew my IRA funds for a first time home purchase, but the acquisition or construction was delayed or cancelled.
- ☐ 5. I have made a rollover contribution or contributions of IRA funds which the IRS levied and then returned to me. I certify I have made my rollover contributions by April 15 of the year following the year the IRA funds were returned to me. The IRS levied my IRA funds on _____. The IRS paid me some or all of such levied funds on _____.
- ☐ 6. I have made a rollover contribution of an outstanding loan which I had with respect to an employer retirement plan. I certify I have made my rollover contribution by April 15th of the year following my loan becoming outstanding.

I acknowledge that you have instructed me to consult with my legal or tax advisor because of the complexity and importance of this matter. I understand that the tax consequences related to depositing funds in a traditional IRA, SEP-IRA or SIMPLE-IRA which do not qualify for rollover treatment are extremely harsh and I acknowledge that the IRA custodian/trustee will rely on my certification that I am eligible to make my rollover contribution. I agree to hold the IRA custodian/trustee harmless and indemnify if I incur adverse tax and/or other legal consequences because I was ineligible.

Signature of Accountholder _____ Date _____

Signature of Acknowledgment of Custodian/Trustee _____ Date _____

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rollover of the inherited funds into an inherited IRA. With respect to an inherited IRA, it can be transferred into another inherited IRA, but it cannot be directly rolled over.

A nonspouse beneficiary is ineligible to take an actual distribution and then make a rollover contribution into an inherited IRA or a regular IRA. Only two exceptions - IRS levy and 2020 RMDs distributed prior to June 23, 2020.

Most distributions from a 401(k) plan are eligible to be rolled over. The following distributions are ineligible to be rolled over.

1. An RMD
2. A hardship distribution
3. A corrective distribution of an excess contribution, an excess deferral or an excess annual addition as adjusted for related earnings or losses.
4. Dividends on employer securities
5. The cost of life insurance coverage.
6. Any distribution which is a part of a series of substantially equal periodic distributions paid at least once a year over the person's lifetime or life expectancy, or joint life expectancy or a period of 10 years or more.
7. Certain loans (defaulted or non-qualifying) which are treated as a distribution.

SIMPLE-IRA Summary Description — IRA Custodian Must Furnish to its SIMPLE-IRA clients by September/October 2020 for 2021

What are a financial institution's duties if it is the custodian or trustee of SIMPLE-IRA funds? After a SIMPLE-IRA has been established at an institution, it is the institution's duty to provide a Summary Description each year within a reasonable period of time before the employees' 60-day election period. CWF believes that providing the Summary Description 30 days prior to the election period would be considered "reasonable." The actual IRS wording is that the Summary Description must be provided "early enough so that the employer can meet its notice obligation." You will want to furnish the Summary Description to the employer in September or the first week of October. The employer is required to furnish the summary description before the employees' 60-day election period.

IRS Notice 98-4 provides the rules and procedures for SIMPLEs. This notice is reproduced in CWF's IRA Procedures Manual.

The Summary Description to be furnished by the SIMPLE-IRA custodian/trustee to the sponsoring employer depends upon what form the employer used to establish the SIMPLE-IRA plan.

The employer may complete either Form 5305-SIMPLE (where all employees' SIMPLE-IRAs are established at the same employer-designated financial institution) or Form 5304-SIMPLE (where the employer allows the employees to establish the SIMPLE-IRA at the financial institution of his or her choice).

There will be one Summary Description if the employer has used the 5305-SIMPLE form. There will be another Summary Description if the employer has used the 5304-SIMPLE form. If you are a user of CWF forms, these forms will be Form 918-A and 918-B.

The general rule is that the SIMPLE-IRA custodian/trustee is required to furnish the summary description to the employer. This Summary Description will only be partially completed. The employer will be required

**SIMPLE-IRA Summary Description,
Continued from page 7**

to complete it and then furnish it to his employees. The employer needs to indicate for the upcoming 2021 year the rate of its matching contribution or that it will be making the non-elective contribution equal to 2% of compensation.

In the situation where the employer has completed the Form 5304-SIMPLE, the IRS understands that many times the SIMPLE-IRA custodian/trustee will have a minimal relationship with the employer. It may well be that only one employee of the employer establishes a SIMPLE-IRA with a financial institution. In this situation, the IRS allows the financial institution to comply with the Summary Description rules by using an alternative method.

To comply with the alternative method, the SIMPLE-IRA custodian/trustee is to furnish the individual SIMPLE-IRA accountholder the following:

- A current 5304-SIMPLE — this could be filled out by the employer, or it could be the blank form
- Instructions for the 5304-SIMPLE
- Information for completing Article VI (Procedures for withdrawal) (You will need to provide a memo explaining these procedures.)
- The financial institution's name and address.

Obviously, if an institution provides the employee with a blank form, he/she will need to have the employer complete it, and, the employee may well need to remind the employer that it needs to provide the form to all eligible employees.

CWF has created a form which covers the "alternative" approach of the Summary Description being provided directly to an employee. The penalty for not furnishing the Summary Description is \$50 per day.

Special Rule for a "transfer" SIMPLE-IRA. There is also what is termed a "transfer" SIMPLE-IRA. If your institution has accepted a transfer SIMPLE-IRA, and there have been no current employer contributions, then there is no duty to furnish the Summary Description.

If there is the expectation that future contributions will be made to this transfer SIMPLE-IRA, then the institution will have the duty to furnish the Summary Description.

Reminder of Additional Reporting Requirements

The custodian/trustee must provide each SIMPLE-IRA account holder with a statement by January 31, 2021, showing the account balance as of December 31, 2020, (this contribution and distribution is the same as for the traditional IRA), and include the specific contribution activity in the account during the calendar year (this is not required for a traditional IRA). There is also a \$50 per day fine for failure to furnish this January FMV statement.

Is it Still Possible to Establish a SIMPLE-IRA Plan for 2020?

Yes, if the sponsoring business has never sponsored a SIMPLE-IRA Plan before and if the business has not made any contributions for 2020 to another type of retirement plan (e.g. profit sharing plan or SEP).

A person or business can set up a SIMPLE-IRA plan effective on any date between January 1 and October 1 of a year, provided it did not previously maintain a SIMPLE-IRA plan. This requirement does not apply if there is a new employer that comes into existence after October 1 of the year the SIMPLE-IRA plan is established.

A new business must set up a SIMPLE-IRA plan as soon as administratively feasible after it comes into existence. If it previously maintained a SIMPLE-IRA Plan, it can set up a SIMPLE-IRA plan effective only on January 1 of a year. A SIMPLE-IRA plan cannot have an effective date that is before the date you actually adopt the plan.