

**Salary Reduction Simplified Employee Pension—
Individual Retirement Accounts
Contribution Agreement****(Under section 408(k) of the Internal Revenue Code)****Do not file
with the Internal
Revenue Service**

_____ amends its salary reduction SEP by adopting the following Model Salary Reduction SEP under Internal Revenue Code section 408(k) and the instructions to this form.

Name of employer

Note: An employer may not establish a salary reduction SEP after 1996.

Article I—Eligibility Requirements (check applicable boxes—see instructions)

Provided the requirements of Article III are met, the employer agrees to permit elective deferrals to be made in each calendar year to the individual retirement accounts or individual retirement annuities (IRAs), established by or for all employees who are at least _____ years old (not to exceed 21 years) and have performed services for the employer in at least _____ 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, ☐ includes ☐ **does not** include certain nonresident aliens, and ☐ includes ☐ **does not** include employees whose total compensation during the year is less than \$450*.

Article II—Elective Deferrals (see instructions)

A. Salary Reduction Amount. An eligible employee may elect to have his or her compensation reduced by a specified percentage or amount per pay period, as designated in writing to the employer.

B. Timing of Elective Deferrals. No deferral election may be based on compensation an eligible employee received, or had a right to receive, before execution of the deferral election.

Article III—SEP Requirements (see instructions)

The employer agrees that each employee's elective deferrals to the SEP will be:

A. Based only on the first \$220,000* of compensation.

B. Limited annually to the smaller of: **(1)** 25% of compensation; **or (2)** the section 402(g) limit for the tax year.

C. Limited further, under section 415, if the employer makes nonelective contributions to this or another SEP.

D. Paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract) or, if necessary, an IRA established for an employee by the employer.

E. Made only if at least 50% of the employer's employees eligible to participate elect to have amounts contributed to the SEP. If the 50% requirement is not satisfied as of the end of any calendar year, then all of the elective deferrals made by the employees for that calendar year will be considered "disallowed deferrals" (IRA contributions that are not SEP-IRA contributions).

F. Made only if the employer had 25 or fewer employees eligible to participate at all times during the prior calendar year.

G. Adjusted only if deferrals to this SEP for any calendar year do not meet the "deferral percentage limitation" described on page 3.

Article IV—Excess SEP Contributions (see instructions)

Elective deferrals by a "highly compensated employee" must satisfy the deferral percentage limitation under section 408(k)(6)(A)(iii). Amounts in excess of this limitation will be deemed excess SEP contributions for the affected highly compensated employee or employees.

Article V—Notice Requirements (see instructions)

A. The employer will notify each highly compensated employee, by March 15 following the end of the calendar year to which any excess SEP contributions relate, of the excess SEP contributions to the highly compensated employee's SEP-IRA for the applicable year. The notification will specify the amount of the excess SEP contributions, whether they must be withdrawn, the calendar year in which any excess contributions are includible in income, and must provide an explanation of applicable penalties if the excess contributions that must be withdrawn are not withdrawn on time.

B. The employer will notify each employee who makes an elective deferral to a SEP that, until March 15 after the year of the deferral, any transfer or distribution from that employee's SEP-IRA of SEP contributions (or income on these contributions) attributable to elective deferrals made that year will be includible in income for purposes of sections 72(t) and 408(d)(1).

C. The employer will notify each employee by March 15 of each year of any disallowed deferrals to the employee's SEP-IRA for the preceding calendar year. Such notification will specify the amount of the disallowed deferrals and the calendar year in which those deferrals are includible in income and must provide an explanation of applicable penalties if the disallowed deferrals are not withdrawn on time.

Article VI—Top-Heavy Requirements (see instructions)

A. Unless paragraph B is checked, the employer will satisfy the top-heavy requirements of section 416 by making a minimum contribution each year to the SEP-IRA of each employee eligible to participate in this SEP (other than a key employee as defined in section 416(i)). This contribution, in combination with other nonelective contributions, if any, is equal to the smaller of 3% of each eligible nonkey employee's compensation or a percentage of such compensation equal to the percentage of compensation at which elective (not including catch-up elective deferral contributions) and nonelective contributions are made under this SEP (and any other SEP maintained by the employer) for the year for the key employee for whom such percentage is the highest for the year.

* This is the amount for 2006. For later years, the limit may be increased for cost-of-living adjustments. Increases, if any, to the amounts in this form that are subject to cost-of-living adjustments (COLAs), are announced by the IRS in a news release, in the Internal Revenue Bulletin, and on the IRS website at www.irs.gov.

Article VI—Top-Heavy Requirements *(continued)*

B. ☐ The top-heavy requirements of section 416 will be satisfied through contributions to nonkey employees' SEP-IRAs under this employer's other SEP.

C. To satisfy the minimum contribution requirement under section 416, all nonelective SEP contributions will be taken into account but elective deferrals will not be taken into account.

Article VII—Effective Date (see instructions)

This SEP will be effective upon adoption and establishment of IRAs for all eligible employees.

Employer's signature

Date

Name and title

Instructions

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

Purpose of Form

Form 5305A-SEP is a model salary reduction simplified employee pension (SEP) used by an employer to permit employees to make elective deferrals to a SEP described in section 408(k).

Do not file Form 5305A-SEP with the IRS. Instead, keep it with your records.

Note: SEPs permitting elective deferrals cannot be established after 1996. If you established a SEP before 1997 that permitted elective deferrals, under current law you may continue to maintain such SEP for years after 1996.

If you used the March 2002 version of Form 5305-A SEP for your SEP, you are not required to use this version of the form.

Instructions for the Employer
What Is A SEP?

A SEP is a written arrangement (a plan) that provides you with an easy way to make contributions towards your employees' retirement income. Under a salary reduction SEP, employees may choose whether or not to make elective deferrals to the SEP or to receive the amounts in cash. If elective deferrals are made, you contribute the amounts deferred by your employees directly into a traditional individual retirement arrangement (traditional IRA) set up by or for each employee with a bank, insurance company, or other qualified financial institution. The traditional IRA, established by or for an employee, must be one for which the IRS has issued a favorable opinion letter or a model traditional IRA published by the Service as Form 5305, Traditional Individual Retirement Trust Account, or Form 5305-A, Traditional Individual Retirement Custodial Account. It cannot be a SIMPLE IRA (an IRA designed to accept contributions made under a SIMPLE IRA Plan described in section 408(p)) or a Roth IRA. Adopting Form 5305A-SEP does not establish an employer IRA described in section 408(c).

The information provided below is intended to help you understand and administer the elective deferral rules of your SEP.

When To Use Form 5305A-SEP

Use this form only if you intend to permit elective deferrals to a SEP. If you want to establish a SEP to which nonelective employer contributions may be made, use Form

5305-SEP, Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement, or a nonmodel SEP instead of, or in addition to, this form.

Do not use Form 5305A-SEP if you:

1. Have any leased employees as defined in section 414(n)(2).
2. Currently maintain any other qualified retirement plan. This does not prevent you from also maintaining a Model SEP (Form 5305-SEP) or other SEP to which either elective or nonelective contributions are made.
3. Have more than 25 employees eligible to participate in the SEP at any time during the prior calendar year. If you are a member of one of the groups described in paragraph 2 under *Excess SEP Contributions—Deferral Percentage Limitation* on page 3, you may use this SEP only if in the prior year there were never more than 25 employees eligible to participate in this SEP, in total, of all the members of such groups, trades, or businesses. In addition, all eligible employees of all the members of such groups, trades, or businesses must be eligible to make elective deferrals to this SEP.
4. Are a state or local government or a tax-exempt organization.

Completing the Agreement

This SEP agreement is considered adopted when:

1. You have completed all blanks on the form.
2. You have given all eligible employees the following information:
 - a. A copy of Form 5305A-SEP. Any individual who in the future becomes eligible to participate in this SEP must be given Form 5305A-SEP, upon becoming an eligible employee.
 - b. A statement that traditional IRAs other than the traditional IRAs into which employer SEP contributions will be made may provide different rates of return and different terms concerning, among other things, transfers and withdrawals of funds from the IRAs.
 - c. A statement that, in addition to the information provided to an employee at the time the employee becomes eligible to participate, the administrator of the SEP must furnish each participant within 30 days of the effective date of any amendment to the SEP, a copy of the amendment and a written explanation of its effects.
 - d. A statement that the administrator will give written notification to each participant of any employer contributions made under the

SEP to that participant's IRA by the later of January 31 of the year following the year for which a contribution is made or 30 days after the contribution is made.

Employers who have established a salary reduction SEP using Form 5305A-SEP and have provided each participant a copy of the completed Form 5305A-SEP and the other documents and disclosures described in *Instructions for the Employer* and *Instructions for the Employee*, are not required to file the annual information returns, Forms 5500 or 5500-EZ, for the SEP. However, under Title I of the Employee Retirement Income Security Act of 1974 (ERISA), this relief from the annual reporting requirements may not be available to an employer who selects, recommends, or influences its employees to choose IRAs into which contributions will be made under the SEP, if those IRAs are subject to provisions that impose any limits on a participant's ability to withdraw funds (other than restrictions imposed by the Code that apply to all IRAs). For additional information on Title I requirements, see the Department of Labor regulations at 29 CFR 2520.104-49.

Forms and Publications You May Use

An employer may need to use any of the following forms or publications:

- Form W-2, Wage and Tax Statement.
- Form 5330, Return of Excise Taxes Related to Employee Benefit Plans. Employers who are liable for the 10% tax on excess contributions use this form to pay the excise tax.
- Pub. 560, Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans).
- Pub. 590, Individual Retirement Arrangements (IRAs).

Deducting Contributions

You may deduct, subject to any applicable limits, contributions made to a SEP. This SEP is maintained on a calendar year basis, and contributions to the SEP are deductible for your tax year with or within which the particular calendar year ends. See section 404(h). Contributions made for a particular tax year and contributed by the due date of your income tax return, including extensions, are deemed made in that tax year and the contributions are deductible if they would otherwise be deductible had they actually been contributed by the end of that tax year. See Rev. Rul. 90-105, 1990-2 C.B. 69. However, the deductibility of your contributions may be limited if the

Model Salary Reduction SEP Deferral Form**I. Salary reduction deferral**

Subject to the requirements of the Model Salary Reduction SEP of _____, I authorize the
 (name of employer)
 following amount or percentage to be withheld from each of my paychecks and contributed to my SEP-IRA:

(a) _____ % (not to exceed 25%) of my salary; or (b) \$ _____ .

This salary reduction authorization shall remain in effect until I provide written modification or termination of its terms to my employer.

II. Amount of deferral

I understand that the total amount I defer in any calendar year may not exceed the smaller of:

(a) 25% of my compensation (determined without including any SEP-IRA contributions); or (b) the section 402(g) limit for the year.

III. Commencement of deferral

The deferral election specified in I above shall not become effective before _____. Specify
 (Month, day, year)
 a date no earlier than the first day of the first pay period beginning after this authorization.

IV. Distributions from SEP-IRAs

I understand that I should not withdraw or transfer any amounts from my SEP-IRA that are attributable to elective deferrals and income on elective deferrals for a particular calendar year (except for excess elective deferrals) until March 15 of the subsequent year or, if sooner, when my employer notifies me that the deferral percentage limitation test for that plan year has been completed. Any such amounts that I withdraw or transfer before this time will be includible in income for purposes of sections 72(t) and 408(d)(1).

Signature of employee ► _____

Date ► _____

Notification of Excess SEP Contributions

To: _____
 (name of employee)

Our calculations indicate that the elective deferrals you made to your SEP-IRA for calendar year _____ exceed the maximum permissible limits under section 408(k)(6), and that \$ _____ must be withdrawn from your SEP-IRA.

These excess SEP contributions are includible in your gross income for the _____ (insert the year identified above, or if less than \$100, the following year) calendar year.

These excess SEP contributions must be distributed from your SEP-IRA by April 15, 20_____. (insert year after the calendar year in which this notice is given) in order to avoid possible penalties. Income allocable to the excess amounts must be withdrawn at the same time and is includible in income in the year of withdrawal. Excess SEP contributions remaining in your SEP-IRA account after that time are subject to a 6% excise tax, and the income on these excess SEP contributions may be subject to a 10% penalty when finally withdrawn.

You made total excess contributions for the year of \$ _____. This amount may be different from the amount you have to withdraw if you have unused catch-up elective deferral contributions under this SEP for the year.

Signature of employer ► _____

Date ► _____