

**Simplified Employee Pension-Individual  
Retirement Accounts Contribution Agreement**

(Under Section 408(k) of the Internal Revenue Code)

**Do NOT File with  
Internal Revenue  
Service**

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

(Business name—employer)

The employer agrees to provide for discretionary contributions in each calendar year to the Individual Retirement Accounts or Individual Retirement Annuities (IRA's) of all eligible employees who are at least \_\_\_\_\_ years old (not over 25) (see instruction "Who May Participate") and worked in at least \_\_\_\_\_ years (not over 3) of the last 5 calendar years (see instruction "Who May Participate"). This  includes  does not include employees covered under a collective bargaining agreement and  includes  does not include employees whose total compensation during the tax year is less than \$200.

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

- Be made only on the first \$200,000 of compensation.
- Be made in an amount that is the same percentage of total compensation for every employee. If any employee's compensation over \$100,000 is taken into account, the percentage used must be at least 7.5%.
- Be limited to the smaller of 15% of compensation or \$15,000.
- Be paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract).

Signature of employer

Date

By

**Instructions for the Employer**

(Section references are to the Internal Revenue Code.)

**Paperwork Reduction Act Notice.**—The Paperwork Reduction Act of 1980 says we must tell you why we are collecting this information, how it is to be used, and whether you have to give it to us. The information is used to determine if you are entitled to a deduction for contributions made to a SEP. Your completing this information is only required if you want to establish a Model SEP.

**Purpose of Form**

Form 5305-SEP (Rev. April 1983) (Model SEP) is used for calendar years beginning after 12/31/81 by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) plan described in section 408(k). This form is NOT to be filed with IRS.

**What is a SEP Plan?**

A SEP provides an employer with a simplified way to make contributions toward an employee's retirement income. Under a SEP the employer is permitted to contribute a certain amount (see below) to an employee's Individual Retirement Account or Individual Retirement Annuity (IRA's). The employer makes contributions directly to an IRA set up by an employee with a bank, insurance company, or other qualified financial institution. For purposes of this form, the IRA must be a model IRA established on an IRS form or a master or prototype IRA for which IRS has issued a favorable opinion letter. Making the agreement on Form 5305-SEP does not establish an employer IRA as described under section 408(c).

This form may not be used by an employer who:

- Currently maintains any other qualified retirement plan.
- Has maintained in the past a defined benefit plan, even if now terminated.
- Has any eligible employees for whom IRA's have not been established.
- Is a member of an affiliated service group (as described in section 414(m)), a controlled group of corporations (as described in section 414(b)), or trades or businesses under common control (as described in section 414(c)). UNLESS all eligible employees of all the members of such groups, trades, or businesses participate under the SEP.

**Who May Participate**

Any employee who is at least 25 years old and has performed "service" for you in at least 3 of the last 5 calendar years must be permitted to participate under the SEP. However, you may establish less restrictive eligibility requirements if you choose. "Service" is any work performed for you for any period of time, however short. Further, if you are a member of an affiliated service group, a controlled group of corporations, or trades or businesses under common control, "service" includes any work performed for any period of time for any other member of such group, trades, or businesses. Generally, to make the agreement, all eligible employees including all eligible employees, if any, of other members of an affiliated service group, a controlled group of corporations, or trades or businesses under common control must participate in the plan. However, employees covered under a collective bargaining agreement and certain nonresident aliens may be excluded if section 410(b)(3)(A) or 410(b)(3)(C) applies to them. Employees whose total compensation for the tax year is less than \$200 may be excluded.

**Amount of Contributions**

You are not required to make any contributions to an employee's SEP-IRA in a given year. However, if you do make contributions, you must make them to the IRA's of all eligible employees, whether or not they are still employed at the time contributions are made. The contributions made must be the same percentage of each employee's total compensation (up to a maximum compensation base of \$200,000). The contributions you make in a calendar year for any one employee may not be more than the smaller of \$15,000 or 15% of that employee's total compensation (figured without considering the SEP-IRA contributions).

For this purpose, compensation includes:

- Amounts received for personal services actually performed (see regulations section 1.219-1(c)); and
- Earned income defined under section 401(c)(2).

In making contributions, you may not discriminate in favor of any employee who is an officer, a more than 10% shareholder, a self-employed individual, or highly compensated.

Under this form you may not integrate your SEP contributions with, or offset them by, contributions made under the Federal Insurance Contributions Act (FICA).

**How to Report Contributions**

You must include the amount you contribute to the SEP-IRA of an employee in the employee's gross income on Form W-2 for the calendar year for which the amount is contributed. Report the amount of the SEP contributions in the "Employer's use" box on Form W-2. For example, for an employee with annual compensation of \$22,000, which includes \$2,000 of SEP contributions, enter \$22,000 in the box on Form W-2 labeled "Wages, tips, and other compensation." In the "Employer's use" box, enter \$2,000-SEP to indicate the SEP contributions for the year.

You may choose to treat contributions made in the first 3½ months of a calendar year as made in the prior year, even though a Form W-2 was already issued for the prior year. To do so, you must complete an additional Form W-2 for the prior year and show the SEP contributions made in the first 3½ months of the following year. For example, if you treat \$150 of contributions made in the first 3½ months of a year as additional contributions for the prior year, you would issue a new Form W-2 showing \$150 of wages, tips, and other compensation and \$150-SEP in the "Employer's use" box.

Currently, employers who have established a SEP using this agreement and have provided each participant with a copy of this form, including the questions and answers, are not required to file the annual information returns, Forms 5500, 5500-C, 5500-K or 5500-R for the SEP.

**Deducting Contributions**

You may deduct all allowable contributions under section 404(h). If your tax year is the calendar year, you may take the employer deductions for that tax year, subject to the limits of section 404, for contributions made either during the year or by April 15 of the following year. If the tax year and calendar year do not coincide, you may only deduct contributions made for a calendar year for the tax year in which the calendar year ends. If you use a fiscal year, contributions for a calendar year must be made no later than 3½ months after the end of that calendar year.

**Making the Agreement**

This agreement is considered made when IRA's have been established for all of your eligible employees, you have completed all blanks on the agreement form without modification, and you have given all your eligible employees copies of the agreement form, instructions, and questions and answers.

Keep the agreement form with your records; do not file it with IRS.

## Information for the Employee

The information provided explains what a Simplified Employee Pension plan is, how contributions are made, and how to treat your employer's contributions for tax purposes.

Please read the questions and answers carefully. For more specific information, also see the agreement form and instructions to your employer on this form.

### QUESTIONS AND ANSWERS.—

**1. Q.** What is a Simplified Employee Pension, or SEP?

**A.** A SEP is a retirement income arrangement under which your employer may contribute any amount each year up to the smaller of \$15,000 or 15% of your compensation into your own Individual Retirement Account/Annuity (IRA) for calendar years starting after 12/31/81. For calendar years starting before 1/1/82 the dollar limit is \$7,500.

Your employer will provide you with a copy of the agreement containing participation requirements and a description of the basis upon which employer contributions may be made to your IRA.

All amounts contributed to your IRA by your employer belong to you, even after you separate from service with that employer.

**2. Q.** Must my employer contribute to my IRA under the SEP?

**A.** Whether or not your employer makes a contribution to the SEP is entirely within the employer's discretion. If a contribution is made under the SEP, it must be allocated to all the eligible employees according to the SEP agreement. The Model SEP specifies that the contribution on behalf of each eligible employee will be the same percentage of compensation (excluding compensation higher than \$200,000) for all employees.

**3. Q.** How much may my employer contribute to my SEP-IRA in any year?

**A.** Under the Model SEP (Form 5305-SEP) that your employer has adopted, your employer will determine the amount of contribution to be made to your IRA each year. However, the contribution for any year is limited to the smaller of \$15,000 or 15% of your compensation for that year. The compensation used to determine this limit does not include any amount which is contributed by your employer to your IRA under the SEP. The agreement does not require an employer to maintain a particular level of contributions. It is possible that for a given year no employer contribution will be made on an employee's behalf. **Also see Question 5.**

**4. Q.** How do I treat my employer's SEP contributions for my taxes?

**A.** The amount your employer contributes will be included in your gross income reported on Form W-2. The amount of the employer's SEP contribution will be shown in the "Employer's use" box on Form W-2. For example, an employee with annual compensation of \$22,000 which includes \$2,000 of SEP contributions, would receive a Form W-2 for the year showing \$22,000 of wages, tips, and other compensation. In the "Employer's use" box, "\$2,000-SEP" would be shown. You will be entitled to an offsetting deduction on your tax return for this amount. Because contributions for a particular calendar year may be made through April 15 following that calendar year, it is possible that your employer may make a contribution that is not reflected on your original W-2. In that case, your employer must provide you with an additional W-2 which includes the amount of that contribution.

**5. Q.** May I also contribute to my IRA if my employer has a SEP?

**A.** Yes, you may contribute an amount up to your normal IRA limitation.

**Also see Question 12.**

**6. Q.** Are there any restrictions on the IRA I select to deposit my SEP contributions in?

**A.** Under the Model SEP that is approved by IRS, contributions must be made to either a Model IRA which is executed on an IRS form or on a master or prototype IRA for which IRS has issued a favorable opinion letter. **Also see Question 7.**

**7. Q.** My spouse and I both have IRAs. Can my employer contribute the SEP contribution to my spouse's IRA?

**A.** Although there is no prohibition against this, it may result in adverse tax consequences. Your employer's entire contribution will be included in your income for that year, but all or part of the offsetting deduction may be disallowed. A transaction of this sort could result in complex tax consequences requiring professional advice.

**8. Q.** What if I don't want a SEP-IRA?

**A.** Your employer may require that you become a participant in such an arrangement as a condition of employment. However, if the employer does not require all eligible employees to become participants and an eligible employee elects not to participate, all other employees of the same employer are prohibited from entering into a SEP-IRA arrangement with that employer. If one or more eligible employees do not participate and the employer attempts to establish a SEP-IRA agreement with the remaining employees, the resulting arrangement will not result in any tax advantage and may in fact result in adverse tax consequences to the participating employees.

**9. Q.** Can I move funds from my SEP-IRA to another tax-sheltered IRA or retirement bond?

**A.** Yes; it is permissible for you to withdraw, or receive, funds from your SEP-IRA, and no more than 60 days later, place such funds in another IRA, SEP-IRA, or retirement bond. This is called a "rollover" and may not be done without penalty more frequently than at one-year intervals. However, there are no restrictions on the number of times you may make "transfers" if you arrange to have such funds transferred between the trustees, so that you never have possession.

**10. Q.** What happens if I withdraw my employer's contribution from my IRA?

**A.** If you don't want to leave the employer's contribution in your IRA, you may withdraw it at any time, but any amount withdrawn is includable in your income. Also, if withdrawals occur before attainment of age 59½, and not on account of death or disability, you may be subject to a penalty tax.

**11. Q.** May I participate in a SEP even though I'm covered by another plan?

**A.** An employer may not adopt this IRS Model SEP (Form 5305-SEP) if the employer maintains another qualified retirement plan or has ever maintained a qualified defined benefit plan. However, if you work for several employers, you may be covered by a SEP of one employer and a pension or profit-sharing plan of another employer.

**Also see Questions 12 and 13.**

**12. Q.** What happens if too much is contributed to my SEP-IRA in any one year?

**A.** Any contribution by you or by your employer that is more than the yearly deduction limitations may be withdrawn without penalty by the due date (plus extensions) for filing your tax return (normally April 15th). Excess contributions left in your SEP-IRA account after that time are subject to a 6%

excise tax. Withdrawals of those contributions may be taxed as premature withdrawals. **Also see Question 10.**

**13. Q.** What happens if I have two or more employers who maintain SEP's?

**A.** If you are employed by two or more employers who maintain SEP's, the amount that you can deduct will depend upon the compensation received from each employer. For example, if employer A maintains a SEP and your compensation from employer A is \$20,000, the maximum amount that you will be able to deduct is \$3,000 (15% × \$20,000) for contributions under employer A's SEP. If employer B maintains a SEP and your compensation from employer B is \$10,000, the maximum amount that you will be able to deduct is \$1,500 (15% × \$10,000) for contributions under employer B's SEP. Therefore, your total SEP deduction would be no greater than \$4,500.

**14. Q.** Do I need to file any additional forms with IRS because I participate in a SEP?

**A.** No.

**15. Q.** Is my employer required to provide me with information about SEP-IRAs and the SEP agreement?

**A.** Yes, your employer must provide you with a copy of the executed SEP agreement (Form 5305-SEP), these Questions and Answers, and provide a statement each year showing any contribution to your IRA. **Also see Question 4.**

**16. Q.** Is the financial institution where I establish my IRA also required to provide me with information?

**A.** Yes, it must provide you with a disclosure statement which contains the following items of information in plain, nontechnical language:

(1) the statutory requirements which relate to your IRA;

(2) the tax consequences which follow the exercise of various options and what those options are;

(3) participation eligibility rules, and rules on the deduction for retirement savings;

(4) the circumstances and procedures under which you may revoke your IRA, including the name, address, and telephone number of the person designated to receive notice of revocation (**this explanation must be prominently displayed at the beginning of the disclosure statement**);

(5) explanations of when penalties may be assessed against you because of specified prohibited or penalized activities concerning your IRA; and

(6) financial disclosure information which:

(a) either projects value growth rates of your IRA under various contribution and retirement schedules, or describes the method of computing and allocating annual earnings and charges which may be assessed;

(b) describes whether, and for what period, the growth projections for the plan are guaranteed, or a statement of the earnings rate and terms on which the projection is based;

(c) states the sales commission to be charged in each year expressed as a percentage of \$1,000; and

(d) states the proportional amount of any nondeductible life insurance which may be a feature of your IRA.

See Publication 590, Tax Information on Individual Retirement Arrangements, available at most IRS offices, for a more complete explanation of the disclosure requirements.

In addition to this disclosure statement, the financial institution is required to provide you with a financial statement each year. It may be necessary to retain and refer to statements for more than one year in order to evaluate the investment performance of the IRA.