

# Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement

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

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

## Article I—Eligibility Requirements (check applicable boxes—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 \_\_\_\_\_ years old (not to exceed 21 years old) 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—SEP Requirements (see instructions)

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

- A. Based only on the first \$200,000\* of compensation.
- B. The same percentage of compensation for every employee.
- C. Limited annually to the smaller of \$40,000\* or 25% of compensation.
- D. Paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract).

\_\_\_\_\_  
Employer'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 (Model 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).

**Do not** file 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, SIMPLE, and Qualified Plans), and **Pub. 590**, 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 employees' retirement income. Under a SEP, you can contribute to an employee's traditional individual retirement account or annuity (traditional IRA). You make contributions directly to an IRA set up by or for each employee with a bank, insurance company, or other qualified financial institution. When using Form 5305-SEP to establish a SEP, the IRA must be a Model traditional IRA established on an IRS form or a master or prototype traditional IRA for which the IRS has issued a favorable opinion letter. You may **not** make SEP contributions to a Roth IRA or a SIMPLE IRA. Making the agreement on Form 5305-SEP does not establish an employer IRA described in section 408(c).

**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 employees for whom IRAs have not been established.
3. Use the services of leased employees (described in section 414(n)).
4. Are a member of an affiliated service group (described in section 414(m)), a controlled group of corporations (described in section 414(b)), or trades or businesses under common control (described in sections 414(c) and 414(o)), unless all eligible employees of all the members of such groups, trades, 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. Use Form 5305A-SEP, or a nonmodel SEP.

**Note:** SEPs permitting elective deferrals cannot be established after 1996.

**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 "service" for you in at least 3 of the immediately preceding 5 years. You can establish less restrictive eligibility requirements, but not more restrictive ones.

Service is any work performed for you for any period of time, however short. 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.

**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 their union, **(2)** nonresident alien employees who did not earn U.S. source income from you, and **(3)** employees who received less than \$450\* in compensation during the year.

**Contribution limits.** You may make an annual contribution of up to 25% of the employee's compensation or \$40,000\*, whichever is less. Compensation, for this purpose, does not include employer contributions to the SEP or the employee's compensation in excess of \$200,000\*. If you also maintain a salary reduction SEP, contributions to the two SEPs together may not exceed the smaller of \$40,000\* or 25% of compensation for any employee.

You are not required to make contributions every year, but when you do, you must contribute to the SEP-IRAs of all eligible employees who actually performed services during the year of the contribution. This includes eligible employees who die or quit working before the contribution is made.

Contributions cannot discriminate in favor of highly compensated employees. Also, you may not integrate your SEP contributions with, or offset them by, contributions made under the Federal Insurance Contributions Act (FICA).

If this SEP is intended to meet the top-heavy minimum contribution rules 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 IRAs established on behalf of those employees.

**Deducting contributions.** You may deduct contributions to a SEP subject to the limits of section 404(h). This SEP is maintained on a calendar year basis and contributions to the SEP are deductible for your tax year with or

\* For 2003 and later years, this amount is subject to annual cost-of-living adjustments. The IRS announces the increase, if any, in a news release, in the Internal Revenue Bulletin, and on the IRS Web Site at [www.irs.gov](http://www.irs.gov).