



# SEPs and SIMPLE IRAs: Anything But Simple

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# Agenda



- ▶ SEPs
- ▶ SIMPLE IRA Basics
- ▶ SIMPLE IRA Eligibility
- ▶ SIMPLE IRA Contributions
- ▶ SIMPLE IRA Conversions
- ▶ SEP and SIMPLE IRA Correction
- ▶ Super Catch-ups



# Simplified Employee Pensions (SEPs)

408(k)

# Requirements for a SEP



- ▶ Held in IRA
  - ▶ Employees are automatically 100% vested
- ▶ Participation requirements
- ▶ Contribution requirements
  - ▶ Used to allow elective deferrals (SARSEP): No new SARSEPs after 1996
- ▶ Employees can withdraw their money without employer limitations
- ▶ Satisfy top-heavy if applicable
- ▶ Conforming plan document
  - ▶ 5305-SEP
  - ▶ Written allocation formula

# Participation requirements



- ▶ Employer must contribute on behalf of every employee who
  - ▶ Has attained age 21
  - ▶ Has performed service 3 of the last 5 years
  - ▶ Received at least \$750 total comp in year (goes up with inflation)
- ▶ Exclude
  - ▶ Union employees
  - ▶ Nonresident aliens without US source income

# Employer/employee



- ▶ Employee includes self-employed individuals
  - ▶ Sole proprietors
  - ▶ Partners
- ▶ Employee includes leased employees
- ▶ Employer
  - ▶ Includes controlled group, common control, affiliated service group
- ▶ Example: Sole prop MD with no employees sponsors SEP
  - ▶ Sole prop is in ASG with medical partnership
  - ▶ SEP must cover all employees in the partnership

# 5305 SEP: Participation



Form **5305-SEP**

(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. 1545-0499

**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 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\*.

# Enforcing the CG/ASG rules



► 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.



# What happens if you have a SEP that doesn't include CG/ASG employees?



- ▶ If you are using 5305-SEP it is a document failure
- ▶ If you are using a prototype SEP, the document almost surely requires you to cover them
  - ▶ You have an operational failure
- ▶ This can be expensive!
- ▶ This is a good time to consult ERISA counsel

# Contribution requirements



- ▶ Contributions must be nondiscriminatory
- ▶ Contributions must be pro rata based on compensation
  - ▶ Can have integrated plan on prototype
- ▶ Subject to 415 contribution limits
  - ▶ Aggregate with other plans employer maintains
- ▶ Can't exceed 25% of compensation of all participants
  - ▶ Deduction limit
  - ▶ Subject to 10% penalty tax on nondeductible contributions
- ▶ Compensation definition
  - ▶ Must be nondiscriminatory (414(s))
  - ▶ Cannot exceed compensation limit (401(a)(17) – currently \$350,000)

# Form 5305-SEP: Contributions



## **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 \$205,000\* of compensation.
  - B.** The same percentage of compensation for every employee.
  - C.** Limited annually to the smaller of \$41,000\* or 25% of compensation.
  - D.** Paid to the employee's IRA trustee, custodian, or insurance company (for an annuity contract).
- 

► **Note:** You cannot aggregate a SEP with a qualified plan to show that the qualified plan is nondiscriminatory

# New option: Roth: Notice 2024-2 § K



- ▶ Can allow employee to elect that SEP-IRA will be a Roth IRA
  - ▶ You don't have to allow it
- ▶ If you offer Roth, must give employees effective opportunity to elect Roth IRA
  - ▶ Election must be made before contribution is made
  - ▶ Must be affirmative election
- ▶ Taxable in year contribution made to IRA
  - ▶ Even if Employer deducts contribution in earlier year
- ▶ Can use in existing 5305-SEP

# Notice requirements

- You have given all your eligible employees the following information:

1. A copy of Form 5305-SEP.
2. 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.
3. 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.
4. 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 SEP using Form 5305-SEP and have furnished each eligible employee with a copy of the completed Form 5305-SEP and provided the other documents and disclosures described in *Instructions to the Employer and Information 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 regulation at 29 CFR 2520.104-48.





# SIMPLE IRAS

Savings

IRA: Code 408(p)

Incentive

401(k): Code 401(k)(11)

Match

PLan for

Employees

# Calendar year plan



- ▶ Always must be calendar year plan
- ▶ Must be in place for full year
  - ▶ 2 exceptions
    - ▶ Can set up new SIMPLE IRA as late as October 1
    - ▶ Can convert midyear to safe harbor 401(k)





# SIMPLE IRA Basics and Eligibility



# Two types of SIMPLE IRA Plans



## ►IRA:

- No 5500
- Most all employees are eligible

## ►401(k)

- Must file 5500
- Plan trust
- Normal ERISA fiduciary rules apply
- Can exclude participants if you can pass coverage

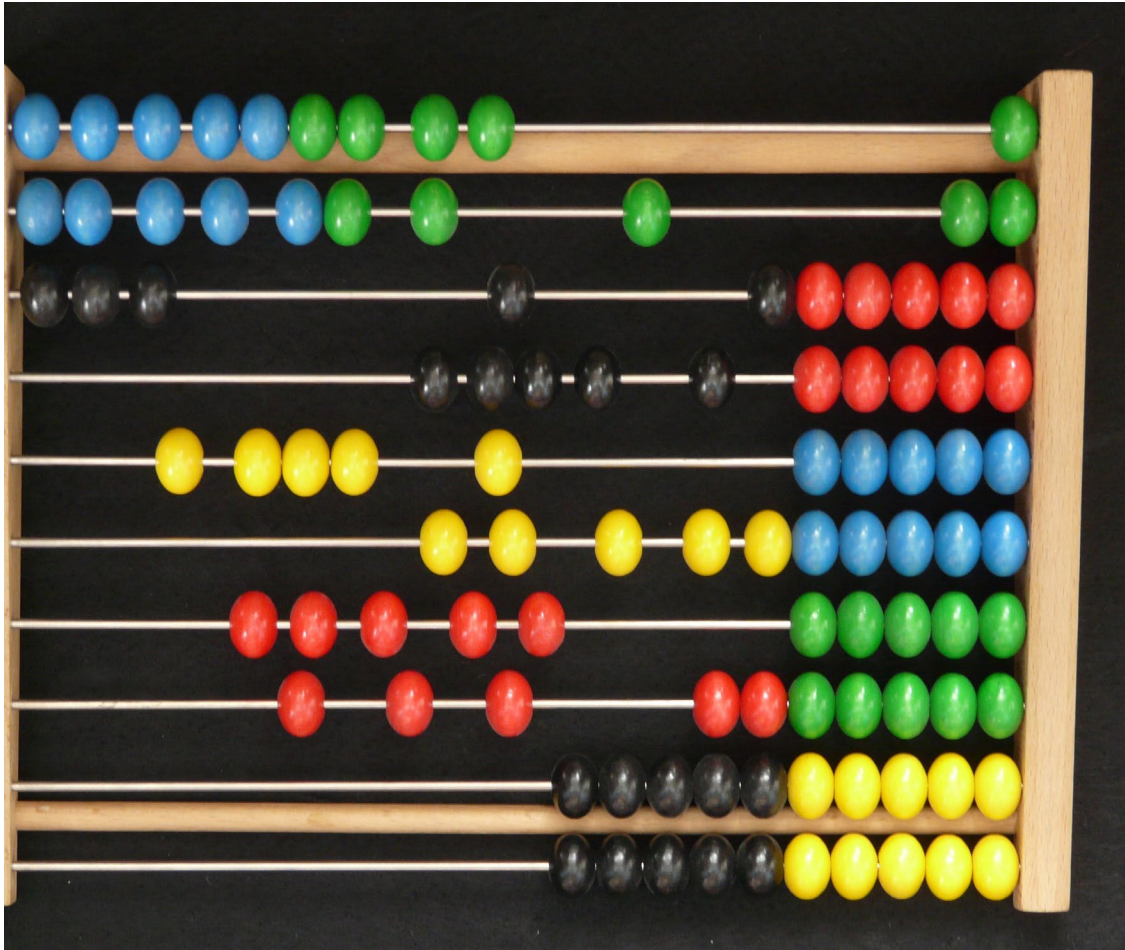
## ►Both are limited to “eligible employers”

# 408(p)(2)(C)(i) Eligible Employer



- ▶ **(I) In general.** The term "eligible employer" means, with respect to any year, an employer which had no more than 100 employees who received at least \$5,000 of compensation from the employer for the preceding year.
- ▶ **(II) 2-year grace period.** An eligible employer who establishes and maintains a plan under this subsection for 1 or more years and who fails to be an eligible employer for any subsequent year shall be treated as an eligible employer for the 2 years following the last year the employer was an eligible employer.
  - ▶ If such failure is due to any acquisition, disposition, or similar transaction involving an eligible employer, the preceding sentence shall not apply.

# Guidance: Notice 98-4 §B



- ▶ Count employees of all related employers
  - ▶ Controlled group, ASG, etc.
- ▶ Count all employees, including union and nonresident alien, whether or not they meet eligibility requirements
  - ▶ Count them if they were employed at any time during the year
  - ▶ Include leased employees under Code §414(n)
- ▶ Count self-employed individuals (partners, sole proprietors)
  - ▶ Compensation is earned income

# Example of grace period



- ▶ Employer established plan in 2023
- ▶ 95 employees who earned at least \$5,000 in 2022:
  - ▶ Eligible employer for 2023
- ▶ Increases to 105 employees in 2023
  - ▶ Is eligible employer for 2024 because of grace period
- ▶ Employer is acquired by large company in 2024
  - ▶ Total employees > 500
  - ▶ Grace period does not apply to 2025; not eligible employer

# Only plan rule



- ▶ A SIMPLE IRA must be the only plan the employer (or any related employer or predecessor employer) sponsors for the year
  - ▶ Exception: plan limited to union employees who don't participate in the SIMPLE IRA
- ▶ SIMPLE IRA 401(k) plans have a somewhat similar requirement
  - ▶ No contributions can be made or benefits accrued for the year under a plan of the employer (including related employers) for any employee included in the SIMPLE IRA 401(k).
    - ▶ However, forfeitures can be allocated without running afoul of this requirement
- ▶ Note: This rule impacts the validity of the SIMPLE IRA, not the “other plan”

# Coverage transition rule



- ▶ If there is a merger or acquisition described in Code §410(b)(6)(C) and
  - ▶ No other change in coverage or benefits
  - ▶ And plan otherwise complies with SIMPLE IRA rules
- ▶ Then for current year and the following two years:
  - ▶ Plan satisfies 100 employee requirement
  - ▶ Plan can be limited to employees of original employer
  - ▶ Plan can satisfy “only plan rule” even if other company has plan



# SIMPLE IRA Eligibility



- ▶ In a SIMPLE IRA an employee must be eligible to defer and to receive the employer contribution if the employee:
  - ▶ Has ever received at least \$5,000 compensation from the employer in any two prior years and
  - ▶ Is reasonably expected to receive at least that much in the current year
- ▶ The plan can exclude union employees and nonresident aliens
- ▶ All employees of related employers are eligible if they meet these eligibility conditions.
- ▶ This requirement does not apply to a SIMPLE IRA 401(k), which is subject to the normal coverage rules which apply to all qualified plans.

# 5305-SIMPLE IRA



Form **5305-SIMPLE**

(Rev. March 2012)

Department of the Treasury  
Internal Revenue Service

## Savings Incentive Match Plan for Employees of Small Employers (SIMPLE)— for Use With a Designated Financial Institution

OMB No. 1545-1502

**Do not file**  
with the Internal  
Revenue Service

\_\_\_\_\_ establishes the following SIMPLE

\_\_\_\_\_  
Name of Employer

IRA plan under section 408(p) of the Internal Revenue Code and pursuant to the instructions contained in this form.

### **Article I—Employee Eligibility Requirements** *(complete applicable box(es) and blanks—see instructions)*

- 1 General Eligibility Requirements.** The Employer agrees to permit salary reduction contributions to be made in each calendar year to the SIMPLE individual retirement account or annuity established at the designated financial institution (SIMPLE IRA) for each employee who meets the following requirements (select either 1a or 1b):

**a** ☐ **Full Eligibility.** All employees are eligible.

**b** ☐ **Limited Eligibility.** Eligibility is limited to employees who are described in both (i) and (ii) below:

**(i) Current compensation.** Employees who are reasonably expected to receive at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) for calendar year.

**(ii) Prior compensation.** Employees who have received at least \$ \_\_\_\_\_ in compensation (not to exceed \$5,000) during any \_\_\_\_\_ calendar year(s) (insert 0, 1, or 2) preceding the calendar year.

**2 Excludable Employees**

- ☐ The Employer elects to exclude employees covered under a collective bargaining agreement for which retirement benefits were the subject of good faith bargaining. **Note:** *This box is deemed checked if the Employer maintains a qualified plan covering only such employees.*



# Also available: Form 5304-Simple



## ► Difference between forms:

- Use 5305-SIMPLE IRA when the employer designates the financial institution to receive the funds
  - With the 5305 you must tell participants they can move their money to a different institution
- Use 5304-SIMPLE IRA when the employer does not designate the institution



# SIMPLE IRA Contributions

# Contributions



- ▶ Elective deferrals
  - ▶ Mandatory employee contribution
  - ▶ Optional nonelective contribution
  - ▶ No other contributions allowed
- 
- ▶ Guaranteed nondiscriminatory
  - ▶ Guaranteed not top-heavy

# SIMPLE IRA Deferrals



- ▶ Employees can make elective deferrals to SIMPLE IRA
- ▶ Lower limits than for 401(k)
  - ▶ Normal limit: \$16,500
  - ▶ Normal catch-up: \$3,500
- ▶ Note: SIMPLE IRA 401(k) is exempt from mandatory automatic enrollment
- ▶ Can be automatic enrollment

# Extra deferrals



- ▶ Starting in 2024, can authorize 10% higher contributions
  - ▶ With extra: \$18,150 + \$3,850 catch-up
- ▶ Automatically available if no more than 25 employees last year
  - ▶ Otherwise, cost extra employer contribution
- ▶ Must tell employees about higher deferral potential in annual notice

# Limitation on extra deferrals



- ▶ An employer, regardless of size, can offer the 10% extra deferrals only if during the three years prior to the year the employer established the SIMPLE IRA, neither the employer nor a related employer nor a predecessor of either, established or maintained a qualified plan or a 403(b) plan covering essentially the same employees.

# Salary reduction agreement requirements



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## Article II—Salary Reduction Agreements *(complete the box and blank, if applicable—see instructions)*

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- 1 Salary Reduction Election.** An eligible employee may make an election to have his or her compensation for each pay period reduced. The total amount of the reduction in the employee's compensation for a calendar year cannot exceed the applicable amount for that year. See instructions.
  - 2 Timing of Salary Reduction Elections**
    - a** For a calendar year, an eligible employee may make or modify a salary reduction election during the 60-day period immediately preceding January 1 of that year. However, for the year in which the employee becomes eligible to make salary reduction contributions, the period during which the employee may make or modify the election is a 60-day period that includes either the date the employee becomes eligible or the day before.
    - b** In addition to the election periods in 2a, eligible employees may make salary reduction elections or modify prior elections . If the Employer chooses this option, insert a period or periods (e.g., semi-annually, quarterly, monthly, or daily) that will apply uniformly to all eligible employees.
    - c** No salary reduction election may apply to compensation that an employee received, or had a right to immediately receive, before execution of the salary reduction election.
    - d** An employee may terminate a salary reduction election at any time during the calendar year. ☐ If this box is checked, an employee who terminates a salary reduction election not in accordance with 2b may not resume salary reduction contributions during the calendar year.
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# 5305-SIMPLE IRA: Model Salary Reduction Agreement



## Model Salary Reduction Agreement

### I. Salary Reduction Election

Subject to the requirements of the SIMPLE IRA plan of \_\_\_\_\_ (name of employer) I authorize \_\_\_\_\_ % or \$ \_\_\_\_\_ (which equals \_\_\_\_\_ % of my current rate of pay) to be withheld from my pay for each pay period and contributed to my SIMPLE IRA as a salary reduction contribution.

### II. Maximum Salary Reduction

I understand that the total amount of my salary reduction contributions in any calendar year cannot exceed the applicable amount for that year. See instructions.

### III. Date Salary Reduction Begins

I understand that my salary reduction contributions will start as soon as permitted under the SIMPLE IRA plan and as soon as administratively feasible or, if later, \_\_\_\_\_. (Fill in the date you want the salary reduction contributions to begin. The date must be after you sign this agreement.)

### IV. Duration of Election

This salary reduction agreement replaces any earlier agreement and will remain in effect as long as I remain an eligible employee under the SIMPLE IRA plan or until I provide my Employer with a request to end my salary reduction contributions or provide a new salary reduction agreement as permitted under this SIMPLE IRA plan.

Signature of employee \_\_\_\_\_

Date \_\_\_\_\_



# Mandatory employer contributions



- ▶ Fully vested
- ▶ Choice
  - ▶ 2% nonelective
  - ▶ 100% of deferrals up to 3% of compensation
    - ▶ Simple IRA option: Can reduce match to lower % (1% - 3%) twice in 5 year period
    - ▶ SIMPLE IRA only: Comp not limited by 401(a)(17) for match
- ▶ Indicate your choice in annual participant notice
  - ▶ Not in plan document
  - ▶ Can change from year to year

# Higher deferrals, more than 25 employees



- ▶ If the employer elects to use 10% higher deferral limits and
- ▶ The employer had more than 25 employees prior year
  - ▶ Grace period applies
- ▶ Choice of employer contributions:
  - ▶ 3% nonelective
  - ▶ 100% of deferrals up to 4% of compensation
    - ▶ Simple IRA option: Can reduce match to lower % (1% - 4%) twice in 5 year period
- ▶ Specify contributions and deferral limits in annual participant notice

# Qualified student loan matching contributions



- ▶ SIMPLE IRA can treat qualified student loan payments as though they were deferrals for purposes of computing the matching contribution.
  - ▶ Up to SIMPLE IRA deferral limit

# Optional nonelective contributions



- ▶ Discretionary, fully vested
- ▶ Goes to all who earn at least \$5,000 (indexed for inflation)
- ▶ Allocate pro rata by compensation (up to 10% of comp)
- ▶ Amount cannot exceed \$5,000 per participant
- ▶ Example:
  - ▶ Boss compensation = \$200,000
  - ▶ Max nonelective for Boss = 2.5% of compensation
  - ▶ Can give 2.5% nonelective to all participants

# Contribution deadlines



- ▶ Elective deferrals:
  - ▶ Must be contributed no later than 30 days after month of deferral
  - ▶ Example: All April deferrals must be deposited by May 30
  - ▶ DOL ASAP timing rules also apply to ERISA plans
- ▶ Mandatory employer contribution:
  - ▶ Extended due date of tax return

# 5305-SIMPLE IRA: Contributions



- 1 Salary Reduction Contributions.** The amount by which the employee agrees to reduce his or her compensation will be contributed by the Employer to the employee's SIMPLE IRA.
- 2 a Matching Contributions**
  - (i) For each calendar year, the Employer will contribute a matching contribution to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contributions up to a limit of 3% of the employee's compensation for the calendar year.
  - (ii) The Employer may reduce the 3% limit for the calendar year in (i) only if:
    - (1) The limit is not reduced below 1%;
    - (2) The limit is not reduced for more than 2 calendar years during the 5-year period ending with the calendar year the reduction is effective; and
    - (3) Each employee is notified of the reduced limit within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- b Nonelective Contributions**
  - (i) For any calendar year, instead of making matching contributions, the Employer may make nonelective contributions equal to 2% of compensation for the calendar year to the SIMPLE IRA of each eligible employee who has at least \$  (not more than \$5,000) in compensation for the calendar year. No more than \$250,000\* in compensation can be taken into account in determining the nonelective contribution for each eligible employee.
  - (ii) For any calendar year, the Employer may make 2% nonelective contributions instead of matching contributions only if:
    - (1) Each eligible employee is notified that a 2% nonelective contribution will be made instead of a matching contribution; and
    - (2) This notification is provided within a reasonable period of time before the employees' 60-day election period for the calendar year (described in Article II, item 2a).
- 3 Time and Manner of Contributions**
  - a The Employer will make the salary reduction contributions (described in 1 above) to the designated financial institution for the IRAs established under this SIMPLE IRA plan no later than 30 days after the end of the month in which the money is withheld from the employee's pay. See instructions.
  - b The Employer will make the matching or nonelective contributions (described in 2a and 2b above) to the designated financial institution for the IRAs established under this SIMPLE IRA plan no later than the due date for filing the Employer's tax return, including extensions, for the taxable year that includes the last day of the calendar year for which the contributions are made.

# New option: Roth: Notice 2024-2 § K



- ▶ Can allow employee to elect that SIMPLE IRA-IRA will be a Roth IRA
  - ▶ You don't have to allow it
- ▶ If you offer Roth, must give employees effective opportunity to elect Roth IRA
  - ▶ Same time frames as deferral election
  - ▶ Election must be made before contribution is made
  - ▶ Must be affirmative election
- ▶ Taxable in year contribution made to IRA
  - ▶ Even if Employer deducts contribution in earlier year
- ▶ Can use in existing 5305-SIMPLE IRA

# Maximum SIMPLE IRA Contribution

## Compare with 401(k) with SHNEC



- ▶ Assumes compensation is \$250,000
- ▶ Under 26 employees
- ▶ Participant is age 60

Category	Regular SIMPLE	10% extra allowed	401(k)
Deferral	\$16,500	\$18,150	\$23,500
Catch-up	\$5,250	\$5,775	\$11,250
Match/SHNEC	\$7,500	\$7,500	\$7,500
Optional nonelective	\$5,000	\$5,000	\$39,000
<b>Total</b>	<b>\$34,250</b>	<b>\$36,425</b>	<b>\$81,250</b>



# SIMPLE IRA Distributions



- ▶ It's an IRA
  - ▶ So, people can take distributions when they choose
- ▶ Can do Trustee to Trustee transfer to another SIMPLE IRA
- ▶ During first two years of participation in SIMPLE IRA
  - ▶ Can roll to or from another SIMPLE IRA
  - ▶ Can roll to 401(k)/403(b) subject to distribution restrictions that apply to deferrals
- ▶ After two years you have all normal rollover options

# Early distribution penalty



- ▶ With many exceptions, if you take a distribution from a plan or an IRA within before 59 ½, you must pay a 10% penalty tax
- ▶ With a SIMPLE IRA, the penalty is 25% if you take the distribution in the first two years.
  - ▶ Two-year clock starts on day first contribution is deposited in the SIMPLE IRA for the participant

# 5305-SIMPLE IRA: Conclusion



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## Article V—Definitions

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### 1 Compensation

- a General Definition of Compensation.** Compensation means the sum of wages, tips, and other compensation from the Employer subject to federal income tax withholding (as described in section 6051(a)(3)), the amounts paid for domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, and the employee's salary reduction contributions made under this plan, and, if applicable, elective deferrals under a section 401(k) plan, a SARSEP, or a section 403(b) annuity contract and compensation deferred under a section 457 plan required to be reported by the Employer on Form W-2 (as described in section 6051(a)(8)).
- b Compensation for Self-Employed Individuals.** For self-employed individuals, compensation means the net earnings from self-employment determined under section 1402(a), without regard to section 1402(c)(6), prior to subtracting any contributions made pursuant to this plan on behalf of the individual.
- 2 Employee.** Employee means a common-law employee of the Employer. The term employee also includes a self-employed individual and a leased employee described in section 414(n) but does not include a nonresident alien who received no earned income from the Employer that constitutes income from sources within the United States.
- 3 Eligible Employee.** An eligible employee means an employee who satisfies the conditions in Article I, item 1 and is not excluded under Article I, item 2.
- 4 Designated Financial Institution.** A designated financial institution is a trustee, custodian, or insurance company (that issues annuity contracts) for the SIMPLE IRA plan that receives all contributions made pursuant to the SIMPLE IRA plan and deposits those contributions to the SIMPLE IRA of each eligible employee.

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**Article VI—Procedures for Withdrawals and Transfers** *(The designated financial institution will provide the instructions (to be attached or inserted in the space below) on the procedures for withdrawals of contributions by employees.)*

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## Article VII—Effective Date

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This SIMPLE IRA plan is effective  . See instructions.

# Annual notice requirement



- ▶ Must give a notice to participants every year
  - ▶ Tell them what mandatory contribution the employer will make
    - ▶ If employer is allowing 10% extra deferrals, state deferral limit and adjusted employer contribution (if applicable)
  - ▶ Tell them how to make or change deferral election
  - ▶ Provide summary description of plan
    - ▶ 5304/5305: Copy of first two pages of form can be summary description
- ▶ Deadline: November 1
- ▶ Penalty \$50/day unless reasonable cause

# 5305-SIMPLE IRA: Model Notice



## Model Notification to Eligible Employees

### I. Opportunity to Participate in the SIMPLE IRA Plan

You are eligible to make salary reduction contributions to the \_\_\_\_\_ SIMPLE IRA plan. This notice and the attached summary description provide you with information that you should consider before you decide whether to start, continue, or change your salary reduction agreement.

### II. Employer Contribution Election

For the \_\_\_\_\_ calendar year, the Employer elects to contribute to your SIMPLE IRA (*employer must select either (1), (2), or (3)*):

- ☐ (1) A matching contribution equal to your salary reduction contributions up to a limit of 3% of your compensation for the year;
- ☐ (2) A matching contribution equal to your salary reduction contributions up to a limit of \_\_\_\_\_ % (*employer must insert a number from 1 to 3 and is subject to certain restrictions*) of your compensation for the year; or
- ☐ (3) A nonelective contribution equal to 2% of your compensation for the year (limited to compensation of \$250,000\*) if you are an employee who makes at least \$ \_\_\_\_\_ (*employer must insert an amount that is \$5,000 or less*) in compensation for the year.

### III. Administrative Procedures

To start or change your salary reduction contributions, you must complete the salary reduction agreement and return it to \_\_\_\_\_ (*employer should designate a place or individual*) by \_\_\_\_\_ (*employer should insert a date that is not less than 60 days after notice is given*).

# SIMPLE IRA Termination: IRS Website



- ▶ How do I terminate my SIMPLE IRA plan?
  - ▶ Step 1: Notify your employees within a reasonable time before November 2 that you'll discontinue the SIMPLE IRA plan effective the following January 1.
  - ▶ Step 2: Notify your SIMPLE IRA plan's financial institution and payroll provider that you won't be making SIMPLE IRA contributions for the next calendar year and that you want to terminate your contributions.
  - ▶ Step 3: You should keep records of your actions, but you don't need to notify the IRS that you have terminated the SIMPLE IRA plan.
  - ▶ Example: Acme Company decided on November 18, 2014, to terminate its SIMPLE IRA plan as soon as possible. The earliest effective date for the termination is January 1, 2016. Acme must notify its employees before November 2, 2015, that it won't sponsor a SIMPLE IRA plan for 2016.
- ▶ Can I terminate or amend my SIMPLE IRA plan in the middle of the year?
  - ▶ No, you cannot end your plan in the middle of the calendar year. Once started, you must continue your SIMPLE IRA plan for the entire calendar year, funding all contributions promised in the employee notice.
    - ▶ Except now you can if you convert to a safe harbor 401(k) plan





# MIDYEAR SIMPLE IRA TO 401(K) CONVERSION

Notice 2024-2, § G



# SECURE 2.0 Relief



- ▶ SECURE 2.0 allows SIMPLE IRAs to convert to certain 401(k) plans midyear
  - ▶ No other midyear termination possible
  - ▶ Other than the 401(k) plan, “only plan” rule applies for the entire calendar year
    - ▶ So, you can set up a 401(k) but you can’t set up a cash balance plan until the following year
- ▶ Cannot covert:
  - ▶ From SIMPLE IRA to 403(b)
  - ▶ From SIMPLE IRA 401(k) to safe harbor 401(k)

# What 401(k) plans can be used as replacement plans?



- ▶ Classic safe harbor 401(k)
  - ▶ Safe harbor nonelective or
  - ▶ Safe harbor match
- ▶ QACA (nonelective or match)
- ▶ SIMPLE IRA 401(k)????
- ▶ Starter 401(k)????

# Procedural steps



- ▶ The employer takes "formal written action" to terminate the SIMPLE IRA, specifying a termination date
  - ▶ Naturally, the employer should notify the financial institution and its payroll provider
- ▶ At least 30 days before the termination date, the employer must notify the SIMPLE IRA participants that no further salary deferrals will be made to the SIMPLE IRA after termination
  - ▶ The notice must also explain that employees will receive the appropriate SIMPLE IRA employer contributions through the date of termination.
- ▶ The employer must establish a safe harbor 401(k) plan (the "replacement plan"). As to deferrals and safe harbor contributions, the replacement plan must be effective the day after the termination date of the SIMPLE IRA
- ▶ The employer must provide the appropriate safe harbor or other notice for the replacement 401(k) plan
  - ▶ This would presumably be provided at the same time as the termination notice for the SIMPLE IRA
  - ▶ The notice must explain the deferral limit for the replacement plan.

# FAQs on replacement plans



- ▶ Effective date for deferrals in replacement plan must be day after termination of SIMPLE IRA
- ▶ Effective date of plan itself could be January 1
  - ▶ So you don't have to pro rate limits
- ▶ Nothing prevents you from making additional employer contributions to replacement plan
  - ▶ Example: Cross-tested profit-sharing contribution
- ▶ New safe harbor plan must be in existence for at least 3 months

# 401(k) deferral limit



- ▶ Adjusted: prorate based on days
  - ▶  $(\text{SIMPLE IRA LIMIT} \times \text{SIMPLE IRA DAYS}) / 365 +$
  - ▶  $(\text{401(k) LIMIT} \times \text{401(k) DAYS}) / 365 -$
  - ▶ SIMPLE IRA DEFERRALS

# Example



- ▶ In 2024, the SIMPLE IRA deferral limit for a catch-up eligible participant is \$19,500.
- ▶ The limit for a safe harbor 401(k) plan is \$30,500.
- ▶ An employer terminates its SIMPLE IRA May 31, 2024, and establishes a new safe harbor 401(k) plan with the deferral portion of the plan effective June 1, 2024.
- ▶ Sam is catch-up eligible and had deferred the full \$19,500 into the SIMPLE IRA.
- ▶ Sarah is also catch-up eligible and had not made any deferrals to the SIMPLE IRA.
- ▶ Sam can defer \$6,502.74  $[(\$19,500 \times 152)/365 + (\$30,500 \times 214)/365 - \$19,500]$  to the safe harbor 401(k) plan for 2024
- ▶ Sarah can defer \$26,002.74.

# What about the 415 limit



► IRS hasn't discussed. Three approaches possible:

1. At its most conservative, one would prorate the 415 limit between the two plans.
  - Code §415 does not apply to SIMPLE IRA arrangements, so it is difficult to determine what that limit would be.
  - Nothing in the law suggests this is called for.
2. Include the SIMPLE IRA contributions as annual additions in calculating the 415 limit for the 401(k) plan.
3. The most generous possibility is that the SIMPLE IRA is completely disregarded in computing the 415 limit.
  - The rationale for this position is that SIMPLE IRAs are not themselves subject to 415 and are not discussed explicitly within the 415 regulations.





# SEP AND SIMPLE IRA CORRECTIONS

# Now can self-correct many failures



- ▶ Before SECURE 2.0, SEP and SIMPLE IRA sponsors had to use VCP to correct any failures other than insignificant operational failures
- ▶ That changed with SECURE 2.0 § 305 and Notice 2023-43
- ▶ Now most SEP and SIMPLE IRA failures can be self-corrected

# What cannot be self-corrected



- ▶ A failure that involves excess contributions to a SEP or SIMPLE IRA plan and that is corrected by permitting the excess contributions to remain in an affected participant's IRA
- ▶ A failure in a SEP or SIMPLE IRA that occurs in a plan without an IRS approved document:
  - ▶ 5304, 5305 Series
  - ▶ IRS approved prototype



# SUPER CATCH-UPS AND SIMPLE IRAS

# SECURE 2.0 allows super catch-ups



- ▶ 150% of normal catch-up contributions
- ▶ Only available in calendar year participant turns
  - ▶ 60
  - ▶ 61
  - ▶ 62
  - ▶ 63
- ▶ 2025: 401(k) regular catch-up: \$7,500
- ▶ 2025: 401(k) super catch-up \$11,250

## Also applies to SIMPLE IRAs and 401(k)s



- ▶ Regular catch-up \$3,500
- ▶ Regular 10% extra catch-up \$3,850
- ▶ Super catch-up \$5,250
- ▶ Super extra catch-up \$5,775

# Thank you!



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    - ▶ 457 Plan eSource
    - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)