

Form **5306-A**

# Application for Approval of Prototype Simplified Employee Pension (SEP) or Savings Incentive Match Plan for Employees of Small Employers (SIMPLE IRA Plan)

(Rev. August 2010)

OMB No. 1545-0199

Department of the Treasury  
Internal Revenue Service

**Deleted "S"** (Under **Section 408(k) or (p)** of the Internal Revenue Code)

**For IRS Use Only**

1 Enter amount of user fee submitted (see **Specific Instructions**) ▶ \$

**Part I Identifying Information** (see instructions before completing this part)

**File folder number**

2 Approval requested for:

a Type of plan—

(1)  Prototype simplified employee pension (SEP) under section 408(k)

(2)  Prototype savings incentive match plan for employees of small employers (SIMPLE IRA plan) under section 408(p)

b  Initial application

c  Amendment—Enter ▶

(1) Latest letter serial number

(2) Date letter issued

(3) File folder number

3 If the SEP contains elective deferral provisions, check this box

4a Name of applicant

4b Applicant's employer identification number

Number, street, and room or suite no. (If a P.O. box, see instructions on page 3.)

City or town, state, and ZIP code

5a Name of person to be contacted

5b Telephone number

5c **Email address**

5d If a power of attorney is attached, check box

6 Type of submission (check one box): a  Not a mass submitter b  Mass submitter

c  Identical adoption of a mass submitter d  Minor modification of a mass submitter

7a If 6c or 6d is checked, enter the mass submitter's name

b File folder number of the mass submitter's SEP or SIMPLE IRA plan on which this submission is based:

8 Type of sponsoring organization:

a  Insurance company

b  Trade or professional organization

c  Savings and loan association that qualifies as a bank

d  Bank

e  Regulated investment company

f  Federally insured credit union

g  Approved non-bank trustee (attach copy of approval letter)

**Part II SEP Information**

Attach a copy of the SEP documents and indicate the article or section and the page number where the following provisions appear. If any item does not apply, write "N/A." Sample language, or a listing of required modifications (LRMs), is available on the IRS website at [www.irs.gov](http://www.irs.gov). Type "LRM" in the search box. Sponsors are encouraged to use LRM language.

Plan Article or Section Reference	Plan Page Number	For IRS Use Only
		1
		2
		3
		5
		6
		7

9a Does the SEP cover all employees who have attained age 21, performed service for the employer in 3 of the immediately preceding 5 years, and received at least \$550\* in compensation from the employer for the year, other than employees who may be excluded under section 410(b)(3)(A) or (C)?

b Does the SEP provide that all eligible employees will share in an allocation?

c Does the SEP contain a definite allocation formula that does not discriminate in favor of highly compensated employees?

d Does the SEP require that it be used only with pre-approved traditional IRAs?

e Does the SEP prohibit restrictions on withdrawals (other than restrictions permitted under section 408(d)(7)(A) in the case of a salary reduction SEP)?

f Does the SEP define "compensation" in a manner that satisfies one of the safe harbor definitions under section 414(s) and limit compensation under section 408(k)(3)(C)?

\* This is the amount for 2010. The amount may be increased in future years for cost-of-living adjustments.

**Please Sign Here**

Under penalties of perjury, I declare that I have examined this application, including accompanying statements, and to the best of my knowledge and belief, it is true, correct, and complete.

Signature of officer

Date

Title

For Paperwork Reduction Act Notice, see the instructions.

Cat. No. 32621R

Form **5306-A** (Rev. 8-2010)

Deleted "in" and "under" Search IRS Site for, then click on "Listing of Required Modifications (LRMs)." **IRS.gov**

**Part III SIMPLE IRA Plan Information**

Attach a copy of the SIMPLE IRA plan documents and indicate the article or section and the page number where the following provisions appear. If an item does not apply, enter "N/A." Sample language, or a listing of required modifications (LRMs), is available on the IRS website at [www.irs.gov](http://www.irs.gov). Type "LRM" in the search box. Sponsors are encouraged to use LRM language.

Plan Article or Section Reference	Plan Page Number	For IRS Use Only
10a Does the plan define the term "employer" to include all members of such groups or entities required to be aggregated with the employer? . . . . .		1
b Does the plan limit adoption to employers that have 100 or less employees who earned \$5,000 or more in compensation from the employer during the preceding calendar year? . . . . .		2
c Does the plan limit adoption to employers that do not maintain another qualified plan to which contributions are made or benefits accrued? . . . . .		3
d Does the plan define the term "employee" to include leased employees and employees described in section 401(c)(1)? . . . . .		4
e Does the plan cover all employees except those that may be excluded under section 408(p)(4)? . . . . .		5
f Does the plan provide that each eligible employee may make or modify a salary reduction agreement during the 60-day period immediately preceding the calendar year after receiving proper notice? . . . . .		6
g Does the plan provide that salary reduction contributions may not exceed the statutory limits? . . . . .		7
h Under the plan, is an eligible employee permitted to terminate a salary reduction election at any time? . . . . .		8
i Is the interest of an eligible employee in the plan nonforfeitable at all times? . . . . .		9
j Does the plan provide that the employer will make matching contributions to each eligible employee's SIMPLE IRA equal to the employee's salary reduction contribution, up to a limit of 3% of the employee's compensation for the calendar year? . . . . .		10
k Does the plan provide that the employer will make a 2% nonelective contribution to each eligible employee's SIMPLE IRA in lieu of matching contributions? . . . . .		11
l Does the plan require that the employer will make salary reduction contributions to eligible employees' SIMPLE IRAs no later than 30 days after the month in which the amounts would otherwise have been payable to the employee in cash? . . . . .		12
m Unless the employer has chosen, does the plan allow each eligible employee to select the financial institution for their SIMPLE IRA? . . . . .		13
n If the employer has selected the financial institution, does the plan require the financial institution to meet the notification requirements of section 408(p)(7) and limited in accordance with section 408(p)(2)(B)? . . . . .		14
o Does the plan define "compensation" as described in section 408(p)(6)(A)? . . . . .		15
p Does the plan require that it be used only with pre-approved SIMPLE IRAs? . . . . .		16
q Does the plan prohibit restrictions on withdrawals? . . . . .		17
r Does the plan provide that amendments will become effective only at the beginning of a calendar year and will conform to the content of the plan notice for the calendar year? . . . . .		18

IRS.gov.

Deleted "Does the SEP define "compensation" in a manner that satisfies one of the safe harbor definitions under section 414(s) and limit compensation under section 408(k)(3)(C)?

Deleted "as of the earliest date on which these contributions can reasonably be segregated from the employer's general assets?"

## General Instructions

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

**Purpose of form.** Form 5306-A is used by sponsors who want to get IRS approval of their prototype simplified employee pension (SEP) agreements or savings incentive match plans for employees of small employers (SIMPLE IRA plan).

**Who may file.** Use Form 5306-A to request a favorable opinion letter if:

- You are a bank, federally insured credit union, savings and loan association that qualifies as a bank, insurance company, regulated investment company, or trade or professional society or association (other than an employee association); and
- You want to get a favorable opinion letter that a SEP agreement or SIMPLE IRA plan to be used by more than one employer is acceptable in form.

**Who does not need to file.** Instead of designing their own SEP or SIMPLE IRA plan, sponsors may use one of the Form 5304 or 5305 series of model forms to establish a SEP or a SIMPLE IRA plan. Sponsors who use one of these forms with individual retirement accounts or annuities for which the IRS has issued a favorable opinion or ruling letter, or with model individual retirement accounts issued by the IRS, are considered to have established a SEP or SIMPLE IRA plan that meets the requirements of section 408(k) or 408(p). Do not file Form 5306-A if you use a model form.

**Note.** The IRS will not issue an opinion letter on a document submitted with Form 5306-A that is a combination of a prototype SEP or SIMPLE IRA plan and a prototype individual retirement account or annuity.

**What to file.** File this application and one copy of all documents that make up the SEP agreement or SIMPLE IRA plan.

If this is an amendment, include a copy of the amendment and an explanation of its effect on the SEP agreement or SIMPLE IRA plan.

**Where to file.** File Form 5306-A with the Internal Revenue Service, Attention: EP Opinion Letters, P.O. Box 27063, McPherson Station, Washington, DC 20038.

**Signature.** An officer who is authorized to sign or another person authorized under a power of attorney must sign this application. (Send the power of attorney with this application when you file it.)

## Specific Instructions

**User fee.** All applications must be accompanied by the appropriate user fee. Applications submitted without the proper user fee will not be processed and will be returned to the applicant.

To determine the proper user fee, see Rev. Proc. 2010-8, 2010-1 I.R.B. 234 available at [www.irs.gov/pub/irs-irbs/irb10-01.pdf](http://www.irs.gov/pub/irs-irbs/irb10-01.pdf), or the current superseding revenue procedure.

**Line 2c.** If you are amending your previously approved SEP or SIMPLE IRA plan, enter the letter serial number, date, and file folder number from the latest opinion letter you received for your SEP or SIMPLE IRA plan.

**Line 3.** If the application is for a SEP that provides for elective deferrals intended to meet the requirements of section 408(k)(6), check the box.

The Small Business Job Protection Act of 1996 (P.L. 104-188) repealed section 408(k)(6), effective December 31, 1996, except with respect to a SEP of an employer if the terms of the SEP of such employer, as in effect on December 31, 1996, provided for elective deferrals.

**Line 4a. Address.** Include the suite, room, or other unit number after the street number. If the Post Office does not deliver mail to the street address and you have a P.O. box, show the box number instead of the street address.

## Privacy Act and Paperwork Reduction Act Notice

We ask for the information on this form to carry out the Internal Revenue laws of the United States. We need it to ensure that you are complying with these laws and to allow us to figure and collect the right amount of tax. This information is needed to process your application and to determine whether your prototype SEP or SIMPLE IRA plan meets the requirements of section 408(k) or 408(p). You are not required to apply for approval; however, if you want to receive an opinion letter from the IRS regarding your prototype SEP or SIMPLE IRA plan, you are required to

provide the information requested on this form. Section 6109 requires you to provide the requested identification numbers. Failure to provide the information may delay or prevent processing your application; providing any false information may subject you to penalties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law.

Generally, tax returns and return information are confidential, as stated in section 6103. However, section 6103 allows or requires the Internal Revenue Service to disclose or give such information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, U.S. commonwealths and possessions for use in administering their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

**Recordkeeping** . . . . . 15 hr., 46 min.

**Learning about the law or the form** . . . . . 1 hr., 23 min.

**Preparing, copying, assembling, and sending the form to the IRS** . . . . . 1 hr., 42 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:T:SP, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send the form to this address. Instead, see *Where to file* on this page.