

**Model VCP Compliance Statement - Schedule 3
SEPs and SARSEPs**

Include the plan name, Applicant's EIN, and plan number on each page of the compliance statement, including attachments.

Plan name _____

Applicant's EIN _____

Plan number _____

Instructions: This Schedule 3 is available for Simplified Employee Pension plans (SEPs), including SEPs that include salary reduction arrangements (Salary Reduction Simplified Employee Pension plans (SARSEPs)).

Section I - Identification of Failure(s) and Proposed Method(s) of Correction

The following failure(s) to comply with the Internal Revenue Code (IRC) occurred with respect to the plan identified above. Check the failure(s) that apply. Within each failure, check applicable boxes and provide the information requested:

A. Employer Eligibility Failure (SARSEPs only)

- The plan sponsor was not eligible to sponsor a SARSEP because the plan was established on _____ (plan sponsors were not permitted to establish SARSEPs after December 31, 1996.)
- The plan was adopted by a plan sponsor who was (or subsequently became) ineligible to sponsor a SARSEP under the requirements of IRC Section 408(k)(6) because the plan sponsor (and, if applicable, its related controlled group or affiliated service group employers) had more than 25 employees (including leased employees, if applicable) during the following plan year(s) _____
- The plan was adopted by a plan sponsor that became ineligible to sponsor a SARSEP under the requirements of IRC Section 408(k)(6) because, in one or more plan years, fewer than 50% of the employees eligible to participate in the plan elected to make salary reduction contributions. The failure occurred during the following plan year(s) _____

Description of Proposed Method of Correction

All contributions ceased as of _____ (insert date beginning no later than the date this VCP submission is filed with the IRS). The plan sponsor will not permit any new salary reduction contributions to the plan.

B. Failure to Satisfy the Deferral Percentage Test (SARSEPs only)

At least one Highly Compensated Employee (HCE) deferred an amount which, as a percentage of compensation, was more than 125% of the Average Deferral Percentage (ADP) for all Nonhighly Compensated Employees (NHCEs) eligible to participate in the plan (IRC Section 408(k)(6)(A)(iii)).

The total excess deferrals for each affected plan year were

| Year | Excess Deferrals |
|------|------------------|
| | |
| | |
| | |
| | |
| | |
| | |

Plan name

Applicant's EIN

Plan number

Description of the Proposed Method of Correction

The plan sponsor has made (or will make) nonforfeitable contributions on behalf of all eligible NHCEs. Each eligible NHCE will receive a contribution equal to a uniform percentage of compensation. The uniform percentage is equal to the difference between the (1) ADP that would have been required for an HCE's deferral percentage to have passed the nondiscrimination test and (2) the actual ADP for NHCEs. (Example: In a particular plan year, an HCE defers 10% of compensation. The ADP for NHCEs for the same plan year is 5% of compensation. However, for the plan to pass the nondiscrimination test, the ADP should have been 8% of compensation. The corrective contribution on behalf of each eligible NHCE will be equal to 3% of compensation.) The corrective contribution made on behalf of each NHCE will also be adjusted for earnings. Earnings will be calculated from the last day of the plan year for which the failure occurred through the date of the corrective contribution. The corrective contribution (adjusted for earnings) will be made to each affected NHCE's SARSEP IRA. If an affected employee does not have a SARSEP IRA, a SARSEP IRA will be established for that employee. Earnings will be calculated for an affected NHCE's account on the basis of one of the following methods (*check one*)

- Actual investment results of the affected NHCE's SARSEP IRA.
- The interest rate incorporated in the Department of Labor's Voluntary Fiduciary Correction Program Online Calculator (VFCP Online Calculator) <https://www.askebsa.dol.gov/vfcpcalculator/webcalculator.aspx>, since the actual earnings of the affected NHCE's SARSEP IRA cannot be ascertained.
- Actual investment results for years in which data is available, or the rate incorporated in the VFCP Online Calculator for years in which the actual earnings of the affected NHCE's SARSEP IRA cannot be ascertained. The VFCP Online Calculator was or will be used for the following year(s) _____

The total corrective contribution (before adjusting for earnings) on behalf of the affected NHCEs for each plan year is

| Year | Corrective Contribution |
|------|-------------------------|
| | |
| | |
| | |
| | |
| | |
| | |

Former employees affected by the failure (*check one*)

- There are no former employees affected by the failure.
- Affected former employees (or if deceased, their estate or known beneficiary) will be contacted, and corrective contributions will be made to their SARSEP IRA. To the extent that an affected former employee or beneficiary cannot be located following a mailing to the last known address, the plan sponsor will take the actions specified below to locate that employee or beneficiary.

After such actions are taken, if an affected employee or beneficiary is not found but is located at a later date, the plan sponsor will make corrective contributions to the affected SARSEP IRA at that time.

Plan name

Applicant's EIN

Plan number

C. Failure to Make Required Employer Contributions (SEPs or SARSEPs)

The plan sponsor failed to make employer contributions on behalf of eligible employees as required under the terms of the plan.

- The failure occurred on account of the erroneous exclusion of eligible employees.
- The failure occurred due to errors in the determination of compensation for eligible employees.
- Other (describe)

The failure occurred for the following plan year(s) _____

Description of the Proposed Method of Correction

The plan sponsor has contributed (or will contribute) additional amounts to the plan on behalf of each affected employee. For each affected employee, the corrective contribution will be determined by calculating the contribution the employee would have been entitled to under the terms of the plan and subtracting any contributions already made on behalf of the participant for the plan year. The required contribution made on behalf of an affected participant will be adjusted for earnings. Earnings will be calculated from the last day of the plan year for which the failure occurred through the date of the corrective contribution. The corrective contribution (adjusted for earnings) will be made to each affected employee's SEP (or SARSEP, if applicable) IRA. If an affected employee does not have a SEP (or SARSEP, if applicable) IRA, a SEP (or SARSEP, if applicable) IRA will be established for that employee.

The total corrective contribution (before adjusting for earnings) on behalf of the affected NHCEs for each plan year is

| Year | Corrective Contribution |
|------|-------------------------|
| | |
| | |
| | |
| | |
| | |
| | |

Earnings will be calculated for an affected employee on the basis of the following method (check one)

- Actual investment results of the affected employee's SEP or SARSEP IRA.
- The interest rate incorporated in the VFCP Online Calculator, since the actual earnings of the affected employee's IRA cannot be ascertained.
- Actual investment results for years in which data is available, or the rate incorporated in the VFCP Online Calculator for years in which the actual earnings of the affected employee's IRA cannot be ascertained. The VFCP Online Calculator was or will be used for the following year(s) _____

Plan name

Applicant's EIN

Plan number

Former employees affected by the failure (*check one*)

- There are no former employees affected by the failure.
- Affected former employees (or if deceased, their estate or known beneficiary) will be contacted and corrective contributions will be made to their SARSEP IRA. To the extent that an affected former employee or beneficiary cannot be located following a mailing to the last known address, the plan sponsor will take the actions specified below to locate that employee or beneficiary.

After such actions are taken, if an affected employee or beneficiary is not found but is located at a later date, the plan sponsor will make corrective contributions to the affected SARSEP IRA at that time.

D. Failure to provide eligible employees with the opportunity to make elective deferrals (SARSEPs only)

- The plan did not provide employees who satisfied the applicable eligibility requirements with the opportunity to make elective deferrals to the SARSEP. The failure occurred for the following plan year(s) _____

Description of the Proposed Method of Correction

The plan sponsor has contributed (or will contribute) additional amounts to the plan on behalf of each affected employee. The corrective contribution will be made to compensate the affected employee(s) for the missed deferral opportunity. The corrective contribution on behalf of each affected employee is equal to 50% of what the employee's deferral might have been had he or she been provided with the opportunity to make elective deferrals to the plan. Since the employee's deferral decision is not known, the deferral amount is estimated by determining the average of the deferral percentages for the employee's group (highly compensated or nonhighly compensated). (Example: NHCE N was erroneously excluded from the plan. During the year of exclusion, N made \$10,000 in compensation. The average of the deferral percentages for other NHCEs who were provided with the opportunity to make elective deferrals was 5%. N's missed deferral is estimated to be 5% times \$10,000 or \$500. The required corrective contribution on behalf of N, before adjusting for earnings, is 50% of \$500 or \$250.)

The total corrective contribution (before adjusting for earnings) on behalf of the affected NHCEs for each plan year is

| Year | Corrective Contribution |
|------|-------------------------|
| | |
| | |
| | |
| | |
| | |
| | |
| | |

The corrective contribution made on behalf of each affected employee will also be adjusted for earnings. Earnings will be calculated from the date(s) that the contribution(s) should have been made through the date of the corrective contribution. The corrective contribution (adjusted for earnings) will be made to each affected employee's SARSEP IRA. If an affected employee does not have a SARSEP IRA, a SARSEP IRA will be established for that employee. Earnings will be calculated on the basis of one of the following methods (*check one*)

- Actual investment results of the affected employee's SARSEP IRA.
- The interest rate incorporated in the VFCP Online Calculator, since the actual earnings of the affected employee's IRA cannot be ascertained.
- Actual investment results for years in which data is available, or the rate incorporated in the VFCP Online Calculator for years in which the actual earnings of the affected employee's IRA cannot be ascertained. The VFCP Online Calculator was or will be used for the following year(s) _____

Plan name

Applicant's EIN

Plan number

Former employees affected by the failure *(check one)*

- There are no former employees affected by the failure.
- Affected former employees (or if deceased, their estate or known beneficiary) will be contacted, and corrective contributions will be made to their SARSEP IRA. To the extent that an affected former employee or beneficiary cannot be located following a mailing to the last known address, the plan sponsor will take the actions specified below to locate that employee or beneficiary.

After such actions are taken, if an affected employee or beneficiary is not found but is located at a later date, the plan sponsor will make corrective contributions to the affected SARSEP IRA at that time.

E. Excess Amounts Contributed

The plan sponsor contributed excess amounts to the plan on behalf of participants as follows *(check boxes that apply)*

- Amounts were contributed in excess of the benefit the participants were entitled to under the plan.
- SARSEP only: Elective deferrals were contributed to the SARSEP in excess of the limitation under the terms of the SARSEP (such as, the lesser of 25% of compensation or the applicable limit under IRC Section 402(g)).

The total of the excess amounts for each affected plan year was

| Year | Excess Amounts | Number of Participants Affected |
|------|----------------|---------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

- Excess amounts of \$250 or less.

For one or more participants, the total excess amount (employer contributions and/or elective deferrals before adjusting for earnings) is \$250 or less. The excess amount will not be distributed.

Description of the Proposed Method of Correction *(check all correction methods that apply)*

- Distribution of excess elective deferrals (SARSEPs only)
The plan sponsor has effected (or will effect) a corrective distribution of the excess amounts, adjusted for earnings through the date of correction, to the affected participant(s). The earnings adjustment will be based on the actual rates of return of the participant's SARSEP IRA from the date(s) that the excess deferrals were made through the date of correction.

Affected participants were (or will be) informed that the corrective distribution of an excess amount is not eligible for favorable tax treatment accorded to distributions from a SARSEP and, specifically, is not eligible for tax-free rollover.

Plan name

Applicant's EIN

Plan number

The total corrective distribution (before adjusting for earnings) for each affected year is as follows:

| Year | Corrective Distribution | Number of Participants Affected |
|------|-------------------------|---------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

Distribution of excess employer contributions

The plan sponsor has effected (or will effect) the return of excess employer contributions, adjusted for earnings through the date of correction, to the plan sponsor. The earnings adjustment will be based on the actual rates of return of the affected participants' SEP IRAs or SARSEP IRAs from the date(s) that the excess employer contributions were made through the date of correction. The amount returned to the plan sponsor is not includible in the gross income of the affected participant(s). The plan sponsor is not entitled to a deduction for the excess employer contributions. The amount returned is reported on Form 1099-R as a distribution issued to the affected participant(s), indicating the taxable amount as zero.

The amount to be returned to the plan sponsor (before adjusting for earnings) for each affected year is

| Year | Return of Excess Employer Contributions | Number of Participants Affected |
|------|---|---------------------------------|
| | | |
| | | |
| | | |
| | | |
| | | |
| | | |

F. Written Arrangement Not Timely Updated for Tax Law Changes

The SEP or SARSEP plan was not timely updated for tax law changes associated with the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) as required by Revenue Procedure 2002-10.

Description of Proposed Method of Correction

The plan sponsor has adopted a new version of the SEP or SARSEP plan that includes the EGTRRA tax law changes retroactive to 2002. A copy of the signed and dated plan is enclosed with this VCP submission.

 Plan name

 Applicant's EIN

 Plan number

Section II - Change in Administrative Procedures

Include an explanation of how and why the failures arose and a description of the measures that have been or will be implemented to ensure that the same failures will not recur.

Section III - Request for Excise Tax Relief *(check applicable boxes)*

- Excise tax pursuant to IRC Section 4979. The Applicant requests that the IRS not pursue the excise tax under IRC Section 4979. (This applies only to failures to satisfy the nondiscrimination test for elective deferrals. Enclose a written explanation in support of your request for relief from this excise tax.)
- Excise tax pursuant to IRC Section 4972. The Applicant requests that the IRS not pursue the excise tax under IRC Section 4972. (This applies to situations where corrective contributions made in accordance with this submission would be nondeductible contributions for the year of correction and thus would be subject to the excise tax under IRC Section 4972. Enclose a written explanation in support of your request for relief from this excise tax.)
-

Section IV - Enclosures

- A copy of the applicable plan document in effect at the time of the failures. (This could be an IRS form document, such as a Form 5305-SEP or 5305A-SEP, or a prototype plan document developed by a financial institution. If a prototype plan document is used, include a copy of the most recent favorable opinion letter issued for the plan document).
- A written explanation of how and why the failure(s) described in this submission occurred, including a description of the administrative procedures applicable to the failure(s) in effect at the time the failure(s) occurred.
- For failures that involve corrective contributions or corrective distributions, a description of assumptions and supporting calculations used to determine the amounts needed for correction:
 - 1) For failures to satisfy the nondiscrimination test for elective deferrals, computations in support of the proposed correction, including:
 - a) The determination of HCEs and NHCEs,
 - b) The deferral percentages of individual employees and the applicable ADP calculations,
 - c) The determination of corrective contributions on behalf of NHCEs to correct the ADP test, and
 - d) Calculations showing how the earnings adjustment and the ultimate corrective contribution on behalf of affected employees will be determined. (Use estimates, including an estimated correction date, if corrective distributions have not been made yet.)

 Plan name

 Applicant's EIN

 Plan number

- 2) For failures to make required employer contributions and for failures to provide eligible employees with the opportunity to make elective deferrals:
- a) Computations in support of the corrective contribution amounts attributable to each participant. In the case of a failure to provide eligible employees with the opportunity to make elective deferrals, please include computations showing how the average deferral percentage, missed deferral and corrective contribution amount was determined; and
 - b) Calculations showing how the earnings adjustment and the ultimate corrective contribution on behalf of affected employees will be determined.
- 3) For failures involving the contribution of excess amounts:
- a) Computations in support of the excess contribution amounts attributable to each participant, and
 - b) Calculations showing how the earnings adjustment and the ultimate corrective distribution amounts are determined. (Use estimates, including an estimated correction date, if corrective distributions have not been made yet.)
- Explanations in support of requests for excise tax relief.
 - Any other information that would be useful for the purpose of understanding the proposals made under the submission.
 - If the plan was not timely updated for EGTRRA, include a copy of the updated document that was adopted by the plan sponsor.