SIMPLE IRA PLAN CHECKLIST

This checklist is *not* a complete description of all plan requirements, and should *not* be used as a substitute for a complete plan review.

For Business Owner's Use

(DO NOT SEND THIS WORKSHEET TO THE IRS)

Every year it is important that you review the requirements for operating your Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) IRA plan. Use this checklist to help you keep your plan in compliance with many of the important rules. Click on "(More)" in any of the following questions for additional information (including examples) on how to find, fix and avoid each mistake. See www.irs.gov/ep for online versions of the checklists, Fix-It Guides and other resources for SIMPLE IRA and other plan types.

1. Do you have 100 or fewer employees who earned at least $5,000 in compensation for the prior year? Yes ☐ No ☐

Businesses with more than 100 employees (including full-time, part-time, and seasonal employees) with individual earnings of at least $5,000 yearly cannot establish a SIMPLE IRA plan.
(More)

2. Does your business only sponsor this SIMPLE IRA plan? Yes ☐ No ☐

A business with a SIMPLE IRA plan generally cannot also sponsor any other retirement plan, such as a 401(k) plan.
(More)

3. Does the plan document reflect the recent SIMPLE IRA law changes? Yes ☐ No ☐

Recent law changes must always be reflected in your SIMPLE IRA plan document. See the IRS Model plan (Form 5304-SIMPLE or Form 5305-SIMPLE) or an IRS approved SIMPLE IRA prototype plan.
(More)

4. Were all eligible employees allowed to participate according to the SIMPLE IRA plan's eligibility requirements? Yes ☐ No ☐

An employee who had compensation of at least $5,000 in any 2 prior years and who is expected to earn at least $5,000 in the current year is eligible to participate in a SIMPLE IRA plan.
(More)

5. Were correct employer contributions made on behalf of the eligible employees? Yes ☐ No ☐

The required employer contributions must be either 2% of an employee's compensation or up to a 3% matching contribution.
(More)

6. Is the plan's definition of compensation for all deferrals and allocations used correctly? Yes ☐ No ☐

Generally, compensation means the sum of wages, tips and other compensation subject to federal income tax withholding and the employee's salary deferral contributions made to the SIMPLE IRA plan.
(More)

7. Were employee salary deferral contributions timely deposited to employees' SIMPLE IRAs after withholding from the employees' salary? Yes ☐ No ☐

You must deposit employees' deferrals in the IRA as soon as possible, but no later than 30 days following the month in which the employee would have otherwise received the money.
(More)

8. Were employer contributions made timely to the employees' SIMPLE IRAs? Yes ☐ No ☐

Matching contributions or nonelective contributions must be deposited to the SIMPLE IRA account on or before the due date of your business's tax return, including extensions.
(More)

9. Have all SIMPLE IRA plan notification requirements been satisfied? Yes ☐ No ☐

Requirements include providing employees with the opportunity to make a salary deferral election, informing employees of the ability to select a financial institution for their SIMPLE IRAs, providing employees with a summary plan description and notifying employees of the employer's decision whether to make matching or nonelective contributions.
(More)

10. Did you make employer contributions to all eligible employees whether or not they terminated during the plan year? Yes ☐ No ☐

A SIMPLE IRA plan cannot require employment on a particular day, such as the last day of the year, in order to receive matching or nonelective contributions.
(More)

If you answered "No" to any of the above questions, you may have a mistake in the operation of your SIMPLE IRA plan. This list is only a guide to a more compliant plan, so answering "Yes" to each question may not mean your plan is 100% compliant. Many mistakes can be corrected easily, without penalty and without notifying the IRS.

- **contact your tax advisor**
- **visit the IRS at www.irs.gov/ep**
- **call the IRS at (877) 829-5500**

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SIMPLE IRA Plan Fix-It Guide
Common Problems, Real Solutions

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
1) You have more than 100 employees who earned $5,000 or more in compensation for the prior year. (More) (Video)	Review prior year's compensation data to determine if you had more than 100 employees who earned $5,000 or more in compensation. (More)	Stop employer and employee contributions to the SIMPLE IRAs. (More)	Prior to establishing a SIMPLE IRA plan, ensure you meet the requirements. (More)
2) Your business sponsors another qualified retirement plan. (More)	Determine if any employee received an allocation of contributions or accrued a benefit from your other qualified plan. (More)	Stop employer and employee contributions to the SIMPLE IRAs. (More)	Do not maintain another qualified retirement plan while sponsoring a SIMPLE IRA plan. (More)
3) You have not updated your SIMPLE IRA plan document for current law changes. (More) (Video)	Determine if your plan document is the latest IRS-approved plan from your financial institution or a current model plan. (More)	Adopt the latest version of your financial institution's IRS-approved SIMPLE IRA plan or a current Form 5304-SIMPLE or 5305-SIMPLE. (More)	Make sure your SIMPLE IRA plan document is the most current available. (More)
4) You excluded an eligible employee from participating. (More) (Video)	Review plan document sections on eligibility and participation. Check whether employees were enrolled at the proper time. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Review the participation status of all employees at least annually. (More)
5) You made incorrect employer contributions for eligible employees. (More) (Video)	Review plan provisions on employer contributions and determine if correct allocations were made to all participants. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Review the plan's terms to ensure you are allocating correct employer contributions to employees' SIMPLE IRAs. (More)
6) You used the wrong compensation definition to calculate deferrals and contributions to participants' SIMPLE IRAs. (More) (Video)	Review the plan document to determine if you are using the proper compensation for deferrals and contributions. (More)	Make corrective contributions to the plan to make up for the employees' missed deferrals and contributions. (More)	Review the plan's terms to ensure you are using the correct amount of compensation to calculate deferrals and contributions. (More)

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
7) Employee elective deferral contributions were not deposited timely to employees' SIMPLE IRAs. (More) (Video)	Compare the date on which you withheld the elective deferral contributions with the date on which you contributed the deferrals to employees' SIMPLE IRA accounts. (More)	Make corrective contributions for each employee equal to the missed earnings for the period the deposits were late. (More)	Establish procedures to ensure employees' elective deferral contributions are timely deposited. (More)
8) Employer contributions were not made timely to the employees' SIMPLE IRAs. (More)	Review employee data, payroll remittances and other applicable records to determine if employer contributions were timely deposited. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Establish a procedure to ensure employer contributions are timely deposited. (More)
9) SIMPLE IRA plan notification requirements were not followed. (More) (Video)	Determine if the required SIMPLE IRA plan notifications were timely provided to eligible employees. (More)	Evaluate the impact of the failure to provide the required notices and make a reasonable correction. (More)	Establish procedures to ensure required notices are timely provided to employees. (More)
10) Employer contributions were not made to eligible employees who terminated during the year. (More)	Review employee payroll data to determine if eligible employees terminated during the year. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Establish administrative procedures to ensure that you make an employer contribution for all eligible employees whether or not they terminated employment during the year. (More)

SIMPLE IRA Plan - Overview

A **S**avings **I**ncentive **M**atch **Pl**an for **E**mployees of Small Employers (SIMPLE) IRA plan is a simplified way for you and your employees to save for retirement. This is an IRA-based plan that allows employees to contribute part of their salary and requires employers to contribute on behalf of eligible employees.

Eligible employers: You can establish a SIMPLE IRA plan if you have:

1. 100 or fewer employees who earned $5,000 or more in the previous year; and
2. no other qualified plan.

Any type of employer can establish a SIMPLE IRA plan, including tax-exempt entities, governmental entities and employers of domestic workers.

Contributions by employees and employers

Employees can make elective salary deferrals to the plan rather than receiving these amounts as part of regular pay. Elective deferrals can be up to:

- $11,500 in 2011
- $14,000 for employees age 50 or older in 2011($11,500 plus $2,500 catch-up contribution)
- These limits are subject to cost-of-living increases in later years.

Employers are **required** to make either a matching contribution (up to 3%) or a 2% fixed (nonelective) contribution for each eligible employee.

Matching contribution: If an employee elects to defer, then the employer must match the employee's contribution dollar-for-dollar, up to 3% of the employee's compensation. The employer does not have to make any matching contribution if the employee did not make elective deferrals.

You may temporarily reduce the 3% match if:
(i) the revised matching contribution is not less than 1% of pay;
(ii) the reduction did not occur more frequently than 2 years during the 5-year period ending in the year for which the election was made; and
(iii) each employee was notified of the reduced match within a reasonable time before the employee's 60-day election period.

Fixed (nonelective) contribution: An employer who opts for the fixed contribution is committing to make a contribution of 2% of compensation for each of its employees who are eligible to participate in the plan, regardless of whether the employee elects to defer salary.

Establishing a SIMPLE IRA plan

Timing: Generally, you can set up a SIMPLE IRA plan effective on any date between January 1 and October 1 of a year, provided you did not previously maintain a SIMPLE IRA plan.

- If you are a new employer coming into existence after October 1 of the year, you can set up a SIMPLE IRA plan as soon as administratively feasible after coming into existence.
- If you previously maintained a SIMPLE IRA plan, you can set up a SIMPLE IRA plan effective only on January 1 of a year.

- A SIMPLE IRA plan cannot have an effective date that is before the date you actually adopt the plan. You can only maintain SIMPLE IRA plans on a calendar-year basis.

Model Forms: You can set up your SIMPLE IRA plan using:

1. Form 5304-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - Not for Use With a Designated Financial Institution, or
2. Form 5305-SIMPLE, Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - for Use With a Designated Financial Institution.

Each form is a SIMPLE IRA plan document. Use Form 5304-SIMPLE if you permit plan participants to select the financial institution for receiving their SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require all contributions under the SIMPLE IRA plan to be deposited initially at a financial institution designated by you.

The SIMPLE IRA plan is adopted when you have completed all appropriate boxes and blanks on the form and you (and the designated financial institution, if any) have signed it. Keep the original form. Do not file it with the IRS.

If you set up a SIMPLE IRA plan using Form 5304-SIMPLE or Form 5305-SIMPLE, you can also use the form to:

- Meet the employer notification requirements for the SIMPLE IRA plan. Page 3 of Forms 5304-SIMPLE and 5305-SIMPLE contain a “Model Notification to Eligible Employees” that can be used to provide the necessary information to the employee.
- Provide employees with a salary deferral agreement. Page 3 also contains a “Model Salary Reduction Agreement.”

Financial institution forms: As an alternative to the IRS models, you may establish a SIMPLE IRA plan through the adoption of a prototype SIMPLE IRA plan document (usually through a mutual fund, insurance company, bank or other qualified financial institution).

Setting up SIMPLE IRAs

SIMPLE IRAs are the individual retirement accounts or annuities into which the contributions are deposited. A SIMPLE IRA must be set up for each eligible employee. Forms 5305-S, SIMPLE Individual Retirement Trust Account, and 5305-SA, SIMPLE Individual Retirement Custodial Account, are model trust and custodial account documents the participant and the trustee (or custodian) can use for this purpose. A SIMPLE IRA cannot be designated as a Roth IRA.

A SIMPLE IRA must be set up for an employee before the first date by which a contribution is required to be deposited into the employee’s IRA.

Effect on IRA limits: Contributions to a SIMPLE IRA will not affect the amount an individual can contribute to a Roth IRA or a traditional IRA. However, contributions to a SIMPLE IRA may preclude an individual from receiving a tax deduction for contributions to a traditional IRA because the individual is considered “covered by an employer plan.”

Credit for costs of establishing a SIMPLE IRA plan

You may be able to claim a tax credit for part of the ordinary and necessary costs of starting a SIMPLE IRA plan. (See Form 8881, Credit for Small Employer Pension Plan Startup Costs.)

Employee Plans Compliance Resolution System – Overview

You can correct mistakes and avoid the consequences of disqualification of the SIMPLE IRAs of employees by using the IRS Employee Plans Compliance Resolution System. A correction should be reasonable and appropriate. The correction method should resemble one already outlined in the Code and you should consider all applicable facts and circumstances. Rev. Proc. 2008-50, 2008-35 I.R.B. 464 is the official guidance governing the EPCRS program.

There are three ways to correct mistakes under EPCRS:

1) **Self-Correction Program (SCP)** - permits a plan sponsor to correct certain plan failures without contacting the IRS.
2) **Voluntary Correction Program (VCP)** - permits a plan sponsor to, any time before audit, pay a fee and receive IRS approval for correction of plan failures.
3) **Audit Closing Agreement Program (Audit CAP)** - permits a plan sponsor to pay a sanction and correct a plan failure while the plan is under audit.

A general description of each component of EPCRS is provided below:

Self-Correction Program:

- To be eligible for SCP, the plan sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance with the law. A plan document alone does not constitute evidence of established procedures.
- SCP is available for correcting operational problems only – that is, the failure to follow the plan terms. SCP is not available for problems with the plan document, such as the failure to keep the plan document current to reflect changes in the law.
- For a SIMPLE IRA plan, only insignificant operational failures can be corrected using SCP.
- The plan sponsor should follow the general correction principles in Rev. Proc. 2008-50, section 6.
- A plan sponsor who corrects a mistake listed in Appendix A or Appendix B of Rev. Proc. 2008-50 according to the correction methods listed may be certain that their correction is reasonable and appropriate for the failure.
- If needed, the plan sponsor should make changes to its administrative procedures to ensure the mistakes do not recur.
- When using SCP, the plan sponsor should maintain adequate records to demonstrate correction in the event of an audit of the plan.
- There is no fee for self-correction.

Voluntary Correction Program:

- The plan sponsor:
    - identifies the mistakes.
    - proposes correction using the General Correction Principles in Rev. Proc. 2008-50, section 6.
    - proposes changes to its administrative procedures to ensure the mistakes do not recur.
    - pays a compliance fee of $250.
- The IRS issues a Compliance Statement detailing the mistakes identified by the employer and correction methods approved by the IRS.
- The plan sponsor corrects the identified mistakes within 150 days of the issuance of the Compliance Statement.
- While the IRS is processing the submission, Employee Plans will not examine the plan, except under unusual circumstances.

Audit Closing Agreement Program:

- The plan sponsor or plan is under examination.
- The plan sponsor:
  - enters into a Closing Agreement with the IRS.
  - makes corrections prior to entering into the Closing Agreement.
  - pays a sanction negotiated with the IRS.
    - The sanction paid under Audit CAP should be greater than the fee paid under VCP.
- The sanction under Audit CAP is a negotiated percentage of the **Maximum Payment Amount (MPA)** based on the sum for all open taxable years of the:
  - Additional income tax resulting from income inclusion for employees in the plan (Form 1040), including the tax on plan distributions that have been rolled over to other IRAs or plans (and any interest and penalties applicable to the employees' tax return).
  - Additional tax resulting from the 6% tax imposed under §4973 of the Code on excess contributions to IRAs.

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Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
1) You have more than 100 employees who earned $5,000 or more in compensation for the prior year. (More) (Video)	Review prior year's compensation data to determine if you had more than 100 employees who earned $5,000 or more in compensation. (More)	Stop employer and employee contributions to the SIMPLE IRAs. (More)	Prior to establishing a SIMPLE IRA plan, ensure you meet the requirements. (More)

1) You have more than 100 employees who earned $5,000 or more in compensation for the prior year.

You are ineligible to adopt a SIMPLE IRA plan if you have more than 100 employees who earned at least $5,000 in compensation for the prior year.

You must count all employees who met the $5,000 earnings threshold in determining whether the 100-employee test is met. This includes full-time, part-time, seasonal and leased employees. In addition, if you are a member of a controlled group or an affiliated service group, all employees of the businesses in the group are considered your employees.

A grace period may apply if you have maintained a SIMPLE IRA plan for at least 1 year before you exceeded the 100-employee limit.

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How to Find the Mistake:

Review the prior year's compensation data (from payroll records, W-2s, quarterly filings with the state) and determine if there were more than 100 employees who earned $5,000 or more in compensation during the previous year. When reviewing prior year's compensation, make sure you count *all* compensation, including overtime, bonuses and commissions.

Generally, compensation means the sum of wages, tips and other compensation subject to federal income tax withholding and the employee's elective deferral contributions made to the SIMPLE IRA plan.

When counting employees, "employee" includes all employees of all related employers. Related employers include controlled groups of corporations that include your business, trades or businesses under common control with your business, and affiliated service groups that include your business. This means, for example, that if you and/or your family members own a controlling interest in another business, employees of that other business are "employees" for purposes of determining the 100-employee limit. The controlled group and affiliated service group rules are complex. The purpose of the examples below is to illustrate that if there are entities that have common ownership interests or are engaged in performing services for (or with) each other, they may be related entities that would be considered a part of a single controlled or affiliated service group. If this applies to you, consult with your tax adviser to determine whether you are part of a controlled or affiliated service group.

Example: If A owns at least 80% of B, A and B are members of a controlled group.

Example: If 5 or fewer persons, each having some ownership stake in A and B, collectively own at least 80% of A and B, A and B are members of a controlled group.

Example: If A is a shareholder in B, and its primary purpose is the performance of services for B, then A and B may be members of an affiliated service group.

Example: If A is a shareholder in B, and regularly associates with B in the performance of services for third parties, then A and B may be members of an affiliated service group.

Leased employees: Employees of an organization who, based on an agreement between the organization and an employer, perform services for the employer on a substantially full-time basis and are under the control and direction of the employer ("leased employees") are considered employees of that employer under a special rule and must be counted in determining the number of the employer's employees.

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How to Fix the Mistake:

Corrective Action:
If this is the first year of the plan or after the grace period, stop making new contributions to the plan. You can file a VCP application requesting that contributions made for previous years in which the employer had more than 100 employees remain in the employees' SIMPLE IRA accounts. You should return salary deferral contributions (and related earnings) to the employees. Report the returned amounts on Form 1099-R as a taxable distribution not eligible for rollover. Employer contributions (and related earnings) should be returned to you and reported on a Form 1099-R issued to the employee indicating the taxable amount as zero. In addition, since no contributions could have been made to the SIMPLE IRA, the contributions are excess contributions subject to excise tax. For each year there are excess contributions in the SIMPLE IRA plan, you, the employer, are subject to excise tax under Code §4972, and are required to file a Form 5330 excise tax return. In addition, for each year that excess contributions were made to an employee's SIMPLE IRA, the affected employee is liable for excise tax under Code §4973 and is required to file a Form 5329. The excise tax liabilities occur for each year until the excess contributions are removed from the SIMPLE IRAs.

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Correction Program(s) Available:

Self-Correction Program:
This mistake cannot be corrected under SCP.

Voluntary Correction Program:
If the plan is not under examination, you may make a submission under VCP to get approval for the proposed correction. The fee for this mistake is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, the relief that may be provided under VCP may still be available. However, in conjunction with any relief provided, you will have to pay a sanction. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

Prior to establishing a SIMPLE IRA plan, determine whether you are eligible to have a SIMPLE IRA plan. Make sure you include all employees for the “100-employee” count. This includes full-time, part-time, seasonal and leased employees who earned more than $5,000 in compensation in the prior year. It also includes employees of other employers in the same controlled or affiliated service group. If you had fewer than 100 employees and the business grew to exceed 100, the rules provide for a grace period. Generally, the grace period is two calendar years following the year in which the 100-employee limitation was last satisfied. (The grace period may be different if you exceed the limitation because of an acquisition or disposition involving your business.) During the grace period, you may still make contributions for the affected employees. At the same time, you have the opportunity to set up another type of retirement plan for the benefit of your employees, but only after the year of the last contributions to the SIMPLE IRA plan.

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Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
2) Your business sponsors another qualified retirement plan. (More)	Determine if any employee received an allocation of contributions or accrued a benefit from your other qualified plan. (More)	Stop employer and employee contributions to the SIMPLE IRAs. (More)	Do not maintain another qualified retirement plan while sponsoring a SIMPLE IRA plan. (More)

2) Your business sponsors another qualified plan.

You cannot make contributions to a SIMPLE IRA plan for any calendar year in which an employee either receives an allocation of contributions in a defined contribution plan, such as a 401(k), profit-sharing, money purchase, 403(b) or SARSEP plan, or accrues a benefit in a defined benefit plan for any plan year beginning or ending in that calendar year.

However, there is an exception to this rule. You can make contributions under a SIMPLE IRA plan for a calendar year even though you maintain another qualified plan if either:

1) The other qualified plan you maintain covers only employees covered under a **collective bargaining agreement** for which retirement benefits were the subject of good faith bargaining and the SIMPLE IRA plan excludes these employees; or
2) You maintain the other qualified plan during the calendar year in which an **acquisition, disposition or similar transaction** occurs (or the following calendar year) and, had the transaction not occurred, the qualified plan would have been sponsored by an employer separate from you, the sponsor of the SIMPLE IRA plan.

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How to Find the Mistake:

Determine whether any employee (including any employee of the members of a controlled group or affiliated service group, if applicable) received an allocation of contributions or accrued a benefit in another qualified plan you sponsored for any part of the calendar year.

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How to Fix the Mistake:

Corrective Action:
If you maintain other retirement plans, cease making new contributions to the SIMPLE IRA plan. You may be able to file a VCP application requesting that contributions made for previous years in which you maintained more than one plan remain in the employees' IRAs. Salary deferral contributions (and related earnings) should be returned to the employees. The returned amounts should be reported on Form 1099-R as a taxable distribution not eligible for rollover. Employer contributions (and related earnings) should be returned to you and reported on a Form 1099-R issued to the participant indicating the taxable amount as zero. In addition, any contributions made to the SIMPLE IRA are excess contributions subject to excise tax. For each year there are excess contributions in the SIMPLE IRA plan, you, the employer, are subject to excise tax under Code §4972, and are required to file a Form 5330 excise tax return. In

addition, for each year that excess contributions are made to a participant's SIMPLE IRA, the affected participant may be liable for excise tax under Code §4973 and may be required to file a Form 5329. The excise tax liabilities occur for each year until the excess contributions are removed from the SIMPLE IRA plan.

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Correction Program(s) Available:

Self-Correction Program:
This mistake cannot be corrected under SCP.

Voluntary Correction Program:
You make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the mistake. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under VCP. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

You should ensure that you and any members of a controlled group or affiliated service group of which you are a member do not maintain another qualified retirement plan. If you have another qualified plan and want to establish a SIMPLE IRA plan, then you need to take steps to terminate the qualified plan before the calendar year in which you contribute to the SIMPLE IRA plan.

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Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
3) Your have not updated your SIMPLE IRA plan document for current law changes (More) (Video)	Determine if your plan document is the latest IRS-approved plan from your financial institution or a current model plan. (More)	Adopt the latest version of your financial institution's IRS-approved SIMPLE IRA plan or a current Form 5304-SIMPLE or 5305-SIMPLE. (More)	Make sure your SIMPLE IRA plan document is the most current available. (More)

3) You have not updated your SIMPLE IRA plan document for current law changes.

The laws governing retirement plans change frequently. Some new laws require changes in a plan's terms and operations; others may offer sponsors a new option or increase benefits allowable under a plan. Plans must be operated in accordance with each new required provision as of that provision's statutory effective date (established by Congress), and any necessary changes to the plan's language must be made by a separate date set by the IRS. If a plan sponsor decides to take advantage of a new optional rule, the appropriate amendment to the plan's language must be adopted before the year in which the new rule is implemented. At least once a year you should confirm that the plan language and operations are up-to-date.

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How to Find the Mistake:

If you are using an IRS model Form 5304-SIMPLE or 5305-SIMPLE, review the top left-hand corner of the document for the revision date (for example, "Rev. September 2008"), and compare it with the revision date for the current model plans on the IRS website. If the revision date for your plan is earlier, then it is likely your plan has not been updated to reflect the most recent law changes. However, you should follow the instructions for the latest document. The instructions for the current model forms, with a revision date of September 2008, provide that if you used the March 2002 or August 2005 version of the form to establish a model SIMPLE IRA plan, you are not required to use the September 2008 version of the form.

If you are using a financial institution's SIMPLE IRA prototype document, check whether the financial institution has received an IRS opinion letter providing that the SIMPLE IRA prototype document complies with current law.

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How to Fix the Mistake:

Corrective Action:
You should adopt a current IRS SIMPLE IRA model plan or IRS-approved SIMPLE IRA prototype plan.

For years in which the plan was not governed by a valid plan document, the SIMPLE IRA could lose the tax benefits associated with contributions made to the SIMPLE IRA and the earnings accumulated in the SIMPLE IRA, unless VCP is used.

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Correction Program(s) Available:

Self-Correction Program:
This mistake cannot be corrected under SCP.

Voluntary Correction Program:
If you did not adopt an updated plan document timely and the plan is not under examination, make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the mistake. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under VCP. The sanction under Audit CAP is a percentage of the MPA.

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How to Avoid the Mistake:

If you are using an IRS SIMPLE IRA model plan (Form 5304-SIMPLE or 5305-SIMPLE), visit the IRS website before the end of each calendar year to learn whether the IRS has updated the model plans. If there is a newer version of the form on the website, check the instructions to determine whether it is necessary to adopt the newer form.

If you are using a financial institution's SIMPLE IRA prototype, check with that financial institution to ensure there are proper procedures in place ensuring they send any required updates you need to sign in a timely manner.

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Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
4) You excluded an eligible employee from participating. (More) (Video)	Review plan document sections on eligibility and participation. Check whether employees were enrolled at the proper time. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Review the participation status of all employees at least annually. (More)

4) You excluded an eligible employee from participating.

Generally, any employee whom you reasonably expect to receive at least $5,000 in compensation during a calendar year, and who did so in any prior 2 years is eligible to participate. You may increase the number of employees eligible to participate by lowering the $5,000 amount or by allowing all employees to participate regardless of how much they earn.

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How to Find the Mistake:

Review the SIMPLE IRA plan document to determine which employees must be allowed to participate. Compare past payroll information with employees who participated in the SIMPLE IRA plan. For example, if the plan uses the strictest participation rule, begin with the following **spot check**:

1) Review payroll data (W-2s, quarterly returns filed with the state (if applicable) and internal payroll records for prior years).
2) List all employees who earned at least $5,000 during any two prior years and whom you employed for any part of the current year.
3) Determine whether any of those employees either did not make elective deferrals or did not receive an allocation of employer contributions in either the prior years or the current year.
4) For the group of employees who either did not make elective deferrals or did not receive an allocation of employer contributions, determine whether their failure to make elective deferrals or receive employer contributions was because of their exclusion from the plan.
5) If employees were excluded from the plan, determine if the exclusions were consistent with the plan's terms.
6) If you find any employees in your spot check who were improperly excluded, then this could be an indication of a larger problem. You might expand the search to include other employees. This might require a review of payroll data for years long passed.

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How to Fix the Mistake:

Corrective Action:
If you excluded an eligible employee, you must make up for the employee's "missed deferral opportunity" by making a contribution of 1.5% of compensation for the period of the employee's exclusion, plus earnings (calculated from the date that the elective deferrals should have been made through the date of correction). The "missed deferral opportunity" is the economic loss to the employee resulting from not having a portion of compensation deferred on a pre-tax basis to a retirement account in which the amounts deferred can accumulate tax-free. Since the employee did not have a chance to make an election, the IRS correction programs assume that

the employee would have elected to defer 3% of compensation. The required corrective contribution to replace the missed deferral opportunity is 50% of the missed deferral, or 1.5% of compensation.

If, under the plan, the employer contribution is a 3% match, then the corrective contribution should include a matching contribution of 3% of compensation plus earnings (calculated from the date you should have made the required contributions through the date of correction). If the improperly excluded employee made the 3% of compensation elective deferral, as assumed in the prior paragraph, then the employee would have received a matching contribution equal to 3% of compensation. (Note: This contribution is in addition to the corrective contribution made to replace the "missed deferral opportunity.")

If, under the plan, the employer contribution is a 2% nonelective contribution (not dependent on the elective deferrals made by employees), then the corrective contribution should include a contribution of 2% of compensation plus earnings (calculated from the date the required contributions should have been made through the date of correction).

Example with employer matching contributions:
Nancy met the plan's eligibility requirements, but was not allowed to make elective deferral contributions to the plan. Nancy earned $10,000 in compensation during the year she was excluded from the plan. Under the plan document, the employer selected a matching contribution equal to each eligible employee's elective deferral contributions up to 3% of compensation.

The required corrective employer contribution must replace Nancy's missed opportunity to make elective deferral contributions plus any employer contributions to which Nancy would be entitled under the plan's terms.

1) **Missed deferral opportunity**: Nancy's missed deferral is 3% times $10,000, or $300. The required corrective employer contribution to replace Nancy's missed deferral opportunity, before adjusting for earnings, is 50% of $300, or $150. Thus, the required corrective contribution for an employee who was improperly excluded from making elective deferrals to a SIMPLE IRA plan is 1.5% of compensation (adjusted for earnings).
2) **Employer matching contributions**: Under the plan's terms, Nancy would have been entitled to an employer matching contribution equal to 3% of compensation based on her 3% missed deferral. The required corrective employer contribution to replace the missed matching contribution is 3% times $10,000, or $300, adjusted for earnings.

The total corrective employer contribution is $450 ($150 missed deferral opportunity plus $300 employer contribution) adjusted for earnings.

Example with fixed employer contributions:
Richard met the eligibility requirements, but his employer did not permit him to make elective deferral contributions to his SIMPLE IRA plan. During the year of exclusion, Richard earned $10,000 in compensation. The terms of the SIMPLE IRA plan require an employer contribution for each eligible employee equal to 2% of the employee's compensation for the calendar year.

The required corrective employer contribution must replace Richard's missed opportunity to make elective deferral contributions plus any employer contributions to which Richard would be entitled under the plan's terms.

1) **Missed deferral opportunity**: Richard's missed deferral is 3% times $10,000, or $300. The required corrective employer contribution to replace Richard's missed deferral

opportunity, before adjusting for earnings, is 50% of $300, or $150. Thus, the required corrective contribution for an employee the employer improperly excluded from making elective deferrals to a SIMPLE IRA plan is equal to 1.5% of compensation (adjusted for earnings).

2) **Fixed employer contributions**: Under the plan's terms, Richard was also entitled to receive an employer contribution equal to 2% of compensation. Thus, to replace the missed employer contribution, the required corrective employer contribution is 2% times $10,000, or $200, adjusted for earnings.

The total corrective employer contribution is $350 ($150 missed deferral opportunity plus $200 employer contribution) adjusted for earnings.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the failure.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

Before adopting this type of plan, understand the features of a SIMPLE IRA plan and determine whether the participation requirement for this type of plan matches your goals. In a SIMPLE IRA plan, you have limited flexibility to customize the plan participation criteria.

The individuals who administer the plan should be familiar with the terms of the plan document and there should be sufficient plan administrative procedures to ensure that the eligible employees are allowed to participate in the plan.

Before each November 2, take inventory of the individuals currently excluded from participation in the plan and compare with the plan terms. If you determine that any of the excluded employees will be eligible in the following calendar year, then you should provide notices informing the participants of their rights to make elective deferral contributions before the election period that begins on November 2 (see #9, below).

Make sure you consider all employees of any controlled group or affiliated service group and leased employees in determining the group of employees who should have the opportunity to make elective deferral contributions and receive employer contributions under the plan.

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
5) You made incorrect employer contributions for eligible employees. (More) (Video)	Review plan provisions on employer contributions and determine if correct allocations were made to all participants. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Review the plan's terms to ensure you are allocating correct employer contributions to employees' SIMPLE IRAs. (More)

5) You made incorrect employer contributions for eligible employees.

The required employer contributions must be either:

- 2% of an employee's compensation regardless of whether they made an elective deferral contribution; or
- a matching contribution equal to an employee's elective deferral contribution (up to 3% of such employee's compensation).

Note that you may reduce the 3% matching contribution to a lower percentage, but not lower than 1%. You may not lower the 3% for more than 2 of 5 years ending with the year the reduction is effective.

Return to Table

How to Find the Mistake:

Review plan document provisions relating to employer contributions. Based on those provisions and compensation data for all employees, calculate the employer contribution for those employees. Compare the calculation with the amounts you actually contributed for the employees. If the amounts contributed differ, then it is possible you are not following the plan's terms.

Return to Table

How to Fix the Mistake:

Corrective Action:
If additional amounts are required, contribute make-up amounts, adjusted for earnings from the date of the mistake to the date of correction. If you contributed amounts in excess of an employee's benefit, distribute the excess amount, adjusted for earnings through the date of correction. Report the distribution on Form 1099-R issued to the participant indicating the taxable amount as zero.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the mistake. The fee for the VCP submission is $250.

Audit Closing Agreement Program:

If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

The individuals administering the SIMPLE IRA plan should be familiar with the terms of the plan document. After learning the key provisions of the plan document, the administrator can make sure that the plan procedures ensure compliance with plan terms. Examples of administrative procedures include checklists, software, manuals, methods for calculating compensation, calculations of the required employer contributions and methods for deposit and allocation.

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
6) You used the wrong compensation definition to calculate deferrals and contributions to participants' SIMPLE IRAs. (More) (Video)	Review the plan document to determine if you are using the proper compensation for deferrals and contributions. (More)	Make corrective contributions to the plan to make up for the employees' missed deferrals and contributions. (More)	Review the plan's terms to ensure you are using the correct amount of compensation to calculate deferrals and contributions. (More)

6) You used the wrong definition of compensation to calculate deferrals and contributions to participants' SIMPLE IRAs.

Generally, compensation means the sum of wages, tips and other compensation subject to federal income tax withholding and the employee's elective deferral contributions made to the SIMPLE IRA plan.

Return to Table

How to Find the Mistake:

Review the computations supporting the elective deferral contributions and employer contributions made for all employees. Make sure that you count all compensation (not just base compensation) in this review. Include bonuses, overtime, commissions and all other categories of compensation. You may need to make additional contributions if these calculations indicate that you excluded categories of compensation.

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How to Fix the Mistake:

Corrective Action:
Make corrective contributions to employees' SIMPLE IRAs equal to:

1) 50% of the employee's elective deferral percentage under the plan times the excluded compensation (Note: unlike the correction for excluded employees, in this case you know the participant's actual salary deferral election); plus
2) the employer contribution required under the plan times the excluded compensation.

You must adjust the amounts contributed for earnings to the date of correction.

Example:
Susan elected to make an elective deferral contribution equal to 5% of compensation to the SIMPLE IRA plan. The plan's terms require the employer to contribute 2% of compensation for each employee. However, when determining the elective deferral contribution and the required employer contribution, the employer neglected to add $1,000 of Susan's overtime income to her $10,000 basic pay. Thus, Susan was not able to make elective deferral contributions on overtime income, and overtime income was ignored when determining the employer contribution that Susan was entitled to under the SIMPLE IRA plan.

The required corrective employer contribution must replace Susan's missed opportunity to make elective deferral contributions with respect to overtime income plus any employer contributions to which Susan would be entitled under the plan's terms.

1) **Missed deferral opportunity**: Susan's missed deferral, based on her election, is 5% times $1,000, or $50. The required corrective employer contribution to replace Susan's missed deferral opportunity, before adjusting for earnings, is 50% of $50, or $25.
2) **Employer contributions**: Under the terms of the plan, Susan was also entitled to receive an employer contribution equal to 2% of compensation. To replace the missed employer contribution with respect to Susan's $1,000 overtime income, the required corrective employer contribution is 2% times $1,000, or $20. The corrective contribution must also be adjusted for earnings.

The total corrective employer contribution is $45 ($25 missed deferral opportunity plus $20 employer contribution) adjusted for earnings.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS under Rev. Proc. 2008-50 identifying the failure. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

Establish plan administrative procedures requiring an annual review of employees' compensation. Verify that you have considered all compensation, including overtime, bonuses and commissions (not just base compensation) for determining employee elective deferral contributions and employer contributions.

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
7) Employee elective deferral contributions were not deposited timely to employees' SIMPLE IRAs. (More) (Video)	Compare the date on which you withheld the elective deferral contributions with the date on which you contributed the deferrals to the employees' SIMPLE IRA accounts. (More)	Make corrective contributions for each employee equal to the missed earnings for the period the deposits were late. (More)	Establish procedures to ensure employees' elective deferral contributions are timely deposited. (More)

7) Employee elective deferral contributions were not deposited timely to employees' SIMPLE IRAs.

IRS rules require you to make the elective deferral contributions no later than 30 days following the month in which you withheld the deferrals from the employee's salary.

If your plan is subject to Department of Labor rules, you may have to deposit employees' deferrals sooner. Department of Labor rules require you to transfer your employees' elective deferral contributions to their SIMPLE IRA accounts at the earliest date on which such contributions can be reasonably segregated from the employer's general assets. There is a 7-day safe harbor that most SIMPLE IRA plans would qualify for.

Return to Table

How to Find the Mistake:

For each pay period, review the date on which you withheld the elective deferral contributions from the employees' salary (typically the same date that you paid the net salaries to the employees) and compare with the date on which the elective deferral contributions were contributed to the employees' SIMPLE IRA accounts. If the deposits were not made by the earliest applicable deadline, you have a problem.

Return to Table

How to the Fix the Mistake:

In addition to transferring the withheld elective deferrals to the employees' SIMPLE IRAs, you should also make a contribution equal to the amount that those deferrals would have earned from the date that you should have deposited them through the date of the actual deposit.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the failure. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP and should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

You should also correct this mistake under the DOL's Voluntary Fiduciary Correction Program, if applicable.

Return to Table

How to Avoid the Mistake:

Establish plan administrative procedures to ensure you have made employees' salary deferral contributions to the employees' SIMPLE IRAs shortly after you withheld the amounts from their paychecks. (Note: The DOL timeframe for timely deposit is shorter than the IRS timeframe. Therefore, if your plan is subject to the DOL rules, you should use the DOL timeframe as the criteria for designing administrative procedures.)

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
8) Employer contributions were not made timely to the employees' SIMPLE IRAs. (More)	Review employee data, payroll remittances and other applicable records to determine if employer contributions were timely deposited. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Establish a procedure to ensure employer contributions are timely deposited. (More)

8) Employer contributions were not timely made to the employees' SIMPLE IRAs.

You have until the due date, including extensions, of your business's tax return to deposit matching contributions or nonelective contributions in the employees' SIMPLE IRAs for that year.

Return to Table

How to Find the Mistake:

Review employee data and other applicable accounting records to determine if you made timely contributions.

Return to Table

How to Fix the Mistake:

Corrective Action:

Make the required employer contributions plus the earnings that the contributions would have accrued if they were timely contributed.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the failure. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

Review the SIMPLE IRA plan rules concerning the timing of employer contributions and adopt administrative procedures to implement proper timing. Create a procedure that will alert you to: (1) the upcoming due date for employer contributions and (2) check whether you made the necessary contributions.

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
9) SIMPLE IRA plan notification requirements were not followed. (More) (Video)	Determine if the required SIMPLE IRA plan notifications were timely provided to eligible employees. (More)	Evaluate the impact of the failure to provide the required notices and make a reasonable correction. (More)	Establish procedures to ensure required notices are timely provided to employees. (More)

9) SIMPLE IRA plan notification requirements were not followed.

Prior to the election period the employer should:

1) Provide employees with the opportunity to make a salary deferral election immediately before November 2, the beginning of the 60-day election period prior to each calendar year. For new hires, the notice must generally be provided on the date of hire.
2) Inform employees of the ability to select a financial institution for their SIMPLE IRAs (if the plan provides for it).
3) Provide a Summary Description to each participant.
4) Notify employees of the employer's decision on whether to make fixed or matching contributions, including the amount of the match or fixed contributions.

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How to Find the Mistake:

Review the SIMPLE IRA plan notification requirements and verify you have followed them in operation. Review plan records to determine if and when you provided applicable notices to employees. In addition, review employee census data and the documents provided to employees.

Return to Table

How to Fix the Mistake:

Corrective Action:
Correct the plan administrative procedures to ensure you meet the notice requirement in future years. Evaluate the impact of failing to provide notices timely. For example, if the failure caused an employee to be excluded from the plan, then corrective contributions may be required. See the discussion under Potential Mistake #4.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS pursuant to Rev. Proc. 2008-50 identifying the failure. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

Establish administrative procedures to alert you of the timing of the notice requirements. Ensure that the procedures include providing a notice to each eligible employee before the annual election period that informs them of the SIMPLE IRA plan and their right to make elective deferral contributions or modify a prior elective deferral agreement.

Return to Table

Potential Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
10) Employer contributions were not made to eligible employees who terminated during the year (More)	Review employee payroll data to determine if eligible employees terminated during the year. (More)	Make corrective contributions to place affected employees in the position they would have been in but for the mistake. (More)	Establish administrative procedures to ensure that you make an employer contribution for all eligible employees whether or not they terminated employment during the year. (More)

10) Employer contributions were not made to eligible employees who terminated during the plan year.

An employer must make matching or nonelective contributions to all eligible employees. A SIMPLE IRA plan cannot require employment on a particular day, such as the last day of the year, to receive matching or nonelective contributions.

Return to Table

How to Find the Mistake:

Review employee payroll information to determine if any employee terminated employment during the year. Determine whether any of the terminated employees were covered under the plan and received an employer contribution for the year of termination.

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How to Fix the Mistake:

Corrective Action:
Make an employer contribution for each eligible employee who did not receive a contribution for the year. You must also make a contribution of the earnings that the employer contribution would have earned, determined from the date you should have made the contribution until the date you actually made the contribution.

Return to Table

Correction Program(s) Available:

Self-Correction Program:
The mistake may be corrected under SCP if you determine that the mistake is insignificant.

Voluntary Correction Program:
You may make a VCP submission to the IRS under Rev. Proc. 2008-50 identifying the failure. The fee for the VCP submission is $250.

Audit Closing Agreement Program:
If this mistake is discovered on audit, it may be corrected under Audit CAP. Correction of the plan under Audit CAP should be very similar to correction under SCP. The sanction under Audit CAP is a percentage of the MPA.

Return to Table

How to Avoid the Mistake:

Review the SIMPLE IRA plan rules concerning employer contributions. Establish administrative procedures that include listing all eligible employees who should receive an employer contribution for each year. The list should include all eligible employees whether or not they terminate employment in that calendar year

Return to Table