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 CHECKLIST 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. See www.irs.gov/retirement and click on "Types of Plans" for online versions of this checklist, Fix-It Guides and other resources for SIMPLE IRA and other plan types. For additional information (including examples) on how to find, fix and avoid each mistake, click on "(More)" on the online version of this checklist.

1. Has your SIMPLE IRA plan been amended for current law? Yes ☐ No ☐

Laws related to retirement plans change quite frequently. You must update the plan language and its operation to the current law.
(More)

2. 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)

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

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

4. Are all eligible employees allowed to participate in the SIMPLE IRA plan? 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. Are you determining each eligible employee's compensation using the definition in your SIMPLE IRA plan document? 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)

6. Are correct contributions being timely made to each participant's SIMPLE IRA? Yes ☐ No ☐

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

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)

7. Are contributions being made to terminated participants who were eligible 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)

8. 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)

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**
- **www.irs.gov/retirement**
- **call the IRS at (877) 829-5500**

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SIMPLE IRA Plan Fix-It Guide

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
1) You haven't 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.	Adopt the latest version of your financial institution's IRS-approved SIMPLE IRA plan or a current IRS Form 5304-SIMPLE or 5305-SIMPLE.	Make sure you adopt the most current SIMPLE IRA plan document.
2) 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.	Stop employer and employee contributions to the SIMPLE IRAs.	Prior to establishing a SIMPLE IRA plan, ensure that you meet the requirements.
3) 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.	Stop employer and employee contributions to the SIMPLE IRAs.	Don't maintain another qualified retirement plan while sponsoring a SIMPLE IRA plan.
4) You excluded an eligible employee from participating. (More) (Video)	Review plan document sections on eligibility and participation. Check whether you enrolled employees at the proper time.	Make corrective contributions to place affected employees in the position they would have been in if no mistake was made.	Review the participation status of all employees at least annually.
5) 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're using the proper compensation for deferrals and contributions.	Make corrective contributions to the plan to make up for the employees' missed deferrals and contributions.	Review the plan's definition of compensation to ensure that you're using the correct amount to calculate deferrals and contributions.

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
6) You made incorrect or untimely employer contributions or elective deferrals for eligible employees. (More) (Video)	Compare the amounts you contributed for each employee with the contribution percentage provided in the annual notice multiplied by each employee's compensation. Compare the dates on which you withheld the elective deferral contributions and the dates on which you contributed them to the employees' SIMPLE IRAs. Review employee data, payroll remittances and other records to determine if you deposited employer contributions timely.	Contribute make-up amounts, adjusted for earnings through the date of correction. Make corrective contributions for each employee equal to the missed earnings for the period the deposits were late.	Establish procedures to ensure that the employees' elective deferral contributions are made per the employees' election and employer contributions are equal to the amount provided for in the annual notice and are timely deposited.
7) Employer contributions weren't given to terminated eligible employees. (More)	Review employee payroll data to determine if eligible employees terminated during the year and if they were eligible to receive a contribution.	Make corrective contributions to place affected employees in the position they would have been in if no mistake was made.	Establish administrative procedures to ensure that you make an employer contribution for all eligible employees whether or not they terminated employment during the year.
8) SIMPLE IRA plan notification requirements weren't followed. (More) (Video)	Determine if you timely provided the required SIMPLE IRA plan notifications to eligible employees.	Evaluate the impact of the failure to provide the required notices and make a reasonable correction.	Establish procedures to ensure that you timely give required notices to employees.

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 for eligible employees.

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

- 100 or fewer employees who earned $5,000 or more in the previous year; and
- 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:

- $12,000 in 2014
- plus an additional $2,500 for employees age 50 or older
- 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. Prior to November 2, the beginning of the 60-day election period, the employer must notify employees which contribution it will provide the next calendar year.

Matching contribution: If an employee elects to make a salary deferral, then the employer must match the employee's contribution dollar-for-dollar, up to 3% of the employee's compensation. The employer doesn't have to make a matching contribution if the employee didn't make an elective deferral.

You may temporarily reduce the 3% match if:

- the revised matching contribution isn't less than 1% of pay;
- the reduction didn't occur for more than 2 years during the 5-year period ending in the year for which the election was made; and
- 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 eligible employees, regardless of whether the employee elects to defer salary. The fixed contribution can't be reduced like the matching contribution.

Establishing a SIMPLE IRA plan

Timing: Generally (provided you didn't previously maintain a SIMPLE IRA plan), you can set up a SIMPLE IRA plan effective on any date between January 1 and October 1.

- If you're a new employer coming into existence after October 1, 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 can't have an effective date that's 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:

- Form 5304-SIMPLE, *Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) - Not for Use With a Designated Financial Institution*, or
- 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 to receive their SIMPLE IRA plan contributions. Use Form 5305-SIMPLE if you require all contributions under the SIMPLE IRA plan to be initially deposited at a financial institution you designate.

The SIMPLE IRA plan is adopted when you've 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. Don't 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 you can use 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 by adopting 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 can't be designated as a Roth IRA.

A SIMPLE IRA must be set up for an employee before the first date a contribution must be deposited into the employee's IRA.

Effect on IRA limits: Contributions to a SIMPLE IRA won't 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

If you make mistakes with respect to your plan, you may use the IRS Employee Plans Compliance Resolution System to correct your mistakes. A correction for a mistake should be reasonable and appropriate. The correction method should resemble one already provided for in the Internal Revenue Code and you should consider all applicable facts and circumstances. Revenue Procedure 2013-12, 2013-04 I.R.B. 313 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 or paying a fee.
2. **Voluntary Correction Program (VCP)** - permits a plan sponsor to, any time before audit, pay a limited 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 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 only available for correcting an insignificant failure to follow the SIMPLE IRA plan document. 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.
- The plan sponsor should follow the general correction principles in Revenue Procedure 2013-12, section 6.
- A plan sponsor who corrects a mistake listed in Appendix A or Appendix B of Revenue Procedure 2013-12 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 that the mistakes don't recur.
- When using SCP, the plan sponsor should maintain adequate records to demonstrate correction in the event of a plan audit.
- There is no fee for self-correction.

Voluntary Correction Program:

- The plan sponsor makes a submission to the IRS that:
  - includes completed Forms 8950 and 8951.
  - identifies the mistakes.
  - proposes correction using the general correction principles in Revenue Procedure 2013-12, section 6.
  - proposes changes to its administrative procedures to ensure that the mistakes do not recur.
  - may include electronic pre-formatted model documents (Appendix C - Part 1 Model VCP Submission Compliance Statement and Appendix C - Part II Schedules) and Acknowledgement Letter (Appendix D) (to assist applicants making a VCP submission).
  - pays a compliance fee of $250.

    - a higher compliance fee will be owed if excess amounts are allowed to be retained in affected participants' IRAs.
- The IRS issues a Compliance Statement detailing the mistakes identified by the plan sponsor 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, IRS will not audit the plan, except under unusual circumstances.

Audit Closing Agreement Program:

- The plan sponsor or plan is under audit.
- 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** 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 that apply to the employees' tax return).
  - Additional tax resulting from the 6% tax imposed under Internal Revenue Code Section 4973 on excess contributions to IRAs.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You haven't updated your SIMPLE IRA plan document for current law changes. (Video)	Determine if your plan document is the latest IRS-approved plan from your financial institution or a current model plan.	Adopt the latest version of your financial institution's IRS-approved SIMPLE IRA plan or a current IRS Form 5304-SIMPLE or 5305-SIMPLE.	Make sure you adopt the most current SIMPLE IRA plan document.

1) You haven't 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 plan sponsors a new option or increase benefits allowable under a plan. Plans must be operated according to 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 sponsor must adopt an appropriate amendment to the plan language before the end of the year the new rule is put in place. At least once a year you should confirm that your plan language and operations are up-to-date. In addition, Revenue Procedure 2002-10 required SIMPLE IRA plans to be updated for law changes after January 1, 2002, and that IRS model adopters must have had an updated plan in place by December 31, 2002.

How to find the mistake:

If you're 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. March 2012"), 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's likely your plan hasn't 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 March 2012), provide that if you used the March 2002, August 2005 or September 2008 version of the form to establish a model SIMPLE IRA plan, you aren't required to use the March 2012 version of the form.

If you're using a financial institution's SIMPLE IRA prototype document, check whether the financial institution has received an IRS opinion letter stating that the SIMPLE IRA prototype document satisfies current law.

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 wasn't 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 your correct this error using the Voluntary Correction Program.

Correction programs available:

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

Voluntary Correction Program:
If you didn't timely adopt an updated plan document and the plan isn't under audit, make a submission to the IRS under Revenue Procedure 2013-12. Plan sponsors are encouraged to make their VCP submission using the model documents in Appendix C, including Forms 8950 and 8951. 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 maximum payment amount.

How to avoid the mistake:

If you're using IRS Form 5304-SIMPLE or 5305-SIMPLE, visit the IRS website before the end of each calendar year to see if the IRS has updated the model plans. If there's a newer version of the form, read the instructions to determine if you need to adopt the newer form.

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

Return to Table

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

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

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

You must count all employees who met the $5,000 earnings threshold in determining whether you met the 100-employee test. This includes full-time, part-time, seasonal and leased employees. In addition, if you're 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've maintained a SIMPLE IRA plan for at least one year before you exceeded the 100-employee limit.

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 prior 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 including 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 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 examples below illustrate that if there are entities that have common ownership interests or perform 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 your tax advisor to determine whether you're 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 five 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.

How to fix the mistake:

Corrective action:
If this is 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 IRAs.

Correction programs available:

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

Voluntary Correction Program:
If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4 and Forms 8950 and 8951.The fee for the VCP submission 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, you'll have to pay a sanction. The sanction under Audit CAP is a percentage of the maximum payment amount.

How to avoid the mistake:

Prior to establishing a SIMPLE IRA plan, determine whether you're eligible to have one. 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 your employees, but only after the year of the last contributions to the SIMPLE IRA plan.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
Your business sponsors another qualified retirement plan.	Determine if any employee received an allocation of contributions or accrued a benefit from your other qualified plan.	Stop employer and employee contributions to the SIMPLE IRAs.	Don't maintain another qualified retirement plan while sponsoring a SIMPLE IRA plan.

3) Your business sponsors another qualified plan.

You can't contribute 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, you can have a SIMPLE IRA plan even though you maintain another qualified plan if:

- The other plan is only for employees covered under a **collective bargaining agreement,** and the SIMPLE IRA plan excludes these employees; or
- Your business was part of an **acquisition, disposition or similar transaction** during the current or the two prior calendar years, and only your separate employees participate in the SIMPLE IRA plan.

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.

Example: ABC Company has a profit-sharing plan to which they make annual contributions. ABC Company may not have a SIMPLE IRA plan because they have another plan in which participants receive contributions.

Example: DEF Company is terminating its calendar-year profit-sharing plan. DEF made a profit-sharing contribution for 2013 but didn't deposit it until 2014. Therefore, even though DEF deposited the profit-sharing contribution in 2014, they allocated it in 2013. DEF Company may have a SIMPLE IRA plan for 2014 because no participant received an allocation in 2014.

Example: GHI Company has a fiscal year (July – June) profit-sharing plan. If GHI allocates a profit-sharing contribution for plan year July 1, 2013 – June 30, 2014, it can't have a SIMPLE IRA plan for either the 2013 or 2014 calendar year.

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 submission requesting that contributions made for previous years in which you maintained more than one plan remain in the employees' IRAs.

Correction programs available:

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

Voluntary Correction Program:
If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4 and Forms 8950 and 8951. 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 maximum payment amount.

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 don't 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.

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You excluded an eligible employee from participating. (Video)	Review plan document sections on eligibility and participation. Check whether you enrolled employees at the proper time.	Make corrective contributions to place affected employees in the position they would have been in if no mistake was made.	Review the participation status of all employees at least annually.

4) You excluded an eligible employee from participating.

Generally, any employee is eligible to participate if:

- you reasonably expect the employee to receive at least $5,000 in compensation during the calendar year, and
- the employee did so in any prior 2 years.

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.

How to find the mistake:

Review your SIMPLE IRA plan document to determine which employees you must allow 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 if any of those employees didn't make elective deferrals or receive an employer contribution in the prior years or the current year.
4. For the group of employees who either didn't make elective deferrals or receive an employer contribution, 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 past years' payroll data.

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 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 didn't have a chance to make an election, IRS safe harbor correction methods assume that the employee would've 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 that 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've received a matching contribution equal to 3% of compensation. (Note: This contribution is in addition to the corrective contribution you must make 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).

If it isn't feasible to determine what the actual investment results would have been, you may use a reasonable rate of interest, such as the interest rate used by the Department of Labor's Voluntary Fiduciary Correction Program Online Calculator.

Example with employer matching contributions:
Nancy met the plan's eligibility requirements, but wasn't allowed to make elective deferral contributions to the plan. Nancy earned $10,000 during the year she was excluded. 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.

- **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.
- **Employer matching contributions**: Under the plan's terms, Nancy would've 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) and must be adjusted for earnings through the date of correction.

Example with fixed employer contributions:
Richard met the eligibility requirements, but his employer didn't 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.

- **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 through the date of correction).

- **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 through the date of correction.

The total corrective employer contribution is $350 ($150 missed deferral opportunity plus $200 employer contribution) and must be adjusted for earnings through the date of correction.

Correction programs available:

Self-Correction Program:
The examples illustrate an operational problem because the employer failed to follow the terms of the SIMPLE IRA plan document by excluding eligible employees from participating in the plan. If the other eligibility requirements of SCP are satisfied, the employer might be able to use SCP to correct the mistake. The employer would have to determine whether:

- Appropriate practices and procedures were originally in place to facilitate compliance with requirements for employee eligibility.
- The failure is insignificant.

Voluntary Correction Program:
If the plan is not under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4 and Forms 8950 and 8951.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 maximum payment amount.

How to avoid the mistake:

Before adopting a SIMPLE IRA plan, understand its features 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.

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

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

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

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

How to find the mistake:

Review the computations for the elective deferral contributions and employer contributions 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.

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. If it isn't feasible to determine what the actual investment results would've been, you may use a reasonable rate of interest, such as the interest rate used by the Department of Labor's Voluntary Fiduciary Correction Program Online Calculator.

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

- **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.
- **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 on 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) and must be adjusted for earnings through the date of correction.

Correction programs available:

Self-Correction Program:
The example illustrates an operational problem because the employer failed to follow the terms of the SIMPLE IRA plan document in determining participant compensation. If the other eligibility requirements of SCP are satisfied, the employer might be able to use SCP to correct the mistake. The employer would have to determine whether:

- Appropriate practices and procedures were originally in place to facilitate compliance with requirements for determining participant compensation.
- The failure is insignificant.

Voluntary Correction Program:
If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4 and Forms 8950 and 8951.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 maximum payment amount.

How to avoid the mistake:

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

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
You made incorrect or untimely employer contributions or employee elective deferrals for eligible employees. (Video)	Compare the amounts you contributed for each employee with the contribution percentage provided in the annual notice multiplied by each employee's compensation. Compare the dates you withheld the elective deferral contributions to the dates you contributed the deferrals to employees' SIMPLE IRAs. Review employee data, payroll remittances and other records to see if you deposited employer contributions timely.	Contribute make-up amounts, adjusted for earnings through the date of correction. Make corrective contributions equal to the missed earnings for the period the deposits were late.	Establish procedures to ensure that employees' elective deferral contributions are made per the employees' election, employer contributions are equal to the amount in the annual notice and contributions are timely deposited.

6) You made incorrect or untimely employer contributions and employee elective deferrals for eligible employees.

The required employer contributions to a SIMPLE IRA plan must be either:

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

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. You may not lower the 2% fixed contribution.

Prior to November 2, the beginning of the 60-day election period, you must notify the employees of which contribution you will make in the following calendar year.

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

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. Generally, plans that benefit employees other than an owner-employee (and spouse) are subject to the Department of Labor rules. These rules require you to transfer your employees' elective deferral contributions to their SIMPLE IRAs at the earliest date on which the employer can reasonable segregate the contributions from the employer's general assets. There is a 7-day safe harbor to deposit elective deferrals for which most SIMPLE IRA plans qualify.

How to find the mistake:

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

Review employee data and other records to determine if you deposited the contributions by the required dates.

For each pay period, review the date you withheld elective deferral contributions from the employees' salaries (typically the same date that you paid employees) and compare it with the date the contributions were deposited to the employees' SIMPLE IRAs. If the deposits weren't made by the earliest deadline, you have a plan error.

How to fix the mistake:

Corrective action:
If you miscalculated elective deferrals and employer contributions and contributed **less** than required by the SIMPLE IRA plan document, you must contribute make-up amounts, adjusted for earnings through the date of correction. For corrective contributions from understated elective deferrals, follow the corrective action for Mistake #5.

If you didn't make the employer contributions timely, make an additional contribution of the earnings that the contributions would've accrued if they were timely contributed.

If it's not feasible to determine what the actual investment results would've been, you may use a reasonable rate of interest, such as the interest rate used by the Department of Labor's Voluntary Fiduciary Correction Program Online Calculator.

If you contributed **more** than the amount required by the terms of your SIMPLE IRA plan document, then you should correct by using either the:

a. *Distribution Method* - effect distribution for the excess amount, as adjusted for earnings (see Revenue Procedure 2013-12 section 6.11(5)(a)).
    - When the excess amount is because of:
        - elective deferrals - distribute and report on Form 1099-R as taxable for the year the distribution is made.
        - employer contributions - distribute to the plan sponsor rather than to the participants and report on a Form 1099-R issued to the participant, with a taxable amount of zero.

b. *Retention Method* – retain excess amounts in the SIMPLE-IRA. The plan sponsor must pay a special fee of at least 10% of the excess amount. This 10% fee is in addition to the Voluntary Correction Program submission fee.

    Small excess amounts. If the total excess amount is $100 or less, you aren't required to distribute the excess and aren't subject to the special additional fee.

Correction programs available:

Self-Correction Program:
If you miscalculate the elective deferrals or employer contributions by not following the SIMPLE IRA plan document terms, or fail to pay contributions to the IRAs on time, but meet the other eligibility requirements of SCP, you might be able to use SCP to correct the mistake (if no excess monies are allowed to remain in the affected participants' IRAs). You'd have to determine whether:

- Appropriate practices and procedures were originally in place to facilitate compliance with requirements for calculating and paying the elective deferrals and employer contributions.
- The failure is insignificant.

Voluntary Correction Program:
Under VCP, correction is as described under "Corrective action." If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including

Schedule 4. You must include Forms 8950 and 8951.The fee for the VCP submission is $250. You must use VCP if you wish to allow excess amounts to remain in the affected participants' IRAs and you'll have to pay an additional compliance fee equal to 10% of the excess amounts

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

If you paid elective deferral contributions late, you should also correct this mistake under the DOL's Voluntary Fiduciary Correction Program.

How to avoid the mistake:

The SIMPLE IRA plan administrators should be familiar with the plan document terms. The administrators should make sure that plan procedures follow the plan terms for the amount of contributions and depositing elective deferrals. Examples of administrative procedures include using checklists; software; manuals; and methods for calculating compensation and required employer contributions, and the steps for depositing and allocating them.

Review the SIMPLE IRA plan rules for the timing of employer contributions and adopt administrative procedures to make sure you pay them on time. Create a procedure that will alert you to the:

- upcoming due date for employer contributions, and
- certification that you made the contributions.

Establish plan administrative procedures to ensure that you've 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 for designing administrative procedures.)

Return to Table

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
Employer contributions weren't given to terminated eligible employees.	Review employee payroll data to determine if eligible employees terminated during the year and if they were eligible to receive a contribution.	Make corrective contributions to place affected employees in the position they would have been in if no mistake was made.	Establish administrative procedures to ensure that you make an employer contribution for all eligible employees whether or not they terminated employment during the year.

7) Employer contributions weren't given to terminated eligible employees.

An employer must make either matching or nonelective contributions to all eligible employees. A SIMPLE IRA plan can't require an employee to be employed on a particular day, such as the last day of the year, to receive matching or nonelective contributions.

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.

How to fix the mistake:

Corrective action:
Make an employer contribution for each eligible employee who didn't 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've made the contribution until the date you actually made it. If it isn't feasible to determine what the actual investment results would have been, you may use a reasonable rate of interest, such as the Department of Labor's Voluntary Fiduciary Correction Program Online Calculator.

Correction programs available:

Self-Correction Program:
If you failed to follow the SIMPLE IRA plan document terms when making employer contributions and the other eligibility requirements of SCP are satisfied, you might be able to use SCP to correct the mistake. You have to determine whether:

- Appropriate practices and procedures were originally in place to facilitate compliance with who was eligible to receive employer contributions.
- The failure is insignificant.

Voluntary Correction Program:
If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4. You must include Forms 8950 and 8951.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 maximum payment amount.

How to avoid the mistake:

Review the SIMPLE IRA plan rules for 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

Mistake	Find the Mistake	Fix the Mistake	Avoid the Mistake
SIMPLE IRA plan notification requirements weren't followed. (Video)	Determine if you timely provided the required SIMPLE IRA plan notifications to eligible employees.	Evaluate the impact of the failure to provide the required notices and make a reasonable correction.	Establish procedures to ensure that you timely give required notices to employees.

8) SIMPLE IRA plan notification requirements weren't followed.

Prior to November 2, the beginning of the 60-day election period prior to each calendar year, the employer should:

- Give all eligible employees a written notice that informs them of their right to make a salary deferral election. If the plan doesn't have a waiting period, the employer should generally give the notice to a newly hired employee on the employee's hire date.
- Inform employees of their ability to select a financial institution for their SIMPLE IRAs (if the plan allows this option).
- Give a Summary Description to each participant.
- Notify employees of the employer's decision to make either a fixed or a matching contribution, including the amount of the contribution.

How to find the mistake:

Review the SIMPLE IRA plan notification requirements and verify you've followed them in operation. Review plan records to determine if, and when, you notified employees. In addition, review employee census data to determine eligible employees and the documents you gave to them.

How to fix the mistake:

Corrective action:
Correct your plan administrative procedures to ensure that you meet the notice requirement in future years. Evaluate the impact of failing to provide notices timely. For example, if not notifying an employee of the SIMPLE IRA plan caused the employee to be excluded from the plan, then you may need to contribute to his or her SIMPLE IRA. See the discussion under Potential Mistake #4.

Correction programs available:

Self-Correction Program:
If you failed to follow the terms of the SIMPLE IRA plan document when you didn't provide the annual written notice to all eligible employees and you've satisfied the other SCP eligibility requirements, you might be able to use SCP to correct the mistake. You would have to determine whether:

- Appropriate practices and procedures were originally in place to facilitate compliance with timely issuing the annual written notice.
- The failure is insignificant.

Voluntary Correction Program:
If the plan isn't under audit, you may make a VCP submission using the model documents in Appendix C, including Schedule 4 and Forms 8950 and 8951.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 maximum payment amount.

How to avoid the mistake:

Establish administrative procedures to alert you when you must give SIMPLE IRA plan notices. Ensure that your procedures include giving 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 change their prior elective deferral agreement.

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