EP Team Audit (EPTA) Program - Top Ten Failures Found in Voluntary Correction Program

The following list was taken from the IRS website.

Top Ten Failures Found in Voluntary Correction Program

1. Failure to amend the plan for tax law changes by the end of the period required by the law.
This results in a plan failing to operate in accordance with the current law because the plan document has not been amended to affect such change. Currently, the most common law changes that employers have failed to amend their plans for are GUST*, the good faith amendments for EGTRRA** and the Final and Temporary regulations under section 401(a)(9).

2. Failure to follow the plan's definition of compensation for determining contributions.
Usually, certain types of compensation are excluded, such as bonuses, commissions, or overtime, or certain types of compensation are included where they should have been excluded. This failure can result in participants receiving allocations to their accounts that are either greater than or less than the amount they should have received.

3. Failure to include eligible employees in the plan or the failure to exclude ineligible employees from the plan.
This often occurs in a controlled group situation after a merger or acquisition. Where otherwise eligible employees are excluded, the excluded employees don't receive an allocation of contributions to which they are entitled. Where ineligible employees are included in the plan, the employer has made additional contributions which it did not need to make to the plan.

4. Failure to satisfy plan loan provisions.
Loan failures often result from the plan sponsor's failure to withhold loan payments. Where a plan fails to collect loan repayments from participants, the loan is considered defaulted and the participant should be taxed on the loan in the year of default.

5. Impermissible in-service withdrawals.
These requests relate to both defined benefit and contribution plans. The law provides that distributions to participants can be made upon certain events or the attainment of a specific age. This failure involves the circumstance where a distribution is made to a participant where the law or plan terms do not permit a distribution.

6. Failure to satisfy IRC 401(a)(9) minimum distribution rules.
The law requires that a participant receive a distribution when they attain a certain age. This failure involves the plan not making distributions to participants where they have attained the age for required distributions under the law. The law requires that the participant pay an excise tax of 50% on the amount of required distribution if it is not made timely. The Service will, in appropriate cases, waive the excise tax if the plan sponsor requests the waiver in appropriate situations.

7. Employer eligibility failure.
This occurs when an employer adopts a plan that it legally is not permitted to adopt. Common situations are where a government adopts a 401(k) plan or a tax-exempt entity (other than a 501(c)(3) entity or a public educational organization) adopts a 403(b) plan.

8. Failure to pass the ADP/ACP nondiscrimination tests under IRC 401(k) and 401(m).
This failure could result from the employer not using the correct compensation or where the employer excluded eligible employees who elected not to participate in the 401(k) plan.

9. Failure to properly provide the minimum top-heavy benefit or contribution under IRC 416 to non-key employees.
The law requires that if the account balances or accrued benefits of key employees (typically, owners)

comprises a substantial portion of the assets of the plan (generally, 60% of plan assets), non-key employees are entitled to receive a minimum benefit or contribution.

10. Failure to satisfy the limits of IRC 415.
The law limits the amount of contributions a participant can receive in a defined contribution plan (i.e., a 401(k) or profit-sharing plan) and the amount of benefits a participant can accrue in a defined benefit plan. This failure occurs where the employer or its third party administrator does not monitor the amount of contributions allocated or the amount of benefits accrued by participants.

---

* The Uruguay Round Agreements Act; the Uniformed Services Employment and Reemployment Rights Act of 1994; the Small Business Job Protection Act of 1996; the Taxpayer Relief Act of 1997; the Internal Revenue Service Restructuring and Reform Act of 1998; and the Community Renewal Tax Relief Act of 2000 (collectively known as “GUST”)

** The Economic Growth and Tax Relief Reconciliation Act of 2001

Note: the links are active as of the date of issue.