

### Checking the right box, insight into IRS audits

by James G. Isaac, Susan Peters Schaefer and Karen A. Simonsen (guest contributors)

The Internal Revenue Service recently published an updated list of common plan mistakes found during the agency's Employee Plans Team Audits (EPTA) and an internal controls questionnaire used by EPTA auditors.

Although [the EPTA program](#) focuses on retirement plans with at least 2,500 participants, the published materials give all plan administrators valuable insights into the IRS's audit process and what the IRS believes plan sponsors can do to avoid common errors in plan administration.

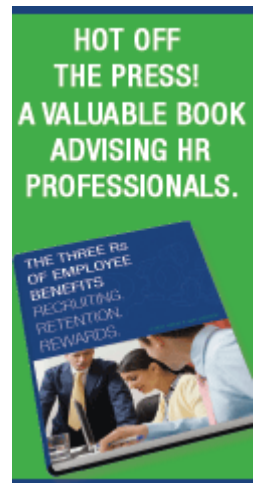
#### Payroll

The questionnaire contains four sets of questions each directed at various points of plan compliance: human resources, payroll, plan administration and operational failures. Regarding human resources, EPTA auditors may inquire about:

- The coordination of employees' hiring and termination with the actual delivery of benefits.
- How transferred, rehired and leased employees are handled.
- How plan practices and procedures are communicated to new benefits or HR personnel when turnover occurs.

Regarding payroll, EPTA examiners focus on the controls in place for the accurate transmission of employee payroll data to the plan recordkeeper. The IRS also reviews whether certain pay is run through nonstandard payroll – such as bonuses and

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executive pay, how payroll errors are corrected, how the correction is communicated to the plan administrator and whether record of the correction is maintained.

## Plan administration

When it comes to plan administration, EPTA examiners review how responsibilities are allocated and how communications and data are maintained between the plan sponsor and the plan's recordkeeper or other service providers.

Examiners will consider items such as who is responsible for determining that timely amendments are executed for the plan. In addition, EPTA auditors review how the custodian of trust assets maintains trust data, communicates that data to the plan's trustee and [deals with errors](#). They also review how certain reportable transactions and events are identified and disclosed.

In terms of operational plan failures, EPTA examiners will ask a series of procedural questions. For example, examiners will want to know what procedures are in place to identify operational failures, how identified failures have been corrected and what new procedures have been implemented so that failures do not occur again. The IRS will be particularly interested in a plan sponsor's answers to these questions when determining whether sanctions are appropriate and, if so, the severity of these sanctions.

## Documentation

Finally, the IRS provides a guide with a comprehensive list of documents that needs to be made available during an EPTA audit. Guides specific to both defined contribution and defined benefit plans are available, as well as a combined guide for both plan types.

Depending on the specific issues under review, an auditor may require that the plan sponsor make available such diverse materials as documentation confirming the correction of a plan's past operational failures, the amount and date of distributions to individual participants (including bank records documenting distributions), and the amounts and types of plan expenses and [other disbursements](#).

The EPTA materials not only alert plan sponsors of [what to expect in an IRS audit](#) but also are valuable resources to check plan compliance and internal control procedures. These are important tools that plan administrators may use to conduct self-audits of plan compliance. Plan sponsors should conduct periodic self-audits, as frequently as annually.

These self-audits can permit the plan to self-correct errors currently, without requiring IRS approval, and prepare for eventual IRS audits. The questionnaire specifically asks about the self-audit procedures in place, and the IRS may consider evidence of self-audit procedures in negotiating any penalties for errors found in a formal audit.

You can contact the authors at 312-984-2009 or [sschaefer@mwe.com](mailto:sschaefer@mwe.com).

*Ed's Note: Legal Alert will not publish on Nov. 27. Look for your next Legal Alert on Dec. 4. Happy Thanksgiving!*

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