Correction of elective deferrals resulting from automatic enrollment failures (including automatic escalation) and other elective deferral failures

Correction methods under the Employee Plans Compliance Resolution System (EPCRS) for elective deferral failures generally provide for an employer contribution that is equivalent to 50 percent of the missed deferral. This would be in addition to any employer contribution to which the employee would have otherwise been entitled. Under the Revised EPCRS Revenue Procedure 2016-51 employers also have the option of not making the 50 percent employer contribution providing certain requirements are met, as described below.

An elective deferral failure is a failure to correctly implement elective deferrals in a §401(k) plan or §403(b) plan including elective deferrals pursuant to an affirmative election or pursuant to an automatic contribution feature (including an automatic escalation feature) and a failure to afford an employee the opportunity to make an affirmative election because the employee was improperly excluded from the plan.

### Automatic enrollment plan elective deferral failure safe harbor correction

<table>
<thead>
<tr>
<th>Step 1</th>
<th>The automatic elective deferral failure is identified within 9½ months after the end of the plan year in which the failure occurred (October 15 for calendar-year plans).</th>
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| Step 2 | Correct deferrals must begin the earlier of:  
  • The first paycheck made on or after the last day of the 9½ month period after the end of the plan year in which the failure occurred (October 15 for a calendar-year plan); or  
  • If the plan sponsor was notified by the employee, the first paycheck made on or after the last day of the month after the month of notification. |
| Step 3 | Notice of the failure must be given to the affected employee no later than 45 days after the date deferrals begin. The notice must contain the following information:  
  • Name of the plan and plan contact information including name, street address, email address, and phone number of plan contact;  
  • General information about the failure, including the correct deferral percentage and the date the deferrals should have commenced (disclosure of actual dollar amounts is not required);  
  • Statement that appropriate amounts have begun (or will begin shortly) to be deducted from compensation and contributed to the plan;  
  • Statement that corrective contributions relating to the missed matching contributions have been made (or will be made). Specific information about the date or amount of corrective contributions is not required; and  
  • Explanation that the participant may increase his or her deferral percentage to make up for the missed deferral opportunity, subject to the 402(g) limits. |
| Step 4 | Corrective contributions (adjusted for earnings) to make up for any missed matching contributions must be made no later than the end of the second plan year following the plan year in which the missed matching contributions occurred.  
  • If the employee has not made an investment election, the plan’s default investment option can be used to calculate earnings.  
  • The earnings adjustment cannot result in a cumulative loss (i.e., at least contribute the amount of the missed match). |

NOTE: The Automatic Enrollment Safe Harbor Correction Method expires December 21, 2020, unless extended by the IRS.
Early correction of employee elective deferral failures

1. No 50 percent employer contribution is required for the missed elective deferral if a) the missed elective deferral did not occur for more than three months or, if notified earlier than three months, the employer commences correct deferrals no later than the first paycheck in the month following the month the employer was notified; and b) Steps 3 and 4 above are implemented, as well, or

2. A reduced employer contribution is required equal to 25 percent (rather than 50 percent) of the missed deferrals if the missed elective deferral occurred for more than three months, provided a) the employer commences correct deferrals no later than the last day of the second plan year following the plan year when the failure first occurred or, if notified, the employer commences correct deferrals no later than the first paycheck in the month following the month the employer was notified; and b) Steps 3 and 4 above are implemented, as well.

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