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Automatic Enrollment Failures and Correction Methods

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Last week, the IRS released new safe harbor correction methods for automatic enrollment related failures for 401(k) and 403(b) plans. The new safe harbor correction rules apply to failures involving: (1) an employee who should have been enrolled under a plan's automatic enrollment feature but was not, and (2) an employee who made an affirmative election in lieu of automatic contributions but whose election was not implemented correctly. If the failure is discovered within 9-1/2 months following the close of the plan year in which the failure occurred, the plan sponsor will not have to make a corrective contribution for the missed deferral opportunity so long as the affected employee's correct deferrals begin within the 9-1/2 month period (or earlier if the employee notifies the plan sponsor of the failure before then). Furthermore, the plan sponsor must provide notice of the failure to the affected employee within 45 days after the date in which the correct deferrals begin, and make a corrective contribution to the affected employee's account to make up for any missed matching contributions (adjusted for earnings).

In addition to the automatic enrollment corrections, this guidance provides a rolling correction period for employee elective deferral failures that do not exceed three months. Under this safe harbor, no corrective contributions for the missed elective deferrals would be required if the affected employee's correct deferrals begin within the three month period (or earlier if the employee notifies the plan sponsor of the failure before then). Again, the plan sponsor must provide notice of the failure to the affected employee within 45 days after the date in which the correct deferrals begin, and make corrective contributions to the affected employee's account to make up for any missed matching contributions (adjusted for earnings).

If the period of failure exceeds three months, then the plan sponsor is required to make a corrective contribution for the missed deferrals, but the amount of the corrective contribution has been reduced to 25% of the missed deferrals. To take advantage of this safe harbor, the plan sponsor must begin making the correct deferrals within a two year period following the plan year in which the failure occurred, provide the 45-day notice and make a corrective contribution for the missed matching contributions.

This guidance also provides an alternative safe harbor method for calculating "Earnings for Employee Elective Deferral Failures" under 401(k) and 403(b) plans. If an affected eligible employee has not affirmatively designated an investment alternative, missed earnings may be calculated based on the plan's default investment option. However, cumulative losses reflected in the earnings calculation may not be used to reduce the

required corrective contributions relating to the matching contributions.

Please contact any member of our Benefits Law Group if you have any questions regarding this or any employee benefit issues.

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