

Section 350.

(last updated 1/19/2023)

Title: Safe harbor for correction of employee elective deferral failures

Effective Date: Effective for any errors with respect to which the date that is 9½ months after the end of the plan year during which the error occurred is after December 31, 2023.

Mandatory or Optional: N/A

Plans Affected: 401(a); 403(b); 457(b); IRAs

Previous Law: The IRS' Employee Plans Compliance Resolution System (EPCRS) contains rules allowing plans to correct errors, including with respect to missed deferrals under automatic enrollment or automatic escalation features. EPCRS currently contains a safe harbor for correcting automatic enrollment failures, which is set to expire on December 31, 2023.

SECURE 2.0 Law: Creates a safe harbor that a plan will not fail to be a qualified plan merely because of a corrected error. A "corrected error" is a reasonable administrative error made in implementing automatic enrollment, automatic escalation features, or by failing to offer an affirmative election due to the employee's improper exclusion from the plan, so long as that error is corrected within 9 ½ months of the end of the plan year in which the error occurred (or date on which employee notifies the plan sponsor of the error, if earlier), is resolved favorably toward the participant and without discrimination toward similarly situated participants, and notice is provided within 45 days of the date on which correct deferrals begin. This new safe harbor does not require a corrective contribution for missed deferrals, but the plan sponsor must contribute any missed matching contributions, plus earnings. The safe harbor is available for 401(a), 403(b) and 457(b) plans and IRAs.

Guidance and/or Correction Bills:

- None