Revenue Procedure 2026-34

TABLE OF CONTENTS

PART I. INTRODUCTION TO EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM .....

SECTION 1. PURPOSE AND OVERVIEW .....
.01 Purpose .....
.02 General principles underlying EPCRS .....
.03 Overview.....
.04 Income or excise tax issues that are ineligible for resolution under EPCRS....
.05 IRA issues that are ineligible for resolution under EPCRS .....

SECTION 2. EFFECT OF THIS REVENUE PROCEDURE ON PROGRAMS .....
.01 Effect on programs .....
.02 Description of modifications .....
.03 Future enhancements and request for comments .....

PART II. PROGRAM EFFECT, DEFINITIONS, AND ELIGIBILITY .....

SECTION 3. EFFECT OF EPCRS; RELIANCE .....
.01 Effect of EPCRS on retirement plans .....
.02 Compliance statement .....
.03 Excise and other taxes .....
.04 Reliance .....

SECTION 4. DEFINITIONS.....
.01 Definitions for Qualified Plans.....
.02 Definitions for Section 403(b) Plans .....
.03 Definitions for Orphan Plans.....
.04 Earnings .....
.05 IRA .....
.06 Definitions for SEP Arrangements.....
.07 Definitions for SIMPLE IRA Plans.....
.08 Under Examination .....
.09 Eligible Inadvertent Failure .....

SECTION 5. PROGRAM ELIGIBILITY .....
.01 EPCRS Programs .....
.02 Effect of examination .....
.03 Availability of correction for a terminated plan .....
.04 Availability of correction for an Orphan Plan.....
.05 Availability of correction for section 457(b) plans.....

.06 Egregious failures
.07 Diversion or misuse of plan assets
.08 Abusive tax avoidance transactions

PART III. CORRECTION PRINCIPLES AND RULES OF GENERAL APPLICABILITY

SECTION 6. CORRECTION PRINCIPLES AND RULES OF GENERAL APPLICABILITY
.01 Correction principles; rules of general applicability
.02 Correction principles
.03 Special exceptions to full correction
.04 Correction for exclusion of employees with respect to elective deferrals or after-tax employee contributions
.05 Correction of an Employer Eligibility Failure
.06 Correction of a Demographic Failure
.07 Correction by plan amendment
.08 Correction of a failure to obtain spousal consent in a Qualified Plan subject to sections 401(a)(11) and 417
.09 Principles regarding corrective allocations, corrective contributions, and corrective distributions for defined contribution plans
.10 Principles regarding corrective contributions and corrective distributions for defined benefit plans
.11 Special rules relating to Excess Amounts and Excess Allocations
.12 Inadvertent Benefit Overpayments and other Overpayments
.13 Correction of plan loan failures
.14 Plan Sponsor ceasing to exist or maintain the plan
.15 Matters subject to excise or other taxes
.16 Correction principles for Section 403(b) Plans
.17 Correction principles for SEP Arrangements and SIMPLE IRA Plans
.18 Confidentiality and disclosure
.19 No effect on other law

PART IV. SELF-CORRECTION PROGRAM (SCP)

SECTION 7. GENERAL SCP CORRECTION RULES
.01 In general
.02 Requirement of established practices and procedures
.03 Failures not eligible for, and correction methods not available under, SCP
.04 Correction methods
.05 Correction Period under SCP
.06 Examples

SECTION 8. APPLICATION OF SCP IF UNDER EXAMINATION
.01 SCP while Under Examination

.02 Exclusions from SCP while Under Examination .....
.03 Determination of an insignificant Operational Failure .....
.04 Multiple failures.....
.05 Examples.....

PART V. VOLUNTARY CORRECTION PROGRAM WITH IRS APPROVAL (VCP).....

SECTION 9. VCP PROCEDURES.....
.01 VCP pre-submission conference .....
.02 VCP requirements .....
.03 Identification of failures.....
.04 Effect of VCP submission on examination.....
.05 No concurrent examination activity.....
.06 Determination letter applications not related to a VCP submission .....
.07 Processing of submission.....
.08 Compliance statement.....
.09 Effect of compliance statement on examination .....
.10 Anonymous submissions not permitted .....
.11 Special rules relating to group submissions.....
.12 Multiemployer and multiple employer plans.....

SECTION 10. SUBMISSION PROCEDURES FOR VCP.....
.01 General rules.....
.02 Submission of model forms .....
.03 Mandatory submission process using the Pay.gov website.....
.04 PDF file submission contents .....
.05 User fee due at the time of VCP submission using the Pay.gov website.....
.06 Additional user fee due for group submissions.....
.07 Additional amounts due for certain submissions.....
.08 Power of attorney requirements.....
.09 Acknowledgement of filing.....
.10 Maintenance of copies of submissions .....
.11 Assembling the submission .....

SECTION 11. VCP USER FEES.....

PART VI. CORRECTION ON AUDIT (AUDIT CAP).....

SECTION 12. DESCRIPTION OF AUDIT CAP.....
.01 Audit CAP requirements .....
.02 Payment of sanction .....
.03 Additional requirements.....
.04 Failure to reach resolution .....
.05 Effect of closing agreement .....

.06 Other procedural rules

SECTION 13. AUDIT CAP SANCTION
.01 Determination of sanction
.02 Factors considered
.03 Transferred Assets
.04 Sanction for Nonamender Failures discovered during the determination letter application process

PART VII. EFFECT ON OTHER DOCUMENTS; EFFECTIVE DATE; PUBLIC COMMENTS; PAPERWORK REDUCTION ACT

SECTION 14. EFFECT ON OTHER DOCUMENTS

SECTION 15. EFFECTIVE DATE

SECTION 16. PUBLIC COMMENTS

SECTION 17. PAPERWORK REDUCTION ACT

DRAFTING INFORMATION

APPENDIX

OPERATIONAL FAILURES AND CORRECTION METHODS
.01 General rule
.02 Failure to properly provide the minimum top-heavy benefit under section 416 to non-key employees
.03 Failure to satisfy the ADP test set forth in section 401(k)(3) and the ACP test set forth in section 401(m)(2)
.04 Failure to distribute elective deferrals in excess of the section 402(g) limit (in contravention of section 401(a)(30))
.05 Exclusion of an eligible employee from contributions or accruals under the plan
.06 Failure to timely pay the minimum distribution required under section 401(a)(9)
.07 Failure to obtain participant or spousal consent for a distribution subject to the participant and spousal consent rules under sections 401(a)(11) and 417
.08 Correction of an Excess Allocation with respect to a section 415 failure
.09 Correction of Overpayments
.10 Correction of a failure to provide a notice of suspension of benefits in a defined benefit plan
.11 Vesting failures in a defined contribution plan
.12 Section 401(a)(17) failures in a defined contribution plan

.13 Correction by amendment .....
.14 Earnings adjustment methods .....

PART I. INTRODUCTION TO EMPLOYEE PLANS COMPLIANCE RESOLUTION SYSTEM

SECTION 1. PURPOSE AND OVERVIEW

.01 Purpose. This revenue procedure updates the comprehensive system of correction programs for sponsors of retirement plans that are intended to satisfy the requirements of section 401(a), 403(a), 403(b), 408(k), or 408(p) of the Internal Revenue Code ("Code") but that have not met these requirements for a period of time. This system, the Employee Plans Compliance Resolution System ("EPCRS"), permits Plan Sponsors to correct these failures and thereby continue to provide their employees with retirement benefits on a tax-favored basis. The components of EPCRS are the Self-Correction Program ("SCP"), the Voluntary Correction Program ("VCP"), and the Audit Closing Agreement Program ("Audit CAP").

.02 General principles underlying EPCRS. EPCRS is based on the following general principles:

- Plan Sponsors and other administrators of eligible plans should satisfy the applicable plan document requirements of the Code and operate the plans in accordance with their terms.

- Plan Sponsors and other administrators of eligible plans should be encouraged to establish administrative practices and procedures that ensure that these plans are operated properly in accordance with the applicable requirements of the Code and the terms of the plan document.

- Plan Sponsors and other administrators should make voluntary and timely correction of any plan failures, whether involving discrimination in favor of highly compensated employees, plan operations, the terms of the plan document, or adoption of a plan by an ineligible employer. Timely and efficient correction protects participating employees by providing them with their expected retirement benefits, including favorable tax treatment.

- Voluntary compliance is promoted by establishing limited fees for voluntary corrections approved by the Internal Revenue Service ("IRS"), thereby reducing employers' uncertainty regarding their potential tax liability and participants' potential tax liability.

- Fees and sanctions should be graduated in a series of steps so that there is always an incentive to correct promptly.

- Sanctions for plan failures identified on audit should be reasonable in light of the nature, extent, and severity of the violation.

- Administration of EPCRS should be consistent and uniform.

- Plan Sponsors should be able to rely on the availability of EPCRS in taking corrective actions to maintain the tax-favored status of their plans.

.03 Overview. EPCRS includes the following basic elements:

- Self-correction (SCP). A Plan Sponsor that has established compliance practices and procedures may, without paying any fee or sanction, correct certain failures under a Qualified Plan, a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan under the terms described in section 7.

- Voluntary correction with IRS approval (VCP). A Plan Sponsor, at any time before the plan or Plan Sponsor is Under Examination, may pay a limited fee and receive the IRS's approval for correction of a Qualified Plan, Section 403(b) Plan, SEP Arrangement, or SIMPLE IRA Plan Failure. Under VCP, there are special procedures for group submissions and anonymous no-fee pre-submission conferences.

- Correction Under Examination (Audit CAP). If a failure (other than a failure corrected through SCP or VCP) is identified while the plan or Plan Sponsor is Under Examination, the Plan Sponsor may correct the failure and pay a sanction through Audit CAP. The sanction imposed will bear a reasonable relationship to the nature, extent, and severity of the failure, taking into account the extent to which correction occurred before audit.

.04 Income or excise tax issues that are ineligible for resolution under EPCRS. Employee Plans Rulings and Agreements considers requests, under voluntary closing agreement procedures known as VCAP, to resolve certain income or excise tax issues that are ineligible for resolution under EPCRS. Refer to Rev. Proc. 2026-4, 2026-1 IRB 160 (and its annual successors), for more information. Instructions on submitting a request, including a request for an anonymous pre-submission conference, can be found at: https://www.irs.gov/retirement-plans/employee-plans-voluntary-closing-agreements.

.05 IRA issues that are ineligible for resolution under EPCRS. The IRS is opening a separate IRA compliance resolution system that will permit IRA custodians and IRA owners to correct certain failures related to IRAs that are ineligible for resolution under EPCRS. See Rev. Proc. 2026-33, this Bulletin.

SECTION 2. EFFECT OF THIS REVENUE PROCEDURE ON PROGRAMS

.01 Effect on programs. This revenue procedure modifies and supersedes Rev. Proc. 2021-30, 2021-31 IRB 172, the most recent prior consolidated statement of the correction programs under EPCRS.

.02 Description of modifications. This update to Rev. Proc. 2021-30 incorporates changes made to EPCRS by recent legislation and interim guidance issued in Notice 2023-43, 2023-24 IRB 919, Notice 2024-2, 2024-2 IRB 316, and Notice 2024-77, 2024-45 IRB 1093. Changes made in response to comments are noted in the changes described in this section 2.02. This update to Rev. Proc. 2021-30 makes the following changes:

(1) SECURE 2.0 Act. Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 ("SECURE 2.0 Act"), was enacted on December 29, 2022. Section 301 (recovery of retirement plan overpayments), section 305 (expansion of the Employee Plans Compliance Resolution System), and section 350 (safe harbor for corrections of employee elective deferral failures) of the SECURE 2.0 Act made changes that affected several provisions of Rev. Proc. 2021-30. The Department of the Treasury ("Treasury Department") and the IRS issued three notices providing interim guidance on these provisions. Notice 2023-43 provides interim guidance on section 305; Notice 2024-2 provides interim guidance on section 350; and Notice 2024-77 provides interim guidance on section 301(b). This revenue procedure incorporates the provisions of sections 301(b), 305, and 350 and the guidance provided in these notices as described in the following paragraphs.

(a) Section 305 of the SECURE 2.0 Act (expansion of Employee Plans Compliance Resolution System). Section 305 of the SECURE 2.0 Act generally expands SCP to permit self-correction of Eligible Inadvertent Failures, including loan failures. This updated revenue procedure incorporates the provisions of section 305 and Notice 2023-43 by:

(i) defining Eligible Inadvertent Failure, see section 4.09;

(ii) eliminating the requirement that a Qualified Plan or a Section 403(b) Plan be the subject of a favorable letter to use SCP;

(iii) listing failures that are not eligible for SCP, see section 7.03;

(iv) permitting self-correction of certain Demographic Failures, Employer Eligibility Failures, and Plan Document Failures, see section 6.05, 6.06, and 6.07;

(v) permitting self-correction of loan failures identified in this revenue procedure, see section 6.13;

(vi) expanding self-correction for failures occurring in SEP Arrangements and SIMPLE IRA Plans, if certain plan document requirements are met, see section 7;

(vii) requiring that a Plan Sponsor ensure that a spouse receives the benefit the spouse is entitled to under sections 401(a)(11) and 417 if there was a failure to obtain spousal consent for a loan and the loan has not been repaid at the time a distribution is made, see section 6.13(4);

(viii) requiring that self-correction of an Eligible Inadvertent Failure be completed within a reasonable period after identification of the failure, and that a self-correction that is completed by the later of the last day of the third plan year following the plan year in which the failure occurred or 18 months after identification of the failure is deemed to have been completed within a reasonable period,[1] see section 7.05;

(ix) treating self-correction of an Employer Eligibility Failure as having been completed within a reasonable period if the Plan Sponsor ceases all contributions to the plan as soon as reasonably practicable after the failure is identified and no later than the last day of the sixth month following the date the failure is identified, see sections 6.05 and 7.05;

(x) requiring a Plan Sponsor to provide documentation substantiating self-correction of an Eligible Inadvertent Failure when a plan or Plan Sponsor is Under Examination, see section 7.05(2)(b);

(xi) providing that, once a plan or Plan Sponsor comes Under Examination, SCP may only be used if: (a) the Plan Sponsor has demonstrated a specific commitment to implement a self-correction with respect to the Eligible Inadvertent Failures, including corrections for Plan Document Failures, Employer Eligibility Failures, and Demographic Failures; or (b) the failure is an insignificant Operational Failure, see sections 7.05, 8.01, and 8.02;

---

[1] Notice 2023-43 provides that a correction completed within 18 months after identification of a failure is deemed to be a correction made within a reasonable period. In response to comments, this deemed reasonable period has been modified to provide that if a correction of a failure is completed by the later of the last day of the third plan year following the plan year in which the failure occurred or 18 months after identification of the failure, the correction is deemed to have been completed within a reasonable period.

(xii) establishing that a determination of whether actions taken by a Plan Sponsor demonstrate a specific commitment to implement self-correction is based on all the facts and circumstances and must include a demonstration that the Plan Sponsor is actively pursuing correction, see section 8.01;

(xiii) restricting the availability of SCP to correct failures discovered during the determination letter process so that SCP is only available with respect to those failures if they are insignificant Operational Failures, see section 9.06(2); and

(xiv) specifying that an elective deferral failure may be corrected with a reduced qualified nonelective contribution ("QNEC") only if the correction is completed no later than the last day of the third plan year following the plan year in which the failure occurred (rather than by the end of the SCP correction period for significant failures because that deadline no longer applies due to the passage of section 305 of the SECURE 2.0 Act), see Appendix section .05(9)(b).[2]

(b) Section 350 of the SECURE 2.0 Act (safe harbor for corrections of employee elective deferral failures). Section 350 of the SECURE 2.0 Act adds section 414(cc) to the Code. Section 414(cc) generally reinstates the safe harbor method in section .05(8), Appendix A of Rev. Proc. 2021-30, that permits correction, with no QNEC, of an employee deferral failure in a plan with an automatic enrollment or automatic escalation feature.[3]

This updated revenue procedure incorporates the provisions of section 350 of the SECURE 2.0 Act and Notice 2024-2, relating to section 401(k) plans, Section 403(b) Plans, SEP Arrangements, or SIMPLE IRA Plans, in Appendix section .05(8) by:

(i) eliminating the December 31, 2023, sunset of the safe harbor correction method;

(ii) extending the correction method to SEP Arrangements and SIMPLE IRA Plans;

(iii) extending the correction method to terminated employees; and

[2] This correction deadline was revised after consideration of comments.
[3] Pursuant to authority provided in section 414(cc)(4)(E), for the Treasury Department and the IRS to prescribe guidance to carry out the purposes of section 414(cc), an error under section 414(cc)(2) may only be corrected upon satisfaction of the requirements of this revenue procedure (or a successor revenue procedure).

(iv) requiring that a corrective allocation of matching contributions be made within a reasonable period, as determined by all relevant facts and circumstances, after the date on which the correct elective deferrals begin (or would have begun but for the employees' termination of employment).[4]

(c) Section 301 of the SECURE 2.0 Act (recovery of retirement plan Overpayments). Section 301(b) of the SECURE 2.0 Act adds sections 414(aa) and 402(c)(12) to the Code. Section 414(aa) generally provides that no corrective payment is required for an Inadvertent Benefit Overpayment. Section 402(c)(12) provides rollover treatment for an Inadvertent Benefit Overpayment.

This updated revenue procedure incorporates the provisions of section 301(b) of the SECURE 2.0 Act and Notice 2024-77 by:

(i) defining Inadvertent Benefit Overpayment, see section 4.01(3)(d) and 4.02(4);

(ii) excluding failures related to sections 401(a)(17), 415, and 436 of the Code from the elimination of the requirement to restore an Inadvertent Benefit Overpayment to the plan, see section 6.12(1)(a);

(iii) permitting a Plan Sponsor to seek recoupment of an Inadvertent Benefit Overpayment, see section 6.12(1)(a);[5]

(iv) requiring a corrective payment to the Plan for an Inadvertent Benefit Overpayment related to a section 401(a)(17), 415, or 436 failure that is not recouped from the recipient with an exception for small payments under $250,[6] see section 6.03(4) and 6.12(1)(b);

(v) providing that certain failures may require a corrective payment if the Inadvertent Benefit Overpayment results in another failure, such as (a) a corrective payment due to an incorrect allocation of a profit-sharing contribution that results in benefit underpayments to others, or (b) restoration of an impermissible forfeiture in accordance with section 411, see section 6.12(1)(a);

---

[4] Q&A I-4 of Notice 2024-2 provides that a corrective allocation of matching contributions made by the last day of the sixth month following the month in which correct elective deferrals begin is deemed to have been made within a reasonable period. In response to a comment, the six-month period in Q&A I-4 has been extended to twelve months.

[5] Section 206(h) of the Employee Retirement Income Security Act of 1974, Pub. L. 93-406, 88 Stat. 829, as amended (ERISA) may limit a Plan Sponsor's ability to seek recoupment.

[6] Notice 2024-77 did not include this small payment exception. The exception has been added to this revenue procedure in response to a comment.

(vi) treating as an eligible rollover distribution any Inadvertent Benefit Overpayment not sought by the Plan Sponsor, see section 6.12(1)(c)(i);

(vii) requiring that a Plan Sponsor seeking recoupment of an Inadvertent Benefit Overpayment notify the recipient that any unreturned portion is not an eligible rollover distribution, see section 6.12(1)(c)(i);

(viii) treating recoupment as having been sought with respect to any Inadvertent Benefit Overpayment that is due to a section 415 or 401(a)(17) failure (so that the Plan Sponsor must notify the recipient that any unreturned portion of the Inadvertent Benefit Overpayment is not an eligible rollover distribution), see section 6.12(1)(c)(ii);

(ix) treating the transfer of an Inadvertent Benefit Overpayment that had been rolled over from the originating plan to a second plan as an eligible rollover distribution and also treating as an eligible rollover distribution the transfer of the amount from the second plan back to the originating plan, regardless of plan terms, see section 6.12(1)(c)(iii);

(x) permitting a Plan Sponsor that wishes to continue Inadvertent Benefit Overpayments that are not in accordance with plan terms to adopt an amendment that increases past and future benefit payments if the amendment does not violate any applicable Code provision, including section 401(a)(17) or 415, see section 6.12(1)(a) and (3); and

(xi) eliminating the description of the funding exception method and contribution credit method and referencing Rev. Proc. 2021-30 for the description of these methods, see section 6.12(3)(d).

(2) Other modifications. In addition to incorporating sections 301(b), 305, and 350 of the SECURE 2.0 Act, this updated revenue procedure makes other changes by:

(a) referencing the availability of VCAP for resolving certain income and excise tax issues that are ineligible for resolution under EPCRS and giving the IRS the discretion to determine that a submission is ineligible for VCP and may be resolved under VCAP, see sections 1.04 and 9.07(2);

(b) referencing the availability of an IRA compliance resolution system for resolving certain failures related to IRAs that are ineligible for resolution under EPCRS, see section 1.05;

(c) updating definitions related to Plan Document Failures by incorporating the definitions used in Rev. Proc. 2022-40, 2022-47 IRB 487

(determination letter program for individually designed plans), and Rev. Proc. 2023-37, 2023-51 IRB 1491 (opinion letter program for Pre-approved Plans), see section 4.01(2)(a) and 4.02(2)(a);

(d) clarifying that, for purposes of SCP eligibility, a failure to initially adopt a written plan does not include a failure in which (1) employees of an employer are participating in a plan adopted by a Plan Sponsor; and (2) the employer has not adopted the plan as a participating employer,[7] see sections 6.07(3)(c) and 7.03(1);

(e) revising certain definitions and correction methods applicable to SEP Arrangements and SIMPLE IRA Plans, see sections 4.06, 4.07, and 6.17;

(f) clarifying that certain income or excise tax issues are ineligible for VCP and Audit CAP, see section 5.01(1)(b) and (c);

(g) clarifying that failures in a fully insured defined benefit plan that is described in section 412(e)(3) of the Code are generally not eligible for SCP, VCP, or Audit CAP, see sections 5.01(1)(b), 5.01(1)(c), and 7.03(10);

(h) eliminating the requirement for a Plan Sponsor to notify an individual that an Excess Amount of $250 or less is not an eligible rollover distribution, see section 6.03(5);

(i) revising procedures for locating lost participants, see section 6.03(6);

(j) adding a provision regarding the adoption of certain retroactive amendments to clarify the requirements for a limited correction method used in VCP and Audit CAP, see section 6.07;

(k) revising the correction principle for failure to obtain spousal consent in certain Qualified Plans to require that the Plan Sponsor ensure that the spouse receives the benefit the spouse is entitled to receive, see section 6.08 and Appendix section .07;

(l) clarifying the determination of actuarial equivalence for corrective distributions from defined benefit plans (underpayments), see section 6.10;

(m) revising procedures for a group submission under VCP, see sections 9.11 and 10.04(13);

---

[7] This clarification was made in response to comments.

(n) revising the Audit CAP sanction for Nonamender Failures discovered during the determination letter application process, see section 13.04;

(o) eliminating a special rule relating to brief exclusions from elective deferrals and after-tax employee contributions previously in Appendix B section .02(1)(F) to Rev. Proc. 2021-30;

(p) clarifying that the correction methods for employee exclusion failures with respect to after-tax employee contributions may be used for failures involving partial years,[8] see Appendix section .05(2)(d)(i);

(q) extending a safe harbor correction method that permits a reduced QNEC to correct deferral failures so that it applies to terminated employees and is available to correct after-tax employee contribution failures,[9] see Appendix section .05(9)(b) and (d);

(r) adding a method for determining the missed deferral if all non-highly compensated employees are improperly excluded from making deferrals,[10] see Appendix section .05(2)(b);

(s) adding a safe harbor correction method for Plan Sponsors that fail to provide a suspension of benefits notice to certain participants in a defined benefit plan, see Appendix section .10;

(t) revising certain VCP and Audit CAP procedures to include updated references that reflect the expansion of SCP, the issuance of Rev. Proc. 2022-40 and Rev. Proc. 2023-37, and revised internal Employee Plans procedures; and

(u) making miscellaneous style changes, including (i) merging Appendix A and Appendix B to Rev. Proc. 2021-30 into a single Appendix; (ii) removing duplicative provisions; (iii) updating correction method examples by revising annual limits, contributions, and plan years; and (iv) reorganizing certain provisions.[11]

---

[8] This revenue procedure's clarification that certain correction methods can be used for partial plan year failures was made after consideration of comments.

[9] This revenue procedure's extension of the safe harbor correction method so that it applies to failures with respect to after-tax employee contributions and terminated employees was made after consideration of comments.

[10] This revenue procedure's additional method for determining the missed ADP if all non-highly compensated employees have been excluded with respect to deferrals was made after consideration of comments.

[11] Several commenters requested stylistic changes, for example, the removal of duplicative provisions.

.03 Future enhancements and request for comments. (1) Future enhancements. It is expected that the Treasury Department and the IRS will continue to update EPCRS. The Treasury Department and the IRS continue to invite further comments on how to improve EPCRS. For information on how to submit comments, see section 16.

(2) Request for comments on proposal for calculating Earnings. This revenue procedure currently provides that an allocation or contribution made to correct a failure in a defined contribution plan should be adjusted for the earnings that would have been allocated or contributed to the participant's account had the failure not occurred (from the date of the failure through the date of correction), and, for these corrections, this revenue procedure also provides that a Plan Sponsor may, but is not required to, adjust for losses. The Appendix provides for safe harbor methods for calculation of earnings for a correction of an Operational Failure in a defined contribution plan (in general, a corrective contribution or allocation that increases one or more employees' account balances). The safe harbor methods do not apply to corrective distributions or reductions. The safe harbor methods are based on actual earnings of the applicable account, fund, or plan. However, section 6.03(2) provides an exception stating that, under certain circumstances, if it is not feasible to make a reasonable estimate of what the actual investment results would have been, a reasonable interest rate may be used, and, for this purpose, the interest rate used by the Department of Labor's Voluntary Fiduciary Correction Program ("VFCP") Online Calculator ("DOL Online Calculator")[12] is deemed to be a reasonable interest rate. The DOL Online Calculator uses the section 6621(a)(2) and (c)(1) underpayment rates in effect during the time period of the failure and the corresponding factors from Rev. Proc. 95-17, 1995-1 CB 556, which reflect daily compounding. The DOL Online Calculator uses the rate in section 6621(a)(2) if lost earnings do not exceed $100,000 and the rate in section 6621(c)(1) if lost earnings exceed $100,000. The rate under section 6621(a)(2) is based on the Federal short-term rate plus three percentage points, and the rate under section 6621(c)(1) is the rate under section 6621(a)(2) plus two percentage points.

In response to stakeholder suggestions, the Treasury Department and the IRS are considering ways to expand the use of the DOL Online Calculator to calculate earnings. Expanded use of the DOL Online Calculator has the potential to reduce earnings calculation costs, complexity, and uncertainty. However, the DOL Online Calculator rate of section 6621(a)(2) may be too low as compared to average rates of return for private defined contribution plans over recent periods. Additionally, it would be inappropriate to permit Plan Sponsors to choose to calculate earnings based on the

[12] The DOL Online Calculator is found at: https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/correction-programs/vfcp.

DOL Online Calculator during periods of high returns and to use actual earnings during periods of low, or even negative, returns.

The Treasury Department and the IRS have developed a proposal that would require use of the DOL Online Calculator earnings assumption based on the underpayment rate under section 6621(c)(1), which is higher than the rate under section 6621(a)(2). Using the DOL Online Calculator in a way that generates use of the higher underpayment rate requires some manipulation, but should not significantly increase costs, complexity, or uncertainty. The proposal also would impose an earnings floor, as described in (b) below, with respect to correction methods that permit use of the safe harbor earnings calculation methods described in the Appendix.

Comments are requested on the following specific proposals:

(a) Addition of another safe harbor method under Appendix section .14 for calculating earnings for a correction of an Operational Failure in a defined contribution plan (in general, a corrective contribution or allocation that increases one or more employees' account balances) which would permit the use of the underpayment rate described in section 6621(c)(1) (used in the DOL Online Calculator if lost earnings exceed $100,000);[13] and

(b) If this revenue procedure does not require a specific earnings method, addition of a requirement that the DOL Online Calculator underpayment rates (described in section 6621(a)(2) and (c)(1), as applicable) must be used as a floor (a minimum amount of earnings) for determining the amount of earnings under all corrections of Operational Failures in defined contribution plans (in general, corrective contributions or allocations that increase one or more employees' account balances), including when any other safe harbor method is used to determine the earnings.

Comments are also requested on whether the benefit restoration calculation method available under certain circumstances in section 6.03(2) should be revised to be consistent with the prior paragraph.

PART II. PROGRAM EFFECT, DEFINITIONS, AND ELIGIBILITY

[13] Because the underpayment rate under section 6621(c)(1) must be used, correction amounts cannot merely be entered into the DOL Online Calculator to obtain the correct lost earnings. For the DOL Online Calculator to generate earnings using the interest rate under section 6621(c)(1), an artificial entry may need to be created. For example, the following data to create the artificial entry could be used: $100,000,000 in the "Principal" box, any date in the "Loss Date" box, and a date that is at least one year later in both the "Recovery Date" and "Final Payment Date" boxes. The "Amount Due" generated using the artificial data would be ignored when aggregating the earnings for the correction.

SECTION 3. EFFECT OF EPCRS; RELIANCE

.01 Effect of EPCRS on retirement plans. For a Qualified Plan, a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan, if the eligibility requirements of section 5 are satisfied and the Plan Sponsor corrects a failure in accordance with the applicable requirements of SCP in section 7, VCP in section 9, or Audit CAP in section 12, the IRS will not treat the plan as failing to satisfy the requirements of section 401(a), 403(b), 408(k), or 408(p), as applicable, because of the failure. For example, if the Plan Sponsor corrects a failure in accordance with the requirements of this revenue procedure, the plan will not be treated as failing to satisfy section 401(a), 403(b), 408(k), or 408(p), as applicable, for purposes of applying sections 3121(a)(5) (FICA taxes) and 3306(b)(5) (FUTA taxes).

.02 Compliance statement. If a Plan Sponsor or Eligible Organization receives a compliance statement under VCP, the compliance statement is binding upon the IRS and the Plan Sponsor or Eligible Organization as provided in section 9.08 and 9.09.

.03 Excise and other taxes. See section 6.15 for rules relating to excise and other taxes.

.04 Reliance. Taxpayers may rely on this revenue procedure, including the relief described in section 3.01.

SECTION 4. DEFINITIONS

The following definitions apply for purposes of this revenue procedure:

.01 Definitions for Qualified Plans. The definitions in this section 4.01 apply to Qualified Plans.

(1) Qualified Plan. The term “Qualified Plan” means a plan intended to satisfy the requirements of section 401(a) or 403(a).

(2) Qualification Failure. The term “Qualification Failure” means any failure that adversely affects the qualification of a plan. There are four types of Qualification Failures: (a) Plan Document Failures; (b) Operational Failures; (c) Demographic Failures; and (d) Employer Eligibility Failures.

(a) Plan Document Failure. (i) In general. The term “Plan Document Failure” means a plan provision (or the absence of a plan provision) that, on its face, violates the Qualification Requirements. A Plan Document Failure includes a failure to adopt an initial plan document, a Nonamender Failure, and an Interim Amendment Failure.

A Plan Document Failure does not include a failure to adopt a discretionary plan amendment by the plan amendment deadline set forth in section 6.02 of Rev. Proc. 2022-40 or sections 6.03 and 7 of Rev. Proc. 2023-37. A failure to adopt a discretionary plan amendment is an Operational Failure.

(ii) Specific definitions relating to Plan Document Failures:

(A) Qualification Requirements. The term "Qualification Requirements" means the requirements of sections 401(a) and 403(a), including requirements provided by statute, in regulations, or in other guidance published in the Internal Revenue Bulletin ("IRB"). Under this definition, a change in Qualification Requirements includes a change provided by statute, in regulations, or in other guidance published in the IRB, that affects a requirement of section 401(a) or 403(a), without regard to whether the change results in a Disqualifying Provision or merely permits the adoption of a discretionary amendment. See section 4.01(4) of Rev. Proc. 2022-40 for individually designed plans and section 4.02(3) of Rev. Proc. 2023-37 for Pre-approved Plans.

(B) Disqualifying Provision. The term "Disqualifying Provision" means (a) a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the plan to fail to satisfy the requirements of the Code applicable to the qualification of the plan as of the date the plan or amendment is first made effective; (b) a plan provision that, pursuant to § 1.401(b)-1(b)(3), has been designated by the Commissioner of the IRS, in guidance published in the IRB, as a disqualifying provision by reason of a change in those requirements; or (c) the absence from a plan of a provision required by (or, if applicable, integral to) a change in the qualification requirements of the Code. A Disqualifying Provision also includes a provision designated by the IRS if it (i) results in the failure of the plan to satisfy the qualification requirements of the Code by reason of a change in those requirements that is effective after December 31, 2001, or (ii) is integral to a Disqualifying Provision described in clause (i). See section 4.01(1) of Rev. Proc. 2022-40 for individually designed plans and section 4.02(1) of Rev. Proc. 2023-37 for Pre-approved Plans.

(C) Interim Amendment Failure. The term "Interim Amendment Failure" means the failure to adopt an amendment to correct a Disqualifying Provision that results in the failure of a Pre-approved Plan to satisfy a Qualification Requirement by reason of a change in that requirement, or an amendment that is integral to such Disqualifying Provision. See sections 4.01(9) and 6.04 of Rev. Proc. 2023-37 for the definition of Interim Amendment and requirements for Pre-approved Plans.

The term also includes the failure to adopt an amendment required to be adopted in an individually designed plan before January 1, 2017 (or before February 1, 2017, for Cycle A plans). See section 5.04 of Rev. Proc. 2007-44, 2007-2 CB 54, for the applicable date of adoption.

(D) Nonamender Failure. The term “Nonamender Failure” means a failure to adopt an amendment that corrects a Disqualifying Provision within the applicable remedial amendment period. See section 5 of Rev. Proc. 2022-40 for individually designed plans for the applicable remedial amendment period and section 6 of Rev. Proc. 2023-37 for Pre-approved Plans for the applicable remedial amendment period.

For an individually designed plan, a Nonamender Failure includes the failure to timely amend for provisions that appear on applicable annual Required Amendments Lists, as described in section 7 of Rev. Proc. 2022-40. See https://www.irs.gov/retirement-plans/required-amendments-list.

(b) Operational Failure. The term “Operational Failure” means a failure that arises solely from the failure to follow plan provisions. For example, a failure to follow the terms of the plan providing for the satisfaction of the requirements of section 401(k) and (m) is considered an Operational Failure.

A plan does not have an Operational Failure to the extent the plan is permitted to be amended retroactively to reflect the plan’s operations (for example, pursuant to section 401(b)). In the situation in which a Plan Sponsor timely adopted an amendment and the plan was not operated in accordance with the terms of such amendment, the plan is considered to have an Operational Failure.

(c) Demographic Failure. The term “Demographic Failure” means a failure to satisfy the requirements of section 401(a)(4), 401(a)(26), or 410(b) that is not an Operational Failure or an Employer Eligibility Failure.

(d) Employer Eligibility Failure. The term “Employer Eligibility Failure” means the adoption of a plan intended to include a qualified cash or deferred arrangement under section 401(k) by an employer that fails to satisfy the employer eligibility requirements to establish a section 401(k) plan. An Employer Eligibility Failure is not a Plan Document, Operational, or Demographic Failure.

(3) Excess Amount; Excess Allocation; Overpayment; Inadvertent Benefit Overpayment. (a) Excess Amount. The term “Excess Amount” means a Qualification Failure due to a contribution, allocation, or similar credit that is made on behalf of a participant or beneficiary to a plan in excess of the maximum amount permitted to be contributed, allocated, or credited on behalf of the participant or beneficiary under the terms of the plan or that exceeds a limitation on contributions or allocations provided in the Code or regulations. Excess Amounts include:

(i) an elective deferral or after-tax employee contribution that is in excess of the maximum contribution under the plan;[14]

(ii) a contribution made in excess of the limitation under section 415;

(iii) an elective deferral in excess of the limitation of section 402(g) and, if applicable, an additional elective deferral in excess of the limitation of section 414(v);

(iv) an excess contribution or excess aggregate contribution under section 401(k) or (m); and

(v) a contribution that is made with respect to compensation in excess of the limitation of section 401(a)(17).

However, an Excess Amount does not include a contribution, allocation, or other credit that is made pursuant to a correction method provided under this revenue procedure for a different Qualification Failure. Excess Amounts are limited to contributions, allocations, or annual additions under a defined contribution plan, after-tax employee contributions to a defined benefit plan, and contributions or allocations that are to be made to a separate account (with actual Earnings) under a defined benefit plan.

(b) Excess Allocation. The term "Excess Allocation" means an Excess Amount for which the Code or regulations do not provide any corrective mechanism. Excess Allocations include Excess Amounts as defined in section 4.01(3)(a)(i), (ii), and (v).

(c) Overpayment. The term "Overpayment" means a payment made to a plan participant or beneficiary (the "Overpayment recipient") that exceeded the amount payable to the Overpayment recipient under the terms of the plan or that exceeded a limitation provided in the Code or regulations. An Overpayment also includes a payment made before a distribution is permitted under the Code or under the terms of the plan. However, an Overpayment does not include a payment that is made pursuant to a correction method provided under this revenue procedure for a different Qualification Failure. For example, a corrective distribution to correct a section 415(c) failure would not be considered an Overpayment.

(d) Inadvertent Benefit Overpayment. The term "Inadvertent Benefit Overpayment" means an Overpayment that occurs due to an Eligible Inadvertent Failure. However, an Inadvertent Benefit Overpayment does not include an Overpayment made to a disqualified person as defined in section 4975(e)(2) or an owner-employee as defined in section 401(c)(3).

---

[14] The term elective deferral includes a designated Roth contribution, and the term after-tax employee contribution does not include a designated Roth contribution.

(4) Maximum Payment Amount. The term “Maximum Payment Amount” means a monetary amount that is approximately equal to the tax the IRS could collect upon plan disqualification and is the sum for the open taxable years of the:

(a) tax on the trust (Form 1041, U.S. Income Tax Return for Estates and Trusts) (and any interest or penalties applicable to the trust return);

(b) additional income tax resulting from the loss of employer deductions for plan contributions (and any interest or penalties applicable to the Plan Sponsor’s return);

(c) additional income tax resulting from income inclusion for participants in the plan (Form 1040, U.S. Individual Income Tax Return), including the tax on plan distributions that have been rolled over to other qualified trusts (as defined in section 402(c)(8)(A)) or eligible retirement plans (as defined in section 402(c)(8)(B)) and any interest or penalties applicable to the participants’ returns;

(d) in the case of any participant loan that did not comply with the requirements of section 72(p)(2), the tax the IRS could collect as a result of the loan not being excluded from gross income under section 72(p)(2); and

(e) any other tax that results from a Qualification Failure that would apply but for correction under this revenue procedure.

(5) Plan Sponsor. The term “Plan Sponsor” means the employer that establishes or maintains a Qualified Plan for its employees.

(6) Transferred Assets. The term “Transferred Assets” means plan assets that were received, in connection with a corporate merger, acquisition, or other similar employer transaction, by the plan in a transfer (including a merger or consolidation of plan assets) under section 414(l) from a plan sponsored by an employer that was not a member of the same controlled group as the Plan Sponsor immediately prior to the corporate merger, acquisition, or other similar employer transaction. If a transfer of plan assets related to the same employer transaction is accomplished through several transfers, then the date of the transfer is the date of the first transfer.

(7) Pre-approved Plan. The term “Pre-approved Plan” means a plan that has received an opinion letter under Rev. Proc. 2023-37, or a predecessor or successor revenue procedure, and that is made available by a Pre-approved Plan provider for adoption by eligible employers. See section 4.01(14) of Rev. Proc. 2023-37.

.02 Definitions for Section 403(b) Plans. The definitions in this section 4.02 apply to Section 403(b) Plans. For Section 403(b) Plans, the definitions under

Rev. Proc. 2008-50, 2008-35 IRB 464, apply to failures that occurred in taxable years beginning before January 1, 2009.

(1) Section 403(b) Plan. The term "Section 403(b) Plan" means a plan or program intended to satisfy the requirements of section 403(b).

(2) Section 403(b) Failure. The term "Section 403(b) Failure" means a failure that adversely affects the exclusion from income of a participant's benefit under a Section 403(b) Plan. There are four types of Section 403(b) Failures: (a) Plan Document Failures; (b) Operational Failures; (c) Demographic Failures; and (d) Employer Eligibility Failures.

(a) Plan Document Failure. (i) In general. The term "Plan Document Failure" means a plan provision (or the absence of a plan provision) that, on its face, violates any of the Section 403(b) Requirements. A Plan Document Failure includes a failure to adopt an initial plan document, a Nonamender Failure, and an Interim Amendment Failure.

(ii) Specific definitions relating to Plan Document Failures:

(A) Section 403(b) Requirements. The term "Section 403(b) Requirements" means the requirements of section 403(b), including the requirements provided in the Code, and in regulations or other guidance published in the IRB. Under this definition, a change in Section 403(b) Requirements includes a statutory, regulatory, or other guidance change that affects a requirement of section 403(b), without regard to whether the change results in a Form Defect or merely permits the adoption of a discretionary amendment. See section 4.03 of Rev. Proc. 2023-37 for Pre-approved Plans and section 4.01 of Rev. Proc. 2022-40 for individually designed plans.

(B) Form Defect. The term "Form Defect" means (a) a provision of a new plan, the absence of a provision from a new plan, or an amendment to an existing plan that causes the form of the Section 403(b) Plan to fail to satisfy the Section 403(b) Requirements applicable as of the date the plan or amendment is first made effective; (b) a plan provision that: (i) results in the failure of the form of the Section 403(b) Plan to satisfy the Section 403(b) Requirements by reason of a change in those requirements; (ii) is integral to a Form Defect described in (i); or (c) the absence from a plan of a provision required by (or, if applicable, integral to a change in) the Section 403(b) Requirements within the applicable remedial amendment period. See section 4.01 of Rev. Proc. 2022-40 for individually designed plans and section 4.03 of Rev. Proc. 2023-37 for Pre-approved Plans.

For a form defect first occurring before July 1, 2020, see Rev. Proc. 2019-39, 2019-42 IRB 945. A Form Defect as defined above differs from the definition of form defect first occurring before July 1, 2020.

(C) Interim Amendment Failure. The term “Interim Amendment Failure” means the failure to adopt an amendment to correct a Form Defect that results in the failure of a Pre-approved Plan to satisfy a Section 403(b) Requirement, as applicable, by reason of a change in that requirement, or an amendment that is integral to that Form Defect. See section 7 of Rev. Proc. 2023-37 for Interim Amendment requirements for Pre-approved Plans.

(D) Nonamender Failure. The term “Nonamender Failure” means a failure to adopt an amendment that corrects a Form Defect within the applicable remedial amendment period set forth in section 6.02 of Rev. Proc. 2022-40 for an individually designed plan or sections 6.03 and 7 of Rev. Proc. 2023-37 for a Pre-approved Plan.

For an individually designed plan, a Nonamender Failure includes the failure to timely amend for provisions that appear on the Required Amendments List, as described in section 7 of Rev. Proc. 2022-40. See https://www.irs.gov/retirement-plans/required-amendments-list.

A Plan Document Failure does not include a failure to adopt a discretionary plan amendment by the plan amendment deadline set forth in section 6.02 of Rev. Proc. 2022-40 or sections 6.03 and 7 of Rev. Proc. 2023-37.

(b) Operational Failure. The term “Operational Failure” means a Section 403(b) Failure (other than an Employer Eligibility Failure) that arises solely from the failure to follow plan provisions. For example, a failure to follow the terms of the plan providing for the satisfaction of the requirements of section 403(b)(12)(ii)(A) (relating to the availability of elective deferral contributions) and section 401(m) (as applied to Section 403(b) Plans pursuant to section 403(b)(12)(A)(i)) is an Operational Failure. A plan does not have an Operational Failure to the extent the plan is permitted to be amended retroactively to reflect the plan’s operations.

(c) Demographic Failure. The term “Demographic Failure” means a failure to satisfy the requirements of section 401(a)(4), 401(a)(26), or 410(b) (as applied to Section 403(b) Plans pursuant to section 403(b)(12)(A)(i)) that is not an Operational Failure or an Employer Eligibility Failure.

(d) Employer Eligibility Failure. The term “Employer Eligibility Failure” means the adoption of a plan intended to satisfy the requirements of section 403(b) by a Plan Sponsor that is not (i) an employer described in section 501(c)(3) that is exempt from tax under section 501(a); (ii) a public educational organization described in section 170(b)(1)(A)(ii) that is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing; or (iii) a self-employed minister described in section 414(e)(5)(A) or an employer of the minister. An Employer Eligibility Failure is not a Plan Document, Operational, or Demographic Failure.

(3) Excess Amount; Excess Allocation. (a) Excess Amount. The term "Excess Amount" means a contribution, allocation, or other credit that is made on behalf of a participant or beneficiary to a plan in excess of the maximum amount permitted to be contributed, allocated, or credited on behalf of the participant or beneficiary under the terms of the plan or that exceeds a limitation on contributions provided in the Code or regulations. The term "Excess Amount" includes:

(i) an elective deferral or after-tax employee contribution that is in excess of the maximum contribution under the plan;[15]

(ii) a contribution made in excess of the limitation under section 415;

(iii) an elective deferral in excess of the limitation of section 402(g) and, if applicable, an additional elective deferral in excess of the limitation of section 414(v);

(iv) an excess aggregate contribution under section 401(m); and

(v) a contribution that is made with respect to compensation in excess of the limitation of section 401(a)(17).

A contribution is not an Excess Amount (or a Section 403(b) Failure) if that contribution is treated as maintained in a separate section 403(c) account in accordance with the rules in the regulations under sections 403(b) and 415. A contribution in excess of the limitations described in the preceding paragraph that is not treated as maintained in a separate section 403(c) account in accordance with the rules set forth in regulations under section 403(b) is an Excess Amount.

However, an Excess Amount does not include a contribution, allocation, or other credit that is made pursuant to a correction method provided under this revenue procedure for a different Section 403(b) Failure.

(b) Excess Allocation. The term "Excess Allocation" means a Section 403(b) Failure that is an Excess Amount for which the Code or regulations do not provide any corrective mechanism. Excess Allocations include Excess Amounts as defined in section 4.02(3)(a)(i) and (v).

(4) Overpayment; Inadvertent Benefit Overpayment. (a) Overpayment. The term "Overpayment" means a payment made to a recipient (the "Overpayment recipient") that exceeded the amount payable to the Overpayment recipient under the terms of the plan or that exceeded a limitation provided in the Code or regulations. An Overpayment

[15] The term elective deferral includes a designated Roth contribution, and the term after-tax employee contribution does not include a designated Roth contribution.

also includes a payment made before a distribution is permitted under the Code or under the terms of the plan. However, an Overpayment does not include a payment that is made pursuant to a correction method provided under this revenue procedure for a different Section 403(b) Failure.

(b) Inadvertent Benefit Overpayment. The term "Inadvertent Benefit Overpayment" means an Overpayment that occurs due to an Eligible Inadvertent Failure. However, an Inadvertent Benefit Overpayment does not include an Overpayment made to a disqualified person as defined in section 4975(e)(2).

(5) Maximum Payment Amount. The term "Maximum Payment Amount" means a monetary amount that is approximately equal to the tax the IRS could collect as a result of the Section 403(b) Failure and is the sum for the open taxable years of the:

(a) additional income tax resulting from income inclusion for employees or other participants (as reported on Form 1040), including the tax on distributions that have been rolled over to other qualified trusts (as defined in section 402(c)(8)(A)) or eligible retirement plans (as defined in section 402(c)(8)(B)) and any interest or penalties applicable to the participants' returns; and

(b) any other tax that results from a Section 403(b) Failure that would apply but for correction under this revenue procedure.

(6) Plan Sponsor. The term "Plan Sponsor" means the employer that offers a Section 403(b) Plan to its employees.

(7) Pre-approved Plan. The term "Pre-approved Plan" means a plan that has received an opinion letter under Rev. Proc. 2023-37, or a predecessor or successor revenue procedure, and that is made available by a Pre-approved Plan provider for adoption by eligible employers. See section 4.01(14) of Rev. Proc. 2023-37.

.03 Definitions for Orphan Plans. The definitions in this section 4.03 apply to Orphan Plans.

(1) Orphan Plan. The term "Orphan Plan" means any Qualified Plan or Section 403(b) Plan with respect to which an "Eligible Party" (defined in section 4.03(2)) has determined that the Plan Sponsor (a) no longer exists, (b) cannot be located, or (c) is unable to maintain the plan.

However, the term "Orphan Plan" does not include any plan subject to title I of ERISA that is terminated pursuant to 29 CFR 2578.1 of the Department of Labor regulations governing the termination of abandoned individual account plans.

(2) Eligible Party. The term "Eligible Party" means:

(a) A court-appointed representative with authority to terminate the plan and dispose of the plan's assets;

(b) In the case of an Orphan Plan under investigation by the Department of Labor, a person or entity determined by the Department of Labor to have accepted responsibility for terminating the plan and distributing the plan's assets; or

(c) In the case of a Qualified Plan to which title I of ERISA has never applied, a surviving spouse who is the sole beneficiary of a plan that provided benefits to a participant who was (i) the sole owner of the business that sponsored the plan and (ii) the only participant in the plan.

.04 Earnings. The term "Earnings" refers to the adjustment of a principal amount to reflect subsequent investment gains and losses, unless otherwise provided in a specific section of this revenue procedure.

.05 IRA. The term "IRA" means an individual retirement account (as defined in section 408(a)) or an individual retirement annuity (as defined in section 408(b)).

.06 Definitions for SEP Arrangements. The definitions in this section 4.06 apply to SEP Arrangements.

(1) SEP Arrangement. The term "SEP Arrangement" means a plan intended to satisfy the requirements of section 408(k). For purposes of this revenue procedure, the term SEP Arrangement also includes a Salary Reduction Simplified Employee Pension ("SARSEP") described in section 408(k)(6).

(2) SEP Arrangement Failure. The term "SEP Arrangement Failure" means a failure that adversely affects the exclusion from income of a participant's benefit under a SEP Arrangement as provided by section 408(k).

(3) Plan Sponsor. The term "Plan Sponsor" means the employer that offers a SEP Arrangement to its employees.

.07 Definitions for SIMPLE IRA Plans. The definitions in this section 4.07 apply to SIMPLE IRA Plans.

(1) SIMPLE IRA Plan. The term "SIMPLE IRA Plan" means a plan intended to satisfy the requirements of section 408(p).

(2) SIMPLE IRA Plan Failure. The term "SIMPLE IRA Plan Failure" means a failure that adversely affects the exclusion from income of a participant's benefit in a SIMPLE IRA as provided by section 408(p).

(3) Plan Sponsor. The term “Plan Sponsor” means the employer that offers a SIMPLE IRA Plan to its employees.

.08 Under Examination. (1) Under Examination. The term “Under Examination” describes the following situations: (a) a plan that is under an Employee Plans examination (that is, an examination of a Form 5500 series or other Employee Plans examination); (b) a Plan Sponsor that is under an Exempt Organizations examination (that is, an examination of a Form 990 series or other Exempt Organizations examination); or (c) a plan that is under investigation by the Criminal Investigation division of the IRS.

(2) Employee Plans examination. (a) Notification. A plan that is under an Employee Plans examination includes any plan for which the Plan Sponsor, or an authorized representative, has received verbal or written notification from Employee Plans of an impending Employee Plans examination, or of an impending referral for an Employee Plans examination, and also includes any plan that has been under an Employee Plans examination and is in Appeals or in litigation for issues raised in an Employee Plans examination.

(b) Aggregation. A plan is considered to be Under Examination if it is aggregated, for purposes of satisfying the nondiscrimination requirements of section 401(a)(4), the minimum coverage requirements of section 410(b), or the requirements of section 403(b)(12)(A)(i), with any plan that is Under Examination. In addition, a plan is considered to be Under Examination with respect to a failure of a qualification requirement (other than those described in the preceding sentence) if the plan is aggregated with another plan for purposes of satisfying that qualification requirement (for example, section 401(a)(30), 415, or 416) and that other plan is Under Examination. For example, assume Plan A has a section 415 failure, Plan A is aggregated with Plan B only for purposes of section 415, and Plan B is Under Examination. In this case, Plan A is considered to be Under Examination with respect to the section 415 failure. However, if Plan A has a failure relating to the spousal consent rules under section 417 or the vesting rules of section 411, Plan A is not considered to be Under Examination with respect to the section 417 or 411 failure. For purposes of this revenue procedure, the term aggregation does not include consideration of benefits provided by various plans for purposes of the average benefits test set forth in section 410(b)(2).

(c) Application for determination. An Employee Plans examination also includes a case in which a Plan Sponsor has submitted any Form 5300 (Application for Determination for Employee Benefit Plan), Form 5307 (Application for Determination for Adopters of Modified Nonstandardized Pre-approved Plans), or Form 5310 (Application for Determination for Terminating Plan) and the Employee Plans agent notifies the Plan Sponsor, or an authorized representative, of possible failures, whether

or not the Plan Sponsor is officially notified of an "examination." This would include a case where, for example, a Plan Sponsor has applied for a determination letter on plan termination, and an Employee Plans agent notifies the Plan Sponsor that there are partial termination concerns. In addition, if, during the review process, the agent requests additional information that indicates the existence of a failure not previously identified by the Plan Sponsor, the plan is considered to be under an Employee Plans examination. If, in such a case, the determination letter request under review is subsequently withdrawn, the plan is nevertheless considered to be under an Employee Plans examination for purposes of eligibility under SCP and VCP with respect to those issues raised by the agent reviewing the determination letter application. The fact that a Plan Sponsor voluntarily submits a determination letter application does not constitute a voluntary identification of a failure to the IRS. In order to be eligible for VCP, the Plan Sponsor (or the authorized representative) must identify each failure, in writing, to the reviewing agent before the agent recognizes the existence of the failure or addresses the failure in communications with the Plan Sponsor (or the authorized representative).

(3) Exempt Organization examination. A Plan Sponsor that is under an Exempt Organizations examination includes any Plan Sponsor that has received (or whose authorized representative has received) verbal or written notification from Exempt Organizations of an impending Exempt Organizations examination or of an impending referral for an Exempt Organizations examination and also includes any Plan Sponsor that has been under an Exempt Organizations examination and is now in Appeals or in litigation for issues raised in an Exempt Organizations examination.

.09 Eligible Inadvertent Failure. The term "Eligible Inadvertent Failure" means a Qualification Failure, Section 403(b) Failure, SEP Arrangement Failure, or SIMPLE IRA Plan Failure that occurs despite the existence of practices and procedures that satisfy the standards set forth in section 7.02. An Eligible Inadvertent Failure does not include any failure that is egregious, relates to the diversion or misuse of plan assets, or is directly or indirectly related to an abusive tax avoidance transaction. See section 5.06, 5.07, and 5.08.

SECTION 5. PROGRAM ELIGIBILITY

.01 EPCRS Programs. (1) SCP. Except as otherwise provided in this section 5 and section 7.03, and subject to the requirements in sections 7 and 8, SCP is available to correct Eligible Inadvertent Failures in Qualified Plans, Section 403(b) Plans, SEP Arrangements, and SIMPLE IRA Plans.

(2) VCP. Unless otherwise provided in this section 5, VCP is available to correct most failures in Qualified Plans, Section 403(b) Plans, SEP Arrangements, and SIMPLE IRA Plans. Generally, as provided in section 6.15, matters subject to excise or

other taxes are ineligible for VCP. Failures in a fully insured defined benefit plan that is described in section 412(e)(3) are generally not eligible for VCP.

(3) Audit CAP. Unless otherwise provided in this section 5, Audit CAP is available for the correction of Qualified Plans, Section 403(b) Plans, SEP Arrangements, and SIMPLE IRA Plans for most failures found Under Examination that have not been corrected in accordance with SCP or VCP. Generally, as provided in section 6.15, matters subject to excise or other taxes are ineligible for Audit CAP. Failures in a fully insured defined benefit plan that is described in section 412(e)(3) are generally not eligible for Audit CAP.

(4) Eligibility of other arrangements. The IRS may extend EPCRS to other arrangements.

(5) Appropriate use of programs. In a particular case, the IRS may decline to make available one or more correction programs under EPCRS in the interest of sound tax administration.

.02 Effect of examination. In general, if the plan or Plan Sponsor is Under Examination, SCP and VCP are not available. However, certain Eligible Inadvertent Failures that are Operational Failures may be corrected under SCP, as permitted in section 8, even if the plan or Plan Sponsor is Under Examination.

.03 Availability of correction for a terminated plan. Correction of Qualification Failures, Section 403(b) Failures, SEP Arrangement Failures, and SIMPLE IRA Plan Failures in a terminated plan may be made under VCP or Audit CAP, even if the plan trust or contract is no longer in existence. As provided in sections 7 and 8, certain Eligible Inadvertent Failures may be corrected under SCP.

.04 Availability of correction for an Orphan Plan. A failure in an Orphan Plan that is terminating may be corrected under VCP or Audit CAP if the party acting on behalf of the plan is an Eligible Party, as defined in section 4.03(2). SCP is not available for correcting failures in Orphan Plans. In the case of a terminating Orphan Plan, the IRS may, in its discretion, waive the user fee. In such a case, the submission must include a request for a waiver of the user fee. See section 10.04(14).

.05 Availability of correction for section 457(b) plans. The IRS will accept submissions relating to section 457(b) plans on a provisional basis outside of EPCRS through standards that are similar to those that apply with respect to VCP filings under sections 9 and 10, as applicable, including procedures for filing a submission on the Pay.gov website. The availability of correction is generally limited to plans that are sponsored by governmental entities described in section 457(e)(1)(A). In the case of a section 457(b) plan that is an unfunded deferred compensation plan established for the benefit of top hat employees of a tax-exempt entity described in section 457(e)(1)(B),

the IRS generally will not enter into an agreement to address problems associated with such a plan. However, the IRS may consider a submission for such a plan where, for example, the plan was erroneously established to benefit the entity's non-highly compensated employees, and the plan has been operated in a manner that is similar to a Qualified Plan.

.06 Egregious failures. (1) In general. Egregious failures include: (a) a plan that has consistently and improperly covered only highly compensated employees; (b) a plan that provides more favorable benefits for an owner of the employer, based on a purported collective bargaining agreement where there has in fact been no good faith bargaining between bona fide employee representatives and the employer (see Notice 2003-24, 2003-1 CB 853, with respect to good faith bargaining and welfare benefit funds); or (c) a defined contribution plan where a contribution is made on behalf of a highly compensated employee that is several times greater than the dollar limit set forth in section 415(c).

(2) SCP. SCP is not available to correct failures that are egregious.

(3) VCP. VCP is available to correct egregious failures. However, the IRS reserves the right to impose a sanction that may be larger than the user fee described in Rev. Proc. 2026-4 (and its annual successors). For this purpose, an egregious failure would include any case in which the IRS concludes that the parties controlling the plan recognized that the action taken would constitute a failure and the failure either involves a substantial number of participants or beneficiaries or involves participants who are predominantly highly compensated employees.

(4) Audit CAP. Audit CAP is available to correct egregious failures.

.07 Diversion or misuse of plan assets. SCP, VCP, and Audit CAP are not available to correct failures relating to the diversion or misuse of plan assets.

.08 Abusive tax avoidance transactions. (1) Effect on EPCRS Programs. (a) SCP. If the plan or the Plan Sponsor has been a party to an abusive tax avoidance transaction, SCP is not available to correct any failure that is directly or indirectly related to the abusive tax avoidance transaction.

(b) VCP. If the IRS determines that a plan or Plan Sponsor was, or may have been, a party to an abusive tax avoidance transaction, then the matter will be discussed and coordinated with appropriate IRS personnel. The IRS may determine that the plan or the Plan Sponsor has been a party to an abusive tax avoidance transaction, and that the failures addressed in the VCP submission are related to that transaction. In those situations, the IRS will conclude the review of the submission without issuing a compliance statement and will refer the case for examination. However, if the IRS determines that the plan failures are unrelated to the abusive tax

avoidance transaction or that no abusive tax avoidance transaction occurred, then the IRS will permit the VCP submission to address the failures identified in the VCP submission and may issue a compliance statement with respect to those failures. In no event may a compliance statement be relied on for the purpose of concluding that the plan or Plan Sponsor was not a party to an abusive tax avoidance transaction. In addition, even if it is concluded that the failures can be addressed pursuant to a VCP submission, the IRS reserves the right to make a referral of the abusive tax avoidance transaction matter for examination.

(c) Audit CAP and SCP (for plans Under Examination). For plans Under Examination, if the IRS determines that the plan or Plan Sponsor was, or may have been, a party to an abusive tax avoidance transaction, the matter may be discussed and coordinated with appropriate IRS personnel. With respect to plans Under Examination, an abusive tax avoidance transaction includes a transaction described in section 5.08(2) and any other transaction that the IRS determines was designed to facilitate the impermissible avoidance of tax. Upon receiving a response from the appropriate IRS personnel, (i) if the IRS determines that a failure is related to the abusive tax avoidance transaction, the IRS reserves the right to conclude that neither Audit CAP nor SCP is available for that failure, or (ii) if the IRS determines that satisfactory corrective actions have not been taken with regard to the transaction, the IRS reserves the right to conclude that neither Audit CAP nor SCP is available to the plan.

(2) Abusive tax avoidance transaction defined. For purposes of this section 5.08 (except to the extent otherwise provided in section 5.08(1)(c)), an abusive tax avoidance transaction means any listed transaction under § 1.6011-4(b)(2) and any other transaction identified as an abusive transaction, including transactions identified on the IRS website entitled “Employee Plans abusive tax transactions.”

PART III. CORRECTION PRINCIPLES AND RULES OF GENERAL APPLICABILITY

SECTION 6. CORRECTION PRINCIPLES AND RULES OF GENERAL APPLICABILITY

.01 Correction principles; rules of general applicability. The general correction principles in section 6.02 and rules of general applicability in section 6.03 through 6.19 apply for purposes of this revenue procedure. See section 6.16 for specific rules applicable to Section 403(b) Plans and section 6.17 for specific rules applicable to SEP Arrangements and SIMPLE IRA Plans.

.02 Correction principles. Correction should be accomplished taking into account the following principles:

(1) Full correction. Generally, a failure is not corrected unless full correction is made with respect to all participants and beneficiaries, and for all taxable years, whether or not the taxable year is closed. Correction is determined by taking into account the terms of the plan at the time of the failure.

(2) Restoration of benefits. The correction method should restore the plan to the position it would have been in had the failure not occurred, including restoration of current and former participants and beneficiaries to the benefits and rights they would have had if the failure had not occurred.

(3) Use of reasonable and appropriate correction method. The correction should be reasonable and appropriate for the failure. Depending on the nature of the failure, there may be more than one reasonable and appropriate correction for the failure. Whether any particular correction method is reasonable and appropriate is determined by taking into account the applicable facts and circumstances and the principles in this section 6.

(4) Appendix safe harbor correction methods are deemed reasonable and appropriate. The Appendix includes safe harbor correction methods for Operational Failures relating to Qualified Plans. To the extent a failure listed in the Appendix could occur under a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan, the correction method listed for such failure may similarly be used to correct the failure. Any correction method permitted under the Appendix is deemed to be a reasonable and appropriate method of correcting the failure. If a plan has a different but analogous failure to one set forth in the Appendix (such as the failure to provide a matching contribution by a governmental plan that is not subject to section 401(m)), then the analogous correction method under the Appendix is generally available to correct the failure.

(5) Consistency. Generally, if more than one correction method is available to correct a type of failure for a plan year (or if there are alternative ways to apply a correction method), the correction method (or one of the alternative ways to apply the correction method) should be applied consistently in correcting all failures of that type for that plan year. Similarly, Earnings adjustment methods generally should be applied consistently with respect to corrective contributions or allocations for a particular type of failure for a plan year. In the case of a group submission, the consistency requirement applies on a plan-by-plan basis.

(6) Use of existing method. The correction method should, to the extent possible, resemble one already provided for in the Code, regulations, or other guidance of general applicability. For example, for Qualified Plans and Section 403(b) Plans, the correction method set forth in § 1.402(g)-1(e)(2) would be the typical means of correcting a failure under section 402(g).

(7) No EPCRS correction if the failure is correctible under statute or regulations. Generally, the correction programs are not available to correct failures that can be corrected under the Code and related regulations. For example, as a general rule, a Plan Document Failure that is a Disqualifying Provision for which the remedial amendment period under section 401(b) has not expired can be corrected under provisions of the Code through retroactive remedial amendment.

(8) No correction that violates other statutory requirements. The correction method must not violate another applicable requirement of section 401(a) or 403(b) (for example, section 401(a)(4), 411(d)(6), or 403(b)(12), as applicable), section 408(k) for SEP Arrangements, or section 408(p) for SIMPLE IRA Plans, or a parallel requirement in Part 2 of Subtitle B of title I of ERISA (for plans that are subject to Part 2 of Subtitle B of title I of ERISA). If an additional failure is created as a result of the use of a correction method in this revenue procedure, then that failure also must be corrected in conjunction with the use of that correction method and in accordance with the requirements of this revenue procedure.

(9) Retention of assets in the plan. The correction method should keep plan assets in the plan, except to the extent the Code, regulations, or other guidance of general applicability provides for correction by distribution to participants or beneficiaries or by return of assets to the employer. For example, if an Excess Allocation (not in excess of the section 415 limits) made under a Qualified Plan was made for a participant under a plan (other than a section 401(k) plan), the excess should be reallocated to other participants or, depending on the facts and circumstances, used to reduce future employer contributions.

(10) Nondiscrimination. The correction method for failures relating to nondiscrimination should provide benefits for non-highly compensated employees. For example, for Qualified Plans, the correction method set forth in § 1.401(a)(4)-11(g) (rather than methods making use of the special testing provisions set forth in § 1.401(a)(4)-8 or 1.401(a)(4)-9)) would be the typical means of correcting a failure to satisfy nondiscrimination requirements. Similarly, the correction of a failure to satisfy the requirements of section 401(k)(3) or 401(m)(2) solely by distributing excess amounts to highly compensated employees would not be the typical means of correcting such a failure.

(11) Use of other government agency correction methods. (a) In general. If a correction method is one that another government agency has authorized with respect to a violation of legal requirements within its interpretive authority and that correction relates to a failure to which this revenue procedure applies, then the IRS generally will take the correction method of the other governmental agency into account for purposes of this revenue procedure.

(b) Correction of ERISA fiduciary standards under VFCP. In the case of a violation of the fiduciary standards imposed by Part 4 of Subtitle B of title I of ERISA, correction under the Department of Labor's VFCP for a fiduciary violation that relates to a similar failure under this revenue procedure would generally be taken into account as correction under this revenue procedure.

.03 Special exceptions to full correction. (1) In general. Except in rare circumstances, a failure must be fully corrected. The mere fact that correction is inconvenient or burdensome is not enough to relieve a Plan Sponsor of the need to make full correction. However, full correction may not be required in certain situations if it is unreasonable or not feasible. Even in these situations, the correction method adopted must be one that does not have significant adverse effects on participants and beneficiaries or the plan, and that does not discriminate significantly in favor of highly compensated employees. The exceptions described in section 6.03(2) through (7) are examples of situations in which full correction is not required.

(2) Reasonable estimates. If either (a) it is possible to make a precise calculation of the amount to be restored but the probable difference between an approximate calculation and the precise calculation of the amount needed to restore a participant's or beneficiary's benefits is insignificant and the administrative cost of determining precise restoration would significantly exceed the probable difference or (b) it is not possible to make a precise calculation (for example, if it is impossible to provide plan data), reasonable estimates may be used in calculating appropriate correction. If it is not feasible to make a reasonable estimate of what the actual investment results would have been, a reasonable interest rate may be used. For this purpose, the interest rate used by the DOL Online Calculator is deemed to be a reasonable interest rate.

(3) Delivery of small benefits. If the total corrective distribution due a participant or beneficiary is $75 or less, the Plan Sponsor is not required to make the corrective distribution if the reasonable direct costs of processing and delivering the distribution to the participant or beneficiary would exceed the amount of the distribution. This section 6.03(3) does not apply to corrective contributions. Corrective contributions are required to be made with respect to a current or former participant, without regard to the amount of the corrective contributions.

(4) Recovery of small Overpayments and Inadvertent Benefit Overpayments. If the total amount of an Inadvertent Benefit Overpayment due to a section 401(a)(17), 415, or 436 failure (or an Overpayment that is not an Inadvertent Benefit Overpayment) to a recipient is $250 or less, the Plan Sponsor is not required to seek the return of the payment from the recipient or to make a corrective contribution to the plan. Also, the Plan Sponsor is not required to notify the recipient that the payment of $250 or less is

ineligible for favorable tax treatment accorded to distributions from the plan (and, specifically, is ineligible for tax-free rollover).[16]

(5) Small Excess Amounts. If the total amount of an Excess Amount with respect to the benefit of a participant or beneficiary is $250 or less, the Plan Sponsor is not required to distribute or forfeit such Excess Amount.

(6) Locating lost participants. Reasonable actions must be taken to find all current and former participants and beneficiaries to whom benefits are due, but who have not been located after a mailing to the last known address. The use of a commercial locator service that holds itself out as a finder of lost persons for compensation using information from a database maintained by a consumer reporting agency (as defined in 15 U.S.C. § 1681a(f)) will be deemed to satisfy the requirement to take reasonable actions. A Plan Sponsor will not be considered to have failed to correct a failure due to the inability to locate an individual if reasonable actions to locate the individual have been undertaken in accordance with this paragraph; provided that, if the individual is later located, the benefits are provided to the individual at that time.

(7) Orphan Plans. The IRS retains the discretion to determine under VCP and Audit CAP whether full correction will be required with respect to a terminating Orphan Plan. See section 6.14(2) for Orphan Plan corrections.

.04 Correction for exclusion of employees with respect to elective deferrals or after-tax employee contributions. If a Qualified Plan, Section 403(b) Plan, SEP Arrangement, or SIMPLE IRA Plan has an Operational Failure that consists of excluding an employee who should have been eligible to make an elective deferral or an after-tax employee contribution, the employer is permitted to make certain contributions on behalf of the excluded employee. Generally, the employer should contribute to the plan on behalf of the excluded employee an amount that makes up for the value of the lost opportunity for the employee to have a portion of the employee's compensation contributed to the plan and accumulated with earnings tax deferred in the future. Specific methods and examples to correct this failure are provided in Appendix section .05, including methods that do not require corrective contributions to make up for the lost opportunity.

The correction principle regarding making up for the value of an employee's lost opportunity and the methods and examples in the Appendix apply solely to the correction for excluding employees and does not extend to other failures. The examples in the Appendix do not, for example, extend to the correction of a failure to

---

[16] See section 6.12(1)(c)(i) for rules relating to the notification requirements for favorable rollover treatment of an Inadvertent Benefit Overpayment in excess of $250 due to a failure other than a section 401(a)(17) or 415 failure.

satisfy a nondiscrimination test such as the actual deferral percentage (ADP) test pursuant to section 401(k)(3) or the actual contribution percentage (ACP) test pursuant to section 401(m)(2).

.05 Correction of an Employer Eligibility Failure. (1) General correction. The permitted correction of an Employer Eligibility Failure is the cessation of all contributions under the plan, including elective deferrals and after-tax employee contributions. If corrected under SCP, a Plan Sponsor must cease all contributions to the plan as soon as reasonably practicable after the failure is identified, but no later than the last day of the sixth month following the date the failure is identified. If corrected under VCP, the cessation must occur no later than the date the submission under VCP is filed. The assets in such a plan are retained in the trust, annuity contract, or custodial account until they can be distributed. Distribution may not be made earlier than the occurrence of one of the applicable distribution events, for example, for Section 403(b) Plans, an event described in section 403(b)(7) (to the extent the assets are held in custodial accounts) or section 403(b)(11) (for those assets invested in annuity contracts that would be subject to section 403(b)(11) restrictions if the employer were eligible).

(2) Exception. If a Plan Sponsor subsequently becomes eligible to maintain the plan, cessation of contributions is not required (for example, with respect to a tax-exempt employer that may maintain a section 401(k) plan after 1996). In the case of a Section 403(b) Failure that is an Employer Eligibility Failure, correction may include treating contributions as not being excluded under section 403(b) (and thus the contributions would be treated as having been contributed, for example, to an annuity contract to which section 403(c) applies).

(3) Correction of other failures. A plan that is corrected under this section is treated as subject to all of the requirements and provisions of section 401(a) for a Qualified Plan, section 403(b) for a Section 403(b) Plan, section 408(k) for a SEP Arrangement, and section 408(p) for a SIMPLE IRA Plan (including Code provisions relating to rollovers). Therefore, the Plan Sponsor must also correct any other failures affecting the plan in accordance with this revenue procedure.

(4) Rollover treatment. If correction is made in accordance with the requirements of this section 6.05, then any rollover made from the plan pursuant to a distributable event is deemed to have been made from an eligible retirement plan (as defined in section 402(c)(8)(B)) for the purpose of determining whether any amount qualifies as an eligible rollover distribution under section 402(c) (including the determination of whether there were excess contributions that are subject to the section 4973 excise tax).

.06 Correction of a Demographic Failure. The correction of a Demographic Failure generally requires a corrective amendment to the plan adding more benefits or

increasing existing benefits (see § 1.401(a)(4)-11(g)). A Demographic Failure that is corrected using a method other than a method set forth in § 1.401(a)(4)-11(g) may not be corrected under SCP (for example, a demographic failure under section 401(a)(4) may not be corrected by using a special testing provision set forth in § 1.401(a)(4)-8 or 1.401(a)(4)-9, or by providing benefits primarily to short-service or low-paid employees).

.07 Correction by plan amendment. (1) In general. A Plan Sponsor may correct Plan Document, Demographic, and Operational Failures by plan amendment in accordance with requirements under section 6.06 and this section 6.07. As provided in section 7, certain failures may not be corrected by a plan amendment under SCP.

(2) Operational Failure. (a) Retroactive amendments to conform to prior operations. (i) In general. A Plan Sponsor may amend a plan to conform the terms of the plan to the plan's prior operations, provided that the amendment complies with applicable Code requirements (including the requirements of sections 401(a)(4), 410(b), 411(d)(6), 403(b)(12), 415, and 436, as applicable). See Appendix section .13 for examples of Operational Failures corrected by plan amendment to conform the terms of the plan to the plan's prior operations.

(ii) Retroactive amendments generally must be more favorable. A Plan Sponsor may amend a plan to conform the terms of the plan to the plan's prior operations if the retroactive plan amendment results in a benefit, right, or feature that is more favorable for an employee, participant, or beneficiary.

(iii) Retroactive amendments that are not more favorable. An Operational Failure generally may not be corrected by a retroactive plan amendment that conforms the terms of the plan to the plan's prior operations in a manner that is less favorable for an employee, participant, or beneficiary than the terms of the written plan document before the retroactive plan amendment. However, in limited circumstances, such a plan amendment may be permitted under VCP or Audit CAP.

A retroactive amendment that is not more favorable is permitted to correct an Operational Failure if, at the time the relevant language was effective in the written plan document, the Plan Sponsor and the employees, participants, and beneficiaries had the same understanding and expectation of the plan's terms, but the language in the written plan document did not reflect those terms. The Plan Sponsor has the burden of proving to the IRS, through clear and convincing documentary evidence, that the retroactive amendment implements the Plan Sponsor's, employees', participants', and beneficiaries' understanding of the plan terms.

The following are examples of documents (including electronic documents) that may be used to provide clear and convincing evidence: (a) current and prior plan documents, including any amendments; (b) current and prior summary plan

descriptions (SPDs); (c) current and prior employee handbooks; (d) collective bargaining agreements (CBAs) in effect during the period of failure; (e) correspondence with accountants, third-party administrators, actuaries, and attorneys relating to the plan's design and operation; (f) emails or memos distributed to employees relating to plan benefits during the period of failure; (g) employment offers made during the period of failure; (h) slide decks or other written presentations for employees; (i) employee newsletters; (j) enrollment forms; (k) benefit distribution forms; (l) documents, written communications, or correspondence provided or made available to plan participants, beneficiaries, or employees; and (m) documentation of relevant corporate action (for example, board resolutions).

The Plan Sponsor is required to disclose any documents provided to employees, participants, or beneficiaries during the entire period of failure that are inconsistent with the retroactive plan amendment and to make a representation that no other inconsistent documents exist. If inconsistent documents have been provided to employees, participants, or beneficiaries, the Plan Sponsor may not be able to satisfy the clear and convincing evidence standard. If no inconsistent documents have been provided to employees, participants, or beneficiaries, the Plan Sponsor is required to make a representation to that effect.

Consistent operation of a plan by a Plan Sponsor in a manner inconsistent with the written plan document does not, by itself, establish that the terms of the written plan document were drafted incorrectly, nor does a failure of employees, participants, or beneficiaries to question benefits or plan operations prove employee, participant, or beneficiary expectations. The IRS will not consider affidavits to be clear and convincing evidence that the terms of a written plan document were drafted incorrectly.

As provided in section 6.19, any compliance statement or closing agreement issued by the IRS does not preclude individuals from exercising their rights under title I of ERISA to recover plan benefits to which they are entitled.

(b) Corrective action. A Plan Sponsor may adopt a plan amendment to reflect corrective action. For example, if the plan failed to satisfy the ADP test required under section 401(k)(3) of the Code and the Plan Sponsor must make QNECs not already provided for under the plan, the plan may be amended to provide for QNECs.

(3) Plan Document Failure. (a) Interim Amendment Failure. A corrective amendment for an Interim Amendment Failure will be treated as if it had been adopted timely for the purpose of determining the availability of the remedial amendment period in Rev. Proc. 2007-44 for an individually designed plan and Rev. Proc. 2023-37 for a Pre-approved Plan. If corrected under SCP, the amendment must have been adopted within the time period set forth in section 7.05.

(b) Nonamender Failure. A corrective amendment for a Nonamender Failure will be treated as if it had been timely adopted during the applicable remedial amendment period. If corrected under SCP, the amendment must have been adopted within the time period set forth in section 7.05.

(c) Initial plan adoption. A Plan Sponsor may not use SCP to correct a Plan Document Failure consisting of a failure to initially adopt a written plan under section 401(a), 403(a), 403(b), 408(k), or 408(p), including the failure to adopt a written Section 403(b) Plan timely in accordance with § 1.403(b)-3(b)(3) and Notice 2009-3, 2009-2 IRB 250. A failure to initially adopt a written plan does not include a failure in which (A) employees of an employer are participating in a plan established by a Plan Sponsor, and (B) the employer has not adopted the plan as a participating employer.

(4) Corrective amendments to Pre-approved Plans. (a) Effect of corrective amendment. Generally, a Plan Sponsor that is an adopter of a Pre-approved Plan may amend its plan to correct a Qualification Failure or a Section 403(b) Failure as otherwise permitted under the provisions of this section 6. If a corrective amendment is not included in an adoption agreement, basic plan document, or single plan document at the time an opinion or advisory letter is issued with respect to a plan, then adopting such a corrective amendment would cause the Plan Sponsor to lose reliance on the plan's opinion or advisory letter, except in the limited circumstances provided in section 6.07(4)(b).

(b) Exception for certain amendments. In the case of a Pre-approved Plan, the adoption of a plan provision required to correct a failure under VCP or Audit CAP that is not included in the adoption agreement, basic plan document, or single plan document will not cause the Plan Sponsor to lose its reliance on the plan's opinion or advisory letter, provided that: (i) the corrective amendment would otherwise be permitted under the rules for Pre-approved Plans, as applicable, and (ii) no other modification has been made to the plan that would cause the plan to lose its reliance on the opinion or advisory letter. If these conditions are satisfied, the Plan Sponsor may continue to rely on the plan's opinion or advisory letter. In addition, the adoption of the corrective amendment will not cause the Pre-approved Plan to lose its eligibility to remain within the remedial amendment cycle provided for in Rev. Proc. 2023-37, as modified, on a continuing basis until the expiration of the next remedial amendment cycle described in section 5 of Rev. Proc. 2023-37, as modified.

.08 Correction of a failure to obtain spousal consent in a Qualified Plan subject to sections 401(a)(11) and 417. (1) In general. A failure to obtain spousal consent may be corrected by Plan Sponsor notification to the affected participant and spouse (that is, the spouse to whom the participant was married at the time of the distribution), so that either the spouse can provide spousal consent to the distribution actually made or the participant may repay the distribution and receive a qualified joint and survivor annuity.

(2) Alternative correction methods when spousal consent is not obtained. A Plan Sponsor must ensure that a spouse, upon distribution, receives the benefit the spouse is entitled to under sections 401(a)(11) and 417. Appendix section .07 provides alternative correction methods and examples of these alternative methods.

.09 Principles regarding corrective allocations, corrective contributions, and corrective distributions for defined contribution plans. (1) Corrective allocations or corrective contributions. (a) In general. A corrective allocation or corrective contribution should be based upon the terms of the plan and other applicable information at the time of the failure (including the compensation that would have been used under the plan for the period with respect to which a corrective allocation or corrective contribution is being made), and it should be adjusted for Earnings and forfeitures that would have been allocated to the participant's account if the failure had not occurred (from the date of the failure through the date of correction). However, a corrective allocation or corrective contribution may, but is not required to, be adjusted for losses. Accordingly, a corrective allocation or corrective contribution must include gains and may be adjusted for losses. For safe harbor methods and additional information, see Appendix section .14, Earnings Adjustment Methods.

(b) Annual additions and deductions. A corrective allocation or corrective contribution to a participant’s account because of a failure to make a required allocation or contribution in a prior limitation year is not considered an annual addition with respect to the participant for the limitation year in which the correction is made. Instead, it is considered an annual addition for the limitation year to which the corrective allocation or corrective contribution relates. However, the normal rules of section 404, regarding deductions, apply.

(c) Source of funds. A corrective allocation or corrective contribution should come only from employer nonelective contributions (including forfeitures if the plan permits their use to reduce employer contributions). For purposes of correcting a failed ADP or ACP test, any amounts used to fund QNECs must satisfy the definition of a QNEC in § 1.401(k)-6.

(2) Corrective distributions. A corrective distribution should be adjusted for Earnings from the date of the failure through the date of correction (determined without regard to any Code provision that permits a corrective distribution to be made at a later date). Any corrective distribution from a plan must be properly reported.

.10 Principles regarding corrective contributions and corrective distributions for defined benefit plans. (1) Corrective distributions. A corrective distribution for an individual should be increased to take into account the delayed payment, in accordance with the plan’s provisions for actuarial equivalence (after considering the applicable requirements of sections 417(e)(3) and 415(b) or any other

applicable provision) that were in effect on the date that the distribution should have been made. The term “plan’s provisions for actuarial equivalence” means the actuarial assumptions, as defined under the plan for optional forms of payment not subject to section 417(e), and applies to all corrective payments regardless of whether the form of payment is subject to section 417(e). An accumulation of the corrective distribution(s) for delayed payment should be based on compound interest. A corrective distribution is not subject to the requirements of section 417(e)(3) if it is made to make up for missed payments with respect to a benefit that is not subject to the requirements of section 417(e)(3). Any corrective distributions from the plan must be properly reported.

(2) Corrective contributions for section 436(b), (c), or (e) failures. (a) In general. In the case of a single-employer defined benefit plan, a payment of benefits that fails to satisfy the requirements of section 436(b), (c), or (e) can be corrected by the Plan Sponsor (including another person acting on behalf of the Plan Sponsor) making a contribution to the plan equal to the following amount (with interest up to the date of the contribution): (i) in the case of a failure to satisfy section 436(b) with respect to an unpredictable contingent event benefit, the amount described in section 436(b)(2) with respect to that benefit; (ii) in the case of a failure to satisfy section 436(c) with respect to an amendment, the amount described in section 436(c)(2) with respect to that amendment; and (iii) in the case of a failure to satisfy section 436(e), the amount described in section 436(e)(2) with respect to that failure. See also section 6.12 for correction of an Inadvertent Benefit Overpayment that exceeds the limitations imposed by section 436(b), (c), (d), or (e).

(b) Plan subject to section 436 at time of corrective action. A corrective distribution or a corrective amendment is not subject to the requirements of section 436, but, if the plan is subject to a restriction pursuant to section 436 at the time of the correction, generally the Plan Sponsor must make a contribution to the plan at the time of the correction in the following amount: (i) if a corrective distribution is made in a single-sum payment or other prohibited payment (as defined in section 436(d)(5)) at a time when the plan is subject to a restriction pursuant to section 436(d), the Plan Sponsor must generally contribute to the plan the amount of that corrective distribution (but only half of the corrective distribution must be contributed if the payment is made at a time when the plan is subject to a restriction pursuant to section 436(d)(3)); and (ii) if a corrective amendment is made at a time when the plan is subject to a restriction pursuant to section 436(c), the Plan Sponsor must generally contribute to the plan an amount equal to the increase in the funding target of the plan (as defined in section 430) attributable to that amendment. No contribution is required to be made under this paragraph if the corrective distribution is made in a form that is not a prohibited payment (for example, if the correction is made by actuarially increasing future payments that are made in a form that is not a prohibited payment).

(c) Treatment of contribution for section 436. Any contribution made by the Plan Sponsor pursuant to section 6.10(2)(b) is treated in the same manner as a “section 436

contribution" (as defined in § 1.436-1(j)(7)). Thus, the contribution is treated as separate from a minimum required contribution under section 430 and is disregarded in determining the amount added to a prefunding balance under section 430(f)(6). See § 1.436-1(f)(2) generally for rules relating to section 436 contributions.

.11 Special rules relating to Excess Amounts and Excess Allocations. (1) Tax treatment and reporting of Excess Amounts in Qualified Plans and Section 403(b) Plans. A distribution of an Excess Amount is not eligible for the favorable tax treatment accorded to distributions from Qualified Plans or Section 403(b) Plans (such as eligibility for tax-free rollover). Thus, for example, if such a distribution was contributed to an IRA, the contribution is not a valid rollover contribution for purposes of determining the amount of excess contributions (within the meaning of section 4973) to the individual's IRA. A distribution of an Excess Amount is generally treated in the manner described in section 3 of Rev. Proc. 92-93, 1992-2 CB 505 (relating to the corrective disbursement of elective deferrals). The distribution must be reported on Form 1099-R (Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.) for the year of distribution with respect to each participant or beneficiary receiving such a distribution. Except as otherwise provided in section 6.03(5) with respect to recovery of small Excess Amounts where an Excess Amount has been or is being distributed, the Plan Sponsor must notify the recipient that (a) an Excess Amount has been or will be distributed and (b) the Excess Amount is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for rollover).

(2) Correction of Excess Allocations in Qualified Plans. (a) In general. An Excess Allocation is corrected in accordance with the Reduction of Account Balance Correction Method set forth in this section 6.11(2). Under this method, the account balance of an employee who received an Excess Allocation is reduced by the Excess Allocation (adjusted for Earnings).

(b) Reallocation of employer contributions. If the Excess Allocation would have been allocated to other employees in the year of the failure had the failure not occurred, then that amount (adjusted for Earnings) is reallocated to those employees in accordance with the plan's allocation formula. If the improperly allocated amount would not have been allocated to other employees absent the failure, that amount (adjusted for Earnings) is placed in a separate account that is not allocated on behalf of any participant or beneficiary (an unallocated account) established for the purpose of holding Excess Allocations, adjusted for Earnings, to be used to reduce employer contributions (other than elective deferrals) in the current year or succeeding year. While such amounts remain in the unallocated account, the employer is not permitted to make contributions to the plan other than elective deferrals.

(c) Elective deferrals or after-tax employee contributions. Excess Allocations that are attributable to elective deferrals or after-tax employee contributions (adjusted for Earnings) must be distributed to the participant in accordance with section 6.11(1).

(d) Ordering rule for correction of a section 415 Excess Allocation. If an Excess Allocation resulting from a violation of section 415 consists of annual additions attributable to both (i) employer contributions and (ii) elective deferrals or after-tax employee contributions, then the correction of the Excess Allocation is completed by first distributing the unmatched employee's after-tax contributions (adjusted for Earnings) and then the unmatched employee's elective deferrals (adjusted for Earnings). If any excess remains and is attributable to either elective deferrals or after-tax employee contributions that are matched, the excess is apportioned first to after-tax employee contributions with the associated matching employer contributions and then to elective deferrals with the associated matching employer contributions. Any matching contribution or nonelective employer contribution (adjusted for Earnings) which constitutes an Excess Allocation is then forfeited and placed in an unallocated account established for the purpose of holding Excess Allocations to be used to reduce employer contributions in the current year and succeeding year. Such unallocated account is adjusted for Earnings. While such amounts remain in the unallocated account, the employer is not permitted to make contributions (other than elective deferrals) to the plan. A safe harbor correction method for a non-vested, non-highly compensated former employee is set forth in Appendix section .08(2).

(e) Qualification. An Excess Allocation that is corrected pursuant to this paragraph is disregarded for purposes of sections 402(g) and 415, the ADP test of section 401(k)(3), and the ACP test of section 401(m)(2).

(3) Correction of Excess Allocations in Section 403(b) Plans. Excess Allocations that are attributable to elective deferrals or after-tax employee contributions (adjusted for Earnings) exceeding plan limits, or employer contributions exceeding section 401(a)(17) limits, must be distributed to the participant (and the distribution must be treated in accordance with section 6.11(1)) or be placed in a section 403(c) separate account in accordance with section 6.16(2).

.12 Inadvertent Benefit Overpayments and other Overpayments.
(1) Inadvertent Benefit Overpayments. (a) In general. An Inadvertent Benefit Overpayment that does not occur due to a section 401(a)(17), 415, or 436 failure generally does not require any corrective payment to maintain compliance with the applicable provisions of section 401(a) or 403(b).[17] However, a Plan Sponsor is not

[17] Certain failures may require a corrective payment if the Inadvertent Benefit Overpayment results in another failure, such as (a) a payment due to an incorrect allocation of a profit-sharing contribution that results in benefit underpayments to others, or (b) restoration of an impermissible forfeiture in accordance with section 411.

precluded under this revenue procedure from seeking recoupment or from making corrective contributions under the correction methods set forth in section 6.12(3).[18] A Plan Sponsor that wishes to continue payments in a manner that is inconsistent with the plan's terms must adopt a plan amendment as set forth in section 6.12(3) reflecting past and future operation of the plan.

(b) Section 415, 401(a)(17), or 436 Inadvertent Benefit Overpayments. With respect to a section 401(a)(17), 415, or 436 failure that occurs as a result of an Inadvertent Benefit Overpayment to a recipient, to the extent the Inadvertent Benefit Overpayment is not recouped on behalf of the plan from the recipient, in accordance with section 6.12(3)(b), the Plan Sponsor or another person must make a corrective payment under the same circumstances as required under section 6.12(2) for the correction of an Overpayment that is not an Inadvertent Benefit Overpayment, or, as applicable, under section 6.10 for correction of a section 436 failure.

(c) Rollover treatment of Inadvertent Benefit Overpayments. (i) Inadvertent Benefit Overpayment not due to a section 401(a)(17) or 415 failure. The portion of a rolled-over Inadvertent Benefit Overpayment that is not due to a section 401(a)(17) or 415 failure for which recoupment is not sought is treated as an eligible rollover distribution under section 402(c)(12) if the payment would have been an eligible rollover distribution but for being an Inadvertent Benefit Overpayment.

The portion of an Inadvertent Benefit Overpayment for which recoupment is sought that is not returned to the originating plan is not treated as an eligible rollover distribution. The Plan Sponsor must notify the recipient that any unreturned portion of the Inadvertent Benefit Overpayment is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover). The notice provided to the recipient regarding tax treatment of the unreturned portion of the overpayment may be combined with a recoupment request.

(ii) Rollover treatment of a section 401(a)(17) or 415 Inadvertent Benefit Overpayment. The portion of an Inadvertent Benefit Overpayment for which recoupment is sought that is not returned to the originating plan is not treated as an eligible rollover distribution under section 402(c)(12). For purposes of this rule, an Inadvertent Benefit Overpayment occurring as a result of a section 401(a)(17) or 415 failure is treated as an Inadvertent Benefit Overpayment for which recoupment is sought. Accordingly, if, on behalf of a plan, the Plan Sponsor does not recoup from a recipient a rolled-over Inadvertent Benefit Overpayment that occurs as a result of a section 401(a)(17) or 415 failure, the Inadvertent Benefit Overpayment is not treated as an eligible rollover distribution. The Plan Sponsor must notify the recipient that any portion of the Inadvertent Benefit Overpayment not returned to the plan is not eligible

[18] Section 206(h) of ERISA may preclude or limit the Plan Sponsor from recoupment.

for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover). The notice provided to the recipient regarding tax treatment of the unreturned portion of the overpayment may be combined with a recoupment request.

(iii) Treatment for transfer to originating plan for any Inadvertent Benefit Overpayment. If an Inadvertent Benefit Overpayment is rolled over from an originating plan to a second plan, then the amount that is transferred back to the originating plan (after recoupment was sought) is treated both as an eligible rollover distribution from the originating plan and as an eligible rollover distribution transferred back to the originating plan under section 402(c)(12). Thus, without regard to plan terms, the originating plan is treated as permitting the transfer back of the Inadvertent Benefit Overpayment as an eligible rollover distribution, and the transfer from the second plan is treated as an eligible rollover distribution.

(2) Overpayments that are not Inadvertent Benefit Overpayments. (a) In general. An Overpayment that is not an Inadvertent Benefit Overpayment must be corrected in accordance with the rules set forth in section 6.12(2) and (3). Except as provided in section 6.03(4) with respect to the recovery of small Overpayments, to the extent the amount of an Overpayment is not corrected in accordance with the methods under section 6.12(3), depending upon the requirements of the correction method, the Plan Sponsor or another person may be required to contribute the uncorrected amount to the plan adjusted for Earnings at the plan's earnings rate from the date of distribution to the date of the correction.

(b) Rollover treatment. Except as provided in section 6.03(4) with respect to the recovery of small Overpayments and Inadvertent Benefit Overpayments, the Plan Sponsor must notify the recipient in writing that the Overpayment is not eligible for favorable tax treatment accorded to distributions from an eligible retirement plan, as defined in section 402(c)(8)(B) (and, specifically, is not eligible for tax-free rollover).

(3) Correction Methods. (a) Correction by Plan amendment. Subject to the conditions set forth in section 6.07 (which permits correction by plan amendment), a Plan Sponsor may adopt an amendment to reflect past payments made under the plan and to continue the same amount of benefits in the future. As provided in section 6.07, the amendment must meet applicable Code requirements. Thus, for example, an amendment to increase benefit payments that results in a violation of section 401(a)(17) or 415 is not permitted.

(b) Repayment to plan by recipient. A Plan Sponsor may seek recoupment from an Overpayment recipient and may use the safe harbor methods described in Appendix section .09(2).[19]

[19] Section 206(h) of ERISA may limit a Plan Sponsor's ability to seek recoupment.

(c) Repayment by recipient in absence of a distributable event in a defined contribution plan. To the extent an Inadvertent Benefit Overpayment or Overpayment results solely from a distribution of a recipient's benefit under the plan in the absence of a distributable event, but the Inadvertent Benefit Overpayment or Overpayment was otherwise determined in accordance with the terms of the plan, any amount returned to the plan by the recipient is allocated to the recipient's account.

(d) Funding exception method and contribution credit method for defined benefit plans. If the applicable requirements are satisfied, Plan Sponsors of defined benefit plans may use the funding exception method or the contribution credit method described in Rev. Proc. 2021-30, Appendix B, section 2.05. However, these correction methods may not be applied with respect to Inadvertent Benefit Overpayments or Overpayments associated with a failure to satisfy a statutory limit (including sections 401(a)(17), 415(b), and 436) or with Overpayments made to a disqualified person (as defined in section 4975(e)(2)) or an owner-employee (as defined in section 401(c)(3)).

(e) Other correction methods. Other appropriate correction methods may be used. Any other correction method used must satisfy the correction principles of section 6 and any other applicable rules in this revenue procedure.

(f) Unallocated account in a qualified defined contribution plan. Except as provided in section 6.12(3)(c), a repaid Overpayment, adjusted for Earnings at the plan's earnings rate to the date of the repayment, is to be placed in an unallocated account, as described in section 6.11(2)(b), to be used to reduce employer contributions (other than elective deferrals) no later than 12 months following the close of the plan year in which the unallocated amounts were repaid to the plan (or, if the amount would have been allocated to other eligible employees who were in the plan for the year of the failure if the failure had not occurred, then that amount is reallocated to the other eligible employees in accordance with the plan's allocation formula).

.13 Correction of plan loan failures. (1) In general. Plan loan failures may be corrected in accordance with the correction methods under this section 6.13.

(2) Plan loan failures treated as deemed distributions under section 72(p). Unless correction is made in accordance with section 6.13(3) (to the extent applicable), a deemed distribution under section 72(p)(1) in connection with a failure relating to a plan loan to a participant must be reported on Form 1099-R with respect to the affected participant, and any applicable income tax withholding amount that was required to be paid in connection with the failure (see § 1.72(p)-1, Q&A-15) must be paid by the employer. In this case, the deemed distribution may be reported on Form 1099-R with

respect to the affected participant for the year of correction (instead of the year of the failure).[20]

(3) Correction methods for certain section 72(p) plan loan failures. (a) In general. The correction methods set forth in section 6.13(3)(b), (c), and (d) apply to plan loans that do not comply with one or more requirements of section 72(p)(2); however, these correction methods are not available if the maximum period for repayment of the loan pursuant to section 72(p)(2)(B) has expired. Further, the IRS reserves the right to limit the use of these correction methods to situations that it considers appropriate, for example, if the loan failure is caused by employer action. A deemed distribution corrected under section 6.13(3)(b), (c), or (d) is not required to be reported on Form 1099-R, and corrective payments under section 6.13(3) do not result in the affected participant having additional basis in the plan for purposes of determining the tax treatment of subsequent distributions from the plan to the affected participant.

(b) Loans in excess of section 72(p)(2)(A). A failure of plan loan terms to satisfy section 72(p)(2)(A) may be corrected by a corrective payment to the plan based on the excess of the loan amount over the maximum loan amount under section 72(p)(2)(A). In the event that loan repayments were made in accordance with the amortization schedule for the loan before correction, such prior repayments may be applied (i) solely to reduce the portion of the loan that did not exceed the maximum loan amount under section 72(p)(2)(A) (so that the corrective payment would equal the original loan excess plus interest thereon), (ii) to reduce the loan excess to the extent of the interest thereon, with the remainder of the repayments applied to reduce the portion of the loan that did not exceed the maximum loan amount under section 72(p)(2)(A) (so that the corrective payment would equal the original loan excess), or (iii) pro rata against the loan excess and the maximum loan amount under section 72(p)(2)(A) (so that the corrective payment would equal the outstanding balance remaining on the original loan excess on the date that the corrective payment is made). After the corrective payment is made, the loan may be reformed to amortize the remaining principal balance as of the date of the corrective payment over the remaining period of the original loan. This is permissible as long as the recalculated repayments over the remaining loan period would not cause the loan to violate the maximum repayment term requirement under section 72(p)(2)(B). The maximum repayment term is determined from the date the original loan was made. In addition, the amortized repayments determined for the

[20] This revenue procedure retains the correction method, previously in section 6.07 of Rev. Proc. 2021-30 (and predecessor guidance), permitting the reporting of a deemed distribution (with income inclusion for the individual) in the year of correction. Section 305(b) of the SECURE 2.0 Act codifies the use of this correction method, stating, in part, that loan errors may be corrected "according to the rules of section 6.07 of Revenue Procedure 2021-30 (or any successor guidance), including the provisions related to whether a deemed distribution must be reported on Form 1099-R."

remaining loan period must comply with the level amortization requirement of section 72(p)(2)(C).

(c) Plan loan terms that do not satisfy section 72(p)(2)(B) or (C). A failure of plan loan terms to satisfy the maximum repayment term requirement of section 72(p)(2)(B) or the level amortization requirement of section 72(p)(2)(C) may be corrected by a reamortization of the loan balance in accordance with section 72(p)(2)(C) over the remainder of the maximum period that complies with section 72(p)(2)(B), as measured from the original date of the loan.

(d) Defaulted loans. A failure to repay a loan in accordance with loan terms that satisfy section 72(p)(2) may be corrected by (i) a single-sum corrective payment equal to the amount that the affected participant would have paid to the plan if there had been no failure to repay the plan, plus interest accrued on the missed payments, (ii) reamortizing the outstanding balance of the loan, including accrued interest, over the remaining payment schedule of the original term of the loan or the period remaining had the loan been amortized over the maximum period that complies with section 72(p)(2)(B), as measured from the original date of the loan, or (iii) any combination of (i) and (ii).

(e) No requirement for plan provisions. This section 6.13 applies even if the plan does not require loans to satisfy the requirements of section 72(p)(2). However, under the Department of Labor's VFCP, to correct the ERISA fiduciary violations associated with the failures described in section 6.13(3)(b), (c), and (d), the plan must include plan provisions requiring that loans comply with section 72(p)(2)(A), (B), and (C).

(4) Failure to obtain spousal consent for a plan loan. (a) Spousal consent obtained. The correction method for the failure to obtain spousal consent for a plan loan is that the Plan Sponsor must notify the affected participant and spouse (the spouse to whom the participant was married at the time of the plan loan), so that the spouse can provide spousal consent to the plan loan.

(b) No spousal consent obtained. If spousal consent is not obtained, as described in section 6.13(4)(a), a Plan Sponsor must ensure that, if the loan has not been repaid upon distribution, the spouse receives the benefit the spouse is entitled to receive under sections 401(a)(11) and 417.

(5) Number of loans exceeds a loan limitation established by plan. An Operational Failure that results from a participant obtaining a number of loans that exceeds the number of loans permitted under the terms of the plan may be corrected by adopting a plan amendment in accordance with the correction method set forth in Appendix section .13(2).

(6) Correction principle for plan loan failures. In the case of a plan loan failure corrected in accordance with section 6.13(3)(b), (c), or (d), the participant is generally responsible for paying the corrective payment. However, with respect to the failure listed in section 6.13(3)(d), the employer should pay a portion of the correction payment on behalf of the participant equal to the interest that accumulates as a result of such failure, generally determined at a rate equal to the greater of the plan loan interest rate or the rate of return under the plan.

.14 Plan Sponsor ceasing to exist or maintain the plan. (1) ERISA individual account plans. If the plan is subject to ERISA and is an individual account plan as defined in section 3(34) of ERISA, for a failure that results from the Plan Sponsor having ceased to exist, the Plan Sponsor no longer maintaining the plan, or similar reasons, the permitted correction is to terminate the plan and distribute plan assets to participants and beneficiaries in accordance with 29 CFR 2578.1 of the Department of Labor regulations (relating to abandoned plans). This correction must satisfy four conditions. First, the correction must comply with standards and procedures set forth in 29 CFR 2578.1. Second, the qualified termination administrator, based on plan records located and updated in accordance with the Department of Labor regulations, must have reasonably determined whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 of the Code apply to any benefit payable under the plan and must take reasonable steps to comply with those requirements (if applicable). Third, each participant and beneficiary must have been provided a nonforfeitable right to the participant's or beneficiary's accrued benefits as of the date of deemed termination under the Department of Labor regulations, subject to Earnings between that date and the date of distribution. Fourth, participants and beneficiaries must receive notification of their rights under section 402(f).

In addition, notwithstanding correction under this revenue procedure, the IRS reserves the right to pursue appropriate remedies under the Code against any party who is responsible for the plan, such as the Plan Sponsor, plan administrator, or owner of the business, even in its capacity as a participant or beneficiary under the plan.

(2) Orphan Plans. If an Orphan Plan has one or more failures (whether a Qualification Failure or a Section 403(b) Failure) that result from the Plan Sponsor having ceased to exist, the Plan Sponsor no longer maintaining the plan, or similar reasons, the permitted correction is to terminate the plan and distribute plan assets to participants and beneficiaries. This correction must satisfy four conditions. First, the correction must comply with conditions, standards, and procedures substantially similar to those set forth in 29 CFR 2578.1 of the Department of Labor regulations (relating to abandoned plans) with respect to identifying and notifying participants and beneficiaries and distributing assets. Second, the Eligible Party must have reasonably determined whether, and to what extent, the survivor annuity requirements of sections 401(a)(11) and 417 apply to any benefit payable under the plan and take reasonable steps to comply with those requirements (if applicable). Third, each

participant and beneficiary must have been provided a nonforfeitable right to the amounts credited to the participant's or beneficiary's account or accrued benefits as of the date of termination subject to income, expenses, gains, and losses between that date and the date of distribution. Fourth, participants and beneficiaries must receive notification of their rights under section 402(f).

In addition, notwithstanding correction under this revenue procedure, the IRS reserves the right to pursue appropriate remedies under the Code against any party who is responsible for the plan, such as the Plan Sponsor, plan administrator, or owner of the business, even in its capacity as a participant or beneficiary under the plan.

(3) Section 403(b) Failures for orphan contracts or other assets. (a) Former employees or beneficiaries. In any case in which a Section 403(b) Failure results from the Plan Sponsor having ceased involvement with respect to specific assets (including an insurance annuity contract) held under a defined contribution plan on behalf of a participant who is a former employee or on behalf of a beneficiary, a permitted correction is to distribute those plan assets to the participant or beneficiary. Compliance with the distribution rules of 29 CFR 2578.1(d)(2)(vii) of the Department of Labor regulations satisfies this section 6.14(3).

(b) Failures relating to information sharing agreements. In any case in which a Section 403(b) Failure results from a contract issued in an exchange not being part of a Section 403(b) Plan due to the failure to have an information sharing agreement pursuant to § 1.403(b)-10(b)(2)(i)(C), a permitted correction is for the assets held under the contract to be transferred to another vendor to which contributions are being made under the Section 403(b) Plan in order to become a contract which is held under the Section 403(b) Plan without regard to the special rules in § 1.403(b)-10(b).

.15 Matters subject to excise or other taxes. (1) In general. Except as provided in this revenue procedure, the correction programs are not available for events for which the Code provides consequences other than plan disqualification (such as the imposition of an excise tax or additional income tax). For example, funding deficiencies (failures to make the contributions to a plan required by section 412 or 430); prohibited transactions under section 4975; prohibited allocations under section 4979A of qualified securities by an employee stock ownership plan (ESOP), as defined under section 4975(e)(7); and failures to file the Form 5500 series cannot be corrected under this revenue procedure.

(2) Section 4974. As part of VCP and Audit CAP, if a failure involves the failure to satisfy the minimum required distribution requirements of section 401(a)(9), in appropriate cases, the IRS will waive the excise tax under section 4974 applicable to plan participants or beneficiaries. The waiver will be included in the compliance statement in the case of VCP, or in the closing agreement in the case of Audit CAP.

(a) VCP. The Plan Sponsor, as part of the submission, must make an affirmative request for waiver of the excise tax under section 4974, and, in cases where the participant subject to the excise tax is either an owner-employee as defined in section 401(c)(3) or a 10-percent owner of a corporation, the Plan Sponsor must also provide an explanation supporting the request.

(b) Audit CAP. The Plan Sponsor must make an affirmative request for waiver of the excise tax under section 4974. The Plan Sponsor should also provide an explanation supporting the request for a waiver. Upon reviewing the request, the reasons for the failure, and other facts or circumstances of the case Under Examination, the IRS will determine whether it is appropriate to approve the waiver of the excise tax as part of the closing agreement negotiated under Audit CAP.

(3) Section 4972. As part of VCP, if the failure involves a correction that requires the Plan Sponsor to make a plan contribution that is not deductible, in appropriate cases, the IRS will not pursue the excise tax under section 4972 on such nondeductible contributions. The Plan Sponsor, as part of the submission, must request the relief and provide an explanation supporting the request.

(4) Section 4979. As part of VCP, if a failure results in excess contributions as defined in section 4979(c) or excess aggregate contributions as defined in section 4979(d) under a plan, in appropriate cases, the IRS will not pursue the excise tax under section 4979, for example, when correction is made for any case in which the ADP test was timely performed but, due to reliance on inaccurate data, resulted in an insufficient amount of excess elective deferrals having been distributed to highly compensated employees. The Plan Sponsor, as part of the submission, must request the relief and provide an explanation supporting the request.

(5) Section 4973. Subject to section 6.05(4), as part of VCP, in appropriate cases, the IRS will not pursue the excise tax under section 4973 relating to excess contributions made to a section 403(b)(7) custodial account under a Section 403(b) Plan or to an IRA under the following circumstances:

(a) Removal of an Overpayment and return to plan or IRA. As part of the proposed correction for Overpayments that are transferred or rolled over into an IRA or section 403(b)(7) custodial account, the Overpayment recipient removes the Overpayment (adjusted for Earnings) from the Overpayment recipient's section 403(b)(7) custodial account or IRA and returns that amount to the plan.

(b) Removal of Excess Amount and reporting as taxable distribution. As part of the proposed correction for Excess Amounts, the recipient removes the Excess Amount (adjusted for Earnings) from the recipient's section 403(b)(7) custodial account under a Section 403(b) Plan or IRA and reports that amount (reduced by any applicable after-tax employee contribution) as a taxable distribution for the year in

which the Excess Amount (adjusted for Earnings) is removed from the recipient's section 403(b)(7) custodial account under a Section 403(b) Plan or IRA. The amount removed is generally taxed in a manner that is similar to the manner in which the corrective disbursement of elective deferrals is taxed, as described in section 3 of Rev. Proc. 92-93.

(c) Request of relief. The Plan Sponsor, as part of the submission, must request relief from the section 4973 excise tax and provide an explanation supporting the request.

(6) Section 72(t). As part of VCP, in appropriate cases, the IRS will not pursue the 10-percent additional tax under section 72(t) if, as part of the proposed correction of an Inadvertent Benefit Overpayment that occurred solely because an employee received a distribution from the employee's vested account balance that was not pursuant to a distributable event, the participant or beneficiary returns the improperly distributed amount, adjusted for Earnings, to the plan. In appropriate cases, as a condition for not pursuing all or a portion of the 10-percent additional tax, the IRS may require the Plan Sponsor to pay a sanction not in excess of the 10-percent additional tax under section 72(t). The Plan Sponsor, as part of the submission, must request the relief and provide an explanation supporting the request.

.16 Correction principles for Section 403(b) Plans. (1) Correction for Section 403(b) Plans generally. Except as provided otherwise in this revenue procedure, the correction for a Section 403(b) Plan is expected to be the same as the correction required for a Qualified Plan with the same failure (that is, a Plan Document Failure, Operational Failure, Demographic Failure, or Employer Eligibility Failure).

(2) Special correction principle. In general, a Section 403(b) Failure can be corrected by treating a contract as a section 403(c) annuity contract (or, if applicable, as an amount to which section 61, 83, or 402(b) applies), such as for purposes of correcting an Employer Eligibility Failure, an Excess Amount, an Excess Allocation, a failure to provide for full vesting (including a failure to maintain a separate account), or an exchange made to a vendor which is not part of the plan (and for which there is no information sharing agreement).

.17 Correction principles for SEP Arrangements and SIMPLE IRA Plans. (1) Correction for SEP Arrangements and SIMPLE IRA Plans generally. Generally, the correction for a SEP Arrangement or a SIMPLE IRA Plan is expected to be similar to the correction required for a Qualified Plan with a similar Qualification Failure (that is, a Plan Document Failure, Operational Failure, Demographic Failure, or Employer Eligibility Failure).

(2) Correction of failure to satisfy deferral percentage test. If the failure involves a violation of the deferral percentage test under section 408(k)(6)(A)(iii) applicable to a SARSEP, the failure may be corrected in either of the following ways:

(a) Plan Sponsor contribution. The Plan Sponsor may make corrective contributions that are 100 percent vested to all eligible non-highly compensated employees (to the extent permitted by section 415) necessary to raise the deferral percentage to an amount sufficient to pass the test. This amount may be calculated as the same percentage of compensation (regardless of the terms of the SEP Arrangement); or

(b) Distribution of Excess Amounts. In accordance with section 6.17(4), the affected highly compensated employee may receive a distribution of Excess Amounts, adjusted for Earnings through the date of correction, to correct the failure. The Plan Sponsor must also make a contribution of an amount equal to the total amount distributed. This amount must be allocated to (i) current employees who were non-highly compensated employees in the year of the failure, (ii) current non-highly compensated employees who were non-highly compensated employees in the year of the failure, or (iii) employees (both current and former) who were non-highly compensated employees in the year of the failure.

(3) Treatment of undercontributions to a SEP Arrangement or a SIMPLE IRA Plan. (a) Make-up contributions; Earnings. The Plan Sponsor should correct undercontributions to a SEP Arrangement or a SIMPLE IRA Plan by contributing make-up amounts that are fully vested, adjusted for Earnings from the date of the failure to the date of correction.

(b) Earnings adjustment methods. Contributions under SEP Arrangements and SIMPLE IRA Plans are made to IRAs. Therefore, there is no earnings rate under the SEP Arrangement or SIMPLE IRA Plan as a whole. If it is not feasible to make a reasonable estimate of what the actual investment results would have been, a reasonable interest rate may be used as permitted in section 6.03(2).

(4) Treatment of Excess Amounts under a SEP Arrangement or a SIMPLE IRA Plan. (a) Definition. For purposes of this section 6.17 and section 7.03, an Excess Amount is an amount contributed on behalf of an employee that is in excess of an employee's benefit under the terms of the plan or in excess of the limitations of section 402(g), 408(k)(6)(A)(iii), or 415.

(b) Distribution of Excess Amounts. (i) Elective deferrals. If an Excess Amount is attributable to elective deferrals, the affected participant may receive the Excess Amount, adjusted for Earnings through the date of correction. The amount distributed to the affected participant is includible in gross income in the year of distribution. The distribution is reported on Form 1099-R for the year of distribution with respect to each

participant receiving the distribution. In addition, the Plan Sponsor must inform affected participants that the distribution of an Excess Amount is not eligible for favorable tax treatment accorded to distributions from a SEP Arrangement or a SIMPLE IRA Plan (and, specifically, is not eligible for tax-free rollover).

(ii) Employer contributions. If the Excess Amount is attributable to employer contributions, the Plan Sponsor may receive the Excess Amount, adjusted for Earnings through the date of correction. The amount distributed to the Plan Sponsor is not includible in the gross income of the affected participant. The Plan Sponsor is not entitled to a deduction for such employer Excess Amount. The distribution is reported on Form 1099-R issued to the participant indicating the taxable amount as zero.

(c) Retention of Excess Amounts. If the failure involves an Excess Amount under a SEP Arrangement or a SIMPLE IRA Plan and the Excess Amount is retained in the affected employee's IRA, a sanction applies, in addition to the user fee described in Appendix A of Rev. Proc. 2026-4 (and its annual successors). A sanction equal to at least 10 percent of the Excess Amount with no adjustment for Earnings is imposed. In addition, the Plan Sponsor is not entitled to a deduction for an Excess Amount retained in the SEP Arrangement or SIMPLE IRA Plan.

In the case of an Excess Amount retained in a SEP Arrangement that is attributable to a section 415 failure, the Excess Amount, adjusted for Earnings through the date of correction, must reduce an affected participant's applicable section 415 limit for the year following the year of correction (or for the year of correction if the Plan Sponsor so chooses), and subsequent years, until the excess is eliminated.

(d) De minimis Excess Amounts. If the total Excess Amount in a SEP Arrangement or SIMPLE IRA Plan, whether attributable to elective deferrals or employer contributions, is $250 or less, the Excess Amount is not required to be distributed and the sanction described in section 6.17(4)(c) does not apply.

.18 Confidentiality and disclosure. Because each correction program relates directly to the enforcement of Code requirements, the information received or generated by the IRS under the program is subject to the confidentiality requirements of section 6103 and is not a written determination within the meaning of section 6110.

.19 No effect on other law. Correction under these programs has no effect on the rights or obligations of any party under any other law, including the rights of any persons and the obligations of fiduciaries or employers under title I of ERISA. The Department of Labor maintains the VFCP, under which certain ERISA fiduciary violations may be corrected. The Department of Labor also maintains a Delinquent Filer Voluntary Compliance Program under which certain failures to comply with the annual reporting requirements (Form 5500 series) under ERISA may be corrected.

PART IV. SELF-CORRECTION PROGRAM (SCP)

SECTION 7. GENERAL SCP CORRECTION RULES

.01 In general. Except as otherwise provided in sections 5 and 7.03 and subject to the requirements in this section 7 and section 8, SCP is available to correct Eligible Inadvertent Failures in Qualified Plans, Section 403(b) Plans, SEP Arrangements, and SIMPLE IRA Plans.

.02 Requirement of established practices and procedures. To be eligible to correct an Eligible Inadvertent Failure under SCP, the Plan Sponsor or administrator of a plan must have established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance in form and operation with applicable Code requirements. For example, the plan administrator of a Qualified Plan that may be top heavy under section 416 may include in its written procedures a specific annual step to determine whether the plan is top heavy and, if so, to ensure that the minimum contribution requirements of the top-heavy rules are satisfied. A plan document alone does not constitute evidence of established procedures.

These established procedures must have been in place and routinely followed, and the Eligible Inadvertent Failure must have occurred through an oversight or mistake in applying them. SCP also may be used in situations in which the Eligible Inadvertent Failure occurred because the procedures that were in place, while reasonable, were not sufficient to prevent the occurrence of the failure.

A plan that provides for elective deferrals and nonelective employer contributions that are not matching contributions will be treated as having established practices and procedures to prevent section 415 failures if the annual limits under section 415 are regularly satisfied by returning elective deferrals to the affected employee within 9½ months after the end of the plan's limitation year.

In the case of a failure that relates to Transferred Assets or to a plan assumed in connection with a corporate merger, acquisition, or other similar employer transaction between the Plan Sponsor and the sponsor of the transferor plan or the prior Plan Sponsor of an assumed plan, the plan is considered to have established practices and procedures for the Transferred Assets if such practices and procedures are in effect for the Transferred Assets by the end of the first plan year that begins after the corporate merger, acquisition, or other similar transaction.

In the case of a Section 403(b) Failure, the requirement to have established practices and procedures only applies for failures during periods after December 31, 2009.

.03 Failures not eligible for, and correction methods not available under, SCP. The following Eligible Inadvertent Failures are either not eligible for correction under SCP, or not eligible to be corrected using certain correction methods that are otherwise available under SCP.

(1) Initial failure to adopt a plan document. A Plan Document Failure consisting of a failure to initially adopt a written plan under section 401(a), 403(a), 403(b), 408(k), or 408(p), including the failure to adopt a written Section 403(b) Plan timely in accordance with § 1.403(b)-3(b)(3) and Notice 2009-3. A failure to initially adopt a written plan does not include a failure in which (A) employees of an employer are participating in a plan established by a Plan Sponsor, and (B) the employer has not adopted the plan as a participating employer.

(2) Failure occurring under certain SEP Arrangements. A failure occurring in a SEP Arrangement with a plan document that does not consist of either (a) a valid Model Form 5305-SEP or 5305A-SEP adopted by an employer in accordance with the instructions on the applicable form, or (b) a prototype SEP Arrangement that has a current favorable opinion letter and that has been amended in accordance with the procedures set forth in Rev. Proc. 2002-10, 2002-1 CB 401.

(3) Failure occurring under certain SIMPLE IRA Plans. A failure occurring in a SIMPLE IRA Plan with a plan document that does not consist of either (a) a valid Model Form 5305-SIMPLE or 5304-SIMPLE adopted by the Plan Sponsor in accordance with the instructions on the applicable form, or (b) a prototype SIMPLE IRA Plan that has a current favorable opinion letter and that has been amended in accordance with the procedures set forth in Rev. Proc. 2002-10.

(4) Failure involving Excess Amounts in SEP Arrangements and SIMPLE IRA Plans. A failure that involves Excess Amounts, as defined in section 6.17, contributed to a SEP Arrangement or a SIMPLE IRA Plan if the correction method permits the Excess Amounts to remain in the IRA.

(5) Failure involving Orphan Plans. A failure in an Orphan Plan.

(6) Certain failures involving Terminated Plans. A significant Operational Failure (that is, a failure that is not an insignificant failure, as determined in accordance with the factors set forth in section 8.03), Plan Document Failure, Employer Eligibility Failure, or Demographic Failure in a terminated plan.

(7) Certain Demographic Failures. A Demographic Failure that is corrected using a method other than a method set forth in § 1.401(a)(4)-11(g) (for example, a demographic failure under section 401(a)(4) may not be corrected by using a special testing provision set forth in § 1.401(a)(4)-8 or 1.401(a)(4)-9, or by providing benefits primarily to short-service or low-paid employees).

(8) Certain corrections by plan amendment. An Operational Failure that is corrected by a plan amendment that conforms the terms of the plan to the plan's prior operations in a manner that is less favorable for a participant or beneficiary than the original terms of the plan. See section 6.07.

(9) Certain ESOP Failures. A failure occurring in an ESOP for which consequences in addition to plan disqualification are associated; for example, a failure that results in the application of an excise tax under section 4979A.

(10) Failures involving fully insured defined benefit plans. A failure in a fully insured defined benefit plan that is described in section 412(e)(3).

.04 Correction methods. Eligible Inadvertent Failures may be corrected under SCP in accordance with the correction principles and rules of general applicability set forth in section 6.

.05 Correction period under SCP. (1) In general. (a) Reasonable period. Correction of an identified Eligible Inadvertent Failure must be completed within a reasonable period after identification of such failure by the Plan Sponsor. A reasonable period is determined by considering all relevant facts and circumstances. A correction of an Eligible Inadvertent Failure that is completed by the later of the last day of the third plan year following the plan year in which the failure occurred or 18 months after identification of the failure by the Plan Sponsor is deemed to have been completed within a reasonable period.

(b) Section 401(k)(3) or 401(m)(2) failures. In the case of a failure to satisfy the requirements of section 401(k)(3) or 401(m)(2), this reasonable period ends on the later of the last day of the third plan year following the plan year that includes the last day of the additional period for correction permitted under section 401(k)(8) or 401(m)(6) or 18 months after identification of such failure. If a Section 403(b) Plan does not have a designated plan year, the plan year is deemed to be the calendar year for purposes of this section.

(c) Employer Eligibility Failure. An Eligible Inadvertent Failure that is an Employer Eligibility Failure is treated as having been corrected within a reasonable period if the Plan Sponsor ceases all contributions to the plan as soon as reasonably practicable after the failure is identified, but no later than the last day of the sixth month following the date of identification of the failure.

(2) Effect of examination. (a) In general. Notwithstanding section 7.05(1), the SCP correction period ends when the plan or Plan Sponsor comes Under Examination for that year. However, certain Operational Failures may be corrected under SCP, as permitted in section 8, even if the plan or Plan Sponsor is Under Examination.

(b) Documentation. If requested while Under Examination, a Plan Sponsor must be able to provide documentation substantiating the self-correction, such as documentation that: (1) identifies the Eligible Inadvertent Failure, including the years of occurrence, the number of employees affected, and the date the failure was identified; (2) explains how the Eligible Inadvertent Failure occurred and demonstrates that there were established practices and procedures (formal or informal) reasonably designed to promote and facilitate overall compliance in effect when the failure occurred; (3) identifies and substantiates the correction method and the date of the completion of the correction; and (4) identifies any changes made to those established practices and procedures to ensure that the same failure would not recur.

.06 Examples. The following examples illustrate the application of this section 7.

Example 1: Employer Z maintains a qualified defined contribution plan. During May 2025, while doing a self-audit of the operation of the plan for the 2024 plan year, the plan administrator discovered that, despite the practices and procedures established by Employer Z with respect to the plan, several employees eligible to participate in the plan were excluded from participation. The administrator also found that, for 2024, Operational Failures occurred because the elective deferrals of additional employees exceeded the section 402(g) limit, and Employer Z failed to make the required top-heavy minimum contribution. In addition, during the review of the administration for the 2024 year, it was found that the plan administrator intended to implement correction for the failure to satisfy the ADP test (as described in section 401(k)(3)) for the 2023 plan year. During December 2024, the Plan Sponsor made QNECs on behalf of the excluded employees, distributed the excess deferrals to the affected participants, and made a top-heavy minimum contribution to all participants entitled to that contribution for the 2023 plan year. Each corrective contribution and distribution was credited with Earnings at a rate appropriate for the plan from the date the corrective contribution or distribution should have been made to the date of correction. The failed ADP test for 2023 was corrected by making corrective contributions, adjusted for Earnings, on behalf of non-highly compensated employees using the method described in Appendix section .03. Under these facts, the Plan Sponsor has corrected the ADP test failure for the 2023 plan year and the Operational Failures for the 2024 plan year within a reasonable period after identification of the failure and thus satisfied the requirements of this section 7.

Example 2: Employer A maintains a qualified defined contribution plan, Plan A. In April 2025, Employer A purchased all of the stock of Employer B, a wholly owned subsidiary of Employer C. Employees of Employer B participated in Plan C, a qualified defined contribution plan sponsored by Employer C. Following Employer A’s review of Plan C, Employer A and Employer C agreed that Plan A would accept a transfer of plan assets from Plan C attributable to the account balances of the employees of Employer B who had participated in Plan C. As part of this agreement, Employer C

represented to Employer A that Plan C was tax qualified. Employers A and C also agreed that such transfer would be in accordance with section 414(l) and § 1.414(l)-1 and addressed issues related to costs associated with the transfer. Following the transaction, the employees of Employer B began participation in Plan A. Effective July 1, 2025, Plan A accepted the transfer of plan assets from Plan C. After the transfer, during September 2025, Employer A determined that all the participants in one division of Employer B had been incorrectly excluded from allocation of the profit-sharing contributions for the 2023 and 2024 plan years. During March 2026, Employer A made corrective contributions on behalf of the affected participants. The corrective contributions were credited with Earnings at a rate appropriate for the plan from the date the corrective contributions should have been made to the date of correction, and Employer A otherwise complied with the requirements of SCP. Under these facts, Employer A has, within a reasonable period after identification of the failure, corrected the Operational Failures for the 2023 and 2024 plan years with respect to the assets transferred to Plan A, and thus satisfied the requirements of this section 7.

SECTION 8. APPLICATION OF SCP IF UNDER EXAMINATION

.01 SCP while Under Examination. An Eligible Inadvertent Failure may be self-corrected even though the plan or Plan Sponsor is Under Examination if (a) the failure is insignificant, not excluded under section 7.03, and an Operational Failure, or (b) the Plan Sponsor has taken actions that demonstrate a specific commitment to implementing correction of the Eligible Inadvertent Failure before the plan or Plan Sponsor comes Under Examination.

Whether actions taken by a Plan Sponsor demonstrate a specific commitment to implement a correction is based on facts and circumstances. However, these actions must generally demonstrate that the Plan Sponsor is actively pursuing correction of the identified Eligible Inadvertent Failure. The completion of an annual audit or adoption of a general statement of intent to correct failures when they are discovered are not actions demonstrating a specific commitment to implement a correction of a failure.

.02 Exclusions from SCP while Under Examination. SCP is not available for Plan Document Failures, Employer Eligibility Failures, Demographic Failures, and Operational Failures that are not insignificant when a plan or Plan Sponsor is Under Examination unless the Plan Sponsor has taken actions that demonstrate a specific commitment to implementing correction of the failure as described in section 8.01.

.03 Determination of an insignificant Operational Failure. An Operational Failure is considered insignificant based on facts and circumstances. The relevant facts and circumstances to be considered in determining whether an Operational Failure is insignificant include, but are not limited to: (a) whether other failures occurred during the period being examined (for this purpose, a failure is not considered to have

occurred more than once merely because more than one participant is affected by the failure); (b) the percentage of plan assets and contributions involved in the failure; (c) the number of years the failure occurred; (d) the number of participants affected relative to the total number of participants in the plan; (e) the number of participants affected as a result of the failure relative to the number of participants who could have been affected by the failure; (f) whether correction was made within a reasonable time after discovery of the failure; and (g) the reason for the failure (for example, data errors such as errors in the transcription of data, the transposition of numbers, or minor arithmetic errors). No single factor is determinative. Additionally, factors (b), (d), and (e) should not be interpreted to exclude small businesses.

.04 Multiple failures. In the case of a plan with more than one Operational Failure that occurs in more than one year, the failures are eligible for correction under this section 8 only if all the Operational Failures are insignificant in the aggregate. Operational Failures that have been corrected under SCP in section 7 and VCP in sections 9 and 10 are not taken into account for purposes of determining if Operational Failures are insignificant in the aggregate.

.05 Examples. The following examples illustrate the application of this section 8. For purposes of the examples, it is assumed that no Operational Failures occurred other than the Operational Failures identified below.

Example 1: Employer X maintains Plan A, a profit-sharing plan that satisfies the requirements of section 401(a) in form. In 2023, the benefits of 50 of the 250 participants in Plan A were limited by section 415(c). However, when the IRS examined Plan A in 2025, it discovered that, during the 2023 limitation year, the annual additions allocated to the accounts of three of these employees exceeded the maximum limitations under section 415(c). Employer X contributed $3,500,000 to the plan for the plan year. The amount of the excesses totaled $4,550. Under these facts, because the number of participants affected by the failure relative to the total number of participants who could have been affected by the failure (3/50) and the monetary amount of the failure relative to the total employer contribution to the plan for the 2023 plan year ($4,550/$3,500,000) are insignificant, the section 415(c) failure in Plan A that occurred in 2023 would be eligible for correction under this section 8.

Example 2: The facts are the same as in Example 1, except that the failure to satisfy section 415 occurred during each of the 2022 and 2023 limitation years. In addition, the three participants affected by the section 415 failure were not identical each year. The fact that the section 415 failures occurred during more than one limitation year does not cause the failures to be significant; accordingly, the failures are still eligible for correction under this section 8.

Example 3: The facts are the same as in Example 1, except that the annual additions of 18 of the 50 employees whose benefits were limited by section 415(c)

nevertheless exceeded the maximum limitations under section 415(c) during the 2023 limitation year, and the amount of the excesses ranged from $1,000 to $9,000, and totaled $150,000. Under these facts, taking into account the number of participants affected by the failure relative to the total number of participants who could have been affected by the failure for the 2023 limitation year (18/50) and the monetary amount of the failure relative to the total employer contribution ($150,000/$3,500,000), the failure is significant. Accordingly, the section 415(c) failure in Plan A that occurred in 2023 is ineligible for correction under this section 8 as an insignificant failure.

Example 4: Employer J maintains Plan C, a money purchase pension plan. The plan document satisfies the requirements of section 401(a). The formula under the plan provides for an employer contribution equal to 10 percent of compensation, as defined in the plan. During its examination of the plan for the 2024 plan year, the IRS discovered that the employee responsible for entering data into the employer's computer made minor arithmetic errors in transcribing the compensation data with respect to six of the plan's 40 participants, resulting in excess allocations to those six participants' accounts. Under these facts, the number of participants affected by the failure relative to the number of participants that could have been affected (6/40) is insignificant, and the failure is due to minor data errors. Thus, the failure occurring in 2024 is insignificant and therefore eligible for correction under this section 8.

Example 5: Public School maintains for its 200 employees a salary reduction Section 403(b) Plan that is intended to satisfy the requirements of section 403(b). The business manager has primary responsibility for administering the plan, in addition to other administrative functions within Public School. During its examination of the plan for the 2024 plan year, the IRS discovered that a former employee should have received an additional minimum required distribution of $278 under section 403(b)(10). Another participant received an impermissible hardship withdrawal of $2,500. Another participant made elective deferrals of which $1,000 was in excess of the section 402(g) limit. Under these facts, even though multiple failures occurred in a single plan year, the failures are eligible for correction under this section 8 because, in the aggregate, the failures are insignificant.

PART V. VOLUNTARY CORRECTION PROGRAM WITH IRS APPROVAL (VCP)

SECTION 9. VCP PROCEDURES

.01 VCP pre-submission conference. (1) Request. Prior to submitting a VCP application, a representative of a Plan Sponsor may request a VCP pre-submission conference regarding corrective actions with respect to any failure that is eligible to be submitted under VCP. A VCP pre-submission conference may be requested only (a) for matters on which a compliance statement may be issued under this revenue procedure, (b) with respect to requested correction methods that are not described as safe harbor correction methods in the Appendix, and (c) if the Plan Sponsor is eligible

and intends to submit an application under VCP. VCP pre-submission conferences are held only at the discretion of the IRS, and as time permits. A Plan Sponsor, or its representative, may also request an anonymous VCP pre-submission conference.

(2) Submission of request. The Plan Sponsor or Plan Sponsor's representative must submit the VCP pre-submission conference request via the Pay.gov website by submitting a Form 8950, Application for Voluntary Correction Program (VCP) Submission Under the Employee Plans Compliance Resolution System. The request should also include (a) a description of the failure(s), including how and why the failure(s) occurred; (b) a description of the proposed method(s) of correction; (c) a description of all relevant facts, including the type of affected participants (for example, highly compensated employees or non-highly compensated employees); (d) plan provisions and amendments that are relevant to the request; and (e) any other information the IRS would need to evaluate the request.

(3) Conference. At the conference, the IRS will provide oral feedback regarding the failure(s) and proposed correction method(s) described in the request. Any discussion of substantive issues at the conference, however, is advisory only, is not binding on the IRS, and cannot be relied upon as a basis for obtaining relief under EPCRS or retroactive relief under the provisions of section 7805(b). After the conference, the IRS will issue a letter confirming that the conference took place, and the matter will be closed. If the Plan Sponsor subsequently files a VCP submission regarding the issues discussed, the Plan Sponsor must follow the procedures set forth in this section 9 and section 10 (which require submission of a new Form 8950 and payment of an applicable user fee).

.02 VCP requirements. The requirements of VCP are satisfied with respect to a failure if, on the Pay.gov website, the Plan Sponsor files a VCP submission and pays the applicable user fee set forth in Appendix A of Rev. Proc. 2026-4 (and its annual successors), in accordance with the requirements of this section 9 and section 10, and implements the corrective actions and satisfies any other conditions set forth in the compliance statement issued by the IRS described in section 9.08. As provided in section 10.08, a Plan Sponsor may designate an authorized representative to file a VCP submission with the IRS on its behalf.

.03 Identification of failures. VCP is not based upon an examination of the plan by the IRS. Only the failures disclosed by the Plan Sponsor in the submission or added as permitted in section 9.07(5) or failures identified by the IRS in processing the submission are addressed under VCP, and only those failures are covered by a VCP compliance statement. The IRS will not make any investigation or finding under VCP concerning whether there are other failures.

.04 Effect of VCP submission on examination. Because VCP does not arise out of an examination, consideration under VCP does not preclude or impede (under

section 7605(b) or any administrative provisions adopted by the IRS) a subsequent examination of the Plan Sponsor or the plan by the IRS with respect to the taxable year (or years) involved with respect to matters that are outside the compliance statement. However, a Plan Sponsor's statements describing failures are made only for purposes of VCP and will not be regarded by the IRS as an admission of a failure for purposes of any subsequent examination. See section 4.08 for the definition of Under Examination.

.05 No concurrent examination activity. Except in unusual circumstances, a plan that has been properly submitted under VCP will not be examined while the submission is pending. However, a plan that is included in a group submission under section 9.11 may be examined while the group submission is pending with respect to issues not identified in the group submission at the time such plan comes Under Examination. Also, if it is determined that either the plan or the Plan Sponsor was, or may have been, a party to an abusive tax avoidance transaction (as defined in section 5.08), the IRS may authorize the examination of the plan, even if a submission pursuant to VCP is pending. In addition, this practice regarding concurrent examinations does not extend to other plans of the Plan Sponsor. Thus, any plan of the Plan Sponsor that is not pending under VCP could be subject to examination.

.06 Determination letter applications not related to a VCP submission. (1) IRS determination letter submission. The IRS may process a determination letter application (including an application requested on Form 5310) submitted under the determination letter program (as set forth in Rev. Proc. 2026-4 (and its annual successors), Rev. Proc. 2022-40, and Rev. Proc. 2023-37, as applicable and as modified, and any subsequent guidance issued in the IRB) while separately processing a VCP submission for the same plan. Generally, issuance of the determination letter in response to an application made on Form 5310 will be suspended pending the closure of the VCP submission.

(2) Failures discovered during the IRS determination letter process. A submission of a plan under the determination letter program does not constitute a submission under VCP. If the Plan Sponsor discovers a failure during the determination letter process, the failure may not be corrected as part of the determination letter process. The Plan Sponsor may use SCP and VCP as applicable. If the IRS, in connection with a determination letter application, discovers failures, the Plan Sponsor may use SCP to correct insignificant Operational Failures as permitted under section 8 (Application of SCP if Under Examination). The IRS may issue a closing agreement with respect to the failures identified or, if appropriate, refer the case to Employee Plans Examinations. In such a case, the VCP user fee does not apply. Instead, except as provided in section 9.06(3), the sanction in section 13.01 relating to Audit CAP applies. See section 4.08 for a description of when a plan submitted for a determination letter is considered to be Under Examination for purposes of EPCRS.

(3) Nonamender Failures discovered during the IRS determination letter process. If the IRS, in connection with a determination letter application, discovers a Nonamender Failure, the sanction structure in section 13.04 applies.

.07 Processing of submission. (1) Preliminary review of submission. Upon receipt of a VCP submission, the IRS will review the submission to determine whether the eligibility requirements of section 5 and the submission requirements of section 10 are satisfied.

(2) Eligibility of submission. If, at any stage of the review process, the IRS determines that a VCP submission is seriously deficient or that issuing a compliance statement with respect to the VCP submission would be inappropriate or impracticable, the IRS reserves the right not to issue a compliance statement. If no substantive processing of the case has occurred, the IRS will refund the user fee submitted with the request. Otherwise, the user fee will not be refunded. The IRS also reserves the right to determine that the submission is ineligible for VCP and to resolve any issue under VCAP. If the issue is resolved through a closing agreement under VCAP, the user fee will be refunded. If no closing agreement is issued, then the user fee will not be refunded.

(3) Review of submission. Once the IRS determines that the submission is complete under VCP, the IRS may contact the Plan Sponsor or the Plan Sponsor's authorized representative to discuss the proposed corrections and the plan's administrative procedures. However, if the IRS determines that the submission is complete and sets forth an acceptable correction method, the IRS may issue a compliance statement without contacting the Plan Sponsor or the Plan Sponsor's authorized representative.

(4) Additional information required. If additional information is required, an IRS representative generally will contact the Plan Sponsor and the Plan Sponsor's authorized representative and explain what is needed to complete the submission. The Plan Sponsor will generally have up to 21 calendar days from the date of this contact to provide the requested information. If the information is not timely received the matter may be closed, the user fee will not be returned, and the case may be referred to Employee Plans Examinations. Any request for an extension must be made in writing within the response period and must be approved by the IRS.

(5) Additional failures discovered after initial submission. (a) Plan Sponsor discovery. A Plan Sponsor that discovers additional unrelated failures after its initial submission may request that such failures be added to its submission. However, the IRS retains the discretion to reject the inclusion of such failures if the request is not timely (for example, if the Plan Sponsor makes its request when processing of the submission is substantially complete) or the application of VCP would be inappropriate or impracticable.

(b) IRS discovery. If the IRS discovers an unrelated failure while the request is pending, the failure generally will be added to the failures under consideration. However, the IRS retains the discretion to determine that a failure is outside the scope of the voluntary request for consideration because the Plan Sponsor did not voluntarily bring this failure forward. In this case, if the IRS considers the additional failure to be material, all aspects of the plan may be examined, and the rules pertaining to Audit CAP will apply.

(6) Modifications to VCP submission by Plan Sponsor. If a Plan Sponsor materially modifies a VCP submission, the Plan Sponsor must submit a new penalties of perjury statement set forth in section 10.04(16) with respect to such subsequent modifications. If the Plan Sponsor does not submit a new penalties of perjury statement, the Plan Sponsor will be required to sign and return the compliance statement under the general procedures described in section 9.07(9)(a). See section 10.03(7) for information concerning submission of any such modification prior to the assignment of the case to an IRS representative.

(7) Conference of right. If the IRS initially determines that it cannot issue a compliance statement because the parties cannot agree upon the nature of a failure, a correction, or a change in administrative procedures, the Plan Sponsor (generally through the Plan Sponsor's authorized representative) will be contacted by the IRS representative and offered a conference with the IRS. The conference must be held within 21 calendar days of the date of contact. The conference is usually held via telephone or electronically via the internet. The Plan Sponsor will generally have up to 21 calendar days after the date of the conference to submit additional information in support of the submission. Any request for an extension of the time for submitting additional information must be made in writing within the response period and must be approved by the IRS (by the applicable group manager). Additional conferences may be held at the discretion of the IRS.

(8) Failure to reach resolution. If the IRS and the Plan Sponsor cannot reach agreement with respect to the submission, the matter will be closed, the user fee will not be returned, and the case may be referred to Employee Plans Examinations.

(9) Issuance of compliance statement. (a) In general. If agreement has been reached and all applicable user fees have been paid, the IRS will send to the Plan Sponsor a compliance statement signed by the IRS specifying the corrective action required. However, the IRS reserves the right to require the Plan Sponsor to sign the compliance statement. In such a case, the IRS will send to the Plan Sponsor an unsigned compliance statement. Within 21 calendar days of the date the compliance statement is sent, the Plan Sponsor must sign and return the compliance statement and pay any outstanding user fee that may be required for a group submission (see section 10.06) or for an Orphan Plan (see sections 5.04 and 10.04(14)). The IRS will

then issue a signed copy of the compliance statement to the Plan Sponsor. If the Plan Sponsor does not return the compliance statement (and pay any outstanding user fee) within 21 calendar days, the VCP submission will be closed, and no further action will be taken with respect to the submission. In appropriate circumstances, the plan may be referred to Employee Plans Examinations.

(b) Model VCP Compliance Statement. If the Plan Sponsor included a completed Form 14568, Model VCP Compliance Statement, with its VCP submission (see section 10.02), then the IRS will sign and send to the Plan Sponsor the compliance statement specifying the corrective action required. In appropriate circumstances, the IRS reserves the right to issue an individually drafted compliance statement in lieu of the Form 14568.

(c) Modification of compliance statement. Once the compliance statement has been issued (based on the information provided), the Plan Sponsor cannot request a modification of the compliance statement terms except by a new request for a compliance statement, accompanied by a new user fee, submitted in accordance with the submission procedures set forth in section 10.

(10) Timing of correction. (a) In general. The Plan Sponsor must implement the specific corrections and administrative changes set forth in the compliance statement within 150 days of the date of the compliance statement. Any request for an extension of this correction period must be made in writing prior to the expiration of the correction period and must be approved by the IRS. If the Plan Sponsor fails to implement the corrections and administrative changes with respect to a failure within the specified timeframe, the Plan Sponsor may not rely on the compliance statement with respect to that failure. The Plan Sponsor must make another VCP submission and receive another compliance statement to have reliance on the compliance statement.

(b) Interim Amendment Failures and Nonamender Failures. Correction of Interim Amendment Failures or Nonamender Failures, as described in section 4.01(2)(a)(ii)(C) and (D) and 4.02(2)(a)(ii)(C) and (D), must be made by the date of the submission. Thus, the submission must include the executed amendments that would correct the Interim Amendment or Nonamender Failure.

(c) Other plan amendments. If a corrective plan amendment is required as part of a VCP submission, the corrective plan amendment must be adopted no later than 150 days after the date of the compliance statement. However, for a governmental plan (within the meaning of section 414(d)), the corrective amendment must be adopted by the later of 150 days after the date of the compliance statement or the close of the first regular legislative session of the legislative body with the authority to amend the plan that begins on or after 91 days after the date of the compliance statement.

(11) Verification. Once the compliance statement has been issued, the IRS may require verification that the plan has complied with the correction methods and that any plan administrative procedures required by the compliance statement have been implemented. This verification does not constitute an examination of the books and records of the employer or the plan (within the meaning of section 7605(b)). If the IRS determines that the Plan Sponsor did not implement the corrections and procedures within the time period provided in the issued compliance statement, the plan may be referred to Employee Plans Examinations.

.08 Compliance statement. (1) General description of compliance statement. The compliance statement issued for a VCP submission only addresses the failures identified in the submission, the terms of correction (including any revision of administrative procedures), and the time period within which proposed corrections must be implemented (including any changes in administrative procedures). The compliance statement also provides that the IRS will not treat the plan as failing to satisfy the applicable requirements of the Code on account of the failures described in the compliance statement if the conditions of the compliance statement are satisfied. The reliance provided by a compliance statement is limited to the failures and years specified and does not provide reliance for any other failure or year.

(2) Correction through plan amendment. (a) Interim Amendment Failures. With respect to an Interim Amendment Failure, as defined in section 4.01(2)(a)(ii)(C) and 4.02(2)(a)(ii)(C), the issuance of a compliance statement will result in the corrective amendments being treated as if they had been adopted timely for the purpose of determining the availability of the remedial amendment period in Rev. Proc. 2007-44 for an individually designed plan and Rev. Proc. 2023-37 for a Pre-approved Plan. However, the issuance of such a compliance statement does not constitute a determination as to whether the corrective plan amendment, or the terms of the plan, including the corrective plan amendment, satisfy the Qualification Requirements or Section 403(b) Requirements in form.

(b) Nonamender Failures. With respect to a Nonamender Failure, as defined in section 4.01(2)(a)(ii)(D) and 4.02(2)(a)(ii)(D), including amendments provided on the Required Amendments List for an individually designed plan, the issuance of a compliance statement will result in the corrective amendments being treated as if they had been timely adopted during the applicable remedial amendment period. However, the issuance of such a compliance statement does not constitute a determination as to whether the corrective plan amendment complies with the change in Qualification Requirements or Section 403(b) Requirements, whether the corrective plan amendment conforms the terms of the plan to the plan's prior operations, or whether the terms of the plan, including the corrective plan amendment, satisfy the Qualification Requirements or Section 403(b) Requirements in form.

(c) Operational Failures. The issuance of a compliance statement for an Operational Failure that is corrected through a plan amendment constitutes a determination that the Operational Failure has been corrected, if the amendment is adopted within the period allowed under section 9.07(10), but is not a determination that the terms of the plan, including the corrective plan amendment, satisfy the Qualification Requirements or Section 403(b) Requirements in form.

(d) Failure to adopt a written Section 403(b) Plan timely. The issuance of a compliance statement for a failure to adopt a written Section 403(b) Plan timely in accordance with the final regulations under section 403(b) and Notice 2009-3 will result in the Section 403(b) Plan being treated as if it had been adopted timely for the purposes of the extended remedial amendment period set forth in Rev. Proc. 2017-18, 2017-5 IRB 743, as modified by Notice 2020-35, 2020-35 IRB 948. However, the issuance of a compliance statement does not constitute a determination as to whether the written plan, as drafted, complies with the applicable requirements of section 403(b) and the final section 403(b) regulations.

(e) Failure to adopt an initial plan document timely. The issuance of a compliance statement for a failure to adopt an initial plan document for a Qualified Plan, a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan will result in the plan being treated as if it had been adopted timely. However, the issuance of a compliance statement does not constitute a determination as to whether the written plan, as drafted, complies with the applicable Code requirements.

(3) Administrative procedures required. Where current procedures are inadequate for operating the plan in conformance with the applicable requirements of the Code, the compliance statement will be conditioned upon the implementation of stated administrative procedures. The IRS may prescribe appropriate administrative procedures in the compliance statement.

(4) Compliance statement conditioned upon timely correction. The compliance statement is conditioned on (a) there being no misstatement or omission of material facts in connection with the submission, and (b) the implementation of the specific corrections and satisfaction of any other conditions in the compliance statement.

(5) Authority delegated. The authority to approve compliance statements (including relief from any excise or additional income tax as provided under section 6.15) on behalf of the Manager of EP Voluntary Compliance is delegated to EP Voluntary Compliance group managers.

.09 Effect of compliance statement on examination. The compliance statement is binding upon both the IRS and the Plan Sponsor or Eligible Organization (as defined in section 9.11(1)) with respect to the specific tax matters identified therein for the periods specified, but does not preclude or impede an examination of the plan

by the IRS relating to matters outside the compliance statement, even with respect to the same taxable year or years to which the compliance statement relates.

.10 Anonymous submissions not permitted. VCP submissions may not be submitted on an anonymous basis. Identifying information for the Plan Sponsor and plan must be disclosed on the application form submitted, as well as any other forms, documents, or exhibits included with the submission.

.11 Special rules relating to group submissions. (1) In general. An Eligible Organization may submit a VCP request for a Qualified Plan, a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan under a group submission for Plan Document Failures, Operational Failures, and Employer Eligibility Failures. An Eligible Organization is eligible to make a group submission if the failures in the submission result from a systemic error involving the Eligible Organization that affects at least 10 plans and results in at least 10 plans implementing correction. If, at any time before the IRS issues the compliance statement, the number of plans falls below 10, the Eligible Organization must notify the IRS that it is no longer eligible to make a group submission. Under this circumstance, the user fee may be retained by the IRS.

For purposes of a group submission, "Eligible Organization" means (a) a sponsor or provider[21] of a Pre-approved Plan, (b) an insurance company or other entity that has issued annuity contracts or provides services with respect to assets for Section 403(b) Plans, or (c) an entity that provides its clients with administrative services with respect to Qualified Plans, Section 403(b) Plans, SEP Arrangements, or SIMPLE IRA Plans.

(2) User fees based on number of plans. The user fee for a group submission is set forth in Appendix A of Rev. Proc. 2026-4 (and its annual successors). In general, the user fee for a group submission is based on the number of plans affected by the failures described in the submission. For this purpose, in the case of a plan that consists of a basic plan document and adoption agreements, the number of plans submitted is determined by reference to the number of basic plan documents submitted.

(3) Separate group submission required. Except with respect to a group submission involving a Plan Document Failure described in this paragraph, if the failure that is the subject of a group submission occurred in more than one type of plan, a separate group submission must be made for each type of plan. For this purpose,

---

[21] A provider also includes a sponsor of a master and prototype plan, a mass submitter, and a volume submitter practitioner as defined in Rev. Proc. 2015-36, 2015-27 IRB 20, with respect to Qualified Plans, and includes a prototype sponsor, a mass submitter, and a volume submitter practitioner as defined in Rev. Proc. 2013-22, 2013-18 IRB 985, as modified by Rev. Proc. 2014-28, 2014-16 IRB 944, and Rev. Proc. 2021-37, 2021-38 IRB 385, with respect to Section 403(b) Plans.

(a) defined contribution plans under section 401(a), (b) Section 403(b) Plans, (c) defined benefit plans, and (d) SEP Arrangements and SIMPLE IRA Plans are considered four different plan types. Notwithstanding the preceding, if the plans that are the subject of a group submission were operated in accordance with applicable Code requirements as of the applicable effective date, and the failure consists solely of a Nonamender Failure or an Interim Amendment Failure, defined contribution plans (including Section 403(b) Plans) and defined benefit plans may be submitted in a single group submission.

(4) Special group submission procedures. (a) In general. A group submission is subject to the same procedures as any VCP submission in accordance with sections 9 and 10, except that the Eligible Organization is responsible for performing the procedural obligations imposed on the Plan Sponsor under sections 9 and 10, including submitting the relevant portions of the plan document(s).

(b) Notice to Plan Sponsors. Before filing a group submission, the Eligible Organization must provide notice to all Plan Sponsors of the plans eligible to be included in the group submission. The notice must be provided at least 30 days before the Eligible Organization's group submission to the IRS. The purpose of the notice is to provide each Plan Sponsor with information relating to the group submission request. The notice should explain the reason for the group submission and inform the Plan Sponsor that the Plan Sponsor's plan will be included in the group submission unless the Plan Sponsor responds within the 30-day notice period and requests that the Plan Sponsor's plan be excluded from the group submission.

(c) Required list and certification. When filing a group submission via the Pay.gov website, the Eligible Organization must include a list setting forth (i) the employer tax identification numbers for the Plan Sponsors of the plans that consented to be included in the group submission and to which the compliance statement may be applicable, (ii) the plans by name, plan number, type of plan, and number of plan participants, and (iii) net assets as listed on the most recently filed Form 5500 series return.[22] The Eligible Organization must also include a certification that each Plan Sponsor received notice of the group submission.

At the time of initial submission, the list and certification must be included in the Portable Document Format ("PDF") file described in section 10.03(2). The Eligible Organization can add a Plan Sponsor that has received a notice with the information

[22] If the Plan Sponsor is not required to file a Form 5500 series return, the amount of net assets generally will be the amount of net assets as of the last day of the most recently completed plan year preceding the date of the group submission. However, if this information has not been compiled at the time of submission, the Plan Sponsor may use the amount of net assets associated with the most recently completed prior plan year for which information on the amount of net assets is available. This exception will not apply if the information is submitted more than seven months after the close of the most recently completed plan year preceding the submission.

described in section 9.11(4)(b) to the list at any stage of the submission process before the compliance statement has been signed. However, a Plan Sponsor may only be added to the list after the initial submission if the Plan Sponsor has not been notified of an impending examination (see section 4.08). If the Eligible Organization adds an additional Plan Sponsor to the list after the initial submission, the Eligible Organization must submit the updated list to the IRS representative in an electronic format prior to the issuance of the signed compliance statement.

When an Eligible Organization receives an unsigned compliance statement from the IRS on the proposed correction and agrees to the terms of the compliance statement, the Eligible Organization must return the signed compliance statement and any additional user fee required under Appendix A of Rev. Proc. 2026-4 (and its annual successors) within 21 calendar days, in accordance with section 10.06. Only those plans for which correction is actually made within 240 calendar days of the date of the signed compliance statement (or within such longer period as may be agreed to by the IRS at the request of the Eligible Organization) will be covered by the compliance statement.

.12 Multiemployer and multiple employer plans. In the case of a multiemployer or multiple employer plan, the plan administrator, rather than any contributing or adopting employer, must file a submission under VCP with respect to any plan failures and is responsible for performing the procedural obligations imposed on the Plan Sponsor under sections 9 and 10. The plan administrator may designate an authorized representative to file a VCP submission with the IRS using the Pay.gov website as described in section 10.08. The request must be with respect to the plan, rather than a portion of the plan affecting any particular employer.

SECTION 10. SUBMISSION PROCEDURES FOR VCP

.01 General rules. (1) A VCP submission must satisfy the requirements of this section 10.

(2) All VCP submissions must be filed using the Pay.gov website, as described in this section 10. On the Pay.gov website, applicants (generally, either a Plan Sponsor or a representative authorized pursuant to a valid Form 2848 as provided in section 10.08) will file a VCP submission and pay applicable user fees online. Any paper VCP submissions will be returned to the applicant.

(3) A VCP submission must include a description of the failures, a description of the proposed methods of correction, and other procedural items set forth in this section 10.

.02 Submission of model forms. (1) To satisfy certain submission requirements, applicants may submit Form 14568 and attach separate narrative

documents that describe the failures, correction methods, and other items described in section 10.04. The narrative documents should contain all material terms and should not incorporate by reference any other document or provisions of the plan document. The format and content of the Form 14568 may not be modified or changed.

(2) Schedules 1 through 9 to Form 14568 (Forms 14568-A through 14568-I) provide descriptions of common failures and standardized correction methods that may be submitted in lieu of the separate narrative documents described in section 10.02(1).

(3) Applicants who submit the Form 14568 series should complete the forms electronically and combine all submission documents into a single PDF file that includes the completed forms. See section 10.03(2) and 10.04.

(4) Multiple schedules may be included in a single VCP submission.

(5) A schedule may be submitted only if its content applies, without modification, to the applicant's situation.

(6) If an applicant submits the Form 14568 or any of its applicable schedules, the applicant must submit the current versions of Form 14568 and Forms 14568-A through 14568-I, as applicable, which are available on the IRS website at https://www.irs.gov/retirement-plans/correcting-plan-errors-fill-in-vcp-submission-documents. The IRS reserves the right to modify the Form 14568 series to improve usability, reflect changes in law, or create additional schedules by adding new forms to the Form 14568 series.

.03 Mandatory submission process using the Pay.gov website. Applicants must use the Pay.gov website to file a VCP submission with the IRS and pay the applicable user fee. The submission process requires the following actions:

(1) Form 8950. Applicants must file a Form 8950 using the Pay.gov website. The Instructions to Form 8950 are located at https://www.irs.gov/pub/irs-pdf/i8950.pdf.

(2) Combine required items into a PDF file. The applicant must convert all applicable items required in section 10.04 into PDF documents and combine them into a single PDF file that follows the suggested ordering of documents in section 10.11. If the combined PDF file exceeds 15 MB, the applicant must remove some documents (or parts of documents) so that the PDF file does not exceed 15 MB. Applicable documents that cannot be included in the PDF file because of the size limitation must be faxed to the IRS as described in section 10.03(6).

(3) Upload and attach PDF. After filing the Form 8950 on the Pay.gov website, the applicant must upload the single PDF that contains all submission documents required by this section 10.

(4) Pay the applicable user fee. Submit the applicable user fee using the payment methods available on the Pay.gov website.

(5) Payment confirmation. The Pay.gov website will generate a payment confirmation notice after the VCP submission has been filed. The Pay.gov Tracking ID on this receipt will serve as the IRS control number for the VCP submission. The confirmation may be emailed to the Pay.gov account holder, with copies to other email addresses that the account holder chooses to provide. The applicant should retain a copy of the payment confirmation notice. If a payment confirmation is not generated by the Pay.gov website, then the VCP submission process has not been successful, and the applicant should contact IRS customer account services at (877) 829-5500 (a toll-free number).

(6) Required documents not part of uploaded PDF due to size limitation. If there are required VCP submission documents that cannot be part of the submitted PDF file due to the Pay.gov attachment file size limitation, the applicant must fax these documents to the IRS using fax number (855) 203-6996. This fax number is to be used only to supplement VCP submissions filed with the IRS on the Pay.gov website. A fax used to submit documents that cannot be part of the submitted PDF file due to the Pay.gov 15 MB limitation must include (a) the applicant name; (b) plan name; and (c) the Pay.gov Tracking ID (the IRS control number) in order for the documents to be associated with the appropriate submission.

(7) Subsequent changes or revisions. If an applicant needs to revise or amend a filed VCP submission (or any of its attachments), before it is assigned to an IRS representative, the applicant should not file a new submission. Instead, the applicant should call the VCP Status Inquiry Line at (626) 927-2011 (not a toll-free number). The IRS will help the applicant determine the best method for submitting the revised documents.

.04 PDF file submission contents. The single PDF file described in section 10.03(2) and this section 10.04 that is uploaded to the Pay.gov website must include the following information:

(1) Identification of failures. A complete description of the failures, the years in which the failures occurred, including closed years (that is, years for which the statutory period has expired), and the number of individuals affected by each failure.

(2) Explanation. An explanation of how and why the failures arose, including a description of the administrative procedures applicable to the failures in effect at the time the failures occurred.

(3) Proposed method of correction. A detailed description of the method for correcting the failures that the Plan Sponsor has implemented or proposes to implement. Each step of the correction method must be described in narrative form. The description must include specific information needed to support the proposed correction method. This information includes, for example, the number of employees affected and the expected cost of correction (both of which may be approximated if the exact number cannot be determined at the time of the request), the years involved, and calculations or assumptions the Plan Sponsor used to determine the amounts needed for correction.

In addition, if the proposed method of correction for an Operational Failure is a retroactive amendment to conform the terms of the plan to the plan's prior operations that results in a benefit, right, or feature that is more favorable for an employee, participant, or beneficiary, as provided in section 6.07(2)(a)(ii), the Plan Sponsor must demonstrate that the amendment is non-discriminatory. If the proposed method of correction for an Operational Failure is a retroactive amendment to conform the terms of the plan to the plan's prior operations that results in a benefit, right, or feature that is less favorable for an employee, participant, or beneficiary, all documentation to support the request as described in section 6.07(2)(a)(iii) must be submitted, including a demonstration that this type of amendment is non-discriminatory.

(4) Earnings or actuarial adjustments. A description of the methodology that will be used to calculate Earnings or actuarial adjustments on any corrective contributions or distributions (indicating the computation periods and the basis for determining Earnings or actuarial adjustments), in accordance with section 6.09 and 6.10.

(5) Computations. Specific calculations for each affected employee or a representative sample of affected employees. The sample calculations must be sufficient to demonstrate each aspect of the correction method proposed. For example, if a Plan Sponsor requests a compliance statement with respect to a failure to satisfy the contribution limits of section 415(c) and proposes a correction method that involves elective deferrals (whether matched or unmatched) and matching contributions, the Plan Sponsor must submit calculations illustrating the correction method proposed with respect to each type of contribution. As another example, with respect to a failure to satisfy the ADP test in section 401(k)(3), the Plan Sponsor must submit the ADP test results both before the correction and after the correction.

(6) Former employees or beneficiaries. The specific method(s) that will be used to locate and notify affected former employees and beneficiaries, or an affirmative statement that no former employees or beneficiaries were affected by the failures or will be affected by the correction.

(7) Change in administrative procedures. A description of the measures that have been or will be implemented to ensure that the same failure or failures will not recur.

(8) Plan document. A copy of the entire plan document or the relevant portions of the plan document. For example, in a case involving an improper exclusion of eligible employees from a profit-sharing plan with a cash or deferred arrangement, relevant portions of the plan document include the eligibility, allocation, and cash or deferred arrangement provisions of the plan document (including an adoption agreement, if applicable), along with applicable definitions in the plan. In the case of a SEP Arrangement or a SIMPLE IRA Plan, the entire plan document should be included in the PDF document. For submissions limited to Plan Document Failures defined in section 4.01(2)(a) and 4.02(2)(a) for which an applicant has adopted a Pre-approved Plan that uses an adoption agreement format, as provided in section 4.01(2) of Rev. Proc. 2023-37, a completed copy of the signed and dated adoption agreement is all that is necessary to be included in the PDF document; it is not necessary to include a copy of the entire plan document.

(9) Request for excise tax relief (section 4972, 4973, 4974, or 4979) or additional tax relief under section 72(t). If excise tax or additional tax relief is sought, a specific request for that relief should be included in the submission, along with explanations, where applicable, supporting such request.

(10) Loan failures and income tax reporting relief. A submission should state whether relief is being requested for not reporting a deemed distribution under section 72(p) and, if reporting relief is not being requested, whether the deemed distribution will be reported in the year of correction or the year in which the deemed distribution occurred.

(11) Transferred Assets. If a submission includes a failure that relates to Transferred Assets and the failure occurred prior to the transfer, a description of the transaction (including the dates of the employer change and the plan transfer).

(12) Section 403(b) Plans. A statement that the Plan Sponsor has contacted all other entities involved with the plan and has been assured of cooperation in implementing the applicable correction, to the extent necessary. For example, if the plan's failure is the failure to satisfy the requirements of section 403(b)(1)(E) regarding elective deferrals, the Plan Sponsor must, prior to making the VCP submission, contact the insurance company or custodian with control over the plan's assets to ensure cooperation in effecting a distribution of the excess deferrals adjusted for Earnings thereon. The VCP submission must also contain a statement as to the type of employer (for example, a tax-exempt organization described in section 501(c)(3)) that is making the VCP submission.

(13) Group submissions. For a group submission, a copy of the relevant portions of the plan document(s) and the list of plans and information described in section 9.11(4)(c). As provided in section 9.11, except with respect to a group submission involving a Plan Document Failure described in section 9.11(3), if the failure that is the subject of a group submission occurred in more than one type of plan, a separate group submission must be made for each type of plan.

(14) Orphan Plans. If the plan is an Orphan Plan, information that establishes that the applicant is an Eligible Party, as defined in section 4.03(2). In addition, the applicant should indicate whether relief from full correction or a waiver from the user fee is being requested and the support for such request. See section 6.03(7) (IRS has the discretion to make an exception for full correction) and section 5.04 (IRS has the discretion to waive the user fee).

(15) Plan Sponsor authorization. If the Plan Sponsor is authorizing an individual to represent it before the IRS and sign and file a VCP submission on its behalf, a Form 2848. If the Plan Sponsor is authorizing an individual to inspect and receive confidential information, a Form 8821, Tax Information Authorization. See section 10.08.

(16) Penalties of perjury. If the Plan Sponsor is authorizing an individual to sign and file the VCP submission (including any subsequent material modifications of such submission), on its behalf, the following declaration: **"Under penalties of perjury, I declare that I have examined this submission, including accompanying documents, and, to the best of my knowledge and belief, the facts presented in support of this submission are true, correct, and complete."** The declaration must be signed by the Plan Sponsor, not the Plan Sponsor's representative, and include the title of the authorized individual who signed the declaration.

.05 User fee due at the time of VCP submission using the Pay.gov website. Except as provided in section 10.04(14) (Orphan Plans) and 10.06 (Additional user fee due for group submissions), the user fee set forth in Appendix A of Rev. Proc. 2026-4 (and its annual successors) must be paid on the Pay.gov website as part of the VCP submission process. If the appropriate user fee is not paid, the VCP submission will not be processed.

.06 Additional user fee due for group submissions. In the case of a group submission, the initial user fee (described in Appendix A of Rev. Proc. 2026-4 (and its annual successors)) must be paid when the submission is first made to the IRS on the Pay.gov website. Any additional user fee amount (also described in Appendix A of Rev. Proc. 2026-4 (and its annual successors)) is due at the time the compliance statement is signed by the Eligible Organization and returned to the IRS, or when agreement has been reached between the IRS and the Eligible Organization regarding correction of the failure(s). The payment of this additional user fee must be made using

the Pay.gov website and the Pay.gov version of Form 8951, Additional Payment for Open Application for VCP or IVCP.

.07 Additional amounts due for certain submissions. In the case of a SEP Arrangement or a SIMPLE IRA Plan, a sanction may be imposed pursuant to a closing agreement over and above the specified user fee in limited circumstances. See section 6.17(4)(c) for details. Also, in any case involving section 72(t), a sanction may be imposed pursuant to a closing agreement. See section 6.15(6).

.08 Power of attorney requirements. (1) To appear before the IRS in connection with a submission, the Plan Sponsor's authorized representative must comply with the requirements of section 6.02(11) and (12) of Rev. Proc. 2026-4 (and its annual successors) and include a Form 2848. A Form 2848 that designates a representative who is not qualified to sign Part II of the Form 2848 (for example, an unenrolled return preparer) will not be accepted. However, a Plan Sponsor may authorize an individual, such as an unenrolled return preparer, to inspect or receive confidential information using Form 8821 (see Form 8821 and Instructions). The Form 2848 or Form 8821, as applicable, must be included in the PDF file uploaded to the Pay.gov website. See section 10.04(15).

(2) A Plan Sponsor may designate an authorized representative to file a VCP submission with the IRS using the Pay.gov website. If the Plan Sponsor is authorizing an individual to sign and submit a VCP submission on its behalf, the Plan Sponsor must specifically indicate the scope of such authorization on the Form 2848. In order to properly authorize such individual, the Plan Sponsor should check the box in line 5a for "Other acts authorized" on Form 2848 and include as a description "signing and filing of the Form 8950 and accompanying documents as part of a VCP submission." This option is not available for individuals listed on a Form 8821. See section 10.04(16) requiring a penalties of perjury declaration signed by the Plan Sponsor to be included in the application.

.09 Acknowledgement of filing. The IRS will not mail an acknowledgement letter to an applicant or its authorized representative that has filed a VCP submission (or non-VCP submission for a section 457(b) plan, as permitted by section 5.05). The Pay.gov website generates a "Payment Confirmation–Application for Voluntary Correction Program" when the VCP submission is successfully filed. The Pay.gov Tracking ID on this receipt serves as the IRS control number for the filed VCP submission and should be considered an official acknowledgement. See section 10.03(5), payment confirmation. Additional information regarding the status of a submission may be found at: https://www.irs.gov/retirement-plans/voluntary-correction-program-vcp-submission-status.

.10 Maintenance of copies of submissions. Plan Sponsors and their authorized representatives should maintain copies of all correspondence submitted to the IRS with respect to their VCP submissions.

.11 Assembling the submission. The IRS will be able to process a VCP submission more quickly if the required documents in the PDF uploaded on the Pay.gov website are presented in the following order:

(1) Plan Sponsor's Penalties of Perjury Statement.

(2) Power of Attorney (Form 2848) or Tax Information Authorization (Form 8821).

(3) Applicable cover letter.

(4) The information described in section 10.04.

(5) If the VCP submission includes either the Model Compliance Statement (Form 14568) or any schedule (Forms 14568-A through 14568-I), any required information and enclosures, and any related schedules.

(6) Relevant plan document language, or plan document (if applicable).

(7) Copy of opinion, advisory, or determination letter (if applicable).

(8) Any other items that may be relevant to the VCP submission.

SECTION 11. VCP USER FEES

The user fees for all submissions under VCP are set forth in Appendix A of Rev. Proc. 2026-4 (and its annual successors). Plan Sponsors should refer to the annual Employee Plans revenue procedure in effect at the time they file their VCP submission with the IRS to determine the applicable user fee. All user fees must be paid upon filing the VCP submission (except as provided in sections 5.04 and 10.04(14), regarding a waiver from user fees for Orphan Plans, and section 10.06, regarding additional user fees for group submissions).

PART VI. CORRECTION ON AUDIT (AUDIT CAP)

SECTION 12. DESCRIPTION OF AUDIT CAP

.01 Audit CAP requirements. If the IRS identifies a Qualification Failure, Section 403(b) Failure, SEP Arrangement Failure, or SIMPLE IRA Plan Failure (other than a failure that has been corrected in accordance with SCP or VCP) upon an

Employee Plans or Exempt Organizations examination of a Qualified Plan, Section 403(b) Plan, SEP Arrangement, or SIMPLE IRA Plan, the requirements of this section 12 are satisfied with respect to the failure if the Plan Sponsor corrects the failure, pays a sanction in accordance with section 13, satisfies any additional requirements of section 12.03, and enters into a closing agreement with the IRS. This section 12 also applies if the IRS identifies a participant loan that did not comply with the requirements of section 72(p)(2) (other than a loan failure that is corrected in accordance with SCP or VCP) upon an Employee Plans or Exempt Organizations examination of a Qualified Plan or Section 403(b) Plan.

.02 Payment of sanction. Payment of the sanction under section 13 generally is required at the time the closing agreement is signed. The Plan Sponsor must pay the sanction under Audit CAP using the payment methods available on the Pay.gov website, unless the Plan Sponsor does not have the capability to use the methods on the Pay.gov website. In that case, the Plan Sponsor may pay the Audit CAP sanction by submitting a certified check or cashier's check made payable to the United States Treasury.

.03 Additional requirements. Depending on the nature of the failure, the IRS will discuss the appropriateness of the plan's existing administrative procedures with the Plan Sponsor. If existing administrative procedures are inadequate for operating the plan in conformance with the applicable requirements of the Code, the closing agreement may be conditioned upon the implementation of stated procedures.

.04 Failure to reach resolution. If the IRS and the Plan Sponsor cannot reach an agreement with respect to the correction of the failure(s) or the amount of the sanction, then the plan will be disqualified as if it did not comply with section 401(a), the plan or contract will be treated as if it did not comply with section 403(b), the SEP Arrangement will be treated as if it did not comply with section 408(k), or the SIMPLE IRA Plan will be treated as if it did not comply with section 408(p).

.05 Effect of closing agreement. A closing agreement constitutes an agreement between the IRS and the Plan Sponsor that is binding with respect to the tax matters identified in the agreement for the periods specified.

.06 Other procedural rules. The procedural rules for Audit CAP are set forth in IRM 4.70.14.2.1.2.2.2, EP – EPCRS Closing Agreements; IRM 4.70.14.2.1.2.2.4, EP – Electronic Payments of Closing Agreement Sanctions; and IRM 7.11.8, EP Determinations Closing Agreement Program.

SECTION 13. AUDIT CAP SANCTION

.01 Determination of sanction. The sanction under Audit CAP is a negotiated amount that is determined based on the facts and circumstances, including the

relevant factors described in section 13.02. Sanctions will not be excessive and will bear a reasonable relationship to the nature, extent, and severity of the failures, based on the factors below. The sanction generally will not be less than the VCP user fee applicable to the plan. See section 13.04 for special rules relating to the sanction for Nonamender Failures discovered during the determination letter application process.

.02 Factors considered. Factors include:

(1) For all plans (as appropriate):

(a) the steps taken by the Plan Sponsor to ensure that the plan had no failures;

(b) the steps taken by the Plan Sponsor to identify failures that may have occurred;

(c) the extent to which correction had progressed before the examination was initiated, including full correction;

(d) the number and type of employees affected by the failure;

(e) the number of non-highly compensated employees who would be adversely affected if the plan were not treated as qualified or not treated as satisfying the requirements of section 403(b), 408(k), or 408(p);

(f) whether the failure is a failure to satisfy the requirements of section 401(a)(4), 401(a)(26), or 410(b), either directly or through section 403(b)(12);

(g) whether the failure is solely an Employer Eligibility Failure;

(h) the period over which the failure occurred (for example, the time that has elapsed since the end of the applicable remedial amendment period under section 401(b) for a Plan Document Failure);

(i) the reason for the failure (for example, data errors such as errors in transcription of data, the transposition of numbers, or minor arithmetic errors); and

(j) the Maximum Payment Amount.

(2) Additional factors for Nonamender Failures in Qualified Plans and Section 403(b) Plans. The factors considered for Nonamender Failures in Qualified Plans and Section 403(b) Plans also include:

(a) whether the plan is the subject of a favorable determination, opinion, or advisory letter;

(b) the internal controls implemented by the Plan Sponsor to ensure the timely adoption of required amendments;

(c) the extent to which the Plan Sponsor had adopted a timely plan amendment which later is found not to satisfy the Qualification Requirements or Section 403(b) Requirements;

(d) the extent to which the Plan Sponsor had otherwise adopted applicable amendments identified on the Required Amendments List described in section 7 of Rev. Proc. 2022-40, as modified, and published annually in the IRB; and

(e) the extent to which the Plan Sponsor had reasonably determined that a provision on the Required Amendments List described in section 7 of Rev. Proc. 2022-40, as modified, was not applicable to the Plan Sponsor's plan.

(3) Participant loan failure. An additional factor taken into account with respect to a participant loan that did not comply with the requirements of section 72(p)(2) is the extent to which the failure is a result solely of action (or inaction) of the employer or its agents (or the extent to which the failure is a result of the employee's or beneficiary's action or inaction).

.03 Transferred Assets. If the examination involves a plan with Transferred Assets and the IRS determines that no new incidents of the failures that relate to the Transferred Assets occurred after the end of the second plan year that begins after the corporate merger, acquisition, or other similar employer transaction, the sanction under Audit CAP will not exceed the sanction that would apply if the Transferred Assets were maintained as a separate plan.

.04 Sanction for Nonamender Failures discovered during the determination letter application process. (1) In general. Except as provided in section 13.04(2), if the only failure identified by the IRS during the determination letter application process is a Nonamender Failure that was not voluntarily identified by the Plan Sponsor, the sanction for both an individually designed plan and a Pre-approved Plan is 200 percent of the applicable VCP user fee described in Appendix A of Rev. Proc. 2026-4 (and its annual successors).

(2) Modified sanction in certain cases. The sanction prescribed in section 13.04(1) may be reduced or increased in the following circumstances:

(a) If a plan amendment was timely adopted in order to establish or maintain the plan's qualified status or to establish or maintain the plan's eligible status as a Section 403(b) Plan but is found not to satisfy the applicable requirements of the Code, the applicable sanction described in section 13.04(1) may be reduced based on the

facts and circumstances, including the factors described in section 13.02(2)(a), (b), and (c). However, the sanction generally will not be less than the VCP user fee applicable to the plan.

(b) If a Nonamender Failure is egregious, the sanction will be determined under section 13.01. Whether a Nonamender Failure is egregious will be determined based on the facts and circumstances, including:

(i) the number of plan amendments that were not timely adopted;

(ii) the number of years that had elapsed from the end of the remedial amendment period until amendments were adopted (if at all); and

(iii) the extent to which the plan lacked internal controls to facilitate the timely adoption of amendments.

PART VII. EFFECT ON OTHER DOCUMENTS; EFFECTIVE DATE; PUBLIC COMMENTS; PAPERWORK REDUCTION ACT

SECTION 14. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2021-30 is modified and superseded by this revenue procedure. Notice 2023-43, Notice 2024-77, and section II.I of Notice 2024-2 are also modified and superseded by this revenue procedure.

SECTION 15. EFFECTIVE DATE

This revenue procedure is generally effective October 22, 2026.

SECTION 16. PUBLIC COMMENTS

The Treasury Department and the IRS invite comments on this revenue procedure. Comments should be submitted in writing on or before January 20, 2027, and should include a reference to Revenue Procedure 2026-34. Consideration will be given, however to any written comment submitted after January 20, 2027, if such consideration will not delay the issuance of guidance. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type “IRS-2026-1388” in the search field on the Regulations.gov home page to find this revenue procedure and submit comments). Alternatively, comments may be submitted by mail to:

CC:PA:01:PR (Revenue Procedure 2026-34), Room 5503
Internal Revenue Service
P.O. Box 7604

Ben Franklin Station
Washington, D.C. 20044

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

SECTION 17. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-1673.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in sections 6.03(6), 6.07, 6.15(5), 6.15(6), 9, 10, and 12.01, and in Appendix section .05(8)(c) and (9)(c). This information is required to enable the Commissioner, Tax Exempt and Government Entities Division of the IRS, to consider the issuance of various types of closing agreements and compliance statements. This information will be used to issue closing agreements and compliance statements to allow individual plans to continue to maintain their tax-favored status. As a result, favorable tax treatment of the benefits of the eligible employees is retained. The likely respondents are individuals, state or local governments, businesses or other for-profit institutions, nonprofit institutions, and small businesses or organizations.

The estimated total annual reporting or recordkeeping burden is 42,753 hours.

The estimated annual burden per respondent/recordkeeper varies from 0.73 to 20.03 hours, depending on individual circumstances, with an estimated average of 6.7 hours. The estimated number of respondents or recordkeepers is 6,390.

The estimated frequency of responses is occasional.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. § 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes).

For further information regarding this revenue procedure, please contact the Employee Plans' taxpayer assistance telephone service at (877) 829-5500 (a toll-free number) between the hours of 8:30 a.m. and 4:30 p.m. Eastern Time, Monday through Friday.

APPENDIX

OPERATIONAL FAILURES AND CORRECTION METHODS

.01 General rule. (1) In general. This Appendix sets forth correction methods for Operational Failures relating to Qualified Plans. In each case, the method described corrects the Operational Failure identified in the headings below. Corrective allocations, contributions, and distributions must reflect Earnings and actuarial adjustments if required by sections 6.09 and 6.10 of this revenue procedure. To the extent a failure listed in this Appendix could occur under a Section 403(b) Plan, a SEP Arrangement, or a SIMPLE IRA Plan, the correction method listed for such failure, such as the correction method for an Employee Elective Deferral failure in section .05(9), may similarly be used to correct the failure. Unless otherwise specified, section references in this Appendix refer to sections in this Appendix. If a plan has a different but analogous failure to one set forth in this Appendix (such as the failure to provide a matching contribution by a governmental plan that is not subject to section 401(m)), then the analogous correction method under this Appendix is generally available to correct the failure.

(2) Correction methods permitted in this Appendix are safe harbors. Correction methods permitted in this Appendix are deemed to be reasonable and appropriate methods of correcting a failure. A Plan Sponsor may choose any correction method by which the plan can satisfy the requirements of the correction method. For example, a section 401(k) plan that improperly excluded an employee may use the general correction method under section .05(2). However, if the section 401(k) plan has an automatic contribution feature, the plan may use the correction method under section .05(8), assuming the plan satisfies the eligibility requirements in section .05(8)(a). If the section 401(k) plan doesn't have an automatic contribution feature but is able to correct the failure within a specified time period, the plan may use the correction method under section .05(9)(a) or (b).

(3) Other reasonable correction methods permitted. As provided in section 6.02(3) of this revenue procedure, there may be more than one reasonable and appropriate correction of a failure. Whether any other correction method, not described in this Appendix, is reasonable and appropriate is determined taking into account the applicable facts and circumstances and must satisfy the correction principles in section 6 of this revenue procedure. For example, the sponsor of a Section 403(b) Plan that failed to satisfy the universal availability requirement of section 403(b)(12)(A)(ii) might correct by determining the missed deferral for an excluded employee using a percentage based on the average deferrals for all employees in the plan instead of using the rule for calculating missed deferrals set out in section .05(6)(b). In doing so, the correction method would fall outside this Appendix, and the Plan Sponsor would need to satisfy the general correction principles of section 6 and other applicable rules in this revenue procedure.

(4) Assumptions for examples. Unless otherwise specified, for ease of presentation, the examples in this Appendix assume that:

(a) the plan year and the section 415 limitation year are the calendar year;

(b) the Plan Sponsor maintains a single plan intended to satisfy section 401(a) and has never maintained any other plan;

(c) in a defined contribution plan, the plan provides that forfeitures are used to reduce future employer contributions;

(d) the eligibility and other requirements for SCP, VCP, or Audit CAP, whichever applies, are satisfied;

(e) there are no failures other than the described Operational Failures, and if a corrective action would result in any additional failure, appropriate corrective action is taken for that additional failure in accordance with this revenue procedure; and

(f) if the examples in this Appendix do not identify whether the plan offers designated Roth contributions, the results in the examples, including corrective contributions, would be the same whether or not the plan offered designated Roth contributions.

.02 Failure to properly provide the minimum top-heavy benefit under section 416 to non-key employees. In a defined contribution plan, the safe harbor correction method is to properly contribute and allocate the required top-heavy minimums to the plan in the manner provided for in the plan on behalf of the non-key employees (and any other employees required to receive top-heavy allocations under the plan). In a defined benefit plan, the minimum required benefit must be accrued in the manner provided in the plan.

.03 Failure to satisfy the ADP test set forth in section 401(k)(3) and the ACP test set forth in section 401(m)(2). (1) QNEC correction method. A safe harbor correction method is to make QNECs (as defined in § 1.401(k)-6) on behalf of the non-highly compensated employees to the extent necessary to raise the actual deferral percentage or actual contribution percentage of the non-highly compensated employees to the percentage needed to pass the test or tests. For purposes of correcting a failed ADP or ACP test, any amounts used to fund QNECs must satisfy the definition of QNEC in § 1.401(k)-6. The contributions must be made on behalf of all eligible non-highly compensated employees (to the extent permitted under section 415) and must be the same percentage of compensation. QNECs contributed to satisfy the ADP test need not be taken into account for determining additional contributions (for example, a matching contribution), if any. For purposes of this section .03, employees who would have received a matching contribution had they made elective deferrals must be counted as eligible employees for the ACP test, and the plan must satisfy the ACP test. Under this correction method, a plan may not be treated as two separate plans, one covering

otherwise excludable employees and the other covering all other employees (as permitted in § 1.410(b)-6(b)(3)), in order to reduce the number of employees eligible to receive QNECs. Likewise, under this correction method, the plan may not be restructured into component plans in order to reduce the number of employees eligible to receive QNECs. (See Example 1.)

(2) One-to-one correction method. (a) In general. In addition to the QNEC correction method in section .03(1), a failure to satisfy the ADP test or ACP test may be corrected by using the one-to-one correction method set forth in this section .03(2). Under the one-to-one correction method, an excess contribution amount is determined and assigned to highly compensated employees as provided in section .03(2)(b) below. That excess contribution amount (adjusted for Earnings) is either distributed to the highly compensated employees or forfeited from the highly compensated employees' accounts as provided in section .03(2)(c) below. That same dollar amount (that is, the excess contribution amount, adjusted for Earnings) is contributed to the plan and allocated to non-highly compensated employees as provided in section .03(2)(d) below. Under this correction method, a plan may not be treated as two separate plans, one covering otherwise excludable employees and the other covering all other employees (as permitted in § 1.410(b)-6(b)(3)). Likewise, restructuring the plan into component plans is not permitted.

(b) Determination of the excess contribution amount. The excess contribution amount for the year is equal to the excess of (i) the sum of the excess contributions (as defined in section 401(k)(8)(B)) and the excess aggregate contributions (as defined in section 401(m)(6)(B)), as assigned to each highly compensated employee in accordance with section 401(k)(8)(C) and (m)(6)(C), over (ii) previous corrections that complied with section 401(k)(8) and (m)(6).

(c) Distributions and forfeitures of the excess contribution amount. (i) The portion of the excess contribution amount assigned to a particular highly compensated employee under section .03(2)(b) is adjusted for Earnings from the end of the plan year of the year of the failure through the date of correction. The amount assigned to a particular highly compensated employee, as adjusted, is distributed or, to the extent the amount was forfeitable as of the close of the plan year of the failure, is forfeited. If the amount is forfeited, it is used in accordance with the plan provisions relating to forfeitures that were in effect for the year of the failure. If the amount so assigned to a particular highly compensated employee has been previously distributed, the amount is an Excess Amount within the meaning of section 4.01(3) or 4.02(3) of this revenue procedure. Thus, pursuant to section 6.11(1) of this revenue procedure, the Plan Sponsor must notify the employee that the Excess Amount is not eligible for favorable tax treatment accorded to distributions from Qualified Plans (and, specifically, is not eligible for tax-free rollover).

(ii) If any matching contributions (adjusted for Earnings) are forfeited in accordance with section 411(a)(3)(G), the forfeited amount is used in accordance with the plan provisions relating to forfeitures that were in effect for the year of the failure.

(iii) If a payment was made to an employee and that payment is a forfeitable match described in either section .03(2)(c)(i) or (ii), then it is an Inadvertent Benefit Overpayment or an Overpayment defined in section 4.01(3) of this revenue procedure subject to the rules described in section 6.12 of this revenue procedure.

(d) Contribution and allocation of equivalent amount. (i) The Plan Sponsor makes a contribution to the plan that is equal to the aggregate amounts distributed and forfeited under section .03(2)(c)(i) (that is, the excess contribution amount adjusted for Earnings, as provided in section .03(2)(c)(i), which does not include any matching contributions forfeited in accordance with section 411(a)(3)(G) as provided in section .03(2)(c)(ii)). The contribution must be a QNEC as defined in § 1.401(k)-6.

(ii)(A) This section applies to a plan that uses the current year testing method described in §§ 1.401(k)-2(a)(2) and 1.401(m)-2(a)(2). The contribution made under section .03(2)(d)(i) is allocated to the account balances of those individuals who were either (I) the eligible employees for the year of the failure who were non-highly compensated employees for that year or (II) the eligible employees for the year of the failure who were non-highly compensated employees for that year and who also are non-highly compensated employees for the year of correction. Alternatively, the contribution is allocated to account balances of eligible employees described in (I) or (II) of the preceding sentence, except that the allocation is made only to the account balances of those employees who are employees on a date during the year of the correction that is no later than the date of correction. Regardless of which of these four options (described in the two preceding sentences) the Plan Sponsor selects, eligible employees must receive a uniform allocation (as a percentage of compensation) of the contribution. (See Examples 2 and 3.) Under the one-to-one correction method, the amount allocated to the account balance of an employee (that is, the employee's share of the total amount contributed under this section .03(2)(d)(ii)(A)) is not further adjusted for Earnings and is treated as an annual addition under section 415 for the year of the failure for the employee for whom it is allocated.

(B) If a plan uses the prior year testing method described in §§ 1.401(k)-2(a)(2) and 1.401(m)-2(a)(2), section .03(2)(d)(ii)(A) is applied by substituting "the year prior to the year of the failure" for "the year of the failure."

(e) Examples. The following examples illustrate the application of this section .03. Example 1: Employer A maintains a Section 403(b) Plan for its employees that provides a matching contribution equal to 100 percent of the first 4 percent of an employee's elective deferrals. For 2021, the ACP for non-highly compensated employees equaled 3.5 percent. The ACP for highly compensated employees equaled 5.5 percent. In 2025, Employer A discovers that several non-highly compensated employees were excluded from the 2021 ACP test. The corrected ACP test results in an ACP for non-highly compensated employees of 2 percent. Because the ACP for highly compensated employee ACPs exceeded the ACP for non-highly compensated employees ACP by more than 2 percent, the plan failed to satisfy the 2021 ACP test.

Correction: Employer A must make QNECs on behalf of the non-highly compensated employes to the extent necessary to raise the ACP for non-highly compensated employees to the percentage needed to pass the ACP test. Employer A must make a QNEC of 1.5 percent of compensation for each non-highly compensated employee to raise the ACP for non-highly compensated employees to 3.5 percent to pass the “plus two” ACP test.

Example 2: Employer B maintains a profit-sharing plan with a cash or deferred arrangement that is intended to satisfy section 401(k) using the current year testing method. The plan does not provide for matching contributions or after-tax employee contributions. In 2025, it was discovered that the ADP test for 2021 was not performed correctly. When the ADP test was performed correctly, the test was not satisfied for 2021. For 2021, the ADP for highly compensated employees was 9 percent and the ADP for non-highly compensated employees was 4 percent. Accordingly, the ADP for highly compensated employees exceeded the ADP for non-highly compensated employees by more than two percentage points (in violation of section 401(k)(3)). There were two highly compensated employees eligible under the section 401(k) plan during 2021, Employee P and Employee Q. Employee P made elective deferrals of $20,000, which is equal to 10 percent of Employee P’s compensation of $200,000 for 2021. Employee Q made elective deferrals of $13,600, which is equal to 8 percent of Employee Q’s compensation of $170,000 for 2021.

Correction: On June 30, 2025, Employer B uses the one-to-one correction method to correct the failure to satisfy the ADP test for 2021. Accordingly, Employer B calculates the dollar amount of the excess contributions for the two highly compensated employees in the manner described in section 401(k)(8)(B). The amount of the excess contribution for Employee P is $8,000 (4 percent of $200,000) and the amount of the excess contribution for Employee Q is $3,400 (2 percent of $170,000), or a total of $11,400. In accordance with section 401(k)(8)(C), $11,400, the excess contribution amount, is assigned $8,900 to Employee P and $2,500 to Employee Q. It is determined that the Earnings on the assigned amounts through June 30, 2025, are $1,080 and $920 for Employees P and Q, respectively. The assigned amounts and the Earnings are distributed to Employees P and Q. Therefore, Employee P receives $9,980 ($8,900 + $1,080) and Employee Q receives $3,420 ($2,500 + $920). In addition, on the same date, Employer B makes a corrective contribution to the section 401(k) plan equal to $13,400 (the sum of the $9,980 distributed to Employee P and the $3,420 distributed to Employee Q). The corrective contribution is allocated to the account balances of eligible non-highly compensated employees for 2021, pro rata based on their compensation for 2021 (subject to section 415 for 2021).

Example 3: The facts are the same as in Example 2, except that for 2021 the plan also provides for (1) after-tax employee contributions and (2) matching contributions equal to 50 percent of the sum of an employee’s elective deferrals and after-tax employee contributions that do not exceed 10 percent of the employee’s compensation. The plan provides that matching contributions are subject to the plan’s 20 percent per year of

service vesting schedule and that matching contributions are forfeited and used to reduce employer contributions if associated elective deferrals or after-tax employee contributions are distributed to correct an ADP or ACP test failure. For 2021, non-highly compensated employees made after-tax employee contributions and no highly compensated employee made any after-tax employee contributions. Employee P received a matching contribution of $10,000 (50 percent of $20,000) and Employee Q received a matching contribution of $6,800 (50 percent of $13,600). Employees P and Q were 100 percent vested in 2021. It was determined that the plan satisfied the requirements of the ACP test for 2021.

Correction: The same corrective actions are taken as in Example 2. In addition, in accordance with the plan's terms, corrective action is taken to forfeit Employee P's and Employee Q's matching contributions associated with their distributed excess contributions. Employee P's distributed excess contributions and associated matching contributions are $8,900 and $4,450, respectively. Employee Q's distributed excess contributions and associated matching contributions are $2,500 and $1,250, respectively. Thus, $4,450 is forfeited from Employee P's account and $1,250 is forfeited from Employee Q's account. In addition, the Earnings on the forfeited amounts are also forfeited. It is determined that the respective Earnings on the forfeited amount for Employee P is $530 and for Employee Q is $470. The total amount of the forfeitures of $6,700 (Employee P's $4,450 + $530 and Employee Q's $1,250 + $470) is used to reduce employer contributions for 2025 and subsequent years.

.04 Failure to distribute elective deferrals in excess of the section 402(g) limit (in contravention of section 401(a)(30)). The permitted correction method is to distribute the excess deferral to the employee and to report the amount as taxable in the year of deferral and in the year distributed. The inclusion of the deferral and the distribution in gross income applies whether or not any portion of the excess deferral is attributable to a designated Roth contribution (see section 402A(d)(3)). In accordance with § 1.402(g)-1(e)(1)(ii), a distribution to a highly compensated employee is included in the ADP test and a distribution to a non-highly compensated employee is not included in the ADP test.

.05 Exclusion of an eligible employee from contributions or accruals under the plan. (1) Exclusion of an eligible employee with respect to employer provided contributions or benefits. For plans with employer provided contributions or benefits (which are neither elective deferrals under a qualified cash or deferred arrangement under section 401(k) nor matching or after-tax employee contributions that are subject to section 401(m)), the safe harbor correction method is to make a contribution to the plan on behalf of the employees excluded from a defined contribution plan or to provide benefit accruals for the employees excluded from a defined benefit plan. The contribution correction method and the reallocation correction method described in section .05(1)(a) and (b) are safe harbor correction methods.

(a) Contribution correction method for exclusion of an eligible employee in a profit-sharing plan or stock bonus plan. To correct for the exclusion of an eligible

employee from nonelective contributions (within the meaning of § 1.401(k)-6) in a profit-sharing plan or stock bonus plan, an allocation amount is determined for each excluded employee on the same basis as the allocation amounts were determined for the other employees under the plan's allocation formula (for example, the same ratio of allocation to compensation), taking into account all of the employee's relevant factors (for example, compensation) under that formula for that year. The Plan Sponsor makes a corrective contribution on behalf of the excluded employee that is equal to the allocation amount for the excluded employee. The corrective contribution is adjusted for Earnings to the date the corrective contribution is made on behalf of the excluded employee. If, as a result of excluding an employee, an amount was improperly allocated to the account balance of an eligible employee who shared in the original allocation of the nonelective contribution, no reduction is made to the account balance of the employee who shared in the original allocation on account of the improper allocation. (See Example 4.)

(b) Reallocation correction method for exclusion of an eligible employee in a profit-sharing plan or stock bonus plan. (i) In general. Subject to the limitations set forth in section .05(1)(b)(vi) below, the exclusion of an eligible employee for a plan year from a profit-sharing or stock bonus plan that provides for nonelective contributions may be corrected using the reallocation correction method. Under the reallocation correction method, the account balance of the excluded employee is increased as provided in section .05(1)(b)(ii), the account balances of other employees are reduced as provided in section .05(1)(b)(iii), and the increases and reductions are reconciled, as necessary, as provided in section .05(1)(b)(iv). (See Examples 4 and 5.)

(ii) Increase in account balance of excluded employee. The account balance of the excluded employee is increased by an amount that is equal to the allocation the employee would have received had the employee shared in the allocation of the nonelective contribution. The amount is adjusted for Earnings to the date the corrective allocation is made on behalf of the affected employee.

(iii) Reduction in account balances of other employees. (A) The account balance of each employee who was an eligible employee who shared in the original allocation of the nonelective contribution is reduced by the excess, if any, of (I) the employee's allocation of that contribution over (II) the amount that would have been allocated to that employee's account had the failure not occurred. This amount is adjusted for Earnings taking into account the rules set forth in section .05(1)(b)(iii)(C) and (D). The amount after adjustment for Earnings is limited in accordance with section .05(1)(b)(iii)(D).

(B) This section .05(1)(b)(iii)(B) applies if most of the employees with account balances that are being reduced are non-highly compensated employees. If there has been an overall gain for the period from the date of the original allocation of the contribution through the date of correction, no adjustment for Earnings is required to the amount determined under section .05(1)(b)(iii)(A) for the employee. If the amount for the employee is being adjusted for Earnings and the plan permits investment of account balances in more than one investment fund, for administrative convenience, the

reduction to the employee's account balance may be adjusted by the lowest rate of return of any investment fund offered under the plan for the period from the date of the original allocation of the contribution through the date of correction.

(C) If an employee's account balance is reduced and the original allocation was made to more than one investment fund or there was a subsequent distribution or transfer from the fund receiving the original allocation, then reasonable, consistent assumptions are used to determine the Earnings adjustment.

(D) The amount determined in section .05(1)(b)(iii)(A) for an employee after the application of section .05(1)(b)(iii)(B) and (C) may not exceed the account balance of the employee on the date of correction, and the employee is permitted to retain any distribution made prior to the date of correction.

(iv) Reconciliation of increases and reductions. If the aggregate amount of the increases under section .05(1)(b)(ii) exceeds the aggregate amount of the reductions under section .05(1)(b)(iii), the Plan Sponsor makes a corrective contribution to the plan for the amount of the excess. If the aggregate amount of the reductions under section .05(1)(b)(iii) exceeds the aggregate amount of the increases under section .05(1)(b)(ii), then the amount by which each employee's account balance is reduced under section .05(1)(b)(iii) is decreased on a pro rata basis.

(v) Reductions among multiple investment funds. If an employee's account balance is reduced and the employee's account balance is invested in more than one investment fund, then the reduction may be made from the investment funds selected in any reasonable manner.

(vi) Limitations on use of reallocation correction method. If any employee would be permitted to retain any distribution pursuant to section .05(1)(b)(iii)(D), then the reallocation correction method may not be used unless most of the employees who would be permitted to retain a distribution are non-highly compensated employees.

(c) Examples. The following examples illustrate the application of this section .05(1).

Example 4: Employer C maintains a profit-sharing plan that provides for discretionary nonelective employer contributions. The plan provides that the employer's contributions are allocated to account balances in the ratio that each eligible employee's compensation for the plan year bears to the compensation of all eligible employees for the plan year and, therefore, the only relevant factor for determining an allocation is the employee's compensation. The plan provides for self-directed investments among four investment funds and daily valuations of account balances. For the 2024 plan year, Employer C made a contribution to the plan of a fixed dollar amount. However, five employees who met the eligibility requirements were inadvertently excluded from participating in the plan. The contribution resulted in an allocation on behalf of each of the eligible employees, other than the excluded employees, equal to 10 percent of compensation. Most of the employees who received allocations under the plan for the

year of the failure were non-highly compensated employees. No distributions have been made from the plan since 2024. If the five excluded employees had shared in the original allocation, the allocation made on behalf of each employee would have equaled 9 percent of compensation. The excluded employees began participating in the plan in the 2025 plan year.

Correction: Employer C uses the correction method in section .05(1)(a) to correct the failure to include the five eligible employees. Thus, Employer C makes a corrective contribution to the plan. The amount of the corrective contribution on behalf of the five excluded employees for the 2024 plan year is equal to 10 percent of compensation of each excluded employee, the same allocation that was made for other eligible employees, adjusted for Earnings. The excluded employees receive an allocation equal to 10 percent of compensation (adjusted for Earnings) even though, had the excluded employees originally shared in the allocation for the 2024 contribution, their account balances, as well as those of the other eligible employees, would have received an allocation equal to only 9 percent of compensation.

Example 5: The facts are the same as in Example 4.

Correction: Employer C uses the reallocation correction method to correct the failure to include the five eligible employees. Thus, the account balances are adjusted to reflect what would have resulted from the correct allocation of the employer contribution for the 2024 plan year among all eligible employees, including the five excluded employees. The inclusion of the excluded employees in the allocation of that contribution would have resulted in each eligible employee, including each excluded employee, receiving an allocation equal to 9 percent of compensation. Accordingly, the account balance of each excluded employee is increased by 9 percent of the employee's 2024 compensation, adjusted for Earnings. The account balance of each of the eligible employees other than the excluded employees is reduced by 1 percent of the employee's 2024 compensation, adjusted for Earnings. Employer C determines the adjustment for Earnings using the rate of return of each eligible employee's excess allocation (using reasonable, consistent assumptions). Accordingly, for an employee who shared in the original allocation and directed the investment of the allocation into more than one investment fund or who subsequently transferred a portion of a fund that had been credited with a portion of the 2024 allocation to another fund, reasonable, consistent assumptions are followed to determine the adjustment for Earnings. It is determined that the total of the initially determined reductions in account balances exceeds the total of the required increases in account balances. Accordingly, these initially determined reductions are decreased pro rata so that the total of the actual reductions in account balances equals the total of the increases in the account balances, and Employer C does not make any corrective contribution. The reductions from the account balances are made on a pro rata basis among all of the funds in which each employee's account balance is invested.

Example 6: The facts are the same as in Example 4.

Correction: The correction is the same as in Example 5, except that, because most of the employees whose account balances are being reduced are non-highly compensated employees, for administrative convenience, Employer C uses the rate of return of the fund with the lowest rate of return for the period of the failure to adjust the reduction to each account balance. It is determined that the aggregate amount (adjusted for Earnings) by which the account balances of the excluded employees is increased exceeds the aggregate amount (adjusted for Earnings) by which the other employees' account balances are reduced. Accordingly, Employer C makes a contribution to the plan in an amount equal to the excess. The reduction from account balances is made on a pro rata basis among all of the funds in which each employee's account balance is invested.

(2) Exclusion of an eligible employee with respect to contributions subject to section 401(k) or 401(m). (a)(i) In general. For plans providing benefits subject to section 401(k) or 401(m), the corrective contribution for an improperly excluded employee is described in the following paragraphs of this section .05(2). These correction methods may also be used for a partial plan year exclusion. Corrections for a partial plan year exclusion may be used in conjunction with the correction for a full plan year exclusion. If eligible, a Plan Sponsor may be able to use the safe harbor correction methods in section .05(8) or .05(9) for certain failures with respect to exclusion of an employee with respect to elective deferrals.

(ii) Use of prorated compensation. For purposes of partial year correction, for administrative convenience, in lieu of using the employee's actual plan compensation for the portion of the year during which the employee was improperly excluded, a pro rata portion of the employee's plan compensation that would have been taken into account for the plan year, if the employee had not been improperly excluded, may be used. (See Example 8.)

(iii) Coordination with the correction of other failures. The methods for correcting the failures described in this section .05 do not apply until after the correction of other failures. Thus, for example, if, in addition to the failure of excluding an eligible employee, the plan also failed the ADP or ACP test, the correction methods described in section .05 cannot be used until after correction of the ADP or ACP test failures. For purposes of this section .05, in order to determine whether the plan passed the ADP or ACP test, the plan may rely on a test performed with respect to those eligible employees who were provided with the opportunity to make elective deferrals or after-tax employee contributions and receive an allocation of employer matching contributions, in accordance with the terms of the plan, and may disregard the employees who were improperly excluded.

For purposes of correcting other failures under this revenue procedure after correction has occurred, the employee is treated as having made elective deferrals equal to the employee's missed deferral for the year or the portion of the year during which the employee was improperly excluded.

(b) Exclusion of an eligible employee with respect to a non-safe harbor section 401(k) plan. (i) Correction for elective deferrals. If the employee was not provided the opportunity to elect and make elective deferrals (other than designated Roth contributions) to a section 401(k) plan that does not satisfy section 401(k)(3) by applying the safe harbor contribution requirements of section 401(k)(12) or (13), the employer must make a QNEC to the plan on behalf of the employee equal to 50 percent of the employee's "missed deferral." The missed deferral is determined by multiplying the ADP for the year of exclusion (whether or not the plan is using current or prior year testing) for the employee's group in the plan (either highly compensated or non-highly compensated) by the employee's compensation for the period during which the employee was excluded. The employee's missed deferral is reduced to the extent necessary to ensure that the sum of the missed deferral and any elective deferrals actually made by the employee for that year does not exceed applicable plan limits, including the annual deferral limit under section 402(g) for the calendar year in which the failure occurred. The QNEC must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee.

If no non-highly compensated employee made any elective deferrals during the applicable plan year, the missed deferral is determined by multiplying the employee's compensation for the period during which the employee was excluded by the greater of three percent or the rate needed to pass the ADP test.

Under this correction method, a plan may not be treated as two separate plans, one covering otherwise excludable employees and the other covering all other employees (as permitted in § 1.410(b)-6(b)(3)) in order to reduce the applicable ADP, the corresponding missed deferral, and the required QNEC. Likewise, restructuring the plan into component plans is not permitted in order to reduce the applicable ADP, the corresponding missed deferral, and the required QNEC. (See Examples 7, 8, and 10.)

(ii) Correction for matching contributions. If the employee should have been eligible for, but did not receive, an allocation of employer matching contributions under a non-safe harbor plan because the employee was not given the opportunity to make elective deferrals, the employer must make a corrective employer nonelective contribution on behalf of the affected employee. The corrective employer nonelective contribution is equal to the matching contribution the employee would have received had the employee made a deferral equal to the missed deferral determined under section .05(2)(b)(i). This matching contribution is reduced to the extent that the sum of this contribution and other matching contributions actually made on behalf of the employee for the plan year does not exceed the maximum matching contribution permitted if the employee had made the maximum matchable contributions permitted under the plan for the plan year. The corrective employer nonelective contribution must be adjusted for Earnings to the date the corrective contribution is made on behalf of the affected employee. (See Example 7.)

(c) Exclusion of an eligible employee with respect to a section 401(k)(12) or 401(k)(13) safe harbor plan. (i) Correction for elective deferrals in a section 401(k)(12)

safe harbor plan using matching contributions. If the employee was not provided the opportunity to elect and make elective deferrals (other than designated Roth contributions) to a safe harbor section 401(k) plan that uses a rate of matching contributions to satisfy the safe harbor requirements of section 401(k)(12), then the missed deferral is equal to three percent of the employee's plan compensation (or, if greater, whichever percentage of the employee's compensation which, if contributed as an elective deferral, would have been matched at a rate of 100 percent or more) for the portion of the year during which the employee was improperly excluded.

The required QNEC on behalf of the excluded employee is equal to (A) 50 percent of the missed deferral, plus (B) either (I) an amount equal to the contribution that would have been required as a matching contribution based on the missed deferral in a plan that uses matching contributions to satisfy section 401(k)(12) or (II) the nonelective contribution that would have been made on behalf of the employee in a plan that uses nonelective contributions to satisfy section 401(k)(12). The missed deferral is reduced to the extent that the sum of the missed deferral and any elective deferrals actually made by the employee for that year would exceed the maximum elective deferrals permitted under the plan for that plan year (including the section 402(g) limit). The QNEC and the corresponding matching or nonelective contribution must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. (See Examples 11 and 12.)

(ii) Correction for elective deferrals in a section 401(k)(12) safe harbor plan using nonelective contributions. If the employee was not provided the opportunity to elect and make elective deferrals (other than Roth contributions) to a safe harbor section 401(k) plan that uses nonelective contributions to satisfy the safe harbor requirements of section 401(k)(12), then the missed deferral is equal to three percent of compensation for the year or portion of the year during which the employee was improperly excluded.

The required QNEC on behalf of the excluded employee is equal to (A) 50 percent of the missed deferral, plus (B) either (I) an amount equal to the contribution that would have been required as a matching contribution based on the missed deferral in a plan that uses matching contributions to satisfy section 401(k)(12) or (II) the nonelective contribution that would have been made on behalf of the employee in a plan that uses nonelective contributions to satisfy section 401(k)(12). The missed deferral is reduced to the extent that the sum of the missed deferral and any elective deferrals actually made by the employee for that year would exceed the maximum elective deferrals permitted under the plan for that plan year (including the section 402(g) limit). The QNEC and the corresponding matching or nonelective contribution must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. (See Example 13.)

(iii) Correction for elective deferrals in a section 401(k)(13) safe harbor plan. If the employee was not provided the opportunity to make an affirmative election with respect to elective deferrals (other than designated Roth contributions) to a safe harbor section 401(k) plan that uses an automatic contribution arrangement to satisfy the safe

harbor requirements of section 401(k)(13) and the failure occurs for a period that does not extend past the last day of the first plan year which begins after the date on which the first deferral would have been made (but for the failure), then the missed deferral is equal to three percent of the employee's compensation for the period during which the employee was excluded under the plan. If the failure occurs for a plan year or plan years subsequent to the period described in the prior sentence, then the missed deferral for each subsequent plan year is equal to the qualified percentage specified in the plan document to comply with section 401(k)(13)(C)(iii).

The required corrective employer contribution on behalf of the excluded employee is a QNEC equal to (A) 50 percent of the missed deferral, plus (B) an amount equal to either (I) the matching contribution that would apply under section 401(k)(13) based on the missed deferral or (II) the nonelective contribution that would have been made on behalf of the employee under section 401(k)(13), whichever applies under the plan. The missed deferral is reduced to the extent that the sum of the missed deferral and any elective deferrals actually made by the employee for that year would exceed the maximum elective deferrals permitted under the plan for that plan year (including the section 402(g) limit). The QNEC and the corresponding matching or nonelective contribution must be adjusted for Earnings to the date the corrective employer contribution is made on behalf of the affected employee.

(iv) Exclusion of an eligible employee with respect to required nonelective contributions under a safe harbor section 401(k)(12) or 401(k)(13) plan. In the case of a failure to make the required nonelective contribution for a plan year under a plan that uses the nonelective contribution method under section 401(k)(12)(C) to satisfy the safe harbor requirements of section 401(k)(12) or that uses the alternative nonelective contribution method under section 401(k)(13)(D)(i)(II) to satisfy the safe harbor requirements of section 401(k)(13), the nonelective contribution (which must be a QNEC in the case of a plan that uses section 401(k)(12) to satisfy the ADP test) required to be made on behalf of the employee is equal to three percent of the employee's compensation during the period of the failure. For this purpose, the period of the failure for any plan year ends at the end of the plan year.

(d) Exclusion of an eligible employee with respect to after-tax employee contributions. (i) Correction for after-tax employee contributions. If the employee should have been eligible to elect and make after-tax employee contributions (other than designated Roth contributions), the employer must make a QNEC to the plan on behalf of the employee that is equal to 40 percent of the employee's "missed after-tax contributions." The employee's missed after-tax contributions are equal to the ACP for the employee's group (either highly compensated or non-highly compensated) times the employee's compensation for the plan year, or the portion of the year during which the employee was improperly excluded. The missed after-tax employee contribution is reduced to the extent that the sum of that contribution and the actual total after-tax employee contributions made by the employee for the plan year would exceed the maximum after-tax employee contributions permitted under the plan for the employee for the plan year. If the ACP consists of both matching and after-tax employee

contributions, then, in lieu of basing the employee's missed after-tax employee contributions on the ACP for the employee's group, the employer is permitted to determine separately the portion of the ACP that is attributable to after-tax employee contributions for the employee's group (either highly compensated or non-highly compensated), multiplied by the employee's compensation for the plan year, or the portion of the year during which the employee was improperly excluded. The QNEC must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. (See Examples 7, 8, and 9.)

(ii) Correction for matching contributions. If the employee was improperly excluded from an allocation of employer matching contributions because the employee was not given the opportunity to make after-tax employee contributions (other than designated Roth contributions), the employer must make a corrective employer nonelective contribution on behalf of the affected employee. The corrective employer nonelective contribution is equal to the matching contribution the employee would have received had the employee made an after-tax employee contribution equal to the missed after-tax employee contribution determined under section .05(2)(d)(i). This matching contribution is reduced to the extent that this contribution and other matching contributions actually made on behalf of the employee for the plan year would exceed the maximum matching contribution permitted if the employee had made the maximum matchable contributions permitted under the plan for the plan year. The corrective employer nonelective contribution must be adjusted for Earnings to the date the corrective contribution is made on behalf of the affected employee.

(3) Exclusion of an eligible employee with respect to designated Roth contributions. For employees who were improperly excluded from section 401(k) plans that provide for the optional treatment of elective deferrals as designated Roth contributions, the correction is the same as described under section .05(2). Thus, for example, the corrective employer contribution is made in accordance with the method described in section .05(2)(b) in the case of a section 401(k) plan that is not a safe harbor section 401(k) plan or section .05(2)(c) in the case of a safe harbor section 401(k) plan. However, the corrective contributions made by the employer may not be treated as designated Roth contributions (and may not be included in an employee's gross income) and thus may not be contributed or allocated to a Roth account (as described in section 402A(b)(2)). The corrective employer contribution must be allocated to an account established for receiving a QNEC or any other employer contribution in which the employee is fully vested and subject to the withdrawal restrictions that apply to elective deferrals.

(4) Exclusion of an eligible employee with respect to catch-up contributions.
(a) Correction for catch-up contributions. If an eligible employee was not provided the opportunity to elect and make catch-up contributions to a section 401(k) plan, the employer must make a QNEC to the plan on behalf of the employee equal to 50 percent of the employee's missed deferral attributable to catch-up contributions. For this purpose, the missed deferral attributable to catch-up contributions is one half of the applicable catch-up contribution limit for the year, or partial year, in which the employee

was improperly excluded. The QNEC must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. For purposes of this correction, an eligible employee, pursuant to section 414(v)(5), refers to any participant who (i) would have attained age 50 by the end of the plan's taxable year and (ii) in the absence of the plan's catch-up provision, could not make additional elective deferrals on account of the plan or statutory limitations described in section 414(v)(3) and § 1.414(v)-1(b)(1). The corrective contributions made by the employer may not be treated as designated Roth contributions (and may not be included in an employee's gross income) and thus may not be contributed or allocated to a Roth account (as described in section 402A(b)(2)). (See Example 14.)

(b) Correction for missed matching contributions on catch-up contributions. If an employee was precluded from making catch-up contributions under this section .05(4), and the employee would have been entitled to an additional matching contribution, then the employer must make a corrective employer nonelective contribution for the matching contribution on behalf of the affected employee. The corrective employer nonelective contribution is equal to the additional matching contribution the employee would have received had the employee made a deferral equal to the missed deferral determined under section .05(4)(a). The corrective employer nonelective contribution must be adjusted for Earnings to the date the corrective contribution is made on behalf of the affected employee.

(5) Failure to implement an employee election. (a) Correction for elective deferrals including Roth designated contributions. For eligible employees who filed elections to make elective deferrals under the Plan which the Plan Sponsor failed to implement on a timely basis, the Plan Sponsor must make a QNEC to the plan on behalf of the employee equal to 50 percent of the employee's missed deferral. The missed deferral is determined by multiplying the employee's elected deferral percentage by the employee's compensation for the portion of the year during which the employee was improperly excluded. If the employee elected a dollar amount for an elective deferral, the missed deferral would be the specified dollar amount. For a partial year exclusion, the dollar amount is multiplied by a fraction equal to the number of months, including partial months where applicable, during which the eligible employee was excluded from making elective deferral contributions divided by 12. The employee's missed deferral amount is reduced further to the extent necessary to ensure that the missed deferral and any elective deferrals actually made by the employee do not exceed applicable plan limits, including the annual deferral limit under section 402(g) for the calendar year in which the failure occurred. The QNEC must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. However, any QNEC made by the employer may not be treated as designated Roth contributions (and may not be included in an employee's gross income) and thus may not be contributed or allocated to a Roth account (as described in section 402A(b)(2)). The corrective employer contribution must be allocated to an account established for receiving a QNEC or any other employer contribution in which the employee is fully vested and subject to the withdrawal restrictions that apply to elective deferrals. (See Example 15.)

(b) Correction for after-tax employee contributions. For eligible employees who filed elections to make after-tax employee contributions under the Plan which the Plan Sponsor failed to implement on a timely basis, the Plan Sponsor must make a QNEC to the plan on behalf of the employee equal to 40 percent of the employee's missed after-tax contributions. The missed after-tax employee contribution is determined by multiplying the employee's elected after-tax employee contribution percentage by the employee's compensation for the portion of the year during which the employee was improperly excluded. If the employee elected a flat dollar amount that can be attributed to the period of exclusion, then the flat dollar amount for the period of exclusion may be used for this purpose. If the employee elected a flat dollar amount to be contributed for the entire plan year, then that dollar amount is multiplied by a fraction. The fraction is equal to the number of months, including partial months where applicable, during which the eligible employee was excluded from making after-tax employee contributions divided by 12. The missed after-tax employee contribution is reduced to the extent that the sum of that contribution and the actual total after-tax employee contributions made by the employee for the plan year would exceed the maximum after-tax employee contributions permitted under the plan for the employee for the plan year. The QNEC must be adjusted for Earnings to the date the corrective QNEC is made on behalf of the affected employee. However, any QNEC made by the employer may not be treated as after-tax employee contributions (and may not be included in an employee's gross income). The corrective employer contribution must be allocated to an account established for receiving a QNEC or any other employer contribution in which the employee is fully vested and subject to the withdrawal restrictions that apply to elective deferrals.

(c) Correction for matching contributions. In the event of a failure described in paragraph (a) or (b) of this section .05(5), if the employee would have been entitled to an additional matching contribution had either the missed deferral or after-tax employee contribution been made, then the Plan Sponsor must make a corrective employer nonelective contribution for the matching contribution on behalf of the affected employee, or a corrective QNEC in the case of a safe harbor plan under section 401(k)(12). The corrective employer nonelective contribution or QNEC is equal to the matching contribution the employee would have received had the employee made a deferral equal to the missed deferral determined under this section .05(5). The corrective employer nonelective contribution or QNEC must be adjusted for Earnings to the date the corrective contribution or QNEC is made on behalf of the affected employee. This corrective contribution or QNEC is reduced to the extent that the sum of this contribution and other matching contributions actually made on behalf of the employee for the plan year would exceed the maximum matching contribution permitted if the employee had made the maximum matchable contributions permitted under the plan for the plan year.

(6) Exclusion of an eligible employee with respect to a Section 403(b) Plan, including a failure to satisfy the universal availability requirement of section 403(b)(12)(A)(ii). (a) Subject to section .05(6)(b), the correction methods set

forth in this section .05 for a Qualified Plan also apply to a Section 403(b) Plan that has a similar failure.

(b) If the employee was not provided the opportunity to elect and make elective deferrals to a Section 403(b) Plan, then, in lieu of determining the missed deferral based on the ADP as described in section .05(2)(b)(i), the missed deferral is equal to the greater of three percent of compensation or the maximum deferral percentage for which the Plan Sponsor provides a matching contribution rate that is at least as favorable as 100 percent of the elective deferral made by the employee.

(7) Exclusion of an eligible employee with respect to a SIMPLE IRA Plan. (a) Subject to section .05(7)(b), the correction methods set forth in this section .05 for a Qualified Plan also apply to a SIMPLE IRA Plan that has a similar failure.

(b) If the employee was not provided the opportunity to elect and make elective deferrals to a SIMPLE IRA Plan, then, in lieu of determining the missed deferral based on the ADP as described in section .05(2)(b), the missed deferral is three percent of compensation.

(8) Special safe harbor correction method for failures related to automatic contribution features in a section 401(k) plan, Section 403(b) Plan, SEP Arrangement, or SIMPLE IRA Plan. (a) Eligibility to use safe harbor correction method. This safe harbor correction method is available for failures associated with missed elective deferrals for eligible employees who are subject to an automatic contribution feature in a section 401(k) plan, Section 403(b) Plan, SEP Arrangement, or SIMPLE IRA Plan (including employees who made affirmative elections in lieu of automatic contributions but whose elections were not implemented correctly and employees improperly excluded due to a failure to offer employees the opportunity to make an affirmative election). If the failure to implement an automatic contribution feature for an affected eligible employee or the failure to implement an affirmative election of an eligible employee who is otherwise subject to an automatic contribution feature does not extend beyond the end of the 9½-month period after the end of the plan year of the failure, no QNEC or employer contribution for the missed elective deferrals is required, provided that the following conditions are satisfied:

(i) Correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the 9½-month period after the end of the plan year in which the failure first occurred for the affected eligible employee or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(8)(c) is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(iii) If the eligible employee would have been entitled to additional matching contributions had the missed deferrals been made, the Plan Sponsor makes a corrective allocation (adjusted for Earnings) on behalf of the employee equal to the matching contributions that would have been required under the terms of the plan as if the missed deferrals had been contributed to the plan within a reasonable period, as determined by all relevant facts and circumstances, after the date on which the correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment). A corrective allocation of matching contributions that is made by the last day of the twelfth month following the month in which correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment) is deemed to be made within a reasonable period.

(b) Calculation of Earnings for certain failures to implement automatic contribution features. This correction method provides an alternative safe harbor method for calculating Earnings for failures that are corrected in accordance with the procedures in this section .05(8). If an affected eligible employee has not affirmatively designated an investment alternative, missed Earnings may be calculated based on the plan's default investment alternative, provided that any cumulative losses reflected in the Earnings calculation will not result in a reduction in the required corrective contributions relating to any matching contributions. The Plan Sponsor may also use the Earnings adjustment methods set forth in section .14. For a SEP Arrangement or a SIMPLE IRA Plan, a reasonable interest rate may be used as permitted in section 6.17(3)(b) of this revenue procedure.

(c) Content of notice requirement. The notice required under section .05(8)(a)(ii) must include the following information:

(i) General information relating to the failure, such as the percentage of eligible compensation that should have been deferred and the approximate date that the compensation should have begun to be deferred. The general information need not include a statement of the dollar amounts that should have been deferred.

(ii) A statement that appropriate amounts have begun to be deducted from compensation and contributed to the plan (or that appropriate deductions and contributions will begin shortly).

(iii) A statement that corrective allocations relating to missed matching contributions have been made (or that corrective allocations will be made). Information relating to the date and the amount of corrective allocations need not be provided.

(iv) An explanation that the affected participant may increase the deferral percentage in order to make up for the missed deferral opportunity, subject to applicable limits under section 402(g).

(v) The name of the plan and plan contact information (including name, street address, email address, and telephone number of a plan contact).

(d) Terminated employees. A Plan Sponsor must make the same correction with respect to a terminated employee except that the notice provided to a terminated employee is not required to include the information set forth in section .05(8)(c)(ii) or (iv).

(9) Safe harbor correction methods for Employee Elective Deferral Failures in section 401(k) plans, Section 403(b) Plans, SEP Arrangements, or SIMPLE IRA Plans. (a) Safe harbor correction method for Employee Elective Deferral Failures that do not exceed three months. Under this safe harbor correction method, an Employee Elective Deferral Failure (as defined in section .05(9)(e)) can be corrected without a QNEC or employer contribution for missed elective deferrals if the following conditions are satisfied:

(i) Correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the three-month period that begins when the failure first occurred for the affected eligible employee or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(9)(c) is given to the affected eligible employee not later than 45 days after the date on which correct deferrals begin; and

(iii) If the eligible employee would have been entitled to additional matching contributions had the missed deferrals been made, the Plan Sponsor makes a corrective allocation (adjusted for Earnings, which may be calculated as described in section .05(8)(b)) on behalf of the employee equal to the matching contributions that would have been required under the terms of the plan as if the missed deferrals had been contributed to the plan. The Plan Sponsor must make the corrective allocation within a reasonable period, as determined by all relevant facts and circumstances, after the date on which the correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment). A corrective allocation of matching contributions that is made by the last day of the twelfth month following the month in which correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment) is deemed to be made within a reasonable period.

(b) Safe harbor correction method for Employee Elective Deferral Failures that extend beyond three months but do not extend beyond three years after the plan year in which the failure occurred. This safe harbor correction may be used to correct an Employee Elective Deferral Failure that occurs with respect to an employee for a period that exceeds three months but does not extend beyond three years after the plan year in which the failure occurred (or the conditions for the safe harbor correction method

described in section .05(8) or .05(9)(a) are not met by the Plan Sponsor). Under this safe harbor method, the required corrective employer contribution is equal to 25 percent of the missed deferrals (25-percent QNEC) in lieu of the higher QNEC required in section .05(2)(b) and .05(5)(a).[23]

Eligibility for this safe harbor correction method is determined on an employee-by-employee basis and is measured with respect to the year in which the Employee Elective Deferral Failure first occurred. For example, if the Employee Elective Deferral Failure first occurs during the 2023 plan year with respect to Employee A and the failure first occurs during the 2019 plan year for Employee B, this safe harbor correction method may be used to correct the failure through the end of the 2026 plan year with respect to Employee A. This safe harbor is not available for Employee B. In order to use this safe harbor correction method, the Plan Sponsor must satisfy the following conditions:

(i) An employee's correct deferrals begin no later than the earlier of the first payment of compensation made on or after the last day of the third plan year following the plan year in which the failure occurred or, if the Plan Sponsor was notified of the failure by the affected eligible employee, the first payment of compensation made on or after the end of the month after the month of notification;

(ii) Notice of the failure that satisfies the content requirements of section .05(9)(c) is given to an affected employee not later than 45 days after the date on which correct deferrals begin;

(iii) Corrective allocations (including the 25-percent QNEC and employer contributions to make up for any missed matching contributions), as described in section 6.09 of this revenue procedure, must be made within a reasonable period, as determined by all relevant facts and circumstances, after the date on which the correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment). A corrective allocation of matching contributions that is made by the last day of the twelfth month following the month in which correct elective deferrals began (or, with respect to a terminated employee, would have begun but for the termination of employment), including adjustments for Earnings, which may be calculated as described in section .05(8)(b), is deemed to be made within a reasonable period.

(c) Content of notice requirement. The notice required under section .05(9)(a)(ii) or .05(9)(b)(ii) must include the same information listed in section .05(8)(c).

---

[23] In general, for purposes of this section .05(9), the rules that apply to Employee Elective Deferral Failures also apply to failures with respect to after-tax employee contributions. However, in the case of after-tax employee contributions, the required corrective employer contribution is equal to 20 percent of the missed after-tax employee contributions in lieu of the higher required contribution in section .05(2)(d) and (5)(b).

(d) Terminated employees. A Plan Sponsor must make the same correction for a terminated employee except the notice provided to a terminated employee is not required to include the information set forth in section .05(8)(c)(ii) or (iv).

(e) Employee Elective Deferral Failure. An "Employee Elective Deferral Failure" is a failure to implement elective deferrals correctly, including elective deferrals pursuant to an affirmative election or pursuant to an automatic contribution 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 contribution features include automatic enrollment and automatic escalation features (including automatic escalation features that were affirmatively elected).

(10) Examples. The following examples illustrate the application of this section .05(2), (4), and (5).

Example 7: (Correction methods set forth in section .05(2)(b) and (d)). Employer D maintains a section 401(k) plan. The plan provides for matching contributions for eligible employees equal to 100 percent of elective deferrals that do not exceed 3 percent of an employee's compensation. The plan allows employees to make after-tax employee contributions up to a maximum of the lesser of 2 percent of compensation or $1,000. The after-tax employee contributions are not matched. The plan provides that employees who complete one year of service are eligible to participate in the plan on the next designated entry date. The entry dates are January 1 and July 1. In 2025, it is discovered that Employee V, a non-highly compensated employee with compensation of $60,000, was excluded from the plan for the 2022 plan year even though the employee satisfied the plan's eligibility requirements as of January 1, 2022.

For the 2022 plan year, the relevant employee and contribution information is as follows:

	Compensation	Elective deferral	Match	After-Tax Employee Contribution
Highly Compensated Employees:				
R	$200,000	$ 6,000	$6,000	$0
S	$150,000	$12,000	$4,500	$1,000
Non-highly Compensated Employees:				
T	$80,000	$12,000	$2,400	$1,000
U	$50,000	$ 500	$ 500	$0

HCEs:

ADP - 5.5%
ACP - 3.33%
ACP attributable to matching contributions - 3%

ACP attributable to after-tax employee contributions - 0.33%

NHCEs:

ADP - 8%
ACP - 2.63%
ACP attributable to matching contributions - 2%
ACP attributable to after-tax employee contributions - 0.63%

Correction: Employer D uses the correction method described in section .05(2)(b), to correct the failure to include Employee V in the plan for the full plan year beginning January 1, 2022. Employer D calculates the corrective QNEC to be made on behalf of Employee V as follows:

(a) Elective deferrals: Employee V was eligible to elect and make elective deferrals in 2022, but was not provided with the opportunity to do so. Thus, Employer D must make a QNEC to the plan on behalf of Employee V equal to 50 percent of Employee V's missed deferral. The QNEC is adjusted for Earnings. The missed deferral for Employee V is determined by using the ADP for non-highly compensated employees for 2022 and multiplying that percentage by Employee V's compensation for 2022. Accordingly, the missed deferral for Employee V on account of Employee V's improper exclusion from the plan is $4,800 (8 percent x $60,000). Thus, the required corrective contribution is $2,400 (that is, 50 percent x $4,800), adjusted for Earnings. The corrective contribution is made to a pre-tax QNEC account for Employee V (not to a designated Roth contributions account even if the plan offers designated Roth contributions, as provided in section .05(3)).

(b) Matching contributions: Employee V should have been eligible for, but did not receive, an allocation of employer matching contributions because Employee V was not provided the opportunity to make elective deferrals in 2022. Thus, Employer D must make a corrective employer nonelective contribution to the plan on behalf of Employee V that is equal to the matching contribution Employee V would have received had the missed deferral been made. The corrective employer nonelective contribution is adjusted for Earnings. Under the terms of the plan, if Employee V had made an elective deferral of $4,800 or 8 percent of compensation ($60,000), Employee V would have been entitled to a matching contribution equal to 100 percent of the first 3 percent of Employee V's compensation ($60,000) or $1,800. The required corrective contribution is $1,800, adjusted for Earnings.

(c) After-tax employee contributions: Employee V was eligible to but was not provided with the opportunity to elect and make after-tax employee contributions in 2022. Thus, Employer D must make a QNEC to the plan on behalf of Employee V equal to 40 percent of Employee V's missed after-tax employee contribution, adjusted for Earnings. The missed after-tax employee contribution for Employee V is determined by using the ACP for non-highly compensated employees (to the extent that the ACP is attributable to after-tax employee contributions) for 2022 and multiplying that

percentage by Employee V's compensation for 2022. Accordingly, the missed after-tax employee contribution for Employee V, on account of Employee V's improper exclusion from the plan, is $378 (0.63 percent x $60,000). The required corrective contribution is $151.20 (40 percent x $378), adjusted for Earnings.

(d) Total required corrective contribution, before adjustments for Earnings: Employee V is entitled to a correction contribution equal to: $4,351.20 ($2,400 for the deferral plus $1,800 for the matching contribution plus $151.20 for the after-tax employee contributions). The required corrective contribution is further adjusted for Earnings. The corrective contribution for the deferrals ($2,400), after-tax employee contributions ($151.20), and related Earnings must be made in the form of a QNEC.

Example 8: (Correction methods set forth in section .05(2)(a)(ii), (b), and (d)). Employer E maintains a section 401(k) plan. The plan provides for matching contributions for each payroll period that are equal to 100 percent of an employee's elective deferrals that do not exceed 2 percent of the eligible employee's plan compensation during the payroll period. The plan provides for after-tax employee contributions. The after-tax employee contribution cannot exceed $1,000 for the plan year. The plan provides that employees who complete one year of service are eligible to participate in the plan on the next January 1 or July 1 entry date. Employee X, a non-highly compensated employee, who met the eligibility requirements and should have entered the plan on January 1, 2024, was not offered the opportunity to elect to have elective contributions made on Employee X's behalf to the plan. In August of 2024, the error was discovered and Employer E offered Employee X the opportunity to make elective deferrals and after-tax employee contributions as of September 1, 2024. Employee X made elective deferrals equal to 4 percent of the employee's plan compensation for each payroll period from September 1, 2024, through December 31, 2024 (resulting in elective deferrals of $880). Employee X's plan compensation for 2024 was $72,000 ($50,000 for the first eight months and $22,000 for the last four months). Employer E made matching contributions equal to $440 on behalf of Employee X, which is 2 percent of Employee X's plan compensation for each payroll period from September 1, 2024, through December 31, 2024 ($22,000). After being allowed to participate in the plan, Employee X made $250 of after-tax employee contributions for the 2024 plan year. The ADP for non-highly compensated employees for 2024 was 3 percent and the ACP for non-highly compensated employees for 2024 was 2.3 percent. The ACP attributable to matching contributions for non-highly compensated employees for 2024 was 1.8 percent. The ACP attributable to after-tax employee contributions for non-highly compensated employees for 2024 was 0.5 percent.

Correction: Employer E uses the correction method described in section .05(2)(b) and (d), to correct for the failure to provide Employee X the opportunity to elect and make elective deferrals and after-tax employee contributions, and, as a result, the failure of Employee X to receive matching contributions for a portion of the plan year (January 1, 2024, through August 31, 2024). Thus, Employer E makes a corrective contribution on behalf of Employee X that satisfies the requirements of section .05(2)(b)

and (d). Employer E elects to utilize the provisions of section .05(2)(a)(ii) to determine Employee X's compensation for the portion of the year in which Employee X was not provided the opportunity to make elective deferrals and after-tax employee contributions. Thus, for administrative convenience, in lieu of using actual plan compensation of $50,000 for the period Employee X was excluded, Employee X's annual plan compensation is prorated for the eight-month period that the employee was excluded from participating in the plan. The corrective contribution is determined as follows:

(a) Corrective contribution for missed deferral: Employee X was eligible to but was not provided with the opportunity to elect and make elective deferrals from January 1 through August 31 of 2024. Employer E must make a QNEC to the plan on behalf of Employee X equal to 50 percent of Employee X's missed deferral. Employee X's missed deferral is determined by multiplying the 3 percent ADP for non-highly compensated employees by $48,000 (8/12ths of the employee's 2024 compensation of $72,000). Accordingly, the missed deferral is $1,440. The missed deferral is not reduced because, when this amount is added to the amount already deferred, no plan limit (including section 402(g)) was exceeded. Accordingly, the required QNEC is $720 (that is, 50 percent multiplied by the missed deferral amount of $1,440), adjusted for Earnings.

(b) Corrective contribution for missed matching contribution: Under the terms of the plan, if Employee X had made an elective deferral of $1,440 or 3 percent of compensation for the period of exclusion ($48,000), the employee would have been entitled to a matching contribution equal to 2 percent of $48,000 or $960. The missed matching contribution is not reduced because no plan limit is exceeded when this amount is added to the matching contribution already contributed for the 2024 plan year. Accordingly, the required corrective employer contribution is $960, adjusted for Earnings.

(c) Corrective contribution for missed after-tax employee contribution: Employee X was eligible, but was not provided with the opportunity, to elect and make after-tax employee contributions from January 1 through August 31 of 2024. Employer E must make a QNEC to the plan on behalf of Employee X equal to 40 percent of Employee X's missed after-tax employee contributions, adjusted for Earnings. The missed after-tax employee contribution amount is equal to the 0.5 percent ACP attributable to employee contributions for non-highly compensated employees multiplied by $48,000 (8/12ths of the employee's 2024 plan compensation of $72,000). Accordingly, the missed after-tax employee contribution amount is $240. The missed after-tax employee contribution is not reduced because the sum of $240 and the previously made after-tax employee contribution of $250 is less than the overall plan limit of $1,000. Therefore, the required QNEC is $96 (that is, 40 percent multiplied by the missed after-tax employee contribution of $240), adjusted for Earnings.

The total required corrective contribution, before adjustments for Earnings, on behalf of Employee X is $1,776 ($720 for the deferral plus $960 for the matching

contribution plus $96 for the after-tax employee contributions). The corrective contribution for the deferral ($720) and after-tax employee contributions ($96) and related Earnings must be made in the form of a QNEC.

Example 9: (Correction method set forth in section .05(2)(d)). The facts (including the ADP and ACP results) are the same as in Example 8, except that it is now determined that Employee X, after being included in the plan in 2024, made after-tax employee contributions of $950.

Correction: The correction is the same as in Example 8, except that the QNEC required to replace the missed after-tax employee contribution is re-calculated to take into account applicable plan limits in accordance with the provisions of section .05(2)(d). The QNEC is determined as follows:

The missed after-tax employee contribution amount is equal to the 0.5 percent ACP attributable to after-tax employee contributions for non-highly compensated employees multiplied by $48,000 (8/12ths of the employee's 2024 plan compensation of $72,000). The missed after-tax employee contribution amount, based on this calculation, is $240. However, the sum of this amount ($240) and the previously made after-tax employee contribution ($950) is $1,190. Because the plan limit for after-tax employee contributions is $1,000, the missed after-tax employee contribution needs to be reduced by $190, to ensure that the total after-tax employee contributions comply with the plan limit. Accordingly, the missed after-tax employee contribution is $50 ($240 minus $190) and the required QNEC is $20 (that is, 40 percent multiplied by the missed after-tax employee contribution of $50), adjusted for Earnings.

Example 10: (Correction method set forth in section .05(2)(b)). Employer F sponsors a section 401(k) plan. The plan has a one-year-of-service eligibility requirement and provides for January 1 and July 1 entry dates. Employee Y, who should have been provided the opportunity to elect and make elective deferrals for the plan year beginning on January 1, 2022, was not provided the opportunity to elect and make elective deferrals until July 1, 2022. Employee Y made $8,000 in elective deferrals to the plan in 2022. Employee Y was a highly compensated employee with compensation for 2022 of $200,000. Employee Y's compensation from January 1 through June 30, 2022, was $130,000. The ADP for highly compensated employees for 2022 was 10 percent. The ADP for non-highly compensated employees for 2022 was 8 percent. The section 402(g) limit for deferrals made in 2022 was $20,500.

Correction: Employee Y's missed deferral is equal to the 10-percent ADP for highly compensated employees multiplied by $130,000 (compensation earned for the portion of the year in which Employee Y was erroneously excluded, that is, January 1, 2022, through June 30, 2022). The missed deferral amount based on this calculation is $13,000. However, the sum of this amount ($13,000) and the previously made elective contribution ($8,000) is $21,000. The 2022 section 402(g) limit for elective deferrals is $20,500. In accordance with the provisions of section .05(2)(b), the missed deferral needs to be reduced by $500 to ensure that the total elective

contribution complies with the applicable section 402(g) limit. Accordingly, the missed deferral is $12,500 ($13,000 minus $500) and the required QNEC is $6,250 (that is, 50 percent multiplied by the missed deferral of $12,500). The QNEC is adjusted for Earnings.

Example 11: (Correction method set forth in section .05(2)(c)(i)). Employer G maintains a safe harbor section 401(k) plan that requires matching contributions that satisfy the requirements of section 401(k)(12), which are equal to: 100 percent of elective deferrals that do not exceed 3 percent of an employee's compensation and 50 percent of elective deferrals that exceed 3 percent but do not exceed 5 percent of an employee's compensation. Employee M, a non-highly compensated employee who met the eligibility requirements and should have entered the plan on January 1, 2024, was not offered the opportunity to defer under the plan and was erroneously excluded for all of 2024. Employee M's compensation for 2024 was $50,000.

Correction: In accordance with the provisions of section .05(2)(c)(i), Employee M's missed deferral on account of exclusion from the safe harbor section 401(k) plan is 3 percent of compensation. Thus, the missed deferral is equal to 3 percent multiplied by $50,000, or $1,500. Accordingly, the required QNEC for Employee M in 2024 is $750, that is, 50 percent of $1,500. The required corrective contribution for Employee M's missed matching contribution is $750. Since the matching contribution is required to satisfy the requirements of section 401(k)(12), the corrective contribution must be made in the form of a QNEC. The total QNEC, before adjustments for Earnings, on behalf of Employee M is $1,500 (that is, $750 for the missed deferral plus $750 for the missed matching contribution). The QNEC is adjusted for Earnings.

Example 12: (Correction method set forth in section .05(2)(c)(i)). Same facts as Example 11, except that the plan provides for matching contributions equal to 100 percent of elective deferrals that do not exceed 4 percent of an employee's compensation.

Correction: In accordance with the provisions of section .05(2)(c)(i), Employee M's missed deferral on account of exclusion from the safe harbor section 401(k) plan is 4 percent of compensation. The missed deferral is 4 percent of compensation because the plan provides for a 100 percent match for deferrals up to that level of compensation. Therefore, in this case, Employee M's missed deferral is equal to 4 percent multiplied by $50,000, or $2,000. The QNEC for Employee M in 2024 is $1,000, that is, 50 percent multiplied by $2,000. The missed matching contribution, based on the missed deferral of $2,000 is $2,000. Thus, the required corrective contribution for Employee M's missed matching contribution is $2,000. Since the matching contribution is required to satisfy the requirements of section 401(k)(12), the corrective contribution must be made in the form of a QNEC. The total QNEC on behalf of Employee M is $3,000 (that is, $1,000 for the missed deferral plus $2,000 for the missed matching contribution), adjusted for Earnings.

Example 13: (Correction method set forth in section .05(2)(c)(ii)). Same facts as Example 11, except that the plan uses a rate of nonelective contributions to satisfy the requirements of section 401(k)(12) and provides for a nonelective contribution equal to 3 percent of compensation.

Correction: In accordance with the provisions of section .05(2)(c)(ii), Employee M's missed deferral on account of exclusion from the safe harbor section 401(k) plan is 3 percent of compensation. Thus, the missed deferral is equal to 3 percent multiplied by $50,000, or $1,500. Thus, the QNEC for Employee M's in 2024 is $750 (50 percent of $1,500). The required nonelective contribution, based on the plan's formula of 3 percent of compensation for nonelective contributions is $1,500. Since the nonelective contribution is required to satisfy the requirements of section 401(k)(12), the corrective contribution is made in the form of a QNEC. The total required QNEC on behalf of Employee M is $2,250 (that is, $750 for the missed deferral, plus $1,500 for the nonelective contribution), adjusted for Earnings.

Example 14: (Correction method set forth in section .05(4)). Employer H maintains a section 401(k) plan. The plan limit on deferrals is the lesser of the deferral limit under section 402(g) or the limitation under section 415. The plan also provides that certain participants (as defined in section 414(v)(5)) may make contributions in excess of the plan's deferral limits, up to the limitations on catch-up contributions for the year. The plan also provides for a 60 percent matching contribution on elective deferrals. The deferral limit under section 402(g) for 2022 is $20,500. The limitation on catch-up contributions under the terms of the plan and section 414(v)(2)(B)(i) for 2022 is $6,500. Employee R, age 55, was provided with the opportunity to make elective deferrals up to the plan limit, but was not provided the opportunity to make section 401(k) catch-up contributions. Employee R is a non-highly compensated employee who earned $60,000 in compensation and made elective deferrals totaling $20,500 in 2022.

Correction: In accordance with section .05(4), Employee R's missed deferral on account of the plan's failure to offer the opportunity to make section 401(k) catch-up contributions is $3,250 (or one half of the limitation on catch-up contributions for 2022). The required QNEC for Employee R's missed catch-up contributions in 2022 is $1,625 (or 50 percent of $3,250), adjusted for Earnings. In addition, Employee R is entitled to an additional matching contribution, under the terms of the plan, equal to 60 percent of the missed deferral that is attributable to the catch-up contribution that the employee would have made had the failure not occurred. In this case, the missed deferral is $3,250 and the corresponding matching contribution is $1,950 (that is, 60 percent of $3,250). Thus, the required corrective contribution for the additional matching contribution that should have been made on behalf of Employee R is $1,950 adjusted for Earnings.

Example 15: (Correction method set forth in section .05(5)). Employer I maintains a section 401(k) plan. The plan provides for matching contributions for eligible employees equal to 100 percent of elective deferrals that do not exceed 3 percent of an employee's compensation. On January 1, 2024, Employee T made an affirmative election to

contribute 10 percent of compensation for the 2024 plan year. However, Employee T's election was not processed, and the required amounts were not withheld from Employee T's salary in 2024. Employee T's salary was $60,000 in 2024.

Correction: Employer I uses the correction method described in section .05(5) to correct the failure to implement Employee T's election to make elective deferrals under the plan for the full plan year beginning January 1, 2024. Employer I calculates the corrective QNEC to be made on behalf of Employee T as follows:

(a) Elective deferrals: Employee T's election to make elective deferrals in 2024 was not implemented. Thus, pursuant to section .05(5)(a), Employer I must make a QNEC to the plan on behalf of Employee T equal to 50 percent of Employee T's missed deferral. The missed deferral is determined by using Employee T's elected deferral percentage (10 percent) for 2024 and multiplying that percentage by Employee T's compensation for 2024 ($60,000). Accordingly, the missed deferral for Employee T on account of Employer I's failure to implement Employee T's election is $6,000 (10 percent x $60,000). Thus, the required QNEC for the failure to implement Employee T's election is $3,000 (that is, 50 percent x $6,000), adjusted for Earnings.

(b) Matching contributions: Employee T should have been eligible for but did not receive an allocation of employer matching contributions because no elective deferrals were made on Employee T's behalf in 2024. Thus, pursuant to section .05(5)(c), Employer I must make a corrective employer nonelective contribution to the plan on behalf of Employee T that is equal to the matching contribution Employee T would have received had the missed deferral been made, adjusted for Earnings. If Employee T had made an elective deferral of $6,000 or 10 percent of compensation ($60,000), Employee T would have been entitled to a matching contribution equal to 100 percent of the first 3 percent of compensation ($60,000) or $1,800. Accordingly, the contribution required for the missed matching contribution is $1,800, adjusted for Earnings.

The total required corrective contribution on behalf of Employee T, before Earnings, is $4,800 ($3,000 for the missed deferral plus $1,800 for the missed matching contribution). The corrective contribution for the missed deferral ($3,000) and related Earnings must be made in the form of a QNEC.

Example 16: (Correction method set forth in section .05(8)). Employer J maintains a calendar year section 401(k) plan that contains automatic contribution features but does not provide for any matching contributions. All employees automatically have elective deferrals of 3 percent of compensation withheld. Employees may elect to decrease or increase this amount. On March 1, 2025, Employer J discovered four employees hired in June 2024 who were improperly excluded from the plan.

Correction: Employer J automatically enrolled the employees in the section 401(k) plan as of April 1, 2025, and began withholding 3 percent of their compensation as elective deferrals. On May 1, 2025, Employer J issued a notice to the affected employees that satisfied the content requirement specified in section .05(8)(c).

Employer J does not have to provide a corrective contribution for any missed deferrals due to the employees' improper exclusion from the plan in 2024 and first three months of 2025.

Example 17: (Correction method set forth in section .05(9)). Assume the same facts in Example 16, except that the section 401(k) plan does not provide an automatic contribution feature.

Correction: On April 1, 2025, Employer J provided the excluded employees with the opportunity to participate in the section 401(k) plan. Employer J issued the notice on May 1, 2025. Employer J makes a corrective contribution equal to 25 percent of the missed deferral amount for 2024 and first three months of 2025, adjusted for Earnings.

.06 Failure to timely pay the minimum distribution required under section 401(a)(9). (1) Defined contribution plan. The safe harbor correction method with respect to a defined contribution plan is to distribute the required minimum distributions (with Earnings from the date of the failure to the date of the distribution). The amount required to be distributed for each year in which the initial failure occurred should be determined by dividing the adjusted account balance on the applicable valuation date by the applicable denominator. For this purpose, adjusted account balance means the actual account balance, determined in accordance with Treas. Reg. § 1.401(a)(9)-5(b), reduced by the amount of the total missed minimum distributions for prior years.

(2) Defined benefit plan. The safe harbor correction method with respect to a defined benefit plan is to distribute the required minimum distributions, plus an interest payment based on the plan's actuarial equivalence factors in effect on the date that the distribution should have been made. See section 6.10 of this revenue procedure. If this correction is made at the time the plan is subject to a restriction on single-sum payments pursuant to section 436(d), the Plan Sponsor must contribute to the plan the applicable amount under section 6.10(2) of this revenue procedure as part of the correction.

.07 Failure to obtain participant or spousal consent for a distribution subject to the participant and spousal consent rules under sections 401(a)(11) and 417. (1) In general. For a failure to obtain required written consent from an unmarried plan participant, the Plan Sponsor must notify the affected participant so that the participant can provide consent to the distribution actually made or the participant may repay the distribution and receive an optional form of distribution offered by the plan. For married participants, as provided in section 6.08 of this revenue procedure, the Plan Sponsor generally must notify the affected participant and spouse (the spouse to whom the participant was married at the time of the distribution), so that the spouse can provide spousal consent to the distribution actually made or the participant may repay the distribution and receive a qualified joint and survivor annuity.

(2) Alternative correction methods when spousal consent is not obtained. (a) In general. As alternatives to the correction method in section 6.08 of this revenue

procedure, correction for a failure to obtain spousal consent may be made under either section .07(2)(b) or (c).

(b) QJSA option. The spouse is entitled to a benefit under the plan equal to the portion of the qualified joint and survivor annuity that would have been payable to the spouse upon the death of the participant had a qualified joint and survivor annuity been provided to the participant under the plan at the annuity starting date for the prior distribution. Such spousal benefit will be provided in accordance with the Plan's administrative practices and procedures. The participant's annuity may be actuarially reduced by considering the distributions already received by the participant. However, the portion of the qualified joint and survivor annuity payable to the spouse upon the death of the participant may not be actuarially reduced.

(c) Election between annuity and single-sum payment. The plan may offer the spouse the choice between (i) the survivor annuity benefit described under section .07(2)(b) or (ii) a single-sum payment equal to the actuarial present value of that survivor annuity benefit (calculated using the applicable interest rate and mortality table under section 417(e)(3)). Any such single-sum payment is treated in the same manner as a distribution under section 402(c)(9) for purposes of rolling over the payment to an IRA or other eligible retirement plan. In the event that the plan is subject to a restriction on the payment of single sums pursuant to section 436(d) at the time the plan offers this choice to the spouse and the spouse elects to receive a single-sum payment, the Plan Sponsor must contribute to the plan the applicable amount under section 6.10(2)(b)(i) of this revenue procedure.

(3) Example. The following example illustrates the application of this section .07.

Example 18: In accordance with the automatic qualified joint and survivor annuity option under a plan, a married participant who retired would have received a qualified joint and survivor annuity of $600 per month payable for life with $300 per month payable to the spouse for the spouse's life beginning upon the participant's death. Instead, the participant received, without the required consent of the participant's spouse, a single-sum distribution equal to the actuarial present value of the participant's accrued benefit under the plan.

Correction: At the time of the correction, the participant's spouse does not consent to the participant's prior single-sum distribution. Even though the $600 monthly annuity payable during the participant's lifetime may be actuarially reduced to take the single-sum distribution into account, the spouse is entitled to receive an annuity of $300 per month payable for life beginning at the participant's death. If the plan gives the spouse the choice to receive an annuity of $300 per month payable or a lump-sum payment equal to the actuarial present value of a $300-per-month annuity, and the spouse elects to receive the lump-sum payment, then the payment is treated in the same manner as a distribution under section 402(c)(9) for purposes of rolling over the payment to an IRA or other eligible retirement plan. If the election by the spouse is made at the time the plan is subject to a restriction on single-sum payments pursuant to

section 436(d), then the lump-sum payment alternative is available only if the Plan Sponsor (or other person) contributes to the plan the amount under section 6.10 of this revenue procedure as part of the correction.

.08 Correction of an Excess Allocation with respect to a section 415 failure. (1) General correction method. The failure to limit annual additions allocated to employees in a defined contribution plan as required in section 415 is corrected in accordance with section 6.11(2)(d) of this revenue procedure.

(2) Forfeiture correction method for a correction of an Excess Allocation relating to a section 415(c) failure in a Qualified Plan for a non-vested, non-highly compensated former employee. In addition to the method in section 6.11(2)(d) of this revenue procedure, the failure to satisfy section 415(c) with respect to a non-highly compensated employee (a) who in the limitation year of the failure had annual additions consisting of both (i) either elective deferrals or after-tax employee contributions or both and (ii) either matching or nonelective contributions or both, (b) for whom the matching and nonelective contributions equal or exceed the portion of the employee's annual addition that exceeds the limits under section 415(c) ("section 415(c) excess") for the limitation year, and (c) who has terminated with no vested interest in the matching and nonelective contributions (and has not been reemployed at the time of the correction), may be corrected by using the forfeiture correction method set forth in this paragraph. The section 415(c) excess is deemed to consist solely of the matching and nonelective contributions. If the employee's section 415(c) excess (adjusted for Earnings) has previously been forfeited, the section 415(c) failure is deemed to be corrected. If the section 415(c) excess (adjusted for Earnings) has not been forfeited, that amount is placed in an unallocated account, as described in section 6.11(2)(d) of this revenue procedure, to be used to reduce employer nonelective contributions in succeeding year(s) (or if the amount would have been allocated to other employees who were in the plan for the year of the failure if the failure had not occurred, then that amount is reallocated to the other employees in accordance with the plan's allocation formula). Note that while this correction method will permit more favorable tax treatment of elective deferrals for the employee than the correction method in section 6.11(2) of this revenue procedure, this correction method could be less favorable to the employee in certain cases, for example, if the employee is subsequently reemployed and becomes vested. (See Examples 19 and 20.)

(3) Examples. The following examples illustrate the application of this section .08.

Example 19: Employer K maintains a section 401(k) plan. The plan provides for nonelective employer contributions, elective deferrals, and after-tax employee contributions. The plan provides that the nonelective contributions vest under a 3-year cliff vesting schedule. The plan provides that when an employee terminates employment, the employee's nonvested account balance is forfeited five years after a distribution of the employee's vested account balance and that forfeitures are used to reduce employer contributions. For the 2022 limitation year, the annual additions made on behalf of two non-highly compensated employees in the plan, Employees T and U,

exceeded the limit in section 415(c). For the 2022 limitation year, Employee T had section 415 compensation of $60,000. Employee T made elective deferrals and after-tax employee contributions. For the 2022 limitation year, Employee U had section 415 compensation of $40,000. Employee U made elective deferrals. Also, on January 1, 2023, Employee U, who had two years of service with Employer K, terminated his employment and received his entire vested account balance (which consisted of his elective deferrals). The annual additions for Employees T and U consisted of:

	T	U
Nonelective Contributions	$42,500	$ 20,300
Elective Deferrals	$20,000	$ 20,000
After-tax Contributions	$ 500	$ 0
Total Contributions	$ 63,000	$ 40,300
Section 415(c) Limit (Lesser of $61,000 or 100% of Pay)	$ 60,000	$ 40,000
Section 415(c) Excess	$ 3,000	$ 300

Correction: Employer K uses the section .08(1) correction method (in accordance with section 6.11(2) of this revenue procedure) to correct the section 415(c) excess with respect to Employee T (that is, $3,000). Thus, a distribution of plan assets (and corresponding reduction of the account balance) consisting of $500 (adjusted for Earnings) of unmatched after-tax employee contributions and $2,500 (adjusted for Earnings) of elective deferrals is made to Employee T. Employer K uses the forfeiture correction method in section .08(2) to correct the section 415(c) excess with respect to Employee U. Thus, the section 415(c) excess is deemed to consist solely of the nonelective contributions. Accordingly, Employee U's nonvested account balance is reduced by $300 (adjusted for Earnings) which is placed in an unallocated account, as described in section 6.11(2) of this revenue procedure, to be used to reduce employer contributions in succeeding year(s). After correction, it is determined that the ADP and ACP tests for 2022 were satisfied.

Example 20: Employer L maintains a section 401(k) plan. The plan provides for nonelective employer contributions, matching contributions, and elective deferrals. The plan provides for matching contributions that are equal to 100 percent of an employee's elective deferrals that do not exceed 8 percent of the employee's plan compensation for the plan year. For the 2022 limitation year, Employee V had section 415 compensation of $50,000. During that limitation year, the annual additions for Employee V totaled $52,500, consisting of $5,000 in elective deferrals, $4,000 in matching contributions (8 percent of $50,000), and a $43,500 nonelective employer contribution. Thus, the annual additions for Employee V exceeded the section 415(c) limit by $2,500.

Correction: Employer L uses the section .08(1) correction method (in accordance with section 6.11(2) of this revenue procedure) to correct the section 415(c) excess with respect to Employee V (that is, $2,500). Accordingly, $1,000 of the unmatched elective

deferrals (adjusted for Earnings) are distributed to Employee V. The remaining $1,500 excess is apportioned equally between the elective deferrals and the associated matching employer contributions, so Employee V's account balance is further reduced by distributing to Employee V $750 (adjusted for Earnings) of the elective deferrals and forfeiting $750 (adjusted for Earnings) of the associated employer matching contributions. The forfeited matching contributions are placed in an unallocated account, as described in section 6.11(2) of this revenue procedure, to be used to reduce employer contributions in succeeding year(s). After correction, it is determined that the ADP and ACP tests for 2022 were satisfied.

.09 Correction of Overpayments. (1) In general. As described in section 6.12(3) of this revenue procedure, an Overpayment may be corrected by repayment to the plan. Repayments may be made using the return of Overpayment or adjustment of future payment correction methods set forth in section .09(2). As provided in section 6.12(3)(e) of this revenue procedure, any other appropriate correction method may be used to correct an Overpayment.

(2) Return of Overpayment and adjustment of future payments correction methods. (a) Return of Overpayment correction method. (i) In general. The Plan Sponsor must take reasonable steps to have the Overpayment (adjusted for appropriate interest) returned to the plan by the Overpayment recipient and must reduce future benefit payments (if any) to the Overpayment recipient to equal the correct amount payable under the terms of the plan (or an amount that satisfies a limitation provided in the Code or regulations). The Plan Sponsor may permit the Overpayment recipient to repay the Overpayment through the payment of a single sum or through an installment agreement. However, the installment option is not available in cases in which the Overpayment recipient is a disqualified person (as defined in section 4975(e)(2)) or an owner-employee (as defined in section 401(c)).

(ii) Plan Sponsor contribution required. If the amount returned to the plan by the Overpayment recipient is less than the Overpayment adjusted for Earnings at the plan's earnings rate, the Plan Sponsor or another person (other than any spouse or beneficiary of the Overpayment recipient) must contribute the difference to the plan. (See Example 24.)

(b) Adjustment of future payments correction method. (i) In general. In the case of plan benefits that are being distributed in the form of periodic payments, Overpayments may be corrected using the adjustment of future payments correction method. Under the adjustment of future payments correction method, payments made to the Overpayment recipient on or after the date of correction are reduced so that they do not exceed the correct benefit payment under the terms of the plan (or satisfy a limitation provided in the Code or regulations). An additional reduction is made to recoup the Overpayment (over a period not longer than the remaining payment period) so that the actuarial present value of the additional reduction, determined as of the date of correction, is equal to the Overpayment plus interest at the interest rate used by the

plan as of the date of correction to determine actuarial equivalence. (See Examples 21 and 23.)

(ii) Joint and survivor annuity payments. If a participant is receiving payments in the form of a joint and survivor annuity, with the participant's spouse receiving a life annuity upon the participant's death equal to a percentage (for example, 75 percent) of the amount being paid to the participant, the reduction of future annuity payments to reflect the correct amount payable to the participant under the terms of the plan (or to satisfy a limitation provided in the Code or regulations) reduces the amount of benefits payable during the lives of both the participant and spouse. However, any reduction to recoup Overpayments made to the participant's future annuity payments does not reduce the amount of the spouse's survivor benefit (regardless of whether the Overpayments have been recouped fully due to the reductions during the participant's lifetime). Thus, the spouse's survivor benefit will be based on the specified percentage (for example, 75 percent) of the maximum permitted amount payable under the terms of the plan (or to satisfy a limitation provided in the Code or regulations), instead of the reduced periodic amount payable to the participant. (See Example 22.)

(iii) Plan Sponsor not required to contribute to the plan. To the extent the amount returned by an Overpayment recipient through the adjustment of future payments correction method is less than the Overpayment (for example, due to the death of the Overpayment recipient), the Plan Sponsor is not required to contribute any additional amount to the plan.

(c) Overpayment recipients may be given choice of recoupment correction methods. If seeking recoupment of an Overpayment under section .09(2), a Plan Sponsor may provide an Overpayment recipient a choice of repaying an Overpayment by: (i) a single-sum repayment, (ii) an installment agreement, or (iii) an adjustment made to future benefit payments.

(3) Examples. The following examples illustrate the application of this section .09.

Example 21: Employer M maintains a defined benefit plan funded solely through employer contributions. The plan provides that the benefits of employees are limited to the maximum amount permitted under section 415(b), disregarding cost-of-living adjustments under section 415(d) after benefit payments have commenced. At the beginning of the 2025 plan year, Employee S retired and started receiving an annual straight life annuity of $290,000 from the plan. Due to an administrative error, the annual amount received by Employee S for 2025 included an Overpayment of $10,000 (because the section 415(b)(1)(A) limit for 2025 was $280,000). This error was discovered at the beginning of 2026.

Correction: Employer M uses the adjustment of future payments correction method to correct the failure to satisfy the limit in section 415(b). Future annuity benefit payments to Employee S are reduced so that they do not exceed the section 415(b) maximum limit, and, in addition, Employee S's future benefit payments from the plan are

actuarially reduced to recoup the Overpayment. Accordingly, Employee S's future benefit payments from the plan are reduced to $280,000 and further reduced by $1,000 annually for life, beginning in 2026. The annual benefit amount is reduced by $1,000 annually for life because, for Employee S, the actuarial present value of a benefit of $1,000 annually for life commencing in 2026 is equal to the sum of $10,000 and interest at the rate used by the plan to determine actuarial equivalence beginning with the date of the first Overpayment and ending with the date the reduced annuity payment begins. Thus, Employee S's remaining benefit payments are reduced so that Employee S receives $279,000 for 2026, and for each year thereafter.

Example 22: The facts are the same as in Example 21, except that Employee S is receiving the benefit in the form of a fully subsidized 100-percent joint and survivor benefit, so that Employee S's spouse will receive 100 percent of Employee S's benefit after Employee S's death. As provided under Example 21, under the terms of the plan, the annual benefit payable to Employee S should have been $280,000 for Employee S's lifetime, and $280,000 to Employee S's spouse after Employee S's death.

Correction: The adjustment to recoup the Overpayment is applied only for Employee S's lifetime, as described in section .09(2)(b)(ii), so the actuarial adjustment is $1,000 annually as determined in Example 21. Therefore, the future annual payments to Employee S will be $279,000 for Employee S's lifetime, and the annual payments to Employee S's spouse will be $280,000 for the remainder of the spouse's lifetime after Employee S's death.

Example 23: The facts are the same as in Example 21.

Correction: Employer M uses the adjustment of future payments correction method to correct the section 415(b) failure, by recouping the entire excess payment made in 2025 from Employee S's remaining benefit payments for 2026. Thus, Employee S's annual annuity benefit for 2026 is reduced to $269,400 to reflect the excess benefit amounts (increased by interest) that were paid from the plan to Employee S during the 2025 plan year. Beginning in 2027, Employee S begins to receive annual benefit payments of $280,000.

Example 24: The facts are the same as in Example 21, except that the benefit was paid to Employee S in the form of a single-sum distribution in 2025, which exceeded the maximum section 415(b) limit by $110,000.

Correction: Employer M uses the return of Overpayment correction method to correct the section 415(b) failure. Thus, Employer M notifies Employee S of the $110,000 Overpayment and that the Overpayment was not eligible for favorable tax treatment accorded to distributions from Qualified Plans (and, specifically, was not eligible for tax-free rollover). The notice also informs Employee S that the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) is owed to the plan. Employer M takes reasonable steps to have the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) paid to the plan.

Employee S pays the $110,000 (plus the requested interest) to the plan. It is determined that the plan's rate of return for the relevant period was two percentage points more than the rate used by the plan to calculate the single-sum payment. Accordingly, Employer M contributes the difference to the plan.

Example 25: The facts are the same as in Example 24.

Correction: Employer M uses the return of Overpayment correction method to correct the section 415(b) failure. Thus, Employer M notifies Employee S of the $110,000 Overpayment and that the Overpayment was not eligible for favorable tax treatment accorded to distributions from Qualified Plans (and, specifically, was not eligible for tax-free rollover). The notice also informs Employee S that the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) is owed to the plan. Employer M takes reasonable steps to have the Overpayment (with interest at the rate used by the plan to calculate the single-sum payment) paid to the plan. As a result of Employer M's recovery efforts, some, but not all, of the Overpayment (with interest) is recovered from Employee S. It is determined that the amount returned by Employee S to the plan is less than the Overpayment adjusted for Earnings at the plan's rate of return. Accordingly, Employer M contributes the difference to the plan.

.10 Correction of a failure to provide a notice of suspension of benefits in a defined benefit plan. A failure to provide a notice of suspension of benefits, in accordance with the terms of a defined benefit plan and consistent with section 203(a)(3)(B) of ERISA and the regulations thereunder, to a participant who remains employed after attaining normal retirement age should be corrected by providing the participant the required suspension of benefits notice and increasing the participant's accrued benefit in a manner that is consistent with the provisions of Prop. Reg. § 1.411(b)-2(b)(4). Generally, under the proposed regulations, the participant's accrued benefit for each plan year for which the failure occurred would be equal to the benefit the participant accrued under the terms of the plan as of the close of the prior plan year increased by the greater of:

(1) the benefit the participant would have accrued during the plan year under the plan's benefit formula, and

(2) the prior year's benefit increased to the end of the plan year (or through the date of correction, if earlier), in accordance with the plan's provisions for actuarial equivalence, as described in section 6.10 of this revenue procedure, that were in effect for that plan year.

.11 Vesting failures in a defined contribution plan. (1) Correction methods. (a) Contribution correction method. A failure to apply the proper vesting percentage to an employee's account balance that results in forfeiture of too large a portion of the employee's account balance may be corrected using the contribution correction method. The Plan Sponsor makes a corrective contribution on behalf of the employee whose account balance was improperly forfeited in an amount equal to the improper forfeiture.

The corrective contribution is adjusted for Earnings. If, as a result of the improper forfeiture, an amount was improperly allocated to the account balance of another employee, no reduction is made to the account balance of that employee. (See Example 26.)

(b) Reallocation correction method. In lieu of the contribution correction method, in a plan under which forfeitures of account balances are reallocated among the account balances of the other eligible employees in the plan, a failure to apply the proper vesting percentage to an employee's account balance which results in forfeiture of too large a portion of the employee's account balance may be corrected under the reallocation correction method set forth in section .05(1)(b), subject to the limitations set forth in section .05(1)(b)(vi). In applying section .05(1)(b)(ii), the account balance of the employee who incurred the improper forfeiture is increased by an amount equal to the amount of the improper forfeiture and the amount is adjusted for Earnings. In applying section .05(1)(b)(iii)(A), the account balance of each employee who shared in the allocation of the improper forfeiture is reduced by the amount of the improper forfeiture that was allocated to that employee's account. The Earnings adjustments for the account balances that are being reduced are determined in accordance with section .05(1)(b)(iii)(B) and (C) and the reductions after adjustments for Earnings are limited in accordance with section .05(1)(b)(iii)(D). In accordance with section .05(1)(b)(iv), if the aggregate amount of the increases exceeds the aggregate amount of the reductions, the Plan Sponsor makes a corrective contribution to the plan for the amount of the excess. In accordance with section .05(1)(b)(iv), if the aggregate amount of the reductions exceeds the aggregate amount of the increases, then the amount by which each employee's account balance is reduced is decreased on a pro rata basis. (See Example 27.)

(2) Examples. The following examples illustrate the application of this section .11.

Example 26: Employer N maintains a profit-sharing plan that provides for nonelective contributions. The plan provides for self-directed investments among four investment funds and daily valuation of account balances. The plan provides that forfeitures of account balances are reallocated among the account balances of other eligible employees on the basis of compensation. During the 2024 plan year, Employee R terminated employment with Employer N and elected and received a single-sum distribution of the vested portion of Employee R's account balance. No other distributions have been made since 2024. However, an incorrect determination of Employee R's vested percentage was made, resulting in Employee R receiving a distribution of less than the amount to which Employee R was entitled under the plan. The remaining portion of Employee R's account balance was forfeited and reallocated (and these reallocations were not affected by the limitations of section 415). Most of the employees who received allocations of the improper forfeiture were non-highly compensated employees.

Correction: Employer N uses the contribution correction method to correct the improper forfeiture. Thus, Employer N makes a contribution on behalf of Employee R

equal to the incorrectly forfeited amount (adjusted for Earnings) and Employee R's account balance is increased accordingly and subsequently distributed to Employee R. No reduction is made from the account balances of the employees who received an allocation of the improper forfeiture.

Example 27: The facts are the same as in Example 26.

Correction: Employer N uses the reallocation correction method to correct the improper forfeiture. Thus, Employee R's account balance is increased by the amount that was improperly forfeited (adjusted for Earnings) and such increase will be distributed to Employee R. The account of each employee who shared in the allocation of the improper forfeiture is reduced by the amount of the improper forfeiture that was allocated to that employee's account (adjusted for Earnings). Because most of the employees whose account balances are being reduced are non-highly compensated employees, for administrative convenience, Employer N uses the rate of return of the fund with the lowest rate of return for the period of the failure to adjust the reduction to each account balance. It is determined that the amount (adjusted for Earnings) by which the account balance of Employee R is increased exceeds the aggregate amount (adjusted for Earnings) by which the other employees' account balances are reduced. Accordingly, Employer N makes a contribution to the plan in an amount equal to the excess. The reduction from the account balances is made on a pro rata basis among all of the funds in which each employee's account balance is invested.

.12 Section 401(a)(17) failures in a defined contribution plan. (1) Reduction of account balance correction method. (a) In general. The allocation of contributions or forfeitures for a plan year on the basis of compensation in excess of the limit under section 401(a)(17) of the Code for the plan year may be corrected using the reduction of account balance correction method set forth in section 6.11(2) of this revenue procedure.

(b) Example. The following example illustrates the application of this section .12(1).

Example 28: Employer O maintains a money purchase pension plan. Under the plan, an eligible employee is entitled to an employer contribution of 8 percent of the employee's compensation up to the section 401(a)(17) limit ($305,000 for 2022). During the 2022 plan year, an eligible employee, Employee W, inadvertently was credited with a contribution based on compensation above the section 401(a)(17) limit. Employee W's compensation for 2022 was $450,000. Employee W received a contribution of $36,000 for 2022 (8 percent of $450,000), rather than the contribution of $24,400 (8 percent of $305,000) provided by the plan for that year, resulting in an improper allocation of $11,600.

Correction: The section 401(a)(17) failure is corrected using the reduction of account balance method by reducing Employee W's account balance by $11,600 (adjusted for Earnings) and crediting that amount to an unallocated account, as

described in section 6.11(2) of this revenue procedure, to be used to reduce employer contributions in succeeding year(s).

(2) Contribution correction method. (a) In general. As an alternative to the reduction of account balance correction method, a Plan Sponsor may correct a section 401(a)(17) failure for a plan year using the contribution correction method. The Plan Sponsor contributes an additional amount on behalf of each of the other employees (excluding each employee for whom there was a section 401(a)(17) failure) who received an allocation for the year of the failure, and amending the plan to provide for the additional allocation. The amount contributed for an employee is equal to the employee's plan compensation for the year of the failure multiplied by a fraction, the numerator of which is the improperly allocated amount made on behalf of the employee with the largest improperly allocated amount, and the denominator of which is the limit under section 401(a)(17) applicable to the year of the failure. The resulting additional amount for each of the other employees is adjusted for Earnings. (See Example 29.)

(b) Example. The following example illustrates the application of this section .12(2).

Example 29: The facts are the same as in Example 28.

Correction: Employer O corrects the failure using the contribution correction method by (1) amending the plan to increase the contribution percentage for all eligible employees (other than Employee W) for the 2022 plan year and (2) contributing an additional amount (adjusted for Earnings) for those employees for that plan year. To determine the increase in the plan's contribution percentage (and the additional amount contributed on behalf of each eligible employee), the improperly allocated amount ($11,600) is divided by the section 401(a)(17) limit for 2022 ($305,000). Accordingly, the plan is amended to increase the contribution percentage by 3.8 percentage points ($11,600/$305,000) from 8 percent to 11.8 percent. In addition, each eligible employee for the 2022 plan year (other than Employee W) receives an additional contribution of 3.8 percent multiplied by that employee's plan compensation for 2022. This additional contribution is adjusted for Earnings.

(3) Distribution or transfer in a Section 403(b) Plan. (a) In general. In accordance with section 6.11 and 6.16(2) of this revenue procedure, a Plan Sponsor may correct a section 401(a)(17) failure for a plan year by distributing the Excess Allocation to the employee or by contributing the Excess Allocation to a section 403(c) account on behalf of the employee. The Excess Allocation is reported as taxable to the employee.

(b) Example. The following example illustrates the application of this section .12(3).

Example 30: Under Employer P's Section 403(b) plan, Employee F is entitled to a fully vested employer nonelective contribution of 8 percent of compensation. The section 401(a)(17) limit was $290,000 for 2021. Employee F's compensation for 2021

was $300,000. The plan received a contribution to Employee F's account of $24,000, based on $300,000 of compensation ($300,000 x 8 percent). Employer P discovered the Excess Allocation of $800 in 2024.

Correction: Employer P must distribute the section 401(a)(17) Excess Allocation of $800 (plus Earnings) to Employee F or transfer, on Employee F's behalf, the Excess Allocation into a section 403(c) separate account, established outside of the plan. Employer P reports the $800 as taxable to Employee F. If the $800 is transferred into a section 403(c) account, Employee F has basis in the amount.

.13 Correction by amendment. A Plan Sponsor may, under the requirements in section 6.07 of this revenue procedure, amend a plan to conform the terms of the plan to the plan's prior operations. For example:

(1) Hardship distribution failures. (a) In general. The failure of making hardship distributions to employees under a plan that does not provide for hardship distributions may be corrected by plan amendment. The plan is amended retroactively to provide for the hardship distributions that were made available. This paragraph does not apply unless (a) the amendment satisfies the requirements of section 6.07 of this revenue procedure, and (b) the plan as amended would have satisfied the Qualification Requirements of section 401(a) (including the requirements applicable to hardship distributions under section 401(k), if applicable) had the amendment been adopted when hardship distributions were first made available.

(b) Example. The following example illustrates the application of this section .13(1).

Example 31: Employer Q maintains a section 401(k) plan. Although plan provisions in 2023 did not provide for hardship distributions, beginning in 2023 hardship distributions of amounts allowed to be distributed under section 401(k) were made currently and effectively available to all employees (within the meaning of § 1.401(a)(4)-4). The standard used to determine hardship satisfied the deemed hardship distribution standards in § 1.401(k)-1(d). Hardship distributions were made to a number of employees during the 2023 and 2024 plan years, creating an Operational Failure. The failure was discovered in 2025.

Correction: Employer Q corrects the failure by adopting a plan amendment in 2025, effective January 1, 2023, to provide a hardship distribution option that satisfies the rules applicable to hardship distributions in § 1.401(k)-1(d). The amendment provides that the hardship distribution option is available to all employees. Thus, the amendment satisfies section 401(a), and the plan as amended in 2025 would have satisfied section 401(a) (including § 1.401(a)(4)-4 and the requirements applicable to hardship distributions under section 401(k)) if the amendment had been adopted in 2023.

(2) Plan loan failures. The failure of (a) permitting plan loans to employees under a plan that does not provide for plan loans, or (b) permitting a participant to obtain a number of loans that exceeds the number of loans permitted under the terms of the plan, may be corrected by amending the plan retroactively to provide for the plan loans that were made available. This correction may not be used unless (a) the amendment satisfies the requirements of section 6.07 of this revenue procedure, (b) the plan as amended would have satisfied the Qualification Requirements of section 401(a) (and the requirements applicable to plan loans under section 72(p)) had the amendment been adopted when plan loans were first made available, and (c) plan loans (including plan loans in excess of the number permitted under the terms of the plan) were available to either all participants, or solely to one or more participants who were non-highly compensated employees.

(3) Early inclusion of otherwise eligible employee failure. (a) In general. The failure of including an otherwise eligible employee in the plan who either (i) has not completed the plan's minimum age or service requirements, or (ii) has completed the plan's minimum age or service requirements but became a participant in the plan on a date earlier than the applicable plan entry date, may be corrected by amending the plan retroactively to change the eligibility or entry date provisions to provide for the inclusion of the ineligible employee to reflect the plan's actual operations. The amendment may change the eligibility or entry date provisions with respect to only those ineligible employees that were wrongly included, and only to those ineligible employees, provided (i) the amendment satisfies the requirements of section 6.07 of this revenue procedure at the time it is adopted, (ii) the amendment would have satisfied the Qualification Requirements of section 401(a) had the amendment been adopted at the earlier time when it is effective, and (iii) the employees affected by the amendment are predominantly non-highly compensated employees. For a defined benefit plan, a contribution may have to be made to the plan for a correction that is accomplished through a plan amendment if the plan is subject to the requirements of section 436(c) at the time of the amendment, as described in section 6.10(2)(a).

(b) Example. The following example illustrates the application of this section .13(3).

Example 32: Employer R maintains a section 401(k) plan applicable to all employees who have at least six months of service. The plan is a calendar year plan. The plan provides that Employer R will make matching contributions based upon an employee's salary reduction contributions. In 2025, it is discovered that all four employees who were hired by Employer R in 2022 were permitted to make salary reduction contributions to the plan effective with the first weekly paycheck after they were employed. Three of the four employees are non-highly compensated. Employer R matched these employees' salary reduction contributions in accordance with the plan's matching contribution formula. Employer R calculates the ADP and ACP tests for 2022 (taking into account the salary reduction and matching contributions that were made for these employees) and determines that the tests were satisfied.

Correction: Employer R corrects the failure by adopting a plan amendment, effective for employees hired on or after January 1, 2022, to provide that there is no service eligibility requirement under the plan.

.14 Earnings adjustment methods. (1) In general. (a) Under section 6.09 of this revenue procedure, whenever the appropriate correction method for a failure in a defined contribution plan includes a corrective contribution or allocation that increases one or more employees' account balances (now or in the future), the contribution or allocation is adjusted for Earnings and forfeitures. This section .14 provides Earnings adjustment methods (but not forfeiture adjustment methods) that may be used by a Plan Sponsor to adjust a corrective contribution or allocation for Earnings in a defined contribution plan. Consequently, these Earnings adjustment methods may be used to determine the Earnings adjustments for corrective contributions or allocations made under the correction methods in this Appendix. If an Earnings adjustment method in this section .14 is used to adjust a corrective contribution or allocation, that adjustment is treated as satisfying the Earnings adjustment requirement of section 6.09(1) of this revenue procedure. Other Earnings adjustment methods, different from those illustrated in this section .14, may also be appropriate for adjusting corrective contributions or allocations to reflect Earnings.

(b) Under the Earnings adjustment methods of this section .14, a corrective contribution or allocation that increases an employee's account balance is adjusted to reflect an "earnings amount" that is based on the Earnings rate(s) (determined under section .14(3)) for the period of the failure (determined under section .14(2)). The Earnings amount is allocated in accordance with section .14(4).

(c) The rule in section 6.03(2) of this revenue procedure permitting reasonable estimates in certain circumstances applies for purposes of this section .14. For this purpose, a determination of Earnings made in accordance with the rules of administrative convenience set forth in this section .14 is treated as a precise determination of Earnings. Thus, if the probable difference between an approximate determination of Earnings and a determination of Earnings under this section .14 is insignificant and the administrative cost of a precise determination would significantly exceed the probable difference, reasonable estimates may be used in calculating the appropriate Earnings.

(d) This section .14 does not apply to corrective distributions or corrective reductions in account balances. Thus, for example, while this section .14 applies in increasing the account balance of an improperly excluded employee to correct the exclusion of the employee under the reallocation correction method described in section .05(1)(b)(ii), this section .14 does not apply in reducing the account balances of other employees under the reallocation correction method. (See section .05(1)(b)(iii) for rules that apply to the Earnings adjustments for such reductions.) In addition, this section .14 does not apply in determining Earnings adjustments under the one-to-one correction method described in section .03(2).

(2) Period of the failure. (a) General rule. For purposes of this section .14, the "period of the failure" is the period from the date that the failure began through the date of correction. For example, in the case of an improper forfeiture of an employee's account balance, the beginning of the period of the failure is the date as of which the account balance was improperly reduced.

(b) Rules for beginning date for exclusion of eligible employees from the plan. (i) General rule. In the case of an exclusion of an eligible employee from a plan contribution, the beginning of the period of the failure is the date on which contributions of the same type (for example, elective deferrals, matching contributions, or discretionary nonelective employer contributions) were made for other employees for the year of the failure. In the case of an exclusion of an eligible employee from an allocation of a forfeiture, the beginning of the period of the failure is the date on which forfeitures were allocated to other employees for the year of the failure.

(ii) Exclusion from a section 401(k) or (m) plan. For administrative convenience, for purposes of calculating the Earnings rate for corrective contributions for a plan year (or the portion of the plan year) during which an employee was improperly excluded from making periodic elective deferrals or after-tax employee contributions, or from receiving periodic matching contributions, the Plan Sponsor may treat the date on which the contributions would have been made as the midpoint of the plan year (or the midpoint of the portion of the plan year) for which the failure occurred. Alternatively, in this case, the Plan Sponsor may treat the date on which the contributions would have been made as the first date of the plan year (or the portion of the plan year) during which an employee was excluded, provided that the Earnings rate used is one half of the Earnings rate applicable under section .14(3) for the plan year (or the portion of the plan year) for which the failure occurred.

(3) Earnings rate. (a) In general. For purposes of this section .14, the Earnings rate generally is based on the investment results that would have applied to the corrective contribution or allocation if the failure had not occurred.

(b) Multiple investment funds. If a plan permits employees to direct the investment of account balances into more than one investment fund, the Earnings rate is based on the rate applicable to the employee's investment choices for the period of the failure. For administrative convenience, if most of the employees for whom the corrective contribution or allocation is made are non-highly compensated employees, the rate of return of the fund with the highest rate of return under the plan for the period of the failure may be used to determine the Earnings rate for all corrective contributions or allocations. If the employee had not made any applicable investment choices, the Earnings rate may be based on the rate of return under the plan as a whole (that is, the average of the rates earned by all of the funds in the valuation periods during the period of the failure weighted by the portion of the plan assets invested in the various funds during the period of the failure).

(c) Other simplifying assumptions. For administrative convenience, the Earnings rate applicable to the corrective contribution or allocation for a valuation period with respect to any investment fund may be assumed to be the actual Earnings rate for the plan's investments in that fund during that valuation period. For example, the Earnings rate may be determined without regard to any special investment provisions that vary according to the size of the fund. Further, the Earnings rate applicable to the corrective contribution or allocation for a portion of a valuation period may be a pro rata portion of the Earnings rate for the entire valuation period, unless the application of this rule would result in either a significant understatement or overstatement of the actual Earnings during that portion of the valuation period.

(4) Allocation methods. (a) In general. For purposes of this section .14, the Earnings amount generally may be allocated in accordance with any of the methods set forth in this section .14(4). The methods under section .14(4)(c), (d), and (e) are intended to be particularly helpful if corrective contributions are made at dates between the plan's valuation dates.

(b) Plan allocation method. Under the plan allocation method, the Earnings amount is allocated to account balances under the plan in accordance with the plan's method for allocating Earnings as if the failure had not occurred. (See Example 33.)

(c) Specific employee allocation method. Under the specific employee allocation method, the entire Earnings amount is allocated solely to the account balance of the employee on whose behalf the corrective contribution or allocation is made (regardless of whether the plan's allocation method would have allocated the Earnings solely to that employee). In determining the allocation of plan Earnings for the valuation period during which the corrective contribution or allocation is made, the corrective contribution or allocation (including the Earnings amount) is treated in the same manner as any other contribution under the plan on behalf of the employee during that valuation period. Alternatively, if the plan's allocation method does not allocate plan Earnings for a valuation period to a contribution made during that valuation period, plan Earnings for the valuation period during which the corrective contribution or allocation is made may be allocated as if that employee's account balance had been increased as of the last day of the prior valuation period by the corrective contribution or allocation, including only that portion of the Earnings amount attributable to Earnings through the last day of the prior valuation period. The employee's account balance is then further increased as of the last day of the valuation period during which the corrective contribution or allocation is made by that portion of the Earnings amount attributable to Earnings after the last day of the prior valuation period. (See Example 34.)

(d) Bifurcated allocation method. Under the bifurcated allocation method, the entire Earnings amount for the valuation periods ending before the date the corrective contribution or allocation is made is allocated solely to the account balance of the employee on whose behalf the corrective contribution or allocation is made. The Earnings amount for the valuation period during which the corrective contribution or allocation is made is allocated in accordance with the plan's method for allocating other

Earnings for that valuation period in accordance with section .14(4)(b). (See Example 35.)

(e) Current period allocation method. Under the current period allocation method, the portion of the Earnings amount attributable to the valuation period during which the period of the failure begins ("first partial valuation period") is allocated in the same manner as Earnings for the valuation period during which the corrective contribution or allocation is made in accordance with section .14(4)(b). The Earnings for the subsequent full valuation periods ending before the beginning of the valuation period during which the corrective contribution or allocation is made are allocated solely to the employee for whom the required contribution should have been made. The Earnings amount for the valuation period during which the corrective contribution or allocation is made ("second partial valuation period") is allocated in accordance with the plan's method for allocating other Earnings for that valuation period in accordance with section .14(4)(b). (See Example 36.)

(5) Examples. The following examples illustrate the application of this section .14.

Example 33: Employer S maintains a profit-sharing plan that provides for only nonelective contributions. The plan has a single investment fund. Under the plan, assets are valued annually (the last day of the plan year) and Earnings for the year are allocated in proportion to account balances as of the last day of the prior year, after reduction for distributions during the current year but without regard to contributions received during the current year (the "prior year account balance"). Plan contributions for 2021 were made on March 31, 2022. On April 20, 2024, Employer S determines that an operational failure occurred for 2021 because Employee X was improperly excluded from the plan. Employer S decides to correct the failure by using the section .05(1)(a) correction method for the exclusion of an eligible employee from nonelective contributions in a profit-sharing plan. Under this method, Employer S determines that this failure is corrected by making a contribution on behalf of Employee X of $5,000 (adjusted for Earnings). The Earnings rate under the plan for 2022 was +20 percent. The Earnings rate under the plan for 2023 was +10 percent. On May 15, 2024, when Employer S determines that a contribution to correct for the failure will be made on June 1, 2024, a reasonable estimate of the Earnings rate under the plan from January 1, 2024, to June 1, 2024, is +12 percent.

Earnings adjustment on the corrective contribution: The $5,000 corrective contribution on behalf of Employee X is adjusted to reflect an earnings amount based on the Earnings rates for the period of the failure (March 31, 2022, through June 1, 2024) and the earnings amount is allocated using the plan allocation method. Employer S determines that a pro rata simplifying assumption may be used to determine the Earnings rate for the period from March 31, 2022, through December 31, 2022, because that rate does not significantly understate or overstate the actual investment return for that period. Accordingly, Employer S determines that the Earnings rate for that period is 15 percent (9/12ths of the plan's 20-percent Earnings

rate for the year). Thus, applicable Earnings rates under the plan during the period of the failure are:

Time Periods	Earnings Rate
3/31/22 - 12/31/22 (First Partial Valuation Period)	+15%
1/1/23 - 12/31/23	+10%
1/1/24 - 6/1/24 (Second Partial Valuation Period)	+12%

If the $5,000 corrective contribution had been contributed for Employee X on March 31, 2022, (1) Earnings for 2022 would have been increased by the amount of the Earnings on the additional $5,000 contribution from March 31, 2022, through December 31, 2022, and would have been allocated as 2022 Earnings in proportion to the prior year (December 31, 2021) account balances, (2) Employee X's account balance as of December 31, 2022, would have been increased by the additional $5,000 contribution, (3) Earnings for 2023 would have been increased by the 2023 Earnings on the additional $5,000 contribution (including 2022 Earnings thereon) allocated in proportion to the prior year (December 31, 2022) account balances along with other 2023 Earnings, and (4) Earnings for 2024 would have been increased by the Earnings on the additional $5,000 (including 2022 and 2023 Earnings thereon) from January 1 through June 1, 2024, and would be allocated in proportion to the prior year (December 31, 2023) account balances along with other 2024 Earnings. Accordingly, the $5,000 corrective contribution is adjusted to reflect an Earnings amount of $2,084 ($5,000 x [(1.15 x 1.10 x 1.12)-1]) and the earnings amount is allocated to the account balances under the plan allocation method as follows:

(a) Each account balance that shared in the allocation of Earnings for 2022 is increased, as of December 31, 2022, by its appropriate share of the Earnings amount for 2022, $750 ($5,000 x 0.15).

(b) Employee X's account balance is increased, as of December 31, 2022, by $5,000.

(c) The resulting December 31, 2022, account balances will share in the 2023 Earnings, including the $575 for 2023 Earnings included in the corrective contribution ($5,750 x 0.10), to determine the account balances as of December 31, 2023. However, each account balance other than Employee X's account balance has already shared in the 2023 Earnings, excluding the $575. Accordingly, Employee X's account balance as of December 31, 2023, will include $500 of the 2023 portion of the earnings amount based on the $5,000 corrective contribution allocated to Employee X's account balance as of December 31, 2022 ($5,000 x 0.10). Then each account balance that originally shared in the allocation of Earnings for 2023 (that is, excluding the $5,500 additions to Employee X's account balance) is increased by its appropriate share of the remaining 2023 portion of the earnings amount, $75.

(d) The resulting December 31, 2023, account balances (including the $5,500 additions to Employee X's account balance) will share in the 2024 portion of the

earnings amount based on the estimated January 1, 2024, through June 1, 2024, Earnings included in the corrective contribution equal to $759 ($6,325 x 0.12). (See Table 1.)

TABLE 1

CALCULATION AND ALLOCATION OF THE
CORRECTIVE AMOUNT ADJUSTED FOR EARNINGS

	Earnings Rate	Amount	Allocated to
Corrective Contribution		$5,000	Employee X
First Partial Valuation Period Earnings	15%	$750[1]	All 12/31/2021 Account Balances[4]
2023 Earnings	10%	$575[2]	Employee X ($500)/ All 12/31/2022 Account Balances ($75)[4]
Second Partial Valuation Period Earnings	12%	$759[3]	All 12/31/2023 Account Balances (including Employee X's $5,500)[4]
Total Amount Contributed		$7,084	

[1] $5,000 x 15%
[2] ($5,000 + $750) x 10%
[3] ($5,000 + $750 + $575) x 12%
[4] After reduction for distributions during the year for which Earnings are being determined but without regard to contributions received during the year for which Earnings are being determined.

Example 34: The facts are the same as in Example 33.

Earnings adjustment on the corrective contribution: The earnings amount on the corrective contribution is the same as in Example 33, but the earnings amount is allocated using the specific employee allocation method. Thus, the entire earnings amount for all periods through June 1, 2024 (that is, $750 for March 31, 2022, through December 31, 2022; $575 for 2023; and $759 for January 1, 2024, through June 1, 2024) is allocated to Employee X. Accordingly, Employer S makes a contribution on June 1, 2024, to the plan of $7,084 ($5,000 x 1.15 x 1.10 x 1.12). Employee X's account balance as of December 31, 2024, is increased by $7,084. Alternatively, Employee X's account balance as of December 31, 2023, is increased by $6,325 ($5,000 x 1.15 x 1.10), which shares in the allocation of Earnings for 2024, and Employee X's account balance as of December 31, 2024, is increased by the remaining $759. (See Table 2.)

TABLE 2

CALCULATION AND ALLOCATION OF THE
CORRECTIVE AMOUNT ADJUSTED FOR EARNINGS

	Earnings Rate	Amount	Allocated to:
Corrective Contribution		$5,000	Employee X
First Partial Valuation Period Earnings	15%	$750[1]	Employee X
2023 Earnings	10%	$575[2]	Employee X
Second Partial Valuation Period Earnings	12%	$759[3]	Employee X
Total Amount Contributed		$7,084	

[1] $5,000 x 15%
[2] ($5,000 +$750) x 10%
[3] ($5,000 +$750 + $575) x 12%

Example 35: The facts are the same as in Example 33.

Earnings adjustment on the corrective contribution: The earnings amount on the corrective contribution is the same as in Example 33, but the earnings amount is allocated using the bifurcated allocation method. Thus, the Earnings for the first partial valuation period (March 31, 2022, through December 31, 2022) and the Earnings for 2023 are allocated to Employee X. Accordingly, Employer S makes a contribution on June 1, 2024, to the plan of $7,084 ($5,000 x 1.15 x 1.10 x 1.12). Employee X's account balance as of December 31, 2023, is increased by $6,325 ($5,000 x 1.15 x 1.10); and the December 31, 2023, account balances of employees (including Employee X's increased account balance) will share in estimated January 1, 2024, through June 1, 2024, Earnings on the corrective contribution equal to $759 ($6,325 x 0.12). (See Table 3.)

TABLE 3

CALCULATION AND ALLOCATION OF THE
CORRECTIVE AMOUNT ADJUSTED FOR EARNINGS

	Earnings Rate	Amount	Allocated to:
Corrective Contribution		$5,000	Employee X
First Partial Valuation Period Earnings	15%	$750[1]	Employee X
2023 Earnings	10%	$575[2]	Employee X
Second Partial Valuation Period Earnings	12%	$759[3]	12/31/23 Account Balances (including Employee X's $6,325)[4]
Total Amount Contributed		$7,084	

[1] $5,000 x 15%
[2] ($5,000 + $750) x 10%
[3] ($5,000 + $750 + $575) x 12%
[4] After reduction for distributions during the 2024 year but without regard to contributions received during the 2024 year.

Example 36: The facts are the same as in Example 33.

Earnings adjustment on the corrective contribution: The earnings amount on the corrective contribution is the same as in Example 33, but the earnings amount is allocated using the current period allocation method. Thus, the Earnings for the first partial valuation period (March 31, 2022, through December 31, 2022) are allocated as 2024 Earnings. Accordingly, Employer S makes a contribution on June 1, 2024, to the plan of $7,084 ($5,000 x 1.15 x 1.10 x 1.12). Employee X's account balance as of December 31, 2023, is increased by the sum of $5,500 ($5,000 x 1.10) and the remaining 2023 Earnings on the corrective contribution equal to $75 ($5,000 x 0.15 x 0.10). Further, both (1) the estimated March 31, 2022, through December 31, 2022, Earnings on the corrective contribution equal to $750 ($5,000 x 0.15) and (2) the estimated January 1, 2024, through June 1, 2024, Earnings on the corrective contribution equal to $759 ($6,325 x 0.12) are treated in the same manner as 2024 Earnings by allocating these amounts to the December 31, 2024, account balances of employees in proportion to account balances as of December 31, 2023 (including Employee X's increased account balance). (See Table 4.) Thus, Employee X is allocated the Earnings for the full valuation period during the period of the failure.

TABLE 4

CALCULATION AND ALLOCATION OF THE
CORRECTIVE AMOUNT ADJUSTED FOR EARNINGS

	Earnings Rate	Amount	Allocated to:
Corrective Contribution		$5,000	Employee X
First Partial Valuation Period Earnings	15%	$750[1]	12/31/23 Account Balances (including Employee X's $5,575)[4]
2023 Earnings	10%	$575[2]	Employee X
Second Partial Valuation Period Earnings	12%	$759[3]	12/31/23 Account Balances (including Employee X's $5,575)[4]
Total Amount Contributed		$7,084	

[1] $5,000 x 15%
[2] ($5,000 +$750) x 10%
[3] ($5,000 +$750 +$575) x 12%
[4] After reduction for distributions during the year for which Earnings are being determined but without regard to contributions received during the year for which Earnings are being determined.