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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 10061]

RIN 1545-BR08

Automatic Enrollment Requirements Under Section 414A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document sets forth final regulations that provide guidance with respect to the automatic enrollment requirements that apply to certain retirement plans. The regulations reflect statutory changes made by the SECURE 2.0 Act of 2022 requiring that certain cash or deferred arrangements and salary reduction agreements be eligible automatic contribution arrangements that satisfy additional specified requirements. The regulations affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans that include cash or deferred arrangements or annuity contracts purchased under salary reduction agreements and other retirement plans that include eligible automatic contribution arrangements.

DATES: *Effective date*: These regulations are effective on **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

Applicability date: These regulations generally apply to plan years that begin after December 31, 2027. However, see §1.414A-1(f)(2) and the Applicability Date section later in this preamble for additional details regarding applicability dates.

FOR FURTHER INFORMATION CONTACT: Jamie L. Dvoretzky at (202) 317-4102 (not a toll-free number) or Kara M. Soderstrom at (202) 317-6799 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Authority

These regulations are promulgated under section 7805(a) of the Internal Revenue Code (Code), which provides that "the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue." In addition, section 341 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), instructs the Secretaries of the Treasury and Labor (or their delegates) to adopt regulations related to the consolidation of notices required for defined contribution plans under the Code and the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829, as amended (ERISA).

Background

This document sets forth a regulation under section 414A of the Code that is added to the Income Tax Regulations (26 CFR part 1). Section 414A, which was added to the Code by section 101 of the SECURE 2.0 Act, provides that certain retirement plans must automatically enroll employees.

In addition to adding a new regulation under section 414A of the Code, this document sets forth amendments to the Income Tax Regulations under section 414(w). These amendments to §1.414(w)-1 reflect the application of section 414A and the exception to the notice requirements for unenrolled participants set forth in section 414(bb), as added to the Code by section 320 of the SECURE 2.0 Act. The amendments to §1.414(w)-1 also address section 402A(e)(5)(C) of the Code, which was added to the Code by section 127 of the SECURE 2.0 Act, as well as section 341 of the

SECURE 2.0 Act. Section 402A(e)(5)(C) of the Code and section 341 of the SECURE 2.0 Act permit the consolidation of certain notices required under the Code and ERISA.

I. *In General*

A. *Cash or deferred arrangements and salary reduction agreements*

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA)[1] that is a qualified CODA. Under section 401(k)(2), a CODA is a qualified CODA only if it satisfies certain requirements. These requirements include that elective contributions under the CODA are subject to the section 401(k)(2)(B) restriction on when distributions may be made, and that the arrangement satisfies the actual deferral percentage (ADP) test in section 401(k)(3)(A)(ii).[2]

Section 403(b)(1) of the Code provides for an exclusion from gross income of certain contributions that are used to purchase an annuity contract, including contributions that are made under a salary reduction agreement. Although there is no direct definition of salary reduction agreement in section 403(b), several provisions of the Code set forth rules that apply to the use of a salary reduction agreement to purchase an annuity contract described in section 403(b). For example, section 403(b)(11) provides distribution restrictions that apply to “contributions made pursuant to a salary reduction agreement.”

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[1] Under §1.401(k)-1(a)(2)(i), a CODA generally is an arrangement providing for an election by an employee to have the employer provide either contributions to a plan described in section 401(a) or payments directly in cash.

[2] The ADP test in section 401(k)(3)(A)(ii) compares the average deferral percentage for highly compensated employees with the average deferral percentage for non-highly compensated employees. As an alternative to satisfying the annual ADP test, a plan may satisfy the provisions of section 401(k)(11), (12), (13), or (16).

B. *Automatic enrollment*

Section 902 of the Pension Protection Act of 2006, Public Law 109-280, 120 Stat. 780 (PPA '06), added sections 401(k)(13) and 414(w) to the Code to facilitate automatic contribution arrangements (also referred to as automatic enrollment) in qualified CODAs under section 401(k). Section 414(w) also applies to automatic contribution arrangements under section 403(b) plans; section 457(b) plans maintained by governmental employers described in section 457(e)(1)(A); simplified employee pensions, the terms of which provide for a salary reduction arrangement described in section 408(k)(6); and SIMPLE individual retirement accounts described in section 408(p). An automatic contribution arrangement is a CODA or other similar arrangement that includes a default election under which an eligible employee is treated as having elected to have a specified contribution made on the employee's behalf under the plan unless the employee makes an affirmative election to have contributions made in a different amount on the employee's behalf (including no contributions).[3]

1. *Qualified automatic contribution arrangements under section 401(k)(13)*

Section 401(k)(13) provides a design-based safe harbor for a CODA that provides for automatic enrollment at a specified level and meets certain employer contribution, notice, and other requirements. A CODA that satisfies these requirements, referred to as a qualified automatic contribution arrangement (QACA), is treated as satisfying the ADP test.

Section 401(k)(13)(C)(ii) provides that the default election in a QACA ceases to apply to any eligible employee if the employee makes an affirmative election to not have any elective contributions made on the employee's behalf or to have elective contributions made in a specified amount or percentage of compensation on the

[3] Section 902 of PPA '06 also added a new section 514(e) to ERISA, which broadly provides that, notwithstanding any other provision of section 514, title I of ERISA supersedes State laws that would directly or indirectly prohibit or restrict the inclusion of an automatic contribution arrangement in a plan.

employee's behalf. Reflecting that provision, §1.401(k)-3(j)(1)(ii) provides that the default election ceases to apply with respect to an eligible employee for periods of time with respect to which the employee has an affirmative election that is currently in effect to have elective contributions made in a different amount on the employee's behalf (in a specified amount or percentage of compensation) or not have any elective contributions made on the employee's behalf.

Section 401(k)(13)(C)(iii) sets forth a series of minimum default contribution percentages (based on the plan year that the arrangement first applies to an employee) that an automatic contribution arrangement must satisfy to be a QACA and requires that the default contribution percentages apply uniformly. Under §1.401(k)-3(j)(2)(iii), a plan does not fail to satisfy this uniform percentage requirement merely because: (1) the percentage varies based on the number of years or portions of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA; (2) the rate of elective contributions under a cash or deferred election that is in effect immediately prior to the effective date of the default percentage under the QACA is not reduced; (3) the rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions), and 415; or (4) the default election is not applied during the period an employee is not permitted to make elective contributions pursuant to section 414(u)(12)(B)(ii).

Section 401(k)(13)(C)(iv) provides an exception from the application of the default election under a QACA for eligible employees who were eligible to participate in the CODA (or a predecessor CODA) immediately before the effective date of the QACA and who have an election in effect on that effective date. Reflecting that provision, §1.401(k)-3(j)(1)(iii) provides that an automatic contribution arrangement does not fail to be a QACA merely because the default election is not applied to an employee who was eligible under the CODA (or a predecessor arrangement) immediately prior to the

effective date of the QACA and on that effective date had an affirmative election in effect (that remains in effect) to have elective contributions made on the employee's behalf (in a specified amount or percentage of compensation) or not have elective contributions made on the employee's behalf.

Section 1.401(k)-3(j)(2)(iv) provides that minimum percentages in a QACA are determined without regard to whether an employee has continued to be eligible to make contributions under the plan. However, §1.401(k)-3(j)(2)(iv) provides that a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under a QACA as if the employee also had not had such contributions for any prior plan year.

2. *Eligible automatic contribution arrangements under section 414(w)*

Section 414(w) facilitates automatic enrollment by providing relief from the distribution restrictions under section 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1)(A) in the case of an eligible automatic contribution arrangement (EACA). Under this relief, a plan may permit an employee who was automatically enrolled under an EACA to take a distribution within a limited period after the initial default elective contribution with respect to the employee was made.

Under section 414(w)(1) and (2), an applicable employer plan[4] that contains an EACA is permitted to allow employees to elect to receive a distribution, called a permissible withdrawal, equal to the amount of default elective contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the EACA applies to the employee and ending with the effective date of

[4] Section 414(w)(5) defines an applicable employer plan for purposes of section 414(w) as a trust described in section 401(a) that is exempt from tax under section 501(a), a plan described in section 403(b), a section 457(b) plan that is maintained by a governmental employer described in section 457(e)(1)(A), a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), or a SIMPLE individual retirement account described in section 408(p).

the election. The election must be made within 90 days after the date of the first default elective contribution with respect to the employee under the arrangement.[5]

Section 414(w)(3) defines an EACA as an arrangement under which: (1) a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; (2) the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and (3) participants are provided a notice that satisfies the requirements of section 414(w)(4).

Section 414(w)(4) provides that the administrator of a plan that includes an EACA must, within a reasonable period before each plan year, provide each employee to whom the arrangement applies for the plan year written notice of the employee's rights and obligations under the arrangement that is sufficiently accurate and comprehensive to apprise the employee of the employee's rights and obligations. Section 414(w)(4)(A)(ii) requires that the notice be written in a manner calculated to be understood by the average employee to whom the arrangement applies.
Section 414(w)(4)(B) provides that the notice must explain: (1) the employee's rights under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have contributions made at a different percentage), and (2) how contributions made under the arrangement will be invested in the absence of any investment decision by the employee. In addition, the employee must be given a reasonable period after receipt of the notice and before the first elective contribution is made to make an election described in the notice.

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[5] Section 414(w)(1)(A) and (B) provides that the amount of the distribution is includible in the gross income of the employee for the taxable year in which the distribution is made but is not subject to the additional income tax on early distributions under section 72(t).

On February 24, 2009, a final regulation under section 414(w) was published in the **Federal Register** (TD 9447, 74 FR 8200). Section 1.414(w)-1(b)(2) includes rules that address the uniform percentage requirement of section 414(w)(3)(B), including rules that incorporate the exceptions to the uniform percentage requirement for a default elective contribution under a QACA set forth in §1.401(k)-3(j)(2)(iii).

II. *New Automatic Enrollment Requirements and Other Changes Regarding EACAs Under the SECURE 2.0 Act*

A. *Section 101 of the SECURE 2.0 Act*

Section 101 of the SECURE 2.0 Act added section 414A to the Code. Under section 101(c) of the SECURE 2.0 Act, the amendments made by section 101 apply to plan years beginning after December 31, 2024.

Section 414A(a)(1) of the Code generally provides that a CODA will not be treated as a qualified CODA described in section 401(k) unless the CODA satisfies the automatic enrollment requirements of section 414A(b). Similarly, section 414A(a)(2) generally provides that an annuity contract otherwise described in section 403(b) that is purchased under a salary reduction agreement will not be treated as described in section 403(b) unless the salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b).

Under section 414A(b)(1), a CODA or salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b) if the CODA or salary reduction agreement is an EACA (as defined in section 414(w)(3)) that satisfies the additional requirements of section 414A(b)(2) through (4). Section 414A(b)(2) requires the EACA to allow employees to make permissible withdrawals (as defined in section 414(w)(2)). Under section 414A(b)(3)(A)(i), the minimum initial default contribution percentage under the EACA must be at least 3 percent (but not more than 10 percent), and under section 414A(b)(3)(A)(ii), the default contribution percentage must increase by one percentage point for each plan year beginning after each completed year of participation

under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent).[6] Section 414A(b)(4) provides that amounts contributed pursuant to the EACA for which no investment is elected by a participant must be invested in accordance with the requirements of 29 CFR 2550.404c-5[7] (or any successor regulations).

Section 414A(c) sets forth certain exceptions to the requirements of section 414A(a). In general, section 414A(a) does not apply to any: (1) SIMPLE 401(k) plan described in section 401(k)(11); (2) qualified CODA established before December 29, 2022 (the date of enactment of the SECURE 2.0 Act); (3) section 403(b) plan established before December 29, 2022; (4) governmental plan described in section 414(d); (5) church plan described in section 414(e); (6) plan maintained by a new business as described in section 414A(c)(4)(A); or (7) plan maintained by a small business as described in section 414A(c)(4)(B).

Certain of the exceptions in section 414A(c) include special rules for plans maintained by more than one employer. Section 414A(c)(2)(B) provides rules that apply in the case of an employer that, after December 29, 2022, adopts a plan maintained by more than one employer. Under that provision, the exception to section 414A(a) for a qualified CODA or 403(b) plan established before December 29, 2022, will not apply to that adopting employer, and the rules of section 414A(a) will apply with respect to that employer as if the plan were a single plan. In addition, under section 414A(c)(4)(C), the new business and small business exceptions to section 414A(a) are applied separately to each participating employer in a plan maintained by more than one employer, and all participating employers to which section 414A(a) applies (after the application of the

[6] Section 414A(b)(3)(B) provides a reduced maximum default contribution percentage of 10 percent for certain plans with respect to certain plan years.
[7] The requirements of 29 CFR 2550.404c-5 relate to investments in qualified default investment alternatives (QDIAs).

new business exception in section 414A(c)(4)(A) and the small business exception in section 414A(c)(4)(B)) are treated as maintaining a separate plan for purposes of section 414A.

On December 20, 2023, the Department of the Treasury (Treasury Department) and the IRS released Notice 2024-2, 2024-2 IRB 316, which provides guidance on certain provisions of the SECURE 2.0 Act including initial guidance in the form of questions and answers regarding certain issues related to section 414A of the Code.

B. *SECURE 2.0 Act changes regarding EACA notices*

1. *Notice requirements for unenrolled participants*

Section 320(b) of the SECURE 2.0 Act added section 414(bb) to the Code, effective for plan years beginning after December 31, 2022. Section 414(bb)(1) provides that, with respect to any defined contribution plan, no disclosure, notice, or other plan document is required to be furnished under the Code to any unenrolled participant if the unenrolled participant is furnished: (1) an annual reminder notice (as defined in section 414(bb)(3)) of the participant's eligibility to participate in the plan and any applicable election deadlines under the plan, and (2) any document requested by the participant that the participant would be entitled to receive notwithstanding section 414(bb).

Under section 414(bb)(2), an unenrolled participant is an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished a summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor. The last sentence of section 414(bb)(2) of

the Code provides that any eligibility to participate in the plan following any period for which the employee was not eligible to participate is to be treated as initial eligibility.

Section 414(bb)(3) provides that the annual reminder notice required under section 414(bb)(1) is the notice described in section 111(c) of ERISA (as added by section 320(a) of the SECURE 2.0 Act).

2. *Combining EACA notices with other notices*

Section 127 of the SECURE 2.0 Act provides for the creation of pension-linked emergency savings accounts (PLESAs) effective for plan years beginning after December 31, 2023. Among other changes, section 127 of the SECURE 2.0 Act redesignates section 402A(e) of the Code as section 402A(f) and adds a new section 402A(e) regarding PLESAs.[8] Section 402A(e)(5)(A) requires the plan administrator of a plan with a PLESA feature to furnish initial and annual notices to participants describing certain information regarding the PLESA that meet the requirements of section 402A(e)(5)(B). Section 402A(e)(5)(C) permits the initial and annual notices required under section 402A(e)(5)(A) to be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if the other notice is provided to the participant at the time required for that notice.

The Department of Labor has provided frequently asked questions regarding PLESAs, including with respect to the permitted consolidation of notices under section 801(d)(3)(C) of ERISA (which is a parallel provision to section 402A(e)(5)(C) of the Code). *See* Q&A-18 of "FAQs: Pension-Linked Emergency Savings Accounts,"

[8] On January 12, 2024, the Treasury Department and the IRS released Notice 2024-22, 2024-6 IRB 662, which provides initial guidance regarding anti-abuse rules under section 402A(e)(12) of the Code, as added by section 127 of the SECURE 2.0 Act, and also addresses whether Rev. Rul. 74-55, 1974-1 CB 89, and Rev. Rul. 74-56, 1974-1 CB 90, are applicable to PLESAs.

available at *www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/pension-linked-emergency-savings-accounts*.

Section 341 of the SECURE 2.0 Act permits a plan (as defined in section 3 of ERISA) to consolidate two or more of the notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code into a single notice, provided that the combined notice satisfies certain requirements. Section 341 of the SECURE 2.0 Act does not prevent the consolidation of any other notices required under ERISA or the Code to the extent otherwise permitted by the Secretary of Labor or the Secretary of the Treasury (or their delegates), as applicable.

On October 24, 2007, the Department of Labor published in the **Federal Register** (72 FR 60452) a final regulation, 29 CFR 2550.404c-5, providing relief from certain fiduciary responsibilities under ERISA for investments made on behalf of participants or beneficiaries who fail to direct the investment of assets in their individual accounts. The preamble to that final regulation indicates that the Department of Labor anticipates that the notice requirements of sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code could be satisfied in a single disclosure document. *See* 72 FR 60455 (regarding the notice requirements under section 404(c)(5)(B) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code) and 72 FR 60466 (regarding the notice requirements under sections 404(c)(5)(B) and 514(e)(3) of ERISA).

To aid plan sponsors for the 2008 plan year (the first plan year that a plan could have included a QACA or EACA), the IRS coordinated with the Department of Labor to post a sample “Automatic Enrollment Notice,” available at *www.irs.gov/pub/irs-tege/sample_notice.pdf*. This sample notice is intended to satisfy the notice

requirements of sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code.

On April 29, 2008, the Department of Labor issued Field Assistance Bulletin 2008-03. Q&A-10 of Field Assistance Bulletin 2008-03 explains that the notice required under section 401(k)(12)(D) also may be combined with the notice required under section 404(c)(5)(B) of ERISA.

Q&A-18 of "FAQs: Pension-Linked Emergency Savings Accounts" explains that, with respect to section 341 of the SECURE 2.0 Act, the Department of Labor retains its position regarding the consolidation of notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code. Q&A-18 also explains that, under section 801(d)(3)(C) of ERISA, the initial and annual notices that must be furnished to PLESA participants may be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if such other notice is provided to the participant at the time required for such notice.

III. *Proposed Regulations*

On January 14, 2025, a notice of proposed rulemaking (REG-100669-24) containing a proposed regulation under section 414A and proposed amendments to the regulations under section 414(w) that would reflect section 101 of the SECURE 2.0 Act, and relevant provisions of sections 127, 320, and 341 of the SECURE 2.0 Act, was published in the **Federal Register** (90 FR 3092). Comments received in response to Notice 2024-2 were considered in the preparation of the proposed regulations. Eighteen comments were received in response to the notice of proposed rulemaking, and a public hearing was held on April 8, 2025.

After consideration of the comments received in response to the notice of proposed rulemaking and testimony at the public hearing, the proposed regulations are

adopted by this Treasury decision with certain changes described in the Summary of Comments and Explanation of Revisions section of this preamble.

Summary of Comments and Explanation of Revisions

This Summary of Comments and Explanation of Revisions addresses the comments that the Treasury Department and the IRS received in response to the proposed regulations and describes the revisions included in the final regulations. Unless otherwise indicated in this Summary of Comments and Explanation of Revisions, provisions of the proposed regulations for which no comments were received (or for which the only comments received were in support of those provisions) are adopted without substantive change. Several comments were unrelated to tax law or otherwise outside the scope of the proposed regulations. Some comments also expressed support or disapproval for the new section 414A, rather than the regulations, and were therefore also outside the scope of the proposed regulations. Additionally, comments that merely summarize the proposed regulations, recommend statutory revisions to section 414A, or other statutes, or address issues that are outside the scope of this rulemaking (including issues addressed in other guidance, proposed changes to such guidance, and enforcement) are beyond the scope of these regulations. For example, the application of the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2021-30, 2021-31 IRB 172, is beyond the scope of these regulations. The final regulations include non-substantive modifications, including non-substantive changes in response to comments and modifications that promote consistency across rules and examples and improve the overall clarity of the guidance.

Such non-substantive modifications are not addressed in this Summary of Comments and Explanation of Revisions.

I. *Section 1.414A-1*

A. *Employees required to be covered under the eligible automatic contribution arrangement*

The proposed regulation would clarify that a CODA or salary reduction agreement under a plan satisfies the automatic enrollment requirements of section 414A only if the plan provides for an EACA that covers all employees in the plan who are eligible to elect to have contributions made on their behalf under the CODA or pursuant to the salary reduction agreement. One commenter agreed with the language of the proposed regulation, but several other commenters requested that the final regulations provide that certain categories of employees need not be covered by an EACA for section 414A(b) to be satisfied. In particular, commenters requested that an EACA in a plan need not cover (1) employees who are covered by a collective bargaining agreement or (2) employees who were eligible to participate in a CODA or salary reduction agreement included in the plan before the CODA or salary reduction agreement became subject to the automatic enrollment requirements of section 414A(b). Although section 414A(c) provides several exceptions to the requirements of section 414A(a) for certain types of plans, no provision in section 414A (or in section 101(c) of the SECURE 2.0 Act) excludes any category of employee from the automatic enrollment requirements of section 414A(b) of the Code if the plan is subject to section 414A(a). Accordingly, §1.414A-1(c)(1)(ii) retains the rule from the proposed regulation and clarifies that each employee who is eligible to elect to have contributions made on the employee's behalf under a CODA or pursuant to a salary reduction agreement must be covered by the EACA, which includes an employee who was eligible to participate in the CODA or salary reduction agreement before the CODA or salary reduction agreement became subject to the automatic enrollment

requirements of section 414A(b).

B. *Timing rules for applying the default election*

To reflect the minimum contribution percentage requirements of section 414A(b)(3), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if the default election made on behalf of an employee under the EACA is equal to a uniform percentage of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan. A commenter requested confirmation that, after an EACA notice is distributed, a plan may begin to apply the default election after a reasonable election period. The commenter also requested flexibility on the timing for automatically enrolling long-term, part-time employees in the EACA. Another commenter noted the importance of giving employees prior notice of their right to opt out of any default contributions and automatic increases.

Section 1.414A-1(c)(1)(i), like the proposed regulation, reflects the provisions of section 414A(b)(1) by requiring that the automatic contribution arrangement under section 414A be an EACA. An EACA is subject to the requirements of §1.414(w)-1(e)(2), which requires that the default election begin to apply no earlier than a reasonable period of time after receipt of the notice describing the EACA. The changes made by the SECURE 2.0 Act do not affect this existing rule. Thus, an EACA that is subject to section 414A must also meet this timing requirement. Additionally, §1.414(w)-1(b)(3)(iii) provides timing rules for giving the EACA notice, which are not affected by the SECURE 2.0 Act, and which also would apply to an EACA that is subject to section 414A. Under these timing rules, the notice generally must be provided within a reasonable period before the beginning of each plan year (generally, at least 30 days (and no more than 90 days) before the beginning of each plan year). However, in the plan year an employee is first eligible to make a cash or deferred election (or first

becomes covered under the automatic contribution arrangement as a result of a change in employment status), the notice must be provided within a reasonable period before the employee becomes a covered employee (generally, no more than 90 days before the employee becomes a covered employee, and no later than the date that affords the employee a reasonable period of time after receipt of the notice to make an affirmative election). These automatic enrollment timing rules, including the time period for giving the notice, apply to each employee covered under the EACA and do not contain any special rules for long-term, part-time employees. Accordingly, no changes were made to the final regulation in response to these comments.

C. *Timing and default percentage rules for applying automatic increases*

As described in section II.A of the Background portion of this preamble, section 414A(b)(3)(A)(ii) generally requires automatic increases of one percentage point to an employee's minimum default contribution percentage for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent). The proposed regulation would provide that, for each plan year beginning after an employee's initial period, the percentage contribution under the default election must be increased by one percentage point until the percentage is at least 10 percent.

Commenters requested clarification that the one percentage point increase to the percentage contribution under the default election could occur on a day other than the first day of a plan year. With respect to the timing of automatic increases, some of those commenters requested that the minimum escalated percentage for a plan year be permitted to be applied earlier than the first day of the plan year, thus allowing the escalation to be applied earlier but not later than the first day of the plan year. Additionally, one commenter asked for clarification that an automatic increase to the

percentage contribution under the default election could be greater than one percentage point.

In response to the comments, §1.414A-1(c)(3)(ii)(B) clarifies the language of the proposed regulation by providing that, not later than the first day of each plan year beginning after an employee's initial period, the percentage contribution under the default election applicable to the employee on the first day of the prior plan year must be increased by at least one percentage point. This clarification allows for flexibility in the timing and amount of the increase. The final regulation also provides that annual increases must occur until the employee's percentage contribution is at least 10 percent. Under the final regulation, a plan may provide that the annual increases continue after the employee's percentage contribution is 10 percent but may not provide for the annual increases to continue after the employee's percentage contribution is equal to 15 percent.

D. *Redetermination of the initial period used to determine an employee's default contribution percentage*

The proposed regulation would provide rules, based on the rules for a QACA under §1.401(k)-3(j)(2)(iv), that address the default percentage that would apply for an employee who did not have default elective contributions made for an entire plan year. The proposed regulation would provide different rules that could be used depending on whether the employee was not eligible to have contributions made on the employee's behalf under a CODA or salary reduction agreement or had made an affirmative election to have contributions made in a different amount (including an election not to have contributions made).

Specifically, the proposed regulation would permit a plan to provide that if, after an employee's initial period began, the employee did not have default elective contributions made on the employee's behalf for an entire plan year, then the employee's initial period is redetermined. If no default elective contributions were made

solely because the employee was not eligible to elect to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement for that entire plan year, then a plan would be permitted to provide that the employee's initial period would be redetermined so that it begins on the date the employee is again eligible to elect to have contributions made on the employee's behalf under the plan. An employer would likely adopt this provision to determine the default contribution rate that applies to an employee who was rehired more than one plan year after the employee terminated employment.

However, if no default elective contributions were made solely because the employee made an affirmative election to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in a different amount (including an election not to have contributions made), then a plan would be permitted to provide that the employee's initial period would be redetermined so that it begins on any date specified under the plan that is later than the date the employee's original initial period ended. For example, a plan would be permitted to be amended to provide that, as of a specified date, the default election would apply to all employees who previously made an affirmative election that had been in effect for a period of at least one plan year to have contributions made on behalf of the employees under the plan at a rate that is below the uniform percentage that applies during an initial period (so that the uniform percentage that applies during the initial period will apply unless the employee makes a new affirmative election). An employer might adopt such an amendment to facilitate an increase in the rate of contributions made on behalf of its employees.

Commenters asked that the proposed regulation be modified to eliminate the requirement that a rehired employee must have been ineligible for at least an entire plan year before the plan can redetermine the rehired employee's initial period for purposes

of implementing the default election applicable under the plan for the initial period. A commenter requested that plans be permitted to provide that employees who have made an affirmative election to contribute less than the default rate and have not had an entire plan year elapse since that election was implemented are not subject to increases based on the original initial period. Another commenter requested that the proposed regulation be modified to provide that an employee's initial period may be redetermined under the same rules currently applicable to a QACA under §1.401(k)-3(j)(2)(iv).

Section 1.414A-1(c)(3)(iv) retains the requirement of the proposed regulation requiring an entire plan year of ineligibility or an entire plan year of contributions made pursuant to an affirmative election, regardless of whether the affirmative election contribution percentage is less than the default percentage, before the plan can implement the initial default percentage by redetermining the rehired employee's initial period. This language is intended to parallel, not modify, the rules currently applicable to a QACA under §1.401(k)-3(j)(2)(iv), which states that for purposes of determining the date the initial period begins, a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under the QACA as if the employee had not had such contributions made for any prior plan year as well. In addition, the final regulation balances the requirement of automatic increases at regular intervals with concerns regarding the administrative feasibility of determining an individual's default contribution percentage based on older data.

Another commenter requested clarification whether the plan document would need to be amended to reflect this rule if the plan chooses to reflect the provision in the preamble to the proposed regulation permitting the redetermination of the initial period in the case of an employee who became eligible to participate in the plan before the first day of the 2025 plan year and who did not have default elective contributions made for an entire plan year (and the plan document does not already provide for

redetermination). As explained in section I.I of this Summary of Comments and Explanation of Revisions regarding applicability date issues, if a plan chooses to permit the redetermination of the initial period in this situation, plan terms would need to provide for the redetermination.

E. *Investment requirements*

In accordance with the investment requirements of section 414A(b)(4), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if amounts contributed pursuant to the EACA, and for which no investment is elected by the employee, are invested in accordance with the requirements of 29 CFR 2550.404c-5 (or any successor regulations).

Section 2550.404c-5 provides rules regarding the fiduciary relief afforded by section 404(c)(5) of ERISA, under which a participant who does not give investment directions will be treated as exercising control over the participant's account with respect to assets that the plan invests in a QDIA as defined in §2550.404c-5(e).

Commenters requested clarification that section 414A(b)(4) does not apply to, or is deemed satisfied for, an EACA (subject to section 414A(b)) that is part of a plan that does not provide for participant direction of the investment of amounts contributed pursuant to the EACA. One commenter requested that, as an alternative, a plan be permitted to satisfy section 414A(b)(4) by providing participants with the option to choose between trustee-directed investments and a QDIA as described in 29 CFR 2550.404c-5, with any amounts for which no investment is elected by the participant automatically invested in the QDIA.

In response to the comments, §1.414A-1(c)(4) provides that the requirements of 29 CFR 2550.404c-5 (or any successor regulations) apply to amounts contributed pursuant to an EACA only if the EACA is part of a plan that offers an employee the opportunity to direct the investment of all or a portion of the assets allocated to the

employee's individual account under the plan. This is consistent with section 414A(b)(4), under which the requirements of 29 CFR 2550.404c-5 (or any successor regulations) apply if the employee chooses not to make an investment election. Section 1.414A-1(c)(4) also clarifies that the requirements of 29 CFR 2550.404c-5 (or any successor regulations) apply to amounts contributed pursuant to an EACA only if the EACA is part of a plan that is subject to title I of ERISA.

F. *Exceptions for new and small businesses*

Section 414A(c)(4)(A) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, while the employer maintaining the plan (and any predecessor employer) has been in existence for less than 3 years. Section 414A(c)(4)(B) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, earlier than the date that is one year after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees.

1. *Predecessor employer*

The notice of proposed rulemaking requested comments on whether guidance would be needed to define the term predecessor employer as used in the new business exception under section 414A(c)(4)(A). Commenters requested guidance on the definition, mentioning, among other reasons, concerns with applying the new business exception in a merger context. One of those commenters recommended that the term predecessor employer be defined by reference to §1.415(f)-1(c)(2), which provides rules, in the context of applying limitations on benefits and contributions, for determining a predecessor employer in a situation in which a plan is not maintained by a successor. In response to these comments, §1.414A-1(d)(4)(i) provides that, for purposes of the new business exception, a predecessor employer is a predecessor employer within the

meaning of §1.415(f)-1(c). Thus, the final regulation includes a definition of predecessor employer in the situation in which a plan is maintained by a successor as well as a situation in which a plan is not maintained by a successor.

2. *Related employers*

Commenters requested clarification as to whether, for purposes of the new and small business exceptions in proposed §1.414A-1(d)(4), the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). Some commenters requested confirmation that the term employer would include all those members while other commenters requested that the term employer not include any of those members. In response to these comments, §1.414A-1(d)(4)(iv) provides that, for purposes of the new and small business exceptions in the case of a plan that is not a multiple employer plan, the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). For purposes of the new and small business exceptions, in the case of a multiple employer plan, §1.414A-1(d)(4)(iv) provides that the term employer includes all employers treated as a single employer under §1.413-2(a)(2)(ii).

3. *Eligibility for the small business exception*

One commenter requested confirmation that once an arrangement first becomes ineligible for the small business exception in proposed §1.414A-1(d)(4)(ii) because the employer maintaining the plan normally employs more than 10 employees in a taxable year, then the arrangement will remain subject to the requirements of proposed §1.414A-1(b) even if the employer normally employs 10 or fewer employees in a subsequent year. Another commenter requested clarification regarding the application of the small business exception if an employer normally employs 10 or fewer employees in a subsequent year, particularly in the case of a corporate event that reduces the

number of employees. Section 1.414A-1(d)(4)(ii) retains the language of the proposed regulation. Thus, the requirements of §1.414A-1(b) do not apply before the first plan year that begins at least 12 months after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees. The Treasury Department and the IRS agree with the first commenter's interpretation that the requirements of §1.414A-1(b) continue to apply for subsequent plan years even if the employer no longer normally employs more than 10 employees, including in the case of a corporate event.

4. *Determining the number of employees for the small business exception*

A commenter requested that the final regulation allow an employer the flexibility to determine the number of its employees, for purposes of determining whether the employer normally employs more than 10 employees, based on either (1) the rules of Q&A-5 of §54.4980B-2, as specified in the proposed regulations, or (2) the eligibility rules for SIMPLE IRAs and the credit for small employer pension plan startup costs under section 45E. However, because the phrase normally employed is used in section 4980B(d)(1) and Q&A-5 of §54.4980B-2 but not in section 45E, §1.414A-1(d)(4)(ii) retains the rule from the proposed regulation providing that the number of employees that the employer normally employs for a taxable year is determined using the rules of Q&A-5 of §54.4980B-2 and does not permit the alternative requested by the commenter.

G. *Exceptions for plans established before the enactment of section 414A*

As described in section II.A of the Background portion of this preamble, section 414A(c)(2)(A) provides an exception from the requirements of section 414A(a) in the case of a qualified CODA, or section 403(b) plan, that is established before December 29, 2022. This Summary of Comments and Explanation of Revisions uses the term pre-enactment plan to encompass both a qualified CODA and section 403(b)

plan that is eligible for the exception under section 414A(c)(2)(A).

The proposed regulation would implement section 414A(c)(2)(A)(i) by generally providing that the requirements of section 414A(a) do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were adopted initially before December 29, 2022, even if the plan terms providing for the CODA become effective after that date. One commenter asked for clarification of the treatment of a multiemployer plan that existed before December 29, 2022, but did not add a CODA until after that date. Section 1.414A-1(e)(1)(i) retains the rule from the proposed regulation. This rule reflects section 414A(c)(2)(A)(i) and applies to multiemployer plans. Therefore, a multiemployer plan qualifies for the exception from the requirements of section 414A only if plan terms were adopted providing for the qualified CODA before December 29, 2022. If they were not, then the plan would not qualify for the exception.

H. *Merger of a plan established on or after the enactment of section 414A with a plan established before the enactment of section 414A*

The proposed regulation generally would provide that a pre-enactment plan maintained by a single employer will not continue to be treated as a pre-enactment plan after a merger with a plan maintained by a single employer that is not a pre-enactment plan. However, the proposed regulation would provide an exception in this case if there is a transaction described in §1.410(b)-2(f), the pre-merger pre-enactment plan is designated as the ongoing plan, and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii). Under section 410(b)(6)(C)(ii), the transition period begins on the date of the change in members of a controlled group (as described in section 414(b), (c), (m), or (o)) and ends on the last day of the first plan year beginning after the date of that change.

One commenter requested that the condition to designate the pre-merger pre-enactment plan as the ongoing plan be eliminated in the final regulation or, in the alternative, recommended that the preamble to the final regulations clarify that the

designation can be accomplished in any written manner and need not necessarily be in the plan document. Section 1.414A-1(e)(3)(ii)(B) retains the condition in the proposed regulation requiring that the pre-merger pre-enactment plan be designated as the ongoing plan. However, the Treasury Department and the IRS agree with the commenter that the designation of an ongoing plan under §1.414A-1(e)(3)(ii)(B) should be documented in writing but does not need to be in the written plan document.

Another commenter requested that the proposed regulation be modified to extend the period for a plan merger until the end of the first plan year that ends no later than eighteen months after the end of the transition period described in section 410(b)(6)(C)(ii). Section 410(b)(6)(C)(ii) provides a period for an employer to implement changes to its plans that may be needed following a transaction described in section 410(b)(6)(C). The Treasury Department and the IRS believe that this transition period is sufficient for an employer to implement a plan merger to preserve a plan's pre-enactment status under section 414A. Accordingly, §1.414A-1(e)(3)(ii)(C) retains the condition in the proposed regulation that the plan merger occur within the transition period described in section 410(b)(6)(C)(ii).

I. *Applicability date issues*

The proposed regulations were proposed to apply to plan years that begin more than six months after the date that final regulations are published in the **Federal Register**. For earlier plan years, it was proposed that a plan be treated as having complied with section 414A if the plan complies with a reasonable, good faith interpretation of section 414A.

Commenters requested a later applicability date for the final regulation and a reasonable, good-faith standard for interpretation of the statute in advance of the applicability date of the final regulation. Some of these commenters specifically

requested delayed applicability dates for multiemployer plans or other plans that are maintained pursuant to one or more collective bargaining agreements.

Section 1.414A-1(f)(2) provides that §1.414A-1 applies to plan years beginning after December 31, 2027. The final regulation includes related clarifications to reflect this regulatory applicability date. Consistent with the proposed regulation, §1.414A-1(f)(2) provides that, for prior plan years, a reasonable, good faith interpretation standard applies with respect to section 414A. The Treasury Department and the IRS have determined that this applicability date provides an adequate period for implementation of the provisions of the final regulation, including with respect to multiemployer plans or other plans that are maintained pursuant to one or more collective bargaining agreements.

Like the proposed regulation, the final regulation requires an EACA to cover all employees who are eligible to elect to have contributions made on their behalf for the automatic enrollment requirements to be satisfied. This requirement to cover all eligible employees includes an employee who became eligible to participate in the CODA or salary reduction agreement before the statutory applicability date. The final regulations are applicable for plan years beginning after December 31, 2027, but the statute applies to plan years beginning after December 31, 2024. For a CODA or salary reduction agreement that became subject to the automatic enrollment requirements of section 414A(b) on the statutory applicability date, employees who were eligible to participate in the CODA or to enter into a salary reduction agreement before the statutory applicability date may not have been covered by the EACA as of the first day of the plan year beginning after December 31, 2024 (the 2025 plan year). These employees who were not covered by the EACA as of the first day of the 2025 plan year are referred to in this section as pre-414A employees. Under the final regulation, the pre-414A employees must be covered by the EACA as of the first day of the plan year

beginning after December 31, 2027 (the 2028 plan year) and automatically enrolled as of that date if they do not have affirmative elections in effect on that date. Under §1.414A-1(c)(3)(ii)(A)(*2*), the initial period for the pre-414A employees begins when section 414A first applies to the plan, which is the first day of the 2025 plan year. Under §1.414A-1(c)(3)(ii)(A)(*3*), the initial period for the pre-414A employees ends on the last day of the plan year that follows the plan year that includes the date the initial period begins, which is the last day of the 2026 plan year. Thus, the initial period for the pre-414A employees under the final regulation ends before the pre-414A employees must be covered by the EACA under the final regulation.

For a pre-414A employee who, under the final regulation, must be automatically enrolled as of the first day of the 2028 plan year, the plan terms could permit a redetermination of the initial period for the pre-414A employee. This redetermination is similar to the initial-period redetermination permitted in the final regulation for an employee who did not have default elective contributions made for an entire plan year, and it is permitted even though the pre-414A employee did not make an affirmative election. Thus, the plan is permitted to provide that the default contribution percentage that applies to the pre-414A employee is the percentage that would have applied under the EACA if the initial period for the pre-414A employee had started on the first day of the 2028 plan year. In the alternative, the plan is permitted to provide that the default contribution percentage that applies to the pre-414A employee is the percentage that would have applied under the EACA for the 2028 plan year had the pre-414A employee been covered by the EACA starting on the first day of the 2025 plan year.

J. *Other matters*

1. *Portability of elections*

Section 414A(b)(3)(A)(i) states that an EACA meets the requirements related to automatic contribution percentage levels if the uniform percentage of compensation

contributed by the participant under the EACA during the first year of participation is not less than 3 percent and not more than 10 percent (unless the participant specifically elects not to have such contributions made or to have such contributions made at a different percentage). Proposed §1.414A-1(c)(3)(iii) would provide exceptions to the uniformity requirement, including an exception that would apply if the rate of contributions under a CODA or salary reduction agreement that is in effect for an employee immediately prior to the date that the default election under the proposed regulation first applies to the employee is not reduced. A commenter requested that the final regulations provide for an exception to the uniformity requirement to allow for an individual's deferral election under a prior 401(k) or 403(b) plan to apply under a current plan, even if the prior and current plans are maintained by completely unrelated employers and even if the individual was not immediately eligible for the current plan after being ineligible for the prior plan (which could occur when the individual switches jobs or takes some time off between jobs). As an alternative, the commenter requested that the final regulations provide for the issuance of sub-regulatory guidance that elaborates on and further interprets the uniformity requirement. Another commenter specifically requested that the final regulations provide for portability of elections for plans sponsored by entities that are going through corporate transactions.

Section 1.414A-1(c)(3)(iii) retains the rule from the proposed regulation and does not address portability of elections in the context of (1) prior and current plans that are maintained by completely unrelated employers, including situations in which an individual was not immediately eligible for the current plan after being ineligible for the prior plan, or (2) corporate transactions. The final regulations also do not provide for the issuance of sub-regulatory guidance. The Treasury Department and the IRS have concerns about the complexity of, and disclosure concerns inherent in, allowing for

elections under one plan to be taken into account under another unrelated plan without an individual providing consent.

2. *PLESAs*

The Department of Labor published a request for information soliciting public feedback on several sections of the SECURE 2.0 Act in the **Federal Register** (88 FR 54511). In response to comments received, the preamble to the proposed regulations addressed the interaction of the rules for a PLESA and the automatic enrollment requirements of section 414A. As stated in that preamble, if a plan with a qualified CODA includes a PLESA, then the PLESA is part of the CODA. Thus, an affirmative election to contribute to a PLESA is an affirmative election to contribute to the CODA. If the plan is subject to the automatic enrollment requirements of section 414A, then an affirmative election to contribute to a PLESA would be an affirmative election under the CODA for purposes of the proposed regulation. If an employee is automatically enrolled to contribute to a PLESA, the investment requirements of section 414A(b)(4) and proposed §1.414A-1(c)(4) (which reference the Department of Labor's rules for QDIAs under 29 CFR 2550.404c-5) generally would not be satisfied with respect to the automatic contributions to the PLESA.[9] Thus, automatic contributions to the PLESA would not be able to be used to satisfy the automatic enrollment requirements under section 414A.

In response to the proposed regulations, commenters requested that the Treasury Department and the IRS work with the Department of Labor so that automatic contributions to a PLESA would be able to be used to satisfy the automatic enrollment

[9] The Department of Labor published frequently asked questions online providing general compliance information under ERISA regarding PLESAs providing that, generally, the investment option designated for PLESAs cannot be the same as a plan's QDIA under 29 CFR 2550.404c-5(e)(4)(i). However, Q&A-15 does indicate that a PLESA's investment option could meet the requirements for a QDIA for a short period of time.

requirements under section 414A. These comments have been shared with the Department of Labor.

3. *Interaction with QACA rules*

A commenter requested confirmation that satisfaction of the requirements for a QACA found in §1.401(k)-3(j) and (k) would constitute satisfaction of the automatic enrollment rules under section 414A. The Treasury Department and the IRS do not agree. The requirements under section 414A and the rules under section 401(k)(13) are separate, and the requirements under section 414A apply in addition to any rules under section 401(k)(13). Section 414A includes requirements that are not found in section 401(k)(13) and §1.401(k)-3(j) and (k), including the requirement in section 414A(b)(2) that the arrangement be an eligible automatic contribution arrangement that allows employees to make permissible withdrawals (as defined in section 414(w)(2)) and the requirement in section 414A(b)(4) that certain amounts contributed pursuant to the arrangement be invested in accordance with the requirements of 29 CFR 2550.404c-5 (or any successor regulations).

The commenter also noted that the initial period under the proposed regulation begins earlier than the initial period for a QACA under §1.401(k)-3(j)(2)(ii)(A) and that the initial period could end earlier under the proposed regulation.[10] However, an arrangement can be structured so that the initial period under the arrangement satisfies both the requirements under §1.414A-1(c)(3)(ii)(A) and the rules for a QACA under

[10] The initial period under §1.401(k)-3(j)(2)(ii)(A) begins when the employee first has contributions made pursuant to a default election under an arrangement and ends on the last day of the following plan year. The initial period under §1.414A-1(c)(3)(ii)(A)(*2*) and (*3*) begins when the employee is first eligible to elect to have contributions made on the employee's behalf under the plan (or if later, when section 414A first applies to the plan), and ends on the last day of the plan year that follows the plan year that includes the date the initial period begins.

§1.401(k)-3(j)(2)(ii)(A). Accordingly, the final regulation retains the definition of initial period from the proposed regulation.

II. *Section 1.414(w)-1 and unenrolled participants*

As described in section II.B of the Background portion of this preamble, section 320 of the SECURE 2.0 Act adds new section 414(bb) to the Code. The notice of proposed rulemaking would reflect section 414(bb) by amending §1.414(w)-1 to add a new paragraph under which, if the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant (as defined in section 414(bb)(2)),[11] then the requirement to give the notice described in section 414(w)(4) of an employee's rights and obligations (the annual EACA notice) does not apply to the participant. Thus, an unenrolled participant does not need to be given the annual EACA notice, provided that the participant is furnished (1) annual reminder notices under section 414(bb)(1)(A), and (2) any document requested by the participant (if the participant would be entitled to receive the document in the absence of section 414(bb) and section 111 of ERISA).

The notice of proposed rulemaking requested comments on the criteria that should apply for an individual to be an unenrolled participant under section 414(bb)(2). Additionally, on August 11, 2023, the Department of Labor published a request for information soliciting public feedback on several sections of the SECURE 2.0 Act in the **Federal Register** (88 FR 54511), including a request for information on the criteria that should be considered for determining who is an unenrolled participant.

One commenter on the proposed regulations requested further clarification on which employees would be included in the term unenrolled participant. Another

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[11] Section 414(bb)(2) defines an unenrolled participant as an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished the summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria as the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor.

commenter requested confirmation that the term unenrolled participant is defined as any employee who does not have an account balance in the plan and who has not elected to make contributions to the plan. Section 1.414(w)-1(b)(4)(i) retains the language of the proposed regulation and does not provide additional criteria for determining who is an unenrolled participant. To the extent guidance is issued under section 414(bb)(2)(D), the Treasury Department and the IRS, in consultation with the Secretary of Labor, will consider the commenters' requests and any other appropriate criteria for determining who is an unenrolled participant. These comments have been shared with the Department of Labor.

Applicability Date

Section 1.414A-1 and the amendments to §1.414(w)-1 apply to plan years that begin after December 31, 2027. For a plan year beginning after December 31, 2024, but before the applicability date of these final regulations, a reasonable, good faith interpretation standard applies with respect to the statutory provisions reflected in the final regulations.

Special Analyses

I. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The regulations have been designated by the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA) as subject to review under Executive Order 12866 pursuant to the Memorandum of Agreement (MOA, July 4, 2025) between the Treasury Department and the OMB regarding review

of tax regulations. OIRA has determined that the rulemaking is economically significant under section 3(f)(1) of Executive Order 12866 and subject to review under Executive Order 12866 and section 1(b) of the MOA. Accordingly, the regulations have been reviewed by OMB.

Baseline

The Treasury Department and the IRS have assessed the benefits and costs of the regulations relative to a no-action baseline reflecting anticipated Federal income tax-related behavior in the absence of these regulations.

Need for Regulation

The regulations are necessary because section 101 of the SECURE 2.0 Act sets out the broad rule that certain new 401(k) and 403(b) plans must use automatic enrollment but does not provide the required operational details. The regulations provide guidance on exactly who must be covered, how to calculate and increase default contribution rates, when an escalation schedule can be reset, how the investment default rules apply, and how statutory exceptions (such as for pre-enactment plans, plans maintained by new businesses, and plans maintained by small businesses) work.

The Statute and the Regulations

Section 101 of the SECURE 2.0 Act adds new section 414A to the Code and makes automatic enrollment a required feature for many newly established 401(k) and 403(b) retirement plans. Under this change, a CODA or a 403(b) salary reduction agreement will not be treated as tax-favored unless it is structured as an EACA, under which eligible employees must be enrolled automatically unless they affirmatively opt out or choose a different contribution rate.

Section 101 of the SECURE 2.0 Act also sets specific minimum standards for how automatic enrollment must work. The default contribution rate must be a uniform

percentage between three percent and ten percent and automatically increase by one percentage point for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least ten percent (but not more than 15 percent). Employees must be allowed to opt out or elect a different percentage. In addition, automatically contributed amounts must be eligible for a limited permissible-withdrawal period shortly after enrollment, giving employees a chance to reverse default contributions. In general, if an employee does not choose how to invest contributions, the amounts must be invested in accordance with the requirements of Department of Labor rules regarding QDIAs.

Section 101 of the SECURE 2.0 Act builds in several exceptions. The automatic enrollment requirements do not apply to 401(k) or 403(b) plans that were established before December 29, 2022, nor to SIMPLE 401(k) plans, governmental plans, or church plans. Section 101 also provides temporary relief for certain small or new employers—businesses that have been in existence for less than three years or that normally employ ten or fewer employees. Overall, section 101 amends the Code to make automatic enrollment with escalating contribution rates the default framework for many newly created defined contribution retirement plans, with the goal of increasing employee participation and retirement savings levels nationwide.

The regulations provide the operational details of how plans comply with the automatic enrollment requirement added by section 101 of the SECURE 2.0 Act. The regulations clarify that, unless a statutory exception applies, a 401(k) or 403(b) plan that is subject to new section 414A of the Code must include an EACA that covers all employees who are eligible to make deferrals and not just new hires or employees not covered by a collective bargaining agreement. Employees who already have an affirmative election in effect when section 414A first becomes applicable to the plan do not have to be defaulted; this protects existing elections. The regulations confirm that

the plan must include the existing EACA permissible withdrawal feature—meaning an automatically enrolled employee must be allowed to withdraw default contributions (plus earnings) within a 90-day window after the first default contribution.

The regulations also provide detailed mechanics on how the automatic increases must operate. The regulations define an employee's initial period as beginning when the employee first becomes eligible to make deferrals (or, if later, when section 414A first applies to the plan) and ending on the last day of the plan year following the plan year in which eligibility begins. The regulations provide that after that period the plan must increase the employee's default rate by at least one percentage point each year, no later than the first day of each plan year, until the rate reaches at least ten percent, but not above 15 percent.

The regulations allow certain exceptions to the uniform percentage requirement. Employees at different stages of participation can contribute at different default percentages if the default percentages are based on how long the employees have been subject to the EACA. If an employee was already contributing at a certain rate before the automatic enrollment rules applied, the plan does not have to reduce that employee's contribution rate down to a new default percentage. If statutory contribution limits prevent an employee from contributing the full default percentage, the plan can cap the employee's contributions at the legal maximum.

The regulations also permit limited resets of the beginning of an initial period. A reset is allowed if, after an employee's original initial period begins, the employee has an entire plan year with no default contributions. For example, a rehired employee who was ineligible for a full plan year may have a new initial period starting when the employee is again eligible. Similarly, if an employee affirmatively elected a zero percent

contribution rate (or another rate), the employee may have a new initial period if the employee has at least an entire year with no default contributions.

Under the regulations, if a plan is subject to title I of ERISA, and permits participant-directed investments, then any defaulted contributions for which the employee does not make an investment election must be invested in a QDIA under Department of Labor rules—typically a target-date fund, balanced fund, or managed account that satisfies the QDIA regulation. By contrast, if a plan does not permit participants to direct the investment of their accounts (for example, if all investments are selected and managed by a trustee or investment committee), then the requirements of the QDIA regulation need not be satisfied. In that case, the regulations allow plan assets to be invested without having to satisfy the requirements of the QDIA regulation.

With respect to the new business exception (for employers in existence for less than 3 years), the regulations define predecessor employer by cross-reference to existing tax rules, meaning prior businesses count for purposes of determining the three-year period. Additionally, the regulations provide that the automatic enrollment requirements apply for the next plan year immediately after the employer has been in existence for 3 years. For the small business exception, the regulations specify that the employer is considered to normally employ more than 10 employees using the employee counting method under the rules of Q&A-5 of §54.4980B-2 (referred to as the COBRA[12] regulations). The regulations also clarify that the automatic enrollment requirements apply starting with the first plan year following the first taxable year of the employer with respect to which that employer normally employed more than 10 employees. The regulations also clarify that related employers that are treated as one employer under certain controlled group rules must be aggregated when applying the

[12] Consolidated Omnibus Budget Reconciliation Act of 1985, Public Law 99-272, 100 Stat. 82, as amended (COBRA).

exception. The regulations clarify that in the case of a multiple employer plan, the exceptions for new and small businesses apply on an employer-by-employer basis.

Finally, the regulations provide detailed guidance on the statutory exception for plans established before December 29, 2022 (the pre-enactment exception). The regulations provide that the automatic enrollment requirements do not apply to any CODA if the plan terms providing for the CODA were adopted before that date, even if those plan terms were effective after that date, and to any 403(b) plan adopted before that date, without regard to the date of adoption of any salary reduction agreement provisions.

The regulations provide that if two pre-enactment plans merge, the post-merger plan will be treated as a pre-enactment plan and clarify that, in the case of a multiple employer plan, the merger does not change the status of the plan for employers that were already participating before the merger. If a pre-enactment plan merges with a plan that is not eligible for the exception as a pre-enactment plan, the merged plan generally loses the exception, unless the merger occurs in connection with certain corporate transactions during a limited transition period and the pre-enactment plan is designated as the ongoing plan.

A multiple employer plan that is merged with another plan would be treated as a pre-enactment plan with respect to the employer that sponsored the merged-in plan if, with respect to the participating employer that engaged in the transaction, the plan was treated as a pre-enactment plan before the transaction. As is the case of any merger involving a multiple employer plan, the merger would not affect whether the multiple employer plan is treated as a pre-enactment plan with respect to any other employer. With respect to a merger of a multiple employer plan that is a pre-enactment plan with a multiple employer plan that is not a pre-enactment plan, the regulation provides that the merger will not affect whether the merged plan is treated as a pre-enactment plan with

respect to any employer that maintained either multiple employer plan prior to the merger. If an employer joins a multiple employer plan after the date of enactment, the automatic enrollment rules apply as if the employer maintained its own separate plan (unless another statutory exception, such as the small business or new business exception, applies).

The regulations provide that other changes, such as changing plan design features or expanding eligibility, do not cause the plan to lose pre-enactment status.

Affected Entities and Taxpayers

While about 2.2 million taxpayers and 31,600 retirement plans are expected to benefit from the clarity provided by the regulations, approximately 1.5 million taxpayers per year on average between 2023 and 2032 (increasing at a rate of about 0.7 percent each year during this time period) and about 25,000 retirement plans per year on average will be directly affected by the regulations.[13]

Economic Effects of the Regulations

The regulations provide operational details and clarity with respect to how 401(k) and 403(b) plans comply with the automatic enrollment requirements added by section 101 of the SECURE 2.0 Act. Section 101 applies only to new 401(k) and 403(b) plans and provides limited scope for choices to be made about the conditions under which a new 401(k) or 403(b) plan satisfies or fails to satisfy the automatic enrollment requirements to qualify for tax-favored status.

The clarity provided by the regulations creates economic benefits for all affected taxpayers in terms of increased retirement savings and relatively small costs for affected CODAs in terms of additional investment expenses and administrative costs. The Treasury Department and the IRS used Investment Company Institute (ICI) studies;

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[13] Gillette, R., Kitchen, J., Pearce, J., Prisinzano, R., & Zhang, C. (2023). *U.S. Treasury Individual Income Tax Model* (Office of Tax Analysis Technical Paper No. 12). U.S. Department of the Treasury. https://home.treasury.gov/system/files/131/TP-12.pdf

confidential tax data, including Form 5500 filings; and Treasury's Individual Tax Model (ITM) to estimate the costs and benefits of the regulations. Section 101 is estimated to increase retirement savings by $4.2 billion on average each year between 2023 and 2032, affecting about 2.2 million taxpayers and about 31,600 affected plans on average each year.[14] This corresponds to about a 7 percentage point[15] increase in participation each year for employees in affected plans (an increase in participation rates from 70 percent to 77 percent). Once implemented, about 50 percent of all employees in affected plans are expected to use a default contribution rate.[16] Retirement savings are expected to increase on average by $1,900 per year for the 2.2 million affected taxpayers. Moreover, over the next decade, the number of affected taxpayers is expected to increase by 0.7 percent per year, and the amount of retirement savings is expected to increase by 4.9 percent per year.

Table 1 shows, using proportions provided by Venti and Wise (1986), the estimated amount of the increase in average savings per year attributed to reduced current consumption, reduced other tax-preferred or non-tax-preferred saving, and the tax subsidy from increased tax-preferred savings.[17]

Table 1. Source of Increase in Retirement Savings

[14] U.S. Department of Labor, Employee Benefits Security Administration. (2026, January). *Private Pension Plan Bulletin: Abstract of 2023 Form 5500 annual reports* (Version 1.1). U.S. Department of Labor. https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf; U.S. Department of Labor, Employee Benefits Security Administration. (n.d.). *Form 5500 datasets*. U.S. Department of Labor. Retrieved July 27, 2026, from https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/public-disclosure/foia/form-5500-datasets.

[15] Butrica, B. A., & Karamcheva, N. S. (2015, May). *Automatic enrollment, employer match rates, and employee compensation in 401(k) plans*. *Monthly Labor Review*, U.S. Bureau of Labor Statistics. https://www.bls.gov/opub/mlr/2015/article/automatic-enrollment-employer-match-rates-and-employee-compensation-in-401k-plans.htm

[16] Burke, J., Hung, A. A., & Luoto, J. E. (2016). *Opting out of retirement plan default settings* (Working Paper No. 2016-01). U.S. Department of Labor, Employee Benefits Security Administration. https://www.dol.gov/sites/dolgov/files/ebsa/researchers/analysis/retirement/opting-out-of-retirement-plan-default-settings.pdf

[17] Venti, S. F., & Wise, D. A. (1986). Tax-deferred accounts, constrained choice and estimation of individual saving. *The Review of Economic Studies, 53*(4), 579–601. https://doi.org/10.2307/2297607; Poterba, J. M., Venti, S. F., & Wise, D. A. (1995). Do 401(k) contributions crowd out other personal saving? *Journal of Public Economics, 58*(1), 1–32. https://doi.org/10.1016/0047-2727(95)01404-3 and Poterba, J. M., Venti, S. F., & Wise, D. A. (1996). How retirement saving programs increase saving. *Journal of Economic Perspectives, 10*(4), 91–112. https://doi.org/10.1257/jep.10.4.91.

Source	Average Per Year ($/Bn)	Average Per Participant Per Year ($)
Reduced Current Consumption	2.1	946
Reduced Other Saving	0.6	284
Tax Subsidy	1.5	662

Covered Employees and Permissive Withdrawals

The regulations clarify that a CODA or a salary reduction agreement under a plan satisfies the automatic enrollment requirements only if the plan provides for an EACA that covers all eligible employees and that, while section 101 provides exceptions to this requirement for certain types of plans, it includes no provision that excludes any category of employees. Moreover, the regulations clarify that an EACA does not fail to satisfy section 101 if the default election does not apply to an employee who has an affirmative election, including an election not to have contributions made, that remains in place. The regulations also provide that an EACA satisfies the automatic enrollment requirements only if the plan provides for permissible withdrawals, as required by section 101. Hence, the regulations do not incorporate any choice in determining covered employees and permissible withdrawals.

Timing Rules

The regulations clarify that an employee's initial period begins when the employee is first eligible to elect to have contributions made under the plan and ends on the last day of the following plan year, as opposed to the initial period's beginning when the employee first has contributions made pursuant to a default election and ending on the last day of the following plan year. The timing difference between the two alternatives is at most two weeks and arises only because of coordination issues between employee start dates (some employees start in the middle of a pay period) and payroll system operations. The decision to use the approach in the regulation as opposed to the alternative would result in an increase of annual retirement savings for a

new hire of up to 3 percent. Hence, the Treasury Department and the IRS expect that this rule will increase retirement savings by about $100 million per year on average relative to $4.2 billion baseline increase in retirement savings. About 25,000 plans are expected to be affected by this rule. Allowing for partial period contributions is expected to increase administrative costs by a negligible amount each year.

Default Percentage Rule

The regulations clarify that no later than the first day of each plan year beginning after an employee's initial period, the default election applicable to the employee on the first day of the prior plan year must be increased by at least one percentage point. This decision, which allows for flexibility in terms of timing and amounts of increases, reduces the administrative burden and would increase retirement savings. However, applying the minimum escalated percentage prior to the first day of the plan year is not expected to be common since plan years are typically calendar years and the effective date used by employers for annual salary increases is often January 1 or early in the first quarter of the year.

Additionally, applying an escalating percentage point greater than one percentage point is unlikely to occur for two reasons. First, research on salience and taxation[18] would suggest that doing so is likely to result in pushback from employees who are subject to automatic enrollment in the form of complaints and some employees' opting out of automatic enrollment completely due to the abrupt and significant decrease in their take-home pay. Second, employers have no discernible benefit from applying an escalating percentage-point increase greater than one percentage point.

The regulations also provide exceptions like those found in existing rules for a QACA to the uniform percentage requirement of section 101 to ensure that the

[18] Chetty, R., Looney, A., & Kroft, K. (2009). Salience and taxation: Theory and evidence. *American Economic Review, 99*(4), 1145–1177. https://doi.org/10.1257/aer.99.4.1145

automatic escalation of the default election percentage is administratively feasible. Examples include, allowing employees to contribute at different default percentages if the default percentages are based on how long the employees have been subject to the EACA and allowing the plan to cap contributions for an employee if statutory contribution dollar limits prevent them from contributing the full default percentage.

The regulations allow plans to reset an employee's initial period if an employee goes a full year without having default contributions. If the employee had no contributions because the employee made an affirmation election, the plan can reset their initial period to any future date after the employee's initial period ended. This rule gives employers the flexibility to restart an employee's initial period, including for an employee who previously made an affirmative election. For example, if the employee had no contributions because the employee terminated employment and was later rehired, the regulations allow a plan to restart the employee's initial period. While this rule would reduce the administrative costs, as plans would not have to keep track of the automatic escalation schedule of employees who terminated employment and increase retirement savings, the economic impact would be negligible as less than two percent of the U.S. workforce is composed of workers who terminated employment and were later rehired.[19,20]

Investment Requirements

The regulations clarify that the investment rules in section 414A of the Code only apply to plans that allow employees to direct their investments. Given that nearly all 401(k) and 403(b) retirement plans are subject to title I of ERISA, and that Form 5500 filings indicate that only about 3.5 percent of 401(k) and 403(b) retirement plans do not

[19] Richardson, N. (2025, May 20). *Boomerang hiring makes a comeback*. ADP Research. https://www.adpresearch.com/boomerang-hiring-makes-a-comeback/
[20] Fujita, S., & Moscarini, G. (2017). *Recall and Unemployment*. American Economic Review, 107(12), 3875–3916.

allow participant-directed investments, the Treasury Department and the IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings attributable to 401(k) and 403(b) retirement plans that do not allow participant-directed investments is about $150 million. Based on Form 5500 Schedule H data, the average expense ratio is about 1.5 percent. Hence, the Treasury Department and the IRS estimate that this part of the regulations will save about $3 million in plan costs and benefit less than 80,000 taxpayers on average each year between 2023 and 2032.

Small Business and New Business Exceptions

The regulations clarify that once a business has been in existence for three years, automatic enrollment needs to begin starting the next plan year and defines a predecessor employer (which matters for determining whether a business is a new business) using existing rules under the Code. The alternative would have been to start automatic enrollment on the date of the new business's 3-year anniversary. Using US Census Bureau data on firm age[21], US Bureau Labor Statistics data on access to retirement plans,[22] and Form 5500 filings, the Treasury and the IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings and the 2.2 million affected taxpayers attributable to taxpayers employed in firms of age 3. Based on an average shift in retirement savings of six months, the Treasury Department and the IRS estimate that this rule, relative to the alternative, would reduce retirement savings over the 2023 to 2032 time period by less than $3 million a year and would affect about 19,000 taxpayers a year. Further Treasury and the IRS estimate that about 1,000 plans a year would experience small increases in associated administrative costs per year due to this rule relative to the alternative.

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[21] U.S. Census Bureau. (2025). *Business Dynamics Statistics: Firm age: 1978–2023* (Table BDSFAGE). Economic Surveys, Business Dynamics Statistics. https://data.census.gov/table/BDSTIMESERIES.BDSFAGE

[22] U.S. Bureau of Labor Statistics. (2023, September 21). *Employee benefits in the United States—March 2023*. U.S. Department of Labor. https://www.bls.gov/news.release/archives/ebs2_09212023.htm

The regulations clarify that the number of employees that the employer normally employs for a taxable year is determined using the COBRA regulations. This clarification is necessary because section 101 of the SECURE 2.0 Act stipulates that businesses normally employing ten or fewer employees are not subject to the automatic enrollment requirements and the phrase normally employed is used in the COBRA regulations. Additionally, the regulations clarify that when an employer first has a year in which it normally employed more than 10 employees, the automatic enrollment rule applies starting with the next plan year that begins at least 12 months after the end of that year. Based on Form 5500 filings, the Treasury Department and the IRS estimated the proportion of the $4.2 billion baseline increase in retirement savings and the 2.2 million affected taxpayers attributable to plans with five to nine employees. Based on the assumption that about 8 percent of such firms will increase their employment beyond the 10-person threshold in the next year and an average shift in retirement savings of eighteen months, the Treasury Department and the IRS estimate that this waiting period relative to requiring such firms to begin autoenrollment once they cross the 10-person threshold would reduce retirement savings by about $4 million and affect less than 10,000 workers. The waiting period in the regulation relative to the alternative would affect about 150 plans, but the difference in plan costs between the chosen option and the alternative is estimated to be negligible on average per year between 2023 and 2032.

Exceptions for Pre-Enactment Plans

The regulations interpret what it means to establish a CODA before December 29, 2022, for purposes of section 101 of the SECURE 2.0 Act. The regulations provide that the automatic enrollment requirements do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were adopted initially before December 29, 2022, even if the plan terms providing for the

CODA are effective after that date. The regulations could have provided an alternative interpretation and provided that the automatic enrollment requirements do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were effective initially before December 29, 2022. This alternative would have made more plans subject to the automatic enrollment requirements.

Given that plan sponsors were able to anticipate the passage of the SECURE 2.0 Act of 2022 well in advance[23] but there was no certainty about the adoption of regulations that would exempt qualified CODAs that were adopted initially before the date of enactment from the automatic enrollment requirements, plan sponsors with a preference against automatic enrollment would have adopted their plan terms with effective dates prior to December 29, 2022. Hence, the regulations would have had little impact on the timing of the effective dates of plan terms. Hence, the Treasury Department and the IRS estimate that just 0.25 percent of the plan terms of qualified CODAs adopted before December 29, 2022, had plan terms effective after that date. Based on this assumption, this part of the regulations, relative to the alternative, would result in a one-time reduction in retirement savings of about $11 million, affecting less than 6,000 taxpayers, less than 100 plans, and total plan costs by a negligible amount.

Lastly, the regulations provide rules regarding the applicability of the pre-enactment exception in situations involving plan mergers. These merger rules are expected to benefit employers and employees by increasing flexibility and reducing the costs for the subset of plans affected by plan mergers.

Summary

[23] The earliest version of the SECURE 2.0 Act of 2022 was introduced as Securing a Strong Retirement Act of 2021 on May 2021 and the SECURE 2.0 Act of 2022 passed with clear majorities in both the House and Senate.

	Benefits		Costs	
Aspects of Regulation	Counts	Amounts	Counts	Amounts
a. Covered employees and permissive withdrawals	*	*	*	*
b. Timing rules	About 1.5 million taxpayers per year on average	About $100 million per year on average	About 25,000 plans per year on average	*
c. Default percentage rules	About 32,000 plans per year on average	Greater flexibility on date, amount and reset of default election percentage escalation. Avoids administrability issues with default percentage rules.	*	*
d. Investment Requirements	About 1,100 plans per year on average and less than 80,000 taxpayers per year on average	About $3 million per year on average	*	*
e. New Business Exception	Less than 1,000 plans per year on average	More time to implement autoenrollment.	Less than 20,000 taxpayers per year on average	Less than $3 million per year on average
f. Small Business Exception	Less than 150 plans per year on average	More time to implement autoenrollment.	Less 10,000 taxpayers per year on average	Less than $4 million per year on average
g. Exceptions for Pre-Enactment Plans	Less than 100 plans	Facilitates a choice with respect to autoenrollment	One-time impact on less than 6,000 taxpayers	One-time reduction in retirement plan savings of about $11 million

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 - 3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. The collections of information contained in these regulations have been approved by OMB under OMB Control Number 1545-2135.

The collections of information in these regulations contain third-party disclosure requirements that are necessary to comply with the statutory requirement under section 414A of the Code (which requires certain CODAs or salary reduction agreements to be EACAs) and that are necessary if a plan applies section 414(bb) (which eliminates certain disclosure and notice requirements for unenrolled participants if an annual notice is provided to the unenrolled participants). These collections of information generally will be provided by businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments that sponsor retirement plans that include EACAs to individuals in order to meet the statutory notice requirements for EACAs under section 414(w)(4).

The collections of information in these regulations contain third-party disclosure requirements that are necessary to comply with the statutory rule under section 414A, which requires certain CODAs and salary reduction agreements to be EACAs (as defined in section 414(w)(3)). Under §1.414(w)-1(b)(3), initial and annual written notices must be given to each employee to whom the EACA applies of the employee's rights and obligations under the EACA. Section 1.414A-1 does not change the notice requirements for an EACA under §1.414(w)-1 but does subject certain CODAs and salary reduction agreements to the notice requirements for an EACA by requiring those CODAs and salary reduction agreements to be EACAs (as required by section 414A). This requirement to be an EACA will not affect pre-enactment plans.

The collection of information under §1.414(w)-1(b)(4) related to unenrolled participants is required in order for a plan to apply section 414(bb). Section 414(bb) provides that no disclosure, notice, or other plan document is required to be furnished under the Code to an unenrolled participant if the unenrolled participant is furnished an annual reminder notice of the unenrolled participant's eligibility to participate in the plan and any applicable election deadlines under the plan. In accordance with section 414(bb), the regulation will allow unenrolled participants to be furnished an annual reminder notice instead of the annual notice required for EACAs under section 414(w)(4) and §1.414(w)-1(b)(3).

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.

Within the proposed rulemaking published at 90 FR 3092, the IRS solicited feedback on the collection requirements described above. No public comments were received by the IRS directed specifically on the PRA or on the collection requirements.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. Although section 414A provides an exception from the automatic enrollment requirements for some small entities, other small entities that sponsor section 401(k) or 403(b) plans that are established on or after December 29, 2022, may need to provide for automatic enrollment in the plans and default cash or deferred or salary reduction elections for employees who are otherwise eligible to participate in the plans. Automatic enrollment and default elections, and the resulting additional contributions to a plan, apply to compensation that employees would have

otherwise received and do not require additional amounts to be paid. Section 414A does not require plans to provide for nonelective contributions or matching contributions. Before the enactment of section 101 of the SECURE 2.0 Act, plans were permitted, but not required, to provide for automatic enrollment. Accordingly, any additional recordkeeping or administrative costs resulting from the automatic enrollment requirements that apply to certain section 401(k) and 403(b) plans sponsored by small entities are not expected to be significant. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses, and no comments were received.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The regulations do not have federalism implications, impose

substantial direct compliance costs on State and local governments, or preempt State law within the meaning of the Executive order. This is because section 414A, by its terms, does not apply to governmental plans.

VI. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 et seq.), the Office of Information and Regulatory Affairs designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, notices, and other guidance cited in this document are published in the Internal Revenue Bulletin and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov*.

Drafting Information

The principal authors of these regulations are Jamie L. Dvoretzky and Kara M. Soderstrom, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the Treasury Department and the IRS participated in the development of the regulations.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, the Treasury Department and the IRS amend 26 CFR parts 1 and 602 as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.414(w)-1 is amended by:

a. Revising the second sentence of paragraph (b)(1); and

b. Adding paragraph (b)(4).

The revision and addition read as follows:

§1.414(w)-1 Permissible withdrawals from eligible automatic contribution arrangements.

* * * * *

(b) * * *

(1) * * * Except to the extent required under section 414A (which applies to plan years beginning after December 31, 2024), an eligible automatic contribution arrangement need not cover all employees who are eligible to elect to have contributions made on their behalf under the applicable employer plan.

* * * * *

(4) *Special rules*--(i) *No requirement to provide notice to unenrolled participant.* If the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant described in section 414(bb)(2), then the requirement to give the notice of an employee's rights and obligations set forth in paragraph (b)(3) of this section does not apply to the participant.

(ii) *Consolidation of notices.* The notice described in paragraph (b)(3) of this section may be combined with one or more of the notices required under section 404(c)(5)(B), 514(e)(3), or 801(d)(3)(A) of the Employee Retirement Income Security Act of 1974 (Public Law 93-406, 88 Stat. 829), as amended, and any notice required under section 401(k)(12)(D) or (13)(E), provided that the combined notice--

(A) Includes the required content,

(B) Clearly identifies the issues addressed therein,

(C) Is furnished at the time and with the frequency required for each notice,

(D) Is presented in a manner that is reasonably calculated to be understood by the average plan participant, and

(E) Does not obscure or fail to highlight the primary information required for each notice.

* * * * *

Par. 3. Section 1.414A-1 is added to read as follows:

§1.414A-1 Automatic enrollment requirements under section 414A.

(a) *Overview*. This section provides rules regarding the automatic enrollment requirements under section 414A. Paragraph (b) of this section provides that a plan that includes a qualified cash or deferred arrangement under section 401(k) or a salary reduction agreement under section 403(b) is required to satisfy the automatic enrollment requirements of paragraph (c) of this section unless an exception described in paragraph (d) of this section (for certain types of plans and businesses) or paragraph (e) of this section (for a cash or deferred arrangement or section 403(b) plan established before December 29, 2022) applies to the plan. The applicability date of section 414A and the applicability date of this section are set forth in paragraph (f) of this section.

(b) *General rule*--(1) *Qualified cash or deferred arrangements*. Except as provided in paragraph (d) or (e) of this section, a cash or deferred arrangement will not be treated as a qualified cash or deferred arrangement described in §1.401(k)-1(a)(4)(i) for a plan year unless the plan that includes the arrangement provides that any cash or deferred election under the arrangement must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(2) *Section 403(b) plans with salary reduction agreements*. Except as provided in paragraph (d) or (e) of this section, an annuity contract described in section 403(b) that

is purchased pursuant to a salary reduction agreement described in §31.3121(a)(5)-2(a)(1) (that is, an election to reduce compensation pursuant to a cash or deferred election as defined in §1.401(k)-1(a)(3)) will not be treated as purchased under a section 403(b) plan for a plan year unless the plan provides that any salary reduction agreement under the plan must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(c) *Automatic enrollment requirements*--(1) *In general*--(i) *Arrangement must be an eligible automatic contribution arrangement*. A cash or deferred arrangement or salary reduction agreement under a plan satisfies the automatic enrollment requirements of this paragraph (c) only if the plan provides for an eligible automatic contribution arrangement (as defined in section 414(w)(3)) that--

(A) Covers the employees described in paragraph (c)(1)(ii) of this section, and

(B) Satisfies the additional requirements of paragraphs (c)(2) through (4) of this section.

(ii) *Employees required to be covered under the eligible automatic contribution arrangement*. Each employee who is eligible to elect to have contributions made on the employee's behalf under a cash or deferred arrangement or pursuant to a salary reduction agreement must be covered by the eligible automatic contribution arrangement.

(iii) *Exception to default election for employees with an affirmative election.* An eligible automatic contribution arrangement will not fail to satisfy the requirements of this paragraph (c) merely because the default election under the arrangement does not apply to an employee who, on the date paragraph (b) of this section first applies to the plan that includes the cash or deferred arrangement or salary reduction agreement, had an affirmative election in effect (that remains in effect) to--

(A) Have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(2) *Arrangement must permit permissible withdrawals*. An eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(2) only if the plan that includes the arrangement provides that any employee who has default elective contributions made under the arrangement may elect to make a permissible withdrawal (as defined in section 414(w)(2) and described in §1.414(w)-1(c)).

(3) *Contribution requirements*--(i) *Default election*. An eligible automatic contribution arrangement under a plan satisfies the requirements of this paragraph (c)(3) only if, under the arrangement, the default election made on behalf of an employee is equal to a uniform percentage, as described in paragraph (c)(3)(ii) of this section, of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan, unless the employee affirmatively elects to--

(A) Have contributions made in a different amount on the employee's behalf under a cash or deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(ii) *Uniform percentage*--(A) *Initial period*--(*1*) *Initial percentage*. The contribution percentage under the default election for each employee's initial period must be a uniform percentage that is not less than 3 percent and not more than 10 percent.

(*2*) *Beginning of initial period*. An employee's initial period begins when the employee is first eligible to elect to have contributions made on the employee's behalf under the plan (or if later, when section 414A first applies to the plan).

(*3*) *End of initial period*. The employee's initial period ends on the last day of the plan year that follows the plan year that includes the date the initial period begins.

(B) *Subsequent plan years*. Not later than the first day of each plan year beginning after an employee's initial period under the arrangement, the percentage contribution under the default election applicable to the employee on the first day of the prior plan year must be increased by at least 1 percentage point. Annual increases must occur until the employee's percentage contribution is at least 10 percent. A plan may provide that the annual increases continue after the employee's percentage contribution is 10 percent but may not provide for the annual increases to continue after the employee's percentage contribution is equal to 15 percent.

(iii) *Exception to uniform percentage requirement*. An eligible automatic contribution arrangement does not fail to satisfy the uniform percentage requirement of paragraph (c)(3)(ii) of this section merely because--

(A) The percentage used for the default election varies based on the number of years (or portions of years) since the beginning of the initial period for an employee;

(B) The rate of contributions under a cash or deferred election or salary reduction agreement that is in effect for an employee immediately prior to the date that the default election under this paragraph (c) first applies to the employee is not reduced;

(C) The rate of contributions under a cash or deferred election or salary reduction agreement is limited so as not to exceed the applicable limits of sections 401(a)(17), 401(k)(16), 402(g) (determined with or without catch-up contributions), 403(b)(16), and 415; or

(D) The default election provided under paragraph (c)(3)(i) of this section is not

applied during the period an employee is not permitted to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in order for the plan to satisfy the requirements of section 414(u)(12)(B)(ii).

(iv) *Treatment of periods without default contributions*--(A) *Permissive redetermination of initial period in certain situations*. The uniform percentages described in paragraph (c)(3)(ii) of this section are based on the date an employee's initial period begins. However, if, after the employee's initial period began, the employee did not have default elective contributions made for an entire plan year, then the plan is permitted to provide that the employee's initial period is redetermined as described in paragraph (c)(3)(iv)(B) or (C) of this section.

(B) *Redetermination for employee who became ineligible*. If, for an entire plan year, no default elective contributions were made solely because the employee was not eligible to elect to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement for that plan year, then the plan is permitted to provide that the employee's initial period is redetermined so that it begins on the date the employee is again eligible to elect to have contributions made on the employee's behalf under the plan.

(C) *Redetermination for employee who remained eligible and made an affirmative election.* If, for an entire plan year, no default elective contributions were made solely because the employee made an affirmative election to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in a different amount (including an election not to have contributions made), then the plan is permitted to provide that the initial period is redetermined so that it begins on any date specified under the plan that is later than the date specified in paragraph (c)(3)(ii)(A)(*3*) of this section.

(4) *Investment requirements*. If an eligible automatic contribution arrangement is

included in a plan subject to title I of the Employee Retirement Income Security Act of 1974, Public Law 93-406, 88 Stat. 829, as amended, and the plan offers an employee the opportunity to direct the investment of all or a portion of the assets allocated to the employee's individual account under the plan, the eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(4) only if amounts contributed pursuant to the arrangement, and for which no investment is elected by the employee, are invested in accordance with the requirements of 29 CFR 2550.404c-5 (or any successor regulations).

(d) *Exceptions for certain types of plans and businesses*--(1) *SIMPLE 401(k) plans*. Paragraph (b) of this section does not apply to any SIMPLE 401(k) plan (as described in section 401(k)(11) and §1.401(k)-4).

(2) *Governmental plans*. Paragraph (b) of this section does not apply to any governmental plan (within the meaning of section 414(d)).

(3) *Church plans*. Paragraph (b) of this section does not apply to any church plan (within the meaning of section 414(e)).

(4) *New and small businesses*--(i) *New businesses***.** Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, for a plan year if, as of the beginning of the plan year, the employer maintaining the plan (aggregated with any predecessor employer) has been in existence for less than 3 years. For purposes of this paragraph (d)(4)(i), the term predecessor employer means a predecessor employer within the meaning of §1.415(f)-1(c).

(ii) *Small businesses.* Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, before the first plan year that begins at least 12 months after the close of the first taxable year of the employer maintaining the plan with respect to which

that employer normally employed more than 10 employees. For this purpose, the number of employees that the employer normally employs for a taxable year is determined using the rules of Q&A-5 of §54.4980B-2 of this chapter.

(iii) *Applicability to multiple employer plans*. In the case of a multiple employer plan, the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section apply on an employer-by-employer basis.

(iv) *Related employers*. For purposes of the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section, in the case of a plan that is not a multiple employer plan, the term employer includes all members of a group of employers that are treated as a single employer under the rules of section 414(b), (c), (m), or (o). For purposes of the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section, in the case of a multiple employer plan, the term employer includes all employers treated as a single employer under §1.413-2(a)(2)(ii).

(v) *Example*--(A) *Facts*. Employer Q has been in existence since July 1, 2027, and does not have a predecessor employer. Employer Q maintains Plan X, which has a plan year that is the calendar year and includes a cash or deferred arrangement. Plan X is effective on January 1, 2028, and provides that a cash or deferred election must be an affirmative election. Employee M, who becomes eligible to elect to have contributions made on Employee M’s behalf under Plan X on January 1, 2028, makes an affirmative election not to have elective contributions made on Employee M’s behalf and that affirmative election is still in effect on January 1, 2031. Employee N, who also becomes eligible to elect to have contributions made on Employee N’s behalf under Plan X on January 1, 2028, does not make any election to have (or not have) contributions made on Employee N’s behalf under Plan X. Effective January 1, 2031, Plan X is amended to include an eligible automatic contribution arrangement that satisfies the requirements of paragraphs (c)(2) through (4) of this section. The amendment provides that an

employee who has a cash or deferred election that is an affirmative election and is in effect on January 1, 2031, is not subject to the default election under the eligible automatic contribution arrangement that is included in Plan X.

(B) *Analysis and conclusion*. Because the exception for new businesses set forth in paragraph (d)(4)(i) of this section ceases to apply to Plan X for plan years beginning on or after January 1, 2031, paragraph (b) of this section first applies to Plan X as of that date. Pursuant to paragraph (c)(1)(iii) of this section, the eligible automatic contribution arrangement required to be included in Plan X for plan years beginning on January 1, 2031, does not fail to satisfy the requirements of paragraph (c) of this section merely because the default election under the arrangement does not apply to Employee M as a result of Employee M's affirmative election. However, Plan X does not satisfy the requirements of section 414A unless the default election in paragraph (c)(3) of this section applies to Employee N because of the absence of an affirmative election made by Employee N to have elective contributions made on Employee N's behalf in a different amount (or to not have elective contributions made on Employee N's behalf).

(e) *Exception for plans established before the enactment of section 414A*--(1) *In general*. Subject to the rules of application in paragraphs (e)(2) through (6) of this section, paragraph (b) of this section does not apply to--

(i) Any plan that includes a qualified cash or deferred arrangement if the plan terms providing for the qualified cash or deferred arrangement were adopted initially before December 29, 2022 (the date of the enactment of section 414A), even if the plan terms providing for the cash or deferred arrangement are effective after that date, or

(ii) Any section 403(b) plan adopted initially before December 29, 2022, without regard to the date of adoption of plan terms providing for salary reduction agreements.

(2) *Merger of plans established before the enactment of section 414A*--(i) *General rule*. If two plans described in paragraph (e)(1)(i) of this

section are merged, then the merged plan will be treated as a plan described in paragraph (e)(1)(i) of this section. Similarly, if two section 403(b) plans described in paragraph (e)(1)(ii) of this section are merged, then the merged plan will be treated as a section 403(b) plan described in paragraph (e)(1)(ii) of this section.

(ii) *Effect of merger of multiple employer plans on participating employers*. If either of the plans described in paragraph (e)(2)(i) of this section are multiple employer plans, then the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained the multiple employer plan prior to the merger.

(3) *Merger of a plan established on or after the enactment of section 414A with a plan established before the enactment of section 414A*--(i) *General rule*--(A) *Section 401(k) plans*. Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a plan that includes a cash or deferred arrangement and that is not described in paragraph (e)(1)(i) of this section is merged with a plan described in paragraph (e)(1)(i) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(i) of this section.

(B) *Section 403(b) plans*. Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a section 403(b) plan that is not described in paragraph (e)(1)(ii) of this section is merged with a plan described in paragraph (e)(1)(ii) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(ii) of this section.

(ii) *Exception for certain transactions*. A plan that is maintained by a single employer and described in paragraph (e)(1) of this section will continue to be treated as described in paragraph (e)(1) of this section after a merger described in paragraph (e)(3)(i) of this section, if--

(A) There is a transaction described in §1.410(b)-2(f),

(B) The plan described in paragraph (e)(1) of this section is designated as the ongoing plan, and

(C) The plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(iii) *Applicability to multiple employer plans*--(A) *Applicability of exception for certain transactions involving a merger into a multiple employer plan*. In the case of a merger of a plan that is not a multiple employer plan and not described in paragraph (e)(1) of this section into a multiple employer plan that is designated as the ongoing plan, paragraph (e)(3)(ii) of this section applies even though the ongoing plan is a multiple employer plan and without regard to whether that plan is a plan described in paragraph (e)(1) of this section, provided that, prior to the transaction described in paragraph (e)(3)(ii)(A) of this section, the multiple employer plan was treated as a plan described in paragraph (e)(1) of this section with respect to the employer that maintained the multiple employer plan and engaged in the transaction.

(B) *Merger of multiple employer plans*. If both of the plans described in paragraph (e)(3)(i) of this section are multiple employer plans, then the exception in paragraph (e)(3)(ii) of this section does not apply. In such a case, the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained either multiple employer plan prior to the merger.

(4) *Treatment of adoption of, or merger with, a multiple employer plan*--(i) *In general*. If, after December 29, 2022, an employer adopts a multiple employer plan, then, with respect to that employer, the multiple employer plan will not be treated as a plan described in paragraph (e)(1) of this section. The same treatment will apply if the employer maintains a plan other than a multiple employer plan that is merged with a multiple employer plan after December 29, 2022, unless the merger is described in

paragraph (e)(3)(iii)(A) of this section.

(ii) *Exception for mergers involving plans established before the enactment of section 414A*. Paragraph (e)(4)(i) of this section does not apply if the plan that is merged into the multiple employer plan is a plan described in paragraph (e)(1) of this section. Thus, if the employer maintains a plan described in paragraph (e)(1) of this section that is merged into the multiple employer plan after December 29, 2022, then the multiple employer plan will be treated as a plan described in paragraph (e)(1) of this section with respect to that employer.

(iii) *Effect on other participating employers*. Neither an adoption nor a merger described in paragraph (e)(4)(i) or (ii) of this section affects whether the multiple employer plan is treated as a plan described in paragraph (e)(1) of this section with respect to any other employer maintaining the plan.

(5) *Plan spin-off*. If a portion of a plan described in paragraph (e)(1) of this section is spun off from that plan, the resulting spun-off plan will be treated as a plan described in paragraph (e)(1) of this section if either--

(i) The plan from which the spin-off occurred was not a multiple employer plan, or

(ii) The plan from which the spin-off occurred was a multiple employer plan that was treated as described in paragraph (e)(1) of this section with respect to the employer maintaining the spun-off plan.

(6) *Other plan amendments*--(i) *Treatment of amendments to a plan established before the enactment of section 414A*. A plan described in paragraph (e)(1) of this section will not fail to be described in paragraph (e)(1) of this section merely because the plan is amended, provided that the amendment is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section. The preceding sentence applies even if the amendment expands eligibility to participate in the cash or deferred arrangement, or to enter into a salary reduction agreement, to other employees of the

employer that maintains the plan or to employees of another employer that is aggregated with the employer that maintains the plan under section 414(b), (c), (m), or (o).

(ii) *Mergers with plans that do not include cash or deferred arrangements or salary reduction agreements.* If an employer maintains a plan that is described in paragraph (e)(1) of this section and that plan is merged with a plan that does not include a cash or deferred arrangement or permit a salary reduction agreement, then the merged plan will continue to be a plan described in paragraph (e)(1) of this section after the merger.

(7) *Examples*. The following examples illustrate the application of this paragraph (e). For purposes of the examples, each plan is maintained on a calendar-year basis, includes a cash or deferred arrangement that was adopted on the same date that the plan was adopted, and is not a SIMPLE 401(k) plan, governmental plan, or church plan. These examples assume that this section applies for plan years beginning on or after January 1, 2028, and, unless otherwise specifically provided, any plan merger does not occur in connection with a transaction described in §1.410(b)-2(f).

(i) *Example 1*--(A) *Facts*. Plan A, which is maintained by a single employer, Employer R, was adopted on January 1, 2021. Plan B, which is maintained by a single employer, Employer S, was adopted on January 1, 2025. On July 1, 2028, Plan A is merged with Plan B, and Plan A is the surviving plan in the merger.

(B) *Analysis and conclusion*. The merger is a merger of a plan described in paragraph (e)(1)(i) of this section with a plan that is not described in paragraph (e)(1)(i) of this section and is not a merger described in paragraph (e)(3)(ii) or (4) of this section. Under paragraph (e)(3)(i)(A) of this section, Plan A will no longer be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section

after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, applies to Employer R).

(ii) *Example 2*--(A) *Facts*. The facts are the same as in paragraph (e)(7)(i) of this section (*Example 1*), except that there is an acquisition described in §1.410(b)-2(f), and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(B) *Analysis and conclusion*. The merger satisfies the requirements of paragraph (e)(3)(ii) of this section. Accordingly, Plan A will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger.

(iii) *Example 3*--(A) *Facts*. Plan C, a multiple employer plan, was established on January 1, 2021. Plan D, a plan maintained by Employer T that is not a multiple employer plan, was adopted on January 1, 2024. Plan D merges with Plan C on December 31, 2028, and Plan C is the surviving plan after the merger.

(B) *Analysis and conclusion*. The merger is described in paragraph (e)(4)(i) of this section, and, because Plan D is not a plan described in paragraph (e)(1)(i) of this section, the merger is not excepted under paragraph (e)(4)(ii) of this section. Similarly, because there was no transaction described in §1.410(b)-2(f), the merger is not described in paragraph (e)(3)(iii) of this section. Accordingly, with respect to Employer T, Plan C will not be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, continues to apply to Employer T). However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan C is treated as a plan described in paragraph (e)(1)(i) of this section with respect to any other employers.

(iv) *Example 4*--(A) *Facts*. Plan E, a plan maintained by Employer U that is not a multiple employer plan, was adopted on January 1, 2021. Plan F, a multiple employer

plan, was established on January 1, 2024. Plan E merges with Plan F on December 31, 2028, and Plan F is the surviving plan after the merger.

(B) *Analysis and conclusion*. Under paragraph (e)(4)(ii) of this section, the portion of Plan F that applies with respect to Employer U will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger. However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan F is treated as a plan described in paragraph (e)(1)(i) of this section with respect to any other employers.

(v) *Example 5*--(A) *Facts*. Plan G, a plan maintained by Employer V that is not a multiple employer plan, was adopted on January 1, 2021. Plan G is amended, effective January 1, 2028, to add an additional participating employer, a subsidiary that is 100 percent owned by Employer V.

(B) *Analysis and conclusion*. Because the expansion of eligibility is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section, Plan G will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the amendment pursuant to paragraph (e)(6)(i) of this section.

(vi) *Example 6*--(A) *Facts*. Plan J, a multiple employer plan, was established on January 1, 2021. Employer W adopts Plan J on January 1, 2022. Effective January 1, 2028, the assets and account balances attributable to the employees of Employer W are spun off to form a new plan, Plan K, maintained solely by Employer W.

(B) *Analysis and conclusion*. Under paragraph (e)(5)(ii) of this section, Plan K will be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section.

(f) *Applicability dates*--(1) *Statutory applicability date*. Section 414A applies to plan years beginning after December 31, 2024.

(2) *Regulatory applicability date*. This section applies to plan years beginning after December 31, 2027. For prior plan years, a reasonable, good faith interpretation standard applies with respect to section 414A.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

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(b) * * *

CFR part or section where identified and described	Current OMB control no.
* * * * *	
1.414(w)-1	1545-2135
* * * * *	
1.414A-1	1545-2135
* * * * *	

Frank J. Bisignano,

Chief Executive Officer.

Approved: June 17, 2026.

Kevin M. Salinger,

Assistant Secretary of the Treasury (Tax Policy).

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