

# SECURE Act 2.0 Mandatory Automatic Enrollment Requirements for New Retirement Plans Guidance Released

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One of the hallmarks of the SECURE 2.0 Act of 2022 (SECURE Act 2.0) legislation was to increase participation in retirement plans. On January 10, 2025, the Treasury Department and the IRS came one step closer when they announced the issuance of proposed regulations requiring automatic enrollment for new Code Section 401(k) and 403(b) retirement plans (Proposed Regulations). As background, the SECURE Act 2.0 added Code Section 414A, which provides that a retirement plan will not be qualified unless it satisfies certain automatic enrollment requirements under Code Section 414(w). These requirements:

- Require automatic enrollment of employees with elective deferral contributions of at least 3% and no more than 10% in the first year of participation (with 1% increases between 10-15%)
- Permit participants to withdraw their automatic elective deferrals within 90 days of their first elective deferral contributions being made
- If no investment election is made, permit the automatic elective deferrals to be invested in qualified default investment alternatives (QDIAs)

The legislation, as originally enacted, provides that the automatic enrollment requirements do not apply to 1) retirement plans established before December 29, 2022; 2) retirement plans that have been in existence for less than three years; 3) governmental plans; 4) SIMPLE 401(k) plans; and 5) retirement plans with fewer than 10 employees. The Proposed Regulations provide additional regulatory guidance and clarification on issues such as eligibility for the automatic enrollment feature, contribution requirements, permissive withdrawals and investment requirements. The Proposed Regulations also incorporate previous IRS automatic enrollment guidance issued last year (provided in Notice 2024-2) with some modifications.

## Highlights From the Proposed Regulations

- **Eligibility** – Provides that an employer cannot exclude groups of employees, and the automatic enrollment requirements must apply to all employees eligible to elect to participate in the plan. However, an employer can exclude employees who already have an election on

file (whether an election to contribute or to opt out) on the date the plan is required to comply with the automatic enrollment requirements.

- **Contribution limits** – Clarifies how an employee’s “initial period” is determined for purposes of initial contributions. The initial period begins on the date the employee is first eligible to participate in the plan and ends on the last day of the following plan year. This is important for the application of the automatic escalation rule that requires the plan to automatically increase an auto-enrolled participant’s contribution percentage by one percentage point (up to 10%) each plan year following the employee’s initial period.
- **Plan mergers and spinoff** – Generally, incorporates guidance provided in Notice 2024-2 regarding the application of the automatic enrollment requirement to plans that are the result of mergers but expands the guidance to address mergers involving multiple employer plans; incorporates the guidance in Notice 2024-2 regarding spinoffs. Importantly, the merger of two plans established prior to December 29, 2022, into one plan will not create a new plan subject to the automatic enrollment requirements.
- **New and small business** – Provides that the automatic enrollment requirements should start on the first day of the first plan year that begins after the employer has been in existence for three years. Further, the 10-employee requirement is determined by the Consolidated Omnibus Budget Reconciliation Act (COBRA) regulations under Q&A-5, Treasury Regulation Section 54.4980B-2.
- **Multiple employer plans** – Clarifies that if an employer adopts a multiple employer plan, the automatic enrollment requirements apply to the employer as if it adopted a single employer plan (i.e., they apply if adopted after December 29, 2022) regardless of when the multiple employer plan was adopted. This would not affect the employers who adopted the multiple employer plan on or before December 29, 2022.

The Proposed Regulations will not take effect until the first plan year beginning six months after the issuance of final regulations. However, the change in presidential administration (and related changes within the administrative agencies) casts uncertainty on whether these regulations will be finalized without further modifications or withdrawn all together. A plan sponsor should proceed in good faith to apply these rules until they are final.

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