Mandatory Automatic Enrollment under SECURE 2.0, Section 101

What is changing?

SECURE 2.0 §101 added Code §414A, requiring certain plans to include mandatory automatic enrollment provisions beginning in 2025. The IRS issued further guidance in Notice 2024-02 that, among other things, details how to determine whether a plan was "established" prior to December 29, 2022 (the date of enactment of SECURE 2.0) and provides a few examples of plan mergers and plan spin offs in the context of the new rule.

Plans determined to be "established" prior to December 29, 2022 are often referred to as "pre-enactment qualified CODAs" or "pre-enactment plans" and plans that are required to have mandatory automatic enrollment under SECURE 2.0 §101 are often referred to as "post-enactment plans."

When will this provision become effective?

Plan years beginning after December 31, 2024.

Are there exceptions?

Yes, below are the exceptions:

- Plans "established" prior to December 29, 2022 (see the next question for determination of "establishment date")
- Governmental and church plans
- SIMPLE plans
- New businesses: Employers that have been in existence for less than three years
- Small businesses: Employers that normally employ fewer than 11 employees (exemption expires one year after the close of the first tax year after employer goes over the limit)

How do I know if my plan is considered "established" before December 29, 2022?

Notice 2024-02 addresses how to determine a plan's "establishment" date for purposes of SECURE 2.0 §101:

- For 401(k) plans, the cash or deferred arrangement (CODA), or elective deferral provision, must have been adopted prior to December 29, 2022, for the plan to be considered "established" and therefore not required to add automatic enrollment
    - For example: if an employer adopted a plan that included a qualified CODA on October 3, 2022, with an effective date of January 1, 2023, then the qualified CODA would be considered established on October 3, 2022 (that is, before December 29, 2022), even though the qualified CODA was not effective until after December 29, 2022

- For 403(b) plans, the plan is "established" when the plan was adopted, regardless of whether the plan included an elective deferral provision at that time

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What is the impact on plan mergers and plan spin-offs?

Notice 2024-02 addresses many of the issues related to plan mergers or spin-offs and MEPs/PEPs:

- **Examples for Multiple Employer Plans (MEPs) and Pooled Employer Plans (PEPs):**
  - A start up plan that joins a MEP/PEP must have an EACA regardless of the MEP/PEP pre-enactment status
  - A pre-enactment single employer plan that merges into a pre-enactment MEP/PEP retains its pre-enactment status
  - A post-enactment plan that merges into a pre-enactment MEP/PEP must add auto enrollment

- **Examples for Single Employer Plans:**
  - If two plans that include pre-enactment CODAs are merged, the resulting plan is a pre-enactment CODA and retains its pre-enactment status
  - If a plan that includes a pre-enactment CODA is merged into a post-enactment plan, generally the resulting plan will be treated as a post-enactment plan
    - An exception is provided in this instance for plans being merged due to a transaction covered by §410(b)(6)(C). If the plans are merged by the end of the transition period (i.e., the end of the plan year after the plan year of the transaction), then the plan will be exempt from the EACA mandate if the plan that is designated as the ongoing plan is the one that includes a pre-enactment CODA.
  - If a plan is spun-off from a pre-enactment plan, the resulting spun-off plan is generally treated as a pre-enactment plan, retaining its pre-enactment status

These examples are not a complete list of scenarios. Please contact your Relationship Manager or Plan Consultant if you would like to review the specifics of your plan.

Does my pre-enactment plan merging into a post-enactment MEP/PEP retain its pre-enactment status?

Current IRS guidance does not specifically address a pre-enactment plan merging into a post-enactment MEP/PEP. As this is not addressed in the guidance and absent further guidance available at this time, many industry professionals are taking the conservative approach that plans that merge into a MEP/PEP are required to add an EACA upon merger. In other words, the pre-enactment plan that merges into the post-enactment MEP/PEP loses its pre-enactment status.

What are the eligible automatic contribution arrangement (EACA) provision requirements?

- The plan provisions must meet EACA requirements
- For a participant's first year of participation, the default percentage must be at least 3%, and not more than 10%
- On the first day of each completed year of participation, the percentage is increased by 1% to a maximum percentage of at least 10% (but not more than 15%)
- The participant must be able to make an affirmative election to change their deferral percentage or stop deferring
- Participant deferrals must be invested in accordance with the DOL qualified default investment alternative (QDIA) regulations (§2550.404c-5) unless a participant makes a contrary investment election
- The plan must allow permissible withdrawals

Please contact your Relationship Manager or Plan Consultant with any questions.