

AMERICAN BENEFITS
COUNCIL

February 20, 2024

Submitted electronically via email and regulations.gov

Helen Morrison
Benefits Tax Counsel
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Rachel Leiser Levy
Associate Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: IRS Notice 2024-02

Dear Helen and Rachel:

On behalf of the American Benefits Council (the Council), I wrote on February 7 to address a concern regarding question and answer A-3 of Notice 2024-02.¹

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

Under Q&A A-3 of Notice 2024-02, it appears that if a single-employer plan that includes a pre-enactment qualified CODA is merged into a pooled employer plan (PEP) or other multiple employer plan (MEP) that was established on or after December 29, 2022, the single-employer plan loses its status as having a pre-enactment qualified CODA. Thus, that employer's part of the PEP or MEP will become subject to the automatic enrollment requirements of Code Section 414A. As discussed in my previous letter, we believe that this result (1) is technically incorrect, and (2) will have very adverse policy effects.

¹ <https://www.americanbenefitscouncil.org/pub/D4BBF970-EB7D-0A04-A9F4-A4A62DB5AA2B>

Aside from Q&A-3, we believe that Notice 2024-02 was extremely well done. The notice covered many very helpful topics, and our members are still absorbing the guidance. So, we are anticipating learning much more about the issues in the notice as our members work through the various implementation challenges. It is our intention to continue gathering input from our members on issues under the notice as those issues are identified. We plan to send in additional comments as we become aware of them.

Thanks again for the excellent work that went into the notice, and we look forward to working with you on many issues in the future.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Dudley". The signature is fluid and elegant, with the first and last names clearly legible.

Lynn Dudley

Senior Vice President, Global Retirement and Compensation Policy

cc: Kyle Brown

William Evans

Pamela Kinard

Linda Marshall

Neil Sandhu

Michael Spaid

Laura Warshawsky

Harlan Weller

David Ziegler