IRS Issues Proposed Regulations on Automatic Enrollment Requirements

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Notice of Proposed Rulemaking: Automatic Enrollment Requirements Under Section 414A, 26 CFR Part 1, 90 Fed. Reg. 3092 (Jan. 14, 2025)

Available at ***https://www.govinfo.gov/content/pkg/FR-2025-01-14/pdf/2025-00501.pdf***

The IRS has issued proposed regulations reflecting the SECURE 2.0 Act's requirement that, for plan years beginning after December 31, 2024, certain plans established on or after December 29, 2022, must qualify as automatic enrollment plans and meet additional requirements to be considered qualified cash or deferred arrangements (CODAs). The proposed regulations reflect statutory provisions on issues such as percentage requirements for initial contributions and automatic increases, permissible withdrawals, investment requirements, and exemptions for certain types of plans, and incorporate previous IRS automatic enrollment guidance with some modifications. Here are highlights.

The proposed regulations would clarify that most employees must be included in automatic enrollment. However, employees who had already made an affirmative election before the plan became subject to automatic enrollment can be excluded from the default election provisions. With respect to plan mergers, the proposed regulations build on the earlier guidance and provide additional details on when merged plans would be treated as pre-enactment plans (i.e., plans established before December 29, 2022, which are exempted from these automatic enrollment requirements). They clarify that plan design changes and other amendments, including changes that expand employee eligibility to make deferrals, generally would not affect a plan's status as a pre-enactment plan (except amendments relating to certain mergers involving CODAs that were not established before December 29, 2022, or the adoption of a multiple employer plan). Examples demonstrate situations that may affect a plan's treatment as a pre-enactment plan. Other issues addressed include satisfying the uniform percentage requirements, situations in which an individual's "initial period" may be redetermined, and the consolidation of automatic enrollment disclosures with other notice requirements. The proposed regulations also provide that, if a CODA includes a pension-linked emergency savings account (PLESA), an affirmative election to contribute to the PLESA would be considered an affirmative election under the CODA, but automatic contributions to a PLESA would not satisfy the automatic enrollment requirements.

The regulations are proposed to apply to plan years that begin more than six months after the issuance of final regulations. Before final regulations are applicable, plan administrators must apply a reasonable, good faith interpretation of the statute, a point reiterated in the related news release.

EBIA Comment: With the imminent change in presidential administration (and related changes to executive branch agencies), the proposed regulations face uncertainty and could potentially be withdrawn or substantially altered. Regardless, for plans subject to these rules, being able to demonstrate the application of good faith statutory interpretation will be crucial. For more information, see EBIA's 401(k) Plans manual at Sections VIII.A ("Participant Contributions: Code Requirements and Design Choices") and VIII.D ("Elective Deferrals: Automatic Arrangements").

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