THE ERISA INDUSTRY COMMITTEE
Shaping benefit policies before they shape you.

ANDREW BANDUCCI
Senior Vice President, Retirement and Compensation Policy

Submitted Electronically

March 14, 2025

Internal Revenue Service
Attn: CC:PA:01:PR (REG –100669-24)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: RIN 1545-BR08: Notice of Proposed Rulemaking on "Automatic Enrollment Requirements Under Section 414A"

To Whom It May Concern:

On behalf of The ERISA Industry Committee (ERIC), thank you for the opportunity to comment on the notice of proposed rulemaking issued by the Department of the Treasury and the Internal Revenue Service (IRS) on January 14, 2025 (Proposal or Proposed Rule).[1] ERIC appreciates the guidance the IRS, the Department of the Treasury, and other regulators have provided in connection with the *SECURE 2.0 Act of 2022* (SECURE 2.0), including this proposed regulation.

By way of background, ERIC is a national advocacy organization exclusively representing the largest employers in the United States in their capacity as sponsors of employee benefit plans for their nationwide workforces. With member companies that are leaders in every economic sector, ERIC is the voice of large employer plan sponsors on federal, state, and local public policies impacting their ability to sponsor benefit plans. ERIC member companies offer benefits to tens of millions of employees and their families, located in every state, city, and Congressional district.

ERIC supported SECURE 2.0, although we had reservations about Section 101, imposing an automatic enrollment requirement on certain retirement plans established after the date of SECURE 2.0's enactment. While automatic enrollment is a powerful tool that can have excellent results for retirement outcomes, ERIC generally opposes one-size-fits-all mandates on plan design decisions. In the American retirement system, where employers voluntarily provide valuable employee benefits, plan sponsors need to have the flexibility to design and administer retirement plans to best serve their diverse workforces.

[1] 90 Fed. Reg. 3092 (Jan. 14, 2025).

Section 101 of SECURE 2.0 generally creates a qualification requirement for cash or deferred arrangements (CODAs) to satisfy certain new automatic enrollment requirements housed in new Code section 414A. Among a variety of exceptions, a plan "established" before the date of enactment of SECURE 2.0 is not subject to these requirements, which generally eased our concerns, as ERIC members already have plans established.[2] The Treasury Department and IRS provided additional guidance implementing section 101 in the form of Notice 2024-2.[3] We appreciated that Q&A A-1 of that Notice made clear that a plan is "established" on the date plan terms providing for the CODA are adopted *initially* (emphasis added). We note that this was incorporated into the Proposed Rule. [4]

Similarly, we appreciate that the Proposed Rule incorporates earlier guidance stating that the merger of two plans established before SECURE 2.0's enactment does not create a new, post-enactment plan subject to the automatic enrollment mandate. ERIC also asked for clarification to ensure that the merger of a post-enactment single-employer plan into a multiple employer plan does not change the requirements applicable with respect to the other employers in the plan.[5] Similarly, we appreciate the additional clarification that if an employer merges its pre-enactment plan into a multiple-employer plan established after enactment, then the post-merger multiple-employer plan will be treated as a pre-enactment plan with respect to that employer.[6]

The preamble to the Proposed Rule also describes the interaction of the automatic enrollment requirements with the provisions of SECURE 2.0 governing how pension-linked emergency savings accounts (PLESAs) are handled. We fear there is tension in the requirements applicable to investment of these funds. Generally, under Internal Revenue Code section 414A, the automatic enrollment requirements are satisfied only if (in the case where there is no investment elected by the employee), the contributions are invested pursuant to 29 CFR 2550.404c-5 (the qualified default investment alternative rules promulgated by the Department of Labor). At the same time, if a plan to which the automatic enrollment mandate applies also includes a PLESA, then an election to contribute to a PLESA is also an election to contribute to the CODA. As the Proposed Rule describes:

> *If an employee is automatically enrolled to contribute to a PLESA, the investment requirements [in the Proposal] generally would not be satisfied with respect to the automatic contributions to the PLESA. Thus, automatic contributions to the PLESA would not be able to be used to satisfy the automatic enrollment requirements under section 414A.*[7]

The Proposed Rule notes, in a footnote, that according to the Department of Labor, the default investment option for a PLESA generally cannot be the same as the plan's qualified default

[2] Sec. 414A(c)(2)(A)(i).
[3] Notice 2024-2, 2024-2 IRB 316 (Dec. 20, 2023).
[4] 90 Fed. Reg. at 3098.
[5] *Id.* at 3099.
[6] *Id.*
[7] *Id.* at 3101.

investment alternative (QDIA), unless for a short time period.[8] This additional complexity threatens to limit uptake of PLESAs, which were intended to assist the holistic financial wellness of American workers. ERIC urges Treasury and IRS to work with the Department of Labor to harmonize and streamline the PLESA rules in this context by permitting defaulted PLESA funds to be held in the plan's QDIA.

Furthermore, the Proposal imposes a requirement that amounts contributed to the plan pursuant to an Eligible Automatic Contribution Arrangement must be invested pursuant to the Department of Labor's QDIA rules.[9] There is not currently a mechanism for correcting QDIA compliance errors. However, the proposed new requirement could have plan qualification ramifications for non-compliant plans. Therefore, we also urge Treasury and IRS to work with the Department of Labor to provide guidance on how to correct errors related to QDIA non-compliance, so that inadvertent errors do not jeopardize plan qualification.

Again, thank you for the opportunity to participate in the implementation efforts of SECURE 2.0 and please do not hesitate to reach out with any questions.

Sincerely,

Andrew Banducci

[8] *Id.* at n. 10.
[9] *Id.* at 3098.