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Prop. Reg. Section 1.414A-1(d)

Automatic enrollment requirements under section 414A

(a)Overview. This section provides rules regarding the automatic enrollment requirements under section 414A. Paragraph (b) of this section provides that a plan that includes a qualified cash or deferred arrangement under section 401(k) or a salary reduction agreement under section 403(b) is required to satisfy the automatic enrollment requirements of paragraph (c) of this section unless an exception described in paragraph (d) of this section (for certain types of plans and businesses) or paragraph (e) of this section (for a cash or deferred arrangement or section 403(b) plan established before December 29, 2022) applies to the plan. The applicability date of section 414A and the applicability date of this section are set forth in paragraph (f) of this section.

(b)General rule.

(1)Qualified cash or deferred arrangements. Except as provided in paragraph (d) or (e) of this section, a cash or deferred arrangement will not be treated as a qualified cash or deferred arrangement described in §1.401(k)-1(a)(4)(i) for a plan year unless the plan that includes the arrangement provides that any cash or deferred election under the arrangement must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(2)Section 403(b) plans with salary reduction agreements. Except as provided in paragraph (d) or (e) of this section, an annuity contract described in section 403(b) that is purchased pursuant to a salary reduction agreement described in §31.3121(a)(5)-2(a)(1) (that is, an election to reduce compensation pursuant to a cash or deferred election as defined in §1.401(k)-1(a)(3)) will not be treated as purchased under a section 403(b) plan for a plan year unless the plan provides that any salary reduction agreement under the plan must satisfy the automatic enrollment requirements of paragraph (c) of this section.

(c)Automatic enrollment requirements.

(1)In general.

(i) Arrangement must be an eligible automatic contribution arrangement. A cash or deferred arrangement or salary reduction agreement under a plan satisfies the automatic enrollment requirements of this paragraph (c) only if the plan provides for an eligible automatic contribution arrangement (as defined in section 414(w)(3)) that-

(A) Covers the employees described in paragraph (c)(1)(ii) of this section, and

(B) Satisfies the additional requirements of paragraphs (c)(2) through (4) of this section.

(ii) Employees covered under the eligible automatic contribution arrangement. The employees who must be covered by the eligible automatic contribution arrangement are all employees in the plan who are eligible to elect to have contributions made on their behalf under a cash or deferred arrangement or pursuant to a salary reduction agreement.

(iii) Exception to default election for employees with an affirmative election. An eligible automatic contribution arrangement will not fail to satisfy the requirements of this paragraph (c) merely because the default election under the arrangement does not apply to an employee who, on the date paragraph (b) of this section first applies to the plan that includes the cash or deferred arrangement or salary reduction agreement, had an affirmative election in effect (that remains in effect) to-

(A) Have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(2) Arrangement must permit permissive withdrawals. An eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(2) only if the plan that includes the arrangement provides that any employee who has default elective contributions made under the arrangement may elect to make a permissible withdrawal (as defined in section 414(w)(2) and described in § 1.414(w)-1(c)).

(3) Contribution requirements.

(i) Default election. An eligible automatic contribution arrangement under a plan satisfies the requirements of this paragraph (c)(3) only if, under the arrangement, the default election made on behalf of an employee is equal to a uniform percentage, as described in paragraph (c)(3)(ii) of this section, of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan, unless the employee affirmatively elects to-

(A) Have contributions made in a different amount on the employee's behalf under a cash or deferred election or a salary reduction agreement (in a specified amount or percentage of compensation); or

(B) Not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

(ii) Uniform percentage.

(A) Initial period.

(1) Initial percentage. The contribution percentage under the default election for each employee's initial period must be a uniform percentage that is not less than 3 percent and not more than 10 percent.

(2) Beginning of initial period. An employee's initial period begins when the employee is first eligible to elect to have contributions

made on the employee's behalf under the plan (or if later, when section 414A first applies to the plan).

(3) End of initial period. The employee's initial period ends on the last day of the plan year that follows the plan year that includes the date the initial period begins.

(B) Subsequent plan years. For each plan year beginning after an employee's initial period under the arrangement, the percentage contribution under the default election must be increased by 1 percentage point until the percentage is at least 10 percent. However, the percentage may not exceed 15 percent (or the lower percentage specified in section 414A(b)(3)(B), if applicable).

(iii) Exception to uniform percentage requirement. An eligible automatic contribution arrangement does not fail to satisfy the uniform percentage requirement of paragraph (c)(3)(ii) of this section merely because-

(A) The percentage used for the default election varies based on the number of years (or portions of years) since the beginning of the initial period for an employee;

(B) The rate of contributions under a cash or deferred election or salary reduction agreement that is in effect for an employee immediately prior to the date that the default election under paragraph (c) of this section first applies to the employee is not reduced;

(C) The rate of contributions under a cash or deferred election or salary reduction agreement is limited so as not to exceed the applicable limits of sections 401(a)(17), 401(k)(16), 402(g) (determined with or without catch-up contributions), 403(b)(16), and 415; or

(D) The default election provided under paragraph (c)(3)(i) of this section is not applied during the period an employee is not permitted to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in order for the plan to satisfy the requirements of section 414(u)(12)(B)(ii).

(iv) Treatment of periods without default contributions

(A) Permissive redetermination of initial period in certain situations. The uniform percentages described in paragraph (c)(3)(ii) of this section are based on the date an employee's initial period begins. However, if, after the employee's initial period began, the employee did not have default elective contributions made for an entire plan year, then the plan is permitted to provide that the employee's initial period is redetermined as described in paragraph (c)(3)(iv)(B) or (C) of this section.

(B) Redetermination for employee who became ineligible. If, for an entire plan year, no default elective contributions were made solely because the employee was not eligible to elect to have contributions made on the

employee's behalf under a cash or deferred election or salary reduction agreement for that plan year, then the plan is permitted to provide that the employee's initial period is redetermined so that it begins on the date the employee is again eligible to elect to have contributions made on the employee's behalf under the plan.

(C) Redetermination for employee who remained eligible and made an affirmative election. If, for an entire plan year, no default elective contributions were made solely because the employee made an affirmative election to have contributions made on the employee's behalf under a cash or deferred election or salary reduction agreement in a different amount (including an election not to have contributions made), then the plan is permitted to provide that the initial period is redetermined so that it begins on any date specified under the plan that is later than the date specified in paragraph (c)(3)(ii)(A)(3) of this section.

(4) Investment requirements. An eligible automatic contribution arrangement satisfies the requirements of this paragraph (c)(4) only if amounts contributed pursuant to the arrangement, and for which no investment is elected by the employee, are invested in accordance with the requirements of 29 CFR 2550.404c-5 (or any successor regulations).



(d) Exceptions for certain types of plans and businesses.

(1) SIMPLE 401(k) plans. Paragraph (b) of this section does not apply to any SIMPLE 401(k) plan (as described in section 401(k)(11) and § 1.401(k)-4).

(2) Governmental plans. Paragraph (b) of this section does not apply to any governmental plan (within the meaning of section 414(d)).

(3) Church plans. Paragraph (b) of this section does not apply to any church plan (within the meaning of section 414(e)).

(4) New and small businesses.

(i) New businesses. Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, for a plan year if, as of the beginning of the plan year, the employer maintaining the plan (aggregated with any predecessor employer) has been in existence for less than 3 years.

(ii) Small businesses. Paragraph (b) of this section does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a section 403(b) plan, before the first plan year that begins at least 12 months after the close of the first taxable year of the employer maintaining the plan with respect to which that employer normally employed more than 10 employees. For this purpose, the number of employees that the employer normally employs for a taxable year is determined using the rules of Q&A-5 of §54.4980B-2 of this chapter.

(iii) Applicability to multiple employer plans. In the case of a multiple employer plan, the exceptions provided in paragraphs (d)(4)(i) and (ii) of this section apply on an employer-by-employer basis.

(iv)

Example.

(A) Facts. Employer Q has been in existence since July 1, 2026, and does not have a predecessor employer. Employer Q maintains Plan X, which has a plan year that is the calendar year and includes a cash or deferred arrangement. Plan X was effective on January 1, 2027, and provides that a cash or deferred election must be an affirmative election. Employee M, who became eligible to elect to have contributions made on Employee M's behalf under Plan X on January 1, 2027, made an affirmative election not to have elective contributions made on Employee M's behalf and that affirmative election is in effect on January 1, 2030. Employee N, who also became eligible to elect to have contributions made on Employee N's behalf under Plan X on January 1, 2027, has not made any election to have (or not have) contributions made on Employee N's behalf under Plan X. Effective January 1, 2030, Plan X is amended to include an eligible automatic contribution arrangement that satisfies the requirements of paragraphs (c)(2) through (4) of this section. The amendment provides that an employee who has a cash or deferred election that is an affirmative election and is in effect on January 1, 2030, is not subject to the default election under the eligible automatic contribution arrangement that is included in Plan X.

(B) Analysis and Conclusion. Because the exception for new businesses set forth in paragraph (d)(4)(i) of this section ceases to apply to Plan X for plan years beginning on or after January 1, 2030, paragraph (b) of this section first applies to Plan X as of that date. Pursuant to paragraph (c)(1)(iii) of this section, the eligible automatic contribution arrangement required to be included in Plan X for plan years beginning on January 1, 2030, does not fail to satisfy the requirements of paragraph (c) of this section merely because the default election under the arrangement does not apply to Employee M as a result of Employee M's affirmative election. However, Plan X does not satisfy the requirements of section 414A unless the default election in paragraph (c)(3) of this section applies to Employee N because of the absence of an affirmative election made by Employee N to have elective contributions made on Employee N's behalf in a different amount (or to not have elective contributions made on Employee N's behalf).

(e)Exception for plans established before the enactment of section 414A.

(1)In general. Subject to the rules of application in paragraphs (e)(2) through (6) of this section, paragraph (b) of this section does not apply to-

(i) Any plan that includes a qualified cash or deferred arrangement if the plan terms providing for the qualified cash or deferred arrangement were adopted initially before December 29, 2022 (the date of the enactment of section 414A), even if the plan terms providing for the cash or deferred arrangement are effective after that date, or

(ii) Any section 403(b) plan adopted initially before December 29, 2022, without regard to the date of adoption of plan terms providing for salary reduction agreements.

(2) Merger of plans established before the enactment of section 414A.

(i) General rule. If two plans described in paragraph (e)(1)(i) of this section are merged, then the merged plan will be treated as a plan described in paragraph (e)(1)(i) of this section. Similarly, if two section 403(b) plans described in paragraph (e)(1)(ii) of this section are merged, then the merged plan will be treated as a section 403(b) plan described in paragraph (e)(1)(ii) of this section.

(ii) Effect of merger of multiple employer plans on participating employers. If either of the plans described in paragraph (e)(2)(i) of this section are multiple employer plans, then the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained the multiple employer plan prior to the merger.

(3) Merger of a plan established on or after the enactment of section 414A with a plan established before the enactment of section 414A.

(i) General rule.

(A) Section 401(k) plans. Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a plan that includes a cash or deferred arrangement and that is not described in paragraph (e)(1)(i) of this section is merged with a plan described in paragraph (e)(1)(i) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(i) of this section.

(B) Section 403(b) plans. Except as provided in paragraphs (e)(3)(ii), (iii), and (4)(ii) of this section, if a section 403(b) plan that is not described in paragraph (e)(1)(ii) of this section is merged with a plan described in paragraph (e)(1)(ii) of this section, then the merged plan will not be treated as a plan described in paragraph (e)(1)(ii) of this section.

(ii) Exception for certain transactions. A plan that is maintained by a single employer and described in paragraph (e)(1) of this section will continue to be treated as described in paragraph (e)(1) of this section after a merger described in paragraph (e)(3)(i) of this section, if-

(A) There is a transaction described in §1.410(b)-2(f),

(B) The plan described in paragraph (e)(1) of this section is designated as the ongoing plan, and

(C) The plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(iii) Applicability to multiple employer plans.

(A) Applicability of exception for certain transactions involving a merger into a multiple employer plan. In the case of a merger of a plan that is not a multiple employer plan and not described in paragraph (e)(1) of this

section into a multiple employer plan that is designated as the ongoing plan, paragraph (e)(3)(ii) of this section applies even though the ongoing plan is a multiple employer plan and without regard to whether that plan is a plan described in paragraph (e)(1) of this section, provided that prior to the transaction described in paragraph (e)(3)(ii)(A) of this section, the multiple employer plan was treated as a plan described in paragraph (e)(1) of this section with respect to the employer that maintained the multiple employer plan and engaged in the transaction.

(B) Merger of multiple employer plans. If both of the plans described in paragraph (e)(3)(i) of this section are multiple employer plans, then the exception in paragraph (e)(3)(ii) of this section does not apply. In such a case, the merger will not affect whether the merged plan is treated as a plan described in paragraph (e)(1) of this section with respect to any employer that maintained either multiple employer plan prior to the merger.

(4) Treatment of adoption of, or merger with, a multiple employer plan.

(i) In general. If, after December 29, 2022, an employer adopts a multiple employer plan, then, with respect to that employer, the multiple employer plan will not be treated as a plan described in paragraph (e)(1) of this section. The same treatment will apply if the employer maintains a plan other than a multiple employer plan that is merged with a multiple employer plan after December 29, 2022, unless the merger is described in paragraph (e)(3)(iii) of this section.

(ii) Exception for mergers involving plans established before the enactment of section 414A. Paragraph (e)(4)(i) of this section does not apply if the plan that is merged into the multiple employer plan is a plan described in paragraph (e)(1) of this section. Thus, if the employer maintains a plan described in paragraph (e)(1) of this section that is merged into the multiple employer plan after December 29, 2022, then the multiple employer plan will be treated as a plan described in paragraph (e)(1) of this section with respect to that employer.

(iii) Effect on other participating employers. Neither an adoption nor a merger described in paragraph (e)(4)(i) or (ii) of this section affects whether the multiple employer plan is treated as a plan described in paragraph (e)(1) of this section with respect to any other employer maintaining the plan.

(5) Plan spin-off. If a portion of a plan described in paragraph (e)(1) of this section is spun off from that plan, the resulting spun-off plan will be treated as a plan described in paragraph (e)(1) of this section if either-

(i) The plan from which the spin-off occurred was not a multiple employer plan, or

(ii) The plan from which the spin-off occurred was a multiple employer plan that was treated as described in paragraph (e)(1) of this section with respect to the employer maintaining the spun-off plan.

(6) Other plan amendments.

(i) Treatment of amendments to a plan established before the enactment of section 414A. A plan described in paragraph (e)(1) of this section will not fail to be described in paragraph (e)(1) of this section merely because the plan is amended, provided that the amendment is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section. The preceding sentence applies even if the amendment expands eligibility to participate in the cash or deferred arrangement, or to enter into a salary reduction agreement, to other employees of the employer that maintains the plan or to employees of another employer that is aggregated with the employer that maintains the plan under section 414(b), (c), or (m).

(ii) Mergers with plans that do not include cash or deferred arrangements or salary reduction agreements. If an employer maintains a plan that is described in paragraph (e)(1) of this section and that plan is merged with a plan that does not include a cash or deferred arrangement or permit a salary reduction agreement, then the merged plan will continue to be a plan described in paragraph (e)(1) of this section after the merger.

(7) Examples. The following examples illustrate the application of this paragraph (e). For purposes of the examples, each plan is maintained on a calendar-year basis, includes a cash or deferred arrangement that was adopted on the same date that the plan was adopted, and is not a SIMPLE 401(k) plan, governmental plan, or church plan. These examples assume that this section applies for plan years beginning on or after January 1, 2026, and, unless otherwise specifically provided, any plan merger does not occur in connection with a transaction described in §1.410(b)-2(f).

(i)

Example (1).

(A) Facts. Plan A, which is maintained by a single employer, Employer R, was adopted on January 1, 2021. Plan B, which is maintained by a single employer, Employer S, was adopted on January 1, 2025. On July 1, 2026, Plan A is merged with Plan B, and Plan A is the surviving plan in the merger.

(B) Analysis and conclusion. The merger is a merger of a plan described in paragraph (e)(1)(i) of this section with a plan that is not described in paragraph (e)(1)(i) of this section and is not a merger described in paragraph (e)(3)(ii) or (4) of this section. Under paragraph (e)(3)(i)(A) of this section, Plan A will no longer be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, applies to Employer R).

(ii)

Example (2).

(A) Facts. The facts are the same as in paragraph (e)(7)(i) of this section (Example 1), except that there is an acquisition described in §1.410(b)-2(f), and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii).

(B) Analysis and conclusion. The merger satisfies the requirements of paragraph (e)(3)(ii) of this section. Accordingly, Plan A will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger.

(iii)

Example (3).

(A) Facts. Plan C, a multiple employer plan, was established on January 1, 2021. Plan D, a plan maintained by Employer T that is not a multiple employer plan, was adopted on January 1, 2024. Plan D merges with Plan C on December 31, 2024.

(B) Analysis and conclusion. The merger is described in paragraph (e)(4)(i) of this section and because Plan D is not a plan described in paragraph (e)(1)(i) of this section, the merger is not excepted under paragraph (e)(4)(ii) of this section. Similarly, because there was no transaction described in §1.410(b)-2(f), the merger is not described in paragraph (e)(3)(iii) of this section. Accordingly, with respect to Employer T, Plan C will not be a plan described in paragraph (e)(1)(i) of this section and will be subject to paragraph (b) of this section after the merger (unless an exception described in paragraph (d)(4) of this section, relating to new or small businesses, continues to apply to Employer T). However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan C is treated as a plan described in paragraph (e)(1)(i) of this section with respect to any other employers.

(iv)

Example (4).

(A) Facts. Plan E, a plan maintained by Employer U that is not a multiple employer plan, was adopted on January 1, 2021. Plan F, a multiple employer plan, was established on January 1, 2024. Plan E merges with Plan F on December 31, 2024.

(B) Analysis and conclusion. Under paragraph (e)(4)(ii) of this section, the portion of Plan F that applies with respect to Employer U will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the merger. However, under paragraph (e)(4)(iii) of this section, the merger does not affect whether Plan F is treated as a plan described in paragraph (e)(1)(i) of this section with respect to any other employers.

(v)

Example (5).

(A) Facts. Plan G, a plan maintained by Employer V that is not a multiple employer plan, was adopted on January 1, 2021. Plan G is amended, effective January 1, 2026, to add an additional participating employer, a subsidiary that is 100 percent owned by Employer V.

(B) Analysis and conclusion. Because the expansion of eligibility is not an amendment relating to an action described in paragraph (e)(2), (3), or (4) of this section, Plan G will continue to be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section after the amendment pursuant to paragraph (e)(6)(i) of this section.

(vi)

Example (6).

(A) Facts. Plan J, a multiple employer plan, was established on January 1, 2021. Employer W adopts Plan J on January 1, 2022. Effective January 1, 2026, the assets and account balances attributable to the employees of Employer W are spun off to form a new plan, Plan K, maintained solely by Employer W.

(B) Analysis and Conclusion. Under paragraph (e)(5)(ii) of this section, Plan K will be excepted from paragraph (b) of this section as a plan described in paragraph (e)(1)(i) of this section.

(f)Applicability dates.

(1)Statutory applicability date. Section 414A applies to plan years beginning after December 31, 2024.

(2)Regulatory applicability date. This section applies to plan years beginning after [DATE SIX MONTHS AFTER DATE OF PUBLICATION OF FINAL RULE]. For earlier plan years, a plan is treated as having complied with section 414A if the plan complies with a reasonable, good faith interpretation of section 414A.