



March 19, 2025

Ms. Helen Morrison  
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Department of the Treasury  
1500 Pennsylvania Ave., NW  
Washington, DC 20220

Ms. Rachel Leiser Levy  
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Ms. Kara Soderstrom  
General Attorney (Tax)  
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**Re: Proposed Regulations Related to Automatic Enrollment Requirements Under  
Section 414A [REG 100669-24]**

Dear Mses. Morrison, Levy, and Soderstrom:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury ("Treasury") and the Internal Revenue Service (IRS) in issuing proposed regulations to address the need for guidance related to the automatic enrollment requirements as enacted in Section 101 of the SECURE 2.0 Act of 2022 (SECURE 2.0), signed into law on December 29, 2022, as part of the Consolidated Appropriations Act of 2023.<sup>1</sup>

SECURE 2.0 added section 414A to the Internal Revenue Code (IRC).<sup>2</sup> On January 14, 2025, Treasury and the IRS issued proposed regulations [REG-100669-24] (Proposed Regulations) implementing the automatic enrollment provisions authorized under SECURE 2.0 and codified in section 414A. This letter is in response to the Proposed Regulations. Specifically, the AICPA provides comments in the following areas:

- I. Investment Requirements for Trustee Directed Plans
- II. Determining Employee Count for Small Businesses
- III. Definition of Predecessor Employer

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<sup>1</sup> P.L. 117-328.

<sup>2</sup> Unless otherwise indicated, hereinafter, all section references to the Internal Revenue Code of 1986, as amended, or to the Treasury Regulations promulgated thereunder.

## I. Investment Requirements for Trustee Directed Plans

### Overview

Proposed Reg. § 1.414A-1(b)(4) provides that an eligible automatic contribution arrangement satisfies investment requirements under section 414A(b)(4) if amounts contributed, and for which no investment is elected by the participant, are invested in accordance with Section 2550.404c-5 of title 29, Code of Federal Regulations (29 CFR 2550.404c-5), which provides fiduciary relief for investments in qualified default investment alternatives (QDIAs).

### Recommendation

The AICPA recommends that Treasury and the IRS issue final regulations clarifying that the investment requirements set forth under Prop. Reg. § 1.414A-1(c)(4) are not applicable to plans that do not adopt participant direction of investment.

### Analysis

Section 404(c) of the Employee Retirement Income Security Act of 1974 (ERISA) provides relief from liability for investment outcomes to fiduciaries of individual account plans that allow participants to exercise control over the investment of assets in their plan accounts. For plans designed in this manner, ERISA provides a safe harbor for plan fiduciaries investing participant assets in certain types of QDIAs in the absence of participant investment direction. Participants are deemed to have exercised control over assets in their account if, in the absence of investment direction from the participant, the plan fiduciary invests the assets in a QDIA. However, section 404(c) of ERISA would not apply to plans that are designed without participant investment direction (i.e., to those where the plan trustee chooses the investments).

Section 414A(b)(4) states:

[a]n eligible automatic contribution arrangement meets the requirements of this paragraph if amounts contributed pursuant to such arrangement, and for which no investment is elected by the participant, are invested in accordance with the requirements of section 2550.404c-5 of title 29, Code of Federal Regulations (or any successor regulations).

This statutory language can be interpreted to apply exclusively to plans that allow plan participants to direct the investments of their plan account. Plans that do not offer self-directed investment options, such as trustee-directed plans, would be exempt from the requirement under section 414A(b)(4). In a trustee-directed plan, there is no mechanism to offer participant choice for investment into a default fund. Trustee-directed plans are invested with all assets managed as a pool with no self-directed option, such that the concept of a default investment, or a QDIA, does not exist for these types of plans. To view the section 414A(b)(4) requirement as applying to all plans subject to the automatic enrollment mandate of section 414A would require all such plans to have participant-directed investments. Currently, plans are not required to permit participant direction of investments, such that a default fund would be overly burdensome

and impracticable and would not further protect retirement plan participants beyond complying with the requirements to operate a QDIA with respect to plans subject to section 414A.

## **II. Determining Employee Count for Small Businesses**

### **Overview**

Section 414A(c)(4)(B) provides an exception to the automatic enrollment requirements for plans sponsored by small businesses. A small business, for this purpose, is any employer that has 10 or fewer employees. Plans sponsored by these employers will not be subject to automatic enrollment requirements until the date that is one year after the close of the first taxable year for which the employer normally employed more than 10 employees. Proposed Reg. § 1.414A-1(d)(4)(ii) provides that, for purposes of determining employees “normally employed” for a taxable year, the rules of Treas. Reg. § 54.4980B-2, Q&A-5 apply.

### **Recommendation**

The AICPA recommends that Treasury and the IRS issue final regulations stating that only employees of the plan sponsor are included in the count for purposes of determining status as a small business under section 414A.

### **Analysis**

The statute under section 414A(c)(4)(B) does not apply to any qualified cash or deferred arrangement, or any annuity contract purchased under a plan, earlier than the date that is one year after the close of the first taxable year with respect to which the employer maintaining the plan normally employed more than 10 employees.

According to the preamble to the Proposed Regulations, in response to Notice 2024-2, Treasury and IRS received comments requesting clarification regarding the method for counting employees for purposes of the small business exception under section 414A(c)(4)(B). In response to these comments, the Proposed Regulations provide that Treas. Reg. § 54.4980B-2, Q&A 5 applies to determine how many employees the employer “normally employs.” Treasury Reg. § 54.4980B-2, Q&A 5 references Q&A 2 of the same regulations for the definition of “employer.” Under Treas. Reg. § 54.4980B-2, Q&A 2, members of a group described in section 414(b), (c) and (m) are aggregated as a single employer for purposes of employee count.

The aggregation rules under section 414 have been well established in the IRC prior to the enactment of section 414A. In drafting section 414A, Congress did not provide a cross-reference to section 414 for purposes of determining employee count. Likewise, section 414 was not amended to indicate its application to section 414A. Congress also did not provide a definition of small employer other than to say that the exception will cease to apply once “the employer maintaining the plan normally employed more than 10 employees.” There is no indication that, for purposes of the small business exception under section 414A, Congress intended that employees of a small business include all employees of its aggregated group. This

requirement is contrary to the intent of Congress to exclude small businesses, whether or not they are part of a section 414(b) or (c) controlled group.<sup>3</sup>

### III. Definition of Predecessor Employer

#### Overview

Section 414A(c)(4)(A) provides an exception to the automatic enrollment requirements for plans sponsored by an employer (and any predecessor employer) that has been in existence for less than 3 years. Neither the statute nor the Proposed Regulations define the term “predecessor employer.” The Proposed Regulations solicit comments on whether guidance is needed to define the term “predecessor employer” as used in section 414A(c)(4)(A).

#### Recommendation

The AICPA recommends that Treasury and the IRS issue final regulations that define predecessor employer by reference to Treas. Reg. § 1.415(f)-1(c)(2) for purposes of section 414A(c)(4)(A).

#### Analysis

Consistent with Treas. Reg. § 1.415(f)-1(c)(2), an employer that does not continue the business of a purchased entity should be treated as a new employer and considered exempt from the automatic enrollment regulations if it otherwise satisfies the exemption criteria. In contrast, an employer that creates a new entity and then purchases another entity while continuing its business operations should be considered a predecessor employer subject to the provisions of section 414A.

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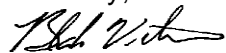
We appreciate your consideration of these comments and welcome the opportunity to discuss them further. If you have any questions, please contact Anne Bushman, Chair, AICPA Employee Benefits Taxation Technical Resource Panel, at (202) 370-8213, or [anne.bushman@rsmus.com](mailto:anne.bushman@rsmus.com); Kristin Esposito, AICPA Director – Tax Policy & Advocacy, at (202) 434-9241, or [kristin.esposito@aicpa-cima.com](mailto:kristin.esposito@aicpa-cima.com); or me, at (830) 372-9692, or [bvickers@alamo-group.com](mailto:bvickers@alamo-group.com).

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<sup>3</sup> JCS-1-23 (December 21, 2023).

Ms. Helen Morrison  
Ms. Rachel Leiser Levy  
Ms. Kara Soderstrom  
March 19, 2025  
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Sincerely,

A handwritten signature in black ink, appearing to read "Blake Vickers", written in a cursive style.

Blake Vickers, CPA, CGMA  
Chair, AICPA Tax Executive Committee

cc: Ms. Laura Warshawsky, Deputy Associate Chief Counsel, Internal Revenue Service