

Recent SECURE 2.0 Guidance Regarding Automatic Enrollment Features

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PRACTICES Employee Benefits and Executive Compensation

As we previously reported [here](#), [here](#), and [here](#), on December 20, 2023, the IRS issued Notice 2024-02 (the “**Notice**”), which provides guidance on several provisions of the SECURE 2.0 Act for retirement plans. This article is the third in a series of articles on recent SECURE 2.0 Act guidance and covers the expansion of automatic enrollment features. In future articles, we plan to discuss guidance regarding safe harbor corrections for automatic enrollment failures and plan-linked emergency savings accounts.

As required by the SECURE 2.0 Act, a cash or deferred arrangement (“**CODA**”) in a 401(k) plan (or a salary reduction agreement in a 403(b) plan) established after December 29, 2022 (“**Post-Enactment CODA**”) must include an eligible automatic contribution arrangement (“**EACA**”). A CODA established before that date (“**Pre-Enactment CODA**”) is grandfathered in and is not required to contain an EACA. The Notice clarifies that a CODA is considered established on the date the plan terms providing for the CODA are initially adopted (i.e., the execution date) and not the initial effective date of the CODA. The Notice further clarifies that the EACA requirement generally applies to starter 401(k) deferral-only arrangements and safe harbor deferral-only plans for plan years beginning after December 31, 2024.

The Notice also contains specific guidance regarding the merger and spin-off of plans in connection with the EACA requirement as summarized below:

- *Merger of two plans with Pre-Enactment CODAs.* If there are two single-employer plans with Pre-Enactment CODAs that merge after December 29, 2022, the CODA in the resulting plan will continue to be a Pre-Enactment CODA.
- *Merger of a plan with a Pre-Enactment CODA and a plan with a Post-Enactment CODA.* If a single-employer plan containing a Post-Enactment CODA merges with a single-employer plan containing a Pre-Enactment CODA, the CODA in the resulting plan generally will not qualify as a Pre-Enactment CODA, subject to an exception for mergers due to a corporate transaction.
- *Spin-off from a plan with a Pre-Enactment CODA.* If a plan is spun off from a plan containing a Pre-Enactment CODA, the CODA in the spin-off plan will also be a Pre-Enactment CODA.

The Notice is available [here](#). For further information regarding this provision and the SECURE 2.0 Act in general, please refer to our prior blog posts linked below.

- [Recent SECURE 2.0 Guidance Regarding Optional Treatment of Employer Matching or Nonelective Contributions as Roth Contributions](#)
- [Recent SECURE 2.0 Act Guidance Regarding Small Immediate Financial Incentives and Penalty-Free Withdrawals for Terminal Illness](#)
- [SECURE 2.0 Act Amendment Deadlines Extended](#)

- [IRS's Proposed Long-Term, Part-Time Employee Rule](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Permissive Plan Sponsor Design Changes and Plan Corrections](#)
- [SECURE 2.0 Act Plan Sponsor Year-End Compliance: Participant Contributions and Distributions](#)
- [IRS Issues Relief for Enforcement of Roth Catch-Up Contribution Requirement for Highly Paid Employees Under SECURE 2.0 Act](#)
- [IRS Transition Relief for Required Minimum Distributions Under SECURE 2.0 Act](#)
- [IRS Issues Interim Guidance on Expanded EPCRS](#)
- [SECURE 2.0 Act: Focus on Governmental 457\(b\) Plans](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans – Plan Design Changes](#)
- [SECURE 2.0 Act: Focus on 401\(k\) and 403\(b\) Plans Distribution and Withdrawal Changes](#)
- [SECURE 2.0 Act: Focus on Pension Plans](#)
- [SECURE 2.0 Act: Permissive Plan Design Changes](#)
- [SECURE 2.0 Act Increases Age for Required Minimum Distributions](#)
- [SECURE 2.0 Act: Changes to Plan Corrections Guidance](#)
- [SECURE 2.0 is Here! What's Next for Plan Sponsors?](#)
- [Major Retirement Legislation Passed by Congress: SECURE 2.0 Act](#)