taxpayers may apply these regulations in their entirety for taxable years beginning after December 31, 2017, and ending before December 17, 2018. In lieu of applying the regulations referred to in the first sentence of this paragraph (a), taxpayers may apply the provisions matching §§ 1.59A–1 through 1.59A–9 from the Internal Revenue Bulletin (IRB) 2019–02 (*https://www.irs.gov/irb/2019-02_IRB*) in their entirety for all taxable years beginning after December 31, 2017, and ending on or before December 6, 2019.

* * * * *

(c) *Additional applicability dates.* Sections 1.59A–3(b)(2)(iv) and 1.59A–6(b)(3) (iii) through (iv) apply to taxable years beginning on or after January 10, 2025.

■ **Par. 6.** Section 1.6038A–2 is amended by revising the third sentence of paragraph (g) to read as follows:

§ 1.6038A–2 Requirement of return.

* * * * *

(g) * * * Paragraph (b)(7)(ix) of this section applies to payments made in taxable years beginning on or after January 1, 2027. * * *

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2025–00186 Filed 1–10–25; 4:15 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100669–24]

RIN 1545–BR08

Automatic Enrollment Requirements Under Section 414A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document sets forth proposed regulations that would provide guidance with respect to the automatic enrollment requirements that apply to certain retirement plans. The proposed regulations reflect statutory changes made by the SECURE 2.0 Act of 2022 requiring that certain cash or deferred arrangements and salary reduction agreements be eligible automatic contribution arrangements that satisfy additional specified requirements. The proposed regulations would affect participants in, beneficiaries of, employers maintaining, and administrators of certain retirement plans that include cash or deferred arrangements or annuity contracts purchased under salary reduction agreements and other retirement plans that include eligible automatic contribution arrangements. This document also provides notice of a public hearing.

DATES: Written or electronic comments must be received by March 17, 2025. A public hearing on this proposed regulation has been scheduled for April 8, 2025, at 10 a.m. ET. Requests to speak and outlines of topics to be discussed at the public hearing must be received by March 17, 2025. If no outlines are received by March 17, 2025, the public hearing will be cancelled.

ADDRESSES: Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *www.regulations.gov* (indicate IRS and REG–100669–24) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket on *www.regulations.gov.* Send paper submissions to: CC:PA:01:PR (REG–100669–24), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, call Christina M. Cerasale at (202) 317–4102 or Kara M. Soderstrom at (202) 317–6799; concerning submission of comments, the hearing, and the access code to attend the hearing by telephone, call the Publications and Regulations Section at (202) 317–6901 (not toll-free numbers) or email *publichearings@irs.gov* (preferred).

SUPPLEMENTARY INFORMATION:

Authority

These proposed regulations are promulgated under section 7805(a) of the Internal Revenue Code (Code), which provides that ''the Secretary shall prescribe all needful rules and regulations for the enforcement of [the Code], including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.'' In addition, section 341 of the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), enacted on December 29, 2022, as Division T of the Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459 (2022), instructs the Secretaries of the Treasury and Labor (or their delegates) to adopt regulations related to the consolidation of notices required for defined contribution plans under the Code and the Employee Retirement Income Security Act of 1974, Public Law 93–406, 88 Stat. 829, as amended (ERISA).

Background

This notice of proposed rulemaking sets forth a proposed regulation under section 414A of the Code that would be added to the Income Tax Regulations (26 CFR part 1). Section 414A, which was added to the Code by section 101 of the SECURE 2.0 Act, provides that certain retirement plans must automatically enroll employees.

In addition to adding a new regulation under section 414A of the Code, this notice of proposed rulemaking sets forth proposed amendments to the regulations under section 414(w). These amendments to § 1.414(w)–1 would reflect the application of section 414A and the exception to the notice requirements for unenrolled participants set forth in section 414(bb), as added to the Code by section 320 of the SECURE 2.0 Act. The proposed amendments to § 1.414(w)–1 also would address section 402A(e)(5)(C) of the Code, which was added to the Code by section 127 of the SECURE 2.0 Act, as well as section 341 of the SECURE 2.0 Act. Section 402A(e)(5)(C) of the Code and section 341 of the SECURE 2.0 Act permit the consolidation of certain notices required under the Code and ERISA.

I. In General

A. Cash or Deferred Arrangements and Salary Reduction Agreements

Section 401(k)(1) provides that a profit-sharing, stock bonus, pre-ERISA money purchase, or rural cooperative plan will not fail to qualify under section 401(a) merely because it includes a cash or deferred arrangement (CODA) [1] that is a qualified CODA. Under section 401(k)(2), a CODA is a qualified CODA only if it satisfies certain requirements. These requirements include that elective contributions under the CODA are subject to the section 401(k)(2)(B)

---

[1] Under § 1.401(k)–1(a)(2)(i), a CODA generally is an arrangement providing for an election by an employee to have the employer provide either contributions to a plan described in section 401(a) or payments directly in cash.

restriction on when distributions may be made, and that the arrangement satisfies the actual deferral percentage (ADP) test in section 401(k)(3)(A)(ii).[2]

Section 403(b)(1) of the Code provides for an exclusion from gross income of certain contributions that are used to purchase an annuity contract, including contributions that are made under a salary reduction agreement. Although there is no direct definition of salary reduction agreement in section 403(b), several provisions of the Code set forth rules that apply to the use of a salary reduction agreement to purchase an annuity contract described in section 403(b). For example, section 403(b)(11) provides distribution restrictions that apply to ''contributions made pursuant to a salary reduction agreement.''

B. Automatic Enrollment

Section 902 of the Pension Protection Act of 2006, Public Law 109–280, 120 Stat. 780 (PPA '06), added sections 401(k)(13) and 414(w) to the Code to facilitate automatic contribution arrangements (also referred to as automatic enrollment) in qualified CODAs under section 401(k). Section 414(w) also applies to automatic contribution arrangements under section 403(b) plans; section 457(b) plans maintained by governmental employers described in section 457(e)(1)(A); simplified employee pensions, the terms of which provide for a salary reduction arrangement described in section 408(k)(6); and SIMPLE individual retirement accounts described in section 408(p). An automatic contribution arrangement is a CODA or other similar arrangement providing for elections on the part of eligible employees that includes a default election under which an eligible employee is treated as having elected to have a specified contribution made on the employee's behalf under the plan while permitting the employee to make an affirmative election to have contributions made in a different amount on the employee's behalf (including no contributions).[3]

1. Qualified Automatic Contribution Arrangements Under Section 401(k)(13)

Section 401(k)(13) provides a design-based safe harbor for a CODA that provides for automatic enrollment at a specified level and meets certain employer contribution, notice, and other requirements. A CODA that satisfies these requirements, referred to as a qualified automatic contribution arrangement (QACA), is treated as satisfying the ADP test.

Section 401(k)(13)(C)(ii) provides that the default election in a QACA ceases to apply to any eligible employee if the employee makes an affirmative election to not have any elective contributions made on the employee's behalf or to have elective contributions made in a specified amount or percentage of compensation on the employee's behalf. Reflecting that provision, § 1.401(k)–3(j)(1)(ii) provides that the default election ceases to apply with respect to an eligible employee for periods of time with respect to which the employee has an affirmative election that is currently in effect to have elective contributions made in a different amount on the employee's behalf (in a specified amount or percentage of compensation) or not have any elective contributions made on the employee's behalf.

Section 401(k)(13)(C)(iii) sets forth a series of minimum default contribution percentages (based on the plan year that the arrangement first applies to an employee) that an automatic contribution arrangement must satisfy to be a QACA and requires that the default contribution percentages apply uniformly. Under § 1.401(k)–3(j)(2)(iii), a plan does not fail to satisfy this uniform percentage requirement merely because: (1) the percentage varies based on the number of years or portions of years an eligible employee has participated in the automatic contribution arrangement intended to be a QACA; (2) the rate of elective contributions under a cash or deferred election that is in effect immediately prior to the effective date of the default percentage under the QACA is not reduced; (3) the rate of elective contributions is limited so as not to exceed the limits of sections 401(a)(17), 402(g) (determined with or without catch-up contributions), and 415; or (4) the default election is not applied during the period an employee is not permitted to make elective contributions pursuant to section 414(u)(12)(B)(ii).

Section 401(k)(13)(C)(iv) provides an exception from the application of the default election under a QACA for eligible employees who were eligible to participate in the CODA (or a predecessor CODA) immediately before the effective date of the QACA and who have an election in effect on that effective date. Reflecting that provision, § 1.401(k)–3(j)(1)(iii) provides that an automatic contribution arrangement does not fail to be a QACA merely because the default election is not applied to an employee who was eligible under the CODA (or a predecessor arrangement) immediately prior to the effective date of the QACA and on that effective date had an affirmative election in effect (that remains in effect) to have elective contributions made on the employee's behalf (in a specified amount or percentage of compensation) or not have elective contributions made on the employee's behalf.

Section 1.401(k)–3(j)(2)(iv) provides that minimum percentages in a QACA are determined without regard to whether an employee has continued to be eligible to make contributions under the plan. However, § 1.401(k)–3(j)(2)(iv) provides that a plan is permitted to treat an employee who for an entire plan year did not have contributions made pursuant to a default election under a QACA as if the employee also had not had such contributions for any prior plan year.

2. Eligible Automatic Contribution Arrangements Under Section 414(w)

Section 414(w) facilitates automatic enrollment by providing relief from the distribution restrictions under section 401(k)(2)(B), 403(b)(7), 403(b)(11), or 457(d)(1)(A) in the case of an eligible automatic contribution arrangement (EACA). Under this relief, a plan may permit an employee who was automatically enrolled under an EACA to take a distribution within a limited period after the initial default elective contribution with respect to the employee was made.

Under section 414(w)(1) and (2), an applicable employer plan[4] that contains an EACA is permitted to allow employees to elect to receive a distribution, called a permissive withdrawal, equal to the amount of default elective contributions (and attributable earnings) made with respect to the employee beginning with the first payroll period to which the EACA

[2] The ADP test in section 401(k)(3)(A)(ii) compares the average deferral percentage for highly compensated employees with the average deferral percentage for non-highly compensated employees. As an alternative to satisfying the annual ADP test, a plan may satisfy the provisions of section 401(k)(11), (12), (13), or (16).

[3] Section 902 of PPA '06 also added a new section 514(e) to ERISA, which broadly provides that, notwithstanding any other provision of section 514, title I of ERISA supersedes State laws that would directly or indirectly prohibit or restrict the inclusion of an automatic contribution arrangement in a plan.

[4] Section 414(w)(5) defines an applicable employer plan for purposes of section 414(w) as a trust described in section 401(a) that is exempt from tax under section 501(a), a plan described in section 403(b), a section 457(b) plan that is maintained by a governmental employer described in section 457(e)(1)(A), a simplified employee pension the terms of which provide for a salary reduction arrangement described in section 408(k)(6), or a SIMPLE individual retirement account described in section 408(p).

applies to the employee and ending with the effective date of the election. The election must be made within 90 days after the date of the first default elective contribution with respect to the employee under the arrangement.[5]

Section 414(w)(3) defines an EACA as an arrangement under which: (1) a participant may elect to have the employer make payments as contributions under the plan on behalf of the participant, or to the participant directly in cash; (2) the participant is treated as having elected to have the employer make such contributions in an amount equal to a uniform percentage of compensation provided under the plan until the participant specifically elects not to have such contributions made (or specifically elects to have such contributions made at a different percentage); and (3) participants are provided a notice that satisfies the requirements of section 414(w)(4).

Section 414(w)(4) provides that the administrator of a plan that includes an EACA must, within a reasonable period before each plan year, provide each employee to whom the arrangement applies for the plan year written notice of the employee's rights and obligations under the arrangement that is sufficiently accurate and comprehensive to apprise the employee of the employee's rights and obligations. Section 414(w)(4)(A)(ii) requires that the notice be written in a manner calculated to be understood by the average employee to whom the arrangement applies. Section 414(w)(4)(B) provides that the notice must explain: (1) the employee's rights under the arrangement to elect not to have elective contributions made on the employee's behalf (or to elect to have contributions made at a different percentage), and (2) how contributions made under the arrangement will be invested in the absence of any investment decision by the employee. In addition, the employee must be given a reasonable period of time after receipt of the notice and before the first elective contribution is made to make an election described in the notice.

The Treasury Department and the IRS issued a regulation under section 414(w) on February 24, 2009 (TD 9447, 74 FR 8200). Section 1.414(w)–1(b)(2) includes rules that address the uniform percentage requirement of section 414(w)(3)(B), including rules that incorporate the exceptions to the uniform percentage requirement for a default elective contribution for a QACA set forth in § 1.401(k)–3(j)(2)(iii).

II. New Automatic Enrollment Requirements and Other Changes Regarding EACAs Under the SECURE 2.0 Act

A. Section 101 of the SECURE 2.0 Act

Section 101 of the SECURE 2.0 Act adds section 414A to the Code. Under section 101(c) of the SECURE 2.0 Act, the amendments made by section 101 apply to plan years beginning after December 31, 2024.

Section 414A(a)(1) of the Code generally provides that a CODA will not be treated as a qualified CODA described in section 401(k) unless the CODA satisfies the automatic enrollment requirements of section 414A(b). Similarly, section 414A(a)(2) generally provides that an annuity contract otherwise described in section 403(b) that is purchased under a salary reduction agreement will not be treated as described in section 403(b) unless the salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b).

Under section 414A(b)(1), a CODA or salary reduction agreement satisfies the automatic enrollment requirements of section 414A(b) if the CODA or salary reduction agreement is an EACA (as defined in section 414(w)(3)) that satisfies the additional requirements of section 414A(b)(2) through (4). Section 414A(b)(2) requires the EACA to allow employees to make permissible withdrawals (as defined in section 414(w)(2)). Under section 414A(b)(3)(A)(i), the minimum initial default contribution percentage under the EACA must be at least 3 percent (but not more than 10 percent), and under section 414A(b)(3)(A)(ii), the default contribution percentage must increase by one percentage point for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent).[6] Section 414A(b)(4) provides that amounts contributed pursuant to the EACA for which no investment is elected by a participant must be invested in accordance with the requirements of 29 CFR 2550.404c–5[7] (or any successor regulations).

Section 414A(c) sets forth certain exceptions to the requirements of section 414A(a). In general, section 414A(a) does not apply to any: (1) SIMPLE 401(k) plan described in section 401(k)(11); (2) qualified CODA established before December 29, 2022 (the date of enactment of the SECURE 2.0 Act); (3) section 403(b) plan established before December 29, 2022; (4) governmental plan described in section 414(d); (5) church plan described in section 414(e); (6) plan maintained by a new business as described in section 414A(c)(4)(A); or (7) plan maintained by a small business as described in section 414A(c)(4)(B).

Certain of the exceptions in section 414A(c) include special rules for plans maintained by more than one employer. Section 414A(c)(2)(B) provides rules that apply in the case of an employer that, after December 29, 2022, adopts a plan maintained by more than one employer. Under that provision, the exception to section 414A(a) for a qualified CODA or 403(b) plan established before December 29, 2022, will not apply to that adopting employer, and the rules of section 414A(a) will apply with respect to that employer as if the plan were a single plan. In addition, under section 414A(c)(4)(C), the new business and small business exceptions to section 414A(a) are applied separately to each participating employer in a plan maintained by more than one employer, and all participating employers to which section 414A(a) applies (after the application of the new business exception in section 414A(c)(4)(A) and the small business exception in section 414A(c)(4)(B)) are treated as maintaining a separate plan for purposes of section 414A.

On December 20, 2023, the Treasury Department and the IRS released Notice 2024–2, 2024–2 IRB 316, which provides initial guidance on certain provisions of the SECURE 2.0 Act. Section II.A of Notice 2024–2 provides initial guidance in the form of questions and answers regarding certain issues related to section 414A of the Code that primarily addresses the scope of the exceptions under section 414A(c)(2) to the requirements of section 414A.

Q&A A–1 of Notice 2024–2 provides that, for purposes of section 414A(c)(2)(A)(i) (the exception to section 414A(a) for a qualified CODA established before December 29, 2022), a qualified CODA is established on the date plan terms providing for the CODA are adopted initially, even if the plan terms providing for the CODA are effective after the adoption date.

[5] Section 414(w)(1)(A) and (B) provides that the amount of the distribution is includible in the gross income of the employee for the taxable year in which the distribution is made but is not subject to the additional income tax on early distributions under section 72(t).

[6] Section 414A(b)(3)(B) provides a reduced maximum default contribution percentage of 10 percent for certain plans with respect to certain plan years.

[7] The requirements of 29 CFR 2550.404c–5 relate to investments in qualified default investment alternatives.

Q&A A–2 of Notice 2024–2 provides rules that apply in the case of a merger of a plan maintained by a single employer that includes a qualified CODA established before December 29, 2022 (a pre-enactment qualified CODA), with another plan that includes a pre-enactment qualified CODA. Under Q&A A–2, the treatment of the qualified CODA included in the ongoing plan as a pre-enactment qualified CODA is unaffected by the merger (without regard to whether the ongoing plan is maintained by a single employer or more than one employer).

Q&A A–3 of Notice 2024–2 provides that if a plan that includes a qualified CODA that was not established before December 29, 2022, is merged with a plan that includes a pre-enactment qualified CODA, then, after the merger, the qualified CODA included in the ongoing plan generally will not be treated as a pre-enactment qualified CODA. However, if, in connection with a disposition, acquisition, or other transaction described in section 410(b)(6)(C), a plan maintained by a single employer that includes a qualified CODA that was not established before December 29, 2022, is merged with another plan maintained by a single employer that includes a pre-enactment qualified CODA, and the plan that includes the pre-enactment qualified CODA is designated as the ongoing plan, then the qualified CODA included in the ongoing plan continues to be treated as a pre-enactment qualified CODA after the merger, provided that the merger occurs by the end of the section 410(b)(6)(C) transition period.

Q&A A–3 also provides that if a plan maintained by a single employer includes a qualified CODA that was not established before December 29, 2022, and is merged into a plan maintained by more than one employer that includes a pre-enactment qualified CODA, then the qualified CODA included in the ongoing plan would not be treated as a pre-enactment qualified CODA with respect to that employer. However, in that case, the merger would not affect whether the qualified CODA is treated as a pre-enactment qualified CODA with respect to other employers that participate in the ongoing plan.

Q&A A–4 of Notice 2024–2 provides that if a plan that includes a qualified CODA is spun off from a plan that includes a pre-enactment qualified CODA, the qualified CODA included in the new spun-off plan generally is also treated as being a pre-enactment qualified CODA. However, if the plan from which the new plan was spun off was a plan maintained by more than one employer that was established before December 29, 2022, then the qualified CODA included in the spun-off plan is treated as a pre-enactment qualified CODA only if the qualified CODA in the plan maintained by more than one employer was treated as a pre-enactment qualified CODA with respect to the employer sponsoring the spun-off plan.

Q&A A–5 of Notice 2024–2 provides that, in general, the rules of section 414A that apply to qualified CODAs also apply to section 403(b) plans. However, the exception to section 414A(a) for a section 403(b) plan established before December 29, 2022, applies without regard to the date of adoption of plan terms that provide for salary reduction agreements.

Q&A A–6 of Notice 2024–2 explains that, unless an exception set forth in section 414A(c) applies (for example, the exception for a new or small business), section 414A(a) applies to a starter 401(k) deferral-only arrangement described in section 401(k)(16)(B), or to a safe harbor deferral-only plan described in section 403(b)(16)(B), for plan years beginning after December 31, 2024.

The Treasury Department and the IRS received 12 written comments in response to Notice 2024–2 that address the guidance provided in Section II.A of the notice. The Treasury Department and the IRS reviewed all 12 comments, and this preamble addresses those that are relevant and within scope for this notice of proposed rulemaking. All written comments responding to Notice 2024–2 are available for public inspection and copying at *www.regulations.gov,* and certain of those comments that address Section II.A of Notice 2024–2 are discussed in the Explanation of Provisions portion of this preamble.

B. SECURE 2.0 Act Changes Regarding EACA Notices

1. Notice Requirements for Unenrolled Participants

Section 320(b) of the SECURE 2.0 Act adds section 414(bb) to the Code, effective for plan years beginning after December 31, 2022. Section 414(bb)(1) provides that, with respect to any defined contribution plan, no disclosure, notice, or other plan document is required to be furnished under the Code to any unenrolled participant if the unenrolled participant is furnished: (1) an annual reminder notice (as defined in section 414(bb)(3)) of the participant's eligibility to participate in the plan and any applicable election deadlines under the plan, and (2) any document requested by the participant that the participant would be entitled to receive notwithstanding section 414(bb).

Section 414(bb)(2) defines an unenrolled participant as an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished the summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria as the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor. The last sentence of section 414(bb)(2) of the Code provides that any eligibility to participate in the plan following any period for which the employee was not eligible to participate is to be treated as initial eligibility.

Section 414(bb)(3) provides that the annual reminder notice required under section 414(bb)(1) is the notice described in section 111(c) of ERISA (as added by section 320(a) of the SECURE 2.0 Act).

2. Combining EACA Notices With Other Notices

Section 127 of the SECURE 2.0 Act provides for the creation of pension-linked emergency savings accounts (PLESAs) effective for plan years beginning after December 31, 2023. Among other changes, section 127 of the SECURE 2.0 Act redesignates section 402A(e) of the Code as section 402A(f) and adds a new section 402A(e) regarding PLESAs.[8] Section 402A(e)(5)(A) requires the plan administrator of a plan with a PLESA feature to furnish initial and annual notices to participants describing certain information regarding the PLESA that meet the requirements of section 402A(e)(5)(B). Section 402A(e)(5)(C) permits the initial and annual notices required under section 402A(e)(5)(A) to be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if the other notice

[8] On January 12, 2024, the Treasury Department and the IRS released Notice 2024–22, 2024–6 IRB 662, which provides initial guidance regarding anti-abuse rules under section 402A(e)(12) of the Code, as added by section 127 of the SECURE 2.0 Act, and also addresses whether Rev. Rul. 74–55, 1974–1 CB 89, and Rev. Rul. 74–56, 1974–1 CB 90, are applicable to PLESAs.

is provided to the participant at the time required for that notice.

The Department of Labor has provided frequently asked questions regarding PLESAs, including with respect to the permitted consolidation of notices under section 801(d)(3)(C) of ERISA (which is a parallel provision to section 402A(e)(5)(C) of the Code). *See* Q&A–18 of ''FAQs: Pension-Linked Emergency Savings Accounts,'' available at *www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/faqs/pension-linked-emergency-savings-accounts.*

Section 341 of the SECURE 2.0 Act permits a plan (as defined in section 3 of ERISA) to consolidate two or more of the notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code into a single notice, provided that the combined notice satisfies certain requirements. Section 341 of the SECURE 2.0 Act does not prevent the consolidation of any other notices required under ERISA or the Code to the extent otherwise permitted by the Secretary of Labor or the Secretary of the Treasury (or their delegates), as applicable.

On October 24, 2007, the Department of Labor published in the **Federal Register** (72 FR 60452) a final regulation, 29 CFR 2550.404c–5, providing relief from certain fiduciary responsibilities under ERISA for investments made on behalf of participants or beneficiaries who fail to direct the investment of assets in their individual accounts. The preamble to that final regulation indicates that the Department of Labor anticipates that the notice requirements of sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code could be satisfied in a single disclosure document. *See* 72 FR 60455 (regarding the notice requirements under section 404(c)(5)(B) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code) and 72 FR 60466 (regarding the notice requirements under sections 404(c)(5)(B) and 514(e)(3) of ERISA).

To aid plan sponsors for the 2008 plan year (the first plan year that a plan could have included a QACA or EACA), the IRS coordinated with the Department of Labor to post a sample ''Automatic Enrollment Notice,'' available at *www.irs.gov/pub/irs-tege/sample_notice.pdf.* This sample notice is intended to satisfy the notice requirements of sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(13)(E) and 414(w)(4) of the Code.

On April 29, 2008, the Department of Labor issued Field Assistance Bulletin 2008–03. Q&A–10 of Field Assistance Bulletin 2008–03 explains that the notice required under section 401(k)(12)(D) also may be combined with the notice required under section 404(c)(5)(B) of ERISA.

Q&A–18 of ''FAQs: Pension-Linked Emergency Savings Accounts'' explains that, with respect to section 341 of the SECURE 2.0 Act, the Department of Labor retains its position regarding the consolidation of notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code. Q&A–18 also explains that, under section 801(d)(3)(C) of ERISA, the initial and annual notices that must be furnished to PLESA participants may be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if such other notice is provided to the participant at the time required for such notice.

Explanation of Provisions

I. Proposed § 1.414A–1

A. General Rule

In accordance with section 414A(a)(1), the proposed regulation generally would provide that a CODA will not be treated as a qualified CODA unless the plan that includes the CODA provides that any cash or deferred election under the CODA must satisfy the automatic enrollment requirements of section 414A. The proposed regulation would clarify that the determination of whether a CODA fails to satisfy these automatic enrollment requirements (and, therefore, fails to be a qualified CODA) is made on a plan-year basis.

Similarly, in accordance with section 414A(a)(2), the proposed regulation generally would provide that an annuity contract described in section 403(b) that is purchased pursuant to a salary reduction agreement 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 section 414A.

B. Automatic Enrollment Requirements

1. In General

As described in section II.A of the Background portion of this preamble, section 414A(a) generally requires a qualified CODA, or an annuity contract described in section 403(b) that is purchased under a salary reduction agreement, to satisfy the automatic enrollment requirements of section 414A(b), which require the CODA or salary reduction agreement to be an EACA, as described in section 414(w)(3), that meets the requirements of section 414A(b)(2) through (4). Section 414A(c) sets forth exceptions to the requirements of section 414A(a) for certain plans.

The Treasury Department and the IRS received comments in response to Notice 2024–2 requesting that the guidance provide that certain categories of employees need not be covered by an EACA for section 414A(b) to be satisfied. However, although section 414A(c) provides several exceptions to the requirements of section 414A(a) for certain types of plans, there is no provision in section 414A (or in section 101(c) of the SECURE 2.0 Act) that excludes any category of employee from the automatic enrollment requirements of section 414A(b) of the Code if the plan is subject to section 414A(a). Accordingly, the proposed regulation would clarify that a CODA or salary reduction agreement under a plan satisfies the automatic enrollment requirements of section 414A only if the plan provides for an EACA that covers all employees in the plan who are eligible to elect to have contributions made on their behalf under the CODA or pursuant to the salary reduction agreement (including long-term, part-time employees described in section 401(k)(15) of the Code or section 202(c) of ERISA).

Commenters also requested guidance on whether an employee must be automatically enrolled if the employee was eligible to participate in a CODA or salary reduction agreement included in a plan before the CODA or salary reduction agreement became subject to the automatic enrollment requirements of section 414A(b). In response to these comments, the proposed regulation would provide an exception to automatic enrollment for certain employees who are eligible to make a cash or deferred election under a CODA or to enter into a salary reduction agreement that is comparable to the exception for certain current employees under a QACA, as set forth in § 1.401(k)–3(j)(1)(iii). Specifically, the proposed regulation would clarify that an EACA will not fail to satisfy section 414A merely because the default election under the EACA does not apply to an employee who, on the date the plan is first required to satisfy the automatic enrollment requirements of the proposed regulation, had an affirmative election in effect (that remains in effect) to 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 not have contributions made on the employee's behalf under a cash or deferred election or a salary reduction agreement.

2. Permissive Withdrawals

In accordance with section 414A(b)(2), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if the plan that includes the EACA provides that any employee who has default elective contributions made under the EACA may elect to make a permissible withdrawal, as defined in section 414(w)(2) and described in § 1.414(w)–1(c) (that is, a withdrawal of default elective contributions and earnings that satisfies certain timing and amount requirements).

3. Contribution Requirements

To reflect the minimum contribution percentage requirements of section 414A(b)(3), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if the default election made on behalf of an employee under the EACA is equal to a uniform percentage of the employee's compensation that is subject to a cash or deferred election or salary reduction arrangement under the plan. The default election would not apply if the employee affirmatively elects to have contributions made in a different amount on the employee's behalf (in a specified amount or percentage of compensation) or not have any contributions made on the employee's behalf, under a cash or deferred election or a salary reduction agreement.

In accordance with section 414A(b)(3)(A)(i), the proposed regulation would provide that 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. The proposed regulation would clarify that an employee's initial period (that is, the employee's ''first year of participation'' under section 414A(b)(3)(A)(i)) would begin when the employee is first eligible to elect to have contributions made on the employee's behalf under the plan (or if later, when the plan is first required to satisfy the automatic enrollment requirements of section 414A), and the employee's initial period would end on the last day of the following plan year.

As described in section II.A of the Background portion of this preamble, section 414A(b)(3)(A)(ii) generally requires automatic increases of one percentage point to an employee's minimum default contribution percentage for each plan year beginning after each completed year of participation under the EACA, up to a maximum default contribution percentage of at least 10 percent (but not more than 15 percent). The proposed regulation would provide that, for each plan year beginning after an employee's initial period, the percentage contribution under the default election must be increased by one percentage point until the percentage is at least 10 percent. The proposed regulation also would provide that the percentage may not exceed 15 percent (or the lower percentage specified in section 414A(b)(3)(B), if applicable).

For purposes of satisfying the uniform percentage requirement of section 414A(b)(3)(A), the proposed regulation would adopt the exceptions from the uniform percentage requirement of section 414(w)(3)(B), which are based on the similar exceptions from the uniform percentage requirement for a QACA under § 1.401(k)–3(j)(2)(iii). Specifically, the proposed regulation would clarify that an EACA does not fail to satisfy the uniform percentage requirement merely because: (1) 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, (2) 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 the proposed regulation first applies to the employee is not reduced, (3) the rate of contributions under a cash or deferred election or salary reduction agreement is limited so as not to exceed certain applicable limits under the Code, or (4) the default election 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 under section 414(u)(12)(B)(ii), which provides for a six-month suspension of elective deferrals (and employee contributions) if an individual elects to receive a distribution by reason of the individual being treated as having been severed from employment while performing military service.

The proposed regulation would provide rules, based on the rules for a QACA under § 1.401(k)–3(j)(2)(iv), that would address the default percentage that would apply for an employee who did not have default elective contributions made for an entire plan year. The proposed regulation would provide different rules that could be used depending on whether the employee was not eligible to have contributions made on the employee's behalf under a CODA or salary reduction agreement or had made an affirmative election to have contributions made in a different amount (including an election not to have contributions made).

Specifically, the proposed regulation would permit a plan to provide that if, after an employee's initial period began, the employee did not have default elective contributions made for an entire plan year, then the employee's initial period is redetermined. If 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 entire plan year, then a plan would be permitted to provide that the employee's initial period would be 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. An employer would likely adopt this provision to determine the default contribution rate that applies to an employee who was rehired more than one plan year after the employee terminated employment.

However, if 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 a plan would be permitted to provide that the employee's initial period would be redetermined so that it begins on any date specified under the plan that is later than the date the employee's original initial period ended. For example, a plan is permitted to be amended to provide that, as of a specific date, the default election will apply to all employees who previously made an affirmative election that has been in effect for a period of at least one plan year to have contributions made on behalf of the employees under the plan at a rate that is below the uniform percentage that applies during an initial period (so that the uniform percentage that applies during the initial period will apply unless the employee makes a new affirmative election). An employer might adopt such an amendment to facilitate an increase in the rate of

contributions made on behalf of its employees.

4. Investment Requirements

In accordance with the investment requirements of section 414A(b)(4), the proposed regulation would provide that an EACA satisfies the automatic enrollment requirements of section 414A only if amounts contributed pursuant to the EACA, 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).

C. Exceptions for Certain Types of Plans and Businesses

1. SIMPLE 401(k) Plans

In accordance with section 414A(c)(1), the proposed regulation would provide that the automatic enrollment requirements of section 414A do not apply to any SIMPLE 401(k) plan (as described in section 401(k)(11) and § 1.401(k)-4).

2. Governmental and Church Plans

In accordance with section 414A(c)(3), the proposed regulation would provide that the automatic enrollment requirements of section 414A do not apply to any governmental plan (within the meaning of section 414(d)) or any church plan (within the meaning of section 414(e)).

3. New and Small Businesses

Section 414A(c)(4)(A) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, while the employer maintaining the plan (and any predecessor employer) has been in existence for less than 3 years. However, section 414A does not specify the date as of which a plan must satisfy the automatic enrollment requirements of section 414A(b) if the exception for new businesses under section 414A(c)(4)(A) ceases to apply to the plan.

In response to Notice 2024–2, the Treasury Department and the IRS received a comment requesting clarification that a plan will not fail to satisfy the automatic enrollment requirements of section 414A(b) if the plan includes an EACA no later than the first plan year that begins on or after the third anniversary of the employer's existence. The Treasury Department and the IRS agree that a plan should not be required to implement an EACA in the middle of a plan year. Therefore, the proposed regulation would clarify that the automatic enrollment requirements of section 414A do not apply to a 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.

Section 414A(c)(4)(B) provides that the automatic enrollment requirements of section 414A(a) do not apply to any qualified CODA, or any annuity contract purchased under a plan, earlier than the date that is 1 year 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. However, section 414A(c)(4)(B) does not specify any method for counting the number of employees for this purpose.

In response to Notice 2024–2, the Treasury Department and the IRS received comments requesting clarification regarding the method for counting employees for purposes of the small business exception under section 414A(c)(4)(B). One commenter raised the issue of how to count employees for this purpose but did not suggest a specific method. Another commenter recommended that the Treasury Department and the IRS adopt a monthly averaging approach, which the commenter explained would be similar to the approach used for purposes of section 4980H. However, section 4980H does not use the phrase "normally employed"; instead, that phrase is used in section 4980B(d)(1). Therefore, the proposed regulation would clarify that 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.

Similar to the clarification provided in the proposed regulation for new businesses, the proposed regulation would clarify that the automatic enrollment requirements of section 414A do not apply to any qualified CODA, 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.

As described in section II.A of the Background portion of this preamble, section 414A(c)(4)(C) provides special rules for the new and small business exceptions in the case of "a plan maintained by more than 1 employer." The proposed regulation would clarify that the phrase "a plan maintained by more than 1 employer" means a multiple employer plan.[9] Accordingly, the proposed regulation would reflect the provisions of section 414A(c)(4)(C) by providing that, in the case of a multiple employer plan, the exceptions for new and small businesses apply on an employer-by-employer basis. Thus, if an employer participating in a multiple employer plan is a new or small business, it would be exempt from the automatic enrollment requirements of section 414A, but that exemption would have no impact on whether section 414A applies to the employees of the other participating employers.

D. Exceptions for Plans Established Before the Enactment of Section 414A

1. In General

As described in section II.A of the Background portion of this preamble, section 414A(c)(2)(A) provides an exception from the requirements of section 414A(a) in the case of a qualified CODA, or section 403(b) plan, that is established before December 29, 2022, and Q&A A–1 and Q&A A–5 of Notice 2024–2 provide guidance with respect to the date that a qualified CODA or section 403(b) plan is established for purposes of section 414A(c)(2)(A). Notice 2024–2 refers to a qualified CODA or section 403(b) plan that is eligible for the exception under section 414A(c)(2)(A) as a pre-enactment qualified CODA or pre-enactment section 403(b) plan, and this Explanation of Provisions uses the term pre-enactment plan to encompass both pre-enactment qualified CODAs and pre-enactment section 403(b) plans.

The proposed regulation would reflect the provisions of section 414A(c)(2)(A)(i) and incorporate the guidance provided in Q&A A–1 of Notice 2024–2 by generally providing that the automatic enrollment requirements of section 414A do not apply to any plan that includes a qualified CODA if the plan terms providing for the qualified CODA were adopted initially before December 29, 2022, even if the plan terms providing for the CODA are effective after that date. The proposed regulation also would reflect the provisions of section 414A(c)(2)(A)(ii) and incorporate the guidance provided in Q&A A–5 of Notice 2024–2 by providing that the automatic enrollment requirements of section 414A do not apply to 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.

[9] This interpretation is consistent with the heading of section 414A(c)(4)(C) ("Treatment of multiple employer plans") and the interpretation in § 1.413–2(a)(2) and (3) of the substantially identical language in section 413(c) ("a plan maintained by more than one employer").

2. Merger of Plans Established Before the Enactment of Section 414A

With respect to the merger of two pre-enactment plans (neither of which is a multiple employer plan) or the merger of a pre-enactment plan that is not a multiple employer plan with a pre-enactment multiple employer plan, the proposed regulation would incorporate the guidance provided in Q&A A–2 of Notice 2024–2 (which, under Q&A A–5 of Notice 2024–2, also applies to section 403(b) plans). Thus, the plan after the merger will be treated as a pre-enactment plan.

The proposed regulation generally would extend the guidance provided in Q&A A–2 of Notice 2024–2 to the merger of two pre-enactment multiple employer plans. However, the proposed regulation would clarify that a merger involving a multiple employer plan will not affect whether the merged plan is treated as a pre-enactment plan with respect to any employer that maintained the multiple employer plan prior to the merger.

3. Merger of Plan Established on or After the Enactment of Section 414A With a Plan Established Before the Enactment of Section 414A

With respect to the merger of a plan that is not a pre-enactment plan and a pre-enactment plan (neither of which is a multiple employer plan), the proposed regulation generally would incorporate the guidance provided in Q&A A–3 of Notice 2024–2 (which, under Q&A A–5 of Notice 2024–2, also applies to section 403(b) plans). With respect to the guidance provided in Q&A A–3 of Notice 2024–2 regarding a plan merger in connection with a transaction described in section 410(b)(6)(C), the proposed regulation generally would incorporate that guidance by providing that a pre-enactment plan will continue to be treated as a pre-enactment plan after a merger with a plan that is not a pre-enactment plan if there is a transaction described in § 1.410(b)–2(f), the pre-merger pre-enactment plan is designated as the ongoing plan, and the plan merger occurs within the transition period described in section 410(b)(6)(C)(ii). In addition, the proposed regulation would expand the rule in Q&A A–3 of Notice 2024–2 to address certain situations in which a plan maintained by a single employer that is not a pre-enactment plan is merged into a multiple employer plan. Under this expansion, the multiple employer plan would be treated as a pre-enactment plan with respect to the employer that sponsored the merged-in plan if, with respect to the participating employer that engaged in the transaction, the multiple employer plan was treated as a pre-enactment plan before the transaction. As is the case of any merger involving a multiple employer plan, the merger would not affect whether the multiple employer plan is treated as a pre-enactment plan with respect to any other employer.

Under section 410(b)(6)(C)(ii), the transition period begins on the date of the change in members of a controlled group (as described in section 414(b), (c), (m), or (o)) and ends on the last day of the first plan year beginning after the date of that change. In response to Notice 2024–2, one commenter requested that the guidance provided in Q&A A–3 be modified to extend the time period for a plan merger until the end of the first plan year that begins after the end of the section 410(b)(6)(C) transition period. The proposed regulation would not extend the time period set forth in Q&A A–3 of Notice 2024–2 because that is the time period specified in the Code for an employer to implement changes to its plans that may be needed following a transaction described in section 410(b)(6)(C).

With respect to a merger of a multiple employer plan that is a pre-enactment plan with a multiple employer plan that is not a pre-enactment plan, the proposed regulation would clarify the guidance provided in Q&A A–3 of Notice 2024–2 by providing that the merger will not affect whether the merged plan is treated as a pre-enactment plan 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

As described in section II.A of the Background portion of this preamble, section 414A(c)(2)(B) provides special rules that apply in the case of an employer that adopts, after December 29, 2022, a plan maintained by more than one employer. Consistent with the interpretation of the statutory phrase ''a plan maintained by more than 1 employer'' in section 414A(c)(4)(C), as described in section I.C.3 of this Explanation of Provisions, the proposed regulation would clarify that the phrase ''a plan maintained by more than one employer'' in section 414A(c)(2)(B) means a multiple employer plan. Thus, the proposed regulation would provide that if an employer adopts a multiple employer plan after December 29, 2022, then, with respect to that employer, the multiple employer plan will not be treated as a pre-enactment plan. However, this treatment would not affect employers who adopted the multiple employer plan on or before December 29, 2022.

With respect to the merger of a plan (other than a multiple employer plan) with a multiple employer plan after December 29, 2022, the proposed regulation generally would incorporate the guidance provided in Q&A A–2 and Q&A A–3 of Notice 2024–2 (which, under Q&A A–5 of Notice 2024–2, also applies to section 403(b) plans). Thus, for example, if an employer merged a plan that was not a pre-enactment plan into a pre-enactment multiple employer plan after December 29, 2022, the multiple employer plan generally would not be treated as a pre-enactment plan with respect to that employer after the merger.

In response to Notice 2024–2, the Treasury Department and the IRS received a number of comments expressing concern that, in the case of an employer maintaining a pre-enactment plan that is merged into a multiple employer plan that was established after December 29, 2022, the multiple employer plan would not be treated as a pre-enactment plan with respect to that employer after the merger. The comments requested guidance providing that if a pre-enactment plan is merged into a multiple employer plan, then the merged-in plan does not lose its pre-enactment status with respect to the employer that maintained the merged-in plan regardless of whether the multiple employer plan was established before or after December 29, 2022. In response to these comments, the proposed regulation would provide that, if an employer maintains a pre-enactment plan that is merged into a multiple employer plan after December 29, 2022, then the post-merger multiple employer plan will be treated as a pre-enactment plan with respect to that employer. This rule would apply regardless of the date of establishment of the multiple employer plan.

The proposed regulation also would clarify that the special rule set forth in section 414A(c)(2)(B) regarding the adoption of a multiple employer plan after December 29, 2022, applies on an employer-by-employer basis. Thus, under the proposed regulation, neither an employer's adoption of a multiple employer plan nor a merger of an employer's plan into a multiple employer plan after December 29, 2022, would affect whether the multiple employer plan is treated as a pre-enactment plan with respect to any other employer maintaining the plan.

5. Plan Spin-Off

The proposed regulation would incorporate the guidance provided in Q&A A–4 of Notice 2024–2 by providing that if a portion of a pre-enactment plan is spun off from that plan, the resulting spun-off plan will be treated as a pre-enactment plan if either the plan from which the spin-off occurred was not a multiple employer plan, or the plan from which the spin-off occurred was a multiple employer plan that was treated as a pre-enactment plan with respect to the employer maintaining the spun-off plan.

6. Other Plan Amendments

In response to Notice 2024–2, the Treasury Department and the IRS received comments requesting guidance on whether changes to a plan's design or other plan amendments would affect the date the plan was established for purposes of section 414A(c)(2)(A). In response to these comments, the proposed regulation would clarify that a plan will not fail to be a pre-enactment plan merely because the plan is amended, provided that the amendment is not an amendment relating to an adoption of a multiple employer plan or a plan merger. This rule would apply even if the plan amendment expands eligibility to participate in the CODA (or to enter into a salary reduction agreement) to other employees of the employer that maintains the plan or to employees of another employer in the employer's controlled group. The proposed regulation also would clarify that if a pre-enactment plan is merged with a plan that does not include a CODA or permit any salary reduction agreements, then the merged plan will continue to be a pre-enactment plan after the merger.

In response to Notice 2024–2, the Treasury Department and the IRS also received comments requesting guidance on whether a change in a plan's service provider would affect the date the plan was established for purposes of section 414A(c)(2)(A). Generally, a mere change in a plan's recordkeeper would not necessitate an amendment to the plan. However, if a plan's change of recordkeeper or any similar change required a plan amendment that does not relate to the adoption of a multiple employer plan or a plan merger, then, under the proposed regulation, the amendment would not cause the plan to fail to be a pre-enactment plan.

E. Applicability Date

1. Statutory Applicability Date

In accordance with section 101(c) of the SECURE 2.0 Act, the proposed regulation would provide that section 414A applies to plan years beginning after December 31, 2024.

2. Regulatory Applicability Date

The proposed regulation would apply to plan years that begin more than 6 months after the date that final regulations under section 414A are issued. For earlier plan years, a plan would be treated as having complied with section 414A if the plan complies with a reasonable, good faith interpretation of section 414A.

As explained in section I.B.1 of this Explanation of Provisions, the proposed regulation would require an EACA to cover all employees in the plan who are eligible to elect to have contributions made on their behalf for the automatic enrollment requirements of the proposed regulation to be satisfied. If a CODA or section 403(b) plan that provides for salary reduction agreements becomes subject to the requirements of section 414A(a) as of the first day of the plan year beginning after December 31, 2024 (2025 plan year), but employees who became eligible to participate in the CODA or to enter into a salary reduction agreement before the first day of the 2025 plan year (and who do not have affirmative elections in effect on that date) are not covered under the EACA, then those employees would have to be covered under the EACA on the first day of the first plan year that the final regulations apply to the CODA or to the section 403(b) plan that provides for salary reduction agreements (first applicable plan year).

As a result, under the proposed regulation, unless employees who became eligible to participate in the CODA or to enter into a salary reduction agreement before the first day of the 2025 plan year have affirmative elections in effect on the first day of the first applicable plan year, those employees would need to be automatically enrolled as of that date in order for the requirements of the regulation to be satisfied. In that case, the default contribution percentage would be the percentage that would apply under the EACA for the first applicable plan year had those employees been automatically enrolled starting on the first day of the 2025 plan year. As an alternative, the plan terms could reflect the provision in the proposed regulation permitting the redetermination of the initial period in the case of an employee who did not have default elective contributions made for an entire plan year (so that the plan would be permitted to provide that the initial contribution percentage that applies to those employees is the percentage that would apply under the EACA had the initial period for those employees started on the first day of the first applicable plan year).

F. Other Matters

1. Multiemployer Plans

As described in section I.D.4 of this Explanation of provisions, the proposed regulation would clarify that, for purposes of section 414A(c)(2)(B), the phrase ''a plan maintained by more than one employer'' means ''a multiple employer plan.'' Thus, the phrase ''a plan maintained by more than one employer'' would not be interpreted to include a multiemployer plan or a plan maintained by members of a controlled group. As a result, under the proposed regulation, a pre-enactment multiemployer plan would continue to be treated as a pre-enactment plan with respect to an employer that adopts the plan after December 29, 2022, or with respect to an employer that maintains a plan that is merged into the multiemployer plan after December 29, 2022 (regardless of the date the merged-in plan was established). Similarly, a pre-enactment plan would continue to be treated as a pre-enactment plan with respect to additional members of an employer's controlled group if eligibility to participate in the plan is expanded to include employees of those employers after December 29, 2022.

2. PLESAs

The Department of Labor published a request for information soliciting public feedback on several sections of the SECURE 2.0 Act in the **Federal Register** (88 FR 54511). In response to comments received, this preamble addresses the interaction of the rules for a PLESA and the automatic enrollment requirements of section 414A.

If a plan with a qualified CODA includes a PLESA, then the PLESA is part of the CODA. Thus, an affirmative election to contribute to a PLESA is an affirmative election to contribute to the CODA. If the plan is subject to the automatic enrollment requirements of section 414A, then an affirmative election to contribute to a PLESA would be an affirmative election under the CODA for purposes of the proposed regulation.

If an employee is automatically enrolled to contribute to a PLESA, the investment requirements of section 414A(b)(4) and proposed § 1.414A–1(c)(4) (which reference the Department of Labor's rules for qualified default investment alternatives under 29 CFR 2550.404c–5) generally would not be

satisfied with respect to the automatic contributions to the PLESA.[10] Thus, automatic contributions to the PLESA would not be able to be used to satisfy the automatic enrollment requirements under section 414A.

II. Section 1.414(w)–1

A. Employees Covered by the EACA

As explained in section I.B.1 of this Explanation of Provisions, proposed § 1.414A–1 would clarify that, in order for a CODA or salary reduction agreement under section 403(b) to satisfy the automatic enrollment requirements of section 414A, all employees in the plan who are eligible to elect to have contributions made on their behalf under the CODA or pursuant to a salary reduction agreement must be covered by the EACA. Section 1.414(w)–1(b)(1) currently provides that an EACA need not cover all employees who are eligible to elect to have contributions made on their behalf under the applicable employer plan. For consistency with proposed § 1.414A–1, this notice of proposed rulemaking would amend § 1.414(w)–1(b)(1) to clarify that the section 414A requirement to be covered by an EACA overrides the existing rule in the EACA regulations.

B. Special Rules Relating to Notices

1. Unenrolled Participants

As described in section II.B of the Background portion of this preamble, section 320 of the SECURE 2.0 Act adds new section 414(bb) to the Code. This notice of proposed rulemaking would reflect section 414(bb) by amending § 1.414(w)–1 to add a new paragraph under which, if the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant (as defined in section 414(bb)(2)),[11] then the requirement to give the section 414(w)(4) notice of an employee's rights and obligations does not apply to the participant. Thus, an unenrolled participant does not need to be given the annual EACA notice, provided that the participant is furnished (1) annual reminder notices under section 414(bb)(1)(A), and (2) any document requested by the participant (if the participant would be entitled to receive the document in the absence of section 414(bb) and section 111 of ERISA).

2. Consolidation of Notices

As described in section II.B of the Background portion of this preamble, section 402A(e)(5)(C) of the Code (as added by section 127 of the SECURE 2.0 Act) permits the initial and annual notices required under section 402A(e)(5)(A) of the Code to be included with any other notice under ERISA, including under section 404(c)(5)(B) or 514(e)(3) of ERISA, or under section 401(k)(13)(E) or 414(w)(4) of the Code, if the other notice is provided to the participant at the time required for that notice. In addition, section 341 of the SECURE 2.0 Act permits a plan to consolidate two or more of the notices required under sections 404(c)(5)(B) and 514(e)(3) of ERISA and sections 401(k)(12)(D), 401(k)(13)(E), and 414(w)(4) of the Code into a single notice, provided that the combined notice satisfies certain requirements.

The proposed amendment to § 1.414(w)–1 would address section 402A(e)(5)(C) of the Code and section 341 of the SECURE 2.0 Act by adding a new paragraph that provides that the EACA notice required under § 1.414(w)–1(b)(3) generally may be combined with one or more of the notices required under section 404(c)(5)(B), 514(e)(3), or 801(d)(3)(A) of ERISA and section 401(k)(12)(D) or 401(k)(13)(E) of the Code. Consistent with section 341 of the SECURE 2.0 Act, the proposed regulation would require that the combined notice include the required content, clearly identify the issues addressed therein, be furnished at the time and with the frequency required for each notice, be presented in a manner that is reasonably calculated to be understood by the average plan participant, and not obscure or fail to highlight the primary information required for each notice.

Proposed Applicability Date

Section 1.414A–1 and the amendments to § 1.414(w)–1 are proposed to apply to plan years that begin more than 6 months after the date that final regulations under section 414A are issued. For a plan year beginning after December 31, 2024, but before the applicability date of those final regulations, a plan is treated as having complied with section 414A if the plan complies with a reasonable, good faith interpretation of section 414A.

Special Analyses

I. Regulatory Planning and Review

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

II. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA) requires that a Federal agency obtain the approval of the Office of Management and Budget (OMB) before collecting information from the public, whether such collection of information is mandatory, voluntary, or required to obtain or retain a benefit. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collections of information in these proposed regulations contain third-party disclosure requirements that are necessary to comply with the statutory requirement under section 414A of the Code (which requires certain CODAs or salary reduction agreements to be EACAs) and that are necessary if a plan applies section 414(bb) (which eliminates certain disclosure and notice requirements for unenrolled participants if an annual notice is provided to the unenrolled participants). These collections of information generally would be provided by businesses or other for-profit institutions, nonprofit institutions, organizations, and state or local governments that sponsor retirement plans that include EACAs to individuals in order to meet the statutory notice requirements for EACAs under section 414(w)(4).

The collection of information under proposed § 1.414(w)–1(b)(4) related to unenrolled participants is required in order for a plan to apply section 414(bb). Section 414(bb) provides that no disclosure, notice, or other plan document is required to be furnished under the Code to an unenrolled participant if the unenrolled participant is furnished an annual reminder notice of the unenrolled participant's

[10] The Department of Labor published frequently asked questions online providing general compliance information under ERISA regarding PLESAs providing that, generally, the investment option designated for PLESAs cannot be the same as a plan's qualified default investment alternative under 29 CFR 2550.404c–5(e)(4)(i). However, Q&A–15 does indicate that a PLESA's investment option could meet the requirements for a qualified default investment alternative for a short period of time.

[11] Section 414(bb)(2) defines an unenrolled participant as an employee who: (1) is eligible to participate in a defined contribution plan, (2) has been furnished the summary plan description pursuant to section 104(b) of ERISA for the plan and any other notices related to eligibility under the plan and required to be furnished under the Code or ERISA in connection with the participant's initial eligibility to participate in the plan, (3) is not participating in the defined contribution plan, and (4) satisfies any other criteria as the Secretary of the Treasury may determine appropriate, as prescribed in guidance issued in consultation with the Secretary of Labor.

eligibility to participate in the plan and any applicable election deadlines under the plan. In accordance with section 414(bb), the proposed regulation would allow unenrolled participants to be furnished an annual reminder notice instead of the annual notice required for EACAs under section 414(w)(4) and § 1.414(w)–1(b)(3). The burden is as follows:

Estimated number of respondents: 90,000–140,000 plans.

Estimated frequency of responses: Varies *.

* *The notice would only need to be furnished to unenrolled participants once per year, however, plans have multiple unenrolled participants within a given year. For calculation purposes, IRS is estimating that each employer plan has 35 unenrolled participants that could receive the annual notice.*

Estimated average annual burden per respondent: 1 hour*, to draft the notice and provide it to unenrolled participants.

* *The IRS estimates that the reporting burden per response would not be burdensome because the notice does not need to be customized per participant.*

Estimated total annual reporting burden: 90,000–140,000 hours.

The collections of information in these proposed regulations also contain third-party disclosure requirements that are necessary to comply with the statutory rule under section 414A, which requires certain CODAs and salary reduction agreements to be EACAs (as defined in section 414(w)(3)). Under § 1.414(w)–1(b)(3), initial and annual written notices must be given to each employee to whom the EACA applies of the employee's rights and obligations under the EACA. Proposed § 1.414A–1 would not change the notice requirements for an EACA under § 1.414(w)–1 but would subject certain CODAs and salary reduction agreements to the notice requirements for an EACA by requiring those CODAs and salary reduction agreements to be EACAs (as required by section 414A). This requirement to be an EACA would not affect pre-enactment plans. IRS anticipates about 16,000 new plans could be established within a given year that would not otherwise be EACAs except for the requirements of section 414A.

Estimated number of respondents: 16,000.

Estimated frequency of responses: Varies *.

* *Notice would need to be given to eligible employees once per year. For calculation purposes, IRS is estimating that each employer plan has 60 eligible employees that would receive the annual notice.*

Estimated average annual burden per respondent: 1 hour *, to draft the notice and provide it to eligible employees.

* *The IRS estimates that the reporting burden per response would not be burdensome because the notice does not need to be customized per participant.*

Estimated total annual reporting burden: 16,000 hours.

IRS is soliciting feedback on these third-party disclosure requirements and their associated burden. The third-party disclosure requirements contained in this notice of proposed rulemaking have been submitted to OMB for review in accordance with the Paperwork Reduction Act under OMB Control Number 1545–2135. Commenters are strongly encouraged to submit public comments electronically. Written comments and recommendations for the proposed information collection should be sent to *www.reginfo.gov/public/do/PRAMain,* with copies to the Internal Revenue Service. Find this particular information collection by using the search function at *www.reginfo.gov/public/do/PRAMain.* Submit electronic submissions for the proposed information collection to the IRS via email at *pra.comments@irs.gov* (indicate REG–100669–24 on the Subject line). Comments on the collection of information should be received by March 17, 2025. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

III. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Although section 414A provides an exception from the automatic enrollment requirements for some small entities, other small entities that sponsor section 401(k) or 403(b) plans that are established on or after December 29, 2022, may need to provide for automatic enrollment in the plans and default cash or deferred or salary reduction elections for employees who are otherwise eligible to participate in the plans. Automatic enrollment and default elections, and the resulting additional contributions to a plan, apply to compensation that employees would have otherwise received and do not require additional amounts to be paid. Section 414A does not require plans to provide for nonelective contributions or matching contributions. Before the enactment of section 101 of the SECURE 2.0 Act, plans were permitted, but not required, to provide for automatic enrollment. Accordingly, any additional recordkeeping or administrative costs resulting from the automatic enrollment requirements that apply to certain section 401(k) and 403(b) plans sponsored by small entities are not expected to be significant. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required.

The Treasury Department and the IRS invite comments on the impacts these proposed regulations may have on small entities. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

IV. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. The proposed regulations do not propose any rule that would include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

V. Executive Order 13132: Federalism

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. The proposed

regulations do not propose rules that would have federalism implications, impose substantial direct compliance costs on State and local governments that are not required by statute, or preempt State law within the meaning of the Executive order. This is because section 414A, by its terms, does not apply to governmental plans.

Comments and Public Hearing

Before final regulations are adopted to implement section 414A of the Code, or to revise the regulations under section 414(w) to reflect changes made by sections 101, 320, and 341 of the SECURE 2.0 Act, consideration will be given to comments regarding the notice of proposed rulemaking that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** section. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Comments specifically are requested on whether guidance is needed to define the term ''predecessor employer'' as used in section 414A(c)(4)(A) of the Code and on the criteria that should apply for an individual to be an unenrolled participant under section 414(bb)(2). All comments will be made available at *www.regulations.gov.* Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn.

A public hearing has been scheduled for April 8, 2025, beginning at 10 a.m. ET in the Auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. Participants may alternatively attend the public hearing by telephone.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit an outline of the topics to be addressed and the time to be devoted to each topic by March 17, 2025 as prescribed in the preamble under the **DATES** section. A period of 10 minutes will be allocated to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing. If no outline of the topics to be discussed at the hearing is received by March 17, 2025, the public hearing will be cancelled. If the public hearing is cancelled, a notice of cancellation of the public hearing will be published in the **Federal Register**.

Individuals who want to testify in person at the public hearing must send an email to *publichearings@irs.gov* to have their names added to the building access list. The subject line of the email must contain the regulation number REG–100669–24 and the language TESTIFY In Person. For example, the subject line may say: Request to TESTIFY In Person at Hearing for REG–100669–24.

Individuals who want to testify by telephone at the public hearing must send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–100669–24 and the language TESTIFY Telephonically. For example, the subject line may say: Request to TESTIFY Telephonically at Hearing for REG–100669–24.

Individuals who want to attend the public hearing in person without testifying must also send an email to *publichearings@irs.gov* to have their names added to the building access list. The subject line of the email must contain the regulation number REG–100669–24 and the language ATTEND In Person. For example, the subject line may say: Request to ATTEND Hearing In Person for REG–100669–24. Requests to attend the public hearing must be received by 5 p.m. ET on April 4, 2025.

Individuals who want to attend the public hearing by telephone without testifying must also send an email to *publichearings@irs.gov* to receive the telephone number and access code for the hearing. The subject line of the email must contain the regulation number REG–100669–24 and the language ATTEND Hearing Telephonically. For example, the subject line may say: Request to ATTEND Hearing Telephonically for REG–100669–24. Requests to attend the public hearing must be received by 5 p.m. ET on April 4, 2025.

Hearings will be made accessible to people with disabilities. To request special assistance during the hearing, please contact the Publications and Regulations Branch of the Office of Associate Chief Counsel (Procedure and Administration) by sending an email to *publichearings@irs.gov* (preferred) or by telephone at (202) 317–6901 (not a toll-free number) by April 3, 2025.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *www.irs.gov.*

Drafting Information

The principal authors of these proposed regulations are Christina M. Cerasale and Kara M. Soderstrom, of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes (EEE)). However, other personnel from the Treasury Department and the IRS participated in the development of the proposed regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 * * *

* * * * *

■ **Par. 2.** Section 1.414(w)–1 is amended by:

■ a. Revising the second sentence of paragraph (b)(1); and

■ b. Adding paragraph (b)(4).

The revision and addition read as follows:

§ 1.414(w)–1 Permissible withdrawals from eligible automatic contribution arrangements.

* * * * *

(b) * * *

(1) * * * Except to the extent required under section 414A (which applies to plan years beginning after December 31, 2024), an eligible automatic contribution arrangement need not cover all employees who are eligible to elect to have contributions made on their behalf under the applicable employer plan.

* * * * *

(4) *Special rules*—(i) *No requirement to provide notice to unenrolled participant.* If the requirements of section 414(bb)(1) are satisfied with respect to an unenrolled participant described in section 414(bb)(2), then the requirement to give the notice of an employee's rights and obligations set forth in paragraph (b)(3) of this section does not apply to the participant.

(ii) *Consolidation of notices.* The notice described in paragraph (b)(3) of this section may be combined with one or more of the notices required under section 404(c)(5)(B), 514(e)(3), or 801(d)(3)(A) of the Employee Retirement Income Security Act of 1974 (Public Law 93–406, 88 Stat. 829), as amended, and any notice required under section 401(k)(12)(D) or (13)(E), provided that the combined notice—

(A) Includes the required content,

(B) Clearly identifies the issues addressed therein,

(C) Is furnished at the time and with the frequency required for each notice,

(D) Is presented in a manner that is reasonably calculated to be understood by the average plan participant, and

(E) Does not obscure or fail to highlight the primary information required for each notice.

* * * * *

■ **Par. 3.** Section 1.414A–1 is added to read as follows:

§ 1.414A–1 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.

Douglas W. O'Donnell,

Deputy Commissioner.

[FR Doc. 2025–00501 Filed 1–10–25; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 751

[EPA–HQ–OPPT–2021–0277; FRL–8331–02–OCSPP]

RIN 2070–AK87

C.I. Pigment Violet 29 (PV29); Regulation Under the Toxic Substances Control Act (TSCA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing to address the unreasonable risk of injury to human health presented by C.I. Pigment Violet 29 (CASRN 81–33–4, also known as PV29), under its conditions of use as documented in EPA's January 2021 Risk Evaluation for PV29 and the September 2022 Revised Risk Determination for PV29 prepared under TSCA. TSCA requires that EPA address by rule any unreasonable risk of injury to health or the environment identified in a TSCA risk evaluation and apply requirements to the extent necessary so the chemical no longer presents unreasonable risk. To address the identified unreasonable risk, EPA is proposing requirements to protect workers from the unreasonable risk of PV29 during manufacturing and processing, certain industrial and commercial uses of the chemical, and disposal, while also allowing for a reasonable transition period prior to enforcement of said requirements.

DATES: Comments must be received on or before February 28, 2025. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before February 13, 2025.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2021–0277, online at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: