

## SECURE 2.0 Update: IRS Releases Proposed Regulations on Automatic Enrollment

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We are roaring into 2025 riding a high-speed train, and the IRS was the first to board. On January 10, 2025, the IRS issued two proposed regulations relating to SECURE 2.0 — including one aimed at providing more guidance about SECURE 2.0's automatic enrollment provisions.

**Context:** SECURE 2.0 requires that all newly established 401(k) and 403(b) plans automatically enroll employees (unless they opt out) at an initial contribution rate between 3% and 10%. The provision takes effect this year and applies to all 401(k) and 403(b) plans established after December 29, 2022. Certain exceptions apply, including for new and small businesses, governmental plans, and church plans.

**Grandfathered Plans:** The proposed regulations include special provisions for “grandfathered plans”—meaning those established before the enactment of SECURE 2.0. The proposed regulations would clarify that such grandfathered plans may join MEPs and PEPs formed after enactment and still retain their grandfathered status. This would mean that grandfathered plans could join MEPs or PEPs without becoming subject to automatic enrollment. This is great news for many practitioners and should promote increased usage of MEP and PEP plan options.

**Small Business and Counting Requirements:** As mentioned above, SECURE 2.0's new automatic enrollment provisions do not apply to small employers. SECURE 2.0 defines a small employer as one that normally employs 10 or fewer employees — but, before these proposed regulations, employers were left guessing as to how the IRS was defining “normal” for these purposes. The proposed regulations offer some helpful clarification and would provide that a business is considered to have “normally” employed 10 or fewer employees if, and only if, it had 10 or fewer employees on at least 50% of its typical business days during the year.

**Coverage:** The proposed regulations clarify that the new automatic enrollment provisions, once added to a plan, would apply to all participants in the plan — including those who were hired before the automatic enrollment mandate took effect. The proposed regulations do note, though, that participants hired before the automatic enrollment provision's effective date who already have an affirmative election in place (including an election to opt-out of participation) are exempt, and do not need to be automatically enrolled.

The IRS is accepting comments on the proposed regulations now and has scheduled a public hearing for April 8th. SECURE 2.0's automatic enrollment provisions have been of great interest to plan sponsors — now is a great time to work with your TPA partner and ensure clients are aware of the helpful clarifications intended by the IRS.

### Reminders

- **January 31, 2025:** Usual deadline for providing plan participant data to plan vendors for testing. Now is a great time to make sure your clients have all data ready.
- **January 31, 2025:** Deadline for distributing Form 1099-R to plan participants who received distributions in the prior year.
- **February 28, 2025:** Deadline for filing hard copies of Form 1099-R with the IRS (if not submitted electronically).