The Asset Management Industry
SERVING INDIVIDUAL INVESTORS
INVESTMENT COMPANY INSTITUTE
1401 H Street, NW, Washington, DC 20005 USA

March 17, 2025

Filed Electronically

Internal Revenue Service
CC:PA:01:PR (REG–100669–24)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Re: Notice of Proposed Rulemaking — Automatic Enrollment Requirements Under Section 414A

To Whom It May Concern:

The Investment Company Institute (ICI)[1] appreciates the opportunity to provide our views to the Treasury Department ("Treasury") and Internal Revenue Service ("IRS") in support of the proposed regulations relating to automatic enrollment requirements that apply to certain retirement plans ("Proposal").[2] The Proposal would add a new regulatory section under section 414A of the Internal Revenue Code ("Code") to reflect changes enacted under the SECURE 2.0 Act of 2022. We appreciate the IRS's and Treasury's efforts to provide needed guidance to clarify the operation of the new statutory requirements.

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[1] The Investment Company Institute (ICI) is the leading association representing the asset management industry in service of individual investors. ICI's members include mutual funds, exchange-traded funds (ETFs), closed-end funds, and unit investment trusts (UITs) in the United States, and UCITS and similar funds offered to investors in other jurisdictions. Its members manage $39.1 trillion invested in funds registered under the US Investment Company Act of 1940, serving more than 120 million investors. Members manage an additional $9.6 trillion in regulated fund assets managed outside the United States. ICI also represents its members in their capacity as investment advisers to collective investment trusts (CITs) and retail separately managed accounts (SMAs). ICI has offices in Washington DC, Brussels, and London.

[2] See 90 Fed. Reg. 3092 (January 14, 2025), available at https://www.govinfo.gov/content/pkg/FR-2025-01-14/pdf/2025-00501.pdf.

Section 101 of the SECURE 2.0 Act adds new section 414A to the Code, which, effective for plan years beginning after December 31, 2024, requires newly established 401(k) and 403(b) plans to automatically enroll participants (subject to exceptions). Plans established prior to December 29, 2022 ("pre-enactment plans") are excluded from the automatic enrollment requirement, as are plans adopted by businesses in existence for less than three years and plans adopted by businesses that employ ten or fewer employees.

In March 2023, ICI submitted a letter[3] to the Service and Treasury requesting guidance in several areas where clarification is needed. On December 20, 2023, Treasury and IRS released Notice 2024-2, providing initial guidance, in Q&A format, on various issues related to the SECURE 2.0 Act changes, including the new requirement for automatic enrollment in retirement plans.[4] On February 20, 2024, ICI submitted a comment letter[5] in response to Notice 2024-2.

In our March 2023 Letter and February 2024 Letter, we requested guidance on several questions regarding the automatic enrollment requirement, including:

- The timing of plan "establishment" for purposes of grandfather treatment, including clarification of the meaning of "established" for purposes of determining eligibility for the grandfathering treatment.
- The impact of mergers and spin-offs on grandfather treatment, including clarifying that a merger or spinoff will not result in loss of grandfather treatment because the merged plan (or spun-off plan) is merely a continuation of the grandfathered plan.
- Clarification on the treatment of employers joining post-enactment MEPs, and specifically, confirming that the grandfather exception applies separately with respect to each participating employer, based on whether that employer maintained a plan prior to December 29, 2022.
- The identification of which employees are subject to the requirement to automatically enroll, and particularly for the 2025 plan year.

We appreciate the guidance in the Proposal, which addressed the items we raised in our letters. We support the Proposal and believe that, overall, it provides a reasonable framework for implementing the SECURE 2.0 Act's automatic enrollment requirement. We are particularly supportive of the Proposal's guidance that, if an employer maintains a pre-enactment plan that is merged into a MEP after December 29, 2022, then the post-merger MEP will be treated as a pre-

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[3] See letter from Elena Barone Chism and Shannon Salinas, ICI, to Carol Weiser, Benefits Tax Counsel, US Department of the Treasury and Rachel Levy, Associate Chief Counsel, Internal Revenue Service (March 23, 2023), available at https://www.ici.org/system/files/2023-04/23-cl-secure20-priorities.pdf (the "March 2023 Letter").

[4] IRS Notice 2024-02 is available at https://www.irs.gov/pub/irs-drop/n-24-02.pdf.

[5] See letter from Elena Barone Chism and Shannon Salinas, ICI, to Internal Revenue Service (February 20, 2024), available at https://www.ici.org/letters/24-cl-irs-grab-bag-guidance (the "February 2024 Letter").

enactment grandfathered plan with respect to that employer, regardless of the date of establishment of the MEP.

While we strongly support the Proposal, particularly the provisions addressing the items listed above, we also support changes recommended in a letter submitted today by the American Benefits Council.[6] As a member of the Council, ICI believes those changes will add needed clarity and improve administrability of the regulations.

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ICI and its members appreciate the opportunity to comment on the Proposal. We are committed to working with Treasury and the IRS to implement the SECURE 2.0 Act changes, in an effective manner. If you have any questions, please contact Elena Chism at 202/326-5821 (elena.chism@ici.org) or Shannon Salinas at 202/326-5809 (shannon.salinas@ici.org).

Sincerely,

/s/ Elena Chism	/s/ Shannon Salinas
Elena Chism Deputy General Counsel Retirement Policy	Shannon Salinas Associate General Counsel Retirement Policy

[6] See letter from Lynn Dudley, American Benefits Council to Internal Revenue Service (March 17, 2025).