



## Automatic Enrollment/Escalation—Is My Plan Grandfathered?

We knew it was coming—some type of auto enrollment and auto escalation mandate for 401(k) and 403(b) plans. Congress has long been a proponent of such automatic arrangements as they have proven they boost plan participation. The first “negative election” plans go back 25 years to 1998, when the IRS issued Revenue Ruling 98-30. Automatic escalation soon followed as did automatic investment. Some have even referred to this evolution as the systematic “DB-ification” or “pensionization” of 401(k) plans.

We know that automatic plan features help drive better plan outcomes. Section 101, “Expanding automatic enrollment in retirement plans,” of the newly enacted SECURE Act 2.0 of 2022 is intended to build on that idea. Beginning with the 2025 plan year, newly established 401(k) and 403(b) plans must automatically enroll employees in a certain type of eligible automatic contribution arrangement (EACA) upon meeting plan eligibility. However, some plans and business types are exempt from the requirement, including businesses with “grandfathered” plans.

The question then becomes, “Is my plan grandfathered?” You might be surprised to learn that it may not be. Consider the following example.

Planning Plus, Inc., established a new 401(k) plan effective 1/1/2023. The plan does not have an automatic enrollment feature. Is Planning Plus’s 401(k) plan grandfathered for purposes of the auto enrollment/escalation mandate?

The answer is, “no.” Grandfathered plans, for this purpose, are defined as all current 401(k) and 403(b) plans established prior to 12/29/2022—the date of SECURE 2.0’s enactment. Consequently, even

though Planning Plus established a plan before the date by which most new plans must include a SECURE 2.0 EACA (i.e., by the 2025 plan year), the plan does not meet the definition of grandfathered for purposes of an exemption. Therefore, Planning Plus will have to incorporate the EACA by the 2025 plan year unless, of course, one of the other exemptions applies. Both the EACA and exemptions appear next. For Year 1, the enrollment amount must be least 3% and may go up to 10%. For Years 2-8, the deferral amount is increased by one percentage point until it reaches at least 10%, but not more than 15%.<sup>1</sup>

**Participants may opt out or elect another percentage. The following plans are exempt:**

- Grandfathered plans (i.e., all current 401(k) and 403(b) plans established prior to 12/29/2022—the date of SECURE 2.0’s enactment)
- Businesses with 10 or fewer employees
- Businesses in existence for less than 3 years
- Church plans
- Governmental plans

**Other details include:**

- Deferrals must be invested in a qualified default investment alternative (QDIA) unless the participant elects otherwise.
- Participants can withdraw auto-deferrals made during a 90-day period after initial deferral.
- The provision applies to employers adopting a multiple-employer plan (MEP) after 12/29/2022, even if the MEP was established before that date.

The auto enrollment/auto escalation requirements for new 401(k) and 403(b) plans included in SECURE 2.0 might be a “gotcha” moment for some plan sponsors. With over 90 provisions in the new law, there is so much to uncover. We can help you avoid being caught off guard by what lies buried in the fine print of SECURE 2.0.

<sup>1</sup> Nonsafe-harbor plans are capped at 10% until the 2025 plan year

Contact the Pentegra Solutions Center at [solutions@pentegra.com](mailto:solutions@pentegra.com)  
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