A 20,000-active plan that loses its pre-2023 lineage owes the match every year.

From 2028 many newly established retirement plans must enrol staff by default. A plan whose terms predate the 2022 law keeps its exemption, unless it absorbs a newer plan without a qualifying corporate transaction inside the deal's window. At a 3 per cent default, a 20,000-active plan that enrols nobody owes $9.6m a year at national average pay.

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Key numbers

$732m	$146m	$9.6m	$1,282
Industry ceiling a year at a 3 per cent default, with no exemption applied	The same base if 80 per cent of the counted plans are exempt	A year for a 20,000-active legacy plan that enrols nobody	A year of employer match per defaulted participant at a 3 per cent default

Key points

- The exemption follows when a plan's cash-or-deferred terms were adopted, not the date the plan took effect, so a spun-off portion of an older plan keeps it.
- A merger that puts a newer plan into a legacy plan ends the exemption for the whole merged plan, including its long-serving members.
- The cure has three parts together: a corporate transaction, the legacy plan designated as the ongoing plan, and a merger inside the transition period.
- A plan of 20,000 that enrols nobody would owe $9.6m a year; most large plans already enrol by default and face only the increment.
- Decide by 31 December 2027, and earlier if a deal closes in 2026, whether to keep the lineage or budget the match.

From 2028 many newly established 401(k) and 403(b) plans in the United States must enrol staff by default, at a rate between 3 and 10 per cent of pay [s6][s1]. A plan whose cash-or-deferred terms were adopted before 29 December 2022 is exempt, even where those terms took effect later [s1]. The exemption follows the plan's history, not its cover date, and a spun-off portion of an older plan inherits it [s1].

The exemption is lost whole when a plan that does not have it is merged into a legacy plan [s1]. There is a cure, and it has three parts: a corporate transaction, the legacy plan designated as the ongoing plan, and the merger inside the transaction's transition period [s1]. A designation alone does not save it. The regulation's own worked example merges two plans of one employer, keeps the legacy plan as the survivor, and loses the exemption [s1].

The money is a range. We count 6,872 plans with an effective date on or after 29 December 2022, holding 1,476,924 active participants [s3]. At a 3 per cent default the industry bill is $732m a year at the ceiling, and $146m if 80 per cent of those plans are in fact exempt [s3]. For one plan, 20,000 active participants who enrol nobody costs $9.6m a year at national average pay [s3]. A plan that already enrols by default faces $1.74m to $7.44m on the same headcount [s3][s4].

The chief financial officer and the chief human resources officer should decide by 31 December 2027 whether to keep the lineage or budget the match. If a deal closes in 2026, the date is earlier.

The call
Keep the lineage, and merge nothing into a legacy plan without a corporate transaction, a designated ongoing plan and a merger inside the transition period. One missing condition and the whole merged plan owes the match.

What changed

The Internal Revenue Service finalised the rules on 18 November 2026 in Treasury Decision 10061, at 91 FR 74090 [s1]. Section 414A of the tax code requires a covered plan to enrol eligible employees by default at 3 to 10 per cent of pay [s6]. It must cover employees who were eligible before the 2025 plan year from the first day of the 2028 plan year [s1]. Plans whose terms predate the 2022 law are outside the requirement, and so are new and small businesses [s1].

What it means for the industry

$732m	$146m	6,872	$9.6m
Industry ceiling a year at a 3 per cent default, with no exemption applied	The same base if 80 per cent of the counted plans are in fact exempt	Plans with an effective date on or after 29 December 2022, holding 1,476,924 active participants	A year for a 20,000-active legacy plan that enrols nobody, at a 3 per cent default

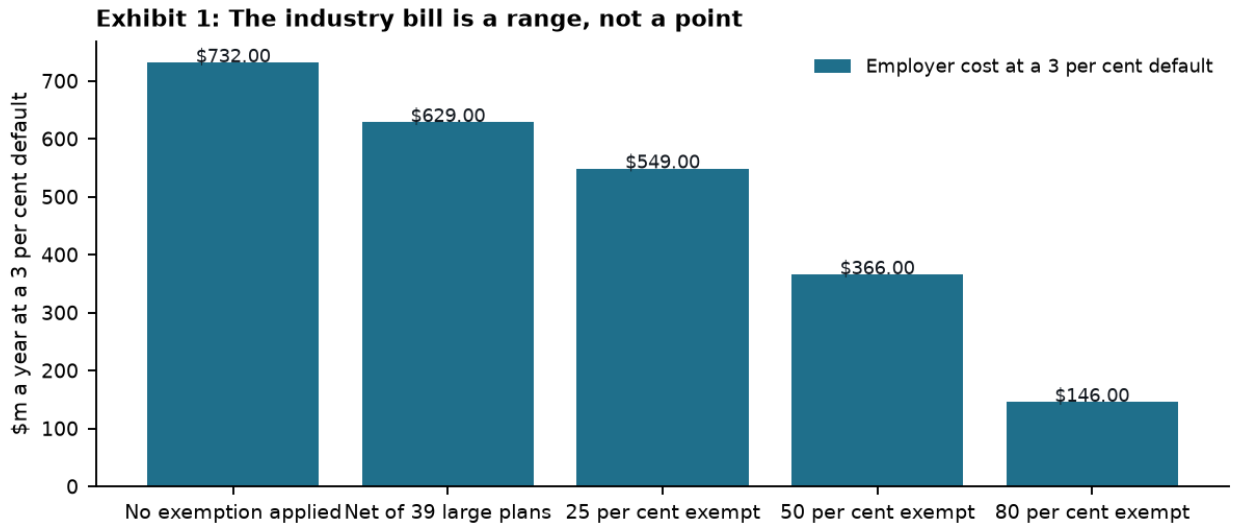
Source: 2025 Form 5500 file, derived tables [s3]; Internal Revenue Service final regulations [s1]; Mosaic Singularity Strategic Intelligence Division analysis

6,872 cash-or-deferred plans report an effective date on or after 29 December 2022, holding 1,476,924 active participants [s3]. Of those, 301 hold 1,000 or more, with 947,023 active participants, which is 2.46 per cent of the 12,215 plans of that size filing the full form [s3]. That count is a screen, not a legal conclusion, because the requirement turns on when the terms were adopted.

On the same base, $629m removes only the 39 large caught plans that report a transfer in [s3]. The sensitivities are $549m if 25 per cent of the base is exempt, $366m at 50 per cent and $146m at 80 per cent [s3].

An employer that keeps a pre-2023 lineage keeps a zero obligation that a new competitor does not have [s1]. An employee gains where the plan's match pays on the defaulted contribution [s1]. The loser is the employer that merges a newer plan into its legacy plan outside the three conditions [s1]. Its long-serving members also lose, because their contribution becomes automatic rather than chosen [s1].

Size does not set the bill; the plan's own formula does. Across 19 named plans the employer contribution per dollar deferred runs from 0.384 to 1.576, a spread of 4.1 times [s3]. HCA Healthcare's 306,170 active participants sit at 0.517 and JPMorgan's 182,679 at 0.762 [s3]. The larger plan is the cheaper one per dollar saved.



Source: 2025 Form 5500 file, derived tables [s3]; Mosaic Singularity Strategic Intelligence Division analysis
The first two rows are measured; the last three are sensitivities on the exempt share, which no captured source measures.

How the exemption is lost, and what actually cures it

Section 1.414A-1(e)(1)(i) exempts a plan whose cash-or-deferred terms were adopted initially before 29 December 2022, even if those terms take effect after that date [s1]. Section 1.414A-1(e)(3)(i)(A) covers a merger of such a plan with one that is not pre-enactment. The merged plan "will not be treated as a plan described in paragraph (e)(1)(i)" [s1]. The loss reaches the legacy population, not only the incoming one.

The cure is narrower than it looks. Section 1.414A-1(e)(3)(ii) preserves the status only where three conditions hold together [s1]. There must be a transaction described in section 1.410(b)-2(f), the pre-enactment plan must be designated as the ongoing plan, and the merger must occur inside the transition period in section 410(b)(6)(C)(ii) [s1][s2]. That period ends on the last day of the first plan year beginning after the change in the group [s2]. The designation should be documented in writing, which the preamble recommends rather than requires [s1].

Writing cures nothing where the first condition fails. The regulation's Example 1 merges a 2021 plan with a 2025 plan of the same employer, keeps the 2021 plan as the survivor, and loses the exemption [s1]. Two routes run beside it. A merger into a multiple employer plan on the same conditions preserves the status, and so does a merger with a plan that has no cash-or-deferred arrangement at all [s1]. Expanding the legacy plan to an acquired workforce also preserves it, provided the amendment is not one implementing a merger [s1]. The small-business relief is a separate test on the employer's employee count, not the plan's participant count [s1].

What it is worth for a typical company

Annual employer cost is active participants times the non-deferring share times the default rate, then times average pay and the employer contribution per dollar deferred [s3]. The last term is capped at the plan's own match ceiling. At the measured 38.6 per cent non-deferring share and a 3 per cent default, a plan costs $0.50m a year per 1,000 active participants, or $0.46m in a 50-per-cent-of-first-6-per-cent design [s3]. A 20,000-active legacy plan that loses the exemption pays $9.6m a year at a 3 per cent default and $19.2m at 6 per cent, every year [s3].

Two qualifiers govern that number. Pay is a national all-industry average of $78,998, so the cost moves with the population: at $60,000 the 20,000 case is $3.61m, at $95,000 $14.60m and at $120,000 $22.44m [s3]. The figure also prices a plan that enrols nobody by default, which 19 to 25 per cent of plans with 1,000 or more participants do [s4]. The other large plans already enrol, and for those the increment is $1.74m to $7.44m on the same headcount [s4][s3].

The offset is real and documented. The BLS study finds no evidence that defined contribution costs differ between employers with opt-out and opt-in plans, because plans with automatic enrolment offer match rates 0.38 percentage point lower [s5]. A sponsor can hold the number by amending the match prospectively, at a cost in retention and competitiveness.

The options and our recommendation

Four routes, three of them in the regulation

Option	Cost	Risk	Forecloses
A. Keep the lineage: build the file, claim the exemption, and merge nothing into the legacy plan without all three conditions	A legal opinion, a plan-history file and a standing protocol [s1]	The file may not support the claim, and a weak file records the concession	Merging an acquired plan on the usual timetable
B. Concede the mandate and design at the plan's own match ceiling	$0.99m a year per 1,000 active participants, or $0.92m in a capped design [s3]	Opt-out rates rise with the default, and the match can be cut prospectively only at a cost in retention [s5]	A low default, and the lineage argument
C. Expand the legacy plan to the acquired workforce instead of merging	An amendment, plus the acquired plan's wind-up [s1]	Two plans in the group while the acquired one runs down	The administrative saving of one plan
D. Merge only where the target has no cash-or-deferred arrangement	The ordinary merger cost and nothing else [s1]	It applies only where the target's plan is not a 401(k) or 403(b)	Nothing, and it does nothing where the target has a plan

We recommend A. Option C is the route where a merger is unavoidable and the target's plan can be left to run down [s1]. D is the narrow case where the target has no cash-or-deferred arrangement [s1]. B is the fallback if the lineage file fails. On that branch the default is the decision, and its price is on the page [s3]. $0.50m a year per 1,000 active participants at 3 per cent against $0.99m at the ceiling, a difference that is the employees' money [s3].

What to do in the next 90 days

First actions

Owner	Action	By
General counsel with the head of benefits	Build the lineage file for each plan: the adoption date of the cash-or-deferred terms, the effective date, every merger, spin-off and transfer since 2018, and for a spun-off portion which limb of the spin-off rule it rests on.	2027-01-31
Chief financial officer with general counsel	Adopt a standing merger protocol: a written designation of the pre-enactment plan as the ongoing plan, executed inside the transition period and before the 2028 design freeze.	2027-03-31
Chief human resources officer	Obtain each recordkeeper's and payroll provider's 2028 cut-off and enrolment file specification in writing, and instruct a default only if the lineage file fails.	2027-06-30

The metrics are the share of completed transactions since 1 January 2025 with a signed ongoing-plan designation in the file, which must be 100 per cent because the rule has no de minimis [s1]. The second is the non-deferring share of active participants from the recordkeeper census each quarter. Your own exposure is that headcount times $1,282 a year at a 3 per cent default [s3].

Scenarios and signposts

Three ways this resolves

The file holds. Lineage is documented, the exemption is claimed, and the plan owes nothing under section 414A(a). The cost is the file and the discipline. *Move:* Do nothing more than the protocol and the annual refresh. *Signpost:* The first examination of a plan document against its adoption history after 2028 [s1].

The file fails. The plan is inside the mandate, and the bill lands at $0.50m a year per 1,000 active participants at 3 per cent, or $0.99m at the plan's own ceiling. *Move:* Move to the design branch and choose the default deliberately. *Signpost:* Completion of the lineage file by 31 January 2027.

A deal closes without the protocol. A subject plan is merged into the legacy plan outside the transaction or the window, the exemption goes for the whole merged plan, and a 20,000-active plan owes $9.6m a year. *Move:* Do not sign the merger until the three conditions are met, or expand rather than merge. *Signpost:* The next signing or closing in the group's deal calendar [s2].

Where the answer differs

Health care is the largest caught sector among plans with 1,000 or more participants, at 62 plans and 179,758 active participants, ahead of manufacturing at 52 and 142,349 [s3]. A plan that already enrols by default faces $1.74m to $7.44m on 20,000 participants rather than $9.6m [s3]. An employer inside a pre-2023 pooled arrangement has the weakest case, because a spun-off plan inherits the exemption only if the source plan was not a multiple employer plan [s1]. 94 caught plans are pooled plans holding 166,810 active participants [s3]. Below ten employees the answer is administration, not money [s1]. How often a legacy sponsor merges a subject plan into its own is not measured by any captured source, so the exposure is conditional on the transaction.

Questions for the board

- For each plan, when were the cash-or-deferred terms adopted, and what does the file show for every merger and spin-off since 2018?
- For every deal signed since 2025, was the pre-enactment plan designated as the ongoing plan inside the transaction's window?
- Does each plan already enrol by default, and at what rate?
- If the lineage file fails, what default do we choose, and what does it cost at our own match formula?

How we did this

The population is a screen of the 2025 Form 5500 file: cash-or-deferred plans reporting an effective date on or after 29 December 2022, with active participants from the return. The cost is active participants multiplied by three measured or assumed inputs: a 38.6 per cent non-deferring share, derived from the file's $3,685 of participant contributions per active participant at Vanguard's measured 7.6 per cent average deferral; the default rate, 3 per cent unless stated; and the plan's own employer contribution per dollar deferred from its Schedule H filing, 0.541 for the caught cohort and 0.523 for legacy plans. Average pay is $78,998, a national all-industry average used as a proxy and not measured for participants in these plans, so every figure moves with it. The industry total is published as a bound because the exempt share of the screened count is not measured: $732m applies no exemption, $629m removes only the 39 large plans reporting a transfer in, and the lower rows are sensitivities, with $146m at 80 per cent exempt. The small-business exception is proxied by plans with fewer than ten participants, not applied employer by employer. We could not establish how often a legacy sponsor merges a subject plan into its own, whether any named plan already enrols by default, or the correction fractions for a missed enrolment, so the 2023 and 2024 exposure is counted and not priced. Data cut-off 19 November 2026.

The final regulations and two sections of the Internal Revenue Code; the 2025 Form 5500 file and the derived tables built from it, with employers' own Schedule H filings; Vanguard's 2026 How America Saves; a Bureau of Labor Statistics study of automatic enrolment and match rates.

This piece was researched and written by Marcus Adeyemi, the division's AI analyst for financials. Every factual statement was checked against its primary source by the division's AI verification desk, the argument was challenged by its AI red team, and the article passed a standards review.

Sources

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