IRS and DOL Issue Guidance on Pension-Linked Emergency Savings Accounts

The Internal Revenue Service ("IRS") and Department of Labor ("DOL") recently released coordinated guidance on Section 127 of the SECURE 2.0 Act ("SECURE 2.0"), which established pension-linked emergency savings accounts ("PLESAs"), a discretionary plan provision that may be offered for plan years beginning on or after January 1, 2024. The IRS issued Notice 2024-22 (the "Notice"), providing initial guidance on the anti-abuse rules, and the DOL released "Frequently Asked Questions: Pension-Linked Emergency Savings Accounts" ("FAQs"), providing guidance in the form of questions and answers relating to the general applicability of PLESAs.

PLESAs Generally

PLESAs are a short-term savings account for emergency expenses tied to an existing 401(k), 403(b) or governmental 457(b) plan. Plan participants who are non-highly compensated and otherwise eligible to participate in the plan (i.e., meet the age, service, and entry requirements), may contribute to a PLESA. Participants may self-enroll, or plan sponsors may implement an automatic enrollment feature at a rate of 3% or less. Contributions to a PLESA must be made as Roth contributions and held in a separately record-kept source, and are statutorily capped at $2,500 (subject to annual cost of living adjustments).

If a participant is eligible for employer matching contributions, the participant's PLESA contributions must be taken into consideration when the participant's matching contribution is calculated. Participants are permitted to withdrawal from the PLESA at least once per month and no withdrawal fee or other charge can be assessed on the first four withdrawals each plan year. PLESA contributions must be held (1) in cash, (2) in an interest-bearing deposit account, or (3) in an investment product designed to preserve principal and provide a reasonable rate of return.

Because Congress anticipated the potential for abuse by participants who might contribute to the PLESA for the purpose of receiving a matching contribution and subsequently withdraw contributed PLESA amounts from the plan, the Secretary of the Treasury, in consultation with the Secretary of Labor, were directed to issue guidance with respect to anti-abuse rules.

IRS Notice 2024-22

The Notice recognizes the general anti-abuse framework created by SECURE 2.0, which provides that a plan may employ reasonable procedures to limit the frequency and/or amount of matching contributions with respect to contributions to the PLESA, solely to the extent necessary to prevent manipulation of the plan's matching contribution rules. In addition, the plan is not required to suspend matching contributions following any participant withdrawal of contributions, whether or not matched and whether or not made pursuant to an automatic contribution arrangement.

The Notice also recognizes that SECURE 2.0 has already established certain guardrails to limit potential manipulation, which plan sponsors may consider sufficient to prevent abuse. Specifically,

plans may (1) set an order of matching contributions so that elective deferrals will be matched first, and (2) set a PLESA contribution limit lower than the $2,500 maximum, to reduce the matching contributions that would be made on PLESA contributions. In addition, plans may choose to limit the withdrawal frequency from PLESAs to one withdrawal per month. To the extent a plan sponsor does not find these options sufficient, it may implement additional procedures to prevent abuse, provided those procedures are reasonable. The Notice defines a reasonable anti-abuse procedure as "one that balances the interests of participants in using the PLESA for its intended purpose with the interests of plan sponsors in preventing manipulation of the plan's matching contribution rules."

The Notice provides the following examples of procedures that would not be considered reasonable and that may not be implemented:

- Forfeiting matching contributions that have already been made on account of participant contributions to the PLESA by reason of a participant's withdrawal from a PLESA;
- Suspending a participant's ability to contribute to the PLESA on account of a withdrawal from the PLESA; or
- Suspending matching contributions made on account of participant elective (non-PLESA) deferrals to the plan.

The IRS has invited comments on the Notice and indicated that the Notice is initial, not comprehensive, guidance on the anti-abuse rules.

DOL FAQs

The FAQs address a variety of topics and open questions relating to PLESAs, including eligibility and participation, contributions, distributions and withdrawals, administration and investment. Below are some key takeaways from the FAQs, not previously addressed or otherwise covered in the statutory language of SECURE 2.0.

- A plan cannot require minimum contributions by pay period, close and distribute a PLESA account based on a minimum balance requirement, or impose any penalty if the PLESA balance falls below a specified amount.

- A plan may require that PLESA contributions be made in whole dollars. A plan may also require that percentage-based contributions be no less than one percent or be made in whole percent increments if those requirements are applied uniformly to other participant contributions to the plan and participants are allowed to elect to have contributions made in whole dollar amounts as an alternative.

- A plan may choose to include or exclude earnings in applying the $2,500 contribution limit as long as, in either case, participant contributions to the PLESA do not exceed the statutory limit. Under the "Inclusion Approach," a plan may look to the participant's total account balance (inclusive of contributions and earnings) and prohibit further contributions if the total account balance exceeds $2,500. Under the "Exclusion Approach," a plan may apply the $2,500 limit on participant contributions alone, in which case earnings that cause the account balance to exceed $2,500 may be ignored. In addition, a participant cannot be restricted from replenishing funds after a withdrawal.

- PLESA contributions follow the same remittance timing rules that apply to elective deferrals, i.e., amounts must be remitted to the plan as of the earliest date that such contributions can reasonably be segregated from the employer's general assets, but in no case later than the 15th business day of the month immediately following the month in which the contribution is either withheld or received by the employer.

- Participants are not required to demonstrate or certify the existence of an emergency or other need or event in order to obtain a withdrawal from the PLESA; withdrawals may be made at the discretion of the participant.

- Plan fiduciaries may select any prudent investment product that satisfies the requirement to invest PLESA contributions in cash, an interest-bearing deposit account, or an investment product designed to preserve principal. Investment products that contain liquidity constraints (e.g., surrender charges) are considered incompatible with this requirement. In addition, PLESAs generally cannot be invested in the plan's QDIA.; however, if the plan uses a "limited duration QDIA," that QDIA may also be designated for the investment of PLESA contributions.

- Required PLESA notices may be combined with other required ERISA notices, including the QDIA notice, any applicable automatic enrollment notice, and any applicable safe harbor notices, consistent with the DOL's previously issued notice consolidation guidance and in satisfaction of the requirement in Section 341 of SECURE 2.0 addressing enhancements to notice consolidation.

- To avoid unnecessary duplication with the statutory PLESA disclosure requirements, participants' PLESA account balances are not required to be included in the quarterly benefit statements.

- The DOL is working on adding a PLESA feature to the 2024 Form 5500 where plans offering a PLESA would indicate the arrangement on the Form 5500 Annual Return/Report, beginning with the 2024 plan year filing, and the instructions would tell filers that financial information on the plan's PLESA accounts should be aggregated and reported in the relevant line items (e.g., contributions, earnings, fees/expenses, distributions) of the applicable forms, schedules, and attachments.

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