

Federal Agencies Issue PLESA Guidance

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The IRS and the U.S. Department of Labor recently issued guidance which addresses the newly created Pension Linked Emergency Savings Accounts (“PLESAs”), a novel plan design option authorized under SECURE 2.0. PLESAs are essentially “side car” savings accounts that can be added to defined contribution plans. PLESAs are subject to significantly relaxed distribution restrictions and are intended to facilitate plan participation and retirement savings among lower income workers. PLESAs became available for plan years beginning after December 31, 2023. A recent study shows that roughly 25% of plan sponsors are interested in adding a PLESA to their plan. However, thus far employer uptake has remained near zero, in part due to lingering regulatory questions and hesitancy on the part of service providers.

To address this uncertainty, the IRS issued **Notice 2024-22** (the “PLESA Notice”) and the Department of Labor **issued FAQs** (the “DOL FAQs”). Highlights of this new PLESA guidance are summarized below:

- **Eligibility/Participation.** If adopted as a plan feature, participation is available to those non-highly compensated employees who would be eligible to participate in the underlying defined contribution plan. Employers may either automatically enroll participants in a PLESA or use affirmative elections. Either way, participants must have the option to opt-out and withdraw their money at no charge.
- **Employee Contributions.** PLESA contributions are made on a modified Roth (after-tax) basis. PLESAs are subject to a statutory maximum balance of \$2,500 (though employers may opt for a lower maximum balance). The DOL FAQs clarify that a plan may either provide for inclusion or exclusion of earnings on the contributions when applying the \$2,500 limit. A plan generally cannot require a minimum balance or minimum contribution requirements, but it can implement certain reasonable administrative restrictions, such as requiring that contributions be made in whole dollars or percentages. The DOL FAQs confirm that the remittance period for PLESA participant contributions is the same that applies to elective deferrals to a 401(k) plan.
- **Matching Contributions.** The DOL FAQs confirm that if there is a matching component to the underlying defined contribution plan, the employee’s PLESA contributions must be eligible for matching contributions at the same rate established under the plan for non-PLESA elective deferrals, and that any employer matching contributions are to be contributed to the retirement savings portion of the plan, and not the PLESA.

The PLESA Notice focuses on the potential for abuse of this provision. It is conceivable that a participant may manipulate the matching component requirements by contributing to receive the match into the retirement portion of his/her retirement account, but then take a distribution from the PLESA so that the participant maximizes the match but maintains little to no contributions in the PLESA, a practice referred to as “churning.” The PLESA Notice permits a plan sponsor to implement “reasonable procedures” to the extent necessary to prevent manipulation of the matching rules and includes examples of practices that the IRS does not view as reasonable, such as forfeiture of matching contributions or suspension of PLESA eligibility.

- **Withdrawals.** The DOL FAQs clarify that a participant does not need to provide any evidence of hardship or emergency to access the funds; rather, the funds are available at the discretion of the participant. PLESAs must

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allow withdrawals at least once a month, and there cannot be any withdrawal fees associated with the first four withdrawals each plan year.

If you would like additional information about PLESAs or SECURE 2.0 generally, please contact the authors of this alert or your Miller Canfield attorney.