

# Retirement **Spotlight**

Illuminating current industry news and events

May 6, 2024

## IRS AND DOL RELEASE GUIDANCE FOR PLESA PROVISIONS

In January 2024, the Internal Revenue Service (IRS) released [Notice 2024-22](#), providing guidance with respect to anti-abuse rules for Pension-Linked Emergency Savings Accounts (PLESAs), a new provision created by the SECURE 2.0 Act of 2022 (SECURE 2.0). Soon after, the Department of Labor (DOL) issued a set of frequently asked questions ([FAQs](#)) intended to provide answers to general compliance questions about the administration of PLESAs.

### Background

Effective for 2024 and later plan years, Section 127 of SECURE 2.0 gives employers the option to permit participants who are non-highly compensated employees (non-HCEs) to contribute up to \$2,500 (indexed) as a Roth deferral to a separate account (i.e., a PLESA) included in a defined contribution plan (401(k), 403(b), or governmental 457(b) plan). The PLESA rules are found in Internal Revenue Code Section (IRC Sec.) 402A(e) and in four new sections (801 through 804) of the Employee Retirement Income Security Act of 1974 (ERISA). While SECURE 2.0 provided the basic framework to establish PLESAs, the IRS was required to issue regulations to address remedies that employers can use to prevent misuse of these types of accounts. The FAQs supplement Notice 2024-22 and are meant to help employers and participants understand and benefit from the new law.

### IRS Guidance

The IRS states that it is not considered abusive behavior when a participant repeats the pattern of contributing Roth deferrals into a PLESA, receiving a matching contribution, and then requesting a distribution of Roth deferrals, leaving the matching contribution in the plan. Notice 2024-22 states that this pattern of behavior is mitigated by the ordering rules, contribution limits, and withdrawal limits as provided by [IRC Sec. 402A\(e\)](#).

- **Ordering Rules of Matching Contributions.** The amount of matching contributions attributed to participant contributions to the PLESA may be limited, as matching contributions must first be attributed to elective deferrals made to the underlying plan as indicated in IRC Sec. 402A(e)(6)(B).
- **Annual Limit for Matching Contributions.** If participants have not yet reached the matching contribution limit after the employer applies a matching contribution to elective deferrals made to the underlying plan, additional matching contributions may be attributed to PLESA contributions. IRC Sec. 402A(e)(6)(A) limits matching contributions attributed to PLESA contributions to the dollar limit associated with a PLESA, which is \$2,500 (indexed); but an employer may set a lower limit. A lower limit for Roth deferrals contributed to a PLESA will result in a lower cap on the amount of matching contributions that would be required to be attributed to PLESA contributions.
- **Withdrawal Limit from PLESA.** Participants may request a PLESA distribution for any reason at least once per month as specified in IRC Sec. 402A(e)(7)(A). Employers may, but are not required to, allow participants to request PLESA distributions more frequently than once per month. Employers may also consider the

participant's ability to request PLESA distributions once per month as a sufficient constraint on a participant's ability to manipulate the matching contribution rules.

While many employers may consider the statutory requirements adequate to prevent abusive behavior, some may decide to employ additional "reasonable" procedures designed to limit the frequency or amount of matching contributions made on account of PLESA contributions as provided by IRC Sec. 402A(e)(12)(A).

- **Reasonable Procedures.** Reasonable procedures must balance the interests of participants who use a PLESA for its intended purpose with an employer's duty to prevent manipulation of the matching contribution rules of the plan.
- **Unreasonable Procedures.** The IRS and the Treasury Department have provided specific examples of unreasonable procedures. This is not an all-encompassing list: other procedures may also be deemed to be unreasonable.
  - **Forfeiture of Matching Contributions.** Matching contributions cannot be forfeited when a participant takes a PLESA distribution.
  - **Suspension of Participant Contributions.** An employer may not suspend a participant's ability to contribute to a PLESA if the participant takes a PLESA distribution.
  - **Suspension of Matching Contributions.** An employer may not suspend matching contributions made on account of participant elective deferrals to the underlying defined contribution plan.

## DOL FAQs

The DOL collaborated with the Treasury Department and the IRS to develop a set of 20 FAQs that address general compliance information under ERISA specific to managing PLESAs. The general compliance information is presented in sections that discuss eligibility and participation, contributions, distributions and withdrawals, and administration and investment.

### Eligibility and Participation

PLESAs are short-term savings accounts established within a defined contribution plan. Because of this, PLESAs receive all of the protections afforded by ERISA. The ERISA protections apply when an employee makes a Roth deferral into the PLESA regardless of whether an employee also makes elective deferrals into the plan. Only non-HCEs may elect to contribute to a PLESA.

- **Employee Eligibility.** Employees will be eligible to contribute to a PLESA, as provided by an employer's retirement plan, after meeting the plan's eligibility requirements. The employer may not set up separate eligibility criteria for employees to contribute to a PLESA.
- **Automatic Enrollment.** Employees may be automatically enrolled into a PLESA (if the plan permits), but an employer may not require an employee to participate. A maximum three percent automatic enrollment deferral rate applies, but employees may affirmatively elect to contribute a higher or lower percentage. Employees must be notified in writing before being automatically enrolled in the PLESA. If an employee opts out of auto enrollment, he may withdraw assets from the PLESA at no charge.
- **Minimum Amounts.** The employer may not set a minimum contribution amount or account balance requirement for PLESAs. In addition, the employer may not impose a fee or penalty for PLESAs with account balances that fall below a minimum amount. Employers will need to decide if contributions to a PLESA must be made in whole dollar amounts or based on a percentage of the employee's compensation. If contributions are based on a percentage of compensation, the employer may require the amount be no less than one percent or a whole percentage if
  - the requirement is applied to all other types of employee contributions to the plan, and
  - employees can instead elect to make contributions in whole dollar amounts.

### Contributions

All PLESA contributions must be made as Roth deferrals. PLESA assets must be separately accounted for in a segregated omnibus account with separate recordkeeping for each individual PLESA. In addition, all PLESA contributions count toward an employee's [402\(g\) limit](#) (\$23,000 for 2024). The portion of a PLESA balance attributable to an employee's Roth deferrals may not exceed \$2,500 (indexed).

- **Tracking PLESA Contribution Limits.** Employers must decide if they will limit PLESA contributions based on the amount contributed (exclusion approach) or the total account balance (inclusion approach). In other words,

an employer must decide whether to exclude or include the amount of earnings to determine if an employee has met the PLESA contribution limit.

- The **exclusion approach** will disregard any earnings and only track the assets that employees actually contribute to a PLESA account to determine if an employee has met the PLESA contribution limit.
- The **inclusion approach** includes earnings in the calculation to determine if an employee has reached the PLESA contribution limit. The inclusion approach is permitted as an employer can set a contribution limit that is less than the \$2,500 statutory limit (indexed).

There is not an annual limit specific to PLESA contributions. Employees may request multiple withdrawals from a PLESA and make additional contributions as long as they do not exceed the \$2,500 (indexed, or less if dictated by the plan) limit.

- **Matching Contributions.** An employer must match contributions to a PLESA at the same percentage as non-PLESA deferrals if the plan permits a matching contribution. The matching contribution is made to the plan rather than the PLESA.
- **Deposit Deadlines.** Employers must follow the same deferral deposit deadlines for PLESA contributions as for non-PLESA contributions, generally as soon as administratively feasible.

## Distributions and Withdrawals

Employees may request a PLESA distribution at least once per month and the distribution will not be subject to the 10 percent early distribution tax under [IRC Sec. 72\(t\)](#). An employee has full discretion when requesting a PLESA distribution and does not need to demonstrate or certify the existence of an emergency in order for PLESA assets to be distributed. PLESA distributions must be completed as soon as practicable from the date of the distribution request.

- **Distribution Fees.** The first four requests for PLESA distributions may not be subject to any fees or charges solely based on the distribution; additional distribution requests may be subject to reasonable fees or charges in connection with the distribution.
- **Distribution Methods.** At this time, the DOL does not intend to establish any administrative restrictions on the manner in which assets may be distributed from a PLESA. PLESA assets may be distributed, for example, by check, debit card, or electronic transfer.

## Administration and Investment

The general investment objective for PLESAs is to preserve capital and allow for asset liquidity so an employee can respond to an unexpected financial need. To meet this investment objective, PLESA contributions must be held in cash, another type of interest-bearing deposit account, or other investment product offered by a state or federally-regulated financial institution designed to “maintain over the term of the investment the dollar value that is equal to the amount invested in the product and preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with the need for liquidity.” Investments that include a surrender charge to the employee or plan are generally incompatible with this investment objective.

- **Qualified Default Investment Alternatives (QDIAs).** Generally, a QDIA’s investment objective does not meet a PLESA’s principal preservation and liquidity requirements. However, if a fiduciary has selected a limited duration QDIA as described in [29 CFR §2550.404c-5\(e\)\(4\)\(iv\)](#), which requires the selected investment product or fund be designed to preserve principal and provide a reasonable rate of return (whether or not guaranteed) consistent with liquidity, the QDIA may be used for the investment of PLESA contributions.
- **Administrative Fees.** The employer may charge fees for reasonable expenses or other charges associated with the administration of a PLESA. These administrative fees may be imposed directly on a PLESA or against individual accounts of which the PLESA is a part. The administrative fees are subject to ERISA’s fiduciary standards as described in [Field Assistance Bulletin No. 2003-03](#).
- **Initial and Annual Notices.** Employers must provide employees an initial notice at least 30, but no more than 90 days, before the date of the first contribution to a PLESA (including automatic enrollment contributions) or the date of any adjustment to the employee’s contribution rate to the PLESA. The employer must also provide an annual notice.

- **Notice Content.** The initial and annual notices must describe details about the administration of the PLESA, including but not limited to, the purpose of the PLESA (short-term, emergency savings), applicable PLESA contribution limits, related fees and expenses, and the amount that an employee has in the PLESA as well as the amount or percentage of compensation that the employee has contributed. The initial and annual PLESA notices may be included with other notices as long as the other notice is provided to the employees at the same time the PLESA notice is required. The other notices include a QDIA notice, an automatic contribution arrangement notice (ACA/EACA/QACA), or safe harbor notice. The DOL may issue a model notice in the future after evaluating whether a model notice is feasible and helpful.
- **Form 5500.** Plans that offer a PLESA feature will be required to report information about the PLESA in aggregate with the plan on Form 5500 and Form 5500-SF. The DOL will provide a specific PLESA code as well as instructions for plans to report information regarding contributions, investments, fees and expenses, and distributions.

## Next Steps

The Treasury Department and IRS accepted comments related to Notice 2024-22 and Section 127 of SECURE 2.0, including reasonable anti-abuse procedures, until April 5, 2024. The regulatory agencies are directed in SECURE 2.0 to monitor PLESA use and issue a report to Congress summarizing the findings not later than seven years from the date of enactment of SECURE 2.0. Visit [ascensus.com](https://ascensus.com) for the latest developments.