Voya Alert!

January 17, 2024

IRS Notice 2024-22 Provides Guidance on Anti-Abuse Rules related to Pension-Linked Emergency Savings Accounts

On January 12, 2024, the Internal Revenue Service (IRS) released Notice 2024-22 (Notice) with respect to section 127 of the SECURE 2.0 Act of 2022 (SECURE 2.0) dealing with Pension-Linked Emergency Savings Accounts (PLESAs). PLESAs are allowed within 401(k), 403(b), and governmental 457(b) defined contribution plans for plan years beginning after December 31, 2023. The Notice is intended to provide initial guidance regarding anti-abuse procedures for PLESAs.

Background

In general, PLESAs are optional short-term savings accounts held in a defined contribution plan and treated as a designated Roth account. Non-highly compensated participants who are otherwise eligible for the plan can elect to participate in the PLESA or the plan may provide for automatic enrollment into it by the employer. The plan must separately account for contributions made into the PLESA plus applicable earnings and must allow the participant to request a withdrawal from the PLESA at least once per month. No contributions can be made to the PLESA once the account balance attributable to participant contributions exceeds $2,500 or a lesser amount as determined by the plan sponsor.

If an employer makes any matching contribution into the plan that contains the PLESA, then the employer must also take into account the participant contributions made into the PLESA for matching purposes. Any matching contributions made to the plan are first applied to the participant's elective deferrals and then to the PLESA contributions. Matching contributions attributable to PLESA contributions are held in a plan's regular employer matching source.

A participant's withdrawal made from the PLESA is considered a qualified Roth distribution and is not subject to the 10% early withdrawal penalty under IRC 72(t)(2).

Potential Abuse

The Notice points out that plan sponsors may be concerned of potential abuse by participants in the use of PLESAs to cause matching contributions to exceed the intended amounts or frequency and gaining premature access to plan assets.

An example is provided in the Notice of a participant repeating a pattern of contributing $2,500 into the PLESA each year, receiving a match contribution on such amount, and then taking a $2,500 distribution in the same year.

Notice Guidance

The Notice explains that by way of IRC Section 402A(e)(12)(A), "a plan may employ reasonable procedures to limit the frequency or amount of matching contributions with respect to contributions to such account, solely to the extent necessary to prevent manipulation of the rules of the plan to cause matching contributions to exceed the intended amounts or frequency."

The IRS indicates there are already statutory provisions provided in the IRC that limit the ability of participants to abuse the use of PLESAs which include:

- The order of matching contributions whereby the participant's elective deferral contributions will be matched first prior to matching PLESA contributions,
- The limitation on annual matching contributions whereby the annual matching contributions that are made on the PLESA contributions cannot exceed the maximum account balance of $2,500 (or a lesser amount as provided by the plan).

The IRS acknowledges that plan sponsors may, but are not required to, implement additional procedures to prevent the abuse of PLESAs within their plan and 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."

Instead of providing examples of reasonable anti-abuse procedures, the Notice provides examples of procedures that would be unreasonable for a plan sponsor to implement as an anti-abuse mechanism for PLESAs, which include, but are not limited to:

- Forfeiting matching contributions made on account of PLESA contributions when a participant takes a PLESA withdrawal,
- Suspending participant contributions to a PLESA on account of a participant PLESA withdrawal, and
- Suspending matching contributions on participant elective deferrals otherwise made to the same plan.

The Treasury and IRS invite comments and suggestions regarding matters discussed in the Notice and in particular comments as to what would be reasonable or acceptable anti-abuse procedures for PLESAs and whether Rev. Rul. 74-55 and Rev. Rul. 74-56 apply to PLESAs. Comments should be submitted in writing to the IRS on or before April 3, 2024.