SECURE 2.0

SECURE 2.0 Will Allow a Special Emergency Savings Account Within Certain Qualified Plans

Pension-Linked Emergency Savings Accounts

Congress has wrestled with Americans' lack of emergency savings for years. Numerous proposals have been offered, but no substantial measures have passed. Until now. The SECURE 2.0 Act has created a "pension-linked emergency savings account," or "PLESA," which is designed to help individuals save for the emergencies that so many appear to be unprepared for.

The aim of this article is to present the most important takeaways of this new feature.

Guidance from the Department of Labor (DOL) and the IRS is expected, though it is not clear whether such guidance will arrive before employers can implement PLESAs, which become effective for plan years that begin on or after January 1, 2024. Because PLESAs are optional, employers may wait to see how upcoming guidance affects whether (or when) they adopt this provision for their plans.

PLESA Eligibility and Contributions

- Employers may add this feature to their 401(k) plans, 403(b) plans, and governmental 457(b) plans.
- Non-highly compensated employees who satisfy the age, service, and other eligibility requirements may contribute.
- Contribution amounts are based either on a participant election or on an automatic-enrollment feature—and must be made to a PLESA Roth account.
- If auto-enrollment is used, the contribution cannot exceed 3% of an employee's compensation.
- Employer matching contributions (if any) must be made on account of the PLESA contributions at the same rate as other matching contributions made to the plan. But such matching contributions must be made to the participant's account in the plan that is *not* a PLESA.
- Employers cannot accept any contribution that would cause the portion of the PLESA account balance attributable to employer contributions to exceed $2,500 (or a lower amount dictated by the plan).

ACCOUNT REQUIREMENTS

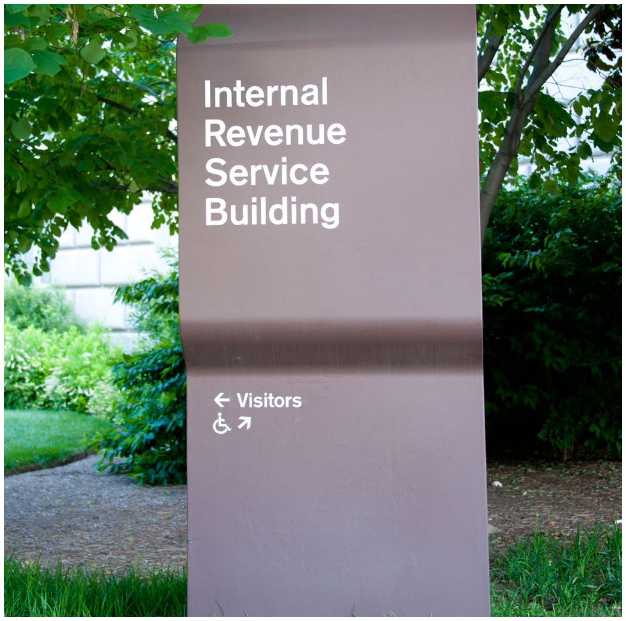
- There cannot be a minimum account balance requirement.
- Participants must be permitted to withdraw any amount at least once each calendar month.
- No fees can be charged for the first four withdrawals during each plan year; additional withdrawals may be subject to reasonable fees.
- PLESA assets must be held as cash, in an interest-bearing deposit account, or an investment product that is
  - designed to maintain the value of the contributions,
  - designed to provide a reasonable return rate that is consistent with the need for liquidity, and
  - offered by a federally- or state-regulated financial organization.

REPORTING AND DISCLOSURE

- Participants must receive a notice that describes the PLESA rules 30 – 90 days before the first contribution (whether auto-enrollment applies or not) or the date of any change in contribution rates *and* at least annually in future years.
- The notice must include information such as the purpose of the account, procedures for making contributions (or opting out), and the amount in the account.
- The notice must be written to be understood by the average plan participant—and may be combined with other required notices.

DISTRIBUTIONS

- PLESA distributions are considered “qualified distributions” for purposes of the Roth basis recovery rules: they are not subject to tax or the 10 percent early distribution penalty tax.
- If a participant separates from service (or if the PLESA feature is eliminated), distributions are eligible rollover distributions, but the employer does not need to
  - apply a mandatory 20% withholding rate,
  - provide a direct rollover option to the participant, or
  - provide an IRS 402(f) notice.
- If the employer terminates the PLESA feature, participants may transfer the assets to their designated Roth account within the plan or may receive the assets themselves within a reasonable time.



OTHER PROVISIONS

Given the need for some effective mechanism for individuals to save for emergencies, it will be interesting to see whether PLESAs fit the bill. Two other provisions may help us determine whether PLESAs will help remedy some of our savings shortfalls.

- The SECURE 2.0 Act requires the IRS to issue regulations by the end of 2023 to address possible approaches that employers may take to limit abuse by participants—who may be tempted to contribute simply to get a matching contribution—and who routinely withdraw their PLESA assets. Broader regulations may help employers determine whether they want to adopt this new provision.
- The IRS and DOL are also required to conduct a study to determine whether emergency savings vehicles are being used—and what effect they are having on retirement plan participation, especially among low-and moderate-income households. This study must be submitted to Congress within seven years.