

# Q1 Fiduciary Legal Briefing

IRS releases guidance on prohibited Pension-Linked Emergency Savings Account anti-abuse rules

## SECURE 2.0 PLESA Law Breakdown

SECURE 2.0 created the opportunity for sponsors to include a “pension-linked emergency savings account” (PLESA) in a DC plan. As IRS describes them: “PLESAs are short-term savings accounts established and maintained in connection with a defined contribution plan and are treated as a type of designated Roth account.” Highly compensated employees may not make PLESA contributions. PLESAs are generally subject to a \$2,500 account cap. but the plan may set a lower cap.

PLESA contributions must receive the same matching contributions that regular contributions do; (annual) matching contributions on account of PLESA contributions may not, however, exceed the account cap (\$2,500 or, if the employer elects, a lower amount).

Participants must, however, be able to withdraw amounts in a PLESA at least once a month. With respect to withdrawals, the statute provides that “for purposes of any applicable limitation on matching contributions, any matching contributions made under the plan are treated first as attributable to the elective deferrals of the participant other than contributions to a PLESA.”

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## The Issue

The possible participant abuse of PLESA rules with which IRS believes sponsors may be concerned is “that a participant could ... contribute to [a] PLESA and take distributions in a way that maximizes matching contributions received but maintains little to no contributions in the PLESA.” For instance, a participant might manage to “buy” \$2,500 in matching contributions using only PLESA contributions, then withdraw all those PLESA contributions during the year while still keeping the related matching contributions, thus effectively getting a \$2,500 match with no long-term saving.

In this regard, the statute provides that a plan “may employ reasonable procedures to limit the frequency or amount of matching contributions with respect to contributions to [a PLESA], 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.”

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## Proactive Provisions

With respect to possible plan anti-abuse measures, Notice 2024-22 states that the following would not be permitted:

- Forfeiture of matching contributions: A plan may not provide that matching contributions already made on account of participant contributions to the PLESA will be forfeited by reason of a participant's withdrawal from a PLESA;
- Suspension of participant contributions to PLESA: A plan may not suspend a participant's ability to contribute to the participant's PLESA on account of a withdrawal from the PLESA; and
- Suspension of matching contributions on participant contributions to the underlying defined contribution plan: A plan may not suspend matching contributions made on account of participant elective deferrals to the underlying defined contribution plan.
- Thus (under Notice 2024-22) rules limiting the ability of participants to game the PLESA system will generally have to focus on restricting the frequency and amount of PLESA contributions, not on penalizing "abuse."