Guidance on Anti-Abuse Rules Under Section 127 of the SECURE 2.0 Act of 2022 and Certain Other Issues with Respect to Pension-Linked Emergency Savings Accounts

Notice 2024-22

I. PURPOSE

This notice provides guidance with respect to section 127 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 3559 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act). Section 127 of the SECURE 2.0 Act provides for the creation of Pension-Linked Emergency Savings Accounts (PLESAs) effective for plan years beginning after December 31, 2023.

This notice is not intended to provide comprehensive guidance with respect to section 127 of the SECURE 2.0 Act, but rather it provides initial guidance regarding anti-abuse rules under section 402A(e)(12) of the Internal Revenue Code (Code) to assist in the implementation of SECURE 2.0 Act section 127 provisions. This notice also addresses whether Rev. Rul. 74-55, 1974-1 C.B. 89, and Rev. Rul. 74-56, 1974-1 C.B. 90, are applicable to PLESAs.

The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) invite comments on this guidance and any other aspect of section 127(e) and (f) of the SECURE 2.0 Act.

II. BACKGROUND

Section 127 of the SECURE 2.0 Act amends title I of the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829, as amended (ERISA),[1]

[1] This notice does not provide guidance on elements of section 127 of the SECURE 2.0 Act over which the Department of Labor has interpretive authority.

and section 402A of the Code to provide for the creation of PLESAs.[2] In general, 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.

Section 402A(e)(1)(A) provides that an applicable retirement plan (as defined under section 402A(f)(1)) may include a PLESA established pursuant to section 801 of ERISA, which, except as otherwise provided in section 402A(e) of the Code, is treated as a designated Roth account. Under section 402A(e)(1)(A)(ii), an applicable retirement plan may either (a) offer to enroll an eligible participant in a PLESA or (b) automatically enroll an eligible participant in a PLESA pursuant to an automatic contribution arrangement (described in section 402A(e)(4)). Further, under section 402A(e)(1)(B), if an applicable retirement plan includes a PLESA, the plan must: separately account for contributions to the PLESA (and any earnings properly allocable to the contributions), maintain separate recordkeeping with respect to each PLESA, and allow withdrawals from the PLESA in accordance with distribution rules described in section 402A(e)(7), which permits a withdrawal at the participant’s discretion, in whole or in part, at least once per month.

Under section 402A(e)(2)(A), an eligible participant with regard to a defined contribution plan means an individual, without regard to whether the individual otherwise participates in the plan, who meets any age, service, and other eligibility requirements of the plan and is not a highly compensated employee (as defined in section 414(q)). Pursuant to section 402A(e)(2)(B), an eligible participant on whose behalf a PLESA is established who thereafter becomes a highly compensated employee cannot make

[2] Section 127 of the SECURE 2.0 Act added new subsection 402A(e) of the Code and redesignated subsection 402A(e) as 402A(f), effective January 1, 2024.

further contributions to the PLESA but retains the right to withdraw any account balance in accordance with the rules in section 402A(e)(7) and (8), which permit withdrawals upon termination of employment or plan termination.

Subject to certain excess contribution rules, section 402A(e)(3)(A) provides that no contribution shall be accepted to a PLESA to the extent such contribution would cause the portion of the account balance attributable to participant contributions to exceed the lesser of (i) $2,500 or (ii) an amount determined by the plan sponsor of the PLESA.

In general, under section 402A(e)(6)(A), if an employer makes any matching contributions (as defined in section 401(m)(4)) to a defined contribution plan of which a PLESA is a part, the employer must (subject to the limitations of section 402A(e)(3)) make matching contributions on behalf of an eligible participant on account of the participant's contributions to the PLESA. The matching contributions must be at the same rate as any other matching contribution on account of an elective contribution by the participant. The matching contributions will be made to the participant's account under the defined contribution plan which is not the PLESA. The matching contributions on account of contributions to the PLESA must not exceed the maximum account balance under section 402A(e)(3)(A) for the plan year. Pursuant to section 402A(e)(6)(B), 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.

Pursuant to section 402A(e)(7)(A), a PLESA generally must allow for withdrawal by the participant on whose behalf the account is established of the account balance, in whole or in part, at the participant's direction, at least once per calendar month. The distribution of such a withdrawal by the participant must be made as soon as practicable after the date on which the participant elects to make such withdrawal. Section 402A(e)(7)(B) provides that a distribution from a PLESA is treated as a qualified distribution for purposes of section 402A(d) and treated as meeting the requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

Section 402A(e)(11) provides that, notwithstanding section 411(d)(6), a plan which includes a PLESA may cease to offer such accounts at any time.

Section 402A(e)(12)(A) provides that a plan of which a PLESA is a part 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. Section 402A(e)(12)(B) provides that a plan of which a PLESA is a part is not required to suspend matching contributions following any participant withdrawal of contributions, including elective deferrals and employee contributions, whether or not matched and whether or not made pursuant to an automatic contribution arrangement.

The last sentence of section 402A(e)(12) provides that the Secretary of the Treasury, in consultation with the Secretary of Labor, shall issue regulations or other guidance not later than 12 months after the date of the enactment of the SECURE 2.0 Act with respect to the anti-abuse rules described in section 402A(e)(12).

Section 127(e)(2) of the SECURE 2.0 Act amends section 72(t)(2) of the Code to add a new subparagraph (J). Section 72(t)(2)(J) provides that, except as provided in section 72(t)(3) and (4), the ten-percent additional tax on early distributions from qualified retirement plans under section 72(t)(1) does not apply to distributions from a PLESA pursuant to section 402A(e). Section 127(e)(3) of the SECURE 2.0 Act amends section 72(d) of the Code to add new paragraph (3). Section 72(d)(3) provides that, for purposes of section 72, contributions to a PLESA to which section 402A(e) applies (and any income allocable thereto) may be treated as a separate contract.

Section 127(g) of the SECURE 2.0 Act provides that the amendments made by section 127 apply to plan years beginning after December 31, 2023.

III. GUIDANCE UNDER SECTION 402A(e)(12) REGARDING REASONABLE ANTI-ABUSE PROCEDURES

Congress directed that the Secretary of the Treasury, in consultation with the Secretary of Labor, issue guidance with respect to the discretionary anti-abuse rules described in section 402A(e)(12). This Part III provides examples of anti-abuse procedures that are not reasonable and thus may not be used to limit the frequency or amount of matching contributions made to the account. This Part III first highlights several statutory provisions within section 402A(e) to which a plan might look to limit the ability of participants to manipulate the rules of the plan to cause matching contributions to exceed the intended amounts or frequency.

A. Statutory Provisions

Statutory provisions under section 402A(e) that limit manipulation of the rules of the plan to cause matching contributions to exceed the intended amounts or frequency include:

- **Order of matching contributions**: Section 402A(e)(6)(B) provides that any matching contributions made under the plan are treated first as attributable to a participant's elective deferrals other than PLESA contributions. As a result, any elective deferrals a participant makes under the underlying defined contribution plan will be matched first and will lower the availability of matching contributions that will be made on account of participant contributions to their PLESA;

- **Limitation on annual matching contributions**: Section 402A(e)(6)(A) provides that matching contributions on account of contributions to the PLESA cannot exceed the maximum account balance set under section 402A(e)(3)(A) ($2,500 (as adjusted by the Secretary of the Treasury)) or a lower amount set by the plan sponsor) for the plan year. Section 402A(e)(3)(A)(ii) also permits a plan sponsor to set a lower PLESA balance limit than the $2,500 limit under section 402A(e)(3)(A)(i). A lower limit on the portion of the PLESA balance attributable to participant contributions would result in a correspondingly lower cap on annual matching contributions that would be required under section 402A(e)(6)(A).

A plan sponsor might view these provisions as sufficient anti-abuse provisions, and therefore decide not to impose any other restrictions meant to prevent manipulation of matching contributions. In such a case, for example, a plan sponsor may consider a participant as not manipulating the matching contribution rules if the participant made a $2,500 contribution in one year, received the matching contribution on such amount, and then took $2,500 in distributions that year and repeated that pattern in subsequent years.

Similarly, because plans are not required to permit participants to take more than one distribution per month, plan sponsors may view the option of limiting the number of permissible withdrawals to a maximum of once per month as a sufficient constraint on the potential to manipulate the matching contribution rules.

B. Procedures to Limit Manipulation of Matching Contributions

Under section 402A(e)(12)(A), a plan of which a PLESA is a part may, but is not required to, employ reasonable procedures to limit the frequency or amount of matching contributions with respect to contributions to a PLESA. However, plan sponsors might be concerned that a participant could nevertheless contribute to the participant's PLESA and take distributions in a way that maximizes matching contributions received but maintains little to no contributions in the PLESA. If a plan sponsor decides to employ additional procedures to prevent abuse, section 402A(e)(12)(A) provides that reasonable procedures are permitted 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.

A reasonable anti-abuse procedure is 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. Plan sponsors may find it challenging to identify participants engaging in manipulative practices because those participants may be able to adapt their pattern of contributions and distributions to replicate patterns of participants making contributions and taking periodic distributions for legitimate purposes, such as unexpected expenses. The

Treasury Department and IRS have determined that procedures that are unreasonable for a plan sponsor to implement include, but are not limited to:

- **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.

IV. REVENUE RULINGS 74-55 AND 74-56

Certain stakeholders have expressed concerns regarding the application of Rev. Rul. 74-55 and Rev. Rul. 74-56 to PLESAs. The Treasury Department and the IRS do not view these revenue rulings as applicable in the context of PLESAs, regardless of whether the contributions are matched. The Treasury Department and the IRS invite comments regarding the applicability of these revenue rulings, and the regulations on which they are based, in this or other contexts.

V. REQUEST FOR COMMENTS

The Treasury Department and the IRS invite comments and suggestions regarding the matters discussed in this notice and any other aspect of section 127 of the

SECURE 2.0 Act. In particular, comments related to reasonable anti-abuse procedures are invited in order to explore further examples of what may be reasonable. The Treasury Department and IRS are interested in examples of reasonable procedures which effectively balance the policy of incentivizing emergency savings while discouraging potentially abusive practices.

Comments should be submitted in writing on or before April 5, 2024, and should include a reference to Notice 2024-22. Comments may be submitted electronically via the Federal eRulemaking Portal at www.regulations.gov (type "IRS Notice 2024-22" in the search field on the regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to:

Internal Revenue Service
Attn: CC:PA:LPD:PR (Notice 2024-22), Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

VI. DRAFTING INFORMATION

The principal author of this notice is Jordan D. Kohl of the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). Other personnel from the Treasury Department and the IRS also participated in the development of this guidance. For further information regarding this notice, please call Ms. Kohl at (312) 292-2170 (not a toll-free number).