New DOL Guidance Sheds Light on SECURE 2.0 Emergency Savings Accounts

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GOVERNMENT AFFAIRS

On the heels of the **recent IRS guidance** on pension-linked emergency savings accounts (PLESAs), the Department of Labor's (DOL) Employee Benefits Security Administration (EBSA) **followed suit on Jan. 17**, issuing additional guidance in the form of FAQs.

Included in Section 127 of the SECURE 2.0 Act of 2022, PLESAs are essentially short-term Roth savings accounts established and maintained separately within an individual's retirement savings plan, such as a 401(k) plan.

Employers may automatically enroll their employees into PLESAs, make employee contributions to the PLESAs through payroll deductions and make matching employer contributions to the linked retirement plans. The PLESA rules are found in new sections 801 through 804 of ERISA, and in Internal Revenue Code Section 402A(e), which include provisions that are largely parallel to the new ERISA provisions. The PLESA provisions are effective for plan years beginning after Dec. 31, 2023.

"These savings accounts will enhance retirement security by reducing retirement plan leakage and, at the same time, offering additional flexibility to workers," Assistant Secretary for EBSA Lisa Gomez said in a statement.

While the 20 FAQs outlined in the document do not necessarily break new ground, they do provide some important clarifications for certain items of interest, including in the areas of eligibility and participation, contributions and distributions, and administration and investment.

Reporting and Disclosure

One notable area is in the PLESA reporting and disclosure requirements (Questions 17 through 20) and whether plans can combine notices.

Citing ERISA Section 801(d)(3)(C), the FAQs note that plan administrators may combine the notices, explaining that the "initial and annual notices that must be furnished to PLESA participants 'may be included with any other notice under [ERISA], including under section 404(c)(5)(B) or 514(e)(3), or under section 401(k)(13)(E) or 414(w)(4) of the Internal Revenue Code of 1986, if such other notice is provided to the participant at the time required for such notice.'"

Although not contained in the FAQ, the DOL teased the possibility of a coming model notice. To that end, the Department said it is working with Treasury to evaluate whether a model notice is feasible and helpful to include in future guidance.

The DOL also notes that it will not require pension benefit statements under ERISA section 105 or disclosures furnished under 29 CFR §2550.404(a)(5) to address a plan's PLESA feature, provided that the plan administrator satisfies the notice requirements of ERISA section 801(d)(3)(A) and (B).

In addition, because PLESAs were not authorized until 2024, the 2023 Form 5500s do not have specific PLESA reporting requirements, but the DOL notes that it is working to update the forms.

Application of the $2,500 Limit

The DOL also addressed the question of whether the $2,500 limit is based solely on contributions or does it include earnings as well. Again, citing ERISA Section 801, the DOL notes that plans have flexibility to either include or exclude earnings on the participant's contributions, so long as the portion attributable to participant contributions does not exceed the statutory limit.

For instance, if a plan applies the $2,500 limit and caps participant contributions at that amount, earnings credited in excess of $2,500 would not constitute a violation of the limit, calling it the "exclusion approach" because earnings are excluded from calculation of the limitation.

Alternatively, plans may focus on a participant's total account balance (both contributions and earnings) and prohibit contributions if the total account balance would exceed $2,500—the "inclusion approach" because earnings are included in calculation of the limitation.

As to whether a plan can impose an annual limit for participant contributions in addition to the account balance limit, the DOL makes clear that is not acceptable, noting that an annual limit could restrict a participant from replenishing funds following a withdrawal.

"The statutory scheme implies an ability to make periodic withdrawals and replenishing contributions, in keeping with the emergency-savings nature of the account," the DOL explains in FAQ 8. The guidance further notes, however, that the tax qualification contribution limits under the Internal Revenue Code (IRC) and points to the newly released **IRS guidance** on anti-abuse constraints and other issues under IRC Section 402A(e).

PLESA Investment Options and QDIAs

Question 15 tackled interpretive guidance on the QDIA, noting that the investment options for PLESAs cannot be the same as the plan's qualified default investment alternative under 29 CFR §2550.404c-5(e)(4)(i).

The FAQ also provided 404 guidance, noting that relief set forth in SECURE 2.0 is "capital preservation and liquidity consistent with immediate access to savings to respond to unexpected financial needs."

Fees, Withdrawals and Remittances

As to whether plans can impose limitations or fees for withdrawals from PLESAs, the DOL reiterates that plans have the discretion to allow PLESA withdrawals more, but not less, frequently than once per calendar month.

The DOL further emphasizes that PLESAs cannot be subject to any fees or charges, direct or indirect, solely on the basis of a withdrawal of funds from the PLESA for the first four withdrawals in a plan year. However, PLESAs may be subject to reasonable fees or charges in connection with any subsequent withdrawals.

"Fees for subsequent withdrawals, whether called a 'withdrawal fee,' 'account maintenance fee,' or other similar term, would not be permissible if the amount exceeded a reasonable fee for the individual withdrawal or otherwise effectively constituted a fee or charge for one or more of the first four withdrawals," the DOL states.

Apart from withdrawals, the DOL also clarifies that plans may impose "reasonable fees, expenses, or charges associated with the administration of PLESAs" against accounts in the individual account plan of which the PLESA is a part.

Lastly, the DOL noted that the remittance period for PLESA participant contributions is the same as contributions to other retirement plans.

"Thus, an employer or other plan sponsor should remit amounts withheld from wages to the PLESA as of the earliest date that such contributions can reasonably be segregated from the employer's general assets but in no case later than the 15th business day of the month immediately following the month in which the contribution is either withheld or received by the employer," it concluded.

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