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PLESA Please!
It's an Emergency!

S. Derrin Watson

Alison Cohen

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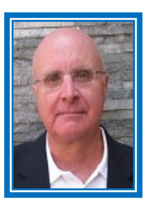

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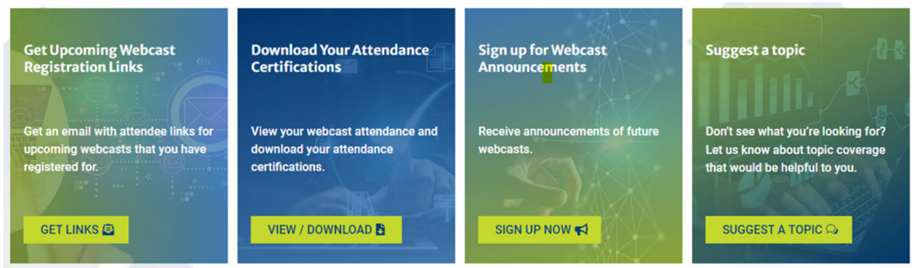

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Your Presenters Today

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Two SECURE 2.0 Emergency Distributions

- Not too bad:
  - Emergency Personal Expense Distribution (EPED)
- It's complicated:
  - Pension-Linked Emergency Savings Account (PLESA)
- Both go into effect in 2024
- Both are available for PS, 401(k), 403(b), gov't 457(b)
- Both are optional: plan sponsor doesn't have offer either of them

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Let's Talk First About EPEDs

- New distribution event available
- Unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses
  - Can rely on employee's written certification
- Doesn't apply to pension plans
- Participants can repay within 3 years
- Plan does not treat as eligible rollover distribution

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Two Types of Limits

- Limited to 1 per year
- Barred from EPEDs for next 3 calendar years unless fully recharged by:
  - Repaying to plan
  - Deferrals and after-tax contributions
- Presumably reported on Form 1099-R
- Normal distribution fees apply

Vested Balance	Maximum Amount
< $1,000	$0
$1,000 - $2,000	Vested balance - $1,000
Over $2,000	$1,000

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PENSION-LINKED EMERGENCY SAVINGS ACCOUNT (PLESA)

ERISA 3(45)
ERISA 801-804
Code §402A(e)
Notice 2024-22
DOL FAQs

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What's a PLESA?

- Often described as a "sidecar" to plan
- Special Roth account in plan
- Employee contributions only
- Only NHCEs can contribute
  - HCEs can still use account set up when they were NHCEs
- All distributions tax-free (principal + earnings)
  - Treated as qualified Roth distribution

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DOL FAQs

- SECURE 2.0 §127 added new sections 801-804 to ERISA
  - Most detailed set of rules for PLESAs
  - All ERISA protections apply to PLESAs
- Also added Code §402A(e) to deal with tax aspects
- That means both IRS and DOL have authority
- January 17, 2024, DOL issued 20 FAQs explaining PLESAs
  - Issued in consultation with IRS

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PLESA Participants

- "An individual must be eligible to participate in a plan's PLESA if they meet any age, service, and other eligibility requirements of the plan, and if they are not a highly compensated employee."
  - Sounds like any NHCE participant is eligible to contribute to a PLESA if the plan offers them

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No Minimums

- Plan cannot have minimum contribution or account balance requirements
- Can't have:
  - Any policy requiring PLESA distribution based on minimum balance
  - Penalty (fees or suspend withdrawals) for accounts below minimum
  - Any policy requiring minimum contribution per pay period
    - Can require PLESA contributions in whole dollars
    - Can require minimum 1% contribution and whole percentage increments if:
      - These rules are applied uniformly to other contributions
      - Participants can elect whole dollar amounts as an alternative

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Auto Enrollment

- Can automatically enroll participants
- Maximum default PLESA contribution rate: 3%
  - Example: 401(k) plan has auto enroll at 5% for deferrals and 3% for PLESA
  - Can't change rate more than once per year (before beginning of year)
    - Notice has to reflect default rate
- Participants must be able to elect out
  - Or elect different percentage
  - Detailed notice requirements
- Participants can always withdraw PLESA contributions

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Contribution Limits

- "Portion of a PLESA attributable to participant contributions may not exceed" $2,500 (indexed for inflation)
  - Plan can set lower limit
- PLESA contributions count against §402(g) limit on deferrals
  - Example: Martha (age 40) is hired in 2024 and makes $250,000
    - Won't be an HCE until 2025
  - She contributes $2,500 to PLESA
  - Maximum 2024 401(k) deferral is $20,500 ($23,000 §402(g) limit minus $2,500 contributed to PLESA)

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Do Earnings Count in Computing Limits?

- You decide!
  - You can include or exclude earnings in computing $2,500 account limit
- Example
  - Account balance is $2,450
    - $2,400 contributions
    - $50 earnings
  - If earnings count against limit (“inclusion approach”) max contribution = $50
  - If earnings don’t count against limit (“exclusion approach”) max contribution = $100

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No Annual Contribution Limit

- Plan cannot impose annual contribution limit
- Example:
  - Fred contributes $700/month to PLESA
  - He contributes $2,100 to PLESA in January-March
  - In April, he withdraws $1,900 for a medical bill (balance $200)
  - He contributes another $2,100 April-June
  - In July, he withdraws $1,800 for vacation (Balance $500)
  - He contributes another $2,000 July-Sept. (balance now $2,500 + earnings)
- Remember, those contributions all count against §402(g) limit

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What Do We Do With Fred's Extra $100?

- Code §402A says we have three choices
  - If the participant has a Roth account in the plan
    - Participant can elect to increase Roth contribution
    - Plan can treat it as a deemed election to increase Roth contribution
  - Otherwise, plan doesn't take the money
    - Can you say "excess amount" operational failure?

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Deposit Timing; Recordkeeping

- PLESA contributions follow same deposit timing rules that apply to elective deferrals
  - ASAP
  - Or else it's a prohibited transaction
- Plan must separately account for PLESA contributions and earnings
  - On individual basis
- Funds can be held in "segregated omnibus account"

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Emergency is Just a Word

- No need to demonstrate or certify an emergency or hardship to take a distribution
- Withdrawals are made "at the discretion of the participant"

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Distribution Restrictions; Fees

- Plan must permit at least one withdrawal per month
  - Can allow withdrawals more frequently
- Must distribute ASAP when participant requests a withdrawal
- No direct or indirect fees or charges, direct or indirect, solely on basis of withdrawal for first four withdrawals in plan year
  - Can't be called "withdrawal fee" or "account maintenance fee"
- Reasonable fees and charges allowed for subsequent withdrawals, including fees for handling paper checks
- Can distribute via check, debit card, or electronic transfer

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Administrative Fees

- "Reasonable fees, expenses, or other charges associated with administration may be imposed directly on PLESAs."
  - Alternatively, those fees can be imposed against other accounts in plan
  - Of course, employer could pay the fees instead

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Investment of PLESA Accounts

- PLESA contributions must be held:
  - As cash
  - In an interest-bearing deposit account, or
  - In an investment product designed to "maintain over the term of the investment the dollar value that is equal to the amount invested in the product and preserve principal and provide a reasonable rate of return, whether or not such return is guaranteed, consistent with the need for liquidity"

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More on Investments

- Must be offered by state- or federally-regulated institution
- Can select any prudent product that meets these requirements
- Stay away from investment products with surrender charges or other liquidity restraints
- Plan's QDIA generally won't meet requirements
  - Other than short-term QDIA during first 120 days of EACA participation

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Termination of PLESA

- Employer can terminate arrangement at any time
  - No anti-cutback right
- After termination of employment or arrangement:
  - Participant can choose to move money to another Roth account in plan
    - And roll from there to a Roth IRA or other Roth account
  - Otherwise, plan makes account available to participant
  - Participant's choice

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Annual PLESA Notice Required
No Model Notice Yet

- The purpose of the account: short-term emergency savings
- Limits on and tax treatment of contributions to PLESA
- Fees, expenses, restrictions, or charges associated with PLESA
- Contribution, opt out, and withdrawal procedures
- Default contribution, if any
- The amount in the account and amount or % of comp contributed
- Designated investment option
- Termination options
- HCE can withdraw but can't contribute

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Can Combine PLESA Notice With Other Notices

- Can be furnished with:
  - ACA notice
  - Safe harbor notice
  - QACA notice
  - EACA notice
  - QDIA notice
- If plan gives annual PLESA notice:
  - No need to include PLESA account balance in annual participant benefit statement
  - No need to discuss PLESA in annual fee disclosure notice

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Form 5500 on PLESA

- 2023 doesn't have any PLESA questions
  - Can't establish before first day of 2024 plan year
- 2024
  - Expect a new code to show plan includes PLESA
  - Still figuring out Form 5500 requirements
    - Likely include PLESA contributions, distributions, assets with retirement contributions
  - Considering requesting additional data

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MATCHING CONTRIBUTIONS OTHER TAX ISSUES

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Matching Contributions

- If plan provides for match, participant's match rate for PLESAs must be the same as the rate for elective deferrals
- All matching contributions allocated to regular match account
  - Do not go to PLESA account
- Maximum match related to PLESA=$2500/year

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Ordering Rule

- Match is first attributable to regular deferrals and then to PLESAs
- Example:
  - Plan provides for match of 100% of deferrals up to 6% of comp
  - Zach's comp is $6000/month; defers 5% and PLESA 3%
  - Match is 6% ($360), of which $300 relates to deferrals and $60 to PLESA
  - Only the $60 counts against the $2,500 annual PLESA matching contribution limit

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Hold on There!

- An employer conceivably could be worried that an employee could game the system
  - I don't make any regular deferrals
  - Every month I make $200 PLESA deposits
  - Every month I make $200 PLESA withdrawals
  - The employer (who has a generous 100% match) deposits $2400 in my matching contribution account
  - That's $2400 free money, with no deferrals and a $0 PLESA balance
    - And if enough employees figure this out, it could impact ADP and ACP

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Code 402A(e)(12) Anti-abuse Provision

- Plan "may employ **reasonable** procedures to limit the frequency or amount of matching contributions with respect to [PLESA] contributions . . ., **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"
- IRS can't require plan to suspend match following participant withdrawals

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Notice 2024-22 Anti-abuse Commentary

- SECURE 2.0 required IRS to provide "regulations or other guidance" with regard to anti-abuse provision by December 29, 2023
- Notice 2024-22 issued January 12, 2024
- Narrowly limited to anti-abuse provision
- Doesn't say much

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IRS Notes Statutory Tools it Thinks Prevent Abuse

- The Notice 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"
  - Deferrals are matched before PLESAs
    - But this doesn't matter to someone who doesn't defer
  - Match capped at PLESA limit
    - Plan worried about abuse could always set a lower PLESA limit and so limit the plan's match exposure
  - Can limit withdrawals to once per month

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What the IRS Takes Away

- "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."

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What You Can Do

- Can have reasonable procedures to limit frequency or amount of PLESA match
- These procedures are permitted "solely to the extent necessary" to prevent manipulation
- Balance participants need's/rights against preventing manipulation
- "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"

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What You Can’t Do

- The following are not reasonable; you can’t do this on account of participant PLESA withdrawals
  - Forfeit matching contributions already made to PLESA account
  - Suspend future PLESA contributions
  - Suspend matching contributions on regular deferrals on account of PLESA participant’s PLESA

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Summary of IRS Position

- We don’t think you need to do anything to prevent abuse
- It’s tough to determine abusers
- Anything you do is subject to challenge
- We won’t suggest anything you can do
- But, we will tell you what you can’t do

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Other Tax Issues SECURE 2.0 Told Us

- PLESA contributions count against §402(g) limit
- If you violate §402(g), excess deferrals first come from PLESA account
- All PLESA distributions are tax free
  - Not subject to premature distribution penalty-tax
  - Treated as “separate contract”
- Plan can amend/terminate PLESA without regard to anti-cutback rule
- PLESA distributions are generally not eligible rollover distributions
  - Funds moved from PLESA to Roth account on termination can be rolled

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Other Tax Issues With No Current Answers

- Whether PLESA contributions are annual additions
- How PLESAs impact
  - ADP test
  - ACP test

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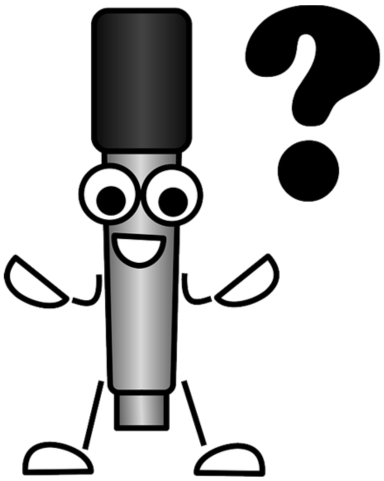

YOUR QUESTIONS

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A Few Reminders

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- After the webcast you will be presented with a short google forms survey. Please let us know how we are doing.
- Joanne Pecina will demonstrate how to find more information on today's topic from the ERISApedia.com resources

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