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IRS Provides Partial Guidance on Pension-Linked Emergency Savings Accounts

The SECURE 2.0 Act of 2022 introduced the option for sponsors of §401(k), §403(b), or government §457(b) defined contribution plans to incorporate a Pension-Linked Emergency Savings Account (PLESA) feature. Notice 2024-22 from the IRS delivers preliminary guidance concerning the anti-abuse rules applicable to these plans.

In IRS News Release IR-2024-11, released at the same time as the Notice, the IRS provides a brief summary of the reasons for the notice:

> Guidance on reasonable measures employers who offer PLESAs can take to discourage potential manipulation of the PLESA matching contribution rules can be found in Notice 2024-22, posted today on IRS.gov. The notice also requests public comment and explains how to submit comments.

Pension-Linked Emergency Savings Accounts (PLESAs)

The news release offers the following fundamental overview of the operation of a PLESA (Pension-Linked Emergency Savings Account):

> Authorized under the SECURE 2.0 Act of 2022, PLESAs are individual accounts in defined contribution plans and are designed to permit and encourage employees to save for financial emergencies.
>
> Employers can offer PLESAs in plan years beginning after Dec. 31, 2023. This means that, in some cases, eligible employees could have begun contributing to a PLESA as early as Jan. 1, 2024. Subject to certain restrictions, matching contributions are made with respect to PLESA contributions at the same rate as contributions to the linked defined contribution plan.
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> Employees who are eligible to participate in an employer's defined contribution plan and qualify to contribute to a PLESA, if their employer offers one, may contribute to the PLESA even if they don't participate in the employer's defined contribution plan. In general, the

> maximum balance in a participant's PLESA (attributable to contributions) is $2,500, though employers can choose to set a lower limit.
>
> PLESAs are treated as designated Roth accounts. This means that contributions are not tax deductible, but withdrawals are generally tax free. Participants can withdraw funds held in the PLESA at least once a month, as necessary.

Limited Nature of Guidance in the Notice

The Notice is not intended to offer comprehensive guidance on all aspects of PLESAs (Pension-Linked Emergency Savings Accounts). Instead, its scope is confined to clarifying that specific actions are prohibited when adopting measures beyond those expressly permitted in the newly added sections of the Internal Revenue Code (IRC). The measures (both statutory and those additional ones a sponsor way wish to add) are ones designed to prevent potential abuse of matching contributions by employees under this program. As stated in Section I of the Notice:

> 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 legislation acknowledges concerns that sponsors may have regarding employees potentially using PLESA contributions merely to gain matching contributions, without intending to retain the funds in the plan. There is apprehension that employees might plan to make contributions with the intention of requesting an “emergency” withdrawal, irrespective of whether an unexpected financial issue arises or not. Section II of the Notice outlines these provisions of the law as follows:

> 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.

Section II further notes that the IRS was obligated to issue guidance no later than 12 months following the enactment of the SECURE 2.0 Act of 2022 (although they missed that target by just over two weeks):

> 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).

IRS Guidance Provided - Statutory Provisions Permitted to Control Matching Contributions

In Section III.A, the IRS commences by reminding taxpayers of the statutory provisions deemed automatically reasonable for controlling employee manipulation of matching amounts in cases where a PLESA provision is present in an eligible plan.

> 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).

Section III.A goes on to state that a sponsor may regard these tools as sufficient for mitigating the risk of employees manipulating rules to obtain additional matching contributions.

> 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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> 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.

This discussion implies a reminder to sponsors that by limiting their provisions to curb abuse of the matching contribution rules, they can avoid concerns about IRS challenges. The law does allow for other measures to be implemented. The opening paragraph of Section III.B. details the legal provisions in this context:

> 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.

IRS Guidance to Limit Manipulation of Matching Contributions

Section III.B. of the Notice contains guidance from the IRS on provisions deemed unacceptable for limiting the manipulation of matching contributions.

> 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:
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> - **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.

Revenue Rulings 74-55 and 74-56 Do Not Apply to PLESAs

Section IV addresses concerns raised by some commentators about the applicability of Revenue Rulings 74-55 and 74-56 in this area. The IRS concludes that neither ruling is applicable to PLESAs.

> 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.

Partnerships Granted Limited Relief on Providing Part IV Information on Form 8308 to Partners for 2023 Tax Year

In Notice 2024-19, the IRS has offered relief to partnerships mandated to disclose extra information on Form 8308. This pertains to the sales or exchanges of partnership interests under the "hot asset" provisions of IRC §751(a).

The Notice begins:

> This notice provides relief from penalties under § 6722 of the Internal Revenue Code1 for failures to furnish correct payee statements solely for failure of a partnership with unrealized receivables or inventory items described in § 751(a) (§ 751 property) to furnish Part IV of Form 8308, *Report of a Sale or Exchange of Certain Partnership Interests*, to the transferor and transferee in a § 751(a) exchange (described in section II of this notice) that occurred in calendar year 2023 by the due date specified in § 1.6050K-1(c)(1). This relief applies only if the partnership furnishes to the transferor and transferee by the due dates specified in section III of this notice (1) a correct copy of Parts I, II, and III of Form 8308, or a statement that includes the same information, and (2) a correct copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under § 1.6050K-1(c).

Form 8308 Requirements

Section II of the Notice details the filing requirements for Form 8308 that were in place prior to the 2023 tax year.

> Generally, § 6050K and § 1.6050K-1 require a partnership with § 751 property to provide information to each transferor and transferee that are parties to a sale or exchange of an interest in the partnership (or portion thereof) in which any money or other property received by a transferor from a transferee in exchange for all or part of the transferor's interest in the partnership is attributable to § 751 property (§ 751(a) exchange). Section 1.6050K-1(a)(2) provides that partnerships are required to report each § 751(a) exchange on Form 8308. Generally, § 1.6050K-1(f)(1) provides that a partnership is required to file Form 8308 as an attachment to its Form 1065, *U.S. Return of Partnership Income*, for the taxable year of the partnership that includes the last day of the calendar year in which the § 751(a) exchange took place. Form 8308 is due at the time for filing the partnership return, including extensions.
>
> In addition, § 1.6050K-1(c)(1) provides that each partnership that is required to file a Form 8308 must furnish a statement to the transferor and transferee by the later of (a) January 31 of the year following the calendar year in which the § 751(a) exchange occurred, or (b) 30 days after the partnership has received notice of the exchange as specified under § 6050K and § 1.6050K-1. A partnership must use a copy of the completed Form 8308 as the required statement unless the Form 8308 contains information for more than one § 751(a) exchange. Section 1.6050K-1(c)(1) provides that if the partnership does not use the Form 8308 as the required statement, the partnership must furnish a statement that includes the information required to be shown on the Form 8308 with respect to the § 751(a) exchange to which the person to whom the statement is furnished is a party.
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> Section 6722 imposes a penalty for failure to furnish correct payee statements on or before the required date, and for any failure to include all of the information required to be shown on the statement or the inclusion of incorrect information. For these purposes, payee statements include statements required to be furnished to transferors and transferees under § 6050K. See § 6724(d)(2)(P). Section 6724 provides an exception to the imposition of a penalty under § 6722 if it is shown that the failure is due to reasonable cause and not to willful neglect.

In 2022, the IRS updated the regulations, expanding the scope of information required on Form 8308 for these scenarios.

> On November 30, 2020, the Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) published T.D. 9926, 85 FR 76910, which amended § 1.6050K-1(c)(2) to require a partnership to furnish to a transferor partner the information necessary for the transferor to make the transferor partner's required statement in §

> 1.751-1(a)(3). Among other items, § 1.751-1(a)(3) requires a transferor partner in a § 751(a) exchange to submit with the transferor partner's income tax return a statement setting forth the amount of gain or loss attributable to § 751 property. In October 2023, the IRS released a revised version of Form 8308. Consistent with the requirements in § 1.6050K-1(c)(2), new Part IV of the 2023 Form 8308 requires a partnership to report, among other items, the partnership's and the transferor partner's share of § 751 gain and loss, collectibles gain under § 1(h)(5), and unrecaptured § 1250 gain under § 1(h)(6).

The supplementary information is detailed in Part IV of the updated Form 8308, which is dated October 2023.

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Part IV **Partner's Share of Gain (Loss) Required by Sections 751(a) and 1(h)(5) and (6)**
The amounts in column (c) should be reported to the selling partner on their Schedule K-1 in box 20 using the relevant code.

		(a) Partnership-level deemed sale gain (loss)	**(b1)** Percentage interest in the partnership transferred	**(b2)** Number of units in the partnership transferred	**(c)** Partner-level deemed sale gain (loss)	K-1 box 20 code
1	Section 751(a) gain (loss) . . .					AB
2	Section 1(h)(5) gain					AC
3	Deemed section 1250 unrecaptured gain					AD

In justifying the issuance of this Notice, the IRS acknowledges the numerous comments received, highlighting concerns that the information required for Part IV may not be available to many partnerships by January 31. The Notice further elaborates:

> Since the issuance of the revised Form 8308, concerns have been expressed to the Treasury Department and the IRS that many partnerships will be unable to furnish the information required in Part IV of the 2023 Form 8308 to transferors and transferees by the January 31, 2024 due date, because, in many cases, partnerships will not have all of the information required by Part IV of the 2023 Form 8308 by January 31, 2024.

Relief Granted

Section III of the Notice outlines the following relief measures for partnerships that are unable to provide information to transferors and transferees by January 31, 2024:

> With respect to § 751(a) exchanges during calendar year 2023, the IRS will not impose penalties under § 6722 solely for failure to furnish Form 8308 with a completed Part IV by the due date specified in § 1.6050K-1(c)(1) for a partnership that (1) timely and correctly furnishes to the transferor and transferee a copy of Parts I, II, and III of Form 8308, or a statement that includes the same information, by the later of (a) January 31, 2024, or (b) 30 days after the partnership is notified of the § 751(a) exchange, and (2) furnishes to the transferor and transferee a copy of the complete Form 8308, including Part IV, or a statement that includes the same information and any additional information required under

> § 1.6050K-1(c), by the later of (a) the due date of the partnership's Form 1065 (including extensions), or (b) 30 days after the partnership is notified of the § 751(a) exchange.

The Notice further cautions that this relief does not extend to the obligation of filing Form 8308 with the partnership's income tax return for the relevant tax year.

> The relief provided in this notice applies only with respect to furnishing Form 8308 to the transferor and transferee. This notice does not provide relief with respect to filing Form 8308 as an attachment to a partnership's Form 1065; as such, this notice does not provide relief from penalties under § 6721 for failure to file correct information returns.

What Will Happen for Future Years

This Notice is applicable solely to partnership income tax returns for the 2023 tax year. The future course of action by the IRS for subsequent tax years remains uncertain. The issue addressed by the IRS is not likely to diminish in future years, as it often seems improbable for partnerships to acquire all necessary information merely 31 days after the conclusion of the relevant year.

IRS Updates Electronic Filing Exemption Guidance Following Release of Revised Regulations in 2023

In 2019, the Taxpayer First Act (TFA) amended IRC §6011(e), granting the IRS authority to mandate electronic filing requirements for non-individual taxpayers filing a lower number of information returns than previously triggered mandatory electronic filing. Notice 2024-18 offers guidance on the specific circumstances under which taxpayers may secure a waiver from these electronic filing requirements, simultaneously rendering Notice 2010-13 obsolete and modifying guidance provided in Notice 2023-60.

Background

Section II of the Notice commences by outlining the provision introduced in the Taxpayer First Act, which authorized the IRS to broaden the scope of mandatory electronic filing requirements.

> Section 2301 of the Taxpayer First Act (TFA), Public Law 116-25, 133 Stat. 981 (2019), amended §6011(e) of the Internal Revenue Code (Code)1 by amending §6011(e)(2) and adding §6011(e)(5) to the Code to authorize the Secretary of the Treasury or her delegate (Secretary) to prescribe regulations that decrease, in accordance with the TFA, the number of returns a filer may file without being required to file returns and other documents electronically. Under this authority, the Secretary may require any person who must file at least 10 returns during a calendar year to file the returns electronically (electronic filing requirement). Prior to the TFA, the Secretary was authorized to apply the electronic filing requirement only for persons required to file at least 250 returns during the calendar year. In

> addition, §3101 of the TFA amended §§6011 and 6033 with respect to certain returns required to be filed by tax-exempt organizations by requiring that all such returns be filed in electronic form.

Section II of the Notice details the regulations promulgated by the IRS in early 2023.

> On February 23, 2023, the Department of the Treasury and the IRS published T.D. 9972, *Electronic-Filing Requirements for Specified Returns and Other Documents*, which contained final regulations providing updated electronic filing requirements generally applicable beginning January 1, 2024 (Updated Electronic Filing Regulations). In addition, as stated in section III of this notice, the Updated Electronic Filing Regulations allow certain waivers of and administrative exemptions from the electronic filing requirement.

Furthermore, Section II provides a description of Notice 2010-13, now rendered obsolete, as follows:

> Notice 2010-13, which this notice obsoletes, provided the procedure for corporations, S corporations (as defined in section 1361(a)(1)), and tax-exempt organizations that are required to file returns under §6033, to request a waiver of the requirement to file electronically Form 1120, *U.S. Corporation Income Tax Return*; Form 1120-F, *U.S. Income Tax Return of a Foreign Corporation*; Form 1120-S, *U.S. Income Tax Return for an S Corporation*; Form 990, *Return of Organization Exempt From Income Tax*; Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Trust Treated as a Private Foundation*; and returns, amended returns, and superseding returns in the Form 1120 series and Form 990 series as required by regulations and IRS publications.

Religious Belief Exemption

The 2023 regulations contain an exemption from the electronic filing of specific documents for organizations whose use of the necessary technology for electronic filing conflicts with their religious beliefs. Section III offers the following background on this exemption.

> The Updated Electronic Filing Regulations provide for certain administrative exemptions from the electronic filing requirement. Sections 301.6011-2 (general electronic filing requirement), 301.6011-3 (for partnership returns), 301.6011-5 (for corporate income tax returns), and 301.6037-2 (for S corporation returns), as amended by the Updated Electronic Filing Regulations, provide for an administrative exemption from the electronic filing requirement for filers of the returns or other documents described in those regulations for whom using the technology required to file electronically conflicts with their religious beliefs (religious exemption).

Section III continues by offering guidance for entities claiming this exemption in relation to the filing of information returns:

> Most filers claiming the religious exemption who file information returns subject to the general electronic filing requirements prescribed by §301.6011-2 (for example, Forms 1099 and Forms W-2) have the option to notify the IRS that they qualify for a religious exemption in advance of filing returns and other documents. Filers are encouraged to notify the IRS in advance that they are claiming a religious exemption by filing a Form 8508, *Application for Waiver from Electronic Filing of Information Returns*, in accordance with the form's instructions.

The Notice proceeds to provide guidance for those seeking this exemption in connection with the filing of income tax returns.

> Filers of Forms 1120 and 1120-F under §301.6011-5 (for corporate income tax returns), Form 1120-S under §301.6037-2 (for S corporation returns), and Form 1065 under §301.6011-3 (for partnership returns), claiming the religious exemption must not file Form 8508. Instead, those filers must file returns and other documents in paper form following the paper filing requirements provided by applicable IRS revenue procedures, publications, forms, instructions, or other guidance. Filers of Forms 1120, 1120-S, 1120-F, and 1065, who qualify for a religious exemption must print in bold letters "Religious Exemption" at the top of page 1 of the return they file in paper form. Filers who qualify for the religious exemption for the Forms 1120, 1120-S, 1120-F, and 1065, are not subject to the electronic filing waiver procedure that is available to other filers, which requires advance application and approval from the IRS before filing in paper form.

Section IV of the Notice asserts that guidance regarding corporate income tax returns in this and other circumstances provided for in the notice is already available:

> The procedure to request a waiver of the requirement to file electronically Forms 1120, 1120-S, and 1120-F described in Notice 2010-13 now is available in applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the IRS.gov website. Any updates to the procedure to request a waiver will be made available in the same way.

Hardship Waiver

Subsequently, the Notice outlines the hardship waiver stipulated under the 2023 regulations:

> In addition, certain provisions of currently applicable regulations and the Updated Electronic Filing Regulations authorize the Commissioner of Internal Revenue (Commissioner) to grant certain waivers of the requirement to file electronically certain returns and other documents in cases of undue hardship (hardship waiver). The procedures for seeking a hardship waiver (if applicable) of the electronic filing requirement may be

> found in applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the *IRS.gov* website.

Other Administrative Exemptions

In conclusion, the Notice delves into other administrative exemptions that the IRS can grant under the 2023 regulations:

> Finally, certain provisions of the Updated Electronic Filing Regulations authorize the Commissioner to provide other administrative exemptions from the electronic filing requirement to promote effective and efficient tax administration. If the Commissioner provides other administrative exemptions, a submission claiming the administrative exemption must be made in accordance with applicable IRS revenue procedures, publications, forms, instructions, or other guidance, including postings to the IRS.gov website.

Returns Requried to Be Electronically Filed Under IRC §6033 (Forms 990 and 990-PF)

The Notice highlights that under the statute, no exemption from electronic filing is available for Forms 990 and 990-PF:

> Additionally, because §6033, as amended by §3101 of the TFA, requires any organization with an obligation to file a return under §6033 to file the return in electronic form, the procedure to request a waiver of the electronic filing requirement as described in Notice 2010-13 no longer applies to Form 990 and Form 990-PF series returns.

Relief from Electronic Filing Obligations When Return is Rejected by Electronic Filing System

The final topic addressed in Section IV of the Notice provides guidance for instances where a taxpayer attempts to electronically file a covered return but is unsuccessful in getting the return accepted by the IRS:

> Finally, Notice 2010-13 provided instructions regarding timely filing of Forms 1120, 1120-S, 1120-F, 990, and 990-PF on the IRS's Modernized e-File (MeF) system after attempts to file electronically on the MeF system are rejected. In place of Notice 2010-13, instructions regarding timely filing and for correcting returns that are rejected during attempts to file electronically using the IRS electronic filing systems may be found in IRS publications specific to each IRS electronic filing system; for example, Publication 4164, *Modernized e-File (MeF) Guide for Software Developers and Transmitters* (currently available at: https://www.irs.gov/pub/irs-pdf/p4164.pdf), and Publication 5717, *Information Returns*

Intake System (IRIS) Taxpayer Portal User Guide (currently available at: https://www.irs.gov/pub/irs-pdf/p5717.pdf). For the foregoing reasons, Notice 2010-13 is no longer necessary and is obsoleted.