



April 5, 2024

Submitted electronically via regulations.gov

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

RE: Notice 2024-22, Guidance on Anti-Abuse Rules Under Section 127 of the SECURE 2.0 Act of 2022

Dear Sir or Madam:

The American Benefits Council ("the Council") appreciates the opportunity to comment on Notice 2024-22, which provides initial guidance on Section 127 of the SECURE 2.0 Act of 2022 (SECURE 2.0) regarding the creation of Pension-Linked Emergency Savings Accounts (PLESAs).

As discussed in further detail below, the Council especially appreciates the flexibility provided in Notice 2024-22 with respect to the optional adoption of anti-abuse procedures for PLESAs. We believe that providing plan sponsors with flexibility on how to structure their PLESAs is critical to the success of this new savings vehicle moving forward. In addition, we strongly support the Internal Revenue Service's (IRS) view expressed in Notice 2024-22 that Revenue Rulings 74-55 and 74-56 do not apply to PLESAs. Also, because of the uncertainty regarding the policy and legal basis for these Revenue Rulings, we urge the IRS to revoke these outdated Revenue Rulings altogether.

The Council is a Washington, D.C.-based employee benefits public policy organization. The Council advocates for employers dedicated to the achievement of best-in-class solutions that protect and encourage the health and financial well-being of their workers, retirees and their families. Council members include over 220 of the world's largest corporations and collectively either directly sponsor or support sponsors of health and retirement benefits for virtually all Americans covered by employer-provided plans.

FLEXIBILITY IS CRUCIAL FOR PLESA IMPLEMENTATION

Because administrative flexibility will be crucial to the adoption and success of PLESAs, the Council appreciates the flexibility that was provided through Notice 2024-22 by making it clear that it is optional for plan sponsors to adopt procedures to limit the amount or frequency of matching contributions based on PLESA contributions. As we have expressed in previous guidance requests, we do not believe that the type of manipulation envisioned by Internal Revenue Code (“Code”) Section 402A(e)(12) has created issues outside of the PLESA context, and therefore, we do not anticipate it will be an issue for PLESAs. Accordingly, we believe that the IRS has taken the correct approach to this issue.

The Council remains concerned, however, that the potential for unnecessary regulation of PLESAs, beyond what is required by the statute, would undermine the ability of plan sponsors to provide PLESAs. Accordingly, the Council encourages the IRS to continue to offer this type of flexibility to plan sponsors in any additional PLESA-related guidance that is developed in the future.

REVOKE REVENUE RULINGS 74-55 & 74-56

Under Revenue Ruling 74-55, a plan generally will not satisfy the qualification requirements of Code Section 401(a) if it provides employer contributions that are allocated on the basis of after-tax employee contributions that may be withdrawn immediately after they are made. According to Revenue Ruling 74-55, this is not permitted because it would result in a “manipulation” in contravention to the regulatory requirement to have a “definite predetermined formula” for allocating employer contributions.¹ In a similar regard, Revenue Ruling 74-56 reiterates this general premise, but provides that the allocation of employer contributions based on after-tax employee contributions that may be immediately withdrawn will *not* result in a manipulation of a plan’s formula when a substantial limitation is imposed on a participant’s right to withdraw his or her contributions. In the case of Revenue Ruling 74-56, the “substantial limitation” is a plan provision that imposes a six-month suspension of future contributions if a participant withdraws his or her own contributions.

It is clear that these rulings have no application to PLESAs, which necessarily envision matching contributions being made on elective contributions that may be withdrawn immediately. Accordingly, we agree with the statement in Notice 2024-22 indicating that “[t]he Treasury Department and the IRS do not view these revenue

¹ Treas. Reg. § 1.401-1(b)(1)(ii).

rulings as applicable in the context of PLESAs, regardless of whether the contributions are matched.”

In response to the invitation for comments regarding the applicability of these Revenue Rulings in this and other contexts, the Council urges the IRS to revoke Revenue Rulings 74-55 and 74-56 altogether. The premise of Revenue Rulings 74-55 and 74-56 reflect a questionable extension of the regulatory requirement for plans to have a definite predetermined formula, and there is no compelling policy or legal reason to impose such rules. Moreover, to the extent the IRS believes such guidance is still valid, their application introduces unnecessary complexity into plan designs when participants are otherwise eligible to receive distributions.

The Revenue Rulings are unnecessary because employers have a strong interest in preventing manipulation. To the extent that such manipulation is occurring in a plan, employers have the tools to prevent it. It is unnecessary to create qualification rules that are redundant in this case and create uncertainty about what constitutes a substantial limitation. In addition, redundancy is apparently the rationale for the Revenue Rulings never being applied to pre-tax contributions despite the same potential for “manipulation” in some cases, such as participants who have attained age 59 ½ and have a right to an in-service distribution. By their terms, the Revenue Rulings only envision after-tax employee contributions, and the IRS has very appropriately never published guidance expressly extending their application to elective deferrals.

If a plan wishes to impose limitations to prevent this type of manipulation, it has the ability to do so voluntarily. Plans should not, however, be compelled to do so as a matter of plan qualification. Rather than protecting plans from potential abuse, such a requirement only creates a potential qualification trap for employers. Accordingly, the Council urges Treasury and IRS to revoke Revenue Rulings 74-55 and 74-56.

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Thank you for considering the Council’s comments on Notice 2024-22. If you have any questions or if we can be of further assistance, please contact me at 202-289-6700 or ldudley@abcstaff.org.

Sincerely,

A handwritten signature in cursive script that reads "Lynn Dudley".

Lynn Dudley

Senior Vice President, Global Retirement and Compensation Policy