

MEMO# 35760

July 2, 2024

IRS Issues Q&A Guidance on Emergency Personal Expense Distributions and Domestic Abuse Victim Distributions Under SECURE 2.0 Act

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TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Issues Q&A Guidance on Emergency Personal Expense Distributions and Domestic Abuse Victim Distributions Under SECURE 2.0 Act

On June 20, 2024, the Internal Revenue Service (IRS) issued Notice 2024-55,[\[1\]](#) which provides guidance regarding two provisions of the SECURE 2.0 Act[\[2\]](#)—Withdrawals for Certain Emergency Expenses (§115) and Penalty-Free Withdrawal from Retirement Plans for Individual in Case of Domestic Abuse (§314). Both provisions provide exceptions to the 10 percent additional tax on early withdrawals under section 72(t) of the Internal Revenue Code (Code),[\[3\]](#) and both provisions are already effective, for distributions made after December 31, 2023.

According to the Notice, the Treasury Department and the IRS plan to issue regulations under Code section 72(t). The Notice solicits public comments with respect to all aspects of Code section 72(t), but specifically requests comments related to repayments of certain early distributions. Comments are due by October 7, 2024.

Emergency personal expense distributions (EPEDs) (§115)

The SECURE 2.0 Act provides a new exception from the 10 percent early withdrawal penalty for certain distributions from defined contribution (DC) plans and IRAs for specified emergency expenses (unforeseeable or immediate financial needs relating to personal or family emergency expenses). Plans generally may rely on certification from the individual that the distribution meets the criteria for EPEDs, and can permit the distributions as in-service withdrawals. Individuals are limited to one distribution per calendar year up to \$1,000,[\[4\]](#) with the option to repay the distribution within three years. No additional emergency expense distributions are permitted from a plan during the immediately

following three calendar year period unless the amount of previous distributions is recontributed to such plan.

Domestic abuse victim distributions (DAVDs) (§314)

The SECURE 2.0 Act provides for a new type of penalty-free in-service withdrawal from DC plans and IRAs for victims of domestic abuse meeting certain eligibility criteria (e.g., if made to an individual during the 1-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner). The term "domestic abuse" means physical, psychological, sexual, emotional, or economic abuse, including efforts to control, isolate, humiliate, or intimidate the victim, or to undermine the victim's ability to reason independently, including by means of abuse of the victim's child or another family member living in the household. Plans adopting the provision are permitted to rely on a participant's self-certification of eligibility. The statute limits eligible distributions by an individual to the lesser of \$10,000 (to be adjusted for inflation, in amounts rounded to the nearest multiple of \$100) or 50 percent of the account balance. Participants generally are permitted to repay such distributions into an eligible retirement plan within three years.

Notice 2024-55

The Notice provides guidance, in Q&A format, which includes:

- 7 Q&As Relating to Individuals Receiving EPEDs;
- 8 Q&As Relating to Applicable Eligible Retirement Plans Permitting EPEDs;
- 6 Q&As Relating to Individuals Receiving DAVDs; and
- 6 Q&As Relating to Applicable Eligible Retirement Plans Permitting DAVDs.

Several of the Q&As provide similar guidance with respect to both types of distribution, as follows:

- An applicable eligible retirement plan is not required to permit EPEDs or DAVDs. [Q&A A-8, B-7]
- If a plan allows an individual to take an EPED or a DAVD, the plan generally is required to allow that individual to repay the amount (if the individual is eligible to make a rollover contribution). [Q&A A-12, B-11]
- A repayment of an EPED or a DAVD is treated as a direct trustee-to-trustee transfer. [Q&A A-13 and A-14, B-12 and B-13]
- At any time during the three-year period beginning on the day after the date on which the distribution was received, an individual may repay any portion of an EPED or a DAVD (up to the entire amount of the distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made.[\[5\]](#) [Q&A A-7, B-6]
- If a plan does not permit these types of distributions, an individual is permitted to treat an otherwise permissible distribution (e.g., a hardship distribution) as an EPED or a DAVD on the individual's federal income tax return, to the extent the distribution meets the limitation(s) applicable to the type of distribution. [Q&A A-8 and A-15, B-7 and B-14]
- An EPED or DAVD is not treated an eligible rollover distribution for purposes of the direct rollover rules or section 402(f) notice requirements. The payor of the distribution is not required to withhold an amount equal to 20 percent of the distribution (as otherwise generally required in section 3405(c)(1)); however, the individual may elect to have ten percent of the distribution withheld (the distribution is subject to the withholding requirements of section 3405(b) and § 35.3405-1T of the

withholding tax regulations). [Q&A A-11, B-10]

- An employee's certification that the employee is eligible for an EPED or a DAVD must be in writing and may be provided under the IRS's electronic delivery rules. [Q&A A-9, B-9]

Emergency Personal Expense Distributions

The Notice provides additional details specific to EPEDs, including two examples illustrating (a) how the dollar limitation should be applied in a circumstance when an amount less than \$1,000 would be permitted and (b) determining whether a subsequent distribution may be taken within the following three-year period, based on the individual's repayments or new contributions. [Q&A A-5, A-6]

A determination of whether an expense meets the statutory definition (i.e., qualifies as being for "an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses") is based on the relevant facts and circumstances for each individual. The Notice specifies that factors to be considered include, but are not limited to, whether the individual (or their family member) has expenses relating to:

- medical care,
- accident or loss of property due to casualty,
- imminent foreclosure or eviction from a primary residence,
- the need to pay for burial or funeral expenses,
- auto repairs, or
- any other necessary emergency personal expenses. [Q&A A-2]

Domestic Abuse Victim Distributions

The Notice provides additional details specific to DAVDs, including an example illustrating how the dollar limit is applied. [Q&A B-4]

Regarding the certification requirements for a DAVD, the Notice suggests that an employee could check a box on the distribution request form to certify that (1) the employee or participant is eligible for a DAVD and (2) the distribution is made during the one-year period beginning on any date on which the individual is a victim of domestic abuse. [Q&A B-9]

Comments Requested

The Treasury Department and the IRS anticipate issuing regulations under Code section 72(t), and the Notice solicits public comments with respect to all aspects of Code section 72(t) and on all matters discussed in the Notice. Comments are due by October 7, 2024.

The Notice requests comments in particular on:

- Whether the Secretary should adopt regulations providing exceptions to the rule that a plan administrator may rely on an employee's certification relating to EPEDs and procedures to address cases of employee misrepresentation.
- Repayments, which are permitted with respect to qualified birth or adoption distributions under section 72(t)(2)(H), EPEDs under section 72(t)(2)(I), DAVDs under section 72(t)(2)(K), and terminal illness distributions under section 72(t)(2)(L). For example, comments are requested:
 - On the implementation of the requirement that any repayment made within the 3-year period beginning on the day after the date the distribution was received

will be treated as a direct trustee-to-trustee transfer within 60 days of the distribution; and

- On procedures for determining whether a repayment meets the applicable requirements under section 72(t)(2), particularly whether it would be helpful if the anticipated proposed regulations would permit an administrator to rely on an individual's certification that any requested repayment meets the requirements under section 72(t)(2), is made within the applicable 3-year time period, and does not exceed the amount of the distribution with respect to which a repayment is being made.

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Notes

[1] Notice 2024-55 is available at <https://www.irs.gov/pub/irs-drop/n-24-55.pdf>.

[2] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

[3] Code section 72(t) generally applies a 10 percent additional tax on distributions (more specifically, on the portion of the distribution that is includible in gross income) from qualified retirement plans and IRAs for distributions taken before the plan participant or IRA owner attains age 59-1/2. There are several exceptions from the additional tax that may apply, depending on the circumstance and whether the distribution comes out of a qualified plan or IRA.

[4] Section 72(t)(I)(iii) limits the distribution amount to the lessor of: \$1,000, or the individual's nonforfeitable accrued benefit minus \$1,000.

[5] This seems to provide confirmation that the individual is permitted to make a repayment to a plan or IRA other than the plan or IRA from which they took the distribution. However, in order to make a subsequent EPED or DAVD within the following three-year period, the statutory language seems to require that the repayment (or new contribution) be made to the plan from which the distribution was taken.