

**MEMO# 35878**

October 8, 2024

# **ICI Comment Letter on Notice 2024-55, Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)**

[35878]

October 08, 2024

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: ICI Comment Letter on Notice 2024-55, Certain Exceptions to the 10 Percent  
Additional Tax Under Code Section 72(t)

ICI on October 7, 2024, filed a comment letter with the Department of Treasury (Treasury) and the Internal Revenue Service (IRS) on Notice 2024-55.[\[1\]](#) A copy of the comment letter is attached. The Notice provides guidance on the application of the exceptions to the 10 percent additional tax under Internal Revenue Code (Code) section 72(t) for emergency personal expense distributions (EPEDs) and domestic abuse victim distributions (DAVDs), pursuant to sections 115 and 314 of the SECURE 2.0 Act of 2022 (Act).[\[2\]](#) The Notice also requests comments on all aspects of section 72(t), in anticipation of Treasury and IRS issuing regulations under section 72(t).

Our comment letter makes the following recommendations for future guidance.

- There Should Not Be Exceptions to Self-Certification of EPEDs or DAVDs. Treasury and IRS should not provide exceptions to self-certification and procedures to address cases of employee misrepresentation. Any such exceptions would severely undercut the benefits to self-certification of distributions, and as such should not be included in future guidance.
- Permit Self-Certification for EPED and DAVD Repayments. Future guidance should provide that individual self-certification also is available for repayments of EPEDs and DAVDs.
- Confirm That a Plan Can Eliminate EPED and DAVD Features. Treasury and IRS should formally confirm that EPED and DAVD features are not protected benefits under the anti-cutback rule. Absent this clarification, plan sponsors may be hesitant to offer these features for fear that they would be limited in their ability to later eliminate them.
- Confirm that Repayments Are Permitted to a Different Plan. Repayment of EPEDs,

DAVDs, and QBADs to plans other than the distributing plan or an IRA should be affirmatively permitted—the current guidance is unclear. Additionally, Treasury and IRS should confirm that a plan that does not accept rollover contributions would not have to be amended to permit rollover contributions in order to offer EPEDs, DAVDs, or QBADs.

- Permit Self-Certification for Both Distributions and Repayments in Cases of Terminal Illness. Treasury and IRS should provide that both eligibility for and repayments of terminal illness distributions may be self-certified, consistent with their discretion under Section 326 of the Act. Self-certification would address many practical challenges to vesting discretion to evaluate these distributions and repayments with plan sponsors and administrators.

We continue to monitor developments regarding section 72(t) guidance and will update members as we learn more.

David Cohen  
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#### **Notes**

[1] See ICI Memorandum No. 35760, dated July 2, 2024, available at <https://www.ici.org/memo35760>.

[2] For a summary of the Act, see ICI Memorandum No. 349795, dated Jan. 12, 2023, available at <https://www.ici.org/memo34975>.

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