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DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220



**TO:** Levesz, Administrator, Office of Information and Regulatory Affairs  
**FROM:** Deputy Assistant Secretary for Privacy, Transparency, and Records

**SUBJECT:** Justification for Emergency Processing: Miscellaneous Changes Under the SECURE 2.0 Act

The Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) are requesting an OMB Control Number under emergency procedures in connection with provision §§ 326 of Division T of the Consolidated Appropriations Act, 2023, Pub. L. 117-328, 136 Stat. 4459 (2023), known as the Setting Every Community Up for Retirement Enhancement Act of 2022 (SECURE 2.0 Act) on December 29, 2022. Treasury and IRS will issue a notice providing guidance on various sections of the SECURE 2.0 Act.

#### Background on the Collection

Section 72(t)(1) of the Code generally imposes a 10 percent additional tax on any distribution from a qualified retirement plan within the meaning of § 4974(c), unless the distribution qualifies for one of the exceptions listed in § 72(t)(2). Section 326 of the SECURE 2.0 Act, amended § 72(t)(2) of the Code to add a new exception to the 10 percent additional tax for any distribution made to a terminally ill individual. Section 72(t)(2)(L) permits an employee who is a terminally ill individual to receive a distribution (terminally ill distribution) on or after the date on which the employee has been certified by a physician as having a terminal illness. Section 72(t)(2)(L)(iii) provides that, in order to be considered a terminally ill individual, an employee must furnish sufficient evidence to the plan administrator in such form and manner as the Secretary of the Treasury may require. A terminally ill distribution is includible in gross income but is not subject to the 10 percent additional tax under § 72(t)(1). Section 326 applies to distributions made by terminally ill individual after December 29, 2022.

#### Information Being Collected

As required by section 326 of the SECURE 2.0 Act, the notice provides that a written certification of terminal illness from a physician must be provided to the plan administrator and include the following: (1) a statement that the individual's illness or physical condition that can be reasonably expected to result in death in 84 months or less; (2) a narrative description of the evidence that was used to support the statement of illness or physical condition; (3) the name and contact information of the physician making the statement; (4) the date the physician examined the individual or reviewed the evidence provided by the individual, and the date that the certification is signed by the physician; and (5) the signature of the physician making the statement, and an attestation from the physician that, by signing the form, the physician confirms

that the physician composed the narrative description based on the physician’s examination of the individual or the physician’s review of the evidence provided by the individual.

### Request

Section 326 of the SECURE 2.0 Act is effective for plan years beginning after December 29, 2022. Because many plans are calendar year plans, these provisions are currently effective for many employers and employees. Therefore, employers may now offer financial incentives, and terminally ill taxpayers may now take terminally ill distributions.

Taxpayers need immediate guidance as to how to satisfy the Code requirements. Therefore, due to the extraordinary circumstances for implementing §§ 326 of the SECURE 2.0 Act, Treasury, and IRS request emergency processing of this information collection request by December 20. Given the inability to seek public comment during such a short timeframe, IRS also respectfully requests a waiver from the requirement to publish a notice in the Federal Register seeking public comment during the period of Office of Management and Budget review. However, public comment will be solicited in the notice in conjunction with the subsequent approval to collect this information.