

Supporting Statement  
Internal Revenue Service (IRS)  
Certifications for Exceptions to the 10% Additional Tax  
OMB # 1545-2317

1. Circumstances necessitating the collection of information.

Section 72(t)(1) generally imposes a 10 percent additional tax on any distribution from a qualified retirement plan within the meaning of section 4974(c), unless the distribution qualifies for one of the exceptions listed in section 72(t)(2). Section 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), amended section 72(t)(2) of the Code to add new exceptions to the 10 percent additional tax, including those for any distribution made to:

- (1) a terminally ill individual under section 72(t)(2)(L)(iii),
- (2) an individual for emergency personal expenses under section 72(t)(2)(I), and
- (3) a domestic abuse victim under section 72(t)(2)(K)

While these distributions are not subject to the 10 percent additional tax under section 72(t)(1), they nevertheless are includible in gross income.

Section 72(t)(2)(L)(iii) 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 certification of terminal illness from a physician must 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.

Section 72(t)(2)(I)(iv) provides that an emergency personal expense distribution is any distribution made from an applicable eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses. Section 72(t)(2)(I)(iv) provides that an administrator of an applicable eligible retirement plan may rely on an employee's written certification that the employee satisfies the conditions for an emergency personal expense

distribution. Q&A A-9 provides that, in determining whether an employee is eligible for an emergency personal expense distribution, an administrator of an applicable eligible retirement plan is permitted to rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution.

Section 72(t)(2)(K)(iii)(I) generally provides that a domestic abuse victim distribution is any distribution from an applicable eligible retirement plan to a domestic abuse victim if made 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.

To meet the certification requirements of section 72(t)(2)(K)(vi)(III), the employee or participant could check the box on the distribution request form to certify that (1) the employee or participant is eligible for a domestic abuse victim distribution and (2) the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse. The certification must be provided in writing and the employee or participant may use the electronic delivery rules in §1.401(a)-21(d) to provide the certification.

## 2. Use of the data.

The information will be used by a plan administrator to:

- (1) Determine whether an individual is eligible for a terminal illness distribution under section 72(t)(2)(L),
- (2) Rely on the individual's certification that the individual meets the requirements to receive an emergency personal expense distribution under section 72(t)(2)(I); and
- (3) Determine whether an individual is eligible for a domestic abuse victim distribution under section 72(t)(2)(K).

For situations in which a plan does not offer a terminal illness distribution, an individual may elect to treat an otherwise permissible distribution as a terminal illness distribution. In such a case, the IRS may use the physician's certificate of terminal illness (retained by the taxpayer under section 6001) to ensure that the taxpayer is eligible for the exception to the 10% additional tax under section 72(t)(2)(L) for terminal illness distributions.

## 3. Use of information technology.

IRS has no plans to offer electronic filing as these are third-party disclosure requirements only. However, as provided for domestic abuse victim distributions, the certification must be provided in writing and the employee may use the electronic delivery rules in §1.401(a)-21(d) to provide the certification.

## 4. Efforts to identify duplication.

The information obtained through this collection is unique and is not already available for use or adaption from another source.

5. Impact on small entities.

The collection of information requirement will not have a significant economic impact on a substantial number of small entities.

6. Consequences of less frequent collection and obstacles to burden reduction.

Consequences of less frequent collection would result in plan administrators being unable to verify if a taxpayer meets the statutory requirements for an exception to the 10 percent additional tax for a terminally ill distribution, emergency personal expense distribution, or a domestic victim abuse distribution.

7. Circumstances requiring special information collection.

There are no special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2).

8. Solicitation of comments on information collection.

In response to the Federal Register notice dated February 20, 2024 (89 FR 12945), IRS received no comments during the comment period regarding this collection.

9. Explanation of decision to provide any payment or gift to respondents.

No payment or gift has been provided to any respondents.

10. Assurance of confidentiality.

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. Justification of sensitive questions.

A privacy impact assessment (PIA) has been conducted for information collected under this request as part of the “Individual Master File (IMF)” system and a Privacy Act System of Records notice (SORN) has been issued for this system under IRS 24.030--Customer Account Data Engine Individual Master File, formerly Individual Master File, and IRS 34.037--IRS Audit Trail and Security Records System. The Internal Revenue Service PIAs can be found at <http://www.treasury.gov/privacy/PIAs/Pages/default.aspx>.

Title 26 USC 6109 requires inclusion of identifying numbers in returns, statements, or other documents for securing proper identification of persons required to make such returns, statements, or documents and is the authority for social security numbers (SSNs) in IRS systems.

12. Estimated burden of information collection.

For Emergency Personal Expense Distribution and Domestic Abuse Victim Distribution, IRS expected the number of responses to range from 75,000 to 150,000 annually, for an average of 112,500.

Authority	Description	# of Respondents	# Responses per Respondent	Annual Response	Hours per Response	Total Burden
IRC 72(t)	Terminal Illness Distributions	500	1	500	15 min. (0.25 hr.)	125 hrs.
IRC 72(t)	Emergency Personal Expense Distribution	112,500	1	112,500	3 min. (0.05 hr.)	5,625 hrs.
IRC 72(t)	Domestic Abuse Victim Distribution	112,500	1	112,500	3 min. (0.05 hr.)	5,625 hrs.
Totals		225,500		225,500		11,375 hrs.

13. Estimated total annual cost burden to respondents.

There are no start-up costs associated with this collection.

14. Estimated cost to the federal government.

There is no annualized cost to the federal government as these are third party disclosure requirements only.

15. Reasons for change in burden.

This collection is being revised due to enactment of sections 115 and 314 of the SECURE 2.0 Act. This will generate an increase in the estimated annual responses of 225,000 and an estimated annual burden increase of 11,250 hours.

	Requested	Program Change Due to New Statute	Program Change Due to Agency Discretion	Change Due to Adjustment in Agency Estimate	Change Due to Potential Violation of the PRA	Previously Approved
Annual Number of Responses	225,500	225,000	0	0	0	500
Annual Time Burden (hrs.)	11,375	11,250	0	0	0	125

16. Plans for tabulation, statistical analysis and publication.

There are no plans for tabulation, statistical analysis, and publication.

17. Reasons why displaying the OMB expiration date is inappropriate.

IRS believes that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the notices sunset as of the expiration date. Taxpayers are not likely to be aware that IRS intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions to certification.

There are no exceptions to the certification statement.