

## **Certain Exceptions to the 10 Percent Additional Tax Under Code Section 72(t)**

### **Notice 2024-55**

#### **I. PURPOSE**

This notice provides guidance on the application of the exceptions to the 10 percent additional tax under section 72(t)(1) of the Internal Revenue Code (Code) for emergency personal expense distributions and domestic abuse victim distributions. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) anticipate issuing regulations under section 72(t) of the Code, and section IV of this notice solicits public comments with respect to all aspects of section 72(t).

#### **II. BACKGROUND**

Section 72(t)(1) of the Code generally provides for a 10 percent additional tax on a distribution from a qualified retirement plan, as defined in section 4974(c), unless the distribution qualifies for one of the exceptions listed in section 72(t)(2). The 10 percent additional tax applies only to the portion of the distribution that is includible in gross income. For purposes of section 72(t), the term “qualified retirement plan,” as defined in section 4974(c), means a plan described in section 401(a) that includes a trust exempt from tax under section 501(a), an annuity plan described in section 403(a), an annuity contract described in section 403(b), an individual retirement account described in section 408(a), or an individual retirement annuity described in section 408(b).<sup>1</sup>

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<sup>1</sup> For purposes of this notice, the term “IRA” includes an individual retirement account described in section 408(a) and an individual retirement annuity described in section 408(b).

Section 72(t)(2) provides several exceptions to the 10 percent additional tax imposed by section 72(t)(1), including, for example, exceptions for distributions:

- made on or after the date on which the employee<sup>2</sup> attains age 59 ½;
- made to a beneficiary (or to the estate of the employee) on or after the death of the employee;
- attributable to the employee being disabled within the meaning of section 72(m)(7);
- that are part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary; and
- made, if the distributions are not made from an IRA, to an employee after separation from service after attainment of age 55.

On December 29, 2022, Division T of the Consolidated Appropriations Act, 2023, Public Law 117-328, 136 Stat. 4459 (2022), known as the SECURE 2.0 Act of 2022 (SECURE 2.0 Act), was enacted. Sections 115 and 314 of the SECURE 2.0 Act amended section 72(t) of the Code to add exceptions to the 10 percent additional tax, and this notice provides guidance on those sections.

### **III. PROVISIONS OF THE SECURE 2.0 ACT**

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<sup>2</sup> The term "employee" includes any participant in an employee retirement plan, and in the case of an IRA, the individual for whose benefit the IRA was established. See generally section 72(t)(5).

## **A. SECTION 115 OF THE SECURE 2.0 ACT -- EMERGENCY PERSONAL EXPENSE DISTRIBUTIONS**

Section 115 of the SECURE 2.0 Act amended section 72(t)(2) of the Code by adding section 72(t)(2)(I), which provides a new exception to the 10 percent additional tax for a distribution from an applicable eligible retirement plan to an individual for emergency personal expenses. An emergency personal expense distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1).

Section 72(t)(2)(I)(iv) provides that the term “emergency personal expense distribution” means 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) also provides that the term “applicable eligible retirement plan” has the same meaning as in section 72(t)(2)(H)(vi)(I), where the term is defined as an eligible retirement plan described in section 402(c)(8)(B) other than a defined benefit plan.

Emergency personal expense distributions are subject to three limitations. First, section 72(t)(2)(I)(ii) provides that not more than one distribution per calendar year is permitted to be treated as an emergency personal expense distribution by any individual. Second, section 72(t)(2)(I)(iii) permits an individual to treat a distribution as an emergency personal expense distribution in any calendar year in an amount up to a maximum of \$1,000.<sup>3</sup> Third, section 72(t)(2)(I)(vii) provides rules that limit taking subsequent emergency personal expense distributions.

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<sup>3</sup> This \$1,000 amount is not indexed for inflation.

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. The Secretary may provide by regulations for exceptions to the rule regarding a plan administrator's reliance on an employee's certification, and for procedures for addressing cases of employee misrepresentation.

Section 72(t)(2)(I)(v) provides that if a distribution from an applicable eligible retirement plan to an individual would be an emergency personal expense distribution (without regard to the limitations in section 72(t)(2)(I)(ii) and (iii)), a plan will not be treated as failing to meet any requirement under the Code merely because the plan treats the distribution as an emergency personal expense distribution, unless the aggregate amount of the distributions from all plans maintained by the employer (and any member of any controlled group<sup>4</sup> that includes the employer) to that individual exceeds the limitations described in section 72(t)(2)(I)(ii) and (iii).

Section 72(t)(2)(I)(vi) provides that the rules relating to repayment of emergency personal expense distributions should follow the rules for repayment of qualified birth or adoption distributions in section 72(t)(2)(H)(v). Therefore, an individual generally may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay an emergency personal expense distribution (not to exceed the aggregate amount of the emergency personal expense distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made.

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<sup>4</sup> Section 72(t)(2)(I)(v) applies the controlled group definition in section 72(t)(2)(H)(iv)(II), which defines "controlled group" as any group treated as a single employer under section 414(b), (c), (m), or (o).

Section 72(t)(2)(I)(viii) provides that the special rules in section 72(t)(2)(H)(vi)(II) and (IV) (for qualified birth or adoption distributions) also apply for emergency personal expense distributions. Thus, an emergency personal expense distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), or the mandatory withholding rules under section 3405. In addition, emergency personal expense distributions are treated as meeting the distribution requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

The amendment made to section 72(t)(2) by section 115 of the SECURE 2.0 Act applies to emergency personal expense distributions made after December 31, 2023.

### **Questions and Answers Relating to Individuals Receiving Emergency Personal Expense Distributions**

Q. A-1: What is an emergency personal expense distribution?

A. A-1: An emergency personal expense distribution is a 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. An emergency personal expense distribution is includible in gross income, but it is not subject to the 10 percent additional tax under section 72(t)(1).

Q. A-2: How does an individual determine whether an expense is an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses?

A. A-2: Whether an individual has an unforeseeable or immediate financial need relating to necessary personal or family emergency expenses is determined by the

relevant facts and circumstances for each individual. Factors to be considered include, but are not limited to, whether the individual (or a family member of the individual) has expenses relating to --

(a) medical care (including the cost of medicine or treatment that would be deductible under section 213(d), determined without regard to the limitations in section 213(a)),

(b) accident or loss of property due to casualty,

(c) imminent foreclosure or eviction from a primary residence,

(d) the need to pay for burial or funeral expenses,

(e) auto repairs, or

(f) any other necessary emergency personal expenses.

For purposes of determining whether an individual has an unforeseeable or immediate financial need, the administrator may rely on an employee's written certification that the employee is eligible for an emergency personal expense distribution. See Q&A A-9 of this notice.

Q. A-3: Which types of plans are eligible to permit an emergency personal expense distribution?

A. A-3: An emergency personal expense distribution may be made from an applicable eligible retirement plan, which means an eligible retirement plan described in section 402(c)(8)(B) other than a defined benefit plan. Therefore, generally, a section 401(a) qualified defined contribution plan (such as a section 401(k) plan), a section 403(a) annuity plan, a section 403(b) annuity contract, a governmental

section 457(b) plan, or an IRA is eligible to permit an emergency personal expense distribution.

Q. A-4: How frequently can an individual treat a distribution from an applicable eligible retirement plan as an emergency personal expense distribution?

A. A-4: An individual is permitted to treat only one distribution per calendar year as an emergency personal expense distribution.

Q. A-5: Is there a dollar limitation on the amount that an individual may treat as an emergency personal expense distribution under section 72(t)(2)(I)(iii)?

A. A-5: The amount that may be treated as an emergency personal expense distribution by an individual in any calendar year shall not exceed the lesser of \$1,000 or an amount equal to the excess of --

(a) the individual's total nonforfeitable accrued benefit under the plan (in the case of an IRA, the individual's total interest in the IRA), determined as of the date of each such distribution, over

(b) \$1,000.

For example, Plan C is a section 401(k) plan that permits emergency personal expense distributions, and Employee A is a participant in Plan C. On July 1, 2025, Employee A has a vested account balance of \$1,500 in Plan C. On July 1, 2025, Employee A requests an emergency personal expense distribution of \$500 from Plan C. Employee A has not previously received an emergency personal expense distribution. The excess of Employee A's nonforfeitable interest in Plan C over \$1,000 is \$1,500 - \$1,000, or \$500. Employee A is permitted to treat \$500 from Plan C as an emergency

personal expense distribution (the lesser of \$1,000 or the amount equal to \$1,500 - \$1,000 (\$500)).

Q. A-6: Once an individual treats a distribution as an emergency personal expense distribution, how soon can that individual take a subsequent emergency personal expense distribution?

A. A-6: Notwithstanding the limitation in Q&A A-4 of this notice, if an individual treats a distribution as an emergency personal expense distribution in any calendar year with respect to an applicable eligible retirement plan, no amount of any subsequent distribution can be treated as an emergency personal expense distribution during the immediately following 3 calendar years with respect to that plan unless --

(a) the previous emergency personal expense distribution is fully repaid to the plan, or

(b) the aggregate of the individual's elective deferrals and employee contributions to the plan (in the case of an IRA, the total amounts that the individual contributed to the IRA) after the previous emergency personal expense distribution is at least equal to the amount of the previous emergency personal expense distribution that has not been repaid.

For example, consider the same facts as Q&A A-5 of this notice (Employee A requests from Plan C an emergency personal expense distribution of \$500 on July 1, 2025). Employee A does not repay the emergency personal expense distribution but continues to make elective deferrals to Plan C. On August 1, 2027, Employee A has an account balance in the amount of \$5,000. With respect to the \$5,000 account balance, Employee A contributed \$3,500 in elective deferrals since the July 1, 2025, distribution.



On August 1, 2027, Employee A requests an emergency personal expense distribution (which meets the requirements of Q&A A-1 of this notice) of \$1,000 from Plan C. This distribution meets the limitation requirements in Q&A A-4 (annual limitation), Q&A A-5 (dollar limitation), and Q&A A-6 (limitation on subsequent distributions) of this notice.

Q. A-7: May an individual repay an emergency personal expense distribution to an applicable eligible retirement plan?

A. A-7: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of an emergency personal expense distribution (up to the entire amount of the emergency personal expense distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

**Questions and Answers Relating to Applicable Eligible Retirement Plans Permitting Emergency Personal Expense Distributions.**

Q. A-8: Is an applicable eligible retirement plan required to permit emergency personal expense distributions under section 72(t)(2)(I)?

A. A-8: It is optional for an applicable eligible retirement plan to permit emergency personal expense distributions pursuant to section 72(t)(2)(I). Plan amendments adopted to permit emergency personal expense distributions are discretionary amendments for purposes of the plan amendment rules discussed in Section II.J. of Notice 2024-02, 2024-02 IRB 316. For information relating to the deadline for adopting plan amendments, see the plan amendment rules discussed in Section II.J. of Notice 2024-02.

If an applicable eligible retirement plan does not permit emergency personal expense distributions, the individual is permitted to treat an otherwise permissible distribution<sup>5</sup> as an emergency personal expense distribution. See Q&A A-15 of this notice.

Q. A-9: May an administrator rely on a written certification from an employee that the employee is eligible for an emergency personal expense distribution?

A. A-9: 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.<sup>6</sup> For this purpose, an administrator is a plan administrator as defined in section 414(g), or an IRA trustee, custodian, or issuer.

Q. A-10: Do emergency personal expense distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. A-10: Emergency personal expense distributions are treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the

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<sup>5</sup> For purposes of this notice, a "permissible distribution" means a distribution that meets the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A) and is permissible under the plan. Thus, for example, a participant in a plan that does not permit emergency personal expense distributions may meet the requirements for a hardship distribution if the plan permits hardship distributions. In addition, a participant who terminated service with an employer with an accrued benefit under a section 401(k) plan that does not permit emergency personal expense distributions may meet the distribution restrictions for severance from employment.

<sup>6</sup> The written certification may be provided using the electronic delivery rules in §1.401(a)-21(d).

distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as an emergency personal expense distribution.

Q. A-11: Is an emergency personal expense distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. A-11: An emergency personal expense distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to an emergency personal expense distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the emergency personal expense distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, an emergency personal expense distribution is subject to the withholding requirements of section 3405(b) and § 35.3405-1T of the withholding tax regulations.

Q. A-12: If an applicable eligible retirement plan permits emergency personal expense distributions, is the plan required to accept a repayment of that distribution to the plan?

A. A-12: An applicable eligible retirement plan must accept the repayment of an emergency personal expense distribution from an individual if the following apply:

(a) the plan permits emergency personal expense distributions;

(b) the individual received an emergency personal expense distribution from that plan; and

(c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the emergency personal expense distribution to the plan.

Q. A-13: Is a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. A-13: In the case of a repayment of an emergency personal expense distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. A-14: Is a repayment of an emergency personal expense distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. A-14: In the case of a repayment of an emergency personal expense distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions, may an individual treat an otherwise permissible distribution as an emergency personal expense distribution?

A. A-15: If an applicable eligible retirement plan does not permit emergency personal expense distributions and an individual receives an otherwise permissible distribution that meets the requirements of an emergency personal expense distribution (as defined in Q&A A-1 of this notice), the individual may treat the distribution on the individual's federal income tax return as an emergency personal expense distribution to the extent the distribution meets the various limitations on an emergency personal expense distribution (see Q&As A-4 through A-6 of this notice). As part of the individual's tax return, the individual will claim on Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, that the distribution is an emergency personal expense distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(l). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

## **B. SECTION 314 OF THE SECURE 2.0 ACT -- DOMESTIC ABUSE VICTIM DISTRIBUTIONS**

Section 314 of the SECURE 2.0 Act amended section 72(t)(2) by adding section 72(t)(2)(K), which provides a new exception to the 10 percent additional tax for an eligible distribution to a domestic abuse victim (domestic abuse victim distribution). A domestic abuse victim distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1). A "domestic abuse victim distribution" is defined in section 72(t)(2)(K)(iii)(I) as 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. The term “domestic abuse” is defined in section 72(t)(2)(K)(iii)(II) as 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.

Section 72(t)(2)(K)(ii) permits an individual to receive a distribution from an applicable eligible retirement plan of up to \$10,000 (indexed for inflation) without application of the 10 percent additional tax if the distribution meets the requirements to be a domestic abuse victim distribution. An “applicable eligible retirement plan” is defined in section 72(t)(2)(K)(vi)(I) as an eligible retirement plan (as defined in section 402(c)(8)(B)) other than a defined benefit plan or a plan to which sections 401(a)(11) and 417 apply.

Section 72(t)(2)(K)(iv) provides that if a distribution from an applicable eligible retirement plan to a domestic abuse victim would be a domestic abuse victim distribution (without regard to the limitation in section 72(t)(2)(K)(ii)), a plan will not be treated as failing to meet any requirement under the Code merely because the plan treats the distribution as a domestic abuse victim distribution, unless the aggregate amount of the distributions from all plans maintained by the employer (and any member of any controlled group that includes the employer) to the domestic abuse victim exceeds the limitation described in section 72(t)(2)(K)(ii).

Section 72(t)(2)(K)(v) provides that the rules relating to repayment of domestic abuse victim distributions should follow the rules in section 72(t)(2)(H)(v) (the rules for repayment of qualified birth or adoption distributions). Therefore, an individual generally may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay a domestic abuse victim distribution (not to exceed the aggregate amount of the domestic abuse victim distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made.

Section 72(t)(2)(K)(vi)(II) provides that a domestic abuse victim distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), or the mandatory withholding rules under section 3405.

Section 72(t)(2)(K)(vi)(III) provides that any distribution that the employee or participant certifies as a domestic abuse victim distribution shall be treated as meeting the distribution requirements of sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A).

The amendment made to section 72(t)(2) by section 314 of the SECURE 2.0 Act applies to domestic abuse victim distributions made after December 31, 2023.

### **Questions and Answers Relating to Individuals Receiving Domestic Abuse Victim Distributions**

Q. B-1: What is a domestic abuse victim distribution?

A. B-1: A domestic abuse victim distribution is a distribution from an applicable eligible retirement plan to a domestic abuse victim 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. A domestic abuse victim distribution is includible in gross income but is not subject to the 10 percent additional tax under section 72(t)(1).

Q. B-2: How is domestic abuse defined for the purposes of a domestic abuse victim distribution?

A. B-2: 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.

Q. B-3: Which types of plans are eligible to permit a domestic abuse victim distribution?

A. B-3: A domestic abuse victim distribution may be made from an applicable eligible retirement plan, which is defined in section 72(t)(2)(K)(vi)(I) as an eligible retirement plan described in section 402(c)(8)(B), other than a defined benefit plan or a plan to which the spousal consent requirements of sections 401(a)(11) and 417 apply. In general, the spousal consent requirements of sections 401(a)(11) and 417 apply to certain qualified retirement plans, including defined benefit plans, money purchase pension plans, and defined contribution plans that (1) do not provide 100 percent death benefits for surviving spouses, (2) provide benefits in the form of a life annuity, or (3) are direct or indirect transferees of a defined benefit or money purchase pension plan. See section 401(a)(11)(B) and § 1.401(a)–20, Q&A–3.



Q. B-4: Is there a dollar limitation on the amount that an individual may treat as a domestic abuse victim distribution under section 72(t)(2)(K)?

A. B-4: The aggregate amount that an individual may treat as a domestic abuse victim distribution cannot exceed the lesser of --

(a) \$10,000 (indexed for inflation), or

(b) 50 percent of the present value of the nonforfeitable accrued benefit (vested accrued benefit) of the employee under the plan.

For example, Plan E is a section 403(b) plan that permits domestic abuse victim distributions, and Taxpayer D is a participant in Plan E. On August 15, 2024, Taxpayer D is eligible to receive a domestic abuse victim distribution from Plan E because Taxpayer D was a victim of domestic abuse on January 15, 2024. August 15, 2024, is less than one year after the January 15, 2024, incident. On August 15, 2024, Taxpayer D has a \$15,000 vested account balance in Plan E (\$7,500 is 50 percent of Taxpayer D's vested account balance). Taxpayer D requests a \$7,500 domestic abuse victim distribution from Plan E. Taxpayer D is permitted to take a domestic abuse victim distribution of \$7,500 from Plan E (the lesser of \$7,500 (50 percent of Taxpayer D's vested account balance) and \$10,000).

Q. B-5: How are the cost-of-living adjustments made to the dollar limit for domestic abuse victim distributions?

A. B-5: For taxable years beginning in a calendar year after 2024, the \$10,000 amount will be increased annually by an amount equal to --

(a) The \$10,000 dollar limitation, multiplied by

(b) The cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting calendar year 2023, for calendar year 2016 in section 1(f)(3)(A)(ii).

If any amount after adjustment under section 72(t)(2)(K)(vii) is not a multiple of \$100, the amount will be rounded to the nearest multiple of \$100. The adjusted amounts will be provided in future guidance issued in the Internal Revenue Bulletin.

Q. B-6: May an individual repay a domestic abuse victim distribution to an applicable eligible retirement plan?

A. B-6: An individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay any portion of a domestic abuse victim distribution (up to the entire amount of the domestic abuse victim distribution) to an applicable eligible retirement plan in which the individual is a beneficiary and to which a rollover can be made under section 402(c), 403(a)(4), 403(b)(8), 408(d)(3), or 457(e)(16), as applicable.

### **Questions and Answers Relating to Applicable Eligible Retirement Plans Permitting Domestic Abuse Victim Distributions**

Q. B-7: Is an applicable eligible retirement plan required to permit domestic abuse victim distributions under section 72(t)(2)(K)?

A. B-7: It is optional for an applicable eligible retirement plan to permit domestic abuse victim distributions pursuant to section 72(t)(2)(K). Plan amendments adopted to permit domestic abuse victim distributions are discretionary amendments for purposes of the plan amendment rules discussed in Section II.J. of Notice 2024-02. For

information relating to the deadline for adopting plan amendments, see Section II.J of Notice 2024-02.

If an applicable eligible retirement plan does not permit domestic abuse victim distributions, the individual is permitted to treat an otherwise permissible distribution as a domestic abuse victim distribution. See Q&A B-14 of this notice.

Q. B-8: Do domestic abuse victim distributions from an applicable eligible retirement plan meet the distribution restriction requirements in sections 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A)?

A. B-8: If the employee or participant certifies that the employee or participant is eligible to receive a domestic abuse victim distribution, then the distribution is treated as meeting the distribution restrictions for qualified cash or deferred arrangements under section 401(k)(2)(B)(i), custodial accounts under section 403(b)(7)(A)(i), annuity contracts under section 403(b)(11), and governmental deferred compensation plans under section 457(d)(1)(A). Thus, for example, an employer may expand the distribution options under its plan to allow an amount attributable to elective, qualified nonelective, qualified matching, or safe harbor contributions under a section 401(k) plan to be distributed as a domestic abuse victim distribution.

Q. B-9: What are the certification requirements for a domestic abuse victim distribution?

A. B-9: Pursuant to section 72(t)(2)(K)(vi)(III), any distribution that an employee or participant certifies as a domestic abuse victim distribution will be treated as meeting the distribution restriction requirements under the Code for the applicable eligible retirement plan. 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.

Q. B-10: Is a domestic abuse victim distribution treated by an applicable eligible retirement plan as an eligible rollover distribution for purposes of the direct rollover rules, section 402(f) notice requirements, and the mandatory withholding rules?

A. B-10: A domestic abuse victim distribution is not treated as an eligible rollover distribution for purposes of the direct rollover rules under section 401(a)(31), the notice requirement under section 402(f), and the mandatory withholding rules under section 3405. Thus, the plan is not required to offer an individual a direct rollover with respect to a domestic abuse victim distribution. In addition, the administrator is not required to provide a section 402(f) notice. Finally, the administrator or payor of the domestic abuse victim distribution is not required to withhold an amount equal to 20 percent of the distribution, as generally is required in section 3405(c)(1). However, a domestic abuse victim distribution is subject to the withholding requirements of section 3405(b) and § 35.3405-1T.

Q. B-11: If an applicable eligible retirement plan permits domestic abuse victim distributions, is the plan required to accept a repayment of that distribution to the plan?

A. B-11: An applicable eligible retirement plan must accept the repayment of a domestic abuse victim distribution from an individual if the following apply:

(a) the plan permits domestic abuse victim distributions;

(b) the individual received a domestic abuse victim distribution from that plan;

and

(c) the individual is eligible to make a rollover contribution to that plan at the time the individual wishes to repay the domestic abuse victim distribution to the plan.

Q. B-12: Is a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA treated as the direct transfer of an eligible rollover distribution as defined in section 402(c)(4)?

A. B-12: In the case of a repayment of a domestic abuse victim distribution from an applicable eligible retirement plan other than an IRA, an individual is treated as having received the distribution as an eligible rollover distribution (as defined in section 402(c)(4)) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. B-13: Is a repayment of a domestic abuse victim distribution from an IRA treated as the direct transfer of a distribution described in section 408(d)(3)?

A. B-13: In the case of a repayment of a domestic abuse victim distribution from an IRA, an individual is treated as having received the distribution as a distribution described in section 408(d)(3) and as having transferred the amount to an applicable eligible retirement plan in a direct trustee-to-trustee transfer within 60 days of the distribution.

Q. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions, may an individual treat an otherwise permissible distribution as a domestic abuse victim distribution?

A. B-14: If an applicable eligible retirement plan does not permit domestic abuse victim distributions and an individual receives an otherwise permissible distribution that meets the requirements of a domestic abuse victim distribution (as defined in Q&A B-1 of this notice), the individual may treat the distribution as a domestic abuse victim distribution on the individual's federal income tax return to the extent the distribution meets the limitation on a domestic abuse victim distribution (see Q&A B-4 of this notice). As part of the individual's tax return, the individual will claim on Form 5329 that the distribution is a domestic abuse victim distribution, in accordance with the form's instructions. The distribution, while includible in gross income, is not subject to the 10 percent additional tax under section 72(t)(1) pursuant to section 72(t)(2)(K). If the individual decides to repay the amount to an eligible retirement plan, the individual may, at any time during the 3-year period beginning on the day after the date on which the distribution was received, repay the amount to an IRA.

#### **IV. REQUEST FOR COMMENTS**

The Treasury Department and the IRS invite comments on all matters discussed in this notice. In particular, the Treasury Department and the IRS invite comments 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 emergency personal expense distributions and procedures to address cases of employee misrepresentation.

In addition, as mentioned in the Purpose section of this notice, the Treasury Department and the IRS anticipate issuing regulations under section 72(t) and invite general comments on section 72(t). In particular, because the anticipated proposed

regulations would address repayments of certain distributions under section 72(t)(2) (for example, qualified birth or adoption distributions under section 72(t)(2)(H), emergency personal expense distributions under section 72(t)(2)(I), domestic abuse victim distributions under section 72(t)(2)(K), and terminal illness distributions under section 72(t)(2)(L)), the Treasury Department and the IRS request comments relating to repayments. 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. Comments are also requested 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,<sup>7</sup> and does not exceed the amount of the distribution with respect to which a repayment is being made.

Comments should be submitted in writing on or before October 7, 2024, and should include a reference to Notice 2024-55. Comments may be submitted electronically via the Federal eRulemaking Portal at [www.regulations.gov](http://www.regulations.gov) (type "IRS Notice 2024-55" in the search field on the Regulations.gov home page to find this notice and submit comments). Alternatively, comments may be submitted by mail to: Internal

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<sup>7</sup> But see section 311(b)(2) of the SECURE 2.0 Act for a special temporary rule on the effective date of the 3-year rule for repayments relating to qualified birth or adoption distributions made on or before the date of enactment of the SECURE 2.0 Act.

Revenue Service, Attn: CC:PA:LPD:PR (Notice 2024-55), Room 5203, P.O. Box 7604, Ben Franklin Station, Washington, D.C. 20044.

The Treasury Department and the IRS will publish for public availability any comment submitted electronically or on paper to its public docket.

## **V. PAPERWORK REDUCTION ACT**

The collection of information contained in this notice has been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3507) under control number 1545-2317. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. The information collection requirements in section III.A and B will be submitted to OMB for review and approval in accordance with 5 CFR 1320.10.

Pursuant to section 72(t)(2)(l)(iv), Q&A A-9 of this notice 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.

Q&A B-9 of this notice provides that, to meet the certification requirements of section 72(t)(2)(K)(vi)(III), an individual 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.

According to the Bureau of Labor and Statistics, determined as of March 2023, approximately 45 percent of civilian workers in the United States participated in defined contribution plans. The population of civilian workers represented by the March 2023 National Compensation Survey (NCS) was 145,300,100. Using 45 percent of the population reported in the NCS survey, approximately 65,385,045 civilian workers participated in defined contribution plans in March 2023.

Sections 115 and 314 of the SECURE 2.0 Act became effective January 1, 2024. The IRS does not have all the data necessary for determining paperwork for certifications of emergency personal expense and domestic victim abuse distributions. At this point, the IRS does not know how many applicable eligible retirement plans will offer these distributions or how many employees will request these distributions from applicable eligible retirement plans. Therefore, the paperwork burden is based on an estimated range of the number of employees who would apply for either an emergency personal expense distribution or a domestic abuse victim distribution from an applicable eligible retirement plan that permits such distributions.

The collection of information is required to obtain a benefit. For Q&A A-9 of this notice, the likely respondent is an individual who is requesting an emergency personal expense distribution from an applicable eligible retirement plan, as described in section 72(t)(2)(I)(iv), and self-certifying that the individual is eligible for an emergency personal expense distribution.

Estimated total annual reporting burden: 3,750 to 7,500 hours.

Estimated average annual burden per respondent: 3 minutes.

Estimated number of respondents: 75,000 to 150,000 respondents.

Estimated frequency of responses: 1 per distribution request.

For Q&A B-9 of this notice, the likely respondent is an individual who is requesting a domestic abuse victim distribution from an applicable eligible retirement plan, as defined in section 72(t)(2)(K)(vi)(I), and self-certifying that the individual is eligible for a domestic abuse victim distribution and that the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse.

Estimated total annual reporting burden: 3,750 to 7,500 hours.

Estimated average annual burden per respondent: 3 minutes.

Estimated number of respondents: 75,000 to 150,000 respondents.

Estimated frequency of responses: 1 per distribution request.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

## **VI. DRAFTING INFORMATION**

The principal authors of this notice are Naomi Lehr, Vernon Carter, and Pamela R. Kinard of the Office of Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). For further information regarding this notice, please contact Mr. Vernon Carter at (202) 317-6799, Ms. Naomi Lehr at (202) 317-4102, or Ms. Pamela Kinard at (202) 317-6000 (not toll-free numbers).