

# Washington Pulse

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## IRS Releases Guidance for Certain SECURE 2.0 Distribution Provisions

The Internal Revenue Service (IRS) has issued [Notice 2024-55](#), providing guidance on two provisions permitted under the SECURE 2.0 Act of 2022 ([SECURE 2.0](#)); emergency personal expense distributions and domestic abuse victim distributions. The notice defines these distributions and explains the restrictions associated with taking such distributions, the self-certification rules, repayment details, and withholding and notice requirements.

### Background

To encourage individuals to maintain their accumulated retirement savings, Internal Revenue Code Section ([IRC Sec. 72\(t\)\(1\)](#)) imposes a 10 percent additional tax on distributions taken before age 59½ from a qualified retirement plan or an individual retirement arrangement (IRA), unless an exception under IRC Sec. 72(t)(2) is met. Generally, this additional tax is equal to 10 percent of the taxable portion of the distribution. Notice 2024-55 provides guidance regarding two new exceptions to the 10 percent additional tax as provided by Section 115 (emergency personal expense distributions) and Section 314 (domestic abuse victim distributions) of SECURE 2.0. Eligible individuals could start taking these distributions after December 31, 2023.

### Emergency Personal Expense Distributions

An emergency personal expense distribution may be made from an applicable eligible retirement plan to an individual to help meet “unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses.” Emergency personal expense distributions are considered an optional distributable event in qualified 401(a) plans, 403(a) annuity plans, 403(b) plans, and governmental 457(b) plans. These distributions are *not* treated as distributable events in defined benefit plans. Emergency personal expense distributions may also be made from Traditional and Roth IRAs, as well as SEP and SIMPLE plans.

- **Definition.** The determination of what is considered an unforeseeable or immediate financial need relating to a necessary personal or family emergency expense is based on the relevant facts and circumstances for each individual, which may include situations that involve
  - medical care;
  - accident or loss of property due to casualty;
  - imminent foreclosure or eviction from a primary residence;
  - burial or funeral expenses;
  - auto repairs; or
  - any other necessary emergency personal expenses.
- **Limitations.** Individuals are restricted to *one* emergency personal expense distribution per calendar year. The maximum amount eligible for distribution is limited to the lesser of
  - \$1,000, or
  - an individual’s vested benefit (or IRA account balance) that exceeds \$1,000.

Once an individual takes an emergency personal expense distribution from an applicable eligible retirement plan, he may not take another emergency personal expense distribution from that plan for the next three calendar years, unless

he repays the distribution amount or makes contributions (elective deferrals and employee contributions in an employer plan or contributions to an IRA) covering the amount that was distributed.

Emergency personal expense distributions are considered to meet the qualified plan distribution restrictions as provided by IRC Secs. 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A). As a result, plan sponsors may, for example, permit emergency personal expense distributions from amounts attributable to elective deferrals, qualified nonelective contributions (QNECs), qualified matching contributions (QMACs), and safe harbor contributions.

- **Self-Certification.** Plan administrators and IRA trustees, custodians, or issuers may rely on an individual's written certification that he is eligible for an emergency personal expense distribution.
- **Repayment Options.** Individuals are permitted to repay, at any time during the three-year period that begins on the day after an emergency personal expense distribution was received, any portion of the distribution to an applicable eligible retirement plan in which the individual is eligible to make a rollover contribution.

Applicable eligible retirement plans that permit emergency personal expense distributions are required to accept repayments of emergency personal expense distributions from an individual who received an emergency personal expense distribution from the plan and is eligible to make a rollover contribution to the plan at the time the repayment is made.

- **Withholding and Notice Requirements.** An emergency personal expense distribution is *not* treated as an eligible rollover distribution for the purposes of the direct rollover rules. As a result, a plan sponsor is not required to offer a direct rollover, provide a 402(f) notice, or withhold 20 percent of the amount distributed. Instead, the plan sponsor must apply the 10 percent voluntary withholding rules.  
An emergency personal expense distribution that is recontributed to an eligible retirement plan or IRA is deemed to be an eligible rollover distribution that meets the 60-day rollover rule.
- **When Plans Do Not Permit Emergency Personal Expense Distributions.** An individual who receives an otherwise permissible distribution from a plan may still claim the distribution as an emergency personal expense distribution on [IRS Form 5329](#), *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, so long as it otherwise meets the applicable requirements.

## Domestic Abuse Victim Distribution

A domestic abuse victim distribution is available to individuals during a one-year period beginning on any date on which the person is a victim of domestic abuse by a spouse or domestic partner. Domestic abuse victim distributions are considered an optional distributable event in qualified 401(a) and 403(a) defined contribution plans, 403(b) plans, and governmental 457(b) plans, other than plans subject to qualified joint and survivor annuity rules. These distributions are *not* treated as distributable events in defined benefit plans. Domestic abuse victim distributions may also be made from Traditional and Roth IRAs, as well as SEP and SIMPLE plans.

- **Definition.** Notice 2024-55 confirms the definition of domestic abuse as “physical, 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 member living in the household.”
- **Limitations.** Domestic abuse victims may request a distribution not to exceed the lesser of
  - \$10,000 (indexed), or
  - 50 percent of their vested benefit (or IRA account balance).

Domestic abuse victim distributions are considered to meet the qualified plan distribution restrictions as provided by IRC Secs. 401(k)(2)(B)(i), 403(b)(7)(A)(i), 403(b)(11), and 457(d)(1)(A) if an individual certifies that he is eligible to receive a domestic abuse victim distribution. As a result, plan sponsors may, for example, permit domestic abuse victim distributions from amounts attributable to elective deferrals, QNECs, QMACs, and safe harbor contributions.

- **Self-Certification.** As with emergency personal expense distributions, plan administrators and IRA providers may rely on an individual's written certification that he is eligible for a domestic abuse victim distribution. For example, an individual may certify in writing that he is eligible to receive a domestic abuse victim distribution by checking the applicable box on a distribution request form to certify that
  - the individual is eligible for a domestic abuse victim distribution; and
  - the distribution is made during the one-year period beginning on any date that the individual was a victim of domestic abuse.
- **Repayment Options.** Individuals also have the option to repay the amount that was distributed to them as a domestic abuse victim distribution. The notice states that a plan sponsor must accept the repayment of a domestic abuse victim distribution if
  - the plan permits domestic abuse victim distributions;
  - the individual received a domestic abuse victim distribution from the plan; and
  - the individual is eligible to make a rollover contribution to the plan at the time the repayment is made.

- **Withholding and Notice Requirements.** Plan sponsors are not required to offer a direct rollover, provide a 402(f) notice, or withhold an amount equal to 20 percent of the domestic abuse victim distribution. The 10 percent voluntary withholding rules apply.  
A domestic abuse victim distribution that is recontributed to an eligible retirement plan or IRA is deemed to be an eligible rollover distribution that meets the 60-day rollover rule.
- **When Plans Do Not Permit Emergency Personal Expense Distributions.** An individual who receives an otherwise permissible distribution from a plan may still claim the distribution as an emergency personal expense distribution on IRS Form 5329, *Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*, so long as it otherwise meets the applicable requirements.

## Next Steps

The IRS is accepting written comments until October 7, 2024. Specifically, the IRS has requested comments on whether it 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 developing procedures to address cases of misrepresentation. The IRS also requests general comments related to IRC Sec. 72(t) and, in particular, on the topic of repayments, as the agency prepares to issue proposed regulations for this specific IRC section later this year.

Ascensus will continue to follow any new guidance as it is released. Visit [ascensus.com](https://ascensus.com) for the latest developments.