

June 24, 2024

IRS Issued Guidance Regarding Certain Exceptions to the 10% Early Distribution Tax Under Internal Revenue Code Section 72(t)

The Internal Revenue Service (IRS) has issued Notice 2024-55 providing guidance on the application of the exceptions to the 10% early distribution tax under Internal Revenue Code (IRC) Section 72(t) with regard to Emergency Personal Expense and Domestic Abuse Victim distributions from retirement plans that opt to provide such distributions.

BACKGROUND – EMERGENCY PERSONAL EXPENSE DISTRIBUTIONS

Section 115 of the SECURE 2.0 Act amended IRC Section 72(t)(2) to provide a new exception to the 10% early distribution tax for a distribution from a 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% early distribution tax. An emergency personal expense distribution is any distribution made from an eligible retirement plan to an individual for purposes of meeting unforeseeable or immediate financial needs relating to necessary personal or family emergency expenses, and are subject to the following limitations:

- An individual may not receive more than one such distribution per calendar year,
- An individual is limited to no more than \$1,000 per calendar year, and
- Subsequent emergency personal distributions may not be taken until certain repayment requirements have been met.

An eligible retirement plan for these purposes generally includes a 401(a)/(k) defined contribution plan, 403(a) annuity plan, a 403(b) plan, a governmental 457(b) plan, and an IRA.

GUIDANCE PROVIDED IN NOTICE 2024-55

Emergency Personal Expense Defined. An individual's unforeseeable or immediate financial need with regard to necessary personal or family emergency expenses is determined by the individual's relevant facts and circumstances. The guidance provides factors that can be considered, but clarifies that it is not an exhaustive list. Factors may include whether the individual (or family member of the individual) has incurred expenses relating to:

- medical care (including the cost of medicine or treatment that would be deductible under IRC Section 213(d), determined without regard to the limitations in IRC Section 213(a)),
- accident or loss of property due to casualty,
- imminent foreclosure or eviction from a primary residence,
- the need to pay for burial or funeral expenses,
- auto repairs, or
- any other necessary emergency personal expenses.

Reliance on Written Certification. The guidance confirms that a plan administrator, including an IRA trustee, custodian or issuer, may rely on an employee's written certification that the employee is eligible for an emergency expense distribution, and that electronic delivery of the certification is permissible.

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

- the individual's total vested 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**
- \$1,000.

To demonstrate this limit, the guidance provides the following helpful 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 vested 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)).*

Subsequent Distributions and Repayments. No subsequent distributions may be treated as an emergency personal expense distribution in the following 3 calendar years unless:

- the prior emergency personal expense distribution has been fully repaid to the plan, or
- the aggregate of the elective deferrals and employee contributions to the plan (in the case of an IRA, the total amounts that the individual contributed to the IRA) are at least equal to the amount of the prior emergency personal expense distribution that has not been repaid.

To demonstrate this limit, the guidance provides the following helpful example:

- *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 of \$1,000 from Plan C.*
- *This distribution meets the annual and dollar limitation requirements and the requirements relating to subsequent distributions.*

With regard to repayments, the guidance clarifies that an individual may repay all or any portion of an emergency personal expense distribution during the three-year period beginning on the day after the date on which the distribution was received to an eligible retirement plan in which the individual is a participant or beneficiary and that permits rollovers.

A plan must accept repayment of an emergency personal expense distribution from an individual if the following apply:

- The plan permits emergency personal expense distributions,
- The individual received such distribution from the plan, and
- The individual is eligible to make a rollover contribution to the plan at the time of repayment.

BACKGROUND – DOMESTIC ABUSE VICTIM DISTRIBUTION:

Section 314 of the SECURE 2.0 Act amended IRC Section 72(t)(2) to provide a new exception to the 10% early distribution 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% early distribution tax. A domestic abuse victim distribution is any distribution from a retirement plan to a domestic abuse victim if made during the one-year period beginning on any date on which the individual is a victim of domestic abuse by a spouse or domestic partner. An individual may receive of up to \$10,000 (indexed for inflation) without application of the 10% early distribution tax if the distribution meets the requirements to be a domestic abuse victim distribution.

An eligible retirement plan for these purposes generally includes a 401(a)/(k) defined contribution plan, 403(a) annuity plan, a 403(b) plan, a governmental 457(b) plan and an IRA; however, it does not include a plan that is subject to the spousal consent rules under IRC Sections 401(a)(11) and 417.

GUIDANCE PROVIDED IN NOTICE 2024-55

Domestic Abuse Defined. The term “domestic abuse” is defined 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.

Certification Requirements. A plan may rely on a participant’s written certification that the participant is eligible for a domestic abuse victim distribution. Electronic delivery of the certification is permissible. The notice includes the following helpful example:

A participant could check the box on the distribution request form to certify that -

- the participant is eligible for a domestic abuse victim distribution and*
- the distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse.*

Amount Limitation. The aggregate amount that an individual may treat as a domestic abuse victim distribution cannot exceed the lesser of:

- \$10,000 (indexed for inflation), or
- 50 percent of the present value of the vested accrued benefit of the employee under the plan.

Repayment. With regard to repayments, the guidance makes clear that an individual may repay all or any portion of a domestic abuse victim distribution during the three-year period beginning on the day after the date in which the distribution was *received* to an eligible retirement plan in which the individual is a participant or beneficiary and that permits rollovers.

A plan must accept repayment of a domestic abuse victim distribution from an individual if the following apply:

- The plan permits domestic abuse victim distributions,
- The individual received such distribution from the plan, and
- The individual is eligible to make a rollover contribution to the plan at the time of repayment.

PLANS THAT CHOOSE NOT TO PERMIT EMERGENCY PERSONAL EXPENSE OR DOMESTIC ABUSE VICTIM DISTRIBUTIONS

The Notice indicates that if an employer decides not to permit such distributions under the terms of the plan, and an individual receives an otherwise permissible distribution that meets the requirements of an emergency personal expense or domestic abuse victim distribution, the individual may treat the distribution on their federal income tax returns as meeting the requirements and claim the exemption to the 10% early distribution tax. The individual may, at any time during the three-year period beginning on the day after the date on which the distribution was received, repay the amounts to an IRA.

FUTURE GUIDANCE

According to the Notice, the Treasury Department and IRS anticipate issuing regulations with regard the IRC Section 72(t). Voya will continue to monitor and communicate as required.

IRS Circular 230 Disclosure

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