

# Compliance Directions

## IRS Issues Guidance on SECURE 2.0 Distributions

### Gallagher

On June 20, 2024, the IRS issued [Notice 2024-55](#) (the Notice), which contains guidance in question and answer format regarding new in-service distribution options pursuant to the SECURE 2.0 Act of 2022 (SECURE 2.0). The Notice is not intended to provide comprehensive guidance, but instead is intended to provide direction on discreet issues to assist defined contribution plans when beginning to implement certain SECURE 2.0 distribution provisions. The Notice states that the IRS anticipates issuing future regulations on these distribution rules. This paper addresses the significant provisions of the Notice relating to defined contribution plans.

### Background

Internal Revenue Code (the Code) section 72(t) generally imposes a 10% additional tax on early distributions from qualified retirement plans and IRAs. The Code waives the additional tax in the event of death, disability, or age 59½. The tax is also waived for participants who terminate employment with the retirement plan sponsor in the year they turn age 55 or later. SECURE 2.0 adds a number of new, optional in-service distribution triggers on which the participant need not pay the 10% tax. The Notice addresses the rules around some of those new distributable events.

### Emergency Personal Expense Distributions

SECURE 2.0 allows, but does not require, plans to offer “emergency personal expense distributions.” If added as a plan feature, participants can take one distribution each calendar year for personal emergencies, up to \$1,000. For participants with an account under \$2,000, the maximum distribution will be the amount by which their account exceeds \$1,000. The distribution is not eligible for rollover treatment and the plan is not required to withhold 20% of the payment for federal income tax purposes.

The Code states that plan administrators may rely on the participant’s written certification that they satisfy the conditions for a distribution. The Notice clarifies that whether the participant has an eligible emergency expense depends on all of the facts and circumstances. However, appropriate personal expenses would include situations where the participant or a family member has expenses relating to (1) medical care, (2) accident or loss of property due to casualty, (3) imminent foreclosure or eviction from a

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primary residence, (4) burial or funeral expenses, (5) auto repairs or (6) “other necessary emergency personal expenses.”

That list of appropriate expenses overlaps significantly with the general hardship distribution rules. However, the final two items demonstrate that emergency personal expense distributions can be broader than hardship withdrawals. In addition to necessary car repairs, emergency distributions might include things such as repairing a home furnace or paying a utility bill needed to prevent the loss of power in a participant’s primary residence.

The Notice confirms the statutory rule that, after taking an emergency distribution, a participant must wait three years before taking a second one. That waiting period is shortened to the next calendar year if the participant repays the distribution. The participant can meet this standard either by simply repaying the withdrawal back into the plan or making aggregate elective deferrals into the plan equal to the withdrawal amount.

Repayment of the distribution by the participant is optional, not mandatory. However, the Notice verifies that if a plan makes an emergency personal expense distribution to a participant, the plan must allow repayment of that distribution as long as the plan accepts rollover contributions.

## **Domestic Abuse Victim Distributions**

SECURE 2.0 also adds an optional in-service distribution trigger for domestic abuse victims. The distribution is subject to income tax, but not the 10% additional tax under Code section 72(t). The distribution can equal 50% of the participant’s vested account up to \$10,000 (adjusted annually for inflation). In plans that add this feature, the withdrawal can be taken by anyone who has in the prior one-year period experienced “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.”

Pursuant to the Notice, a distribution to a domestic abuse victim is subject to similar rules as the distributions for emergency personal expenses. The distribution is not eligible for rollover treatment, and the plan is not required to withhold 20% of the payment for federal income tax purposes. The participant has the right, but not the

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obligation, to repay the distribution back into the plan within three years. If a plan makes a distribution to a domestic abuse victim, the plan must allow repayment of that distribution as long as the plan accepts rollover contributions.

Similarly, the Notice confirms that plan administrators can rely on the participant's written certification that they are eligible for a distribution as a domestic abuse victim. Specifically, the administrator should ask the participant to confirm that (1) they have been the victim of domestic abuse (as defined above) and (2) the distribution is being made during the one-year period beginning on any date the abuse occurred.

## **Gallagher Insight**

The Notice does not provide any guidance on other SECURE 2.0 optional distribution rules, such as disaster distributions or distributions to terminally ill participants. However, the Notice gives helpful information to plan sponsors who are considering adding these types of optional features. Specifically, the Notice confirms that if the plan does not offer these in-service distributions, participants who would otherwise meet their requirements can still avoid the 10% additional penalty tax if they are able to take a distribution using a different rule (e.g., a hardship distribution or a post-termination distribution). As a result, participants may be able to take advantage of these exceptions to the 10% additional tax, even if the plan does not formally adopt them as a distributable event.

Unfortunately, the guidance does not discuss whether these types of distributions are a protected benefit. In other words, the IRS has not addressed whether plans can be amended to remove the distribution triggers once they are added. Plan sponsors should consider this ambiguity before moving forward with adding these rules.

The Notice makes clear that additional guidance should be forthcoming in the form of regulations. Plan sponsors should stay up to date on any IRS rules to make the right plan design decisions for their workforce. Your Gallagher consultant will keep you apprised of any further developments relating to these distribution rules or any other SECURE 2.0 provisions.

This material was created to provide accurate and reliable information on the subjects covered, but should not be regarded as a complete analysis of these subjects. It is not intended to provide specific legal, tax or other professional advice. The services of an appropriate professional should be sought regarding your individual situation.

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