

IRS Issues Guidance on New Exceptions to 10% Additional Tax on Early Distributions from Retirement Plans

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The Internal Revenue Code generally discourages retirement plan participants from requesting distributions from their retirement plan funds prior to age 59 ½ by imposing an additional 10% tax on those distributions. However, the Code outlines several permissible exceptions to this rule under which a participant could request a distribution prior to age 59 ½ and not be subject to the additional 10% tax. SECURE 2.0 added several new exceptions to this list of distributions that are exempt from the additional 10% tax, including: (1) distributions related to emergency personal expenses; and (2) distributions for victims of domestic abuse. In response, the Internal Revenue Service recently released Notice 2024-55 which provides guidance on these new exceptions.

An emergency personal expense distribution is a distribution for any unforeseeable or immediate financial need related to personal or family emergency expenses. Examples include (but are not limited to): medical care; imminent foreclosure; auto repairs; and burial/funeral expenses. A domestic abuse victim distribution is any distribution made to the victim during the one-year period beginning on any date on which the individual is a victim of domestic abuse (which is broadly defined) by a spouse or domestic partner.

The notice confirms that it is optional for plans to allow these types of distributions. However, if a plan does offer these distribution rights, it will also generally be required to accept repayment of such distributions. In addition, once a plan offers either type of distribution, it is likely considered a protected benefit. Even if a plan does not adopt these distribution rights, an individual may treat an otherwise permissible distribution as either an emergency personal expense distribution or a domestic abuse victim distribution on his or her individual federal tax return (assuming the individual meets the applicable requirements).

The IRS guidance provided in the Notice on each of these new exceptions includes:

We will continue to monitor for regulations and additional guidance that may be issued in the future related to these distribution rights. If you are interested in implementing these provisions, or would like any further information, please contact your Miller Canfield attorney or one of the authors of this alert.