

## FAQ: Domestic abuse distributions

The following Q&As are for general informational purposes only and do not address specific situations or fact patterns. Plan sponsors are advised to consult their tax and/or legal advisor for specific guidance.

**Q: What are domestic abuse distributions?**

A: Under SECURE Act 2.0, plans can provide for a new distributable event due to domestic abuse (domestic abuse distributions). The provision allows plans to permit a participant that self-certifies that the participant experienced domestic abuse to take a distribution of the lesser of \$10,000, indexed for inflation, or 50% of the participant's account balance within one year of an incident of abuse.

**Q: What participants are eligible to take a domestic abuse distribution?**

A: To qualify for a domestic abuse distribution, a participant must certify all of the following:

1. The individual is eligible for a domestic abuse withdrawal as defined in SECURE Act 2.0 and adopted by their plan.
2. The amount of the domestic abuse distribution they have requested when added to all previous domestic abuse distributions from all other employer plans and IRAs does not exceed the lesser of \$10,000 or 50% of their vested account balance.
3. The distribution is within one year from the domestic violence incident.

**Q: What is considered domestic abuse?**

A: Under SECURE Act 2.0 section 314, 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." Plan sponsors may rely on a participant's self-certification of domestic abuse by a spouse or domestic partner. Empower will not make any determination as to whether the participant has met the definition of domestic abuse. Questions related to the definition should be directed to the plan sponsor or the plan's counsel.

**Q: Can a participant who has terminated employment take a domestic abuse distribution?**

A: Yes. Domestic abuse distributions are allowed for participants who are still employed and for participants who have separated from service.

**Q: How many domestic abuse distributions can be taken by an individual participant?**

A: Each participant will be limited to one distribution per 12-month period across all plans of an employer that are administered by Empower regardless of amount.

**Q: Are domestic abuse distributions subject to the 10% early distribution excise tax?**

A: No. A domestic abuse distribution is not subject to the 10% tax on early distributions.

**Q: How would domestic abuse distributions be processed? Would they come from all contribution sources?**

A: These distributions are processed pro rata across all vested contribution sources and investment options held in a participant's plan account (excluding funds held in the participant's self-directed brokerage account or any funds subject to a qualified joint and survivor annuity and/or spousal consent).

**Q: Are domestic abuse distributions eligible rollover distributions? How will tax withholding apply?**

A: A domestic abuse distribution is not treated as an eligible rollover distribution. It will be subject to 10% federal income tax (plus any applicable state and/or local income tax) on the amount allocable to the taxable portion of the distribution unless the participant elects a greater withholding amount or elects no withholding with respect to such amount.

Empower will report the domestic abuse distribution on an IRS Form 1099-R in the year in which the distribution was taken from the participant's plan account.

**Q: Can a participant repay a domestic abuse distribution? How does that process work?**

A: A participant may repay a domestic abuse distribution if they self-certify that they are making a bona fide repayment of a previous domestic abuse distribution within the three-year period beginning on the day after the date on which that distribution was received by the participant. However, to do this, the participant must be eligible under the terms of the plan to make a rollover contribution.

**Q: If a plan sponsor wants to add domestic abuse distributions to their plan, what do they need to do?**

A: The plan sponsor, or their third-party administrator (TPA), needs to complete and submit the plan election link/form to add domestic abuse distributions. The plan sponsor may elect to review and approve all domestic abuse distributions or may direct Empower to process domestic abuse distributions received in good order and supported by participant self-certification in accordance with the plan sponsor's administrative procedures and without further review or inquiry by Empower.

**Q: How does a participant request a domestic abuse distribution?**

A: Participants must submit domestic abuse distribution requests via the appropriate administrative form or any other means that may be made available by Empower in the future (e.g., via participant account online or via call center).

Each participant request must be received in good order prior to the close of market at least five business days before the end of the applicable regulatory deadline. If a request is not received by Empower at least five business days before the end of the applicable regulatory deadline, Empower cannot commit to processing the request timely. Empower will not back date the transaction.

**Q: What type of plans may offer domestic abuse distributions?**

A: 401(a) (including 401(k)), 403(b), and governmental 457(b) plans may offer domestic abuse distributions. Non-governmental money purchase pension plans may not offer them. This distribution option does not apply to defined benefit plans or other plans subject to qualified joint and survivor annuity (QJSA) and/or spousal consent.

**Q: Are domestic abuse distributions a protected benefit?**

A: It is not clear based on SECURE 2.0 whether domestic abuse distributions are considered a protected benefit that cannot be removed for current participants. Absent further guidance, plan sponsors should consider them to be a protected benefit.