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There have not been any regulations issued regarding section 72(t)(2)(D).

A distribution qualifies under section 72(t)(2)(D) if it was made from an **individual retirement plan** to an individual after separation from employment:

(1) If such individual has received unemployment compensation for 12 consecutive weeks under any Federal or State unemployment compensation law by reason of such separation, sec. 72(t)(2)(D)(i)(I);

(2) if such distribution was made during any taxable year during which such unemployment compensation is paid or the succeeding taxable year, sec. 72(t)(2)(D)(i)(II); and

(3) to the extent such distribution does not exceed the amount paid during the taxable year for insurance, sec. 72(t)(2)(D)(i)(III).

A self-employed individual shall be treated as having satisfied the requirement of section 72(t)(2)(D)(i)(I) (number (1) above) if, under Federal or State law, the individual would have received unemployment compensation but for the fact that the individual was self-employed. Sec. 72(t)(2)(D)(iii). Thus, if the taxpayer is self-employed, the taxpayer has to present evidence that he would have been eligible to receive any Federal or State unemployment compensation, but for the fact that the taxpayer was self employed.

Although not able to cite as precedence, see the attached Tax Court Summary Opinion 2005-78 and how the Tax Court handled a S case dealing with section 72(t)(2)(D)(iii).