

Publications

IRS Issues FAQs to Explain Optional Disaster Relief

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The [SECURE 2.0 Act](#) provides for permanent distribution and loan relief for any federally declared major disasters occurring on or after January 26, 2021. This new relief is intended to facilitate timely disaster distributions from qualified plans and IRAs, without having to wait for any specific IRS relief (as was needed in the past). The IRS has published a [list of frequently asked questions](#) that explain the scope of this relief that plan sponsors (and IRA custodians) can provide. Importantly, it incorporated the same rules for these disaster relief provisions as was used for distributions/loans after Hurricane Katrina, as set forth in Notice 2005-92.

The provision is geared to provide the following relief.

The Relief

The relief comes in three categories for any major disaster (see FEMA website), which plan sponsors can elect to offer some or all of:

- Distributions (qualified plans and IRAs): \$22,000 special distribution right, no 10% early distribution tax, subject to taxation over a three-year period, and a three-year repayment right;
- Plan Loans (qualified plans only): Expanded the loan limit to the lesser of \$100,000 or 100% of the account balance, and a one-year delay in loan repayments (e.g., generally repayments due within the period from the first day of the incident period to the date that is 180 days after the last day of the incident period);
- Home Purchase (qualified plans and IRAs): Ability to repay distributions taken for principal residence purchase or construction that were not otherwise used. This includes hardship distributions and qualified first-time homebuyer distributions from an IRA, which were received between 180 days before and 30 days after the incident period, and generally repaid within 180 days after the start of the incident period (disaster declaration, if later).

Eligible participants include anyone (1) with a principal residence in the disaster area at any time during the incident period (see period [specified by FEMA](#) as the period); and (2) who sustained an economic loss by reason of the disaster. A self-certification process is acceptable, absent actual knowledge to the contrary.

Notably, the tax relief can still be claimed for eligible distributions via the participant's tax return (Form 8915-F) even if the plan does not offer the relief.

Plan/IRA Amendment

If this optional relief is offered, no amendment is needed to reflect the relief until December 31, 2026. The IRS recently issued an updated Defined Contribution [Listing of Required Modifications](#) ("LRM"), which contains sample IRS-approved language that could be helpful for plan documents. And plan sponsors/IRA providers may consider using similar amendment language as used for Hurricane Katrina relief.

Action Steps

Plan sponsors offering the relief should review their procedures to ensure compliance with the various distribution rules, rollover rules, and Form 1099-R reporting and withholding rules, and add this item to their pending amendment list. IRA providers should review and update their operational procedures as well, and consider communication on this new design feature.