

MEMO# 35723

May 30, 2024

IRS Guidance for Disaster Relief Distributions and Loans under the SECURE 2.0 Act

[35723]

May 29, 2024

TO: ICI Members

Pension Committee

Pension Operations Advisory Committee SUBJECTS: Pension

Tax RE: IRS Guidance for Disaster Relief Distributions and Loans under the SECURE 2.0 Act

IRS recently released Fact Sheet 2024-19,[\[1\]](#) which provides guidance (in the form of FAQs) under section 331 of the SECURE 2.0 Act on disaster relief distributions from retirement plans and IRAs, and for retirement plan loans, for individuals impacted by federally declared major disasters.[\[2\]](#) Prior to the enactment of section 331, such relief was not generally available for all major disasters—Congress had to authorize relief on a per disaster or year-by-year basis. ICI has previously requested guidance under section 331.[\[3\]](#)

SECURE 2.0 Act section 331

Section 331 provides permanent special rules for plan/IRA distributions and plan loans (similar to the rules provided under the CARES Act[\[4\]](#) and in response to other large-scale disasters) in cases of qualified federally declared disasters, effective for disasters occurring on or after January 26, 2021.

- **Tax-favored distributions from retirement plans.** Section 331 allows up to \$22,000 to be distributed from employer retirement plans or IRAs for affected individuals who sustained an economic loss as a result of such disaster.[\[5\]](#) The distribution must be made no later than 180 days after the later of (i) Dec. 29, 2022, (ii) the first day of the incident period for such disaster, or (iii) the date of the applicable disaster declaration. These distributions are not subject to the 10 percent early distribution penalty. Any portion of the distribution can be repaid to an eligible retirement plan (which includes both Internal Revenue Code (Code) section 401(a) plans and IRAs) at any time over the three-year period beginning on the day after the distribution was received, subject to the terms of the plan. To the extent that the amounts are not repaid they will be included in the taxpayer's taxable income ratably over three taxable years, unless the individual elects to not have the ratable inclusion

apply.[\[6\]](#)

- **Recontributions of withdrawals for home purchases.** If an individual received a distribution during a specified period to purchase a home[\[7\]](#) and the funds were not used for that purpose because the home was (or would have been) located in a disaster area, then the individual may recontribute the amount of the distribution into an eligible retirement plan. The recontribution may consist of one or more contributions made during the period beginning on the first day of the incident period and ending on the date which is 180 days after the applicable date.
- **Loans from qualified plans.** Section 331 increases the maximum loan amount that an affected individual may borrow to the lesser of 100 percent of the participant's account balance or \$100,000 (the generally applicable limit is the lesser of 50 percent of the participant's account balance or \$50,000). Section 331 also extends the repayment period for an affected individual who has a loan outstanding on or after the applicability date of a disaster by one year, for any repayment due date that would fall during the period beginning on the first day of the incident period and ending 180 days after the last day of the incident period.
- **GAO Report.** Section 331 directs the GAO to submit a report to the relevant Congressional committees that addresses taxpayer utilization of the retirement disaster relief provided by section 331 and/or permitted by prior legislation, including a comparison of utilization by higher and lower income taxpayers and whether the \$22,000 threshold on distributions provides adequate relief for taxpayers who suffer from a disaster. This report is not addressed in the Fact Sheet.

Fact Sheet 2024-19

The Fact Sheet provides interim guidance that clarifies the scope of relief under section 331. In addition to restating numerous provisions of section 331, outlined above, the Fact Sheet clarifies a number of points. The Fact Sheet also states that a taxpayer who reasonably and in good faith relies on the guidance in the Fact Sheet "will not be subject to a penalty that provides a reasonable cause standard for relief, including a negligence penalty or other accuracy-related penalty, to the extent that reliance results in an underpayment of tax."[\[8\]](#)

Section 331 is optional for employers

The Fact Sheet confirms that an employer is not required to provide for disaster recovery distributions and/or loans that meet the requirements of section 311.[\[9\]](#) An employer also may elect to incorporate only some of the requirements of section 311 into a plan, for example by permitting qualified disaster recovery distributions but not changing applicable plan loan provisions. Even where not an option under a plan, however, an individual may choose to treat a distribution as a qualified disaster recovery distribution on their federal income tax return if they otherwise meet the requirements of section 311 and the applicable guidance thereunder. The Fact Sheet links to various resources to assist individuals with filing and compliance—both in this context and more generally for including such distributions in the taxable portion of an individual's income and for plan reporting of such distributions.[\[10\]](#)

The Fact Sheet indicates that although the IRS "anticipates" that plans will accept repayments of qualified disaster recovery distributions (to be treated as rollover contributions), it acknowledges that plans are not obligated to accept rollover contributions and a plan that does not accept rollovers is not required to change its terms to accept repayments of qualified disaster recovery distributions.[\[11\]](#)

Who can obtain relief, and what is an economic loss

To be eligible for the section 331 distribution and plan loan relief, an individual's principal residence at any time during the incident period^[12] must be located in the qualified disaster area with regard to such disaster, and the individual must sustain an economic loss by reason of such qualified disaster.^[13] A plan sponsor or plan administrator may rely on an individual's "reasonable representations" that they are eligible for the relief, absent the plan administrator's or other responsible person's actual knowledge to the contrary.^[14]

An economic loss includes, but is not limited to:

- Loss, damage to, or destruction of real or personal property from fire, flooding, looting, vandalism, theft, wind, or other cause;
- Loss related to displacement from the individual's home; or
- Loss of livelihood due to temporary or permanent layoffs.^[15]

What is a qualified disaster

The Fact Sheet clarifies that a qualified disaster is "any disaster with respect to which a major disaster has been declared by the President after Dec. 27, 2020."^[16] Note that disasters initially declared to be an "emergency" may later be declared to be a "major disaster," thereby qualifying them for relief under section 331.

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Notes

^[1] Disaster relief frequently asked questions: Retirement plans and IRAs under the SECURE 2.0 Act of 2022 [Fact Sheet], FS 2024-19 (IRS, May 2024), available at <https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022> ("Fact Sheet").

^[2] For a summary of the SECURE 2.0 Act, see ICI Memorandum No. 34795, dated January 12, 2023, available at <https://www.ici.org/memo34795>.

^[3] See Letter from Elena Barone Chism, Deputy General Counsel - Retirement Policy, and Shannon Salinas, Associate General Counsel - Retirement Policy, ICI, to Carol Weiser, Benefits Tax Counsel, US Department of the Treasury, and Rachel Levy, Associate Chief Counsel, IRS; Re: Issues for Priority Guidance Under SECURE 2.0 Act, pp.14-15 (March 23, 2023), available at <https://www.ici.org/letters/23-cl-secure20-priorities>.

^[4] The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) consists of several different provisions aimed at providing emergency assistance and health care response for individuals, families and businesses affected by COVID-19. For an overview of the CARES Act, see ICI Memorandum No. 32328, dated March 27, 2020, available at <https://www.ici.org/memo32328>.

^[5] The total amount of distributions to an individual from all eligible retirement plans that may be treated as qualified disaster recovery distributions with respect to each qualified disaster is \$22,000. However, a plan will not be treated as violating any Code requirement merely because an individual receives total distributions in excess of \$22,000, provided that the aggregate amount of such distributions from plans maintained by the employer

(and members of the employer's controlled group or affiliated service group) does not exceed \$22,000 with respect to each qualified disaster.

[6] Conversely, to the extent a distribution is repaid, the individual may file amended federal income tax returns with respect to those years in which a portion of the distribution was included in income.

[7] To qualify for this treatment the distribution must be either a qualified first-time homebuyer distribution from a IRA or a hardship distribution from a 401(k) or 403(b) plan, which (i) was to be used to purchase or construct a principal residence in a qualified disaster area, but which was not so used because of the qualified disaster, and (ii) was received during the period beginning 180 days before the first day of the incident period of that qualified disaster and ending 30 days after the last day of that incident period. Section 331(b) (adding Code section 72(t)(8)(F)(ii)).

[8] Fact Sheet (Introduction). The Fact Sheet also notes that because the Fact Sheet was not published in the Internal Revenue Bulletin its content will not be relied on or used by the IRS to resolve cases. Additionally, to the extent the Fact Sheet misstates the law as applied to a particular taxpayer's case, the law (and not the Fact Sheet) will control that taxpayer's tax liability.

[9] Fact Sheet, General Information Q.7.

[10] See Fact Sheet, Taxation and reporting of qualified disaster recovery distributions Q.3, Q.4.

[11] Fact Sheet, General Information Q.10.

[12] An "incident period" is the FEMA-specified period during which a disaster occurs. This information is available on FEMA's disaster declaration search tool, available at <https://www.fema.gov/disaster/declarations>.

[13] Section 331(a)(2) (adding Code section 72(t)(11)(A)(ii)).

[14] Fact Sheet, Taxation and reporting of qualified disaster recovery distributions Q.11.

[15] Fact Sheet, General Information Q.4. These categories of losses are listed by way of examples.

[16] Fact Sheet, General Information Q.5. Q.5 states that such disasters can be found using the above-referenced FEMA disaster declaration search tool and searching for disaster type: Major Disaster Declaration.