WORKPLACE BENEFITS

Disaster relief in 401(k) plans

Interested in extending disaster relief options to your participants?

To provide individuals with greater access in times of need, Section 331 of SECURE 2.0 amended the Internal Revenue Code to include permanent withdrawal and loan relief to participants who suffer economic loss due to federally declared disasters. This provision became retroactively effective for qualifying disasters occurring on or after January 26, 2021.

Please keep in mind that this is an optional feature. Plan sponsors are not required to offer these relief provisions and to do so must amend their plan document.

What follows is a summary of the disaster relief provisions under SECURE 2.0, key takeaways from recent IRS guidance and considerations for plan sponsors.

Disaster relief under SECURE 2.0

To be eligible for relief, participants' principal residence must be located within a qualified disaster area during the incident period specified by the Federal Emergency Management Agency (FEMA), and participants must have suffered economic loss related to the disaster. Examples of an economic loss include, but are not limited to:

- Loss of or damage to personal property from fire, flooding, wind, theft or other cause
- Loss related to displacement from the individual's home
- Loss of livelihood due to temporary or permanent layoff

The following features may be offered to qualifying participants.

Disaster recovery distributions

- Withdrawals up to $22,000 per disaster can be taken even if an in-service withdrawal isn't otherwise available (for example, hardship, age 59½).
- A qualified disaster recovery distribution is exempt from the 10% early withdrawal penalty and may be included in income in equal amounts over a three-year period.
- Amounts may be recontributed to an eligible retirement plan or IRA that accepts these repayments during the three-year period that begins on the date following the date of the withdrawal.

Note: To qualify as a disaster recovery distribution, the withdrawal(s) must occur between the first day of the incident period of the disaster and 180 days after:

- December 29, 2022
- The first day of the incident period for the applicable disaster
- The date the disaster is declared

Loan relief

- Loan maximums during the specified period may be increased to the lesser of $100,000 or 100% of the qualified participant's vested account balance (minus outstanding plan loans of the participant).
- For any loan repayment that's due from the first day of the incident period to the date that's 180 days after the last day of the incident period, the due date for repayment may be delayed for up to one year. Any payments after the suspension period will be adjusted to reflect that delay and any interest accruing during the delay.

Recontribution of certain hardship withdrawals

- Participants may repay a hardship withdrawal that was taken for the purchase or construction of a principal residence in a disaster area but was not used on account of such disaster.

Regulatory guidance

On May 3, 2024, the IRS issued informal guidance in the form of FAQs (Fact Sheet 2024-19) to provide general information to assist taxpayers and tax professionals.

Key takeaways for plan sponsors include:

- The relief only applies in the case of declared "major disasters." The FEMA Search Your Location webpage can be used to filter disasters by declaration type.
- The $22,000 limit on disaster recovery distributions is the aggregate amount that can be taken per disaster from all plans and IRAs of the affected participant.
- A plan sponsor is permitted to choose whether, and to what extent, to provide disaster relief. For example, a plan can offer disaster recovery distributions but not offer any of the loan relief.
- A plan administrator may rely on a participant's reasonable representation that the participant is a qualified individual unless the administrator has actual knowledge to the contrary.
- Even if an employer-sponsored plan doesn't offer a disaster relief provision, an individual taxpayer who is otherwise eligible for a withdrawal can request the tax relief using IRS Form 8915-F to report any withdrawals that may qualify as a disaster recovery distribution.

Considerations for plan sponsors

- Based on relevant facts and circumstances (for example, geographical location of your employees, current usage of in-service withdrawals and loans), decide whether to amend your plan to include a disaster relief provision pursuant to Section 331 of SECURE 2.0.
- Determine which features will be offered (for example, withdrawals only, both loans and withdrawals).
- Review roles and responsibilities regarding the administration of the disaster provision, including approvals of withdrawal and loan requests, acceptance of recontributions, participant communication and education, and amending your plan document.
- Be on the lookout for modifications to the IRS FAQs and additional guidance.

As always, please consult with your legal counsel prior to making any plan design changes.

Bank of America's approach

Per the IRS FAQs, participants can self-certify their eligibility for relief unless the plan administrator has actual knowledge to the contrary. As such, Bank of America's process has been designed to allow participants to proceed with a request only if their residence of record is within the qualified disaster area.

What's next

Beginning in January 2025, Bank of America will be prepared to enable disaster relief provisions should sponsors choose to include them in their plan. Plan sponsors will receive information on how to add disaster relief provisions and details on their related administration later this year.

Connect with your Bank of America representative today if you'd like to offer these relief provisions to plan participants.