



Distributions for Special Needs

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401(k)/403(b) distributable events

Apply to deferrals, QNECs, QMACs, Safe Harbor

Generally apply to 403(b) custodial accounts



- ▶ Attainment of age 59½
- ▶ Severance/deemed severance
- ▶ Plan termination
- ▶ Hardship distributions
- ▶ Disability
- ▶ Corrective distributions
- ▶ ESOP dividend distribution
- ▶ Qualified reservist distribution
- ▶ EACA permissible withdrawal
- ▶ Qualified birth and adoption distribution
- ▶ Lifetime income distribution
- ▶ Qualified disaster recovery distribution*
- ▶ Emergency personal expense distributions*
- ▶ Distributions to domestic abuse victims*
- ▶ Qualified long-term care distributions
- ▶ Distributions from pension-linked emergency savings accounts

Recent IRS Guidance



▶ Notice 2024-55

- ▶ Emergency Personal Expense Distribution
- ▶ Domestic Abuse Victim Distribution

▶ Notice 2024-2

- ▶ Terminally Ill Individual Distribution

▶ <https://www.irs.gov/newsroom/disaster-relief-frequent-asked-questions-retirement-plans-and-iras-under-the-secure-20-act-of-2022>

- ▶ Qualified Disaster Recovery Distribution

Similarities



- ▶ These four distributions have several things in common
 - ▶ They are all taxable
 - ▶ They are not subject to 10% penalty tax under Code §72(t)
 - ▶ They can be recontributed within three years
 - ▶ All are optional; plan doesn't have to authorize them
 - ▶ Deadline to put in document is 12/31/2026
 - ▶ Can implement them before then
 - ▶ Plan doesn't treat as eligible rollover distribution
 - ▶ Available from IRA
 - ▶ Plan reports distribution on 1099-R
 - ▶ Even if it is recontributed in same year



PROMISES, PROMISES

- ▶ IRS promises that we will see new regulations on the premature distribution penalty tax under Code §72(t)
 - ▶ Which will address all these distributions



EMERGENCY PERSONAL EXPENSE DISTRIBUTION (EPED)



What is an EPED?



- ▶ An emergency personal expense distribution is a distribution made from an applicable eligible retirement plan to an individual for purposes of meeting **unforeseeable or immediate** financial needs relating to **necessary personal or family emergency expenses**
 - ▶ Individual facts and circumstances

Examples of qualifying expenses



1. Medical care
2. Accident or loss of property due to casualty,
3. Imminent foreclosure or eviction from a primary residence,
4. The need to pay for burial or funeral expenses,
5. Auto repairs, or
6. Any other necessary emergency personal expenses

Employee certification



- ▶ In determining whether an employee is eligible for an emergency personal expense distribution, an administrator of an applicable eligible retirement plan is permitted to rely on an employee's written (or electronic) certification that the employee is eligible for an emergency personal expense distribution

What plans can distribute EPEDs?



- ▶ Any defined contribution plan or IRA
 - ▶ Other than tax-exempt 457(b) plan
- ▶ Applies to distributions after 12/31/2023



3 limitations on EPEDs



1. No more than one distribution per calendar year can be treated as an EPED
2. \$1,000 limit
 - ▶ (not indexed for inflation)
3. Three-year rule

Vested Balance	Maximum Amount
< \$1,000	\$0
\$1,000 - \$2,000	Vested balance - \$1,000
Over \$2,000	\$1,000

Three-year rule



- ▶ If you take an EPED from a plan, you cannot treat a subsequent distribution in the next 3 calendar years from that plan as an EPED unless the earlier distribution has been repaid
 - ▶ In other words, if I take an EPED in 2025, I cannot take another EPED from the same plan before 2029 unless I repay the 2025 distribution

How do you repay a distribution?



- ▶ Recontribute the money to the plan, or
- ▶ Make elective deferrals/after-tax employee contributions to the plan
- ▶ Example:
 - ▶ I take \$1,000 EPED from plan in 2025
 - ▶ In 2026 I recontribute \$300 to the plan and defer \$400
 - ▶ In 2027 I defer another \$300; total repayments = \$1000
 - ▶ I can now take another EPED in 2027

Recontribution



- ▶ If participant can make rollovers to a plan, then participant can recontribute EPED to the plan
 - ▶ During 3 year period starting on the day after the distribution
- ▶ Plan must allow recontribution of EPEDs if:
 - ▶ Participant received EPED from that plan
 - ▶ The plan currently permits EPEDs
 - ▶ Participant is eligible to make rollover contribution to the plan

Recontribution treated as direct rollover



- ▶ Treated as though the participant had timely rolled over funds directly from one plan to another within 60 days
 - ▶ Which means original distribution wasn't taxable
 - ▶ File an amended return

Distributable event



- ▶ Plan may treat EPED as distributable event for
 - ▶ 401(k)
 - ▶ 403(b)
 - ▶ Govt 457(b)
- ▶ Not a distributable event for money purchase pension

Not an eligible rollover distribution from plan's perspective



- ▶ Mandatory 20% withholding does not apply
 - ▶ Voluntary 10% withholding
- ▶ No direct rollover notice
- ▶ Don't have to cooperate with request for direct rollover

What if your plan doesn't permit EPEDs?



- ▶ Participant can claim EPED treatment of distribution
- ▶ Example:
 - ▶ Mary is 50
 - ▶ Plan allows hardship distributions but doesn't allow EPEDs
 - ▶ Mary has medical bill which qualifies for hardship distribution
 - ▶ She takes a \$2,500 in-service distribution
 - ▶ Plan processes it like any other hardship distribution (Code 1)
 - ▶ Withholds \$500
 - ▶ Mary files form 5329 claiming that \$1,000 of distribution is EPED
 - ▶ Saves the \$100 penalty tax on the \$1,000
 - ▶ Can recontribute the \$1,000 to an IRA within 3 years



DOMESTIC ABUSE VICTIM DISTRIBUTION (DAVD)



What is a DAVD?



- ▶ A domestic abuse victim distribution is a distribution from an applicable eligible retirement plan to a domestic abuse victim made during the 1-year period beginning on any date on which the individual is a **victim of domestic abuse by a spouse or domestic partner**.
 - ▶ 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.

Employee certification



- ▶ Any distribution that an employee or participant certifies as a domestic abuse victim distribution will be treated as meeting the distribution restriction requirements under the Code for the applicable eligible retirement plan. To meet the certification requirements of section the Code, the employee or participant could check the box on the distribution request form to certify that
 1. The employee or participant is eligible for a domestic abuse victim distribution and
 2. The distribution is made during the 1-year period beginning on any date on which the individual is a victim of domestic abuse.
- ▶ The certification must be provided in writing or electronically

What plans can distribute DAVDs?



- ▶ Any defined contribution plan or IRA
 - ▶ Other than a plan subject to the QJSA rules
 - ▶ Defined benefit
 - ▶ Money purchase
 - ▶ Transferee of pension plan
 - ▶ Provide benefits in the form of a life annuity
- ▶ Applies to distributions after 12/31/2023

Dollar limit on DAVD



- ▶ Cannot exceed the lesser of:
 - ▶ \$10,000 (indexed for inflation)
 - ▶ 50% of vested account
- ▶ No limit on the number of distributions per year
- ▶ No statement that \$10,000 limit is a lifetime limit
- ▶ No requirement to repay distribution before receiving another distribution

Recontribution



- ▶ If participant can make rollovers to a plan, then participant can recontribute DAVD to the plan
 - ▶ During 3 year period starting on the day after the distribution
- ▶ Plan must allow recontribution of DAVDs if:
 - ▶ Participant received DAVD from that plan
 - ▶ The plan currently permits DAVDs
 - ▶ Participant is eligible to make rollover contribution to the plan

Recontribution treated as direct rollover



- ▶ Treated as though the participant had timely rolled over funds directly from one plan to another within 60 days
 - ▶ Which means original distribution wasn't taxable
 - ▶ File an amended return

Distributable event



- ▶ Plan may treat DAVD as distributable event for
 - ▶ 401(k)
 - ▶ 403(b)
 - ▶ Govt 457(b)
- ▶ Not a distributable event for money purchase pension

Not an eligible rollover distribution from plan's perspective



- ▶ Mandatory 20% withholding does not apply
 - ▶ Voluntary 10% withholding
- ▶ No direct rollover notice
- ▶ Don't have to cooperate with request for direct rollover

What if your plan doesn't permit DAVDs?



- ▶ Participant can claim DAVD treatment of distribution
- ▶ Example:
 - ▶ Martha is 50
 - ▶ She is a victim of domestic abuse August 1, 2024
 - ▶ Plan doesn't allow DAVDs
 - ▶ She quits job so she can move to another city
 - ▶ She takes severance distribution Nov. 1 of entire \$15,000 account balance
 - ▶ Plan processes it like any other hardship distribution (Code 1)
 - ▶ Withholds \$3000
 - ▶ Mary files form 5329 claiming that \$7,500 of distribution is DAVD
 - ▶ Saves the \$750 penalty tax on the \$7500
 - ▶ Can recontribute the \$7,500 to an IRA within 3 years

TERMINALLY ILL INDIVIDUAL DISTRIBUTIONS (“TIID”)



What is a TIID?



- ▶ Any distribution from a qualified retirement plan to an employee who is a terminally ill individual that is made **on or after the date** on which the employee has been certified by a physician as having a terminal illness. The certification must satisfy the content requirements in Notice 2024-2.
 - ▶ Terminally ill individual means an individual who has been certified by a physician as having an illness or physical condition that can reasonably be expected to result in death in 84 months or less after the date of the certification.
 - ▶ Physician: Licensed doctor of medicine or osteopathy
 - ▶ Can't be the employee

What plans can distribute DAVDs?



- ▶ Any
 - ▶ Qualified plan (DB/DC)
 - ▶ 403(b)
 - ▶ IRA
- ▶ Not available from 457(b)
- ▶ Applies to distributions after 12/31/2023

No dollar limits on TIIDs

- ▶ Can be entire account balance



Physician certificate requirements



1. A statement that the individual's illness or physical condition can be reasonably expected to result in death in 84 months or less after the date of certification;
2. A narrative description of the evidence that was used to support the statement of illness or physical condition;
3. The name and contact information of the physician making the statement;
4. The date the physician examined the individual or reviewed the evidence provided by the individual, and the date that the certification is signed by the physician; and
5. The signature of the physician making the statement, and an attestation from the physician that, by signing the form, the physician confirms that the physician composed the narrative description based on the physician's examination of the individual or the physician's review of the evidence provided by the individual.

What must be furnished to plan/IRA trustee?



- ▶ An employee must furnish to the plan administrator a physician's certification that certifies that the employee is a terminally ill individual. A physician's certification is sufficient evidence that an employee is a terminally ill individual. However, for purposes of the Code, it is not sufficient evidence for an employee who is a physician to certify the physician's own terminal illness.
- ▶ Although the certification must meet the requirements on the last slide, it does not need to include the underlying documentation upon which the certification is based. However, the employee should retain both the underlying documentation and a copy of the certification for the employee's tax records.

Recontribution



- ▶ If participant can make rollovers to a plan, then participant can recontribute TID to the plan
 - ▶ During 3 year period starting on the day after the distribution

Recontribution treated as direct rollover



- ▶ Treated as though the participant had timely rolled over funds directly from one plan to another within 60 days
 - ▶ Which means original distribution wasn't taxable
 - ▶ File an amended return

Not a distributable event



- ▶ So you need some other distribution event (e.g., hardship)
- ▶ Technical corrections bill would fix this



Not an eligible rollover distribution from plan's perspective



- ▶ Mandatory 20% withholding does not apply
 - ▶ Voluntary 10% withholding
- ▶ No direct rollover notice
- ▶ Don't have to cooperate with request for direct rollover

What if your plan doesn't permit TIIDs?



- ▶ Participant can claim TIID treatment of distribution
- ▶ Example:
 - ▶ Bill is 50
 - ▶ August 1 a doctor certifies that Bill is terminally ill
 - ▶ Plan doesn't allow TIIDs
 - ▶ Bill takes a \$20,000 hardship distribution to pay his medical bills
 - ▶ Plan processes it like any other hardship distribution (Code 1)
 - ▶ Withholds \$4000
 - ▶ Bill files form 5329 claiming that distribution is TIID
 - ▶ Saves the \$2,000 penalty tax on the \$20,000
 - ▶ Can recontribute the \$20,000 to an IRA within 3 years

Post-Severance Distributions



- ▶ Notice 2024-2 doesn't acknowledge that post-severance distributions could be TIIDs
 - ▶ Could be because statute refers to "employees"
- ▶ Easy way around it:
 - ▶ Roll post-severance distribution to IRA
 - ▶ Provide physician certificate to IRA custodian
 - ▶ Take TIID from IRA





QUALIFIED DISASTER RECOVERY DISTRIBUTION (QDRD) AND RELATED RELIEF



Qualified Disaster/Disaster Area



- ▶ A Qualified Disaster means a major disaster under FEMA rules. The Qualified Disaster Area means the area with respect to which the Qualified Disaster was declared.
- ▶ The easiest way to learn if a FEMA disaster has been declared and the extent of the disaster area is to go to the FEMA website for disaster declarations. From that page, you can enter the state and the year. The declaration type is "major disaster declaration." The website will display a list of the disasters declared in that state for the year.
 - ▶ However, knowing the state is not enough. Disaster declarations are frequently made on a county-by-county basis. For purposes of a QDRD, a Qualified Disaster can include distributions authorized for either public assistance or individual assistance. (By contrast, hardship distributions related to disasters are limited to those qualifying for individual assistance.
 - ▶ How do you find out whether a specific county is covered by a disaster declaration? Go to the webpage for the specific disaster, and from the menu on the right, select "designated areas." A map will appear showing the impacted counties and the type of assistance.

Sample: FEMA website

► Shows:

- Disaster code
- Incident period
- Declaration date
- Map of designated areas

California Severe Winter Storms, Flooding, Landslides, and Mudslides

DR-4683-CA



Quick Links

- **Recovery resources:** [State & Local](#) | [National](#)
- **Connect:** [Social Media](#) | [Mobile App & Text](#)
- **24/7 counseling:** [Disaster Distress Helpline](#)

Incident Period: Dec 27, 2022 - Jan 31, 2023

Declaration Date: Jan 14, 2023



English Español 简体中文 हिन्दी 한국어 Tagalog Tiếng Việt

On This Page

[Now Closed: Period to Apply for Disaster Assistance](#)

[Local Resources](#)

[How to Help](#)

[Funding Obligations](#)

[More About This Disaster](#)

[Designated Areas](#)

[Individual Assistance](#) | [Public Assistance](#) | [How a Disaster Gets Declared](#)



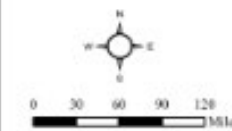
IA-4683-DR, California Disaster Declaration as of 05/25/2023



Data Layer/Map Description:
The types of assistance that have been designated for selected areas in the State of California.

All municipalities in the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

- Designated Counties**
- No Designation
 - Individual Assistance and Public Assistance (Category A - G)
 - Public Assistance (Category A - G)



Data Sources:
FEMA, ESRI;
Initial Declaration: 01/14/2023
Disaster Federal Registry Notice Amendment #10: 05/25/2023
Datum: North American 1983
Projection: Lambert Conformal Conic
MapID: 880a5a21f57

2023 CALIFORNIA WINTER STORMS

Qualified Individual



- ▶ An individual is a qualified individual if:
 - ▶ The individual's **principal residence** at any time during the incident period of any qualified disaster is in the qualified disaster area with respect to that disaster, and
 - ▶ The individual has sustained an economic loss by reason of that qualified disaster. Examples:
 - ▶ 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.

Employee certification



- ▶ A plan sponsor or plan administrator is permitted to rely on a participant's reasonable representations that the participant is a qualified individual who qualifies for this special treatment for distributions and loans,
 - ▶ unless the plan administrator (or other responsible person) with respect to the qualified employer plan has actual knowledge to the contrary.

What is a QDRD?



- ▶ A qualified disaster recovery distribution is a distribution to a qualified individual that is made from an eligible retirement plan on or after the first day of the incident period of a qualified disaster and before the date that is 180 days after the latest of the following three dates:
 - ▶ Dec. 29, 2022,
 - ▶ The first day of the incident period with respect to the qualified disaster, or
 - ▶ The date of the disaster declaration with respect to the qualified disaster.

What plans can distribute QDRDs?



- ▶ Any plan or IRA
 - ▶ Other than a tax-exempt 457(b) plan



Dollar limit on DAVD



- ▶ Cannot exceed \$22,000/disaster (indexed for inflation)
- ▶ No limit on the number of distributions/disasters per year
- ▶ No requirement to repay distribution before receiving another distribution

Recontribution



- ▶ If participant can make rollovers to a plan, then participant can recontribute QDRD to the plan
 - ▶ During 3 year period starting on the day after the distribution
- ▶ Is an eligible retirement plan required to accept repayment of a participant's qualified disaster recovery distribution?
 - ▶ In general, the IRS anticipates that eligible retirement plans will accept a qualified individual's repayments of a qualified disaster recovery distribution, which are to be treated as rollover contributions. However, eligible retirement plans generally are not required to accept rollover contributions. For example, if a plan does not accept any rollover contributions, the plan is not required to change its rollover terms or procedures to accept repayments of qualified disaster recovery distributions.

Recontribution treated as direct rollover



- ▶ Treated as though the participant had timely rolled over funds directly from one plan to another within 60 days
 - ▶ Which means original distribution wasn't taxable
 - ▶ File an amended return
 - ▶ See sections 4.D, 4.E, and 4.F of Notice 2005-92, as well as the instructions to Form 8915-F, for additional examples regarding repayment.

Distributable event



- ▶ Plan may treat DAVD as distributable event for
 - ▶ 401(k)
 - ▶ 403(b)
 - ▶ Govt 457(b)
 - ▶ Money purchase pension
- ▶ Not a distributable event for defined benefit plan
- ▶ QJSA rules still apply

Not an eligible rollover distribution from plan's perspective



- ▶ Mandatory 20% withholding does not apply
 - ▶ Voluntary 10% withholding
- ▶ No direct rollover notice
- ▶ Don't have to cooperate with request for direct rollover

What if your plan doesn't permit QDRDs?



- ▶ Participant can claim QDRD treatment of distribution
- ▶ Example:
 - ▶ Tom is 50 and a qualified individual
 - ▶ He loses his job as the result of a hurricane that destroys employer's business
 - ▶ Plan doesn't allow QDRDs
 - ▶ Tom takes \$40,000 distribution within 179 days of disaster declaration
 - ▶ Plan processes it like any other severance distribution (Code 1)
 - ▶ Withholds \$8,000
 - ▶ Mary files form 8915-F claiming that \$22,000 of distribution is QDRD
 - ▶ Saves the \$2,200 penalty tax on the \$22,000
 - ▶ Can recontribute the \$7,500 to an IRA within 3 years
 - ▶ Can spread tax on \$22,000 over 3 years

Recipient reporting



- ▶ A QDRD received by a qualified individual should be reported on the individual's federal income tax returns, including Form 8915-F, over the 3-year period beginning with the year of receipt, unless the qualified individual elects on Form 8915-F to include the entire amount in income in the year of receipt.
 - ▶ For example, a qualified individual who received a qualified disaster recovery distribution in 2023 must include the taxable portion of the distribution in income in equal amounts over the 3-year period – 2023, 2024, and 2025 – unless the qualified individual elects on the 2023 Form 8915-F to include the entire amount in income in 2023.

**Qualified Disaster Retirement Plan
Distributions and Repayments**

Attach to Form 1040, 1040-SR, or 1040-NR.
Go to www.irs.gov/Form8915F for instructions and the latest information.

Name. If married, file a separate form for each spouse required to file Form 8915-F. See instructions.

Your social security number

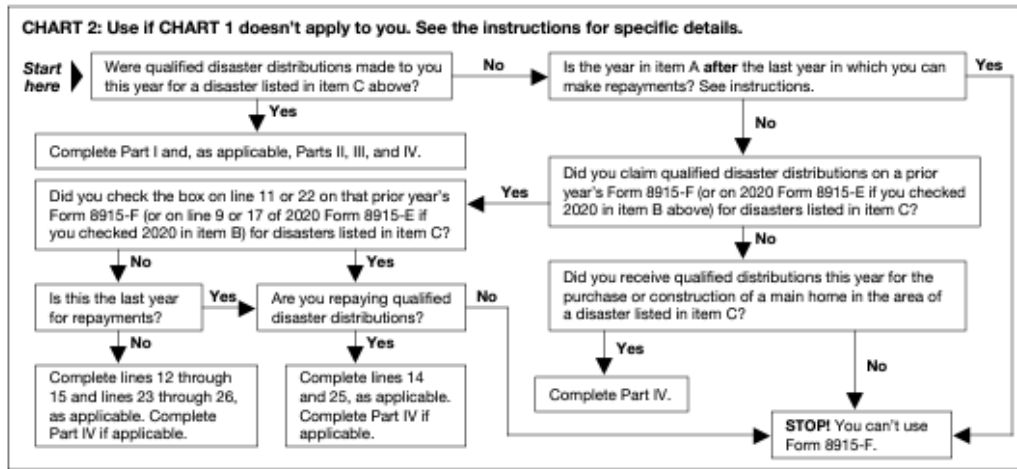
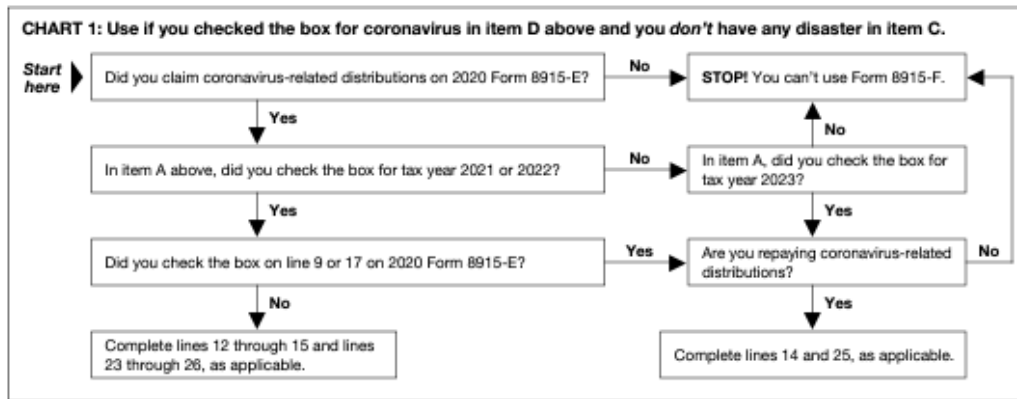
Before you begin (see instructions for details):

- Use Form 8915-F for 2021 and later disasters. Also, use it after 2020 for coronavirus-related and other 2020 disasters instead of Form 8915-E.
- Major Disaster Declarations at www.FEMA.gov/disaster/declarations provides the only qualified disasters and their FEMA numbers for item C.
- "This year" (as used on this form) is the year of the form you check in item A next. For example, if you check 2022, "this year" is 2022.

Complete items A and B below. Complete item C and check the box in item D for the coronavirus, as applicable.

- A Tax year for which you are filing form** (check only one box): 2021 2022 2023 2024 Other _____
- B Calendar year in which qualified disaster(s) began** (check only one box): 2020 2021 2022 2023 Other _____
- C FEMA number for each of your qualified disasters for the year checked in item B above.** Use item D, not item C, for the coronavirus.
(1) _____ (2) _____ (3) _____ (4) _____ (5) _____ (6) _____
- D If your only disaster, or one of your disasters, is the coronavirus, check this box** Don't list the coronavirus in item C.

Which lines on this form should I use? See CHARTS 1 and 2 below.



Thank you!



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 - ▶ 403(b) Plan eSource
 - ▶ 457 Plan eSource
 - ▶ Plan Correction eSource (with Ilene Ferenczy and Alison Cohen)