



Pension Analyst

Important information

New legislation

February 2009

EESA affects retirement plan administration

Who's affected

This relief is available to sponsors of qualified plans, ERISA 403(b) plans, and governmental section 457(b) plans whose participants were directly affected by the flooding, severe storms and tornadoes that occurred in the Midwestern disaster area. It is also available to affected participants in non-ERISA 403(b) programs.

Background and summary

On October 3, 2008, President Bush signed into law the Emergency Economic Stabilization Act of 2008 (EESA). In addition to its basic economic stabilization provisions, EESA includes a provision titled the "Heartland Disaster Tax Relief Act of 2008." This provision gives individuals who were directly affected by severe storms, tornadoes and flooding in federally-declared Midwestern disaster areas between May 20, 2008, and August 1, 2008, additional access to their retirement savings to alleviate hardships caused by these natural disasters. It also lessens the tax burdens related to these special distributions.

The relief:

- Applies to individuals who resided in specified counties of Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin on applicable disaster dates;
- Offers the ability to take qualified disaster recovery assistance distributions, to a maximum of \$100,000, from most employer-sponsored retirement plans and traditional IRAs;
- Provides special tax treatment for these distributions;
- Allows individuals to recontribute these distributions to an eligible retirement plan within three years of distribution;
- Increases the maximum loan amount for individuals affected by the disaster to the lesser of \$100,000, or 100% of the participant's vested account balance, for loans taken during the specified time periods; and
- Allows plans to suspend plan loan repayments due from affected individuals for up to one year.

Action and next steps

Plan sponsors with employees or former employees in the affected Midwestern disaster areas should review this publication to become familiar with the relief available to these individuals. Plan sponsors that wish to make this relief available under their plans or programs should contact their Prudential Retirement representative.

In this issue

- [Extension of midwestern disaster relief](#)
- [Qualified disaster recovery assistance distributions](#)
- [Special plan loan provisions](#)
- [Recontribution of withdrawals taken for home purchases](#)
- [IRS guidance](#)
- [Plan and contract amendments](#)
- [Notify Prudential](#)
- [Midwestern disaster area chart](#)

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Extension of midwestern disaster relief

In general, an individual is eligible to take special plan distributions and loans from profit sharing plans (including section 401(k) plans), money purchase pension plans, stock bonus plans, defined benefit plans, 403(b) plans, governmental section 457(b) plans, and traditional IRAs if he is a qualified storm damage individual. A **“qualified storm damage individual”** is an individual:

- Whose principal place of residence on the [applicable disaster date](#) was located in the [Midwestern disaster area](#); and
- Who incurred an economic loss as the result of severe storms, flooding or tornadoes.

The term **“Midwestern disaster area”** means an area that was:

- Declared a major disaster area by the President on or after May 20, 2008, and before August 1, 2008, due to the occurrence of severe storms, tornadoes, or flooding in designated counties in Arkansas, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, and Wisconsin; and
- Entitled to individual or individual and public assistance from the federal government under EESA with respect to damages caused by the disaster.

The **“applicable disaster date”** means the date on which the severe storms, tornadoes and flooding occurred in the Midwestern disaster area.

Refer to the [Midwestern Disaster Area Chart](#) appearing at the end of this publication for additional information regarding the affected counties in each state and the applicable disaster date.

Qualified disaster recovery assistance distributions

A **“qualified disaster recovery assistance distribution”** is any distribution from an eligible retirement plan made on or after the [applicable disaster date](#) and before January 1, 2010, to a [qualified storm damage individual](#). Qualified disaster recovery assistance distributions:

- May not exceed \$100,000 per individual;
- Are exempt from the 10% federal income tax penalty on early distributions;
- Are not eligible for rollover, if made from a qualified plan or governmental section 457(b) plan, and therefore, are not subject to mandatory 20% federal tax withholding;
- Are included in the individual’s gross income ratably over a three-taxable year period, beginning with the year in which the distribution occurred, unless the individual elects otherwise; and
- May be repaid within three years to an IRA, a qualified plan, a governmental section 457(b) plan, or a 403(b) plan in which the individual is participating, which is eligible to receive a rollover contribution. The repayment does not have to be made to the same plan or IRA from which the distribution was made.

For more information, see [IRS Form 8930](#).

Special plan loan provisions

A [qualified storm damage individual](#) may also take larger loans from qualified plans, 403(b) plans, and governmental section 457(b) plans. The maximum loan amount available to these individuals for loans taken during the applicable period (when added to the outstanding balance of all other loans from the plan), generally cannot exceed the lesser of \$100,000, or 100% of the participant’s vested account balance. The **“applicable period”** is defined as the period:

- Beginning on October 3, 2008; and
- Ending on December 31, 2009.

In addition, any qualified storm damage individual who had outstanding plan loan repayments due on or after the [applicable disaster date](#) and before January 1, 2010, may delay repayments for one year. This delay will not cause the loan to become a taxable deemed distribution. *For example, a repayment originally due on November 1, 2008, may be delayed to November 1, 2009.*

After the one-year period ends, the loan must be reamortized to adjust payments for the new due date and accrued interest. The one year postponement period will be ignored with respect to the term of the loan.

Recontribution of withdrawals taken for home purchases

EESA contains a special recontribution provision for individuals who took hardship distributions from a 401(k) plan or 403(b) plan to purchase a home in the [Midwestern disaster area](#) provided the:

- Distributions were made six months before the [applicable disaster date](#); and
- Home was not purchased due to the disaster.

These distributions may be recontributed to the plan or an IRA tax-free. Amounts must be recontributed within five months after the date of enactment of EESA (i.e., by March 3, 2009) in order to receive favorable tax treatment. An individual who received a hardship distribution and repaid the distribution, in whole or in part, before March 4, 2009, must file Form 8930.

IRS guidance

The IRS has published limited formal guidance relating to these provisions of EESA. Recently, the IRS published [Publication 4492-B titled "Information for Affected Taxpayers in the Midwestern Disaster Areas."](#) This publication confirmed that:

- An individual's "principal place of residence" is the main home where an individual lives most of the time. A temporary absence due to special circumstances, such as illness, education, business, military service, evacuation, or vacation, will not change an individual's main home.
- A distribution made during the applicable time period may qualify as a qualified disaster recovery assistance distribution, even if it is not made as a result of the disaster; and
- Different types of distributions (e.g., periodic payments, plan loan offsets, hardship withdrawals, in-service withdrawals, required minimum distributions) may be considered qualified disaster recovery assistance distributions.

However, Publication 4492-B does not address all issues raised by the EESA provision. Until additional guidance is published, it may be reasonable to apply the guidance provided for administering similar provisions under the [Katrina Emergency Tax Relief Act of 2005 \(KETRA\)](#). For example:

- Defined benefit and money purchase pension plans may not permit in-service qualified disaster recovery assistance distributions; and
- If an individual takes more than one qualified disaster recovery assistance distribution, each distribution has its own repayment deadline.

Plan sponsors should discuss the provisions described in this publication with their plan's legal counsel.

Plan and contract amendments

Sponsors of qualified plans, 403(b) plans, and governmental section 457(b) plans that want to offer any of these special distribution or plan loan provisions will need to amend their plans to reflect those provisions. In general, the deadline for EESA plan and contract amendments, containing the appropriate retroactive effective dates, is the last day of the first plan year beginning on or after January 1, 2010. For governmental plans, EESA amendments must be adopted by the last day of the first plan year beginning on or after January 1, 2012. There is no special amendment deadline for collectively-bargained plans.

The IRS may establish different amendment deadlines, if they perceive a need to do so under either the existing remedial amendment cycle rules that apply to qualified plans or the amendment and determination letter rules that are currently under development for 403(b) plans. If Prudential provides document services for your plan, we will work with you to draft the appropriate amendments to reflect these provisions by the appropriate amendment deadline.

Notify Prudential

If you wish to offer qualified disaster recovery assistance distributions, loans, or loan repayment suspensions under your retirement plan or if you wish to accept recontributions of qualified disaster recovery assistance distributions under your plan, please contact your Prudential Retirement representative before you authorize any such transactions. To ensure that the appropriate tax reporting occurs, we need to be able to identify these transactions in advance. In addition, we have developed new forms to aid in the processing of these transactions.

Midwestern Disaster Area Chart

State	Affected Counties	Applicable Disaster Date
Arkansas	Arkansas, Benton, Cleburne, Conway, Crittenden, Grant, Lonoke, Mississippi, Phillips, Pulaski, Saline and Van Buren.	May 2, 2008
Illinois	Adams, Calhoun, Clark, Coles, Crawford, Cumberland, Douglas, Edgar, Greene, Hancock, Henderson, Jasper, Jersey, Lake, Lawrence, Madison, Mercer, Monroe, Pike, Randolph, Rock Island, St. Clair, Scott, Whiteside and Winnebago.	June 1, 2008
Indiana	Adams, Bartholomew, Benton, Boone, Brown, Clay, Daviess, Dearborn, Decatur, Fountain, Franklin, Gibson, Grant, Greene, Hamilton, Hancock, Hendricks, Henry, Huntington, Jackson, Jay, Jefferson, Jennings, Johnson, Knox, Lawrence, Madison, Marion, Monroe, Montgomery, Morgan, Ohio, Owen, Parke, Pike, Posey, Putnam, Randolph, Ripley, Rush, Shelby, Sullivan, Switzerland, Tippecanoe, Union, Vermillion, Vigo, Wabash, Washington and Wayne.	June 6, 2008
Iowa	Adair, Adams, Allamakee, Appanoose, Audubon, Benton, Black Hawk, Boone, Bremer, Buchanan, Butler, Carroll, Cass, Cedar, Cerro Gordo, Cherokee, Chickasaw, Clarke, Clayton, Clinton, Crawford, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Floyd, Franklin, Fremont, Greene, Grundy, Guthrie, Hamilton, Hancock, Hardin, Harrison, Henry, Howard, Humboldt, Iowa, Jackson, Jasper, Johnson, Jones, Keokuk, Kossuth, Lee, Linn, Louisa, Lucas, Lyon, Madison, Mahaska, Marion, Marshall, Mills, Mitchell, Monona, Monroe, Montgomery, Muscatine, Page, Palo Alto, Pocahontas, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Story, Tama, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Webster, Winnebago, Winneshiek, Worth and Wright.	May 25, 2008
Kansas	Barber, Barton, Bourbon, Brown, Butler, Chautauqua, Cherokee, Clark, Clay, Comanche, Cowley, Crawford, Decatur, Dickinson, Edwards, Elk, Ellis, Ellsworth, Franklin, Gove, Graham, Harper, Haskell, Hodgeman, Jackson, Jewell, Kingman, Kiowa, Lane, Linn, Logan, Mitchell, Montgomery, Ness, Norton, Osborne, Pawnee, Phillips, Pratt, Reno, Republic, Riley, Rooks, Rush, Saline, Seward, Sheridan, Smith, Stafford, Sumner, Thomas, Trego, Wallace and Wilson.	May 22, 2008
Michigan	Allegan, Barry, Eaton, Ingham, Lake, Manistee, Mason, Missaukee, Osceola, Ottawa, Saginaw and Wexford.	June 6, 2008

State	Affected Counties	Applicable Disaster Date
Minnesota	Cook, Fillmore, Freeborn, Houston, Mower and Nobles.	June 7, 2008
Missouri	Barry, Jasper and Newton. Adair, Andrew, Atchison, Audrain, Bates, Buchanan, Callaway, Cape Girardeau, Carroll, Cass, Chariton, Christian, Clark, Daviess, Gentry, Greene, Grundy, Harrison, Holt, Howard, Jefferson, Johnson, Knox, Lewis, Lincoln, Linn, Livingston, Macon, Marion, Mercer, Miller, Mississippi, Monroe, Morgan, New Madrid, Nodaway, Pemiscot, Perry, Pettis, Pike, Platte, Polk, Putnam, Ralls, Randolph, Ray, Saline, Schuyler, Scotland, Shelby, St. Charles, St. Genevieve, St. Louis, the Independent City of St. Louis, Scott, Stone, Sullivan, Taney, Vernon, Webster and Worth.	May 10, 2008 June 1, 2008
Nebraska	Gage, Johnson, Morrill, Nemaha and Pawnee. Adams, Blaine, Boone, Boyd, Brown, Buffalo, Burt, Butler, Cass, Chase, Cherry, Colfax, Cuming, Custer, Dawson, Douglas, Dundy, Fillmore, Frontier, Furnas, Gage, Garfield, Gosper, Greeley, Hall, Hamilton, Hayes, Holt, Howard, Jefferson, Johnson, Kearney, Keya Paha, Lancaster, Lincoln, Logan, Loup, Merrick, McPherson, Morrill, Nance, Nemaha, Otoe, Phelps, Platte, Polk, Red Willow, Richardson, Rock, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thomas, Thurston, Valley, Webster, Wheeler and York. Dodge, Douglas, Sarpy and Saunders.	April 23, 2008 May 22, 2008 June 27, 2008
Wisconsin	Adams, Calumet, Crawford, Columbia, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, LaCrosse, Lafayette, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha and Winnebago.	June 5, 2008

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Pension Analyst by Prudential Retirement

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