

The Use of Resources from the SAR's¹Housing Subaccount to Finance the Workers' Social Security Pensions.

Contributions paid by employers to the National Workers' Housing Fund are a part of the individual accounts that integrate the Retirement Savings System, which in turn is made up by the following subaccounts:²

The first subaccount refers to the mandatory dues payable by workers, employers and the federal government to cover the insurance for retirement, senior unemployment and old age, of the compulsory social security regime.

The second one, called "housing subaccount", refers precisely to the mandatory contributions payable by the employers to the National Workers' Housing Fund.

The third one, called "voluntary contributions subaccount", refers to contributions made by employers and workers voluntarily.

The fourth one, named "of supplementary contributions for retirement", refers to voluntary payments that can be made both by workers and employers.

The primary purpose of the resources from the housing subaccount is to permit workers to obtain from the INFONAVIT³, which is charged with administering them, unexpensive and sufficient loans for the workers to acquire the ownership of comfortable and sanitary lodgings, as well as to build, refurbish or improve the homes that they already have and to pay liabilities assumed by reason of these concepts.⁴

Accordingly, Article 43 Bis of the Law of the INFONAVIT provides, on the one hand, that upon reception by the worker of a loan from the INFONAVIT, the balance of the housing subaccount in the worker's individual SAR account shall be applied as initial payment of the loan; and on the other, that during the term of the loan, any employer's contributions made in favor of the workers shall be applied in reducing the loan's outstanding balance.

¹ Retirement Savings System (Sistema de Ahorro para el Retiro – SAR)

² Retirement Savings System Law, Article 74.

³ National Institute for the Workers' Housing Fund (Instituto Nacional del Fondo para la Vivienda de los Trabajadores – INFONAVIT)

⁴ Federal Labor Law, Article 137.

Now, Article 40 of the Law of the INFONAVIT stipulates textually:

“The housing subaccount funds that have not been applied as provided by article 43 Bis shall be transferred to the retirement funds managing agency either to contract the respective pension or to deliver such funds pursuant to the Social Security Laws, especially under the terms of their articles 119, 120, 127, 154, 159, 170 and 190, 193 and pursuant to the Retirement Savings Systems, especially as provided by its articles third, 18, 80, 82 and 83.

“To that effect, the worker or his/her beneficiaries must request from the INFONAVIT the transfer of the housing subaccount resources to the retirement funds managing agencies. The INFONAVIT may then agree with the Mexican Social Security Institute the terms and requirements to simplify and unify the processes to authorize the availability of the resources alluded to in the paragraph above.”

In the terms of this precept, concerning those workers who have never received loans from INFONAVIT, or who received loans and have already totally paid them, these workers, or their beneficiaries, if any, are entitled to receive the balance of the resources existing in their respective housing subaccount, or to have such balance transferred to the respective AFORE⁵ in order to contract the corresponding social security pension.

For natural reasons, these transfers apply in the cases wherein the pension is granted pursuant to the Social Security Law, as amended and now in force, and not when the Mexican Social Security Institute pays such pensions in the terms of the partially repealed Social Security Law.

Pursuant to the rules of the Social Security Law in relation to the above-transcribed INFONAVIT Law's article, the alluded balance of the housing sub-account's resources may be used to finance disability pensions (articles 119 and 120) pensions in case of death (art. 127) and senior unemployment (art. 154)

⁵ Administradora de Fondos para el Retiro (Retirement Funds Managing Agency).

It should be noted that, without any justified reason, old-age pensions, regulated by articles 161, 162, 163 and 164 of the Social Security Law are excluded, even though these pensions are of the same nature and share the same characteristics and payment procedures as those for senior unemployment, with the only exception, formal but irrelevant, to the effects of the Social Security Law in force, that the minimum age for senior unemployment pensions is 60 years of age, whereas for old-age pensions 65 years old is the minimum age.

Opposed to the above, it is totally justifiable that the aforesaid INFONAVIT Law precept exclude the financing of pensions for work-related risks as the purpose of transferring the housing subaccount's balances.

Indeed, the Mexican Constitution consecrates the workers' right to the remedy or redress of misfortunes caused by work-related hazards, i.e., the injuries and illnesses that they sustain or suffer by reason of their work, and provides that the inherent responsibility to indemnify is, in principle, in charge of the employer.⁶

The Federal Labor Law, which systematizes Article 123 of the Constitution, regulates the responsibility of employers in the matter of work-related hazards by stipulating the indemnities in employers' charge in amounts proportional to the degree or importance of the work-related disability, including the worker's death.

The Social Security Law, which also systematizes the Constitution's Article 123 in regulating the insurance for work-related hazards that is a part of its mandatory regime, provides that the Mexican Social Security Institute (IMSS), in its capacity as the public decentralized agency charged with organizing and managing the social security system, subrogates itself in the obligations on liability for work-related risks established for the employers by the Federal Labor Law; for this reason, the work-related risks insurance is fully financed by dues paid by the employers.⁸

Concerning permanent disabilities or death of workers caused by work-related hazards, the IMSS's subrogation for the employers' responsibilities to pay indemnities must be actualized in the form of payment of pensions to the affected workers or to their beneficiaries as the case may be.⁹

⁶ Mexican Constitution, Article 123, Section "A", fraction XIV.

⁷ Federal Labor Law, articles 483, 487, 491, 492, 495, 500 and 502.

⁸ Social Security Law, articles 5, 53 and 79.

⁹ Social Security Law, articles 58, 59, 61, 64 and 65.

In this logic, any transfer of housing subaccount balances in order to finance work-related risks pensions would be illegitimate, as these pensions are economic benefits that workers must receive at no cost to them or their beneficiaries, if any.

Finally, it should be noted that Article 37 of the INFONAVIT Law provides that enforceability of the right of the workers and their beneficiaries to receive the resources of their housing subaccount under the aforementioned article 40 of the same Law, is subject to a 10-years statute of limitations; thereafter, it prescribes in favor of the Workers' Housing Fund

Even though Article 40 of the INFONAVIT Law provides for the transfer of workers' individual SAR accounts to contract social-security pensions, that the aforesaid statute of limitation applies to the transfers is debatable, since, for one thing, transfers are not paid to the workers or their beneficiaries but to the AFOREs, and for another, because the right to receive such pensions is inextinguishable.¹⁰

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¹⁰ Social Security Law, Article 301.