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CORRESPONDENCE MEMORANDUM

DATE: February 15, 2016

TO: Deferred Compensation Board Members

FROM: David Nispel, Chief Legal Counsel
Shelly Schueller, Deferred Compensation Director

SUBJECT: Unforeseen Financial Emergency Hardship Withdrawals from the Wisconsin Deferred Compensation Program

Staff requests the Board review its position on unforeseen financial emergency hardships and provide guidance to the Department and plan administrator regarding the Board's expectations for processing individual hardship withdrawal applications. Specifically:

1. **Revise the WDC Plan and Trust document to include the Board's preferred look-back time frame, delegating final review and signature approval to the Board Chair;**
2. **Revise the hardship policy to clarify that a 12-month look-back period is the standard, and delegate final review and signature approval to the Board Chair;**
3. **Require the administrator to include a copy of the hardship brochure and policy with hardship withdrawal applications; and**
4. **Increase locations where information on the hardship look-back time frame is available (online, print publications, etc.).**

Summary
The Deferred Compensation Board (Board) recently heard appeals from two participants whose financial emergency (hardship) withdrawal applications were denied by the Wisconsin Deferred Compensation Program (WDC) administrator and the Department. In light of these recent appeals, the Board requested a review of the information available to participants regarding hardship withdrawals. This memo reviews existing federal and state requirements for hardship withdrawals, the Board's existing policy statement, the current hardship application process and historical trends. It includes several discussion items on which Board guidance is requested and specific recommendations for Board consideration.

Reviewed and approved by Matt Stohr, Administrator
Division of Retirement Services
Matt Stohr Electronically Signed 2/19/16

Board	Mtg Date	Item #
DC	3.8.16	7

Federal Requirements

According to Internal Revenue Code (IRC) regulations (see attached), s. 457(b) retirement savings plans such as the WDC may permit unforeseen financial emergency (hardship) withdrawals by participants if the plan sponsor has determined to offer hardship withdrawals and appropriate procedures are included in the plan document. A plan is not required to offer hardship withdrawals. A hardship withdrawal from a s. 457(b) plan may only occur when the participant or their beneficiary is faced with an unforeseeable emergency. Each individual participant's hardship application should be evaluated based on the facts and circumstances of each case to determine if it meets the requirements for a hardship withdrawal.

The IRC defines an unforeseeable emergency as a severe financial hardship resulting from an illness or accident, loss of property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. Examples of situations that may be considered unforeseeable emergencies include imminent foreclosure on, or eviction from, a participant's home, medical/dental expenses, and funeral expenses. Generally, the purchase of a home and the payment of college tuition are not unforeseeable emergencies under the rules governing s. 457 plans.

Whether a participant or beneficiary is faced with an unforeseeable emergency depends on each participant's unique facts and circumstances. When requesting a hardship withdrawal, a participant must document that a financial need exists that cannot be relieved through any other means. If the unforeseeable emergency can be relieved through reimbursement or compensation from insurance, liquidation of the participant's assets, or cessation of deferrals under the plan, then a hardship withdrawal is not permitted. The amount withdrawn for a qualifying hardship situation must not exceed the amount reasonably necessary to satisfy the emergency need.

Participants do not have to pay back hardship withdrawals but do pay taxes on the withdrawn amount. The amount may include any amounts that are necessary to pay federal, state and local income tax (and any penalties) applicable to the withdrawal. The amount withdrawn permanently reduces their retirement savings account balance.

Guidance

Federal guidance regarding what situations constitute hardships that would specifically be permitted under the IRC is very limited. In particular, no substantial guidance exists to define what is meant by the terms “severe” or “unforeseeable.” The only recent guidance provided by the Internal Revenue Service (IRS) came in Revenue Ruling 2010-27, which provided three specific requests and the IRS decision on each. Two situations that could be approved for a hardship withdrawal are 1) the need to repair a participant's principal residence due to significant water damage (assuming this damage is not covered by insurance and arises as a result of events beyond the participant's control), even though the damage may not be the result of a natural disaster; and 2) the need to pay for the funeral expenses of a participant's adult child, even though the child is no longer a tax dependent of the participant.

In this same ruling, the IRS determined that accumulated credit card debt was not an acceptable reason for a hardship withdrawal because credit card debt itself cannot be due to any circumstances that were extraordinary and unforeseeable and that arose as a result of events beyond the participant's control. In other words, the IRS looks to the nature of the event that gave rise to the credit card debt, and not the fact that the accumulated debt may now be so large as to constitute an emergency from the participant's standpoint.

The National Association of Government Defined Contribution Administrators (NAGDCA) has stated that because there is no definitive list of situations that may qualify for a hardship withdrawal, plan administrators "have been left with what amounts to a subjective facts and circumstances test for adjudicating unforeseeable emergency withdrawal requests."

Due to the subjective nature of hardship withdrawal requests, it is important to document the review and determination process and to apply approvals and denials consistently. In the event of a compliance audit by the IRS, a plan may be required to justify the hardship withdrawals it has permitted. A plan that permits participants to withdraw amounts virtually at will is likely to be in violation of the federal regulations. Consequently, most plans' hardship applications require a participant to include extensive documentation regarding the nature and extent of the financial hardship. Information that may be used to help document a financial emergency often includes:

- Foreclosure notices showing amount required to prevent foreclosure
- Notices of eviction showing amount of rent needed to prevent eviction
- Funeral bills indicating cost of such
- Explanation of benefits from health insurance
- Copies of unpaid medical bills not covered by insurance
- Doctor's statements for unpaid medical leave
- Insurance statements showing date of loss, cause and amount covered by insurance
- Police or fire accident reports for loss of property not reimbursed by insurance
- Copy of most recent earnings statement (paycheck stub) for income loss
- First page of federal tax returns
- Other legal or administrative reports as available

The following are examples of expenses that*, by themselves*, would not likely qualify for a hardship withdrawal because there is no unforeseeable emergency involved. These are situations where the individual 1) had significant control or 2) could have reasonably and prudently anticipated, avoided or budgeted for the event. This list is not all-inclusive.

- Cost of education or tuition
- Normal monthly expenses: utility bills, mortgage or rent payments
- Payment on credit cards or loans
- Payment of federal, state, local or property taxes
- Elective purchase, maintenance or remodeling of a home or other real estate
- Costs associated with divorce

- Purchase of automobile and other transportation expenses
- Automobile or appliance maintenance
- Elective or cosmetic surgery
- Loss of overtime/holiday pay
- Bankruptcy
- Legal judgments
- Investment or business losses
- Gambling losses
- Wage garnishment
- Costs of adoption
- Child support payments

Board Authority and Policy

Under s. 40.80 of the Wisconsin Statutes (attached), the Board is charged with administering the WDC on behalf of plan participants. This includes serving as the trustees of the WDC and making sure the WDC remains a qualified deferred compensation plan as defined in s. 457(b) of the IRC.

Wisconsin Administrative Code s. ETF 70.10 (attached) establishes procedures for administering the WDC, including various responsibilities of the Board, the Department of Employee Trust Funds (ETF) and plan participants. It repeats IRC requirements regarding hardship withdrawals and specifies the process that the WDC's plan administrator must follow when reviewing hardship applications in s. ETF 70.10(5)(2). Also, s. ETF 70.10 (6) requires ETF to prepare a report on financial emergency hardship activity for review at each Board meeting. In the 1990s, these reports included individual entries that included a date, reasons for the hardship requested, amount and decision. The Board approved streamlining this report in the early 2000s to reflect the number of applications received, reviewed, approved, denied or pending.

The Board has included a provision permitting hardship withdrawals in the WDC Plan and Trust since this document was created in the early 1980s (in 1982 edition). Section 10.03 of the Plan and Trust (attached) outlines the review and distribution process for hardship withdrawals, replicating the federal requirements found in s. 457 of the IRC.

In November 2012 the Board authorized the WDC's program administrator to process and either approve or deny hardship withdrawal applications, via the "8th Amendment" to the administrative services contract with the WDC's administrator. At the same time, the WDC's program administrator requested direction from the Board and ETF regarding situations that may qualify as reasons for a hardship withdrawal. The Board subsequently approved an "Unforeseeable Financial Emergency Hardship Withdrawal Policy" (attached). This policy explains the Board's intent to provide hardship withdrawals for participants with qualifying situations. It included examples of past situations that were approved for hardship withdrawals, such as furloughs and loss of income due to involuntary termination (layoff).

Hardship Withdrawal Information Available to Participants

Along with the formal federal and state regulations, the WDC Plan and Trust document and the Board's hardship withdrawal policy, basic information on hardship withdrawals is available to interested participants via the WDC staff and website. This includes:

a) Program Highlights Brochure (page 4 reproduced here)

What qualifies as an unforeseeable emergency?

According to the IRS and its Treasury Regulation 1.457-6(c), an unforeseeable emergency is a "severe financial hardship" to the participant or beneficiary resulting from:

- An illness or accident (including spouse or dependent).
- Loss of property due to casualty (including the need to rebuild a home following damage to the home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster).
- The imminent foreclosure of a primary residence.
- The need to pay medical expenses including nonrefundable deductibles, as well as the cost of prescription drug medication.
- The need to pay for funeral expenses of a spouse or dependent.

You must prove that you are experiencing a severe financial emergency and provide evidence that you have exhausted all other sources of income in order to remove before-tax and/or after-tax (Roth) dollars from the WDC.

If you feel your situation meets the IRS requirements for a financial emergency and your WDC account is the only choice you have, call **(877) 457-WDCP (9327)** and request an Unforeseeable Emergency Withdrawal Request Form and Application. You must provide documentation supporting your application.

For further information about unforeseeable emergencies, please refer to the WDC Plan and Trust Document.

b) Unforeseeable Financial Emergency Withdrawal brochure (attached). In 2010, ETF and the program administrator's staff jointly developed a short financial emergency brochure for participants (attached). This document was available online via the WDC website. It explained the federal hardship withdrawal requirements as outlined by the federal Internal Revenue Code (IRC) and the process and documentation necessary for a hardship withdrawal request to be approved. This was inadvertently removed from the WDC website at some point in the last few years, but will be reposted to the "distributions" portion of the WDC website in late February 2016. The recently revised brochure currently contains a sentence on the first page indicating that events that occurred more than twelve months prior to the date of an application will not qualify as an emergency.
c) Unforeseeable Emergency Withdrawal Request (attached). Language indicating that qualifying documentation with dates exceeding 12 months may be rejected was added to the WDC's unforeseeable emergency withdrawal application in the spring of 2015.

Hardship Withdrawal Application Process

The general steps of the WDC financial emergency hardship application process are as follows:

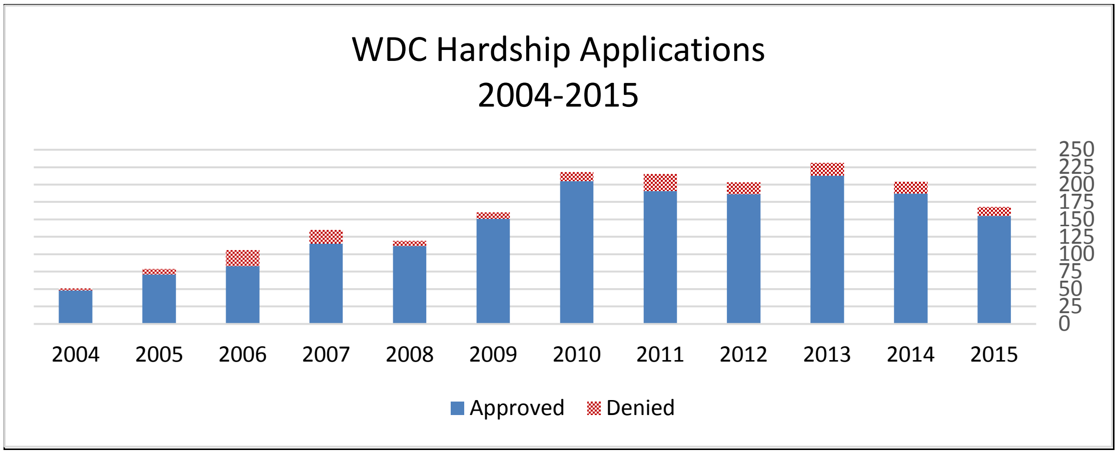
1. A participant interested in pursuing a financial emergency hardship withdrawal contacts the WDC (current administrator is Empower Retirement) for information on what may qualify under federal regulations and a hardship withdrawal application.

The program administrator has dedicated a specific team of employees to work with participants seeking hardship withdrawals. This approach helps ensure that participants have a single reference point for questions and that the administrator is following the federal rules and guidelines consistently.

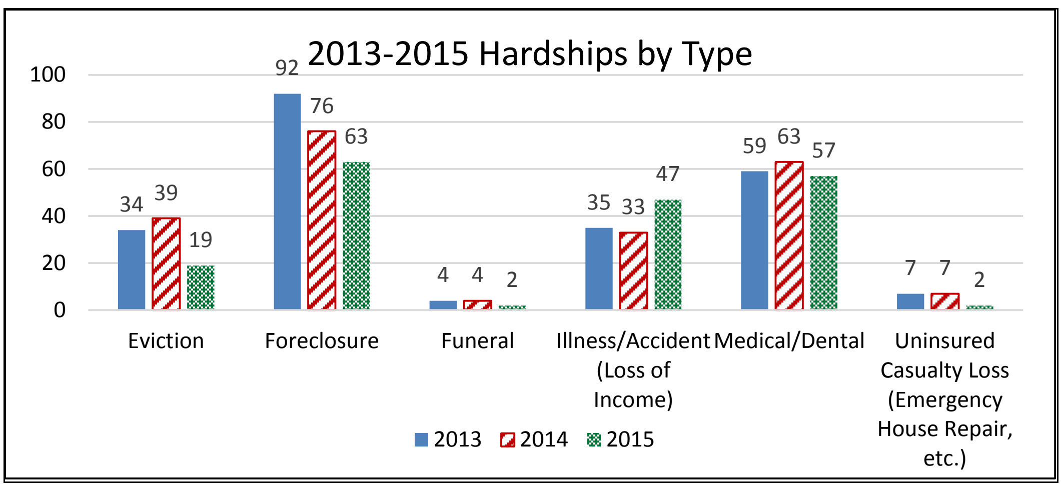
2. The participant is asked to submit a completed application and provide documentation that may be used to support their financial emergency hardship application. Collecting the supporting information may take several weeks, as participants do not always have immediate access to the information necessary to document their severe, unforeseen and unplanned financial emergency. Once the participant considers their application packet complete, they submit it to the WDC via Empower's corporate office in Colorado.
3. Empower's hardship correspondence staff reviews the materials and may request additional information from the participant to help document the nature and extent of the participant's emergency.
4. Empower makes a decision to approve or deny the application using federal criteria and the Board's policy. Generally speaking, three issues must be decided:
    a. The participant must demonstrate an immediate and significant financial need;
    b. The immediate and significant financial need must be due to an emergency; and
    c. The plan must be the only source available to meet the emergency need.
5. If a withdrawal is granted, Empower completes the process of distributing the hardship withdrawal. A notification letter is not sent. The following year, participants receive an IRS form 1099-R for tax filing.
6. If a withdrawal is denied, Empower notifies the participant of the denial and sends a copy of the denial letter to ETF.
7. A participant may file a written request with ETF for a department review of a denial. ETF will issue a departmental determination. A participant may appeal a department determination to the Board. This appeal must be received within 90 days of the date of the department determination letter.
8. ETF updates its internal tracking spreadsheet quarterly and reports the number of hardships to the Board. The report includes the total number of hardship applications received, in process, approved, denied, and sent to ETF for review.

<u>WDC Hardships - Historical Trends</u>

The graph below illustrates the number of financial emergency hardship applications submitted by WDC participants that were approved or denied between 2004 and 2015. More than 1,900 applications were submitted during this time, with 89% (1,717) approved for an emergency distribution. Of the 172 denied applications, ETF wrote 31 Department determination letters in response to a participant's request for review. Three participants appealed ETF's decision to the Board. In 2009, the Board upheld the administrative law judge's initial decision that the Department's denial was appropriate. In late 2015 and early 2016, the Board heard two appeals. In both cases, the Board overruled the Department's determination and the administrative law judge's proposed decision and approved the emergency distribution requests.



In general, WDC participants have most often requested a hardship withdrawal in order to keep their primary residence (prevention of foreclosure or eviction). Between 2013 and 2015, the following situations were cited by participants submitting hardship applications:



<u>Discussion Points</u>

1. **Does the Board want to continue offering hardship withdrawals?**
   If yes, please move to discussion point 2.

   If the Board wants to eliminate hardship withdrawals, ETF would recommend phasing this feature out. Time will be needed to request revisions deleting this feature from the WI Administrative Code provisions governing the WDC, as well as remove it from the WDC Plan and Trust document. In addition, phasing hardship withdrawals out would allow WDC staff to complete any applications in process and conduct an informational campaign for participants regarding the removal of this feature.

   In the event hardship withdrawals are discontinued, it is highly likely that WDC participants will still seek special distributions from their accounts for various reasons. As a way to meet these requests, the Board may wish to review its decision not to permit loans from the WDC. Loans are optional features for s. 457 plans. A loan is an amount employees can borrow from their retirement plan accounts and then pay back with interest. As long as the participant repays the borrowed amount, it is not taxed and the participant's plan account balance is restored by the amount borrowed. Participants do not need to prove they are experiencing a financial hardship to get a loan.

To date, the Board has declined to permit loans from WDC accounts. The Board last reviewed this option in 2007 and determined that it was not in the best interest of participants' retirement security to be able to take loans from their WDC accounts. The 2007 Board memo indicated that loans are costly (administrators usually charge fees for applications, processing and maintenance), participants often take out a new loan when the participant pays off the original loan, and this results in reduced funding of a participant's retirement account, which reduces the likelihood that the participant will have saved enough for retirement.

2. **What look-back time frame does the Board want applied for hardship withdrawals?**
   Each hardship withdrawal request contains unique facts and circumstances specific to a participant's situation. In order for the WDC's administrator to effectively and consistently process hardship withdrawal requests, the Board should provide the administrator with clear expectations and guidance. The hardship policy approved by the Board in 2012 provides the Board's philosophy in offering hardship withdrawals along with examples of situations that may or may not have qualified for a hardship withdrawal.

   The Board's current policy is a 12 month look-back, and Department staff feel this remains appropriate. 12 months is the most common time standard used by peer plans and the time-frame used by the WDC's administrator, and appears to be an unwritten default. It is extremely unusual for expenses from events over 12 months from the date of a hardship application to be considered appropriate for a hardship withdrawal because there is no unforeseeable emergency involved. These are situations where the individual 1) had significant control or 2) could have reasonably and prudently anticipated, avoided or budgeted for the event.

   As of July 31, 2015, the WDC's administrator was processing hardship withdrawal requests for 363 s.457 plans. The 12 month look-back time frame the WDC has been using is also utilized by the other 362 plans using this same administrator. Most, but not all, state-sponsored s. 457 plans use a 12 month look-back. The State of Ohio Deferred Compensation plan does permit a 24 month look-back, but this seems to be an exception to the normal 12-month look-back period.

3. **Where should the Board's agreed-upon look-back time frame be documented?**
   If the Board adjusts the look-back time frame, it should be formalized. Options include:
   a) Updating the Plan and Trust document. The Board has full control of this document and can make changes as necessary.
   b) Revising the hardship policy document. The Board has full control of this document and can make changes as necessary.

c) Requiring the WDC administrator to include the timeframe in all hardship informational documents and forms. The Board's contract with the administrator would enable this to occur relatively quickly.
d) Requesting an administrative rule revision. This could take some time due to the lengthy process required to make changes to the Wisconsin Administrative Code.

Recommendations

The Department recommends the Board consider approving the following:

1. Revise the WDC Plan and Trust document as shown on the attached draft to include the Board's preferred look-back time frame, and delegating final review and signature approval to the Board Chair;
2. Revise the hardship policy to reflect that a 12month look-back is the plan's standard, as shown on the attached draft, and delegate final review and signature approval to the Board Chair;
3. Require the administrator to include a copy of the hardship brochure and policy with hardship withdrawal applications; and
4. Increase locations where information on the hardship look-back time frame is available (online, print publications, etc.).

Staff will be available at the Board meeting to discuss the contents of this memo and answer any questions.

Attachments

a) Proposed Revisions to WDC Plan and Trust (section 10.03 only)
b) Proposed Revisions to WDC Hardship Policy

References

a) IRC 457(b) Deferred Compensation Plans https://www.irs.gov/Retirement-Plans/IRC-457b-Deferred-Compensation-Plans: https://www.irs.gov/Retirement-Plans/IRC-457b-Deferred-Compensation-Plans
b) Internal Revenue Bulletin: T.D. 9075 2003-39: Compensation Deferred Under Eligible Deferred Compensation Plans https://www.irs.gov/irb/2003-39_IRB/ar09.html
c) IRS Unforeseeable Emergency Distributions from 457(b) Plans: https://www.irs.gov/Retirement-Plans/Employee-Plans-News-December-17-2010-Unforseeable-Emergency-Distributions-from-457b-Plans
d) Revenue Ruling 2010-27: https://www.irs.gov/irb/2010-45_IRB/ar09.html
e) IRS FAQs Regarding Hardship Distributions: https://www.irs.gov/Retirement-Plans/Retirement-Plans-FAQs-regarding-Hardship-Distributions
f) s. 40.80, Wisconsin Statutes: s. 40.80 of the Wisconsin Statutes
g) s. ETF 70.10: http://legis.wisconsin.gov/rsb/code/etf/etf070.pdf
h) WDC Plan and Trust: http://etf.wi.gov/members/wdc_plan_trust_document.pdf
i) WDC Hardship Policy: http://etf.wi.gov/boards/gov_manual_WDC/hardship.pdf
j) National Association of Government Defined Contribution Administrators (NAGDCA) publications:
   - NAGDCA Note: Unforeseeable Emergencies and Hardship Withdrawals: What Every Plan Administrator Needs to Know (2009)
   - Section 457(b) Plan Administrator's Guide to Unforeseeable Emergency Withdrawals (2007)
k) WDC Program Highlights Brochure: https://wisconsin.gwrs.com/static/Wisconsin/pdf/planhighlights.pdf

l) WDC Unforeseeable Financial Emergency Withdrawal brochure: https://www.dcprovider.com/PDF/wisconsin/WDC_UnforeseeableFinancialEmergencyWithdrawalGuide.pdf
m) WDC Unforeseeable Emergency Withdrawal Request (attached)

Attachment A

Unforeseeable Financial Emergency Hardship Withdrawal Policy

Adopted: November 6, 2012
Last Revised: ~~November 6, 2012~~draft for March 2016

The Deferred Compensation Board's Unforeseen Financial Emergency Hardship Withdrawal Policy recognizes that each Wisconsin Deferred Compensation Program (WDC) participant's unforeseeable financial emergency hardship withdrawal reflects a participant's unique situation and must be evaluated accordingly. However, the decision to either allow or deny an unforeseeable financial emergency hardship withdrawal application is subject to each Section 457 plan provider's interpretations of the rules and how they apply to individual situations. Each participant's financial emergency hardship withdrawal application must be carefully evaluated, based on the unique facts and circumstances of that participant's particular situation. The key to administering financial emergency hardships is to apply the rules and procedures for these distributions to all participants consistently.

Background: The Wisconsin Deferred Compensation Program (WDC) is required to follow the Internal Revenue Code (IRC) and Wisconsin Administrative Code Chapter ETF 70.10 (attached) when granting a financial emergency hardship withdrawal (also called an unforeseeable emergency). Regulations under Section 457(b) of the IRC define an unforeseeable emergency as follows:

> **IRC Section 1.457-6 (c)**
> (2) Requirements – (i) Unforeseeable emergency defined. An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in Section 152(a)); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent (as defined in Section 152(a)) may also constitute an unforeseeable emergency. Except as otherwise specifically provided in this paragraph (c)(2)(i), the purchase of a home and the payment of college tuition are not unforeseeable emergencies under this paragraph (c)(2)(i).
>
> (ii) Unforeseeable emergency distribution standard. Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under this paragraph (c) is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not by itself cause severe financial hardship, or by cessation of deferrals under the plan.

(iii) Distribution necessary to satisfy emergency need. Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

To date, there has been very limited additional federal guidance regarding what constitutes an unforeseen financial emergency. In particular, no substantial guidance exists to define what is meant by the terms “severe” or “unforeseeable”. Revenue Ruling 2010-27 from the Internal Revenue Service (IRS) lists just three examples of participant requests for unforeseen financial emergency distributions and the IRS’ decision on each:

1. **“[To] repair significant water damage to the participant’s principal residence not covered by insurance** - the distribution is allowable because the damage to the participant’s primary residence is an extraordinary and unforeseeable circumstance and is substantially similar to the need to pay for damage to a home from a natural disaster.
2. **[To] pay funeral expenses of the participant’s non-dependent adult son [or daughter]** - the distribution is allowable because it is for an extraordinary and unforeseeable circumstance and is substantially similar to the need to pay for funeral expenses of a dependent.
3. **[To] pay credit card debt** - the distribution is **not allowable** because it is not due to an extraordinary and unforeseeable circumstance or the result of events beyond the participant’s control.”[1]

As noted in by the National Association of Government Defined Contribution Administrators (NAGDCA) documents on financial emergency hardship distribution requests, because there is no definitive list, plan administrators “have been left with what amounts to a subjective facts and circumstances test for adjudicating unforeseeable emergency withdrawal requests”.

The Board has determined that, *in general,* expenses from events exceeding twelve (12) months prior to the date of a hardship application may not *by themselves* be considered appropriate for a hardship withdrawal because there is no unforeseeable emergency involved. These are situations where the individual 1) had significant control or 2) could have reasonably and prudently anticipated, avoided or budgeted for the event.

Commented [SS1]: Insert time period per Board direction.

The following list of hardship situations is not meant to be all inclusive; rather, it is a sampling of situations that have been presented as financial emergencies in the past.

Selected WDC Financial Emergency Hardship Situations		
Situation	**Appropriate for a Hardship Withdrawal?**	**Decision Notes**
Furloughs	Yes, depending on the duration	Distributions may be allowed for furloughs experienced within the last twelve months, depending on each individual’s circumstances.

Commented [SS2]: Insert time period per Board direction.

[1] http://www.irs.gov/irb/2010-45_IRB/ar09.html last accessed on November 5, 2012

Selected WDC Financial Emergency Hardship Situations		
Situation	**Appropriate for a Hardship Withdrawal?**	**Decision Notes**
		Applications for distributions citing furlough as the only reason for a request where the furlough has occurred for more than twenty four months will not be considered appropriate for a hardship withdrawal.
Partner/spouse loss of income due to involuntary termination	Yes	A distribution may be allowed if the participant can document that the job loss was the result of an involuntary termination (layoff, etc.) and it was within the last twelve months.
Loss of income due to spousal/partner abandonment	Yes	A distribution may be allowed if a participant can document the loss of income from the abandonment within the last twelve months via a copy of an income tax form or paycheck stub **and** the couple is still married on the date of the application for a distribution. Note: divorcing participants may split a WDC account via a Domestic Relations Order.
Loss of income due to increase in employee-paid share of Wisconsin Retirement System (WRS) pension contributions	No	A distribution is not allowable because WRS pension contributions are not truly "lost" income; the income is invested for the participant's future retirement via the WRS.
Loss of income due to increase in employee-paid share of group health insurance premiums	No	A distribution is not allowable because insurance premium increases are not due to extraordinary and unforeseeable circumstances.
Loss of income due to a divorce	No	A distribution is not allowable; divorce is neither extraordinary nor unforeseeable. In addition, divorcing participants may split a WDC account via a Domestic Relations Order.

Commented [SS3]: Insert time period per Board direction.

Commented [SS4]: Insert time period per Board direction.

Selected WDC Financial Emergency Hardship Situations		
Situation	**Appropriate for a Hardship Withdrawal?**	**Decision Notes**
Loss of business income due to economic changes	No	A distribution is not allowable because typically this is not the participant's primary source of income, and business income losses may be relieved through other means (e.g. commercial sources).

Attachments

1. Ch. ETF 70.10: http://legis.wisconsin.gov/rsb/code/etf/etf070.pdf
2. National Association of Government Defined Contribution Administrators (NAGDCA):
    a. NAGDCA Note: Unforeseeable Emergencies and Hardship Withdrawals: What Every Plan Administrator Needs to Know (2009) http://nagdca.org/Publications/NAGDCA-Notes/ArtMID/5428/ArticleID/212/NAGDCA-Note-Unforeseeable-Emergencies-and-Hardship-Withdrawals--What-Every-Plan-Administrator-Needs-to-Know
    b. Section 457(b) Plan Administrator's Guide to Unforeseeable Emergency Withdrawals (2007) http://nagdca.org/dnn/Portals/45/Publications/Issues/unforeseeableEmergency.pdf
    ~~a. http://www.nagdca.org/content.cfm/id/nagdcanote20091118 (2009)~~
    ~~b. http://www.nagdca.org/content.cfm/id/content.cfm/id/hardship_distributions (2008)~~
    ~~c. http://www.nagdca.org/content.cfm/id/unforeseeable_emergency_withdrawals (2007)~~

Attachment B

Plan and Trust Document Proposed Revisions to Article 10.03: Hardship Withdrawal
Draft for March 2016 Board discussion

10.03 Hardship Withdrawal: Notwithstanding any other provisions herein, in the event of an UNFORESEEABLE EMERGENCY, a PARTICIPANT or BENEFICIARY may request that benefits be paid to him or her at any time. Such request shall be filed in accordance with procedures established pursuant to this PLAN. If the application for payment is approved by the TRUSTEE or its designee, payments shall be effected within ten (10) working days of receipt of such approval. The decision whether a PARTICIPANT or BENEFICIARY is faced with an UNFORSEEABLE EMERGENCY will be based upon the relevant facts and circumstances of each case and in accordance with the terms of the PLAN and 26 CFR §1.457-6(c)(2). Benefits to be paid shall be limited strictly to the amount necessary to meet the UNFORESEEABLE EMERGENCY constituting financial hardship, and may include any amounts necessary to pay for any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution, to the extent such UNFORESEEABLE EMERGENCY is not relieved:

a. by reimbursement or compensation from insurance or otherwise;

b. by liquidation of the PARTICIPANT'S assets, to the extent the liquidation of such assets would not itself cause financial hardship; or

c. by cessation of deferrals under the PLAN.

A PARTICIPANT'S deferrals will automatically be terminated upon approval of a hardship application and the PARTICIPANT cannot re-enroll in the PLAN for 180 days from the date of approval of the hardship withdrawal. The ADMINISTRATOR may require such medical, financial or other evidence deemed appropriate for a determination to be made concerning the PARTICIPANT'S or BENEFICIARY'S withdrawal request.

Expenses from events exceeding twelve (12) months prior to the date of a hardship application may not *by themselves* be considered appropriate for a hardship withdrawal because there is no unforeseeable emergency involved. These are situations where the individual 1) had significant control or 2) could have reasonably and prudently anticipated, avoided or budgeted for the event.

Commented [A1]: Insert time period per Board direction.

Foreseeable personal expenditures normally budgetable, such as a down payment on a home, the purchase of an automobile, college or other educational expenses, etc., may not necessarily constitute an UNFORESEEABLE EMERGENCY. The decision of the TRUSTEE or its designee concerning the payment of benefits under this Section shall be appealable under Wisconsin Statutes Sections 40.80(2g) and 40.08 (12).

10.04 De Minimus Distributions: Notwithstanding any other provision of the PLAN, if the PARTICIPANT has not deferred any amount for a two (2) year period, a PARTICIPANT may …