Unforeseeable Financial Emergency Hardship Withdrawal Policy

Adopted: November 6, 2012
Last Revised: November 1, 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 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).
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> (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.
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> (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 or loss of income related to 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. Participants with situations created by events extending twelve months prior to the date of an emergency withdrawal application must be prepared to submit additional documentation explaining how their situation qualifies as a financial emergency.

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.

[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 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. Note: WDC participants may divide their WDC accounts via an Order to Divide WDC Program Account, ET-2367. This document is available on both the ETF website, etf.wi.gov, and the WDC website, www.wdc457.org.
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).

References

1. Wis. Admin. Code ETF s. 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) accessible at

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) accessible at http://nagdca.org/dnn/Portals/45/Publications/Issues/unforeseeableEmergency.pdf