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Hardship Withdrawals from 401(k), 403(b) and 457(b) Plans

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Agenda

- Hardship distributions from 401(k) plans
 - Restrictions on distributions from 401(k) deferral accounts
 - Distributions from employer contribution accounts, QNEC accounts, matching contribution accounts, QMAC accounts and safe harbor contribution accounts
 - Permissible hardship distribution expenses
 - Required substantiation/documentation for hardship distributions
 - Plan design options
- Hardship distributions from 403(b) plans
 - Similarities and differences from the 401(k) hardship distribution rules
 - The different hardship distribution rules applicable to 403(b) annuity contracts, 403(b) custodial accounts and retirement income accounts
- Unforeseeable emergency distributions from 457(b) plans



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Permissible Distribution Events from 401(k) Plans

- Distribution of elective deferrals
 - Severance of employment
 - Death
 - Disability
 - Age 59½
 - **Hardship***
 - Before plan years beginning after December 31, 2018, plan may not include earnings on deferrals (except may include earnings credited as of December 31, 1988 (or end of last plan year ending before July 1, 1989))
 - Deemed severance for military leave
 - Plan termination
 - Permissible withdrawal under EACA

*Bipartisan Budget Act of 2018 and IRS proposed regulations revised the rules for hardship distributions from elective deferral accounts



Requirements for Hardship Distributions from Elective Deferral Accounts

- Two requirements for a hardship distribution
 - Must be on account of immediate and heavy financial need, and
 - Must not exceed the amount necessary to satisfy the financial need
- Condition #1 - Immediate and heavy financial need
 - Certain “safe harbor” expenses deemed to be on account of immediate and heavy financial need
 - Safe harbor expenses expanded under IRS proposed regulations
 - Non-safe harbor expenses acceptable if clearly delineated in the plan and if they do not favor highly compensated employees
- Condition #2 - Amount necessary to satisfy the financial need
 - Uniform standard replaces choice of facts and circumstances test and the safe harbor standard



Safe Harbor List of Hardship Expenses

- Proposed regulations revise the list of safe harbor hardship expenses that are “deemed” to be on account of an immediate and heavy financial need (Condition #1)
 - Adding “primary beneficiary under the plan” as an individual for whom qualifying medical, educational, and funeral expenses may be incurred
 - Modifying the expense event relating to damage to a principal residence that would qualify for a casualty deduction under Code §165
 - New limitations in Code §165(h)(5) do not apply
 - Plan may retroactively apply the regulatory casualty loss standard for 2018
 - Adding a new type of expense to the list, relating to expenses incurred as a result of certain disasters
 - Plan may retroactively apply the new disaster event for 2018



Safe Harbor List of Hardship Expenses

- Purchase of participant’s principal residence
- To prevent eviction from or foreclosure on participant’s principal residence
- Medical expenses of the employee, spouse, dependent or primary beneficiary
- Post-secondary tuition, room and board and related expenses for employee, spouse, children, dependents or primary beneficiary
- Funeral expenses for deceased parent, spouse, child, dependent or primary beneficiary
- Casualty loss (Code §165) to participant’s principal residence
- Disaster-related expenses and losses incurred by participant



Substantiation of Hardship Distribution

- Regulations do not include any guidelines on how a plan should substantiate a hardship distribution request
 - IRS view is that plan must have sufficient information to adjudicate a claim
- IRS April 2015 Newsletter
 - Plan sponsors should obtain and keep hardship distribution records
 - Failing to have these records available for examination is a qualification failure that should be corrected using the Employee Plans Compliance Resolution System (EPCRS)
 - Records may be in paper or electronic format and should include:
 - Documentation of the hardship request, review and approval
 - Financial information and documentation that substantiates the employee's immediate and heavy financial need
 - Documentation to support that the hardship distribution was properly made according to applicable plan provisions and the Internal Revenue Code
 - Proof of the actual distribution made and related Forms 1099-R



Substantiation of Hardship Distribution

- IRS memorandum on Safe-Harbor Hardship Distributions from 401(k) Plans (February 23, 2017)
 - Field directive to IRS examiners
 - Addresses whether a hardship distribution is “deemed to be on account of an immediate and heavy financial need” (Condition #1) under the safe harbor expenses
 - Memo provides a method for using certification and document retention by participants
 - If certain requirements satisfied, plan treated as meeting hardship substantiation requirements without obtaining and retaining source documents



Substantiation of Hardship Distribution

- Participant must receive notice of hardship rules
- Plan must receive from the participant a summary of information contained in the source documents
- Employer must have access to data on hardship withdrawals
- No more than two hardship distributions in a year
- Examiner may still audit source documents



Substantiation of Hardship Distribution

- Notifications that the employer/administrator must provide to the employee
 - The hardship distribution is taxable and additional taxes could apply
 - The amount of the distribution cannot exceed the immediate and heavy financial need (Condition #2)
 - The recipient agrees to preserve source documents and to make them available at any time, upon request, to the employer or administrator
- General information for all hardship requests
 - Participant's name
 - Total cost of the event causing hardship (for example, total cost of medical care, total cost of funeral/burial expenses, payment needed to avoid foreclosure or eviction)
 - Amount of distribution requested
 - Certification by the participant that the information provided is true and accurate



Safe Harbor List of Hardship Expenses

- Purchase of participant's principal residence
 - Costs directly related to the purchase (excluding mortgage payments) of principal residence of the participant
 - Not for a rental property
 - Not for refinancing a mortgage loan
 - Does not include spouse, children, dependents or primary beneficiary
 - "Principal residence"
 - Regulations do not define
 - Code §121 and associated regulations provide a definition of principal residence
 - A home purchased by the employee, but which will be used only as a primary residence by the employee's spouse and children and not the employee, would not satisfy this definition
 - If, following a divorce, a participant buys out the ex-spouse's interest in the principal residence, that would qualify as a purchase of the principal residence for purposes of the hardship definition



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Safe Harbor List of Hardship Expenses

- Purchase of participant's principal residence
 - Substantiation
 - Will this be the participant's principal residence?
 - Address of the residence
 - Purchase price of the principal residence
 - Types of costs and expenses covered (down-payment, closing costs and/or title fees)
 - Name and address of the lender
 - Date of the purchase/sale agreement
 - Expected date of closing



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Safe Harbor List of Hardship Expenses

- To prevent eviction from or foreclosure on participant's principal residence
 - Must be principal residence (single family home, condo, townhouse, apartment, etc.) of the participant
 - Does not include spouse, children, dependents or primary beneficiary
 - Substantiation
 - Is this the participant's principal residence?
 - Address of the residence
 - Type of event (foreclosure or eviction)
 - Name and address of the party that issued the foreclosure or eviction notice
 - Date of the notice of foreclosure or eviction
 - Due date of the payment to avoid foreclosure or eviction



Safe Harbor List of Hardship Expenses

- Medical expenses of the employee, spouse, dependent or primary beneficiary
 - Medical expenses defined under Code §213(d)
 - Definition of dependent under Code §152 (with modifications)
 - Definition of primary beneficiary - an individual who is named as a beneficiary under the plan (whether by participant designation or plan provision) and has an unconditional right to all or a portion of the participant's account balance upon the participant's death
 - Hardship has to be incurred at the time the individual is a primary beneficiary
 - A participant could name multiple beneficiaries so that hardship expenses could be covered for more than one person
 - Contingent beneficiaries would not qualify



Safe Harbor List of Hardship Expenses

- Medical expenses of the employee, spouse, dependent or primary beneficiary
 - Substantiation
 - Who incurred the medical expenses (name)?
 - What is the relationship to the participant (self, spouse, dependent, or primary beneficiary under the plan)?
 - What was the purpose of the medical care (not the actual condition but the general category of expense; for example, diagnosis, treatment, prevention, associated transportation, long-term care)?
 - Name and address of the service provider (hospital, doctor/dentist/chiropractor/other, pharmacy)
 - Amount of medical expenses not covered by insurance



Safe Harbor List of Hardship Expenses

- Post-secondary tuition, room and board and related expenses for employee, spouse, children, dependents or primary beneficiary
 - Substantiation
 - Who are the educational payments for (name)?
 - What is the relationship to the participant (self, spouse, child, dependent, or primary beneficiary under the plan)?
 - Name and address of the educational institution
 - Categories of educational payments involved (post-high school tuition, related fees, room and board)
 - Period covered by the educational payments (beginning/end dates of up to 12 months)



Safe Harbor List of Hardship Expenses

- Funeral expenses for deceased parent, spouse, child, dependent or primary beneficiary
 - Substantiation
 - Name of the deceased
 - Relationship to the participant (parent, spouse, child, dependent, or primary beneficiary under the plan)
 - Date of death
 - Name and address of the service provider (cemetery, funeral home, etc.)



Safe Harbor List of Hardship Expenses

- Casualty loss (Code §165) to participant's principal residence
 - Personal casualty losses - Car accidents, earthquakes, fires, floods, mine cave-in, shipwrecks, sonic booms, storms, terrorist attacks, vandalism, volcanic eruptions (Pub 547)
 - Determined without regard to whether the loss exceeds 10% of adjusted gross income
 - Determined without regard to Code §165(h) that requires that loss be attributable to a federally-declared disaster
 - Plan may retroactively apply the regulatory casualty loss standard for 2018



Safe Harbor List of Hardship Expenses

- Casualty loss (Code §165) to participant's principal residence
 - Substantiation
 - Is this the participant's principal residence?
 - Address of the residence that sustained damage
 - Briefly describe the cause of the casualty loss (fire, flooding, type of weather-related damage, etc.), including the date of the casualty loss
 - Briefly describe the repairs, including the date(s) of repair (in process or completed)



Safe Harbor List of Hardship Expenses

- Disaster-related expenses and losses incurred by participant
 - Allows hardship distributions for expenses and losses (including loss of income) incurred by the participant on account of a disaster declared by FEMA
 - In order for this event to apply, the participant's principal residence or principal place of employment at the time of the disaster would have to be located in an area designated by FEMA for individual assistance with respect to the disaster
 - No longer need to wait for IRS announcement or to adopt an interim amendment



Distribution Necessary to Satisfy Financial Need

- Two requirements for a hardship distribution
 - Must be on account of immediate and heavy financial need, and
 - **Must not exceed the amount necessary to satisfy the financial need (Condition #2)**
- Proposed regulations eliminate any requirement that an employee be prohibited from making elective deferrals and after-tax employee contributions after receipt of a hardship distribution and eliminate the 6-month suspension requirement
 - No plan (safe harbor or not) may impose a suspension period on any hardship distributions taken on or after January 1, 2020
 - Generally, this rule is effective for the 2019 plan year, meaning plans can immediately eliminate the 6-month suspension requirement
 - However, the plans may wait until January 1, 2020 to comply with this requirement
 - With respect to participants who received a hardship distribution during the 2018 plan year, the plan could either continue to apply the current suspension or eliminate it as of the beginning of the 2019 plan year
 - A plan amendment (we believe) will need to reflect operational decisions



Distribution Necessary to Satisfy Financial Need

- Proposed regulations revise the rules for determining whether a distribution is necessary to satisfy an immediate and heavy financial need by eliminating any requirement to take plan loans prior to obtaining a hardship distribution
 - Effective for plan years beginning after December 31, 2018
 - Plans may still require that a participant take available loans before hardship distribution as a condition for receiving a hardship distribution



Facts and Circumstances - Financial Need

- Elimination of current rules relating to the determination of whether a distribution is necessary to satisfy a financial need that is based on all the relevant facts and circumstances or safe harbor approach, generally effective for plan years beginning after December 31, 2018
- One general standard for determining whether a distribution is necessary
 - A hardship distribution may not exceed the amount of an employee's need (including any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution),
 - The employee must have obtained other available distributions under the employer's plans, and
 - The employee must represent that he or she has insufficient cash or other liquid assets to satisfy the financial need
 - A plan administrator may rely on such a representation unless the plan administrator has "actual knowledge" to the contrary
 - Plans can wait to apply the self-certification standard to distributions made after December 31, 2019



Permissible Distribution Events from 401(k) Plans

- Employer contributions (other than QNECs, QMACs and safe harbor contributions*) and matching contributions
 - Attainment of a specific age
 - Any other stated event such as:
 - **Hardship**
 - Severance of employment
 - Death
 - Disability
 - Termination of plan

* Bipartisan Budget Act of 2018 and IRS proposed regulations revised the rules for hardship distributions from QNEC, QMAC and safe harbor contribution accounts



Expansion of Sources for Hardship Distributions

- Bipartisan Budget Act of 2018 and IRS proposed regulations revise the hardship distribution rules
- Hardship distributions are permitted from QNECs, QMACs, and earnings on these amounts, regardless of when contributed or earned
 - Effective for plan years beginning after December 31, 2018
- Safe harbor plans (including QACAs) also may make hardship distributions from safe harbor contribution sources
- Allowing hardship distributions from these sources is discretionary and a plan may restrict access to any particular source



Outstanding Issues – Proposed Regulations

- Immediately provide reliance on proposed regulations (resolved)
- Clarify ability to limit safe harbor hardship distribution expenses
- Clarify that plans may impose additional conditions on receiving hardship distributions
- Specify a reasonable amendment deadline for pre-approved and governmental plans
- Clarify 403(b) plan and contract amendment rules
- Clarify meaning of “actual knowledge”
- Allow 6-month suspension of elective deferrals to avoid leakage
- Impact on hardship distribution “substantiation guidelines”



Implementation of Proposed Regulations Changes

- Rules generally are operationally effective for plan years beginning after December 31, 2018, but different applicability dates apply
- Administrative systems must be able to handle operational decisions
- Service providers must discuss new rules with plan sponsors



Implementation of Proposed Regulations Changes

- Document providers should document plan sponsor's operational decisions (including effective date of changes)
 - Hardship Distribution Operational Checklist is helpful
- Plan sponsors should communicate changes to plan participants
- Pre-approved plan providers will need to adopt an interim amendment
 - Timing questions are outstanding
 - Format of interim amendment
 - Employer selections
- Plan sponsor discretionary amendment must conform to operation



Plan Amendments

- Plan amendments reflecting the proposed regulations will be necessary, but preamble only discusses the timing of the amendments for individually designed plans (i.e., amendment timing ties to Required Amendments List)
- Pre-approved plans are subject to the interim amendment requirements under the IRS procedures
- Employers will need to make operational decisions to implement changes prior to adopting a plan amendment
- Plans will need to conform the plan amendments to their operation
 - A Hardship Distribution Operational Checklist is helpful in this regard



Plan Document Requirements

- Hardship distributions must be authorized under the plan document
- Different hardship distribution options available for elective deferral accounts, matching contribution accounts, employer contribution accounts, safe harbor contribution accounts, rollover accounts, and after-tax contribution accounts
- Plan should designate (or provide for outside procedures to designate) the hierarchy of the hardship distribution sources



Plan Design Options

10-1 AVAILABILITY OF IN-SERVICE DISTRIBUTIONS. A Participant may withdraw all or any portion of his/her vested Account Balance, to the extent designated, upon the occurrence of any of the event(s) selected under this AA §10-1. If more than one option is selected for a particular contribution source under this AA §10-1, a Participant may take an in-service distribution upon the occurrence of any of the selected events, unless designated otherwise under this AA §10-1.

Deferral	Match	ER	
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(a) No in-service distributions are permitted.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(b) Attainment of age 59½.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(c) Attainment of age _____.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(d) A Hardship that satisfies the safe harbor rules under Section 8.10(e)(1) of the Plan. [<i>Note: Not applicable to QNECs, QMACs, or Safe Harbor Contributions.</i>]
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(e) A non-safe harbor Hardship described in Section 8.10(e)(2) of the Plan. [<i>Note: Not applicable to QNECs, QMACs, or Safe Harbor Contributions.</i>]
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(f) Attainment of Normal Retirement Age.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(g) Attainment of Early Retirement Age.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(h) The Participant has participated in the Plan for at least _____ (cannot be less than 60) months.
N/A	<input type="checkbox"/>	<input type="checkbox"/>	(i) The amounts being withdrawn have been held in the Trust for at least two years.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(j) Upon a Participant becoming Disabled (as defined in AA §9-4(b)).
<input type="checkbox"/>	N/A	N/A	(k) As a Qualified Reservist Distribution as defined under Section 8.10(d) of the Plan.
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	(l) Describe: _____



Plan Design Options

10-3 SPECIAL DISTRIBUTION RULES. No special distribution rules apply, unless specifically provided under this AA §10-3.

- ☐ (a) In-service distributions will only be permitted if the Participant is 100% vested in the source from which the withdrawal is taken.
- ☐ (b) A Participant may take no more than _____ in-service distribution(s) in a Plan Year.
- ☐ (c) A Participant may not take an in-service distribution of less than \$ _____.
- ☐ (d) A Participant may not take an in-service distribution of more than \$ _____.
- ☐ (e) Unless elected otherwise under this subsection, the hardship distribution provisions of the Plan are not expanded to cover primary beneficiaries as set forth in Section 8.10(e)(5) of the Plan. If this subsection is checked, the hardship provisions of the Plan will apply with respect to individuals named as primary beneficiaries under the Plan.
- ☐ (f) In determining whether a Participant has an immediate and heavy financial need for purposes of applying the non-safe harbor Hardship provisions under Section 8.10(e)(2) of the Plan, the following modifications are made to the permissible events listed under Section 8.10(e)(1)(i) of the Plan: _____
[Note: This subsection may only be used to the extent a non-safe harbor Hardship distribution is authorized under AA §10-1 or AA §10-2.]
- ☐ (g) Other distribution rules: _____
[Note: Any other distribution rules described in this subsection may not discriminate in favor of Highly Compensated Employees. This subsection may be used to apply the limitations under this AA §10-3 only to specific in-service distribution options (e.g., hardship distributions).]



Plan Design Options

(a) **Source accounts (not including earnings).** For Plan Years beginning after December 31, 2018 (or such later date specified under (a)(10) below), a Participant may take an in-service distribution upon the occurrence of a Hardship that satisfies the hardship distribution rules under Proposed Treas. Reg. §1.401(k) issued November 9, 2018 with respect to the following sources:

- ☐ (1) No change to current Plan sources available for hardship distributions under AA §§10-1 and 10-2.
- ☐ (2) Pre-Tax Salary Deferral Account
- ☐ (3) Roth Deferral Account
- ☐ (4) Qualified Nonelective Contribution (QNEC) Account
- ☐ (5) Qualified Matching Contribution (QMAC) Account
- ☐ (6) Safe Harbor Employer Contribution Account
- ☐ (7) Safe Harbor Matching Contribution Account
- ☐ (8) QACA Safe Harbor Employer Contribution Account
- ☐ (9) QACA Safe Harbor Matching Contribution Account
- ☐ (10) Describe the effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: _____

(b) **Earnings on source accounts.** For Plan Years beginning after December 31, 2018 (or such later date specified under (b)(10) below), amounts available for Hardship distributions will include earnings on the following available sources:

- ☐ (1) Amounts available for hardship will include earnings on all available sources (this election does not apply to hardship distributions applicable to elective deferral amounts from a 403(b) plan)
- ☐ (2) No change to current Plan rule (i.e., earnings will not be available on Salary Deferrals, except for those on grandfathered (pre-1989) earnings, if applicable).
- ☐ (3) Pre-Tax Salary Deferral Account
- ☐ (4) Roth Deferral Account
- ☐ (5) Qualified Nonelective Contribution (QNEC) Account
- ☐ (6) Qualified Matching Contribution (QMAC) Account
- ☐ (7) Safe Harbor Employer Contribution Account
- ☐ (8) Safe Harbor Matching Contribution Account
- ☐ (9) QACA Safe Harbor Employer Contribution Account
- ☐ (10) QACA Safe Harbor Matching Contribution Account
- ☐ (11) Describe the effective date (if later than the beginning of the Plan Year beginning after December 31, 2018) for which the election(s) above apply: _____



Hardship Distributions Not Protected Option

- A profit sharing plan (whether or not a 401(k) plan) may amend or eliminate a hardship distribution option or may modify the conditions for a hardship distribution without violating the anti-cutback rules of Code §411(d)(6)
- A plan may eliminate a hardship distribution option on account balances transferred as part of a plan merger
 - Allows plans to conform hardship distribution programs
- This exception to the protected benefit rule encourages employers to implement hardship distributions without the concern that they cannot eliminate the options later
 - However, can create employee relations problem if eliminated
- Impact of rule on implementation of revised hardship distribution rules



Taxation of Hardship Distributions

- Hardship distributions are subject to income taxes (unless they consist of Roth contributions)
 - Generally subject to 10% additional tax on early distributions
- Hardship distributions cannot be rollover or paid back to the plan
- Voluntary withholding applies
 - 10% withholding applies, unless employee elects different withholding rate



Improper Hardship Distributions

- What are the most common hardship distribution errors found during plan audits?
 - Plan did not permit hardship distributions, but made them anyway
 - Hardship distributions did not follow the plan document's specific hardship criteria or restrictions
- Corrective actions under EPCRS
 - If plan document did not allow, retroactively amend plan
 - SCP is available as operational error
 - If distribution did not meet document requirements for hardship distribution, repayment to plan



Restrictions on Distributions – 403(b) Plans

- Restrictions on distributions
 - Elective deferrals (all 403(b) plans)
 - Severance from employment
 - Death
 - **Hardship**
 - Disability
 - Attainment of age 59 ½
 - Annuity contracts (Code §403(b)(1)) and retirement income accounts (Code §403(b)(9)) – amounts other than elective deferrals
 - Severance from employment
 - Upon occurrence of any specified event, including **hardship**



Restrictions on Distributions – 403(b) Plans

- Restrictions on distributions
 - Custodial accounts – amounts other than elective deferrals
 - Severance from employment
 - Death
 - Disability
 - Attainment of age 59 ½
 - **Hardship** distributions are not allowed from custodial accounts for amounts other than elective deferrals



Hardship Distributions – 403(b) Plans

- Rules set forth under Treas. Reg. §1.403(b)-6
 - A hardship distribution has the same meaning as a distribution on account of hardship under §1.401(k)-1(d)(3) and is subject to the rules and restrictions set forth in §1.401(k)-1(d)(3) (including limiting the amount of a distribution in the case of hardship to the amount necessary to satisfy the hardship)
 - Rules that are the same as for 401(k) plans
 - Plan document requirement
 - Hardship distribution is not protected benefit option
 - Taxation of hardship distribution
 - Ability to use EPCRS for corrections



Proposed Regulations - 403(b) Plans

- Proposed hardship distribution regulations GENERALLY apply to 403(b) plans
- However, the statutory requirement that 403(b) plans may not distribute earnings on elective deferrals, as required under Code §403(b)(11), continues to apply
- Preamble confirms that the ability for 403(b) plans to make hardship distributions from the QNEC, QMAC and safe harbor plan sources is limited to annuity contracts under Code §403(b)(1) and does not apply to custodial accounts under Code §403(b)(7)
 - Hardship is not a permissible distribution event for amounts in 403(b) custodial accounts, except for elective deferrals (not including earnings)



Proposed Regulations - 403(b) Plans

- 403(b) plan amendments
 - Rules for 403(b) plan interim amendments are unclear
 - Best approach - pre-approved 403(b) plan providers and their adopting employers should adopt interim amendments at the same time as 401(k) plan providers and adopting employers adopt interim amendments
 - Use Hardship Distribution Operational Checklist
 - Remember impact of regulations on 403(b) plans is not exactly the same as the impact on 401(k) plans



Distribution Restrictions – 457(b) Plans

- Severance from employment
 - Employee dies, retires or otherwise has a severance from employment
- Attainment of age 70½
- Unforeseeable emergency
 - Not the same as “hardship” distributions under Code §401(k)



Unforeseeable Emergency

- A 457(b) plan must specify that distributions on account of unforeseeable emergency are permitted and the plan must define an unforeseeable emergency as a severe financial hardship resulting from any of the following:
 - an illness or accident of the participant or beneficiary, or the participant's or beneficiary's spouse or dependent
 - 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
- A participant's beneficiary may be treated in the same manner as the participant's spouse or dependent for purposes of determining whether the participant has an unforeseeable emergency



Unforeseeable Emergency

- “Similar extraordinary and unforeseeable” circumstances
 - The imminent foreclose of or eviction from a primary residence,
 - The need to pay for medical expenses (including non-refundable deductibles or costs for prescription drug medication), or
 - Funeral expenses of a spouse or dependent
 - Generally, not for payments for college tuition or for a home
- Examples provided by IRS of other unforeseeable circumstances
 - Costs of repairing the participant's principal residence due to significant water damages from a water leak discovered in the participant's basement
 - Funeral expenses for the participant's adult son (who is not a dependent)
 - A distribution to pay the participant's accumulated credit card debt, which is not due to any events that are extraordinary and unforeseeable circumstances arising as a result of events beyond the participant's control, would not be payable under the unforeseeable emergencies exception



Unforeseeable Emergency

- Distribution on account of an unforeseeable emergency is not permitted to the extent the emergency is or may be relieved:
 - through reimbursement or compensation from insurance or otherwise,
 - by liquidation of the participant's assets (unless such liquidation would cause severe financial hardship), or
 - by cessation of deferrals under the plan
- The amount distributed may include the amount reasonably necessary to satisfy the need, including Federal, State or local income taxes or penalties reasonably anticipated to result from the distribution



Thank you for attending!

