



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Instructions to Participants**

- Withdrawals from the 457 Deferred Compensation Plan due to financial hardship of an unforeseeable nature are allowed on a very limited basis, and only if the application and supporting documentation demonstrate that the request meets Plan and IRS regulations.
- An unforeseeable emergency includes the following:
 - (i) A sudden and unexpected illness or accident involving you, your spouse or dependents. (Non-routine, un-reimbursed medical expenses etc.)
 - (ii) The loss of property due to casualty. (Fire, flood, storm damage etc.)
 - (iii) Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond your control. (Un-reimbursed funeral expenses of IRS dependents etc.)
- **Events that will not qualify as Unforeseeable Emergencies:** home purchase or renovation; car purchase or repairs not due to casualty; payment of tuition and related educational fees; regular monthly expenses; Federal, state or local income or property tax assessments, penalties or interest; divorce.
- The distribution will not be permitted if the financial hardship can be relieved by reimbursement or compensation by insurance, liquidation of your assets, or ceasing deferrals to the Plan.
- If your account balance is greater than \$500, you must have a request for at least \$500. Otherwise, the request must be for your full account balance.
- The distribution amount can not exceed the amount necessary to meet the emergency.
- You must provide our office with supporting documentation for the amount you are requesting. **If incomplete information/documentation is provided, this application WILL NOT be approved.**
- If your distribution is approved, you will not be able to make deferrals to your GEBCorp 457 Account for six (6) months following the date of the distribution. You may start deferring to your account after six months but your jurisdiction's payroll department must be notified.
- All completed Unforeseeable Emergency Distribution Request Forms, supporting documentation and Form W-4P's should be forwarded to the following:

GEBCorp
1100 Circle 75 Parkway, Suite 300
Atlanta, Georgia 30339
Attn: Administration
Fax: (770) 563-9356

- If you have any questions regarding Unforeseeable Emergency Distributions from your ACCG 457 Deferred Compensation Plan, please feel free to call your plan representative or Client Services (800) 736-7166.



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Application Form (Part 1)**

Participant Name: _____

Social Security No.: _____ E-Mail: _____

Mailing Address: _____

Employer: _____

Date of Birth: _____

Home Phone: _____ Work Phone: _____

A. Reason for Withdrawal. The withdrawal amount you request must be for a severe financial hardship. Indicate below the type of hardship you are experiencing (check one):

- A sudden and unexpected illness or accident involving you, your spouse, or your dependent
- The loss of property due to a casualty or unforeseeable event
- Another similar extraordinary and unforeseeable circumstance arising as a result of events beyond your control

Examples of the above may be the following:

- An unexpected illness or accident resulting in medical expenses that are not covered by insurance. (Non-routine, un-reimbursed medical expenses etc.)
- Damage to your home or other property resulting from a casualty that is not covered by insurance. (Fire, flood, storm damage etc.)
- Funeral expenses for which you are responsible. (Un-reimbursed funeral expenses of IRS dependents etc.)

Examples of what is **Not** considered an unforeseeable are the following:

- Payment of tuition and related educational fees
- Normal monthly expenses
- Home or auto maintenance
- Purchase of a home or car

Please describe the unforeseeable emergency that you are experiencing:



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Application Form (Part 2)**

B. Amount of Distribution. Your distribution cannot exceed the amount necessary to resolve the emergency. You must not be able to relieve the financial hardship by any other reasonable source. A distribution is not considered necessary if the emergency can be relieved through (i) reimbursement or compensation by insurance, (ii) liquidation of assets without causing an additional hardship or (iii) by ceasing deferrals under this Plan.

The minimum amount you can withdraw is \$500. If your account is less than \$500 you must withdraw 100% of your account.

Please indicate the amount you need to withdraw from the Plan: \$_____

C. Supporting Documentation. In order to process your request for an Unforeseeable Emergency, we will require supporting documentation for the withdrawal amount you are requesting.

Your Distribution Will Not Be Processed If Our Office Does Not Receive Documentation Supporting The Amount That You Are Requesting.

D. Form W-4P. An Unforeseeable Emergency Distribution from a 457 is not eligible to be rolled over into an Individual Retirement Account (IRA) or any other plan. Since the distribution is not eligible to be rolled over, you must complete a Form W-4P to indicate the withholding you wish to occur at the time of distribution. If you do not want any taxes withheld on your distribution, you will need to check Box 1 on the attached form. **If you do not return a signed Form W-4P with your distribution request, 10% Federal income tax will be withheld.** Your distribution is based on the Internal Revenue Service Regulations currently in effect. We advise you to consult your plan representative or tax advisor prior to taking any distribution from the Plan.

I certify that I have received a copy of the Instructions To Participants and have read and understand the above-mentioned requirements for taking a distribution due to an Unforeseeable Emergency.

Signature: _____ Date: _____
(Participant)



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Application Form (Part 3)**

******* To Be Completed By Your Employer's Authorized Representative *******

I certify that I have reviewed this form and the documentation supporting this Unforeseeable Emergency Distribution Request, and I do hereby authorize the withdrawal as requested.

Print Name/Title: _____

Signature: _____ Date: _____

Phone Number: _____

**Return completed forms to:
GEBCorp, 1100 Circle 75 Parkway, Suite 300
Atlanta, Georgia 30339
Attn: Administration
Fax (770) 563-9356**



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Suspension Form**

By signing below I am acknowledging that if my Unforeseeable Emergency Distribution Request is approved I will NOT be able to make deferrals to my GEBCorp 457 Account for six (6) months following the date of the distribution. After six months I may start deferring to my account but it will be necessary for me to submit a Participant Deferral Form to my jurisdiction's Payroll Department in order to request that an amount be deferred into my GEBCorp 457 Account.

Participant Name: _____

Signature: _____

A Participant Deferral Form is attached for your convenience. Please indicate on this form the amount you would like to defer to your GEBCorp 457 account after the six month suspension of your account. If you change your mind during the six month suspension, please contact our office in order to complete an updated form.

If you have any questions regarding Unforeseeable Emergency Distributions from your ACCG 457 Deferred Compensation Plan, please feel free to call your plan representative or our office (800) 736-7166.



**ACCG 457 Deferred Compensation Plan
Unforeseeable Emergency Distribution Request
Participant Deferral Form**

Participant Name: _____

Social Security No.: _____ Employer: _____

If your Unforeseeable Emergency Distribution Request is approved, you will not be able to make deferrals to your GEBCorp 457 Account for six (6) months following the date of the distribution. After 6 months you may start deferring to your account. It is necessary for you to complete the information requested below regarding the amount you wish to defer after the six month suspension period.

457 Payroll Deferral Amount Change

I wish to change my deferral amount for each pay period to the following:

\$ _____ or _____ %

You must defer a minimum of \$20.00 or 1% of your compensation for each payroll period.

I understand that the amount indicated above will be withdrawn from my account after the 6 month suspension period that will occur if my unforeseeable emergency distribution request is approved.

Signature: _____ Date: _____

To be completed by GEBCorp

Date of Unforeseeable Emergency Distribution: _____

Notified the Jurisdiction to stop Deferrals: _____

Date to restart payroll Deferrals: _____

Notified the Jurisdiction to start Deferrals: _____



ACCG 457 Deferred Compensation Plan Unforeseeable Emergency Distribution Request Guidelines

Section 5.06 of the 457 Plan document, provides for “Distributions for Unforeseeable Emergencies” (commonly referred to as “hardship distributions”). The language contained in Section 5.06 is substantially the same language found in the Internal Revenue Service Regulation §1.457-6(c)* relating to these type of distributions.

In general, distributions under a 457 plan for unforeseeable emergencies are more restrictive than distributions for a hardship under a 401(k) plan primarily because any event or occurrence that was within the reasonable control of the participant will not qualify for an unforeseeable emergency distribution. In addition, the burden of showing that the participant qualifies for an unforeseeable emergency distribution rests solely with the participant.

Below is the language of Section 5.06 of the Plan along with additional discussion illustrating the issues relating to the administration of the provision by GEBCorp or the Plan Administrator.

Plan Provisions

Distributions for Unforeseeable Emergencies

Parameters of Distributions: A Participant or Beneficiary may make, on account of an unforeseeable emergency, a distribution from his Account; provided, a Participant may not withdraw less than \$500 (or if less, 100% of his Account balance). For purposes of this subsection, an unforeseeable emergency is defined as a severe financial hardship as described below. A distribution based on a severe financial hardship cannot exceed the amount necessary to meet the emergency and not reasonably available from other resources of the Participant. The Plan Administrator shall make its determination as to whether a Participant has suffered an unforeseeable emergency and whether it is necessary to use a distribution from the Plan to satisfy that emergency on the basis of all relevant facts and circumstances.

Severe Financial Hardship: For purposes of the Plan, a severe financial hardship to the Participants Participant or a Beneficiary exists if the distribution results from (i) a sudden and unexpected illness or accident of the Participant, his spouse or dependents or his Beneficiary, (ii) the loss of the Participant’s or Beneficiary’s property due to a casualty, or (iii) other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Beneficiary. Examples of what are not considered to be a severe financial hardship, except in extraordinary circumstances, include the desire to purchase of a home, or the payment of tuition and related educational fees and expenses for post-secondary education for the Participant’s dependents.

Necessary to Satisfy Need: A distribution will be considered as necessary to satisfy a severe financial hardship only if the emergency cannot be relieved (i) through reimbursement or compensation by insurance or otherwise, (ii) by liquidation of the Participant’s assets, to the extent the liquidation of such assets would not itself cause severe financial hardship or (iii) by ceasing all deferrals under this Plan.

Source of Distribution Amounts: If the assets of the Participant’s Account are invested in more than one Investment Fund, the distribution amount shall be charged pro rata against each Investment Fund.

Form of Distribution Amount: The amount of a distribution pursuant to this Section shall be paid to a Participant in a single sum cash payment as soon as administratively practicable after the Third Party Service Provider receives the Employer’s authorization to make the distribution.

ACCG 457 Deferred Compensation Plan Unforeseeable Emergency Distribution Request Guidelines

Participant Deferral Contribution Suspensions: A Participant's Deferral Contribution shall be suspended for a period of six (6) months upon receipt of a distribution pursuant to this Section. Upon completion of the six (6) month suspension period, the Participant may make a new Deferral Contribution election.

Administrative Guidelines for Distribution

General Application

This section describes:

- I. Why a distribution is allowed
- II. The minimum and maximum amounts allowed to be distributed
- III. Who is responsible for making the determination of whether the legal and administrative requirements have been satisfied

I. Why a Distribution is Allowed

In order for a hardship distribution to be provided to a participant, four *sequential* requirements must be met.

- First, the participant must have experienced an "unforeseeable emergency". In general, the use of the term "emergency" describes any event or situation that warrants or requires prompt attention. Therefore, any request should likely involve some level of urgency to alleviate the situation. According to IRS regulations (§1.457-6(c)(2)(i)), an unforeseeable emergency must be defined in the 457 plan as a "severe financial hardship".
- Second, the IRS regulations (§1.457-6(c)(2)(i)) specify that a "severe financial hardship" is derived from one of only three situations or circumstances (identified under "Severe Financial Hardship" below).
- Third, even if it is determined that a severe financial hardship has occurred, any distribution is limited to such severe financial hardships that cannot be alleviated through other financial means such as disposition of other liquid assets, stopping of deferrals or reimbursement by an insurance company (§1.457-6(c)(2)(ii)).
- Fourth, once it has been determined that the unforeseeable emergency resulting in a severe financial hardship has occurred and cannot be alleviated by any other means, a distribution can be made only in an "amount reasonably needed to satisfy the emergency need" (§1.457-6(c)(2)(iii)). This indicates that the participant must provide support or evidence indicating why the amount requested is "the amount reasonably needed to satisfy the emergency need".

These three criteria, in combination, indicate clearly indicate a stringent administrative burden on the participant and the Plan administrator to allow or approve any unforeseeable emergency distribution.



ACCG 457 Deferred Compensation Plan Unforeseeable Emergency Distribution Request Guidelines

Minimum and Maximum Amount Distribution Amount

The minimum amount of \$500 (or the account balance if less than \$500) is an administrative guideline for two reasons: (1) if the amount necessary to meet the unforeseeable emergency is less than \$500, there can be substantial doubt that the request meets the test of a “severe financial hardship” as defined in the Plan and (2) administratively, the cost of processing the hardship request is financially prohibitive without additional charges to the participant.

The maximum amount was described previously as the “amount reasonably needed to satisfy the emergency need”.

Persons Responsible for Determining the Hardship

The Plan Administrator is responsible for: (1) determining if the participant has suffered an unforeseeable emergency and (2) whether a hardship distribution is necessary to satisfy the severe financial hardship created by the unforeseeable emergency. The “Plan Administrator” is defined in Article II of the Plan as the Employer or some other organization the Employer has designated in a separate services agreement.

The Administrative Services Agreement provides for the Employer to delegate to GEBCorp the responsibilities associated with determining the eligibility and amount of an unforeseeable emergency distribution. Unless the Employer expressly delegates this responsibility to GEBCorp, the Employer assumes the administrative responsibility unforeseeable emergency distributions.

Severe Financial Hardship

Because an unforeseeable emergency must, by definition, result in a severe financial hardship, the determination of a “severe financial hardship” is perhaps the most critical component of a plan administrator’s evaluation of the distribution request. This section of the 457 Plan delineates the factors that must be present order to conclude a severe financial hardship has occurred and gives two examples from the IRS regulations (§1.457-6(c)(2)(i)) and one from an IRS private letter ruling ([Letter Ruling 9543010] as found in the 457 Answer Book)of what does **not** constitute a severe financial hardship. In addition, the IRS regulations (§1.457-6(c)(2)(i)) illustrate three examples of what might constitute a severe financial hardship.

Definition

A “severe financial hardship” may be considered to exist if it was created due to one of only three factors:

1. a sudden and unexpected illness or accident of the Participant, his spouse or dependents,
2. the loss of the Participant’s property due to a casualty,
3. other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant

In general, these factors support the concept that the fundamental precept of what constitutes a severe financial hardship is based on something unexpected or unforeseeable happening that is reasonably beyond the control of the participant. Therefore, anything that could have been reasonably foreseen or reasonably within the control of the participant would not be within the definition of a severe financial hardship.

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Illness or Accident

The first factor relates to an illness or accident affecting the participant or his or her immediate family. It is commonly presumed that the financial hardship arises from some extraordinary expenses related to the illness or accident. The hardship, however, could arise from an unforeseeable significant loss of income that might occur due to an accident or illness that prohibits the participant (or any other immediate family member who contributes income to the family) from continuing normal employment.

Loss of Property

The second factor relates to the loss of a participant's property due to a casualty. It is commonly thought that "property" generally refers to a participant's home or other real property due to some type of natural disaster such as earthquakes, hurricanes, tornados or floods or some type of "man made" disaster such as fire or civil conflict resulting from a riot or terrorism. It could also include, however, other types of property such as personal property including automobiles, furniture, clothing and appliances that may have been lost due to a casualty.

The term "casualty" is often used in the context of the loss of human life. It's "dictionary" definition, however, is much broader: (1) anything lost or destroyed accidentally, or (2) an accident, especially a fatal or serious one, or (3) chance or accident as the basis of events.

When determining whether a severe financial hardship exists under this second factor, it is necessary to include both real and personal property and to include both the additional expenses to replace, repair or mitigate in any way the severe financial hardship and any unforeseeable significant loss of income as a result of the property casualty.

Other Event or Occurrence Beyond the Participant's Control

The third factor appears to be designed as a "catch all" to allow for circumstances not covered by the first two factors. The focus under this factor appears to be twofold: (1) any event or occurrence must be similar to the first two factors in that it was extraordinary and unforeseeable, **and** (2) that it was beyond the control of the participant. The issue with this factor is how broadly the terms "extraordinary", "unforeseeable" and "beyond the control" are interpreted by the Plan Administrator.

A narrow interpretation would be to limit this factor to only events or occurrences that are 100% out of the control of the participant. A more reasonable interpretation may be to define "beyond the control" in terms of what a normal participant would believe to be an "unplanned", "abnormal" or "not reasonably anticipated" event or occurrence. In this context, a number of events that frequently occur in society would still be considered unplanned, abnormal or not reasonably anticipated by any particular participant. Even with this broader standard, there still must be either extraordinary expenses or an unforeseeable significant loss of income associated with the event or occurrence that has created a financial emergency need.

ACCG 457 Deferred Compensation Plan Unforeseeable Emergency Distribution Request Guidelines

Examples

Affirmative Examples

- The imminent foreclosure or eviction from the participant's or beneficiary's primary residence
- The need to pay for medical expenses, including non-refundable deductibles, as well as the cost of prescription drug medicine
- The need to pay for the funeral expenses of a family member
- These affirmative examples, found in IRS regulations, are there to give guidance; they are not considered "safe harbor" events that would automatically give rise to a distribution.

Adverse Examples

- The desire to purchase a residence
- The need to send a participants' child to college.
- A divorce [Letter Ruling]

Presumably, if a participant hasn't adequately planned for these situations, he or she cannot use the expenditures for these items to demonstrate a severe financial hardship. Again, this presumes that expenditures for these items are the **only** reason for requesting the emergency distribution.

If it is determined that a participant has experienced an unforeseeable emergency that, in turn has created a severe financial hardship, the conditions have been met for eligibility **to receive** a hardship distribution. Whether a participant **will actually receive anything from his or her 457 account** is based on satisfying two additional criteria.

Alleviated or Relieved by Other Means

The third step in the process is for the Plan Administrator to determine if the participant has any other way to alleviate or relieve the severe financial hardship with other participant funds, other assets or other resources other than from his or her 457 account. The IRS regulations strongly imply that using funds from a 457 account should be the last option and that other options must be considered and used. The IRS regs (§1.457-6(c)(2)(ii)) identify three other alternatives that must be explored:

- Reimbursement or compensation by an insurance company or other third party;
- Liquidation of the participant's other assets but only to the extent that the liquidation of assets would not itself cause a severe financial hardship; and
- Temporarily or permanently ceasing deferrals under the 457 plan.

The 457 Answer Book states that "plan fiduciaries must determine...whether the need can be satisfied by other resources of the participant". This strongly implies that plan fiduciaries such as the plan administrator or employer must have sufficient information such as documentation from which to make the determination if the participant has other resources to relieve the severe financial hardship.

For example, the participant should document that some or all of the amount requested has not been reimbursed or offset by insurance such as automobile, property and casualty, health, disability or by other similar sources such as social security. In addition, the participant should document or affirmatively state that he or she has no other assets that could reasonably be used or liquidated to offset some or all of the hardship amount. As indicated in the IRS regulations, the participant could avoid the liquidation of

alternative assets if he or she could show that such a liquidation would, in and of itself, create another severe



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financial hardship. Finally, the plan administrator should determine if the participant temporarily or permanently ceased some or all of their current deferral amounts, would partially or totally relieve the severe financial hardship. Presumably, the ceasing of deferrals would then allow the participant to gather together funds **over time** to meet the emergency need. Depending on the urgency of relieving the emergency need, the ceasing of deferrals may not allow the participant to gather together a sufficient amount of funds within the needed time frame to relieve the emergency need. Presumably, the size of the hardship amount must be significantly larger than one or more payroll deferral amounts.

Necessary to Satisfy “Emergency” Need

Finally, once it has been determined that the participant does not have other resources sufficient to relieve the severe financial hardship, **the IRS regulations (§1.457-6(c)(2)(iii)) limit the actual amount the participant may receive to only the amount “necessary to satisfy the emergency need”**. Because the regulations do not specify the amount as that necessary to relieve the severe financial hardship, the amount “ necessary to satisfy the emergency need” could be less than that which gave rise to the severe financial hardship.

For example, the amount needed to satisfy the emergency need can be derived from either the additional expenses or lost income. The additional expenses can be determined by either receipts or estimates. Additional expenses can be documented with receipts, invoices or other third party information illustrating an unpaid obligation that has arisen from an eligible unforeseen emergency event. The income or revenue loss can be determined by documents such as payroll receipts, w-2 statements, income tax returns or bank records.

The important factor under this criteria is determining what the amount of the *emergency need* is and not necessarily the amount of the total need that gave rise to the severe financial hardship. For example, while there may have been medical bills resulting from an accident or illness, what amount of those bills are to be reimbursed by one or more insurance companies. Of the amount of the medical bills not reimbursed by an insurance company what portion of that amount is the “emergency need”? Will the hospital or doctor allow the participant to make payments over time? Has the participant been sent a “collection agency” letter requiring total payment of an un-reimbursed medical bill? Documentation from the participant identifying the amount of the “emergency need” is the most helpful in determining the final amount of a distribution from his or her 457 account.

Summary

In general, it is commonly thought that hardships allowed under a 457 deferred compensation plan are more difficult to support than those under a 401(k) plan. In addition, because there are no “safe harbor” examples that would automatically qualify under the IRS regulations, the plan administrator and/or employer must determine the facts and circumstances of each unforeseeable emergency request. Such a review requires exercising prudent judgment within overall operational procedures and applying those in a consistent manner. The absence of specific guidelines, however, also appears to give the plan administrator some discretion to evaluate all the facts and circumstances related to the unforeseeable emergency or the “totality” of the unforeseeable emergency to determine if a distribution is warranted.

*Proposed Rules May 8, 2002