

Section 312.

(last updated 4/4/2023)

Title: Employer may rely on employee certifying that deemed hardship distribution conditions are met

Effective Date: Effective for plan years beginning after the date of enactment.

Mandatory or Optional: Optional

Plans Affected: 401(k); 403(b); a similar rule applies to 457(b) plans.

Previous Law: Applicable Treasury regulations provide that hardship distributions may be made on account of an immediate and heavy financial need or

an unforeseeable emergency, if limited to the amount necessary to satisfy the financial need. These needs are evaluated using facts and circumstances, but there are certain safe harbor events that are deemed to be on account of a hardship. Employees must provide a written representation that they have insufficient cash or liquid assets reasonably available to satisfy the need. (In general, the employee must submit records documenting the safe harbor event constituting a hardship, although there is a streamlined hardship documentation method outlined in the Internal Revenue Manual that uses a self-certification process if certain requirements are met.)

SECURE 2.0 Law: Allows a plan administrator to rely on an employee’s selfcertification that they have had a safe harbor event that constitutes a deemed hardship for purposes of taking a hardship withdrawal from a 401(k) plan or a 403(b) plan.

The administrator can also rely on the employee’s certification that the distribution is not in excess of the amount required to satisfy the financial need and that the employee has no alternative means reasonably available to satisfy the financial need.

A similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans.

Guidance and/or Correction Bills:

- None

Question & Answer (last updated 4/4/2023)

Considering that self-certifying UE’s is optional, if an entity decides to allow self-certifying of UE’s are they allowed to enact caps restricting the amount to be self-certified? Also, are they able to restrict the frequency of self-certifying?

- *Yes. Plan sponsors can create any limits they choose on self-certification provisions.*

Can the self-certification process be used for 457 plans? It states that ‘a similar rule applies for purposes of unforeseeable emergency distributions from governmental Section 457(b) plans’. Do we know the wording of this ‘similar rule’ or where I can find the actual rule?

- *Yes. We are seeking further guidance.*