

## **Ventura County 401(k) Shared Savings Plan Safe Harbor Hardship Withdrawal**

The Internal Revenue Service follows very stringent rules for this type of withdrawal and will examine it very closely if the Plan (or your tax return) is audited, which could occur in the future. If the IRS is not satisfied that you have adequately documented a hardship withdrawal, or that the reason given in support of the request was not within acceptable standards, you could be held in constructive receipt of not only the amount withdrawn, but any sums remaining in the Plan for your future benefit. You could be required to pay additional taxes on such funds, even though you have had no other control or custody of the funds.

More importantly, however, the IRS could determine that the Deferred Compensation Program was not requiring adequate documentation of financial need and was therefore granting unwarranted withdrawals. In that event, the IRS could declare the entire Plan in violation of tax laws and regulations. If this occurred, they could require taxes to be paid on all sums deferred by all participants, even those who have never made a withdrawal request.

It is because of our concern that either or both of these undesirable consequences could occur that we require you to submit documentation in support of your Application. Therefore, you must submit the following documentation along with your Application:

- If your withdrawal is for the purchase of your principal residence (excluding mortgage payments), you must submit documentation showing the name of the seller, the name of the buyer, the closing date, the property address, and the amount of money required to close escrow. Depending on your situation, acceptable documentation is 1) the executed purchase/sales agreement and/or 2) the statement of estimated closing costs or estimated settlement statement.
- If your withdrawal is for uninsured medical expenses for yourself, your spouse, or your dependents, you must submit copies of medical bills, Explanation of Benefit statements from an insurer, or other proof of out-of-pocket costs incurred as a result of covered medical expenses. In the case of ongoing medical treatment, you may submit a licensed physician's statement estimating planned treatment and associated uninsured costs.
- If your withdrawal is for payment of tuition and related education fees, and room and board expenses for the next 12 months of post-secondary education for you, your spouse, or your dependents, you must submit a copy of acceptance or enrollment verification from a college or university, including a copy of a bill or statement for tuition and related covered expenses.
- If your withdrawal is for prevention of eviction from or foreclosure of your principal residence, you must submit a copy of the eviction or foreclosure notice, including documentation of the amount needed to prevent eviction or foreclosure.
- If your withdrawal is for payments for burial or funeral expenses for your deceased parent, spouse, child, or dependent, you must submit a copy of a bill, invoice, or estimate from a service provider for covered services, along with a written description of the decedent's relationship to you.
- If your withdrawal is for expenses for the repair of damage to your principal residence that would qualify for the casualty deduction under section 165, you must submit a copy of a bill, invoice, or estimate for repairs from a contractor, along with a written description of the casualty and related damage.

You may feel the requirement to submit documentation is unduly onerous and invasive, but the consequences of a less definitive and careful approach are so dire as to be unacceptable. You may be assured that your request will receive a careful and fair evaluation, and that your sensitive information will be treated with the highest confidentiality.

In order for your application to be approved, you must have taken out any 401(k) loans for which you are eligible. For more information on loans, or to see if you're eligible, call Fidelity at 800.343.0860 or go online at <http://netbenefits.com/ventura>.

The IRS does not allow hardship distributions from earnings on contributions (elective employee, employer matching and employer non-elective).

If your application is approved, your contributions to the 401(k) Shared Savings Plan and any contributions you're making to the Ventura County Section 457 Plan will be cancelled and you may not begin making contributions again to either Plan for at least six months after the date this request is approved. Your distribution is subject to federal and state income taxes and, if you're under the age of 59½, you will be assessed an additional 10% penalty when you file your income taxes.

If you want to apply for a Safe Harbor Hardship Withdrawal from the 401(k) Shared Savings Plan, complete the attached Ventura County 401(k) Shared Savings Plan Application for Hardship Withdrawal – Safe Harbor (Application) and submit it to the Deferred Compensation Program along with all required documentation.

Deferred Compensation Program staff will review the Application and approve it if: 1) the Application is deemed complete, 2) you are not eligible for a 401(k) loan, and 3) you have submitted the required documentation. We will then request the withdrawal of funds from Fidelity Investments and cancel your contributions to the Plan(s).

## Internal Revenue Code Hardship Withdrawals

(3) Rules applicable to hardship distributions--(i) Distribution must be on account of hardship. A distribution is treated as made after an employee's hardship for purposes of paragraph (d)(1)(ii) of this section if and only if it is made on account of the hardship. For purposes of this rule, a distribution is made on account of hardship only if the distribution both is made on account of an immediate and heavy financial need of the employee and is necessary to satisfy the financial need. The determination of the existence of an immediate and heavy financial need and of the amount necessary to meet the need must be made in accordance with nondiscriminatory and objective standards set forth in the plan.

(ii) Limit on maximum distributable amount--(A) General rule. A distribution on account of hardship must be limited to the maximum distributable amount. The maximum distributable amount is equal to the employee's total elective contributions as of the date of distribution, reduced by the amount of previous distributions of elective contributions. Thus, the maximum distributable amount does not include earnings, QNECs or QMACs, unless grandfathered under paragraph (d)(3)(ii)(B) of this section.

(B) Grandfathered amounts. If the plan so provides, the maximum distributable amount may be increased for amounts credited to the employee's account as of a date specified in the plan that is no later than December 31, 1988, or if later, the end of the last plan year ending before July 1, 1989 (or in the case of a collectively bargained plan, the earlier of—

(1) The later of January 1, 1989, or the date on which the last of the collective bargaining agreements in effect on March 1, 1986 terminates (determined without regard to any extension thereof after February 28, 1986); or

(2) January 1, 1991 and consisting of—

(i) Income allocable to elective contributions;

(ii) Qualified nonelective contributions and allocable income; and

(iii) Qualified matching contributions and allocable income.

(iii) Immediate and heavy financial need--(A) In general. Whether an employee has an immediate and heavy financial need is to be determined based on all the relevant facts and circumstances. Generally, for example, the need to pay the funeral expenses of a family member would constitute an immediate and heavy financial need. A distribution made to an employee for the purchase of a boat or television would generally not constitute a distribution made on account of an immediate and heavy financial need. A financial need may be immediate and heavy even if it was reasonably foreseeable or voluntarily incurred by the employee.

(B) Deemed immediate and heavy financial need. A distribution is deemed to be on account of an immediate and heavy financial need of the employee if the distribution is for—

(1) Expenses for (or necessary to obtain) medical care that would be deductible under section 213(d) (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);

(2) Costs directly related to the purchase of a principal residence for the employee (excluding mortgage payments);

(3) Payment of tuition, related educational fees, and room and board expenses, for up to the next 12 months of post-secondary education for the employee, or the employee's spouse, children, or dependents (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2) and (d)(1)(B));

(4) Payments necessary to prevent the eviction of the employee from the employee's principal residence or foreclosure on the mortgage on that residence;

(5) Payments for burial or funeral expenses for the employee's deceased parent, spouse, children or dependents (as defined in section 152, and, for taxable years beginning on or after January 1, 2005, without regard to section 152(d)(1)(B)); or

(6) Expenses for the repair of damage to the employee's principal residence that would qualify for the casualty deduction under section 165 (determined without regard to whether the loss exceeds 10% of adjusted gross income).

(iv) Distribution necessary to satisfy financial need--(A) Distribution may not exceed amount of need. A distribution is treated as necessary to satisfy an immediate and heavy financial need of an employee only to the extent the amount of the distribution is not in excess of the amount required to satisfy the financial need. For this purpose, the amount required to satisfy the financial need may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution.

(B) No alternative means available. A distribution is not treated as necessary to satisfy an immediate and heavy financial need of an employee to the extent the need may be relieved from other resources that are reasonably available to the employee. This determination generally is to be made on the basis of all the relevant facts and circumstances. For purposes of this paragraph (d)(3)(iv), the employee's resources are deemed to include those assets of the employee's spouse and minor children that are reasonably available to the employee. Thus, for example, a vacation home owned by the employee and the employee's spouse, whether as community property, joint tenants, tenants by the entirety, or tenants in common, generally will be deemed a resource of the employee. However, property held for the employee's child under an irrevocable trust or under the Uniform Gifts to Minors Act (or comparable State law) is not treated as a resource of the employee.

(C) Employer reliance on employee representation. For purposes of paragraph (d)(3)(iv)(B) of this section, an immediate and heavy financial need generally may be treated as not capable of being relieved from other resources that are reasonably available to the employee, if the employer relies upon the employee's representation (made in writing or such other form as may be prescribed by the Commissioner), unless the employer has actual knowledge to the contrary, that the need cannot reasonably be relieved—

(1) Through reimbursement or compensation by insurance or otherwise;

(2) By liquidation of the employee's assets;

(3) By cessation of elective contributions or employee contributions under the plan;

(4) By other currently available distributions (including distribution of ESOP dividends under section 404(k)) and nontaxable (at the time of the loan) loans, under plans maintained by the employer or by any other employer; or

(5) By borrowing from commercial sources on reasonable commercial terms in an amount sufficient to satisfy the need.

(D) Employee need not take counterproductive actions. For purposes of this paragraph (d)(3)(iv), a need cannot reasonably be relieved by one of the actions described in paragraph (d)(3)(iv)(C) of this section if the effect would be to increase the amount of the need. For example, the need for funds to purchase a principal residence cannot reasonably be relieved by a plan loan if the loan would disqualify the employee from obtaining other necessary financing.

(E) Distribution deemed necessary to satisfy immediate and heavy financial need. A distribution is deemed necessary to satisfy an immediate and heavy financial need of an employee if each of the following requirements are satisfied—

(1) The employee has obtained all other currently available distributions (including distribution of ESOP dividends under section 404(k), but not hardship distributions) and nontaxable (at the time of the loan) loans, under the plan and all other plans maintained by the employer; and

(2) The employee is prohibited, under the terms of the plan or an otherwise legally enforceable agreement, from making elective contributions and employee contributions to the plan and all other plans maintained by the employer for at least 6 months after receipt of the hardship distribution.

(F) Definition of other plans. For purposes of paragraph (d)(3)(iv)(C)(4) and (E)(1) of this section, the phrase plans maintained by the employer means all qualified and nonqualified plans of deferred compensation maintained by the employer, including a cash or deferred arrangement that is part of a cafeteria plan within the meaning of section 125. However, it does not include the mandatory employee contribution portion of a defined benefit plan or a health or welfare benefit plan (including one that is part of a cafeteria plan). In addition, for purposes of paragraph (d)(3)(iv)(E)(2) of this section, the phrase plans maintained by the employer also includes a stock option, stock purchase, or similar plan maintained by the employer. See §1.401(k)-6 for the continued treatment of suspended employees as eligible employees.

(v) Commissioner may expand standards. The Commissioner may prescribe additional guidance of general applicability, published in the Internal Revenue Bulletin (see 601.601(d)(2) of this chapter), expanding the list of deemed immediate and heavy financial needs and prescribing additional methods for distributions to be deemed necessary to satisfy an immediate and heavy financial need.

**VENTURA COUNTY 401(K) SHARED SAVINGS PLAN  
APPLICATION FOR HARDSHIP WITHDRAWAL – SAFE HARBOR**

Complete this application and return it to the Deferred Compensation Program, Human Resources Division, 800 South Victoria Avenue #1970, Ventura, CA 93009-1970. Be sure to provide the required supporting documentation or your application will be denied.

Full name \_\_\_\_\_ Date of Birth \_\_\_\_\_

Complete address \_\_\_\_\_  
\_\_\_\_\_

Work phone (\_\_\_\_\_) \_\_\_\_\_

Home phone (\_\_\_\_\_) \_\_\_\_\_

Other phone (\_\_\_\_\_) \_\_\_\_\_

Social Security number \_\_\_\_\_ Employee ID number: \_\_\_\_\_

E-mail address \_\_\_\_\_

Marital status: Single  Married  Divorced/Widowed  Other

This distribution is necessary to meet the expense checked below:

- Purchase of my principal residence (excluding mortgage payments)
- Uninsured medical expenses for me, my spouse, or my dependents
- Payment of tuition and related education fees, and room and board expenses for the next 12 months of post-secondary education for me, my spouse, or my dependents
- Prevention of eviction from or foreclosure of my principal residence
- Payments for burial or funeral expenses for my deceased parent, spouse, child, or dependent
- Expenses for the repair of damage to my principal residence that would qualify for the casualty deduction under section 165

Amount of withdrawal requested: \$ \_\_\_\_\_

I declare under penalty of perjury under the laws of the State of California: 1) all information contained in this Application is true and correct, 2) all information I supplied for purposes of processing my Application is true and correct, and 3) if the amount of my financial need exceeds the amount available in my 401(k) Shared Savings Plan account, I have additional resources available to meet the entire financial need.

I understand that hardship distributions are not allowed from earnings on contributions (elective employee, employer matching and employer non-elective).

I understand that my contributions to the 401(k) Shared Savings Plan and any contributions I am making to the Ventura County Section 457 Plan will be cancelled and I may not begin making contributions again to either Plan for at least six months after the date this request is approved.

I hereby authorize Deferred Compensation Program staff to contact my employer, bank, or any other creditor listed on this Application for Hardship Withdrawal regarding any of the information presented. By affixing my signature below, I authorize my employer, bank, or any other creditor listed on this Application to release any requested information to Deferred Compensation Program staff.

I authorize Deferred Compensation Program staff to execute the withdrawal and I further authorize Fidelity Investments to withhold taxes as indicated below. I understand that valuation of my account will be based on the last valuation date plus any contributions made after that date. I also understand that the amount withdrawn will be taken from investment options in which I am invested on a prorated basis, unless I direct otherwise.

I understand that this distribution is subject to federal and state income taxes. Further, I understand that if I am under the age of 59½, I will be assessed an additional 10% penalty, which will not be withheld from this distribution. I understand that my actual federal or state income tax liability may exceed the amount withheld from the distribution to me, and that I may be subject to tax penalties under the estimated tax payment rules if my estimated tax payments and withholding are inadequate.

For any amounts distributed to me, I elect to have \_\_\_\_\_% federal income taxes withheld. **The federal tax amount selected must be 0% or an amount 10% or higher.** (The amount of your state withholding will be 10% of your federal withholding.) Note: if you do not elect a federal withholding amount, it will delay processing of your Application.

\_\_\_\_\_  
Applicant's Signature Date

\_\_\_\_\_  
Spouse's Signature (Required if married) Date

For office use only

Current balance: \$ \_\_\_\_\_ Eligible for 401(k) loan:  Yes  No

Approved Amount approved: \$ \_\_\_\_\_

Denied Reason for denial: \_\_\_\_\_  
\_\_\_\_\_

Approved/denied by: \_\_\_\_\_ Date: \_\_\_\_\_

Reviewed by: \_\_\_\_\_ Date: \_\_\_\_\_