



## Board Report 20-39

Date: October 20, 2020  
To: Board of Deferred Compensation Administration  
From: Ad Hoc Committee on DCP Autonomy and Staff  
Subject: DCP Autonomy

### Board of Deferred Compensation Administration

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### Recommendation:

That the Board of Deferred Compensation Administration (Board) authorize the Board Chairperson to work directly with staff to draft a Memorandum of Understanding (MOU) between the Board and the Personnel Department incorporating elements of autonomy desired by the Board, including with respect to selection and retention of the Defined Contribution (DC) Plan Manager, reporting of the DC Plan Manager to the Board, budget requests to the Office of the Mayor, and administrative tasks, and return to the Board with the proposed MOU for adoption.

### Discussion:

#### A. Background

At the Board of Deferred Compensation Administration (Board) regular meeting on **July 16, 2019**, former Board Chairperson John Mumma established an Ad Hoc Committee on Deferred Compensation Plan Autonomy (“Committee”) to explore options for establishing greater authority and autonomy for the Deferred Compensation Plan (DCP). At its special meeting on **February 18, 2020**, Board Chairperson Tom Moutes requested that the Committee be convened as soon as practical to address the autonomy of the DCP and to review DCP staffing. At its special meeting on **May 19, 2020**, the Board amended the charge of the Committee to include reviewing and advising on matters regarding the creation of a new Defined Contribution Plan Manager (“DC Plan Manager”) classification, and directed the Committee to review proposed salary ranges and recruitment considerations for the DC Plan Manager classification and report back with recommendations to the Board.

The Committee met on **April 23, 2020** and discussed a range of topics related to DCP autonomy. The Committee met again on **May 14, 2020**, to review certain requested deliverables, including (a) a report from the City Attorney regarding fiduciary roles and responsibilities as they relate to

various entities supporting the City's DCP; (b) a report from the Board's consultants at Segal Consulting (Segal) regarding governance structures for other governmental agencies administering defined contribution plans; (c) a summary of prior Board considerations of questions related to trust and trustee matters; (d) documents related to the legal action involving the City and Nationwide Retirement Solutions; and (e) findings regarding dedication of staff time and funding for DCP positions.

On **September 8, 2020**, the Committee reviewed a report from staff providing research into five governmental entities having a direct reporting relationship between program staff and their oversight boards and committees. Those five entities include:

- Ohio Deferred Compensation (Ohio DC)
- Maryland Teachers and State Employees Supplemental Retirement Plans (MSRP)
- Kentucky Public Employees' Deferred Compensation Authority (KDC)
- New York State Deferred Compensation Plan (NYSDCP)
- New Hampshire Deferred Compensation Plan (NHDCP)

Details regarding findings from these agencies can be found in **Attachment A** to this report.

#### **B. Committee Findings Regarding Agency Governance Structures to Committee Considerations Regarding Governance**

The Committee's focus was developing a forward-thinking model for a refined governance structure that best serves the DCP and its participants. The Committee, based on input from staff and its consultant, recognizes that while governmental plan sponsors have typically used an agency-centered model (whereby program administration is housed with a governmental agency with some degree of oversight provided by a board or committee), other models exist providing for greater program independence and a more direct relationship between the entity with fiduciary oversight responsibilities and the staff administering the program. Overall, the Committee's conclusion was that the more the DCP (as a program fully funded by participant fees) can be insulated from budgetary and staffing volatility, the better served will be its participants.

As a result of its review and deliberations, the Committee has reached the following findings with respect to the question of optimizing the relationship between the Board and staff supporting the DCP:

- ⇒ The Committee finds - after studying governance structures for the Ohio DC, MSRP, KDC, NYSDCP, and NHDCP defined contribution plans - that precedent exists within other governmental agencies for a governance model whereby program staff report directly to a program governing body ("governance-centered") as compared to a model whereby program staff report to another agency or department head ("agency-centered").

- ⇒ The Committee finds that the DCP and its participants would be best served by a governance-centered model reducing the potential for having staff resources redirected to competing agency needs.
- ⇒ The Committee supports an oversight structure whereby the DCP's recently established DC Plan Manager would be selected by the Board.
- ⇒ The Committee supports an oversight structure whereby the DC Plan Manager (and by extension, those staff positions reporting to the DCP Plan Manager) would report directly to the Board, including for the purpose of generating reports and recommendations, strategic planning, policy development and execution, and other administrative and oversight functions.
- ⇒ The Committee supports an operational structure whereby the Board would independently develop, submit, and advocate to the City Council with respect to budget-related requests for position authorities or other budgetary matters (such as the authority to fill vacant positions).
- ⇒ The Committee finds, based on feedback provided by the Personnel Department, that the Personnel Department has considered the Committee's core findings, program needs, and other organizational considerations, and been advised that the Personnel Department supports establishing a governance-centered staffing structure whereby DCP staff would report directly to the Board.
- ⇒ The Committee, after conferring with Board Counsel, finds that an option exists for the Board to move forward immediately to effect core objectives of governance-centered staffing by entering into a Memorandum of Understanding (MOU) between the Board and the Personnel Department with respect to selection of the DC Plan Manager, reporting of staff directly to the Board, and budgetary requests.
- ⇒ The Committee finds that the MOU approach is desirable as an immediate course of action because it could be implemented relatively quickly and would not require changes to either the Administrative Code and/or City Charter.
- ⇒ The Committee finds that notwithstanding the execution of an MOU on these matters, options exist for strengthening the codification of a more governance-centered model within the Administrative Code and possibly the City Charter, but that these options can be pursued on a separate track.

Executing an MOU would not change the fact that DCP staff positions are located within the Personnel Department. However, it would provide for an agreement between the Board and Personnel Department with respect to elements of autonomy desired by the Board, including minimally:

- (a) **DC Plan Manager Selection and Retention** – The Board would conduct the selection process and have the responsibility of making recommendations to the Personnel Department General Manager with respect to selection and retention of the DC Plan Manager.

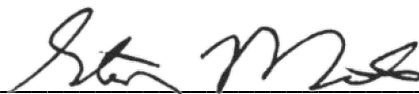
- (b) **Staff Reporting** – The DC Plan Manager would report directly to the Board Chairperson with respect to generating reports and recommendations, strategic planning, policy development and execution, communications, and other administrative and oversight functions.
- (c) **Budgetary Matters** – The Board would generate recommendations to the Mayor for budget requests for position authorities, and authority to fill positions, for the Personnel Department to submit on behalf of the Board and the DCP.
- (d) **Administrative Tasks** – DCP staff would assume, where administratively practical, direct responsibility for certain related support functions (such as review and issuance of procurements, travel, and purchasing) and/or provide compensation to the Personnel Department for those functions requiring Personnel Department support.

Based on these findings, the Committee recommends that the Board authorize the Board Chairperson to work directly with staff to draft an MOU between the Board and the Personnel Department incorporating elements of autonomy desired by the Board, including with respect to selection and retention of the DC Plan Manager, reporting of the DC Plan Manager to the Board, budget requests to the Office of the Mayor, and administrative tasks, and return to the Board with the proposed MOU for adoption.

### C. Update Regarding DCP Staffing and Source of Funds

Staff is in the process of submitting a budget request for FY 2021-22 to adjust the funding source of DCP positions from the General Fund to the City’s Special Fund 896. Special Fund 896 is currently used to pay various DCP travel, equipment, and office and administrative expenses. There are five positions supporting the DCP whose salaries are either partially or fully covered by participant fees with no impact on the General Fund. Presently these positions are front-funded by the General Fund in the Personnel Department budget and the Board approves reimbursement of direct and indirect costs, with reimbursement going to the General Fund from the DCP’s Reserve Fund. EBD is requesting that these positions be directly funded by Special Fund 896 which would remove the positions as a General Fund expenditure and eliminate the reimbursement process. Adjusting the funding source would increase the transparency of participant funding for positions supporting the DCP.

Submitted by:



Steven Montagna, Chief Personnel Analyst

## STATE AGENCIES WITH DIRECT STAFF REPORTING GOVERNANCE DESIGN Summary of Findings

### (1) State of Ohio

Plan Overview – The Ohio Deferred Compensation (Ohio DC) is a multi-employer plan providing a single Internal Revenue Code (IRC) Section 457 plan for state and local public employees with \$15.3 billion in assets, 241,900 participants, and 1,978 participating employers. Ohio DC is unique in that it provides daily recordkeeping and a website for all accounts and investments, rather than contracting this out to a Third-Party Administrator (TPA). Ohio DC works with Nationwide Insurance to provide marketing, enrollment, and education services only to Ohio employers and participants.

Oversight Structure – Ohio DC is established within State law. Ohio Revised Code 148 (<http://codes.ohio.gov/orc/148>) Section 148.02 defines the Ohio DC Board, its composition, and its powers. The Ohio DC Board consists of the Ohio Public Employees Retirement System (PERS) Board plus an Ohio Senator and an Ohio House member of different political parties. The Ohio DC Board meets six times a year.

Staffing – The most senior staff position for Ohio DC is an Executive Director. The Ohio DC Board is the hiring authority and provides supervision for the Executive Director. This position is dedicated exclusively to Ohio DC. Ohio DC has 23 staff positions, including 19 full-time and four part-time positions. All of these positions are at-will.

Plan Expenses – Ohio’s total annual operating budget is \$12.4 million, of which \$7 million is paid to provider Nationwide and \$5 million is paid for salaries, statement printing, and other administrative costs. Participant fees provide 100% of plan funding. Participant fees are 14 basis points with a fee cap of \$55 and with fees waived for account balances smaller than \$5,000.

### (2) State of Maryland

Overview – The Maryland Teachers and State Employees Supplemental Retirement Plans (MSRP) is a multi-employer program with a Board of Trustees vested with the general oversight authority and responsibility for certain tax-favored defined contribution plans for State employees: a 457(b) Plan; 401(k) Plan; 403(b) Plan; and 401(a) Match Plan. As of December 31, 2019, the Plans had 62,385 participants, representing 69,614 accounts, with 34,459 participants actively deferring into the plans. As of December 31, 2019, the plan had \$4.389 billion in invested assets.

Oversight Structure – The MSRP enabling legislation provides for a nine-member fiduciary oversight and policy board appointed by the Governor for four-year terms, including the following: (a) three members from one of six designated units of State government (the Department of Budget and Management, the Department of Education, the Office of the State

Comptroller, the Office of the State Treasurer, the State Retirement Agency, and the Maryland Higher Education Commission); (b) three individuals eligible to participate in the Plans, one of whom must be eligible to participate in the 403(b) Plan; and (c) three members of the public not eligible to participate in the Plans, at least one of which has experience in deferred compensation plans. The Board does not currently maintain a charter or governance documents (e.g. bylaws) separate from its enabling legislation and the Plan documents. The Board generally meets five times per year.

Staffing – The most senior staff position for MSRP is an Executive Director. The Board is the hiring authority and provides supervision for the Executive Director. This position is dedicated exclusively to MSRP. MSRP has 11 staff positions in addition to a vacant Executive Director position (not including an Interim Executive Director appointed by the Board as it is presently proceeding with an executive search). Certain positions (those reporting directly to the Board or holding policy positions) are at will and others are protected.

Plan Expenses – Participant fees are 4.25 basis points plus a 50-cent per account fee on all accounts in excess of \$500 except for the 401(a) match accounts. MSRP’s annual operating expenses are \$1.3 million.

### **(3) State of Kentucky**

Overview – The Kentucky Public Employees’ Deferred Compensation Authority (KDC) is a multi-employer plan with over \$3 billion in assets, over 75,000 participants, and more than 1,000 participating employers. KDC operates governmental 401k pre-tax, 401k Roth, and 457b pre-tax plans, as well as Deemed IRAs (pre-tax and after-tax). All of these were created by Kentucky statute.

Oversight Structure – KDC has a Board of Trustees composed of seven members including: (a) Secretary, Finance and Administration Cabinet, ex officio; (b) Secretary of personnel, ex officio; (c) the state controller, ex officio; (d) the State Treasurer, ex officio; and (e) three at-large members appointed by the Governor, one of whom has at least five years of investment or banking experience and one who is a representative of a nonstate government employer. The members of the board appointed by the Governor serve for four years and ex officio members serve only for the period of their term of office. Each ex officio member may designate a proxy prior to a meeting and the proxy is entitled to participate as a full voting member. The Board meets quarterly.

Staffing – The most senior staff position for KDC is an Executive Director. The Board of Trustees is the hiring authority and provides supervision for the Executive Director. This position is dedicated exclusively to KDC. KDC has 15 staff positions. Only the Executive Director is at-will.

Plan Expenses – KDC’s total annual operating budget is \$9 million, of which approximately half is used for internal administrative expenses and staffing and half is used for vendor contracts

(recordkeeping, consulting, auditing, etc.). Participant fees provide 100% of plan funding. KDC charges participants \$12 per account annually in addition to investment management fees.

#### **(4) New York State**

Overview – The New York State Deferred Compensation Plan (NYSDCP) is a multi-employer IRC Section 457 plan created for New York State employees and employees of participating agencies. The plan has over \$25 billion in assets, approximately 157,806 participants, and more than 1,000 participating employers.

Oversight Structure – NYSDCP uses a three-member Board of Trustees appointed by the governor, head of the State Assembly, and head of the State Senate.

Staffing – The most senior staff position for NYSDCP is an Executive Director. The Board of Trustees is the hiring authority and provides supervision for the Executive Director. This position is dedicated exclusively to NYSDCP. NYSDCP has four full-time staff positions. All are at-will.

Plan Status and Expenses – NYSDCP's total annual operating budget is \$10.8 million, of which approximately \$1.5 million is used for internal expenses, including payment of administrative expenses and custodial fees; the remainder is used for vendor contracts, legal counsel, and Board administrative expenses. Participant fees (including interest earnings) provide 100% of plan funding. The annual per-participant account fee is \$20. The annualized asset-based fee is three basis points levied on accounts with assets exceeding \$20,000 and capped at account assets of \$200,000.

#### **(5) State of New Hampshire**

Overview – The New Hampshire Deferred Compensation Plan (NHDCP) is a multi-employer IRC Section 457 plan created for State of New Hampshire employees and employees of political subdivisions. The plan has approximately \$400 million in assets, approximately 8,350 participants, and 36 political subdivisions.

Oversight Structure – NHDCP is governed by an independent Commission, not affiliated with its DB plan. It is administratively attached to the New Hampshire Department of Administrative Services, which is also the agency that oversees personnel and employee benefits for state employees.

Staffing – The most senior staff position for NHDCP is an Executive Director. The Commission is the hiring authority and provides supervision for the Executive Director. This position is dedicated exclusively to NHDCP. NHDCP has only one staff position (the Executive Director). This position is civil service.

Plan Status and Expenses – NHDCP's total annual operating budget for internal administrative expenses is \$300,000. The plan has a total asset-based fee of .216%, which includes a

recordkeeping fee of .155% and a NHDCP fee of .061%. The plan fee pays for the executive director and Commission functions (travel), auditors, plan investment advisors, outside legal, etc. The Plan is 100% funded by participant fees.