

## HARDSHIP APPEAL WITHDRAWAL REQUEST

Case No. 11-01	
Current Bi-Weekly Deferral	\$0
Current Account Balance	\$142,528
Requested Withdrawal Amount	Partial/\$46,818
Financial Emergency/Unforeseen Event	Foreclosure/Loss of Income/Unreimbursed Medical Expenses

Recommendation:

Staff recommends that the Board of Deferred Compensation Administration approve a partial hardship withdrawal in the amount of \$13,749 (net) in Case No. 11-01, and authorize staff to approve additional amounts up to applicant's documented income loss pending resolution of pending issues identified in this report.

Findings:

*The applicant submitted an application to Great-West and was approved for \$2,588.80 (net) based on unreimbursed medical expenses. The applicant received those funds on July 19, 2011. However, the applicant is appealing because she wants an additional partial withdrawal in the amount of \$46,817.74 (net) to pay for her mortgage arrears on her primary residence.*

Participants may withdraw their deferred compensation funds if they suffer an unforeseeable emergency that causes extreme financial hardship. An unforeseeable emergency is a severe financial hardship of the participant resulting from an illness or accident, loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant. Under Internal Revenue Service (IRS) guidelines, a hardship distribution must not exceed the amount reasonably necessary to satisfy the emergency need.

The applicant is applying to the Board for a larger hardship withdrawal amount because of the cumulative effects of her ongoing wage loss, which has contributed to her falling behind on mortgage payments for her primary residence. According to the applicant her financial emergency was caused by a medical emergency which began in January 2010 and resulted in her being in Intensive Care until March 2010. Since that date she has been in and out of the hospital and is still being treated for her condition and under doctor's care to determine her long term prognosis and treatment. The applicant has experienced a significant reduction in her income and needs to provide financial support to her two children. She is presently applying for a disability pension. The applicant earned approximately \$6,839 per month prior to her medical emergency and is now receiving approximately \$1,645 per month. Since January 2010, the applicant has experienced gross income loss of \$84,862.

The applicant has applied for a hardship withdrawal on three bases. The first was for unreimbursed medical expenses, which Great-West approved and has already provided the applicant with a \$2,589 withdrawal. The second was to cover her mortgage arrearage; however, Great-West denied her application on this basis because the applicant was unable to provide Great-West with documentation of imminent foreclosure. The reason the applicant could not provide this is because she is in the process of obtaining a loan modification and has signed a forbearance agreement, which postpones her mortgage payments for a limited time period. The third basis was the applicant's loss of income; however, Great-West did not

approve the applicant based on this since her income loss began over one year prior to her application. Great-West has a general internal policy indicating that income loss beginning over one year prior to application is not by itself a valid basis for withdrawal because it is assumed that a participant would have sufficient time to make adjustments to his/her income and expenses.

The applicant had already taken out two Deferred Compensation loans. The first loan was taken on May 25, 2006 in the amount of \$50,000 and the second loan was taken on August 13, 2008 in the amount of \$9,300. As a result, the applicant has already exhausted her loan opportunities. She has also canceled her new contributions to Deferred Compensation. The applicant has attempted to take out personal loans but been denied based on her debt to income ratios.

Staff concurs with Great-West's finding that the hardship applicant has not established a financial emergency *at the present time* with respect to her mortgage arrearage. This is because of the applicant's pending application for forbearance. If for some reason the applicant was not successful in obtaining the forbearance, the applicant would have a documented financial emergency and it is expected she would be approved for a withdrawal.

Staff does not concur with Great-West's finding that the applicant's income loss is not a valid basis for hardship withdrawal because it began over one year prior to the hardship application. First, it should be noted that this finding is based on an internal Great-West policy and no Internal Revenue Service guidance prohibits approval for income loss which began earlier than one year. Second, when hardships were being processed by City staff and the Board, the Board routinely approved applications for income loss older than one year. Finally, staff's review of the applicant's income/expenses substantiates not only ongoing income loss, and given the context within which that income loss is occurring (the arrearage on her mortgage) staff cannot identify a means by which the applicant could have made an adjustment to her income/expenses short of losing her home (which would have rendered her eligible for a withdrawal anyway).

Hardship applicants must also demonstrate that they have exhausted all available alternatives. The applicant has depleted all of her savings and is unable to secure another loan due to high debt to income ratios. The applicant currently has two Deferred Compensation loans and has made the necessary arrangements to cancel all of her Deferred Compensation contributions. Staff has referred the applicant to her Employee Assistance Program provider to seek financial counseling. Based on this, staff finds that the applicant has exhausted all available alternatives.

As a result, staff is recommending approval of three months (August-October) of the applicant's negative cash flow as detailed in her income/expense review, which equates to approximately \$13,749. This amount also represents the approximate after-tax value of her ongoing income loss. During this time frame, the applicant should receive information about her pending application for a disability pension benefit and loan modification for her primary residence. The applicant's cumulative total loss of income is \$84,862. Staff is further requesting authorization from the Board to disburse additional amounts to the applicant up to her documented income loss should neither of the above issues be resolved favorably to the applicant or resolved within the three-month period.

The applicant's financial summary follows:

<u>Regular Monthly Expenses</u>	<u>Monthly</u>	<u>Annual</u>		<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
Mortgage, Home Insurance, Property Taxes	\$ 2,941	\$ 35,292		\$ 576,320	Y	Y
Federal/State Income Taxes/Medicare	\$ 17	\$ 209		\$ -	Y	N
Auto Insurance	\$ 150	\$ 1,800			N	N
Auto Registration	\$ 40	\$ 480		\$ -	N/A	N
Medical/Dental Insurance	\$ 161	\$ 1,926		\$ -	N/A	N/A
Union Dues	\$ -	\$ -			N/A	N/A
Life/Disability Insurance	\$ 76	\$ 915			N/A	N/A
Retirement	\$ 160	\$ 1,925		\$ -	N/A	N/A
Food, Clothing, Household	\$ 1,000	\$ 12,000		\$ -	N/A	N/A
Utilities (Phone, Water, Gas, etc.)	\$ 200	\$ 2,400		\$ -	N/A	N/A
Auto (Gas, Maintenance, etc.)	\$ 250	\$ 3,000		\$ -	N/A	N/A
<b>Total Regular Expenses</b>	<b>\$ 4,996</b>	<b>\$ 59,947</b>		<b>\$ 576,320</b>	<b>-</b>	<b>-</b>

<u>Debt/Loan Payments</u>	<u>Monthly</u>	<u>Annual</u>		<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
LAPFCU - Credit Card	\$ 25	\$ 300		\$ 800	N	Y
Bank of America (Visa Credit Card)	\$ 50	\$ 600		\$ 4,500	N	Y
Deferred Comp. Loans	\$ 1,157	\$ 13,885		\$ 10,161	Y	Y
<b>Total Debt Payments</b>	<b>\$ 1,232</b>	<b>\$ 14,785</b>		<b>\$ 15,461</b>		
<b>Total Regular Expenses</b>	<b>\$ 6,228</b>	<b>\$ 74,732</b>		<b>\$ 591,782</b>		

<u>Current Income</u>			
Participant's Income	\$ 1,645	\$ 19,737	As of Aug. 2011
<b>Total Income ---&gt;</b>	<b>\$ 1,645</b>	<b>\$ 19,737</b>	
<b>Difference</b>	<b>\$ (4,583)</b>		

<u>Assets</u>		<u>Wage Loss Calculation</u>	
Checking Account	\$ 1,196	1/10 - 12/10 = 12 months	
Savings Account	\$ 128	(A) Normal Wage Earnings:	\$6,839
Home (appraised/estimated)	\$ 800,000	(B) Actual Wage Received	\$2,797
Auto	\$ 5,000	(C) Actual Wage Loss (A-B):	\$4,042
Personal Property	\$ 10,000	\$4,042 X 12 = \$48,504	
<b>Total Assets ---&gt;</b>	<b>\$ 816,324</b>	1/11 - 7/11 = 7 months	
		(A) Normal Wage Earnings:	\$6,839
		(B) Actual Wage Received	\$1,645
		in 2011:	
		(C) Actual Wage Loss (A-B):	\$5,194
		\$5,194 X 7 = \$36,358	

It should be noted that staff is in discussion with Great-West regarding addressing its income loss policy, at least within the context of administering the City's hardship approvals. Further information on this will be provided at the meeting.

Submitted by: \_\_\_\_\_  
Natasha Gameraoz

Approved by: \_\_\_\_\_  
Steven Montagna