Board Report 22-13

Date: February 15, 2022

To: Board of Deferred Compensation Administration (Board)

From: Staff

Subject: Deferred Compensation Plan Projects and Activities Report: January 2022

Discussion:
Report regarding Deferred Compensation Plan project and activity updates for January 2022:

A. Board Member Updates

Board Member Wendy Macy will be ending her tenure as General Manager of the Personnel Department effective February 17, 2022. Accordingly, Ms. Macy also leaves her position on the Board. An acting, interim or permanent successor had not been named at the time this report was written.

B. Operations and Project Updates

- Investment Manager Cost Proposal Update - At its January 18, 2022 meeting, the Board approved selection of the MFS International Equity Trust, the FIAM Select International Small-Cap Trust, and the Columbia Threadneedle Emerging Markets Opportunity Trust, all collective investment trusts, as providers for the DCP international developed markets, international small-cap, and emerging markets (respectively) components of the DCP International Stock Fund. In connection with developing service contracts, these fund providers were asked to refine or finalize their fee proposals. Updates are provided as follows:

    - FIAM Select International Small-Cap Trust – FIAM indicated it would reduce its pricing from 85 to 75 basis points (comprised of a two-basis point management fee reduction and an eight-basis point operating expenses reduction).
    - MFS International Equity Fund – MFS indicated its fund operating expenses have actually come in two basis points lower than what was noted in its proposal, resulting in a 0.44% total expense ratio versus 0.46%, a 0.02% reduction compared to what was originally presented.

- Columbia Threadneedle Emerging Markets Opportunity Trust – Columbia indicated its cost proposal was the lowest it could offer. Given its competitive standing relative to the peers reviewed, no fee revision was anticipated.

With this revised pricing, the blended expense ratio for the DCP International Fund will be 0.52% versus 0.55% previously projected and 0.72% for the current DCP International Stock Fund expense ratio.

- **Investment Manager Contract Development Update** – Staff has been working with Mercer Investment Consulting (Mercer) and the City Attorney to develop and begin executing a project plan for executing collective investment trust contracts with the Board's recently selected investment managers. Mercer is assisting staff with communicating with the selected providers and helping to track the contract components. Separately, staff and the City Attorney are developing a contract template which will be provided to the investment managers. Given that the City is going to be attempting to implement a large number of new contracts within a relatively short period of time, with limited bandwidth for extensive or protracted negotiations, service providers have been advised that they are expected to (a) minimize modifications to or deviations from the City's requirements, (b) expedite considerations of draft language, and (c) be abundantly constructive and solution-oriented in resolving issues expeditiously. In support of a successful contract execution process, staff further offered to provide individual orientation meetings with the firm's leadership to provide guidance and address common areas of focus in contract development. The response has been favorable and orientations will be scheduled once the template is issued. Regular updates will be provided to the Board as progress is made on managing this significant endeavor.

- **Supreme Court Decision: Hughes vs. Northwestern** – On July 24, 2022, the United States Supreme Court ("Supreme Court") reversed and remanded for reconsideration the Seventh Circuit's decision of *Hughes v. Northwestern University*. The Seventh Circuit dismissed a class action lawsuit against Northwestern University that challenged the fees and investment options under the university's 403(b) plan. The class alleged that plan fiduciaries breached their fiduciary duties of prudence for causing the plan to pay excessive recordkeeping fees, providing too many investment options, and including expensive investment options where identical but cheaper options were available. The question at issue was whether the plan participants stated a plausible claim for relief against the plan fiduciaries for their alleged breach. In analyzing that question, the Supreme Court rejected the Seventh Circuit's reasoning for the dismissal. The Supreme Court ruled that the Seventh Circuit failed to conduct a content specific inquiry required by ERISA when considering a motion to dismiss. Such an inquiry requires an analysis of whether each investment option was prudently selected and monitored and not merely whether the plan, as whole, offered a diversity of investment options. While this case pertained to plans governed by the Employment Retirement Income Security Act of 1974 (ERISA), staff and DCP counsel held a meeting on February 1, 2022, with Wendy Carter and Melanie Walker of Segal Consulting, to review the case for any relevant considerations for the City's 457 plan processes and policies. In reiterating that the case does not apply to the City's DCP (as the City's 457 DCP is not subject to ERISA), the case can be reviewed to ensure the City's DCP has incorporated any desirable elements into its processes to further inform the investment review project plan referenced in Board Report 22-10. An advisory regarding the case produced by the National Association of Government Defined Contribution Administrators (NAGDCA) is provided as **Attachment A**.

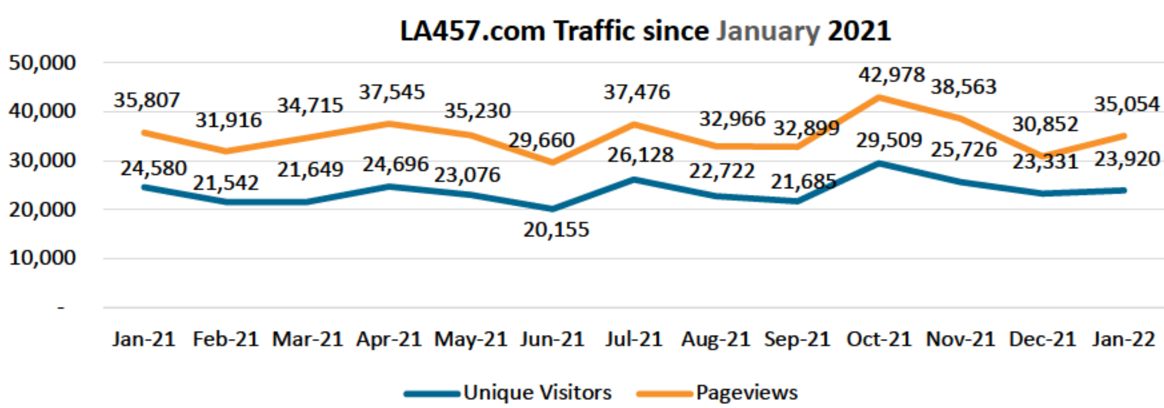
- **Participant Communication** – A retired DCP participant has reached out to the DCP on several occasions expressing concerns regarding participant information displayed on the participant account statement and requesting modifications to the terminology used. Staff researched the matter with Voya and determined that, as the terminology in question is programmed into Voya's recordkeeping platform across all clients, such a change cannot be immediately addressed but can be eventually addressed in later iterations of its recordkeeping platform. The participant asked that her concerns be provided to the Board. A record of correspondence with the participant is therefore provided in **Attachment B**.

B. Communications Updates

- **LA457.com Engagement Statistics: January 2022** - In January LA457.com saw 23,920 unique visitors and 35,054 pageviews. The table to the right provides a review of the top ten website topics accessed by participants during the month.

Top 10 LA457.com Pages in January 2022	Views
1. Home	26,796
2. Join the DCP	965
3. FAQs	880
4. Contact Us	876
5. 2022 Contribution Limits	679
6. Contributions	666
7. Your Distribution Options	322
8. Investment Options	276
9. Loans	274
10. Board Meeting Materials	247

The following chart tracks LA457.com unique visitors and page views since January 2021.



C. 2021 DCP Strategic Initiatives Update

A status review of DCP strategic initiatives is addressed separately in Board Report 22-10.

D. Staffing Update

- Effective January 31, 2022, Daniel Powell has been appointed to the position of Senior Personnel Analyst II in the Employee Benefits Division (EBD). Mr. Powell has moved from the City's Human Resources Payroll (HRP) to EBD and in addition to providing support to the DCP will also be overseeing the COMMUTEwell Program, Wellness Program, Pension Savings Plan, and other EBD programs and functions.

The following table provides a summary of staff positions supporting the DCP.

Position Authority	Incumbent Class	Function	Est. Percent Reimbursed by DCP	Staff Member
Personnel				
Defined Contribution Plan Manager	Defined Contribution Plan Manager	Executive Director	100%	Vacant
Chief Personnel Analyst	Chief Personnel Analyst	Executive Director	20%	Steven Montagna
Senior Benefits Analyst II	Senior Personnel Analyst II	Plan Governance	40%	Daniel Powell
Senior Benefits Analyst I	Vacant	Plan Administration	100%	Vacant
Benefits Analyst	Management Assistant	Communications	100%	Eric Lan
Benefits Analyst	Benefits Analyst	Operations	100%	Mindy Lam
Benefits Specialist	Benefits Specialist	Participant Services	100%	Claudia Guevara
DCP Intern	DCP Intern	Participant Research	100%	Rose Moore
City Attorney				
Deputy City Attorney	Deputy City Attorney	Board Counsel	25%	Charles Hong
Legal Assistant	Legal Assistant	Participant Legal Services	40%	Vicky Williams

E. Committee Assignments

Staff will be issuing a request to Board members shortly requesting that they indicate their interest in serving on Board Committees. This information will be provided to the Board Chairperson for consideration of Committee assignments. Following is the current Committee roster as designated by the Board Chairperson:

Plan Governance and Administrative Issues Committee
Joshua Geller, Chair
Thomas Moutes
Baldemar J. Sandoval

Investments Committee
Raymond Ciranna, Chair
Joshua Geller
Neil Guglielmo
Jeremy Wolfson

Participant Engagement Committee
Neil Guglielmo, Chair
Joshua Geller
Baldemar J. Sandoval

Ad Hoc DC Plan Manager Selection Committee
Thomas Moutes, Chair
Joshua Geller
Neil Guglielmo

F. Next Board Meeting

The next regular Board meeting will take place on March 15, 2022, 28 days following the February 15, 2022 meeting. Following is a tentative list of agenda items for that meeting:

March 15, 2022 Regular Meeting Agenda Items
Board Report 22-14: AB 361 Review
Board Report 22-15: Proposed 2022 Participant Outcome Goals
Board Report 22-16: Investment Contract Development Update
Board Report 22-17: Projects & Activities Updates
Third-Party Administrator (TPA) Quarterly Review - Q4 2021

Submitted by:

Eric Lan, Benefits Analyst

Steven Montagna, Chief Personnel Analyst

ATTACHMENT A

NAGDCA

Northwestern Decision

Takeaways for Public Plan Fiduciaries

January 28, 2022

On January 24, 2022, in a unanimous decision, the Supreme Court in *Hughes v. Northwestern* remanded a long-running case against Northwestern University to the lower courts for further review. **While the case is only directly applicable to ERISA plans, governmental plan fiduciaries may be wise to take note of the court's opinion and consider ways to document a record on fees and expenses that is in line with the Court's decision.**

NORTHWESTERN DECISION

By remanding the case for further review, the Supreme Court held that the Seventh Circuit erred by holding that a plaintiff cannot state a plausible claim against plan fiduciaries based on the inclusion of a few imprudent investment options if the overall investment lineup offered to plan participants is diverse and contains prudent investment options. The Supreme Court held that when considering a motion to dismiss, ERISA requires a "context-specific inquiry". In doing this, the Supreme Court held that courts should consider whether plaintiffs have plausibly alleged a violation of the duty of prudence as articulated in the Supreme Court's decision in *Tibble v. Edison*. Specifically, the Supreme Court held that courts should ask whether a plaintiff has alleged facts that would show that a plan fiduciary failed to satisfy its duty to monitor by failing to regularly review plan investments or recordkeeping expenses and to remove imprudent investments or recordkeepers within a reasonable timeframe. This inquiry is specific to the investment option rather than a plan's lineup as a whole.

Significantly, in its decision in *Northwestern*, the Supreme Court also looked to its prior decision in *Fifth Third Bancorp v. Dudenhoeffer* involving the holding of company stock in 401(k) plans and, citing language in **Dudenhoeffer**, concluded that, "Because the content of the duty of prudence turns on the circumstances . . . prevailing at the time the fiduciary acts, the appropriate inquiry will necessarily be context specific." This language, in itself, could be read to incorporate the standard of inquiry that has served as a high bar and significantly reduced the number of new 401(k) "stock drop" lawsuits. The Supreme Court also emphasized that "[a]t times, the circumstances facing an ERISA fiduciary will implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." Read alongside *Dudenhoeffer*, a court might apply a closer and more "context specific" review of plaintiffs' claims in future fee lawsuits.

POTENTIAL TAKEAWAYS

Even though the decision itself is only six pages, there are a few potential takeaways to consider:

First, the *Northwestern* decision is a short, narrow opinion that offers very little in the way of clear cut guidance for 401(k) plan fiduciaries or especially 403(b) or 457(b) plan fiduciaries. Indeed, the only guidance provided is the fact that a plan offering a variety of investment options, including low-cost options, does not provide, by itself, a sufficient basis to dismiss claims for (1) failing to include the lowest-cost share class of a fund; (2) including too many investment options in a plan thereby causing participant confusion; or (3) allowing plan recordkeepers to charge excessive fees.

Second, there is positive language for plan sponsors and fiduciaries in the unanimous decision that recognizes that fiduciary conduct must be judged in a context specific fashion at the time the challenged conduct occurred and with recognition of what are often competing considerations faced by fiduciaries. However, because the Court remanded to the Seventh Circuit for further consideration of those issues, the Court's ruling is not likely to have an immediate impact on the ongoing wave of new filings challenging the prudence of fiduciary oversight of defined contribution plans.

Third, the *Northwestern* decision may make plan-wide class certification more difficult. Here, the Supreme Court focused on specific investment options as being imprudent rather than the lineup as a whole. Under recent standing decisions, courts have focused on whether each individual seeking relief suffered personal harm. The combination of these two trends could make it tougher for plaintiffs to bring claims on behalf of plan participants who did not invest in the specific investment alternatives being challenged.

To: Board of Deferred Compensation Administration
FROM: Janeth M. Smith

Attachment B
Rcv'd 4-13-2021

Subject: VOYA

I am writing you about a recordkeeping problem at , which I have been unable to resolve with them. They sent me a report with information I did not understand as there was no key. I wrote them and, in summary, their response indicated the information recorded that they were referencing that my records were moved from Great West to them. This is problematic because:

1. Our records should have been from Empower to them as was widely publicized;
2. If there was a key the content of the field would have been known immediately;
3. This was an unnecessary field as noted previously and is obvious by the communiques we have received, there is a new TPA.

As much money as members pay in administrative costs, reports should be understandable, accurate, and informative. If one reads about their status it seems there are only 3, active member, retired member, or other separation from service member. I believe the Board has a responsibility to ensure records are properly maintained.

Thank you for your prompt attention to this matter.

Personnel Department
Employee Benefits Division
APR 13 2021

Rcv'd 4-21-2021

To: Board of Deferred Compensation Administration
FROM: Janet M. Smith 4/12/21
Subject: TPA Report

I previously sent you a letter concerning a report I received from the TPA, that I found problematic. I didn't send you a copy of the report, but have changed my mind and am sending one for your consideration. Please note the following:

- The status is misleading if is referring to mine in the retirement system and as a participant in the 457 program. I am a service retirement.
- It is inaccurate if it refers to the transfer of records from the former TPA, Empower, to themselves.
- I do not know what the other information in the key is referring to as there is no key. If you are aware, I am requesting that you provide it to me.

Thank you in advance for addressing my concerns.

Enclosure

Rcv'd 8-9-2021
Personnel Department
Employee Benefits Division
AUG 09 2021

To: Board of Deferred Compensation Administration
From: Joseph W. Smith 8-5-21
Subject: TPA Communication Report

I received a letter from a person claiming to be a Voya VP. This was in response to my concerns noted in my April letter. She indicated that the categorization noted under "Participant Status" did not refer to Great West as indicated to me earlier, but to my status with the City of Los Angeles, in summary. If this is so, then this is inaccurate. I am a "Service Retirement" from the City, and an active member of the 457 Plan. In the City, the term they are using typically describes a separation due to disciplinary action.

The ongoing confusion about the information in this field points out the need for the TPA to align itself more closely language that is consistent with that a retiree would understand. Additionally, the fact that there has been confusion twice strongly suggests that if there are changes in personnel at the TPA or a new TPA is selected, even greater problems could arise. It is not unimaginable that someone would conclude that the categorization means the member is no longer a member!

Also, the other information in the field is yet to be explained. When I make withdrawals it is reported under my SS#. So, is this the City's number or do you know.

These two issues bring me back to the point that there should have been a Key to explain this field's content. I brought this to the TPA's attention months ago, and as you can see (Attachment) this has not been addressed.

I insist that the Board demand that the TPA address my concerns. As a member, I am surprised that the TPA is recalcitrant in this situation. I have even made suggestions to them how they might address the participant status concern in a more descriptive and explanatory way, with terms members would be familiar with.

I look forward to favorable consideration of this request and prompt and positive action by the TPA.

suggested categories: employed, service retirement, other separation

Attachment

CITY OF Los Angeles
DEFERRED COMPENSATION PLAN

Personnel Department | Employee Benefits Division
200 N Spring St, Room 867 | Los Angeles, CA 90012
LA457.com | (213) 978-1621

October 4, 2021

Sent 10-4-2021

Janeth Smith
[redacted]

Dear Ms. Smith,

I hope this letter finds you well. I am following up in regards to the most recent letter we received from you dated August 5, 2021.

We take participant concerns seriously and appreciate your constructive feedback that account statements should be clear and accurate, and that you found your statement lacking. I understand that you were in previous contact with the City's relationship manager Shelley Fredrick of Voya, regarding the status information provided on your account statement.

As Shelley had noted in her response, the status information on your account statement was supplied by the City's prior Third-Party Administrator (TPA), Empower Retirement. Empower Retirement was previously known as Great-West. I apologize for the confusion of using the names interchangeably. Please be assured that your record was imported as of the end of our relationship with Empower Retirement (formerly Great-West) in 2017.

In regards to the participant status information on your account statement, we have taken your suggestions under advisement and reviewed them with Voya's executive management. We understand that the term "terminated" is not a completely accurate description of your status with the City of Los Angeles. However, Voya has programmed the term "terminated" into its recordkeeping platform and it is not an easily adjustable change because the change requires a complex platform change affecting all of its thousands of clients. In other words, this is not as simple a process as simply changing a word in a word processing document. Voya does make changes to customizable word documents and forms on a routine basis, but this change unfortunately does not fall within that category. Nevertheless, prompted by your concerns and supported by the City, Voya has indicated that this is a matter that can be eventually addressed in later iterations of its recordkeeping platform. In addition, please note that the City actively reviews demographic and status information of participants and internally identifies and utilizes more common City terms like “service retirement,” “separation from service,” and other more specific terminology in its processes and in customizable communications to participants.

Thank you for your continuing feedback to improve the DCP. If you would like to discuss further or have any additional questions or concerns, please do not hesitate to contact me at (213) 978-1621.

Sincerely,

Steven Montagna
Executive Director

Rcv'd 1-14-2021

Personnel Department
Employee Benefits Division
JAN 14 2022

December 28, 2021

To: Board of Deferred Compensation Administration

From: Janeth M. Sarthfins 12-29-21

Subject: Participant Status Report

I received a letter from the Chief of Employee Benefits indicating that the TPA decided to keep the "one size fits all employers" description of members' status until they get the time to look into it. This not acceptable, as is the failure to provide a satisfactory explanation of the number in the field.

It is puzzling that the Board will not stand for clear, explanatory, "customized to the City" reports. The TPA is paid a significant amount of money by members and it is your responsibility to ensure that our money is well spent to meet our needs. A report that is unclear and uninformative, as I have brought to your attention, does not meet this standard. Therefore, I am again requesting that you be proactive on this front and demand that the TPA change this report.