

DEFERRED COMPENSATION PLAN BOARD REPORT 09-40



Date: June 23, 2009
To: Board of Deferred Compensation Administration
From: Staff
Subject: Beneficiary Designation Language

Members
Eugene K. Canzano, Chairperson
Richard Kraus, First Provisional Chair
Shelley Smith, Second Provisional Chair
Maggie Whelan, Third Provisional Chair
Sangeeta Bhatia
Cliff Cannon
Sally Choi
Michael Perez
Kurt A. Stabel

Recommendation:

That the Board of Deferred Compensation Administration receive and file the following information regarding revised beneficiary designation language for Deferred Compensation Plan communication materials.

Discussion:

At the December 16, 2008 Board of Deferred Compensation Administration meeting, Board Member Michael Perez requested that staff review the Plan's current beneficiary designation language regarding requirements and options for assigning a participant's non-community property interest. This was because the current language required that a participant obtain spousal consent for assigning the entire account, even that portion which was not community property.

Staff has been reviewing this issue extensively with the City Attorney's Office over recent months. As a result of that review, staff and the City Attorney have developed proposed language that is currently being reviewed by compliance staff with the Plan Administrator, Great-West Retirement Services. The purpose of this report is to update the Board on our progress and findings.

This issue has been challenging because it involves balancing certain participant disclosure requirements (to demonstrate the Plan has met its legal obligations) and communication objectives (essentially, that participants understand the implications of decisions they make when they make beneficiary elections). In reviewing not only the City's current form but forms used by other Plan sponsors, staff identified two common flaws: (1) forms typically required spousal/domestic partner consent for the entire participant account even though the spouse/domestic partner only has rights to community property interest; and/or (2) even if this was not the case, the disclosure language was so complex that it was doubtful the average participant would understand the implications of his/her decisions.

Staff therefore determined that it made sense to be more explicit, and use clearer language, concerning the fact that a beneficiary designation can be made for that portion of an account which is not community property interest, and that community property interest can still be assigned but only with spousal/domestic partner consent.

As part of updating this document, the Board's City Attorney staff also researched the matter of domestic partnerships and determined that Family Code §297.5 provides that domestic partners registered with the State of California accrue community property interest within the dates of a domestic partnership and should be specifically referenced in our forms. This had not been the case previously.

A current draft of the amended language as it is proposed for our enrollment form is attached to this report. Great-West's legal review may result in further modifications, but our expectation is that the final version will be consistent with the objective of providing participants with the fullest extent of their assignment rights in the clearest manner possible.

Submitted by: _____
Steven Montagna

Approved by: _____
Alejandrina Basquez