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DEFERRED COMPENSATION PLAN BOARD REPORT 07-02



Date: January 31, 2007

To: Board of Deferred Compensation Administration

From: Staff

Subject: Hardship Withdrawal Processing

Recommendation:

That the Board of Deferred Compensation Administration receive and file the following information.

Discussion:

As a result of discussion at the Board's January 16, 2007 meeting regarding hardship withdrawals, Board member Richard Kraus requested that the subject of hardship applications involving unresolved community property issues or based on financial hardships experienced by non-dependents of an applicant be placed on the next agenda. Specifically, Mr. Kraus asked if the Board might, as a policy issue, take the position that these cases should not be moved to the full Board given the clear limitations on Board action. Staff will address each topic separately.

Community Property Issues

Staff would support a policy action by the Board prohibiting consideration of hardship applications involving outstanding community property issues. It has long been established by the City Attorney that distributions of any kind (whether a hardship distribution, regular distribution, or loan) are not permitted when the Plan is aware of a pending community property claim or that one is likely to be forthcoming. This is because the Plan takes on potential liability for the City if it knowingly authorizes a distribution which at some future point is determined to represent, in part, a spouse's community property interest.

In the past these cases have not been routinely transmitted to the Board. However, the January meeting did involve an application with an outstanding community property issue which was forwarded to the Board only at the insistence of the applicant. There was a lengthy discussion of this case and the Board acted to approve the application contingent upon resolution of the community property issues. However, a contingent approval under these circumstances is problematic. Typically such resolution only occurs at the end of the marital dissolution process, which tends to be lengthy. By the point in time the community property issue has been resolved by the court, the circumstances under which the applicant applied may have changed considerably, and it would therefore be prudent for the Board to

conduct a fresh review of the case before giving its approval. As a result, staff believes it makes more sense to strictly enforce the requirement that community property issues be resolved *before* the case is transmitted to the Board.

Hardships Experienced by Applicant Non-Dependents

Staff would support a policy action by the Board prohibiting consideration of applications where the financial emergency is being experienced by a non-dependent/non-beneficiary. As indicated in the hardship withdrawal discussion at the January 16 meeting, Internal Revenue Service (IRS) regulations are clear in stating that the hardship must be experienced by the applicant or the applicant’s dependent/beneficiary in order to be a valid basis for a withdrawal.

However, staff would recommend that this policy action only apply to cases where it has been clearly established that the applicant intends to withdraw funds from his/her account and give them directly to a non-dependent/non-beneficiary for the purpose of resolving that individual’s financial emergency. Cases involving applicants who have incurred their own expenses (e.g. travel) in connection with a non-dependent/non-beneficiary’s financial emergency would still be referred to the Board for disposition.

Submitted by: _____
Steven Montagna

Approved by: _____
Maryanne Keehn