

## HARDSHIP APPEAL WITHDRAWAL REQUEST

Case No. 12-02	
Current Bi-Weekly Deferral	\$0
Current Account Balance	\$5,323 <i>(in addition to outstanding DCP loan balance of \$2,531)</i>
Requested Withdrawal Amount	Partial/\$4,000
Financial Emergency/Unforeseen Event	Foreclosure/Eviction

### Recommendation:

Staff recommends that the Board of Deferred Compensation Administration approve the hardship application in Case No. 12-02 for a withdrawal of \$4,000 (net).

### Findings:

*The applicant submitted a hardship application to Great-West, signed April 19, 2012, citing prevention of foreclosure/eviction. Great-West denied the applicant's request in a letter dated April 26, 2012, stating that since foreclosure had already occurred and the subsequent eviction could not be avoided, there was no defined reason for which Great-West was authorized to approve the request. The applicant is now appealing the denial to the Board, albeit under different facts and circumstances which are outlined in this report.*

Participants may obtain hardship withdrawals 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 application must not exceed the amount reasonably necessary to satisfy the emergency need.

The applicant is appealing to the Board for a hardship withdrawal in order to reimburse a relative for the lease/purchase of a new residence for himself and his family following foreclosure and a near eviction from his primary residence. In early 2011, the applicant was in the process of attempting to negotiate a favorable loan modification with the lender on his former home due to his difficulty in maintaining payments. The difficulty in maintaining payments was, according to the applicant, the result of increased expenses related to child support and custody matters coupled with a significant and unexpected loss of property value which made it impossible to refinance.

The applicant hired a law firm to facilitate negotiations with the lender for lower monthly payments. However, after unsuccessful attempts at resolution and a subsequent foreclosure action, he received a court summons and an unlawful detainer notice in April 2012, meaning he was being required to leave the property.

As such, the applicant attempted to find another residence for his two sons and mother. The applicant encountered difficulty as leasing entities required a deposit and up to six months of pre-paid rent due to the pending eviction. He applied for a hardship withdrawal of \$4,000 for the purpose of securing rental housing. Great-West denied the application on the basis that

his foreclosure had already occurred, but they did not address the issue of whether, notwithstanding this, he had a current financial emergency and whether the causes of any such emergency were unforeseen and unavoidable.

The applicant subsequently appealed his denial to staff on May 10<sup>th</sup>, 2012. By this point the applicant had identified a home to lease with an option to own, which appeared to cost less when comparing up-front costs with a regular lease due to the pre-paid or advance amounts the leasing entities were requiring. He filed a hardship application with staff requesting a \$4,000 withdrawal from his Deferred Compensation account to help him cover the total initial costs for the new residence. Total costs are itemized below:

\$ 2,400	First month's rent
\$ 200	Pet deposit
\$ 10,000	Consideration of lease option
\$ 325	Home inspection
\$ 240	Moving expenses (moving truck, gas, etc.)
<b>\$ 13,125</b>	<b>Total initial cost</b>

Because the applicant submitted his application to staff on May 10<sup>th</sup>, there was insufficient time to prepare the case for Board consideration at the meeting of May 15<sup>th</sup>. In order to move forward with the property lease/purchase, the applicant borrowed funds from a relative to cover the outstanding amount he needed to complete the transaction. The applicant is now living in his new home. Presently, then, the applicant is effectively applying for the hardship withdrawal in order to reimburse his relative.

This case reveals some of the apparent inconsistencies that exist in application of the Federal regulations concerning hardship. Following are the key components of staff's analysis:

- Historically staff has applied two essential tests to hardship applications – has the applicant established a financial emergency, and is the financial emergency the result of an unforeseen or unavoidable event; both tests would need to be met in order to recommend approval of a hardship withdrawal (in other words, it's possible to experience a financial emergency that was not caused by an unforeseen/unavoidable event, and it's possible to have an unforeseen/unavoidable event without a resulting financial emergency – withdrawals are only recommended when an applicant has established both).
- Federal regulations relating to hardship requests for home foreclosure essentially bypass this analysis – the foreclosure (which is the financial emergency) is apparently sufficient under the guidelines to justify a hardship withdrawal, regardless of whether the circumstances that resulted in the foreclosure were or were not unforeseen/unavoidable.
- In the instant case, Great-West evaluated the application based solely on the foreclosure event and determined that, since it had already occurred, there was no basis for a withdrawal, even though at the time the applicant apparently was experiencing the financial emergency of not having funds for a place to live.

- When the applicant originally filed his appeal with staff, he needed funds for a specific property to lease with an option to own, but subsequently was able to secure that property with the financial assistance of a relative.
- Since the applicant now has the property, the effective basis of his application is to repay the personal loan from his relative – a situation that previously the Board has not found to be a valid basis for withdrawal.
- Having said this, however, the applicant’s inability to secure the withdrawal appears to have been a product of poor timing – had he applied to Great-West when his property was in foreclosure he would likely have been approved, and had the Board considered his application in May staff would likely have recommended approval.

Given all this, staff believes that approval of the application is justified given the circumstances. Although repayment of a personal loan is generally not a basis for approving a hardship application, the applicant took the loan for reasons that would have been valid bases for hardship approval had they been acted upon earlier. The personal loan can, in staff’s view, be legitimately viewed as a temporary stopgap pending the Plan’s determination regarding the appeal, rather than a permanent resolution of the emergency.

Given this, staff recommends approval of the requested amount. The applicant’s financial summary is attached.

Submitted by:

\_\_\_\_\_  
Esther Chang

Approved by:

\_\_\_\_\_  
Steven Montagna

<u>Regular Monthly Expenses</u>	<u>Monthly</u>	<u>Annual</u>	<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
Mortgage/Property Tax/Home Insurance	\$ 2,400	\$ 28,800	\$ -		
Federal/State Income Taxes/Medicare	\$ 2,889	\$ 34,664	\$ -	Y	
Auto Insurance	\$ 64	\$ 768	\$ -	Y	
Life/Disability Insurance	\$ 108	\$ 1,293	\$ -	Y	
Retirement	\$ 549	\$ 6,594	\$ -	Y	
Miscellaneous Payroll Deductions	\$ 169	\$ 2,022	\$ -	Y	
Food, Clothing, Household	\$ 2,150	\$ 25,800	\$ -		
Utilities (Phone, Water, Gas, etc.)	\$ 85	\$ 1,020	\$ -	Y	
Auto (Gas, Maintenance, etc.)	\$ 350	\$ 4,200	\$ -	Y	
Child Support/Tuition/Day Care	\$ 1,456	\$ 17,472	\$ -	Y	
<b>Total Regular Expenses</b>	<b>\$ 10,219</b>	<b>\$ 122,633</b>	<b>\$ -</b>		
<u>Debt/Loan Payments</u>	<u>Monthly</u>	<u>Annual</u>	<u>Balance</u>	<u>Verified</u>	<u>Past Due</u>
Car	\$ 449	\$ 5,388	\$ 750	Y	
Wells Fargo CC	\$ 194	\$ 2,328	\$ 4,790	Y	
Abari Orthodontics	\$ 184	\$ 2,208	\$ 1,472	Y	
IRS	\$ 409	\$ 4,908	\$ 20,000		
CA State Franchise Board	\$ 75	\$ 900	\$ 3,000		
Deferred Comp. Loans	\$ 29	\$ 351	\$ 4,697	Y	
<b>Total Debt Payments</b>	<b>\$ 1,340</b>	<b>\$ 16,083</b>	<b>\$ 34,709</b>		<b>\$ -</b>
<b>Total Regular Expenses</b>	<b>\$ 11,560</b>	<b>\$ 138,716</b>	<b>\$ 34,709</b>		<b>\$ -</b>
<u>Current Income</u>					
Participant's Income	\$ 11,732	\$ 140,785	used YTD		
Spouse's Income		\$ -			
<b>Total Income</b>	<b>\$ 11,732</b>	<b>\$ 140,785</b>			
<b>Difference</b>	<b>\$ 172</b>				

<u>Assets</u>	
Checking Account	\$ 827
Savings Account	\$ -
Vehicle	\$ 4,000
Real Estate/Misc/Personal Property	\$ -
<b>Total Assets --&gt;</b>	<b>\$ 4,827</b>

#### Previous on-going expenses

June 2011 – Oct. 2011      Approximately \$2,000-\$3,000 additional monthly to cover initial child support and legal fees and expenses  
Oct. 2011 – Mar. 2012      Approximately \$1,100 a month for lawyer during loan modification negotiations