

## HARDSHIP APPEAL WITHDRAWAL REQUEST

| Case No. 14-01                       |   |
|--------------------------------------|---|
| Current Bi-Weekly Deferral           | \$0   |
| Current Account Balance              | \$39,160.12 (plus \$20,443 in loans being repaid) |
| Requested Withdrawal Amount          | Full Withdrawal                                   |
| Financial Emergency/Unforeseen Event | Loss of Income                                    |

### Recommendation:

Staff recommends that the Board of Deferred Compensation Administration approve the hardship application in Case No. 14-01 for a full withdrawal of the participant's account.

### Findings:

*The applicant submitted a hardship application to Great-West on May 5, 2014, citing medical and financial hardship. Great-West denied the applicant's request in a letter dated May 27, 2014, stating that the loss of income reported could not be attributed to illness, and therefore not a defined reason under the regulations for which Great-West has been authorized to approve. The applicant is now appealing the denial to the Board. Staff received the participant's appeal on May 28, 2014.*

### Background:

The participant is seeking this hardship withdrawal in order to pay for living expenses, including rent and medical prescription costs, due to unforeseen circumstances that have led to a financial emergency.

Both the participant and his spouse have been under considerable personal and financial strain over the last several years due to the loss of his wife's parents (2010) and sister (2012) to illness, the latter of whom lived with the participant and spouse in the final stages of her disease. The participant's son was subsequently arrested in 2012 and is currently incarcerated and awaiting trial. The participant is currently the sole supporter for himself, his spouse, son, and one grandchild (and sharing custody of a second grandchild).

In 2012, due to an estimated \$12,000 in initial legal fees and other expenses to be paid in support of his son, the participant sold the family home and a vehicle. Ultimately, the participant could no longer afford additional legal fees and the participant's son is now being represented by a public defender. Due to the son's incarceration, the participant and spouse have now obtained full custody of one young grandchild and partial custody for another young grandchild. The participant had also co-signed on the son's apartment, the obligation for which further aggravated the participant's financial situation.

Prior to this incident, the participant also had been experiencing financial difficulties. The participant indicates the Fire Department had, over the years, reduced opportunities for overtime work for budget savings. From a review of his annual pay history, in 2010, the participant experienced a decrease of about 23% from his 2009 annual take home pay. This wage reduction took effect at the time the emotional and financial strain worsened for the participant and his family. Additionally, a review of the participant's annual gross salary for the past nine years revealed the participant's *average annual gross salary* from 2010 – 2013

compared to his *average annual gross salary* from 2005 – 2009 indicated a shortfall of \$36,411 annually.

Over time, the participant has been unable to pay his creditors, and a court levied a garnishment against him for a total of \$22,235 in January 2014. As a result, the participant's gross pay is now reduced by approximately 23% each paycheck (beginning on the April 30, 2014 paycheck). This garnishment is anticipated to continue through the end of this calendar year (until the total garnishment is repaid). The participant additionally had another levy placed against him for \$2,000 for being unable to pay the rent for the son's apartment, for which he was a co-signer. This garnishment has not yet taken effect and the participant is unsure when it will initiate.

Great-West denied the hardship application because the applicant could not show a difference in normal wages due to illness. Staff had also indicated to the participant that Great-West could approve hardship withdrawal requests on the basis of prevention of eviction; however, the participant was not yet able to produce an eviction notice. Prevention of eviction is one of the examples provided in Federal guidelines with respect to what constitutes a valid hardship withdrawal. However, in reviewing these guidelines, it is clear that the examples provided are not intended to be exhaustive:

*An unforeseeable emergency is defined in § 1.457–6(c)(2)(i) as a severe financial hardship of the participant or beneficiary resulting from: an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse, or the participant's or beneficiary's dependent (as defined in § 152(a)); loss of the participant's or beneficiary's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, e.g., as a result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or a dependent (as defined in § 152(a)) may also constitute an unforeseeable emergency. However, the purchase of a home and the payment of college tuition are not considered unforeseeable emergencies. Under § 1.457–6(c)(2)(ii), whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under § 457(d)(1)(A) is determined **based on the relevant facts and circumstances of each case**. In any case, however, a distribution on account of an unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of deferrals under the plan.*

Staff has reviewed the participant's monthly income and expenses, and has determined that the combination of the wage garnishments and salary reduction are impacting his ability to meet his family's basic monthly living expenses. Staff's finding is that the severe negative cash flow currently being experienced by the participant represents a financial emergency,

and the estimated annual wage loss in the amount of \$36,411, attorney fees in the amount of \$12,000 and obligations for the son's rental payments in the amount of \$2,000, can be cumulatively viewed as "extraordinary and unforeseeable" and "beyond the control of the participant", consistent with IRS guidelines. The total of these, \$50,411, can be used by the applicant to help resolve the current emergency he is experiencing, which is accumulated debt that has resulted in a severe negative cash flow. However, the participant has approximately \$39,100 available to withdraw from his account. Given this, staff finds justification for a full withdrawal.

The applicant has exhausted his other resources by selling other assets and having taken out two loans with the Deferred Compensation Plan over the last two years due to his situation, with both loans currently in repayment. The participant additionally indicates that he has not been able to obtain any loans outside of the Plan as his credit score will not allow him to do so.

Based on this, staff recommends approval for a full withdrawal. 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> |
|-------------------------------------|---------------------|----------------------|----------------|-----------------|-----------------|
| Federal/State Income Taxes/Medicare | \$ 2,100.00         | \$ 25,200.00         | \$ -           | Y               |                 |
| Health/Life/Disability Insurance    | \$ 650.00           | \$ 7,800.00          | \$ -           | Y               |                 |
| Retirement                          | \$ 1,150.00         | \$ 13,800.00         | \$ -           | Y               |                 |
| Rent                                | \$ 1,300.00         | \$ 15,600.00         | \$ -           | Y               | N               |
| Food, Clothing, Household           | \$ 3,300.00         | \$ 39,600.00         | \$ -           | Y               | N/A             |
| Utilities (Phone, Water, Gas, etc.) | \$ 760.00           | \$ 9,120.00          | \$ -           | Y               | N               |
| Auto (Gas, Maintenance, etc.)       | \$ 255.00           | \$ 3,060.00          | \$ -           | Y               | N               |
| Auto Insurance                      | \$ 131.00           | \$ 1,572.00          | \$ -           | Y               | N               |
| Medical Prescriptions               | \$ 200.00           | \$ 2,400.00          | \$ -           | Y               | N               |
| Life Insurance for Children         | \$ 50.00            | \$ 600.00            | \$ -           | Y               | N               |
| Child Support/Tuition/Day Care      | \$ 200.00           | \$ 2,400.00          | \$ -           | Y               | N               |
| <b>Total Regular Expenses</b>       | <b>\$ 10,096.00</b> | <b>\$ 121,152.00</b> | <b>\$ -</b>    |                 |                 |

| <u>Debt/Loan Payments</u>  | <u>Monthly</u>     | <u>Annual</u>       | <u>Balance</u>      | <u>Verified</u> | <u>Past Due</u> |
|----------------------------|--------------------|---------------------|---------------------|-----------------|-----------------|
| American Express           | \$ 300.00          | \$ 3,600.00         | \$ 7,353.00         |                 | Y               |
| Select Comfort             | \$ 350.00          | \$ 4,200.00         | \$ 8,767.03         |                 | Y               |
| Good Year                  | \$ 80.00           | \$ 960.00           | \$ 1,963.00         |                 | Y               |
| Macy's                     | \$ 150.00          | \$ 1,800.00         | \$ 672.38           | Y               | Y               |
| Sam's Club                 | \$ 40.00           | \$ 480.00           | \$ 944.12           |                 | Y               |
| Toyota (Car #1)            | \$ 509.03          | \$ 6,108.36         | \$ 21,000.00        | Y               |                 |
| Honda (Car #2)             | \$ 358.00          | \$ 4,296.00         | \$ 15,000.00        | Y               |                 |
| Deferred Comp Loan         | \$ 585.00          | \$ 7,020.00         | \$ 20,903.93        | Y               |                 |
| Garnishments               | \$ 2,450.00        | \$ 29,400.00        | \$ 22,235.02        | Y               |                 |
| <b>Total Debt Payments</b> | <b>\$ 4,822.03</b> | <b>\$ 57,864.36</b> | <b>\$ 98,838.48</b> |                 |                 |

**Total Regular Expenses \$ 14,918.03 \$ 179,016.36 \$ 98,838.48**

**Current Income**

|                      |           |                  |           |                   |
|----------------------|-----------|------------------|-----------|-------------------|
| Participant's Income | \$        | 13,200.00        | \$        | 158,400.00        |
| Spouse's Income      | \$        | -                | \$        | -                 |
| <b>Total Income</b>  | <b>\$</b> | <b>13,200.00</b> | <b>\$</b> | <b>158,400.00</b> |

**Difference \$ (1,718.03)**

**Assets**

|                                       |           |               |
|---------------------------------------|-----------|---------------|
| Checking Account                      | \$        | 280.00        |
| Savings Account                       | \$        | 31.00         |
| Vehicle                               | \$        | -             |
| Real Estate/Misc/Personal<br>Property | \$        | -             |
| <b>Total Assets ---&gt;</b>           | <b>\$</b> | <b>311.00</b> |

Submitted by:

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Esther Chang

Approved by:

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Steven Montagna