



CITY OF *Los Angeles*

DEFERRED COMPENSATION PLAN

Board Report 21-13

Date: March 16, 2021
To: Board of Deferred Compensation Administration
From: Staff
Subject: SECURE Act and CRA Provisions

Board of Deferred Compensation Administration

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Recommendation:

That the Board of Deferred Compensation Administration (Board):

- (a) Adopt the SECURE Act provision permitting a participant experiencing a qualified birth or adoption, as described under Internal Revenue Code Section 72(t)(H), to request a withholding tax-free (but not an income tax-free) distribution in an amount up to \$5,000 within one year from the date of a qualified birth or adoption, and to be able to return those funds to the plan in an aggregate amount not to exceed the amount distributed through one or more contributions;
- (b) Adopt the SECURE Act provision permitting participants to make withdrawals from their accounts beginning with the calendar year in which they turn age 59 ½;
- (c) Adopt the CRA provision permitting participants who reside within a non COVID-19 related presidentially declared disaster area – for a disaster declared between January 1, 2020 and February 25, 2021 – to take a distribution or loan of an amount up to \$100,000 subject to all other applicable eligibility requirements;
- (d) Authorize the Board Chairperson to execute a plan sponsor letter of direction to Voya to make these adopted provisions available to DCP participants; and
- (e) Direct staff to incorporate the adopted provisions into the draft revised DCP Plan Document to be presented to the Board.

Discussion:

A. Background

This report provides recommendations with respect to implementing certain optional provisions available to the City's Deferred Compensation Plan (DCP) under three pieces of federal legislation. For background, following is a chronology and description of the legislation and related prior Board action:

- **December 20, 2019** – The Setting Every Community Up for Retirement Enhancement Act of 2019 (SECURE Act) was signed into law. The SECURE Act includes several optional retirement-related provisions available to defined contribution plans.
- **March 27, 2020** – The Coronavirus Aid, Relief, and Economic Security Act (CARES Act) was signed into law. The CARES Act includes certain COVID-related mitigation and support measures for individuals participating in defined contribution retirement plans; such provisions applied to the City’s DCP on either an optional or mandatory basis.
- **April 27, 2020** – The Board adopted certain provisions permitted or required under the CARES Act, including: (a) adopting Coronavirus-Related Distributions (CRDs) of up to \$100,000 for qualified individuals in accordance with Section 2202 of the CARES Act; and (b) adopting an increased loan limit of up to \$100,000 and extension of repayment periods for qualified individuals in accordance with Section 2202 of the CARES Act. The Board further authorized the Board Chairperson to execute a plan sponsor letter of direction to Voya to make adopted CARES Act CRD and loan provisions available to DCP participants, and directed staff to work with the City Attorney and outside tax counsel to draft the Board’s adopted CARES Act provisions into the DCP Plan Document as part of its ongoing Plan Document review and update process.
- **December 27, 2020** – The Consolidated Appropriations Act of 2021 (CRA) was signed into law. The CRA includes a provision for non-COVID disaster relief distributions or loans.

B. Discussion

The Board’s Plan Governance and Administrative Issues Committee (“Committee”) has been meeting to review proposed changes to the DCP Plan Document. The Committee met on March 11, 2021. It is expected that a proposed final revised Plan Document will be presented to the Board at its April or May meeting.

Among the items presented to the Committee as part of its review were several optional provisions available under the SECURE Act and CRA. The proposed revised Plan Document will address these provisions. In the interim, however, as the DCP has received inquiries from participants regarding certain provisions applying to governmental 457(b) retirement plans (if permitted by the plan), staff is bringing these provisions to the Board for immediate adoption. These optional SECURE Act and CRA provisions are as follows:

Distributions for Birth/Adoption – The SECURE Act includes an optional provision permitting a participant experiencing a qualified birth or adoption as described under Internal Revenue Code Section 72(t)(H) to receive a withholding tax-free (but not an income tax-free) distribution in an amount up to \$5,000 within one year from the date of a qualified birth or adoption; and to be able to return those funds to the plan in an aggregate amount not to exceed the amount distributed through one or more contributions. There is no time limit on repayment of the withdrawn amounts.

In-Service Distributions – The SECURE Act includes an optional provision permitting participants to make withdrawals from their accounts beginning with the calendar year in which they turn age 59 ½. Prior to the SECURE Act, plan sponsors could permit in-service distributions for participants who had reached age 70 ½ (that provision had not previously been adopted into the DCP).

Temporary Disaster Relief – The CRA includes an optional provision permitting participants who reside within a non COVID-19 related presidentially declared disaster area – for a disaster declared between January 1, 2020 and February 25, 2021 – to take a distribution or loan of an amount up to \$100,000. The distribution or loan must be received on or before June 24, 2021. The declared disaster must be for reasons other than those related to COVID-19 and the participant’s principal place of residence must be within the federally declared disaster area.

Over the years, as federal legislation has added provisions providing greater flexibility for participants with respect to managing their accounts, the Board has generally chosen to adopt those provisions into the DCP. The three optional provisions described on the prior page expand options for in-service distributions for DCP participants. Staff supports incorporating these provisions into the DCP on the basis that DCP accounts represent a vital resource for participants to support their current and future financial wellbeing, and participants are best situated to determine when and how those assets should be deployed, as permitted by law.

Staff has reviewed the optional provisions referenced in this report with the City Attorney’s Office. The City Attorney has advised that the provisions may be adopted by Board action and implemented immediately and subsequently incorporated into the revised Plan Document on or before January 1, 2024.

Staff has also reviewed these provisions with DCP’s Third-Party Administrator (TPA), Voya. If adopted by the Board, these provisions will be activated for DCP participants. Staff and Voya will work together to communicate these changes via normal distribution channels, including the DCP website, Citywide emails, quarterly newsletters, local account representatives, and social media pages.

Staff recommends that the Board:

- (a) Adopt the SECURE Act provision permitting a participant experiencing a qualified birth or adoption as described under Internal Revenue Code Section 72(t)(H) to receive a withholding tax-free (but not income tax-free) distribution in an amount up to \$5,000 within one year from the date of a qualified birth or adoption, and to be able to return those funds to the plan in the form of one or more contributions in an aggregate amount not to exceed the amount distributed;
- (b) Adopt the SECURE Act provision permitting participants to make withdrawals from their accounts beginning with the calendar year in which they turn age 59 ½;
- (c) Adopt the CRA provision permitting participants who reside within a non COVID-19 related presidentially declared disaster area – for a disaster declared between January 1,

2020 and February 25, 2021 – to take a distribution or loan of an amount up to \$100,000 subject to all other applicable eligibility requirements;

- (d) Authorize the Board Chairperson to execute a plan sponsor letter of direction to Voya to make these adopted provisions available to DCP participants; and
- (e) Direct staff to incorporate the adopted provisions into the draft revised DCP Plan Document to be presented to the Board.

Submitted by:



Steven Montagna, Chief Personnel Analyst