MINUTES

Louisiana Deferred Compensation Commission Meeting

September 1, 2016

A special called meeting of the Louisiana Deferred Compensation Commission was held on Thursday, September 1, 2016 in the offices of the Plan Administrator, 9100 Bluebonnet Centre Blvd, Suite 203, Baton Rouge, Louisiana 70809.

Members Present
Emery Bares, Chairman, Designee of the Commissioner of Insurance
Virginia Burton, Secretary, Participant Member
Thomas Enright, Designee of the State Treasurer
Whit Kling, Vice-Chairman, Participant Member
Rick McGimsey, Designee of the Commissioner of Administration
Len Riviere, Co-Designee of Commissioner of Financial Institutions
Laney Sanders, Participant Member

Others Present
Emily Andrews, State of Louisiana Attorney General's Office
Ben Huxen, Retired Participant Member – Hardship Committee Member
Kent LaPlace, LA Dept of Justice – Hardship Committee Member
Reta McFarland, Retired Participant Member – Hardship Committee Member
Danette Rausch, Sr. Director of Partner Strategy, Empower Retirement-*By Conf Call*
Connie Stevens, State Director, Baton Rouge, Empower Retirement
Susan Allsup, Senior Administrative Assistant, Baton Rouge, Empower Retirement
Debbie Hudnall, Executive Director, LA Clerks of Court Association
Thomas L. Sullivan Jr., Livingston Parish Clerk of Court

Call to Order
Vice-Chairman Kling called the meeting to order at 2:55 p.m.
Ms. Stevens conducted roll call of members.

Mr. Kling explained that the purpose of the meeting was to address Unforeseeable Financial Emergency (Hardship) application processes and procedures as it relates to the recent flooding in Louisiana. Mr. Kling reviewed the Public Comment rules to follow with the members of the public in attendance noting that comments should not exceed five minutes per person.

Public Comments:
Mr. Sullivan stated that he understood and appreciated the fiduciary responsibilities of the Commission. During the recent flooding, however, Mr. Sullivan felt that the Commission's responsibility should have changed from a fiduciary capacity to a moral one. Mr. Sullivan expressed frustration that no one from the Commission reached out to him to ask, "How can we help you?" Instead, it all came from the outside in with Mr. Sullivan having to beg for his money. Mr. Sullivan felt that the 15-page Hardship Application that he received was excessive and that the Commission should have done something proactive to convey to participants their concern. Mr. Sullivan is very dissatisfied with how his situation was handled. Mr. Sullivan asked that the Commission display greater compassion considering the circumstances and not require participants to "jump through hoops" to prove their need.

Mr. Hudnall received an email from Empower Retirement stating that the IRS laws are being followed by the Commission and that there was no way around the existing rules outside of special IRS consideration to allow funds out of the Plan for active employees. Ms. Hudnall asked attorneys to review the IRS rules and Plan document and found that the Commission was not following IRS regulations. Ms. Hudnall stated that she understood that the Hardship Committee met on August 19th and, according to the minutes, did not discuss any issues related to flooding. Ms. Hudnall asked the Commission to state their position on current and future issues of this kind.

Mr. Kling stated that the Commission appreciates what participants are going through. The August Commission Meeting included discussion and motions made to have legal counsel review the rules on what can be done to assist our participants. Mr. Riviere stated that the August meeting also included discussion on how to expedite hardship application procedures. It was pointed out that Ms. Hudnall's reference to minutes of an August 19th meeting was from the Hardship Committee and not the August 23rd Commission Meeting. The minutes from the August 23rd meeting have not yet been posted.

Mr. Enright asked if it would be necessary to authorize overtime or comp time for the LADCP staff to adequately address the increase in hardship requests. Ms. Stevens stated that this would not be necessary. Mr. Enright stated that the pop-up on the LADCP website was difficult to understand. Mr. Enright stated that the pop-up should "catch a person's eye" and the information should be presented in an "easy to understand" format as participants are under a lot of stress and may not read the fine print. Ms. Stevens agreed with Mr. Enright and stated that the pop-up was designed before the IRS bulletin was received so changes would be forthcoming. Mr. Enright stated that the Hardship application is not currently available on line.

Ms. Burton offered an apology on behalf of the Commission if it appeared that the Commission was not sensitive to the devastating loss that so many have endured.

Unforeseeable Emergency Withdrawals

Ms. Andrews reported that at the August 23rd Commission meeting, the request was made to look into anything that could be done to assist active participants affected by flooding an opportunity to retrieve their money from the Plan. Ms. Andrews stated that the more applicable term to use in relation to tax issues *and the* 457(b) Plan, is "Unforeseen Emergency Withdrawal" (UEW) instead of "Hardship." Ms. Andrews researched the prohibition of having more than one loan at a time and found that there is no multiple loan prohibition in the Plan Document. The prohibition is found in the Loan Policy Administration, Article III, Section 3.01. The Commission can change this rule but this may not be necessary in light of the new IRS guidance. The IRS announcement has opened up the UEW's to such an extent that it won't be necessary for participants to take out loans. Loans must also comply with the IRS tax requirements (USC72P) which are contained in the Plan Document (i.e., $50,000 maximum allowed). If the Commission operated outside of these requirements, the Plan would lose its tax-deferred status. Ms. Stevens pointed out operational issues related to offering more than one loan at a time. Even if the Commission approved more than one loan out at a time, some payroll departments may not be able to manage loan remittance payments as it would require another payroll slot in the software.

Ms. Andrews addressed the issue of loan defaults as defined by Title 32, VII, Chapter 11, Section 1107, Number 9. IRS Model Rule 26pfr601.201 states that having previously defaulted on a loan; the participant shall be permanently ineligible for any future loans from the Plan. If the Commission wishes to pursue removing the default ineligibility, Ms. Andrew recommended that a tax specialist be hired to review the rules so that the Plan does not lose its 457(b) status.

Ms. Andrews reviewed the August 30, 2016 IRS Announcement 2016-30 that allows for relief to employees and certain members of their families who live or work in the disaster areas through January 17, 2017. Ms. Andrews pointed out that the announcement provides for relief of verification procedures. A simplified Unforeseeable Emergency Withdrawal Request application was presented and reviewed by the Commission (from 18 pages to 6 pages). The IR 2016-115 of August 30, 2016 will be attached to the UEW application. A notary seal is not required when requesting an alternate delivery address. The Commission made edits to the draft of the application. Ms. Stevens announced that Empower Retirement has agreed to pay for expedited delivery of Flood UEW distributions. Plan loans made pursuant to this announcement must satisfy the requirements of USC72P. Ms. Andrews confirmed the verbiage related to the type of claims allowed under IRS 2016-30: "Any hardship arising from the August 11, 2016 LA storms is treated as an unforeseeable emergency for purposes of distribution from such Plan. Plan administrators may rely upon representations from the employee or former employee as to the need for and amount of a hardship distribution, unless the plan administrator has actual knowledge to the contrary, and the distribution is treated as a hardship distribution for all purposes under the Code and regulations."

There was discussion related to expediting the approval of the UEW requests. Ms. Andrews reviewed the Duties of Commission, Section 105, Number 8, which states that an emergency committee of at least three individuals shall approve or disapprove by such committee. Mr. Bares motioned that LADCP Commission members serve as alternates in the event that UEW Committee members are unable to attend the meetings. Mr. McGimsey seconded the motion. The Commission unanimously approved the motion. The UEW Committee will meet on Tuesdays and Thursdays of each week, as needed, through January 17, 2017.

Ms. Stevens clarified with Ms. Rausch that if a participant already had a loan from the Plan, whatever the balance in the account at the time of the UEW request is available for distribution.

UEWs must be made by January 17, 2017. Effective January 18, 2017, the standard UEW application process is to be followed where full documentation is required.

Mr. McGimsey motioned to accept the IRS UEW emergency rule guidelines and duties of the Commission. Mr. Bares seconded the motion. The Commission unanimously approved the motion.

Mr. McGimsey motioned to accept the IRS UEW guidelines incorporating emergency rules as deemed appropriate. Mr. Bares seconded the motion. The Commission unanimously approved the motion.

Ms. Stevens reported that currently, there are approximately 25 participants awaiting a response from the Commission regarding UEW requests related to the flood.

Adjournment

With there being no further items of business to come before the Commission, Vice-Chairman Kling declared the meeting adjourned at 4:22 p.m.

____

Virginia Burton, Secretary