

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: CEO-Risk Management Division

BOARD AGENDA # *B-6

Urgent

Routine

AGENDA DATE December 15, 2015

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Approval of Changes to the Stanislaus County Deferred Compensation Committee Charter and to the Deferred Compensation Participant Loan Program

STAFF RECOMMENDATIONS:

1. Approve changes to the County Deferred Compensation Committee Charter.
2. Approve changes to the Deferred Compensation Participant Loan Program.
3. Authorize the County Risk Manager to sign the approved updated Deferred Compensation Participant Loan Program document.

FISCAL IMPACT:

No fiscal impact is anticipated with approval of staff recommendations. The current Deferred Compensation Program administered through Mass Mutual Financial Group provides services to approximately 3,904 member accounts totaling \$163,714,589 in assets. The County's Public Agency Retirement System (PARS) covering part-time employees totals approximately \$329,161 in assets distributed to 1,112 member accounts. Member accounts and associated investments include both active and former County employees.

BOARD ACTION AS FOLLOWS:

No. 2015-632

On motion of Supervisor Chiesa, Seconded by Supervisor Monteith
and approved by the following vote,

Ayes: Supervisors: O'Brien, Chiesa, Monteith, DeMartini, and Chairman Withrow

Noes: Supervisors: None

Excused or Absent: Supervisors: None

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

ATTEST:


CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Deferred Compensation Committee Charter

Stanislaus County maintains a deferred compensation program to provide voluntary retirement savings opportunities for full-time employees to supplement the County's defined benefit retirement program through the Stanislaus County Employees' Retirement Association (StanCERA). The County's 457 Deferred Compensation program provides full-time employees with the opportunity to make voluntary pre-tax contributions to a variety of investment options managed through Mass Mutual Financial Group. Since County part-time employees are not eligible for the County's defined benefit retirement program through StanCERA, the County established an alternative Social Security benefit through the Public Agency Retirement System (PARS) to provide retirement savings for these employees. Part-time County employees are automatically enrolled in the PARS program and both the County and the employee pay a portion of the minimum 7.5% contribution rate.

A Stanislaus County Deferred Compensation Committee (Committee) has been established to support the County's deferred compensation program. This Committee meets on a tri-annual basis to manage the overall deferred compensation program with the assistance of staff and contracted consultants. Currently, the Committee is comprised of the following members:

Chief Executive Officer
County Counsel
Assistant Executive Officer
County Auditor/Controller
General Services Agency - Assistant Director

To define the Committee's roles and responsibilities, the Board of Supervisors approved a Deferred Compensation Committee Charter (Charter) in April 2010. Currently, the Charter provides that the Committee is charged with the administration of the deferred compensation plan but does not include the PARS program. Based on existing plan documentation, the administration and oversight of the PARS program is solely governed by the Chief Executive Officer (CEO). In recent years, the Committee has taken an active role in supporting the CEO with the management and administration of the PARS program. In order to support the Committee with this endeavor and to ensure comprehensive administration and oversight of the PARS program, staff is recommending that the County's Deferred Compensation Committee Charter change to include the PARS program. Amending the Deferred Compensation Committee Charter as recommended will ensure that future fiduciary oversight and administrative responsibilities of the PARS program will not solely rest with one individual in the organization. A copy of the amended Committee charter is attached to this agenda item.

Deferred Compensation Loan Program

Pursuant to Federal Code Section 457(b), the County adopted a Deferred Compensation Plan (Plan) document with the purpose of permitting employees to defer a portion of their compensation for retirement investment. Section 5 of the Plan outlines the general terms and conditions of making loans available to employee participants. Under this provision, employee participants have the option of taking out a loan on one-half of their deferred compensation account balance, up to a maximum amount of \$50,000. Deferred compensation loans are guaranteed by the individual employee account balances.

Section 5 of the Plan requires the County to establish written guidelines governing the granting and administration of loans under the deferred compensation program. These written guidelines are important because they set forth the specific rules and guidelines for making loans. To the extent that the guidelines are more restrictive than the Plan, but not inconsistent with the Plan, the guidelines shall be controlling. To meet this requirement, the County implemented a Participant Loan Program document that provides specific terms and conditions for administering deferred compensation loans.

Currently, under the County Participant Loan Program, only active employees can maintain a deferred compensation program loan. This means that if an employee separates employment with the County, the loan is canceled and the employee must pay taxes and penalties on any unpaid loan funds, even if the employee wants to continue making loan payments. To avoid this issue in the future, staff recommends amending the Participant Loan Program document to provide separated participants with the option of continuing to maintain and pay on an existing deferred compensation loan even if the participant is not employed by another participating employer that has adopted a similar Plan. The provision will still require a participant to be a County employee in order to initiate a loan. If proposed changes to the Participant Loan Program are approved, separated participants will be able to continue making loan payments through auto debit deductions from their bank account.

POLICY ISSUES:

Approval to change the Deferred Compensation Committee Charter and the Participant Loan Program document is consistent with the Board of Supervisor's priority of promoting Efficient Delivery of Public Services.

STAFFING IMPACT:

There is no staffing impact associated with this report. The Deferred Compensation Committee is currently in place and the program is adequately supported by consultants and staff in the CEO-Risk Management Division.

CONTACT PERSON:

Jody Hayes, Assistant Executive Officer. Telephone: (209) 525-5714

**STANISLAUS COUNTY
DEFERRED COMPENSATION COMMITTEE CHARTER**

I. INTRODUCTION

This Charter sets forth the rights, powers, responsibilities, and obligations of the Stanislaus County Deferred Compensation Committee (the "Committee"). The Committee is charged under the Charter with the administration and oversight of the Stanislaus County Deferred Compensation Plan and the Part Time, Temporary and Seasonal Employees Plan (collectively called the "Plans") established pursuant to authorization from the Board of Supervisors (the "Board").

II. MEMBERSHIP OF THE COMMITTEE

The Committee shall be comprised of five (5) voting members that shall be appointed by the Chief Executive Officer ("CEO"). Each member shall serve at the discretion of the CEO. A vacancy due to resignation, death, removal, or other cause shall be filled by the CEO as soon as reasonably possible. Committee members must be either current or retired Stanislaus County employees and must be a participant in the Plan. Members shall serve without compensation. All reasonable out-of-pocket expenses of the Committee shall be paid by the Stanislaus County in accordance with existing Stanislaus County policies unless paid from Plan assets. Any member of the Committee may be removed by the CEO at any time with or without cause. With respect to any matter brought to the Committee for a vote, each voting member shall be entitled to one vote.

III. COMMITTEE ACTION

The Committee shall appoint the Committee Chairman and Committee Vice Chairman annually and the Committee members shall appoint a Secretary who need not be a voting member of the Committee. The Secretary shall keep minutes of the Committee's proceedings and be responsible for the data, records, and documents pertaining to the Committee's administration of the Plans. The Committee shall act by a majority of its voting members in office and such action may be taken either by a vote at a meeting or in writing without a meeting. While consensus is preferred, a quorum will be a simple majority of members for all meetings and decisions will be by majority vote of the members participating at the meeting. The Chairman may make appropriate arrangements to resolve voting deadlocks. Members can participate in meetings in person, by voice or video phone or other electronic means. The ~~Plan~~-Administrator of the Plans is authorized to execute any document or documents on behalf of the Committee. Any person is entitled to conclusively rely upon and accept any direction or document executed by the ~~Plan~~-Administrator of the Plans as representing action by the Committee.

IV. RIGHTS AND DUTIES

The Committee shall act with the authority and discretion to control and manage the operation and administration of the Plans and shall have all powers necessary to accomplish these purposes. The responsibility and authority of the Committee shall include, but shall not be limited to, the following:

- A. To modify, amend or alter the provisions of the Plans in whole or in part.
- B. To determine all questions relating to the eligibility of employees to participate.
- C. To create and regularly review the Investment Policy Statement.
- D. Authorizing certain disbursements from the Plans.
- E. Maintaining or having maintained all necessary records for the administration of the Plans.
- F. Interpretation of the provisions of the Plans and publication of such rules and regulations that are deemed necessary and not inconsistent with the terms hereof or of the Plans.
- G. Selecting all service providers necessary or desirable for the administration of the Plans including ~~a~~-consultants, ~~a~~-third-party administrators, ~~a~~-trustee or trustees, ~~a~~-custodians, insurance companies, regulated investment companies, and other such service providers as shall be necessary or appropriate for the administration and operation of the Plans. The Committee shall establish procedures, requests for proposals, criteria for acceptance, and shall select such service providers as the Committee in its sole discretion shall determine. The Committee may enter into reasonable arrangements for the provision of services, including the payment of fees and expenses incurred including payment from Plans assets.

V. INDEMNIFICATION

The Employer shall be responsible for obtaining appropriate fiduciary liability insurance for the Committee and its members and the Committee members shall cooperate with the Employer in providing any information necessary for obtaining such insurance coverage. In addition, the Employer agrees to indemnify and hold the Committee and any Sub-Committee formed by the Committee harmless against liability incurred in the administration of the Plan(s), to the full extent permitted by law.

VI. ALLOCATION AND DELEGATION OF RESPONSIBILITY

The Committee may, by written rule or by its minutes, allocate responsibilities among Committee members and may delegate to persons other than Committee members the authority to carry out responsibilities under the Plans. In the event that a responsibility is allocated to a Committee member, no other Committee member shall be liable for any act or omission of that person except as may otherwise be required by law. If a responsibility is delegated to a person other than a Committee member, the Committee shall not be responsible or liable for any act or omission of such person in carrying out such responsibility except as may otherwise be required by law.

VII. CLAIMS PROCEDURE

Any claim for money or damages shall be presented to the Clerk of the Board of Supervisors in accordance with the requirements of the Government Claims Act (Gov. Code, § 810 et seq.).

All decisions of the Committee are appealable to the CEO; provided such appeal is in writing and clearly sets forth the reasons why the appeal ought to be granted, and is filed with Clerk of the Board of Supervisors within thirty (30) days after the date of the decision. The decision of the CEO is final.

Pursuant to Code of Civil Procedure Section 1094.6(b) and Chapter 2.88 of the Stanislaus County Code, judicial review of any final decision of the CEO may be had pursuant to Code of Civil Procedure Section 1094.5 only if the petition for writ of mandate pursuant to Code of Civil Procedure Section 1094.5 is filed not later than the ninetieth day following the date on which the decision becomes final.

VIII. PLAN INVESTMENTS

The Committee shall have the responsibility for selecting the investments to be made available under the Plans in accordance with the Investment Policy Statement. The Committee shall select one or more insurance companies and/or regulated investment companies for the investment and reinvestment of Plans assets. The Committee shall monitor the performance of investment funds selected by the Committee and offered to participants pursuant to the terms of the Plans, and shall establish such procedures as the Committee shall deem necessary to carry out such monitoring responsibility. Any investment fund not meeting the criteria set forth by the Committee as determined by the Committee in its sole discretion shall be removed from the available investment funds.

IX. STANDARD OF CARE

The Committee shall discharge its duties with respect to the Plans in such a manner as to comply with applicable law and regulations including Internal Revenue Code Sections 401 and 457, -and regulations thereunder. All assets and income of the Plans shall be held in trust for the exclusive benefit of participants and their beneficiaries.

X. PLAN DOCUMENTS

The Plans shall be governed by and administered under one or more Plan documents and trust agreements. These Plan documents and trust agreements, together with any other formal documents maintained for the operation and administration of the Plans, shall be on file in the permanent records of the Committee and shall be available for inspection by Plan participants during business hours. The Committee has the authority to review and update the Investment Policy Statement.

XI. AMENDMENT

This Charter may be amended by majority vote of the Committee at a meeting called for that purpose or by unanimous written consent of all members of the Committee.

APPROVED BY BOARD RESOLUTION ~~2010-208~~ on this ~~20th~~ day of ~~April~~, 2010.

PARTICIPANT LOAN PROGRAM

Stanislaus County Deferred Compensation Plan

The Stanislaus County Deferred Compensation Plan (the "Plan") provides that the Employer (the "Administrator") may, in the Administrator's sole discretion, make Plan loans to Participants. The Plan document requires that a written loan program be established which sets forth the rules and guidelines for making loans. The Administrator's decisions regarding the application or interpretations of this loan program are final and binding on Participants. The Administrator specifically reserves the right to amend these policies and procedures from time to time.

For purposes of this loan program, all terms not defined herein shall have the meanings ascribed to them in the Plan.

1. **Who is Responsible for the Participant Loan Program?** The Administrator is authorized to administer the Plan's loan program. All discretionary decisions concerning loans shall be made by the Administrator. The Administrator may make loans to Participants under the following circumstances: (a) loans shall be made available to all Participants on a reasonably equivalent basis; (b) loans shall bear a reasonable rate of interest; (c) loans shall be adequately secured; and (d) loans shall provide for periodic repayment over a reasonable period of time. No loan will be made from the Plan if it would constitute a prohibited transaction as defined in Internal Revenue Code §4975.
2. **How to Apply for a Loan.** All applications for loans shall be made by Participants to the Administrator in writing. A Participant's ability to make such application, either in writing or by electronic means, will be subject to the qualification guidelines adopted by the Administrator and as set forth in this loan program. All loan applications are subject to consideration by the Administrator in a timeframe commensurate with the form of application. In making application for a loan, a Participant may be required to provide such supporting information deemed necessary by the Administrator. This may include a financial statement, tax returns and such other financial information, which the Administrator may consider necessary and appropriate to determine whether a loan should be granted.
3. **Basis for Loan Approval.** The Administrator, in making a determination as to whether a Participant qualifies for a loan, may consider, in a uniform and nondiscriminatory manner, such criteria as a commercial lender of funds would apply in like circumstances with respect to the Participant and any other reasonable factors it deems relevant. Such criteria may include, but need not be limited to, the creditworthiness of the Participant and his or her general ability to repay the loan, the period of time the Participant has been employed by the Employer, whether adequate security has been provided for the loan, whether the Participant has defaulted on a previous loan or who has had a previous loan declared to be a deemed distribution on account of failure to timely repay a loan in accordance with its terms. The Administrator may, in its discretion, require as a condition to the granting of the loan, that the Participant provide to the Employer an election for direct, after-tax payroll withholding for the loan repayments. In addition, a loan request made during the time a decision concerning a domestic relations order is pending may be delayed until after such decision is final.

4. **Limitations on the types and amount of Loans.** With regard to any loan made pursuant to this program, the following rule(s) and limitation(s) shall apply, in addition to such other requirements set forth in the Plan:
- i. All loans made pursuant to this program shall be considered a directed investment from the Account Balance of the Participant maintained under the Plan. As such, all payments of principal and interest made by the Participant shall be credited only to the Account Balance of such Participant.
 - ii. The maximum amount of a loan shall be the lesser of (a) 50% of the Participant's vested account balance; or (b) \$50,000, reduced by the excess of the highest outstanding balance of loans from the Plan to the Participant during the one year period ending on the day before the date on which such loan was made, over the outstanding balance of loans from the Plan to the Participant on the date on which such loan was made, or, if less, one-half (1/2) the Participant's account balance under this Plan and all other plans of the Employer.
 - iii. The minimum loan term is 12 months.
 - iv. Loans are required to provide that the amount of such loan, plus interest, will be amortized over the repayment period with payments to be made not less frequently than quarterly over a period not to exceed five (5) years. However, if the loan proceeds are used to acquire a principal residence of the Participant, the loan repayment period may be for a period up to thirty (30) years. This means that payments will be level throughout the repayment period, and each payment will include both principal and interest. With the consent of the Administrator, the Participant may repay the outstanding principal amount with interest to the date of repayment at any time prior to the loan due date, but may not make a partial prepayment, provided the loan obligation has not been treated as a deemed distribution by the Administrator.
 - v. Reasonable and necessary fees and expenses incurred by the Plan in the origination and ongoing maintenance of the loan may be charged against the Participant's Account Balance.
 - vi. Only active Participants are entitled to initiate participant loans. This means that if a Participant is not currently employed by the Employer (or a Participating Employer that has adopted the Plan), then he or she is not entitled to initiate a new Participant loan. However, a Participant who has separated services with the Employer may continue to maintain and pay on an existing Participant loan even if the Participant is not employed by a Participating Employer that has adopted the Plan.
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- vii. No loan in an amount less than \$1,000 shall be granted to any Participant.
 - viii. A Participant may only have 1 loan(s) outstanding at any time.

6. **Interest.** Any loan granted under this program shall bear a reasonable rate of interest. In determining such rate of interest, the Plan shall require a rate of return commensurate with the prevailing interest rate charged on similar commercial loans under like circumstances by persons in the business of lending money. Such prevailing interest rate standard shall permit the Administrator to consider factors pertaining to the opportunity for gain and risk of loss that a professional lender would consider on a similar arms' length transaction, such as the creditworthiness of the Participant and the security given for the loan. Therefore, in establishing the rate of interest, the Administrator shall conduct a reasonable and prudent inquiry with professional lenders in the same geographic locale where the Participant and Employer reside to determine such prevailing interest rate for loans under like circumstances.
7. **Collateral.** The Plan shall require that adequate security be provided by the Participant before a loan is granted. For this purpose, the Plan shall consider a Participant's interest under the Plan to be adequate security. However, in no event shall more than 50% of a Participant's interest in the Plan (determined immediately after the origination of the loan) be used as security for the loan.
8. **Default Procedures.** Generally, a default occurs upon the failure of a Participant to timely remit payments under the loan when due. The Administrator will consider a loan in default no later than the last business day of the calendar quarter following the calendar quarter in which the Participant failed to timely remit a scheduled payment (the cure period). The Administrator will also consider a loan in default if the Participant makes or furnishes any false representation or statement to the Plan.
9. **Consequences of Default.** At the time of such default, the Participant will have the opportunity to repay the loan, resume current status of the loan by paying any missed payment(s) plus accrued interest or, if a distribution is available under the terms of the Plan, request a distribution of the note. The Administrator will treat a loan that has been defaulted upon and not timely corrected during the cure period as a deemed distribution from the Plan. In such event, the outstanding balance of the loan plus accrued interest shall become taxable to the Participant as if it had been distributed and reported on a Form 1099-R issued to the Participant. Pending final disposition of the note, the Participant remains obligated for any unpaid principal and accrued interest. If repayment of a defaulted loan had been made by method other than payroll deduction, then method of loan repayment for any subsequent loans will be made by payroll deduction (pursuant to Treasury Regulation Section 1.72(p)-1 Q&A 19).

If the loan remains in default at the time the Participant's employment with the Employer terminates for any reason, the Administrator will offset the Participant's Account Balance by the outstanding balance of the loan to the extent permitted by law. The Administrator will treat the note as repaid to the extent of any permissible offset. With the consent of the Administrator, the Participant may elect to repay the outstanding principal with all accrued interest to the date of repayment as a lump sum.

In the event a loan is outstanding on the date of a Participant's death, his or her estate shall be his or her Beneficiary as to the portion of his or her interest in the Plan invested in such loan.

At the time of such default, the Participant's estate will not have the opportunity to repay the loan. In such event, the outstanding balance of the loan note shall be foreclosed and distributed from the Plan, and become taxable to the Participant's estate and reported on a Form 1099-R issued to the Participant's estate.

10. Notwithstanding the foregoing, Participants will be allowed to suspend payments for a bona fide leave of absence and the loan will not default during such leave to the extent provided below:

The Plan may suspend the obligation to repay a loan made to a Participant for any part of a period during which the Participant is performing service in the uniformed services (as defined in 38 U.S.C. chapter 43), whether or not qualified military service, even if the suspension exceeds one year and even if the term of the loan is extended. However, to avoid a default, the loan repayments shall resume upon the completion of such period of military service and the loan shall be repaid thereafter by amortization in substantially level installments over a period that ends not later than the latest permissible term of the loan plus the period of military service. Suspended loan payments may also be allowed in certain other circumstances or for reasons provided for in applicable IRS guidance, as issued from time to time.

The Plan may suspend the obligation to repay a loan made to a Participant for a period during which the Participant is on a bona fide leave of absence (other than for military service) either without pay or at a rate of pay (after applicable employment withholdings) that is less than the amount of the installment payments required under the terms of the loan. Such period may not exceed one year. Loan interest accrued during such period must be paid no later than the latest permissible term of the loan. Installment payments due after the end of the leave period must not be less than the installment payments required under the terms of the original loan. Repayment of suspended payments may be made by either increasing the amount of installment payments upon the Participant's return to work or by making a lump sum payment for the suspended payments at any time prior to the latest permissible term of the loan.

11. Upon satisfaction of the criteria established for granting a loan, the Administrator may grant the Plan loan request. The Administrator shall then require that the Participant execute all documents necessary to establish the Plan loan, including a promissory note and payroll deduction agreement, a truth-in-lending disclosure and such other documents, which will provide the Plan with adequate security.

Adopted this 15th day of December, 2015

Employer (signature) Paul Loehr

Name: (please print) Paul Loehr

TITLE: County Benefits Manager