



Brian Sandoval, *Governor*

COMMITTEE
Karen Oliver, *Chair, GCB*
Steve C. Woodbury, *Vice Chair, GOED*
Audrey Brooks-Scott, *DCNR*
Kent Ervin, *NSHE*
Mark Stevens, *Retired*

STAFF
Rob Boehmer, *Program Coordinator*
Micah Salerno, *Administrative Assistant*

Shane Chesney, *Senior Deputy Attorney General*

DEFERRED COMPENSATION COMMITTEE QUARTERLY MEETING MINUTES

December 3, 2015

The quarterly meeting of the Deferred Compensation Committee was held on Thursday December 3, 2015, at 9:00 a.m. in the conference room of the Governor's Office of Economic Development, 808 W. Nye Lane, Carson City, Nevada. Attendees participated in person, by videoconference, or by teleconference.

A copy of meeting material including this set of meeting minutes, the agenda, the audio recording and other supporting material, is available on the Nevada Deferred Compensation (NDC) website at: <http://defcomp.nv.gov/Meetings/2015>.

COMMITTEE MEMBERS

Audrey Brooks-Scott
Kent Ervin
Mark Stevens
Steve Woodbury
Karen Oliver, Chair

OTHERS PRESENT

Rob Boehmer, NDC Program Coordinator	Brian Merrick, Voya
Diane Brittell, MassMutual	Dianna Patane, Voya
Shane Chesney, Sr. Deputy Attorney General	Frank Picarelli, Segal Rogerscasey
Evan Dale, Dept. of Administration	Carlos Romo, Retiree
Brian Davie, Retiree	Micah Salerno, NDC Admin. Assistant
Alex Jones, NSHE	Robert Trenerry, MassMutual
Michelle Kelley, NSHE	

1. Call to Order/Roll Call

Chair Karen Oliver called the quarterly meeting of the Nevada Deferred Compensation (NDC) Committee to order at 9:00 a.m. on Thursday, December 3, 2015. Mr. Rob Boehmer took roll, determined a quorum was present, and confirmed the meeting was properly noticed.

Chair Oliver introduced and welcomed Dr. Kent Ervin and Ms. Audrey Brooks-Scott, the newly appointed Committee members.

2. Public Comment

Alex Jones provided written public comment:

Members of the committee and plan participants:

Let me first remind this committee of their legal responsibility to act solely for the interest of participants (e.g. your fiduciary duty to ALL plan participants).

Questions remain regarding the conduct of this agency during the contracting/bidding process and the switch to Voya Financial as the sole record keeper. Nevada Deferred Compensation owes ALL FICA alternative participants explanations and an apology for letting Voya Financial pilfer money from “stable principal” retirement accounts in a manner which is **historically inconsistent** with how these accounts have been managed in Nevada. Importantly, I and other FICA participants request answers to the following questions from the State:

Why did this agency agree to terms with Voya which were detrimental to a full 70% of total participants and over 90% of FICA Alt participants?

This claim is based on data contained in the finalist proposals contained in RPN 3119 and the memo from Voya Financial to Nevada Deferred Compensation regarding small account balances dated May 12, 2015. Based on the terms provided by the three finalists and the balance information provided by Voya (over 90% of accounts <\$5000, near identical proposed interest rates, no other finalist bidder proposed fees on FICA accounts) it is quite clear that Nevada Deferred Compensation committed a negligent breach of its fiduciary duty when it moved forward with awarding the contract to Voya WITHOUT considering account balances before moving these funds. Due to this oversight NDC agreed to terms which were directly detrimental to over 90% of FICA alt participants. I encourage you to not take my word on this claim but to review RPN 3119 (available on state purchasing website per my request) and Voya’s memo to your agency.

In the first year alone NDC’s negligence during the contracting process cost FICA alt participants over \$200,000 based on RPN 3119 final offers. Much of this money coming straight from participants own retirement contributions without their knowledge or consent. It is important to remember that these FICA Alt fees were NOT assessed previously in Nevada and that no other finalist bidder proposed assessing fees on these accounts. Historically, this had not been done in this program. It is quite clear why; even with the supposedly small fee assessed by Voya a majority of these accounts failed to live up to their intended purpose, “to be a supplementary retirement account similar to social security”. These “capital preservation accounts” were losing money (due to Voya’s withdrawals) and Voya has NOT refunded these amounts which were deducted without the consent or knowledge of plan participants. According to Voya’s own memo, up to 19,000 accounts were having their own retirement contributions actively withdrawn each month.

Why did the agency not consider account balance information during the bidding process?

I am quite sure that Rob Boehmer, Bishop Bastien, and the members of this committee would not move their own personal retirement accounts if they were not fully aware of the contents therein. However, this committee did just that for 32,000 vulnerable state workers, as **illustrated by the request for balance information on these accounts initiated by NDC WELL AFTER the contract had been awarded and the money moved**. Again, this information taken into account with the final proposal offers illustrates that NDC failed to fulfill its fiduciary duty. The agreed to terms financially damaged a full

90% of FICA alt participants (70% of all NDC participants) compared to the terms offered by the other two finalists. Again, I encourage you to review RPN 3119 and the memos from Voya to NDC regarding number of accounts and balances therein for the data which supports this conclusion.

Providing evaluators account balance information on FICA Alternative accounts would have very likely altered reviewer scores for “stable value” and “fee structure” for Voya, which combine to account for 55% of review weight. It is HIGHLY UNLIKELY that nonbiased evaluators would have ranked Voya as highly had NDC requested/provided them data regarding the sheer volume of low balance accounts (vast majority below \$5000, half less than \$500), which due to these fees would fail to hold “stable value”.

Why is Voya not sending notifications of new accounts or balance statements to FICA Alt participants?

Voya is well aware that it has been deducting participants own retirement contributions without their consent and refusing to refund that money to their accounts. The previous record keeper provided quarterly statements to all participants. I have talked to several dozen FICA Alternative participants in the past months. None of them reported receiving statements from Voya or notifications of new accounts. Most were COMPLETELY UNAWARE they had one of these accounts until I made them aware of it. I have since had a new account opened in my name. **I received no notification from Voya that this account exists, or any information regarding the terms of this account. Voya HAS NOT** been providing information that it promised it would to participants despite their claims to me and NDC to work to “increase participant education and awareness” (see Voya’s formal response to Alex Jones, dated July 2 2015).

Rectifying the situation:

If the State wants to fully correct these mistakes on behalf of FICA Alt participants then the fees on these accounts need to be immediately waived. Historically, these fees have not existed on these account types in Nevada and neither of the other two finalist bidders proposed fees on these accounts. Historically, the record keeper took on all the risk associated with managing these small balance fixed rate accounts. **Apparently, Voya wants none of the risk assumed with managing these accounts but wants to gain regular income from their management; even going so far as deducting participants own retirement contributions without their consent e.g. the accounts had ONLY the potential to LOSE value.** Waiving the fee at the “break even” point DOES NOT fix the situation given that the vast majority of FICA Alt participants have already been financially damaged by these terms. The terms offered by Voya are quite plainly detrimentally for the majority of NDC’s participants when the information from RPN 3119 and balance information is taken into account.

Refund the deducted amounts to FICA Alt participants immediately.

Voya and the state should make arrangements to immediately refund the amounts deducted to FICA alt participants. These funds are legally questionable in nature given that much of

them were deducted directly from the participants' own retirement contributions which are 100% vested (owned) by the contributor.

Voya MUST provide notification to new account holders and quarterly statements. This is the historic standard for these accounts. Previous record keepers provided notification and statements but I could not identify a single FICA Alternative participant who had received either of these since the January switch. The State and Voya risk a lengthy legal battle with FICA alt plan participants if the committee does not immediately change the management of these accounts to be "solely for the benefit of plan participants" as stipulated by Section 457. **The state should probably re-negotiate the contract for FICA alt accounts (perhaps with a new record keeper) given Voya Representative Bishop Bastien's statement at the previous meeting that Voya is unwilling to manage these accounts for the benefit of participants due to what he claims is the high cost of running them**(see August meeting minutes). Keep in mind that NO OTHER RECORD KEEPER proposed these fees (see RPN 3119) and that HISTORICALLY THESE FEES HAVE NOT BEEN ASSESSED in Nevada. Fix this today before your committee's oversight and error costs Nevada public servants any more money that is supposed to be earmarked for THEIR retirement NOT Voya's ledger books. The legal ramifications are likely to be substantial if your committee does not resolve these complaints immediately. I have identified many other individuals willing to stand with me as class representatives of FICA Alternative participants. Our legal team is ready to move forward should the committee and Voya fail to correct these mistakes.

Sincerely,
Alexander Jones
FICA plan participant

Dr. Carlos Romo, former NDC Committee member, thanked Mr. Davie and Mr. Sisco for their service on the Committee and welcomed the new members. He also urged the committee to look at other alternative investments that could benefit the Program.

Chair Oliver requested to take item 18 out of order since it followed the public comment from Mr. Jones.

18. For Possible Action – Discuss public comment allegations from NSHE FICA Alternative participant Alex Jones

Mr. Boehmer provided background on this item noting that he had done over 100 hours of research regarding Mr. Jones allegations. He noted that only 11 states had these types of social security replacement programs and that each of those accounts had an administrative fee.

Mr. Frank Picarelli, Investment Consultant for NDC, stated that all FICA alternative plans offered an insurance type of stable value product. Based on his research, he believed that to recordkeep this type of account for less than \$10 per year was a reasonable fee.

Mr. Brian Merrick from Voya explained that through the RFP for the recordkeeper contract, Voya had proposed to send an annual statement to FICA participants. They would be sending out the first statement in January 2016 and that was why FICA participants had not received a statement

from Voya yet. Participants did have the option to go online anytime to see their account balance and activity.

Mr. Boehmer and Mr. Picarelli remarked on the flexibility of Voya to waive the fee for FICA accounts with a balance under \$350 to avoid accounts losing money because of the monthly fee. This went into effect on October 1, 2015.

Dr. Ervin understood some of Mr. Jones concerns regarding the fee, although the FICA accounts were not free before the transition, the charges were hidden. He wondered if in the future it would be better to do a separate RFP for the FICA after seeing data from a more formal benchmarking.

Mr. Picarelli noted that the last RFP looked at the whole program to get the best most competitive product. More money as a whole usually received better rates and fees but he could do a study for an independent plan. There were a lot of accounts with small balances in the FICA portion and it could be a good strategy to separate that out next time.

Mr. Boehmer reached out to NAGDCA members for information on other FICA replacement plans. He looked at five plans and each one stipulated the fee for administering the program.

Mr. Woodbury asked how the fees compared to ours.

Mr. Boehmer indicated our Program was well under the medium and was definitely a reasonable fee.

Dr. Ervin requested to have Mr. Picarelli come back at a future meeting with whatever methodology they could use to compare rates so in the future if they went out with a separate RFP maybe a different set of companies would be at the table. He understood that combining the Plan could get a better rate overall. Prior to taking action on this FICA item he wanted to have more in depth information.

3. For Possible Action – Approval of Committee meeting minutes from meetings held on August 13, and September 11, 2015.

Motion by Mr. Woodbury to approve the minutes. Second by Chair Oliver, motion passed unanimously, 3-0. Dr. Ervin and Ms. Brooks-Scott abstained from voting since they did not attend those meetings.

4. For Possible Action- Consider election of Vice Chair to serve the remaining portion of the annual term with Chair Oliver until annual elections are commenced at the February 2016 Committee Meeting.

Mr. Stevens nominated Mr. Woodbury to serve as Vice Chair. Mr. Woodbury accepted.

Motion by Mr. Stevens to nominate Mr. Woodbury to serve as Vice Chair, second by Chair Oliver. Motion carried unanimously, 5-0.

5. For Possible Action – Receive and approve Program Coordinator’s Report of third quarter 2015.
Mr. Boehmer presented his report starting with the budget and reviewing the summary and detail reports which included projections and encumbrances.

Mr. Evan Dale with Department of Administration remarked that the NDC had a pretty small budget and the Committee should be aware how much labor they were using to follow this budget so completely. He noted a lot of their customers did very little or nothing to track their budgets.

Discussion continued regarding the budget, reserve, and allocation back to MassMutual participants as well as excess funds to be utilized for Plan expenses for the next year.

Mr. Boehmer stated the reserve for 120 days was approximately \$123,000 so the Program would be returning \$172,993 in excess revenue back to MassMutual participants per the direction of the Committee from the August 2015 meeting.

The Committee appreciated the overview of the budget and liked the format used. Vice Chair Woodbury asked if Mr. Boehmer could break out the sources of revenue in the future.

Mr. Boehmer continued his report speaking about the Financial Education Day sessions and other plan activities. He spoke about Open Meeting Law training as well as Board and Commission training and suggested covering those annually so the Committee members were doing their part in being responsible members. Mr. Boehmer commented on the Voya vendor rating and asked for Committee approval to submit the form. He commented on the Open Meeting Law complaint from Mr. Jones and how it was addressed and remarked on the new NDC staff position for Ms. Salerno that was effective as of October 12, 2015. A review of the monthly staff report was included as requested at the last meeting.

Discussion was held regarding the information on the loan program with a correction to the October number reported. There were 19 new loans in October, not 99 as indicated on the report.

Mr. Boehmer finished his report with comments on the newsletter, marketing, and website information. He asked for input from the Committee for the satisfaction survey that would be sent to participants in 2016.

Motion by Chair Oliver to receive and approve the Program Coordinator report including the vendor evaluation. Motion seconded by Vice Chair Woodbury.

Dr. Ervin thought the survey was a good idea and suggested staff bring a draft to the Planning Meeting in case they wanted to add input and finalize the questions.

Vote on the motion passed unanimously, 5-0.

6. For Possible Action – Receive and approve amendment to NDC Administrative Manual that reflects direction given to Staff at the August Committee meeting regarding the outlined travel policy, and the response given to the Internal Audit Division findings.

Mr. Boehmer stated the changes from the August meeting had been updated and the amended document was provided. He was seeking Committee approval on the amended document.

Mr. Woodbury remarked on the Committee contracting for part-time administrative assistant on page 9, article 7 and asked for that to be reworded to allow on an as needed basis so it was not an ongoing item.

Motion by Vice Chair Woodbury to approve the NDC Administrative Manual as amended. Second by Mr. Stevens, motion carried unanimously, 5-0.

10 minute break.

7. For Possible Action- Review, discuss, approve and/or amend proposed plan to rectify situation regarding payroll contributions from October 14, 2014 that former Recordkeeper, Mass Mutual, received but failed to post to NDC Participants accounts.

Mr. Boehmer reviewed the background of this item regarding a payroll contribution wire from October 31, 2014 for Truckee Meadows Fire Protection District that was never posted to their MassMutual accounts.

Mr. Picarelli explained there were two ways for MassMutual to correct the error. First, they would run the calculations with the actual unit values based on the funds the participants were in up to the conversion of the contract and then do the same calculation on the Voya side. There were a lot of variables doing that method and it was complicated. The other way would be to come up with a reasonable rate as a comparable rate of return and give everyone that amount. There should be a statement to the participants from MassMutual explaining the process.

Mr. Merrick stated that Voya received calculations of dollar amounts from MassMutual and then used a Department of Labor calculator to determine missed earning allocations once they received the accounts in February.

Dr. Ervin was concerned about making the participants whole and felt it was an egregious mistake from MassMutual and could not understand how internal balancing did not find it sooner.

Vice Chair Woodbury was surprised that the participants did not catch it. He remarked that the proposal from MassMutual to give back what the participants contributed could not factor in the market changes (buying low when the market went down).

Mr. Robert Trenerry with MassMutual indicated that they would comply and cooperate to make all participants whole and would work with the Committee and Mr. Boehmer. He was looking for direction from the Committee and MassMutual would respond accordingly.

Motion by Dr. Ervin to propose a settlement to make participants whole of the amount of their contribution raised by 10% rate of annual return until reimbursement occurs, and together with that, request a formal response from MassMutual on the circumstances of how this occurred. Second by Vice Chair Woodbury, motion carried unanimously, 5-0.

Mr. Boehmer would work with Mr. Trenerry and Ms. Brittell to submit a written memo proposal to MassMutual.

8. For Possible Action – Receive and approve Investment Consultant’s review of third quarter report from Recordkeeper and performance of investment options. ([Segal 3Q15 Report](#))

Mr. Picarelli presented his quarterly report for the third quarter (3Q) of 2015 commenting on financial market conditions from pages 1-19. Page 20 showed the executive summary for 3Q ending September 30, 2015 showing the NDC Plan assets totaled \$666.3 million which was a decrease of \$25.8 million or -3.7%. The majority of Plan assets were invested in the Stable Value Fund representing \$300.0 million, or 45%. The revenue was in compliance with the contract requirement and as of September 30, 2015 there was \$14,052 in Excess Revenue Sharing.

Motion by Chair Oliver to approve the Analysis of Investment quarterly report and the watch list, second by Dr. Ervin. Motion carried unanimously, 5-0.

9. For Possible Action – Receive and approve the Investment Consultant’s Fund Watch list for the third quarter ending September 30, 2015. ([Watch List, pg. 27](#))

Mr. Picarelli explained there were three funds on the watch list with two funds added this quarter due to underperformance. He recommended conducting a fund search to replace Allianz NFJ Dividend Value.

FUND	RECOMMENDATION
American Funds Growth Fund of America	Remain on Watch
Allianz NFJ Dividend Value	Placed on Watch
Franklin Mutual Global Discovery	Placed on Watch

The Committee voted on items and 8 and 9 together.

10. For Possible Action – Receive and approve amended NDC Investment Policy Statement that includes all of the recommended edits from the NDC Committee at the August 13, 2015 meeting.

Mr. Boehmer noted that the NDC Investment Policy Statement included edits that all the Committee members provided.

Discussion was held regarding the QDIA reference on pages 10, 16, and 18. In all cases the wording should match what is stated on page 18.

Motion by Vice Chair Woodbury to approve the Investment Policy Statement based on changes outlined during the meeting and any minor grammatical corrections. Second by Dr. Ervin, motion carried unanimously 5-0.

11. Receive and approve plan activity, administrative update, Beneficiary Data report, Small Inactive Account report summary, and service report from Voya Financial for third quarter ending September 30, 2015. ([Supporting Material](#))

Ms. Patane reviewed the quarterly numbers, beneficiary data, and small account cash information from the Voya Quarterly Review. She recommended removing “not contributed in two years” from the Plan Document cash out provision, and perform a cash out every six months. This would help in fees and in finding people before they moved.

Dr. Ervin suggested having Mr. Picarelli provide best practices for Plan Documents at a future meeting.

Chair Oliver requested to put an item on the February agenda to change the Plan Document wording for Cash Out.

Motion by Dr. Ervin to accept the Voya quarterly report. Second by Ms. Brooks-Scott, the motion carried unanimously, 5-0.

12. For Possible Action – Receive and discuss information regarding the development of an Administrative Account through Voya Financial that all revenue can be deposited into and drafted out of for Plan expenses.

Mr. Merrick stated that Voya could set up an administrative account to hold excess funds before reimbursing them back to participants. All money would go into the account and when NDC billed Voya for administrative expenses the payment would come from that account. It provided a better interest rate than what the State Treasurer’s account offered. Voya would just need a direction

letter from NDC to get the account set up which should include who Voya was authorized to make payments to.

Motion by Vice Chair Woodbury to authorize Voya to establish an administrative account. Second by Dr. Ervin, motion passed unanimously, 5-0.

13. Informational Item-- Receive regulation amendment update from DAG Shane Chesney regarding clarifying authority of the Committee to allow political subdivisions participation in the NDC Programs.

DAG Chesney provided an update on the NAC/NRS language and regulation hearing. He suggested holding a regulation hearing prior to commencing the February meeting so the Committee could adopt the new/revised language.

14. For Possible Action – Receive and discuss information concerning any potential Copyright issues regarding the NDC catch phrase, “Your Journey to and Through Retirement”.

DAG Chesney noted that he did a search for the proposed NDC phrase and it had not been trademarked. He filed for the trademark and would provide an update when he heard back.

The Committee encouraged staff to look into getting an agency credit card for expenses such as this.

15. For Possible Action- Discuss and provide Staff and the Investment Consultant direction as to agenda items that the Committee would like to see discussed and presented at the Annual Strategic Planning Meeting scheduled for January 14, 2016.

Mr. Boehmer asked the Committee to email him with suggestions for the Planning Meeting agenda.

16. For Possible Action – Review, discuss, and decide on if the NDC Committee would like to send the NDC Coordinator and a NDC Committee Member to the Institutional Investor Forum being held in Chicago, IL April 28-29, 2016. Institutional Investor will not sponsor costs for our legal counsel to attend; only our Program Coordinator and one other Committee member.

Motion by Chair Oliver to send Mr. Boehmer and Ms. Brooks-Scott to the Forum. Second by Vice Chair Woodbury, motion passed unanimously, 5-0.

17. For Possible Action – Confirm upcoming Annual Strategic Planning Meeting on January 14, 2016, and Quarterly Committee Meeting scheduled for February 17, 2016. Also, consider scheduling meeting dates for May and August 2016.

Dr. Ervin had a conflict with the February date so the Committee rescheduled it for Thursday, February 25, 2016. They also chose Wednesday, May 25, 2016, and Wednesday, August 17, 2016 for future quarterly meeting dates.

Comments/Updates

19. Committee Members

Vice Chair Woodbury recognized Mr. Sisco’s service to the Committee and welcomed the new members.

Chair Oliver also acknowledged Mr. Sisco’s service, welcomed the new members and thanked Mr. Davie for his service.

20. Investment Consultant

No comment.

21. Recordkeeper

No comment.

22. Staff Updates

Mr. Boehmer noted there had not been any complaints on their new office location and that staff was pleased with the office and security.

Ms. Salerno thanked the Committee including Mr. Davie, Mr. Sisco, and Dr. Romo for going through the process to make her position a State position. She was happy to have the opportunity to participate in the Program and have paid time off along with other benefits as a State employee.

23. Public Comment

No comment.

24. Adjournment

The meeting was adjourned at 2:57 p.m.

Respectfully submitted,

Micah Salerno
NDC Administrative Assistant