Nevada Public Employees' Deferred Compensation Program

*Crosscheck*SM Report
Prepared by: Segal Consulting (2017)

Nevada
Deferred
Compensation

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<u>Special Note</u>: Segal Consulting, as an independent actuarial and employee benefits consulting firm, does not provide legal advice. The information and opinions expressed in this Executive Summary represent our understanding of the law and regulations and their applicability to the Program. Unless otherwise indicated, our observations and recommendations concerning the plan document and plan operations are based on materials furnished to us by the Program. This report is not a legal opinion and has been prepared solely so that the Program and its legal counsel may consider our findings and recommendations in order to determine what corrective action, if any, are necessary.

EXECUTIVE SUMMARY

Segal Consulting was engaged by the Deferred Compensation Committee ("Committee") of the State of Nevada to conduct an independent, comprehensive review of the Nevada Public Employees' Deferred Compensation Program ("Program") to determine the status of the Program's compliance with the Internal Revenue Code rules and regulations governing 457(b) plans, as well as compliance with other applicable federal laws, and to determine whether the Program's administrative operations and practices meet the standards set forth in the Program's governing documents. We reviewed the documents and operations of both the Deferred Compensation Plan and the FICA Alternative Plan ("Plans"). The Program is administered by an Executive Officer and Program staff, as well as by a third-party recordkeeper, Voya.

This Executive Summary describes our findings and analysis from the comprehensive compliance review, which include a review of Plan documents, governance structure and administrative functions, compliance with applicable federal laws and consistency of administration with Program rules, as well as provides recommendations and suggestions for improvements in the Program's administrative functions and operational compliance with federal tax law.

We wish to thank Mr. Rob Boehmer and Ms. Micah Salerno, as well as personnel at Voya, for their immense cooperation and support during this project. The Program was gracious and candid and provided full access to staff and documents during the review process.

As a result of our compliance review, we conclude that the Plans are substantially in compliance with the requirements under section 457(b) of the Internal Revenue Code ("Code") and related regulations and other applicable federal laws. We have identified a few areas of Program administration that may be of concern to the Committee and could warrant further review or modification. In addition, the governing plan documents have some minor defects, which should be corrected to provide administrative clarity and to ensure operational compliance. We also identified areas where procedures to monitor ongoing compliance may need to be developed and implemented.

We note that, as a technical matter, even a minor failure to comply with the requirements under Code section 457(b), including failure to follow the plan document terms, even if a plan provision is not required under the Code, may cause a plan to fail to be an eligible plan under Code section 457(b). However, under the "flush language" between Code section 457(b) and 457(c), there is a special retroactive correction period for governmental 457(b) plans that generally allows compliance errors to be corrected prior to the first day of the first plan year beginning more than 180 days after the IRS notifies the plan sponsor in writing that the plan has been administered in a manner that is inconsistent with Code section 457(b) or the regulations thereunder. Consequently, 457(b) errors can be corrected without the plan failing to be considered an eligible plan.

Overall, it appears that the administration of the Program is consistent with IRS rules and governing plan documents. During a compliance review of any retirement plan, we discover operational and compliance issues and areas for improvement to the administrative processes. Retirement plan administration is inherently complex due to the number of constantly changing regulations required to be followed. While our report does identify several compliance-related operational issues, the majority of issues relate to administrative processes and minor plan document defects that can be corrected satisfactorily.

Segal's compliance review services, known as ***Crosscheck*****,** is a comprehensive review of plan operating procedures to determine whether they are in compliance with applicable requirements of the Internal Revenue Code and other federal legislation and regulatory guidance, as well as with the provisions of the Plan documents. The goal of a ***Crosscheck*** review is to:

1. **Assess** the current state of plan administration.
2. **Confirm** that procedures correspond to what the plan documentation states.
3. **Review** operational compliance with the Internal Revenue Code and other federal laws.
4. **Identify** potential risks associated with noncompliance.

Plan Review and Analysis

Our review and analysis of plan documents and operations included an extensive examination of federal laws and regulations, as described below. Our compliance review focused on the following areas:

- Written plan requirements for 457(b) plans
- Trust and exclusive benefit requirements
- Plan administrator duties and delegation
- Plan recordkeeping
- Eligible employees and eligible participating employers
- Enrollment and deferral agreement formalities
- Qualified Roth contribution program requirements
- Code section 401(a)(9) minimum required distributions
- Code section 457(b) deferral limits and catch-up rules
- Plan distribution rules
- Direct rollovers and transfers
- Qualified domestic relations orders
- Unforeseeable emergency distributions
- Plan loans
- Small benefit cashouts
- Rules for spouses, domestic partners, and beneficiaries
- Federal income tax reporting and withholding requirements

- Age Discrimination in Employment Act (ADEA)
- Veterans' employee benefit rights (USERRA and HEART Act)
- Family and Medical Leave Act (FMLA)

Furthermore, we focused on reviewing areas of Plan governance and administration that warranted additional investigation based on the results of our prior compliance review in 2014, including:

1. Review of governing Plan documents for both the Deferred Compensation Plan and the FICA Alternative Plan to determine whether the Plans have been amended to correct any deficiencies noted in our prior review, as well as to update the Plans for any changes in federal laws or regulations since that time.
2. Review of the processes and procedures followed by the Program administrator and applicable payroll centers in order to comply with the first-of-month rule, which requires a 457(b) plan to commence deferral of compensation no earlier than the first of the month following the date a deferral agreement (or change thereto) has been submitted to the plan.
3. Audit a sampling of transactions conducted by the Program and its recordkeeper for three types of transactions: (a) distributions due to an unforeseeable emergency; (b) plan loans; and (c) verification of compliance with the special catch-up contributions for the last three years prior to normal retirement age.
4. Review of the Program's governance structure, practices and written policies to ensure the Program is following industry best practices in these areas, particularly the Program's internal controls over plan administration by the recordkeeper.

Project Methodology

To understand our findings and recommendations, it is important to describe Segal's ***Crosscheck*** process and methodology. As background, our review of the Program followed our ***Crosscheck*** compliance review and analysis methodology, which was individually tailored for the Plan's specific compliance needs.

Step One: Data Collection and Documentation Review

Prior to interviews with the Program and its recordkeeper, various Plan documents were requested and collected from the Program, including governing statutes and plan documents, written administrative procedures, salary deferral agreements and trust documents. Further documentation was requested from the Program's recordkeeper, such as service agreements, internal administration forms and worksheets and participant communications. Such plan documentation was thoroughly analyzed by two senior compliance consultants. In addition, we reviewed all Program communications, publications, forms and reports contained on the Program's website.

A brief familiarity review was performed of the Plan documentation, in order to prepare for interviews with Program staff. A ***Crosscheck*** workbook, designed by Segal with questions specific to the type of plan, was used as a guide during the interview process.

Our documentation analysis also reviewed the consistency of Plan documents, including:

- "Fit" of participant communications with governing documents, including recent revisions;
- Consistency of operational processes and procedures, as well as other written materials with governing documents and employee communication materials; and
- Consistency of administrative actions with governing documents and written policies and procedures for Plan administration.

Step Two: Interviews with Program Staff and Recordkeeper

The second phase of the ***Crosscheck*** process consisted of interviews with the Executive Officer and Program staff who are responsible for the day-to-day operation of the Program. The goal of the interview process is to ensure that Segal, as well as those involved with administration of the Plans, understand the rules of the Plan and actually administer those rules according to Plan documentation. As indicated above, we covered an extensive array of questions that were designed by Segal regarding Program administration and operational issues. The interview also provided an educational opportunity for Program staff to address questions to our compliance experts on matters related to pension administration.

In addition to our interviews with the Program staff, we conducted telephone interviews with the Program's recordkeeper, Voya. The interviews were conducted informally and designed to further investigate certain areas of administration that were pertinent to our compliance review, based upon the information gathered from our plan documentary review and interview with Program staff.

Step Three: Audit of Individual Data Files

After the interviews were conducted, Segal requested detailed information from the recordkeeper on processed applications for unforeseeable emergency distributions, plan loans and catch-up contribution elections during the period from 07/01/2015 to 06/30/2017, including a complete copy of the recordkeeper's files maintained for a sampling of individual participants. The selected files were reviewed for compliance with Plan rules and administrative effectiveness with respect to unforeseeable emergency distributions, plan loans, and catch-up contribution elections.

Step Four: Written Report

At the conclusion of our review, we prepared this written report of our findings, which identifies and outlines action items, including identification of areas requiring further inquiry, and recommendations on corrective action, if indicated. Subject to review and approval by the Executive Officer, the final report will be presented to the Committee.

Since this report is not a legal audit, it cannot be considered a legal opinion concerning the Plans' qualification status or compliance with relevant statutes and rules. However, if the Committee wishes to act on any of the results of the ***Crosscheck*** review, we can assist in developing solutions and will work with legal counsel as requested. The accuracy of the review and the resulting report is a direct function of the quantity and quality of data available for review.

We thank the Committee once again for selecting Segal to conduct this compliance review and look forward to discussing our findings and recommendations.

FINDINGS AND RECOMMENDATIONS

In our review of the Plans' documentation, we found that the governing documents are substantially in compliance with applicable federal laws regarding written plan requirements for qualified plans and that the Plans' overall documentation was consistent with Program operations and administration. In addition, we found that governance of the Program was appropriate for the type and structure of the Plans. Furthermore, we conclude that the overall Program administration is generally compliant with both applicable federal laws and the terms of the governing Plan documents. Following is a description of the important areas of Program administration and documentation that, based on our review, may warrant further review and modification.

1. First of the month rule

Code section 457(b)(4) provides that compensation under a 457(b) plan may be deferred for any calendar month only if an agreement providing for deferral has been entered into before the beginning of the month such compensation is paid or made available. This first-of-the-month rule is set forth in Section 2.1 of the Deferred Compensation Plan document.

As part of our prior compliance review, we noted that the Program was not monitoring the timing of elections and subsequent changes to deferrals to ensure compliance with this rule, nor was the Program's recordkeeper(s). Since the State has biweekly payroll periods, it was possible that employees were electing deferral amounts and having those amounts deferred in the same calendar month, which is not permitted under the Code. Upon our recommendation, the Program began monitoring the timing of deferral elections, including both the initial participation election and subsequent deferral election changes, to ensure that deferral agreements do not go into effect until the first day of the month following the date the deferral amount is elected. In addition, the Program has since implemented processes to ensure that participating employers are complying with the first-of-the-month rule, such as periodically reminding participating employers about their responsibilities under the Code and providing assistance to the employers and their payroll centers in complying with this rule.

However, there is still one area in which it appears that the Program is not complying with the first-of-the month rule, and that is where the participant changes his/her deferral election to cease all deferrals to the Deferred Compensation Plan, the Program stops deferrals on behalf of the participant as of the next pay period even if this has the effect of ceasing deferrals prior to the first day of the month following the participant's election. The IRS clearly stated its position that the first-of-the-month rule applies to all deferral elections, including any modification or revocation of a deferral agreement in proposed Treas. Reg. section 1.457-4(b)(1), which reads in part [emphasis added] "*To be an eligible plan, the plan must provide that compensation for any calendar month may be deferred by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation to be deferred under the agreement would otherwise be paid or made available,* ***and any modification or revocation of such an agreement may not become effective before the first day of the month following the month in which the modification or revocation occurs****.*" Section 3.1(b) of the

Deferred Compensation Plan document also requires that any increase or decrease in the rate of deferrals elected by a participant be reflected in the first pay period of the month following the month in which the request was executed.

Therefore, we recommend that the Program modify its practice of ceasing deferrals immediately upon such election by the participant in order to ensure that the Program is complying with IRS rules, as well as following the terms of the Deferred Compensation Plan document.

2. Required minimum distributions

Pursuant to Code section 457(d)(2), eligible deferred compensation plans must comply with the required minimum distribution rules under Code section 401(a)(9), which generally require a tax-deferred plan to begin distributions to participants (or beneficiaries) no later than April 1 of the calendar year after the calendar year in which the participant attains age 70 ½ (or severs from employment, if later) payable over a period that does not extend beyond the lifetime (or life expectancy) of the participant (and any beneficiaries). Both the Deferred Compensation Plan document and FICA Alternative Plan document contain sufficient language for complying required minimum distribution rules in form. The Committee delegated the operational function of making required minimum distributions from the Plans to the recordkeeper. In our interview with Voya, their staff described a formal process for making required minimum distribution payments to participants on a timely basis, including the process for locating lost participants, and for participants who cannot be located, processing uncashed checks through the State's unclaimed property fund.

Recently, the Department of Labor and Internal Revenue Service have focused enforcement efforts on the issue of timely payment of required minimum distributions, and in particular the issue of locating lost participants in order to make required payments. The Department of Labor (DOL) published the findings of their investigation of these issues on a group of large defined benefit plans, which included: (1) there were significant number of participants eligible for benefits who had not been paid; (2) some benefit payments were diminished by the 50% excise tax on late required minimum distributions; and (3) the aggregate amount of unpaid benefits was very large (over one-half billion dollars). The DOL investigation also revealed some common reasons why benefits were not being paid on a timely basis, such as: (a) plans not having written procedures to identify and locate lost participants and beneficiaries; (b) plans with procedures not using them on a regular basis; and (3) plans not having adequate records to make payments on time. Finally, the DOL reiterated their position that failure to make timely required minimum distributions could violate ERISA fiduciary obligations. While DOL rules are not directly applicable to governmental 457(b) plans, the agency's guidance on this issue may be useful to all retirement plans.

In October 2017, the Internal Revenue Service (IRS) published a memorandum that directed its auditors of employee plans not to challenge a qualified plan as failing to satisfy required minimum distribution standards under Code section 401(a)(9) if the plan has taken the following steps:

- Searched plan and related plan, sponsor, and publicly-available records or directories for alternative contact information;

- Used any of the following search methods: a commercial locator service, a credit reporting agency, or a proprietary internet search tool for locating individuals; and

- Attempted contact via United States Postal Service certified mail to the last known mailing address and through appropriate means for any address or contact information (including email addresses and telephone numbers).

If a plan has not completed the steps above, the IRS auditor may challenge a qualified plan for violation of required minimum distribution standards or for the failure to commence or make a distribution to a participant or beneficiary to whom a payment is due.

Additionally, in our interview with Voya, they indicated that their records are missing beneficiary designations for 34% of Deferred Compensation Plan participants and 71% of FICA Alternative Plan participants. The lack of beneficiary designations is due in part to the transition from two recordkeepers to a single recordkeeper, where the prior recordkeeper did not provide data on beneficiary designations for its participants. For this reason, Voya takes a number of actions to obtain beneficiary information for participants who have not designated a beneficiary, such as semiannual reminders to such participants, sharing missing beneficiary data with the Program on a quarterly basis, and requiring field agents to inquire about beneficiary information upon any contact with participants. Since required minimum distributions must be paid to beneficiaries on a timely basis, we recommend that the Program and Voya continue their efforts to obtain beneficiary designations from participants, as well as consider new methods to collect this information.

Considering the focus on enforcement of required minimum distributions by IRS and DOL, we recommend that the Program develop and maintain formal, written procedures for complying with required minimum distribution rules that accurately reflect the Program's current operations as described by Voya and include the required steps for locating lost participants set forth in the IRS memorandum.

3. Website errors

During our data collection process for this project, we reviewed the Plan's website to obtain a wealth of information about the Plan's operations. In this process we discovered a few errors on the Plan's website that may need to be addressed, as follows:

- Under the Investment tab, Investment Options, the website provides a list of the available investment options under the Plan with a link to each option for additional information. The link to the Fixed Account option (under Stability of Principal category) has consistently provided only an error message since we first reviewed the website in early 2017 until November 2017. It is our understanding that the Fixed Account option is utilized by a significant number of participants in the Deferred Compensation Plan.

- Under the Resources tab, ROTH, the website provides a link to a Roth calculator. However, this is a broken link that only takes the reader to a blank page.

We recommend that the Committee take steps to correct these website errors and take action to ensure that the website is periodically monitored for any additional errors that may occur.

4. Last three years catch-up verification

The Deferred Compensation Plan permits eligible participants to take advantage of the special catch-up rule for 457(b) plans during the last three years prior to normal retirement age, which allows such participants to elect to defer up to the lesser of two times the regular deferral limit or the amount of underutilized prior years' maximum contribution limitation for years the individual was eligible to participate in the Deferred Compensation Plan. The Program's recordkeeper is responsible for administering this catch-up contribution and monitoring limitations thereunder.

We reviewed summary information about all catch-up elections made during the two-year period from 07/01/2015 to 06/30/2017. Then, we reviewed detailed files for four participants who made a catch-up election during this period. Determining the maximum catch-up contribution amount is a complex calculation, and based on our transactional review and interviews with Voya, the recordkeeper relies primarily on the participant to determine the underutilized prior years' maximum contribution limitation by having them fill out a worksheet. In addition, although the Plan document defines "Normal Retirement Age" for this purpose as beginning no earlier than the unreduced retirement age under the employer's pension plan and ending no later than age 70 1/2, the recordkeeper does not verify a participant's unreduced retirement age under the applicable State retirement plan before permitting catch-up contributions under the Plan. As part of our transactional review, we discovered that one participant elected catch-up contributions using a normal retirement age of 44 years. It is unlikely that this participant had met unreduced retirement age under a pension plan at the time of the catch-up election.

Therefore, we recommend that the Program, in coordination with the recordkeeper, develop and implement a formal process for monitoring the allowable amount of this type of catch-up contribution. This process should include utilizing the information about participants that is readily available to the Plan, such as any prior catch-up election made by the participant, the participant's unreduced retirement age under the applicable State plan, and the amount of prior years' deferrals to the Plan to determine the amount of any underutilized maximum contribution limitation in such years.

5. Plan loans

In 2015, the Deferred Compensation Plan adopted a loan program that allows State of Nevada employees to take a plan loan in accordance with Code section 72(p) and Section 7.3 of the Plan document. Based on our interviews with Voya, the plan loan default rate is approximately 15%. We reviewed summary information about all plan loans made during the two-year period from 07/01/2015 to 06/30/2017. Then, we reviewed detailed files of five plan loans that were made to four participants of the Deferred Compensation Plan and found that these loans were processed in a manner that is consistent with the Plan document and applicable Code requirements.

6. Unforeseeable emergency distributions

We reviewed summary information about all unforeseeable emergency distribution applications processed during the two-year period from 07/01/2015 to 06/30/2017. Then, we reviewed detailed recordkeeping files for twenty-three unforeseeable emergency distribution applications made by eight participants that were processed by Voya. We discovered numerous, significant problems with these unforeseeable distributions that were processed in a manner that is not consistent with the terms of the Plan document and Code section 457 (and the applicable regulations thereunder), as described below:

- In our review of processed unforeseeable emergency applications, we discovered several individuals who received multiple distributions within the two-year period we reviewed, often in amounts equal to the individual's entire account balance based solely on contributions made since the previous unforeseeable emergency distribution. For example, we reviewed applications for a participant who was paid an unforeseeable emergency distribution thirteen times in the two-year period.

- In several instances, unforeseeable emergency distributions were made for only a few hundred dollars and some distributions were made for less than one hundred dollars. It is unlikely that distributions for amounts representing only a fraction of the individual's monthly paycheck or amounts not much more than the total deferrals made in a month would satisfy the facts and circumstances tests required for such distributions under applicable regulations in determining whether an unforeseeable emergency exists. Treas. Reg. section 1.457-6(c) specifically states that a distribution on account of unforeseeable emergency may not be made to the extent such emergency may be relieved through cessation of deferrals to the plan. For the participant who received thirteen distributions in two years, the largest distribution amount was $235.00 and the smallest distribution amount was $51.38.

- In our review of processed applications, we also discovered several instances where the documentation of the amount and type of expenses submitted for payment was not sufficient for an unforeseeable emergency distribution. For example, with respect to the participant who submitted thirteen applications, for three of those applications the participant submitted documentation of medical expenses that was identical to documentation submitted for a prior application where an unforeseeable emergency distribution was paid. Another participant whose detailed files we reviewed submitted as documentation of expenses that must be paid to avoid eviction from their residence a typed document without letterhead from "Mr. John" who provided a contact telephone number which was the participant's own telephone number. Finally, a participant whose detailed files we reviewed received a plan loan in the amount of $40,000 in December 2016, and an unforeseeable emergency distribution of approximately

$64,500 in January 2017, and then paid off the loan in full in February 2017. This participant submitted documentation of medical expenses for dates of service as early as 2012, some of which were for expenses incurred for a person with the first name of the participant's spouse but with a last name that was different than for other medical bills.

- Section 7.1 of the Deferred Compensation Plan document requires that participants take a distribution of any rollover account balance before they are eligible for an unforeseeable emergency distribution. However, in our interview with Voya, they indicated that they do not impose this requirement before approving an unforeseeable emergency distribution. In the detailed files we reviewed, we discovered a participant who received an unforeseeable emergency distribution in the amount of $36,000 in June 2016 where such participant's date of hire was in February 2015. Such participant may have received an unforeseeable emergency distribution that included a portion of a rollover account.

We recommend the Program develop and implement procedures for monitoring the unforeseeable emergency distributions made from the Plan to ensure that for each application approved by the recordkeeper, proper documentation of the financial need has been provided. It may be advisable for the Program to provide some guidelines to the recordkeeper as to the sufficiency of certain types of documentation, so that the recordkeeper may deny applications that do not include proper documentation without exercising any discretion. For example, with respect to medical expenses, the Program may require that all documentation include a date of service and type of medical expense and that medical expenses be incurred a specified period prior to the application (e.g., within two years). With respect to eviction or foreclosure, the Program may require that all documentation be provided in writing on the letterhead of the creditor (e.g., landlord, property manager, or mortgage company) with contact information for the creditor so that the documentation can be verified. Pursuant to discussions with Program staff, it may be advisable for the Program to review unforeseeable applications where the documentation may not be sufficient, at least temporarily, to determine the type of guidelines that may be useful to Voya and may reduce the number of fraudulent applications that are approved for payment.

In addition, the Program may wish to consider implementing rules and procedures to ensure that unforeseeable emergency distributions are not paid that could have been relieved through other means, including cessation of deferrals. One method to do this is require that participants cease making deferrals for a period of time after an unforeseeable emergency distribution is made, similar to the requirements for hardship distributions from 401(k) plans (e.g., deferrals must cease for six months). Other alternatives for this purpose include (1) requiring a minimum amount for unforeseeable emergency distributions, such as many plans do for loans; (2) denying applications for multiple unforeseeable emergency distributions for amounts that represent solely the contributions made since the previous distribution; or (3) limiting the number of unforeseeable emergency distributions in a specific period (e.g., no more than two per year or five over a two-year period). Taking these measures may also reduce the total number of unforeseeable emergency distribution applications, which aids the Program in ensuring that administration of such distributions does not utilize a disproportionate share of Program resources when measured against the resources utilized for the basic purpose of the Plan (e.g., retirement savings) and other features that the Plan offers (e.g. assisting participants with investment strategies and decisions). Permitting an unlimited number of unforeseeable emergency distributions from the Plan may not be benefiting all participants equally in the use of the Program's resources. However, we cannot draw that conclusion based on our review, and this issue likely warrants further investigation.

7. Review of governing Plan documents

A. Deferred Compensation Plan. In our review of this Plan document, we noted several provisions that may need to be amended, as follows:

(1) There are a number of places in the Plan document where the formalities of a governing plan document are not practiced with consistency and accuracy. Thus, we recommend that the Committee consider amending Plan document provisions in a manner that clarifies the meaning and purpose of the substantive language in those provisions. For example:

- The terms "Article" and "Section" are used interchangeably in the document when referring to specific provisions of the Plan;
- A number of references to specific sections in the Plan document and of the Internal Revenue Code are inaccurate;
- Capitalization to indicate defined terms is not used consistently where some defined terms are not capitalized and some undefined terms are capitalized;
- The terms "Roth Program" and "Unit" are defined in Section 1.1 but then not used elsewhere in the Plan document; and
- Sections 14.4 and 14.6 regarding notices to stated parties are nearly identical and could be combined into a single section.

(2) Voya reviewed this Plan document and provided several comments on potential changes to the Plan with which we concur and, therefore, are provided here as part of our recommendations for amending the Plan document.

- Purpose (third paragraph)
  The reference in the following should be to IRC Section 457(e)(1)(A) (which applies to governmental employers rather than IRC Section 457(e)(1)(B) (which applies to nonprofit employers): *"The Plan and Trust Agreement are intended to satisfy the requirements for an eligible deferred compensation plan under Section 457(e)(1)(B) of the Code …"* Similar revisions would be needed at Section 5.1 (Transfers From Another Governmental Plan).

- Section 3.2(b) (457 Catch-Up) does not address how the underutilized amounts are determined if the participant had contributed prior to 2002 (ie, taking into account prior contributions made to any 401(k) or 403(b) plans in which he also participated). See the [language] from Voya specimen 457(b) plan for governmental employers.

- Section 8.4(b) (Beneficiary Rollover Distributions)
  The State may wish to consider incorporating language appearing in Section 1.1 defining "Eligible Retirement Plan" to tighten up the distinctions between rollover rules nonspousal and spousal beneficiaries. As currently drafted, the provision addresses this implicitly by referring to "Eligible Retirement Plan".

(3) We recommend that the Committee consider eliminating the defined term "Enrollment Date" from the Plan document. This term is generally defined as any payroll date on which an employee receives compensation, and then it is used in Articles II and III as the date an employee participates in the Plan or makes a change to their deferral agreement. When used this way, the term Enrollment Date appears to allow a change to deferrals that does not comply with the first-of-month rule.

(4) We recommend that the Committee consider eliminating the defined term "Minimum Required Distribution Date" from the Plan document. The definition of this term is nearly identical to the defined term "Required Beginning Date" where the term Required Beginning Date is used throughout the document and the term Minimum Required Distribution Date is not used elsewhere in the document. Also, the term Required Beginning Date is defined in Treasury Regulations.

(5) We recommend that the Committee consider amending the definition of the term "Unforeseeable Emergency Distribution" to include additional clarifying language from applicable Treasury Regulations and an updated definition of dependent under the Code for this purpose. Sample language for this purpose can be found in Rev. Proc. 2004-56, which provides IRS model language for governmental 457(b) plans.

(6) We recommend that the Committee considering amending Article III (Amounts Deferred or Contributed), as well as any other applicable provisions of the Plan, to include language that governs any employer contributions to this Plan. Our review of your audit report dated 06/30/2015 indicated that some employer contributions are made to this Plan, which was confirmed during our interviews with Program staff. However, the Plan document does not mention employer contributions as permitted or prohibited. The types of contributions permitted to be made to a tax-deferred plan and any limits that apply to such contributions is a required written plan provision under IRS rules.

(7) We recommend that the Committee review the provisions of Article XI (Administration) to determine if any revisions are necessary to reflect the changes made by recently enacted legislation to certain duties of the Committee under the Program.

B. FICA Alternative Plan. In our review of this Plan document, we noted several provisions that may need to be amended, as follows:

(1) There are a number of places in the Plan document where the formalities of a governing plan document are not practiced with consistency and accuracy. Thus, we recommend that the Committee consider amending Plan document provisions in a manner that clarifies the meaning and purpose of the substantive language in those provisions. For example:

- The terms "Article" and "Section" are used interchangeably in the document when referring to specific provisions of the Plan;
- A number of references to specific sections in the Plan document and of the Internal Revenue Code are inaccurate;
- Capitalization to indicate defined terms is not used consistently where some defined terms are not capitalized and some undefined terms are capitalized;
- The term "Enrollment Date" is defined in Section 1.1 but then not used elsewhere in the Plan document;
- Sections 14.4 and 14.6 regarding notices to stated parties are nearly identical and could be combined into a single section; and
- Inapplicable language regarding unforeseeable emergency distributions is contained in the definition of "Eligible Rollover Distribution."

(2) Voya reviewed this Plan document and provided several comments on potential changes to the Plan with which we concur and, therefore, are provided here as part of our recommendations for amending the Plan document.

- Purpose (third paragraph)
  The reference in the following should be to IRC Section 457(e)(1)(A) (which applies to governmental employers rather than IRC Section 457(e)(1)(B) (which applies to nonprofit employers): *"The Plan and Trust Agreement are intended to satisfy the requirements for an eligible deferred compensation plan under Section 457(e)(1)(B) of the Code …"* Similar revisions would be needed at Section 5.1 (Transfers From Another Governmental Plan).

- Section 3.1 is entitled "Non-Elective Deferrals" – the State may wish to revise to Non-Elective Contributions (to be consistent with the definition in Section 1.1).

- Section 5.2(a) (Rollover Contributions in General)
  For purposes of rollovers in, this section needs to carve Roth IRAs out of the definition of Eligible Retirement Plan. While a governmental 457 participant can roll his account to a Roth IRA, a governmental 457(b) plan cannot accept a rollover from a Roth IRA.

- Section 8.4(b) (Beneficiary Rollover Distributions)
  The State may wish to consider incorporating language appearing in Section 1.1 defining "Eligible Retirement Plan" to tighten up the distinctions between rollover rules nonspousal and spousal beneficiaries. As currently drafted, the provision addresses this implicitly by referring to "Eligible Retirement Plan".

(3) We recommend that the Committee consider eliminating the defined term "Minimum Required Distribution Date" from the Plan document. The definition of this term is nearly identical to the defined term "Required Beginning Date" where the term Required Beginning Date is used throughout the document and the term Minimum Required Distribution Date is not used elsewhere in the document. Also, the term Required Beginning Date is defined in Treasury Regulations.

(4) We recommend that the Committee review the provisions of Article XI (Administration) to determine if any revisions are necessary to reflect the changes made by recently enacted legislation to certain duties of the Committee under the Program.

C. State Administrative Manual. In our review of this administrative document, we noted a few provisions that may need to be amended, as follows:

(1) Voya reviewed this administrative document and provided several comments on potential changes to the document with which we concur and, therefore, are provided here as part of our recommendations for amending the State Administrative Manual.

- Section 3802 (Authority)
  While the State law speaks to the authority to establish a 401(k) plan, the Tax Reform Act of 1986 does not allow a governmental employer to establish a 401(k) plan if that plan was not already in existence as of May 5, 1986.

  The manual notes that *"All compensation amounts deferred pursuant to the program, all property and rights purchased with those amounts and all income attributable to those amounts remain solely the property or rights of the State of Nevada or the Nevada System of Higher Education, subject only to the claims of general creditors, until made available to the participants in the program or their beneficiaries."* That State rule would conflict with the federal Internal Revenue Code, which requires that 401 and 457(b) plans be held in trust or similar custodial arrangement for the exclusive benefit of plan participants and beneficiaries. … So the amounts contributed to a retirement plan would neither be the property of the State or reachable by its general creditors. It is possible that … this section of the manual reflects the Internal Revenue Code prior to modification by the Small Business Jobs Protection Act of 1996.

(2) We recommend that the Committee review the provisions of Section 3804 (Deferred Compensation Committee) to determine if any revisions are necessary to reflect the changes made by recently enacted legislation to certain duties of the Committee under the Program.

D. Nevada Public Employees' Deferred Compensation Program Administrative Manual. In our review of this administrative document, we noted a few provisions that may need to be amended, as follows:

(1) Voya reviewed this administrative document and provided a comments on a potential changes to the document with which we concur and, therefore, is provided here as part of our recommendations for amending this Administrative Manual.

> Section 7.7 (Recordkeeper(s))
> The first bullet discusses compliance with IRC Section 402(g), which would not apply to 457(b) plans. That should be replaced with references to IRC Sections 457(b) (which would address both the general 457(b) annual contribution limit and the Special 457(b) catch-up) and 414(v) (which is the Age 50+ catch-up).

(2) We recommend that the Committee review the provisions of Article VII (Roles, Responsibilities and Duties) to determine if any revisions are necessary to reflect the changes made by recently enacted legislation to certain duties of the Committee under the Program.

(3) During our fiduciary training session with the Committee, this governing body expressed a desire to develop written policies relating to communications between relevant parties that is consistent with the Committee's commitment to open governance. Furthermore, during our interviews with the Program, staff expressed a desire to develop written procedures governing claims and appeals that is consistent with the provisions set forth in Section 11.8 of the Deferred Compensation Plan document. We concur that a formal, written communication policy would be helpful to the Committee, and that written procedures governing the Deferred Compensation Plan's claims and appeals process would be helpful to the Program, both of which may be appropriate additions to this Administrative Manual.

With respect to written procedures governing claims and appeals under the Program, the Committee and Program staff will need to consider a number of issues before drafting the procedures, including the following:

- When is a "claim" determined to be made?
- For what actions will the procedures apply (e.g., only for unforeseeable emergency distributions, for any distribution from the plan, for deferral agreements, for investment elections, etc.)
- How can a participant (or beneficiary) make an appeal (in writing or orally)?

- Will there be strict deadlines for certain actions in the appeal process?
- Does any part of the State's administrative law rules govern or guide these procedures?
- Who will be responsible for each action or decision-making step in the process?
- To what extent will the claims and appeals procedures follow ERISA rules?

8. Plan governance

Generally, the governance structure of the Program is well-established and appropriately documented. In addition, the Program has procedures in place for monitoring important aspects of Plan compliance, such as payroll audits to ensure proper transmission of contributions and payroll reports to ensure excess deferrals are not made. Also, Article III (Coordination of Audits) of the Program's Administrative Manual requires a biennial compliance audit of the Program. However, as a plan fiduciary, the Committee is responsible for monitoring the performance of its recordkeeper to ensure compliance with all Code section 457 rules and other applicable federal laws.

In the course of our compliance review, we identified two specific areas of Program operations where the recordkeeper may not be complying with Code section 457 rules and related regulations: catch-up contributions and unforeseeable emergency distributions. The Program should develop and implement a formal process for periodically reviewing administration of these areas to ensure compliance with the Internal Revenue Code and maintenance of the eligible status of the 457(b) Plan. Furthermore, in our review of the Program's governing document, we recommended that the Deferred Compensation Plan document and FICA Alternative Plan document be amended (or restated) to make a number of clarifying changes.

We hope that the information provided in this report can provide assistance to the Committee, Program staff and recordkeeper with respect to areas to focus on for future improvements to the Program.