

COUNTY OF ORANGE 1992 DEFINED BENEFIT RETIREMENT PLAN

SUMMARY

Effective January 1, 1992, the County of Orange adopted the County of Orange 1992 Defined Benefit Retirement Plan (the Plan), in order to comply with the Omnibus Budget Reconciliation Act of 1990 (the Act). The Plan was adopted to avoid paying social security taxes for any eligible employee who performs services for the County on the basis of less-than-half-time or as extra-help.

The Orange County Grand Jury believes that the Plan should be amended to correct and clarify certain of its provisions and that it be put on a sound financial and actuarial basis for the present participants. We also recommend that a new plan be established and that this plan be a defined contribution plan. The new plan should be administered by the County Executive Office, Human Resources, Employee Benefits, in the same manner as the current 401(a) and 457 plans for full-time employees.

INTRODUCTION AND PURPOSE

In fulfilling its obligation to the citizenry, the Orange County Grand Jury has undertaken a study of the Plan. This study was made to improve the County's administration of the Plan.

METHOD OF STUDY

The Grand Jury interviewed members of the Treasurer-Tax Collector staff and members of the County Executive Office, Office of Human Resources, Employee Benefits staff. Information was also obtained from the following documents:

- County of Orange 1992 Defined Benefit Retirement plan effective January 1, 1992.
- January 1, 1998, Actuarial Valuation for 1992 Defined Benefit Retirement Plan, dated December 8, 1998.
- Internal Revenue Code Sections 414 and 415.
- Omnibus Budget Reconciliation Act of 1990.

BACKGROUND

The Congress of the United States of America enacted the Omnibus Budget Reconciliation Act of 1990 (the Act). One of the provisions of the Act mandated that state and local government workers not covered by a retirement plan would be subject to social security coverage. The County of Orange had established a pension plan for its full-time employees in 1945 but did not have any retirement plan for its less-than-half-time and extra-help employees. The County established the 1992 Defined Benefit Retirement Plan (the Plan) for any eligible employee who performs services for the County on the basis of less-than-half-time or as extra-help, effective January 1992. The Plan is mandatory for all eligible part-time and extra-help employees and provides for employee contributions based on the age of the employee. Employees also earn interest on their contributions. When the Plan was established, it covered approximately 3,000 employees and an annual payroll of \$10 to \$12 million.

At the time the Plan was established, it was contemplated that employee contributions and earnings on those contributions would be sufficient to provide retirees with the defined benefits set forth in the Plan and that no contributions would be required of the County. The effect of the County's action was to avoid both the deduction of social security taxes from employees and the payment of the employer's portion of social security taxes.

On September 30, 1999, the Plan had 1,160 active participants and a fund balance of approximately \$2,303,000. The latest actuarial report (as of January 1, 1998) recommended that the County make a contribution to the Plan due to an increase in the unfunded liability. The independent actuary firm also indicated that, based on information received, it was comfortable with its 8 percent interest assumption.

FINDINGS

Under *California Penal Code* Sections 933 and 933.05, a response is required to all findings. The 1999–2000 Orange County Grand Jury has arrived at the following findings:

1. The Plan assets have not been invested to realize a return sufficient to provide the benefits promised to the employees and to minimize the County's cost of the Plan. The fund assets reside in the Treasurer's Investment Pool where they are invested in short-term maturities earning approximately 5 percent.

A response to Finding 1 is required from the **Treasurer-Tax Collector**.

2. Certain provisions of the Plan are unclear, incorrect, or ambiguous.

A response to Finding 2 is required from the **Treasurer-Tax Collector**.

3. In accordance with the Plan §10.8 and the brochure supplied to the employees, a determination letter was to be obtained from the Internal Revenue Service (IRS). This letter was not obtained. The Plan provides that the deductions from employee earnings shall be post-tax until a determination letter is obtained from the IRS, then pre-tax. The County is currently making deductions on a post-tax basis.

A response to Finding 3 is required from the **Treasurer-Tax Collector**.

4. Only two actuarial valuations have been made of the Plan since inception. County Counsel, on two occasions, recommended that there be annual evaluations (or at a minimum every three years).

A response to Finding 4 is required from the **Treasurer-Tax Collector**.

5. The actuarial valuation as of January 1, 1998 recommended a County contribution. The County did not make this contribution.

A response to Finding 5 is requested from the **County Executive Office**.

RECOMMENDATIONS

In accordance with *California Penal Code* Sections 933 and 933.05, each recommendation must be responded to by the government entity to which it is addressed. These responses are submitted to the Presiding Judge of the Superior Court. Based on the findings, the 1999–2000 Orange County Grand Jury recommends that:

1. The Plan assets should be invested to realize a return sufficient to provide the benefits promised to the employees and to minimize the County's cost of the Plan.

A response to Recommendation 1 is required from the **Treasurer-Tax Collector**.

2. The Plan be thoroughly reviewed and those provisions that are unclear, incorrect or ambiguous, be amended.

A response to Recommendation 2 is required from the **Treasurer-Tax Collector**.

3. A determination letter be obtained from the IRS as soon as the Plan is amended and the County should make deductions on a pre-tax basis.

A response to Recommendation 3 is required from the **Treasurer-Tax Collector**.

4. An actuarial valuation of the Plan be made as soon as possible.

A response to Recommendation 4 is required from the **Treasurer-Tax Collector**.

5. The actuary's recommended contribution, if any, be made.

A response to Recommendation 5 is requested from the **County Executive Office**.

6. The Plan be frozen for current employees, and a new defined-contribution plan for less-than-half-time and extra-help employees be established and administered by the County Executive Office, Office of Human Resources, Employee Benefits, and a determination letter for this new plan be obtained from the IRS.

A response to Recommendation 6 is required from the **Board of Supervisors** and requested from the **County Executive Office**.