

## REPORT OF THE CHIEF LEGISLATIVE ANALYST

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DATE: December 4, 2013

TO: Honorable Members of the Rules, Elections and Intergovernmental Relations Committee

FROM: Gerry F. Miller *GFM*  
Chief Legislative Analyst

Council File No:  
Assignment No: 13-11-0953

SUBJECT: Department of Fire and Police Pensions Recommendations for the 2013 – 2014 Federal Legislative Program

CLA RECOMMENDATION: Adopt the attached Resolutions to include in the City's 2013 – 2014 Federal Legislative Program SUPPORT for H.R. 1795 (Davis)/S. 896 (Begich), the Social Security Fairness Act of 2013, legislation which would repeal the Windfall Elimination Provision and the Government Pension Offset; as well as legislation which would exempt qualified retired public safety employees between the ages of 50 and 55 from the 10% early distribution tax on 457 distributions (those from deferred compensation plans) that have been rolled over from defined benefit pension plans, substantially similar to S. 1432 (Nelson), introduced in the 112<sup>th</sup> Congress.

### SUMMARY

On October 30, 2013, the Department of Fire and Police Pensions forwarded a bill response report to the Chief Legislative Analyst's Office seeking a City position on H.R. 1795/S. 896, the Social Security Fairness Act and a City position on legislation which would amend the Internal Revenue Code of 1986 to exempt qualified retired public safety employees between the ages of 50 and 55 from the 10% early distribution tax on 457 contributions that have been rolled over from a defined benefit pension plan.

Upon review, this Office has prepared the attached Resolutions in support of these bills. The Resolutions seeks an official position of the City of Los Angeles to support H.R. 1795/S. 896, the Social Security Fairness Act of 2013, and support for legislation which would exempt qualified retired public safety employees between the ages of 50 and 55 from the 10% early distribution tax on 457 distributions that have been rolled over from defined benefit pension plans.

### BACKGROUND

#### **The Social Security Fairness Act**

The Social Security Fairness Act of 2013, introduced in the House of Representatives as H.R. 1765 (Davis) and in the Senate as S. 896 (Begich), would amend Title II of the Social Security Act to repeal the Windfall Elimination Provision (WEP) and the Government Pension Offset

(GPO). These provisions impact a government worker's Social Security benefits, either earned in their own right or as a spouse or survivor.

Under current law, public employees who do not pay the Social Security tax and are instead entitled to a defined benefit pension are referred to as "non-covered" employees. Non-covered employees may be penalized under the GPO when they collect their pension as well as benefits earned by their spouse or widow. Under the GPO, individuals who would be entitled to a non-covered public pension and a social security benefit earned by their spouse would have their social security benefit significantly reduced. This not only has negative impact on a retiree's income, but also affects Medicare rates, retirement security, and burial benefits.

Under the WEP, public employees may lose up to 60% of their earned Social Security retirement benefits if they had two jobs, one in which they paid Social Security taxes and earned their own Social Security credits, and another, non-covered job. Proponents of the Social Security Fairness Act oppose the current policy as it treats an earned pension the same as a Social Security benefit, even though both were earned separately. In addition, supporters of this legislation believe that the GPO/WEP formulas are arbitrary and inconsistent, especially as related to taxes.

The Department of Fire and Police Pensions recommends support for this legislation because some employees who are covered by the pension system may be entitled to Social Security benefits, and would be impacted by the GPO/WEP.

#### **Amendment to the Internal Revenue Code of 1986**

This legislation would amend the Internal Revenue Code of 1986 to exempt qualified retired public safety employees between the ages of 50 and 55 from the 10% early distribution tax on 457 distributions, those from deferred compensation plans, that have been rolled over from defined benefit pension plans. This legislation would expand on legislation approved in 2006, which exempted qualified retired public safety employees between the ages of 50 and 55 from a 10% tax on an early distribution of their retirement benefits. S. 1432 (Nelson) was introduced in the 2012 – 2013 Legislative session, but was not passed. It has not been reintroduced in the current federal legislative session.

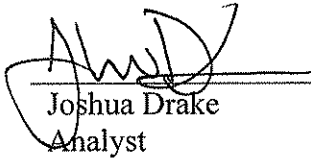
This legislation, if enacted, would enable a pension member exiting DROP (Deferred Retirement Option Plan) who elects to roll over their DROP account balance to the City's Deferred Compensation Plan to withdraw those funds without being subject to an additional 10% tax if they elected to take distribution prior to age 59 ½.

DEPARTMENTS NOTIFIED

Department of Fire and Police Pensions

BILL STATUS

04/26/2013	H.R. 1795 introduced, referred to the House Committee on Ways and Means
05/08/2013	S. 896 introduced, referred to the Senate Committee on Finance



Joshua Drake  
Analyst

GFM:MF:jwd

Attachments:   1. Resolution supporting the Social Security Fairness Act of 2013  
                  2. Resolution in support of legislation identical to S. 1432, introduced in the 112<sup>th</sup> Congress

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, under current law, spouses of individuals who have earned Social Security benefits are normally entitled to spousal benefits; and

WHEREAS, public employees are often defined as “non-contribution” employees, because they are entitled to a fixed benefit pension plan; and

WHEREAS, public employees who are entitled to collect Social Security benefits as a spouse are often penalized through the Government Pension Offset (GPO); and

WHEREAS, the GPO can result in a retiree losing all spousal benefits that they should be entitled to, including access to lower Medicare rates and death benefits; and

WHEREAS, public employees who are entitled to collect Social Security benefits on their own behalf due to other employment are also penalized under the Windfall Elimination Provision (WEP) in the current law; and

WHEREAS, current law treats public employee pensions in the same way as Social Security benefits, even though they are earned separately; and

WHEREAS, H.R. 1795 (Davis) and S. 896 (Begich), The Social Security Fairness Act of 2013, would address this issue by eliminating the GPO and the WEP;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013 - 2014 Federal Legislative Program SUPPORT for H.R. 1795/S. 896, The Social Security Fairness Act of 2013, which would repeal the Government Pension Offset and the Windfall Elimination Provision from the Social Security Act, and enable retired government workers to collect Social Security benefits that they or a spouse have earned.

## RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, qualified Public Safety employees are exempt from the 10% tax penalty on early dispersal of certain defined pension plan distributions; and

WHEREAS, this exemption does not apply to 457 distributions, those that are from a deferred compensation fund, that have been rolled over from a defined benefit pension plan; and

WHEREAS, the current law applies a 10% tax penalty on those public safety employees who choose distribution from a deferred compensation plan prior to age 59 ½; and

WHEREAS, S. 1432 (Nelson) was introduced in the 2012-2013 Legislative year to extend the tax exemption to early distributions from 457 funds, however, this legislation did not pass and has not been reintroduced; and

WHEREAS, this tax penalty negatively affects City employees enrolled in the Delayed Retirement Option Program (DROP) who elected to roll their DROP account balances into the City's deferred compensation plan; and

WHEREAS, legislation eliminating the 10% tax penalty would benefit those employees, and give DROP participants the opportunity to participate in deferred compensation without worrying about a tax penalty for early withdrawal;

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its 2013 - 2014 Federal Legislative Program SUPPORT for legislation which would amend Internal Revenue Code of 1986 to exempt qualified retired public safety employees between the ages of 50 and 55 from the 10% early distribution tax on 457 distributions that have been rolled over from defined benefit pension plans, substantially similar to S. 1432 (Nelson), introduced in the 112<sup>th</sup> Congress.