



Board Agenda Item 50

DATE: June 4, 2019

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, Director of Human Resources

SUBJECT: Amending and Restating the County of Fresno 457(b) Deferred Compensation Plan

RECOMMENDED ACTION(S):

Adopt resolution amending and restating the County of Fresno 457(b) Deferred Compensation Plan.

The recommended action will amend and restate the County of Fresno 457(b) Deferred Compensation Plan to update the Plan to ensure compliance with current law and to incorporate streamlined and recommended administrative practices.

ALTERNATIVE ACTION(S):

The alternative to the recommended action would include (1) take no action to update the County of Fresno 457(b) Deferred Compensation Plan ("Plan") and (2) remove or amend specific provisions within the proposed amended and restated County of Fresno 457(b) Deferred Compensation Plan Document.

FISCAL IMPACT:

There is no net County cost associated with the recommended actions.

DISCUSSION:

The County established the Plan as authorized by Internal Revenue Code (IRC) Section 457, in 1976. The Plan allows employees to defer pre-tax dollars into a variety of investment options for the purpose of saving for retirement. Currently, the Plan has nearly 6,400 participants (figure includes active and non-active County employees) with over \$260 million in assets. Your Board has delegated the authority to oversee the Plan to the Deferred Compensation Management Council (the "Council"), which is comprised of the County Administrative Officer (CAO), Auditor-Controller/Treasurer-Tax Collector, Director of Human Resources, Retirement Administrator, one (1) Department Head appointed by the CAO and two (2) Members-At-Large appointed by your Board. The Council is responsible for: the selection and oversight of the Plan investment options, creating policies and procedures related to the Plan, and making recommendations to your Board regarding Plan record-keeping and consulting services.

The Plan was previously amended and restated by your Board on April 17, 2012. In order to ensure that the Plan remains in compliance with applicable federal and state laws and regulations, as well as industry best practices, staff determined that a comprehensive review was needed. Due to the specialized nature of plans under IRC Section 457, staff worked with County Counsel who engaged Best, Best & Krieger, a law firm specializing in the review of defined contribution plans, to assist in amending and restating the Plan Document. Attachment A includes the proposed amended and restated Plan Document. Attachment B

includes the current Plan Document. Staff has summarized the primary substantive changes from the current Plan below.

1. In-Plan Distributions (Section 8.7 of Attachment B)

The current Plan allows participants to take an "In-Plan De Minimis" distribution, if their account balance is less than \$5,000 and they have not contributed in at least two (2) years. This provision is removed in the proposed amended and restated Plan, as it is only allowed once per career, making it hard to track and enforce. In addition, this provision is not required by the Internal Revenue Code. Elimination of this provision will have no effect on active employees who elect to take a loan or request an emergency distribution from their account.

2. Restriction on Deferrals after Unforeseeable Emergency Withdrawal (Section 8.3 of Attachment B)

Under the current Plan, participants who receive an unforeseeable emergency withdrawal are subject to a contribution prohibition period of two (2) years. The proposed amended and restated Plan would eliminate this prohibition period, as it is counterproductive to encouraging saving for retirement and the provision is difficult to track and enforce. Pursuant to Section 6.H of Agreement No. 14-710, Nationwide Retirement Solutions is responsible for processing all unforeseeable emergency distribution requests.

3. The Roth Option (Articles 2, 3, 5, and 7 of Attachment A)

This added provision in the proposed amended and restated Plan will allow participants to make after-tax contributions (Roth Option) as well as execute in-Plan rollovers to a Roth Option, which re-characterizes their Plan balances from pre-tax to after-tax. Nationwide is prepared to receive after-tax funds from the County and staff does not anticipate any problems with implementing the Roth Option into the County payroll system.

4. Self-Directed Brokerage Accounts (Article 4.04 of Attachment A)

This added provision in the proposed amended and restated Plan authorizes the Council to establish a policy, subject to final approval by your Board, permitting participants to invest in self-directed brokerage accounts. Self-directed brokerage accounts offer participants a "brokerage window" where they can trade investments (stocks, bonds, mutual funds, etc.) that are not in the Plan's official investment lineup. The proposed language was added in the event that such a provision becomes desired by Plan participants in the future.

5. Beneficiary Policy (Article 6 of Attachment A)

This added article in the proposed amended and restated Plan provides for the revocation of a spousal beneficiary upon dissolution of marriage (Article 6.02) and details who will receive a deceased participant's account if the participant does not designate a beneficiary (Article 6.03).

6. Distribute Small-Balance Accounts (Article 7.02.B of Attachment A)

This added provision in the proposed amended and restated Plan allows the Plan to distribute account balances of less than \$1,000 to participants upon separation from service, but does not create an obligation to do so. This will reduce the overall number of accounts, which will streamline administration. This will also ensure that separated participants will receive their funds instead of potentially forgetting about their account funds and never claiming their own deferred compensation.

7. Lost Participant or Beneficiary (Article 7.15 of Attachment A)

This added article in the proposed amended and restated Plan details the process for finding lost beneficiaries and how an account is handled if the beneficiary is unable to be found.

8. Powers and Responsibilities of the Council (Article 8.02.F of Attachment A)

This added provision in the proposed amended and restated Plan grants the Council the authority to determine the reasonable Plan expenses and the administrative fee charged to participants to pay for those expenses on an annual basis. Although your Board delegated the authority to set the administrative fee charged to Plan participants to the Council when it approved the contract with Nationwide Retirement Solutions, Inc. (see Section 4.C of Agreement #14-710), this delegation of authority is better handled through the Plan document rather than as a contractual provision. The Council, under the current Plan, determines reasonable Plan expenses as part of the annual Plan budget review and approval process. Therefore, these changes will have no practical effect on operations and will instead clarify the role of the Council in the budget review and approval process within the Plan document, thereby eliminating the need to include such delegation in future contracts.

9. Claims Procedures (Article 9 of Attachment A)

This added article in the proposed amended and restated Plan provides procedures by which claimants, such as ex-spouses or beneficiaries of participants, may appeal the Plan's determination of benefits.

10. Normal Retirement Age Ranges (Appendix A of Attachment A)

The current Plan contains outdated Normal Retirement Ages (for purposes of Special Section 457 Catch-up - see Article 5.03 of Attachment A). The proposed amended and restated Plan updates the Normal Retirement Ages in Appendix A of Attachment A pursuant to clarification from the Fresno County Employees Retirement Association.

Upon your Board's approval of the recommended action, the amended and restated Plan will take effect and be made available on the County website.

OTHER REVIEWING AGENCIES:

Best, Best & Krieger, a law firm specializing in the review of defined contribution plans, has reviewed the proposed amended and restated Plan as an expert in defined contribution plan law. The Council has reviewed the proposed amended and restated Plan, and has directed staff to submit said Plan to your Board for adoption.

REFERENCE MATERIAL:

BAI #24: April 17, 2012
BAI #20: December 9, 2014

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with Clerk - Resolution and Attachment A
On file with Clerk - Attachment B: Current 457(b) Deferred Compensation Plan

CAO ANALYST:

Deborah Paolinelli