



# Board Agenda Item 34

DATE: August 4, 2020

TO: Board of Supervisors

SUBMITTED BY: Paul Nerland, Director of Human Resources

SUBJECT: Implementation of COVID-19 Related Distribution and Loan Provisions of the CARES Act with Respect to the County of Fresno 457(b) Deferred Compensation Plan

RECOMMENDED ACTION(S):

**Adopt Resolution implementing amendments to the County of Fresno 457(b) Deferred Compensation Plan related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act.**

Approval of the recommended action would allow qualified County of Fresno 457(b) Deferred Compensation Plan (the "Plan") participants to take an in-service distribution from their account, increase the dollar amount and proportion of an account from which an eligible participant may borrow, temporarily allow qualified participants to initiate a second loan, allow qualified participants to delay repayment of existing loans, and suspend payment of required minimum distributions for calendar year 2020. This item is countywide.

ALTERNATIVE ACTION(S):

The alternative to the recommended action would include (1) take no action to implement the proposed amendments to the Plan related to the CARES Act; and (2) remove or amend specific provisions within the proposed Resolution.

FISCAL IMPACT:

There is no Net County Cost associated with the recommended action.

DISCUSSION:

The County has offered its employees a deferred compensation plan, as authorized by Internal Revenue Code (IRC) Section 457, since 1976. The Plan allows employees to defer pre-tax and post-tax dollars into a variety of investment options in order to save for retirement. Currently, the Plan has nearly 6,800 participants with over \$280 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, as well as amendments to the Plan. The Plan was previously amended and restated by your Board on April 17, 2012 and June 4, 2019.

There is currently a local, state and national emergency related to the COVID-19 pandemic. This pandemic

has resulted in significant economic impacts throughout the nation. As a result, on March 27, 2020, the CARES Act became law (Public Law 116-136). Among other provisions, the CARES Act provides several optional provisions that plans can adopt that can provide some financial relief to participants impacted by COVID-19.

Due to the specialized nature of plans under IRC Section 457, staff engaged Best Best & Krieger, a law firm specializing in defined contribution plans, to assist in reviewing the CARES Act provisions and related guidance and in preparing the proposed Resolution (Exhibit A) to adopt optional amendments to the Plan related to the CARES Act, which can assist Plan participants impacted by COVID-19 ("qualified participants"). At its June 24, 2020 meeting, the Council voted unanimously to recommend that your Board adopt the following provisions:

1. During calendar year 2020, allow qualified participants to withdraw funds up to a total of \$100,000 of their vested accounts under the Plan without the application of the 20% tax withholding that is usually required of in-service distributions (the 10% early distribution tax referenced in the CARES Act does not apply to 457 plans). Qualified participants may elect to pay income tax on the distribution in equal installments over a 3-year period.
2. Allow qualified participants to repay distributions under item 1, above, to the Plan within 3 years after the distribution was received.
3. From March 27, 2020 to September 23, 2020, allow qualified participants to request a new loan of up to \$100,000 or 100% of their vested account balances and defer repayment on the new loan for the period of time authorized by law.
4. Because the Plan's loan policy limits loans to one outstanding loan per participant, the Plan's loan policy is amended to temporarily allow qualified participants to initiate a second loan through September 23, 2020.
5. Allow qualified participants to defer loan repayments on existing loans through December 31, 2020, or such longer period of time allowed by law.
6. Suspend the payment of required minimum distributions (RMDs) due in 2020 for all participants in accordance with the CARES Act, unless the participant contacts Nationwide and requests to receive the distribution.

The CARES Act provisions are optional, and your Board may adopt all the provisions or amend the proposed Resolution to adopt some of the provisions. Additionally, your Board may amend the proposed Resolution to adjust the following:

- Total amount allowed for in-service distributions under Item 1, above, up to \$100,000 of the qualified participant's vested account under the Plan.
- Total amount or total percentage allowed for a new loan under Item 3, above, up to \$100,000 or 100% of the qualified participant's vested account balance.

A qualified participant is defined by the CARES Act and includes a participant who was diagnosed with COVID-19, whose spouse or dependent is so diagnosed, or who experiences adverse financial consequences due to COVID-19 (such as being quarantined, being laid off or furloughed, unable to work due to child care, closing or reducing hours of a business, or other factors as determined by the Secretary of the Treasury).

As authorized under the CARES Act, Internal Revenue Service (IRS) Notice 2020-50 expands the definition of who is a qualified individual to take into account additional factors such as reductions in pay, rescissions of job offers, and delayed start dates with respect to an individual, as well as adverse financial consequences to an individual arising from the impact of the COVID-19 coronavirus on the individual's spouse or household member. As expanded under Notice 2020-50, a qualified individual is anyone who:

- is diagnosed, or whose spouse or dependent is diagnosed, with the virus SARS-CoV-2 or the coronavirus disease 2019 (collectively, "COVID-19") by a test approved by the Centers for Disease Control and Prevention (including a test authorized under the Federal Food, Drug, and Cosmetic Act); or
- experiences adverse financial consequences as a result of the individual, the individual's spouse, or a member of the individual's household (that is, someone who shares the individual's principal residence):
  - being quarantined, being furloughed or laid off, or having work hours reduced due to COVID-19;
  - being unable to work due to lack of childcare due to COVID-19;
  - closing or reducing hours of a business that they own or operate due to COVID-19;
  - having pay or self-employment income reduced due to COVID-19; or
  - having a job offer rescinded or start date for a job delayed due to COVID-19.

Typically to implement any plan amendments, the IRS requires formal written amendments to the plan document, which can be a lengthy process. The CARES Act allows immediate implementation of these provisions, as long as the County amends its plan document by the last day of the first plan year beginning on or after January 1, 2024. County staff will prepare and present the amendment to the Board of Supervisors of the County on or before such due date. However, in order to facilitate loans under the CARES Act, the Board of Supervisors should adopt a current change in the loan policy to increase the number of outstanding loans from one to two for qualified participants.

The attached Resolution, if adopted by your Board, authorizes the Council, or the Council's designee, to execute any documents consistent with and necessary to implement these Plan amendments pursuant to the CARES Act, with the understanding that staff will take formal amendments to your Board prior to the end of calendar year 2024.

Upon your Board's approval of the recommended action, the CARES Act provisions will take effect and be made available to qualified Plan participants.

OTHER REVIEWING AGENCIES:

The Deferred Compensation Management Council reviewed and approved the recommended amendments to the Plan at its June 24, 2020 meeting. Best Best & Krieger, a law firm specializing in defined contribution retirement plans and who assisted the County in amending and restating the Plan in 2019, assisted in reviewing the CARES Act provisions and related guidance and in preparing the proposed Resolution.

REFERENCE MATERIAL:

BAI #50, June 4, 2019  
BAI #24, April 17, 2012

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with the Clerk - Resolution

CAO ANALYST:

Yussel Zalapa