



Board Agenda Item 34

DATE: December 14, 2021

TO: Board of Supervisors

SUBMITTED BY: Hollis Magill, Director of Human Resources

SUBJECT: Amend and Restate the County of Fresno 457(b) Deferred Compensation Plan

RECOMMENDED ACTION(S):

Adopt a Resolution to amend and restate the County of Fresno 457(b) Deferred Compensation Plan.

Approving the recommended action will amend and restate the County of Fresno 457(b) Deferred Compensation Plan to incorporate provisions related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act, American Miners Act of 2019, and the Setting Every Community Up for Retirement Enhancement (SECURE) Act.

ALTERNATIVE ACTION(S):

There are no viable alternatives to amending and restating the County of Fresno 457(b) Deferred Compensation Plan (the "Plan") to incorporate the legally required changes. Your Board may choose not to adopt any or all of the optional proposed changes.

FISCAL IMPACT:

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

DISCUSSION:

The Plan allows employees to defer pre-tax and/or after-tax dollars into a variety of investment options in order to save for retirement. Currently, the Plan has over \$360 million in assets and over 7,000 participants, including active and separated/retired employees. Of those 7,000 participants, over 4,000 are active County employees contributing to their Plan accounts (approximately 56% participation).

The Board of Supervisors 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 the Board of Supervisors. 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 the Board of Supervisors regarding Plan record-keeping and consulting services.

The Plan was most recently amended and restated by your Board on June 4, 2019. In addition, your Board

approved Resolution No. 20-256 on August 4, 2020 to implement changes related to the CARES Act. The purpose of the proposed amendment and restatement of the Plan Document is to incorporate the previous changes into the Plan Document and to ensure that the Plan remains in compliance with applicable federal and state laws and regulations. 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.

Exhibit A includes a “redline” version of the current Plan Document with the proposed changes added, for your Board’s reference. The final version of the Plan Document is attached to the Resolution. Staff has summarized the substantive changes from the current Plan Document below.

Legally Required Changes

1. Required Beginning Date (Section 2.26)

The Plan currently states that the Required Minimum Distribution (“RMD”) starting age is 70 ½. Pursuant to Section 114 of the SECURE Act, the RMD age was increased to 72, effective January 1, 2020 for participants who did not reach age 70 ½ before that date.

2. Death Prior To Benefit Commencement (Section 7.05.B)

Pursuant to Section 114 of the SECURE Act, the proposed language corresponds with the changes proposed to Section 2.26, above.

3. Death Prior To Benefit Commencement (Section 7.05.D)

Pursuant to Section 401 of the SECURE Act, the proposed language states that, if a participant’s Designated Beneficiary is not considered an “Eligible Designated Beneficiary” (the participant’s spouse is considered an “Eligible Designated Beneficiary”), the entire account balance will be distributed to the Designated Beneficiary no later than December 31st of the tenth (10th) year following the Participant’s death.

4. CARES Act Provisions (Article 12)

This article incorporates all of the CARES Act changes made to the Plan pursuant to Resolution No. 20-256, which was approved by your Board on August 4, 2020.

Optional Changes

5. Definition of Employee (Section 2.15) and Eligibility (Section 3.01)

The definition of Employee (Section 2.15) was revised to include all common law employees and indicates that independent contractors are not employees. Section 3.01 was changed to indicate that all Employees are eligible to participate in the Plan except seasonal and extra-help employees. Staff is recommending this change in order to clarify that a Severance From Employment, as defined by the Plan, does not occur if an employee has a reduction in hours or if their status changes from permanent to extra help.

6. Commencement Of Payment Of Benefits (Section 7.01.A)

Pursuant to Section 104 of the American Miners Act of 2019, employers may allow employees to take an in-service distribution at age 59 ½; the Plan currently states that participants may take in-service distributions at age 70 ½.

7. Qualified Birth or Adoption Distributions (Section 7.16)

Pursuant to Section 113 of the SECURE Act, the proposed language allows participants to take a distribution of up to \$5,000.00 upon the birth or adoption of their child.

OTHER REVIEWING AGENCIES:

The Council approved the proposed amended and restated Plan Document at its September 23, 2021 meeting and directed staff to submit the Plan Document to your Board for adoption.

REFERENCE MATERIAL:

BAI #34, August 4, 2020

BAI #50, June 4, 2019

ATTACHMENTS INCLUDED AND/OR ON FILE:

On file with the Clerk - Resolution

On file with the Clerk - Exhibit A

CAO ANALYST:

Yussel Zalapa