Inter Office Memo

DEPARTMENT OF
HUMAN RESOURCES

ITEM 7

DATE: June 24, 2020

TO: Deferred Compensation Management Council

FROM: Hollis Magill, Human Resources Manager Hollis Magill

SUBJECT: Proposed Amendments to the Plan Related to the CARES Act

Background

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. Among other provisions, the CARES Act provides several options that plans can adopt that can provide some financial relief to participants impacted by COVID-19.

Issue

Staff has worked with County Counsel to engage the law firm Best Best & Krieger to assist staff in preparing a proposed Board Resolution (Exhibit A) to enact optional changes related to the CARES Act. Such changes are summarized below:

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. Such qualified participants would be allowed to repay distributions to the Plan within 3 years after the distribution was received.
2. 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.
3. 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.
4. Allow qualified participants to defer loan repayments on existing loans through December 31, 2020, or such longer period of time allowed by law.
5. Suspend the payment of RMDs due in 2020 for all participants in accordance with the CARES Act, unless the participant contacts Nationwide and requests to receive the distribution.

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).

The IRS typically 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. As such, the attached Resolution, if adopted by the Board of Supervisors (the "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 the Board prior to the end of calendar year 2024. Prior to adoption of the Resolution by the Board, the County must notice bargaining units of the proposed benefit changes, pursuant to California law.

<u>**Recommended Actions**</u>

1. **Approve the proposed Board of Supervisors Resolution in Exhibit A, either as recommended or with amendments, which allows qualified participants to take an in-service distribution from their account, increases the dollar amount and proportion of an account from which an eligible participant may borrow, temporarily allows qualified participants to initiate a second loan, allows qualified participants to delay repayment of existing loans and suspends payment of required minimum distributions for calendar year 2020.**
2. **Direct staff to take the proposed Resolution to the Board of Supervisors for recommended adoption following compliance with Meyers-Milias-Brown Act requirements.**

BEFORE THE BOARD OF SUPERVISORS
OF THE COUNTY OF FRESNO
STATE OF CALIFORNIA

IN THE MATTER OF APPROVING THE IMPLEMENTATION OF THE COVID-19 RELATED PROVISIONS OF THE CORONAVIRUS AID, RELIEF AND ECONOMIC SECURITY (CARES) ACT	))))))))	RESOLUTION APPROVING IMPLEMENTATION OF THE PROVISIONS OF THE CARES ACT

WHEREAS, Section 457 of the Internal Revenue Code provides that employers may offer a retirement savings plan which allows its officers and employees to defer compensation presently earned to a future date, and

WHEREAS, on January 20, 1976, the County of Fresno ("County") adopted Resolution No. 76-102 which established the terms and conditions of the County of Fresno Deferred Compensation Plan (hereinafter referred to as "the Plan"), and

WHEREAS, the Plan was most recently amended and restated in Resolution 19-222 adopted as of June 4, 2019; and

WHEREAS, in recent months, the world, including the State of California and the County have been threatened with an unprecedented Coronavirus ("COVID-19") pandemic. This deadly virus has impacted every aspect of life and caused financial hardships resulting from lives lost to COVID-19 and loss of jobs. Under the California Governor's Emergency Proclamation of March 4, 2020, closure of non-essential businesses was ordered to slow the rapid spread of COVID-19; and

WHEREAS, the Coronavirus Aid, Relief, and Economic Security ("CARES") Act was enacted and provides availability to Plan funds to qualified participants affected by COVID-19 and also suspends required minimum distributions ("RMDs") for 2020 unless a participant elects to continue to receive such distribution; and

WHEREAS, to offer the options available to qualified Plan participants, an amendment to the Plan document is required, but the CARES Act allows implementation prior to the formal amendment which must occur on or before the last day of the first plan year beginning on or after January 1, 2024; and

WHEREAS, the Board of Supervisors of the County wishes to implement the provisions of the CARES Act as set forth herein; and

WHEREAS, the Plan's loan policy limits loans to one outstanding loan per participant, the loan policy should be amended to increase the number of outstanding loans for a qualified participant to two loans outstanding.

NOW, THEREFORE BE IT RESOLVED by the Board of Supervisors of the County that:

1. The Deferred Compensation Management Council (the "Council), or the Council's designee is hereby authorized to execute any documents consistent with and necessary to implement the following Plan amendments in accordance with the CARES Act effective immediately:

a. 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 and qualified participants may elect to pay income tax on the distribution in equal installments over a 3-year period.

b. Allow qualified participants to repay distributions under item a, above, to the Plan within 3 years after the distribution was received.

c. 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.

d. Approve an amendment to the Plan's loan policy to temporarily allow qualified participants to initiate a second loan through September 23, 2020.

e. Allow qualified participants to defer loan repayments on existing loans through December 31, 2020, or such longer period of time allowed by law.

f. Suspend the payment of RMDs due in 2020 for all participants in accordance with the CARES Act, unless the participant contacts Nationwide and requests to receive the distribution.

2. The staff of the County shall present the necessary amendments to the Board of Supervisors of the County on or before the last day of the first plan year beginning on or after January 1, 2024;

THE FOREGOING was passed and adopted by the following vote of the Board of Supervisors of the County of Fresno this ____ day of____, 2020, to-wit:

AYES:

NOES:

ABSENT:

____
Ernest Buddy Mendes, Chairman of the Board of Supervisors of the County of Fresno

ATTEST:

Bernice E. Seidel
Clerk of the Board of Supervisors
County of Fresno, State of California

By ______________________________________
Deputy

Agenda Item # ________

Reso. # ________________