



# Fulcrum Partners, a OneDigital Company

Answering questions about  
COVID-19 and your non-  
governmental 457(b) plans



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### **As a participant in a non-governmental 457(b) plan, can I cancel, reduce, or change my deferral election?**

Deferral elections in a 457(b) plan can be changed monthly. Any election made by the end of the calendar month would be effective for compensation paid the following month. Contributions can be cancelled, reduced, or increased.

### **Can I take a distribution from my plan due to COVID-19?**

At this time, there's no specific provision for distributions due to COVID-19 itself. However, if the plan design allows for distributions upon an Unforeseeable Emergency, a participant may apply to the administrative committee of the plan and request a distribution from the plan due to the Unforeseeable Emergency. In plans that do allow it, the availability of a distribution may be restricted to active employees. See the next question for more on Unforeseeable Emergency.

### **What is an Unforeseeable Emergency?**

An Unforeseeable Emergency is defined as a severe financial hardship of the participant or beneficiary, resulting from an illness or accident of the participant, spouse, beneficiary, the beneficiary's spouse, or the participant or beneficiary's dependent; or the loss of the participant's property due to casualty or other similar extraordinary and unforeseeable circumstances arising because of events beyond the participant's or beneficiary's control.



When a participant applies for a distribution from the plan due to an Unforeseeable Emergency, regulations limit such distributions to amounts that cannot be relieved through insurance, liquidation of assets that would not cause a severe financial hardship, or cessation of deferrals under the plan. The distribution must be limited to the amount necessary to satisfy the emergency need, plus the amount necessary to pay the tax on it. Distributions due to an Unforeseeable Emergency are subject to income tax.

### **What if my plan does not have an Unforeseeable Emergency distribution option?**

A plan sponsor may amend their plan to add Unforeseeable Emergency as a permissible distribution event effective once the proper documentation is completed.

### **As a plan sponsor, can I reduce or remove the match or other employer contributions?**

The ability to stop or reduce plan contributions depends on the plan design and document. Employers have considerable flexibility in choosing a plan design that can allow them to stop or reduce contributions, including match amounts. Many plans are designed so that the employer has the discretion to make or not make a contribution, so the amount, if any, is entirely determined by the employer. However, some plan designs require the employer to contribute to the plan. If the plan requires employer contributions, the plan sponsor should carefully determine whether the plan can be amended to discontinue mandatory contributions. Many plans are designed to restrict the circumstances of when an amendment may occur.

### **As a sponsor of a non-governmental 457(b) plan, can I terminate the plan?**

Yes, upon termination of the plan, the balances in the participants' accounts can be distributed to participants and beneficiaries. Distributions are subject to income taxation.



## What happens if I need to reduce staff?

If an employee separates from service due to the reduction in staff, they may be due a distribution from the plan. Depending on the plan design, participants may be able to make an election within 60 days after separation from service to delay payment.

## How do I handle employees on leave?

The employment relationship is treated as continuing intact while the employee is on military leave, sick leave, or other bona fide leave of absence if the period of such leave does not exceed six months, or if longer, so long as the employee's right to reemployment is provided either by statute or contract. Consequently, if a participant is on leave, there likely is not a separation from service so long as there is an intent for the employee to return to work.

## What about contributions for employees with reduced shifts or pay?

Participant deferral elections should be honored through the remainder of the month, but may be adjusted going forward. Keep in mind, most participants have elected a percentage of their pay to be deferred, and if their pay level is decreased, this will decrease the amount to be deferred.

## If I have to shut down operations, what do I do about contributions?

If you intend to shut down operations for a period of time, consider these decision points:

- If there will be no payroll during this period, no deferrals will be made.
- If you continue to pay employees in some capacity, consider reducing or removing employer contributions from the plan. A plan amendment may be needed.

When employees come back from unpaid leave or a layoff, they will resume deferrals.



## **Can I submit participant deferrals/ employer contributions, but not corresponding asset payments?**

Non-governmental 457(b) plans cannot be formally funded. Therefore, it's not necessary to make a corresponding asset payment when participant deferrals or company contributions are submitted. However, over the long term, most companies choose to informally finance their plan to ensure sufficient funds are in place when a distribution needs to occur.

## **What if I cannot make payments to participants who are entitled to a distribution?**

Generally, payments need to be made when a participant becomes entitled to a distribution, but if the payment would significantly impact the ability of the organization to continue as a viable entity, counsel should be consulted to see if a payment is appropriate.

## **Will there be relief from Congress for the financial impact of COVID-19?**

So far, relief has not been provided specific to non-governmental 457(b) plans, but the IRS has generally been reasonable in uncertain times. We'll continue to monitor and communicate regulatory changes or new guidance.

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