

MEMORANDUM

TO: Milwaukee Board of School Directors
FROM: James M. Carroll, Assistant City Attorney
RE: Proposed Plan Document Restatement - MPS Executive 403(b) Plan
DATE: May 26, 2020

1) Background

- IRS statutes and regulations require employer-sponsored retirement plans, including 403(b) plans, to maintain and regularly update a “plan document.” A plan document must clearly explain the plan’s features and processes. Failure to properly update a plan document may jeopardize a retirement plan’s tax-qualified status.
- Plan documents may be either individualized or standardized. An individualized plan document is unique to one particular plan and is usually more complex, whereas a standardized plan document typically uses a simplified template that can apply to different plans that are offered by unrelated employers, but that have identical features.
- For years, the IRS’s determination letter program allowed 401(a) retirement plans to submit individualized or standardized plan documents for IRS review. The plan and the IRS would work to ensure that the plan document was compliant with IRS requirements, after which the IRS would issue a favorable determination letter confirming the plan’s tax-qualified status. The determination letter program was not open to 403(b) plans.
- In 2013 the IRS announced the creation of a pre-approved program for standardized 403(b) plans. In 2017 the IRS approved the first pre-approved standardized 403(b) plan documents. Pre-approved plans receive an opinion letter from the IRS that they meet the requirements of Code Section 403(b).
- In general, a pre-approved plan consists of an Adoption Agreement and a Basic Plan Document. The Adoption Agreement allows the plan sponsor to elect amongst provisions provided for in the Basic Plan Document.
- The MPS Executive 403(b) Plan (“Executive Plan”) is a small plan for which only the MPS superintendent is eligible. The Executive Plan currently uses a non-preapproved standardized plan document and is administered by a third-party administrator, TCG Administrators (“TCG”).
- In 2017 the IRS announced that 403(b) plan sponsors could self-correct plan provisions that violate Code Section 403(b)'s written plan rules by adopting plan amendments by March 31, 2020. Plan sponsors could take advantage of the remedial relief by either

adopting a pre-approved plan document with a 2017 opinion letter or restating their individually-designed plan.

- In consideration of the COVID-19 crisis, the IRS extended this deadline to June 30, 2020.

2) Proposed Action

- TCG has asked MPS to sign off on the “Adoption Agreement” applicable to the Executive Plan’s standardized, pre-approved plan document. This is standard practice for TCG, which handles standardized, pre-approved plan documents for multiple clients. MPS must act before the June 30, 2020, deadline to take advantage of IRS remedial relief.
- The Adoption Agreement does not mean that the terms of the Executive Plan’s plan are being materially altered. MPS is simply taking the necessary steps to adopt the plan in compliance with IRS procedures. The terms of the plan document governing eligibility, contributions, distributions, available investment options, etc. remain the same.
- In order to maintain the plan's pre-approved status, TCG has issued an amendment to its pre-approved plan document's Basic Plan Document that relates to changes in IRS regulations regarding hardship distributions. A hardship distribution permits a 403(b) participant to withdraw money without penalty under certain difficult personal circumstances. The Executive Plan does not permit hardship distributions per the elections made on its Adoption Agreement. Thus, while amendment is necessary to ensure the plan's pre-approved status, it does will not affect the operative terms of the Executive Plan.

3) Conclusion

For the reasons discussed above, we are asking the Board of School Directors to do the following before the June 30, 2020, IRS deadline:

- a. Execute the pre-approved plan document Adoption Agreement provided by TCG; and
- b. Execute the amendment to the pre-approved plan document's Basic Plan Document related to hardship distributions.