



DATE: September 12, 2019

TO: Programs and Administration Committee
Planning Committee/Recycling Board

FROM: Pat Cabrera, Administrative Services Director

SUBJECT: Employment Status Change for Board Members

SUMMARY

At both the September 12, 2019 Programs and Administration Committee and the Planning Committee/Recycling Board meetings, staff will advise board members of the recent Internal Revenue Service (IRS) finding. Based on this finding, board members will be classified as employees instead of independent contractors for IRS reporting purposes beginning in calendar year 2020.

DISCUSSION

An IRS audit was recently conducted at the Agency with a focus on whether a person working for or on behalf of the Agency was an employee or an independent contractor. Coincidentally, a few weeks prior to our notice of the audit we reviewed an article from Best, Best and Krieger attorneys at law, regarding this issue as it pertained to public sector board members. Essentially the article stated since public sector board members are public officials, the IRS considers them employees. We subsequently confirmed with our labor attorneys at Liebert Cassidy Whitmore that the IRS' position is that board members are typically employees. Therefore, we have agreed to make the necessary changes effective January 1, 2020. In the meantime, staff will send board members and alternates a form W-4 to gather withholding information. Since the stipends will be processed through payroll beginning in 2020, board members will now receive payment through direct deposit. Staff will include direct deposit instructions along with the W-4 form to board members and alternates.

While income reported by us on either a W-2 (employees) or 1099 (contractors) is normally taxable, the information provided by each board member's W-4 will determine the amount of federal and/or state withholding per payment. Additionally, 7.65% will be deducted from the payment for Medicare and Social Security (FICA) payroll taxes.

While Board members will be considered employees for payroll purposes they will not be eligible for benefits such as medical, retirement, etc., and will not be counted in the budget in terms of authorized positions.

RECOMMENDATION

This item is for information only.