

POSITION STATEMENT ON PROPOSED INTERNAL REVENUE SERVICE REGULATIONS

Issue:

The Internal Revenue Service's Advance Notice of Proposed Rulemaking (hereinafter, "Proposed Regulations"), released in November 2011 and titled "Determination of Government Plan Status," would force states to prohibit public charter school teachers from participating in state retirement plans.

These regulations have not yet been proposed formally. Accordingly, we have the unique, and critical, opportunity to address these regulations now. We must ask the Internal Revenue Service and the Department of Treasury to amend the Proposed Regulations before they are released officially.

Impact:

Twenty-four state statutes mandate charter school participation in state-sponsored retirement systems, while eighteen states permit, but do not require, such participation. In other words, every single state that authorizes public charter schools either requires or permits charter school participation in the state's retirement system.

The National Alliance for Public Charter Schools estimates more than 90,000 charter school employees (most of whom are teachers) will be impacted; as such, the Proposed Regulations will negatively affect more than 90% of our country's charter school workforce – all of whom will be forced to either leave their public charter schools or lose their accrued pension wealth. This is not fair. These public school teachers have played by the rules, often forced into state pension plans by statute, and now they are faced with a devastating choice.

Moreover, as currently written, the Proposed Regulations would not only jeopardize the retirement security of public charter school teachers already participating in such plans, but the Proposed Regulations also could effectively prevent many public charter schools from recruiting or retaining veteran public school teachers, significantly interfering with public charter schools' ability to achieve their educational goals. Furthermore, excluding public charter school teachers from state retirement systems could cause significant funding problems for some state retirement plans.

Solution:

In service of the more than 2 million children educated in nearly 5,600 public charter schools across the country, the Proposed Regulations should be amended to clearly provide that public charter school employees may continue to participate in state retirement plans without jeopardizing a plan's "governmental" status. This could be accomplished with a specific rule providing that public charter schools, authorized by state charter statutes and funded with public dollars, shall be considered agencies or instrumentalities of the State for purposes of the Internal Revenue Service's "governmental plan" definition. Alternatively, the IRS could add an example in the regulations, based on a typical charter school factual scenario, to clarify that the application of the factor-based test in the regulations will result in public charter schools being considered agencies or instrumentalities of the state. Either approach would provide necessary clarity to both states and public charter schools, and would allow public charter school teachers to maintain their participation in state-sponsored retirement plans, as provided by state statute.

Reasoning:

Currently, forty-two states (including the District of Columbia) have laws authorizing the creation of public charter schools. While each state law differs in its specifics, all charter school laws share a basic set of characteristics – designed to afford these schools enhanced autonomy in return for greater accountability. Furthermore, all charter schools are considered public schools under every state's constitution and statutory scheme.

Each state charter law grants authority for certain types of entities to apply for a public school charter. Once a charter is granted, the school is funded with public revenue. In many states, charter school teachers must be licensed by the state to the same extent as teachers in traditional public schools. While public charter schools are exempt from many types of state regulations, they must comply with all health and safety regulations and are subject to the same education assessments as traditional public schools. Charters are reviewed on a periodic basis, and charter school authorizers retain the ability to revoke charters. Perhaps most importantly, charter schools clearly serve a governmental function by providing a free, public education under supervision of the state.

The evidence is clear: charter schools are public schools; the degree of state control over charter schools and public funding of such schools justify amending the Proposed Regulation such that public charter schools are considered agencies or instrumentalities of the state for purposes of the Internal Revenue Service's "governmental plan" definition; and to hold otherwise would harm more than 90% of our nation's public charter school workforce.

For more information please contact Renita Thukral, Senior Director of Legal Affairs (renita@publiccharters.org) or Chad A. Miller, Senior Director of Federal Advocacy (cmiller@publiccharters.org) or visit www.publiccharters.org.