

The Impact of IRS Proposed Regulations
on Charter School Participation in State
Retirement Systems

Governmental Plan Status

- “Governmental plans” are subject to *much* different regulation than private employer-sponsored retirement plans
- If a state retirement system failed to meet the definition of a governmental plan, impacts would include:
 - Changes in vesting requirements
 - New fiduciary duties
 - Changes in funding requirements
 - PBGC coverage and premiums

Charters as “Agencies or Instrumentalities” of the State

- Prior IRS rulings consistently held that charter school participation in state retirement systems did not jeopardize the plans’ status as governmental
 - Based on a facts & circumstances test that focused on the amount of governmental control over the charter school
- Courts had also allowed de minimis participation in state retirement systems by private employees without jeopardizing governmental plan status

The Proposed Regs

- Main factors:
 1. The entity's governing board or body is controlled by a state (power to appoint/remove/replace)
 2. Members of the governing board or body are publicly nominated and elected
 3. A state has fiscal responsibility for the general debts and other liabilities of the entity
 4. The entity's employees are treated in the same manner as employees of the state for purposes other than providing employee benefits (for example, the entity's employees are granted civil service protection)
 5. The entity is delegated the authority to exercise sovereign powers (taxation, eminent domain, and police powers)

The Proposed Regs

- Other factors:
 1. Entity's operations are controlled by the state
 2. Entity is directly funded through tax revenue
 3. Entity is created by a specific enabling statute
 4. Entity is treated as a governmental entity for federal tax purposes
 5. Entity is treated as a governmental entity for state law purposes (ex. Open meeting laws, public records, represented by AG)
 6. Entity is determined to be an agency/instrumentality of the state by a state or federal court
 7. State-owned/no private interests
 8. The entity serves a governmental purpose

Bottom Line for Charter Schools

- If the regulations are finalized as currently written, states will not accept the risk of allowing charter school teachers to continue their participation in state plans

NAPCS Public Comment on Proposed Regulations

- Request regulations be amended to include a safe harbor for charter school participation in state plans (e.g., An entity that provides free public education under a charter granted under state law shall be considered, solely for purposes of these regulations, an agency or instrumentality of the state)
 - Will also acknowledge that there are other ways to amend the test to reach the same end
- Will strongly state that regardless of what happens with the “agency or instrumentality” definition, the regulations *must* be amended to protect charter school employees currently participating in such plans

NAPCS Public Comment, cont.

- Will argue for change based on:
 - The amount of control states have over charter schools, along with public funding
 - Unique labor market for state-certified teachers
 - Education policy effects
 - If charter schools cannot recruit or retain veteran teachers with significant state pension plan accruals, their ability to meet their educational goals may be compromised

Next Steps

- Public comments due February 6th
- Join as a signatory to the NAPCS letter, OR
- Submit your own comments