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Circular Letter

May 22, 2015

TO: **SCHOOL EMPLOYERS**

SUBJECT: **NEW APPLICANT QUESTIONNAIRE FOR SCHOOLS REQUESTING TO PARTICIPATE IN THE CALPERS PLAN**

This Circular Letter is intended to provide school employers with updated information since CalPERS issued Circular Letter 200-013-12, entitled "Internal Revenue Service Advance Notice of Proposed Rulemaking Regarding Definition of a Governmental Plan," and Circular Letter 200-022-013, entitled "New Applicant Questionnaire for Entities Requesting to Participate in CalPERS Benefit Plans." Specifically, this Circular Letter is to inform you about recent guidance under consideration by the Internal Revenue Service (IRS) and the Treasury Department relating to charter school participation in a governmental plan, such as the CalPERS Plan. This Circular Letter also includes an updated School Applicant Questionnaire that charter schools will be required to complete. Each charter school applicant will be reviewed on a case-by-case basis using the revised eligibility criteria to determine whether it may participate in the CalPERS Plan.

Background

As discussed in Circular Letter 200-013-012, the IRS issued an Advance Notice of Proposed Rulemaking (ANPRM) regarding the definition of a "governmental plan" under Section 414(d) of the Internal Revenue Code (IRC). The ANPRM included a draft of anticipated proposed regulations that created a "facts and circumstances" test for determining whether an entity is eligible to participate in a governmental plan and invited public comment. In June 2012, CalPERS submitted comments to the IRS. Additionally, and as discussed in Circular Letter 200-022-013, CalPERS incorporated the criteria contained in the ANPRM's proposed regulations into the eligibility review procedures for all new employer applicants, including charter schools.

Notice 2015-07

The IRS received over 2000 comments on its ANPRM relating to the definition of a "governmental plan", many of which concerned charter schools. In response, the IRS and the Treasury Department issued Notice 2015-07 entitled "Relief for Certain Participants in § 414(d) Plans (Notice 2015-07)." Notice 2015-07 provides further information about what the IRS is considering regarding charter schools under the regulations, and transition relief prior to the effective date of the final regulation. A copy of Notice 2015-07 is available on the IRS website at <http://www.irs.gov/pub/irs-drop/n-15-07.pdf>.

In Notice 2015-07, the IRS and Treasury Department stated that they are considering proposing regulations under Section 414(d). Notice 2015-07 specifies that a state or local retirement system that covers employees of a public charter school will not fail to be a governmental plan merely because the system permits employees of an entity to enroll in the system if the entity satisfies the requirements listed in paragraphs (a) through (e) below:

(a) The entity is a nonsectarian independent public school that serves a governmental purpose by providing tuition-free elementary or secondary education, or both.

(b) The entity is established and operated in accordance with a specific state statute authorizing the granting of charters to create independent public schools or authorizing the establishment of independent public schools.

(c) Participation in the state or local retirement system by the entity's employees is expressly required or permitted under applicable law.

(d) The entity satisfies either paragraph (d)(1) or (d)(2) below.

(1) The entity's governing board or body is controlled by a state, political subdivision of a state, or agency or instrumentality of a state or of a political subdivision of a state. For this purpose, either (i) a state, political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state must have the power to nominate, appoint, remove, and replace a majority of the members of the entity's governing board or body, or (ii) a majority of the members of the entity's governing board or body must be publicly nominated and elected.

(2) In lieu of satisfying the requirements in paragraph (d)(1), the entity satisfies the requirements in paragraphs (d)(2)(i) through (d)(2)(iii) below.

(i) The primary source of the entity's funding is from a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state.

(ii) The rights of the entity's employees to their accrued benefits under the state or local retirement system are not dependent on whether the entity continues to participate in the system and, in the event the entity ceases participation, a governmental entity has responsibility for the accrued benefits of the entity's employees, including the continued funding of the accrued benefits, to no lesser extent than a governmental entity has responsibility for the continued funding of the accrued benefits of the employees of any other participating employer in the system in the event that other employer were to cease to be a participating employer.

(iii) The entity is part of a local educational agency, as defined in 20 U.S.C. § 7801(26) (or is its own local educational agency), and is subject to the significant regulatory control and oversight by a state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state, as described in paragraphs (d)(2)(iii)(1) and (d)(2)(iii)(2) below.

(1) The entity is held accountable by an authorized public chartering agency as defined in 20 U.S.C. § 7221i(4), which has the power to approve, renew, and revoke the charter of the entity. For this purpose, the authorized public chartering agency must be authorized under state law to approve charters for the creation of independent public schools and to hold the entity accountable for results.

(2) The entity is required to comply with health and safety standards, as well as academic and financial accountability standards, that are similar to those that are generally applicable to other public schools in the state.

(e) All financial interests of ownership in the entity are held by a state, political subdivision of a state, or agency or instrumentality of a state or of a political subdivision of a state. A state, political subdivision of a state, or agency or instrumentality of a state or political subdivision of a state is not treated as holding all financial ownership interests in an entity unless, upon dissolution or final liquidation of the entity, the entity's governing documents require the entity's net assets to be distributed to another public school that meets the requirements in (a) through (e) above or to a state, political subdivision of a state, or agency or instrumentality thereof.

This Circular Letter is not intended to be an analysis of Notice 2015-07 nor a definitive statement on the impact on the CalPERS plan, its members and employers, and it should not be relied upon as such.

School Applicant Questionnaire for Charter Schools

Although the proposed regulations under Section 414(d) of the IRC are not final, and could be revised during the official regulatory process, CalPERS has aligned its eligibility criteria for charter schools in accordance with Notice 2015-07, meaning charter schools that are eligible under Notice 2015-07 and the Public Employees' Retirement Law will generally be eligible to participate in the CalPERS Plan. In this regard, CalPERS has developed a new School Applicant Questionnaire. New charter school applicants will be required to complete the attached School Applicant Questionnaire as the first step in the application process. In addition, the School Applicant Questionnaire will be available on the CalPERS website at <http://www.calpers.ca.gov/index.jsp?bc=/employer/interested/retirement/contract-requirements.xml>. CalPERS recommends charter school applicants consult with independent legal counsel if they have questions regarding their eligibility to participate in the CalPERS Plan.

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The School Applicant Questionnaire is the first step in the eligibility review process and CalPERS may require additional documentation from entities during the application process. CalPERS' receipt and review of the School Applicant Questionnaire and/or supporting documentation is not an offer to contract, nor is there any guarantee an applicant will be eligible to participate in the CalPERS Plan. Therefore, you cannot withhold CalPERS retirement contributions from any employees of the Employer in anticipation of eligibility to participate in the CalPERS Plan, nor can you report the Employer's employees under any other agency currently participating in the CalPERS Plan.

We hope you find this information helpful. If you have any questions regarding the School Applicant Questionnaire or the application process, please contact the Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

RENEE OSTRANDER, Chief
Employer Account Management Division

Attachment:
School Applicant Questionnaire