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CC:PA:LPD:PR  
(Notice 2018-24)  
Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, D.C. 20044

**Subject: Notice 2018-24 Request for Comments on Scope of Determination Letter Program for Individually Designed Plans During Calendar Year 2019**

This letter is being submitted on behalf of the California Public Employees' Retirement System (CalPERS or the System) the largest state pension system in the nation. CalPERS provides retirement and health benefit services to over 1.9 million public employees, retirees and their families and currently has almost 3,000 employers participating in its plans. As of May 22, 2018, CalPERS' investment portfolio had a market value of approximately \$355 billion. The System includes four tax-qualified defined benefit pension funds and one tax-qualified defined contribution retirement fund. The Public Employees' Retirement Fund (PERF) is the largest of the tax-qualified plan funds administered by CalPERS.

We continue to commend the Internal Revenue Service (Service) for the steps it has previously taken to make the determination letter program more workable for governmental plans. We recognize that this was a significant undertaking by the Service and we appreciate the Service's work in this regard. CalPERS invested a substantial amount of time and resources to participate in the Service's determination letter program for its five tax-qualified plans and to amend its plans accordingly. We continue to be proud of the favorable determination letters we received from the Service for our plans, and we view them as an important component of the retirement security of our 1.9 million members. In our view, this was also a very efficient use of the Service's resources and believe that the program helped protect the pensions of millions of civil servants.

As we've previously shared with the Service, the decision to limit the determination letter program for individually designed plans and move towards pre-approved or prototype plans, as outlined in Rev. Proc. 2016-37, presents challenges for CalPERS and for the governmental plans community as a whole. In addition, we think that this change in direction could potentially disrupt the appreciable progress made by the Service and the governmental plans community under the prior determination letter program. As such, we appreciate the opportunity to comment regarding the potential expansion of the scope of the determination program for individually designed plans during the 2019 calendar year. However, for the reasons set forth below, we request that the expansion of the program with respect to governmental plans not be limited to calendar year 2019. Rather, we request that the Service permanently expand the determination letter program for governmental plans and reinstitute the program that was in place prior to implementation of Rev. Proc. 2016-37.

Pre-approved plans are not a realistic option for governmental plans because governmental plan provisions are often embodied in statute and regulations. Many of these laws have existed for decades and include multiple benefit structures that cover multiple employee groups. By way of background, the PERF has been in existence for over 80 years (and for more than 40 years since the passage of ERISA). Historically, the state legislature annually enacts plan provisions in accordance with the state's evolving pension policy. These statutory and regulatory schemes do not generally fit into a prototype plan document. Unlike private sector plans that can be restated by a plan sponsor, many governmental plans can only be changed through the legislative process, meaning it will never be feasible to adopt a prototype or pre-approved plan document.

In addition, these plans generally include complex defined benefit provisions that cannot be tailored to a pre-approved plan document. State and municipal governments each provide unique benefits that cover a large number of participants, making individually designed plans the only workable model for governmental plans. Often a single plan will include several defined benefit options, each with sophisticated and unusual features. In many cases, these features are hardwired into statutes and cannot be easily changed. An approach that does not recognize this longstanding practice or provide sufficient flexibility would not be productive for the Service, for governmental plans, or for retirement security.

Finally, while we understand the Service's desire to achieve more efficiency by moving private sector plans to pre-approved plan documents, we believe these efficiencies are already being recognized in the issuance of determination letters to governmental plans. For example, very few pre-approved plan documents cover the sheer number of participants that are covered by our plans. (Consider that in a single determination letter issued to CalPERS, the Service addressed plan terms covering 1.9 million participants.) Given the size, scope and complexity of governmental plans, determination letters for

these individually designed plans inherently include the same cost-effective features as a pre-approved plan document.

For these reasons, we urge the Department of the Treasury and the Service to recognize the unique circumstances for governmental plans and to reinstitute the determination letter program for governmental plans that was in place prior to implementation of Rev. Proc. 2016-37. If servicing the volume of requests in the prior determination letter program is not sustainable, we ask that the Service consider permitting governmental plans to seek new determination letters on a less frequent basis, such as once every seven to ten years, or when there are significant plan amendments that could affect tax-qualification. For example, the ability to obtain determination letters is particularly critical when state and municipal governments implement pension reform and adopt alternative benefit structures for new hires.

Thank you for your consideration of these issues. We look forward to continuing to work with you. If you have any questions or would like additional information, please contact Gretchen Zeagler, CalPERS Assistant Chief, at (916) 795-2911.

Sincerely,

MARCIE FROST  
Chief Executive Officer