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February 6, 2012

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
P.O. Box 7604,
Ben Franklin Station, Washington DC 20044

Dear Commissioner Shulman:

As you know the Internal Revenue Service (IRS) released an advance notice of proposed regulations titled "Determination of Government Plan Status." We understand these regulations would define the term "governmental plan" and will determine what a governmental plan is under section 414(d) of the Internal Revenue Code. It has been brought to our attention that these regulations, as currently drafted, would have negative consequences for teachers at public charter schools.

Currently, 41 states and the District of Columbia have laws authorizing the creation of public charter schools. While each state law is different, all charter schools are public schools, and, therefore, all charter school teachers are public school teachers. The IRS has historically found that charter school teacher participation in state retirement systems does not jeopardize the tax-qualified status of those plans. But under the new test articulated in the draft regulations, these teachers could be prohibited from participating in state retirement systems. This could unfairly jeopardize the retirement security of charter school teachers currently participating in these plans. Equally concerning, the draft regulations could effectively prevent many public charter schools from recruiting or retaining veteran traditional public school teachers, significantly interfering with charter schools' ability to achieve their educational goals.


The National Alliance for Public Charter Schools estimates that more than 90,000 charter school teachers – more than 90 percent of the charter school workforce – will be affected by the policies included in the advance notice.

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With more than 2 million children educated in nearly 5,600 public charter schools across the country, we hope these proposed regulations will be amended to clarify that public charter schools, authorized by state charter statutes, remain agencies or instrumentalities of the state for purposes of the IRS's "governmental plan" definition.

Thank you for your attention to this request.

Sincerely,



JOHN KLINE
Chairman
Committee on Education and the Workforce



DUNCAN HUNTER
Chairman
Subcommittee on Early Childhood,
Elementary, and Secondary Education

cc: The Honorable Arne Duncan, Secretary, U.S. Department of Education

The Honorable Timothy Geithner, Secretary, U.S. Department of the Treasury

The Honorable George Miller, Senior Democrat, Committee on Education and the Workforce