

**National Association of State Retirement Administrators
National Conference on Public Employee Retirement Systems
National Council on Teacher Retirement**

June 12, 2018

Via Electronic Mail (notice.comments@irs.counsel.treas.gov)

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

Re: Notice 2018-24

To Whom It May Concern:

On behalf of the National Association of State Retirement Administrators (NASRA), the National Conference on Public Employee Retirement Systems (NCPERS), and the National Council on Teacher Retirement (NCTR), we are writing regarding the potential expansion of the Internal Revenue Service (IRS) Employee Plans Determination Letter Program for individually designed plans. Collectively, our memberships include governmental plans that hold more than \$4 trillion in assets and cover over 24 million participants.

State and local government retirement systems are established under state statutes, and in many cases local governing ordinances as well, and are individually designed plans that are as unique as their sponsoring jurisdictions. Within statutory, contractual, and in some cases constitutional benefit protections, amendments can be made to public plans to accommodate changing workforce needs and fiscal realities. Modifications are made by popularly-elected governmental bodies through state and local legislative and regulatory processes. Differing plan designs, financial conditions, and legal frameworks across the country require most plan changes be tailored and individually designed as well.

While primarily creatures of state and local law, governmental plans must also meet certain federal tax qualification requirements. An IRS determination letter signifies that plan documents are compliant with the applicable federal tax qualification requirements, which not only provides assurances for audits or other IRS compliance reviews, but also establishes tax-exempt status for investment vehicles, for foreign tax authorities, and in other circumstances where it is necessary to provide such documentation.

With the elimination of the IRS determination letter program (other than at plan inception and termination), many governmental plans are concerned about the uncertainty and risk this may create. Among other things, these include the fact that many state and local governments have made legislative amendments since the issuance of their last determination letter; many governmental plans have determination letters with expiration dates (which, among others, creates difficulties for plans' use in circumstances such as foreign tax reclaims after the date of expiration); and the vast majority of governmental plans are too large and individualized to meet the pre-approved program.

In its 2018 Report of Recommendations, the Advisory Committee on Tax Exempt and Governmental Entities (ACT) made a number of recommendations that merit strong consideration with regard to allowing governmental plans to voluntarily apply for determination letters. These are primarily aimed at addressing plans that are concerned they have significant changes in state law affecting the terms of the plan, their prior letter may be considered too stale to document their tax-exempt status and/or they cannot currently fall within the pre-approved program limitations. The ACT does not recommend governmental plans be required to apply for determination letters as under the prior Determination Letter Program; rather, governmental plans could apply if they deem it beneficial. Determination letter applications could also be much more limited in scope, so that they only address the changes since a plan's last determination letter (including the inoperability of the stated effective date), simplifying the process for both applicants and the IRS.

Allowing governmental plans to voluntarily seek determination letters on a more limited scope could address many concerns. We very much appreciate the opportunity to comment on Notice 2018-24. Please feel free to contact our representatives listed below should you have any questions or would like additional information.

Sincerely,

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