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Circular Letter No.: 200-017-16  
Distribution: XII, XVI

## **Circular Letter**

May 31, 2016

**TO: ALL SCHOOL EMPLOYERS**

**SUBJECT: NEW CHARTER SCHOOL CERTIFICATION FORM FOR CHARTER 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 200-024-15, entitled "New Applicant Questionnaire for Schools Requesting to Participate in the CalPERS Plan," 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 the California Public Employees' Retirement System Charter School Certification form. This Circular Letter also includes an updated School Applicant Questionnaire that charter schools are required to complete when requesting to participate in the CalPERS Plan.

### **Background**

As discussed in Circular Letter 200-013-12, 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 200-022-13, CalPERS incorporated the criteria contained in the ANPRM's proposed regulations into the eligibility review procedures for all new employer applicants, including charter schools.

With Circular Letter 200-024-15, CalPERS implemented a new School Applicant Questionnaire that is aligned with the proposed regulations outlined in IRS Notice 2015-07. 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.

### **California Public Employees' Retirement System Charter School Certification form**

The proposed regulations under Section 414(d) of the IRC are not final, and could be revised during the official regulatory process. In conjunction with aligning the eligibility criteria with Notice 2015-07, CalPERS developed a Charter School Certification form as a bridge between now and the time when the IRS finalizes the regulations. This form allows charter school applicants to certify their intention to comply with the final IRC Section 414(d) regulations. All schools will still be required to go through the New Applicant process prior to participating in the CalPERS Plan. The eligibility review process for Schools begins with the CalPERS School Applicant Questionnaire. The process now includes the Certification form for those schools who are determined to meet eligibility criteria.

### **School Applicant Questionnaire for Schools**

In conjunction with Circular Letter 200-024-15, in May of 2015, CalPERS released the School Applicant Questionnaire as the first step in the application process. The School Applicant Questionnaire has recently been revised and can be found on the CalPERS website at <https://www.calpers.ca.gov/docs/forms-publications/school-applicant-questionnaire.pdf>.

CalPERS recommends that school applicants consult with independent legal counsel if they have questions regarding the CalPERS Charter School Certification form, School Applicant Questionnaire or their eligibility to participate in the CalPERS Plan.

The School Applicant Questionnaire is only 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 that an applicant will be eligible to participate in the CalPERS Plan. Therefore, do not withhold and report CalPERS retirement contributions from any employees of the Employer in anticipation of eligibility to participate in the CalPERS Plan, nor should you report the Employer's employees under any other agency currently participating in the CalPERS Plan.

If you have any questions, please call our CalPERS Customer Contact Center at **888 CalPERS** (or **888-225-7377**).

RENEE OSTRANDER, Chief  
Employer Account Management Division