

National Conference of State Legislatures (NCSL)
American Federation of State, County and Municipal Employees (AFSCME)
National Association of Counties (NACo)
American Federation of Teachers (AFT)
National League of Cities (NLC)
International Association of Fire Fighters (IAFF)
National Association of State Auditors Comptrollers and Treasurers (NASACT)
Fraternal Order of Police (FOP)
Government Finance Officers Association (GFOA)
Service Employees International Union (SEIU)
International City/County Management Association (ICMA)
National Education Association (NEA)
International Public Management Association for Human Resources (IPMA-HR)
National Association of State Retirement Administrators (NASRA)
National Conference of State Social Security Administrators (NCSSSA)
National Conference on Public Employee Retirement Systems (NCPERS)
National Council on Teacher Retirement (NCTR)

May 23, 2009

VIA ELECTRONIC MAIL (governmentalplansdialogue@irs.gov)

RE: Pilot Governmental Plan Questionnaire

Craig Chomyok, Manager
Employee Plans Compliance Unit
Internal Revenue Service
Manager, EPCU -7602
230 S. Dearborn; Room 1700
Chicago, IL 60604

Dear Mr. Chomyok:

On behalf of the national organizations listed above—representing state and local governments and officials, public employee unions, public retirement systems, and more than 20 million state and local government employees, retirees, and their beneficiaries—we are writing in response to the request for comments on the questionnaire sent to a pilot group of governmental plans as part of the Internal Revenue Service's Governmental Plans Initiative.

Our organizations greatly appreciate the IRS' responsiveness to many of the suggestions regarding the draft questionnaire and are grateful for the additional opportunity to submit commentary before the pilot is finalized and sent to a larger group of governmental plans. We agree that the IRS would benefit from a better understanding of governmental plans and the many differences between public and private sector retirement systems. As the process of working on the draft survey made clear, there is a difference not only in structure and governance, but also in the terminology and nomenclature of plans in each sector.

We hope the IRS and the governmental plans community can work collaboratively at gaining a better understanding of how we can assist each other, while also ensuring our mutual goal of protecting the retirement security of State and local government employees and retirees. To that end, we have three general concerns we urge the IRS to address in any final questionnaire: 1) the purpose and timing for which this information will be used; 2) the scope of the information being requested; and 3) the methodology by which the information will be collected. We also urge the IRS and Treasury to consider a more collaborative process to develop comprehensive and specific guidance for the governmental plans community as a prerequisite for establishing a process for enforcement.

Purpose and Timing

First and foremost, our greatest concern with the questionnaire is the IRS' stated intent to "study compliance with applicable federal tax laws" and to "issue a public report that summarizes the overall responses, findings, and observations based on those responses, including actions in the areas of guidance, education/outreach, determinations, and compliance." Not only is there a concern that unrepresentative findings will be used to publish a report and establish a compliance process, but that both will be done absent any comprehensive guidance being in place specific to governmental plans, nor even a listing of all the applicable tax code sections and their requirements of governmental plans.

Governmental plan stakeholders on numerous occasions have requested clarification, modification and/or guidance from IRS in a number of areas to ensure public plans are in compliance with all applicable laws. Much of the need for clarification and modification centers on the application of rules and standardized definitions written for the corporate sector, which do not take into account the state or local laws, regulations and policies governing public plans. Unlike private sector plans that are subject solely to federal regulation, public plans are subject to a vast landscape of state and local requirements. Application of a one-size-fits-all federal regulation often results in conflicts with existing State and local laws, regulatory structures, and benefit protections.

Thus, guidance specific to public plans must be a **predicate** to establishing a compliance process for them. It is unclear how IRS can conduct a compliance survey before comprehensive guidance, or even requested compliance guidance, is issued – let alone produce a qualitative report on the state of such in the public sector.

Jurisdiction

Another general concern with the questionnaire is that many parts have no direct connection to governmental plan compliance with the Federal Internal Revenue Code. A significant portion in fact focuses on the manner in which plans are operated in areas where the Service itself concedes there are no applicable Federal IRC requirements. For example, plan financial statements, plan funding, age and service requirements for plan eligibility, plan communications, plan provisions relating to normal and early retirement, etc.

Methodology

The final concern is with the proposed process by which the IRS will be gathering information to develop a better understanding of public plans. State and local retirement systems have been the subject of two recent Government Accountability Office (GAO) reports thoroughly studying issues including participation, funding, actuarial assumptions, and investment returns. In addition, all information regarding State and local government retirement systems are readily available public information. Furthermore, national trade associations came together many years ago to produce a collective body of information specifically intended to promote sound public retirement system policies and administration by increasing transparency and understanding of the public retirement system community. Information on more than 85 percent of all state and local government pension assets and participants are collected on an annual basis and is available to IRS representatives.

It is unclear then why the IRS, which has on many occasions stated its "limited experience with governmental plans," wishes to base its understanding on a random sampling. Given the thousands of unique plans across the country, we believe doing so will likely provide an inaccurate snapshot of a diverse community. It is our understanding that the Service could be requesting information on the very smallest and most unrepresentative plan even within a large representative system. With the great degree of differentiation across plans, we feel this survey could result in a truly random work product.

Furthermore, based on comments by IRS staff, as well as feedback from our own membership, it is likely the Service will not always send the questionnaires to the best contacts to complete the survey. It is important for the IRS to recognize the separation that exists between the plan, the employer and the legislative and regulatory bodies governing the plan. We remain very concerned that sending the questionnaire to the wrong entity or agency could result in incomplete or incorrect information.

Conclusion

Our organizations fully support the goal of the IRS obtaining a better understanding of our diverse community and ultimately developing a process for ensuring compliance with federal tax laws. However, we believe this should be a collaborative effort, should include governmental plan stakeholders, should be based on complete and representative information, and should start with the aim of establishing clear, specific and appropriate guidelines for public plans prior to developing a compliance process.

The IRS has an excellent model of establishing tax guidance in cooperation with public agencies: IRS Publication 963, entitled the "Federal-State Reference Guide, A Federal-State Cooperative Publication." This guide was prepared by the IRS, the Social Security Administration, and state administrators of Social Security and Medicare. It is readable and gives very useful guidance, covering a large percent of the issues for public agencies. As with IRS Publication 963, IRS should consider formally changing its current questionnaire/survey approach and replacing it with a process that is based on more

accurate information than would otherwise result and which would serve as a sound basis for more detailed written guidance. A good outcome would be cooperative development of guidance like Publication 963, whereby complete and tailored compliance information is available for governmental plans as well as the IRS agents working with this community.

We look forward to working with you and urge you to contact our association representatives should you have any questions or need additional information:

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