

**Congress of the United States**  
**Washington, DC 20515**

March 1, 2012

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

Dear Commissioner Shulman,

We are writing to express concerns about recent advance notice of proposed regulations titled Determination of Government Plan Status released by the Internal Revenue Service. Our understanding is that as currently written, the regulations would force states to prohibit participation in state retirement systems by public charter school teachers. Such a result would not only jeopardize the retirement security of charter school teachers already participating in such plans, but could also effectively prevent many public charter schools from recruiting or retaining veteran public school teachers, significantly interfering with charter schools' ability to achieve their educational goals. Furthermore, excluding public charter school teachers from state retirement systems could cause significant funding problems for some plans.

Currently, 42 states (including the District of Columbia) have laws authorizing the creation of public charter schools. While each state law differs in its specifics, all charter school laws share a basic set of characteristics – designed to afford these schools enhanced autonomy in return for greater accountability. All charter schools are public schools under every state's constitution and statutes; likewise, all charter school teachers are public school teachers. Charter schools are simply public schools with alternative governance structures in place, similar to many magnet public schools and university lab schools that predated the formalization of the public charter school concept.

More specifically, each state charter law grants authority for certain guidelines to apply for a public school charter, but federal public education laws such as IDEA special education requirements are non-waiveable for any public school including charter schools. Once a charter is granted, the school is funded with public revenue. In many states, charter school teachers must be licensed by the state to the same extent as teachers in traditional public schools. While charter schools are exempt from many types of state regulations, they must comply with all health and safety regulations and are subject to the same education assessments and accountability as traditional public schools. Charters are reviewed on a periodic basis, and charter school authorizers retain the ability to revoke

charters. Perhaps most importantly, charter schools clearly serve a governmental function by providing a free, public education under the supervision of the state. In an effort to improve student achievement, some districts have endorsed portfolio management and are converting their under-performing schools into public charter schools as part of a district-led reform effort.

Twenty-four state statutes mandate charter school participation in the state-sponsored retirement system, while 18 states permit, but do not require, such participation. In other words, every single state that authorizes charter schools either requires or permits charter school participation in the state's retirement system. The National Alliance for Public Charter Schools estimates more than 90,000 charter school teachers will be impacted; as such, the Internal Revenue Service's proposed regulations will negatively affect more than 90 percent of our country's charter school workforce – all of whom will be forced to either leave their charter schools or lose their accrued pension wealth. The proposed rule would be a significant blow to public education in the United States.

With more than 2 million children educated in nearly 5,600 public charter schools across the country, we request that the proposed regulations be amended to specify that public charter schools, authorized by state charter statutes, shall be considered agencies or instrumentalities of the State for purposes of the Internal Revenue Service's "governmental plan" definition. The evidence is clear: charter schools are public schools (and are embraced as such by every state's laws); the degree of state control over charter schools and public funding of such schools justify this position; and to hold otherwise would harm the nation's charter school teachers and staff.

Thank you for your consideration.

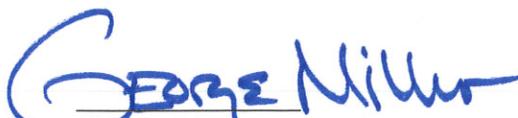
Sincerely,



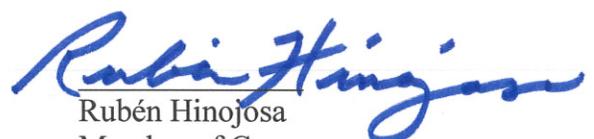
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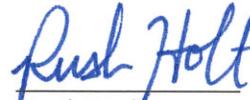
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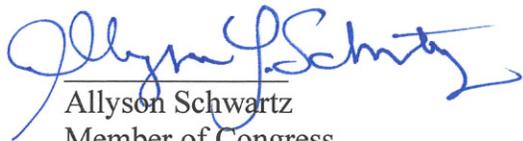
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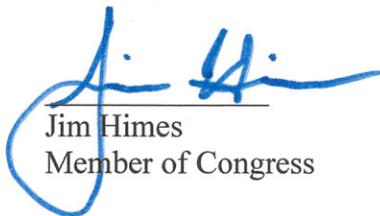
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