Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP1
PLR-128229-18
Date:
April 4, 2019

In Re:
Hybrid Amendment

Legend:

Taxpayer =
Plan =
Date 1 =

Dear :

This letter responds to a request for a ruling, dated September 18, 2018, submitted by your authorized representative, related to the proper treatment of the Plan under sections 413 and 433 of the Internal Revenue Code of 1986, as amended (Code) upon amendment of the Plan to make a statutory hybrid formula available to adopting employers (Hybrid Amendment).

The following facts and representations are submitted under penalties of perjury in support of your request:

The Taxpayer is an association
that meets the requirements of section 501(c)(6) of the Code. The Taxpayer sponsors

the Plan. The Plan is an employee pension benefit plan within the meaning of section 3(2) of the Employee Retirement Income Security Act of 1974, as amended (ERISA), a defined benefit plan within the meaning of section 414(j) of the Code, and a multiple-employer plan within the meaning of section 413(c) of the Code. The Plan provides retirement income to eligible retirees of Taxpayer or Taxpayer's members, or any of their eligible subsidiaries or controlled affiliates, who have adopted the Plan. The Plan was originally established by the Taxpayer on Date 1 (a date prior to July 26, 2005) and has since been amended from time to time by the Taxpayer for a number of reasons, including as determined to be necessary to comply with changes in applicable law.

The Pension Protection Act of 2006 (PPA) modified the funding rules generally for defined benefit plans. Section 104 of PPA provides a delayed effective date for these modifications for any plan in existence on July 26, 2005 that was an eligible cooperative plan for its plan year that includes July 26, 2005 with respect to any plan year beginning before the earlier of (1) the first plan year for which the plan ceases to be an eligible cooperative plan, or (2) January 1, 2017. Pursuant to section 104(c)(1) of PPA, a plan that, for a plan year, is maintained by more than one employer, 85 percent of which are rural cooperatives (as defined in section 401(k)(7)(B) of the Code without regard to section 401(k)(7)(B)(iv)) is an eligible cooperative plan for the plan year. During the plan year that includes July 26, 2005 (the 2005 plan year) and each subsequent plan year, the Plan has been maintained by more than one employer. Further, including new employers that first adopted the Plan after July 26, 2005, 85 percent of the employers that maintain the Plan during the 2005 plan year and each subsequent plan year have been rural cooperatives. Thus, the Plan is an eligible cooperative plan for all relevant plan years.

The Cooperative and Small Employer Charity Pension Flexibility Act of 2014 (CSEC Act) further modified the funding rules for certain defined benefit plans (generally, plans to which section 104 of PPA applied) in the absence of an election by the plan administrator of such a plan not to have these further modifications apply to the plan (each, a CSEC plan). For a CSEC plan that has not made such an election, the CSEC Act generally reinstates the pre-PPA funding rules and eliminates PPA's delayed effective date. The Plan administrator has not made an election to not have these further modifications of the funding rules apply with respect to the Plan, and therefore the Plan has been treated as a CSEC plan for each plan year beginning on or after January 1, .

In addition to including an application from the Taxpayer on Form 5300, Application for Determination for Employee Benefit Plan, for a determination letter with respect to the form of the Plan, the application for favorable determination that ultimately culminated in the Taxpayer's receipt of its current favorable determination letter also

included individual applications for determination letters on behalf of several employers that adopted the Plan with respect to their employees prior to the date of the application but after July 26, 2005. The application for favorable determination filed for each of these employers listed the date that the employer adopted the Plan (Employer Adoption Date) as the date that the employer first established and maintained the Plan. Each such employer received a separate letter of favorable determination that is applicable to the Plan established by that employer as of the applicable Employer Adoption Date.

The Hybrid Amendment

Benefits currently accrue under the Plan under different basic benefit accrual formulas as elected by adopting employers. Each of the currently available formulas is a traditional defined benefit formula. Taxpayer intends to amend the Plan (Hybrid Amendment) to permit adopting employers to elect a cash balance formula. A cash balance formula is referred to under applicable law as a statutory hybrid formula, and is a type of benefit accrual formula to which different rules apply for certain purposes under the Code than the rules that apply to a traditional benefit accrual formula.

In relevant part, the Hybrid Amendment will include that:

(1) An adopting employer would be permitted to select, in its adoption agreement, prospective benefit accrual under the Plan for its employees under a cash balance formula.
(2) Interest credits would be provided in accordance with the market rate of return rules set forth in § 1.411(b)(5)-1(d) of the Income Tax Regulations.
(3) Employer contributions to the Plan related to accruals under the cash balance formula from adopting employers that have selected benefit accrual under the cash balance formula would be held in a separate subset of Plan assets in the Plan's trust, generally available to pay benefits that do not accrue under the cash balance formula only if other Plan assets are insufficient to pay those other Plan benefits.

The Taxpayer expects that new employers that are not currently adopting employers with respect to the Plan may adopt the Plan and first establish and maintain the Plan with respect to their employees both through the date the Plan is amended by the Hybrid Amendment as well as after the Plan is amended. At all times, the Taxpayer intends to ensure that, after adoption by any such new adopting employers, at least 85 percent of the employers that maintain the Plan will be rural cooperatives.

RULINGS REQUESTED

Taxpayer requests rulings that:

(1) The Plan does not fail to be a CSEC plan for purposes of section 413 solely as a result of the amendment to the Plan to add the cash balance formula described as part of the Hybrid Amendment.

(2) To the extent applicable, the deduction limitations described in section 413(d) apply to amounts contributed to or under the Plan by an employer that has adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula added by the Hybrid Amendment.

(3) For purposes of section 433(j)(5)(E), the date as of which the Plan was first established or maintained, including any portion of the Plan first established and maintained by an employer that has adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula, is Date 1.

LAW

Section 104(a) of PPA provides generally that the amendments made by title I of PPA to the minimum funding standards and rules relating to benefit limitations for defined benefit plans set forth in the Code and corresponding provisions of ERISA shall not apply to a plan in existence on July 26, 2005 that was an eligible cooperative plan for its plan year that includes July 26, 2005 with respect to any plan year beginning before the earlier of (1) the first plan year for which the plan ceases to be an eligible cooperative plan, or (2) January 1, 2017.

Section 202(b) of the Preservation of Access to Care for Medicare Beneficiaries and Pension Relief Act of 2010 (PRA) amended section 104(a) of PPA to replace the term “eligible cooperative plan” with “eligible cooperative plan or an eligible charity plan” each place where the former term appeared.[1]

Section 104(c) of PPA provides that a plan is treated as an "eligible cooperative plan" for a plan year if the plan is maintained by more than 1 employer and at least 85 percent of the employers are rural cooperatives (as defined in section 401(k)(7)(B) of the Code, determined without regard to section 401(k)(7)(B)(iv)).

Section 411(a)(13) provides special rules for applicable defined benefit plans and plans that have an effect similar to an applicable defined benefit plan.

Section 411(a)(13)(C) provides that the term "applicable defined benefit plan" means a defined benefit plan under which the accrued benefit (or any portion thereof) is

[1] The Plan is an eligible cooperative plan and therefore treatment of the Plan under section 104(a) of PPA was not affected by the amendment made by section 202(b) of PRA.

calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation.

Section 411(b)(5)(B)(ii) provides a special rule regarding compliance of a plan with the age discrimination rules described in section 411(b)(1)(H) with respect to participants in a plan immediately before and after an amendment to the plan to convert the plan to an applicable defined benefit plan.

Section 413(c) provides special rules in the case of a plan maintained by more than one employer.

Section 413(d) provides generally that, in the case of a CSEC plan (including a plan to which section 413(c) also applies), many of the special rules described in section 413(c) apply without modification.

Section 413(d)(1) provides that, notwithstanding any other provision of section 413, the requirements of section 412 are determined for a CSEC plan as if all participants in the plan were employed by a single employer.

Section 413(d)(3) provides that, notwithstanding any other provision of section 413, each applicable limitation provided by section 404(a) is determined with respect to a CSEC plan as if all participants in the plan were employed by a single employer. That section also provides that the amounts contributed to or under a CSEC plan by each employer that maintains the plan (for the portion of the taxable year included within a plan year) is considered not to exceed the applicable limitation if the anticipated employer contributions for such plan year of all employers (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed that limitation. That section provides further that if those anticipated contributions exceed that limitation, the portion of each such employer's contributions that is not deductible under section 404 is determined in accordance with regulations prescribed by the Secretary.

Section 414(y)(1)(A) of the Code provides that the term "CSEC plan" includes a defined benefit plan (other than a multiemployer plan) to which section 104 of PPA applies without regard to the original January 1, 2017 sunset of the section 104 special rules as enacted in PPA, the amendments to section 104 made by section 202(b) of PRA, or section 104 ceasing to apply to the plan by virtue of the plan being treated as a CSEC plan.

Section 414(y)(3)(A) provides that if a plan falls within the definition of a CSEC plan, the plan is a CSEC plan unless the plan sponsor elects not later than the close of the first plan year of the plan beginning after December 31, 2013 for the plan not to be

treated as a CSEC plan. This election shall take effect for that plan year and, once made, may be revoked only with consent of the Secretary.

Under section 414(y)(3)(B) of the Code, section 104 of PPA, as amended by section 202(b) of PRA, ceases to apply to such a plan that has not made an election not to be treated as a CSEC plan as of the first date as of which such plan is treated as a CSEC plan.

Section 433(j)(5)(E) defines plan sponsor, for purposes of a CSEC plan, to mean the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

Section 1.411(a)(13)-1(d)(5) provides that the term "statutory hybrid plan" means a defined benefit plan that includes a statutory hybrid formula.

Section 1.413-2(a)(1) provides that the term "section 413(c) plan" means a plan that is described in section 413(c) (and each trust that is a part of the plan) and that a plan (and each trust that is a part of the plan) is deemed to be a section 413(c) plan if is described in § 1.413-2(a)(2).

Section 1.413-2(a)(2) specifies that a plan (and each trust that is a part of the plan) is a section 413(c) plan if (1) the plan is a single plan, within the meaning of section 413(a) and § 1.413-1(a)(2), and (2) the plan is maintained by more than one employer. For this purpose, the number of employers maintaining the plan is determined by treating any employers described in sections 414(b) or 414(c), whichever is applicable, as if all of those employers are a single employer, and the rules relating to the time an employer maintains a plan are set forth in § 1.411(a)-5(b)(3).

Section 1.413-1(a)(2) provides that a plan that provides benefits for employees of more than one employer is considered a "single plan" for purposes of § 1.413-2(a)(2) if the plan is considered a single plan for purposes of applying section 414(l) pursuant to § 1.414(l)-1(b)(1).

Section 1.414(l)-1(b)(1) provides that a plan is a "single plan" if and only if, on an ongoing basis, all of the plan assets are available to pay benefits to employees who are covered by the plan and their beneficiaries. For this purpose, all the assets of a plan will not fail to be available to provide all the benefits of a plan merely because the plan is funded in part or in whole with allocated insurance instruments.

Under § 1.414(l)-1(b)(1), a plan does not fail to be a single plan merely because of the following:

(1) The plan has several distinct benefit structures that apply either to the same or different participants,
(2) The plan has several plan documents,
(3) Several employers, whether or not affiliated, contribute to the plan,
(4) The assets of the plan are invested in several trusts or annuity contracts, or
(5) Separate accounting is maintained for purposes of cost allocation but not for purposes of providing benefits under the plan.

Section 1.414(l)-1(b)(1) provides further that more than one plan will exist if a portion of the plan assets is not available to pay some of the benefits. Under the regulation, this will be the case even if each plan has the same benefit structure or plan document, or if all or part of the assets is invested in one trust with separate accounting with respect to each plan.

Section 1.411(b)(5)-1(d)(5)(ii)(C), *Example 1*, illustrates circumstances under which plan assets are generally separately accounted under a plan such that certain plan assets are generally held to pay benefits under a statutory hybrid benefit formula and other plan assets are generally held to pay other plan benefits in a manner not inconsistent with the section 414 "single plan" requirements. Under the example, although benefits accrued under a statutory hybrid formula are generally paid from a separately accounted portion of the plan's assets, if the assets in the separately accounted portion earmarked to pay statutory hybrid formula benefits "are insufficient to pay benefits accrued under [that] formula, the plan provides that [other plan] assets ... from which benefits accrued [under a different benefit formula are generally paid] are available to pay [the statutory hybrid formula] benefits in accordance with the requirement that all assets of the plan be available to pay all plan benefits." Section 1.411(b)(5)-1(d)(5)(ii)(C), *Example 2*, includes similar language.

ANALYSIS

I. Effect of Hybrid Amendment on Plan's Status as a CSEC Plan

Section 414(y)(1)(A) of the Code provides that the term "CSEC plan" includes a defined benefit plan (other than a multiemployer plan) to which section 104 of PPA applies if each of the following are disregarded: (1) the original January 1, 2017 sunset of the section 104 special rules as enacted in PPA; (2) the amendments to section 104 made by section 202(b) of PRA; and (3) the fact that section 104 ceases to apply to a plan as of the first date the plan is treated as a CSEC plan. Section 414(y)(3)(A) provides that a plan that falls within the definition of a CSEC plan is a CSEC plan unless the plan sponsor makes an election that the plan not be treated as a CSEC plan. In other words, if section 104 of PPA would apply to a plan during a plan year ignoring the original January 1, 2017 sunset, the PRA amendment, and the CSEC Act amendment, then the

plan is a CSEC plan for that plan year in the absence of the plan sponsor's election for the plan not to be treated as a CSEC plan.

For section 104(a) of PPA, as modified, to apply during an applicable plan year, a defined benefit plan must have been inexistence on July 26, 2005 and an eligible cooperative plan during the plan year that includes July 26, 2005 and each subsequent plan year through and including the applicable plan year. Accordingly, a defined benefit plan that is an eligible cooperative plan on and during the plan year that includes July 26, 2005 and during each subsequent plan year through the applicable plan year will, in the absence of a timely election to the contrary by the plan sponsor, be treated as a CSEC plan for each such plan year. An eligible cooperative plan includes a plan that is maintained by more than one employer and at least 85 percent of the employers are rural cooperatives (85 percent test). Treatment as a CSEC plan would end as of the first day of the first plan year during which such a plan ceases to be an eligible cooperative plan. There is no requirement under either section 414(y) of the Code or section 104(a) of PPA that the employers that maintain a CSEC plan in any applicable plan year must be the same employers that maintained the plan in any other applicable plan year.

Section 413(c) provides special rules in the case of a plan, such as an eligible cooperative plan, that is maintained by more than one employer. Section 413(d) provides special rules for CSEC plans that apply in lieu of the rules that would otherwise apply under section 413. Under section 413(d), many of the special rules described in section 413(c) apply without modification. However, sections 413(d)(1) and 413(d)(3) provide special funding and deduction rules with respect to a CSEC plan that in certain cases may not have applied to the plan under section 413(c). The rules of section 413(c) apply to a CSEC plan to the extent those rules are not superseded by the rules of section 413(d).

Accordingly, to be a CSEC plan with respect to any given plan year, the plan must (1) have been in existence on July 26, 2005, (2) be a single plan maintained by more than one employer during the plan year that includes July 26, 2005 and each subsequent plan year through and including the plan year in question, and (3) satisfy the 85 percent test for the plan year that includes July 26, 2005 and each subsequent plan year through and including the plan year in question.

A. Existence of the Plan on July 26, 2005

Based on the facts provided, the Plan was in existence on July 26, 2005, was maintained by more than one employer during the 2005 plan year (the plan year that includes July 26, 2005), and at least 85 percent of the employers that maintained the Plan during the 2005 plan year were rural cooperatives (that is, the Plan satisfies the 85 percent test for the 2005 plan year). Accordingly, section 104(a) of PPA applies to

the Plan for the 2005 plan year. The fact that the “original effective date” or “date the plan was originally adopted” was completed on Form 5300 with respect to an adopting employer using a date after July 26, 2005 that the adopting employer first began to maintain the Plan, and not the Plan's original effective date, does not result in the Plan or any portion of the Plan not being in existence on July 26, 2005. The Form 5300 is an administrative form that may be used by the plan sponsor or adopting employer of a multiple-employer plan for purposes of applying for an individual favorable determination letter. The instructions to Form 5300 explicitly contemplate, in certain situations, more than one Form 5300 being filed with respect to a single qualified plan.

Amendment of the Plan to add the Hybrid Amendment does not affect the conclusion that the Plan was in existence on July 26, 2005. Under section 411(a)(13), inclusion of a statutory hybrid formula under a plan does not result in the plan being treated as two separate plans. Specifically, § 1.411(a)(13)-1(d)(5) provides that the term "statutory hybrid plan” means a defined benefit plan (i.e., a single plan) that includes a statutory hybrid formula. In other words, a statutory hybrid plan is a single defined benefit plan that includes a specific benefit formula or formulas, one or more of which is a statutory hybrid formula. This is consistent with the statutory language in section 411(a)(13)(C), which provides that the term “applicable defined benefit plan” means a defined benefit plan under which the accrued benefit (or any portion thereof) is calculated as the balance of a hypothetical account maintained for the participant or as an accumulated percentage of the participant's final average compensation. It is also consistent with the statutory language in section 411(b)(5)(B)(ii), which provides a special rule regarding compliance of a plan with applicable age discrimination rules in the case that the plan is converted to an applicable defined benefit plan. In that case, the statutory language contemplates that the resulting single plan will include two (or more) separate benefit formulas at least one of which will be a newly added statutory hybrid formula. In context, these provisions indicate that a plan--the same plan--is in existence for purposes of sections 401(a) and 411 both before and after an amendment to the plan to add a statutory hybrid formula. Accordingly, the Plan, including the portion of the Plan added by the Hybrid Amendment, does not fail to be the same plan that was in existence on July 26, 2005 merely because the Plan was amended by the Hybrid Amendment, adopted and effective as of a later date, to include a statutory hybrid formula.

B. Status as a Single Plan Maintained by More than One Employer

To continue to be a CSEC plan after amendment to include the statutory hybrid formula, the Plan must be (1) maintained by more than one employer and (2) a single plan as described in § 1.414(l)-1(b)(1). Adopting the Hybrid Amendment, by itself, does not affect whether the Plan is maintained by more than one employer. Based on the facts provided, the Plan at all relevant times has had more than one adopting

employer. Accordingly, as amended by the Hybrid Amendment, the Plan continues to satisfy the requirement that it must be maintained by more than one employer.

To satisfy the requirement that the Plan must be a single plan under § 1.414(l)-1(b)(1), all of the Plan's assets must be available, on an ongoing basis, to pay benefits to employees who are covered by the Plan and their beneficiaries. Under § 1.414(l)-1(b)(1)(v), a plan does not fail to be a single plan merely because separate accounting is maintained for purposes of cost allocation but not for purposes of providing benefits under the plan. However, under § 1.414(l)-1(b)(1), more than one plan will exist if a portion of the plan assets is not available to pay some of the plan benefits, even if each (then determined to be separate) plan has the same benefit structure or plan document or if all or part of the assets are invested in one trust with separate accounting with respect to each (then determined to be separate) plan. The preamble to the section 414(l) regulations instructs that "it is intended that the concept of a single plan contained in these regulations will be applied for other purposes where it is necessary to determine whether an arrangement involves one or more than one plan," including, as examples, references to sections 404, 411, and 412.[2]

Under the Plan, allocation of Plan costs (funding) to the employers that maintain the Plan is determined separately for each employer pursuant to formulas developed for this purpose. This does not affect the requirements for the Plan to be considered a single plan under § 1.414(l)-1(b)(1), which permits that a type of separate accounting is maintained by contributing employers for purposes of determining cost allocation. In addition, it also does not affect those requirements if, under the Plan as amended by the Hybrid Amendment, employer contributions to the Plan related to accruals under the statutory hybrid formula from adopting employers are held in a separate subset of Plan assets in the Plan's trust, where they are available to pay benefits that do not accrue under the statutory hybrid formula only if the corresponding other Plan assets are insufficient to pay those other Plan benefits. Such general separate accounting and use of Plan assets, consistent with that described § 1.411(b)(5)-1(d)(5)(ii)(C), *Examples 1* and *2*, do not result in any portion of the Plan assets not being available, on an ongoing basis, to pay benefits to employees who are covered by the Plan and their beneficiaries. As set forth in *Examples 1* and *2*, even if certain assets are available to pay certain benefits only in the case of an emergency, which emergency could occur at any time, those plan assets remain available, on an ongoing basis, to pay any benefits under the plan consistent with applicable requirements to be considered a single plan under § 1.414(l)-1(b)(1). Accordingly, the Plan does not cease to be considered a single plan merely because the Plan is amended by the Hybrid Amendment.

[2] 44 Fed. Reg. 48192 (August 17, 1979).

C. Satisfaction of the 85 Percent Test

Based on the facts provided, at least 85 percent of the employers that maintained the Plan during the 2005 plan year were rural cooperatives (that is, the Plan satisfies the 85 percent test for the 2005 plan year). Further, based on the facts provided, additional employers became adopting employers with respect to the Plan during plan years subsequent to the 2005 plan year. After adoption of the Plan by each such additional adopting employer, at least 85 percent of the employers that maintained the Plan were rural cooperatives. Accordingly, adoption of the Plan by one or more new (additional) employers that are rural cooperatives or that do not cause the Plan to fail to be maintained by employers at least 85 percent of which are rural cooperatives does not, by itself, cause the Plan to fail to satisfy the 85 percent test. In addition, amendment of the Plan by the Hybrid Amendment, by itself, does not affect whether the Plan satisfies the 85 percent test because the amendment, by itself, neither adds nor removes any adopting employer. Therefore, the Plan, including any portion of the Plan newly established and maintained by an adopting employer after July 26, 2005, is an eligible cooperative plan for the 2005 plan year and each subsequent plan year.

Based on the foregoing, the Plan (1) was in existence on July 26, 2005, (2) satisfies the applicable section 413 requirements as a single plan maintained by more than one employer during the plan year that includes July 26, 2005 and each subsequent plan year through and including the plan year in which the Hybrid Amendment is adopted, and (3) satisfies the 85 percent test for the plan year that includes July 26, 2005 and each subsequent plan year through and including the plan year in which the Hybrid Amendment is adopted. Accordingly, even after amendment of the Plan by the Hybrid Amendment, section 104(a) of PPA continues to apply to the Plan during the 2005 plan year and each subsequent relevant plan year, as if that section did not originally include a sunset provision, had not been subsequently amended, and did not cease to apply based on subsequent legislation. In addition, no election has been made with respect to the Plan that it not be treated as a CSEC plan. Therefore, amendment of the Plan by the Hybrid Amendment will not cause the Plan to cease to be a CSEC Plan.

II. Section 413(d) Deduction Limitations for an Employer who Only Adopts the Statutory Hybrid Formula Added by the Hybrid Amendment

Section 413(d)(3) provides that, in the case of a CSEC plan, notwithstanding any other provision of section 413, each applicable limitation provided by section 404(a) shall be determined as if all participants in the plan were employed by a single employer. That section also provides that the amounts contributed to or under the plan by each employer who maintains the plan (for the portion of the taxable year included within a plan year) shall be considered not to exceed such applicable limitation if the anticipated employer contributions for such plan year of all employers (determined in a reasonable manner not inconsistent with regulations prescribed by the Secretary) do not exceed such limitation. That section provides further that if such anticipated contributions

exceed such limitation, the portion of each such employer's contributions that is not deductible under section 404 shall be determined in accordance with regulations prescribed by the Secretary.

Based on the analysis above, the Plan, as amended by the Hybrid Amendment, is a CSEC plan. In addition, neither the Plan nor any portion of the Plan ceases to be a CSEC plan merely because an employer adopts and provides for benefit accrual only under the statutory hybrid formula that was added to the Plan by the Hybrid Amendment. Therefore, the section 404(a) deduction, to the extent applicable, for an employer that adopts provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula added by the Hybrid Amendment must be determined in accordance with section 413(d)(3).

III. Plan Sponsor for Purposes of Section 433

Based on the foregoing, the Plan's status as a CSEC plan is not affected by the Hybrid Amendment or the adoption of the Plan, including the statutory hybrid formula, by a new employer on or after any particular date. Therefore, for purposes of section 433, the Taxpayer is the plan sponsor of the Plan (as defined in section 433(j)(5)(E)) from the time that the Plan was first established or maintained (on Date 1). Based on the foregoing, this conclusion is not affected by the fact that the “original effective date” or “date the plan was originally adopted” was shown on Form 5300 with respect to an adopting employer as the date that the adopting employer first began to maintain the Plan, and not the Plan's original effective or adoption date by the plan sponsor (on Date 1). The conclusion is also not affected by the fact that an adopting employer received an individual determination letter from the IRS indicating that the Plan, with respect to that employer, had been first adopted as of the date the employer first began to maintain the Plan, and not the Plan's original effective or adoption date by the plan sponsor (on Date 1). Therefore, the Taxpayer is the plan sponsor of the Plan for purposes of section 433, notwithstanding that other employers began to maintain the Plan after Date 1, including any employers that adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula.

CONCLUSION

As described more fully above, the Plan does not fail to be a CSEC plan for purposes of section 413 during any plan year commencing on or after January 1, as a result of an amendment to the Plan (the Hybrid Amendment), adopted and effective after such date, to include an available statutory hybrid formula because the Plan was in existence on July 26, 2005, and the Hybrid Amendment, by itself, neither causes the Plan to cease to be an eligible cooperative plan nor causes the Plan to fail to satisfy applicable requirements under section 413 during the 2005 plan year or any other relevant plan year. Although certain Plan assets attributable to certain benefit accruals under the statutory hybrid formula may be separately accounted for such that those separate Plan

assets would only be available to pay benefits attributable to other benefit accruals under the Plan only in what would be expected to be rare situations, those plan assets remain available, on an ongoing basis, to pay any benefits under the plan consistent with applicable requirements.

Further, neither the Plan nor the portion of the Plan first established and maintained by an employer under which the accrued benefit is determined solely by reference to the statutory hybrid formula fails to be a CSEC plan for purposes of section 413 during the plan year in which that portion of the Plan is so established and maintained merely because the Plan's statutory hybrid formula was not in existence on July 26, 2005 or merely because that employer first adopted and maintained the Plan as of a later date. Finally, the Taxpayer is the plan sponsor of the Plan for purposes of section 433 (as defined in section 433(j)(3)(E)), notwithstanding that other employers began to maintain the Plan after Date 1, including any employers that adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula.

Based on the facts and representations provided by Taxpayer:

(1) The Plan does not fail to be a CSEC plan for purposes of section 413 solely as a result of the amendment to the Plan to add the cash balance formula described as part of the Hybrid Amendment.

(2) To the extent applicable, the deduction limitations described in section 413(d) apply to amounts contributed to or under the Plan by an employer that has adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula added by the Hybrid Amendment.

(3) For purposes of section 433, the Taxpayer is the plan sponsor of the Plan (as defined in section 433(j)(5)(E)) from the time that the Plan was first established or maintained (on Date 1), notwithstanding that other employers began to maintain the Plan after July 26, 2005, including any employers that adopted provisions of the Plan providing for benefit accrual only by reference to the statutory hybrid formula.

These rulings are based on the assumption that the Plan is qualified under section 401(a).

The rulings contained in this letter are based upon information and representations submitted by the Taxpayer, through its authorized representative, and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2019-1, 2018-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the

controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2019-1, § 11.05.

Except as expressly provided above, no opinion is expressed or implied concerning the federal income tax consequences of any other aspects of any transaction or item of income described in this letter ruling.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Linda S. F. Marshall
Senior Counsel
Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations, and Employment Taxes)

cc: