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Person To Contact:
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Telephone Number:

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Date:
December 15, 2020

Legend

Company =
LLC =
DB Plan =
BU Plan =

NBU Plan =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Date 7 =
Date 8 =
Date 9 =
Amount 1 =
Amount 2 =
Amount 3 =

Dear :

This letter is in response to your May 18, 2020, request for rulings concerning the proper treatment under § 4980 of the Internal Revenue Code, of a transfer of surplus assets from a terminated defined benefit plan to two ongoing defined contribution plans, together designated as a "qualified replacement plan."

The following facts and representations have been submitted under penalties of perjury:

The Company is a publicly traded corporation that, along with other members of its controlled group, files a consolidated Federal income tax return. The Company indirectly owns greater than 80 percent of LLC. LLC sponsors the DB Plan, which was established on Date 1 and was intended to be qualified under § 401(a). The DB Plan terminated on Date 2 (the Termination Date), as described more fully below.

LLC also sponsors the BU Plan and the NBU Plan, both of which are defined contribution profit sharing plans that were established on Date 3. The BU Plan covers eligible bargaining unit employees, and the NBU Plan covers eligible non-bargaining unit employees. The NBU Plan includes a qualified cash or deferred arrangement (CODA) under § 401(k), as well as an employer safe harbor contribution feature pursuant to which LLC makes certain matching contributions on behalf of eligible non-bargaining unit employees in accordance with §§ 401(k)(12) and 401(m)(11), and an employer nonelective contribution feature pursuant to which LLC makes certain supplemental contributions for each plan year on behalf of eligible non-bargaining unit employees (excluding certain employees who were eligible to accrue benefit service under the DB Plan). The BU Plan includes a qualified CODA under § 401(k) and an employer contribution feature pursuant to which LLC makes certain matching contributions and supplemental nonelective employer contributions on behalf of eligible bargaining unit employees in accordance with §§ 401(k) and 401(m). The NBU Plan received a favorable determination letter on its qualified status under § 401(a) dated Date 8. The BU Plan received a favorable determination letter on its qualified status under § 401(a) dated Date 9.

The DB Plan was terminated in a standard termination under § 4041(b) of the Employee Retirement Income Security Act of 1974, as amended, and a Standard Termination Notice was filed with the Pension Benefit Guaranty Corporation for the DB Plan on Date 4. The Internal Revenue Service (IRS) issued a favorable determination letter on Date 5 as to the effect of the termination of the DB Plan on its qualified status.

The Company represents that Amount 1 employees were active participants in the DB Plan on the Termination Date, Amount 2 of whom were active participants in either the BU Plan or the NBU Plan at that time. Immediately after the termination of the DB Plan, 99.9 percent of the participants in the DB Plan who remained as current employees of the Company (including any member of its controlled group) were active participants in either the BU Plan or the NBU Plan.

The distribution of all benefits due to participants, surviving spouses, other beneficiaries, and alternative payees under the DB Plan was completed on Date 6. Immediately following such distribution of all benefits due to participants, surviving spouses, other beneficiaries, and alternative payees under the DB Plan, the actuary for the DB Plan estimated that the DB Plan had a surplus of Amount 3 as of Date 7.

After all DB Plan liabilities have been satisfied and before the reversion of any surplus funds to LLC, the Company, or any other member of the Company's controlled group, the Company and LLC intend to direct the trustee of the DB Plan to effectuate a direct transfer from the DB Plan to the NBU Plan and the BU Plan of an aggregate amount equal to the total amount of the DB Plan's remaining surplus. The Company and LLC further intend to direct that such aggregate amount be divided between the NBU Plan and the BU Plan in proportion to the number of participants in the DB Plan as of the Termination Date (99.9 percent of whom were participants in either the NBU Plan or the BU Plan as of the Termination Date) who remain as current employees of the Company (including any member of its controlled group) and are active participants in, respectively, the NBU Plan and the BU Plan as of the last day of the month immediately preceding the month in which the direct transfer of assets from the DB Plan occurs. Of the participants in the DB Plan who were also participants in either the NBU Plan or the BU Plan on the Termination Date, 41 percent were participants in the NBU Plan and 59 percent were participants in the BU Plan.

The Company and LLC intend to cause the amount transferred to the NBU Plan and the BU Plan to be credited to a suspense account under the respective plan and amounts from each suspense account to be allocated to fund all or a portion of any employer nonelective contributions due in accordance with the terms of each plan (after the offset of any forfeitures). The allocation from the suspense account will be no less rapidly than ratably on a periodic basis over an allocation period beginning on the date of the transfer and ending on the last day of the sixth plan year after the plan year of transfer (Allocation Period). The minimum ratable drawdown of the suspense accounts over the Allocation Period will be measured by the sponsor (LLC) or plan administrator of each plan at periodic intervals. The amount of drawdown for each such interval (e.g., for each plan year), applied to fund employer nonelective contributions, will be no less than the amount determined by multiplying the amount in the relevant suspense account as of the first day of such interval by a fraction, the numerator of which is one and the denominator of which is the number of such intervals remaining in the Allocation Period for each plan and will be at least annually. Any income earned by the suspense accounts will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the Allocation Period under the same procedure. The suspense accounts under each plan will not be applied to fund any employer matching contributions.

LLC, as the sponsor of the NBU Plan and the BU Plan, has provided proposed amendments that it intends to adopt to accomplish the foregoing.

In addition, the proposed amendments to the NBU Plan and the BU Plan would provide that if any amount credited to a suspense account under that plan may not be allocated to a participant before the end of the Allocation Period due to any limitation under § 415, such amount shall be allocated to the accounts of other participants under that plan, and if any portion of such amount may not be so allocated because of any such limitation, such portion shall be allocated to the participant in accordance with § 415.

Further, if any transferred amounts credited to a suspense account under the NBU Plan or the BU Plan are not allocated prior to the termination date of the relevant plan, (1) such transferred amounts shall be allocated to the accounts of participants in the relevant plan as of such date, except that any portion of such transferred amounts which may not be allocated due to § 415 limitations shall be allocated to the accounts of other participants; and (2) if any portion of such transferred amounts may not be allocated to other participants under the relevant plan in accordance with clause (1) by reason of such limitation, such portion shall be treated as an employer reversion to which § 4980 applies.

Any amounts allocated from the suspense accounts in the NBU Plan and the BU Plan attributable to the transfers from the DB Plan and any income earned thereon will be treated as employer contributions for purposes of §§ 401 and 415.

Although all benefits due under the DB Plan were distributed within 221 days after LLC received the favorable IRS determination letter regarding the qualified status of the DB Plan upon its termination, the remaining surplus assets will be retained in the trust through which the DB Plan is funded pending receipt of the requested rulings.

Based on the forgoing facts and correspondence, the following rulings have been requested:

1. The NBU Plan and the BU Plan may be treated as one plan for purposes of § 4980 pursuant to § 4980(d)(5)(D) and together constitute a single "qualified replacement plan" for purposes of § 4980(d)(2).

2. The direct transfer from the DB Plan to the NBU Plan and the BU Plan of an aggregate amount equal to 100 percent of the maximum amount that the Company could receive as an employer reversion from the DB Plan will be treated as follows:

    a. the aggregate amount transferred will not be included in the gross Income of the Company;
    b. no deduction will be allowable with respect to the aggregate amount transferred; and
    c. the aggregate amount transferred will not be treated as an employer reversion for purposes of § 4980, and the Company will not be subject to excise tax under § 4980 with respect to such amount transferred.

3. The allocation of the aggregate amount of the direct transfer from the DB Plan between the NBU Plan and the BU Plan in proportion to the number of participants in the DB Plan as of the Termination Date (99.9 percent of whom were participants in either the NBU Plan or the BU Plan as of the Termination Date) who remain as current employees of the Company (including any member of its controlled group) and are active participants in, respectively, the NBU Plan

and the BU Plan as of the last day of the month immediately preceding the month in which the direct transfer of assets from the DB Plan occurs is consistent with the treatment of the NBU Plan and the BU Plan as a single qualified replacement plan for the purposes of § 4980(d)(2) and the requirements of that provision.

4. The crediting of the amounts transferred from the DB Plan to suspense accounts in the NBU Plan and the BU Plan, as applicable, and the allocation of the assets in such suspense account to fund all or a portion of the periodic employer nonelective contributions due in accordance with the terms of each of the NBU Plan and the BU Plan will satisfy the allocation requirement of § 4980(d)(2)(C). More specifically, the minimum ratable drawdown of the suspense account for each of the NBU Plan and the BU Plan over the Allocation Period as a nonelective employer contribution for each interval (e.g., for each Plan Year) will be no less than the amount determined by multiplying the amount in the respective suspense account as of the first day of such interval by a fraction, the numerator of which is one and the denominator of which is the number of such intervals remaining in the Allocation Period for the NBU Plan and the BU Plan, respectively, and will be at least annually. The allocation of any income earned by the suspense accounts will similarly be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the Allocation Period under the same procedure.

Section 4980(a) provides for a 20 percent excise tax on the amount of any reversion from a qualified plan. Section 4980(d)(1) provides, in pertinent part, that the excise tax under § 4980(a) shall be increased to 50 percent with respect to any employer reversion from a qualified plan unless the employer either establishes or maintains a qualified replacement plan, or the plan provides for certain benefit increases which take effect immediately on the termination date.

Section 4980(c)(2) generally defines the term "employer reversion" as the amount of cash and the fair market value of other property received (directly or indirectly) by an employer from the qualified plan.

Section 4980(d)(2) provides that a qualified replacement plan is a qualified plan established or maintained by the employer in connection with a qualified plan termination, which satisfies the participation, asset transfer, and allocation requirements of §§ 4980(d)(2)(A), (B), and (C).

Section 4980(d)(2)(A) requires that at least 95 percent of the active participants in the terminated plan who remain as employees of the employer after the termination be active participants in the replacement plan.

Section 4980(d)(2)(B) requires that a direct transfer from the terminated plan to the replacement plan be made before any employer reversion, and that the transfer be an

amount equal to the excess (if any) of (i) 25 percent of the maximum amount which the employer could receive as an employer reversion without regard to § 4980(d), over (ii) the amount equal to the present value of the aggregate increases in the accrued benefits under the terminated plan of any participants or beneficiaries pursuant to a plan amendment adopted during the 60-day period ending on the date of termination of the qualified plan, and which takes effect immediately on the termination date.

Section 4980(d)(2)(B)(iii) provides that in the case of the transfer of any amount under § 4980(d)(2)(B)(i) from a terminated plan, such amount is not includible in the gross income of the employer, no deduction is allowable with respect to such transfer, and the transfer is not treated as an employer reversion for purposes of § 4980.

Section 4980(d)(2)(C)(i) provides that, if the replacement plan is a defined contribution plan, the amount transferred to the replacement plan must be (I) allocated under the plan to the accounts of participants in the plan year in which the transfer occurs, or (II) credited to a suspense account and allocated from such account to accounts of participants no less rapidly than ratably over the seven plan-year period beginning with the year of the transfer.

Section 4980(d)(2)(C)(ii) provides that if, by reason of any limitation under § 415, any amount credited to a suspense account under § 4980(d)(2)(C)(i)(II) may not be allocated to a participant before the close of the seven plan-year period, such amount shall be allocated to the accounts of other participants, and if any portion of such amount may not be allocated to other participants by reason of any such limitation, it shall be allocated to the participant as provided in § 415.

Section 4980(d)(2)(C)(iii) provides that any income on any amount credited to a suspense account under § 4980(d)(2)(C)(i)(II) shall be allocated to accounts of participants no less rapidly than ratably over the remainder of the period determined under such clause (after application of clause (ii) regarding limitation under § 415).

Section 4980(d)(2)(C)(iv) provides that if any amount credited to a suspense account under § 4980(d)(2)(i)(II) is not allocated as of the termination date of the replacement plan, (I) such amount shall be allocated to the accounts of the participants as of such date, except that any amount which may not be allocated by reason of any limitation under § 415 shall be allocated to the accounts of other participants, and (II) if any portion of such amount may not be allocated to other participants under subclause (I) by reason of such limitation, such portion shall be treated as an employer reversion to which § 4980 applies.

Section 4980(d)(5)(D)(i) authorizes the Secretary of Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan.

Revenue Ruling 2003-85, 2003-32 I.R.B. 291 (Rev. Rul. 2003-85), provides that, in accordance with § 4980(d)(2)(B)(iii), the direct transfer of an amount that is at least 25

percent of the maximum amount which the employer could receive as an employer reversion from a terminated plan which was transferred to a qualified replacement plan is not includible in the employer's gross income. In addition, the IRS held that no deduction was allowable with respect to the amount transferred, and the amount transferred was not treated as an employer reversion. Further, the IRS concluded that any amount that the employer received would be subject to the 20 percent excise tax under § 4980(a) and would be includible in income under § 61.

Under § 501(a), an organization described in § 401(a) (that is, a trust which is part of a qualified pension, profit-sharing or stock bonus plan) is generally exempt from taxation.

Regarding ruling requests 1 and 4, § 4980(d)(5)(D)(i) authorizes the Secretary of Treasury to treat two or more plans as one plan for purposes of determining whether there is a qualified replacement plan. Based on the facts of this case, we find that it is appropriate to exercise this authority. Thus, pursuant to this provision, we rule that, assuming the requirements of a qualified replacement plan under paragraphs (A), (B) and (C) of § 4980(d)(2) are satisfied, the BU Plan and the NBU Plan together may constitute a qualified replacement plan within the meaning of § 4980(d)(2).

Having ruled that the BU Plan and the NBU Plan together may constitute a qualified replacement plan, we now must determine whether the requirements of § 4980(d)(2) are satisfied. You have represented that 99.9 percent of the active participants of the DB Plan who remained employees of Company (or any member its controlled group) on Date 2, the Termination Date, were eligible to participate in either the BU Plan or the NBU Plan. This is consistent with the treatment of the BU Plan and NBU Plan as a single qualified replacement plan. Therefore, because the BU Plan and the NBU Plan together will cover at least 95 percent of the participants of the DB Plan who remain in the employ of Company (or any member of its controlled group), the requirements of § 4980(d)(2)(A) are satisfied by this method of allocation.

You have also represented that the Company will transfer to the BU Plan and the NBU Plan an aggregate amount equal to the total amount of the DB Plan's remaining surplus after all plan liabilities have been satisfied. In accordance with Rev. Rul. 2003-85, the transfer of at least 25 percent of the maximum amount which the employer could receive as an employer reversion satisfies the requirement of § 4980(d)(2)(B).

Further, you have represented that the amount transferred from the DB Plan to the BU Plan and the NBU Plan is expected to be allocated under each plan to the accounts of participants no less rapidly than ratably on a periodic basis over an Allocation Period beginning on the date of the transfer and ending on the last day of the sixth plan year after the plan year of transfer, and that the allocations will otherwise be made in accordance with the requirements of § 4980(d)(2)(C). In addition, any income earned by the suspense account will be allocated at least as rapidly as ratably on the same periodic basis over the remainder of the Allocation Period under the same procedure. Therefore, we conclude that the crediting of the amounts transferred from the DB Plan

to suspense accounts in the BU Plan and the NBU Plan, as applicable, and the allocation of the assets in such suspense accounts to fund all or a portion of the periodic employer nonelective contributions due in accordance with the terms of each of the NBU Plan and the BU Plan, as well as the allocation of any income earned by the suspense accounts at least as rapidly as ratably on the same periodic basis over the remainder of the Allocation Period under the same procedure, will satisfy the allocation requirements of § 4980(d)(2)(C). Based on current law, neither suspense account may be applied to fund employer matching contributions.

Accordingly, we rule that the BU Plan and the NBU Plan together satisfy the requirements to be a qualified replacement plan within the meaning of § 4980(d)(2).

With respect to ruling request 2, because the BU Plan and the NBU Plan together constitute a qualified replacement plan within the meaning of § 4980(d)(2), the direct transfer from the DB Plan to the BU Plan and the NBU Plan of an aggregate amount equal to 100 percent of the maximum amount that the Company could receive as an employer reversion from the DB Plan will be treated as follows:

a. the amount transferred will not be included in the gross income of the Company;

b. no deduction will be allowable with respect to the amount transferred; and

c. the amount transferred will not be treated as an employer reversion for purposes of § 4980, and the Company will not be subject to excise tax under § 4980 with respect to that amount.

In addition, with respect to ruling request 3, we find that the allocation of surplus assets transferred from the DB Plan to the NBU Plan and the BU Plan in proportion to the number of participants in the DB Plan as of the Termination Date who remain as current employees of the Company (including any member of its controlled group) and are active participants in, respectively, the NBU Plan and the BU Plan as of the last day of the month immediately preceding the month in which the direct transfer of assets from the DB Plan occurs is consistent with the treatment of the NBU Plan and the BU Plan as a single qualified replacement plan within the meaning of § 4980(d)(2).

This ruling letter is based on the representation that the DB Plan, the BU Plan, and the NBU Plan are qualified under § 401(a) and that their related trusts are tax-exempt under § 501(a) at all times relevant to this ruling letter.

The rulings contained in this letter are based upon information and representations submitted by you and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2020-1, 2020-1 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. 2020-1, § 11.05.

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

Sincerely,

Laura B. Warshawsky
Chief, Qualified Plans Branch 1
Office of Associate Chief Counsel
(Employee Benefits, Exempt Organizations,
and Employment Taxes)

cc: