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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP1

PLR-119024-17

Date:

October 23, 2017

In Re:

Legend

Plan =

Taxpayer =

State X =

Date 1 =

Date 2 =

Date 3 =

Year 1 =

Year 2 =

Dear :

This letter is written in response to your request dated June 5, 2017, for a ruling on the effect of an amendment changing the interest rate lookback month with respect to pre-conversion benefits under section 411(b)(5) of the Internal Revenue Code of 1986 ("Code") and the regulations thereunder, following the conversion of a defined benefit pension plan qualified under section 401(a) to a cash balance plan that is intended to be a statutory hybrid plan under section 411(a)(13).

In support of your request, you have submitted the following facts and representations (including a copy of the Plan document) under penalties of perjury.

You have represented that the Taxpayer is a tax-exempt organization under section 501(c)(3) that operates a health system in State X. The Plan is a defined benefit plan maintained by the Taxpayer in accordance with section 401(a), and the Plan's plan year is the calendar year. The Plan is a single employer plan but covers employees of multiple related entities that are parties to various collective bargaining agreements. The Plan has received multiple favorable determination letters, the most recent of which was issued on Date 1.

The Plan was converted from a traditional defined benefit pension plan to a cash balance pension plan, generally effective as of Date 2. Prior to Date 2, the Plan contained numerous benefit formulas for employees of the different entities.

The Plan provides that most active participants have a Cash Balance Effective Date of Date 2 (although employees participating in the Plan pursuant to one particular collective bargaining agreement have a Cash Balance Effective Date of Date 3). Vested terminated participants do not have a Cash Balance Effective Date unless they are later rehired in covered employment, in which case their Cash Balance Effective Date is their date of rehire.

The Plan provides that, effective on and after a participant's Cash Balance Effective Date, the participant's Normal Retirement Benefit shall equal the balance of the participant's Cash Balance Account, which equals the sum of the participant's Conversion Account and the Ongoing Account. With respect to a participant's Conversion Account, the Plan provides that, on an eligible participant's Cash Balance Effective Date, the participant's accrued benefit is converted to a single sum that is allocated to the participant's Conversion Account.

The Plan further provides that the amount of the benefit payable from a participant's Conversion Account at an annuity starting date, in any form of benefit available under the Plan, may not be less than the benefit under that form of benefit with respect to service before the participant's Cash Balance Effective Date, determined as of that annuity starting date under the terms of the Plan as in effect immediately before the Cash Balance Effective Date. Your letter refers to this as the "Protected Benefit."

Under the terms of the Plan prior to Date 2, present value determinations were based on interest rates for the lookback month that is the first full calendar month preceding the Plan Year in which the annuity starting date occurs.

Under the Plan terms made effective on Date 2, the Plan provides:

(A) For any distribution with an annuity starting date after Year 1 and before Year 2, the Look-back Month shall be the first full calendar month preceding the Plan Year in which the annuity starting date occurs;

(B) For any distribution with an annuity starting date in Year 2, the Look-back Month shall be whichever of the following months results in the larger distribution:

(i) the first full calendar month preceding the Plan Year in which the annuity starting date occurs, or

(ii) the month of September in the Plan Year preceding the Plan Year in which the annuity starting date occurs; and

(C) For any distribution with an annuity starting date after Year 2, the Look-back Month shall be the month of September in the Plan Year preceding the Plan Year in which the annuity starting date occurs.

You represent that, for annuity starting dates in Year 2 (referenced in paragraph (B) above), the September lookback results in the larger distribution.

With respect to determining the present value of a participant's Protected Benefit, for participants with a Cash Balance Effective Date of Date 2, the interest rate lookback month is the first full calendar month preceding the Plan Year in which the annuity starting date occurs. However, for employees with a Cash Balance Effective Date that is Date 3, and for rehired vested terminated participants who have an annuity starting date in or after Year 2, the interest rate lookback month for purposes of determining the present value of the Protected Benefit is the month of September in the Plan Year preceding the Plan Year in which the annuity starting date occurs.

You represent that the Taxpayer would like to amend the Plan so that an interest rate lookback month of September is used for all present value determinations for all participants, including present value determinations with respect to the Protected Benefit for participants whose Cash Balance Effective Date is Date 2. You represent that this change would simplify plan administration and enable the Plan to provide benefit estimates and benefit distribution paperwork more timely for an annuity starting date of January 1.

Based on the above facts and representations, you have requested the following ruling:

The Taxpayer may amend the Plan to provide that the interest rate lookback month for present value determinations with respect to Protected Benefits of participants with a Date 2 Cash Balance Effective Date will be as follows:

(a) prior to the effective date of such amendment, which will be on or after the date such amendment is adopted, the first full calendar month preceding the Plan Year in which the annuity starting date occurs; (b) for the one year period commencing on the effective date of the amendment, whichever of the following months results in the larger distribution: the first full calendar month preceding the Plan Year in which the annuity starting date occurs, or the month of September in the Plan Year preceding the Plan Year in which the annuity starting date occurs; and (c) following the one year period commencing on the effective date of the amendment, the month of September in the Plan Year preceding the Plan Year in which the annuity starting date occurs.

Under section 411(b)(5)(B)(ii), if an amendment to a defined benefit plan is adopted after June 29, 2005, that has the effect of converting the plan to a cash balance plan, then the plan is treated as failing to meet the prohibition against age discrimination under section 411(b)(1)(H) unless the requirements of section 411(b)(5)(B)(iii) of the Code and § 1.411(b)(5)-1(c)(2) of the Income Tax Regulations are met with respect to each individual who was a participant in the plan immediately before the adoption of the amendment.

Section 411(b)(5)(B)(iii) provides that the accrued benefit of a participant under the terms of the plan as in effect after the amendment may not be less than the sum of (I) the participant's accrued benefit for years of service before the effective date of the amendment, determined under the terms of the plan as in effect before the amendment, plus (II) the participant's accrued benefit for years of service after the effective date of the amendment, determined under the terms of the plan as in effect after the amendment.

Section 1.411(b)(5)-1(c)(2)(i) provides that, in the case of an individual who was a participant in the plan immediately before the date of adoption of a conversion amendment, the participant's benefit at any subsequent annuity starting date may not be less than the sum of (A) the participant's section 411(d)(6) protected benefit (as defined in §1.411(d)-3(g)(14)) with respect to service before the effective date of the conversion amendment, determined under the terms of the plan as in effect immediately before the effective date of the conversion amendment; and (B) the participant's section 411(d)(6) protected benefit with respect to service on and after the effective date of the conversion amendment, determined under the terms of the plan as in effect after the effective date of the conversion amendment.

Section 1.411(b)(5)-1(c)(2)(ii) provides in pertinent part that, except to the extent permitted under §1.411(d)-3 or §1.411(d)-4 (or other applicable law), each optional form of payment provided under the terms of the plan with respect to a participant's section 411(d)(6) protected benefit as in effect before the conversion amendment must be available thereafter to the extent of the plan's benefits for service prior to the effective date of the conversion amendment.

Section 1.411(b)(5)-1(c)(3)(ii) provides that if a plan protects benefits attributable to service before the effective date of the conversion amendment by establishing an opening account balance, then with respect to an optional form of benefit payable at an annuity starting date, the plan must provide that the amount of the benefit payable in that optional form under the lump sum-based benefit formula that is attributable to the opening hypothetical account balance is not less than the benefit under the comparable optional form of benefit attributable to the pre-conversion formula. Thus, the participant must receive a benefit equal to not less than the sum of (1) the benefit attributable to

post-conversion service and (2) the greater of (i) the benefit attributable to the opening account balance and (ii) the pre-conversion benefit.

Section 411(d)(6) and § 1.411(d)-3(a)(1) provide generally that, except for exceptions that are not relevant here, a plan is not a qualified plan if a plan amendment decreases the accrued benefit of any plan participant.

Section 411(d)(6)(B) provides that a plan amendment that has the effect of reducing or eliminating an early retirement benefit or a retirement-type subsidy, or eliminating an optional form of benefit with respect to benefits attributable to service before the amendment is treated as reducing accrued benefits.

Under § 1.411(d)-3(g)(6)(ii)(A), an optional form of benefit is a distribution alternative that is available under the plan. Different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The relevant terms include all terms affecting the value of the optional form, such as the method of benefit calculation and the actuarial factors or assumptions used to determine the amount distributed.

Section 417(e)(3)(C) provides that the applicable interest rate for purposes of determining the minimum present value of a participant's accrued benefit is the adjusted first, second and third segment rates applied under rules similar to the rules applied in section 430(h)(2)(C) for the month before the date of the distribution or such other time as prescribed by regulations (the "lookback month").

Section 1.417(e)-1(d)(1)(i) provides that, for a defined benefit plan, the minimum present value rules apply to determination of the present value of any accrued benefit, and the amount of any distribution. In addition, the present value of any optional form of benefit cannot be less than the present value of the normal retirement benefit determined in accordance with the minimum present value rules.

Under § 1.417(e)-1(d)(4)(i), the applicable interest rate to be used for a distribution is the rate determined for the applicable lookback month. The applicable lookback month for a distribution is the lookback month for the month (or other longer stability period) that contains the annuity starting date for the distribution. The time and method for determining the applicable interest rate for each participant's distribution must be determined in a consistent manner that is applied uniformly to all participants in the plan.

Section 1.417(e)-1(d)(4)(ii) requires a plan to specify the period for which the applicable interest rate remains constant. This stability period may be one calendar month, one plan quarter, one calendar quarter, one plan year, or one calendar year.

Section 1.417(e)-1(d)(4)(iii) requires a plan to specify the lookback month that is used to determine the applicable interest rate. The lookback month may be the first, second, third, fourth, or fifth full calendar month preceding the first day of the stability period.

Section 1.417(e)-1(d)(10)(i) provides that plan amendments changing the applicable interest rate or the time for determining the interest rate are subject to the prohibitions against the reduction or elimination of protected benefits under section 411(d)(6), including optional forms of benefits.

Section 1.417(e)-1(d)(10)(ii), however, provides an exception to the general rule under § 1.417(e)-1(d)(10)(i). For a plan amendment to be eligible for this exception, if the amendment is effective on or after the adoption date, then any distribution for which the annuity starting date occurs in the one-year period commencing at the time the amendment is effective must be determined using the interest rate provided under the plan determined at either the date for determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution.

The Taxpayer's proposed amendment would modify the interest rate lookback month with respect to present value calculations of Protected Benefits for participants with a Cash Balance Effective Date of Date 2, and, therefore, such calculations would no longer be determined under the terms of the Plan as in effect immediately before the Cash Balance Effective Date, as required by 1.411(b)(5)-1(c)(2)(i) (a participant's section 411(d)(6) protected benefit with respect to service before the effective date of the conversion amendment must be determined under the terms of the plan as in effect immediately before the effective date of the conversion amendment).

In addition, § 1.411(b)(5)-1(c)(2)(ii) provides that each optional form of payment provided under the terms of the plan with respect to a participant's section 411(d)(6) protected benefit as in effect before the conversion amendment must be available thereafter to the extent of the plan's benefits for service prior to the effective date of the conversion amendment, except to the extent elimination or reduction of the benefit is permitted under § 1.411(d)-3 or § 1.411(d)-4 (or other applicable law).

Pursuant to § 1.411(d)-3(g)(6)(ii)(A), amending the lookback month is a modification of the actuarial factors for determining the present value of a participant's benefit that would impermissibly eliminate a previously available optional form of benefit in violation of section 411(d)(6) unless an exception applies. Section 1.417(e)-1(d)(10)(ii) provides such an exception. Under § 1.417(e)-1(d)(10)(ii), amendments changing from one permitted lookback month to another permitted lookback month do not violate section 411(d)(6) or section 417(e) provided the participants receive the benefit of either the pre-amendment month or the post-amendment month for a one-year period

commencing on the effective date of the amendment, whichever results in the larger distribution.

Section 1.417(e)-1(d)(10)(i) states that paragraph (d)(10) specifically applies to the purposes in paragraph (d)(1), namely determination of the present value of any accrued benefit, and the amount of any distribution, as well as the determination of whether the present value of any optional form of benefit is not less than the present value of the normal retirement benefit. The determination of the present value of a participant's Protected Benefit is a determination of the present value of an optional form of benefit and therefore is covered by § 1.417(e)-1(d)(10)(ii). Because "other applicable law" for purposes of 1.411(b)(5)-1(c)(2)(ii) includes the rules governing the determination of present value under section 417(e)(3) and § 1.417(e)-1(d)(10)(ii), the terms of the plan amendment, as represented by the Taxpayer, are consistent with the requirements of § 1.411(b)(5)-1(c)(2).

Accordingly, we conclude that the proposed amendment, as described above, to the Plan's interest rate lookback month for present value determinations with respect to Protected Benefits of participants whose Cash Balance Effective Date is Date 2 will not cause the Plan to violate the requirements of section 411(b)(5)(B)(ii) or (iii).

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2017-1, § 7.01(15)(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. 2017-1, § 11.05.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting 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 representative.

Sincerely,

Laura B. Warshawsky
Chief, Qualified Plans Branch 1
Office of the Associate Chief Counsel
(Tax Exempt & Government Entities)

cc: