TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

JUN 11 2009

UIL Nos. 411.00-00; 411.01-00; 411.02-00; 411.03-00

Legend:

Plan X=

Taxpayer A =

Union P =

Date 1 =

Date 2 =

Dear:

This is in response to a letter dated June 18, 2008, submitted on your behalf by your authorized representatives, in which you request a letter ruling concerning the effect under sections 411(a)(9), 411(a)(10), 411(d)(6) and 4980F of the Internal Revenue Code (the "Code"), of a statutory increase in the federally mandated retirement age for pilots on a qualified retirement plan that defines a participant's normal retirement age solely by reference to the federally mandated age.

The following facts and representations have been submitted under penalty of perjury in support of the ruling request:

Taxpayer A is an air carrier operating in the United States and Canada holding an air operating certificate issued by and subject to the regulatory oversight of the Federal Aviation Administration (FAA). Taxpayer A sponsors and maintains Plan X, a defined benefit pension plan which Taxpayer A represents meets the qualification requirements of section 401(a) of the Code. Plan X received its most recent favorable determination letter on Date 2. The sole participants of Plan X are all current or former airline pilots employed by Taxpayer A.

Plan X is a collectively bargained plan. Plan X defines Normal Retirement Date as "the date on which the Participant attains his federally mandated retirement age." This provision was the subject of a collective bargaining agreement between Plan X and

Union P. Taxpayer A asserts that the purpose of this provision is to allow the normal retirement date to change automatically in accordance with any change to the federally mandated retirement age for pilots.

The definition of "Minimum Benefit" in Plan X provides that in no event will the total yearly amount of retirement income that would be provided for a Participant be less than the greatest amount which would have been provided for him if he had retired on any earlier date after he was eligible for retirement and his retirement income payments commenced immediately (based on his years of Credited Service on such earlier date and reduced as appropriate for early retirement on such date if such date preceded his Normal Retirement Date).

With respect to Normal Retirement Income, Plan X provides that each Participant who retires from the employ of the Employer on his Normal Retirement Date will receive a normal retirement income commencing on the first day of the month coinciding with or next following his Normal Retirement Date.

With respect to Early Retirement Income, Plan X provides that each Participant who retires from the employ of the Employer within the ten-year period immediately prior to his Normal Retirement Date may elect to receive an early retirement income, provided he has completed five years of Service. Payment of his retirement income will commence on the first day of any month between the date the election is made and the Participant's Normal Retirement Date, as specified by the participant in his election.

Plan X defines the Amount of Early Retirement Income as the yearly amount of early retirement income payable to the Participant that will be equal to the amount described in the applicable subsection or subsections defining the Amount of Normal Retirement Income based on Credited Service to the date the Participant's employment ceases, and then if the Participant elects to commence payment of his retirement income prior to his Normal Retirement Date, actuarially reduced to reflect such early commencement.

With respect to Late Retirement Income, Plan X provides, in relevant part, that if a Participant's employment continues after his Normal Retirement Date, each such Participant will receive a late retirement income commencing on the earlier of (a) the first day of the month immediately following the calendar month in which his employment ceases by reasons other than death, or (b) for a Participant who attains age 70 ½ on or after January 1, 1988, the April 1 following the calendar year in which he attains age 70 ½.

With respect to the social security supplement benefit under the plan, Plan X provides that a Participant who is required by Federal law to retire prior to age 65 and who retires from the employ of his Employer on Normal Retirement Date will receive a supplemental benefit commencing on the first day of the month coinciding with or next

following the month in which he retires. In addition, a participant who becomes totally and permanently disabled, as determined under Title II or Title XVI of the Social Security Act, after attaining age fifty (50) and having ten (10) or more years of Credited Service, and who is not determined no longer to be so disabled prior to reaching his Normal Retirement Date, will also receive a supplemental benefit commencing on the first day of the month coinciding with or next following the month in which he reaches his Normal Retirement Date (if the Participant, if not disabled, would have been required by Federal law to retire prior to age 65).

With respect to Vested Retirement Income, Plan X provides that each Participant who terminates employment with the Employer, and who is not eligible to receive retirement income in accordance with the other sections of the plan, will be eligible to receive a vested retirement income, commencing upon the first day of the month coinciding with or next following the month in which he attains his Normal Retirement Date, provided his Vesting Percentage is other than 0%.

Plan X provides that a participant vests in his retirement income upon completing 5 years of Service except that if a participant's Service ceases on or after his Normal Retirement Date his Vesting Percentage in 100%.

Prior to Date 1, section 121.383(c) of title 14 of the Code of Federal Regulations prohibited certificate-holding airlines from allowing individuals to serve, and prohibited such individuals from serving, as pilots on airplanes engaged in covered air carrier or commercial operation after their 60th birthdays. On Date 1, the Fair Treatment for Experienced Pilots Act, P.L. 110-135, (the "Act") repealed this rule and established a new rule prohibiting pilots from serving in covered operations on or after their 65th birthdays. The Act further provided that any amendment to an employee benefit plan of an airline that is required to conform to the new requirements and that covers pilots represented for collective bargaining purposes shall be made by agreement between the carrier and the pilots' collective bargaining representative.

The immediate result of the enactment of the Act with respect to Plan X was an increase in the normal retirement date for any Plan participant who attains age 60 and retires on or after Date 1 (Affected Participant) from age 60 to age 65. This increase occurred automatically pursuant to Plan X's definition of normal retirement date, and without any formal amendment or other change to Plan X's wording or terms. The normal retirement date under Plan X for any participant who attained age 60 or who retired prior to December 13, 2007 remains at age 60.

Taxpayer A represents that the increase in the normal retirement date impacts Affected Participants in the following ways:

1. An active Affected Participant who reaches age 60 with fewer than five years of service will no longer vest in his retirement benefits at age 60, but will instead vest in his retirement benefits at the earlier of when he reaches five years of service or age 65, if he remains employed.

2. An Affected Participant who terminates employment prior to age 55 will no longer have the option of commencing his vested retirement benefits at the later of age 50 or his termination date. Instead, the earliest he will be able to commence receiving his retirement benefits will be when he reaches age 55.

3. An Affected Participant's early retirement benefit commencing between ages 55 and 65 will be actuarially reduced relative to the annual retirement benefit the participant would have received commencing between ages 55 and 65 prior to the change in the normal retirement date.

4. An Affected Participant will no longer be eligible to receive the Social Security Supplement.

Based on these facts and representations, the following rulings are requested:

That, with respect to any Affected Participant, the increase in Plan X's normal retirement date from the date an Affected Participant attains age 60 to the date an Affected Participant attains age 65, resulting solely from the increase in the federally mandated retirement age made by the Act:

1. Will not constitute a change by plan amendment in Plan X's vesting schedule that would be prohibited by section 411(a)(10) of the Code, even if the increase has the effect of reducing the nonforfeitable percentage of an Affected Participant's accrued benefit determined without regard to such increase and even if Taxpayer A does not offer any Affected Participant the election described in section 411(a)(10)(B) of the Code with respect to such increase;

2. Will not constitute a decrease by plan amendment in any Affected Participant's accrued Plan X benefit that would be prohibited by section 411(d)(6) of the Code, even after taking into account (i) the elimination resulting from such increase of an Affected Participant's benefit commencement dates between ages 50 and 55; (ii) the actuarial reduction resulting from such increase in the amounts payable on an Affected Participant's benefit commencement dates between ages 55 and 65 relative to the amounts that would have been payable on such dates without regard to such increase; and (iii) the elimination resulting from such increase of an Affected Participant's eligibility to receive a Social Security Supplement, in each case with respect to benefits attributable to service both before and after Date 1;

3. Will not constitute a significant reduction by plan amendment in the rate of any Affected Participant's future benefit accrual that would cause Taxpayer A to be liable for any tax imposed by section 4980F(a) of the Code, even after taking into account the effects of such increase as described in paragraph (2) above and even if the plan administrator for Plan X does not provide the notice described in Section 4980F(e)(2) of the Code to any Affected Participant with respect to such increase; and

4. Will not cause Plan X to fail to meet the requirements of section 411(a)(9) of the Code.

With respect to your first ruling request, section 411(a) of the Code provides, in relevant part, that, a trust shall not constitute a qualified trust under section 401(a) unless the plan of which such trust is a part provides that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age.

Paragraph (2) of section 411(a) describes vesting schedules that apply to employer contributions.

Section 411(a)(10)(A) of the Code provides that a plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) if the nonforfeitable percentage of the accrued benefit derived from employer contributions (determined as of the later of the date such amendment is adopted, or the date such amendment becomes effective) of any employee who is a participant in the plan is less than such nonforfeitable percentage computed under the plan without regard to such amendment.

Section 411(a)(10)(B) of the Code provides that a plan amendment changing any vesting schedule under the plan shall be treated as not satisfying the requirements of paragraph (2) unless each participant having not less than 3 years of service is permitted to elect, within a reasonable period after the adoption of such amendment, to have his nonforfeitable percentage computed under the plan without regard to such amendment.

Section 1.411(a)-8(c)(1) of the Income Tax Regulations (the "Regulations") provides that an amendment of a vesting schedule is any plan amendment that directly or indirectly affects the computation of the nonforfeitable percentage of employees' rights to employer-derived accrued benefits, including any change in the plan which affects either the plan's computation of years of service or of vesting percentages for years of service.

Prior to Date 1, the federally mandated retirement age that was incorporated by reference in Plan X was age 60. After Date 1, the federally mandated retirement age that was incorporated by reference in Plan X was age 65. Plan X provides that a

participant vests in his retirement income upon completing 5 years of Service or upon reaching Normal Retirement Date if earlier. As a result of the change in the federally mandated retirement age, a participant who could have vested in his retirement income at age 60 is no longer eligible to vest at that time. This constitutes a change in Plan X's vesting schedule. Section 411(a)(10) of the Code prohibits a change in the vesting schedule made by a plan amendment. However, the change made by the Act was automatic and not a plan amendment. In fact, the provision in Plan X that defines Normal Retirement Date as "the date on which the Participant attains his federally mandated retirement age." was negotiated at arms-length, and reflects the results of genuine bargaining between Taxpayer A and the representatives of its employees over the definition of Normal Retirement Date, and whose specific purpose was to allow the normal retirement date to change automatically in accordance with any change to the federally mandated retirement age for pilots, without need for further employer action.

Thus, with respect to your first ruling request, we conclude that, with respect to any Affected Participant, the increase in Plan X's normal retirement date from the date an Affected Participant attains age 60 to the date an Affected Participant attains age 65, resulting solely from the increase in the federally mandated retirement age resulting from the enactment of the Act will not constitute a change by plan amendment in Plan X's vesting schedule that would be prohibited by section 411(a)(10) of the Code.

With respect to your second ruling request, section 411(d)(6)(A) of the Code provides, in general, that a plan shall be treated as not satisfying the requirements of this section if the accrued benefit of a participant is decreased by an amendment to the plan, other than an amendment described in section 412(c)(8), or section 4281 of the Employee Retirement Income Security Act of 1974 ("ERISA").

Section 411(d)(6)(B) of the Code provides, in relevant part, that, for purposes of subparagraph (A), a plan amendment which has the effect of (i) eliminating or reducing an early retirement benefit or a retirement-type subsidy (as defined in regulations), or (ii) eliminating an optional form of benefit, with respect to benefits attributable to service before the amendment shall be treated as reducing accrued benefits.

Section 1.411(d)-3(a)(1) of the Regulations provides, in relevant part, that a plan is not a qualified plan (and a trust forming part of such plan is not a qualified trust) if a plan amendment decreases the accrued benefit of any plan participant except as provided in section 412(c)(8), section 4281 of ERISA or other applicable law. For this purpose, a plan amendment includes any changes to the terms of a plan, including changes resulting from a merger, consolidation, or transfer (as defined in section 414(l)) or a plan termination.

Section 1.411(d)-3(b)(1) of the Regulations provides, in relevant part, that, except as provided in this section, a plan is treated as decreasing an accrued benefit if it is amended to eliminate or reduce a section 411(d)(6)(B) protected benefit as defined in paragraph (g)(15).

Section 1.411(d)-3(b)(3)(i) of the Regulations provides that, in general, section 411(d)(6) does not provide protection for benefits that are ancillary benefits, other rights and features, or any other benefits that are not described in section 411(d)(6).

Section 1.411(d)-3(g)(2) of the Regulations defines "ancillary benefit" to include a social security supplement under a defined benefit plan.

Section 1.411(d)-3(g)(6)(i) of the Regulations defines "early retirement benefit" as the right, under the terms of a plan, to commence distribution of a retirement-type benefit at a particular date after severance from employment with the employer and before normal retirement age.

Section 1.411(d)-3(g)(6)(ii) of the Regulations defines the term "optional form of benefit," in general, as a distribution alternative (including the normal form of benefit) that is available under the plan with respect to an accrued benefit or a distribution alternative with respect to a retirement-type benefit. It further provides that different optional forms of benefit exist if a distribution alternative is not payable on substantially the same terms as another distribution alternative. The section also provides that differences in the normal retirement ages of employees or in the form in which the accrued benefit of employees is payable at normal retirement age under a plan are taken into account in determining whether a distribution alternative constitutes one or more optional forms of benefit.

Section 1.411(d)-3(g)(6)(iv) of the Regulations defines "retirement type subsidy" as the excess, if any, of the actuarial present value of a retirement-type benefit over the actuarial present value of the accrued benefit commencing at normal retirement age or at actual commencement date, if later, with both such actuarial present values determined as of the date the retirement-type benefit commences. Examples of retirement-type subsidies include a subsidized early retirement benefit and a subsidized qualified joint and survivor annuity.

Section 1.411(d)-3(g)(15) of the Regulations defines the term "section 411(d)(6)(B) protected benefit" as the portion of an early retirement benefit, a retirement type subsidy, or an optional form of benefit attributable to benefits accrued before the applicable amendment date.

Section 1.411(d)-4 Q&A-1(b)(2), Example (2) of the Regulations states that a plan provides for two optional forms of benefit where the plan permits one participant to receive his benefit upon termination of employment and another participant to receive his benefit upon termination from employment on or after the attainment of age 50.

Section 1.411(d)-4, Q&A-1(d)(3) of the Regulations gives as an example of an item that is not protected by section 411(d)(6) of the Code, any social security supplements described in section 411(a)(9) of the Code, except qualified social security supplements as described in section 1.401(a)(4)-12 of the Regulations.

Section 1.411(d)-4, Q&A-4 of the Regulations provides, generally, that a plan may not permit the employer either directly or indirectly through the exercise of discretion to deny a participant a section 411(d)(6) protected benefit provided under the plan for which the participant is otherwise eligible.

Prior to Date 1, the federally mandated retirement age that was incorporated by reference in Plan X was age 60. After Date 1, the federally mandated retirement age that was incorporated by reference in Plan X was age 65. Prior to the change, an Affected Participant who terminated prior to age 55 had the option of commencing his vested retirement benefits at the later of age 50 or his termination date. After the change, the earliest an Affected Participant will be able to commence receiving his retirement benefits will be when he reaches age 55. Similarly, the change in the definition of Normal Retirement Date will cause an Affected Participant's early retirement benefit commencing between ages 55 and 65 to be actuarially reduced relative to the annual retirement benefit the participant would have received commencing between ages 55 and 65 prior to the change. Finally, after the change, an Affected Participant will no longer be eligible to receive the Social Security Supplement. You have asked us to assume for purposes of this letter that these reductions or eliminations would constitute reductions or eliminations of protected benefits.

Section 411(d)(6) of the Code prohibits decrease of a participant's accrued benefit by amendment to the plan. However, as discussed above in connection with your first ruling request, the change in the definition of Normal Retirement Date made by the Act was automatic and not a plan amendment. Thus, with respect to your second ruling request, we conclude that, with respect to any Affected Participant, the increase in Plan X's normal retirement date from the date an Affected Participant attains age 60 to the date an Affected Participant attains age 65, resulting solely from the increase in the federally mandated retirement age resulting from the enactment of the Act will not constitute a decrease by plan amendment in any Affected Participant's accrued Plan X benefit that would be prohibited by section 411(d)(6) of the Code.

With respect to your third ruling request, section 4980F(a) of the Code imposes a tax on the failure of any applicable pension plan to meet the requirements of Section 4980F(e) with respect to any applicable individual.

Section 4980F(e)(1) provides that if an "applicable pension plan" is amended to provide for a significant reduction in the rate of future benefit accrual, the plan administrator shall provide the notice described in paragraph (2) to each applicable individual and to each employer who has an obligation to contribute to the plan.

Section 4980F(e)(2) of the Code provides that the notice required by paragraph (1) shall be written in a manner calculated to be understood by the average plan participant and shall provide sufficient information (as determined in accordance with regulations prescribed by the Secretary) to allow applicable individuals to understand the effect of the plan amendment. The Secretary may provide a simplified form of notice for, or exempt from any notice requirement, a plan which has fewer than 100 participants who have accrued a benefit under the plan, or which offers participants the option to choose between the new benefit formula and the old benefit formula.

Section 4980F(e)(3) of the Code provides that the notice required in section 4980F(e)(1) shall be provided within a reasonable time before the effective date of the plan amendment.

Section 54.4980F-1, Q&A-1 of the Regulations provides that section 4980F of the Code and section 204(h) of ERISA, each generally requires notice (referred to as "section 204(h) notice") of an amendment to an applicable pension plan that either provides for a significant reduction in the rate of future benefit accrual or that eliminates or significantly reduces an early retirement benefit or retirement-type subsidy. The notice is required to be provided to plan participants and alternate payees who are applicable individuals and to certain employee organizations. The plan administrator must generally provide the notice before the effective date of the plan amendment.

Section 4980F(f)(1) of the Code defines the term "applicable individual" as each participant in the plan, and any beneficiary who is an alternate payee (within the meaning of section 414(p)(8) under an applicable qualified domestic relations order (within the meaning of section 414(p)(1)(A)), whose rate of future benefit accrual under the plan may reasonably be expected to be significantly reduced by such plan amendment.

Section 4980F(f)(2) of the Code defines "applicable pension plan" as any defined benefit plan described in section 401(a) which includes a trust exempt from tax under section 501(a), or an individual account plan which is subject to the funding standards of section 412.

Section 54.4980F-1 Q&A-5(a) & (b) of the Regulations provides that a section 204(h) notice is required for an amendment to an applicable pension plan that provides for a significant reduction in the rate of future benefit accrual, or a significant reduction of an early retirement benefit or retirement-type subsidy within the meaning of section 411(d)(6)(B)(i).

Section 54.4980F-1 Q&A-6(b) of the Regulations provides that, with respect to a defined benefit plan, an amendment is treated as reducing the rate of future benefit accrual only if it is reasonably expected that the amendment will reduce the amount of the future annual benefit commencing at the later of normal retirement age (or at actual retirement age, if later) for benefits accruing for a year.

Section 54.4980F-1 Q&A-7(a)(1) of the Regulations provides that all plan provisions that may affect the rate of future benefit accrual, early retirement benefits, or retirement type subsidies of participants or alternate payees must be taken into account in determining whether an amendment is a section 204(h) amendment. One example of a plan provision that may affect the rate or future benefit accrual is the definition of normal retirement age in a defined benefit plan.

Section 54.4980F-1 Q&A-7(a)(2) of the Regulations provides that if all or a part of a plan's rate of future benefit accrual, or an early retirement benefit or retirement-type subsidy provided under the plan, depends on provisions in another document that are referenced in the plan document, a change in the provisions of the other document is an amendment of the plan.

Section 54.4980F-1 Q&A 8(b) of the Regulations provides that the determination of whether an amendment to a defined benefit plan provides for a significant reduction in the rate of future benefit accrual is made by comparing the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) under the terms of the plan as amended with the amount of the annual benefit commencing at normal retirement age (or at actual retirement age, if later) under the terms of the plan prior to amendment.

You have asked us to assume for purposes of this letter that the change in the definition of Normal Retirement Date under the Plan would cause a reduction in an Affected Participant's rate of benefit accrual. Section 4980F of the Code requires that notice be provided when a plan is amended to provide for a significant reduction in the rate of future benefit accrual. However, as discussed above, the change in the definition of Normal Retirement Date made by the Act was automatic and not a plan amendment. Thus, with respect to your third ruling request, we conclude that, with respect to any Affected Participant, the increase in Plan X's normal retirement date from the date an Affected Participant attains age 60 to the date an Affected Participant attains age 65, resulting solely from the increase in the federally mandated retirement age resulting

from the enactment of the Act will not constitute a significant reduction by plan amendment in the rate of any Affected Participant's future benefit accrual that would cause Taxpayer A to be liable for any tax imposed by section 4980F(a) of the Code.

With respect to your fourth ruling request, section 411(a)(9) of the Code provides that the term "normal retirement benefit" means the greater of the early retirement benefit under the plan, or the benefit under the plan commencing at normal retirement age. For this purpose, the normal retirement benefit shall be determined without regard to medical benefits and disability benefits not in excess of the qualified disability benefit.

In addition, for purposes of section 411(a)(9), the early retirement benefit under a plan shall be determined without regard to any benefits commencing before the benefits payable under title II of the Social Security Act become payable which do not exceed such social security benefits and which terminate when such social security benefits commence.

Section 1.411(a)-7(c)(1) of the Regulations provides, in general, that the term "normal retirement benefit" means the periodic benefit under the plan commencing upon early retirement (if any) or at normal retirement age, whichever benefit is greater.

Section 1.411(a)-7(c)(2) of the Regulations provides, in relevant part, that (i) in the case of a plan under which a benefit is payable as an annuity in the same form upon early retirement and at normal retirement age, the greater benefit is determined by comparing the amount of such annuity payments, and (ii) in the case of a plan under which an annuity benefit payable upon early retirement is not in the same form as an annuity benefit payable at normal retirement age, the greater benefit is determined by converting the annuity benefit payable upon early retirement age into the same form of annuity benefit as is payable at normal retirement age and by comparing the amount of the converted early retirement benefit payment with the amount of the normal retirement benefit payment.

Section 1.411(a)-7(c)(3) of the Regulations provides that the normal retirement benefit under a plan shall be determined without regard to ancillary benefits not directly related to retirement benefits such as medical benefits or disability benefits not in excess of the qualified disability benefit. For this purpose, a qualified disability benefit is a disability benefit which is not in excess of the amount of the benefit which would be payable to the participant if he separated from service at normal retirement age.

Section 1.411(a)-7(c)(4) of the Regulations provides that the early retirement benefit under a plan shall be determined without regard to any social security supplement, and that a "social security supplement" is a benefit commencing before the age when

participants are entitled to old-age insurance benefits, unreduced on account of age, under title II of the Social Security Act and not exceeding the amount of such old-age insurance benefits.

Section 1.411(a)-7(c)(6) of the Regulations provides, in example 1, that actuarial subsidies are ignored for purposes of determining whether an early retirement benefit exceeds the value of the benefit at normal retirement age.

As a result of the change in the definition of Normal Retirement Age, the Social Security Supplement will be eliminated. You have stated that the Social Security Supplement under the Plan was intended to be a qualifying social security supplement and could therefore be ignored for purposes of determining the early retirement benefit. Thus, the fact that the Social Security Supplement will not be included in early retirement benefits determined after Date 1 will not cause the Plan to violate Code section 411(a)(9).

In addition, as a result of the change in the definition of Normal Retirement Age, the actuarial value of the early retirement benefit that an Affected Participant could have received had he elected to commence receiving early retirement benefits before Date 1, could potentially exceed the actuarial value of the retirement benefit commencing to such participant at age 65. However, according to Example 1 of section 1.411(a)-7(c)(6) the Regulations, the actuarial subsidy is not taken into account for this purpose and therefore the change in the subsidy will not cause the Plan to violate Code section 411(a)(9).

Finally, as a result of the change in the definition of Normal Retirement Age the application of the actuarial reduction from age 65 rather than age 60 may result in an early retirement for an Affected Participant who elects to commence receiving early retirement benefits on or after Date 1 being less than the early retirement benefit the participant would have received had he retired before Date 1. However you have stated that the Minimum Benefit language of the Plan satisfies the requirements of section 411(a)(9), because it guarantees an Affected Participant an annual normal or early retirement benefit no less than the greatest annual benefit the participant could have received (excluding any Social Security Supplement) had he retired on any earlier date after becoming eligible for retirement. Thus, with respect to your fourth ruling request, we conclude that, with respect to any Affected Participant, the increase in Plan X's normal retirement date from the date an Affected Participant attains age 60 to the date an Affected Participant attains age 65, resulting solely from the increase in the federally mandated retirement age resulting from the enactment of the Act will not cause Plan X to fail to meet the requirements of section 411(a)(9) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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

Copies of this letter are being sent to your authorized representatives in accordance with a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact ***, I.D. No. ***, at (202) ***. Please address all correspondence to SE:T:EP:RA:T4.

Sincerely yours,

for Donzell H. Littlejohn, Manager
Employee Plans, Technical Group 4

Enclosures:
Deleted Copy of Ruling Letter
Notice of Intention to Disclose

cc: