

U.S. House of Representatives
Committee on Agriculture
Washington, DC 20515

January 13, 2020

The Honorable Steven Mnuchin
Secretary of the Treasury
1500 Pennsylvania Ave, NW
Washington, DC 20220

Dear Mr. Secretary:

In 2019, the Department of the Treasury proposed rules implementing Section 199A of the Internal Revenue Code (Section 199A). As you seek to finalize those rules, we are concerned that provisions in the Department's proposal will have a detrimental impact on farmer-owned cooperatives, their patrons, and the farming communities they live and work in.

In 2018, Congress amended Section 199A to correct an error in the Tax Cut and Jobs Act (TCJA). In seeking to fix the error, Congress worked with multiple stakeholders to accomplish two goals:

1. To replicate to the greatest extent practical, the tax benefits provided to cooperatives and their farmer-patrons under the previous Section 199 which was repealed by the TCJA; and
2. To restore the competitive landscape in agricultural markets and remove any tax incentive for a farmer to do business with a firm because of its corporate structure.

We are concerned that the Department's proposal appears to run contrary to the plain wording of the statute and our clear intent.

In the most salient example of the Department's divergence from the pure wording of the statute, the proposal creates a new category of nonpatronage income, which is excluded from the calculation of the deduction under Section 199A. This exclusion of nonpatronage income from the deduction calculation was never part of the original Section 199 regulations. It is difficult to square this new regulatory concept with the explicit instruction in Section 199A(g)(6), which provides that any Treasury regulations "shall be based on regulations applicable to cooperatives and their patrons under section 199 (as in effect before its repeal)."

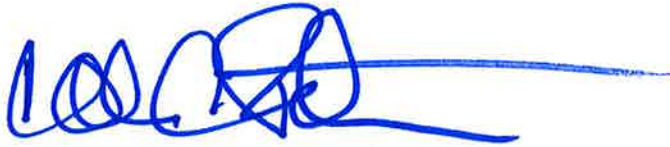
We have reviewed several comment letters which highlight this and other instances where the proposed regulations diverge from the Section 199. While we recognize that not every aspect of Section 199 can be recreated under the new framework of Section 199A, it was and remains Congress' intent that the Department work to recreate Section 199 as faithfully as practical. The current proposal fails to meet these expectations.

As the Department seeks to conclude this rulemaking, it is imperative that the final regulations accurately reflect the intent of Congress and the negotiated agreement that we enshrined in

statute. To the extent that the Department needs to depart from the previous regulations such deviations should be directly related to current statutory inconsistencies with the previous regulations, and not simply staff preferences for a particular policy.

Thank you for your consideration of this matter. We look forward to hearing how you intend to address these critical matters.

Sincerely,

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Collin C. Peterson
Chairman

A handwritten signature in blue ink, appearing to read 'K. Michael Conaway', with a long horizontal line extending to the right.

K. Michael Conaway
Ranking Member