

United States Senate

WASHINGTON, DC 20510

January 16, 2020

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

Dear Mr. Secretary:

We write in regards to the Department of Treasury's proposed regulations implementing Section 199A of the Internal Revenue Code, specifically with regard to "Section 199A rules for Cooperatives and Their Patrons" (REG-118425-18). Thank you for your attention to this issue.

As you know, in 2018, Congress amended Section 199A to correct a provision of the Tax Cuts and Jobs Act (TCJA, Public Law 115-97). During this process, Congress worked with multiple stakeholders toward two, well-documented principles:

1. To replicate to the greatest extent possible the tax benefits accorded to farmer-owned cooperatives and their farmer-patrons under the previous Section 199, also known as the Domestic Production Activities Deduction (DPAD), as it existed prior to its repeal in the Tax Cuts and Jobs Act; and
2. To restore and maintain the competitive landscape of the marketplace and remove any tax incentive for a farmer to do business with a firm because of its corporate structure.

We remain committed to these principles and expect Treasury's final regulations to reflect the intent of Congress. The negotiated agreement that Congress ultimately enacted was the result of a comprehensive and robust stakeholder-driven process. We sought to plainly outline our intent in the statute to avoid misunderstandings, and were explicitly clear that our intent was to replicate to the greatest extent practical, the tax benefits provided to cooperatives and their farmer-patrons under the previous Section 199. In fact, Section 199A(g)(6) directs Treasury to promulgate regulations that "shall be based on the regulations applicable to cooperatives and their patrons under section 199 (as in effect before its repeal)."

As such, it is vital that Treasury's final regulations accurately reflect the intent of Congress, and the principles that formed the foundation of our agreement. Final regulations should recreate Section 199 to the greatest extent practical, while maintaining the competitive balance in the marketplace.

Thank you for your consideration of this matter. We look forward to working with you to address this important issue.

Sincerely,


John Hoeven
United States Senate


John Boozman
United States Senate