

**RETIREMENT & SECURITY (R&S) PROGRAM**  
**SPECIFICATION CHANGES**

The Retirement & Security (R&S) Program and Savings Plan Trust Committee has recommended and the NTCA Board of Directors has approved and is announcing six specification amendments for member comment. Bolded wording shows language to be added and lined-out wording shows language to be deleted from the current R&S Program specifications.

**SUMMARY OF CHANGES**

1. The Governing Law section is revised to reflect Employee Retirement Income Security Act (ERISA) preemption of the Program. (Page 1)
2. The Program's status as a Cooperative and Small Employer Charity Pension Flexibility Act of 2014 (CSEC) is clarified. (Page 2)
3. Clarifying language is added to ensure Member Companies that violate IRS qualification rules take the appropriate corrective action. (Page 2)
4. Participants will now be permitted to rollover distributions from the Program to Simple Individual Retirement Accounts (SIMPLE IRA). (Page 3)
5. Participants who are hired at companies in a Controlled Group, and have no break in Program participation when they transfer between the companies, are excluded from a soft-freeze if a soft-freeze is adopted by the Member Company. (Page 4)
6. Additional prefunding contributions by participating members are now permitted. (Page 5)

**CHANGE #1**

**REASON FOR CHANGE**

The specifications state that the Program is construed and enforced according to the laws of Virginia. Since the Program is governed by ERISA, the Program's ERISA counsel recommends the language be changed to accurately reflect the Governing Law.

**PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE JANUARY 1, 2019)**

Article X.A is amended to read as follows:

**A. Governing Law**

- (1) The Program shall be construed and enforced according the laws of **the Commonwealth of Virginia but only to the extent that such laws are not preempted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA")**

**CHANGE #2**

**REASON FOR CHANGE**

Under the 2014 CSEC legislation, the R&S Program is subject to different minimum funding rules than other ERISA plans, and is not subject to certain benefit restrictions that apply if specific minimum funding thresholds are not satisfied. This change clarifies the R&S Program's status as a CSEC Plan.

**PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE JANUARY 1, 2019)**

Adds Article X.A(2) to read as follows:

- (2) **Effective January 1, 2014, the Program is intended to satisfy the requirements to be a Cooperative and Small Employer Charity (“CSEC”) Pension Plan under section 414(y) of the Code that is subject to the minimum funding standards under section 433 of the Code, and which is exempt from the benefit restriction provisions of section 436 of the Code.**

**CHANGE #3**

**REASON FOR CHANGE**

Prior to 2017, the R&S Program regularly obtained Internal Revenue Service (IRS) approval through the IRS determination letter program. Effective January 1, 2017, the IRS eliminated the determination letter program for ongoing plans. To protect the qualification of the Program, ERISA counsel recommended language be added to state that Member Companies are required to take appropriate corrective action, if needed, to protect the qualification of the Program.

**PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE JANUARY 1, 2019)**

Adds Article II.A(8) to read as follows;

- (8) **A Participating Member's continuing participation in the Program is also conditioned on the Participating Member's cooperation in providing the Committee with information required by the Committee to monitor compliance with the requirements described in Subsections (1) through (5) herein and all other requirements under the Code to maintain the Program's tax-qualified status. A Participating Member's failure to provide information requested by the Committee to determine such compliance, and failure to comply with the requirements of the Program and the Code, may, in the discretion of the Committee, result in the termination of participation in the Program by the Participating Member and its employees effective as of the beginning of the Plan Year for which the Participating Member failed to comply or for which information to determine compliance was requested but not provided.**

Adds Article II.A(9) to read as follows:

- (9) **In accordance with section 14 of Revenue Procedure 2018-4, a Participating Member may rely on the IRS determination letter for the Program issued on January 9, 2014, to NTCA as the controlling Member of the Program, except with respect to the requirements of sections 401(a)(4), 401(a)(26), 401(l), 410(b), and 414(s) of the Code, and, if the Member maintains or has ever maintained another plan, sections 415 and 416 of the Code. Regardless, in addition to the requirements provided above, a Participating Member's continuing participation in the Program shall also be subject to the requirements in the**

**Program, and the provisions of the Code and Treasury Regulations, and other regulatory guidance applicable to tax-qualified retirement plans. In the event that a failure to comply with a Program term or tax-qualification requirement occurs with respect to a Participating Member or such Member's Employees, the Participating Member shall cooperate with the Committee to take any necessary and appropriate corrective action, including pursuant to the Employee Plans Compliance Resolution System, currently stated in Revenue Procedure 2016-51 (as may be updated from time to time by the IRS).**

#### **CHANGE #4**

#### **REASON FOR CHANGE**

Currently the R&S Program does not permit a Participant to rollover their NTCA R&S Program benefits to a Simple IRA. Legislation in 2015 now allows for direct rollovers to a Simple IRA, and this change will add this provision to the R&S Program.

#### **PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE JANUARY 1, 2018)**

Article IV.H(2) to read as follows:

- (2) Definitions - The following definitions apply for purposes of subsection (1):

“Eligible rollover distribution” means any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: any distribution that is one of a series of substantially equal periodic payments (not less frequently than life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated beneficiary, or for a specified period of ten years or more; any distribution to the extent such distribution is required under section 401(a)(9) of the Code; and the portion of any distribution that is not includible in gross income. A portion of a distribution shall not fail to be an eligible rollover distribution merely because the portion consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in section 408(a) or (b) of the Code, or to a qualified plan described in section 401(a) or 403(a) of the Code, or to an annuity contract described in section 403(b) of the Code, and such plan or contract agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of such distribution which is includible in gross income and the portion of such distribution which is not so includible.

“Eligible retirement plan” means an individual retirement account described in section 408(a) of the Code, an individual retirement annuity described in section 408(b) of the Code, an annuity plan described in section 403(a) of the Code, an annuity contract described in section 403(b) of the Code, an eligible plan under section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Program, or a qualified trust described in section 401(a) of the Code; provided that such plan accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code. **An eligible retirement plan shall also include a SIMPLE individual retirement account under section 408(p) of the Code, provided the two-year holding**

**requirement applicable to a SIMPLE individual retirement account under section 72(t)(6) of the Code has been satisfied.**

“Distributee” means a Participant. In addition, the Participant’s surviving spouse and the Participant’s spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

“Direct rollover” means a payment by the Program to the eligible retirement plan specified by the distributee.

**CHANGE #5**  
**REASON FOR CHANGE**

The soft freeze specification change announced last year requires Employees hired by or rehired by a Participating Member in a Controlled Group to be subject to a soft-freeze even if there is no break in Program participation. This change clarifies that participants hired at companies in a Controlled Group, and have no break in Program participation when they transfer between the companies, are excluded from a soft-freeze if a soft-freeze is adopted by the Member Company.

**PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE JANUARY 1, 2019)**

Article II.C(3) is amended to read as follows:

- (3) Participation of Rehired Former Participants - A former Participant may resume active participation as of the first day of the month coincident with or following his date of reemployment with a Participating Member, **subject to the provisions of Article III.L regarding Freeze of Program Eligibility.**

Article III.L is amended to read as follows:

L. Freeze of Program Eligibility (“Soft Freeze”)

- (1) A Participating Member shall be permitted to elect to exclude from Program Eligibility all Employees hired or rehired on or after the first day of any Plan Year (“Freeze Date”), provided such Freeze Date must be on or after the date the Participating Member executes an Adoption Agreement reflecting such exclusion. **An Employee hired or rehired before the Freeze Date but who has not satisfied the eligibility requirements in Article II as of such Freeze Date, shall not be eligible to become a Participant in the Program. In addition, a Participant who terminates employment with a Participating Member and is employed by another Participating Member that is not a member of the first Participating Member’s Controlled Group and has adopted a Soft Freeze shall be excluded from Program Eligibility.**

**Notwithstanding the foregoing, a Participant who**

- (a) **terminates employment with a Participating Member but remains employed within the Participating Member’s Controlled Group before returning to employment with the Participating Member; or**

- (b) **terminates employment with a Participating Member and its Controlled Group and is rehired by the Participating Member (or a member of its Controlled Group that is a Participating Member) prior to a Period of Severance,**

**shall again become a Participant in accordance with Article II.C(3) regardless of whether the Participating Member that rehires the Participant has adopted a Soft Freeze.**

~~An Employee hired before the Freeze Date but who has not satisfied the eligibility requirements in Article II as of such Freeze Date, shall not be eligible to become a Participant in the Program.~~

- (2) A Participating Member that has elected to exclude newly hired or rehired Employees from the Program, as described in Subsection (1) above, must make an annual additional contribution on behalf of the Participants who remain eligible for Program contributions equal to 20% of the Employer basic Contribution described in Article III.A(1), as well as any Employee Basic Contributions described in Article III.B, for the Plan Year during which the Freeze Date occurs and each succeeding Plan Year it remains a Participating Member. Such additional contribution shall be paid in accordance with procedures adopted by the Committee. Any Participating Member with a notional Prefunding Account, as described in Article III.K(4), may elect to apply amounts credited to such Prefunding Account towards the additional contribution described in this paragraph (2).

**CHANGE #6**

**REASON FOR CHANGE**

The specifications currently only permit prefunding surcharge contributions through September 15, 2017. This change reopens prefunding as a mechanism to permit members to make additional contributions to the Program.

**PROPOSED SPECIFICATION LANGUAGE (EFFECTIVE OCTOBER 1, 2018)**

Re-number current Article III.L to III.M

Add Article III.L to read as follows:

**L. Post-2017 Employer Election to Prepay Contributions**

- (1) **A Participating Member may make a “Post-2017 Prefunding Election” in accordance with these Specifications and such other rules and limitations as the Committee may prescribe from time to time.**
- (2) **A “Post-2017 Prefunding Election” is a written election to prefund the Participating Member’s expected Program surcharge or expected additional contributions (a) that is made on or after October 1, 2018 and before any deadline established by the Committee, and (b) that has been accepted by the Committee**

by written notice to the Member. Once such contributions have been paid, the Post-2017 Prefunding Election becomes irrevocable.

(3) A notional Prefunding Account shall be maintained for each Participating Member who has made a Post-2017 Prefunding Election in accordance with the following rules:

(a) **Limitations on Amount of Post-2017 Contribution Election**

(i) **Minimum Contribution:** The minimum amount for a Post-2017 Contribution Election shall be the greater of (i) \$50,000 and (ii) the present value of the Participating Member's expected surcharge contributions.

(ii) **Maximum Contribution:** A Post-2017 Prefunding Election shall not be permitted to the extent that the proposed contribution would cause a Participating Member's aggregate prefunded contributions under the Program (including those made pursuant to a prior Prefunding Election) to exceed the present value of the Member's expected basic and surcharge contributions at the time of such contribution.

(b) The Prefunding Account shall be adjusted annually, including for investment gains and losses, as determined by the Committee. No amount in such Account shall be payable to the Member at any time.

(c) Amounts shall be deemed to be withdrawn from such Account (i) to make surcharge contributions otherwise due under Article III.A until such surcharge contributions are no longer payable by any Participating Member, and (ii) once surcharge contributions are no longer payable, any remaining balance in the Account shall be applied toward the Member's Employer Contributions for Basic Benefits, as prescribed by the Committee.

(d) The amount in the Prefunding Account shall be taken into account in determining a Member's "allocable assets" under Article VII (relating to spinoffs and withdrawals). However, if a spinoff does not satisfy Article VII.B(2)(c), such amount shall be included in the Member's allocable assets solely for purposes of Article VII.C(4) (relating to the annuity purchase method).

(e) A Participating Member may request an accounting of its notional Prefunding Account once per year as permitted by the Committee.

(f) A Participating Member that makes a Post-2017 Prefunding Election will not qualify for a PBGC variable rate premium waiver on the basis of such election.

- (4) **The Committee shall provide rules to coordinate a Participating Member’s prior Prefunding Election and Post-2017 Prefunding Election to the extent appropriate, including combining into a single Prefunding Account contributions made pursuant to both such Elections.**
- (5) **In the case of a significant event affecting the funding of the Program, as determined by the Committee in its sole discretion – including a significant reduction in the value of Program assets or a change in federal law that materially increases minimum funding requirements for the Program – the Committee may modify any of the provisions of this paragraph in its sole discretion.**
- (6) **The Committee may provide additional rules and procedures associated with Prefunding Elections in the Program policy manual or other written documents in its sole discretion.**

Article III.K(4)(e) is amended to read as follows:

- (e) ~~The amount in the Prefunding Account shall be taken into account in determining a Member’s “allocable assets” under Article VII (relating to spinoffs and withdrawals), but no amount in such Account shall be payable to the Member at any time.~~  
**The amount in the Prefunding Account shall be taken into account in determining a Member’s “allocable assets” under Article VII (relating to spinoffs and withdrawals). However, if a spinoff does not satisfy Article VII.B(2)(c), such amount shall be included in the Member’s allocable assets solely for purposes of Article VII.C(4) (relating to the annuity purchase method).**