



AMERICAN BENEFITS  
COUNCIL

May 3, 2012

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CC:PA:LPD:PR (Reg-115809-11)  
Room 5203  
Internal Revenue Service  
PO Box 7604  
Ben Franklin Station  
Washington D.C. 20044

**Re: Notice of Proposed Rulemaking; Purchase of Longevity Annuities under Various Tax Qualified Retirement Plans**

Dear Sir or Madam:

The American Benefits Council (the "Council") is pleased to submit these comments on the Department of the Treasury ("Treasury") and Internal Revenue Service ("Service") proposed rulemaking relating to the purchase of longevity annuity contracts under tax qualified defined contribution plans, individual retirement accounts or annuities and eligible governmental plans. The Council is a public policy organization principally representing Fortune 500 companies and other organizations that assist employers of all sizes in providing benefits to employees. Collectively, the Council's members either sponsor directly or provide services to retirement and health plans that cover more than 100 million Americans.

First and foremost we would like to thank Treasury for issuing this guidance package which also includes proposed regulations on partial annuities (see separate comment letter) Rev. Rul. 2012-3 (application of joint and survivor annuity requirements when a deferred annuity is purchased in a defined contribution plan) and Rev. Rul. 2012-4 (guidance when benefits are rolled over from a defined contribution to a defined benefit plan sponsored by the same employer). We understand this guidance is the first phase of a new regulatory focus on the distribution phase of retirement planning. The Council supports efforts to help Americans save sufficiently for retirement and to manage those assets in retirement to suit their individual needs.

The Council believes this guidance on longevity insurance is a great start to Treasury's focus on the distribution phase of retirement planning. As you know, longevity insurance involves the purchase, generally at retirement, of a deferred fixed annuity which does not begin to make payments until a later time, typically around the average life expectancy.

In this product, the time value of money and mortality premium (participants dying prior to the average life expectancy subsidize the payments to those living beyond average life expectancy) results in significant annuity benefits at lower cost than an immediate annuity may provide. Current minimum required distribution rules that require minimum distributions to begin by age 70-1/2 do not contemplate this type of arrangement. The participant would be forced to include the value of the longevity annuity in the calculation of the minimum distribution resulting in larger required distributions. In extreme cases, the required distribution could be more than the remaining account balance. Without this new guidance, which generally excludes the purchased longevity insurance (that meets certain requirements) from the minimum distribution calculation, few plan sponsors would consider adding longevity insurance to their plans. The Council commends Treasury and the Service for addressing this important issue.

The Council respectfully suggests that Treasury and the Service could provide clarification and additional guidance on a few related issues that the Council believes would encourage more plan sponsors to consider adding longevity insurance to their plans. These related issues include (1) the need for a correction program, (2) clarification of potential forfeiture or cutback issues, (3) clarification that these rules also apply to IRA annuity rollovers and (4) interaction of the Qualified Longevity Annuity Contract (QLAC) rules with the qualified joint and survivor annuity (QJSA) rules. These issues are discussed in more detail in the remainder of this letter.

## **CORRECTION PROGRAM**

The proposed regulations allow the plan to disregard premiums paid for QLACs for purposes of the minimum distribution rules. In order to qualify as a QLAC, the regulations include a number of requirements, including limits on the amount of the participant's account balance that may be used to purchase the QLAC. The Council understands these limits were included in order to limit the possibility the participant is simply using the new rule to delay payment as long as possible. The amount of the participant's retirement plan account that can be used to pay premiums for a QLAC is limited to the lesser of 25 percent of the participant's account balance or \$100,000.

As you know, plan sponsors and their service providers often make inadvertent errors when attempting to comply with regulatory requirements (hence the need for the Employee Plans Compliance Resolution System, or EPCRS) and the Council urges

Treasury and the Service to include a correction program for the purchase of longevity insurance. Participants should not be penalized for mistakes made, through no fault of their own, which cause the limits to be exceeded. For example, the service provider might calculate \$25,000 as the maximum premium that can be paid from a \$100,000 account balance but the purchase is delayed for some reason. Subsequent market movement (subsequent to the calculation but prior to the premium payment) could cause the \$25,000 premium to exceed 25 percent of the account balance on the date premium payments are made. In addition, because the \$100,000 limit applies to all QLACs purchased by an individual, a plan may inadvertently or unknowingly allow a participant to make premium payments that exceed the limit. The Council recommends, for example, that the correction program permit QLAC treatment for the portion of the longevity annuity that meets the limitations (instead of disqualifying the entire contract) in the event of such inadvertent failures. In addition, the Council urges Treasury and the Service to consider other corrections for inadvertent errors, similar to EPCRS.

#### **NO FORFEITURE OR CUTBACK**

Although the proposed regulation anticipates many plan participants interested in such a purchase will purchase a longevity annuity upon retirement, the rule should contemplate potential purchases prior to retirement. Some participants may want to lock in higher deferred payments at a younger age. If the plan sponsor changes service providers and the longevity annuity purchase is no longer available, the regulation should clarify that the change would not be an impermissible forfeiture under Internal Revenue Code Section 411 or a violation of the anti-cutback rules of Code Section 411(d)(6). If the participant purchases the longevity annuity and the plan sponsor changes service providers prior to the date the participant is eligible for a plan distribution, and the plan no longer can hold the QLAC, the Council urges Treasury and the Service to consider guidance that would allow the participant to keep the QLAC. Perhaps a distributable event could be created solely for the purpose of allowing distribution of the paid-up QLAC to an IRA rollover account.

#### **PURCHASE THROUGH IRA ROLLOVER**

The Council also recommends that Treasury and the Service clarify that a QLAC may be purchased as an IRA annuity rollover in which the 25 percent limit applies to the plan balance not the IRA balance. Under the proposed regulations, the 25 percent limit applies separately to employer-sponsored retirement plans and IRAs. The Council believes it is likely that more plans will facilitate the purchase of a QLAC through IRA rollovers than directly through the plan itself. If a participant has a \$100,000 account balance and wants to use \$25,000 to buy a QLAC, it appears counterintuitive and contrary to anti-leakage policy to require distribution of the entire account balance in

order to facilitate the purchase of the QLAC. The Council urges Treasury and the Service to apply the 25 percent limit to the plan balance so long as it is a direct rollover to purchase the QLAC individual retirement annuity. Clarifying this point will give plans more flexibility to assist participants in purchasing QLACs without having to contract with a single provider.

#### **LATE MARRIAGES AND QJSA**

Finally, the regulations should clarify how the QJSA rules interact with previously purchased QLACs. For example, suppose a single participant purchases a QLAC at age 60 and irrevocably names a non-spouse beneficiary for the survivor annuity scheduled to commence at age 85. What happens if the participant marries at age 65? What happens if the participant marries at age 75?

\* \* \* \*

Again, we appreciate the opportunity to provide information and comment on these important regulations. If you have any questions or would like to discuss these comments further, please contact me at 202-289-6700.

Sincerely,

A handwritten signature in black ink, appearing to read "Jan Jacobson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Jan Jacobson  
Senior Counsel, Retirement Policy  
American Benefits Council