



MEMORANDUM

August 20, 2009

RE: Committee of Annuity Insurers Comments on the Administration's Proposal to Require Information Reporting for "Private Separate Accounts" of Life Insurance Companies

The Obama Administration's Fiscal Year 2010 Revenue Proposals would "require information reporting for private separate accounts of life insurance companies." The "Green Book" description of the proposal states that it is intended to help the Internal Revenue Service ("IRS") ensure that income is properly reported and enable the IRS to more easily enforce the "investor control" doctrine applicable to variable annuity and life insurance contracts.¹

The Committee of Annuity Insurers (the "Committee") supports efforts that encourage and facilitate compliance with laws and regulations applicable to annuities, including those governing their federal income tax treatment.² Thus, for example, the Committee's member companies (and, in our experience, virtually all life insurance companies) have structured their variable insurance products and implemented procedures to comply with the investor control doctrine in accordance with IRS guidance, including in situations involving separate accounts that would fall within the Green Book's definition of "private separate accounts."

Nonetheless, the Committee understands the government's concerns with "private separate accounts," and we generally have no objection to the proposed reporting requirement's stated goal – to provide the IRS with information it needs to make its own assessment of potential investor control issues. The Committee also believes, however, that if the proposal is to be implemented, it should be done in a way that avoids unintended consequences and, to the extent possible, reduces burdens on the life insurance companies that will be charged with providing the required information. This includes limiting the reporting requirement to circumstances where it is most likely to produce information that the IRS will find helpful in enforcing the investor control doctrine. Towards that end, this memorandum suggests ways that the reporting requirement can be structured to achieve the desired goals while minimizing potential costs and burdens.

¹ See DEP'T OF THE TREASURY, GENERAL EXPLANATIONS OF THE ADMINISTRATION'S FISCAL YEAR 2010 REVENUE PROPOSALS 89 (May 2009) (the "Green Book"). See the text accompanying notes 10-14, *infra*, for a discussion of the investor control doctrine and the related enactment of section 817(h). Unless otherwise indicated, any reference herein to a "section" means a section of the Internal Revenue Code of 1986, as amended (the "Code").

² The Committee is a coalition of 30 life insurance companies representing over two-thirds of the annuity business in the United States. The Committee was formed in 1982 to participate in the development of federal tax and securities policy with respect to annuities. We have enclosed a list of the Committee's member companies.

1. Clarifying that the requirement does not establish a new substantive standard

The Green Book states that the Treasury Department has proposed reporting for “private separate accounts” because “[i]n some cases” they may violate investor control principles. This and similar statements recognize that an investor control violation does not occur merely because a contract is supported by a “private separate account.”³ Indeed, the IRS has recognized that such an arrangement can pass muster under the investor control doctrine.⁴ Accordingly, we believe it would be helpful and avoid confusion if the final reporting requirement, if implemented, included an express clarification that the investor control doctrine is based on all the relevant facts and circumstances and that the existence of a “private separate account” is only one factor of many that might influence the analysis.

2. Ensuring that the requirement is focused on the area of concern

The Committee believes that if the proposed reporting requirement is not carefully tailored, it could readily trigger reporting obligations in situations where no real potential for an investor control problem exists. This would waste time and resources for both the government and the reporting life insurance companies, and could unnecessarily cause alarm and confusion for policyholders. To avoid these results, we suggest that the reporting requirement be clarified in the following respects.

a. Exclude arrangements that are registered under federal securities laws

As we understand it, the proposed reporting requirement is premised on the notion that if a single policyholder’s variable contract represents a large proportion of a segregated asset account’s total value, there is a greater risk that the account’s investment manager may be inclined to reflect the policyholder’s desires when making investment decisions for the account, thereby giving the policyholder “control” over the assets. While we understand the concern, we do not think this type of situation can reasonably be expected to arise in cases involving variable contracts or underlying investment vehicles that are registered under federal securities laws.

Variable annuity and life insurance contracts are generally treated as securities under federal law. Subject to certain exceptions, they must be registered with the Securities and Exchange Commission (“SEC”), and separate accounts supporting them must be registered with the SEC as investment companies.⁵ In our experience, registered variable contracts rarely, if

³ A similar statement was used in describing an identical reporting requirement that the Clinton Administration proposed in its fiscal year 2001 budget. See STAFF OF THE J. COMM. ON TAX’N, 106TH CONG., DESCRIPTION OF REVENUE PROVISIONS CONTAINED IN THE PRESIDENT’S FISCAL YEAR 2001 BUDGET PROPOSAL 481 (Comm. Print 2000) (describing the reason for the proposed reporting requirement as being a concern that policyholder control over private separate accounts “may” violate the investor control doctrine).

⁴ See PLR 9433030 (May 25, 1994). See also Rev. Rul. 2003-91, 2003-2 C.B. 347 (stating that the investor control analysis is based on all the relevant facts and circumstances).

⁵ See section 2(a)(1) of the Securities Act of 1933 (the “1933 Act”); SEC v. Variable Annuity Life Ins. Co., 359 U.S. 65 (1959); Prudential Ins. Co. v. SEC, 326 F.2d 383 (3d Cir. 1964), cert. denied 377 U.S. 953 (1964); section 3(a)(1) of the Investment Company Act of 1940 (the “1940 Act”).

ever, utilize segregated asset accounts that would fall within the Green Book’s description of “private separate accounts.” Instead, by virtue of being broadly offered for sale, registered products are almost always based on segregated asset accounts that support hundreds, if not thousands, of variable contracts. As a result, it is quite unlikely that imposing the proposed reporting requirement on registered variable products would produce any information relevant to the government’s concern. Imposing the reporting requirement on registered products would, however, require the issuing life insurance companies to establish practices and procedures to detect the rare circumstances in which the 10% ownership threshold might be met and the reporting requirement triggered. Likewise, the IRS would need to review any information that resulted from these efforts, but almost certainly would find the information unhelpful in identifying potential investor control situations.

In contrast, non-registered variable contracts that are sold through non-public offerings (so-called “private placements”) are more likely to be supported by “private separate accounts.”⁶ As non-public offerings, private placements typically involve far fewer policyholders than registered variable product offerings. As a result, they may present a more realistic possibility that a single variable contract would represent a proportionally large interest in the pool of investments supporting the contract. Even this, however, may not be true of all private placement arrangements.

For example, some private placement variable contracts are supported by segregated asset accounts that invest solely in shares of mutual funds or other investment companies (within the meaning of the 1940 Act) that are registered under federal securities laws, even though the variable contracts themselves are not registered. Like registered variable contracts, however, registered investment companies are typically offered to such a large number of investors that it is highly improbable – or impossible – that any single private placement policyholder could have impermissible “investor control” over the investments supporting the contract.⁷

Accordingly, the Committee believes it is appropriate to exclude from the definition of “private separate account” any segregated asset account supporting (1) a registered variable contract or (2) a private placement variable contract if the segregated asset account invests exclusively in registered securities of one or more registered investment companies.

b. Increase the 10% threshold in the definition of “private separate account”

The Green Book describes a “private separate account” as “any account with respect to which a related group of persons owned policies whose cash values, in the aggregate,

⁶ Private placement variable contracts and the separate accounts supporting them (called private investment companies under sections 3(c)(1) and 3(c)(7) of the 1940 Act) rely on exemptions from the otherwise applicable registration and prospectus delivery requirements of the federal securities laws. See section 4(2) of the 1933 Act and Regulation D thereunder. Registered variable contracts do not utilize separate accounts that are private investment companies under federal securities laws.

⁷ See page 7, *infra*, for discussion of a look-through rule under which the existence of a “private separate account” would be determined by looking to the assets of any “insurance-dedicated” investment vehicle in which a segregated asset account invests.

represented at least 10 percent of the value of the separate account.” This description seems to presume that a 10% interest in a separate account would cause the account’s investment manager to pursue the investment goals of the owner of that 10% interest – to the potential detriment of the other policyholders whose contracts represent the remaining 90% interest in the account. In this regard, we think it significant that federal securities laws place fiduciary duties on investment advisers that prohibit them from acting on any single policyholder’s direction to the potential detriment of other policyholders.⁸ As a result, the Committee believes the percentage interest that triggers the reporting requirement should be set significantly higher than 10%.

One place to look for a more appropriate threshold would be federal securities law. For example, section 2(a)(9) of the 1940 Act establishes a rebuttable presumption that any person who owns more than 25% of the voting securities of a separate account “controls” it, and that any person who does not own more than 25% of the voting securities does not control it. The Committee believes that such a standard – or perhaps a higher threshold based on other analogous situations – would be more reasonable and appropriate than the proposed 10% standard.⁹ In any event, we urge that the percentage be increased to one that will ensure that information reported under the requirement will be focused on situations that have a realistic potential for investor control issues. This will address the government’s concerns, while at the same time avoiding unnecessary reporting with attendant costs and burdens.

c. Limit the requirement to contracts that meet the percentage threshold

The Green Book describes the proposal as requiring life insurance companies to report certain information to the IRS “for each contract whose cash value is partially or wholly invested in a private separate account for any portion of the taxable year.” This statement could be read to mean that reporting is required with respect to all contracts supported by a “private separate account,” even those that do not meet the 10% threshold value.

For example, assume that a segregated asset account supports 1,000 variable contracts, with one of those contracts representing 10% of the account’s total value and each of the other 999 contracts representing less than 1%. In such a case, there is no reason to require the life insurance company to report information with respect to the 999 contracts that each represents less than 1% of the segregated asset account – those contracts do not present any investor control risk. It is mere happenstance that they are invested in a pool of assets with the one contract that exceeds the threshold percentage. Requiring life insurance companies to report

⁸ See section 206 of the Investment Advisers Act of 1940 (generally making it unlawful for an investment adviser to engage in fraudulent, deceptive, or manipulative conduct); *SEC v. Capital Gains Research Bureau, Inc.*, 375 U.S. 194 (1963) (interpreting the foregoing requirement as imposing a fiduciary duty on investment advisers).

⁹ Another analogous area would be section 817(h) and its regulations. Treas. Reg. section 1.817-5(b)(1)(i)(A) identifies 55% as the largest percentage of a segregated asset account that can be concentrated in any single investment. Congress enacted section 817(h) in response to investor control concerns (*see infra* note 12 and accompanying text). Because the proposed reporting requirement also is directed at investor control concerns, the 55% “single investment” standard under section 817(h) could be incorporated into the reporting requirement by defining a “private separate account” as one in which any policyholder’s interest exceeds 55%. Another potential analogous area is section 1563(a), which defines “control” in the context of a “controlled group of corporations” by reference to 80% and 50% ownership thresholds. *See* section 1563(a)(1) and (2).

information with respect to those contracts would waste resources, would confuse and alarm policyholders, and would not help the IRS identify potential investor control issues. Accordingly, the Committee believes that the information reporting requirement should be limited to those contracts with values that exceed the threshold limit.

3. Conforming the requirement to existing procedures to help ease administrative burdens

The investor control doctrine at which the proposed reporting requirement is directed was established in a series of rulings beginning in the late 1970s and early 1980s.¹⁰ In those rulings, the IRS denied annuity or life insurance treatment in situations where “the policyholder has investment control over the [segregated asset account’s investments] and possesses sufficient other incidents of ownership to be considered the owner of [those assets] for federal income tax purposes.”¹¹ The same concerns that led the IRS to issue these rulings led Congress to add section 817(h) to the Code in 1984. Congress believed that requiring each segregated asset account supporting a variable contract to be “adequately diversified” in accordance with Treasury regulations would prevent investor control situations from arising. Thus, the legislative history states that Congress meant for the Treasury regulations to “deny annuity or life insurance treatment for investments ... which are made, in effect, at the direction of the investor.”¹²

The Treasury Department responded two years later with proposed and temporary regulations, followed by final regulations in 1989.¹³ The regulations set forth a series of detailed rules that implement the foregoing congressional intent.¹⁴ Life insurance companies responded by establishing sophisticated administrative practices and procedures to ensure compliance with the regulations. These efforts have resulted in widespread compliance with section 817(h) since the regulations became effective over 20 years ago.

Based on this success at administering the diversification requirements, the Committee believes that the new proposed reporting requirement for “private separate accounts” should coincide as much as possible with the procedures that carriers already have in place under section 817(h). This would make sense from a tax policy perspective, as both requirements are intended to prevent investor control from arising and do so by focusing on values in the underlying segregated asset accounts. Given this similarity in intent and focus, conforming the requirements would help reduce any burdens that otherwise might be placed on carriers by

¹⁰ See Rev. Rul. 2003-92, 2003-2 C.B. 350; Rev. Rul. 2003-91, 2003-2 C.B. 347; Rev. Proc. 99-44, 1999-2 C.B. 598; Rev. Rul. 82-55, 1982-1 C.B. 12; Rev. Rul. 82-54, 1982-1 C.B. 11; Rev. Rul. 81-225, 1981-2 C.B. 12; Rev. Rul. 80-274, 1980-2 C.B. 27; Rev. Rul. 77-85, 1977-1 C.B. 12. See also *Christoffersen v. United States*, 749 F.2d 513 (8th Cir. 1984) (generally adopting the rule described in Rev. Rul. 81-225 and its predecessors).

¹¹ Rev. Rul. 81-225, 1981-2 C.B. at 14.

¹² H.R. REP. NO. 98-861, at 1055 (1984) (Conf. Rep.).

¹³ T.D. 8242, 1989-1 C.B. 215; T.D. 8101, 1986-2 C.B. 97

¹⁴ The preamble to the temporary regulations stated that they were not intended to address all aspects of the investor control doctrine, signaling the government’s view that the investor control doctrine could continue to have independent vitality in appropriate cases. See T.D. 8101, 1986-2 C.B. at 98.

allowing them to administer the proposed new requirement alongside the diversification requirements that they already administer. It also would help assure the government that the procedures successfully used to comply with section 817(h) for over 20 years will be used to comply with the new reporting requirement. The specific areas in which we believe the two requirements can and should be conformed are summarized below.

a. Clarify that “separate account” means “segregated asset account”

The Green Book describes the proposed reporting requirement as applying to a private “separate account.” In contrast, the section 817(h) diversification requirements apply to each “segregated asset account,” as defined in Treas. Reg. section 1.817-5(e). As a technical matter, a “separate account” within the meaning of state and foreign law could constitute multiple “segregated asset accounts” within the meaning of section 817(h).¹⁵ On the other hand, it would be extremely unusual for a “segregated asset account” to include more than one state law separate account. As a result, it would seem that the government’s interests, as well as those of insurers, would be best served by defining “private separate account” by reference to the definition of segregated asset account in Treas. Reg. section 1.817-5(e).¹⁶

b. Allow quarterly testing for determining “private separate account” status

The regulations under section 817(h) require a segregated asset account to meet the prescribed diversification requirements on the last day of each calendar quarter or within 30 days thereafter.¹⁷ In contrast, the Green Book proposal does not identify a specific time for determining whether a variable contract’s relative value triggers the reporting requirement. It states, however, that reporting would be required “for each contract whose cash value is partially or wholly invested in a private separate account *for any portion of the taxable year*” (emphasis added).

We are concerned that this language might be intended to require reporting if a contract represents at least 10% of a segregated asset account’s total value at any point in time during a year. Such a reading would require the issuing life insurance company to constantly monitor each contract’s cash value in relation to the aggregate cash values of the contracts that

¹⁵ For example, a state law separate account typically is divided into several “sub-accounts” corresponding to the variable investment options among which contract owners can allocate cash values under their contracts. Each sub-account will in almost all circumstances constitute a “segregated asset account” that must satisfy the diversification requirements. See Treas. Reg. section 1.817-5(e) (defining segregated asset account); Treas. Reg. section 1.817-5(g), Example (1) (stating that a policyholder’s ability to allocate premiums among two groups of assets causes each group to be a segregated asset account).

¹⁶ For example, assume that a state law separate account is divided into 11 sub-accounts, each of which is a “segregated asset account” under Treas. Reg. section 1.817-5(e). Assume further that each segregated asset account holds \$100 in assets and supports only a single variable contract. If the reporting requirement is applied at the state law separate account level, no reporting would be required because none of the 11 contracts supported by the separate account triggers the 10% threshold (\$100 cash value divided by \$1,100 total separate account value equals about 9%). On the other hand, if the reporting requirement is applied at the segregated asset account level, reporting would be required for each sub-account because each supports only a single variable contract.

¹⁷ Treas. Reg. section 1.817-5(c)(1).

the segregated asset account supports. While such monitoring is possible, creating and implementing systems to do so would be time consuming and costly. In the regulations under section 817(h), the Treasury Department found it appropriate to limit the “testing” period to each calendar quarter.¹⁸ A similar approach in the context of the proposed reporting requirement would be equally appropriate, allowing insurers to more easily and efficiently implement that requirement by adding the “testing” it requires to the “testing” that insurers already perform in implementing the section 817(h) diversification requirements.

c. Include a “start-up rule” in the reporting requirement

The regulations under section 817(h) include a “start-up period” under which a newly created segregated asset account has a year before it must begin complying with the diversification requirements.¹⁹ This rule allows the account time to build its assets in a way that complies with the prescribed limits, in recognition that the account may have limited funding until a sufficient number of policyholders allocate contract values to it. We believe that the proposed reporting requirement should similarly recognize a need for a one-year start-up period for new segregated asset accounts.

Absent such a start-up period, any new segregated asset account could inadvertently fall within the definition of a “private separate account” until the time that a larger number of policyholders allocated contract values to the account. A single or small number of variable contracts may represent a significant interest in a segregated asset account for a brief period after the account is first established simply because the account is new. Such circumstances do not raise any investor control concerns and during this period there is no more need to monitor and report the identity of the investors than there is to require that the assets be diversified. Accordingly, we believe it is reasonable and appropriate to reflect a start-up period in the reporting requirement that parallels the start-up period already reflected in the regulations under section 817(h).

d. Establish a look-through rule for investments in commingled asset pools

Section 817(h) and its regulations recognize that it is permissible under the investor control doctrine for a segregated asset account to hold a single investment, as long as that investment is a pooled investment vehicle (*e.g.*, a mutual fund, partnership, or trust) that is not available for direct investment by members of the general public (hereinafter, an “insurance-dedicated fund” or “IDF”). In such situations, the rules prescribe “look-through” treatment for the IDF, pursuant to which the diversification limits are applied by looking through the IDF to the assets it holds. As a result of this rule, the IDF’s assets are treated as the segregated asset account’s assets for purposes of section 817(h).²⁰

¹⁸ See T.D. 8242 (setting forth the preamble to the final section 817(h) regulations and recognizing the burdensome nature of a requirement to “trace premium and investment income as of any date” as a valid reason to allow quarterly testing in applying the start-up rule of Treas. Reg. section 1.817-5(c)(2)).

¹⁹ Treas. Reg. section 1.817-5(c)(2).

²⁰ See section 817(h)(4); Treas. Reg. section 1.817-5(f). See also Rev. Rul. 81-225.

We believe that similar look-through treatment is warranted under the proposed reporting requirement. In cases where a segregated asset account invests in an IDF, it is the policyholder's ability to control the IDF's holdings that would present a problem under the investor control doctrine. As a result, it would be appropriate to apply the reporting requirement based on a contract's cash value in relation to the total value of the IDF supporting it, rather than in relation to the segregated asset account's total value.²¹ Such a rule would help ensure that the information reports that the IRS receives would identify only those situations in which the IRS is interested and would not include extraneous information on contracts that, in fact, are based on a small interest in a very large and highly commingled pool of assets.²²

e. Exclude pension plan contracts from the reporting requirement

As a general matter, investor control concerns are relevant only with respect to "non-qualified" variable contracts under section 817(d), *i.e.*, those that are not "pension plan contracts" within the meaning of section 818(a). For example, when Congress added section 817(h) to the Code in response to investor control concerns, it expressly excluded pension plan contracts from its scope.²³ This reflects the fact that "qualified" retirement plans and similar arrangements pursuant to which pension plan contracts are issued already enjoy tax-deferred status under the Code. For example, taxpayers can clearly "control" the investments in their 401(k) plans without being currently taxed on the earnings. As a result, even if a pension plan contract was supported by a "private separate account," no investor control concerns should arise.

We recognize that in the early 1980s the IRS suggested in one ruling that investor control could be an issue with respect to a few types of pension plan contracts.²⁴ The IRS later clarified, however, that its concern was limited to very narrow circumstances involving the unrelated business income tax.²⁵ It is not uncommon for a single pension plan contract to

²¹ For example, assume that a segregated asset account supports only a single variable contract ("Contract A") with a cash value of \$10,000. Assume further that the account invests exclusively in shares of a single IDF, but the IDF also sells shares to dozens of other segregated asset accounts supporting thousands of other variable contracts. As a result, the IDF holds assets worth \$1 million. Under the look-through rule we are proposing, the reporting requirement would not apply to Contract A, even though it represents 100% of the segregated asset account's total value. This is because its cash value represents only 0.1% of the IDF's total value (\$10,000 divided by \$1 million). To apply a rule based on the IDF's total value, life insurance companies would need to know that value before the information reports become due. Pursuant to current federal securities law requirements, IDFs generally disclose their total net asset values and other information to investors on a quarterly basis, but with some time delay (*e.g.*, 60 days after quarter-end). The proposed reporting requirement would need to take this time delay into account, *e.g.*, by making the information reports due no earlier than 90 days after the end of each calendar year.

²² By virtue of this look-through rule and the limitation described on page 3 above regarding private placement arrangements, the reporting requirement would not apply to any variable contract (registered or not) that is supported by segregated asset accounts that invest exclusively in shares of registered IDFs.

²³ *See* section 817(h)(1) (stating that the diversification requirements apply to any variable contract "other than a pension plan contract").

²⁴ *See* Rev. Rul. 81-225.

²⁵ *See* Rev. Proc. 99-44 (generally reversing the position taken in Rev. Rul. 81-225).

represent all or a large percentage of the holdings of a segregated asset account. Requiring reporting with respect to all such contracts will be burdensome and highly unlikely to facilitate identification of the rare circumstances in which investor control might be applicable to such a contract. Accordingly, we believe it is reasonable and appropriate to clarify that the reporting requirement applies only to variable contracts and separate accounts described in section 817(d), excluding pension plan contracts as defined in section 818(a).

4. Limiting the requirement to information reasonably within the issuer's possession

The Green Book states that a “private separate account” would be defined as any account with respect to which “a related group of persons” own variable contracts whose cash values, “in the aggregate,” meet the prescribed percentage threshold. In order to comply with this requirement, insurers would need to know whether any given policyholder is related to another. In most cases, insurers are very unlikely to possess the information needed to assess whether policyholders are related.²⁶ For example, insurers do not ask policyholders at the time their contracts are issued whether any other related person might currently own a variable contract from the same insurer.²⁷ Even if insurers did ask this, the policyholders may not know (or wish to know) the answer. Which of us knows the investments our siblings, parents, or adult children have made or are making?

As a result, we believe that the “related group of persons” aspect of the proposed reporting requirement should be eliminated. If it is not, it will need to be significantly constrained to facilitate insurers’ ability to comply with it. One way would be to limit it to situations where multiple variable contracts are issued to related policyholders as part of a single transaction, such as a single private placement offering to an affiliated group of corporate policyholders. Insurers would be much more likely to know the relationship among policyholders in such circumstances. In addition, such an approach would likely encompass all variable contracts that are issued through private placement offerings, due to the fact that such offerings typically are large transactions limited to particular policyholders or policyholder groups. As a result, limiting the aggregation principle in this manner would facilitate insurers’ ability to comply with it while still requiring reporting in appropriate circumstances involving private placement arrangements, which, as described above, are much more likely to utilize “private separate accounts” in the first instance.

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In conclusion, we would like to reiterate that the Committee strongly supports efforts that encourage tax compliance with regard to annuities, and in that respect we agree with the stated tax policy goal of the proposed reporting requirement for “private separate accounts.”

²⁶ On the other hand, aggregating *multiple contracts* of a single policyholder (as opposed to *multiple policyholders*) would be feasible because the insurer will possess each policyholder’s EIN or social security number.

²⁷ State and federal privacy laws would preclude an insurer from identifying its policyholders to a potential new customer for purposes of asking that customer if it is related to any of the current policyholders. *See, e.g.*, 16 C.F.R. § 313.10 (generally prohibiting financial institutions from disclosing nonpublic personal information about a consumer to a nonaffiliated third party).

If the proposal is implemented, however, care should be taken to ensure that it is not overly broad or burdensome and that it is focused on the areas in which the government has raised a concern. Towards that end, we believe that the suggestions described above would appropriately tailor the reporting requirement to the area of concern while minimizing costs and burdens.

We would be happy to discuss our suggestions with the Treasury Department and IRS further, or provide any other information that might prove helpful in the event that the proposal moves forward as new legislation. In that regard, please contact Joseph McKeever or Bryan Keene, both of Davis & Harman LLP, if any questions arise. They can be reached by phone at 202-347-2230, or *via* electronic mail at jfmckeever@davis-harman.com or bwkeene@davis-harman.com, respectively.

Enclosure

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Conseco, Inc., Carmel, IN
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc, New York, NY
Hartford Life Insurance Company, Hartford, CT
ING North America Insurance Corporation, Atlanta, GA
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Life Insurance Company of the Southwest, Dallas, TX
Lincoln Financial Group, Fort Wayne, IN
MassMutual Financial Group, Springfield, Massachusetts
Metropolitan Life Insurance Company, New York, NY
Nationwide Life Insurance Companies, Columbus, OH
New York Life Insurance Company, New York, NY
Northwestern Mutual Life Insurance Company, Milwaukee, WI
Ohio National Financial Services, Cincinnati, OH
Pacific Life Insurance Company, Newport Beach, CA
Protective Life Insurance Company, Birmingham, AL
Prudential Insurance Company of America, Newark, NJ
RiverSource Life Insurance Company (an
Ameriprise Financial Company), Minneapolis, MN
Sun Life of Canada, Wellesley Hills, MA
Symetra Financial, Bellevue, WA
USAA Life Insurance Company, San Antonio, TX

The Committee of Annuity Insurers was formed in 1982 to participate in the development of federal tax and securities law policies with respect to annuities. The member companies of the Committee represent over two-thirds of the annuity business in the United States.