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FILED ELECTRONICALLY

The Honorable Ron Wyden
United States Senate
SD-221 Dirksen Senate Office Building
Washington, DC 20510-3703
Retirement_Savings@finance.senate.gov

Re: Committee of Annuity Insurers Comments on Discussion Draft of the Retirement Improvements and Savings Enhancements (RISE) Act of 2016

Dear Senator Wyden:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") in response to the request for comments on the "Discussion Draft" of the Retirement Improvements and Savings Enhancements (RISE) Act, released on September 8, 2016. The Committee is a coalition of life insurance companies formed in 1982 to participate in the development of federal policy with respect to annuities. The Committee's 29 member companies represent more than 80 percent of the annuity business in the United States and are among the largest issuers of annuity contracts in connection with employer-sponsored retirement plans and IRAs. A list of the Committee's member companies is attached.

Among other goals, the RISE Act is intended to encourage retirement savings, simplify the required minimum distribution ("RMD") rules, and address certain perceived abuses involving IRAs. The Committee appreciates this opportunity to comment on these important issues. We strongly support public policies that encourage Americans to save for retirement and to apply a portion of those savings to lifetime income options, such as annuities. We commend your focus in the Discussion Draft on the critical goal of helping all Americans achieve financial security in retirement. The Committee's comments are set forth below, including suggestions that we believe would help improve some of the proposals. Our comments relate to the following topics, the first two of which are most important to our member companies:

(1) Section 206(a) of the Discussion Draft, regarding the post-death RMD rules under section 401(a)(9);[1]

[1] Unless otherwise indicated, all section references are to the Internal Revenue Code of 1986, as amended.

(2) The treatment of annuity payments under the RMD rules, in response to your request for comment on how the RMD rules can be simplified;

(3) Section 102 of the Discussion Draft, regarding the age restriction on traditional IRA contributions;

(4) Section 103 of the Discussion Draft, regarding rollovers by non-spouse beneficiaries;

(5) Section 204 of the Discussion Draft, regarding the age at which lifetime RMDs must commence; and

(6) Section 205 of the Discussion Draft, regarding small account balances and the RMD rules.[2]

Section 206(a) of the Discussion Draft: The proposal to modify the post-death RMD rules should be modified to ensure that life annuities are not discouraged

Section 206(a) of the Discussion Draft would amend the RMD rules to provide that the entire interest in a qualified plan or IRA must be distributed within five years of the owner's death. The proposal would retain current law for "eligible" beneficiaries, allowing them to receive their inherited interests over their lives or life expectancies. Eligible beneficiaries would include the owner's spouse, a non-spouse who is no more than 10 years younger than the owner, and certain other limited categories of persons. The Committee has general concerns with this proposal because it would substantially accelerate the time at which savings would be forced out of the retirement system. We are particularly concerned that the proposal would discourage life annuities. To address this latter concern, the proposal should be modified to expressly allow life annuities with period certain guarantees that do not exceed a specified maximum duration, such as 10 or 20 years. Each of these points is discussed below.

General Concerns Relating to Retirement Security

Americans already face significant headwinds in trying to achieve financial security in retirement. The proposal could make those efforts even harder by forcing individuals to cash in their savings before they retire. For example, assume that a mother dies at age 85 and leaves her IRA to her 60-year-old daughter. Although the daughter hopefully has retirement savings of her own, the money she inherits from her mother could help her in retirement. The proposal, however, would require her to liquidate those savings by age 65, right when she plans to retire. She could reinvest the proceeds, but a number of individuals will instead spend the distributed

[2] Many of the proposals in the Discussion Draft were subsequently included in the Retirement Enhancement and Savings Act of 2016 (RESA), which Senator Hatch introduced as S. 3471 on November 17, 2016. We have focused our comments on the Discussion Draft but have noted where RESA would be relevant.

amounts. If she did reinvest the proceeds it would be net of the taxes owed, diminishing her savings and her prospects for financial security in retirement.

Specific Concerns Relating to Lifetime Income

If the proposal is not abandoned, the Committee believes it is critical to modify the proposal to avoid a potentially significant disincentive for life annuity forms of payout. You and other members of the Senate Finance Committee have been strong supporters of policy initiatives that would facilitate better access to, and more use of, lifetime income options in defined contribution (DC) plans and IRAs.[3] This is important because Americans are living longer than ever before, and thus are spending more of their lifetimes in retirement than previous generations. At the same time, their access to defined benefit (DB) plans has decreased dramatically. In short, it is more important than ever to facilitate and encourage life annuity elections in DC plans and IRAs. Unfortunately, the proposal could readily have the opposite effect.

How the proposal could discourage life annuities

Individuals almost never elect a life annuity without a significant guarantee that protects their heirs in the event of an early death. This is an understandable and very powerful behavioral response to the risk-pooling nature of insurance – an individual's fear of financially "losing" if early death prevents the payment of at least a significant amount of cash benefits under the contract.[4] The academic literature describes this as "mental accounting" or "loss aversion" behavior that negatively affects an individual's decision to annuitize.[5]

In general terms, contractual guarantees that can effectively temper this behavioral response come in two forms: a guaranteed return of premium that is payable in a lump sum, or a guaranteed term of years over which annuity payments will continue despite the annuitant's death, called a "period certain." As you and Senator Cardin recognized in your letter to Treasury Secretary Lew earlier this year, a lump sum death benefit is considered an "increasing" payout under the RMD regulations, subjecting it to more stringent rules and precluding its availability

[3] For example, we greatly appreciated the letter that you and Senator Cardin sent to Treasury Secretary Lew on May 20, 2016, urging the Treasury Department to implement certain regulatory changes that would better facilitate lifetime income options in retirement arrangements, including eliminating certain barriers to annuitization under the RMD regulations and clarifying certain aspects of the rules governing qualifying longevity annuity contracts.

[4] *See* Kenneth Black, Jr. *et al*., LIFE INSURANCE 132 (14th ed. 2013).

[5] *See, e.g.*, Jeffrey R. Brown, *Rational and Behavioral Perspectives on the Role of Annuities in Retirement Planning* (Nat'l Bureau of Econ. Research, Working Paper No. 13537 October 2007), *available at* http://www.nber.org/papers/w13537 (discussing (1) complexity and financial literacy, (2) "mental accounting" and "loss aversion," (3) "regret aversion," and (4) the "illusion of control" as behavioral factors that may contribute to a reluctance to annuitize); Wei-Yin Hu and Jason S. Scott, *Behavioral Obstacles to the Annuity Market* (Soc. Sci. Research Network, Working Paper March 2007), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=978246 (similar).

for more and more retirees. In addition, many individuals simply prefer a period certain over a lump sum because of spendthrift concerns, *i.e.*, they do not want their beneficiaries acting irresponsibly with the retirement assets they inherit, or because a particular period certain has a lesser effect on the monthly payments than a return of premium guarantee.

In that regard, a 10-year period certain is a very common form of guarantee under life annuities. In fact, a life annuity with a 10-year period certain is often the default payout option under an annuity contract. It also represents a "sweet spot" of sorts between the competing economic considerations of maximizing lifetime income and obtaining a sufficient guarantee. This is because the longer the period certain, the lower the periodic payments will be for any given premium. For example, at today's interest rates, $100,000 could purchase a "pure" life annuity (with no guarantees other than lifetime income) of $627 per month for a 70-year old male. Adding a period certain of various durations would affect the payments as follows:

Period Certain	Monthly Payments	Reduction
5 years	$617	$10 (-1.5%)
10 years	$585	$42 (-6.7%)
20 years	$504	$123 (-20%)

As this table illustrates, a 10-year period certain has a relatively small effect on the monthly payments, but provides twice the guaranteed duration of a five-year period certain and significantly higher payments than a 20-year period certain.[6] This helps explain why the 10-year option is common. If the proposal were enacted, however, the 10-year option could become unattractive and possibly unavailable. This is because under the proposal the only way to ensure that an annuity payout will comply with the RMD rules will be to limit the period certain to five years or require an acceleration of the payments despite the remaining scheduled term. Consider the following example:

> Example: Henry elects a life annuity with a 10-year period certain and names his spouse Wanda as the eligible beneficiary. Wanda dies one year later and their adult son Sam becomes the new beneficiary. Henry then dies the next year. The remaining eight-year term of the period certain would violate the new law because Sam is not an eligible beneficiary. This is the case even though Henry had originally named an eligible beneficiary and the payout thus complied when the annuity was purchased.[7] In order to comply now, the payment stream would need to be modified by shortening the remaining duration or commuting the remaining payments to a lump sum.

[6] We also note that if a lump sum return of premium guarantee was elected rather than a 10-year period certain, the monthly payments would be $520, which is 11% lower than the payments with a 10-year period certain.

[7] The payout also would violate the new law if Wanda had not predeceased her husband Henry but died with more than five years remaining in the period certain. This is because the proposal would impose the five-year rule upon the death of even an eligible beneficiary such as Wanda.

As this example shows, the proposal would inject considerable uncertainty into the duration of any guaranteed period longer than five years. The Committee believes uncertainty will make the decision to annuitize more difficult for retirees. Individuals want period certain guarantees under their life annuities because they have concerns over the duration of annuity payments in the event of an early death. By its nature, a period certain addresses this concern. Under the proposal, however, even a period certain would entail considerable uncertainty if the period is longer than five years. Indeed, any guarantee longer than that could not really be called a "period certain" at all because future events could mean the payout duration would need to be changed in a way that is unknowable when the contract is issued.

In these circumstances, many life insurance companies may be reluctant to offer a period certain longer than five years. As a practical matter, insurers guarantee that the annuity payouts they offer will comply with the RMD rules.[8] Thus, the insurer must be able to determine, at the time the payout is elected, whether the scheduled annuity payments will comply. The only way an insurer will be able to know on the issue date that the scheduled payments will comply with the new rules would be to limit the period certain to five years. Absent this limitation, the insurer would need to include a provision in the terms of the contract to accelerate the annuity payments in cases where a death after the contract was issued made the remaining duration of the guarantee period impermissible.

Some annuity contracts include acceleration rights that a beneficiary can choose to exercise, but contracts generally do not *require* such accelerations. Thus, for existing contracts that offer period certain features longer than five years, the company would need to rely upon the beneficiary taking voluntary action to accelerate the payments under the terms of the contract in order to comply with the RMD rules. Many companies may be uncomfortable with this because it would mean the company cannot determine on the issue date that the payout option complies.

As a result, existing deferred annuity contracts that offer period certain features longer than five years may need to be amended to require acceleration of the period certain in a number of circumstances. In addition, many contracts do not offer any acceleration right at all. Adding an acceleration feature to a contract or changing the feature from voluntary to mandatory could involve additional costs for consumers and reduce lifetime payments. Moreover, the RMD regulations impose restrictions on acceleration rights that effectively preclude them in some cases, and those limitations are affecting more and more contracts for a variety of reasons.[9]

In light of the foregoing, we believe many life insurance companies may simply choose to limit period certain guarantees to five years. Such a limited guarantee may be insufficient to overcome the mental accounting and loss aversion factors described above as negatively

[8] This is because the form and structure of the annuity payments must comply with the RMD regulations and it is the insurance company, not the contract owner, who decides the form and structure of the annuity options provided under the contract. *See, e.g.*, Treas. Reg. section 54.4974-2, Q&A-4 (discussing "permissible" and "impermissible" annuity distribution options).

[9] These issues are discussed in more detail on pages 8-10, *infra*.

affecting the decision to annuitize. That is, individuals may choose to forego the valuable protections of a lifetime income guarantee altogether if they cannot add a period certain with which they are comfortable. For example, an individual could decide that a five-year period certain provides insufficient protection and that the reduction in lifetime income that would accompany a lump sum return of premium benefit is too great, leaving no middle ground that the individual finds acceptable.[10] Even if an insurer offers a longer period certain, such as 10 years, and includes an acceleration feature to ensure RMD compliance, individuals may be reluctant to annuitize if there is so much uncertainty about whether, and if so to what extent, the annuity payments will need to be adjusted in the future.

How the proposal can be modified to reduce the disincentive for life annuities

The disincentives for life annuities that the Committee believes would arise under the current proposal can be substantially reduced in a manner that is consistent with the goals of the proposal. Specifically, current law could be retained for life annuities with a period certain that is limited to a specified maximum duration, such 10 years or 20 years. Such period certain durations are common in the industry and would continue to provide the types of protections that retirees find attractive, thereby encouraging life annuities. This approach also would provide certainty at the time annuity payments begin that the scheduled payments will comply with the RMD rules without regard to future events. Moreover, because the allowable period certain would be shorter than under current law, the minimum distribution incidental benefit (MDIB) rule under current law would apply sooner, which would have the effect of front-loading the annuity payments during the owner's life in the case of any joint and survivor annuity with an ineligible beneficiary.[11]

Additional modifications to consider for the post-death RMD proposal

- Grandfathering and transition – The proposal includes a provision that would grandfather certain annuity contracts under which annuity payments had commenced prior to the date of enactment.

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[10] *See supra* note 6.

[11] *See* section 401(a)(9)(G) and Treas. Reg. section 1.401(a)(9)-6, Q&A-2(c). In general, the MDIB rule is intended to ensure that the majority of an individual's retirement savings are scheduled to be paid during the individual's life rather than after his death, which is very similar to the concern underlying the new proposal. The MDIB rule accomplishes this by limiting the permitted payout duration during an individual's life to a period based on the joint life expectancy of the individual and a hypothetical beneficiary who is 10 years younger, as reflected in the Uniform Lifetime Table in the regulations. This 10-year age difference is consistent with how the proposal would define an eligible beneficiary, meaning current law already reflects this concept to some degree. In that regard, the MDIB rule requires a reduction of up to 48% in the dollar amount of any survivor annuity payable to a non-spouse joint annuitant who is more than 10 years younger than the owner, with the reduction triggered upon the owner's death or at the end of any permitted period certain, whichever occurs last. We urge you to consider whether these current-law restrictions address the concerns underlying the proposal to an extent that would allow payout annuities to be excluded from its scope.

- As currently drafted, the grandfathering provision would apply only if the participant had made an "irrevocable election" before the effective date as to the method and amount of the annuity payments. As noted above, some annuity contracts include a commutation feature that allows the acceleration of future payments. Such accelerations do not implicate the concerns underlying the proposal. As a result, the proposal should be clarified to ensure that the existence of an acceleration feature does not cause an annuitization election to be something other than "irrevocable" for purposes of the grandfathering provision.

- Deferred annuities can include benefits to which the owners have contractual rights but that would not be allowed under the new rules. For example, guaranteed minimum withdrawal benefits can guarantee that a specified minimum amount will be available for withdrawal for at least a stated duration, regardless of death and regardless of investment performance. The durations over which such guaranteed benefits are payable may not comply with the new rules, even though they comply with current law. Additional grandfathering would be appropriate in these types of situations and should be added.

- Life insurance companies may need to amend their contracts in order to comply with the new rules. For example, they may need to eliminate contractual rights to annuity options that will not comply with the new rules, or add a commutation option or requirement to their contracts where none currently exists. In many cases, contract amendments must be approved by state insurance regulators. In addition, insurers may need to seek prototype approval from the IRS with respect to any revised contract forms, or obtain IRS determination letters on compliance. The effective date should be delayed to allow insurance companies to work through these processes.

- <u>$450,000 exemption and multiple account balances</u> – The version of the proposal that was introduced in the Retirement Enhancement and Savings Act of 2016 (S. 3471) included a provision that would retain current law with respect to the first $450,000 of an individual's aggregate account balances at death. The Committee supports this concept because it would help preserve retirement savings and thereby enhance retirement security. However, implementing it would present significant challenges.

  - For example, a decedent could have multiple accounts with different providers, as well as multiple beneficiaries among those accounts. In such cases, which are not uncommon, the decedent easily could be the only consistent informational link across the accounts, and after the decedent's death that link will be gone. Because of this, beneficiaries and the relevant providers may not have access to all of the information they need to determine eligibility under the $450,000 exemption.

  - To address these issues, the rule may need to be accompanied by a new information reporting and sharing regime, creating significant burdens on the IRS

and taxpayers alike. Otherwise, simpler alternatives would need to be identified and considered to implement this concept.

- For the same reasons, the proposal should be modified to explicitly state that in fulfilling their responsibilities regarding the RMD rules, IRA providers, plan sponsors, and plan administrators can rely upon representations made to them by beneficiaries or other providers, *etc*., regarding the beneficiaries' eligibility for some or all of the $450,000 exemption, absent actual knowledge to the contrary.

- Defined benefit plans – The proposal does not distinguish between DB plans and other types of plans. The proposal would cause various difficulties for DB plans, including under the applicable anti-cutback rules and the rules governing lump sum payments from underfunded plans. Because of these problems, as well as the more general problems for annuities discussed above, the proposal should not apply to DB plans. In that regard, we note that the version of the proposal that was included in the Retirement Enhancement and Savings Act of 2016 (S. 3471) would not apply to DB plans.

Response to Request for Comments on Suggestions to Simplify RMD Administration:
Modify the RMD Rules Applicable to Annuity Payments

You requested comments on several issues in addition to the specific proposals in the Discussion Draft. One of those issues was how to simplify RMD administration. We offer two suggestions in this regard.

Modify the Rules Applicable to "Increasing" Annuity Payments

The RMD regulations generally prohibit increasing annuity benefits. The rules were designed to prevent back-loading of annuity payments, but the provisions that govern what payments are considered increasing and whether the increase is entitled to an exception from the general prohibition are extremely difficult for individuals to understand and complex for insurers to apply. Furthermore, improvements in life expectancies and the long period of extremely low interest rates have created a situation where these rules are preventing individuals from receiving common forms of life annuities in arbitrary circumstances that do not involve inappropriate deferral. You and Senator Cardin have previously expressed your concerns about this situation to Treasury Secretary Lew.[12] We are aware that the Department is giving consideration to the problem, but it remains unresolved.

The problem is attributable almost entirely to a complex and outdated test that is contained in the current regulations governing increasing payments. The test is commonly

[12] *See supra* note 3.

referred to as the minimum income threshold test ("MITT").[13] The results of this test are highly unpredictable and frequently arbitrary. The effect is that insurance companies are allowed to offer certain life annuity benefit forms to one individual but not to another individual who is in a virtually identical position.[14] Individuals who are considering life annuities are confused by this situation and some simply decide not to elect one.[15]

We believe the RMD rules can be simplified and this barrier to the use of some common forms of life annuities removed by exempting certain long-standing and non-abusive annuity benefit forms from the MITT. *Specifically, we recommend that (1) annuity benefits that pay a cash refund on death, (2) annuity payments that increase at a fixed percentage of no more than 5% a year, (3) commutations of annuity benefits, and (4) dividend payments under participating annuities should be permitted without regard to the MITT.* Each of these items is discussed briefly below.

(1) Cash Refund on Death. The regulations currently treat a return of premium on death as an increasing annuity benefit that must satisfy the MITT. From 1987 until 2004 these benefits were permitted without restriction. When the MITT was created in 2004, they became subject to it. Characterizing these benefits as increasing payments that need to be subjected to the MITT extends the reach of the MITT far beyond its purpose. Indeed, cash refund death benefits under DB plans continue to be allowed without restriction. Such treatment is equally appropriate for commercial annuities.

(2) Fixed Percentage Increases Less than 5%. The regulations currently allow annuity payments from DB plans, but not commercial annuities, to increase by an amount that does not exceed 5% per year, without having to pass the MITT. We have been unable to identify any reason for not allowing the same treatment for commercial annuities. The fact that the MITT is precluding all but the smallest annual percentage increases, and in

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[13] *See* Treas. Reg. section 1.401(a)(9)-6, Q&A-14(c). For more discussion of these aspects of the RMD rules, see the Committee of Annuity Insurers' comment letter on the Treasury Department and IRS Priority Guidance Plan for 2016-17, available at https://www.regulations.gov/document?D=IRS-2016-0012-0036.

[14] For example, one life insurance company that is a member of the Committee of Annuity Insurers offers a variable life annuity to plan participants. The annuity may or may not pass the MITT depending on the annuitant's age when annuity payments commence and whether the annuity provides a term certain. For example, an 88-year-old can receive a life annuity with a 10-year term certain, but someone age 87 cannot. Similarly, a 78-year-old cannot receive a life annuity with a 10-year term certain, but can receive a pure life annuity or a life annuity with a 15-year or 20-year term certain. These types of unpredictable and arbitrary results discourage or prevent annuitization.

[15] To illustrate, one month last year a member company of the Committee had to reject approximately 40 different applications to purchase single premium life annuities providing level lifetime payments with a lump sum return of premium death benefit. Because such a death benefit is treated as an increase under the regulations, the contracts had to satisfy the MITT, but they were unable to do so simply because of the market place interest and longevity assumptions the company uses to price its single premium life annuities. Some of these applicants decided not to purchase a life annuity at all, while others decided to purchase a different type of life annuity.

some cases any increase at all, highlights the importance of exempting these types of increases from the MITT.

(3) Commutations. The presence of commutation features makes the purchase of a life annuity with a guarantee period more attractive to many consumers. The regulations allow commutations but treat the commutation as an increasing payment that must satisfy the MITT. The presence of a commutation right does not defer distribution of the annuity owner's interest. Rather, the exercise of the right accelerates the distribution of the owner's remaining interest. Indeed, the Discussion Draft could effectively require commutations as a means to *limit* tax deferral if the proposal regarding post-death RMDs is adopted. Clearly, such features are fully consistent with the purpose of the RMD rules.

(4) Participating Annuities. The initial payment under a participating annuity is based on the insurer's contractual guarantees with respect to interest, mortality, and expenses. Dividends are paid at the discretion of the insurer, but typically will be paid if the interest, expense, and mortality experience of the insurer with respect to a group of contracts is more favorable than the guarantees under those contracts. By subjecting participating annuities to the MITT, the regulations suggest a concern that insurers otherwise might provide a below-market rate of return in order to depress the initial annuity payment and then plan to pay excessive dividends thereafter for the purpose of maximizing tax deferral for the annuity owners. Such a concern is unfounded.

Clarify the Treatment of Short-Term Accelerations of Annuity Payments

Finally, we urge that the RMD rules be simplified by clarifying that short-term accelerations of annuity payments are permissible. Some annuity contracts permit the annuitant to accelerate the receipt of one or more payments that are scheduled to be made within a specified future period. For example, if the annuitant is receiving monthly payments, the contract may allow her to receive an advance of the next three months' payments in a lump sum, with the annuity payments resuming at their original level at the end of those three months. Such features are attractive to many annuity purchasers and, like commutations, they accelerate the time at which distributions are made. It is uncertain whether the current regulations allow such short-term payment advances and this uncertainty hinders the ability of insurers to make available a simple and desirable benefit.

Section 205 of the Discussion Draft: The Committee supports exempting small account balances from the RMD rules, with some suggestions for improving the proposal

Section 205 of the Discussion Draft would provide an exemption from the RMD rules for individuals whose aggregate account balances in tax-qualified arrangements do not exceed $150,000. The Committee agrees with the policy underlying this proposal. Individuals with relatively small account balances may need to rely heavily on Social Security in retirement, and

many may be on fixed incomes.[16] For them, taking RMDs could deplete what little liquid savings they have in retirement. The proposed exemption would provide these individuals with greater flexibility to conserve their savings and use them only when needed most. In addition, to the extent that required distributions are not made from an account, the individual's savings will not be depleted by taxes and can continue to grow tax-deferred.

As discussed below, the Committee believes it is important to modify the proposed exemption so that lifetime income options are treated the same whether they are provided under a DC plan or a DB plan, and to address certain implementation issues.

- Lifetime income: The proposal should exclude all forms of life annuity benefits from the aggregate account balance when determining if the exemption applies. The proposal as drafted would provide this treatment for life annuity benefits being paid under DB plans. This is appropriate because such benefits are necessarily being paid in accordance with the RMD rules and providing important lifetime income protections. For these same reasons, it is appropriate to exclude from the calculation any life annuity payments being paid under a DC plan or IRA. The proposal should be modified to reflect this.

- Implementation: Careful consideration should be given to how the new rule would be implemented, especially to address individuals with multiple accounts. For example, a 401(k) plan is responsible for calculating RMDs and paying them to plan participants and beneficiaries. Thus, a plan will need to know whether a participant's account balance is exempt from the RMD rules or not. If a participant has multiple accounts, the plan will need to know about them, or perhaps be allowed to assume that no RMDs are needed if the participant's balance in the plan is $150,000 or less. Likewise, if an individual has multiple beneficiaries among multiple arrangements, some coordination is likely to be needed after the individual's death so the parties will know if the exemption applies or not. These implementation issues are very similar to those described above in connection with the $450,000 exemption from the proposal on post-death RMDs. As in that case, the proposal here should be modified to explicitly state that IRA providers, plan sponsors, and plan administrators can rely upon representations made to them by owners and participants regarding their balances in other arrangements.

Section 102 of the Discussion Draft:
The Committee supports the proposal to repeal the maximum age for traditional IRA contributions and has a suggestion on how the proposal should interact with the RMD rules

The Committee supports the proposal to repeal the maximum age for making contributions to traditional IRAs. We also have a suggestion that we think would help clarify

[16] Certainly, $150,000 is not a "small" amount for many Americans. But in terms of retirement savings, this is not a substantial amount. For example, at age 70 in today's interest rate environment $150,000 would generate less than $10,000 per year under a life annuity with a return of premium feature.

and simplify how the RMD rules would apply in cases where such contributions are made in the same year an RMD is due.

Current law prohibits traditional IRA contributions starting in the year the owner attains age 70½. The proposal would repeal this prohibition and allow traditional IRA contributions at any age, subject to other existing limits and requirements. For example, the requirement that an individual must have taxable compensation in order to make an IRA contribution would be retained.[17] This requirement, in particular, provides strong support for the proposal. That is, if an individual has compensation it means he is working, and if an individual is working he should be encouraged to save for retirement. Repealing the age restriction would encourage such savings by expanding the circumstances in which an up-front tax deduction is available as an incentive for contributions. Even in cases where a deduction is unavailable,[18] an individual would be able to make non-deductible contributions to a traditional IRA without regard to the rules that otherwise might preclude a contribution to a Roth IRA.[19] In short, the proposal could only increase savings and thereby retirement security.

If the proposal is enacted, it would mean that an individual could contribute to a traditional IRA for the same year that an RMD is due for that IRA. This is because RMDs generally must commence from an individual's traditional IRAs by age 70½. Thus, any contribution that an individual makes after that age would be accompanied by a requirement to take a minimum distribution that year. Given this flow of money into and out of an IRA in the same year, it would make sense for the rules to provide a netting mechanism. Such a mechanism could reduce or eliminate the need for cash or property to actually change hands. It also could reduce or eliminate the need to liquidate assets within the IRA, which could help avoid transaction costs and investment losses, thereby preserving retirement savings.

This idea could work as follows. The IRA owner would be allowed to automatically reinvest some or all of the annual RMD in her IRA by merely informing the IRA provider of this intent. This would be similar to the way that mutual fund dividends can be reinvested without the owner actually receiving them. The IRA owner would still owe tax on the full RMD, which would be reported as a distribution even though some or all of it is retained in the IRA.[20] Current law would determine which portion of the RMD could be reinvested and deducted as a new IRA

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[17] Section 219(b)(1)(B).

[18] Deductions for traditional IRA contributions are phased out if an individual or the individual's spouse is covered by an employer retirement plan. *See* section 219(g).

[19] Roth IRA contributions are not subject to an age restriction but are phased out for taxpayers with adjusted gross incomes that exceed applicable limits. *See* section 408A(c)(3) and (4).

[20] Voluntary income tax withholding also applies to distributions from traditional IRAs, but only to the extent of cash or other property actually distributed. *See, e.g.*, Treas. Reg. section 31.3405(c)-1, Q&A-11 ("The maximum amount to be withheld on any designated distribution (including any eligible rollover distribution) under section 3405(c) must not exceed the sum of the cash and the fair market value of property (excluding employer securities) received in the distribution."). The individual also could elect out of withholding and choose to reinvest the entire RMD back into the IRA, subject to the applicable IRA contribution limits. *See* section 3405(a)(2).

contribution. With these clarifications, the proposal would make it easier for individuals to contribute to their traditional IRAs after age 70½ and comply with the RMD rules. This, in turn, could further promote retirement savings.

Section 103 of the Discussion Draft:
The Committee supports the proposal to allow 60-day rollovers by non-spouse beneficiaries to inherited IRAs

The Committee supports the proposal to permit tax-free 60-day rollovers by non-spouse beneficiaries from eligible retirement plans and IRAs to "inherited" IRAs. The proposal would help protect non-spouse beneficiaries from inadvertently triggering tax and thereby depleting their inherited retirement savings by taking a distribution they mistakenly believe can be rolled over to an inherited IRA. In that regard, some non-spouse beneficiaries may not appreciate that the 60-day rollover rule is unavailable to them under current law. This creates a potential trap for the unwary, as any distribution to the non-spouse beneficiary can be reinvested in an IRA only as a regular contribution, subject to the normal limits thereon.

Non-spouse beneficiaries, such as adult children of the decedent, may need to rely upon their inherited accounts for their own retirement security. An inadvertent and unnecessary depletion of those accounts could harm those efforts. The proposal would help prevent this from happening. In addition, because distributions to non-spouse beneficiaries from employer sponsored plans would be eligible rollover distributions, the plan would provide the beneficiary with a notice explaining the direct transfer and 60-day rollover options and the associated income tax consequences. Thus, a non-spouse beneficiary would be able to make better-informed decisions as a result of the proposal. For these reasons, the Committee supports it.

Section 204 of the Discussion Draft:
The Committee supports the proposal for increasing the age at which RMDs must commence and urges a broader update to the RMD life expectancy tables

Section 204 of the Discussion Draft would increase the age at which RMDs must commence, as a reflection of improved life expectancies. The Committee supports this proposal and has some suggestions on how it should be implemented in years the age is updated. More broadly, we believe that a corresponding update should be made to reflect improved life expectancies when calculating the dollar amount of RMDs. These two comments are discussed in more detail below.

The date by which RMDs must commence has been determined by reference to age 70½ since the rules were enacted in 1962.[21] Life expectancies have improved since then, meaning individuals are living longer and retiring later in life. Thus, it makes sense to update the age by

[21] Self-Employed Individuals Tax Retirement Act of 1962, Pub. L. No. 87-792, 76 Stat. 809, § 2(2), 76 Stat. 810 (1962). *See also* Pub. L. No. 99-514, 100 Stat. 2085, § 1121(b), 100 Stat. 2465 (1986) (introducing the term "required beginning date" and tying it to age 70½.

which they must commence retirement distributions. The proposed increases to that age would help individuals preserve their retirement savings until they are actually needed, which will improve their chances of financial security thereafter. For these reasons, the Committee supports the proposal and offers the following suggestions to improve it.

Implementing the proposal in years the age is updated.

If the proposal is enacted, the IRS would be required after 2028 to adjust the applicable age based on further improvements in life expectancy. This will require a comparison of life expectancy tables and an announcement by the IRS of any upward adjustment to the age. Depending on when this announcement is made, individuals who believed they had an RMD obligation based on the earlier age may have commenced distributions even though the announcement means they do not. For this reason, individuals should be allowed in such cases to re-contribute any erroneous distributions without regard to the 60-day limit on rollovers, or perhaps allowed to obtain an automatic waiver of that timing limit. In addition, because IRA issuers have certain reporting obligations starting in years that RMDs are due,[22] they should be allowed to assume that the current required beginning date applies at the time the information is reported to the owners, unless the IRS has announced a change with sufficient lead-time to be reflected in the information that is reported.

Updating the life expectancy tables used to calculate RMDs

More generally, the Committee believes that the life expectancy tables included in the RMD regulations should be updated regularly to reflect improvements in longevity. The RMD rules permit an individual to spread retirement distributions generally over life or life expectancy, or over the joint lives or joint life expectancy of the individual and a beneficiary. The rules include life expectancy tables that are used for this purpose. These tables were derived from the basic 2000 individual annuity mortality table with projected mortality improvements through 2003. The RMD regulations provide that these tables can be changed, but they have not been updated and there is no mandate for the Treasury Department or IRS to do so.

The improvements in life expectancy since these tables were incorporated into the regulations means that RMDs are determined using outdated life expectancies, as you recognized in your May 20, 2016, letter to Treasury Secretary Lew. This forces individuals to liquidate their retirement savings over periods that are shorter than their life expectancies. Even if the start date for RMDs is delayed under the proposal, individuals will still need to prematurely liquidate their retirement savings over the shorter, outdated periods in the current RMD regulations. For these reasons, the Committee believes that the proposal also should require regular updates to the life expectancy tables in the regulations.

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[22] *See, e.g.*, Notice 2002-27, 2002-1 C.B. 814.

The Committee of Annuity Insurers appreciates this opportunity to comment on the Discussion Draft. Should any questions arise in connection with our comments, or if the Committee can be of any assistance to you or the Senate Finance Committee on these issues or any other issues involving annuities or lifetime income, please contact Joseph McKeever, Mark Griffin, or Bryan Keene at 202-347-2230 or the email addresses below.

Sincerely,
The Committee of Annuity Insurers

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Attachment

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AIG Life & Retirement, Los Angeles, CA
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The Committee of Annuity Insurers was formed in 1981 to participate in the development of federal policies with respect to annuities. The member companies of the Committee represent more than 80% of the annuity business in the United States.