The COMMITTEE of ANNUITY INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004

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Delivered Electronically

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Re: Request for Guidance and Relief Regarding SECURE Act Effective Dates

Dear Ms. Weiser, Ms. Jones, and Ms. Judson:

We are writing on behalf of the Committee of Annuity Insurers (the "Committee") to request guidance and relief, as soon as possible, regarding the imminent need to implement certain provisions of the Setting Every Community Up for Retirement Enhancement Act of 2019 ("SECURE Act").

President Trump signed the SECURE Act into law on December 20, 2019, as part of a larger legislative package.[1] The Committee, whose 31 member companies represent more than 80% of the annuity business in the U.S. and are among the largest providers of annuities in the qualified plan and IRA markets, strongly supported the SECURE Act.[2] As a result, we are very pleased that it has become law and we look forward to implementing its provisions to help Americans better prepare for and live in retirement.

Implementing some of the SECURE Act's provisions will present challenges, however, due to their statutory effective dates. In that regard, many of the provisions become effective on January 1, 2020. This is an extremely short timeframe – 12 days from enactment – in which to make changes to administrative systems, reporting practices, policy forms, disclosure documents, claims procedures, customer call center scripts, *etc.*, that will be necessary to ensure compliance with the new law. Accordingly, the Committee urges the Treasury Department and Internal Revenue Service to provide guidance and relief as soon as possible that will facilitate prompt implementation without the imposition of penalties or other adverse tax consequences for

[1] The SECURE Act is Division O of the Further Consolidated Appropriations Act, 2020 (the "FCAA"), which passed the House of Representatives on December 17, 2019, and the Senate on December 19, 2019.

[2] The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. A list of the Committee's member companies is attached.

providers and their customers when delays or mistakes inevitably occur due to the relevant effective dates.

In that regard, we are still assessing the full scope of issues on which such guidance and relief are needed. At this time, however, we have identified the following items that we believe warrant immediate attention:

(1) Good faith relief. The Treasury Department and IRS should issue guidance providing that taxpayers may rely on any reasonable, good faith interpretation of the new law pending the issuance of more specific substantive guidance.

(2) Post-death required minimum distributions. Section 401 of the SECURE Act significantly changes the required minimum distribution ("RMD") rules that apply following the death of a plan participant or IRA owner, effective for deaths occurring after 2019. This presents a number of implementation issues, particularly for issuers, owners, and beneficiaries of individual retirement annuities ("IRA annuities"). For example:

- IRA annuity issuers will need to amend their policy forms, *e.g.*, IRA endorsements, to reflect the new rules. It will take time to prepare such amendments, after which issuers generally must obtain state regulatory approval. Guidance should provide adequate time for issuers to make these necessary changes to their policy forms without risking "disqualification" of the IRA annuities.
    - It would be very helpful if the IRS would promptly issue an updated List of Required Modifications (LRMs) that issuers could use to make these changes.
    - For issuers that previously obtained prototype approval of their IRA endorsements, the IRS should provide "snap on" language they can use to amend the endorsements while continuing to rely on their prototype approvals.
- IRA annuity issuers also will need to modify their administrative systems, disclosure statements, claims procedures, customer call center scripts, and other aspects of their compliance documents and procedures to apply the new rules. They also will need to carefully assess which annuitization options under their existing IRA annuity contracts are compatible with the new law. It is possible (and perhaps likely) that errors will occur during 2020 while issuers and their customers work to implement the new rules in good faith. Guidance should waive penalties and other adverse tax consequences in such circumstances, provided that any errors are corrected within a reasonable time.
- IRA annuity issuers will need clarification on the application of the minimum income threshold test (the "MITT") and related rules in the current RMD regulations as a result of the new law. The MITT must be satisfied in order for certain increases in annuity payments under commercial annuities, including increases as a result of an acceleration of payments, to be permitted.[3] Depending on facts and circumstances that are unknown when annuity payments commence, such payments might need to

[3] *See* Treas. Reg. section 1.401(a)(9)-6, Q&A-14(c).

be accelerated after the IRA owner's death in order to satisfy the new post-death RMD rules. Such an acceleration of payments could trigger the application and failure of the MITT and related rules in the current regulations governing accelerations of annuity payments. Guidance is needed to clarify that such an acceleration of payments is not a type of increase in annuity payments that is subject to the MITT or that otherwise violates the RMD rules.

- Qualified plans will face similar implementation issues for which similar guidance is warranted. For example, plans that make mistakes in administering the new after-death RMD rules despite good faith efforts to comply should not be disqualified and should be given the opportunity to correct such mistakes in a timely manner without adverse tax consequences for the plan or participants.[4]

(3) Required beginning date for RMDs. Section 114 of the SECURE Act delays the age at which RMDs must commence from age 70½ to age 72, effective for distributions after 2019 with respect to individuals who attain age 70½ after 2019. This also presents a number of implementation issues. For example:

- IRA issuers must provide notice to IRA owners by January 31st of each year for which an RMD is due in accordance with Notice 2002-27. This is typically done using largely automated systems. Those systems may inadvertently provide such a notice on or before January 31, 2020, for an IRA owner who will turn age 70½ in 2020, even though under the new law the owner will not have an RMD obligation for 2020. Guidance should (1) provide that IRA issuers will not be penalized in these circumstances, and (2) allow IRA owners who take distributions in 2020 based on such erroneous notices to roll the distributions back into their IRAs without regard to the normal 60-day rule that applies to rollovers.[5]

- IRA annuity issuers also will need time to amend their IRA endorsements to reflect the new required beginning date, as described above in the context of the changes to the post-death RMD rules.

- Qualified plans will face similar implementation issues for which similar guidance is warranted. For example, a plan may automatically yet erroneously distribute an RMD to a participant in 2020 even though the new law does not require an RMD. Guidance should be issued promptly to provide as follows:

  - A plan that makes such a distribution should not be disqualified.

  - The plan should not be penalized for failing to provide a direct rollover notice pursuant to Code section 402(f) (or for providing such a notice that does not

[4] Section 601 of the SECURE Act provides remedial amendment periods that give plan sponsors time to amend their plan documents to comply with the new rules, but such relief does not extend to IRAs. As a result, IRS guidance providing additional time to amend the relevant forms may be needed only for IRAs and not for plans.

[5] For example, with respect to the 60-day rollover requirement, this situation could be added to the list of reasons that qualify for a waiver of that requirement under Rev. Proc. 2016-47, 2016-37 I.R.B. 346. *See* IRC section 408(d)(3)(I).

reflect the new law) and should not be required to offer a direct rollover of the distribution unless the participant specifically requests one.

- The plan should be allowed to treat the distribution as subject to the withholding rules for RMDs, not the withholding rules that apply to eligible rollover distributions.

- Participants should be given rollover relief as described above in the discussion of IRAs, although it should be optional for a plan to offer to accept a recontribution (the amount could be rolled to an IRA, for example).

(4) IRA contributions after age 70½. Section 107 of the SECURE Act repeals the current-law prohibition on regular IRA contributions after age 70½, effective for taxable years beginning after 2019. This restriction may be described in IRA endorsements and/or IRA disclosures, and IRA annuity issuers may need to modify their systems to accept regular contributions after age 70½. It would be helpful for IRS guidance to confirm that IRA issuers, trustees, and custodians are not required to accept such contributions.

(5) Penalty-free distributions upon birth or adoption. Section 113 of the SECURE Act facilitates certain penalty-free withdrawals from qualified plans and IRAs upon the birth or adoption of a child, effective for distributions after 2019. We have a number of interpretative questions about how this provision works, especially the new rule that allows these distributions to be repaid as rollovers. But the immediate need for relief and guidance are:

- Confirmation that no special code will be added to the Form 1099-R with respect to such distributions, or that if such a code is added (or any other new reporting requirements are adopted), there will be adequate lead-time for providers to adapt to such requirements.

- For qualified plans, confirmation that offering an in-service withdrawal in the case of a birth or adoption is an optional plan feature.

- Guidance waiving any penalties and other adverse tax consequences in the case of a plan administrator that, until a reasonable period of time after guidance clarifying the treatment of qualified birth or adoption distributions is issued, treats such a distribution as an eligible rollover distribution for purposes of withholding, providing a 402(f) notice, and offering a direct rollover, even if the participant indicates that the distribution is being made in connection with a birth or adoption.

(6) In-service distributions after age 59½. Although not part of the SECURE Act, section 104 of Division M of the FCAA allows in-service distributions at age 59½ in the case of pension plans (including defined benefit plans and money purchase plans) and governmental 457(b) plans, effective for plan years beginning after 2019. Guidance should confirm that this provision is optional, not mandatory.

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The Committee appreciates your consideration of this request for guidance and relief. As mentioned above, we are still assessing the full scope of issues on which guidance and relief are needed as a result of the SECURE Act, but we believe the issues outlined above warrant immediate attention. We would like to meet with you to discuss these issues and other potential issues that may arise with respect to the SECURE Act's implementation. We will contact you to inquire about scheduling a meeting. In the meantime, if you have any questions please contact either of the undersigned at 202-347-2230 or the email addresses listed below.

Sincerely,

Bryan W. Keene
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Mark E. Griffin
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Counsel to the Committee of Annuity Insurers
www.annuity-insurers.org

Attachment (list of member companies)

cc: Stephen Tackney, IRS
Bill Evans, Treasury Department
Harlan Weller, Treasury Department

THE Committee OF Annuity Insurers
www.annuity-insurers.org

AIG Life & Retirement, Los Angeles, CA
Allianz Life Insurance Company, Minneapolis, MN
Allstate Financial, Northbrook, IL
Ameriprise Financial, Minneapolis, MN
Athene USA, Des Moines, IA
AXA Equitable Life Insurance Company, New York, NY
Brighthouse Financial, Inc., Charlotte, NC
Fidelity Investments Life Insurance Company, Boston, MA
Genworth Financial, Richmond, VA
Global Atlantic Financial Group, Southborough, MA
Great American Life Insurance Co., Cincinnati, OH
Guardian Insurance & Annuity Co., Inc., New York, NY
Jackson National Life Insurance Company, Lansing, MI
John Hancock Life Insurance Company, Boston, MA
Lincoln Financial Group, Fort Wayne, IN
Massachusetts Mutual Life Insurance Company, Springfield, MA
Metropolitan Life Insurance Company, New York, NY
National Life Group®, Montpelier, VT
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
Sammons Financial Group, Chicago, IL
Symetra Financial, Bellevue, WA
Talcott Resolution, Windsor, CT
TIAA, New York, NY
The Transamerica companies, Cedar Rapids, IA
USAA Life Insurance Company, San Antonio, TX

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.