

The COMMITTEE
— of —
ANNUITY
INSURERS

1455 Pennsylvania Avenue NW, Suite 1200, Washington, DC 20004
(202) 347-2230 | www.annuity-insurers.org

August 28, 2020

VIA ELECTRONIC MAIL

Jennifer V. Mitchell
Lead Tax Law Specialist
Tax Forms & Publications
Individual and Specialty Forms and Publications Branch
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Draft 2021 Form W-4P

Dear Ms. Mitchell:

On behalf of the Committee of Annuity Insurers (the “Committee”), we are responding to your email dated August 17, 2020, requesting comments on the draft 2021 Form W-4P that you attached (the “Draft Form”). We appreciate your outreach and the opportunity to comment. As explained in more detail below, we recommend the following with respect to the Draft Form:

- (1) Delay implementation until 2022 and avoid a mid-year rollout,
- (2) Restore the check box for electing out of withholding,
- (3) Permit withholding from periodic payments to be determined using a safe harbor withholding rate, and
- (4) Better facilitate additional, optional withholding by clarifying that a payee can identify an additional percentage to withhold.

The Committee is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to tax, securities, ERISA, and banking law issues affecting annuities. The Committee’s current 32 member companies represent over 80% of the annuity business in the United States. A list of the Committee’s member companies is attached.

(1) Delay implementation until 2022 and avoid a mid-year rollout

The Draft Form makes significant changes to the prior versions of Form W-4P. It will take significant time for payors to modify their administrative systems, practices, and procedures

to incorporate these changes.¹ Payors already are faced with the time-consuming task of updating their administrative systems, practices, and procedures for the considerable changes in the tax law made as part of the Setting Every Community Up for Retirement Enhancement Act of 2019, the Coronavirus Aid, Relief, and Economic Security Act of 2020, and related guidance. Moreover, due to the COVID-19 pandemic, many individuals responsible for implementing the changes for payors are unable to work regularly and are working remotely. All these factors will make it even more difficult to make all the changes necessary to implement the new Form W-4P.

In addition, implementing a new Form W-4P mid-year would be problematic. For example, payors would need to apply two variations of the withholding notices and elections for the calendar year in which the changes are introduced. Designated distributions made at the beginning of the year could be subject to different withholding notices and elections than those made later in the year. In this regard, withholding notices and elections with respect to periodic payments are commonly provided in accordance with regulations at the beginning of a calendar year.² Also, although withholding notices and elections with respect to nonperiodic distributions generally are provided in connection with each distribution, the notice and election with respect to nonperiodic distributions from an IRA that are payable on demand and scheduled to be made at least quarterly can be made once at the beginning of each the calendar year.³

For these reasons, any changes to the Form W-4P should apply only after 2021 and should apply only from the beginning of the calendar year.

(2) Restore the check box for electing out of withholding

Section 3405(a)(2) and (b)(2) provide payees with a statutory right to elect out of withholding for periodic payments and nonperiodic distributions, respectively. Current and prior versions of Form W-4P provide a prominently-identified box for the payee to check if they do not want federal income tax withheld. The Draft Form removes that check box. The instructions to the Draft Form direct a payee choosing not to have income tax withheld to write “No Withholding” on the Draft Form in the blank space at the end of section 5 and before the signature and date provided in section 6.

The check box for electing out of withholding should be restored in the final Form W-4P for a number of reasons. First, removing the check box is inconsistent with the regulations on withholding notice and election procedures, which include check boxes that are clearly and prominently displayed in sample language for electing not to have withholding apply.⁴ Second,

¹ In the preamble to the recently proposed regulations on default withholding from periodic payments under section 3405(a)(4), which references Form W-4P, the Treasury Department and IRS acknowledge that “payors and plan administrators” need “adequate time to program their systems to withhold the proper amount of income tax.” 85 Fed. Reg. 31,714, 31,716 (May 27, 2020). Unless otherwise indicated, all section references are to sections of the Internal Revenue Code.

² Treas. Reg. section 31.3405-1T, Q&A D-4.

³ Treas. Reg. section 31.3405-1T, Q&A F-27.

⁴ See Treas. Reg. section 35.3405-1T, Q&A D-22.

with respect to Forms W-4P that payors provide in electronic form, the payee may not be able to enter “No Withholding” on the form. Third, payors that provide Forms W-4P in electronic form or by using a substitute form likely will include a check box on Form W-4P indicating “No Withholding” or a similar statement, thereby creating a difference between the IRS form and the payors’ electronic and substitute forms.⁵

(3) Permit withholding to be determined using a safe harbor withholding rate

The Committee believes the Draft Form unnecessarily complicates federal income tax withholding from annuities and pensions. In particular, the Draft Form has been expanded significantly to include a considerable amount of information that currently is contained only in the worksheet accompanying the form regarding filing status, other income, dependent credits, and other income adjustments.

In situations where the Draft Form applies to nonperiodic distributions under section 3405(e)(3) or eligible rollover distributions under section 3405(c)(1), the additional information in the Draft Form is completely irrelevant because wage withholding does not apply to those types of distributions. In situations where the Draft Form applies to periodic payments under section 3405(e)(2), the added complexity and the additional work required of payees to complete the Draft Form could discourage them from withholding and instead encourage them to elect out of withholding altogether.

To address these concerns, the Committee believes the form can be significantly simplified while still facilitating and encouraging appropriate withholding. Specifically, we recommend:

- (a) providing a safe harbor under which withholding on periodic payments would be based on a percentage that the IRS and Treasury Department specify in the form, and
- (b) retaining the more complicated approach in the Draft Form as an alternative for individuals who wish to use it.

There are several options for structuring the safe harbor. One approach would be for the Draft Form to specify a flat percentage for all periodic payments that the IRS and Treasury Department determine is appropriate to ensure that in most cases the amount withheld would at least equal the amount that would be withheld if the more complicated approach were used. Another alternative, which we understand the American Council of Life Insurers (ACLI) has

⁵ A payor is permitted under IRS News Release IR 83-3, January 7, 1983, to use a substitute Form W-4P that includes certain information. See also Ann. 99-6, 1999-1 CB 352 (addressing the use of electronic forms).

recommended,⁶ would be to permit the payee to elect a withholding percentage that corresponds to the marginal tax rate anticipated to be associated with the annualized periodic payment.

The safe harbor approach would be taxpayer-friendly in that it would be simple to apply and much easier to understand than the approach reflected in the Draft Form. It also would be much easier and quicker for payors to implement and administer. Finally, it would provide a new and additional way to encourage withholding for payees who otherwise would not invest the time and effort to provide the additional information requested in the Draft Form and would instead elect out of withholding.

If a safe harbor approach is adopted, we think the more complicated approach in the Draft Form should be retained as an alternative for taxpayers wishing to use it. This would be consistent with the 2020 Form W-4, which permits, but does not require, retirement income to be reflected when determining the amounts to be withheld from actual wages earned from employment. In other words, Form W-4 does not require pension and annuity income to be reflected on the form, so Form W-4P should not require employment wages to be reflected. If our recommendation is adopted and the more complicated approach is retained in the Draft Form as an alternative, the additional information that was added to the Draft Form regarding other sources of wage income could be moved back to the worksheet accompanying the form.

(4) Better facilitate additional, optional withholding

A payee who receives a nonperiodic distribution may wish to have more than 10 percent withheld. Likewise, a payee who receives a periodic payment may wish to have more withheld than that determined under the safe harbor approach or using the worksheet. The Draft Form, like its predecessors, permits the payee to identify an additional amount to be withheld. This is helpful, but a more effective way to facilitate and encourage additional withholding would be to allow the payee to identify either an additional dollar amount *or an additional percentage* to be withheld. Percentages are easier to understand in relation to tax rates, and thus payees may find it easier to specify an additional percentage to be withheld than to undertake a calculation to determine the comparable dollar amount of additional withholding. For example, a payee in the 15 percent tax bracket who takes a nonperiodic distribution may wish to withhold at the statutory rate for such distributions of 10 percent, plus an additional 5 percent. If it is permissible for a payee to designate an additional dollar amount to withhold, which the current and past forms allow, we see no reason a payee should not be able to elect an additional percentage instead. After all, a percentage multiplied by the amount of a distribution always results in a dollar amount.

* * *

⁶ The Committee supports the recommendations in the ACLI's letter to you dated August 28, 2020, including the recommendation that the final Form W-4P incorporate a U.S. person certification, similar to Form W-9, so the W-4P could be used to document the individual's U.S. taxpayer status.

August 28, 2020

Page 5 of 5

We greatly appreciate your outreach and your consideration of our recommendations on the Draft Form. If you have any questions, or if we can be of any assistance in your consideration of the issues summarized above, please do not hesitate to contact either of the undersigned at 202-347-2230.

Counsel to the Committee of Annuity Insurers



Mark E. Griffin
Partner, Davis & Harman LLP
megriffin@davis-harman.com



Bryan W. Keene
Partner, Davis & Harman LLP
bwkeene@davis-harman.com

Attachment: List of Committee Members

cc: Pinkston Tuawana (IRS)
Maria J. Staggers (IRS)

The COMMITTEE
of
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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
Brighthouse Financial, Inc., Charlotte, NC
Equitable, New York, NY
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
Security Benefit Life Insurance Company, Topeka, KS
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.