

July 29, 2021

VIA ELECTRONIC MAIL

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Re: Requested changes to the early release draft Forms W-4P and W-4R and related worksheets and instructions

Dear Ms. Salotto,

We are writing on behalf of the Committee of Annuity Insurers (the “Committee”) to request certain changes to the early release drafts of IRS Forms W-4P and W-4R and related worksheets and instructions for the 2022 tax year.¹ We urge you to make the following changes, all of which are discussed in more detail below.

- (1) *Clarify the withholding rules for periodic payments* – The payer worksheet accompanying the draft Form W-4P should be modified to clarify the rules that apply with respect to periodic payments beginning prior to 2022 and to clearly explain how a payor is to complete the worksheet when treating a payee as a single individual with no withholding exemptions in or after 2022.
- (2) *Clarify the applicable withholding rate table for periodic payments* – The reference in the payer worksheet to the “Annual Percentage Mortality table” should be modified to refer instead to the “applicable annual Percentage Mortality table” in order to avoid uncertainty and confusion about which table should be used.
- (3) *Clarify the continued applicability of legacy Forms W-4P for nonperiodic distributions* – The General Instructions to the draft Form W-4R should be modified to clarify that if a withholding election is made on a “legacy” Form W-4P with respect to a nonperiodic distribution made prior to 2022, the payor may (but is not required to) continue to apply the election (and the withholding rate previously determined based on that election) to subsequent nonperiodic distributions from the same plan or arrangement, including those

¹ 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 31 member companies represent approximately 80% of the annuity business in the United States. A list of the Committee’s member companies is attached.

made in and after 2022, until a new withholding election is made for nonperiodic distributions.

- (4) *Correct an apparent typographical error in the Form W-4P instructions* – The Specific Instructions that accompany the draft Form W-4P should be modified to correct an apparent typographical error in the portion of the form relating to when a payee or their spouse has a job.
- (5) *Clarify additional situations in which a payee cannot elect reduced withholding* – The draft Forms W-4P and W-4R and the related instructions should be modified to (1) mention the situations to which the prohibition against electing out of withholding has been extended under Notice 87-7, 1987-1 C.B. 420, and Prop. Treas. Reg. section 31.3405(e)-1; and (2) provide that a payee may elect out of withholding with respect to periodic payments or nonperiodic distributions that are to be delivered outside of the United States and any of its possessions if the payee provides the certification required under section 3405(e)(13)(B) of the Internal Revenue Code (the “Code”).

These suggested changes, discussed further below, are in addition to the changes requested by the Committee in our letter to you dated February 4, 2021 (available [here](#)), and in the letter by the Committee and a number of other organizations to Mark Mazur dated April 26, 2021 (available [here](#)), on which you were copied. In particular, for the reasons explained in those letters, the Committee requests that the effective date of the new forms should be delayed until the 2023 tax year or later in order to provide at least one full calendar year for implementation, and penalty relief should be provided for inadvertent errors that payers may make after the established deadline if they act in good faith to comply by then.

We are aware that the Treasury Department and IRS continue to consider making changes to the draft forms. For instance, we understand that the Treasury Department and IRS may update the draft Form W-4R, as discussed below, to address how payers should handle legacy Forms W-4P from 2021 or earlier that related to nonperiodic distributions. In addition, we understand that the Treasury Department and IRS are considering whether to make changes to address concerns expressed about Step 2 in the draft Form W-4P, which requires payees to enter information on the form about their (or their spouse’s) income from jobs or other pension / annuity payouts. The requested delay is especially important to allow payers much needed time after the forms are finalized to implement the new withholding regimes for periodic payments and nonperiodic distributions that are reflected in the draft Forms W-4P and W-4R, respectively. (Please note that the following discussion is based on the draft forms, which would be effective beginning in calendar year 2022. Thus, if the requested delay is granted, references in the discussion below to calendar year 2022 should be read as referring instead to the calendar year for which the final forms become effective.)

(1) Clarify the default withholding rules for periodic payments

A Note in the General Instructions to the draft Form W-4P describes the following two default withholding rules that apply to periodic payments:

- *Periodic payments beginning in or after 2022.* The Note states that if a Form W-4P is not given to the payer (or certain other events occur), “then the payer will withhold from your payments as if your filing status is single with no adjustment in Steps 2 through 4”, i.e., assuming a filing status of a single individual with no withholding exemptions (the “Single Individual Default Withholding Rule”).
- *Periodic payments beginning before 2022.* The Note states: “For payments that began before 2022, your current election (or your default rate) remains in effect unless you submit a new Form W-4P.” For this purpose, the default rate of withholding is determined by treating the payee as a married individual claiming three withholding exemptions (the “Family Default Withholding Rule”).

These default rules are not clearly reflected in the payer worksheet for figuring withholding from periodic payments that accompanies the draft Form W-4P. Step 1 of the worksheet (in lines 1a-1c) determines an annual amount (the “Annual Payment Amount”) by multiplying the total payment for the current period by the number of payments periods in the year. This Annual Payment Amount is adjusted under either the provisions of Step 1 that apply if the payee HAS submitted a Form W-4P for 2022 or later (lines 1d-1i) or the provisions that apply if the payee HAS NOT submitted such a form (lines 1j-1l), as applicable, to determine the “Adjusted Annual Payment Amount” used to figure the tentative annual withholding amount. The following changes should be made to Step 1 of the payer worksheet.

- *Clarification is needed on periodic payments commencing prior to 2022.* The provisions of Step 1 fail to incorporate the withholding rules that apply to periodic payments beginning before 2022. These provisions should be modified to clearly reflect the rules that the current election (if a Form W-4P was submitted prior to 2022) or the Family Default Withholding Rule (if no Form W-4P was previously submitted) applies to periodic payments beginning before 2022 until a new Form W-4P is submitted. In addition, it should be clarified that it is not necessary to complete the payer worksheet in order to apply a pre-2022 withholding election or the Family Default Withholding Rule, and a payer may continue to apply after 2021 the withholding rate determined under the latest pre-2022 withholding election or, if none, the Family Default Withholding Rule.
- *Clarification is needed on applying the Single Individual Default Withholding Rule.* There is some uncertainty and confusion about which provisions of Step 1 should be completed when applying the Single Individual Default Withholding Rule in cases where periodic payments commence in or after 2022 and no Form W-4P is submitted.

One interpretation is that the payer should complete the provisions that apply as if the payee HAS NOT submitted a Form W-4P for 2022 (lines 1j-1l). Under this interpretation, no adjustment would be made to the Annual Payment Amount to arrive at the Adjusted Annual Payment Amount (i.e., both amounts would be the same).

An alternative interpretation is that the payer should apply the provisions in Step 1 that apply as if the payee actually HAS submitted a 2022 Form W-4P for 2022 (lines 1d-1i) by assuming a filing status of single with no withholding allowances, no other income, and no additional withholding. Under this interpretation, the Adjusted Annual Payment

Amount would be equal to the Annual Payment Amount reduced (but not below zero) by \$8,600 for a single individual (i.e., Adjusted Annual Payment Amount would be up to \$8,600 less than the Annual Payment Amount). The reason for the uncertainty and confusion is that some view this interpretation as consistent with the approach taken by the IRS in other contexts. For instance, for purposes of performing the default withholding calculation for a new employee who fails to furnish a Form W-4 (Employee's Withholding Certificate), page 2 of the 2021 Publication 15-T states that the employee will be treated as if they had checked the box for "Single or Married filing separately" in Step 1(c) and made no entries in Step 2 (regarding multiple jobs or spouse who works), Step 3 (regarding dependents), or Step 4 (regarding other adjustments) of Form W-4.

Depending on which provisions of Step 1 are used to apply the Single Individual Default Withholding Rule, the Adjusted Annual Payment Amount used to figure the tentative annual withholding amount could differ by as much as \$8,600. The payer worksheet should be modified to clarify which provisions of Step 1 should be used for this purpose. Absent clarification, payers could take different interpretations of which provisions to apply, and these interpretations could produce significantly different results.

(2) Clarify the applicable withholding rate table for periodic payments

Step 2 of the payer worksheet accompanying the draft Form W-4P is used to compute the tentative annual withholding amount from certain periodic payments. Line 2c of the worksheet refers to the rate from the applicable row in the "STANDARD Withholding Rate Schedules in the Annual Percentage Method table." This reference to an "Annual Percentage Mortality table" has created confusion on the part of some payers looking for a table of that precise name, which does not exist.

The applicable rates and tables are set forth in Publication 15-T (Federal Income Tax Withholding Methods). The cover page to the draft Form W-4P indicates that the payer worksheet will be included in some form in the 2022 Publication 15-T. Currently, the 2021 Publication 15-T does not include an "Annual Percentage Method table". However, the Publication does set forth STANDARD Withholding Rate Schedules in the "2021 Percentage Method Tables" for automated payroll systems and manual payroll systems assuming various different payroll periods.

To address this confusion about the proper withholding table to use for this purpose, the reference to the "Annual Percentage Mortality table" in line 2c of Step 2 of the payer worksheet should be modified to refer instead to the "applicable annual Percentage Mortality table".

(3) Clarify the continued application of legacy Forms W-4P for nonperiodic distributions

Page 2 of the draft Form W-4R includes a Note stating that the payer must withhold 10% of a nonperiodic distribution, and in certain circumstances may not honor requests that a lower (or no) amount be withheld, including where the payee does not give a "Form W-4R" to the payer. This statement fails to mention that if the payee does not submit a Form W-4R but has submitted a Form W-4P with respect to a nonperiodic distribution made from the same arrangement prior to 2022, the withholding election made on such Form W-4P may apply to subsequent nonperiodic distributions from the arrangement, including those made in and after 2022 until a Form W-4R is submitted.

In this regard, Treas. Reg. section 35.3405-1T, Q&A D-32, states that “any election not to have withholding apply to a nonperiodic distribution *may* apply to any subsequent payment or distribution from or under the same plan or arrangement” (emphasis added). Hence, an election made prior to 2022 on a Form W-4P to have an amount greater than 10% withheld from a nonperiodic distribution may apply to any subsequent nonperiodic distribution from or under the same plan or arrangement until a new withholding election is later made for a nonperiodic distribution. Similarly, an election made prior to 2022 on a Form W-4P not to have withholding apply to a nonperiodic distribution may apply to any subsequent nonperiodic distribution from or under the same plan or arrangement until a new withholding election is later made for a nonperiodic distribution.

In accordance with this rule in the regulations, the General Instructions to the draft Form W-4R should be modified to clarify that if a withholding election is made on a Form W-4P with respect to a nonperiodic distribution made prior to 2022, the payer may (but is not required to) continue to apply the election (and the withholding rate previously determined based on that election) to subsequent nonperiodic distributions from the same plan or arrangement, including those made in and after 2022, until a new withholding election is made for nonperiodic distributions. We understand that the Treasury Department and IRS are considering making such a modification.

(4) Correct an apparent typographical error in the Form W-4P instructions

On the draft Form W-4P, the flush language at the end of Step 2 includes a statement that if the payee or their spouse has a job, “do not complete” Steps 3-4(b) of the form. However, the Specific Instructions to Step 2 that accompany the draft Form W-4P include a statement of caution directing the payee to “complete” steps 3-4(b) if they or their spouse have a job. This statement of caution in the Specific Instructions should be modified to state that in such cases, the payee should “not complete” these steps.

(5) Clarify additional situations in which a payee cannot elect out of withholding

The draft Form W-4R and the General Instructions accompanying the form each include a statement that a payee cannot choose to withhold less than 10% on nonperiodic distributions delivered outside the United States and its possessions. Similarly, the General Instructions accompanying the draft Form W-4P include a statement that a payee who is a United States citizen or a resident alien is not permitted to elect out of federal income tax withholding on periodic payments to be delivered outside the United States and its possessions. These statements reflect generally the requirement in Code section 3405(e)(13) that a payee may not elect out of withholding in these circumstances unless the payee certifies to the payer (in such manner as the Secretary may prescribe) that the payee is not (1) a United States citizen or resident alien of the United States, or (2) an expatriate to whom Code section 877 applies.

The draft forms and related instructions do not mention this rule permitting a payee who provides such a certification to elect reduced withholding (including to elect out of withholding). In addition, the draft forms and related instructions make no mention of other rules under Code section 3405(e)(13) in which a payee is prohibited from electing reduced withholding. In particular, the prohibition against electing out of withholding under Code section 3405(e)(13) has been extended under Notice 87-7 to payees who have not provided the payer with a United States residence. This prohibition also was extended in Prop. Treas. Reg. section 31.3405(e)-1 to distributions (1) sent to a

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financial institution or other person located outside the United States and its possessions, (2) sent to a United States financial institution or person with instructions to forward the distribution to a financial institution or person outside of the United States and its possessions, and (3) sent pursuant to payment instructions that reference an Automated Clearing House Transaction, International Bank Account Number, or Society for Worldwide Interbank Financial Telecommunication Business Identifier Code that is linked to a financial institution or person outside the United States and its possessions.

The draft Forms W-4P and W-4R and related instructions should be modified to reflect these additional rules in order to inform payees (1) of the additional situations in which reduced withholding is not permitted, and (2) of the ability to elect reduced withholding by providing the required certification. Absent this additional disclosure, payees may be unaware of this important information and be unpleasantly, and unnecessarily, surprised to learn that their distributions are subject to mandatory withholding. *This requested change is especially important in light of the statements in the cover pages to the draft forms indicating that electronic systems set up as a substitute to the paper forms must exactly replicate the relevant text from the face of the paper Form W-4R, and must exactly replicate the relevant text and instructions from the face of the paper Form W-4P.* Thus, payers are not able to modify the forms and such instructions as necessary to adequately provide the additional disclosure.

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Thank you for considering these suggested changes. Please let us know if you have any question or if we can be of any assistance in your consideration of the draft Forms W-4P and W-4R.

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Attachment (List of Committee Members)

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
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
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
Thrivent, Minneapolis, MN
TIAA, New York, NY
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 approximately 80% of the annuity business in the United States.