

The COMMITTEE  
of  
ANNUITY  
INSURERS

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June 9, 2023

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Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2023-36) Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Recommendations for 2023-24 Priority Guidance Plan

To whom it may concern:

We are writing on behalf of the Committee of Annuity Insurers (the “Committee”) in response to the invitation in Notice 2023-36<sup>1</sup> for public recommendations of items to include on the 2023-2024 Priority Guidance Plan. 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 approximately 80% of the annuity business in the United States. A list of the Committee’s member companies is attached.

Annuities are crucial to the retirement security of millions of Americans. Other than Social Security and defined benefit plans, annuities are the only means that Americans have to guarantee they will not outlive their retirement income. Our guidance requests relate to recent congressional enactments that require additional interpretive guidance from the Treasury Department (“Treasury”) and the Internal Revenue Service (“IRS”). On December 29, 2022, the SECURE 2.0 Act of 2022 (“SECURE 2.0”) became law, and many of its provisions became effective immediately, a few days later, or will become effective in 2024.<sup>2</sup> Earlier in 2022, Treasury and the IRS also published proposed regulations under Internal Revenue Code (“Code”) section 401(a)(9), regarding required minimum distributions (“RMDs”) from qualified retirement plans and IRAs (the “proposed RMD regulations”)<sup>3</sup> to reflect the changes made by the

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<sup>1</sup> 2023-21 I.R.B. 855.

<sup>2</sup> SECURE 2.0 is Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328.

<sup>3</sup> 87 Fed. Reg. 10504 (Feb. 24, 2022). Except where the context requires otherwise, our references to “IRAs” include individual retirement annuities under Code section 408(b) as well as individual retirement accounts under Code section 408(a).

SECURE Act of 2019 (“SECURE 1.0”).<sup>4</sup> Both of these recent developments have a significant effect on annuity contracts, especially contracts that are issued as IRAs or to qualified plans. As a result, the Committee respectfully recommends that the 2023-2024 Priority Guidance Plan place the highest of priorities on (1) guidance relating to the SECURE 2.0 Act, (2) amending and re-proposing provisions of the proposed RMD regulations that require new interpretive guidance relating to SECURE 2.0 or SECURE 1.0, and (3) finalizing the remaining portions of the proposed RMD regulations.

To this end, the Committee has submitted several comment letters requesting specific guidance from Treasury and IRS on these issues. On January 31, 2023, the Committee submitted a letter requesting prompt guidance and relief regarding SECURE 2.0 (“Initial 2.0 Guidance Letter”). In the next few weeks, the Committee will be supplementing this letter with additional requests for guidance under SECURE 2.0 (“Supplemental 2.0 Guidance Letter”). In addition, on May 25, 2022, the Committee submitted an extensive comment letter on the proposed RMD regulations (“RMD Comment Letter”). The Committee considers all of the recommendations in these letters as high priorities for the Priority Guidance Plan, and thus we urge Treasury and IRS to prioritize them as well. The remainder of this letter focuses on selected items that we believe are particularly urgent.<sup>5</sup>

## **1. Update IRS forms and related instructions**

SECURE 2.0 adds new exceptions to the 10% additional tax of Code section 72(t) for certain types of distributions and, in some cases, permits those distributions to be repaid. The following provisions of SECURE 2.0 are effective now: section 308 (firefighters), section 326 (terminal illness) and section 331 (disaster areas). Other similar provisions in SECURE 2.0 are effective later: section 115 (emergency expenses), section 127 (pension-linked emergency savings accounts), and section 314 (domestic abuse victims). In addition, section 601 of SECURE 2.0 provides that SEP and SIMPLE IRAs may be designated as Roth IRAs, and this provision is effective now.

**Guidance request:** We request that Treasury and IRS update the relevant IRS forms and related instructions to reflect these additional distribution exceptions and the ability for an individual to repay these distributions.<sup>6</sup> In particular, the Committee requests that the new distribution exceptions for individuals under age 59½ be reported in Box 7 of Form 1099-R

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<sup>4</sup> The Setting Every Community Up for Retirement Enhancement (“SECURE”) Act, Pub. L. No. 116-94, Div. O, 133 Stat. 3137 (2019).

<sup>5</sup> The Committee’s Initial 2.0 Guidance Letter can be accessed at <https://www.annuity-insurers.org/wp-content/uploads/2023/02/CAI-letter-re-SECURE-2.0-Act-implementation.pdf>, and the Committee’s RMD Comment Letter can be accessed at <https://www.annuity-insurers.org/wp-content/uploads/2022/05/CAI-comments-RMD-regs-5.25.22.pdf>.

<sup>6</sup> The Committee believes that the following forms are affected by the SECURE 2.0 changes: Form 1099-R (*Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc*) Form 5498 (*IRA Contribution Information*), Form 8606 (*Nondeductible IRAs*), and Form 5329 (*Additional Taxes on Qualified Plans (Including IRAs) and Other Tax-Favored Accounts*).

using Code 1 (Early Distribution – No Known Exception). We note that this is the same distribution code that is used to report other types of distributions where an exception to the 10% additional tax might apply, e.g., qualified birth or adoption distributions. In addition, updates to these IRS forms and instructions are needed to allow for distributions from and contributions to SEP and SIMPLE IRAs that are designated as Roth IRAs.

All of these updates are described in more detail in the Committee’s Initial 2.0 Guidance Letter or will be described in the Supplemental 2.0 Guidance Letter. Prompt updates to these forms are needed, especially for the provisions that are effective in 2023.

## **2. Publish model forms and model language**

Many member companies of the Committee rely on listings of required modifications (LRMs) and/or model forms to establish traditional, Roth, and SIMPLE IRAs. Employers likewise use the model forms to establish SEP and SIMPLE IRA plans. The existing LRMs and model forms generally do not reflect the recent changes made by SECURE 1.0 and SECURE 2.0. In addition, in Announcement 2022-6 the IRS suspended its prototype approval program for IRAs indefinitely. The Announcement states that the IRS intends to issue revised LRMs and model forms, but does not specify a timeline.

***Guidance request:*** The Committee requests prompt publication of updated and/or new model forms and LRMs, reflecting the relevant SECURE 1.0 and SECURE 2.0 changes. More information about the types of updates and new forms that are needed can be found in the Committee’s 2.0 Guidance Letter. The Committee also requests that the IRA prototype approval program be restored. We recognize that Treasury and IRS may feel it is necessary or appropriate to finalize other related guidance (such as the RMD regulations) before updating the model forms and LRMs, especially since SECURE 2.0 extended the deadlines for amending IRA and plan documents for SECURE 1.0 and SECURE 2.0 until 2025 (or later in some cases). Despite this extension of the amendment deadlines, some state insurance regulators have been asking Committee members to update their IRA annuity endorsements to reflect SECURE 1.0 and SECURE 2.0 now. In addition, the continued use of outdated model forms and language could cause significant confusion among IRA owners and plan participants. To address these issues, the Committee believes that Treasury and IRS could and should publish updated model forms and LRMs that are drafted broadly enough to satisfy the new statutory requirements while also obviating the need for further short-term revisions to reflect related guidance that may still be pending.

## **3. Issue guidance consistent with the “Four Corners Letter”**

A number of the issues on which the Committee requested guidance in the Initial 2.0 Guidance Letter related to what appeared to be drafting errors in SECURE 2.0, including errors relating to the required beginning date age, Roth IRA contribution limits, and catch-up contributions to employer plans. On May 23, 2023, the Chair and Ranking Members of the House Ways and Means and Senate Finance Committees sent a letter to Treasury and the IRS regarding congressional intent behind certain of the provisions affected by the SECURE 2.0

drafting errors (the “Four Corners Letter”). In our view, the Four Corners Letter provides strong support for Treasury and the IRS to promptly issue guidance that is consistent with the congressional intent expressed in the letter. In that regard, we note that SECURE 2.0 had broad bipartisan support in both Houses of Congress, and there is no reasonable doubt that the Four Corners Letter accurately describes congressional intent for these provisions. Thus, Treasury and IRS can confidently issue guidance on these issues now, even though Congress also may act in the future to clarify the statutory language.

***Guidance request:*** The Committee requests that Treasury and IRS publish guidance clarifying the following provisions, consistently with the Four Corners Letter:

- **Required beginning date age.** Section 107 of SECURE 2.0 changed the age that is used to determine when required minimum distributions must start to an employee or IRA owner. Under the statute, it is not clear whether age 73 or age 75 is the “applicable age” for someone born in 1959. The Four Corners Letter states that Congress intended to increase the required minimum distribution age to 75 for individuals who turn 73 after 2032 (not for individuals who turn 74 after 2032). In other words, age 73 is the “applicable age” for individuals born in 1959. Given that this is the more conservative interpretation of the statute, and is consistent with congressional intent, the Committee recommends that Treasury and IRS promptly publish guidance confirming that age 73 is the applicable age for individuals born in 1959. Prompt guidance is needed so that Committee members can use this age when pricing their products and calculating the actuarial present value under the RMD rules as required by Treas. Reg. § 1.401(a)(9)-6, Q&A-12(b) and Prop. Treas. Reg. § 1.401(a)(9)-6(m)(2). To help make the guidance more understandable, we also request that it refer to the years in which an employee was born, rather than (or in addition to) the years in which they attain various ages.
- **Roth IRA contribution limits.** Section 601 of SECURE 2.0 provides that SEP and SIMPLE IRAs may be designated as Roth IRAs. The statute could be read as providing that contributions (whether Roth or non-Roth) to a SIMPLE or SEP IRA will reduce the amount that the individual can contribute to their own, separate Roth IRA for the year. The Four Corners Letter states that Congress did not intend such a result, and instead intended that “no contributions to a SIMPLE IRA or SEP plan (including Roth contributions) be taken into account for purposes of the otherwise applicable Roth IRA contribution limit.” To eliminate uncertainty on this issue, and to encourage individuals to contribute to their Roth IRAs despite this uncertainty, the Committee asks Treasury and IRS to announce that, pending any potential legislative amendment, they will enforce the law in accordance with the congressional intent expressed in the Four Corners Letter.
- **Catch-up contributions for employer plans.** Section 603 of SECURE 2.0 generally requires that, starting in 2024, a 401(k), 403(b), or governmental 457(b) plan that permits participants to make catch-up contributions must require such contributions to be made as designated Roth contributions, if the participant’s wages exceed \$145,000. A conforming change in the statute could be read as eliminating *all* catch-up contributions to certain plans, whether pre-tax or Roth, starting in 2024. The Four Corners Letter states that

“Congress did not intend to disallow catch-up contributions nor to modify how the catch-up contribution rules apply to employees who participate in plans of unrelated employers.” Until Congress can enact the necessary technical corrections to section 603 of SECURE 2.0, we request guidance stating that Treasury and IRS will apply the law as though the anticipated technical corrections have been made.

#### **4. Update the Employee Plans Compliance Resolution System (EPCRS)**

Section 305 of SECURE 2.0 generally provides that any “eligible inadvertent failure” by a plan to comply with the applicable rules under certain sections of the Code may be self-corrected under EPCRS without a submission to the IRS. It also directs Treasury to expand EPCRS to allow IRA issuers to address eligible inadvertent failures with respect to an IRA. This provision is generally effective as of December 29, 2022.

On May 25, 2023, the IRS released Notice 2023-43, which provides interim guidance on the circumstances in which plan sponsors may self-correct certain errors before the IRS formally updates EPCRS, including clarification that errors occurring before December 29, 2022, may be self-corrected. With respect to IRAs, however, the Notice expressly provides that IRA issuers may *not* use EPCRS to correct (or self-correct) IRA errors until the IRS formally amends EPCRS to address IRAs.

***Guidance request:*** The Committee recommends that Treasury and IRS promptly revise EPCRS to expand the program to IRAs. The Committee notes that section 305 of SECURE 2.0, which requires these changes, is effective as of December 29, 2022, and thus the EPCRS program should be available for IRAs at least as of that date. The Committee will also address other areas that need guidance under the EPCRS program in our forthcoming Supplemental 2.0 Guidance Letter.

#### **5. Finalize and re-propose the RMD regulations, as applicable**

As noted above, on February 24, 2022, Treasury and IRS published proposed RMD regulations under Code section 401(a)(9) to reflect changes that were made by SECURE 1.0.

***Guidance request:*** The Committee requests that the proposed RMD regulations be finalized where possible, taking into account the comments and requests the Committee made in its RMD Comment Letter, and that the remaining portions of the RMD regulations be re-proposed for further public comment. In that regard, we note that our RMD Comment Letter requests that Treasury and IRS re-propose the portions of the RMD regulations relating to (1) the so-called “10-year rule,” in order to unwind the interpretation that in some cases distributions must continue throughout the 10-year period, and (2) the treatment of annuity payments under -6 of the proposed regulations, in order to give taxpayers an opportunity to comment on any changes made to the proposed regulations since they were first published. Likewise, with respect to SECURE 2.0, portions of the proposed regulations should be re-proposed in order to provide adequate notice and an opportunity for public comment on Treasury and IRS interpretations of the new statute. For example, new proposed regulations should be issued on the interaction

between the rule in section 327 of SECURE 2.0 that permits surviving spouses to use the uniform lifetime table (ULT) for post-death RMDs and the rule in the proposed RMD regulations that permits a surviving spouse to elect to continue an IRA as their own. The Committee will address this issue and other issues in more detail in our forthcoming Supplemental 2.0 Guidance Letter.

In finalizing the proposed RMD regulations, the Committee further requests that Treasury and IRS issue guidance that (1) delays the effective date of any new RMD regulations until the first calendar year beginning at least nine months after final regulations are published, in order to give taxpayers and service providers adequate time to implement the regulations, and (2) until that date, provides taxpayers relief for their reasonable, good faith interpretations of the underlying statutory rules.

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We appreciate your consideration of our request for guidance on these issues. If you have any questions or if we can be of any assistance, please contact either of the undersigned.

Sincerely,



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Attachment: List of member companies

The COMMITTEE  
of  
ANNUITY  
INSURERS

Allianz Life Insurance Company, Minneapolis, MN  
Ameriprise Financial, Minneapolis, MN  
Athene USA, Des Moines, IA  
Brighthouse Financial, Inc., Charlotte, NC  
Corebridge Financial, Houston, TX  
CUNA Mutual, Madison, WI  
Equitable, New York, NY  
Fidelity & Guaranty Life Insurance Company, Des Moines, Iowa  
Fidelity Investments Life Insurance Company, Boston, MA  
Fortitude Re, Jersey City, NJ  
Genworth Financial, Richmond, VA  
Global Atlantic Financial Group, Southborough, MA  
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.