

The COMMITTEE  
— of —  
ANNUITY  
INSURERS

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October 7, 2024

*Submitted electronically at [www.regulations.gov](http://www.regulations.gov)*

Internal Revenue Service  
Attn: CC:PA:LPD:PR (Notice 2024-55), Room 5203  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Re: Committee of Annuity Insurers' Comments on Notice 2024-55

To Whom it May Concern:

We are writing on behalf of the Committee of Annuity Insurers (the “Committee”)<sup>1</sup> to comment on Notice 2024-55 (the “Notice”).<sup>2</sup> The Notice provides guidance on sections 115 and 314 of SECURE 2.0, which added exceptions to the 10% additional tax of Code section 72(t) for certain distributions made for emergency personal expenses and to domestic abuse victims, respectively.<sup>3</sup> The Notice requests comments on this guidance and certain other topics, including on all aspects of section 72(t) in connection with anticipated new regulations under that section.

The Committee thanks the Treasury Department and IRS for issuing the Notice, and we appreciate this opportunity to comment. Our comments relate to (1) the permitted distribution and repayment of certain amounts for which SECURE 1.0 and SECURE 2.0 added exceptions to the 10% additional tax, and (2) changes that SECURE 2.0 made to the “substantially equal periodic payment” exception to the 10% additional tax (the “SEPP Exception”).<sup>4</sup> As noted below, a number of our comments reiterate guidance requests that the Committee previously sent to Treasury and IRS.

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<sup>1</sup> 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 other regulatory 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.

<sup>2</sup> 2024-28 I.R.B. 31 (June 21, 2024).

<sup>3</sup> Our references to “SECURE 2.0” mean the SECURE 2.0 Act of 2022, Division T of the Consolidated Appropriations Act, 2023, Pub. L. No. 117-328. Our references to “Code” mean the Internal Revenue Code of 1986, as amended, and unless otherwise indicated our references to “sections” mean sections of the Code.

<sup>4</sup> Our references to “SECURE 1.0” mean the Setting Every Community Up for Retirement Enhancement Act of 2019, Division O of the Further Consolidated Appropriations Act, 2020, Pub. L. No. 116-94.

## **I. Early Distributions and Repayments**

### ***Background***

Code section 72(t)(1) imposes a 10% additional tax on distributions from a qualified plan or IRA before the taxpayer attains age 59½, unless an exception applies. Section 113 of SECURE 1.0 added an exception for qualified birth or adoption distributions. SECURE 2.0 modified this exception and added and amended other exceptions for emergency personal expense distributions (Section 115), pension-linked emergency savings account distributions (Section 127), certain distributions to firefighters (Section 308), domestic abuse victim distributions (Section 314), terminally ill individual distributions (Section 326), qualified first-time homebuyer distributions (Section 331), and qualified disaster recovery distributions (Section 331).

All of the foregoing types of distributions generally are reported on Form 1099-R as taxable for the year in which they are made. However, to the extent that such a distribution is permitted to be repaid and is, in fact, repaid at any time within the 3-year period beginning on the day after the distribution was received, the amount repaid (the "Repayment Amount") is treated as having been transferred to the recipient IRA or plan in a tax-free direct trustee-to-trustee transfer within 60 days of the transfer. Amounts repaid to an IRA are reported on a Form 5498 (*IRA Contribution Information*) using a repayment code in box 14b indicating the type of distribution that is being repaid.

### ***Comments***

#### **1. Self-certification of distributions and repayments.**

- **No exceptions to self-certification for distributions.** The Notice invites comments on whether regulations should provide exceptions to the rule that a plan administrator may rely on an employee's certification relating to emergency personal expense distributions and procedures to address cases of employee misrepresentation. The Committee urges Treasury and IRS not to create any exceptions to the use of self-certification for such distributions or for any of the other types of distributions that SECURE 1.0 and 2.0 added as exceptions to the 10% additional tax. These types of distributions relate generally to circumstances that are personal to the taxpayer and which plan providers and IRA issuers will not be in a position to independently verify. Furthermore, in the case of an IRA, an owner or beneficiary generally can take a distribution at any time, in any amount, and for any reason. There are no statutory withdrawal restrictions for IRAs that an issuer must administer, and an issuer generally may not refuse the amount or timing of an IRA distribution.
- **Reliance on self-certification of repayments.** The Notice requests comments on procedures for determining whether a repayment meets the applicable requirements under Code section 72(t)(2). The anticipated regulations and/or other guidance should clarify that in the case of a distribution that can be repaid, IRA issuers and plan administrators

can rely on an individual's certification that any requested repayment meets the requirements under Code section 72(t)(2), is made within the applicable 3-year time period, and does not exceed the amount of the distribution with respect to which a repayment is being made, even if the repayment is made to the same arrangement from which the distribution was taken. This approach is consistent with the self-certification permitted for the repayment of Hurricane Katrina-related distributions and Coronavirus-related distributions.<sup>5</sup>

2. Domestic abuse victim distributions under defined contribution plans offering life annuities. Under Code section 72(t)(2)(K)(vi)(I), "a plan to which sections 401(a)(11) and 417 apply" is not permitted to offer domestic abuse victim distributions. In this regard, Q&A B-3 of the Notice states that, in general, "the spousal consent requirements of sections 401(a)(11) and 417 apply to certain qualified retirement plans, including defined benefit plans, money purchase pension plans, and defined contribution plans that ... *provide benefits in the form of a life annuity*" (emphasis added). This statement suggests that *any* defined contribution ("DC") plan that merely offers life annuity benefits cannot offer domestic abuse victim distributions, even to a participant who has not actually elected a life annuity.

- Clarification that domestic abuse victim distributions are not permitted for a DC plan only if the participant elects a life annuity. The Committee requests guidance clarifying that DC plans other than money purchase plans are not prevented from offering domestic abuse victim distributions merely because such plans offer an annuity form of distribution, *except with respect to a participant who has actually elected a payment of benefits in the form of a life annuity*. This clarification should explain that, for purposes of section 72(t)(2)(K)(vi)(I), the spousal consent requirements of sections 401(a)(11) and 417 apply only to the extent that a participant actually elects to receive benefits in the form of a life annuity. Put differently, a participant should not be prohibited from receiving a domestic abuse victim distribution from such a plan merely because the plan offers an annuity form of benefit that the participant has not actually elected.

The requested clarification is supported by Code section 401(a)(11)(B) and Treasury Regulation section 1.401(a)-20, Q&A-3, which are cited in Q&A B-3 of the Notice. For example, Q&A-3(a)(2) of Treasury Regulation section 1.401(a)-20 explains that Code sections 401(a)(11) and 417 will apply to a DC plan only if, among other conditions, the participant elects "the payment of benefits in the form of a life annuity" (emphasis added).<sup>6</sup> Absent the requested clarification, Q&A B-3 of the Notice could be read as precluding participants from receiving domestic abuse victim distributions even in cases where spousal consent is not required, and precluding profit sharing plans from offering this helpful domestic abuse victim distribution merely because the plan offers a life annuity form of distribution.

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<sup>5</sup> See section 3.B of Notice 2005-92, 2005-2 C.B. 1156 (providing Hurricane Katrina-related relief) and section 3.B of Notice 2020-50, 2020-28 I.R.B. 35 (providing Coronavirus-related relief).

<sup>6</sup> See also Code section 401(a)(11)(B)(iii)(II).

- Need for interim good-faith relief. If Treasury and IRS disagree with the interpretation described above, the agencies should provide reasonable, good-faith relief for plans that apply the foregoing interpretation in the absence of guidance.
3. Claiming tax-free treatment of a Repayment Amount. It is unclear whether a taxpayer must claim tax-free treatment of a Repayment Amount by amending their tax return for the taxable year in which the distribution was made and reported as taxable, claiming a deduction on their tax return for the taxable year in which the repayment was made, or taking other steps. Guidance should clarify how a taxpayer can claim tax-free treatment for a Repayment Amount.

## **II. The SEPP Exceptions to the 10 Percent Additional Tax**

### ***Background***

Section 323 of SECURE 2.0 provides that annuity payments can be used to satisfy the exceptions to the 10% additional tax in Code sections 72(q)(2)(D) and 72(t)(2)(A)(iv) for distributions that are part of a series of substantially equal periodic payments (“SEPPs”) made at least annually for a permitted period (namely, the taxpayer’s life or life expectancy, or the joint lives or joint life expectancy of the taxpayer and their designated beneficiary). This section of SECURE 2.0 also provides that annuity payments made for a permitted period are deemed to satisfy this “SEPP Exception” if they satisfy the required minimum distribution (“RMD”) rules that apply to annuity payments under Code section 401(a)(9) or would satisfy those rules if they applied (the “Annuity Rule”). These provisions apply to distributions commencing on or after December 29, 2022, and, according to the statute, the provision should not be construed as creating any inference regarding prior law.

In addition, this section of SECURE 2.0 clarifies that the tax-free rollover, transfer, or exchange of all or part of a taxpayer’s interest under an arrangement from which SEPPs are being made will not be treated as a modification of the stream of payments that triggers a recapture of the additional tax under Code section 72(q)(3) or 72(t)(4) (the “Recapture Tax”), if the combined distributions from both arrangements would continue to satisfy the SEPP Exception if they had been made from only the transferor arrangement (the “Transfer Rule”). The Committee requested guidance on the SEPP Exception in our July 21, 2023 letter to Treasury and IRS on select SECURE 2.0 issues.<sup>7</sup>

### ***Comments***

1. One-time switch to annuity payments. For the reasons explained in the Committee’s July 21, 2023 letter, guidance should clarify that in cases where SEPPs are being made as

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<sup>7</sup> See the Committee’s July 21, 2023 letter to Treasury and IRS requesting guidance and relief on certain issues under SECURE 2.0, available at <https://www.annuity-insurers.org/wp-content/uploads/2023/07/CAI-SECURE-2.0-guidance-request-7.21.23.pdf>.

withdrawals from a non-annuitized account using one of the safe harbor methods that apply to such accounts under IRS guidance,<sup>8</sup> a one-time switch to an RMD-compliant *annuity stream* over a permitted period will not be treated as a modification of the SEPPs for purposes of the Recapture Tax. Permitting a one-time switch to an RMD-compliant annuity stream would be consistent with Notice 2022-6 and related guidance, which permit a one-time change from the “fixed amortization method” or “fixed annuitization method” to the “required minimum distribution method” without triggering the Recapture Tax. Such a switch should be permitted even if the SEPP withdrawals commenced before December 29, 2022, especially considering that before SECURE 2.0 the IRS had taken the position that its safe harbor guidance on SEPPs did not apply to annuity payments.<sup>9</sup>

2. Partial annuitization to distribute account-based SEPPs. For the reasons explained in the Committee’s July 21, 2023 letter, guidance should be issued clarifying that an annuity may be purchased to distribute SEPPs that are calculated with respect to a non-annuitized account balance. For example, an individual should be permitted to calculate an annual SEPP amount with respect to their entire non-annuitized account balance using the fixed annuitization method or fixed amortization method in Notice 2022-6, then use part or all of the account to fund a fixed annuity payout to distribute that annual amount. In that regard:
  - Such an annuity payout could occur as a partial annuitization under an existing deferred annuity contract, or the individual could purchase a new single premium immediate annuity (“SPIA”) within an existing account or outside of that account *via* a tax-free rollover, transfer, or exchange of all or a portion of their existing account balance.
  - If a SPIA is purchased in a rollover, transfer, or exchange, the transaction would be covered by the Transfer Rule.
  - This requirement should be satisfied if the annual payments under the SPIA equal the annual distribution amount that was originally calculated for the account using one of the fixed calculation methods in Notice 2022-6. For this purpose, the SPIA payments would not need to be payable for the individual’s entire life or life expectancy (or joint life/life expectancy), as long as (1) the payments continue at least until the Recapture Tax will no longer apply, and (2) the annual payment equals the amount determined under the fixed calculation method for the account, which *is* based on life expectancy.
3. Annuity payments commencing prior to the effective date. For the reasons explained in the Committee’s July 21, 2023 letter, guidance should clarify that the treatment of annuity payments as SEPPs can apply to annuity payments that commenced prior to December 29, 2022, provided that the payments are calculated with respect to a permitted period and satisfy the RMD rules (or would satisfy those rules if they applied). This treatment is consistent

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<sup>8</sup> Notice 2022-6, 2022-5 I.R.B. 460, *modifying and superseding* Rev. Rul. 2002-62, 2002-2 C.B. 710, *modifying* Q&A-12 of Notice 89-25, 1989-1 C.B. 662; Notice 2004-15, 2004-1 C.B. 526.

<sup>9</sup> PLR 201120011 (Feb. 11, 2011).

with the statement in SECURE 2.0 that the changes to the SEPP rules shall not be construed as creating an inference with respect to prior law. In that regard, prior IRS guidance provided that SEPPs could be calculated “using a method that would be acceptable for purposes of calculating the minimum distribution required under section 401(a)(9),” without limiting that method to withdrawals from a non-annuitized account.<sup>10</sup>

4. Application of the Annuity Rule to nonqualified annuity contracts. Page 15 of the 2024 Instructions for Form 1099-R and 5498 explains that the Annuity Rule applies for purposes of satisfying the SEPP Exception under Code section 72(t)(2)(A)(iv) for IRAs and qualified retirement plans. However, the Instructions fail to include a similar statement about the SEPP Exception under Code section 72(q)(2)(D) for *nonqualified* annuity contracts. The Instructions should include a statement clarifying that the Annuity Rule applies for such purposes as well.
5. Application of the Transfer Rule to SEPPs. The discussion of the SEPP Exception on page 15 of the 2024 Instructions for Form 1099-R and 5498 includes an explanation and example of the Recapture Tax under Code sections 72(q)(3) and 72(t)(4). However, this discussion fails to mention the Transfer Rule under those sections. The Instructions should include a discussion of the Transfer Rule as applicable under Code sections 72(q)(3) and 72(t)(4).

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The Committee appreciates your consideration of our comments. If you would find it helpful to discuss any of the issues described in this letter, the Committee’s prior letters, or any other issues relating to SECURE 2.0, we would be pleased to schedule a call with you and your colleagues. You can reach either of us at 202-347-2230 or the email addresses listed below.

Sincerely,



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Attachment: List of member companies

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<sup>10</sup> See Q&A-12 of Notice 89-25, 1989-1 C.B. 662 (prior to modification by Rev. Rul. 2002-62).

The COMMITTEE  
— of —  
ANNUITY  
INSURERS

Allianz Life Insurance Company, Minneapolis, MN  
Ameriprise Financial, Minneapolis, MN  
Athene USA, Des Moines, IA  
AuguStar Life Insurance Company, Cincinnati, OH  
Brighthouse Financial, Inc., Charlotte, NC  
Corebridge Financial, Houston, TX  
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  
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  
TruStage, Madison, WI  
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.