The COMMITTEE of ANNUITY INSURERS

ACLI Financial Security for Life

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VIA ELECTRONIC MAIL

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Re: Prompt IRS/Treasury Action Needed for Box 8 and Code Y on Form 1099-R

Dear Ms. Weinberger and Mr. Steadman:

On behalf of the Committee of Annuity Insurers ("CAI") and the American Council of Life Insurers ("ACLI"),[1] we are writing to follow up recent discussions with you regarding the following new information reporting requirements involving the 2025 IRS Form 1099-R:

- Reporting the actuarial value of an annuitized commercial annuity contract in Box 8 (the "**Box 8 Requirement**"), and

- Reporting qualified charitable distributions ("QCDs") from IRAs using new Code Y in Box 7 (the "**Code Y Requirement**").

We believe these new reporting requirements should be eliminated. If they are not, we respectfully request prompt guidance (1) delaying the requirements until at least the 2027 tax year to give taxpayers adequate time to comply, and (2) clarifying certain aspects of when and how they apply. This letter summarizes and reiterates our points on this topic.

I. The Box 8 Requirement

A. Background

The 2025 Instructions for Forms 1099-R and 5498 (the "Instructions") contain the following new statement in connection with Box 8 on Form 1099-R:

> **Value of annuitized annuity contract.** The issuer of a commercial annuity contract which has been annuitized must report the current actuarial value of the contract as of the end of the year if payments have been made from the contract during the year.

[1] CAI is a coalition of life insurance companies formed in 1981 to participate in the development of federal policy with respect to annuities. CAI's current 32 member companies represent approximately 80% of the annuity business in the U.S. ACLI is the leading trade association driving public policy and advocacy on behalf of the life insurance industry. ACLI's current 280 member companies represent 94% of industry assets in the U.S.

It is our understanding that the IRS added this requirement in response to section 204 of the SECURE 2.0 Act.[2] That section directed the Treasury Department to amend the required minimum distribution ("RMD") regulations under Code section 401(a)(9) to provide an optional rule for calculating RMDs from defined contribution ("DC") plans and IRAs in cases where an individual annuitizes a portion of their account balance. In July 2024, Treasury and IRS issued final and proposed regulations implementing this directive as an "Optional Aggregation Rule."[3]

The Optional Aggregation Rule is available only in connection with DC plans and IRAs. Despite this, the Instructions seem to impose the Box 8 Requirement for every commercial annuity that has been annuitized, even those not involving DC plans or IRAs – such as non-qualified annuities and contracts issued in connection with defined benefit ("DB") plans.

The Box 8 Requirement should not apply for contracts to which the Optional Aggregation Rule is irrelevant. It also should not apply to IRAs because it is duplicative of existing reporting requirements. It also should not apply to annuities issued in connection with DC plans, primarily because plan administrators are responsible for obtaining valuations for plan assets and the idea that a plan would get this information from a Form 1099-R that is issued to a participant is both unprecedented and inappropriate. If the IRS nonetheless retains any aspect of the Box 8 Requirement, we ask that it be limited in certain respects and delayed until at least the 2027 tax year so that payors will have adequate time to comply. We elaborate on all these points below.

B. The Box 8 Requirement Should be Eliminated or At Least Limited

1. Non-Qualified Annuities

The Optional Aggregation Rule is part of the RMD regulations under Code section 401(a)(9). Those regulations apply only to certain types of qualified retirement arrangements. They do not apply to non-qualified annuities in any circumstance.[4] Accordingly, the Box 8 Requirement should be eliminated for non-qualified annuities. The Form 1099-R already makes similar distinctions between qualified and non-qualified annuities in other contexts, such as the requirement to use Code D when reporting distributions from the latter but not the former.

2. DB Plans

Although DB plans are subject to the RMD regulations, the Optional Aggregation Rule is not available for them. Accordingly, the Box 8 Requirement should be eliminated for any annuity contract that is issued in connection with a DB plan. This should be the case whether the contract is issued to an active DB plan, issued in connection with a terminated DB plan, or distributed from

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[2] For example, the instructions to Box 8 on the 2025 Form 1099-R include the following statement: "This information [about the value of an annuitized contract] may be provided to your plan administrator to determine any required distribution from that plan."

[3] *See* Treas. Reg. § 1.401(a)(9)-5(a)(5)(iv) (DC plans); Treas. Reg. § 1.408-8(e)(1)(ii) (IRAs).

[4] By "non-qualified" annuities, we mean annuity contracts that are not part of any qualified retirement plan within the meaning of Code section 4974(c).

a DB plan to a participant as a qualified plan distributed annuity. In all these cases, the annuity contract derives from a DB plan and therefore the Optional Aggregation Rule is moot.

You had asked whether annuity issuers can distinguish between contracts that relate to DB plans and contracts that relate to DC plans or IRAs, so the issuer would know when the Box 8 information is not needed because the contract relates to a DB plan. Even if an insurer cannot draw such distinctions, this does not justify over-imposing the Box 8 Requirement on every single annuitized contract that is in force today when there is virtual certainty that the Optional Aggregation Rule will be irrelevant for many, and perhaps the vast majority, of those contracts.

In addition, as discussed below, we are requesting that if the Box 8 Requirement is not eliminated or made optional, it should be mandatory only with respect to contracts for which the plan administrator has timely provided the insurer with certain information that confirms the contract's relevance to the plan's application of the Optional Aggregation Rule. A DB plan administrator would know not to provide this information to any insurer because the Optional Aggregation Rule is unavailable to such a plan.

3. IRAs

The Box 8 Requirement should be eliminated for IRAs because it is redundant of information that IRA providers already report to the IRS and taxpayers. Form 5498 requires every IRA provider to annually report the year-end fair market value ("FMV") of the IRA in Box 5. To our knowledge, there is no exception to this requirement for annuitized contracts.[5] Thus, whenever an annuity contract that is held as an IRA or held under an IRA is annuitized, the FMV of the annuitized contract should be included on a Form 5498.[6] It would be superfluous to require IRA providers to start reporting the same value on Form 1099-R.

It is our understanding that the IRS may be considering whether the Box 8 Requirement would provide information, in addition to the FMV reported on Form 5498, that the IRS needs in order to confirm compliance with the Optional Aggregation Rule. If we understand this correctly, a specific scenario might be where a Form 5498 reports the combined FMV of an annuitized contract plus other assets held in the same IRA, whereas Box 8 on Form 1099-R might report only the value of the annuitized contract. If this is the concern, it suggests that the IRS may think the value of the annuitized contract must always be separately reported in order to confirm compliance with the Optional Aggregation Rule. This is not the case.

Under the Optional Aggregation Rule, an individual's aggregate RMD with respect to all of their IRAs can be determined by adding up the year-end FMVs of those IRAs, including the FMV of the annuitized contract, then dividing that sum by the applicable Uniform Lifetime Table factor. As long as the individual receives distributions (including annuity payments) at least equal to that sum from one or more of their IRAs during the year, they will satisfy their RMD

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[5] For example, page 21 of the Instructions states that "You are required to file Form 5498 even if required minimum distributions (RMDs) or other annuity or periodic payments have started."

[6] An annuity contract is held "as" an IRA if it is issued as an individual retirement annuity under section 408(b) and is held "under" an IRA if it is held as an asset of an individual retirement account under section 408(a).

obligation. Accordingly, all the IRS needs to confirm compliance with the RMD rules, including the Optional Aggregation Rule, are copies of an individual's Forms 5498 and 1099-R, without the Box 8 Requirement. No changes to the reporting requirements are needed.

4. DC Plans

For a variety of reasons, the Box 8 Requirement also should be eliminated for DC plans. Such plans generally use one of three methods when purchasing a commercial annuity contract to provide for annuitized distributions: (1) holding the contract as a plan asset (an "In-Plan Annuity"), (2) distributing the contract to the participant in kind (a "qualified plan distributed annuity" or "QPDA"), or (3) distributing cash in a rollover to purchase an individual retirement annuity (an "IRA-Annuity"). For the reasons discussed below, the Box 8 Requirement should not apply with respect to annuity contracts that a DC plan purchases using any of these methods.

If the IRS nonetheless retains the Box 8 Requirement, it should apply only with respect to contracts for which the plan administrator has timely informed the insurer that (1) the contract relates to an employer-sponsored DC plan, (2) the plan has adopted the Optional Aggregation Rule, and (3) the plan intends to use the Box 8 information when applying that rule, such as by asking the participant to provide the plan with a copy of the Form 1099-R. In all other cases, if retained, the Box 8 Requirement should be optional rather than mandatory.

a. In-Plan Annuities

An In-Plan Annuity is a commercial annuity contract that a DC plan purchases and holds as an asset of the plan. The Optional Aggregation Rule will be available with respect to an In-Plan Annuity ***only if the plan sponsor decides to offer the rule***. Some plans may offer it and others may not. If a plan does not offer it, the Box 8 Requirement will be irrelevant with respect to any In-Plan Annuity held by that plan. Because the Box 8 Requirement will be irrelevant to some, or perhaps many, In-Plan Annuities, the Box 8 Requirement should not be universally imposed with respect to every In-Plan Annuity.

More generally, it is always the plan administrator's responsibility to ensure that the RMD rules are satisfied with respect to all assets in the plan. This, in turn, requires the plan administrator to obtain accurate values for all plan assets, even those lacking readily-available market quotations. Thus, for a plan that offers the Optional Aggregation Rule, it is the plan administrator's responsibility to obtain an accurate value for any In-Plan Annuity that the plan will reflect when applying that rule. The plan can obtain that value in a number of ways, such as through an independent valuation expert or from the issuer of the annuity contract.

In that regard, when a DC plan purchases an In-Plan Annuity, the plan has a direct contractual relationship with the issuer of the annuity contract. In some cases, the annuity issuer also may provide other services to the plan, such as recordkeeping. Through these existing contractual relationships, the plan sponsor can arrange for the annuity issuer to provide the plan with annual valuations for the In-Plan Annuity. This is a much more targeted and efficient way to ensure that the plan can properly apply the Optional Aggregation Rule, rather than broadly imposing the Box 8 Requirement even when the Optional Aggregation Rule is not being used.

The idea that administrators of DC plans that offer In-Plan Annuities will require various information directly from the insurance company is nothing new. There are a variety of circumstances where the issuer of an In-Plan Annuity provides information about the contract to the plan, including to facilitate the plan's filing of Schedule A of Form 5500, the plan's compliance with the "actuarial present value" requirement in the RMD rules for deferred annuities, and for the plan to otherwise properly report income. Thus, a plan sponsor that decides to adopt the Optional Aggregation Rule will expect the plan administrator to ensure that there is sufficient and timely information being provided with respect to an In-Plan Annuity, including in order to comply with the RMD rules.

Finally, we note that the Box 8 Requirement suggests that a DC plan's ability to comply with the Optional Aggregation Rule will depend solely on the plan being able to obtain from a plan participant a copy of the Form 1099-R they receive from the insurer.[7] We are not aware of any other circumstance in which the IRS requires the value of DC plan assets to be reported on Form 1099-R (or any other IRS form) in order for the plan to be able to comply with the RMD rules or for the IRS to be able to confirm such compliance. Plan administrators routinely ensure that the assets the plan holds are properly and timely valued; they have gotten along without the need to have that value *reported to the participant* on an IRS form. Indeed, in many cases the insurer will not issue a Form 1099-R with respect to an In-Plan Annuity because it is the plan's obligation to do so, which further demonstrates that the Box 8 Requirement is not needed to facilitate a plan's compliance.[8]

In short, the Form 1099-R reporting system is not the appropriate way to ensure that a plan gets the annuity valuation information it needs to apply the Optional Aggregation Rule. A plan sponsor that has decided to offer that rule as part of its plan should take steps to ensure it can obtain the necessary information through other available channels, just as it does in other situations requiring asset valuations.

b. QPDAs

A QPDA is a commercial annuity contract that a DC plan purchases and distributes to a participant in kind, so that the contract is owned by the participant. For some purposes, a QPDA is no longer treated as part of the plan. For example, a QPDA is not a plan asset under ERISA. For other purposes, however, a QPDA is effectively treated as a continuation of the plan from which it was distributed. For example, the RMD rules apply to the contract as if it were part of a DC plan, not an IRA. A QPDA also is not an IRA for any other purpose.

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[7] *See supra* note 2. If the IRS contemplates the insurer, rather than the participant, providing a copy of the Form 1099-R to the plan, it begs the question of why the insurer cannot instead just provide the annuity valuation information to the plan apart from any Form 1099-R.

[8] For example, if the issuer of the In-Plan Annuity pays the annuity payments to the plan, which the plan then retains or pays to participants, the plan administrator must file the Form 1099-R with respect to any distribution from the plan. According to the Instructions, the Box 8 Requirement does not apply to the plan administrator; it applies only to the "issuer of a commercial annuity contract."

In light of a QPDA's treatment as part of a DC plan for some purposes but not others, there is considerable uncertainty whether a plan can take a QPDA into account when applying the Optional Aggregation Rule to assets remaining in the plan. We believe the answer should be yes, and we have requested guidance confirming this.[9] To date, the IRS and Treasury have not addressed the issue, so it remains uncertain. Despite this uncertainty, it appears that the IRS imposed the Box 8 Requirement at least in part to facilitate DC plans reflecting QPDAs under the Optional Aggregation Rule. For example, the instructions at the end of the 2025 Form 1099-R include the following statements regarding the Box 8 Requirement:

> If you previously received an annuity contract as part of a distribution (or the contract was purchased through a direct rollover from a plan account) and periodic payments from that annuity contract are included in box 1, the value of the contract as of the end of the year is shown. This information may be provided to your plan administrator to determine any required distribution from that plan. (Emphasis added.)

The reference to an "annuity contract" that is "received … as part of a distribution" from a plan seems to mean a QPDA, and the reference to the Box 8 information being "provided to your plan administrator" seems to contemplate the participant sharing that information with the plan in connection with the Optional Aggregation Rule.[10] If this is correct, then the Box 8 Requirement is imposing a new reporting requirement in connection with QPDAs before IRS/Treasury have confirmed that QPDAs can be reflected in the Optional Aggregation Rule. At a minimum, the reporting requirement is premature in light of the substantive guidance that is needed here.

Even if such substantive guidance ultimately confirms that a plan can reflect a QPDA when applying the Optional Aggregation Rule to the plan (an outcome we certainly encourage), the Box 8 Requirement is unnecessary for many of the reasons discussed above in connection with In-Plan Annuities. For example, the Optional Aggregation Rule would be moot with respect a QPDA unless the plan sponsor has decided to make that rule available under the terms of the plan. In such cases, the rule still may be irrelevant for any particular QPDA, *e.g.*, if the participant no longer has any non-annuitized account balance in the plan or if the plan requires the individual to elect to use the rule and the individual fails to do so. Thus, as part of any decision to offer the Optional Aggregation Rule under a DC plan, including in connection with QPDAs, the plan sponsor should take steps to ensure that it will be able to obtain the annuity valuations it needs in the circumstances it determines the rule applies. For the reasons discussed above, the Form 1099-R reporting system is not the appropriate way to ensure that a plan gets this information.

If the IRS nonetheless retains the Box 8 Requirement, whether in connection with QPDAs, In-Plan Annuities, or both, the requirement should apply only with respect to contracts for which the plan administrator has timely informed the insurer that (1) the contract relates to an employer-sponsored DC plan, (2) the plan has adopted the Optional Aggregation Rule, and (3) the plan

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[9] *See*, *e.g.*, The Committee of Annuity Insurers' September 17, 2024, letter commenting on the proposed and final RMD regulations, available at https://www.annuity-insurers.org/wp-content/uploads/2024/09/CAI-RMD-reg-comments-9.17.24-with-attachments-1.pdf.

[10] *See supra* notes 2 and 7.

intends to use the Box 8 information when applying that rule, such as by asking the participant to provide the plan with a copy of the Form 1099-R. This would help ensure that the Box 8 information is required to be included on a Form 1099-R only when it is relevant to the plan. If the Box 8 Requirement is retained but the plan administrator does not provide the foregoing information to the annuity issuer, the Box 8 information should be optional rather than mandatory, and if an insurer includes the annuity value in Box 8 the participant could share that information with the plan; otherwise the plan can obtain its own valuation based on information received from the participant about the payments under the QPDA.

If the IRS and Treasury find these suggestions lacking, we would be happy to continue a dialogue with the hope of finding another solution that is more appropriately tailored to QPDAs without imposing an overly-broad reporting requirement that in many cases is not needed and could lead to confusion.

c. IRA-Annuities

An IRA-Annuity is simply an individual retirement annuity under Code section 408(b). Any participant who is eligible to receive a distribution from a DC plan may choose to use some or all of their account balance to purchase an IRA-Annuity in a direct or indirect rollover from the plan. In some cases, the plan may negotiate with one or more annuity providers to offer such IRA-Annuities through direct rollovers from the plan.

An IRA-Annuity is not treated as part of a DC plan for tax purposes, including under the RMD rules. Thus, the RMD regulations do not permit a DC plan to take an IRA-Annuity into account when applying the Optional Aggregation Rule to the plan.[11] Instead, an IRA-Annuity can be taken into account only when applying the Optional Aggregation Rule to other IRAs of the same individual. As discussed above, the Box 8 Requirement should not apply to IRAs because it would be redundant of information already reported on Form 5498. The fact that an IRA-Annuity is purchased in a rollover from a DC plan does not change this fact.[12]

C. The Box 8 Requirement Should Be Delayed and Clarified If It Is Not Eliminated

If the IRS decides to retain any aspect of the Box 8 Requirement, we respectfully request that the requirement be delayed until at least the 2027 tax year. If it is not delayed until then, the IRS should issue guidance stating that it will not impose penalties on any insurer that fails to

[11] The CAI has asked the IRS and Treasury to modify the Optional Aggregation Rule to permit DC plans to take IRA-Annuities into account under that rule, but only if the annuities are purchased in direct rollovers and the plan, or an investment provider under the plan (such as a target date fund that includes a lifetime income feature), has negotiated with the IRA-Annuity issuer regarding the terms of the annuities that will be purchased using plan assets. To date, the IRS and Treasury have not modified the rule in this manner.

[12] We also note that the statement in the instructions at the end of the 2025 Form 1099-R that an annuity value reported in Box 8 with respect to a contract that "was purchased through a direct rollover from a plan account" is misleading and incorrect because it suggests that such a contract is relevant when determining "any required distribution from that plan." An annuity purchased in a *rollover* from a plan is no longer part of that plan.

comply with the requirement before 2028, provided that the insurer is taking reasonable steps towards such compliance.

Such transition relief is warranted for a number of reasons. The Instructions first described the Box 8 Requirement in the spring of 2025, and despite being a significant change, it was not mentioned in the "What's New" section of the Instructions. This may have contributed to some delay in insurers identifying the change. Also, there has been considerable uncertainty whether the Box 8 Requirement applies to all commercial annuities or only those to which the Optional Aggregation Rule is relevant. There also is uncertainty regarding how an insurer must determine the value of an annuity for purposes of the Optional Aggregation Rule, considering that the IRS and Treasury have not finalized the regulations on this point and the industry has requested certain changes to the proposed requirements.[13] Based on the Trump Administration's recently-released Spring 2025 Unified Agenda of Regulatory and Deregulatory Actions, it appears that those regulations may not be finalized until May 2026.[14]

Annuity insurers need adequate time to implement changes to their reporting obligations, including time to revise their forms, procedures, and electronic systems. They also need time to review, digest, and implement the final regulations on how to value an annuity for purposes of the Optional Aggregation Rule after IRS/Treasury issues those final regulations. Such guidance could affect how companies program their systems to generate the required values for Box 8. In these circumstances, the IRS should provide annuity insurers with at least one full calendar year from when the RMD regulations are finalized before imposing the Box 8 Requirement. Thus, even if IRS/Treasury finalize the regulations this year, the Box 8 Requirement would not apply earlier than the 2027 calendar year, for Forms 1099-R due in January 2028.

If the IRS does not delay the Box 8 Requirement until after the final RMD regulations on annuity valuation are issued, or if the IRS believes that a valuation method that differs from the method in the final RMD regulations should apply for purposes of the Box 8 Requirement, the IRS should provide relief for any valuations that are made using reasonable, good faith efforts. In any event, the IRS should not impose penalties on any insurer that fails to comply with the requirement before 2028, provided that they are taking reasonable steps towards compliance.

II. The Code Y Requirement

The 2025 Instructions for Forms 1099-R and 5498 require issuers of IRAs to use new Code Y in Box 7 of Form 1099-R to indicate whether distributions from IRAs in 2025 and subsequent years are qualified charitable distributions, or QCDs. On April 22, 2025, the CAI and ACLI sent a letter asking the IRS to eliminate this requirement, or at least delay it and clarify certain aspects.[15] We would like to supplement our points from that letter as follows.

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[13] *See* Prop. Treas. Reg. § 1.401(a)(9)-5(a)(5)(v).

[14] *See* https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202504&RIN=1545-BQ66.

[15] The letter is available at https://www.annuity-insurers.org/wp-content/uploads/2025/04/CAI-and-ACLI-letter-re-Code-Y-on-1099R-4.22.25-00490874.pdf.

It is our understanding that the IRS may have imposed the Code Y Requirement to help prevent taxpayers from falsely claiming QCD treatment on their tax returns. Under current law, taxpayers must maintain records to substantiate their QCDs, including a written statement from the charity or split-interest entity confirming the contribution. But they are not required to include those documents with their tax returns. We understand this may lead to concern that taxpayers will play "audit roulette" by falsely claiming QCD treatment on their returns with the hope that the IRS will not audit them. We further understand that the Code Y Requirement may be aimed at providing the IRS an additional check against such behavior.

While we would certainly condemn such taxpayer behavior, the Code Y Requirement will do little to prevent it. For the many reasons described in our April 22nd letter, IRA issuers necessarily will need to rely entirely on a taxpayer's representation that a distribution from the IRA is intended to be a QCD.[16] ***Thus, a Code Y shown on a Form 1099-R will only tell the IRS what it already knows from the individual's tax return: they claimed to make a QCD.*** If a taxpayer is willing to misrepresent a QCD on their own tax return under penalties of perjury, presumably they would have no qualms with misrepresenting this to the IRA provider.

If the IRS has real concerns about audit roulette involving QCDs, the better solution is to require taxpayers to include more substantiation with their tax returns. For example, the IRS could require taxpayers to submit a new form that provides more detailed information about a purported QCD, along with a copy of the written statement that the charity or split-interest entity is already required to provide to the taxpayer. The IRS already does this in similar circumstances where there may be significant risk of tax evasion. For example, Form 8283 is required for non-cash charitable contributions when the total deduction exceeds $500. As we suggested in our prior letter, the IRS also could require the written statement from the charity or split-interest entity include more information to better support enforcement.

Accordingly, we continue to believe that the Code Y Requirement should be eliminated. If it is not, we request (1) a delay until at least the 2027 tax year to give IRA providers adequate time to implement the requirement, and (2) the various clarifications described in our April 22nd letter. With respect to the requested delay, we note that guidance is still needed on a number of issues we identified in our prior letter. Additional questions needing guidance also may arise as IRA providers begin changing their systems, procedures, and communications to implement the requirement. A longer vetting period is needed before any requirement goes into effect that could expose IRA providers to reporting penalties despite their best efforts to comply. In that regard, if the Code Y Requirement is not delayed until at least the 2027 tax year, the IRS should issue guidance stating that it will not impose penalties on any IRA provider that fails to comply with the requirement before 2028, provided that they are taking reasonable steps towards compliance.

Finally, we note one additional change that is needed to a technical aspect of the Code Y Requirement, if it is retained. The Instructions currently state that if Code Y is required in Box 7,

[16] As discussed in our April 22nd letter, even if the point of the Code Y Requirement is only to confirm to the IRS that a purported QCD was paid from the IRA "directly" to a charity or split-interest entity, the Code Y Requirement is inadequate to fully confirm this fact because IRA issuers will not know whether a particular entity to which the owner directs a payment is a permitted QCD recipient, especially in the case of a split-interest entity that is not a well-known public charity.

it must appear first, followed by Code 4, 7, or K. Some systems that IRA providers use to generate Forms 1099-R are programmed to show numerical codes first, then letter codes. In our view, it seems unnecessary to require these providers to modify this aspect of their systems; it should be acceptable to show the codes in either order.

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We appreciate your consideration of our request. If you have any questions or if we can be of any assistance as you consider our points above, please contact either of the undersigned.

Sincerely,

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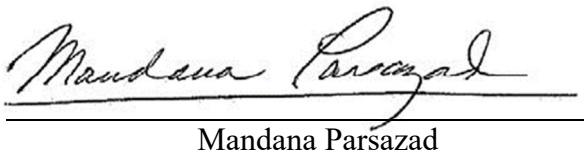

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