The COMMITTEE of ANNUITY INSURERS

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May 27, 2026

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Internal Revenue Service
Attn: CC:PA:01:PR (Notice 2026-23) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Re: Committee of Annuity Insurers' Recommendations for 2026-2027 Priority Guidance Plan

To whom it may concern:

We are writing on behalf of the Committee of Annuity Insurers (the "**Committee**") in response to Notice 2026-23, which invites public recommendations for the 2026-2027 Priority Guidance Plan ("**PGP**").[1] We appreciate this opportunity to comment. The Notice lists several factors that IRS/Treasury will consider when assessing public recommendations. These include whether the recommendation will advance the Administration's goals of reducing regulatory burdens, promoting sound tax administration, and ensuring that regulations are based on the best reading of the underlying statute. For the reasons discussed throughout this letter, we believe our recommendations are consistent with these and other relevant factors from the Notice. Our recommendations fall within the following categories, which we elaborate upon below:

(1) Required Minimum Distributions. The SECURE Act of 2019 ("**SECURE 1.0**") and the SECURE 2.0 Act of 2022 ("**SECURE 2.0**") modified the required minimum distribution ("**RMD**") rules for qualified plans and IRAs. We recommend several changes to the final and proposed regulations implementing the legislation, including eliminating questionable interpretations adopted therein that do not represent the best reading of the underlying statute. Our discussion of this issue begins on page 2 below.

(2) IRA Model Forms, Model Language, and Prototype Approvals. We request prompt publication of updated model forms and listings of required modifications ("**LRMs**") for IRAs that reflect SECURE 1.0 and SECURE 2.0, as well as the prompt re-opening of the IRS prototype approval program for IRAs. We also request an additional one-year extension (until December 31, 2028) of the deadline for IRA providers to update their IRA documents. All of these requests will reduce burdens on taxpayers and promote sound tax administration. Our discussion of this issue begins on page 10 below.

[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 other regulatory issues affecting annuities. The Committee's current 33 member companies represent approximately 80% of the annuity business in the United States. A list of the Committee's member companies is attached.

(3) Information Reporting and Tax Withholding. We have two requests involving information reporting and tax withholding. First, we request that IRS/Treasury extend the current Name/TIN Matching Program to Form 1099-R and similar information returns. Second, we request that IRS/Treasury eliminate or modify the reporting and withholding requirements that apply to insurers in connection with the generation-skipping transfer tax (the **"GST tax"**). These changes would promote sound tax administration, reduce burdens, and eliminate waste. Our discussion of this issue begins on page 12 below.

(4) Other SECURE 2.0 Guidance. We request guidance (1) on the SECURE 2.0 changes to the rules for "substantially equal periodic payments" from retirement arrangements and annuities, and (2) implementing the SECURE 2.0 directive to expand the Employee Plans Compliance Resolution System ("**EPCRS**") to IRAs, including to permit self-correction of certain IRA errors. Such guidance would fulfill congressional intent and reduce burdens on taxpayers. Our discussion of this issue begins on page 18 below.

The Committee previously submitted several letters to IRS/Treasury on most of these topics, along with other topics for which guidance is still needed. We continue to urge IRS/Treasury to act on our prior comments, which are listed in the footnote below.[2] The remainder of this letter focuses on the selected items listed above, which we believe are particularly urgent and strongly implicate the factors described in Notice 2026-23.

Before we discuss those items, however, we want to express our gratitude to IRS/Treasury for removing an item from the 2024-2025 Priority Guidance Plan regarding the application of the constructive receipt doctrine to annuity contracts. We previously communicated our view that such guidance would likely run counter to congressional intent, introduce uncertainty about the federal income tax treatment of annuity contracts, increase controversy and burdens on taxpayers and the IRS, and otherwise have a significantly adverse and disruptive effect on Americans trying to prepare themselves for retirement. Needless to say, we whole-heartedly agree with the abandonment of this guidance item, and we simply wanted to thank the IRS and Treasury for that decision. Now, on to our recommendations for this year's PGP.

1. Required Minimum Distributions

SECURE 1.0 and SECURE 2.0 changed the RMD rules that apply to qualified plans and IRAs. In February 2022 and July 2024, IRS/Treasury published proposed and final regulations on those statutory changes, and the Committee subsequently filed extensive comments. We respectfully

[2] *See* letter dated May 25, 2022, commenting on the 2022 proposed RMD regulations ("**2022 RMD Letter**"); letter dated July 21, 2023, requesting guidance under SECURE 2.0 ("**SECURE 2.0 Letter**"); letter dated August 23, 2023, commenting on Notice 2023-43 ("**2023 EPCRS Letter**"); letter dated September 17, 2024, commenting on the 2024 final and proposed RMD regulations ("**2024 RMD Letter**"); letter dated October 7, 2024, commenting on Notice 2024-55 ("**Notice 2024-55 Letter**"); letter dated October 18, 2024, responding to IRS/Treasury questions during our RMD hearing testimony ("**2024 RMD Hearing Letter**"); letter dated September 18, 2025, requesting elimination or modification of "Box 8" requirements on Form 1099-R ("**2025 Box 8 Letter**"); and letter dated October 6, 2025, regarding the need for updated LRMs for IRAs and for guidance on EPCRS for IRAs ("**2025 LRM Letter**"). These letters are available on the Committee's website at https://www.annuity-insurers.org/news-memoranda/.

ask IRS/Treasury to reflect those comments in the final regulations.[3] Below, we highlight certain points from our prior comments and explain how they implicate the factors from Notice 2026-23 regarding statutory interpretation, sound tax administration, deregulation, and burden reduction.

(a) Clarify that the ALAR Rule never applies to in-plan designated Roth accounts

Pursuant to SECURE 2.0, the RMD rules no longer apply to an in-plan designated Roth account during the participant's lifetime. Consistently, the 2024 final RMD regulations provide that if an employee's *entire* interest in a qualified plan is held in a designated Roth account, then the employee's death is always deemed to occur before their required beginning date (**"RBD"**).[4] This means that, regardless of the participant's age at death, a "**10-Year Deferral Rule**" applies to their designated beneficiary, generally permitting them to defer RMDs for up to 10 years.[5]

The final regulations are less clear, however, whether this same treatment applies if the employee has only a *portion* of their interest in a designated Roth account, with the rest in a non-Roth account under the plan. At the 2024 public hearing on the RMD regulations, IRS/Treasury suggested that different treatment was intended in such cases, namely, the employee's Roth and non-Roth accounts must be aggregated and the same RMD rules must be applied to both, with the applicable rule determined by when the employee dies in relation to their RBD. Thus, for example, if the employee dies on or after their RBD, the "at-least-as-rapidly" rule of section 401(a)(9)(B)(i) (the **"ALAR Rule"**) applies to their Roth account, requiring RMDs to continue each year rather than permitting deferral for up to 10 years, even though the ALAR Rule would not apply if the employee had *only* a Roth account under the plan.

Guidance request: The Committee requests that IRS/Treasury clarify the final regulations to provide that designated Roth accounts are always subject to the RMD rules that apply to employees who die before their RBD, regardless of when the employee actually dies or retires and regardless of whether the employee also has any non-Roth accounts in the plan. The contrary interpretation that IRS/Treasury suggested during the public hearing does not reflect the best reading of the underlying statute and would be inconsistent with clear congressional intent, for the following reasons:

- *Best reading of the statute.* The ALAR Rule, as stated in section 401(a)(9)(B)(i), requires distributions after an employee's death to be made "at least as rapidly as under the method of distributions being used under subparagraph (A)(ii) as of the date of his death." Subparagraph (A)(ii) sets forth the rule for RMDs during the employee's life, *but that rule no longer applies to designated Roth accounts*.[6] Thus, for any employee's designated Roth account, there is no longer any "method of distributions being used under subparagraph (A)(ii) as of the date of his death." If distributions from a designated Roth account must

[3] In particular, please see our 2022 RMD Letter, 2024 RMD Letter, and 2024 RMD Hearing Letter, *supra* note 2. The letters are available at https://www.annuity-insurers.org/wp-content/uploads/2022/05/CAI-comments-RMD-regs-5.25.22.pdf, https://www.annuity-insurers.org/wp-content/uploads/2024/09/CAI-RMD-reg-comments-9.17.24-with-attachments-1.pdf, and https://www.annuity-insurers.org/wp-content/uploads/2024/10/CAI-RMD-follow-up-letter-10.18.24-00424713.pdf, respectively.

[4] Treas. Reg. § 1.401(a)(9)-3(a)(2); Treas. Reg. § 1.403(b)-6(e)(3)(iii).

[5] Treas. Reg. § 1.401(a)(9)-3(c)(3).

[6] *See* section 402A(d)(5) (stating that neither section 401(a)(9)(A) nor the incidental death benefit requirements of section 401(a) apply to designated Roth accounts, effective starting in 2024).

continue after an employee's death at least as rapidly as they were required to be made before their death, but no distributions were required before their death, then logic dictates that continuing to not make any distributions after the employee's death would satisfy the ALAR Rule. This outcome obviously would be wrong and illustrates why the regulations for Roth IRAs, which have never been subject to lifetime RMDs, have always deemed an IRA owner's death to occur *before* their RBD, even if the owner also has traditional IRAs to which the lifetime RMD rules apply.[7]

- *Separate accounting requirement.* Section 402A(b)(2) provides that a plan that offers a "qualified Roth contribution program" must establish separate accounts for Roth contributions and earnings thereon and must maintain separate recordkeeping with respect to each account.[8] This reflects the fact that designated Roth accounts and non-Roth accounts are subject to different rules regarding the taxation of distributions. Although this statutory separate accounting rule does not specifically reference RMDs, it broadly requires separate accounting to ensure that the different rules that apply to designated Roth accounts can be applied properly. Now that designated Roth accounts are subject to different RMD rules than non-Roth accounts, it seems clear that the general separate accounting rule of section 402A(b)(2) should apply for RMD purposes as well.

- *Congressional intent.* Congress eliminated the pre-death RMD rules for in-plan Roth accounts as part of SECURE 2.0 in order to conform the treatment of such accounts to the longstanding treatment of Roth IRAs.[9] Doing so removes an incentive for plan participants to roll their designated Roth account balances out of their employer-sponsored plans into Roth IRAs merely to get the RMD treatment that applies to Roth IRAs. Despite this congressional goal of conformity, IRS/Treasury would retain this incentive for plan leakage if the regulations apply the ALAR Rule to designated Roth accounts. IRS/Treasury also would be interpreting virtually identical statutory language in sections 402A(d)(5) and 408A(c)(4) very differently by applying the ALAR Rule under the former but not the latter.

Based on the foregoing, the best reading of the statute is that designated Roth accounts are always subject to the RMD rules that apply to employees who die before their RBD, regardless of when the employee actually dies or retires and regardless of whether the employee also has any non-Roth accounts in the plan. We urge IRS/Treasury to clarify this.

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[7] Treas. Reg. § 1.408A-6, Q&A-14(a) ("The post-death minimum distribution rules under section 401(a)(9)(B) that apply to traditional IRAs, *with the exception of the at-least-as-rapidly rule described in section 401(a)(9)(B)(i)*, also apply to Roth IRAs") (emphasis added); Treas. Reg. § 1.408A-6, Q&A-15 (section 401(a)(9) applies separately to traditional and Roth IRAs).

[8] *See also* Treas. Reg. § 1.401(k)-1(f)(3).

[9] *See, e.g.*, S. REP. NO. 117-142, at 95 (describing a predecessor bill to SECURE 2.0 and stating that the change to the pre-death RMD rules for designated Roth accounts was included because "[t]he Committee believes that it is appropriate to extend to designated Roth accounts *the exceptions that apply to Roth IRAs* from the pre-death minimum distribution rules and from the incidental death benefit requirements.") (emphasis added).

(b) Interpret Optional Aggregation Rule for annuities consistently with the statute and congressional intent

Section 204 of SECURE 2.0 directed Treasury to amend the RMD regulations to provide a special rule for individuals who annuitize a portion of their account balance in a defined contribution (**"DC"**) plan or IRA. The 2024 final and proposed RMD regulations implement this directive as an "**Optional Aggregation Rule**."[10] The following aspects of those regulations warrant change or clarification to ensure consistency with the statute and congressional intent.

(i) <u>Mandated valuation method</u>

The Optional Aggregation Rule requires a determination of the "value" of the annuity that is in payout status. For this purpose, the 2024 proposed RMD regulations would *require* the use of the "gift tax method" under the Roth IRA conversion regulations when valuing the annuity, even though the statute refers only to the term "value" without prescribing a particular valuation method. The Committee objects to any mandate on how to determine the value of an annuity contract.

Guidance request: The Committee requests that final regulations abandon the proposal that would require only the gift tax method to be used when determining the "value" of an annuity contract for purposes of the Optional Aggregation Rule. Instead, final regulations should (1) adopt a principle-based rule under which the "value" would be equal to the present value of the future annuity payments determined using reasonable actuarial methods and assumptions, determined in good faith, and (2) confirm that the gift tax method is merely one method that can be used to satisfy the principle-based rule. In that regard:

- Mandating the use of a particular valuation method for the Optional Aggregation Rule does not represent the best reading of the underlying statute. Nothing in SECURE 2.0 requires any particular valuation method; the provision refers only broadly to the "value" of the annuity. As a result, there is no clear statutory mandate to force taxpayers to use this and only this valuation method when others may be just as appropriate.

- A principle-based approach under which the "value" is equal to the present value of the future annuity payments determined using reasonable actuarial methods and assumptions, determined in good faith, is consistent with other RMD provisions in SECURE 2.0. In particular, section 201 of SECURE 2.0 removed certain barriers to "increasing" annuity payments under the prior regulations. In doing so, Congress deferred to actuarial experts by replacing the old prescriptive standards with rules that rely on "reasonable actuarial methods and assumptions, as determined in good faith."[11] If Congress determined that such deference was warranted, IRS/Treasury should do the same for the Optional Aggregation Rule.

- No other provision of the RMD regulations mandates a particular valuation method for any type of asset. Even the Roth conversion regulations, from which the gift tax method derives,

[10] Treas. Reg. § 1.401(a)(9)-5(a)(5)(iv).

[11] *See* Treas. Reg. §§ 1.401(a)(9)-6(o)(3)(i)(C) and -6(o)(3)(ii). *See also* Treas. Reg. § 1.401(a)(9)-6(h)(2) and -6(m)(2) (also imposing standards based on "reasonable actuarial assumptions").

do not impose such a mandate. They *permit* the gift tax method to be used but do not *require* its use, provided that any other valuation method captures the "full value of the contract."[12]

- The best reading of the underlying statutory rule is that Congress meant the word "value" to mean "fair market value" as it does under the RMD rules, and the regulations otherwise do not mandate only one method for determining that value. Instead, the RMD regulations and the Roth IRA conversion regulations permit any valuation method that captures the fair market value while identifying certain methods that will be deemed to do so.

(ii) Qualified plan distributed annuities

The 2024 final and proposed RMD regulations do not address whether the Optional Aggregation Rule is available with respect to a qualified plan that purchases an annuity contract and distributes the contract to a participant or beneficiary in-kind as a qualified plan distributed annuity ("**QPDA**"). In 2025, however, the IRS imposed (then suspended) a requirement that annuity issuers must report the "current actuarial value" of any annuitized contract in Box 8 of IRS Form 1099-R. It is our understanding that the IRS imposed this reporting requirement to facilitate the use of the Optional Aggregation Rule in connection with QPDAs, despite the lack of substantive guidance on whether the rule is available for QPDAs.

Guidance request #1: The Committee requests guidance clarifying that, in the case of a QPDA, (1) the Optional Aggregation Rule can apply to the individual's remaining non-annuitized balance in the plan by taking the QPDA into account, and (2) for such purpose, the plan can rely on information about the QPDA that the plan receives from the annuity issuer or from the individual participant, provided that the participant represents that they obtained the information from the annuity issuer or obtained it consistently with applicable standards.

In that regard, permitting plans to take QPDAs into account when applying the Optional Aggregation Rule would further advance the purpose of the new rule to encourage annuitization, as well as the broader goal in SECURE 2.0 to discourage plan leakage.[13] With respect to plan leakage, if a participant cannot get the benefit of the Optional Aggregation Rule when electing a QPDA, they may decide to roll their entire account balance from the plan into an IRA, annuitize a portion of that balance in the IRA, then apply the Optional Aggregation Rule to the remaining balance in the IRA. This should not be the only choice for participants whose plans offer QPDAs. They should be able to keep their non-annuitized accounts in the plan without losing the Optional Aggregation Rule.

Guidance request #2: The Committee requests guidance significantly limiting the requirement that annuity issuers must report the "current actuarial value" of any annuitized contract in Box 8 of Form 1099-R. In that regard, the 2025 Instructions for Forms 1099-R and 5498 (the **"Instructions"**) contain the following statement in connection with Box 8 on Form 1099-R:

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[12] *See* Treas. Reg. § 1.408A-4, Q&A-14(b)(1)(i).

[13] *See, e.g.*, SECURE 2.0 § 327 (permitting spousal beneficiaries to determine RMDs using the Uniform Lifetime Table so that they do not need to roll their inherited benefits out of an employer plan into an IRA in order to get the benefit of that table); SECURE 2.0 § 202 (repealing the 25% account balance limit on QLAC premiums, which effectively required a participant to roll up to three times the amount of the desired premium from the plan in order to purchase a QLAC under an IRA).

> **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.

It is our understanding that the IRS added this requirement to facilitate the use of the Optional Aggregation Rule in connection with QPDAs. 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."[14] Although we greatly appreciate what seems to be an implicit acknowledgement that the Optional Aggregation Rule can apply to QPDAs, the reporting requirement in Box 8 should be significantly narrowed. In that regard:

- 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 plans. The Box 8 requirement should not apply for contracts to which the Optional Aggregation Rule is irrelevant.

- The Box 8 requirement also should not apply to IRAs, even though the Optional Aggregation Rule is relevant to them. This is because the Box 8 requirement is duplicative of the existing rules that require IRA issuers to annually report the fair market value of each IRA (including the value of any annuity contract) on Form 5498 or in a separate statement.

- The Box 8 requirement also should not apply to annuities that continue to be held as assets by DC plans. Plan administrators should remain solely responsible for obtaining valuations for their own assets that are reflected in their RMD calculations for the plan. For example, the plan could work with the annuity issuer to obtain the needed information.

- With respect to QPDAs, the Box 8 requirement also may be unnecessary in many situations. For example, the Optional Aggregation Rule would be moot with respect to a QPDA if the plan does not make the rule available. Even if the plan offers the rule, it may be irrelevant for any particular QPDA, *e.g.*, if the participant no longer has an account in the plan. ***At most, then, the Box 8 requirement should apply with respect to a QPDA only if 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, <u>and</u>

    (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.

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[14] The IRS has released a draft of the 2026 Form 1099-R, which includes the same statement. *See* https://www.irs.gov/pub/irs-dft/f1099r--dft.pdf.

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, thereby reducing burdens and avoiding unnecessary waste.

- Finally, if the Box 8 requirement is retained for any situation, the requirement should be delayed until at least the 2028 tax year so that payors will have adequate time to comply.

These issues are discussed in more detail in our 2025 Box 8 Letter, which we urge IRS/Treasury to revisit.[15]

(iii) Partial annuitization of a single IRA

The 2024 final RMD regulations provide that, for IRAs, the Optional Aggregation Rule is available if an individual owns an individual retirement annuity under section 408(b) and also owns one or more other IRAs that have non-annuitized account balances.[16] This could be interpreted as limiting the Optional Aggregation Rule for IRAs to situations where an individual owns *multiple* IRAs and fully annuitizes one of them. This would mean the rule is not available where (1) an individual owns only one individual retirement annuity and partially annuitizes that one contract, or (2) an individual owns only one individual retirement account and annuitizes an annuity contract that is held within that account, with the payments being made directly to the individual.

Guidance request: The Committee requests confirmation that the Optional Aggregation Rule can apply in situations where an individual owns only one IRA and either (1) the IRA is an individual retirement annuity under section 408(b) that the individual "partially annuitizes," or (2) the IRA is an individual retirement account under section 408(a) that, in turn, holds an annuity contract from which annuity payments are made to the individual in a manner that triggers the RMD rules for annuity payouts under Treas. Reg. section 1.401(a)(9)-6.

In both of these situations, the individual has annuitized a portion of their IRA account balance, such that Treas. Reg. section 1.401(a)(9)-6 applies to that portion while Treas. Reg. section 1.401(a)(9)-5 continues to apply to the remaining portion. This is no different than an individual annuitizing a portion of their account balance in a qualified plan while continuing to maintain a non-annuitized account within that same plan. There is no indication in the statute or legislative history that Congress intended the Optional Aggregation Rule to be available to plans but not IRAs in these situations. Any contrary interpretation would not represent the best reading of the underlying statute.

(c) Interpret effective date of Spousal ULT rule consistently with the statute

Section 327 of SECURE 2.0 amended Code section 401(a)(9)(B)(iv) to permit surviving spouses to calculate their RMDs as beneficiaries using the Uniform Lifetime Table, rather than the Single Life Table (the "**Spousal ULT Rule**"). Section 327(c) of SECURE 2.0 provides that this Spousal ULT Rule "shall apply to calendar years beginning after December 31, 2023." The 2024 proposed RMD regulations would adopt a very narrow interpretation of this statutory effective date,

[15] *See supra* note 2. The letter is available at https://www.annuity-insurers.org/wp-content/uploads/2025/09/Letter-re-Box-8-and-Code-Y-on-2025-Form-1099R-FINAL-9.18.25-00584119.pdf.

[16] Treas. Reg. § 1.408-8(e)(1)(ii).

permitting spouses to use the Spousal ULT Rule "only if the first year for which annual required minimum distributions to the surviving spouse must be made is 2024 or later."[17]

Guidance request: The Committee requests that final regulations modify the proposed "applicability date" of the Spousal ULT Rule so it is available to *all* surviving spouses starting in 2024, even if they were required to commence RMDs before 2024. The narrower interpretation reflected in the proposed regulations does not represent the best reading of the statute, which makes no reference to when a surviving spouse was required to commence RMDs. Rather, it merely refers to the calendar year in which the rule will start applying. The plain and best reading of the statute is that the Spousal ULT Rule became available to *all* spouses starting in 2024, regardless of whether they commenced RMDs as a beneficiary in a prior year.

Neither the 2024 proposed regulations nor the preamble provide any insight into why IRS/Treasury chose to add such a limiting concept to the applicability date despite the clear statutory language. In our view, that decision also is inconsistent with the congressional intent in enacting the Spousal ULT Rule, which we understand was to help discourage plan leakage *via* rollovers to IRAs. In that regard, if a surviving spouse is required to calculate their RMDs from a plan using the Single Life Table, they can reduce their RMD obligation by rolling out of the plan and into their own IRA, thereafter calculating their RMDs using the Uniform Lifetime Table. That is exactly what the proposed regulations would encourage for all spouses whose RMDs commenced before 2024, even if the plan otherwise adopts the Spousal ULT Rule for other spouses. Thus, the IRS/Treasury interpretation does not fulfill the clear congressional intent of this provision, whereas the plain and best reading described above would do just that.

We note that clarifying that the Spousal ULT Rule can be available to any spouse starting in 2024 would not mean that plans are forced to offer or administer that rule. For example, plans would remain free to determine if the Spousal ULT Rule will be available under the plan at all, or if surviving spouses need to affirmatively elect the rule before the plan will begin administering it for any particular spouse.

(d) Determination of Eligible Designated Beneficiary ("EDB") status on the annuity starting date

The Committee requests guidance clarifying that in the case of an annuity contract that is subject to section 401(a)(9)(H), the rule in the final regulations under which a beneficiary's status as an EDB is determined as of the annuity starting date applies only in cases involving a joint life payout with the employee as the annuitant and their EDB as the joint annuitant who is entitled to receive any survivor annuity payments after the employee's death.[18]

As written, the 2024 final regulations state that in the case of an annuity to which section 401(a)(9)(H) applies, "the determination of whether a beneficiary is an eligible designated beneficiary … is made as of the annuity starting date."[19] The preamble to the final regulations addresses the situation where an employee purchases a joint and survivor annuity with their spouse as

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[17] Prop. Treas. Reg. § 1.401(a)(9)-5(g)(3)(ii)(E).

[18] *See* the Committee's 2024 RMD Letter, *supra* note 2. The letter is available at https://www.annuity-insurers.org/wp-content/uploads/2024/09/CAI-RMD-reg-comments-9.17.24-with-attachments-1.pdf.

[19] Treas. Reg. § 1.401(a)(9)-6(d)(2)(ii).

the joint annuitant and they divorce after annuity payments commence.[20] In such case, if EDB status were determined as of the employee's date of death rather than the annuity starting date, the former spouse would not be an EDB even though they became contractually entitled to annuity payments for life upon the employee's death. While the regulation appropriately accounts for this scenario, it is not limited to joint and survivor annuities. Rather, it broadly states that EDB status is determined on the annuity starting date, which suggests this always is the case.

It seems to us that IRS/Treasury may not want this treatment to apply in situations other than joint and survivor annuities. This is because a broader rule could lead to outcomes that are inconsistent with the statute, such as in cases involving an annuity for a period certain with no life contingency.[21] Accordingly, we believe the final regulations should be clarified so that an EDB's status is determined on the annuity starting date only in the case of a joint and survivor annuity. Such a clarification would be consistent with other provisions in the final regulations.[22]

2. IRA Model Forms, Model Language, and Prototype Approvals

The Committee's member companies rely on LRMs and/or model forms when issuing annuity contracts as IRAs. Employers also use the IRS model forms to establish employment-based IRA plans. The existing LRMs and model forms do not reflect the changes made by SECURE 1.0 and SECURE 2.0. Also, Announcement 2022-6 the IRS suspended its prototype approval program for IRAs indefinitely. The current Priority Guidance Plan includes an item to update and consolidate procedures for sponsoring organizations and mass submitters to apply for prototype approval of their IRAs, but to date this guidance has not been updated. Despite the unavailability of updated LRMs, model forms, and the IRA prototype approval program, IRA providers are currently expected to update their IRA governing instruments by year-end 2027.[23] The Committee has two guidance requests on this topic.

Guidance request #1: The Committee requests that IRS/Treasury (1) promptly publish updated and/or new model forms and LRMs reflecting the relevant SECURE 1.0 and SECURE 2.0 changes, and (2) promptly re-open the IRA prototype approval program.

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[20] *See* 89 Fed. Reg. at 58,899.

[21] For example, assume that an IRA owner elects a single life annuity with a 20-year period certain and names an EDB as the beneficiary of any period certain payments after the owner's death. Assume further that the contract permits the owner to change the beneficiary designation at any time (which is very common), and that pursuant to this contract provision the owner changes the beneficiary to a non-EDB the day after the annuity starting date. Now assume that the owner dies one year later, when there are 19 years left in the period certain. The final regulations, as currently written, could permit the non-EDB to continue receiving those payments over the 19-year period, even though the 10-year rule otherwise would apply to the non-EDB.

[22] *See, e.g.*, Treas. Reg. § 1.401(a)(9)-6(b)(2)(i) (providing that in lieu of the normal timing rule for determining a decedent's "designated beneficiary" as of September 30th of the year following the year of the employee's death, such determination is made as of the annuity starting date "[i]f the employee's benefit is paid in the form of a life annuity *for the lives of the employee and a designated beneficiary*," *i.e.*, a joint life annuity) (emphasis added).

[23] *See* section 501 of SECURE 2.0 (providing that plans and IRAs generally must be amended to reflect SECURE 1.0 and SECURE 2.0 by the end of 2025 "or such later date as the Secretary of the Treasury may prescribe"); Notice 2026-9, 2026-7 I.R.B. 534 (extending this deadline to 2027).

On February 13, 2026, we sent an email to IRS/Treasury representatives transmitting the Committee's suggested changes to the LRMs for traditional and Roth individual retirement annuities.[24] Our suggestions were based in part on our understanding that IRS/Treasury are considering whether to significantly shorten and generalize the LRMs for IRAs, particularly the portions addressing RMDs. While we can appreciate the potential appeal of such an approach, the Committee would have concerns with removing too much detail from the LRMs, for reasons outlined in our 2025 LRM Letter.[25]

In light of our concerns, we suggested a middle-ground approach. The LRMs would include short and generalized language on RMDs, but also would include *optional* language with more detail. IRA providers that want or need the additional detail could include some or all of the optional language in their IRAs, and providers that do not want or need the added detail could omit the optional language, resulting in a more streamlined IRA document. This approach would provide model language with varying levels of detail that can be used by all IRA providers. It also would provide much-needed additional guidance on the recent legislative and regulatory changes to the RMD rules, particularly those applicable after the owner's death.

This approach also will help the IRS administer its IRA prototype approval program. Our members tell us that even if future LRMs omit details on RMDs, the IRA annuities they issue will nonetheless include detailed language on that topic, consistently with the level of detail historically reflected in IRA annuities and the LRMs. If the new LRMs omit such details, the IRS may have difficulty reviewing IRA annuities that contain them. This could cause unnecessary delays or denials of prototype approval. On the other hand, if the LRMs contain more detail on RMDs as optional model language, then annuity issuers will be more likely to use that optional language, which could result in more uniformity across providers and help the IRS administer the prototype approval program more efficiently and consistently. All of this would help promote sound tax administration, reduce burdens on taxpayers, and reduce potential controversy between the IRS and taxpayers.

Guidance request #2: We also request that IRS/Treasury announce an additional one-year extension (until December 31, 2028) of the deadline by which IRAs and plan documents must be amended to reflect SECURE 1.0 and SECURE 2.0.

The current deadline is December 31, 2027, reflecting several extensions the IRS has already announced pursuant to its explicit statutory authority to do so.[26] Another extension is warranted because IRS/Treasury have not provided updated LRMs or access to the prototype approval program. As noted above, annuity issuers frequently rely on the LRMs and the prototype approval program when developing their IRA endorsements. Until those resources are made available, many annuity issuers are reluctant to proceed with amending their IRA endorsements.

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[24] Our mark-up of the LRMs for traditional IRAs can be found here: https://www.annuity-insurers.org/wp-content/uploads/2026/02/CAI-LRM-Traditional-IRA-DRAFT-2.13.26.pdf. Our mark-up of the LRMs for Roth IRAs can be found here: https://www.annuity-insurers.org/wp-content/uploads/2026/02/CAI-LRM-Roth-IRA-DRAFT-2.13.26.pdf.

[25] *See supra* note 2. The letter is available at https://www.annuity-insurers.org/wp-content/uploads/2025/11/CAI-letter-10.6.25.pdf.

[26] *See supra* note 23.

In that regard, annuity issuers must obtain state regulatory approval for any new or amended IRA endorsements, and not having LRMs or prototype approval makes that approval process harder. State regulators sometimes object to endorsement language if it is too technical sounding, such as language describing federal income tax requirements. Those objections are typically dropped, however, if the language is based on LRMs or the IRS otherwise has approved the language. As a result, not having LRMs or prototype approval will likely make the state approval process more difficult. Some Committee member companies have already had to address these types of objections with respect to endorsements the companies have updated and filed for state regulatory approval.

More generally, the state regulatory approval process can be time-consuming and expensive. Our members have informed us that it can take a year or longer for the entire process to play out, including developing amended IRA endorsements, filing those endorsements with multiple state regulators, addressing any feedback from the regulators, and delivering the final approved endorsements to IRA customers. Meanwhile, the year-end 2027 deadline is approaching. In these circumstances, an additional one-year extension of that deadline is warranted.

3. Information Reporting and Tax Withholding

We have two requests involving information reporting and tax withholding. First, we request that IRS/Treasury expand the current Name/TIN Matching Program so that it is available for all information returns requiring the reporting of names and TINs, including the Form 1099-R. Second, we request that IRS/Treasury eliminate or modify the reporting and withholding requirements that apply to insurers in connection with the generation-skipping transfer (GST) tax. As explained below, these changes would promote sound tax administration, reduce burdens, and eliminate wasteful uses of resources for the IRS and taxpayers alike.

(a) Expand the Name/TIN Matching Program

Payors that make "designated distributions" from annuities, various retirement arrangements, and life insurance contracts generally must report the distributions to the IRS and to payees on a Form 1099-R.[27] The failure to include the correct name and taxpayer identification number ("**TIN**") on the Form 1099-R subjects these payors to substantial reporting penalties under sections 6721 and 6722, unless they can demonstrate that there was reasonable cause for the error.[28]

The IRS has established a Name/TIN Matching Program ("**Matching Program**") that allows filers of some, but not all, information returns to match their name/TIN records with IRS records before the payor files the return.[29] This program's purpose is to help avoid TIN errors and reduce the number of backup withholding notices the IRS sends, thereby reducing burdens for payors and the IRS alike. Unfortunately, the program currently is available only for "reportable payments" that are subject to backup withholding under section 3406.[30] Designated distributions that are reported on the

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[27] Section 6047(d). *See also* section 3405(e)(1) (defining "designated distribution").

[28] The current penalty for failing to file a correct information return with the IRS is $330, and that same penalty amount applies for failing to furnish a correct payee statement. These amounts are adjusted for inflation each year.

[29] *See* Treas. Reg. § 31.3406(j)-1; Rev. Proc. 2003-9, 2003-8 I.R.B. 516.

[30] Reportable payments are reported on Forms 1099-INT, -DIV, -PATR, -OID, -K, -MISC, -G, and -B.

Form 1099-R technically are not "reportable payments" for this purpose and thus are currently ineligible for the Matching Program.[31]

Since at least 2002, there have been efforts to expand the Matching Program to include information returns beyond those covered by section 3406. In Publication 2108A, *On-Line Taxpayer Identification Number (TIN) Matching Program*, the IRS states that plans to expand the Matching Program to include other Forms 1099 and Form W-2 filings are "actively being pursued." Moreover, Treasury's *General Explanations of the Administration's Fiscal Year 2025 Revenue Proposals* ("**2025 Budget Proposal**") included a proposal to amend section 6103 to permit TIN matching for filers of all information returns that require the reporting of names and TINs. In particular, the 2025 Budget Proposal recognizes that "expanding IRS authority to apply the TIN Matching Program to all information return filers would save the government and taxpayers significant resources and would result in fewer reporting errors, IRS notices, and penalties." While we appreciate IRS/Treasury recognizing the need to expand the program, we disagree that legislation or even regulations are needed to do so; this can be accomplished through sub-regulatory guidance.

Guidance request: The Committee requests that IRS/Treasury expand the Matching Program to all information returns requiring the reporting of names and TINs, including the Form 1099-R. For the reasons discussed below, this request is consistent with factors that Notice 2026-23 says IRS/Treasury will consider when assessing PGP recommendations, particularly factors relating to the reduction of costs and burdens, the reduction of controversy between payors and the IRS, and the promotion of sound tax administration.

- *Expanding the Matching Program would significantly lessen burdens on taxpayers and the IRS, reduce the potential for controversy between the IRS and taxpayers, and promote sound tax administration.*
    - Most information returns that annuity issuers file are on Form 1099-R, which are currently ineligible for the Matching Program. Based on an informal survey of Committee member companies, reporting penalties are being proposed with respect to less than 2% of the information returns they file, but 75-85% of the proposed penalties relate to Form 1099-R.[32] Because of the dollar amount of the penalty per return, these penalties can be substantial and often receive the attention of senior management. For example, one company reported that the proposed penalties on the Notice 972-CG for name and TIN mismatches on the Form 1099-R for tax year 2022 totaled almost $600,000.[33] That company devoted between 100-200 person-hours combined for approximately 12 employees to respond to the Notice.[34] For the most part, the company discovered that the name and TIN errors were due to the payees providing the company the wrong information, which is a factor supporting a reasonable cause exception to the

[31] *See* Treas. Reg. § 31.3406(g)-2(c).

[32] A number of member companies reported that this is the first time in over 10 years that they have seen penalties proposed with respect to name and TIN mismatches on the Form 1099-R.

[33] For the tax year 2022, over $10.5 million in reporting penalties were assessed against the companies that responded to the survey.

[34] The number of person-hours devoted to responding to the Notice 972-CG reported by the member companies ranged anywhere from 20-50 hours up to 1,500-2,000 hours. Other member companies estimated that responding to the Notice cost approximately $100,000.

penalties. The IRS ended up abating all of the penalties.[35] Other companies reported similar experiences.

  - In order to respond to the Notice 972-CG as it relates to the Form 1099-R, payors must take steps within 30 days from the date they receive it.[36] This requires payors to thoroughly review all of the names and TINs on the exhibit to the Notice and compare them to their own records, send letters to policyholders, and prepare a reasonable cause exception letter – all in an extremely short timeframe. This diverts significant resources from other areas in the company. If the payor could confirm names and TINs when the account is opened or throughout the year, the burden could be spread out over time and would not require the fire drill.

  - Expanding the Matching Program also would reduce costs and burdens for the IRS because they would not need to process as many penalty notices that are likely to result in little or no actual penalty. IRS/Treasury acknowledged this fact in the 2025 Budget Proposal, stating that expanding the Matching Program "would save the government and taxpayers <u>significant resources</u> and would result in fewer reporting errors, IRS notices, and penalties."

  - In short, the current process is broken because it wastes IRS and taxpayer resources that would be preserved if the Matching Program were made more broadly available. This is especially exasperating considering that in many cases the proposed penalties resulting from name/TIN mismatches ultimately are abated for reasonable cause.

- *Authority for expanding the Matching Program*. We understand that prior administrations have expressed concerns that IRS/Treasury lack the authority to expand the Matching Program to other information returns. For the reasons discussed below, we believe they have such authority, so legislation is not needed to expand the program.

  - One concern we have heard is that the confidentiality requirements under section 6103, which prohibit the IRS from disclosing return information unless otherwise authorized by the Code, preclude the Matching Program's expansion. We disagree. First, the Matching Program itself does not disclose the taxpayer's identity. Rather, it simply confirms whether the TIN and the taxpayer's name, *as provided by the payor*, match the IRS's records by providing a numerical verification code indicating whether or not there is a match. This numerical indicator from the IRS is not in a form that identifies "directly or indirectly" a particular taxpayer.[37] In addition, the Matching Program is not "making known" to the payor any new information under the Program. The information the Matching Program is confirming is required to be provided by the payee to the payor

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[35] *See* Treas. Reg. § 301.6724-1(c)(1)(v).

[36] *See* IRS Publication 1586, *Reasonable Cause Regulations & Requirements for Missing and Incorrect Name/TINs*, pg. 11. Member companies also reported that the Notice 972-CG letters were being received significantly after the date of the letter, which made it difficult or impossible to respond timely.

[37] The 2025 Budget Proposal recognizes this: "No information other than a numerical indicator for the validity of the match is disclosed."

under section 6109 so the information is already "known" to the payor.[38] We further note that the Committee's member companies are also subject to federal and state privacy laws requiring them to secure all policyholder information, including any information about the policyholder's TIN.

- Section 3405(e)(12)(B), which requires withholding on designated distributions that are reported on Form 1099-R, authorizes IRS/Treasury to notify payors "before any payment or distribution" that the TIN furnished by the payee is incorrect. Notably, the statute does not make this notification contingent on filing an information return first, nor would it be possible to do so in light of the fact that it contemplates the IRS informing the payor of the mismatch *before* any payment or distribution is even made. It also does not require that the notification occur only through the Notice 972-CG process, meaning IRS/Treasury could reasonably interpret this statutory rule as authorizing use of the Matching Program to implement it. This, coupled with the broad grant of authority under section 7805 for IRS/Treasury to "prescribe all needful rules and regulations," provides sufficient authority for expanding the Matching Program to cover at least Form 1099-R.

- *Sub-regulatory guidance is all that is needed*. Given that the Matching Program is already in existence, expanding it would not require new regulations. Thus, our request does not add to the number of regulations nor implicate the directive in Executive Order 14192 to eliminate 10 regulations for every new regulation. Moreover, the IRS could administer the Matching Program on a *more* uniform basis because it would be available to more payors and information returns.

- *Additional clarification requested.* Finally, the Committee also requests that the IRS revise the guidance it has issued on name control conventions, especially as it pertains to trusts.[39] Member companies have reported that a number of the name/TIN mismatch penalties that the IRS proposes are associated with trust-owned annuity contracts. In this regard, IRS Publications 1586, 1220, and 4164 provide inconsistent guidance on how to identify estates, trusts, and fiduciaries on information returns.[40] It would be helpful to have these procedures clarified to avoid unnecessary penalty notices and the resulting burden to respond.

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[38] Several lower courts have stated that return information cannot be "disclosed" or "made known" to a party who already had knowledge of that information. *See, e.g.,* Haywood v. U.S., 642 F.Supp. 188 (D. Kan. 1986) (disclosure of name and TIN to the employer is not material disclosed because the employer already had knowledge of the same); Brown v. U.S., 755 F.Supp. 285 (N.D. Cal. 1990); Elias v. U.S., 1990 WL 264722, at *7 n.14 (C.D. Cal. Dec. 21, 1990); Clark v. I.R.S., 2011 WL 3157196, at *17 (U.S.D.C. Haw. Jul. 26, 2011).

[39] Name controls are four characters of the payee's name that are reported in the "B" record when electronically filing information returns with the IRS. It is our understanding that the name control is not required but can be helpful with matching names and TINs with the IRS records.

[40] For example, Publication 1586 provides that "Jonathan Periwinkle Memory Church Irrevocable Trust (EIN assigned online)" the appropriate name control would be "PER" (or "PERI" using the same example from Publication 1220). However, this is in conflict with rule #4 in the preceding paragraph of Publication 1586, which states that "[i]f the EIN is assigned online […], then the name control is developed using the first four characters of the first name on the primary name line. Ignore leading phrases such as 'Trust for' or 'Irrevocable Trust.'" By that rule, it would be reasonable to conclude that the appropriate name control for this example would be "JONA" rather than "PERI."

(b) Eliminate or Modify the GST Tax Withholding Requirement

The GST tax withholding standards for annuity and life insurance death benefits were established more than 35 years ago and have become outdated and ineffective. They impose significant burdens on individual taxpayers and life insurance companies in situations that rarely involve any actual GST tax liability. As a result, the withholding rules should be revoked or updated, as directed by section 2663(3), to be more consistent with current law.

Under the current regulations, if an annuity or life insurance death benefit exceeds $250,000 (the **"Threshold Amount"**) and is paid to a "skip person," the insurer must file the Schedule R-1 of Form 706 and pay the GST tax out of the proceeds.[41] The current Threshold Amount was placed in the regulations in 1995 without any provision to adjust it for inflation.[42] In contrast, the statutory exemption for the GST tax is indexed to inflation.[43] When the current Threshold Amount was set in 1995, the GST tax exemption was $1 million per individual,[44] whereas today the GST exemption amount is $15 million for individuals and $30 million for married couples.[45] Because the statutory GST exemption amount is tied to inflation whereas the Threshold Amount is static, the discrepancy between the two will continue to expand every year.

The discrepancy between the outdated Threshold Amount and the indexed exemption amount means that the parties must administer the withholding rules in situations where the GST tax is very unlikely to apply. This unnecessarily leads to considerable confusion and burdens for beneficiaries and considerable administrative burdens and expenses for insurers because they must go through the steps required by the withholding rules even when no tax payment is ultimately required.

In that regard, when a death benefit exceeding the Threshold Amount is paid to a skip person, the insurer is liable for any GST tax that is owed on the proceeds.[46] Thus, insurers generally are unwilling to pay the full death proceeds to the beneficiary until the insurer can determine if it is liable for any GST tax. To make such a determination, the insurer needs information from the decedent's estate, including the amount, if any, of the decedent's exemption from the GST tax that will be allocated to the death proceeds. This often requires extensive back-and-forth with a beneficiary or personal representative of the estate.

In many cases, the beneficiary or personal representative is very confused about the insurer's inquiries because the decedent's estate is much smaller than the exemption amount available under

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[41] Treas. Reg. § 26.2662-1(c). A skip person means (1) a natural person assigned to a generation which is 2 or more generations below the generational assignment of the transferor, or (2) a trust (including any arrangement having substantially the same effect as a trust) if all interests in the trust are held by skip persons or no person holds an interest in the trust and no distributions, other than certain remotely-possible distributions, can be made after the transfer to anyone other than a skip person. Section 2613(a). For this purpose, insurance and annuity contracts are treated as arrangements having substantially the same effect as a trust. *See* section 2652(b)(3).

[42] T.D. 8644 (Dec. 26, 1995). In 1988, the regulation set the Threshold Amount at $100,000. *See* T.D. 8187 (March 15, 1988). Treasury increased it to $250,000 in 1995, in response to Congress adding section 2663(3) to the Code. That development is discussed *infra*.

[43] Section 2631(c) and 2010(c)(3)(B).

[44] Pub. L. No. 99-514 § 1431(a).

[45] Sections 2631(c) and 2010(c)(3)(A).

[46] Sections 2603(a)(2) and 2652(b).

the GST and estate taxes, so the parties have not prepared and do not intend to prepare any estate tax or GST tax returns in which the exemption will be allocated to various assets. The beneficiary or personal representative also may incur expenses in seeking legal or other professional assistance to obtain the information the insurer has requested.

In our member companies' experience, the parties ultimately determine in almost all cases that the death proceeds are fully covered by the decedent's GST tax exemption, meaning no GST tax is owed and the insurer can pay the full death benefit to the beneficiary. In other words, the regulations impose significant administrative burdens without resulting in any taxes being owed by any party and result in considerable delay in the payment of death proceeds for no valid reason in virtually all cases. During this delay period, state law also may require the insurer to pay additional interest on the death proceeds, thereby resulting in further unnecessary expenses for the company.

Guidance request: The unnecessary burdens imposed by the current GST tax withholding regime should be eliminated or significantly reduced so they are imposed only in situations that are at least somewhat likely to involve an actual GST tax liability. This could be accomplished in any of the following ways:

- <u>Revoke the requirement</u>. Treasury could issue regulations that eliminate the GST tax withholding obligation that applies to issuers of life insurance and annuity contracts. In that regard:
    - Section 2663(3) authorizes Treasury to issue regulations that make "adjustments" to the statutory GST tax withholding requirement with respect to arrangements, such as insurance and annuity contracts, that are not trusts but are treated as trusts under section 2652(b).
    - The legislative history of section 2663(3) provides a sole example of what Congress had in mind when delegating this authority to Treasury, stating that in the case of an insurance or annuity contract, "it is possible that the Secretary of the Treasury may exercise the authority granted by this section of the bill to provide that *the beneficiary of the insurance or annuity contract* pay any generation-skipping transfer tax."[47]
    - Thus, Congress anticipated that the beneficiary of an insurance or annuity contract, such as the decedent's estate, might be in a better position to determine the applicability of the GST tax. This is entirely consistent with the actual experience of the Committee's member companies, who generally lack the information needed to determine if the GST tax applies and consequently rely entirely on the beneficiary or their representatives in making such determinations.
    - Despite the clear congressional intent outlined above, Treasury never fully implemented that intent through regulations. Instead, Treasury merely increased the Threshold Amount from $100,000 to $250,000.[48] After 38 years, it is time for Treasury to act as Congress expected and eliminate this requirement for insurers.

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[47] S. Rep. No. 100-445, at 373 (emphasis added).

[48] *See supra* note 42.

- Set the Threshold Amount equal to the exemption amount. Alternatively, if Treasury decides not to revoke the withholding requirement on insurers as Congress anticipated when enacting section 2663(3), the Threshold Amount could be increased to equal the current exemption from the GST tax, as subsequently indexed for inflation.

- Set the Threshold Amount to its relative level in 1995. At a minimum, the Threshold Amount should be increased so that it will always equal at least 25% of the current exemption from the GST tax. This was the relative value of the Threshold Amount compared to the GST tax exemption when the former was last updated in 1995 ($250,000 compared to $1 million). This would mean, for example, that in 2026 the Threshold Amount would have been 25% of $15 million, or $3.75 million. Even better, the Threshold Amount could be set to 25% of the GST exemption for married couples, or $7.5 million.

- Impose the requirement only if the executor provides Schedule R-1. As written, the regulations imply that the insurance company is liable for the GST tax and required to report ***only*** if the company receives a Schedule R-1 (Form 706) from the executor before paying the death proceeds. The regulations could be modified to make this explicit. The Instructions to the Form 706 already require the executor to provide the Schedule R-1 to the insurance company. Thus, modifying the regulations to state that the insurer is liable for the GST tax and required to report only if the company receives a Schedule R-1 (Form 706) from the executor before paying the death proceeds would merely codify the existing requirement from the IRS form and will make clear that the companies do not bear the burden of determining whether there is a payment to a skip person.

4. Other SECURE 2.0 Guidance

As discussed below, the Committee requests guidance (a) on changes that SECURE 2.0 made to the rules for "substantially equal periodic payments" from retirement plans, IRAs, and annuities, and (b) implementing the directive in SECURE 2.0 for IRS/Treasury to expand EPCRS to IRAs.

(a) Clarify the "SEPP" rules

Section 323 of SECURE 2.0 provides that annuity payments can be used to satisfy the exceptions to the 10% additional tax in 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 the taxpayer's life or life expectancy, or the joint lives or joint life expectancy of the taxpayer and their designated beneficiary (the "**SEPP Exception**"). It also provides that annuity payments made for a permitted period are deemed to satisfy the SEPP Exception if they satisfy the RMD requirements, or would satisfy those requirements if they applied. These provisions apply to distributions commencing on or after December 29, 2022.

Section 323 of SECURE 2.0 also 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 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. This clarification applies to transfers, rollovers, and exchanges occurring after 2023. In addition, the statute provides that neither these clarifications nor those described above regarding annuity payments should be construed as creating any inference regarding prior law.

Guidance request: For the reasons discussed in our SECURE 2.0 Letter and our Notice 2024-55 Letter,[49] the Committee requests:

- Guidance that in cases where SEPPs are being made as withdrawals from a non-annuitized account using one of the safe harbor methods that apply to such accounts under IRS guidance,[50] the taxpayer can switch to an annuity form of payment without trigging the Recapture Tax,
- Guidance that a payout annuity may be purchased to distribute SEPPs that are calculated with respect to a non-annuitized account balance, and
- Clarification that the treatment of annuity payments as SEPPs can apply to annuity payments that commenced before December 29, 2022.

(b) Update EPCRS to Apply to IRAs

Section 305 of SECURE 2.0 directs Treasury to revise EPCRS so that any "eligible inadvertent failure" by a plan may be self-corrected. It also directs Treasury to expand EPCRS to allow IRA issuers to address eligible inadvertent failures with respect to IRAs. These provisions generally became effective as of December 29, 2022, and they required Treasury to amend EPCRS by December 29, 2024.

In Notice 2023-43,[51] the IRS provided interim guidance on when 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. The current Priority Guidance Plan includes an item regarding "IRS Employee Plans program guidance, including … adding a new IRA Compliance Resolution System (ICRS) to reflect provisions of the SECURE 2.0 Act…."

Guidance request: The Committee asks that IRS/Treasury promptly revise EPCRS to expand the program to IRAs. The Committee notes that section 305 of SECURE 2.0, which mandates 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 fact that IRS/Treasury explicitly made the 2023 interim guidance inapplicable to IRAs directly contradicts the congressional mandate. Moreover, EPCRS for IRAs should permit IRA issuers to self-correct eligible inadvertent failures.

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[49] *See supra* note 2. The letters are available at https://www.annuity-insurers.org/wp-content/uploads/2023/07/CAI-SECURE-2.0-guidance-request-7.21.23-1.pdf and https://www.annuity-insurers.org/wp-content/uploads/2024/10/Notice-2024-55-Comment-Letter-10-07-24-00424170-2.pdf, respectively.

[50] 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.

[51] 2023-24 I.R.B. 919.

In that regard, prior to SECURE 2.0, EPCRS already permitted self-correction of certain errors affecting qualified plans.[52] SECURE 2.0 merely directed IRS/Treasury to expand those self-correction procedures to cover "any eligible inadvertent failure." In the same statutory provision, SECURE 2.0 then directed IRS/Treasury to expand EPCRS to permit IRA issuers to address those same types of "eligible inadvertent failures" with respect to IRAs. The statute does not say "expand EPCRS without self-correction to IRAs." It simply says expand EPCRS to IRAs. Because EPCRS, both before and after SECURE 2.0, permits self-correction, it follows that EPCRS for IRAs also should permit self-correction, at least by IRA issuers with respect to eligible inadvertent failures. This is the best and most plain reading of the statutory mandate.

Accordingly, IRA issuers should immediately be permitted to correct eligible inadvertent errors under the principles of EPCRS and Notice 2023-43 in good faith, including by using the self-correction program, until such time as IRS/Treasury provide further guidance. With respect to the particular types of inadvertent errors involving IRAs that EPCRS should cover, we offer the following:[53]

(1) *Inadvertent distributions* – An individual should be permitted to repay inadvertent distributions from an IRA due to an error by the IRA issuer or other service provider. This could include, for example:

- an amount the individual requested be transferred directly to another IRA, but was inadvertently distributed to the individual or to one of their "non-qualified" accounts (such as a non-qualified annuity); and

- an amount that exceeds the correct amount that the individual requested be distributed, *e.g.*, if they requested a $100 withdrawal but the IRA issuer distributed $1,000.

We note that these circumstances also would include situations where a non-spouse beneficiary took a distribution because a service provider gave them reason to believe the amount could be rolled over tax-free. Congress specifically identified this type of error when directing IRS/Treasury to expand EPCRS to cover IRAs.

(2) *Inadvertent RMD failures* – The Committee requests clarification, with examples, of circumstances in which inadvertent RMD failures can be self-corrected and the IRS will automatically waive the related excise tax under section 4974(d) (for instance, where reasonable steps are being taken to remedy an RMD failure that is due to an error on the part of an IRA issuer or service provider).

(3) *Inadvertent failures to timely furnish an IRA endorsement or disclosure statement* – An IRA issuer should be permitted to self-correct an error where (1) an annuity contract held in a qualified retirement plan or individual retirement account is transferred to the plan participant, IRA owner, or beneficiary, as applicable; (2) the transfer is intended to qualify as

[52] *See* Part IV of Rev. Proc. 2021-30, 2021-31 I.R.B. 172.

[53] *See also* the Committee's SECURE 2.0 Letter and 2023 EPCRS Letter, *supra* note 2. The letters are available at https://www.annuity-insurers.org/wp-content/uploads/2023/07/CAI-SECURE-2.0-guidance-request-7.21.23-1.pdf and https://www.annuity-insurers.org/wp-content/uploads/2023/08/CAI-Comments-on-Notice-2023-43-FINAL-8.23.23.pdf, respectively.

a tax-free rollover or transfer to an individual retirement annuity; (3) the annuity contract is treated by the transferee and issuer as an IRA from the time of the transfer; and (4) the issuer inadvertently fails to provide the transferee with an IRA endorsement for the contract and/or a disclosure statement in connection with the transfer.

(4) *Inadvertent errors where the wrong type of arrangement was established or credited* – An IRA issuer should be able to self-correct an error where the wrong type of arrangement was inadvertently established or credited with proceeds. For example:

- If an individual intends to establish one type of IRA (traditional or Roth), but the issuer inadvertently issues a different type of IRA or issues a non-IRA such as a non-qualified annuity, the error should be eligible for self-correction by replacing the erroneous governing instrument (such as an annuity endorsement) with the correct one.

- Similarly, if an individual intends to transfer amounts from a traditional or Roth account in their plan to the same type of IRA (traditional-to-traditional or Roth-to-Roth), but the IRA issuer or service provider mistakenly places the funds in a different type of IRA than the source funds (traditional-to-Roth or *vice versa*), the error should be eligible for self-correction by transferring the proceeds to the correct type of IRA.

- Likewise, if an individual intends for their plan administrator to split pre-tax and after-tax amounts in a direct rollover between the participant's traditional IRA and Roth IRA, but the plan administrator, IRA issuer, or other service provider inadvertently fails to do so, the error should be eligible for self-correction by transferring the funds between the correct types of IRAs.

(5) *Inadvertent titling errors for inherited IRAs* – Where an IRA issuer inadvertently fails to title an inherited IRA in accordance with section 408(d)(3)(C)(ii) (reflecting the name of the deceased owner as well as the beneficiary), the IRA issuer should be permitted to self-correct the error.

(6) *Information reporting* – In some cases, it may be appropriate for financial institutions to file amended information returns to indicate that an erroneous distribution in a prior year should not have been taxed. For example, if a financial institution issued a Form 1099-R for a distribution that is later determined to have been made in error, and the distribution error is self-corrected in a subsequent year *via* repayment to an IRA, it may be appropriate to issue an amended Form 1099-R for the year of the erroneous distribution, in order to show that it should not have been taxed. However, filing such an amended Form 1099-R should be optional, considering that the original form was correct when filed. In addition, the statute of limitations may be relevant to whether an amended information return is appropriate. For example, a financial institution should not be expected to file an amended information return for a year that likely is closed by the statute of limitations.

With respect to corrective repayments of a prior year's erroneous distribution, we note that Form 1099-R currently contemplates the use of distribution code "E" in box 7 to report certain corrective distributions under EPCRS. Similarly, Form 5498 currently contemplates special entries in boxes 13 and 14 to report certain late rollover contributions and permitted repayments to IRAs. The instructions to these forms could be amended to provide that financial institutions also may use the existing codes or entries to report self-correction distributions and repayments.

In addition to the foregoing specific types of errors, IRS/Treasury should work with stakeholders to identify other common errors and appropriate corrections. In our prior SECURE 2.0 Letter, we also requested clarification that the user fee for a Voluntary Compliance Program submission under EPCRS that varies with the amount of assets of a “plan” applies in a submission involving IRAs by treating each type of IRA (traditional or Roth) as a “plan,” rather than treating each individual traditional IRA or Roth IRA account or annuity contract as a separate plan.

Implementing these changes would not only fulfill the congressional directive for IRS/Treasury to expand EPCRS to IRAs, it also would reduce burdens and promote sound tax administration by making it easier to correct inadvertent and largely non-consequential errors relating to IRAs.

* * * * *

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 of North America, Minneapolis, MN
American Equity Investment Life Insurance Company, West Des Moines, IA
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 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
Transamerica, Cedar Rapids, IA
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.