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THE Committee OF Annuity Insurers
www.annuity-insurers.org

March 10, 2026

VIA ELECTRONIC SUBMISSION

Vanessa A. Countryman
Secretary
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

Re: Amendments to the "Small Business" and "Small Organization" Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act (File No. S7-2026-01)

Dear Ms. Countryman,

The Committee of Annuity Insurers (the "CAI") is submitting this comment letter in response to the request for public comment by the Securities and Exchange Commission (the "SEC" or "Commission") on the proposed rulemaking titled "Amendments to the 'Small Business' and 'Small Organization' Definitions for Investment Companies and Investment Advisers for Purposes of the Regulatory Flexibility Act."[1]

The CAI is a coalition of life insurance companies formed in 1981 to address legislative and regulatory issues relevant to the annuity industry and to participate in the development of federal policy with respect to securities, regulatory, and tax issues affecting annuities. The CAI's 33 member companies represent approximately 80% of the annuity business in the United States.[2] For over 40 years, the CAI has been actively involved in shaping and commenting upon many elements of the SEC's regulatory framework as it applies to registered insurance contracts.[3]

As discussed further below, the CAI generally supports the Commission's proposed amendments to Rule 0-10 under the Investment Company Act of 1940 and Rule 0-7 under the Investment Advisers Act of 1940, which define the term "small business or small organization" for purposes of the Regulatory Flexibility Act ("RFA"), as applied to investment companies and investment advisers, respectively. Consistent with this overall support, the CAI respectfully submits the following recommendations in connection with the final rulemaking:

- Clarify the special instruction for insurance company separate accounts under Item B.5. of Form N-CEN;
- In future rulemakings, give close consideration to the impact of regulation on not only small separate accounts, but also more particularly on small blocks of discontinued variable

[1] Release Nos. IA-6935; IC-35864 (Jan. 7, 2026) [91 FR 1107 (Jan. 12, 2026)] (the "Proposing Release").

[2] See Appendix A for a list of the CAI's current member companies.

[3] The CAI's member companies offer a wide array of SEC-registered annuity products. These products include variable annuities (VAs), registered index-linked annuities (RILAs), market value adjustment annuities (MVAs), and contingent deferred annuities (CDAs). Member companies also offer SEC-registered life insurance products that provide the means to financially protect investors' beneficiaries in the event of early death, *i.e.*, variable life insurance policies (VLs) and registered index-linked universal life insurance policies (RILUs). The CAI's advocacy efforts before the Commission are focused on achieving a regulatory framework that protects investors, that is appropriately contoured to the unique aspects of registered annuity and life insurance products, and minimizes unnecessary burdens and market impediments.

contracts, and in connection therewith, expand the SEC's enforcement position related to discontinued variable contracts to provide going-forward relief for qualifying contracts; and

- Revise the investment adviser grouping standards such that an insurance company's affiliated institutional investment adviser and retail investment adviser are not necessarily grouped together for purposes of the RFA.

The CAI Supports the Proposed Increases to the Sizing Standards for Investment Companies and Investment Advisers

The proposed amendments would appropriately increase the asset thresholds in Rules 0-10 and 0-7 to reflect the substantial growth of the investment management industry since the existing thresholds were set decades ago. The proposed addition of inflation adjustments by SEC order every ten years is also a sensible decision that should help the asset thresholds serve their intended purpose over time. Taken together, these recalibrations should meaningfully improve the quality and usefulness of the Commission's regulatory flexibility analyses, promote tailored rulemaking, and facilitate the Commission's goal of minimizing significant economic impacts on small entities.

The CAI Supports the Group Definition Amendments Applicable to Registered Separate Accounts – including the Proposal to Omit Consideration of an Insurance Company's General Account – but the Related Special Instruction under Form N-CEN Should be Clarified[4]

The CAI supports the proposal to replace the term "group of related investment companies" currently in Rule 0-10 with "family of investment companies," as that term is used in Item B.5. of Form N-CEN. Aligning Rule 0-10 with Item B.5. is an efficient way to streamline the collection of data on small entities, thereby facilitating the Commission's regulatory flexibility analyses, without imposing any new reporting requirements on investment companies.

The CAI Agrees that the Size of an Insurance Company's General Account Should Not Be Considered When Determining Whether a Registered Separate Account is a Small Entity

The CAI supports the proposal to omit consideration of an insurance company's general account when applying the sizing standards to registered separate accounts. Currently, when evaluating small entity status under Rule 0-10, the assets of a registered separate account are cumulated with the assets of the general account and all other registered separate accounts of the insurance company. Consideration of the general account assets stands to be eliminated under the proposal, as there is no corresponding instruction in Item B.5. of Form N-CEN.

For purposes of the RFA, the assets of an insurance company's general account should not be cumulated with the assets of the company's registered separate accounts.[5] An insurance company

[4] This portion of our letter responds directly to the SEC's request for comment in the Proposing Release regarding the application of the proposed group definition amendments to registered separate accounts. *See* Proposing Release, p. 36, Request for Comment No. 11 ("Would the proposed changes to the treatment of insurance company separate accounts be appropriate for the small entity definition and if not, why not? For example, should the Commission's small entity assessment omit consideration of an insurance company's general account, as would be the case under the proposed changes? Is the instruction relating to separate accounts in Form N-CEN sufficiently clear? Is it correct that insurance company separate accounts generally tend to function under substantially similar operational or accounting or control systems?").

[5] We note, consistent with statements in the Proposing Release, that the assets of any unregistered separate accounts should not be cumulated with the assets of a registered separate account when determining whether the registered separate account is a small entity. *See* Proposing Release, p. 33 ("Under the proposed changes, however, the general account would

with significant general account assets may nonetheless have a small variable product business, which is the case for a number of life insurance companies that principally sell traditional fixed life or annuity products or other lines of insurance (*e.g.*, property and casualty insurance). Such companies' registered separate accounts should be considered for small entity status without regard to their general account assets, because those companies lack economies of scale in their variable product business and would be disproportionately impacted (both in cost and burden) by changes in SEC regulation, just as any other small investment company business.

The Special Instruction for Separate Accounts in Item B.5. of Form N-CEN Should be Clarified

The definition of "family of investment companies" in Item B.5. of Form N-CEN includes a general instruction for investment companies and a special instruction for registered separate accounts.[6] Item B.5. currently provides:

> "Family of investment companies" means, except for insurance company separate accounts, any two or more registered investment companies that (i) share the same investment adviser or principal underwriter; and (ii) hold themselves out to investors as related companies for purposes of investment and investor services. . . . Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar.

In comparison, under current Rule 0-10, registered separate accounts of the same insurance company are always grouped together, and registered separate accounts of different insurance companies are never grouped together. The Proposing Release indicates that the proposed change – *i.e.*, replacing "group of related investment companies" under current Rule 0-10 with "family of investment companies" as defined in Item B.5. of Form N-CEN – should not result in significant differences in the extent to which insurance company separate accounts are aggregated for purposes of the RFA because, in the staff's experience, "insurance company separate accounts tend to function under substantially similar operational or accounting, or control systems."[7]

While the staff's general expectation is likely correct – *i.e.*, that the proposed change would not significantly change how separate accounts are grouped for RFA purposes – the CAI believes that the Commission should take this opportunity to revisit the special instruction to provide greater

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no longer be considered . . . . This approach is consistent with how the threshold applies to other types of investment companies because non-investment companies are generally excluded . . . . For example, . . . a group of related investment companies or a family of investment companies, respectively, would not include any private funds.").

[6] The special instruction pre-dates Form N-CEN. It dates to the original adoption of Form N-SAR in 1985. As part of that rulemaking, the SEC adopted the special instruction because the general instruction could "exclude related separate accounts," explaining that under the special instruction as adopted, "*insurance company separate accounts would be considered members of the same family if they share the same investment adviser or principal underwriter and either hold themselves out to investors as related companies for purposes of investment and investor services or function under operational, accounting or control systems which are substantially similar*." *See* Semi-Annual Report Form for Registered Investment Companies; Temporary Suspension of Quarterly Reporting Obligations of Certain Registered Investment Companies Pending Receipt of Comments on Proposed Final Action, Release Nos. 33-14299, 34-21633, IC-14299 (Jan. 4, 1985) (emphasis added). The special instruction then carried forward from Form N-SAR to Form N-CEN as part of the SEC's investment company reporting modernization rulemaking in 2016. *See* Investment Company Reporting Modernization, Release Nos. 33-10231, 34-79095, IC-32314 (Nov. 18, 2016).

[7] *See* Proposing Release, p. 34.

clarity. To that end, the CAI recommends that the Commission revise the special rule to read as follows:

> Any two or more insurance company separate accounts should be considered part of the same family of investment companies if either (i) the separate accounts have the same insurance company sponsor or depositor or (ii) the separate accounts have the same investment adviser or principal underwriter, if the separate accounts' variable contracts are held out to investors as related for purposes of investment and investor services or if the separate accounts function under operational, accounting, or control systems which are substantially similar.

The CAI believes these revisions, which are limited in nature, would bring greater clarity to the special instruction under Item B.5.

- The first test of the recommended special instruction would be new to Item B.5. It would preserve the straightforward grouping of separate accounts embodied in current Rule 0-10. The financial guarantees of variable contracts issued by the same insurance company are backed by the financial strength and claims-paying ability of the same general account, regardless of whether those contracts are supported by different separate accounts. It would therefore seem appropriate to treat such separate accounts as related for purposes of both the RFA and Form N-CEN.
- The second test of the recommended instruction is a re-wording of the longstanding special instruction to more closely track the SEC's intent when it originally adopted the instruction as part of Form N-SAR.[8]

The CAI believes that a clarified Item B.5. instruction would further the Commission's goals with respect to the RFA, provide clearer direction for registered separate accounts reporting on Form N-CEN, and correctly preserve the Commission's longstanding, practical approach to the treatment of registered separate accounts relative to other investment companies.

The Commission Should Analyze the Impact of Regulations on Small Blocks of Discontinued Variable Contracts (*i.e.*, Expand the Enforcement Position on Discontinued Variable Contracts)

The attention to registered separate accounts in the Proposing Release is an encouraging sign that the Commission intends to give close consideration to how new regulations impact small registered separate accounts, including as part of the Commission's regulatory flexibility analyses and retrospective reviews. In the spirit of minimizing disproportionate economic impacts on regulated entities, the CAI strongly encourages the Commission to not only consider the impact that regulation has on small separate accounts, but also more particularly on small blocks of variable contracts that are no longer offered for sale.

Insurance companies face unique challenges in administering and maintaining small blocks of discontinued variable contracts. After a variable contract offering is discontinued, as that block of business naturally shrinks over time, the insurance company's costs become increasingly disproportionate to the number of contract owners remaining. However, unlike mutual funds and other registered investment companies that can liquidate small or uneconomic funds, state insurance laws prohibit insurance companies from terminating or liquidating variable contracts when they are no longer economically viable. The Commission should be sensitive to these challenges when

[8] *See supra* fn. 6.

assessing the costs and burdens imposed by the SEC's regulatory framework on registered separate accounts.

Of particular note, the CAI urges the Commission to consider expanding its current enforcement position on discontinued variable contracts.[9] From 1977 until 2020, insurance companies relied heavily on a line of SEC staff no-action letters, commonly known as the "Great-West" letters. The Great-West letters permitted insurance companies and separate accounts to discontinue filing annual post-effective amendments and delivering updated prospectuses to owners of discontinued variable contracts, provided that certain conditions were satisfied (*e.g.*, fewer than 5,000 investors, delivery of underlying fund prospectuses and shareholder reports, delivery of financial statements, no material changes to the variable contract). This carefully designed relief alleviated the increasingly disproportionate costs borne by insurers when they are required to update registration statements and deliver updated prospectuses for small blocks of discontinued variable contracts.

By facilitating the ability of insurers to administer small blocks of discontinued variable contracts in a more economically viable manner without sacrificing the protections afforded to investors, the Great-West letters proved over decades to be an effective, pragmatic solution to a unique problem. Importantly, the Great-West letters also promoted variable product innovation and facilitated consumer choice insofar as insurers, when deciding whether to develop and offer a new variable product, could take comfort from the fact that if the new product offering was discontinued the ongoing costs of administering that closed block of contracts could be mitigated.

In 2020, the Great-West letters were withdrawn as part of the variable contract summary prospectus rulemaking.[10] In consideration of the extent to which insurers had come to rely on the Great-West letters, the Commission did adopt a non-enforcement policy that provides a form of conditional grandfather treatment. But to the disappointment of the industry, the Commission declined to adopt any form of going-forward relief for discontinued variable contracts.

The CAI urges the Commission to reconsider that decision. With nearly 50 years of experience under the Great-West letters and the non-enforcement policy combined, it is clear that this type of relief is workable, does not raise fundamental investor confusion or protection issues, facilitates innovation and consumer choice, produces considerable cost savings for insurance companies, and reduces the disproportionate impact of regulation on small blocks of business. The CAI therefore strongly encourages the SEC to expand its non-enforcement policy for discontinued variable contracts to cover qualifying contracts on a going-forward basis.

The Commission Should Revise the Adviser Grouping Standards to Avoid Grouping an Insurance Company's Affiliated Institutional and Retail Investment Advisers

As previously noted, we agree with the SEC that an insurance company's general account should not be cumulated with the insurance company's registered separate accounts when evaluating a registered separate account's status under the RFA as a small entity. Similarly, the CAI recommends that the SEC revise the adviser grouping standards, as necessary, to avoid cumulating the assets under management for an insurance company's affiliated institutional investment adviser and retail investment adviser. Institutional and retail investment advisory businesses involve substantially different infrastructures, systems, and regulatory requirements. Moreover, these two separate lines of businesses typically do not share management or advisory personnel. They have

[9] *See* Updated Disclosure Requirements and Summary Prospectus for Variable Annuity and Variable Life Insurance Contracts, Release Nos. 33-10765, 34-88358, IC-33814 (Mar. 11, 2020).

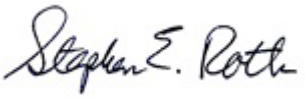
[10] *See id.*

distinct costs and burdens, and there can be few opportunities for economies of scale between them. As such, a retail investment adviser may be disproportionately and unfairly impacted by changes in SEC regulation if its assets under management are cumulated with an institutional adviser merely due to common control. Therefore, the CAI believes that for purposes of the RFA, an insurance company's affiliated institutional investment adviser and retail investment adviser should not be grouped.

* * *

We thank you for the opportunity to provide these comments and recommendations, and we are hopeful that they will be helpful to the Commission and the SEC staff in finalizing the rulemaking.

Respectfully submitted,



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FOR THE COMMITTEE OF ANNUITY INSURERS

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APPENDIX A

THE COMMITTEE OF ANNUITY INSURERS MEMBER LIST

Allianz Life Insurance Company
American Equity Investment Life Insurance Company
Ameriprise Financial
Athene USA
Augustar Life Insurance Company
Brighthouse Financial
Corebridge Financial
Equitable
Fidelity Investments Life Insurance Company
Fortitude Re
Genworth Financial
Global Atlantic Financial Group
Guardian Insurance & Annuity Co., Inc.
Jackson National Life Insurance Company
John Hancock Life Insurance Company
Lincoln Financial Group
Massachusetts Mutual Life Insurance Company
Metropolitan Life Insurance Company
Nationwide Life Insurance Companies
New York Life Insurance Company
Northwestern Mutual Life Insurance Company
Pacific Life Insurance Company
Protective Life Insurance Company
Prudential Insurance Company of America
Sammons Financial
Security Benefit Life Insurance Company
Symetra Financial
Talcott Resolution
Thrivent
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Transamerica
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