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# ACLI Update

By Pete Bautz, Mandana Parsazad and Regina Rose

## REGULATORY GUIDANCE UPDATE

In the past several months, ACLI submitted letters to the Internal Revenue Service (IRS) with recommendations on guidance projects, and on proposed and final regulations affecting the life insurance industry. The first letter, submitted on June 1, was in response to Notice 2017-28, which sought public input on the IRS 2017-2018 Priority Guidance Plan (PGP). The second letter, submitted on July 31, was in response to a Request for Information (RFI) issued by the U.S. Department of the Treasury (Treasury) on June 14, seeking input on executive orders issued by President Trump regarding regulations that may be modified, streamlined, or withdrawn.<sup>1</sup>

In the June 1 letter, which singled out four issues for guidance, ACLI continued to advocate for issuance of previously-identified guidance needed on Life Principles-Based Reserves (Life PBR), highlighting two distinct categories of sub-issues in need of guidance: (i) reserve transition issues, and (ii) substantive reserve issues. The industry continued to characterize life PBR as the industry's highest priority.

The next highest and time sensitive priority issue addressed was guidance on the Required Minimum Distribution (RMD) regulations to modify the minimum income threshold test to remove barriers to annuitization at later ages. The industry's third and fourth priorities, respectively, for the 2017–2018 plan year were guidance on combined annuity long-term care contracts and exchanges of annuities for long-term care insurance, and the use of foreign statement reserves for purposes of measuring qualified insurance income under IRC section 954(i).

In seeking public comments on the PGP in Notice 2017-28, Treasury and the IRS acknowledged the impact of the President's executive orders. At the IRS's specific request, the ACLI's PGP recommendations took into consideration Executive Orders 13771, 13777, and 13789, issued by President Trump. We observed that the executive orders offer a unique opportunity for modification, streamlining, and, in some cases, withdrawal of existing regulations to reduce regulatory costs and burdens for both taxpayers and the IRS, permitting reallocation of resources to appropriate guidance projects. To that end, we requested that the PGP item on regulations under sections 72 and 7702 defining cash surrender value be removed from the PGP since this is



not an area of material controversy, nor a particular burden, on tax administration. We further recommended that regulations relating to Foreign Account Tax Compliance Act (FATCA) as applied to life insurance products and companies, and generation skipping transfer tax (GSTT) withholding obligations on insurance companies, be withdrawn.

We also requested extensive modifications be made to the Life-Nonlife Consolidated Return Regulations to less restrictively implement the IRC provisions and, in certain cases, to eliminate regulatory restrictions that are not required by the IRC at all.

Our July 31 letter mirrored, in large part, the content of the recommendations in our PGP letter. The scope of issues raised was limited to existing proposed and final regulations since the executive orders exclusively addressed burdens created by existing regulations. In this letter, we identified modifications

to the Life-Nonlife Consolidated Return Regulations as the industry's highest priority, and recommended changes identical to those highlighted in our PGP letter. Our recommendations regarding other industry-specific issues were listed in order of priority as follows:

1. RMD guidance (modify);
2. Proposed regulations under 7702 defining cash surrender value (withdraw);
3. Application of FATCA to life insurance companies and products (withdraw);
4. Revise safe harbor explanations under §402 (f) for qualified plan administrators (modify);
5. Provide an exception from foreign bank account reporting (FBAR) for individuals who are signatories on life insurance companies' bank accounts (modify); and
6. GSTT withholding obligations on insurance companies should be eliminated (withdraw).

Finally, on July 7, the IRS released Notice 2017-38, in which it identified eight regulatory projects, including the controversial section 385 debt-equity regulations, as possibly imposing an undue burden on taxpayers or exceeding the IRS's authority. Treasury and IRS requested comments on whether the regulations described in this notice should be rescinded or modified, and in the latter case, how the regulations should be modified in order to reduce burdens and complexity. In mid-July, ACLI was asked to, and did, sign on to an Organization for International Investment (OFII) letter urging Treasury to act quickly to ease the burden of the section 385 regulations and ultimately completely rescind those rules.

On July 28, Treasury and IRS issued Notice 2017-36, which delays by 12 months the documentation requirements under Treasury Regulation Section 1.385-2 and now applies those

requirements to interests issued or deemed issued on or after Jan. 1, 2019. The notice acknowledges that the delay is an intermediate response born out of the review of the section 385 regulations. The notice also requests comments regarding whether the 12-month delay affords taxpayers adequate time to develop systems and processes to comply with the documentation regulations.

ACLI plans to advocate for the industry's guidance and regulatory priorities with the Trump Administration's officials in Treasury's Office of Tax Policy. ■

Pete Bautz is senior vice president, Taxes & Retirement Security for the American Council of Life Insurers and may be reached at [petebautz@acli.com](mailto:petebautz@acli.com).

Mandana Parsazad is vice president, Taxes & Retirement Security for the American Council of Life Insurers and may be reached at [mandanaparsazad@acli.com](mailto:mandanaparsazad@acli.com).

Regina Rose is vice president, Taxes & Retirement Security for the American Council of Life Insurers and may be reached at [reginarose@acli.com](mailto:reginarose@acli.com).

#### ENDNOTES

- 1 For a full discussion of the President's executive orders and the IRS Priority Guidance Plan, please read, Mark S. Smith's *TAXING TIMES* Tidbit article in this issue entitled "Executive Orders on Regulatory Guidance Could Affect IRS Published Guidance."