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# ACLI Update

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On March 22, 2019, Treasury and the Internal Revenue Service (IRS) released proposed regulations implementing Sections 101(a)(3) and 6050Y (Proposed Regulations).<sup>1</sup> These proposed rules follow up on guidance Treasury and the IRS had issued in spring of 2018 in Notice 2018-41, which outlined reporting and definitional rules regarding information reporting of sales of life insurance contracts and modification to the rules on transfers of life insurance contracts for valuable considerations. Instructions for Forms 1099-LS and 1099-SB to allow tax reporting pursuant to Section 6050Y were published concurrently. The deadline for comments on the Proposed Regulations is set for May 9, 2019; a public hearing is scheduled for June 5, 2019.

The Proposed Regulations reflect several changes from the rules prescribed in Notice 2018-41, which demonstrate the significant time and resources that representatives of the IRS Chief Counsel and Treasury devoted to considering and discussing industry comments and concerns regarding the new substantive and reporting rules.

ACLI provided several submissions in response to Notice 2018-41 on the life insurance industry's behalf, highlighting the need for clarification that ordinary-course business transactions that do not directly involve the acquisition of life insurance contracts but rather the sale of one trade or business to another are excluded from the definition of a "Reportable Policy Sale" in Section 101(a)(3)(B). Concern that a merger with or acquisition of a business that owns life insurance policies could be inappropriately cast as an indirect reportable policy sale of policies owned by the businesses involved was one of the most important issues in need of clarification by the industry on behalf of its policyholders. The Proposed Regulations generally address industry concerns regarding mergers and acquisitions involving businesses that own life insurance policies. In particular, the preamble to the Proposed Regulations states that "an indirect acquisition of an interest in a life insurance contract occurs when a person (acquirer) becomes a beneficial owner of a partnership, trust, or other entity that holds (directly or indirectly) an interest in the life insurance contract." The proposed rules clarify that "the term 'other entity' does not include a C corporation ... unless more than 50 percent of the gross value of the assets

of the C corporation ... consists of life insurance contracts immediately before the indirect acquisition."<sup>2</sup> The proposed rules provide several other meaningful exceptions from the definition of reportable policy sale that effectively exclude most ordinary course mergers with and acquisitions of businesses that own life insurance policies.<sup>3</sup>

The ACLI also recommended that issuers be allowed to meet the obligations under Sections 6050Y(b) and (c) on or before Feb. 15, and that the instructions be updated to clarify that Form 1099-LS must be provided to the issuer by no later than Jan. 15, while also requiring the Form be provided by the later of 20 days after sale or 5 days after the rescission period. The proposed rules accepted these industry recommendations without modification. The proposed rules also accepted an industry request that the new IRS form that implements the acquirer's reporting obligation to provide a reportable policy sale statement (RPSS) under Section 6050Y(a) be sent to the issuer's administrative office that, pursuant to the insurance contract, processes transfers of ownership.

The ACLI intends to continue its dialogue with IRS Chief Counsel, Branch 4, and Treasury representatives on other details involving the reporting obligations of life insurers under the Proposed Regulations, including determining whether a transfer of ownership has occurred for purposes of Section 6050Y(b), and expects to provide a formal comment letter. ■

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## ENDNOTES

- 1 REG-103083-18, Information Reporting for Certain Life Insurance Contract Transactions and Modifications to the Transfer for Valuable Consideration Rules, *Federal Register*, <https://www.federalregister.gov/documents/2019/03/25/2019-05400/information-reporting-for-certain-life-insurance-contract-transactions-and-modifications-to-the>.
- 2 *Id.*
- 3 See Prop. Treas. § 1.101-1(c)(2).