Supporting Statement
1545-2234
TD 9673
Longevity Annuity Contracts

1. Circumstances necessitating collection of information

   The final regulations are related to the use of longevity annuity contracts in tax qualified defined contribution plans under section 401 (a) of the Internal Revenue Code (Code), section 403 (b) plans, individual retirement annuities and accounts (IRAs) under section 408, and eligible governmental plans under section 457 (b). The collection of information in the final regulations is necessary as it will provide the public with guidance necessary to comply with the required minimum distribution rules under section 401(a)(9) applicable to an IRA or a plan that holds a longevity annuity contract. The regulations will affect individuals for whom a longevity annuity contract is purchased under these plans and IRAs (and their beneficiaries), sponsors and administrators of these plans, trustees and custodians of these plans and IRAs, and insurance companies that issue longevity annuity contracts under these plans and IRAs.

   Form 1098-Q and its instructions implement the new reporting requirements under Treasury Decision (TD) 9673. Any person who issues a contract purchased or held under any plan, annuity, or account described in IRC section 401(a), 433(b) or 408 (other than a Roth IRA) or eligible governmental plan under section 457(b) must file Form 1098-Q.

2. Use of data

   The collection of information in these final regulations is in A-17(a)(6) of §1.401(a)(9)-6 (disclosure that a contract is intended to be a qualifying longevity annuity contract (QLAC), defined in A-17 of that section) and §1.6047-2 (an annual statement must be provided to qualifying longevity annuity contract owners and their surviving spouses containing information required to be furnished to the IRS). The information in A-17(a)(6) of §1.401(a)(9)-6 is required in order to notify employees and beneficiaries, plan sponsors, and the IRS that the regulations apply to a contract. The information in the annual statement in §1.6047-2(c) is required in order to apply the dollar and percentage limitations in A-17(b) of §1.401(a)(9)-6 and A-12(b) of §1.408-8, and to comply with other requirements of the required minimum distribution rule

3. Use of improved information technology to reduce burden

   A statement required to be furnished pursuant to §1.6047-2 that is provided electronically must meet the consumer consent requirements in §1.401(a)-21(b).

4. Efforts to identify duplication

   There is no similar information already available that can be modified for use for the purposes described in item 2 above.

5. Methods to minimize burden on small business or other small entities

   Not applicable.

6. Consequences of less frequent collection on federal programs or policy activities

   Not applicable.

7. Special circumstances requiring data collection to be inconsistent with guidelines in 5 CFR 1320.5(d)(2)

   Not applicable.

8. Consultation with individuals outside of the agency on availability of data, frequency of collection, clarity of the instructions and forms, and data elements

   On February 2, 2010, the Department of Labor, the IRS, and the Department of the Treasury issued a Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans in the Federal Register (75 FR 5253). That Request for Information included questions relating to how the required minimum distribution rules affect defined contribution plan sponsors' and participants' interest in the offering and use of lifetime income products. In particular, the Request for Information asked whether there were changes to the rules that could or should be considered to encourage arrangements under which participants can purchase deferred annuities that begin at an advanced age (sometimes referred to as longevity annuities or longevity insurance). A number of commenters identified the required minimum distribution rules as an impediment to the utilization of these types of annuities. The Treasury Department and the IRS concluded that there are substantial advantages to modifying the minimum distribution rules in order to facilitate a participant's purchase of a deferred annuity that is scheduled to commence at an advanced age, such as 80 or 85.

   On February 3, 2012, proposed amendments to the regulations (REG-115809-11) under sections 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), 408A(c)(5), and 6047(d) of the Code were published in the Federal Register (77 FR 5443). The amendments to the regulations relating to the required minimum distribution rules were proposed in order to facilitate the purchase of deferred annuities that begin at an advanced age.

A public hearing was held on June 1, 2012. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury Decision.

These final regulations modify the required minimum distribution rules in order to facilitate the purchase of deferred annuities that begin at an advanced age. These regulations apply to contracts that satisfy certain requirements, including the requirement that distributions commence not later than age 85. Prior to annuitization, the value of these contracts, referred to as ‘‘qualifying longevity annuity contracts’’ (QLACs), is excluded from the account balance used to determine required minimum distributions.

Comments were received regarding the limitations on premiums in which a number of commenters requested that the $100,000 limit or the 25-percent limit (or both) be increased to allow individuals to obtain more longevity risk protection. Other commenters supported the retention of the limits at their proposed levels.

After consideration of all of the comments, the Treasury Department and the IRS have concluded that the dollar limit on premiums under the proposed regulations can be increased to $125,000 without leading to an unacceptable level of deferral of distribution. Accordingly, the final regulations increase the $100,000 premium limit to $125,000. The final regulations continue to provide that no more than 25 percent of the account balance may be used to pay premiums. The final regulations also simplify the application of the percentage limit and provide further clarification.

A number of commenters requested that the rule, contained in the proposed regulations, which provided that if a premium for a contract causes the total premiums to exceed either the dollar or percentage limitation, the contract would fail to be a QLAC beginning on the date on which the excess premium was paid, be modified. Commenters stated that disqualifying an entire contract would be a harsh result, particularly in the case of an inadvertent error and several commenters made suggestions on provisions.

In response to these comments, the final regulations provide that if an annuity contract fails to be a QLAC solely because premiums for the contract exceed the premium limits, then the contract will not fail to be a QLAC if the excess premium is returned to the non-QLAC portion of the employee’s account by the end of the calendar year following the calendar year in which the excess premium was paid. The excess premium may be returned to the non-QLAC portion of the employee’s account either in cash or in the form of an annuity contract that is not intended to be a QLAC. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee’s account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance as of that valuation date must be increased to reflect the excess premium. Any such return of excess premium will not be treated as a violation of the rule that a QLAC must not provide a commutation benefit.

In response to other comments, the final regulations clarify that if a contract at any time fails to be a QLAC for premium limitations, the contract will not be treated as a QLAC, or a contract that is intended to be a QLAC, beginning on the date of the first premium payment for that contract.

The proposed regulations provided that for calendar years beginning on or after the calendar year in which the regulations are effective, the dollar limitation would be adjusted at the same time and in the same manner as under section 415(d), except that (1) the base period would be the calendar year quarter beginning six months before the effective date of the regulations, and (2) any increase that is not a multiple of $25,000 would be rounded to the next lowest multiple of $25,000.

In response to comments requesting that the dollar limit be adjusted in smaller increments than $25,000, the final regulations provide that any increase that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000.

The proposed regulations would have provided that under a QLAC the only benefit permitted to be paid after the employee's death is a life annuity, payable to a designated beneficiary, that meets certain requirements. A number of commenters requested that QLACs be permitted to include a return of premium (ROP) feature that guarantees that if the annuitant dies before receiving payments at least equal to the total premiums paid under the contract, then an additional payment is made to ensure that the total payments received are at least equal to the total premiums paid under the contract. They noted that an ROP feature would make QLACs more attractive by addressing the concerns of those who would be unwilling to take the risk that payments under the contract will not be at least equal to the premiums. Several commenters stated that although the cost of providing an ROP feature results in lower annuity payments, the effect would be relatively small and employees would still be more likely to choose an annuity with this feature than without it.

In response to these comments, the final regulations provide that a QLAC may offer an ROP feature that is payable before and after the employee's annuity starting date. Accordingly, a QLAC may provide for a single-sum death benefit paid to a beneficiary in an amount equal to the excess of the premium payments made with respect to the QLAC over the payments made to the employee under the QLAC. If a QLAC is providing a life annuity to a surviving spouse (or will provide a life annuity to a surviving spouse), it may also provide a similar ROP benefit after the death of both the employee and the spouse.

The final regulations provide that an ROP payment must be paid no later than the end of the calendar year following the calendar year in which the employee dies, or in which the surviving spouse dies, whichever is applicable. If the employee's death is after the required beginning date, then the ROP payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the ROP payment similarly is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover. As under the proposed regulations, the final regulations provide that if the sole beneficiary of an employee under the contract is the employee's surviving spouse, the only benefit permitted to be paid after the employee's death (other than an ROP) is a life annuity payable to the surviving spouse that does not exceed 100 percent of the annuity If the employee's surviving spouse is not the sole beneficiary under the contract, the only benefit permitted tobe paid after the employee's death (other than an ROP) is a life annuity payable to a designated beneficiary. In order to satisfy the MDIB requirements of section 401(a)(9)(G), the life annuity is not permitted to exceed an applicable percentage of the annuity payment payable to the employee. The applicable percentage is determined under one of two alternative tables, and the determination of which table applies depends on the different types of death benefits that are payable to the designated beneficiary. However, if the contract provides for an ROP, the applicable percentage is zero. The alternative tables are described further in the "Summary of Comments and Explanation of Revisions" in the final regulation.

Under the proposed regulations, a QLAC would not include a variable contract under section 817 (variable annuity), an equity-indexed contract, or a similar contract. A number of commenters requested that variable annuities and annuities that base returns on an equity index be included in the definition of a QLAC. One commenter noted that a narrow definition may limit the demand for QLACs. Others noted that annuities that provide for equity exposure are better able to address the long-term risk of inflation than fixed annuities.

The final regulations provide that a QLAC does not include a variable contract under section 817, an indexed contract, or a similar contract. However, the final regulations also provide that the Commissioner may provide an exception to this rule in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin. In response to comments, the final regulations clarify that a participating annuity contract is not treated as a contract that is similar to a variable contract or an indexed contract merely because it provides for the payment of dividends described in A–14(c)(3) of § 1.401(a)(9)–6. Similarly, a contract that provides for a cost-of-living adjustment described in A–14(b) of § 1.401(a)(9)–6 is not treated as a contract that is similar to a contract that is a variable contract or an indexed contract. The proposed regulations also provided that in order to be a QLAC, a contract is not permitted to make available any commutation benefit, cash surrender value, or other similar feature. Although some commenters requested flexibility to offer contracts with these types of features, the final regulations retain this rule because the availability of such a feature would significantly reduce the benefit of mortality pooling under the contracts. The proposed regulations provided that a contract is not a QLAC unless it states, when issued, that it is intended to be a QLAC. This rule would ensure that the issuer, employee, plan sponsor, and IRS know that the rules applicable to QLACs apply to a contract. Numerous commenters objected to this requirement, primarily because any changes to a contract form would require issuers to resubmit that form (even if it already satisfies the other QLAC requirements) to state insurance regulators for approval. Some commenters suggested that in order to alleviate the burden, issuers should be allowed to satisfy this requirement by including a statement in an insurance certificate or rider rather than in the contract itself. Several commenters suggested that the requirement to include this statement in the contract should be removed altogether because it duplicates the proposed disclosure requirement. As under the proposed regulations, the final regulations provide that when the contract is issued an employee must be notified that the contract is intended comments, the final regulations provide that this requirement will be satisfied if this language is included in the contract, or in a rider or endorsement with respect to the contract. The final regulations also provide that this requirement will be satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC. In addition, the final regulations include a transition rule under which an annuity contract issued before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy this requirement, provided that when the contract is issued the employee is notified that the contract (or a certificate under a group annuity contract) is intended to be a QLAC, and the contract is amended (or a rider, endorsement, or amendment to the certificate is issued) no later than December 31, 2016 to state that the contract is intended to be a QLAC. The final regulations continue to provide that distributions under a QLAC must satisfy the generally applicable section 401(a)(9) requirements relating to annuities set forth in § 1.401(a)(9)–6, other than the requirement that annuity payments commence on or before the employee's required beginning date. Thus, for example, the limitation on increasing payments described in A– 1(a) of § 1.401(a)(9)–6 applies to the contract.

A number of commenters favored allowing defined benefit plans to offer a QLAC. For example, several commenters stated that not permitting a QLAC to be offered under a defined benefit plan will encourage employees to roll over lump-sum distributions from defined benefit plans to defined contribution plans or IRAs, where they can buy a QLAC. They argued that it would be preferable for the annuities to be provided directly from a defined benefit plan. Defined benefit plans generally are required to offer annuities, which provide longevity protection. Because longevity protection is already available in these plans, the final regulations do not apply to defined benefit plans. However, the Treasury Department and the IRS request comments regarding the desirability of making a form of benefit that replicates the QLAC structure available in defined benefit plans. In particular the Treasury Department and the IRS request comments regarding the advantages to an employee of being able to elect a QLAC structure under a defined benefit plan, instead of electing a lump sum distribution from a defined benefit plan and rolling it over to a defined contribution plan or to an IRA in order to purchase a QLAC.

The most significant revisions are further discussed in the "Summary of Comments and Explanation of Revisions" in the final regulations.

9. Explanation of decision to provide any payment or gift to respondents

Not applicable.

10. Assurance of confidentiality of responses

Generally, tax returns and return information are confidential as required by 26 USC 6103.

11. Justification of sensitive questions

No personally identifiable information (PII) is collected.

12. Estimated burden of information collection

The collection of information contained in these final regulations requires respondents to disclose that an annuity contract is intended to be a qualifying longevity annuity contract and to furnish statements about these contracts. Form 1098-Q and its instructions implement the new reporting requirements. It is estimated to take an average of 8 minutes per response. Therefore, the total annual burden to provide 213,966 responses is 28,529 hours. Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. Estimated total annual cost burden to respondents

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. Estimated annualized cost to the Federal government

Not applicable.

15. Reasons for change in burden

Not applicable. This is a new collection.

16. Plans for tabulation, statistical analysis, and publication

Not applicable.

17. Reasons why displaying the OMB expiration date is inappropriate

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the regulations sunset as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. Exceptions to the certification statement on OMB PRA submission form

Not applicable.