(c) *Effective/applicability date*. This section applies to sales of taxable medical devices on and after January 1, 2013.

Par. 4. Section 48.4221–1 is amended by adding paragraph (a)(2)(vii) to read as follows:

§48.4221–1 Tax-free sales; general rule.

(a) * * *

(2) * * *

(vii) The exemptions under section 4221(a)(3) through (a)(6) do not apply to the tax imposed by section 4191 (medical device tax).

* * * * *

Par. 5. Section 48.4221–2 is amended by adding headings to paragraphs (b)(1) and (b)(2) and adding paragraph (b)(3).

The additions read as follows:

(b) * * *

(1) *In general*. * * *

(2) *Material in the manufacture or production of another article*. * * *

(3) *Kits*—(i) The process of producing or assembling a kit that is a taxable medical device (as defined in §48.4191–2) constitutes further manufacture. Under such circumstances, the taxable and nontaxable articles used in the production or assembly of the kit lose their identity as separate articles once they are incorporated into the kit because the kit is a new taxable article. Accordingly, the provisions of §48.4216(a)–1(e) do not apply upon the sale of a kit that is a taxable medical device, and the entire sale price of the kit is subject to tax under section 4191.

(ii) For purposes of this section, the term *kit* means a set of two or more articles that is enclosed in a single package, such as a bag, tray, or box, for the convenience of a medical or health care professional or the end user. A kit may contain a combination of one or more taxable medical devices and other articles.

(iii) The following example illustrates the rule of this paragraph (b)(3).

Example. X is a manufacturer of scalpels. X is registered with the IRS as a manufacturer of taxable medical devices in accordance with §48.4222(a)–1. Y is a distributor of taxable medical devices. Y is registered with the IRS as a manufacturer of taxable medical devices and as a buyer of taxable medical devices for use in further manufacture in accordance with §48.4222(a)–1. Y purchases scalpels from X for inclusion in surgical kits that Y produces. Both the scalpels and the kits are "taxable medical devices" as defined in §48.4191–2. Accordingly, X may sell the scalpels to Y tax free, provided Y furnishes its registration number to X and certifies in writing that the scalpels will be used in further manufacture.

(iv) This paragraph (b)(3) applies to sales of taxable medical devices on and after January 1, 2013.

* * * * *

Par. 6. Section 48.6416(b)(2)–2 is amended by adding paragraph (a)(4) to read as follows:

§48.6416(b)(2)–2 Exportations, uses, sales and resales included.

(a) * * *

(4) Beginning on January 1, 2013, sections 6416(b)(2)(B), (C), (D), and (E) do not apply to any tax paid under section 4191 (medical device tax).

* * * * *

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on February 3, 2012, 11:15 a.m., and published in the issue of the Federal Register for February 7, 2012, 77 F.R. 6028)

Notice of Proposed Rulemaking and Notice of Public Hearing

Longevity Annuity Contracts

REG–115809–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the purchase of longevity annuity contracts under 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 section 457 plans. These regulations will provide the public with guidance necessary to comply with the required minimum distribution rules under section 401(a)(9). 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 IRAs, and insurance companies that issue longevity annuity contracts under these plans and IRAs. This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by May 3, 2012. Outlines of topics to be discussed at the public hearing scheduled for June 1, 2012 must be received by May 11, 2012.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–115809–11), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington D.C. 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–115809–11), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C., or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–115809–11). The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Jamie Dvoretzky at (202) 622–6060; concerning submission of comments, the hearing, and/or being placed on the building access list to attend the hearing, Oluwafunmilayo (Funmi) Taylor) at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). The collection of information in these proposed regulations is in §1.401(a)(9)–6, A–17(a)(6) (disclosure that a contract is intended to be a qualifying longevity annuity contract) and §1.6047–2 (an initial report must be prepared and an initial disclosure statement

must be furnished to qualifying longevity annuity contract owners, and 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 §1.401(a)(9)–6, A–17(a)(6), is required in order to notify participants and beneficiaries, plan sponsors, and the IRS that the proposed regulations apply to a contract. The information in the annual statement in §1.6047–2 is required in order to apply the dollar and percentage limitations in §1.401(a)(9)–6, A–17(b) and §1.408–8, Q&A–12(b) and to comply with other requirements of the proposed regulations, and the information in the initial report and disclosure statement in §1.6047–2 is required in order for individuals to understand the features and limitations of a qualifying longevity annuity contract. The information would be used by plans and individuals to comply with the required minimum distribution rules.

Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:M:S; Washington, DC 20224. Comments on the collection of information should be received by April 3, 2012. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total average annual recordkeeping burden: 35,661 hours.

Estimated average annual burden per response: 10 minutes.

Estimated number of responses: 213,966.

Estimated number of recordkeepers: 150.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under sections 401(a)(9), 403(b)(10), 408(a)(6), 408(b)(3), 408A(c)(5), and 6047(d) of the Code.

Section 401(a)(9) prescribes required minimum distribution rules for a qualified trust under section 401(a). In general, under these rules, distribution of each participant's entire interest must begin by the required beginning date. The required beginning date generally is April 1 of the calendar year following the later of (1) the calendar year in which the participant attains age 70½ or (2) the calendar year in which the participant retires. However, the ability to delay distribution until the calendar year in which a participant retires does not apply in the case of a 5-percent owner or an IRA owner.

If the entire interest of the participant is not distributed by the required beginning date, section 401(a)(9)(A) provides that the entire interest of the participant must be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of the participant or lives of the participant and a designated beneficiary (or over a period not extending beyond the life expectancy of the participant or the life expectancy of the participant and a designated beneficiary). Section 401(a)(9)(B) prescribes required minimum distribution rules that apply after the death of the participant. Section 401(a)(9)(G) provides that any distribution required to satisfy the incidental death benefit requirement of section 401(a) is treated as a required minimum distribution.

Section 403(b) plans, IRAs described in section 408, and eligible deferred compensation plans under section 457(b) also are subject to the required minimum distribution rules of section 401(a)(9) pursuant to sections 408(a)(6) and (b)(3), 403(b)(10), and 457(d)(2), respectively, and the regulations under those sections. However, pursuant to section 408A(c)(5), the minimum distribution and minimum distribution incidental benefit (MDIB) requirements do not apply to Roth IRAs during the life of the participant.

Section 408(i) provides that the trustee of an individual retirement account and the issuer of an endowment contract or an individual retirement annuity must make reports regarding such account, contract, or annuity to the Secretary and to the individuals for whom the account, contract, or annuity is maintained with respect to such matters as the Secretary may require. Pursuant to this provision, the IRS prescribes Form 5498 (*IRA Contribution Information*), which requires annual reporting with respect to an IRA, including a statement of the fair market value of the IRA as of the prior December 31. Section 6047(d) states that the Secretary shall by forms or regulations require that the employer maintaining, or the plan administrator of, a plan from which designated distributions (as defined in section 3405(e)(1)) may be made, and any person issuing any contract under which designated distributions may be made, make returns and reports regarding the plan or contract to the Secretary, to the participants and beneficiaries of the plan or contract, and to such other persons as the Secretary may by regulations prescribe. These sections also provide that the Secretary may, by forms or regulations, prescribe the manner and time for filing these reports. Section 6693 prescribes monetary penalties for failure to comply with section 408(i), and sections 6652 and 6704 prescribe monetary penalties for failure to comply with section 6047(d).

Section 1.401(a)(9)–6 of the Income Tax Regulations sets forth the minimum distribution rules that apply to a defined benefit plan and to annuity contracts un-

der a defined contribution plan. Under §1.401(a)(9)–6, A–12, if an annuity contract held under a defined contribution plan has not yet been annuitized, the interest of a participant or beneficiary under that contract is treated as an individual account for purposes of section 401(a)(9). Thus, the value of that contract is included in the account balance used to determine required minimum distributions from the participant's individual account.

If an annuity contract has been annuitized, the periodic annuity payments must be nonincreasing, subject to certain exceptions that are set forth in §1.401(a)(9)–6, A–14. In addition, annuity payments must satisfy the MDIB requirement of section 401(a)(9)(G). Under §1.401(a)(9)–6, A–2(b), if a participant's sole beneficiary, as of the annuity starting date, is his or her spouse and the distributions satisfy section 401(a)(9) without regard to the MDIB requirement, the distributions to the participant are deemed to satisfy the MDIB requirement. However, if distributions are in the form of a joint and survivor annuity for a participant and a non-spouse beneficiary, the MDIB requirement is not satisfied unless the periodic annuity payment payable to the survivor does not exceed an applicable percentage of the amount that is payable to the participant, with the applicable percentage to be determined using the table in §1.401(a)(9)–6, A–2(c).

The regulations under sections 403(b)(10), 408(a)(6), 408(b)(3), 408A(c)(5), and 457(d)(2) prescribe how the required minimum distribution rules apply to other types of retirement plans and accounts. Section 1.403(b)–6(e)(1) provides that a section 403(b) contract must meet the requirements of section 401(a)(9). Section 1.403(b)–6(e)(2) provides, with certain exceptions, that the section 401(a)(9) required minimum distribution rules are applied to section 403(b) contracts in accordance with the provisions in §1.408–8. Section 1.408–8, Q&A–1, provides, with certain modifications, that an IRA is subject to the rules of §§1.401(a)(9)–1 through 1.401(a)(9)–9. One such modification is set forth in §1.408–8, Q&A–9, which prescribes a rule under which an IRA generally does not fail to satisfy section 401(a)(9) merely because the required minimum distribution with respect to the IRA is distributed instead from another IRA. Section 1.408A–6, Q&A–14(a), provides that no minimum distributions are required to be made from a Roth IRA during the life of the participant. Section 1.408A–6, Q&A–15, provides that a participant who is required to receive minimum distributions from his or her traditional IRA cannot choose to take the amount of the required minimum distributions from a Roth IRA. Section 1.457–6(d) provides that a section 457(b) eligible plan must meet the requirements of section 401(a)(9) and the regulations under that section.

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. 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 commentators identified the required minimum distribution rules as an impediment to the utilization of these types of annuities. One such impediment that they noted is the requirement that, prior to annuitization, the value of the annuity be included in the account balance that is used to determine required minimum distributions. This requirement raises the risk that, if the remainder of the account has been depleted, the participant would have to commence distributions from the annuity earlier than anticipated in order to satisfy the required minimum distribution rules. Some commentators stated that if the deferred annuity permits a participant to accelerate the commencement of benefits, then, in order to take that contingency into account, the premium would be higher for a given level of annuity income regardless of whether the participant actually commences benefits at an earlier date. Some commentators also noted that longevity annuities often do not provide a commutation benefit, cash surrender value, or other similar feature.

The Treasury Department and the IRS have concluded that there are substantial advantages to modifying the required 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 age 80 or 85 — using a portion of his or her account. Under the proposed amendments to these rules, prior to annuitization, the participant would be permitted to exclude the value of a longevity annuity contract that meets certain requirements from the account balance used to determine required minimum distributions. Thus, a participant would never need to commence distributions from the annuity contract before the advanced age in order to satisfy the required minimum distribution rules and, accordingly, the contract could be designed with a fixed annuity starting date at the advanced age (and would not need to provide an option to accelerate commencement of the annuity).

Purchasing longevity annuity contracts could help participants hedge the risk of drawing down their benefits too quickly and thereby outliving their retirement savings. This risk is of particular import because of the substantial, and unpredictable, possibility of living beyond one's life expectancy. Purchasing a longevity annuity contract would also help avoid the opposite concern that participants may live beneath their means in order to avoid outliving their retirement savings. If the longevity annuity provides a predictable stream of adequate income commencing at a fixed date in the future, the participant would still face the task of managing retirement income over that fixed period until the annuity commences, but that task generally is far less challenging than managing retirement income over an uncertain period.

The Treasury Department and the IRS have concluded that any special treatment under the required minimum distribution rules to facilitate the purchase of such a longevity annuity contract should be limited to a portion of a participant's account balance, such as 25 percent. A percentage limit is necessary in order to be consistent with section 401(a)(9)(A), which requires the entire interest of each participant to be distributed, beginning by the required

beginning date, in accordance with regulations, over the life or life expectancy of the participant (or the participant and a designated beneficiary). The pattern of required minimum payments implemented in the existing regulations under section 401(a)(9) limits the extent to which tax-favored retirement savings can be used for purposes other than retirement income (such as transmitting accumulated wealth to a participant's heirs). Limiting the special treatment for a longevity annuity to those contracts purchased with no more than 25 percent of the account balance is consistent with the intent of section 401(a)(9)(A) because, for a typical participant who will need to draw down the entire account balance during the period prior to commencement of the annuity, the overall pattern of payments would not provide more deferral than would otherwise normally be available for lifetime payments under the section 401(a)(9)(A) rules.

However, because a participant is required to receive only required minimum distributions during the period before the annuity begins (and would not under these proposed regulations be required to draw down the entire remaining balance on an accelerated basis), the Treasury Department and the IRS have concluded that, in addition to the percentage limitation, the amount used to purchase an annuity for which the minimum distribution requirements would be eased should be subject to a dollar limitation, such as $100,000. This dollar limitation would be applied in order to constrain the extent to which the combination of payments from the account balance (determined by excluding the value of the annuity before the annuity commences) and later payments from the annuity contract might result in an overall pattern of payouts from the plan that permits undue deferral of distribution of the participant's entire interest.

Such a limit would still allow significant income to be provided beginning at age 85. For example, if at age 70 a participant used $100,000 of his or her account balance to purchase an annuity that will commence at age 85, the annuity could provide an annual income that is estimated to range between $26,000 and $42,000 (depending on the actuarial assumptions used by the issuer and the form of the annuity elected by the participant, such as whether the form elected is a straight life annuity or a joint and survivor annuity). These illustrations assume a three-percent interest rate, no pre-annuity-starting-date death benefit, use of the Annuity 2000 Mortality Table for males and females,[1] no indexation for inflation, and no load for expenses.

These amounts would be higher if the interest rate used by the issuer to determine the annuity amount were higher. For example, the $42,000 amount would be increased to approximately $50,000 if the annuity were purchased assuming a four-percent interest rate, rather than a three-percent rate.

In addition, a participant who purchases a contract before age 70 could obtain the same income with a lower premium or could obtain larger income with the same premium. For example, even assuming a three-percent interest rate, the $42,000 amount would be approximately $51,000 if the annuity were purchased at age 65 rather than age 70. Furthermore, a participant who purchases increments of annuities over his or her career could hedge the risk of interest-rate fluctuation by purchasing these increments in different interest rate environments and effectively averaging annuity purchase rates over time.

To facilitate compliance with the dollar and percentage limitations and other requirements that longevity annuity contracts must satisfy in order to qualify for the special treatment, certain disclosure and reporting requirements would apply for the issuers of these contracts. Because longevity annuities would not begin until contract owners reach an advanced age, annual statements would also serve as an important reminder to those owners (and persons assisting them with their financial affairs) of their right to receive the annuities.

Explanation of Provisions

These proposed regulations would modify the required minimum distribution rules in order to facilitate the purchase of deferred annuities that begin at an advanced age. The proposed regulations would 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), would be excluded from the account balance used to determine required minimum distributions.

I. *Definition of QLAC*

A. *Limitations on premiums*

The proposed regulations provide that, in order to constitute a QLAC, the amount of the premiums paid for the contract under the plan on a given date may not exceed the lesser of a dollar or a percentage limitation. The proposed regulations prescribe rules for applying these limitations to participants who purchase multiple contracts or make multiple premium payments for the same contract.

Under the dollar limitation, the amount of the premiums paid for a contract under the plan may not exceed $100,000. If, on or before the date of a premium payment, an employee has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is purchased for the employee under the plan or under any other plan, annuity or account, the $100,000 limit is reduced by the amount of those other premium payments.[2]

Under the percentage limitation, the amount of the premiums paid for a contract under the plan may not exceed an amount equal to 25 percent of the employee's account balance on the date of payment. If, on or before the date of a premium payment, an employee has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is held or purchased for the employee under the plan, the maximum amount under the 25-percent limit is reduced by the amount of those other payments.

For purposes of determining whether premiums for a contract exceed the dollar or percentage limitation, unless the plan administrator has actual knowledge to the

[1] If the annuity is provided under an employer plan, unisex mortality assumptions would be required.

[2] As discussed under the heading "II. IRAs," a contract that is purchased or held under a Roth IRA is not treated as a contract that is intended to be a QLAC (even if it otherwise meets the requirements to be a QLAC).

contrary, the plan administrator would generally be permitted to rely on an employee's representation of the amount of premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for an employee under any other plan, annuity, or account. However, this reliance is not available with respect to a plan, annuity, or account that is maintained by an employer (or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o)) with respect to purchases for an employee under any other plan, annuity, or account maintained by that employer.

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 as of the date on which the excess premiums were paid. Thus, beginning on that date, the value of the contract would no longer be excluded from the account balance used to determine required minimum distributions.

For calendar years beginning on or after January 1, 2014, 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 July 1, 2012, and (2) any increase that is not a multiple of $25,000 would be rounded to the next lowest multiple of $25,000. If a contract failed to be a QLAC immediately before an adjustment because the premiums exceeded the dollar limitation, an adjustment of the dollar limitation would not cause the contract to become a QLAC.

B. *Maximum age at commencement*

The proposed regulations provide that, in order to constitute a QLAC, the contract must provide that distributions under the contract commence not later than a specified annuity starting date set forth in the contract. The specified annuity starting date must be no later than the first day of the month coincident with or next following the employee's attainment of age 85. This age reflects the approximate life expectancy of an employee at retirement, and was recommended in a number of the comments received in response to the Request for Information. Any contract for which premiums are paid after the latest permissible specified annuity starting date would not be a QLAC, because such a contract could not require distributions to commence by that date.

The proposed regulations would permit a QLAC to allow a participant to elect an earlier annuity starting date than the specified annuity starting date. For example, if the specified annuity starting date under a contract were the date on which a participant attains age 85, the contract would not fail to be a QLAC solely because it allows the participant to commence distributions at an earlier date. On the other hand, these rules would not require a QLAC to provide an option to commence distributions before the specified annuity starting date, so that a QLAC could provide that distributions must commence only at the specified annuity starting date. For a given premium, such a contract could provide a substantially higher periodic annuity payment beginning on the specified annuity starting date than a contract with an acceleration option. Similarly, premiums could be lower for a given level of periodic annuity payment, leaving a larger portion of the remaining account balance for the participant to use for living expenses before the specified annuity starting date.

The proposed regulations provide that the maximum age may also be adjusted to reflect changes in mortality. The adjusted age (if any) would be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*)). The Treasury Department and the IRS anticipate that such changes will not occur more frequently than the adjustment of the $100,000 limit described in subheading I.A. "Limitations on premiums." If a contract failed to be a QLAC immediately before an adjustment because it failed to provide that distributions must commence by the requisite age, an adjustment of the age would not cause the contract to become a QLAC.

C. *Benefits payable after death of the employee*

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. Thus, for example, a contract that provides a distribution form with a period certain or a refund of premiums in the case of an employee's death would not be a QLAC. These types of payments are inconsistent with the purpose of providing lifetime income to employees and their beneficiaries, as described in the Background section of this preamble. A contract that provides a given lifetime periodic annuity payment to an employee would be less expensive if it provided for a life annuity payable to a designated beneficiary upon the employee's death rather than additional features such as an optional single-sum death benefit. After paying a lower premium for such a life annuity, the employee would be able to retain a larger portion of his or her account, maximizing the employee's lifetime benefits, while also leaving larger death benefits for a beneficiary, from the remaining amount of the account.

The proposed 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 is a life annuity payable to the surviving spouse that does not exceed 100 percent of the annuity payment payable to the employee. The proposed regulations include a special exception that would allow a plan to comply with any applicable requirement to provide a qualified preretirement survivor annuity[3] (which would have an effect only if the employee has a substantially older spouse).

If the employee's surviving spouse is not the sole beneficiary under the contract,[4] the only benefit permitted to be paid after the employee's death 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

[3] A qualified preretirement survivor annuity is defined in section 417(c)(2) as an annuity for the life of the surviving spouse the actuarial equivalent of which is not less than 50 percent of the portion of the account balance of the participant (as of the date of death) to which the participant had a nonforfeitable right (within the meaning of section 411(a) of the Code). Section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA), includes a parallel definition. See Rev. Rul. 2012–3 for rules relating to qualified preretirement survivor annuities.

[4] If the surviving spouse is one of the designated beneficiaries, this rule is applied as if the contract were a separate contract for the surviving beneficiary, but only if certain conditions are satisfied, including a separate account requirement. See §1.401(a)(9)–8, A–2(a) and A–3.

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.

Under the first alternative, the applicable percentage is the percentage described in the existing table in §1.401(a)(9)–6, A–2(c). Because the existing applicable percentage table does not take into account the potential for a death benefit to be paid to the non-spouse designated beneficiary during the period between the required beginning date and the annuity starting date, this table is available only if, under the contract, no death benefits are payable to such a beneficiary if the employee dies before the specified annuity starting date. Furthermore, in order to address the possibility that an employee with a shortened life expectancy could accelerate the annuity starting date in order to avoid this rule, this table is available only if, under the contract, no benefits are payable in any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election, even if the employee's death occurs after his or her selected annuity starting date.

Under the second alternative, the applicable percentage is the percentage described in a new table set forth in the proposed regulations. The table is available for use when the contract provides a pre-annuity-starting-date death benefit to the non-spouse designated beneficiary. The table takes into account that a significant portion of the premium is used to provide death benefits to a designated beneficiary if death occurs during the deferral period between age $70^1/_2$ and age 85. In order to limit the portion of the premium that is used to provide death benefits to a designated beneficiary, use of the table is limited to contracts under which any non-spouse designated beneficiary must be irrevocably selected as of the required beginning date. Accordingly, the applicable percentages in the table are based on the expected longevity for the designated beneficiary, determined as of the employee's required beginning date.

The Treasury Department and the IRS considered whether to prescribe a special rule under which a QLAC could provide for a pre-annuity-starting-date death benefit to a non-spouse designated beneficiary and also allow the designated beneficiary to be changed at any time before the annuity starting date. However, in order to satisfy the MDIB requirements in such a case, the applicable percentages would need to be much smaller than the percentages set forth in the special table. This is because a larger portion of the cost of the contract would be allocable to death benefits if, after the required beginning date and before the annuity starting date, the participant were able to replace a designated beneficiary who has died (or to replace a designated beneficiary who has a short life expectancy with one who has a longer life expectancy). Comments are requested on whether the proposed regulations should be modified to permit alternative death benefits that would be subject to such lower applicable percentages.

If the employee dies before the specified annuity starting date under the contract, the date by which benefits must commence to the designated beneficiary depends on whether the beneficiary is the employee's surviving spouse. If the sole beneficiary under the contract is the employee's surviving spouse, the life annuity is not required to commence until the employee's specified annuity starting date under the contract (in lieu of the otherwise applicable rule that would require distributions to commence by the later of the end of the calendar year following the calendar year in which the employee died or the end of the calendar year in which the employee would have attained age $70^1/_2$). If the employee's sole beneficiary under the contract is not the surviving spouse, the life annuity payable to the designated beneficiary must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

The proposed regulations include a rule for applying the limitations on amounts payable to a surviving spouse or a designated beneficiary in the event the employee dies before the annuity starting date. Under this rule, if the contract does not allow an employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must nonetheless provide a way to determine the periodic annuity payments that would have been payable if payments to the employee had commenced immediately prior to the date on which benefit payments to the designated beneficiary commence.

D. *Other QLAC requirements*

Under the proposed regulations, a QLAC would not include a variable contract under section 817, equity-indexed contract, or similar contract, because the purpose of a QLAC is to provide a participant with a predictable stream of lifetime income. In addition, exposure to equity-based returns is available through control over the remaining portion of the account balance so that a participant can achieve adequate diversification.

The proposed regulations also provide that, in order to be a QLAC, the contract is not permitted to make available any commutation benefit, cash surrender value, or other similar feature. As in the case of the limitations on benefits payable after death, these limitations would allow an annuity contract to maximize the annuity payments that are made while a participant or beneficiary is alive. In addition, having a limited set of options available to purchasers would make these contracts more readily understandable and enhance purchasers' ability to compare products across providers. Ease of comparison will be particularly important to the extent that contracts provided under plans are priced on a unisex basis, while contracts offered under IRAs generally take gender into account in establishing premiums.

The proposed regulations provide that a contract is not a QLAC unless it states, when issued, that it is intended to be a "qualifying longevity annuity contract" or a "QLAC." This rule would ensure that the issuer, participant, plan sponsor, and IRS know that the rules applicable to QLACs apply to this contract.

The proposed regulations provide that distributions under a QLAC must satisfy the generally applicable section 401(a)(9) requirements relating to annuities at §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 under §1.401(a)(9)–6, A–1(a), applies to the contract.

II. *IRAs*

The proposed regulations provide that, in order to constitute a QLAC, the amount of the premiums paid for the contract under an IRA on a given date may not exceed $100,000. If, on or before the date of a premium payment, a participant has paid premiums for the same contract or for any other contract that is intended to be a QLAC and that is purchased for the participant under the IRA or under any other IRA, plan, or annuity, the $100,000 limit is reduced by the amount of those other premium payments.

The proposed regulations also provide that in order to constitute a QLAC, the amount of the premiums paid for the contract under an IRA on a given date generally may not exceed 25 percent of a participant's IRA account balances. Consistent with the rule under which a required minimum distribution from an IRA could be satisfied by a distribution from another IRA (applied separately to traditional IRAs and Roth IRAs), the proposed regulations would allow a QLAC that could be purchased under an IRA within these limitations to be purchased instead under another IRA. Specifically, the amount of the premiums paid for the contract under an IRA may not exceed an amount equal to 25 percent of the sum of the account balances (as of December 31 of the calendar year before the calendar year in which a premium is paid) of the IRAs (other than Roth IRAs) that an individual holds as the IRA owner. If, on or before the date of a premium payment, an individual has paid other premiums for the same contract or for any other contract that is intended to be a QLAC and that is held or purchased for the individual under his or her IRAs, the premium payment cannot exceed the amount determined to be 25 percent of the individual's IRA account balances, reduced by the amount of those other premiums.

The proposed regulations provide that, for purposes of both the dollar and percentage limitations, unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representations of the amount of the premiums (other than the premiums paid under the IRA) and, for purposes of applying the percentage limitation, the amount of the individual's account balances (other than the account balance under the IRA).

Under the proposed regulations, an annuity purchased under a Roth IRA would not be treated as a QLAC. This is because a Roth IRA (unlike a designated Roth account under a plan, as described in section 402A) is not subject to the section 401(a)(9)(A) requirement that the individual's benefits commence and be paid over the lives or life expectancy of the individual and a designated beneficiary (but, after the death of the individual, benefits must be paid under the same section 401(a)(9)(B) rules that apply to traditional IRAs). Because the rules of section 401(a)(9)(A) do not apply to a Roth IRA owner, a longevity annuity contract purchased using a portion of the individual's Roth IRA would not need to provide the right to accelerate payments in order to ensure compliance with those rules. Thus, there is no need to permit the value of a longevity annuity contract to be excluded from the account balance that is used to determine required minimum distributions during the life of a Roth IRA owner. Accordingly, the proposed regulations would not apply the rules regarding QLACs to Roth IRAs.

The proposed regulations would not preclude the use of assets in a Roth IRA to purchase a longevity annuity contract, nor would such a contract be subject to the same restrictions as a QLAC. For example, a longevity annuity contract purchased using assets of a Roth IRA could have an annuity starting date that is later than age 85 and offer features, such as a cash surrender right, that are not permitted under a QLAC. Although such a contract could not be excluded from the account balance used to determine required minimum distributions, this exclusion is not necessary because the required minimum distribution rules do not apply during the life of a Roth IRA owner.

In addition, the dollar and percentage limitations on premiums that apply to a QLAC would not take into account premiums paid for a contract that is purchased or held under a Roth IRA, even if the contract satisfies the requirements to be a QLAC. If a QLAC is purchased or held under a plan, annuity, contract, or traditional IRA that is later rolled over or converted to a Roth IRA, the QLAC would cease to be a QLAC (and would cease to be treated as intended to be a QLAC) after the date of the rollover or conversion. In that case, the premiums would then be disregarded in applying the dollar and percentage limitations to premiums paid for other contracts after the date of the rollover or conversion.[5]

Comments are requested on whether the regulations should be modified to apply the QLAC rules to a Roth IRA or to reduce the availability of the section 401(a)(9) relief for purchases of QLACs by the amount of assets that the individual holds in a Roth IRA. Comments are also requested as to whether any special rules should apply where a QLAC is purchased using assets of a Roth IRA, such as special disclosure in order to minimize any potential confusion.

III. *Section 403(b) plans*

The proposed regulations apply the tax-qualified plan rules, instead of the IRA rules, to the purchase of a QLAC under a section 403(b) plan. For example, the 25-percent limitation on premiums would be separately determined for each section 403(b) plan in which an employee participates. The proposed regulations also provide that the tax-qualified plan rules relating to reliance on representations, rather than the IRA rules, apply to the purchase of a QLAC under a section 403(b) plan.

The proposed regulations provide that, if the sole beneficiary of an employee under a contract is the employee's surviving spouse and the employee dies before the annuity starting date under the contract, a life annuity that is payable to the surviving spouse after the employee's death is permitted to exceed the annuity that would have been payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement sur-

[5] Section 1.408A–4, Q&A–14, describes the amount includible in gross income when part or all of a traditional IRA that is an individual retirement annuity described in section 408(b) is converted to a Roth IRA, or when a traditional IRA that is an individual retirement account described in section 408(a) holds an annuity contract as an account asset and the traditional IRA is converted to a Roth IRA. Those rules would also apply when a contract is rolled over from a plan into a Roth IRA.

vivor annuity (as discussed for qualified plans under subheading I.C. "Benefits payable after death of the employee"). A section 403(b) plan may be subject to this requirement under ERISA, whereas IRAs are generally not subject to this requirement. See §1.401(a)–20, Q&A–3(d), and §1.403(b)–5(e).

IV. *Section 457(b) plans*

Section 1.457–6(d) provides that an eligible section 457(b) plan must meet the requirements of section 401(a)(9) and the regulations under section 401(a)(9). Thus, these proposed regulations relating to the purchase of a QLAC under a tax-qualified defined contribution plan would automatically apply to an eligible section 457(b) plan. However, the rule relating to QLACs is limited to eligible governmental section 457(b) plans. Because section 457(b)(6) requires that an eligible section 457(b) plan that is not a governmental plan be unfunded, the purchase of an annuity contract under such a plan would be inconsistent with this requirement.

V. *Defined benefit plans*

Although defined benefit plans are subject to the minimum required distribution rules, they offer annuities which provide longevity protection. Because this protection is therefore already available, these proposed regulations would not apply to defined benefit plans.[6]

VI. *Disclosure and annual reporting requirements*

Under the proposed regulations, the issuer of a QLAC would be required to create a report containing the following information about the QLAC:

- A plain-language description of the dollar and percentage limitations on premiums;
- The annuity starting date under the contract, and, if applicable, a description of the employee's ability to elect to commence payments before the annuity starting date;
- The amount (or estimated amount) of the periodic annuity payment that is payable after the annuity starting date as a single life annuity (including, if an estimated amount, the assumed interest rate or rates used in making this determination), and a statement that there is no commutation benefit or right to surrender the contract in order to receive its cash value;
- A statement of any death benefit payable under the contract, including any differences between benefits payable if the employee dies before the annuity starting date and benefits payable if the employee dies on or after the annuity starting date;
- A description of the administrative procedures associated with an employee's elections under the contract, including deadlines, how to obtain forms, and where to file forms, and the identity and contact information of a person from whom the employee may obtain additional information about the contract; and
- Such other information that the Commissioner may require.

This report is not required to be filed with the Internal Revenue Service. Each issuer required to create a report would be required to furnish to the individual in whose name the contract has been purchased a statement containing the information in the report. This statement must be furnished prior to or at the time of purchase. In addition, in order to avoid duplicating state law disclosure requirements, the statement would not be required to include information that the issuer has already provided to the employee in order to satisfy any applicable state disclosure law. Comments are requested on whether the information listed is appropriate, and whether (and, if so, the extent to which) this list would duplicate disclosure requirements under existing state law. Comments are also requested on whether there is other information that should be included in the disclosure, such as the special tax attributes of a QLAC.

The proposed regulations prescribe annual reporting requirements under section 6047(d) which would require any person issuing any contract that states that it is intended to be a QLAC to file annual calendar-year reports and provide a statement to the individual in whose name the contract has been purchased regarding the status of the contract. The Commissioner will prescribe an applicable form and instructions for this purpose, which will contain the filing deadline and other information.

The report will be required to identify that the contract is intended to be a QLAC and to include, at a minimum, the following items of information:

- The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract;
- The name, address, and identifying number of the individual in whose name the contract has been purchased;
- If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification Number (EIN) of the plan sponsor;
- If payments have not yet commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated; and
- The amount of each premium paid for the contract, along with the date of payment.[7]

Each issuer required to file the report with respect to a contract would also be required to provide to the individual in whose name the contract has been purchased a statement containing the information that is required to be furnished in the report. This requirement may be satisfied by providing the individual with a copy of the required form, or in another form that contains the following language: "This information is being furnished to the Internal Revenue Service." The statement is required to be furnished to the individual on or before January 31 following the calendar year for which the report is required.

An issuer that is subject to these annual reporting requirements must comply with

[6] See also Rev. Rul. 2012–4 (relating to rollovers to defined benefit plans).

[7] For IRAs, the fair market value of the account on December 31 must be provided to the IRA owners by January 31 of the following year. Trustees, custodians, and issuers are responsible for ensuring that all IRA assets (including those not traded on an established securities market or with otherwise readily determinable value) are valued annually at their fair market value. This includes the value of a contract that is intended to be a QLAC.

the requirements for each calendar year beginning with the year in which premiums are first paid and ending with the earlier of the year in which the individual for whom the contract has been purchased attains age 85 (as adjusted in calendar years beginning on or after January 1, 2014) or dies. However, if the individual dies and the sole beneficiary under the contract is the individual's spouse (so that the spouse's annuity might not commence until the individual would have attained age 85), the annual reporting requirement continues until the year in which the distributions to the spouse commence.

Proposed Effective Date

The proposed regulations regarding disclosure and reporting will be effective upon publication in the **Federal Register** of the Treasury decision adopting these rules as final regulations. Otherwise, these regulations are proposed to be effective for contracts purchased on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013. Until regulations finalizing these proposed regulations are issued, taxpayers may not rely on the rules set forth in these proposed regulations (and the existing rules under section 401(a)(9) continue to apply).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these proposed regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that an insubstantial number of entities of any size will be impacted by the regulation. In addition, IRS and Treasury expect that any burden on small entities will be minimal because required disclosures are expected to take 10 minutes to prepare. In addition, the entities that will be impacted will be insurance companies, very few of which are small entities. Therefore, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. Comments are requested on benefits payable to a non-spouse beneficiary (under the subheading "C. Benefits payable after death of the employee"), Roth IRAs (under the heading "II. IRAs"), and disclosure (under the heading "VI. Disclosure and annual reporting requirements"). Comments are also requested on whether an insurance product that provides guaranteed lifetime withdrawal benefits could constitute a QLAC, taking into account the rules precluding the use of a variable annuity and a commutation of benefits and the rules relating to the provision of benefits to a designated beneficiary after an employee's death (under which benefits can be paid only in the form of a life annuity). The IRS and the Treasury Department further request comments on all aspects of the proposed rules.

All comments will be available for public inspection and copying at *www.regulations.gov* or upon request. A public hearing has been scheduled for June 1, 2012, beginning at 1 p.m. in the Auditorium, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments by May 3, 2012, and an outline of topics to be discussed and the amount of time to be devoted to each topic (a signed original and eight (8) copies) by May 11, 2012. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Cathy Pastor and Jamie Dvoretzky, Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and the Treasury Department participated in the development of these regulations.

* * * * *

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Part 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6047–2 is also issued under 26 U.S.C. 6047(d). * * *

Par. 2. Section 1.401(a)(9)–5 is amended by:

1. Revising paragraph A–3(a).
2. Redesignating paragraph A–3(d) as new paragraph A–3(e) and revising newly designated paragraph A–3(e).
3. Adding new paragraph A–3(d).

The revisions and addition read as follows:

§1.401(a)(9)–5 Required minimum distributions from defined contribution plans

* * * * *

A–3. (a) In the case of an individual account, the benefit used in determining the

required minimum distribution for a distribution calendar year is the account balance as of the last valuation date in the calendar year immediately preceding that distribution calendar year (valuation calendar year) adjusted in accordance with paragraphs (b), (c), and (d) of this A–3.

* * * * *

(d) The account balance does not include the value of any qualifying longevity annuity contract described in A–17 of §1.401(a)(9)–6 that is held under the plan. This paragraph (d) only applies for purposes of determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

(e) If an amount is distributed from a plan and rolled over to another plan (receiving plan), A–2 of §1.401(a)(9)–7 provides additional rules for determining the benefit and required minimum distribution under the receiving plan. If an amount is transferred from one plan (transferor plan) to another plan (transferee plan) in a transfer to which section 414(l) applies, A–3 and A–4 of §1.401(a)(9)–7 provide additional rules for determining the amount of the required minimum distribution and the benefit under both the transferor and transferee plans.

* * * * *

Par. 3. Section 1.401(a)(9)–6 is amended by revising the last sentence in A–12(a) and adding Q&A–17 to read as follows:

§1.401(a)(9)–6 Required minimum distributions for defined benefit plans and annuity contracts.

* * * * *

A–12. (a) * * * See A–1(e) of §1.401(a)(9)–5 for rules relating to the satisfaction of section 401(a)(9) in the year that annuity payments commence, A–3(d) of §1.401(a)(9)–5 for rules relating to qualifying longevity annuity contracts described in A–17 of this section, and A–2(a)(3) of §1.401(a)(9)–8 for rules relating to the purchase of an annuity contract with a portion of an employee's account balance.

* * * * *

Q–17. What is a qualifying longevity annuity contract?

A–17. (a) *Definition of qualifying longevity annuity contract*. A qualifying longevity annuity contract (QLAC) is an annuity contract (that is not a variable contract under section 817, equity-indexed contract, or similar contract) that is purchased from an insurance company for an employee and that satisfies each of the following requirements—

(1) Premiums for the contract satisfy the requirements of paragraph (b) of this A–17;

(2) The contract provides that distributions under the contract must commence not later than a specified annuity starting date that is no later than the first day of the month coincident with or next following the employee's attainment of age 85;

(3) The contract provides that, after distributions under the contract commence, those distributions must satisfy the requirements of this section (other than the requirement in A–1(c) of this section that annuity payments commence on or before the required beginning date);

(4) The contract does not make available any commutation benefit, cash surrender right, or other similar feature;

(5) No benefits are provided under the contract after the death of the employee other than the life annuities payable to a designated beneficiary that are described in paragraph (c) of this A–17; and

(6) The contract, when issued, states that it is intended to be a QLAC.

(b) *Limitations on premium*—(1) *In general*. The premiums paid for the contract on a date do not exceed the lesser of the dollar limitation in paragraph (b)(2) of this A–17 or the percentage limitation in paragraph (b)(3) of this A–17.

(2) *Dollar limitation*. The dollar limitation is an amount equal to the excess of—

(i) $100,000, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for the employee under the plan, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental section 457(b) plan.

(3) *Percentage limitation*. The percentage limitation is an amount equal to the excess of—

(i) 25 percent of the employee's account balance under the plan determined on that date, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is held or was purchased for the employee under the plan.

(c) *Payments after death of the employee*—(1) *Surviving spouse is sole beneficiary*—(i) *In general*. Except as provided in paragraph (c)(1)(ii)(B) of this A–17, 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 is a life annuity payable to the surviving spouse where the periodic annuity payment is not in excess of 100 percent of the periodic annuity payment that is payable to the employee (or, in the case of the employee's death before the employee's annuity starting date, the periodic annuity payment that would have been payable to the employee as of the date that benefits to the surviving spouse commence under paragraph (c)(1)(ii)(A) of this A–17).

(ii) *Death before employee's annuity starting date*. If the employee dies before the employee's annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract—

(A) The life annuity, if any, payable to the surviving spouse under paragraph (c)(1)(i) of this A–17 must commence not later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died; and

(B) The amount of the periodic annuity payment payable to the surviving spouse is permitted to exceed 100 percent of the periodic annuity payment that is payable to the employee to the extent necessary to satisfy the requirement to provide a qualified preretirement survivor annuity (as defined under section 417(c)(2) of the Internal Revenue Code (Code) or section 205(e)(2) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829 (1974)), as amended (ERISA)) pursuant to sections 401(a)(11) and 417 of the Code or section 205(a)(2) of ERISA.

(2) *Surviving spouse is not sole designated beneficiary*—(i) *In general*. If the employee's surviving spouse is not the sole beneficiary under the contract, the only benefit permitted to be paid after the employee's death is a life annuity payable to a designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iv) of this A–17) of the periodic annuity payment that is payable to the employee (or, in the case of the employee's death before the employee's annuity starting date, the applicable percentage of the periodic annuity payment that would have been payable to the employee as of the date that benefits to the designated beneficiary commence under this paragraph (c)(2)(i)). In addition, no benefit is permitted to be paid after the employee's death unless the contract satisfies the requirements of either paragraph (c)(2)(ii) or paragraph (c)(2)(iii) of this A–17. Moreover, except as provided in paragraph (c)(1)(ii)(A) of this A–17, in any case in which the employee dies before the employee's annuity starting date, any life annuity payable to a designated beneficiary must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

(ii) *No pre-annuity starting date death benefit*. The contract satisfies the requirements of this paragraph (c)(2)(ii) if the contract provides that no benefit is permitted to be paid to a beneficiary other than the employee's surviving spouse after the employee's death—

(A) In any case in which the employee dies before the selected annuity starting date under the contract; and

(B) In any case in which the employee selects an annuity starting date that is earlier than the specified annuity starting date under the contract and the employee dies less than 90 days after making that election.

(iii) *Pre-annuity starting date death benefit*. The contract satisfies the requirements of this paragraph (c)(2)(iii) if the contract provides that in any case in which the beneficiary under the contract is not the employee's surviving spouse, benefits are payable to the beneficiary only if the beneficiary was irrevocably selected on or before the employee's required beginning date.

(iv) *Applicable percentage*. If the contract is described in paragraph (c)(2)(ii) of this A–17, the applicable percentage is the percentage described in the table in paragraph A–2(c) of this section. If the contract is described in paragraph (c)(2)(iii) (and not in (c)(2)(ii)) of this A–17, the applicable percentage is the percentage described in the table set forth in this paragraph (c)(2)(iv). The applicable percentage is based on the adjusted employee/beneficiary age difference, determined in the same manner as in paragraph A–2(c) of this section.

Adjusted employee/beneficiary age difference	Applicable percentage
2 years or less	100%
3	88%
4	78%
5	70%
6	63%
7	57%
8	52%
9	48%
10	44%
11	41%
12	38%
13	36%
14	34%
15	32%
16	30%
17	28%
18	27%
19	26%
20	25%
21	24%
22	23%
23	22%
24	21%
25 and greater	20%

(3) *Calculation of early annuity payments*. For purposes of paragraphs (c)(1)(i) and (c)(2)(i) of this A–17, to the extent the contract does not provide an option for the employee to select an annuity starting date that is earlier than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died, the contract must provide a way to determine the periodic annuity payment that would have been payable if the employee were to have an option to accelerate the payments and the payments had commenced to the employee immediately prior to the date that benefit payments to the surviving spouse or designated beneficiary commence.

(d) *Rules of application*—(1) *Reliance on representations*. For purposes of the limitation on premiums described in paragraphs (b)(2) and (b)(3) of this A–17, unless the plan administrator has actual knowledge to the contrary, the plan admin-

istrator may rely on an employee's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17, but only with respect to premiums that are not paid under a plan, annuity, or contract that is maintained by the employer or an entity that is treated as a single employer with the employer under section 414(b), (c), (m), or (o).

(2) *Consequences of excess premiums*. If a contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b) of this A–17 on the date of the payment of that premium, the contract is not a QLAC beginning on that date. In such a case, none of the value of the contract may be disregarded under §1.401(a)(9)–5, Q&A–3(d), as of the date on which the contract ceases to be a QLAC.

(3) *Dollar and age limitations subject to adjustments*—(i) *Dollar limitation*. In the case of calendar years beginning on or after January 1, 2014, the $100,000 amount under paragraph (b)(2)(i) of this A–17 will be adjusted at the same time and in the same manner as under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2012, and any increase under this paragraph (d)(3)(i) that is not a multiple of $25,000 shall be rounded to the next lowest multiple of $25,000.

(ii) *Age limitation*. The maximum age set forth in paragraph (a)(2) of this A–17 may also be adjusted to reflect changes in mortality, with any such adjusted age to be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin (see §601.601(d)(2)(ii)(*b*) of this chapter).

(iii) *Prospective application of adjustments*. If a contract fails to be a QLAC because it does not satisfy the dollar limitation in paragraph (b)(2) of this A–17 or the age limitation in paragraph (a)(2) of this A–17, any subsequent adjustment that is made pursuant to paragraph (d)(3)(i) or paragraph (d)(3)(ii) of this A–17 will not cause the contract to become a QLAC.

(4) *Multiple beneficiaries*. If an employee has more than one designated beneficiary under a QLAC, the rules in §1.401(a)(9)–8, A–2(a), apply for purposes of paragraphs (c)(1)(i) and (c)(2)(i) of this A–17.

(5) *Roth IRAs*. A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–17. See §1.408A–6, A–14(d). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid for the contract will not be taken into account under paragraph (b)(2)(ii)(B) or paragraph (b)(3)(ii)(B) of this A–17 after the date of the rollover or conversion.

(e) *Effective/applicability date*. This Q&A–17 applies to contracts purchased on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

Par. 4. Section 1.403(b)–6 is amended by adding paragraph (e)(9) to read as follows:

§1.403(b)–6 Timing of distributions and benefits.

* * * * *

(e) * * *

(9) *Special rule for qualifying longevity annuity contracts*. The rules in §1.401(a)(9)–6, A–17(b) (relating to limitations on premiums for a qualifying longevity annuity contract (QLAC), and §1.401(a)(9)–6, A–17(d)(1) (relating to reliance on representations with respect to a QLAC), apply to the purchase of a QLAC under a section 403(b) plan (rather than the rules in §1.408–8, A–12(b) and (c)).

* * * * *

Par. 5. Section 1.408–8, Q&A–12, is added to read as follows:

§1.408–8 Distribution requirements for individual retirement plans.

* * * * *

Q–12. How does the special rule in §1.401(a)(9)–5, A–3(d), for a qualifying longevity annuity contract (QLAC), defined in §1.401(a)(9)–6, A–17, apply to an IRA?

A–12. (a) *General rule*. The special rule in §1.401(a)(9)–5, A–3, for a QLAC, defined in §1.401(a)(9)–6, A–17, applies to an IRA, subject to the exceptions set forth in this A–12. See §1.408A–6, A–14(d) for special rules relating to Roth IRAs.

(b) *Limitations on premium*—(1) *In general*. In lieu of the limitations described in §1.401(a)(9)–6, A–17(b), the premiums paid for the contract on a date are not permitted to exceed the lesser of the dollar limitation in paragraph (b)(2) of this A–12 or the percentage limitation in paragraph (b)(3) of this A–12.

(2) *Dollar limitation*. The dollar limitation is an amount equal to the excess of—

(i) $100,000, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is purchased for the IRA owner under the IRA, or any other plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 or eligible governmental section 457(b) plan.

(3) *Percentage limitation*. The percentage limitation is an amount equal to the excess of—

(i) 25 percent of the total account balances of the IRAs (other than Roth IRAs) that an individual holds as the IRA owner as of December 31 of the calendar year immediately preceding the calendar year in which a premium is paid, over

(ii) The sum of—

(A) The premiums paid before that date under the contract, and

(B) The premiums paid on or before that date under any other contract that is intended to be a QLAC and that is held or was purchased for the individual under those IRAs.

(c) *Reliance on representations.* For purposes of the limitations described in paragraphs (b)(2) and (b)(3) of this A–12, unless the trustee, custodian, or issuer of an IRA has actual knowledge to the contrary, the trustee, custodian, or issuer may rely on the IRA owner's representation (made in writing or such other form as may be prescribed by the Commissioner) of the amount of the premiums described in

paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–12 that are not paid under the IRA, and the amount of the account balances described in paragraph (b)(3)(i) of this A–12, other than the account balance under the IRA.

(d) *Roth IRAs*. A contract that is purchased under a Roth IRA is not treated as a contract that is intended to be a QLAC for purposes of applying the dollar and percentage limitation rules in paragraphs (b)(2)(ii)(B) and (b)(3)(ii)(B) of this A–12. See §1.408A–6, A–14(d). If a QLAC is purchased or held under a plan, annuity, account, or traditional IRA, and that contract is later rolled over or converted to a Roth IRA, the contract is not treated as a contract that is intended to be a QLAC after the date of the rollover or conversion. Thus, premiums paid for the contract will not be taken into account under paragraph (b)(2)(ii)(B) or paragraph (b)(3)(ii)(B) of this A–12 after the date of the rollover or conversion.

(e) *Effective/applicability date*. This Q&A–12 applies to contracts purchased on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register** and for determining required minimum distributions for distribution calendar years beginning on or after January 1, 2013.

Par. 6. Section 1.408A–6 is amended by adding paragraph A–14(d) to read as follows:

§1.408A–6 Distributions.

* * * * *

A–14. * * *

(d) The special rules in §1.401(a)(9)–5, A–3, and §1.408–8, Q&A–12, for a QLAC, defined in §1.401(a)(9)–6, A–17, do not apply to a Roth IRA.

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Par. 7. Section 1.6047–2 is added to read as follows:

§1.6047–2 Information relating to qualifying longevity annuity contracts.

(a) *Requirement and form of report*—(1) *In general*. Any person issuing any contract that states that it is intended to be a qualifying longevity annuity contract (QLAC), defined in §1.401(a)(9)–6, Q&A–17, shall make reports required by this section. This requirement applies only to contracts purchased or held under any plan, annuity, or account described in section 401(a), 403(a), 403(b), or 408 (other than a Roth IRA) or eligible governmental section 457(b) plan.

(2) *Initial disclosure*. The issuer shall be required to prepare a report identifying that the contract is intended to be a QLAC and containing the following information—

(i) A plain-language description of the dollar and percentage limitations on premiums;

(ii) The annuity starting date under the contract, and, if applicable, a description of the individual's ability to elect to commence payments before the annuity starting date;

(iii) The amount (or estimated amount) of the periodic annuity payment that is payable after the annuity starting date as a single life annuity (including, if an estimated amount, the assumed interest rate or rates used in making this determination), and a statement that there is no commutation benefit or right to surrender the contract in order to receive its cash value;

(iv) A statement of any death benefit payable under the contract, including any differences between benefits payable if the individual dies before the annuity starting date and benefits payable if the individual dies on or after the annuity starting date;

(v) A description of the administrative procedures associated with an individual's elections under the contract, including deadlines, how to obtain forms, and where to file forms, and the identity and contact information of a person from whom the individual may obtain additional information about the contract; and

(vi) Such other information as the Commissioner may require.

(3) *Annual report*. The issuer shall make annual calendar-year reports on the applicable form prescribed by the Commissioner for this purpose concerning the status of the contract. The report shall identify that the contract is intended to be a QLAC and shall contain the following information—

(i) The name, address, and identifying number of the issuer of the contract, along with information on how to contact the issuer for more information about the contract;

(ii) The name, address, and identifying number of the individual in whose name the contract has been purchased;

(iii) If the contract was purchased under a plan, the name of the plan, the plan number, and the Employer Identification Number (EIN) of the plan sponsor;

(iv) If payments have not yet commenced, the annuity starting date on which the annuity is scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated;

(v) The amount of each premium paid for the contract, along with the date of the premium payment; and

(vi) Such other information as the Commissioner may require.

(b) *Manner and time for filing*—(1) *Initial disclosure*. The report required by paragraph (a)(2) of this section shall not be filed with the Internal Revenue Service.

(2) *Annual report*—(i) *Timing*. The report required by paragraph (a)(3) of this section shall be filed in accordance with the forms and instructions prescribed by the Commissioner. Such a report must be filed for each calendar year beginning with the year in which premiums for a contract are first paid and ending with the earlier of the year in which the individual in whose name the contract has been purchased attains age 85 (as adjusted pursuant to §1.401(a)(9)–6, A–17(d)(3)(ii)) or dies.

(ii) *Surviving spouse*. If the individual dies and the sole beneficiary under the contract is the individual's spouse (in which case the spouse's annuity would not be required to commence until the individual would have attained age 85), the report must continue to be filed for each calendar year until the calendar year in which the distributions to the spouse commence or in which the spouse dies, if earlier.

(c) *Issuer statements*. (1) *Initial disclosure*. Each issuer required to make a report required by paragraph (a)(2) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information in the report. The statement shall be furnished at the time of purchase. The statement is not required to include information that the issuer has already provided to the individual in order to comply with any applicable state disclosure law.

(2) *Annual report*. Each issuer required to file the report required by paragraph

(a)(3) of this section shall furnish to the individual in whose name the contract has been purchased a statement containing the information required to be furnished in the report, except that such statement shall be furnished to a surviving spouse to the extent that the report is required to be filed under paragraph (b)(2)(ii) of this section. A copy of the required form may be used to satisfy the statement requirement of this paragraph (c)(2). If a copy of the required form is not used to satisfy the statement requirement of this paragraph (c)(2), the statement shall contain the following language: "This information is being furnished to the Internal Revenue Service." The statement required by this paragraph (c)(2) shall be furnished on or before January 31 following the calendar year for which the report required by paragraph (a)(3) of this section is required.

(d) *Effective/applicability date*. This section applies on or after the date of publication of the Treasury decision adopting these rules as final regulations in the **Federal Register**.

Steven T. Miller,
Deputy Commissioner for Services and Enforcement.

(Filed by the Office of the Federal Register on February 2, 2012, 8:45 a.m., and published in the issue of the Federal Register for February 3, 2012, 77 F.R. 5443)

Information Reporting by Passport Applicants; Withdrawal

Announcement 2012–11

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking; notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide information reporting rules for certain passport applicants. These regulations do not provide information reporting rules for individuals applying to become permanent residents (green card holders). This document also withdraws the notice of proposed rulemaking (57 FR 61373) published in the **Federal Register** on December 24, 1992.

DATES: Comments and requests for a public hearing must be received by April 25, 2012.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–208274–86), room 5205, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–208274–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–208274–86).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Lynn Dayan or Quyen Huynh at (202) 622–3880; concerning submissions of comments and requests for public hearing, Oluwafunmilayo Taylor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and, pending receipt and evaluation of public comments approved by the Office of Management and Budget under control number 1545–1359. Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, SE:W:CAR:MP:T:M:S, Washington, DC 20224. Comments on the collection of information should be received by March 26, 2012.

Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the duties of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in these proposed regulation is in § 301.6039E–1(b). The information is required to be provided by individuals who apply for a United States passport or a renewal of a United States passport. The information provided by passport applicants will be used by the IRS for tax compliance purposes.

Estimated total annual reporting burden: 1,213,354 hours.

Estimated average annual burden hours per respondent: four to ten minutes.

Estimated number of respondents: 12,133,537.

Estimated annual frequency of responses: one.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 301 under section 6039E of the Internal Revenue Code. Section 6039E provides rules concerning information reporting by U.S. passport and permanent resident applicants, and requires specified federal agencies to provide certain information to the IRS.

On December 24, 1992, the Treasury Department and the IRS published a notice of proposed rulemaking