

Rules Will Allow Issuance of Longevity Insurance in Retirement Plans

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On July 1, the U.S. Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) issued final rules excluding qualifying longevity annuity contracts (QLACs) from the required minimum distribution rules (RMD rules). Excluding QLACs from arrangements that use the account-based RMD rules removed a major impediment to offering longevity annuities within a retirement plan or individual retirement account. Without the amendment to the RMD rules, a potential risk existed that, if an individual's retirement account (other than the longevity annuity) was depleted, the individual would have to commence distributions from the longevity annuity earlier than anticipated to satisfy the required minimum distribution rules. **What constitutes a QLAC?** The amended RMD rules adopt several requirements for a longevity annuity to be considered a QLAC. These requirements are designed to ensure that the annuity excluded from the RMD rules does not result in undue deferral of an individual's retirement account and to ensure that the payments under the annuity are being used for retirement income purposes. Under the amended RMD rules, a QLAC is an annuity contract purchased from an insurance company under which:

- Premiums do not exceed the lesser of: (i) \$125,000, as reduced by previously paid premiums for a QLAC or any previously purchased QLAC; or (ii) 25 percent of the account value (including the value of any QLAC), as reduced by previously paid premiums for a QLAC or any previously purchased QLAC. The amended RMD rules allow for excess premiums to be returned by the end of the calendar year following the calendar year in which the excess premium was paid. The amended RMD rules also include a "cost of living" adjustment to the dollar limitation.
- Annuity payments must begin by a specified date that is no later than the first day of the month next following the individual's 85th birth date.

- The contract provides that after distributions have begun, those distributions must satisfy the RMD rules other than the rule that annuity payments must begin on or before the required beginning date.
- There is no commutation benefit, cash surrender right, or other similar feature.
- Only a limited death benefit that meets specified requirements is payable under the contract.
- The contract (or rider or endorsement for the contract) expressly states that it is intended to be a QLAC.

In addition, a QLAC may not be a variable contract, indexed contract, or similar contract, unless the Commissioner otherwise allows. **What retirement plans can purchase a QLAC?** A QLAC may be offered in tax-qualified defined contribution plans under Section 401(a), including 401(k) arrangements, 403(b) tax-deferred plans, individual retirement annuities and accounts under section 408, and eligible governmental plans under 457(b). **What requirements apply to issuers of QLACs?** Issuers of QLACs must file annual calendar year reports with the IRS and provide a statement to the consumer regarding the status of the QLAC. The IRS will prescribe a new form, and require, at a minimum, the following information:

- The QLAC issuer's name, identifying number, and contact information.
- The individual's name, address, and identifying number.
- If purchased under a plan, plan information, and the employer identification number (EIN) of the plan sponsor.
- If payments have not yet commenced, the date on which annuity payments are scheduled to commence, the amount of the periodic annuity payable on that date, and whether that date may be accelerated.
- For the calendar year, the amount and date of each QLAC premium paid.
- The total QLAC premiums paid through the end of the calendar year.
- The fair market value of the QLAC as of the close of the calendar year.

What are other impediments to the use of QLACs? While Treasury has taken significant steps to address the retirement income crises by amending the RMD rules, two other impediments hinder the use of QLACs. First, plan sponsors are still unclear as to what measures they must take to satisfy their duties under ERISA in selecting issuers of QLACs to offer within their plans. Second, individuals who have historically resisted annuitizing their retirement savings may be reluctant to allocate a portion of their account balances to QLACs.

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