TESTIMONY OF

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ON BEHALF OF

THE INSURED RETIREMENT INSTITUTE

BEFORE THE

INTERNAL REVENUE SERVICE

DEPARTMENT OF THE TREASURY

HEARING ON

QUALIFYING LONGEVITY ANNUITY CONTRACTS

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Introduction

Good afternoon. My name is Michael Oleske and I am the Chief Tax Counsel for New York Life Insurance Company. I am testifying on behalf of the Insured Retirement Institute. Appearing with me today are Lee Covington, its General Counsel and John Little, its Senior Vice President of Federal Affairs. The Insured Retirement Institute's members include insurance companies, asset managers, broker dealers and financial advisors. We currently have over 500 member companies which include more than 150,000 financial advisors and 15,000 home office financial professionals. We appreciate this opportunity to offer our views on the proposed regulations relating to the purchase of longevity annuity contracts under tax-qualified defined contribution plans and individual retirement annuities and accounts.

Our members support the proposed regulations and the additional guidance that accompanied them. We believe that they will help to provide millions of Americans with additional tools with which to plan for a more financially secure retirement. Our comments today will focus on three aspects of the proposed guidance that are of particular interest to our members. These are:

1. The effects of the proposed guidance on retirement security and the need for retirement income;
2. The 25% account value limitation on premiums that may be contributed to a qualifying longevity annuity contract; and
3. Some suggestions to permit greater flexibility in the required contractual terms of a QLAC.

The Need for Retirement Security

As we discussed in our written submission, 79 million baby boomers have reached or are nearing retirement. The nation is facing a potential retirement crisis. Not only will there be more retirees than ever before, but they will also be living longer. The increase in the number of retirees over the coming decades will strain government retirement programs like Social Security and Medicare. This crisis will be made even worse by the fact that there will be fewer workers supporting those retirees. To be better prepared for these difficult times, there has never been a greater need to encourage savings. We are grateful for the Administration's focus on retirement security and are pleased that the proposed guidance recognizes the vital role that annuities and other guaranteed income strategies can play in addressing these challenges.

We applaud the Service and Treasury for providing American workers and retirees with the tools to address one of the greatest uncertainties that they face when planning for retirement: How long will they live and how long will their retirement assets have to last? Many retirees live below their means out of concern that they may need to draw upon their retirement assets for very many years. Others may have unrealistic expectations about their future investment returns and may spend down their retirement funds too quickly. A longevity annuity contract provides meaningful help in dealing with these challenges: If a retiree has such a contract, she knows that she will start receiving income payments at a later age, say at age 80. As a result, her time horizon for managing her remaining assets is changed from an indefinite date to a fixed one. We believe that the proposed guidance will help Americans achieve a more financially secure retirement.

The 25% Account Value Limitation

Next, we would like to discuss some our concerns with one of the requirements that will apply to QLACs—the limitation on contributions to 25% of a participant's account value. We understand that this limitation is grounded in a concern that the major part of a participant's account remain available for distributions on or after age 70-½. However, the rule as proposed may prove very difficult for participants to satisfy. We are concerned that it may present a trap for the unwary and that a failure to meet the test may cause an entire contract to lose its status as a QLAC.

As we discussed in our written submission, the proposed regulations raise a number of concerns:

First, we believe that the premium limit will present a recordkeeping problem for participants. They will need to track their cumulative premiums as well as all their account balances on the dates the premiums were paid.

Second, for participants who are paying QLAC premiums over a period of years or after retirement, the 25%-of-account-balance limitation may unduly restrict the ability to purchase this coverage. If a participant is withdrawing funds to pay for everyday living expenses, but paying longevity premiums to provide future income, the account balance may eventually fall to a level where the cumulative QLAC premiums exceed 25% of the account balance. We suggest that some flexibility be included in the proposed rule to address these types of situations.

Finally, we recommend that the consequence of a participant's paying too much in premiums should not be the failure of the entire contract to be treated as a QLAC but only the part that reflects the overpayment.

Greater Flexibility in the Contractual Terms

In our comment letter, we have recommended some changes to the required terms that a contract must have in order to be treated as a QLAC. We will briefly discuss two of these changes.

First, the proposed regulations require that a longevity contract expressly provide, at the time it is issued, that it is intended to be a QLAC. We understand the purpose of this requirement is to make sure that everyone—the issuer, the participant, the plan sponsor and the IRS—know that the QLAC rules will apply to the contract. However, in practice, this requirement would be very expensive to put into effect. Insurance companies would need to endorse their existing annuity contracts in every state in which they do business. Our members believe that the notification requirements in the proposed rule should be sufficient to make everyone aware of the status of the contract as a QLAC.

Second, the proposed regulations provide that the only form of death benefit payable under a QLAC is a lifetime annuity. We recommend that the regulations permit a QLAC to include a refund of premium feature. We are concerned that the lack of a surrender value, even at the death of the participant, would discourage many from purchasing these contracts. A return of premium feature removes this disincentive and shifts the risk of early death back to the insurance company. The impact of adding a refund of premium benefit on annuity payments is relatively small. For example, for a joint and survivor longevity annuity contact purchased at age 55 with payments beginning at age 75, adding an ROP benefit would only cause a reduction of about 5 percent in the annual payments. Our members believe that the regulations should allow a reasonable death benefit so that a participant’s death is not a forfeiture of all of the premiums paid on the contract.

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We want to thank the Service and the Treasury again for holding this hearing, and for granting the IRI this opportunity to testify.

I am happy to answer any questions you may have.