DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9673]

RIN 1545–BK23

Longevity Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

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

DATES: *Effective date:* These regulations are effective on July 2, 2014.

Applicability date: These regulations apply to contracts purchased on or after July 2, 2014.

FOR FURTHER INFORMATION CONTACT: Jamie Dvoretzky at (202) 317–6799 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2234. The collection of information in these final regulations is in A–17(a)(6) of § 1.401(a)(9)–6 (disclosure that a contract is intended to be a qualifying longevity annuity contract (QLAC), defined in A–17 of that section) and § 1.6047–2 (an annual statement must be provided to QLAC owners and their surviving spouses containing information required to be furnished to the IRS). The information in A–17(a)(6) of § 1.401(a)(9)–6 is required in order to notify employees [1] and beneficiaries, plan sponsors, and the IRS that the regulations apply to a contract. The information in the annual statement in § 1.6047–2(c) is required in order to apply the dollar and percentage limitations in A–17(b) of § 1.401(a)(9)–6 and A–12(b) of § 1.408–8 and to comply with other requirements of the required minimum distribution rules.

Estimated total average annual recordkeeping burden: 28,529 hours.

Estimated average annual burden per response: 8 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 the collection of information 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 section 6103.

Background

This document contains 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 employee'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 employee attains age 70½ or (2) the calendar year in which the employee retires. However, the ability to delay distribution until the calendar year in which an employee retires does not apply in the case of a 5-percent owner or an IRA owner.

If the entire interest of the employee is not distributed by the required beginning date, section 401(a)(9)(A) provides that the entire interest of the employee must be distributed, beginning not later than the required beginning date, in accordance with regulations, over the life of the employee or lives of the employee and a designated beneficiary (or over a period not extending beyond the life expectancy of the employee or the life expectancy of the employee and a designated beneficiary). Section 401(a)(9)(B) prescribes required minimum distribution rules that apply after the death of the employee. 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 403(b)(10), 408(a)(6) and (b)(3), and 457(d)(2), respectively, and to 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 employee.

Section 6047(d) states that the Secretary shall by forms or regulations require 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, to 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. This section also provides that the Secretary may, by forms or regulations, prescribe the manner and time for filing these reports.

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 under a defined contribution plan. Under A–12 of § 1.401(a)(9)–6, if an annuity contract held under a defined contribution plan has not yet been annuitized, the interest of an employee 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 employee'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 A–14 of § 1.401(a)(9)–6. In addition, annuity payments must satisfy the MDIB requirement of section 401(a)(9)(G). Under A–2(b) of

[1] An "employee" includes the owner of an IRA, where applicable.

§ 1.401(a)(9)–6, if an employee'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 employee are deemed to satisfy the MDIB requirement. However, if distributions are in the form of a joint and survivor annuity for an employee 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 employee, with the applicable percentage determined using the table in A–2(c) of § 1.401(a)(9)–6.

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)(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. As provided in A–1 of § 1.408–8, with certain modifications, 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 A–9 of § 1.408–8, 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.

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

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

A public hearing was held on June 1, 2012. Written comments responding to the notice of proposed rulemaking were also received. After consideration of all the comments, the proposed regulations are adopted, as amended by this Treasury Decision. The most significant revisions are discussed in the Summary of Comments and Explanation of Revisions.

Summary of Comments and Explanation of Revisions

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

I. Definition of QLAC

A. Limitations on Premiums

The proposed regulations provided that in order to constitute a QLAC, the amount of the premiums paid for the contract under the plan on a given date could not exceed the lesser of $100,000 or 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 had paid premiums for the same contract or for any other contract that was intended to be a QLAC and that was purchased for the employee under the plan or under any other retirement plan, annuity, or account, the dollar limit would be reduced by the amount of those other premium payments. Similarly, if, on or before the date of a premium payment, an employee had paid premiums for the same contract or for any other contract that was intended to be a QLAC and that was purchased for the employee under the plan, the amount of those other premium payments will be taken into account in determining compliance with the percentage limit.

A number of commenters requested that the $100,000 limit or the 25-percent limit (or both) be increased to allow individuals to obtain more longevity risk protection. Other commenters supported retention of the limits at their proposed levels.

The Treasury Department and the IRS continue to believe that a dollar limit and a percentage limit are necessary in order to constrain undue deferral of distribution of an employee's interest. Moreover, as noted in the preamble to the proposed regulations, a premium of $100,000 could purchase an annuity that provides significant income beginning at age 85. For example, if at age 70 an employee 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 employee).[2] In addition, providing special treatment to QLACs purchased with no more than 25 percent of the account balance is consistent with section 401(a)(9)(A) because, for a typical employee who will need to draw down the entire account balance during the period prior to commencement of the annuity, the overall pattern of payments from the account balance and the QLAC would not provide more deferral than would otherwise normally be available for lifetime payments under the section 401(a)(9)(A) rules.

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

To simplify the application of the percentage limit, the final regulations clarify that the limit is applied with respect to an employee's account balance under a qualified plan as of the last valuation date preceding the date of

[2] 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, no indexation of the annuity stream for inflation, and no load for expenses. (If the annuity were provided under an employer plan, unisex mortality assumptions would be required.)

a premium payment, increased for contributions allocated to the account (and decreased for distributions made from the account) after the valuation date but before the date the premium is paid. In addition, the final regulations clarify that although the value of a QLAC is excluded from the account balance used to determine required minimum distributions, the value of a QLAC is included in the account balance for purposes of applying the 25-percent limit.

The proposed regulations provided that if a premium for a contract causes the total premiums to exceed either the dollar or percentage limitation, the contract would fail to be a QLAC beginning on the date on which the excess premium was paid. A number of commenters requested that this rule be modified, stating that disqualifying an entire contract would be a harsh result, particularly in the case of an inadvertent error. They suggested that the regulations instead provide that if a premium for a longevity annuity contract exceeds the dollar or percentage limits, the QLAC will be disqualified (and hence included in the account balance used to calculate required minimum distributions) only to the extent of the excess premiums. Others suggested that there be a correction program that would allow employees to correct excess premiums.

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

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

The proposed regulations provided that for calendar years beginning on or after the calendar year in which the regulations are effective, the dollar limitation would be adjusted at the same time and in the same manner as under section 415(d), except that (1) the base period would be the calendar year quarter beginning six months before the effective date of the regulations, and (2) any increase that is not a multiple of $25,000 would be rounded to the next lowest multiple of $25,000. In response to comments requesting that the dollar limit be adjusted in smaller increments than $25,000, the final regulations provide that any increase that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000.

B. Maximum Age At Commencement

Like the proposed regulations, the final 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. Under the final regulations, the specified annuity starting date must be no later than the first day of the month next following the employee's attainment of age 85. A QLAC could allow an employee to elect an earlier annuity starting date than the specified annuity starting date, but is not required to provide an option to commence distributions before the specified annuity starting date.

The final regulations continue to provide that the maximum age may be adjusted to reflect changes in mortality. The Treasury Department and the IRS anticipate that such changes will not occur more frequently than the adjustment of the $125,000 limit described in subheading I.A. ''Limitations on premiums.'' The adjusted age (if any) and the adjustment to the $125,000 limit will be prescribed by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

C. Benefits Payable After Death of the Employee

The proposed regulations would have provided that under a QLAC the only benefit permitted to be paid after the employee's death is a life annuity, payable to a designated beneficiary, that meets certain requirements. Thus, for example, a contract that provides a distribution form with a period certain or a return of premiums in the case of an employee's death would not be a QLAC.

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

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

The final regulations provide that an ROP payment must be paid no later than the end of the calendar year following the calendar year in which the employee dies, or in which the surviving spouse dies, whichever is applicable. If the employee's death is after the required beginning date, then the ROP payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the ROP payment similarly is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

As under the proposed regulations, the final regulations provide that if the sole beneficiary of an employee under the contract is the employee's surviving spouse, the only benefit permitted to be paid after the employee's death (other than an ROP) is a life annuity payable to the surviving spouse that does not exceed 100 percent of the annuity payment payable to the employee. The final regulations also include a special exception that would allow a plan to comply with any applicable requirement to provide a qualified preretirement survivor annuity.[3] If the surviving spouse is one of multiple designated beneficiaries, the special rules for a surviving spouse are permitted to be applied as if there were separate contracts for each of the separate beneficiaries, but only if certain conditions are satisfied, including a separate account requirement.[4]

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 (other than an ROP) is a life annuity payable to a designated beneficiary. In order to satisfy the MDIB requirements of section 401(a)(9)(G), the life annuity is not permitted to exceed an applicable percentage of the annuity payment payable to the employee. The applicable percentage is determined under one of two alternative tables, and the determination of which table applies depends on the different types of death benefits that are payable to the designated beneficiary. However, if the contract provides for an ROP, the applicable percentage is zero.

Under the first alternative table, the applicable percentage is the percentage described in the existing table in A–2(c) of § 1.401(a)(9)–6. 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 circumvent 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 dies less than 90 days after making that election, even if the employee's death occurs after his or her selected annuity starting date.

[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, as amended (ERISA), includes a parallel definition. See Rev. Rul. 2012–3, 2012–8 IRB 383 (2012) for rules relating to qualified preretirement survivor annuities.

[4] See A–2(a) and A–3 of § 1.401(a)(9)–8.

Under the second alternative table, the applicable percentage is the percentage described in a new table set forth in the final 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 70½ and age 85. In order to limit the portion of the premium that is used to provide death benefits to a designated beneficiary, the proposed regulations provided that 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. In response to comments, the final regulations modify this rule to allow the non-spouse beneficiary to be selected at a later date in certain circumstances, and to clarify that there is no violation of the irrevocability requirement that applies with respect to a non-spouse beneficiary if an employee substitutes his or her spouse as the beneficiary.

D. Other QLAC Requirements

Under the proposed regulations, a QLAC would not include a variable contract under section 817 (variable annuity), an equity-indexed contract, or a similar contract. A number of commenters requested that variable annuities and annuities that base returns on an equity index be included in the definition of a QLAC. One commenter noted that a narrow definition may limit the demand for QLACs. Others noted that annuities that provide for equity exposure are better able to address the long-term risk of inflation than fixed annuities. The Treasury Department and the IRS believe that because the purpose of a QLAC is to provide an employee with a predictable stream of lifetime income a contract should be eligible for QLAC treatment only if the income under the contract is primarily derived from contractual guarantees. Because variable annuities and indexed contracts[5] provide a substantially unpredictable level of income to the employee, these contracts are inconsistent with the purpose of this regulation. This is true even if there is a minimum guaranteed income under those contracts. In addition, having a limited set of easy-to-understand QLAC options available for purchase enhances the ability of employees to compare the products of multiple providers. Moreover, exposure to equity-based returns is available through control over the remaining portion of the account balance. Therefore, the final regulations provide that a QLAC does not include a variable contract under section 817, an indexed contract, or a similar contract. However, the final regulations also provide that the Commissioner may provide an exception to this rule in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin.

[5] Commenters indicated that an indexed contract and an equity-indexed contract are alternative names for the same type of annuity.

In response to comments, the final regulations clarify that a participating annuity contract is not treated as a contract that is similar to a variable contract or an indexed contract merely because it provides for the payment of dividends described in A–14(c)(3) of § 1.401(a)(9)–6. Similarly, a contract that provides for a cost-of-living adjustment described in A–14(b) of § 1.401(a)(9)–6 is not treated as a contract that is similar to a contract that is a variable contract or an indexed contract.

The proposed regulations also provided that in order to be a QLAC, a contract is not permitted to make available any commutation benefit, cash surrender value, or other similar feature. Although some commenters requested flexibility to offer contracts with these types of features, the final regulations retain this rule because the availability of such a feature would significantly reduce the benefit of mortality pooling under the contracts.

The proposed regulations provided that a contract is not a QLAC unless it states, when issued, that it is intended to be a QLAC. This rule would ensure that the issuer, employee, plan sponsor, and IRS know that the rules applicable to QLACs apply to a contract. Numerous commenters objected to this requirement, primarily because any changes to a contract form would require issuers to resubmit that form (even if it already satisfies the other QLAC requirements) to state insurance regulators for approval. Some commenters suggested that in order to alleviate the burden, issuers should be allowed to satisfy this requirement by including a statement in an insurance certificate or rider rather than in the contract itself. Several commenters suggested that the requirement to include this statement in the contract should be removed altogether because it duplicates the proposed disclosure requirement.

As under the proposed regulations, the final regulations provide that when the contract is issued an employee must be notified that the contract is intended to be a QLAC. However, in response to comments, the final regulations provide that this requirement will be satisfied if this language is included in the contract, or in a rider or endorsement with respect to the contract. The final regulations also provide that this requirement will be satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC. In addition, the final regulations include a transition rule under which an annuity contract issued before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy this requirement, provided that when the contract is issued the employee is notified that the contract (or a certificate under a group annuity contract) is intended to be a QLAC, and the contract is amended (or a rider, endorsement, or amendment to the certificate is issued) no later than December 31, 2016 to state that the contract is intended to be a QLAC.

The final regulations continue to provide that distributions under a QLAC must satisfy the generally applicable section 401(a)(9) requirements relating to annuities set forth in § 1.401(a)(9)–6, other than the requirement that annuity payments commence on or before the employee's required beginning date. Thus, for example, the limitation on increasing payments described in A–1(a) of § 1.401(a)(9)–6 applies to the contract.

II. IRAs

The final regulations retain the premium limitations for IRAs provided under the proposed regulations. The final 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 $125,000. If, on or before the date of a premium payment, an IRA owner has paid premiums for the same contract or for any other contract that is intended to be a QLAC under the IRA or under any other IRA, plan, or annuity, the $125,000 limit is reduced by the amount of those other premium payments.

The final 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 the individual's IRA account balance. 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 final regulations 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.

Like the proposed regulations, the final 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 IRA account balances (other than the account balance under the IRA).

In light of the fact that Roth IRAs are not subject to the required minimum distribution rules prior to the death of the owner, the proposed regulations provided that an annuity purchased under a Roth IRA would not be treated as a QLAC. 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.[6] The final regulations retain the proposed rules on Roth IRAs.

III. Section 403(b) Plans

As under the proposed regulations, the final 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 is separately determined for each section 403(b) plan in which an employee participates. The final 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 final regulations also 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 survivor 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 not subject to this requirement. See A–3(d) of § 1.401(a)–20 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 regulations relating to the purchase of a QLAC under a tax-qualified defined contribution plan automatically apply to an eligible section 457(b) plan. However, the rule relating to QLACs is limited to eligible governmental plans under section 457(b). This is because section 457(b)(6) requires that an eligible section 457(b) plan that is not an eligible governmental plan be unfunded, and the purchase of an annuity contract under such a plan would be inconsistent with the requirement that such a plan be unfunded.

V. Defined Benefit Plans

A number of commenters favored allowing defined benefit plans to offer a

[6] See A–14 of § 1.408A–4 for a description of 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.

QLAC. For example, several commenters stated that not permitting a QLAC to be offered under a defined benefit plan will encourage employees to roll over lump-sum distributions from defined benefit plans to defined contribution plans or IRAs, where they can buy a QLAC. They argued that it would be preferable for the annuities to be provided directly from a defined benefit plan.

Defined benefit plans generally are required to offer annuities, which provide longevity protection. Because longevity protection is already available in these plans, the final regulations do not apply to defined benefit plans. However, the Treasury Department and the IRS request comments regarding the desirability of making a form of benefit that replicates the QLAC structure available in defined benefit plans. In particular the Treasury Department and the IRS request comments regarding the advantages to an employee of being able to elect a QLAC structure under a defined benefit plan, instead of electing a lump sum distribution from a defined benefit plan and rolling it over to a defined contribution plan or to an IRA in order to purchase a QLAC.

VI. Initial Disclosure and Annual Reporting Requirements

Under the proposed regulations, in addition to requiring the contract to state that it is intended to be a QLAC, the issuer of a QLAC would have been required to issue a disclosure containing certain information about the QLAC at the time of purchase. To avoid duplicating state law disclosure requirements, this initial disclosure would not have been required to include information that the issuer already provided to the employee in order to satisfy any applicable state disclosure law.

The final regulations do not require an initial disclosure to be issued to the employee in light of the existing disclosure practices that take into account disclosure requirements under state law and under Title I of ERISA.[7] If the Treasury Department and the IRS determine that employees are not receiving sufficient information before a QLAC is purchased, this issue may be reexamined.

As under the proposed regulations, the final regulations prescribe annual reporting requirements under section 6047(d) which require any person issuing any contract that is intended to be a QLAC to file annual calendar-year reports with the IRS and to provide a statement to the employee regarding the status of the contract. This reporting is necessary to inform both plan administrators and employees that the contract is intended to be a QLAC, so that the dollar and percentage limitations applicable to QLACs can be applied, and to assist the IRS with the administration of the QLAC exception to the required minimum distribution rules. 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;
- For the calendar year, the amount of each premium paid for the contract and the date of the premium payment;
- The total amount of all premiums paid for the contract through the end of the calendar year; and
- The fair market value of the QLAC as of the close of the calendar year.

The annual reporting requirement will be similar to the annual requirement to provide a Form 5498, ''IRA Contribution Information,'' in the case of an IRA.[8] The Commissioner will prescribe a form and instructions for this purpose, which will contain the filing deadline and other information.

Each issuer required to file the report with respect to a contract will also be required to provide to the employee a statement containing the information that is required to be furnished in the report. This requirement may be satisfied by providing the employee with a copy of the required form, or by providing the employee with the information in another document that contains the following language: ''This information is being furnished to the Internal Revenue Service.'' The statement is required to be furnished to the employee 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 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 employee attains age 85 (as adjusted in calendar years beginning after 2014) or dies. However, if the employee dies and the sole beneficiary under the contract is the employee's spouse (so that the spouse's annuity might not commence until the employee would have commenced benefits under the contract had the employee survived), the annual reporting requirement continues until the year in which the distributions to the spouse commence, or if earlier, the year in which the spouse dies. During this period, the annual statement must be provided to the surviving spouse.

Effective/Applicability Dates

These regulations apply to contracts purchased on or after July 2, 2014. One commenter requested that the regulations allow for annuities purchased before the regulations become final to convert to a QLAC in order to avoid surrender charges for contract reissuances, and prevent the absence of disclosure forms from delaying the benefit of these rules. If on or after July 2, 2014, an existing contract is exchanged for a contract that satisfies the requirements to be a QLAC, the new contract will be treated as purchased on the date of the exchange and therefore may qualify as a QLAC. In such a case the fair market value of the contract that is exchanged for a QLAC is treated as a premium that counts toward the QLAC limit.

Availability of IRS Documents

For copies of recently issued revenue procedures, revenue rulings, notices and other guidance published in the Internal Revenue Bulletin, please visit the IRS Web site at *http://www.irs.gov* or contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as

[7] See, for example, the Annuity Model Disclosure Regulation issued by the National Association of Insurance Commissioners and the disclosure for annuity contracts that are designated investment alternatives under 29 CFR 2550.404a–5(i)(2).

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

supplemented by Executive Order 13563. 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 regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the collection of information in these final regulations is in A–17(a)(6) of § 1.401(a)(9)–6 (disclosure that a contract is intended to be a QLAC) and § 1.6047–2 (an annual report must be filed with the IRS and a statement must be provided to QLAC owners and their surviving spouses). An insubstantial number of entities of any size will be impacted by the regulations, and the entities that will be impacted will be insurance companies, very few of which are small entities. In addition, IRS and Treasury expect that any burden on small entities will be minimal. Based on these facts, 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, the notice of the proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

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.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are 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 paragraph A–3(e) and revising it.

■ 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 (QLAC), defined in A–17 of § 1.401(a)(9)–6, that is held under the plan. This paragraph (d) applies only to contracts purchased on or after July 2, 2014.

(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 paragraph A–12(a) and adding paragraph 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 (QLACs), defined 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 purchased from an insurance company for an employee and that, in accordance with the rules of application of paragraph (d) of this A–17, 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 next following the 85th anniversary of the employee's birth;

(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 benefits described in paragraph (c) of this A–17;

(6) When the contract is issued, the contract (or a rider or endorsement with respect to that contract) states that the contract is intended to be a QLAC; and

(7) The contract is not a variable contract under section 817, an indexed contract, or a similar contract, except to the extent provided by the Commissioner in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin and made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and on the IRS Web site at *http://www.irs.gov*.

(b) *Limitations on premiums*—(1) *In general.* The premiums paid with respect to the contract on a date satisfy the requirements of this paragraph (b) if they 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) $125,000 (as adjusted under paragraph (d)(2) of this A–17), over

(ii) The sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to 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 plan under section 457(b).

(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 (including the value of any QLAC held under the plan for the employee) as of that date, determined in accordance with paragraph (d)(1)(iii) of this A–17, over

(ii) The sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to 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) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, 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.

(ii) *Death before annuity starting date*—(A) *Amount of annuity.* If the employee dies before the annuity starting date and the employee's surviving spouse is the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, 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 would have been payable to the employee as of the date that benefits to the surviving spouse commence. However, the annuity is permitted to exceed 100 percent of the periodic annuity payment that would have been 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) or ERISA section 205(e)(2)) pursuant to section 401(a)(11)(A)(ii) or ERISA section 205(a)(2).

(B) *Commencement date for annuity.* Any life annuity payable to the surviving spouse under paragraph (c)(1)(ii)(A) of this A–17 must commence no later than the date on which the annuity payable to the employee would have commenced under the contract if the employee had not died.

(2) *Surviving spouse is not sole beneficiary*—(i) *Death on or after annuity starting date.* If the employee dies on or after the annuity starting date for the contract and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iii) of this A–17) of the periodic annuity payment that is payable to the employee.

(ii) *Death before annuity starting date*—(A) *Amount of annuity.* If the employee dies before the annuity starting date and the employee's surviving spouse is not the sole beneficiary under the contract then, except as provided in paragraph (c)(4) of this A–17, the only benefit permitted to be paid after the employee's death is a life annuity payable to the designated beneficiary where the periodic annuity payment is not in excess of the applicable percentage (determined under paragraph (c)(2)(iii) of this A–17) 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)(ii).

(B) *Commencement date for annuity.* In any case in which the employee dies before the annuity starting date, any life annuity payable to a designated beneficiary under this paragraph (c)(2)(ii) must commence by the last day of the calendar year immediately following the calendar year of the employee's death.

(iii) *Applicable percentage*—(A) *Contracts without pre-annuity starting date death benefits.* If, as described in paragraph (c)(2)(iv) of this A–17, the contract does not provide for a pre-annuity starting date non-spousal death benefit, the applicable percentage is the percentage described in the table in A–2(c) of this section.

(B) *Contracts with set beneficiary designation.* If the contract provides for a set non-spousal beneficiary designation as described in paragraph (c)(2)(v) (and is not a contract described in paragraph (c)(2)(iv)) of this A–17, the applicable percentage is the percentage described in the table set forth in paragraph (c)(2)(iii)(D) of this A–17. A contract is still considered to provide for a set beneficiary designation even if the surviving spouse becomes the sole beneficiary before the annuity starting date. In such a case, the requirements of paragraph (c)(1) of this A–17 apply and not the requirements of this paragraph (c)(2).

(C) *Contracts providing for return of premium.* If the contract provides for a return of premium as described in paragraph (c)(4) of this A–17, the applicable percentage is 0.

(D) *Applicable percentage table.* The applicable percentage is based on the adjusted employee/beneficiary age difference, determined in the same manner as in 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

(iv) *No pre-annuity starting date non-spousal death benefit.* A contract is described in this paragraph (c)(2)(iv) 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 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.

(v) *Contracts permitting set non-spousal beneficiary designation.* A contract is described in this paragraph (c)(2)(v) if the contract provides that if the beneficiary under the contract is not the employee's surviving spouse, benefits are payable to the beneficiary only if the beneficiary was irrevocably designated on or before the later of the date of purchase or the employee's required beginning date.

(3) *Calculation of early annuity payments.* For purposes of paragraphs (c)(1)(ii) and (c)(2)(ii) 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.

(4) *Return of premiums*—(i) *In general.* In lieu of a life annuity payable to a designated beneficiary under paragraph (c)(1) or (2) of this A–17, a QLAC is permitted to provide for a benefit paid to a beneficiary after the death of the employee in an amount equal to the excess of—

(A) The premium payments made with respect to the QLAC over

(B) The payments already made under the QLAC.

(ii) *Payments after death of surviving spouse.* If a QLAC is providing a life annuity to a surviving spouse (or will provide a life annuity to a surviving spouse) under paragraph (c)(1) of this A–17, it is also permitted to provide for a benefit paid to a beneficiary after the death of both the employee and the spouse in an amount equal to the excess of—

(A) The premium payments made with respect to the QLAC over

(B) The payments already made under the QLAC.

(iii) *Other rules*—(A) *Timing of return of premium payment following death of employee.* A return of premium payment under this paragraph (c)(4) must be paid no later than the end of the calendar year following the calendar year in which the employee dies. If the employee's death is after the required beginning date, the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

(B) *Timing of return of premium payment following death of surviving spouse receiving life annuity.* If the return of premium payment is paid after the death of a surviving spouse who is receiving a life annuity (or after the death of a surviving spouse who has not yet commenced receiving a life annuity after the death of the employee), the return of premium payment under this paragraph (c)(4) must be made no later than the end of the calendar year following the calendar year in which the surviving spouse dies. If the surviving spouse's death is after the required beginning date for the surviving spouse, then the return of premium payment is treated as a required minimum distribution for the year in which it is paid and is not eligible for rollover.

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

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

(ii) *Consequences of excess premiums*—(A) *General Rule.* If an annuity contract fails to be a QLAC solely because a premium for the contract exceeds the limits under paragraph (b) of this A–17, then the contract is not a QLAC beginning on the date that premium payment is made unless the excess premium is returned to the non-QLAC portion of the employee's account in accordance with paragraph (d)(1)(ii)(B) of this A–17. If the contract fails to be a QLAC, then the value of the contract may not be disregarded under A–3(d) of § 1.401(a)(9)–5 as of the date on which the contract ceases to be a QLAC.

(B) *Correction in year following year of excess.* If the excess premium is returned (either in cash or in the form of a contract that is not intended to be a QLAC) to the non-QLAC portion of the employee's account by the end of the calendar year following the calendar year in which the excess premium was originally paid, then the contract will not be treated as exceeding the limits under paragraph (b) of this A–17 at any time, and the value of the contract will not be included in the employee's account balance under A–3(d) of § 1.401(a)(9)–5. If the excess premium (including the fair market value of an annuity contract that is not intended to be a QLAC, if applicable) is returned to the non-QLAC portion of the employee's account after the last valuation date for the calendar year in which the excess premium was originally paid, then the employee's account balance for that calendar year must be increased to reflect that excess premium in the same manner as an employee's account balance is increased under section 1.401(a)(9)–7, A–2 to reflect a rollover received after the last valuation date.

(C) *Return of excess premium not a commutation benefit.* If the excess premium is returned to the non-QLAC portion of the employee's account as described in paragraph (d)(1)(ii)(B) of this A–17, it will not be treated as a violation of the requirement in paragraph (a)(4) of this A–17 that the contract not provide a commutation benefit.

(iii) *Application of 25-percent limit.* For purposes of the 25-percent limit under paragraph (b)(3) of this A–17, an employee's account balance on the date on which premiums for a contract are paid is the account balance as of the last valuation date preceding the date of the premium payment, adjusted as follows. The account balance is increased for contributions allocated to the account during the period that begins after the valuation date and ends before the date the premium is paid and decreased for distributions made from the account during that period.

(2) *Dollar and age limitations subject to adjustments*—(i) *Dollar limitation.* In the case of calendar years beginning on or after January 1, 2015, the $125,000 amount under paragraph (b)(2)(i) of this A–17 will be adjusted at the same time and in the same manner as the limits are adjusted under section 415(d), except that the base period shall be the calendar quarter beginning July 1, 2013, and any increase under this paragraph (d)(2)(i) that is not a multiple of $10,000 will be rounded to the next lowest multiple of $10,000.

(ii) *Age limitation.* The maximum age set forth in paragraph (a)(2) of this A–17 may 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 and made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and on the IRS Web site at *http://www.irs.gov.*

(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)(2)(i) or paragraph (d)(2)(ii) of this A–17 will not cause the contract to become a QLAC.

(3) *Determination of whether contract is intended to be a QLAC*—(i) *Structural deficiency.* If a contract fails to be a QLAC at any time for a reason other than an excess premium described in paragraph (d)(1)(ii) of this A–17, then as of the date of purchase the contract will not be treated as a QLAC (for purposes of A–3(d) of § 1.401(a)(9)–5) or as a contract that is intended to be a QLAC (for purposes of paragraph (b) of this A–17) as of the date of purchase.

(ii) *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 A–14(d) of § 1.408A–6. 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 with respect to 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.

(4) *Certain contracts not treated as similar contracts*—(i) *Participating annuity contract.* An annuity contract is not treated as a contract described in paragraph (a)(7) of this A–17 merely because it provides for the payment of dividends described in A–14(c)(3) of § 1.401(a)(9)–6.

(ii) *Contracts with cost-of-living adjustments.* An annuity contract is not treated as a contract described in paragraph (a)(7) of this A–17 merely because it provides for a cost-of-living adjustment as described in A–14(b) of § 1.401(a)(9)–6.

(5) *Group annuity contract certificates.* The requirement under paragraph (a)(6) of this A–17 that the contract state that it is intended to be a QLAC when issued is satisfied if a certificate is issued under a group annuity contract and the certificate, when issued, states that the employee's interest under the group annuity contract is intended to be a QLAC.

(e) *Effective/applicability date*—(1) *General applicability date.* This A–17 and § 1.403(b)–6(e)(9) apply to contracts purchased on or after July 2, 2014 If on or after July 2, 2014 an existing contract is exchanged for a contract that satisfies the requirements of this A–17, the new contract will be treated as purchased on the date of the exchange and the fair market value of the contract that is exchanged for a QLAC will be treated as a premium paid with respect to the QLAC.

(2) *Delayed applicability date for requirement that contract state that it is intended to be QLAC.* An annuity contract purchased before January 1, 2016, will not fail to be a QLAC merely because the contract does not satisfy the requirement of paragraph (a)(6) of this A–17, provided that—

(i) When the contract (or a certificate under a group annuity contract) is issued, the employee is notified that the annuity contract is intended to be a QLAC; and

(ii) The contract is amended (or a rider, endorsement or amendment to the certificate is issued) no later than December 31, 2016, to state that the annuity contract is intended to be a QLAC.

■ **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 A–17(b) of § 1.401(a)(9)–6 (relating to limitations on premiums for a qualifying longevity annuity contract (QLAC), defined in A–17 of § 1.401(a)(9)–6) and A–17(d)(1) of § 1.401(a)(9)–6 (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 A–12(b) and (c) of § 1.408–8).

* * * * *

■ **Par. 5.** In § 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 A–3(d) of § 1.401(a)(9)–5 for a qualifying longevity annuity contract (QLAC) apply to an IRA?

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

(b) *Limitations on premiums*—(1) *In general.* In lieu of the limitations described in A–17(b) of § 1.401(a)(9)–6, the premiums paid with respect to 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) $125,000 (as adjusted under A–17(d)(2) of § 1.401(a)(9)–6), over

(ii) The sum of—

(A) The premiums paid before that date with respect to the contract, and

(B) The premiums paid on or before that date with respect to 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 plan under section 457(b).

(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 (including the value of any QLAC held under those IRAs) 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 with respect to the contract, and

(B) The premiums paid on or before that date with respect to 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 (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—

(1) 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

(2) 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) *Permitted delay in setting beneficiary designation.* In case of a contract that is rolled over from a plan to an IRA before the required beginning date under the plan, the contract will not violate the rule in A–17(c)(2)(v) of § 1.401(a)(9)–6 that a non-spouse beneficiary must be irrevocably selected on or before the later of the date of purchase or the required beginning date under the IRA, provided that the contract requires a beneficiary to be irrevocably selected by the end of the year following the year of the rollover.

(e) *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 A–14(d) of § 1.408A–6. 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 with respect to 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.

(f) *Effective/applicability date.* This A–12 applies to contracts purchased on or after July 2, 2014.

■ **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 A–3 of § 1.401(a)(9)–5 and A–12 of § 1.408–8 for a qualifying longevity annuity contract (QLAC), defined in A–17 of § 1.401(a)(9)–6, do not apply to a Roth IRA.

* * * * *

■ **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 is intended to be a qualifying longevity annuity contract (QLAC), defined in A–17 of § 1.401(a)(9)–6, shall make the report 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 plan under section 457(b).

(2) *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) For the calendar year, the amount of each premium paid for the contract and the date of the premium payment;

(vi) The total amount of all premiums paid for the contract through the end of the calendar year;

(vii) The fair market value of the QLAC as of the close of the calendar year; and

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

(b) *Manner and time for filing*—(1) *Timing.* The report required by paragraph (a)(2) 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 A–17(d)(2)(ii) of § 1.401(a)(9)–6) or dies.

(2) *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 commenced benefits under the contract had the individual survived), 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.* Each issuer required to file the annual 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 required to be included 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) of this section. A copy of the required form may be used to satisfy the statement requirement of this paragraph (c). If a copy of the required form is not used to satisfy the statement requirement of this paragraph (c), the statement shall contain the following language: ''This information is being furnished to the Internal Revenue Service.'' The statement required by this paragraph (c) shall be furnished on or before January 31 following the calendar year for which the report required by paragraph (a)(2) of this section is required.

(d) *Penalty for failure to file report.* Section 6652(e) prescribes a penalty for failure to file the report required by paragraph (a)(2) of this section.

(e) *Effective/applicability date.* This section applies to contracts purchased on or after July 2, 2014.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 8.** The authority citation for part 602 continues to read as follows:

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

■ **Par. 9.** In § 602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * *	*
1.401(a)(9)–6	1545–2234
* * *	*
1.6047–2	1545–2234

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 27, 2014.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2014–15524 Filed 7–1–14; 8:45 am]

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