

[TEXT OF THE FATCA COMMENT LETTER SUBMITTED BY  
ACLI]

July 22, 2011

Manal Corwin  
Deputy Assistant Secretary Tax Policy (Int'l)  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Michael Plowgian  
Attorney-Advisor  
Office of International Tax Counsel  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Jesse Eggert  
Attorney-Advisor  
Office of International Tax Counsel  
Department of Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Steve Musher  
Associate Chief Counsel (Int'l)  
Office of Associate Chief Counsel (Int'l)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

John Sweeney  
Attorney-Advisor  
Office of Associate Chief Counsel (Int'l)  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Josephine Firehock  
Attorney-Advisor  
Office of Associate Chief Counsel (Int'l)  
Internal Revenue Service  
1111 Constitution Avenue, NW

Washington, DC 20224

Re: *Notice 2011-34* ~ Supplemental Notice to Notice 2010-60 Providing Further Guidance and Requesting Comments on Certain Priority Issues Under Chapter 4 of Subtitle A of the Code

Dear Mmes. Corwin and Firehock, and Messrs. Musher, Plowgian, Sweeney and Eggert,

On behalf of ACLI and its member companies <sup>n1</sup>, we are writing in response to *Notice 2011-34* <sup>n2</sup> (the “Notice”) and how new chapter 4 requirements (*Internal Revenue Code Sections 1471 ~ 1474*) <sup>n3</sup> should apply to life insurance companies and products, including the request by Treasury and IRS for comments in the Notice with respect to amended procedures described for holders of pre-existing individual accounts. We also briefly address the most recent Chapter 4 Implementation Notice, *Notice 2011-53* <sup>n4</sup>, and how its phased-in approach for reporting and withholding under chapter 4 should apply to life insurance companies.

## I. Summary of Recommendations

### A. Pre-existing Life Insurance and Annuity Contracts

- No Cash Value:

Life insurance or annuity contracts issued before the effective date of chapter 4, without cash value, all life reinsurance contracts, term life, return of premium, <sup>n5</sup> medical and disability, and other protection insurance policies should not be treated as financial accounts as they present no tax evasion risk.

- Low Risk Life Insurance Products

Group insurance contracts and retirement plans pose a low risk of tax evasion. Both should be exempted from chapter 4. We offer a definition for retirement plans that should be exempted below.

- Cash Value Life Insurance and Annuity Contracts

Treasury and IRS updated procedures they are considering for participating FFIs to follow in identifying U.S. accounts in pre-existing individual accounts.

- As described more fully below, steps 1, 2, 4, and

6 are not appropriate for pre-existing life insurance and annuity contracts as the legislature's concern with chapter 4 compliance concerning life insurance products was a prospective one as opposed to a retrospective one.

- We discuss more fully below why steps 3 and 5, as written, do not correlate to life insurance companies and their products. We believe only pre-existing cash value contracts with cash values above certain thresholds with specific elements and components should be reported. For pre-existing life insurance and annuity contracts we recommend the following:
- Life insurance companies will identify U.S. persons that own Private Placement Life Insurance ("PPLI") products, as defined below, through a one-time electronic search from among their pre-existing PPLI contracts with cash values of above \$ 1,000,000. We define such products by identifying the components usually associated with them in detail below. All other pre-existing accounts that do not meet the definition will be exempted from chapter 4.

- No Withholding on Pre-existing Life Insurance and Annuity Contracts

No withholding tax obligation should apply with respect to pre-existing life insurance contracts and annuities issued on or before March 18, 2012, as life insurance and annuity contracts with cash values are legal agreements with definitive terms that could produce withholdable payments under chapter 4.

#### B. Life Insurance and Annuity Contracts Issued After Effective Date

- No Cash Value

Life insurance or annuity contracts without cash value, all life reinsurance contracts, term life, return of premium, medical and disability, and other protection insurance policies should not be treated as financial accounts as they present no tax evasion risk.

- Low Risk Life Insurance Products

Group insurance contracts and retirement plans pose a low risk of tax evasion. Both should be exempted from chapter 4. We offer a definition for retirement plans that should be exempted below.

- Cash Value Life Insurance and Annuity Contracts

Because life insurance products do not pose a tax evasion risk and life insurance companies differ in the measures their systems track, we believe criteria should be established to exclude certain contracts from chapter 4 requirements. By adopting such an approach, the burden on life insurance companies will be more commensurate with the U.S. tax concern and the IRS will not receive reporting that is of no or little value. In addition, as life insurance companies differ in the measures their systems track, they require the availability of the different bases for measuring value of life insurance or annuity policies. Thus, the cash surrender value (i.e., what the policyholder would receive upon cancelling the contract), annual premiums, growth in the policy, and death benefit should all be available as measures excluding life insurance and annuity policies from chapter 4 requirements. Accordingly, insurance companies should be able to use any of the following criteria to exclude a contract from chapter 4 requirements:

- \$ 50,000 or less in cash value,
- \$ 10,000 or less in annual premiums,
- investment returns that do not exceed the premiums and other amounts paid for the contract during the first 10 years, or
- death benefit of \$ 500,000 or less.

### C. Life Insurance Companies

- Foreign life insurance companies that issue only life insurance contracts without cash value, such as all life reinsurance contracts, term life, return of premium, medical and disability, and other protection

insurance policies, or issue contracts that fit the following criteria

- \$ 50,000 or less in cash value,
- \$ 10,000 or less in annual premiums,
- contracts for which the investment return does not exceed the premiums and other amounts paid for the contract during the first 10 years,
- contracts with death benefits of \$ 500,000 or less

should not be treated as FFIs.

- Life insurance companies that have procedures in place to prohibit them from
  - selling policies or annuities to persons who are not resident in the jurisdictions in which they are licensed to operate, or
  - marketing policies or annuities to U.S. residents,

should be treated as FFIs deemed compliant with chapter 4 requirements under *section 1471 (b)(2)*.

- Foreign life insurers that are FFIs and controlled foreign corporations (“CFCs”) should be treated as having complied with all their reporting obligations under the Code if they fulfill the requirements of chapter 4 as finally adopted for foreign life insurers.

## II. Application of Identification of Pre-existing Individual Accounts Owned by U.S. Persons

In *Section 1* of the Notice, Treasury and IRS update procedures they are considering for participating FFIs to follow in identifying U.S. accounts in pre-existing individual accounts. We have observed in prior correspondence <sup>n6</sup> that the statutory definition of foreign financial institutions <sup>n7</sup> provides Treasury and IRS with latitude to exercise their discretion and exempt life insurance companies from the requirements of chapter 4 as a class of persons that pose a low risk of tax evasion. Moreover, we continue to support Treasury and IRS in exercising their discretion so far by concluding in the prior *Notice 2010-60* that they “do not view the issuance of insurance or reinsurance contracts without cash value as implicating the concerns of chapter 4” <sup>n8</sup>.

If life insurance companies are treated as FFIs as a result of issuing cash value insurance contracts or annuity contracts, we recommend that only life insurance companies that issue contracts with a cash value on or after January 1, 2013, be treated as FFIs. As noted in our prior submission, although life insurance products with cash value pose very little risk for tax evasion, if any, life insurers are willing to implement procedures and seek necessary regulatory approvals to comply fully with FATCA with respect to policies issued after the effective date to address the government's concern about the possible migration of tax evaders from banking to life insurance. We describe in more detail the thresholds and measures for identification and reporting for life insurance and annuity contracts issued after the effective date of chapter 4 in section II.B. below.

#### A. Pre-existing Life Insurance and Annuity Contracts

Treasury and IRS request comments specifically on whether “insurance companies, should perform procedures similar to those described [in steps 1 through 6] . . . with respect to holders of pre-existing individual accounts, including private placement life insurance”.<sup>n9</sup> Our comments below address the question posed by the latest Notice and offer our recommendation for treatment of life insurance companies and products. Steps 1-6 described in the Notice for identification of U.S. taxpayers among pre-existing individual accounts do not translate well to how life insurance companies conduct their business and are not appropriate for life insurance and annuity policies. We understand the government is concerned that after the passage of FATCA, U.S. taxpayers who may have used other financial institutions to evade U.S. taxes might turn to life insurance products. The grant of discretionary authority to Treasury and IRS to craft rules for life insurance companies and policies under chapter 4 was over concern with future migration of such activity. Thus, the concern with chapter 4 compliance ought to be a prospective not a retrospective one, and limited to the understanding that life insurance products pose no or a low risk of tax evasion.

- No Cash Value

As for pre-existing life insurance and annuity contracts, we support Treasury and IRS for recognizing in *Notice 2010-60* that life insurance and all life reinsurance contracts without cash value do not pose a tax evasion risk.<sup>n10</sup> Thus, we recommend, once again, that life insurance or annuity contracts issued before the effective date of chapter 4, without cash value, all life reinsurance contracts<sup>n11</sup> term life, return of premium, medical and disability, and other protection insurance policies be exempted altogether from the application of chapter 4 as they present no tax evasion risk.

- Group Insurance Products and Retirement Plans

Group insurance contracts and retirement plans pose a low risk of tax evasion. Both should be exempted from chapter 4, and in *Notice 2010-60*, Treasury and IRS recognized that retirement plans should be exempt from chapter 4. Group contracts are generally paid for with income earned from performance of services by employees and can be limited to those policies offered through employers that do not allow employees to participate if they work in the U.S.

The IRS and Treasury have also requested a definition of the type of retirement plans that should be exempt from chapter 4. We propose that retirement plans that meet the following criteria be exempted from chapter 4:

A retirement plan would comprise a predetermined contractual or legal arrangement to provide a retirement benefit, pension, or regular income to the covered employee when that person is no longer working or has attained an age to receive retirement benefits. A retirement plan may also include provisions for insurance benefits to a disabled covered employee or to a deceased covered employee's surviving spouse or dependent. A foreign employer or individual retirement plan excluded from FATCA reporting is one which qualifies as a government-sanctioned retirement plan, legal entity, contractual arrangement or investment vehicle operated to provide pension or retirement benefits or earn income for providing such benefits under the laws of the country in which it is established and regulated with respect to contributions, distributions, reporting, sponsorship, and taxation.

- Cash Value Life Insurance and Annuity Contracts

Treasury and IRS should update procedures that they are considering for participating FFIs to follow in identifying U.S. accounts in pre-existing individual accounts. Steps 1, 2, 4, and 6 are not appropriate for pre-existing life insurance and annuity contracts as the legislature's concern with chapter 4 compliance for life insurance products was prospective only, not retrospective. Most life insurance and annuity contracts lack the material investment component that pose a tax evasion risk and should be exempt from chapter 4.

Steps 3 and 5, as written, do not correlate to life insurance companies and their products. Step 3 describes procedures for "private banking accounts" and imposes additional identification obligations on FFIs that hold such accounts based on the private banking relationship the FFI has through its private banking manager. There is no such analogue in the life insurance company business model and distribution channels. Life insurers do not have relationships with their policyholders similar to those in the "private banking" context. Although life insurers may offer products marketed to high-net-worth customers, they do not have the close, ongoing business relationships that provide them with detailed knowledge concerning the policyholder or associated family members.

Moreover, the higher cash value threshold described in Step 5 is similarly unhelpful as a measure of tax evasion risk or knowledge about the policyholder. The higher face amount or cash value would not be a contract that would vary from any other product available to the general public. Often a higher cash value is the result of an older contract that has been in place for a long time, for which the life insurance

company has likely had little or no contact with the policyholder over the term of the contract. Such a contract poses little, if any, risk of tax evasion. In the life insurance business, such policies are highly regulated as life insurance protection products and are not products sought to evade U.S. taxes. The higher cash value or face amount would not provide the life insurer with additional detailed knowledge concerning the policyholder's tax residence. A life insurance company's files for higher cash value policies would contain only additional data relevant to underwriting the increased risks assumed. Thus, for example, more medical information that would relate to the increased mortality or longevity risk being assumed would be in such files but nothing more.

We understand that Treasury and IRS are concerned about life insurance and annuity contracts marketed to high-net income individuals. We presume that was the basis for the procedures described for private banking in steps 3 and 5 and for the specific request of whether a life insurance analogue to such practices exists in "private placement life insurance". While we are not aware of such an analogue, we understand the government's interest in trying to identify existing contracts that may be sold to high-net-worth individuals.

We have observed before, in informal discussions, that an administrable legal definition for PPLI products that addresses the concerns of chapter 4 does not exist and we are not aware of a common definition of such a product being sold in the international market. The term "private placement life insurance" as used in the Notice appears to refer to single client account variable life insurance and annuity contracts offered to high-net-worth individuals. Legally, the term is relevant only as an exemption from the registration requirement for variable products under U.S. securities law, specifically section 4(2) of the Securities Act of 1933. <sup>n12</sup> Outside this narrow exclusion from U.S. securities law, the term has no particular legal import or significance. In commonly used marketing parlance, "private placement insurance" may be used to refer to products marketed to high-net-worth and high-net-liquid-worth individuals who are considered as sufficiently sophisticated in their understanding of finance to warrant an exclusion from registration of the variable policies under securities law.

We understand that there may be non-U.S. life insurance contracts with high values marketed to high-net-worth individuals that the government believes could as pose some tax evasion risk and would suggest that this may be a customized and privately negotiated product that has the assets supporting the contract held in a segregated account(s) in a bank or other financial custodian for the benefit of that policy and policyholder.

Such products may be marketed as "private placement life insurance contracts" but the term itself has no legal definition. Given the costs involved to implement these custom arrangements, the minimum investment is usually in excess of \$ 1,000,000 and they are offered exclusively to high-net-worth individuals who are treated as sophisticated investors similar to those in the Securities Act of 1933 and Securities Exchange Commission regulations. We understand there is usually a minimum investment amount of at least \$ 1,000,000 to qualify the policy for a non-public security offering. <sup>n13</sup> Because the separate accounts are held in banks or financial custodians, the policyholders may have more control overall aspects of these products. We understand in some jurisdictions non-cash assets may be contributed as premiums for the policies. These and other factors combined may cause the government to

have more of a concern about such products. Thus, although no legal definition can be found, we suggest that any identification and reporting required for pre-existing accounts in Step 5 of the Notice be limited for life insurance products to the so-called “PPLI products”, with all of the following characteristics:

- Accounts with cash values above \$ 1,000,000,
- Policyholders can direct how the assets will be invested, and such direction is not limited to choosing from predefined funds offered to the public,
- Initial investment is through lump-sum premiums (later top-up premiums may be possible) of at least \$ 1,000,0000,
- Assets belonging to the policy are managed in a bank or custodial segregated account for each separate policy (As distinguished from other standard insurance products where assets are pooled with other assets of the insurer or assets of policyholders owning similar policies are comingled in separate or segregated accounts held for their benefit by the insurer.),
- Policyholders may contribute assets other than cash to the segregated accounts, and
- Accounts are not offered to the general public, i.e., sold only through private offerings.

We believe a one-time electronic search of such policies for U.S. indicia meeting the criteria outlined above permits Treasury and IRS to achieve its goal of obtaining the right kind of reporting on appropriate existing products most efficiently and will address any concerns the government may have with respect to pre-existing life insurance and annuity policies. We request that all other pre-existing accounts that do not meet the criteria outlined above be exempted from chapter 4.

- No Withholding on Pre-existing Life Insurance and Annuity Contracts

Section 501 (d)(2) of the HIRE Act provides “that chapter 4 shall not require any amount to be deducted or withheld from any payment under any obligation outstanding on March 18, 2012, or from the gross proceeds from any disposition of such an obligation.” n14 Treasury and IRS confirmed in *Notice 2010-60* that obligations that are legal agreements with a definitive expiration or term would be exempted from chapter 4. Life insurance and annuity contracts are legal agreements with definitive terms. The term of any life insurance or annuity contract is actuarially determined. Thus, no withholding tax obligation should apply with respect to pre-existing life insurance contracts and annuities

issued on or before March 18, 2012 as life insurance and annuity contracts with cash values are legal agreements with definitive terms and could produce withholdable payments under chapter 4.

#### B. Life Insurance and Annuity Contracts Issued After Effective Date

- No Cash Value

Life insurance or annuity contracts without cash value, all life reinsurance contracts, term life, return of premium, medical and disability, and other protection insurance policies should not be treated as financial accounts as they present no tax evasion risk.

- Low Risk Life Insurance Products

Group insurance contracts and retirement plans pose a low risk of tax evasion. Both should be exempted from chapter 4. We offer a definition for retirement plans that should be exempted above in section II.A.

- Cash Value Life Insurance and Annuity Contracts

Although we believe cash value life insurance and annuity contracts pose a very low, if any, risk of tax evasion, life insurers would be willing to identify U.S. persons in accordance with the procedures set forth in *Notice 2010-60* for new accounts. Some insurance companies will want to avail themselves of the \$ 50,000 cash value de minimis rule explained below, other insurance companies may find that rule difficult to rely upon, since the cash value of a policy will change over time. As we have previously discussed with the government, life insurance companies often do not have an ongoing relationship with policyholders, and only have contact with them when the policy is sold. Therefore, excluding contracts from chapter 4 based on criteria, such as cash value that changes over time, may not be an administrable criterion for many insurance companies. As such, other criteria are required to more easily identify low risk policies. Another appropriate de minimis rule could look to the amount of premium paid each year pursuant to the terms of the contract, or the time during which it takes for cash value to accumulate. Insurance policies with small and level premiums pose little or no risk of tax evasion. Such policies do not provide for much, if any, initial cash value and the cash value builds over a very long period of time, which does not lend itself to being a financial product conducive for tax evasion. n15 Therefore, we urge that a rule be adopted to exempt life insurance policies from chapter 4 if the annual premium is \$ 10,000 or less for every year of the life of the contract. Finally, we suggest that another de minimis rule suggested by the Canadian Life and Health Insurance Association (“CLHIA”) in their February 2011 letter be adopted for policies that provide a death benefit of \$ 500,000 or less.

Because life insurance products do not pose a tax evasion risk and because life insurance companies differ in the measures their systems track, we believe criteria should be established to exclude contracts from chapter 4 requirements. By adopting such an approach the burden on life insurance companies will be more commensurate with the U.S. tax concern and the IRS will not receive reporting that is of

no or little value. As life insurance companies differ in the measures their systems track, they also require the availability of different bases for measuring value of life insurance or annuity policies. Thus, the cash surrender value (i.e., what the policyholder would receive upon cancelling the contract), annual premiums, growth in the policy, and death benefit should all be available as measures excluding life insurance and annuity policies from chapter 4 requirements. Accordingly, insurance companies should be able to use any of the following criteria to exclude a contract from chapter 4 requirements:

- Contracts with \$ 50,000 or less in cash value,
- Contracts with \$ 10,000 or less in annual premiums,
- Any contract for which the investment return does not exceed the premiums and other amounts paid for the contract during the first 10 years, or
- Life Insurance contracts that provide a death benefit of \$ 500,000 or less.

However, life insurance companies' systems differ and require the availability of other reasonable bases for measuring value of a life insurance or annuity policy that address:

- expected growth in their policies,
- cash surrender values (i.e., what the policyholder would receive net of permitted costs and penalties upon cancelling contracts),
- premiums paid, and
- death benefits.

Thus, for example, if a contract has \$ 51,000 in cash value but provides for a \$ 490,000 death benefit, the company may exclude the contract based on the low death benefit exclusion as such a contract does not pose a risk for tax evasion.

We also suggest that insurers be permitted to report account values consistent with their existing systems, which typically do not detail the type or character of income. Gathering this information on a timely basis and designing systems to report the information would be very expensive and difficult to undertake. Furthermore, as insurance contracts are not used for frequent cash transfers or regular securities transactions, providing this information is unnecessary.

We define "growth in the policy" as an investment return in excess of premiums and other amounts paid for the contract. We recommend that the cash surrender value of a contract be the amount that may be received by the policyholder on the anniversary date of the policy, after all applicable surrender

charges and fees. Insurance companies often do not determine the cash value of contracts on a month end, monthly, or even quarterly basis. Most insurance companies only determine the cash value of insurance contracts on the anniversary date of the contract. Therefore, we request that the date for testing the cash value of an insurance contract only be on the anniversary date of the contract.

C. Preliminary Observations on *Notice 2011-53* ~  
Time Needed to Seek Regulatory Approvals of Contractual  
Amendments and to Install and/or Adjust Systems Requirements  
to Perform Reporting

In *Notice 2011-53* Treasury and IRS recognize the legal and practical obstacles FFIs face in seeking regulatory approvals, amending existing legal documents, and designing and adjusting systems and platforms to comply with chapter 4. Accordingly the government concludes a phased-in approach to FATCA implementation is appropriate “because chapter 4 creates the need for significant modifications to the information management systems of FFIs, withholding agents, and the IRS”.<sup>16</sup> In the Notice Treasury and IRS propose phased-in implementation for commencement of FFI agreements, reporting for existing and new accounts, and withholding on U.S. accounts and non-compliant FFIs.

We appreciate Treasury and IRS’ acknowledgement of the legal and practical difficulties in implementing chapter 4 and request that the timeline for life insurers be extended to allow for life insurers to have an opportunity to review and comment on detailed guidance specific to life insurance companies and products similar to those provided to financial institutions in *Notices 2010-60, 2011-34, and 2011-53*. Treasury and IRS are well within their discretion in phasing-in chapter 4 compliance after its effective date for financial institutions expressly contemplated by the legislature and can exercise their discretion to permit a similar opportunity for the life insurance industry. Treasury and IRS have been granted discretion as to whether and how to apply chapter 4 to life insurance companies or their products. As such, there is no statutory mandate that any guidance for life insurers or their products be provided by the effective date set by the statute, if at all. We trust we have successfully communicated the significance of the differences of life insurance companies and products in our discussions and prior comments. Thus, we request that Treasury and IRS issue a Notice that explains how FATCA will apply to the unique position of insurance companies and products and with a request for comments specific to the life insurance industry before issuing any further guidance for the industry.

Life insurance, annuity and similar contracts are unique in that our products are highly regulated contracts. These are not bank, brokerage or financial accounts for which terms may be able to be changed or for which funds may be frozen or the account closed. An insurance company is obligated to follow the terms within the four corners of the contract that it has agreed to with its policyholder. Insurance contracts cannot be changed once issued, and cannot even be changed for new policies without the consent of the local regulator. In many jurisdictions if the insurance company does not make payments to policyholders as required by the contracts and local regulatory rules to which the insurance company is subject, then the insurance company would be in violation of its private contractual and public regulatory obligations. Such breaches could cause an insurance company to be sanctioned and even prohibited from the future sale of insurance by the local regulator. Insurance companies do not have a practical way to comply with the rules that could require the closing of a re-

calcitrant account, withholding payments under a policy, or requiring new information from an existing policyholder to comply with the new requirements of chapter 4. Therefore, insurance companies will have to go through a process of reviewing contract language to be in compliance with chapter 4. In many jurisdictions it takes a year or two to develop new contract language, and have that language approved by the regulator, before it can be incorporated into newly-issued policies.

Treasury and IRS have set the summer of 2012 as the anticipated date for final regulations for financial institutions expressly contemplated by the legislature in drafting FATCA; we would recommend that they give the insurance industry an additional six months (until December 31, 2012) to provide more comments and discuss future guidance before proposed regulations are issued for life insurers.

Notice 2011-53 outlines a timeline for reporting of pre-existing and new U.S. accounts. As noted above we believe that identification and reporting of pre-existing life insurance contracts should be limited to PPLI contracts (as defined above in section II. A.). We believe that the timeline for reporting of pre-existing PPLI contracts should be subject to the process described in Section II. A. 2. b. iii. for pre-existing accounts allowing two years for identification of pre-existing accounts. Therefore, a life insurance company that knows it is an FFI as of July 1, 2013 would have until July 1, 2015 to fulfill the due diligence requirement to perform procedures for pre-existing accounts.

As noted above in section II.B., insurance companies often do not determine the cash value of contracts on a month end, monthly, or even quarterly basis, and that as such the date for testing the cash value of an insurance contract only be on the anniversary date of the contract. *Notice 2011-53* requires that account balances be reported annually. We believe that for purposes of reporting of new life insurance and annuity accounts, and pre-existing PPLI accounts, insurers should not be required to provide account balances. Reporting of amounts should be based instead on payments made to policyholders. In addition, we suggest that reporting to the IRS of a U.S. account for which a W-9 has been received be based on calendar-year periods instead of the June 30 - September 30 timeframe provided in the Notice. Thus, we propose reporting for newly-identified life insurance and annuity contracts and pre-existing PPLI accounts identified by December 31 to be reported by March 30 of the following calendar year.

Finally, once regulations are issued life insurers will need time to amend contracts, seek regulatory approval for proposed amendments, and build or update contract administrations systems and platforms to comply. Accordingly, we request that Treasury and IRS exercise their discretion to delay the effective date for insurers for two years to permit the necessary systems changes and regulatory approvals to meet the reporting and withholding requirements.

### III. Life Insurance Companies

- Not FFIs if Only Issue Life Insurance Policies Without Cash Value

Foreign life insurance companies that issue only life insurance contracts without cash value, such as reinsurance contracts, term life, return of premium, medical and disability, and other protection insurance policies should not be treated as foreign financial institutions (“FFIs”) under chapter 4.

- Not FFIs if Only Issue Life Insurance Policies

If life insurers are treated as FFIs, foreign life insurance companies that only issue contracts that fit the following criteria should not be treated as FFIs and should be exempted from FATCA reporting altogether:

- \$ 50,000 or less in cash value,
  - \$ 10,000 or less in annual premiums,
  - contracts for which the investment return does not exceed the premiums and other amounts paid for the contract during the first 10 years, and
  - contracts with death benefits of \$ 500,000 or less.
- Deemed Compliant Life Insurance Companies

The Notice also describes guidelines Treasury and IRS are considering for FFIs deemed to meet the requirements of chapter 4. We recommend that life insurance companies that are FFIs should be deemed compliant with chapter 4 requirements if they only issue contracts to residents of their home country.

Life insurance companies that have procedures in place to prohibit them from (1) selling policies or annuities to persons who are not resident in the jurisdictions in which they are licensed to operate, or (2) marketing policies or annuities to U.S. residents, should be treated as FFIs deemed compliant with chapter 4 requirements under *section 1471 (b)(2)*. A deemed compliant life insurance company may be prohibited from marketing outside of its country of incorporation and required to have its compliance officer certify on an annual basis that it has procedures to verify and document that it does not sell to persons who are not residents in the jurisdictions in which they are licensed to operate, or it does not market policies to U.S. residents.

- Treatment of Certain Other Classes of Entities ~  
Controlled Foreign Corporations (CFCs)

Treasury and IRS stated in *Notice 2010-60* that “deeming CFCs to be compliant under *section 1471(b)(2)* would potentially result in disparate treatment of account holders of FFIs, depending on whether they held accounts with FFIs that are CFCs or other FFIs”. We appreciate that Treasury and IRS plan to coordinate reporting obligations of CFCs of life insurance companies with any additional obligations they may have to report under chapter 4. We have previously discussed our proposal for sensible modifications to the reporting requirements for CFCs of U.S. life insurers. Subsequently, chapter 4 was enacted with potentially new additional requirements for life insurance companies. In light of chapter 4’s enactment, and the indication in the Notice that CFCs will not be treated as deemed compliant

pursuant to *section 1471(b)(2)*, we recommend that foreign life insurance companies that are CFCs be treated as having complied with all their reporting obligations under the Code if they fulfill the requirements of chapter 4 as proposed for foreign life insurers in this submission.

Given that the life insurance industry has made requests for reasonable and updated guidance with respect to such CFC reporting since the rules were adopted, but no guidance has been provided, and recognizing that the tax reporting of the foreign life insurance industry has admittedly not been a focus or priority of Treasury and IRS, as the life insurance industry has been recognized as being lower risk than other financial institutions, we request that it be clarified that the 1099 reporting rules not apply to life insurance companies prior to the January 1, 2013 effective date for chapter 4 reporting and that chapter 4 reporting will replace 1099 reporting for such CFCs that are life insurance companies.

#### Acquisition of Pre-existing Contracts by an FFI

A transition or grandfather rule is also needed for life insurance, annuity and similar contracts acquired through an acquisition of such contracts from a life insurance company that does not meet the requirements of *section 1471(b)* (is a non-participating FFI) or the acquisition of a life insurance company that does not meet the requirements of *section 1471(b)* (is a non-participating FFI). In such a situation we suggest that existing contracts not be subject to chapter 4, and that life insurance and annuity contracts issued after the acquisition of a life insurance company be subject to an electronic search through the first full year of ownership of the life insurance company, and thereafter be subject to the rules for new accounts. As explained above, life insurance and annuity contracts that were not required to comply with chapter 4 previously should not become subject to the chapter 4 rules therefore, acquired contracts should be viewed in the same manner as pre-existing contracts.

We thank you for your consideration of this request and look forward to the opportunity to meet with you to discuss the issues that we have presented in this letter. If you have questions or need for additional information, please contact us.

Sincerely yours,

Walter C. Welsh  
Executive Vice President

Mandana Parsazad  
Senior Counsel

American Council of Life Insurers  
Taxes & Retirement Security  
Washington, DC

#### FOOTNOTES:

n1

The American Council of Life Insurers represents more than 300 legal reserve life insurer and fraternal benefit society member companies operating in the United States and virtually all internationally. These member companies represent over 90% of the assets and premiums of the U.S. life insurance and annuity industry.

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2011-19 I.R.B., May 9, 2011.

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Unless otherwise noted, all references are to sections of the Internal Revenue Code of 1986.

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2011-32 I.R.B., August 8, 2011.

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Contracts may provide for returning of a portion of the premium up to 100 percent of the premium.

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For your convenience, ACLI's November 1, 2010 letter in response to *Notice 2010-60* is attached as Appendix A to this letter.

n7

Sections 1471-1474 ("chapter 4"), enacted as part of the Hiring Incentives to Restore Employment Act of 2010, (P.L. 111-147 (the "HIRE") Act); define foreign financial institutions ("FFIs") as entities that

A) accept deposits in the ordinary course of their business,

B) hold financial assets for the account of others

as a substantial portion of its business, or

C) engage primarily in the business of investing or trading in securities or financial instruments.

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*Notice 2010-60, 2010-37 I.R.B., September 13, 2010.*

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*Id.*, note 2, at 19.

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*Id.*, note 8 at 11.

n11

Reinsurance contracts between insurance companies should not be treated as U.S. accounts since U.S. individuals or trusts are not parties to these contracts. Reinsurance agreements therefore do not implicate the concerns of FATCA and its documentation and reporting requirements. We therefore request you expressly exclude all life reinsurance contracts from the definition of a U.S. account.

n12

*15 USC section 77d(2).*

The Interstate Insurance Product Regulation Commission defines Private Placement Life Insurance Annuity contracts as:

**Additional Standards for Private Placement Plans for Individual Variable Adjustable Life Insurance Policies** Private placement plans are variable policies that are issued exclusively to an accredited investor or qualified purchaser, as those terms are defined by the Securities Act of 1933, as amended, the Investment Company Act of 1940, as amended, or the regulations

promulgated under either of those acts, and provides for benefits that vary in relation to the performance of an underlying separate account where the investment funds in the private placement separate account are exempt from registration with the SEC under the Investment Company Act of 1940, as amended.

IIPRC-L06-1-4 (Adopted March 25, 2011).

**Additional Standards for Private Placement Plans for Individual Deferred Variable Annuity Contracts**

Private placement plans are variable annuities that are issued exclusively to an accredited investor or qualified purchaser, as those terms are defined by the Securities Act of 1933, as amended, the Investment Company Act of 1940, as amended, or the regulations promulgated under either of those acts, and provide for benefits that vary in relation to the performance of an underlying separate account where the investment funds in the private placement separate account are exempt from registration with the SEC under the Investment Company Act of 1940, as amended.

IIPRC-AB-03-I-PP (Adopted March 25, 2011).

n13

The current minimum in securities law Regulation D, Rule 501 for natural persons is an individual net worth in excess of \$ 1,000,000 at the time of purchase.

n14

Hiring Incentives to Restore Employment Act of 2010, P.L. 111-147 (the “HIRE”) Act), *Section 501(d)(2)*.

n15

We attached sample illustrations with our November 1, 2010 submission that is attached as Appendix A to this letter.

n16

Id., note 4 at 2.

n17

See, ACLI letters dated November 9, 2001, November 8, 2009, and April 29, 2011.