American Academy *of* Actuaries

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Dear Mr. Choi and Mr. Ziegler,

The Pension Committee of the American Academy of Actuaries[1] is concerned about the decision by the Internal Revenue Service (IRS) that would limit the pension actuaries' potential to interact with IRS actuaries and other experienced employee benefits personnel. This limitation takes the form of:

- tight restrictions on approvals for IRS personnel to speak at or attend actuarial meetings in an official capacity or to participate via teleconference on IRS time,
- elimination of the "R-mail" program, and
- the decision to eliminate the annual "Gray Book"—the handout provided at the Enrolled Actuaries Meeting that was the result of cooperation between the IRS and the employee benefits community, that outlined technical issues currently being faced by practitioners and provided IRS personnel's informal opinions as to what guidance on those questions might turn out to be if guidance were ever issued.

We understand that these decisions may stem from time and budget constraints. We do not believe, however, that the inability of pension actuaries to interact with appropriate IRS personnel will result in cost-effective outcomes. U.S. retirement systems are exceedingly complex, and the ability of pension actuaries and the IRS to exchange timely, useful information is vital to the smooth operation of the systems.

Law and regulations around pensions are always changing; as a result of these constant changes to the pension system guidance is incomplete in many areas. Faced with complex situations where guidance is lacking, plan sponsors can request a formal response. However, the user fees required to accompany these requests make this approach impractical for smaller plans, and the

[1] The American Academy of Actuaries is an 18,500+ member professional association whose mission is to serve the public and the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

timeline is so long that larger plans that request approval often find themselves in situations where they need to take action well before the answer is received.

In such situations, having the ability to receive informal opinions of very knowledgeable IRS personnel provides plan actuaries with a vital means of identifying appropriate courses of action on a timely basis. Without informal guidance, plans could proceed in a way that the IRS will not agree with and would have discouraged, had their advice been available beforehand. The time and effort needed for IRS personnel to work with plan sponsors to remedy these discrepancies when identified upon audit or when reviewed as part of a ruling request will far exceed the time spent to provide additional informal guidance.[2] In addition, these sorts of preventable errors increase costs for plan sponsors and in some cases end up affecting plan participants, resulting in a significant reduction in the effectiveness of the nation's retirement system.

The "Questions to IRS/Treasury and a Summary of Their Responses" or "Gray Book" is an excellent example of how the IRS has benefited through saving time and effort through collaboration with practitioners. The most recent accumulated Gray Books contain well over 1,000 answers to real-life questions and are read by well over 1,000 actuaries each year. The availability of such information likely eliminates a significant number of formal requests for guidance (or decisions to proceed without advice, resulting in potential errors).

We understand the concerns expressed by IRS and Treasury about practitioners and plan sponsors placing undue reliance upon the responses provided by the Gray Book—for example, even going so far as to cite the need for §411(d)(6) protection or other relief when regulations provide for a different approach than reflected in earlier Gray Book questions. However, the elimination of this form of "soft guidance" would best serve the needs of all if it were accompanied at the very least by a willingness to allow plan sponsors the flexibility to do something reasonable in the absence of formal guidance without disallowing that interpretation on audit. As actuaries with great experience in current practice, we believe that plan sponsors will generally accept a prospective change in the IRS's position on an issue. However, plan sponsors (and the practitioners who advise them) experience significant frustration when retroactive guidance comes out after plan sponsors have been dealing with an issue for a long time, particularly when the options for obtaining informal guidance have been severely restricted.

Additionally, we regard the interaction of IRS personnel with actuaries in the retirement space in particular as beneficial to the IRS, providing an effective early warning system for problems and difficulties within the nation's retirement systems. It is more timely than what can be gathered by formal commentary—a slow and often reactive process. Pension professionals will often have a better perspective on the breadth and impact of a particular issue than a single sponsor requesting a formal response on that same issue; obtaining such feedback in an informal context can help the IRS determine in advance how best to allocate its scarce resources for providing formal guidance.

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[2] We also note that Announcement 2015-19 makes significant changes to the determination letter program for individually designed plans that will restrict the ability of plan sponsors to receive certain types of formal determinations with respect to their written plans. The inability of many existing plans to receive a formal determination letter prior to plan termination magnifies the concerns with respect to restricting access to informal guidance from IRS actuaries.

IRS actuaries do continue to participate on panels at certain conferences, but those panel appearances happen far less frequently as a result of the constraints discussed previously. This eliminates the chance to interact with IRS personnel for the many enrolled actuaries who are unable to attend the particular meetings where these individuals are present.

We respectfully request that the decisions leading to this significant restriction on the informal interaction between IRS personnel and the pension actuaries be reconsidered, and that IRS personnel continue to be allowed to informally use their considerable expertise to support the nation's retirement systems and the participants who so greatly rely on them. We all have a common goal: compliance with the law using guidance that works, is complete, and is as easy as possible to apply. Informal contact between IRS personnel and the retirement actuaries goes a long way in ensuring that compliance takes place.

We appreciate IRS and Treasury giving consideration to these comments. Please contact Matthew Mulling, the Academy's pension policy analyst (202-785-7868 or mulling@actuary.org), if you have any questions or would like to arrange a convenient time to discuss this matter further.

Respectfully submitted,

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