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By Electronic Delivery

January 6, 2014

John Sweeney
Office of Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Recently Updated IRS Form W-9

Dear Mr. Sweeney:

ACLI¹ and the ICI,² on behalf of our members, request transition relief for, and modifications to, the recently-updated IRS Form W-9 and the revised substitute form requirements. The requested guidance, discussed below, would address issues otherwise arising when the Form (or substitute) is requested by a U.S. withholding agent.

Our requests arise from the August 2013 revisions of Form W-9 and its corresponding instructions, which incorporate, among other things, changes relating to reporting under the Foreign Account Tax Compliance Act (FATCA). Specifically, Form W-9 was revised to allow for entry of an “Exemption from FATCA reporting code”, and the Certification section in Part II of Form W-9 was expanded to include certification of any claimed exemption from FATCA reporting.

¹ The American Council of Life Insurers is a national trade organization representing 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.

² The Investment Company Institute is the national association of U.S. investment companies, including mutual funds, closed-end funds, exchange-traded funds (ETFs), and unit investment trusts (UITs). ICI seeks to encourage adherence to high ethical standards, promote public understanding, and otherwise advance the interests of funds, their shareholders, directors, and advisers. Members of ICI manage total assets of \$16.3 trillion and serve more than 90 million shareholders.

Our concerns with the Form W-9 changes are two-fold. First, insufficient time has been provided to make the operational changes necessary to obtain certifications on these new forms. Second, the changes required are inapplicable to accounts opened in the United States and, consequently, will lead to substantial confusion for investors not subject to FATCA.

Guidance Regarding Transition Period Needed

A six-month transition period is necessary for those forms that must be updated to include FATCA-specific certifications. Comparable transition relief has been provided previously for other forms changes. When the last significant changes were made to Form W-9 in 2001, the IRS issued a notice that provided six months to implement the new form for purposes of Chapters 3 (NRA withholding), 24 (backup withholding), and 61 (1099 reporting). The FATCA regulations provide six months from the release of a revised withholding certificate to implement such revised certificate for purposes of Chapter 4.

We believe that similar guidance regarding a transition period should be provided for this latest Form W-9 and for all future revisions of withholding certificates. Our member companies and funds often incorporate substitute language into subscription materials, account applications, and servicing forms. Updating all of these documents to accommodate new forms across all products of our member companies and fund complexes takes time. Transition relief will allow our members to revise the necessary materials to accommodate new forms, while providing assurances that accounts and policies opened in the intervening time are properly documented. We suggest that a transition period should end on the later of July 1, 2014 (the effective date for FATCA withholding) or six months after the date of the notice in which such transition period is announced.

Refining the Form and Instructions for U.S. vs. Non-U.S. Withholding Agents

The changes made to the Form W-9 and the instructions for substitute Form W-9 – regarding certifications of exemption from FATCA reporting – will create substantial unnecessary confusion. Specifically, the overwhelming majority of taxpayers completing a Form W-9 or a substitute form – because it pertains to a U.S. account – are not subject to FATCA; for these persons, FATCA-related certifications are irrelevant and will lead to unnecessary questions. These certifications are relevant only to a very small subset of U.S. persons (*i.e.*, those U.S. persons acquiring or holding offshore accounts).

The Form W-9 instructions appear to recognize the potential for confusion. Specifically, the instructions to Form W-9 explain that the “Exemption from FATCA” reporting codes apply only to persons submitting the form for accounts maintained outside of the United States by certain foreign financial institutions, and that a taxpayer who is submitting Form W-9 for an account held in the United States may leave this field blank. The new certification on the Form W-9 states that “[t]he

FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.” While somewhat confusing, a taxpayer not entering a FATCA code at least has not claimed an exemption incorrectly.

Clarifying the Language used in Substitute Forms. The instructions to the substitute Form W-9, however, are not as nuanced – as they do not reference codes “if any” entered onto the substitute form. Instead, the instructions require the substitute Form W-9 to “clearly state . . . that under penalties of perjury[,] the payee is exempt from FATCA reporting.” Unlike the certification contained on the Form W-9 proper, there is no provision in the instructions for making this certification inapplicable to taxpayers who are completing a substitute Form W-9 for a U.S. account.

As discussed, our members often utilize substitute Form W-9 language. Our members are concerned that the inclusion of the new FATCA certification on substitute Forms W-9 for U.S. accounts and products will lead to confusion, since FATCA reporting is not applicable to U.S. accounts. In addition, it will require our members to update a significant volume of materials that contain substitute Form W-9 language, some of which may require filing with state regulators, to incorporate the additional certification, even though the certification is inapplicable to the U.S. accounts and products for which the materials are used.

We believe that a simple solution to these issues would be to revise the Instructions to the Requester of Form W-9 to clarify that the new FATCA certification does not need to be included on substitute Form W-9s being obtained for U.S. accounts. This would avoid confusion caused by the inclusion of an inapplicable certification, as well as relieve our member companies of the burden of making unnecessary updates to existing materials.

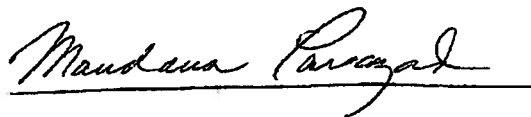
Bifurcating Form W-9 to Reduce U.S. Accountholder Confusion. We also are concerned that the inclusion of the new FATCA certification on the Form W-9 (as opposed to a substitute form) will cause unnecessary confusion with respect to U.S. accountholders providing the Form for their U.S. accounts. As noted, FATCA is not applicable to this extremely common fact pattern and FATCA certifications are not required. Our members anticipate receiving substantial numbers of calls from confused accountholders who do not understand what FATCA is, especially since the FATCA rules do not apply to them. Educating this vast population of accountholders will unnecessarily occupy resources at our members’ account servicing centers.

We propose that bifurcating Form W-9 itself into two forms can solve this issue.³ Bifurcating Form W-9 will substantially reduce confusion for the vast majority of our members' new account openings and the many other industries whose use of Form W-9 is purely domestic.

One type of Form W-9 could be provided to U.S. withholding agents for U.S. persons' U.S. accounts. This Form W-9 could be substantially identical to the former 2011 version. Another type of Form W-9 could be provided to non-U.S. withholding agents. This "Form W-9 for Non-U.S. Withholding Agents" could contain all of the necessary FATCA certifications. Only minor revisions to the instructions of each form would be necessary to indicate in what circumstances each version should be used. A coordination rule could also provide that a "Form W-9 for Non-U.S. Withholding Agents" inadvertently provided to a U.S. withholding agent would still be valid: while a standard Form W-9 provided to a non-U.S. withholding agent would not (as it does not contain the necessary FATCA representations).

Because bifurcation of Form W-9 is a more involved request, we recommend that the IRS prioritize issuing transition guidance and revising the substitute form certifications. Bifurcating the form could be considered with the next round of substantive updates to Form W-9.

We thank you for your consideration of our requests. We are available to discuss these comments and any questions you may have. Please contact Mandana Parsazad at (202) 624-2152 or MandanaParsazad@aclf.com or Ryan Lovin at (202) 326-5826 or Ryan.Lovin@ici.org.



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³ Revising Form W-9 instructions to clarify that FATCA certifications do not need to be included on substitute Forms W-9 being obtained for U.S. accounts solves this issue with respect to substitute Forms W-9.

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