NAFA Throws a Hail Mary on QLACs

By Kerry Pechter *Thu, Jan 15, 2015*

"There is only one opportunity to make a good first impression and they may have blown it," one observer said about a letter from the National Association of Fixed Annuities to the Treasury Dept., requesting Qualified Longevity Annuity Contract status for indexed annuities.

Baffled. That's how I felt after reading the letter that the National Association for Fixed Annuities has apparently sent to the Treasury Department asking that indexed annuities receive so-called QLAC status. George Bostick and Mark Iwry, the Treasury officials to whom the letter was addressed, are probably going to feel something similar.

The letter, which was signed by NAFA president and CEO Kim O'Brien and vetted by a respected authority on indexed annuities, isn't likely to be persuasive. It just doesn't make a whole lot of sense. Here's a link to the **letter**. You can decide for yourself.

There are good reasons why deferred indexed annuities and variable annuities won't ever be qualified longevity annuity contracts (QLACs). The QLAC regulations that the Treasury Department announced last year were intended to solve a specific problem: Near-retirees and retirees couldn't use qualified money to buy deferred income annuities whose income streams started after age 70½. Why? Because DIAs are illiquid, and owners had no way to take required minimum distributions (RMDs) from them.

Deferred VAs and FIAs don't suffer from that problem. As currently sold, they produce income through guaranteed lifetime income riders (GLWBs). Unless they're annuitized—which never happens—they stay liquid. A person who buys them with qualified money doesn't have to break the contract to comply with the RMD rule. So those products don't need the regulatory relief that qualified DIAs needed. The QLAC rule specifically excludes annuities that have cash value.

Since the letter doesn't mention DIAs or GLWBs at all, it's hard to tell exactly what NAFA's reasoning is. Maybe it wants Treasury to let its members sell FIAs that, like DIAs, require a commitment to annuitization by age 85. If they do, the letter doesn't say so. (O'Brien received an interview request from *RIJ*, but responded, in real time, that "I am out this week.")

Instead of talking about DIAs, NAFA focuses on declared rate deferred annuities and deferred variable annuities. "Fixed annuities with a set interest rate are eligible to be qualified longevity annuity contracts (QLACs), but fixed annuities with an indexed rate are not," the first paragraph of the letter said.

That isn't true—"declared rate deferred annuities," which are safe accumulation vehicles like CDs, have nothing to do with the QLAC rule. NAFA also attacks variable annuities as unworthy of QLAC status because they're risky, without acknowledging that it's the reliance on the liquid GLWB riders (complex, non-standardized riders) to create income that makes the QLAC rule irrelevant to both FIAs and VAs, as currently sold.

Not entirely trusting my own interpretation of the letter—the tax and annuity fields are landmined with Rumsfeldian "unknown unknowns"—I emailed copies to three people on whom I rely on for their annuity expertise. They were as baffled by the letter as I was. "Though NAFA in this letter establishes that an FIA provides a substantially equal lifetime income payment to the contract owner," one wrote back, "it does not address one fundamental requirement of the regulations, irrevocability of the qualified assets being used to fund the QLAC."

This letter sounds like a "Hail Mary" pass, and it is. Liquidity is the main selling point of deferred annuities that produce income through GLWBs, and no annuity product can have liquidity and QLAC status at the same time.

NAFA isn't responding to questions, so we don't know exactly what they're thinking. O'Brien referred me to three NAFA members, but they haven't responded either. The other person whom I know worked on the letter declined to comment. Since the letter is already public, they may prefer to let it speak for itself. And it does. As one of my readers wrote, "There is only one opportunity to make a good first impression and they may have blown it. Their only chance is to follow up with an appropriate product."