

## SUPPORTING STATEMENT

### 1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION

The Revenue Procedure is necessary to provide guidance as to how an issuer of a variable contract can enter into a closing agreement with the Internal Revenue Service to remedy an inadvertent failure of a variable contract to satisfy the diversification requirements of section 817(h). Section 817(h) requires that a variable contract (other than a pension plan contract ) based on a segregated asset account must be adequately diversified in accordance with section 817 regulations, in order to be treated as an annuity, endowment or life insurance contract. Section 1.817-5(a) provides that if a variable contract is not treated as a life insurance contract or an endowment contract under section 7702(a), the income on the contract for any taxable year of the policyholder is treated as ordinary income received or accrued by the policyholder during such year in accordance with section 7702(g) and (h). Similarly, if a variable contract is not treated as an annuity contract under section 72, the regulation provides that the income on the contract for any taxable year of the policyholder shall be treated as ordinary income received or accrued by the policyholder during such year in the same manner as a life insurance or endowment contract under section 7702(g) and (h).

In general, the Revenue Procedure provides procedures to be used by issuers to correct contracts to comply with the diversification rules of section 817. The Revenue Procedure permits issuers to correct these contracts by entering into a closing agreement.

### 2. USE OF DATA

The data will be used by the relevant issuers with failed contracts to correct the failed contracts.

### 3. USE OF IMPROVED INFORMATION TECHNOLOGY TO REDUCE BURDEN

The disclosure of certain information does involve the use of automated, electronic, or other technological collection techniques.

### 4. EFFORTS TO IDENTIFY DUPLICATION

We have attempted to eliminate duplication within the agency wherever possible.

### 5. METHODS TO MINIMIZE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES

Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES

Not applicable.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)

Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE OF THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS, AND DATA ELEMENTS

We will publish a notice in the Federal Register in the near future to solicit public comments on this Notice.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS

Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES

Generally, tax returns and tax return information are confidential as required by 26 USC 6103.

11. JUSTIFICATION OF SENSITIVE QUESTIONS

Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION

Section 4 of the Revenue Procedure provides that an issuer that requests a closing agreement must submitted certain information to the Service as well as retaining the certain information that is used to compute the required charge that is paid to the United State Treasury. In addition, an issuer must retain documentation available to support the representations required in Section 4.

We estimate that 10 respondents will be required to comply with the above allocation and disclosure requirements. The estimated burden per respondent for recordkeeping/disclosure is 80 to 90 hours with the average burden of 85 hours, for a total estimated burden of 850 hours annually.

Estimates of the annualized cost to respondents for the hour burdens shown are not available at this time.

13. ESTIMATED TOTAL ANNUAL COST BURDEN TO RESPONDENTS

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information are not available at this time.

14. ESTIMATED ANNUALIZED COST TO THE FEDERAL GOVERNMENT

Not applicable.

15. REASONS FOR CHANGE IN BURDEN

Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION

Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE

We believe that displaying the OMB expiration date is inappropriate because it could cause confusion by leading taxpayers to believe that the Revenue Procedure sunsets as of the expiration date. Taxpayers are not likely to be aware that the Service intends to request renewal of the OMB approval and obtain a new expiration date before the old one expires.

18. EXCEPTIONS TO THE CERTIFICATION STATEMENT ON OMB FORM 83-I

Not applicable.

Note: The following paragraph applies to all of the collections of information in this submission:

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 OMB control number. 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 26 U.S.C. 6103.

EMERGENCY SUBMISSION

This Paperwork Reduction Act Submission is made on an emergency basis, and clearance is requested by May 30, 2008. Because taxpayers that are subject to this

revenue procedure would want to use it as soon as possible, this revenue procedure should be made available as soon as possible.