

SECTION 8. DRAFTING INFORMATION

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26 CFR 301.7121–1: Closing agreements.
(Also Part I, §§ 7702, 7702A.)

Rev. Proc. 2008–38

SECTION 1. PURPOSE

This revenue procedure provides a procedure by which an issuer of a life insurance contract may remedy a failure to account for charges for qualified additional benefits (QABs) under the expense charge rule of § 7702(c)(3)(B)(ii) of the Internal Revenue Code. Rev. Rul. 2005–6, 2005–1 C.B. 471, is amplified.

SECTION 2. BACKGROUND

.01 Definition of a life insurance contract.

(1) Section 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either—

(a) satisfy the cash value accumulation test of § 7702(b), or

(b) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of § 7702(d).

(2) A contract meets the cash value accumulation test of § 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract.

(3) A contract meets the guideline premium requirements of § 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the guideline premium limitation as of that time. The

guideline premium limitation as of any date is the greater of the guideline single premium, or the sum of the guideline level premiums to that date. The guideline single premium is the premium that would be required on the date the contract is issued to fund the future benefits under the contract.

(4) A contract falls within the cash value corridor of § 7702(d) if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value, based on the table set forth in § 7702(d)(2).

(5) Section 7702 is effective for contracts issued after December 31, 1984, in tax years ending after that date.

.02 Definition of a modified endowment contract (MEC).

(1) Section 7702A(a) provides that a life insurance contract is a MEC if the contract—

(a) is entered into on or after June 21, 1988, and fails to meet the 7-pay test of § 7702A(b), or

(b) is received in exchange for a contract described in paragraph (a) of this section 2.02(1).

(2) A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums that would have to be paid on or before such time if the contract were to provide for paid-up future benefits after the payment of 7 level annual premiums.

(3) Section 72(e)(12) provides that, for purposes of determining amounts includible in gross income, all MECs issued by the same company to the same contract holder during any calendar year are treated as one MEC.

.03 Accounting for charges for QABs. Section 7702(f)(5) identifies five categories of benefits as QABs: guaranteed insurability; accidental death or disability benefit; family term coverage; disability waiver benefit; or other benefits prescribed under regulations. These benefits are not treated as future benefits under the contract, but charges for the benefits are treated as future benefits. For purposes of the cash value accumulation test of § 7702(b), § 7702(b)(2)(B) requires that charges for QABs be accounted for using the expense charge rule of § 7702(c)(3)(B)(ii), rather than the mortality charge rule of § 7702(c)(3)(B)(i).

Section 7702A(c)(1) requires that the same rule be used for purposes of the 7-pay test as well. Although § 7702 is silent on the treatment of charges for QABs for purposes of applying the guideline premium requirements, Rev. Rul. 2005–6 concludes that charges for such benefits are to be taken into account under the expense charge rule of § 7702(c)(3)(B)(ii) for that purpose as well.

.04 Authority to enter into closing agreements. Under § 7121, the Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any period. Such agreement is generally final and conclusive, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact.

.05 Correction procedure for QABs. Rev. Rul. 2005–6 sets forth three alternatives for issuers whose compliance systems do not currently account for charges for QABs under the expense charge rule of § 7702(c)(3)(B)(ii):

(1) Alternative A provides that, if an issuer's compliance system does not properly account for charges for QABs but no contracts have failed to satisfy the requirements of § 7702(a) as a result of the system's deficiency, the issuer may correct its compliance system to account for those charges using the expense charge rule without contacting the Internal Revenue Service (Service).

(2) Alternative B provides a correction procedure for closing agreements that were requested on or before February 7, 2006.

(3) Alternative C provides that an issuer whose compliance system does not properly account for charges for QABs may request a closing agreement under terms and conditions that are enumerated in Rev. Rul. 2005–6.

.06 Changes to correction procedure. In Notice 2007–15, 2007–1 C.B. 503, the Service requested comments as to how various correction procedures — including those for improper accounting for charges for QABs under Rev. Rul. 2005–6 — may be improved. This revenue procedure incorporates a number of changes that taxpayers suggested in response to Notice 2007–15. Most significantly, this revenue procedure sets forth a model closing agree-

ment and explains in more detail the terms and conditions that apply under Alternative C of Rev. Rul. 2005-6.

SECTION 3. SCOPE

This revenue procedure applies to any issuer of one or more contracts that failed to meet the definition of a life insurance contract under § 7702(a) or to meet the requirements of § 7702A by reason of a compliance system that does not account for charges for QABs under the expense charge rule of § 7702(c)(3)(B)(ii). For this purpose, the term “issuer” means any company that issues a contract that is intended to satisfy the definition of a life insurance contract under § 7702. The term also includes a company that insures a contract

holder under a contract originally issued by another company.

SECTION 4. PROCEDURE

.01 Request for a ruling. An issuer that seeks relief under this revenue procedure must submit a request for a ruling that meets the requirements of Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor). Additionally, the submission must contain an exhibit setting forth the policy number for each contract for which relief is requested.

.02 Closing Agreement. The issuer also must submit a proposed closing agreement, in triplicate, executed by the issuer, in the same form as the model closing agreement in section 5 of this revenue

procedure. The amount shown in Section 1(A) of the proposed closing agreement is the amount required to be paid (determined under section 4.03 of this revenue procedure) for all of the contracts covered by the agreement.

.03 Determination of amount required to be paid. The amount required to be paid is based on the aggregate number of contracts for which relief is requested, as set forth in the following schedule:

Number of Contracts	Amount Due
20 or fewer	\$1,500.00
21 to 50	\$2,000.00
51 to 100	\$5,000.00
101 to 500	\$10,000.00
501 to 1,000	\$16,000.00
1,001 to 5,000	\$30,000.00
5,001 to 10,000	\$40,000.00
Over 10,000	\$50,000.00

.04 Payment of amount. The issuer is required to pay the amount determined under section 4.03 of this revenue procedure within 60 days of the date of execution of the closing agreement by the Service. Payment shall be made by check payable to the “United States Treasury” delivered, together with a fully executed copy of the closing agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

.05 Correction of contracts and compliance system. With respect to each contract that is in force on the effective date of the closing agreement, the issuer must bring the contract into compliance with § 7702 (or § 7702A, as applicable), either by increasing the contract’s death benefit

or returning the contract’s excess premiums and earnings thereon to the contract holder. The issuer also must correct its compliance system to account properly for charges for QABs as provided in Rev. Rul. 2005-6. The issuer must take the corrective action required under this section 4.05 within 90 days of the date of execution of the closing agreement by the Service.

.06 Representations. The submission must include representations to the effect that the issuer is within the scope of section 3 of this revenue procedure and that the amount due to the Service under the closing agreement is computed correctly under section 4.03. The representations must be executed under penalties of perjury by an appropriate party (as set forth in section 7.01 of Rev. Proc. 2008-1 (or its succes-

sor)). The issuer must retain documentation available for audit to support the representations.

.07 Electronic Submissions. The exhibit required under section 4.01 of this revenue procedure may be submitted to the Service electronically, in read-only format, on a CD-ROM. Adobe Portable Document format is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of three CD-ROMs, one for each of the three copies of the closing agreement. *See* Notice 2005-35, 2005-1 C.B. 1087.

SECTION 5. MODEL CLOSING AGREEMENT

CLOSING AGREEMENT AS TO FINAL DETERMINATION
COVERING SPECIFIC MATTERS
UNDER REV. PROC. 2008-38

THIS CLOSING AGREEMENT (“Agreement”) is made pursuant to § 7121 of the Internal Revenue Code (the “Code”) by and between *[Insert Taxpayer name, address and EIN]* (“Taxpayer”) and the Commissioner of Internal Revenue (the “Service”).

WHEREAS,

A. Taxpayer is the issuer of one or more contracts that were intended to qualify as life insurance contracts under § 7702 *[:that were not intended to be treated as modified endowment contracts under § 7702A;]* and that provided qualified additional benefits (QABs) within the meaning of § 7702(f)(5).

B. Pursuant to Rev. Proc. 2008-38, 2008-29 I.R.B. 139, the Service under certain circumstances will waive civil penalties for failure of a taxpayer to satisfy the reporting, withholding and/or deposit requirements for income received or deemed received under § 7702(g).

C. By letter dated *[Insert date]*, Taxpayer submitted to the Service, pursuant to Rev. Proc. 2008-1, 2008-1 I.R.B.1 *[or successor Rev. Proc., if applicable]*, a request for this Agreement covering *[Insert number]* life insurance contracts identified in Exhibit A attached to this Agreement (the “Contracts”).

D. Taxpayer intended that each of the Contracts meet the definition of a life insurance contract under § 7702 *[and not be a modified endowment contract under § 7702A]*. Taxpayer, however, maintained a compliance system for the contracts that did not account properly for charges for qualified additional benefits (QABs) under § 7702(c)(3)(B)(ii). As a result, the Contracts identified in Exhibit A failed to satisfy the requirements of § 7702 or § 7702A.

E. Taxpayer represents that the errors described in D above qualify the Taxpayer for the remedy described in Rev. Proc. 2008-38.

F. Taxpayer represents that the amount determined under section 4.03 of Rev. Proc. 2008-38 is \$ *[Insert amount]*. Taxpayer represents that this amount has been computed correctly under the provisions of Rev. Proc. 2008-38.

G. Taxpayer represents that it has corrected its compliance system, or will correct the compliance system within the time limit prescribed in Section 1(F), to account properly for charges for QABs.

H. To ensure that the Contracts satisfy the requirements of § 7702 *[and § 7702A, if applicable]*, Taxpayer and the Service have entered into this Agreement.

NOW THEREFORE IT IS HEREBY FURTHER DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS:

1. In consideration for the agreement of the Service as set forth in Section 2 below, Taxpayer agrees as follows:

- (A) To pay the Service the amount of \$ *[Insert amount]* at the time and in the manner described in Section 3 below.
- (B) The amount paid pursuant to Section 1(A) above is not deductible, nor is such amount refundable, subject to credit or offset, or otherwise recoverable from the Service.
- (C) For purposes of Taxpayer’s complying with its reporting and withholding obligations under the Code,
 - (i) neither the investment in the contract for purposes of § 72, nor the premiums paid for purposes of § 7702, on any Contract can be increased by any portion of the amount set forth in Section 1(A) above. If any such increases are made, they are entitled to no effect.
 - (ii) neither the investment in the contract for purposes of § 72, nor the premiums paid, for purposes of § 7702, on any Contract can be increased by any portion of the amount which Taxpayer represents to be the income on the contract for all of the Contracts in the aggregate. If any such increases are made, they are entitled to no effect.
- (D) With respect to each Contract that is in force on the effective date of this Agreement, to the extent necessary in order to bring such Contract into compliance with § 7702 *[and § 7702A, if applicable]*:
 - (i) If the sum of the premiums paid as of the effective date of this Agreement exceeds the amount necessary to keep the Contracts in compliance with the requirements of § 7702 *[and § 7702A, if applicable]*, Taxpayer will take the following corrective action:

- (a) Increase the death benefit to not less than an amount that will ensure compliance with § 7702 [*and § 7702A, if applicable*], or
- (b) Refund to the Contract holder the amount of such excess with interest; or
- (ii) If the sum of the premiums paid as of the effective date of this Agreement does not exceed the amount necessary to keep the contracts in compliance with the requirements of § 7702 [*and § 7702A, if applicable*], Taxpayer will take no corrective action.
- (E) With respect to any Contract which terminated by reason of the death of the insured (i) prior to the date this Agreement is executed by the Service and (ii) at a time when the premiums paid exceeded the guideline premium limitation for the Contract, Taxpayer will pay the Contract holder or the Contract holder's estate such excess with interest.
- (F) Taxpayer represents that it, if it has not already done so, will correct its compliance system within 90 days of the effective date of this Agreement to account properly for charges for QABs.

2. In consideration of the agreement of Taxpayer set forth in Section 1 above, the Service agrees as follows:

- (A) To treat each Contract that is still in force as of the effective date of this Agreement as having satisfied the requirements of § 7702 [*and § 7702A, if applicable*], during the period from the date of issuance of the Contract through and including the latest of (i) the date this Agreement is executed by the Service, (ii) the date of any corrective action described in Section 1(D) above, or (iii) the date of any corrective action described in Section 1(F) above;
- (B) To treat each Contract that terminated prior to the effective date of this Agreement as having satisfied the requirements of § 7702 [*and § 7702A, if applicable*] during the period from date of issuance of the Contract through and including the date of the Contract's termination;
- (C) To treat the failures described above, and any corrective action described in Section 1(D) or 1(E) above, as having no effect on the date the Contract was issued, entered into, or purchased for purposes of any provision of the Code or the regulations thereunder;
- (D) To treat any amount paid to any beneficiary prior to the effective date of this Agreement under a Contract by reason of the death of the insured as paid under a life insurance contract for purposes of the exclusion from gross income under § 101(a)(1);
- (E) To waive civil penalties for failure of Taxpayer to satisfy the reporting, withholding, or deposit requirements that would be applicable but for the relief otherwise provided by this Agreement; and
- (F) To treat no portion of the amount described in Section 1(A) above as income to the Contract holders.

3. Any action required of Taxpayer in Section 1(D) or 1(E) above shall be taken by Taxpayer no later than 90 days after the date of execution of this Agreement by the Service. Payment of the amount described in Section 1(A) above shall be made within 60 days after the date of execution of this Agreement by the Service by check payable to the "United States Treasury" delivered together with a copy of this executed Agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

4. This Agreement is, and shall be construed as being, for the benefit of Taxpayer. Contract holders covered by this Agreement are intended beneficiaries of this Agreement. This Agreement shall not be construed as creating any liability of Taxpayer to the Contract holders.

5. Neither the Service nor Taxpayer shall endeavor by litigation or other means to attack the validity of this Agreement.

6. This Agreement may not be cited or relied upon as precedent in the disposition of any other matter.

NOW THIS CLOSING AGREEMENT FURTHER WITNESSETH, that the Service and Taxpayer mutually agree that the matters so determined shall be final and conclusive, except as follows:

1. The matter to which this Agreement relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts set forth herein.

2. This Agreement is subject to sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for Code § 7122) notwithstanding any other law or rule of law.

3. To the extent this Agreement relates to any tax period after the date on which it is executed, it is subject to any law, enacted after such date, that applies to that tax period.

IN WITNESS WHEREOF, the parties have subscribed their names in triplicate. By signing, the above parties certify that they have read and agreed to the terms of this document.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective July 21, 2008, the date of its publication in the Internal Revenue Bulletin.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 2005-6 is amplified to provide terms and conditions and a model closing agreement for use by taxpayers seeking the relief described in Alternative C.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1752.

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 and 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 return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Branch 4 of that office at (202) 622-3970 (not a toll-free call).

26 CFR 301.7121-1: Closing agreements.
(Also Part I, § 7702A.)

Rev. Proc. 2008-39

SECTION 1. PURPOSE

This revenue procedure provides a procedure by which an issuer of a life insurance contract may remedy an inadvertent non-egregious failure to comply with the modified endowment contract rules under § 7702A of the Internal Revenue Code. Rev. Proc. 2001-42, 2001-2 C.B. 212, and Rev. Proc. 2007-19, 2007-1 C.B. 515, are superseded.

SECTION 2. BACKGROUND

.01 *Definition of a modified endowment contract (MEC).*

(1) Section 7702A(a) provides that a life insurance contract is a MEC if the contract—

(a) is entered into on or after June 21, 1988, and fails to meet the 7-pay test of § 7702A(b), or

(b) is received in exchange for a contract described in paragraph (a) of this section 2.01(1).

(2) A contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first 7 contract years exceeds the sum of the net level premiums which would have to be paid on or before such time if the contract were to provide for paid-up future benefits (as defined in §§ 7702A(c)(3) and 7702(f)(4)) after the payment of 7 level annual premiums.

(3) Section 72(e)(12) provides that, for purposes of determining amounts includible in gross income, all MECs issued by the same company to the same contract holder during any calendar year are treated as one MEC.

.02 *Tax treatment of amounts received under a MEC.* Section 72(e)(10) provides that a MEC is subject to the rules of § 72(e)(2)(B), which tax non-annuity distributions on an income-out-first basis, and the rules of § 72(e)(4)(A) (as modified by §§ 72(e)(10)(A)(ii) and 72(e)(10)(B)), which generally deem loans and assignments or pledges of any portion of the value of a MEC to be non-annuity distributions. Moreover, under § 72(v), the portion of any annuity or non-annuity distribution received under a MEC that is includible in gross income is subject to a 10% additional tax unless the distribution is made on or after the date on which the taxpayer attains age 59½, is attributable to the taxpayer's becoming disabled (within the meaning of § 72(m)(7)), or is part of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the taxpayer or the joint lives (or joint life expectancies) of such taxpayer and the taxpayer's beneficiary.

.03 *Authority to enter into closing agreements.* Under § 7121, the Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any period. Such agreement is generally final and conclusive, except upon a showing of fraud, malfeasance, or misrepresentation of a material fact.

.04 *Correction procedure for inadvertent MECs.* Rev. Proc. 2001-42 set forth circumstances under which the Internal Revenue Service (Service) would enter into closing agreements under which life insurance contracts would be treated as if they were not MECs, notwithstanding inadvertent non-egregious failures to comply with the rules of § 7702A. Under Rev. Proc. 2001-42, an issuer was required

to provide information about the contracts that were subject to the closing agreement, including a template for each contract setting forth the cumulative amounts paid under the contract, the contract's cumulative 7-pay premium, the overage, if any, for each contract year, the earnings rate applicable for each contract year, and the overage earnings for each contract year. In addition, the issuer was required to pay under the closing agreement an amount based on the contract's overage, overage earnings, and tax and interest thereon. Rev. Proc. 2001-42 was modified and amplified by Rev. Proc. 2007-19, primarily to use indices that are more accessible to taxpayers than those previously required to be used and to permit the submission of information in an electronic format.

.05 Changes to correction procedure. In Notice 2007-15, 2007-1 C.B. 503, the Service requested comments as to how various correction procedures — including those for inadvertent MECs under Rev. Proc. 2001-42 — may be improved. This revenue procedure incorporates a number of changes that taxpayers suggested in response to Notice 2007-15. Significant changes include providing an alternative computation of the amount required to be paid under a closing agreement with regard to an inadvertent MEC, eliminating certain informational items that must be submitted, and revising some language of the model closing agreement.

SECTION 3. DEFINITIONS

The following definitions and rules apply solely for purposes of this revenue procedure.

.01 Testing period. The 7-year period described in § 7702A(b) or such additional period as may be required under § 7702A(c)(3) if a contract undergoes a material change.

.02 Amount paid. The amount paid (as defined in § 7702A(e)(1)) under a contract in any contract year (as defined in

§ 7702A(e)(2)) equals the premiums paid for the contract during the year, reduced by amounts to which § 72(e) applies (determined without regard to § 72(e)(4)(A)) but not including amounts includible in gross income. For this purpose, premiums paid do not include—

(1) any portion of any premium paid during the contract year that is returned (with interest) to the contract holder within 60 days after the end of the contract year in order to comply with the 7-pay test, or

(2) the cash surrender value (as defined in § 7702(f)(2)(A)) of another life insurance contract (other than a contract that fails the 7-pay test) exchanged for the contract.

.03 7-pay premium.

(1) *In general.* Except as otherwise provided in section 3.03(2) of this revenue procedure, the 7-pay premium for a contract is the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid for the contract if the contract were to provide for paid up future benefits after the payment of 7 level annual premiums.

(2) *7-pay premium for a contract that undergoes a material change.* If a contract (other than a contract that fails the 7-pay test) is materially changed, the contract is treated as newly issued on the date of the material change and the 7-pay premium for the changed contract is an amount equal to the excess, if any, of—

(a) the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid for the changed contract if the contract were to provide for paid up future benefits after the payment of 7 level annual premiums, over

(b) a proportionate share of the cash surrender value (as defined in section 3.04 of this revenue procedure) under the contract.

.04 Proportionate share of cash surrender value. The proportionate share of the cash surrender value of a contract is the amount obtained by multiplying—

(1) the cash surrender value (as defined in § 7702(f)(2)(A)) of the contract, by

(2) a fraction, the numerator of which is the net level premium (computed in accordance with the rules in § 7702A(c)) that would have to be paid for the changed or new contract if such contract were to provide for paid up future benefits after the payment of 7 level annual premiums, and the denominator of which is the net single premium (determined using the rules in § 7702) for such contract at that time.

.05 Overage. A contract's overage is the amount of the excess, if any, of—

(1) the sum of amounts paid under the contract during the testing period for the contract year and all prior contract years, over

(2) the sum of the 7-pay premiums for the contract year and all prior contract years of the testing period.

.06 Overage earnings. The overage earnings for a contract year is the amount obtained by multiplying—

(1) the sum of a contract's overage for the contract year and its cumulative overage earnings for all prior contract years, by—

(2) the earnings rate set forth in section 3.07 of this revenue procedure.

.07 Earnings rates.

(1) *Contracts other than variable contracts.* Except as otherwise provided in sections 3.07(3) and 3.07(8) of this revenue procedure, the earnings rate applicable to a contract year is the general account total return (as defined in section 3.07(2) of this revenue procedure) for the calendar year in which the contract year begins.

(2) *General account total return.*

(a) *Pre-2008 contract years.* The general account total return applicable to a contract year that begins before January 1, 2008, is the rate set forth in the following table for the calendar year in which the contract year begins.

Year	General Account Total Return
1988	10.2%
1989	9.7%
1990	9.8%
1991	9.2%
1992	8.6%
1993	7.5%
1994	8.3%
1995	7.8%
1996	7.7%
1997	7.6%
1998	6.9%
1999	7.4%
2000	8.0%
2001	7.5%
2002	7.2%
2003	6.2%
2004	6.1%
2005	5.6%
2006	6.0%
2007	6.0%

(b) *Post-2007 contract years.* The general account total return applicable to a contract year that begins after December 31, 2007, is the arithmetic average (weighted on a 50–50 basis) of the following two rates:

(i) Moody’s Seasoned Corporate Aaa Bond Yield, frequency annual, or any successor thereto; and

(ii) Moody’s Seasoned Corporate Baa Bond Yield, frequency annual, or any successor thereto. Both rates are publicly available at www.federalreserve.gov. Thus, for example, under this methodology the general account total return for 2007 is $(5.555833 + 6.4825)/2 = 6.0191665 = 6.0\%$.

(3) *Variable contracts described in § 817(d).*

(a) *Pre-2008 contract years.* The earnings rate applicable to a contract year that begins before January 1, 2008, is the rate set forth in the following table for the calendar year in which the contract year begins.

Year	Variable Contracts Earnings Rate
1988	13.5%
1989	17.4%
1990	1.4%
1991	25.4%
1992	5.9%
1993	13.9%
1994	-1.0%
1995	23.0%
1996	14.3%
1997	17.8%
1998	19.7%
1999	12.8%
2000	-5.5%
2001	-7.1%
2002	-14.1%
2003	19.6%
2004	6.9%
2005	2.1%
2006	10.0%
2007	3.6%

(b) *Post-2007 contract years.* Except as otherwise provided in section 3.07(8) of

this revenue procedure, the earnings rate applicable to a contract year that begins

after December 31, 2007, is equal to the sum of—

(i) 10 percent of the general account total return (as defined in section 3.07(2) of this revenue procedure), and

(ii) 90 percent of the separate account total return (as defined in section 3.07(4) of this revenue procedure) for the calendar year in which the contract year begins.

(4) *Separate account total return.* Except as otherwise provided in section 3.07(8) of this revenue procedure, the separate account total return equals—

(a) 75 percent of the equity fund total return (as defined in section 3.07(5) of this revenue procedure), plus

(b) 25 percent of the bond fund total return (as defined in section 3.07(6) of this revenue procedure), less

(c) 1.1 percentage point.

(5) *Equity fund total return.* The equity fund total return equals—

(a) the calendar year percentage return (as defined in section 3.07(7) of this revenue procedure) represented by the end-of-year values of the Standard and Poor's (S&P) 500 Total Return Index, with daily dividend reinvestment, or any successor thereto, less

(b) 1.5 percentage point.

(6) *Bond fund total return.* The bond fund total return equals—

(a) the calendar year percentage return (as defined in section 3.07(7) of this revenue procedure) represented by the end-of-year values of the Merrill Lynch U.S. Corporate Master Index (C0A0), or any successor thereto, less

(b) 1.0 percentage point.

The Merrill Lynch U.S. Corporate Master Index (C0A0) is publicly available at www.mlindex.ml.com. Under this methodology, the bond fund total return for 2007 is $(1689.135 - 1614.188) / 1614.188 - .01 = 3.64301$ percent.

(7) *Calendar year percentage return.* The calendar year percentage return for an index described in section 3.07(5) or section 3.07(6) of this revenue procedure is calculated by—

(a) dividing the end-of-year value of the index for the calendar year by the end-of-year value of the index for the immediately preceding calendar year, and

(b) subtracting 1 from the result obtained under paragraph (a) of this section 3.07(7).

(8) *Incomplete calendar year.* If the general account total return or the separate account total return for a calendar year

cannot be determined because the calendar year in which the contract year begins has not ended, then the earnings rate for the contract year (or portion thereof) is determined using the general account total return and, if applicable, the average separate account total return, for the 3 calendar years immediately preceding the calendar year in which the contract year begins.

.08 *Proportionate share of average earnings allocable to taxable distributions.* The proportionate share of average earnings allocable to taxable distributions under a contract is the amount obtained by multiplying—

(1) the total amount of the taxable distributions under the contract, by

(2) a fraction, the numerator of which is the contract's cumulative average earnings and the denominator of which is the total income on the contract.

.09 *Total income on a contract.* The total income on a contract as of any date is an amount equal to the excess, if any, of—

(1) the contract's cash surrender value (as defined in § 7702(f)(2)(A)) on such date, over

(2) the premiums paid under the contract before such date, reduced by amounts to which § 72(e) applies (determined without regard to § 72(e)(4)(A)) but not including amounts includible in the contract holder's gross income.

.10 *Distribution frequency factor.* The distribution frequency factor for a contract is—

(1) .8, if—

(a) the interest rate with respect to any portion of a policy loan that could be made under the contract at any time (including policy loans that could be made after a contractually specified date in the future) is guaranteed not to exceed the sum of:

(i) 1 percentage point, plus

(ii) the rate at which earnings are credited to the portion of the contract's cash surrender value (as defined in § 7702(f)(2)(A)) that is allocable to such portion of the policy loan; or

(b) the contract holder has an option to make a partial withdrawal of the contract's cash surrender value that reduces the death benefit (as defined in § 7702(f)(3)) under the contract by less than an amount determined by multiplying—

(i) the death benefit under the contract immediately before the withdrawal, by (ii) the percentage obtained by divid-

ing the withdrawn amount by the contract's cash surrender value (as defined in § 7702(f)(2)(A)) immediately before the withdrawal; and

(2) .5 for all other contracts.

.11 *Applicable percentage.*

(1) *In general.* The applicable percentage for a contract is—

(a) 15%, if the death benefit under the contract is less than \$50,000,

(b) 28%, if the death benefit under the contract is equal to or exceeds \$50,000 but is less than \$180,000, and

(c) 36%, if the death benefit under the contract is equal to or exceeds \$180,000.

(2) *Determination of amount of death benefit.* For purposes of determining the applicable percentage, the death benefit under the contract is the death benefit (as defined in § 7702(f)(3)) as of any date within 120 days of the date of the request for closing agreement, or the last day the contract is in force.

.12 *Reported amount.* The reported amount for a contract is the amount that—

(1) the issuer reports on a timely filed information return as includible in the contract holder's gross income, or

(2) the contract holder includes in gross income on a timely filed income tax return.

.13 *Aggregation of contracts.* All MECs issued by the same issuer to the same contract holder during any calendar year are treated as one MEC.

SECTION 4. SCOPE

.01 *Applicability.* Except as provided in section 4.02, this revenue procedure applies to any issuer of one or more life insurance contracts that desires to remedy the inadvertent non-egregious failure of contracts to comply with the requirements of § 7702A. For this purpose, the term "issuer" means any company that issues a contract that is intended to satisfy the definition of a life insurance contract under § 7702 and comply with the MEC rules under § 7702A. The term also includes a company that insures a contract holder under a contract originally issued by another company.

.02 *Inapplicability.* The Service may exclude a contract from the correction mechanism provided under this revenue procedure if the contract's status as a MEC resulted from a failure to comply with the requirements of § 7702A that—

(1) is attributable to one or more defective interpretations or positions that the Service determines to be a significant feature of a program to sell investment oriented contracts, or

(2) arises where the controlling statutory provision, as supplemented by any legislative history or guidance published by the Service, is clear on its face and the Service determines that failure to follow the provision results in a significant increase in the investment orientation of a contract.

.03 Example. Pursuant to section 4.02 of this revenue procedure, the Service generally will not apply the correction mechanism under this revenue procedure to a MEC if the contract provides for paid-up future benefits after the payment of less than 7 level annual premiums.

SECTION 5. PROCEDURE

.01 Request for a ruling. An issuer that seeks relief under this revenue procedure must submit a request for a ruling that meets the requirements of Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor). Additionally, the submission must contain the following information:

(1) the policy number for each contract;
 (2) a description of the defect[s] that caused the contract[s] to fail to comply with the 7-pay test, including an explanation of how and why the defect[s] arose; and

(3) a description of the administrative procedures the issuer has implemented to ensure that none of its contracts will inadvertently fail the 7-pay test in the future.

.02 Closing agreement. The issuer also must submit a proposed closing agreement, in triplicate, executed by the issuer, in the same form as the model closing agreement in section 6 of this revenue procedure. The amount shown in Section 1(A) of the proposed closing agreement is the amount required to be paid (determined under section 5.03 of this revenue procedure) for all of the contracts covered by the agreement.

.03 Determination of amount required to be paid with regard to a contract. The amount required to be paid with regard to a contract under this section 5.03 is either the amount determined based on overage earnings under section 5.03(1) or, at the election of the issuer, the amount determined based on overage under section 5.03(2).

(1) *Amount determined based on overage earnings.*

(a) *In general.* Except as provided in section 5.03(1)(b) of this revenue procedure, the amount determined based on overage earnings under this section 5.03(1) is the sum of—

(i) the income tax (determined using, in lieu of the contract holder's actual tax rate, the applicable percentage for the contract under section 3.11 of this revenue procedure) and the additional tax under § 72(v) with regard to amounts (other than reported amounts (as defined in section 3.12 of this revenue procedure)) received (or deemed received) under the contract during the period commencing with the date 2 years before the date on which the contract first failed to satisfy the MEC rules and ending on the effective date of the closing agreement;

(ii) any interest computed under § 6621(a)(2) as if the amounts determined under section 5.03(1)(a)(i) of this revenue procedure are underpayments by the contract holder[s] for the tax year[s] in which the amounts are received (or deemed received); and

(iii) an amount, not less than \$0, obtained by multiplying— (A) the excess, if any, of the contract's cumulative overage earnings over the proportionate share of overage earnings allocable to taxable distributions under the contract, by

(B) the applicable percentage for the contract, and by

(C) the distribution frequency factor for the contract under section 3.10 of this revenue procedure.

(b) *Special rule for contracts with de minimis overage earnings.* If the overage

earnings of a contract at all times during the testing period do not exceed \$100, then the amount determined under this section 5.03(1) of this revenue procedure is determined without regard to paragraphs (i) and (ii) of section 5.03(1)(a) of this revenue procedure.

(2) *Amount determined based on overage.* An issuer may elect to pay an amount equal to 100% of the overage as defined in section 3.05 of this revenue procedure, rather than the amount determined under section 5.03(1)(a) of this revenue procedure based on overage earnings with respect to a contract.

(3) *Examples of the determination of the amount required to be paid with regard to a contract.*

(a) *Example 1.* A, an individual, purchases a life insurance contract other than a contract described in sections 3.07(3) or 4.02 of this revenue procedure. The death benefit of the contract exceeds \$180,000 on every day within 120 days of the date of the request for closing agreement. The net level premium (assuming paid-up future benefits after seven annual premium payments) for the contract is \$10,490. The contract provides that, within 60 days after the end of a contract year, the issuer will return (with interest) the amount of any excess premium that would cause the contract to be a MEC under § 7702A.

The interest rate on all portions of any policy loans will always exceed the rate at which interest is credited to the contract's associated cash value by more than 1 percentage point. A partial withdrawal of the cash surrender value (within the meaning of § 7702(f)(2)(A)) always reduces the death benefit by an amount not less than the amount determined by multiplying the death benefit immediately before the withdrawal by the percentage obtained by dividing the withdrawn amount by the cash surrender value immediately before the withdrawal.

A pays a premium of \$10,000 when the contract is issued on January 1, 2001. At the beginning of each of the next 6 contract years, A pays additional premiums of \$10,750, \$10,800, \$10,700, \$11,500, \$11,000, and \$10,000, respectively. Due to an inadvertent error, the issuer fails to return any of the excess premiums.

The issuer desires to enter into a closing agreement to remedy the failure to comply with § 7702A. The issuer prepares the following template with regard to the contract.

Contract Year	Cumulative Amounts Paid	Cumulative 7-pay Premium	Overage	Earnings Rate	Overage Earnings
1 (2001)	10,000	10,490	0	7.5%	0
2 (2002)	20,750	20,980	0	7.2%	0
3 (2003)	31,550	31,470	80	6.2%	4.96
4 (2004)	42,250	41,960	290	6.1%	17.99

Contract Year	Cumulative Amounts Paid	Cumulative 7-pay Premium	Overage	Earnings Rate	Overage Earnings
5 (2005)	53,750	52,450	1,300	5.6%	74.09
6 (2006)	64,750	62,940	1,810	6.0%	114.42
7 (2007)	74,750	73,430	1,320	6.0%	91.89

Prior to A's payment of the \$10,800 premium at the beginning of contract year 3, the cumulative premiums paid for the contract do not exceed the contract's cumulative 7-pay premiums. Therefore, there are no overage earnings in contract years 1 and 2.

Upon payment of the \$10,800 premium at the beginning of contract year 3, however, the cumulative amount paid for the contract (\$31,550) exceeds the contract's cumulative 7-pay premiums (\$31,470) by \$80. As the earnings rate for the calendar year in which contract year 3 begins is 6.2%, the contract's overage earnings for contract year 3 equal \$4.96 ($\$80 \times 6.2\%$).

For contract year 4, the overage is \$290 ($\$42,250 - \$41,960$). The cumulative overage earnings for all prior contract years equal \$4.96. The earnings rate is 6.1%. The overage earnings for contract year 4 equal \$17.99 ($(\$290 + \$4.96) \times 6.1\%$).

For contract year 5, the overage is \$1,300 ($\$53,750 - \$52,450$). The cumulative overage earnings for all prior contract years equal \$22.95 ($\$4.96 + \17.99). The earnings rate is 5.6%. The overage earnings for contract year 5 equal \$74.09 ($(\$1,300 + \$22.95) \times 5.6\%$).

For contract year 6, the overage is \$1,810 ($\$64,750 - \$62,940$). The cumulative overage earnings for all prior contract years equal \$97.04 ($\$4.96 + \$17.99 + \74.09). The earnings rate is 6.0%. The overage earnings for contract year 6 equal \$114.42 ($(\$1,810 + \$97.04) \times 6.0\%$).

For contract year 7, the overage is \$1,320 ($\$74,750 - \$73,430$). The cumulative overage earnings for all prior contract years equal \$211.46 ($\$4.96 + \$17.99 + \$74.09 + \114.42). The earnings rate is 6.0%. The overage earnings for contract year 7 equal \$91.89 ($(\$1,320 + \$211.46) \times 6.0\%$).

The cumulative overage earnings for the contract equal \$303.35 ($\$4.96 + \$17.99 + \$74.09 + \$114.42 + \91.89). Under sections 3.10 and 3.11 of this revenue procedure, the distribution frequency factor is .5 and the applicable percentage is 36%. Accordingly, the amount determined based on overage earnings under section 5.03(1) of this revenue procedure is \$54.60 ($\$303.35 \times .5 \times 36\%$).

The amount determined based on overage under section 5.03(2) of this revenue procedure is equal to 100% of the overage, or \$1,320. The issuer may elect to pay either this amount or the amount determined under section 5.03(1) of this revenue procedure (\$54.60) under the terms of the closing agreement with regard to the contract.

(b) *Example 2.* The facts are the same as in *Example 1* except that, at the beginning of contract year 5, A receives \$3,000 as a policy loan. The contract's cash value (within the meaning of § 72(e)(3)(A)(i)) immediately prior to the loan is \$58,500, which exceeds A's investment in the contract (\$53,750) by \$4,750. Each year A pays the interest on the policy loan. The

issuer does not file a timely information return with regard to the deemed distribution resulting from the policy loan and A does not include the distribution in gross income reported on the income tax return for the taxable years in which the deemed distribution is received. The total income on the contract (as defined in section 3.09 of this revenue procedure) is \$14,500.

The amount determined based on overage earnings under section 5.03(1) of this revenue procedure is the sum of—

(1) an amount equal to the income tax (determined using an applicable percentage of 36%) and the additional tax under § 72(v) with regard to the \$3,000 deemed distribution in contract year 5;

(2) interest computed under § 6621(a)(2) as if the amounts determined under (1) were underpayments for the taxable year in which the distributions are deemed to have occurred; and

(3) 36% of \$120.30, which is the excess of the contract's cumulative overage earnings over the proportionate share of the overage earnings allocable to taxable distributions (\$303.35 - \$62.76), multiplied by the distribution frequency factor (.5). (The proportionate share of overage earnings allocable to taxable distributions is obtained by multiplying the total amount of the taxable distribution under the contract (\$3,000), by a fraction, the numerator of which is the contract's cumulative overage earnings (\$303.35) and the denominator of which is the total income on the contract (\$14,500).)

The amount determined based on overage under section 5.03(2) of this revenue procedure is equal to 100% of the overage, or \$1,320. The issuer may elect to pay either this amount or the amount determined under section 5.03(1) of this revenue procedure under the terms of the closing agreement with regard to the contract.

.04 Payment of amount. The issuer is required to pay the amount determined under section 5.03 of this revenue procedure within 60 days of the date of execution of the closing agreement by the Service. Payment shall be made by check payable to the "United States Treasury" delivered, together with a fully executed copy of the closing agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

.05 Correction of contracts.

(1) *General rules.* If, on the date of the execution of the closing agreement by the Service, the testing period (as defined in section 3.01 of this revenue procedure) for

a contract has more than 90 days remaining, then the issuer must bring the contract into compliance with § 7702A. The issuer may bring a contract into compliance with § 7702A either by either increasing the contract's death benefit or returning the contract's excess premiums and earnings thereon to the contract holder. The issuer shall take the corrective action required under this section 5.05(1) of this revenue procedure within 90 days of the date of execution of the closing agreement by the Service.

(2) *No corrective action required if Service executes closing agreement on a date within ninety (90) days of the expiration of testing period.* If the testing period for a contract expires on or before the date within 90 days of the execution of the closing agreement by the Service, then the issuer is not required to take any corrective action under section 5.05(1) of this revenue procedure.

.06 Representations. The submission must include representations to the effect that the issuer is within the scope of section 4 of this revenue procedure and that amount due to the Service under the closing agreement is computed correctly under section 5.03(1) or (2) of this revenue procedure, as applicable. The representations must be executed under penalties of perjury by an appropriate party (as set forth in section 7.01 of Rev. Proc. 2008-1 (or its successor)). The issuer must retain documentation available for audit to support the representations.

.07 Electronic submissions. The information required under section 5.01(1) of this revenue procedure may be submitted to the Service electronically, in read-only format, on a CD-ROM. Adobe Portable Document format is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of three CD-ROMs, one for each of the three copies of the closing agreement.

SECTION 6. MODEL CLOSING
AGREEMENT

Effective as of date executed by Internal
Revenue Service _____

CLOSING AGREEMENT AS TO FINAL DETERMINATION
COVERING SPECIFIC MATTERS
UNDER SECTION 7702A

THIS CLOSING AGREEMENT (“Agreement”) is made pursuant to § 7121 of the Internal Revenue Code (the “Code”) by and between *[Insert Taxpayer name, address, and EIN]* (“Taxpayer”) and the Commissioner of Internal Revenue (the “Service”).

WHEREAS,

A. Taxpayer is the issuer of one or more life insurance contracts under § 7702.

B. Pursuant to Rev. Proc. 2008–39, 2008–29 I.R.B. 143, an issuer under certain circumstances may remedy an inadvertent non-egregious failure to comply with the modified endowment contract rules under § 7702A.

C. By letter dated *[Insert date]*, Taxpayer submitted to the Service, pursuant to Rev. Proc. 2008–1, 2008–1 I.R.B. 1 *[or successor Rev. Proc., if applicable]*, a request for this Agreement covering *[Insert number]* modified endowment contracts identified on Exhibit A attached to this Agreement (the “Contracts”).

D. Taxpayer intended that each of the Contracts not be a modified endowment contract under § 7702A. Taxpayer represents that the Contract[s] is [are] not described in Sec. 4.02 of Rev. Proc. 2008–39 and that the Contracts identified on Exhibit A are eligible for relief under Rev. Proc. 2008–39.

E. Taxpayer represents that the amount determined under Sec. 5.03 of Rev. Proc. 2008–39 is \$ *[Insert amount]*. Taxpayer represents that this amount has been computed correctly under the provisions of Rev. Proc. 2008–39.

F. To ensure that the Contract[s] is [are] not treated as [a] modified endowment contract[s], Taxpayer and the Service have entered into this Agreement.

NOW THEREFORE IT IS HEREBY FURTHER DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS:

1. In consideration for the agreement of the Service as set forth in Section 2 below, Taxpayer agrees as follows:

- (A) Taxpayer will pay to the Service the amount of \$ *[Insert amount]* at the time and in the manner described in Section 3 below.
- (B) The amount paid pursuant to Section 1(A) above is not deductible by Taxpayer, nor is such amount refundable, subject to credit or offset, or otherwise recoverable by Taxpayer from the Service.
- (C) For purposes of Taxpayer’s complying with its reporting and withholding obligations under the Code,
 - (i) neither the investment in the contract for purposes of § 72, nor the premiums paid for purposes of § 7702, on any Contract can be increased by any portion of the amount set forth in Section 1(A) above. If any such increases are made, they are entitled to no effect.
 - (ii) neither the investment in the contract for purposes of § 72, nor the premiums paid, for purposes of § 7702, on any Contract can be increased by any portion of the amount which Taxpayer represents to be the income on the contract for all of the Contracts in the aggregate. If any such increases are made, they are entitled to no effect.
- (D) To bring Contract[s] for which the testing period (as defined in Sec. 3.01 of Rev. Proc. 2008–39) will not have expired on or before the date 90 days after the execution of this Agreement into compliance with § 7702A, either by an increase in death benefit[s] or the return of the excess premiums and earnings thereon to the Contract holder[s].

2. In consideration of the agreement of Taxpayer set forth in Section 1 above, the Service agrees as follows:

- (A) To treat each Contract as having satisfied the requirements of § 7702A during the period from the date of issuance of the Contract through and including the later of—
 - (i) date of the execution of this Agreement, and
 - (ii) the date of the corrective actions described in Section 1(D) above;

- (B) To treat the corrective action described in Section 1(D) above as having no effect on the date the Contract was issued, entered into, or purchased for purposes of any provision of the Code or the regulations thereunder;
- (C) To waive civil penalties for failure of Taxpayer to satisfy the reporting, withholding, and/or deposit requirements for income subject to tax under § 72(e)(10) that was received or deemed received by a Contract holder under a Contract in a calendar year ending prior to the date of execution of this Agreement; and
- (D) To treat no portion of the amount described in Section 1(A) above as income to the Contract holders.

3. The actions required of Taxpayer in Section 1(D) above shall be taken by Taxpayer no later than 90 days after the date of execution of this Agreement by the Service. Payment of the amount described in Section 1(A) above shall be made within 60 days of the date of execution of this Agreement by the Service by check payable to the "United States Treasury," delivered together with a copy of this executed Agreement to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

4. This Agreement is, and shall be construed as being, for the benefit of Taxpayer. The Contract holders covered by this Agreement are intended beneficiaries of this Agreement. This Agreement shall not be construed as creating any liability of an issuer to the Contract holders.

5. Neither the Service nor Taxpayer shall endeavor by litigation or other means to attack the validity of this Agreement.

6. This Agreement may not be cited or relied upon as precedent in the disposition of any other matter.

NOW THIS CLOSING AGREEMENT FURTHER WITNESSETH, that Taxpayer and the Service mutually agree that the matters so determined shall be final and conclusive, except as follows:

1. The matter to which this Agreement relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts set forth herein.

2. This Agreement is subject to sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for Code § 7122) notwithstanding any other law or rule of law.

3. To the extent this Agreement relates to any tax period after the date on which it is executed, it is subject to any law, enacted after such date, that applies to that tax period.

IN WITNESS WHEREOF, the parties have subscribed their names in triplicate. By signing, the above parties certify that they have read and agreed to the terms of this document.

Date Signed: _____	<p style="text-align: center;"><i>[Insert Taxpayer name]</i></p> By: _____ Title: _____
Date Signed: _____	<p style="text-align: center;">COMMISSIONER OF INTERNAL REVENUE</p> By: _____ Title: _____

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective July 21, 2008, the date of its publication in the Internal Revenue Bulletin.

SECTION 8. EFFECT ON OTHER DOCUMENTS

This revenue procedure supersedes Rev. Proc. 2001-42 and Rev. Proc. 2007-19.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1752.

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 and 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 return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Katherine A. Hossofsky of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue

procedure, contact Branch 4 of that office at (202) 622-3970 (not a toll-free call).

26 CFR 301.7121-1: Closing agreements.
(Also Part I, Section 7702.)

Rev. Proc. 2008-40

SECTION 1. PURPOSE

This revenue procedure provides a procedure by which an issuer of a life insurance contract may remedy the failure of one or more contracts to meet the definition of a life insurance contract under § 7702(a) or to satisfy the requirements of § 101(f) of the Internal Revenue Code. Rev. Rul. 91-17, 1991-1 C.B. 190, is superseded in part; Notice 99-48, 1999-2 C.B. 429, is superseded.

SECTION 2. BACKGROUND

.01 Definition of a life insurance contract.

(1) Section 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either—

(a) satisfy the cash value accumulation test of § 7702(b), or

(b) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of § 7702(d).

(2) A contract meets the cash value accumulation test of § 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract.

(3) A contract meets the guideline premium requirements of § 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the guideline premium limitation as of that time. The guideline premium limitation as of any date is the greater of the guideline single premium, or the sum of the guideline level premiums to that date. The guideline single premium is the premium that would be required on the date the contract is issued to fund the future benefits under the contract.

(4) A contract falls within the cash value corridor of § 7702(d) if the death

benefit under the contract at any time is not less than the applicable percentage of the cash surrender value, based on the table set forth in § 7702(d)(2).

(5) Section 7702 is effective for contracts issued after December 31, 1984, in tax years ending after that date.

.02 Tax treatment of a contract that does not meet the requirements of § 7702(a). Section 7702(g)(1)(A) provides that if at any time a contract that is a life insurance contract under the applicable law does not meet the definition of a life insurance contract under § 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. Further, § 7702(g)(1)(C) provides that if, during any taxable year of the policyholder, a contract that is a life insurance contract under the applicable law ceases to meet the definition of a life insurance contract under § 7702(a), the income on the contract for all prior taxable years is treated as received or accrued during the taxable year in which such cessation occurs.

.03 Definition and treatment of a flexible premium life insurance contract. A flexible premium life insurance contract is a life insurance contract that provides for the payment of one or more premiums that are not fixed by the insurer as to both timing and amount. Section 101(f) provides that any amount paid by reason of the death of the insured under a flexible premium life insurance contract is excluded from gross income only if the contract satisfies either (1) the guideline premium limitation and the applicable percentage of cash value test of § 101(f)(1)(A)(i) and (ii), or (2) the cash value test of § 101(f)(1)(B). The limitations of § 101(f) generally apply to contracts issued before January 1, 1985.

.04 Recordkeeping, reporting, withholding, and deposit requirements for failed contracts. The issuer of a contract that fails to satisfy the requirements of § 7702(a) or § 101(f) may have recordkeeping, reporting, withholding, and deposit obligations.

An issuer that fails to meet these obligations also may be subject to penalties. See Rev. Rul. 91-17 (concerning failures to satisfy the requirements of § 7702(a)).

.05 Authority to enter into closing agreements. Under § 7121, the Secretary is authorized to enter into an agreement

in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any period. Such an agreement is generally final and conclusive, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

.06 Correction procedure for failures to satisfy the requirements of § 7702(a).

Rev. Rul. 91-17, concludes that if a contract fails to meet the definition of a life insurance contract under § 7702(a), then the holder of the contract is deemed to have received a nonperiodic distribution as ordinary income under § 7702(g) or (h), and the issuer is subject to the recordkeeping, reporting, withholding, and deposit requirements applicable to nonperiodic distributions. In addition, Rev. Rul. 91-17 states that the Internal Revenue Service (Service) will waive civil penalties for an issuer's failure to satisfy those requirements if, prior to June 3, 1991, the issuer requested and, in a timely fashion, executed a closing agreement under which the issuer agreed to pay a specified amount. Notice 99-48, indicated that since June 3, 1991, the Service has continued to exercise its authority under § 7121 to enter into closing agreements as set out in Rev. Rul. 91-17. Notice 99-48 also set forth the rates to be used for the purpose of computing the amount due pursuant to such a closing agreement. As a matter of practice, the Service has entered into closing agreements to address contracts that failed to satisfy the requirements of § 101(f), as well.

.07 Changes to correction procedures. In Notice 2007-15, 2007-1 C.B. 503, the Service requested comments as to how various correction procedures — including those for correcting the failure of a contract to satisfy the requirements of § 7702(a) — may be improved. This revenue procedure incorporates a number of changes that taxpayers suggested in response to Notice 2007-15. Most significantly, this revenue procedure (1) sets forth a model closing agreement for issuers that seek relief, and (2) provides alternative calculations of the amount due under the closing agreement.

SECTION 3. SCOPE

This revenue procedure applies to any issuer of one or more contracts that qual-

ified as life insurance contracts under the applicable law, but otherwise failed to meet the definition of a life insurance contract under § 7702(a) or to meet the requirements of § 101(f). For purposes of this revenue procedure, the term “issuer” is any company that issues a contract that is intended to satisfy the definition of a life insurance contract under § 7702 or § 101(f). The term also includes a company that insures a contract holder under a contract originally issued by another company.

SECTION 4. PROCEDURE

.01 *Request for ruling.* An issuer that seeks relief under this revenue procedure must submit a request for a ruling that meets the requirements of Rev. Proc. 2008–1, 2008–1 I.R.B. 1 (or any successor). Additionally, the submission must contain the following information:

- (1) the policy number for each contract;
- (2) a description of the defects that caused the contracts to fail to comply with § 7702 or § 101(f); and
- (3) a description of the administrative procedures the issuer has implemented to prevent additional failures to meet the requirements of § 7702 or § 101(f) in the future.

.02 *Closing agreement.* In the case of a failure to meet the guideline premium requirements of § 7702(c), the issuer must submit a proposed closing agreement, in triplicate, executed by the issuer, in the same form as the model closing agreement in section 5 of this revenue procedure. The amount shown in Section 1(A) of the proposed closing agreement is the amount required to be paid (as determined under section 4.03 of this revenue procedure) for all of the contracts covered by the agreement. In the case of any other failure, the issuer may propose amendments to the proposed closing agreement set forth in section 5 of this revenue procedure, including the amount required to be paid, as appropriate on a case-by-case basis.

.03 *Determination of amount required to be paid with regard to a contract.*

(1) *In general.* The amount required to be paid with regard to a contract under this section 4.03 of this revenue procedure depends on the amount of excess earnings with respect to the contract. For a contract with excess earnings greater

than \$5,000, the amount required to be paid is the amount determined based on income on the contract under section 4.03(2) of this revenue procedure; for a contract with excess earnings less than or equal to \$5,000, the amount required to be paid is the amount determined based on excess earnings under section 4.03(3) of this revenue procedure. In lieu of the amount determined under section 4.03(2) or section 4.03(3) of this revenue procedure, however, the issuer may elect to pay the amount determined based on excess premiums under section 4.03(4) of this revenue procedure.

(2) *Amount determined based on income on the contract.* The amount required to be paid with regard to a contract with excess earnings greater than \$5,000 is the amount determined based on income on the contract. This amount is equal to (i) the amount of tax that would have been owed by the contract holder if the contract holder were treated as receiving the income on the contract, plus (ii) any interest with regard to such tax. For this purpose, the income on the contract is determined in the manner set forth in section 4.03(5)(a) of this revenue procedure; the tax rate is assumed to equal the applicable percentage for the contract determined under section 3.11 of Rev. Proc. 2008–39, page 143, this Bulletin; and the amount of interest is the amount computed under § 6621(a)(2) as if the amounts treated as received by the contract holder as income on the contract caused underpayments of tax in the appropriate years.

(3) *Amount determined based on excess earnings.* The amount required to be paid with regard to a contract with excess earnings less than or equal to \$5,000 is the amount determined based on excess earnings. This amount is equal to the amount of tax that would have been owed by the contract holder if the contract holder were treated as receiving the excess earnings on the contract. For this purpose, the excess earnings on the contract is the amount determined under section 4.03(5)(b) of this revenue procedure; the tax rate is assumed to equal the applicable percentage for the contract determined under section 3.11 of Rev. Proc. 2008–39, and the amount of interest is the amount computed under § 6621(a)(2) as if the amounts treated as received by the contract holder as excess

earnings caused underpayments of tax in the appropriate years.

(4) *Amount determined based on excess premiums.* In lieu of the amount determined based on income on the contract set forth in section 4.03(2) of this revenue procedure or the amount determined based on excess earnings set forth in section 4.03(3) of this revenue procedure, as applicable, an issuer may elect to pay an amount with regard to a contract equal to 100% of the excess premiums as defined in section 4.03(5)(c) of this revenue procedure.

(5) *Definitions.*

(a) *Income on the contract.* The income on the contract is the amount determined with regard to the contract under § 7702(g)(1)(B).

(b) *Excess earnings.* The excess earnings for a contract is equal to the amount obtained by multiplying—

(i) the sum of a contract’s excess premiums for a contract year and its cumulative excess earnings for all prior contract years, by

(ii) the applicable earnings rate as set forth in section 3.07 of Rev. Proc. 2008–39. (For contract years before 1988, the applicable earnings rate is the rate determined in a manner consistent with the formulas set forth in section 3.07 of Rev. Proc. 2008–39 for contract years after 2007.)

(c) *Excess premiums.* The excess premiums with regard to a contract is equal to the highest amount by which the total premiums paid under the contract exceed the guideline premium limitations under § 7702(c) at any time the contract is in force.

.04 *Payment of amount.* The issuer is required to pay the amount determined under section 4.03 of this revenue procedure within 60 days of the date of execution of the closing agreement by the Service. Payment shall be made by check payable to the “United States Treasury” delivered, together with a fully executed copy of the closing agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

.05 *Correction of contracts.* With respect to each contract that is in force on the effective date of the closing agreement, to the extent necessary to bring the contract into compliance with § 7702, the issuer is

required, no later than 90 days after the date of execution of the closing agreement with the Service, either (1) to increase the death benefit to not less than an amount that will ensure compliance with § 7702 or § 101(f), as applicable, or (2) to refund to the contract holder the excess of the sum of the premiums paid as of the effective date of the closing agreement over the guideline premium limitation as of that date. If the sum of the premiums paid does not exceed the guideline premium limitation, no corrective action is necessary.

.06 *Required representations.* The submission must include representations to the effect that (1) the issuer is within the

scope of section 3 of this revenue procedure; (2) the issuer properly computed the amount required to be paid with regard to the contracts in accordance with section 4.03 of this revenue procedure; and (3) the issuer has brought the contracts into compliance with the requirements of § 7702 or § 101(f), as applicable, or will do so within the time period specified in the model closing agreement set forth in section 5 of this revenue procedure. The representations must be executed under penalties of perjury by an appropriate party (as set forth in section 7.01 of Rev. Proc. 2008–1 (or its successor). The issuer must retain

documentation available for audit to support the representations.

.07 *Electronic submissions.* The information required under section 4.01 of this revenue procedure may be submitted to the Service electronically, in read-only format, on a CD-ROM. Adobe Portable Document format is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of three CD-ROMs, one for each of the three copies of the closing agreement.

SECTION 5. MODEL CLOSING AGREEMENT

Effective as of date executed by Internal Revenue Service _____

CLOSING AGREEMENT AS TO FINAL DETERMINATION COVERING SPECIFIC MATTERS UNDER § 7702 *[Insert “or § 101(f)” if applicable]*

THIS CLOSING AGREEMENT (“Agreement”) is made pursuant to § 7121 of the Internal Revenue Code (the “Code”) by and between *[Insert Taxpayer name, address and EIN number]* (“Taxpayer”) and the Commissioner of Internal Revenue (the “Service”).

WHEREAS,

A. Taxpayer is the issuer of one or more contracts that were intended to qualify as life insurance contracts under § 7702 *[Insert “or § 101(f)” if applicable]*. For each contract, however, Taxpayer accepted and retained premiums that exceeded the contract’s guideline premium limitations. As a result, the contract[s] failed to satisfy the requirements of § 7702 *[Insert “or § 101(f)” if applicable]*.

B. Pursuant to Rev. Proc. 2008–40, 2008–29 I.R.B. 151, the Service under certain circumstances will waive civil penalties for failure of a taxpayer to satisfy the recordkeeping, reporting, withholding, or deposit requirements for income received or deemed received under § 7702(g).

C. By letter dated *[Insert date]* Taxpayer submitted to the Service, pursuant to Rev. Proc. 2008–1, 2008–1 I.R.B. 1 *[or successor if applicable]*, a request for this Agreement covering *[Insert number]* of Taxpayer’s life insurance contracts identified on Exhibit A attached to this Agreement (the “Contracts”).

D. Taxpayer represents that the failure[s] described in A above are eligible for relief under Rev. Proc. 2008–40.

E. Taxpayer represents that the amount determined under section 4.03 of Rev. Proc. 2008–40 is \$ *[Insert amount]*. Taxpayer represents that this amount has been computed correctly under the provisions of Rev. Proc. 2008–40.

F. To ensure that the Contracts satisfy the requirements of § 7702(a) *[Insert “or § 101(f)” if applicable]*, Taxpayer and the Service have entered into this Agreement.

NOW THEREFORE IT IS HEREBY FURTHER DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS:

1. In consideration for the agreement of the Service as set forth in Section 2 below, Taxpayer agrees as follows:

- (A) To pay the Service the amount of \$ *[Insert amount]* at the time and in the manner described in Section 3 below.
- (B) The amount paid pursuant to Section 1(A) above is not deductible, nor is such amount refundable, subject to credit or offset, or otherwise recoverable from the Service.
- (C) For purposes of complying with Taxpayer’s reporting and withholding obligations under the Code,

- (i) neither the investment in the contract for purposes of § 72, nor the premiums paid, for purposes of § 7702 **[Insert “or § 101(f)” if applicable]**, on any Contract can be increased by any portion of the amount set forth in Section 1(A) above. If any such increases are made, they are entitled to no effect.
 - (ii) neither the investment in the contract, for purposes of § 72, nor the premiums paid, for purposes of § 7702 **[Insert “or § 101(f)” if applicable]**, on any Contract can be increased by any portion of the amount which Taxpayer represents to be the income on the contract for all of the Contracts in the aggregate. If any such increases are made, they are entitled to no effect.
- (D) With respect to each Contract that is in force on the effective date of this Agreement, to the extent necessary in order to bring such Contract into compliance with § 7702 **[Insert “or § 101(f)” if applicable]**, no later than 90 days after the date of execution of this Agreement by the Service:
- (i) If the sum of the premiums paid as of the effective date of this Agreement exceeds the guideline premium limitation as of such date, Taxpayer will take the following corrective action:
 - (a) Increase the death benefit to not less than an amount that will ensure compliance with § 7702 **[Insert “or § 101(f)” if applicable]**, or
 - (b) Refund to the Contract holder the amount of such excess, with interest at the Contract’s interest crediting rate; or
 - (ii) If the sum of the premiums paid as of the effective date of this Agreement does not exceed the guideline premium limitation of § 7702 **[insert “or § 101(f)” if applicable]** as of such date, to take no corrective action.
- (E) With respect to any Contract which terminated by reason of the death of the insured (i) prior to the date this Agreement is executed by the Service and Taxpayer and (ii) at a time when the premiums paid exceeded the amounts necessary to keep the Contracts in compliance with the requirements of § 7702 **[Insert “or § 101(f)” if applicable]** guideline premium limitation for the Contract, Taxpayer will pay the Contract holder, or the Contract holder’s estate, the amount of such excess with interest.

2. In consideration of the agreement of Taxpayer set forth in Section 1 above, the Service agrees as follows:

- (A) To treat each Contract that is still in force as of the effective date of this Agreement as having satisfied the requirements of § 7702 **[Insert “or § 101(f)” if applicable]** during the period from the date of issuance of the Contract through and including the later of (i) the date of the execution of this Agreement by the Service or (ii) the date of corrective action described in Section 1(D) with respect to that Contract;
- (B) To treat each Contract that terminated prior to the effective date of this Agreement as having satisfied the requirements of § 7702 **[Insert “or § 101(f)” if applicable]** during the period from date of issuance of the Contract through and including the date of the Contract’s termination;
- (C) To treat the failure(s) described above, and any corrective action described in Section 1(D) or 1(E) above, as having no effect on the date the Contract was issued, entered into, or purchased for purposes of any provision of the Code or regulations thereunder;
- (D) To treat any amount paid prior to the effective date of this Agreement to any beneficiary under a Contract by reason of the death of the insured as paid under a life insurance contract for purposes of the exclusion from gross income under § 101(a)(1);
- (E) To waive civil penalties for failure of Taxpayer to satisfy the reporting, withholding, or deposit requirements for income deemed received by Contract holders due to the Contract’s failure to satisfy the requirements of § 7702 **[Insert “or 101(f)” if applicable]**; and
- (F) To treat no portion of the amount described in Section 1(A) above as income to the Contract holders.

3. Any action required of Taxpayer in Section 1(D) or 1(E) above shall be taken by Taxpayer no later than 90 days after the date of execution of this Agreement by the Service. Payment of the amount described in Section 1(A) above shall be made within 60 days after the date of execution of this Agreement by the Service by check payable to the “United States Treasury,” delivered together with a copy of this executed Agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

4. This Agreement is, and shall be construed as being, for the benefit of Taxpayer. Contract holders of the Contracts covered by this Agreement are intended beneficiaries of this Agreement. This Agreement shall not be construed as creating any liability of Taxpayer to the Contract holders.

5. Neither the Service nor Taxpayer shall endeavor by litigation or other means to attack the validity of this Agreement.

6. This Agreement may not be cited or relied upon as precedent in the disposition of any other matter.

NOW THIS CLOSING AGREEMENT FURTHER WITNESSETH, that the Service and Taxpayer mutually agree that the matters so determined shall be final and conclusive, except as follows:

1. The matter to which this Agreement relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts set forth herein.

2. This Agreement is subject to sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for Code § 7122) notwithstanding any other law or rule of law.

3. To the extent this Agreement relates to any tax period after the date on which it is executed, it is subject to any law, enacted after such date, that applies to that tax period.

IN WITNESS WHEREOF, the parties have subscribed their names in triplicate. By signing, the above parties certify that they have read and agreed to the terms of this document.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective July 21, 2008, the date of its publication in the Internal Revenue Bulletin.

long as their contents may become material in the administration of any internal revenue law. Generally tax returns and return information are confidential, as required by 26 U.S.C. 6103.

92-25, 1992-1 C.B. 741, is superseded; Notice 2000-9, 2000-1 C.B. 449, is obsolete.

SECTION 7. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 91-17, 1991-1 C.B. 190, is superseded in part to set forth new terms and conditions under which the Service will enter into a closing agreement to remedy the failure of a contract to qualify as a life insurance contract; Notice 99-48 is superseded.

DRAFTING INFORMATION

The principal author of this revenue procedure is Melissa S. Luxner of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Branch 4 of that office at (202) 622-3970 (not a toll-free call).

SECTION 2. BACKGROUND

.01 *Definition and tax treatment of a variable contract.*

(1) Section 817(d) defines the term “variable contract” to mean a contract that (a) provides for the allocation of all or part of the amounts received under the contract to an account that, pursuant to state law or regulations, is segregated from the general asset accounts of the company, and (b) provides for the payment of annuities, or is a life insurance contract, or provides for funding of insurance on retired lives. In the case of an annuity contract or a contract that provides funding of insurance on retired lives, the amounts paid in or the amounts paid out are required to reflect the investment return and the market value of the segregated asset account. In the case of a life insurance contract, the amount of the death benefit (or the period of coverage) must be adjusted on the basis of the investment return and the market value of the segregated asset account.

SECTION 8. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1752.

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 and records relating to a collection of information must be retained as

*26 CFR 301.7121-1: Closing agreements.
(Also Part I, Section 817; 1.817-5.)*

Rev. Proc. 2008-41

SECTION 1. PURPOSE

This revenue procedure provides a procedure by which an issuer of a variable contract may remedy an inadvertent failure of a variable contract to satisfy the diversification requirements of § 817(h) of the Internal Revenue Code. Rev. Rul. 91-17, 1991-1 C.B. 190, is amplified; Rev. Proc.

(2) Section 817(h) of the Code provides that a variable contract (other than a pension plan contract) based on a segregated

asset account shall not be treated as an annuity, endowment, or life insurance contract if the investments made by the account are not adequately diversified in accordance with regulations prescribed by the Secretary.

(3) Section 1.817-5(a)(1) provides that a variable contract is treated as based on a segregated asset account for a calendar quarter period if amounts received under the contract (or earnings thereon) are allocated to the account at any time during the period. Section 1.817-5(e) of the Income Tax Regulations provides that a “segregated asset account” consists of all assets the investment return and market value of each of which must be allocated in an identical manner to any variable contract invested in any of such assets. Section 1.817-5(g) illustrates the application of this provision.

(4) Section 1.817-5(a) provides that, if a variable contract that is a life insurance contract under applicable law is not treated as a life insurance or endowment contract under § 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 § 7702(g) and (h). Likewise, if a variable contract is not treated as an annuity contract under § 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 § 7702(g) and (h).

.02 Diversification requirements.

(1) Section 1.817-5(b)(1) provides that the investments of a segregated asset account are adequately diversified for purposes of § 817(h) only if—

(a) No more than 55% of the value of the total assets of the account is represented by any one investment;

(b) No more than 70% of the value of the total assets of the account is represented by any two investments;

(c) No more than 80% of the value of the total assets of the account is represented by any three investments, and

(d) No more than 90% of the value of the total assets of the account is represented by any four investments.

For purposes of § 1.817-5, all securities of the same issuer, all interests in the same

real property project, and all interests in the same commodity are each treated as a single investment. In the case of government securities, each government agency or instrumentality is treated as a separate issuer.

(2) Section 817(h)(2) provides a safe harbor under which the investments of a segregated asset account are adequately diversified for purposes of § 817(h) if (a) the account meets the requirements of § 851(b)(3), and (b) no more than 55% of the value of the total assets of the account are assets described in § 851(b)(3)(A)(i) (*i.e.*, cash, cash items (including receivables), Government securities, and securities of other regulated investment companies).

(3) Under § 1.817-5(c)(1), a segregated asset account that satisfies the requirements of § 1.817-5(b) as of the last day of any calendar quarter period (or within 30 days after that last day) is considered adequately diversified for that period.

.03 Recordkeeping, reporting, withholding, and deposit requirements for nondiversified contracts.

An issuer of a variable contract that fails to satisfy the requirements of § 817(h) may have recordkeeping, reporting, withholding, and deposit obligations. An issuer that fails to meet these obligations also may be subject to penalties. *See* Rev. Rul. 91-17.

.04 Authority to enter into closing agreements. Under § 7121, the Secretary is authorized to enter into an agreement in writing with any person relating to the liability of such person (or of the person or estate for whom he acts) in respect of any internal revenue tax for any period. Such agreement is generally final and conclusive, except upon a showing of fraud or malfeasance, or misrepresentation of a material fact.

.05 Correction procedure for failure to satisfy the diversification requirements of § 817(h).

(1) Section 1.817-5(a)(2) provides that, in the event of an inadvertent failure to diversify, the investments of a segregated asset account are nevertheless treated as satisfying the diversification requirements of § 1.817-5(b) for one or more periods if —

(a) the issuer or holder of the variable contract shows that the failure to satisfy the diversification requirements was inadvertent;

(b) the investments of the account satisfy the diversification requirements within a reasonable item after discovery of the failure; and

(c) the issuer or holder agrees to make such adjustments or pay such amounts as the Commissioner may require.

For this purpose (and for purposes of this revenue procedure), income on the contract is computed under § 7702(g)(1)(B), without regard to § 7702(g)(1)(C), and is computed using the period or periods of nondiversification instead of the “taxable year” referred to in § 7702(g)(1)(B). Thus, for example, income attributable to each segregated asset account on which a contract is based (including accounts that at all times were adequately diversified) is included in the computation of income on the contract.

(2) Rev. Proc. 92-25, 1992-1 C.B. 741, set forth the procedure by which an issuer of a variable contract could request the relief described in § 1.817-5(a)(2) with regard to an inadvertent failure to satisfy the diversification requirements of § 817(h). Among the requirements set forth in Rev. Proc. 92-25 was a requirement that the issuer pay an amount under the closing agreement based on all the income on the annuity contracts that invested in the nondiversified accounts, including income with regard to accounts that were adequately diversified.

(3) Notice 2000-9, 2000-1 C.B. 449, reminded issuers of variable annuity contracts that the special rules of § 817(h)(3) and § 1.817-5(b)(3), concerning diversification of accounts with respect to variable life insurance contracts, do not apply with respect to variable annuity contracts. Notice 2000-9 provided a one-time procedure to cure diversification failures that resulted from a misapplication of that rule. That procedure applied to requests for closing agreement relief that were received on or before August 1, 2000.

.06 Changes to correction procedure. In Notice 2007-15, 2007-7 I.R.B. 503, the Service requested comments as to how various correction procedures — including those for inadvertent failures to satisfy the diversification requirements of § 817(h) — may be improved. This revenue procedure incorporates a number of changes that taxpayers suggested in response to Notice 2007-15. Most significantly, this revenue procedure (1) updates the model closing

agreement set forth in Rev. Proc. 92-25, and (2) provides both an alternative computation of the amount due under the closing agreement and an overall limit on the amount that must be paid.

SECTION 3. SCOPE

This revenue procedure applies to any issuer of a variable contract that inadvertently failed to satisfy the diversification requirements of § 817(h), provided the issuer is entitled to relief under § 1.817-5(a)(2). For purposes of this revenue procedure, the term “issuer” is any company that issues a contract that is a variable contract under § 817(d) and is intended to satisfy the diversification requirements of § 817(h). The term also includes a company that insures a contract holder under a contract originally issued by another company.

SECTION 4. PROCEDURE

.01 Request for ruling. An issuer that seeks relief under this revenue procedure must submit a request for a ruling that meets the requirements of Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor). Additionally, the submission must —

(1) identify the period or periods during which the investments of the segregated asset account did not satisfy the diversification requirements;

(2) show that the failure to diversify was inadvertent;

(3) demonstrate that the investments of the account were brought into compliance with the diversification requirements within a reasonable time after discovery of the failure; and

(4) if the amount required to be paid is determined under section 4.03(2) of this revenue procedure, describe the method used to compute the amount of income that all holders of contracts based on the account would be treated as receiving during the period or periods of nondiversification if the account were not treated as adequately diversified under § 1.817-5(a)(2). (This computation is to be made without regard to contracts that were completely surrendered during the nondiversification period.) Otherwise, indicate whether the amount required to be paid was determined under section 4.03(3) or section 4.04(4) of this revenue procedure.

.02 Closing agreement. The issuer must also submit a proposed closing agreement, in triplicate, executed by the issuer, using the model closing agreement in section 6 of this revenue procedure. The amount shown in Section 1(A) of the proposed closing agreement is the amount determined under section 4.03 of this revenue procedure for all of the contracts covered by the agreement.

.03 Determination of amount required to be paid.

(1) *In general.* Except as provided in section 4.03(4) of this revenue procedure, the issuer must remit to the Service the lesser of the amount determined based on income on the contracts under section 4.03(2) of this revenue procedure, or the amount determined based on the amount by which the segregated asset account was nondiversified under section 4.03(3) of this revenue procedure.

(2) *Amount determined based on income on the contracts.* The amount required to be paid based on income on the contracts is the sum of the following amounts for variable annuity contracts and for variable life insurance or endowment contracts, as applicable:

(a) With regard to variable annuity contracts, an amount equal to the sum of —

(i) 20% of income on annuity contracts from which payments have not been made as of the end of the period; plus

(ii) 15% of income on annuity contracts from which payments have been made as of the end of the period; plus

(iii) any interest computed under § 6621(a)(2) as if the amounts determined under sections 4.03(2)(a)(i) and (ii) of this revenue procedure were underpayments by the contract holders for their tax year(s) containing the period(s) of nondiversification; and

(b) With regard to variable life insurance or endowment contracts, an amount equal to the sum of —

(i) 28% of the income on the contracts; plus

(ii) any interest computed under § 6621(a)(2) as if the amount determined under section 4.03(2)(b)(i) of this revenue procedure were an underpayment by the contract holders for their tax year(s) containing the period(s) of nondiversification.

(3) *Amount determined based on the amount by which the segregated asset account was nondiversified.* The amount

determined based on the amount by which the segregated asset account was non-diversified is an amount equal to 100% of the amount by which the account's interest in a single investment exceeded the applicable limitation of § 1.817-5(b). Thus, for example, if a segregated asset account's investment in a single security exceeded both the 55% limitation of § 1.817-5(b)(1)(i)(A) and the 70% limitation of § 1.817-5(b)(1)(i)(B), the amount determined under this section 4.03(3) is the total amount by which the investment would need to be reduced in order to satisfy both requirements and comply with the rules of § 817(h) and § 1.817-5(b). This amount is determined as of the 30th day after the last day of each calendar quarter for which the segregated asset account was not diversified. If nondiversification spans multiple calendar quarters, the amount payable under this section is based on the calendar quarter that produces the highest amount.

(4) *Limitation on amount required to be paid.* Notwithstanding section 4.03(2) or section 4.03(3) of this revenue procedure, as applicable, the amount required to be paid shall not exceed the lesser of \$5,000,000 or 5% of the total asset value of the segregated asset account on the 30th day after the last day of each calendar quarter for which the segregated asset account was not diversified. If nondiversification spans multiple calendar quarters, the amount payable under this section is based on the calendar quarter that produces the highest amount. The limitation applies on a per segregated asset account basis, and is not increased by any interest computed under § 6621(a)(2).

.04 Payment of amount. The issuer is required to pay the amount determined under section 4.03 of this revenue procedure within 60 days of the date of execution of the closing agreement by the Service. Payment shall be made by check payable to the “United States Treasury” delivered, together with a fully executed copy of the closing agreement, to Internal Revenue Service, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

.05 Correction of contracts. The issuer is required to have satisfied the requirements of § 817(h) and § 1.817-5(b) of the regulations within a reasonable time after

the discovery of the failure to satisfy those requirements.

.06 *Required representations.* The submission must include representations to the effect that (1) the issuer is within the scope of section 3 of this revenue procedure; (2) the issuer properly computed the amount required to be paid with regard to the contracts in accordance with section 4.03 of this revenue procedure; and (3) the issuer has brought the contracts into com-

pliance with the requirements of § 817(h) and § 1.817-5(b) of the regulations. The representations must be executed under penalties of perjury by an appropriate party (as set forth in section 7.01 of Rev. Proc. 2008-1 (or its successor)). The issuer must retain documentation available for audit to support the representations.

.07 *Electronic submission.* The information required under this revenue procedure may be submitted to the Service

electronically, in read-only format, on a CD-ROM. Adobe Portable Document is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of three CD-ROMs, one for each of the three copies of the closing agreement.

SECTION 6. MODEL CLOSING AGREEMENT

Effective as of date executed by Internal Revenue Service _____

CLOSING AGREEMENT AS TO FINAL DETERMINATION COVERING SPECIFIC MATTERS UNDER SECTION 817(h)

THIS CLOSING AGREEMENT (“Agreement”) is made pursuant to section 7121 of the Internal Revenue Code (the “Code”), by and between *[Insert Taxpayer name, address and EIN]* (“Taxpayer”) and the Commissioner of Internal Revenue (the “Service”).

WHEREAS,

A. Taxpayer is the issuer of one or more variable contracts, as defined in § 817(d) (without regard to § 817(h)) (the “Contracts”), which are based, in whole or in part, on a segregated asset account (the “Account”) and that provides for the allocation of amounts received under the variable contracts to the Account.

B. Pursuant to Rev. Proc. 2008-41, 2008-29 I.R.B. 155, the Service may treat the investments of a segregated asset account on which a variable contract is based as satisfying the diversification requirements of § 817(h) and § 1.817-5(b) of the Income Tax Regulations for periods during which there was an inadvertent failure to diversify.

C. By letter dated *[Insert date]* Taxpayer submitted to the Service, pursuant to Rev. Proc. 2008-1, 2008-1 I.R.B. 1 *[or successor, if applicable]* and Rev. Proc. 2008-41 a request for this Closing Agreement that *[Insert account name]* (the Account) be treated as adequately diversified under § 817(h) for the period *[Insert period of nondiversification]* (“the period of nondiversification”).

D. Taxpayer represents that the failure of the Account to satisfy the requirements of § 817(h) is eligible for relief under Rev. Proc. 2008-41.

E. Taxpayer represents that the failure of the investments in the Account to satisfy the requirements of § 1.817-5(b) was discovered on *[Insert date]*, and the investments came into compliance with those requirements on *[Insert date]*.

F. Taxpayer represents that the amount determined under section *[Insert 4.03(2), (3) or (4), as appropriate]* of Rev. Proc. 2008-41 is \$ *[Insert amount]*. Taxpayer represents that this amount has been computed correctly under the provisions of Rev. Proc. 2008-41.

G. To ensure that variable contracts that provide for the allocation of amounts received thereunder to Account are treated as annuity, endowment, or life insurance contracts, as applicable, Taxpayer and the Service have entered into this Agreement.

NOW THEREFORE IT IS HEREBY DETERMINED AND AGREED BETWEEN TAXPAYER AND THE SERVICE AS FOLLOWS:

1. In consideration for the agreement of the Service as set forth in section 2 below, Taxpayer agrees as follows:

- (A) Taxpayer will pay the Service \$ *[Insert amount]* at the time and manner described in section 3 below.
- (B) The amount paid pursuant to section 1(A) above is not deductible by Taxpayer, nor is such amount refundable, subject to credit or offset, or otherwise recoverable from the Service;
- (C) For purposes of Taxpayer’s complying with its reporting and withholding obligations under the Code,
 - (i) neither the investment in the contract for purposes of § 72, nor the premiums paid for purposes of section § 7702 on any Contract can be increased by any portion of the amount set for the in section 1(A) above. If any such increases are made, they are entitled to no effect.

- (ii) neither the investment in the contract for purposes of § 72, nor the premiums paid, for purposes of § 7702 on any Contract can be increased by any portion of the amount which Taxpayer represents to be the income on the contract for all of the Contracts in the aggregate. If any such increases are made, they are entitled to no effect.

2. In consideration of the agreement of Taxpayer set forth in Section 1 above, the Service agrees as follows:

- (A) To treat the investments of the Account as adequately diversified for purposes of § 817(h) during the period of nondiversification;
- (B) To treat no portion of the amount described in Section 1(A) above as income to the Contract holders;
- (C) To treat the failure(s) described above, and any corrective action described in Section 1(A) above, as having no effect on the date the Contracts were issued, entered into or purchased for purposes of any provision of the Code or regulations thereunder; and
- (D) To waive civil penalties for failure of Taxpayer to satisfy the reporting, withholding, or deposit requirements for income deemed received by Contract holders due to the Contracts' failure to satisfy the requirements of § 817.

3. Payment of the amount described in Section 1(A) above shall be made within 60 days of the date of execution of this Agreement by the Service. This payment must be made by check payable to the "United States Treasury," delivered, together with a copy of this executed Agreement, to Internal Revenue Service Center, Receipt & Control Stop 31, 201 W. Rivercenter Blvd., Covington, KY 41011.

4. This Agreement is, and shall be construed as being, for the benefit of Taxpayer. Holders of contracts based on the Account are intended beneficiaries of this Agreement. This Agreement shall not be construed as creating any liability of Taxpayer to the holders of the contracts based on the Account.

5. Neither the Service nor Taxpayer shall endeavor by litigation or other means to attack the validity of this Agreement.

6. This Agreement may not be cited or relied upon as precedent in the disposition of any other matter.

NOW THIS CLOSING AGREEMENT FURTHER WITNESSETH, that the Service and Taxpayer mutually agree that the matters so determined shall be final and conclusive, except as follows:

1. The matter to which this Agreement relates may be reopened in the event of fraud, malfeasance, or misrepresentation of material facts set forth herein.

2. This Agreement is subject to sections of the Code that expressly provide that effect be given to their provisions (including any stated exception for Code § 7122) notwithstanding any other law or rule of law.

3. To the extent this Agreement relates to any tax period after the date on which it is executed, it is subject to any law, enacted after such date, that applies to that tax period.

IN WITNESS WHEREOF, the parties have subscribed their names in triplicate. By signing, the above parties certify that they have read and agreed to the terms of this document.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

SECTION 7. EFFECTIVE DATE

This revenue procedure is effective July 21, 2008, the date of its publication in the Internal Revenue Bulletin.

SECTION 8. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 91-17, 1991-1 C.B. 190, is amplified to provide terms and conditions and a model closing agreement for use by taxpayers seeking the relief described in § 1.817-5(a)(2) of the regulations; Rev.

Proc. 92-25, 1992-1 C.B. 741, is superseded; Notice 2000-9, 2000-1 C.B. 449, is obsolete.

SECTION 9. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed

and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1752.

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 and 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 return information are confidential, as required by 26 U.S.C. 6103.

DRAFTING INFORMATION

The principal author of this revenue procedure is Melissa S. Luxner of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue procedure, contact Branch 4 of that office at (202) 622-3970 (not a toll-free call).

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability.
(Also Part 1, §§ 101, 7702.)

Rev. Proc. 2008-42

SECTION 1. PURPOSE

This revenue procedure provides a procedure by which an issuer of a life insurance contract may automatically obtain a waiver, under § 7702(f)(8) or § 101(f)(3)(H) of the Internal Revenue Code, for certain reasonable errors that caused the contract to fail to satisfy the requirements of § 7702 or § 101(f), as applicable. Rev. Rul. 91-17, 1991-1 C.B. 190, is amplified.

SECTION 2. BACKGROUND

.01 Definition of a life insurance contract.

(1) Section 7702(a) provides that, for a contract to qualify as a life insurance contract for Federal income tax purposes, the contract must be a life insurance contract under the applicable law and must either—

(a) satisfy the cash value accumulation test of § 7702(b), or

(b) both meet the guideline premium requirements of § 7702(c) and fall within the cash value corridor of § 7702(d).

(2) A contract meets the cash value accumulation test of § 7702(b) if, by the terms of the contract, the cash surrender value of the contract may not at any time exceed the net single premium that would have to be paid at that time to fund future benefits under the contract.

(3) A contract meets the guideline premium requirements of § 7702(c) if the sum of the premiums paid under the contract does not at any time exceed the guideline premium limitation as of that time. The guideline premium limitation as of any date is the greater of the guideline single premium, or the sum of the guideline level premiums to that date. The guideline single premium is the premium that would be required on the date the contract is issued to fund the future benefits under the contract.

(4) A contract falls within the cash value corridor of § 7702(d) if the death benefit under the contract at any time is not less than the applicable percentage of the cash surrender value, based on the table set forth in § 7702(d)(2).

(5) Section 7702 is effective for contracts issued after December 31, 1984, in tax years ending after that date.

.02 Definition and tax treatment of a flexible premium life insurance contract. A flexible premium life insurance contract is a life insurance contract that provides for the payment of one or more premiums that are not fixed by the insurer as to both timing and amount. Section 101(f) provides that any amount paid by reason of the death of the insured under a flexible premium life insurance contract is excluded from gross income only if the contract satisfies either (1) the guideline premium limitation and the applicable percentage of cash value test of § 101(f)(1)(A)(i) and (ii), or (2) the cash value test of § 101(f)(1)(B). The limitations of § 101(f) generally apply to contracts issued before January 1, 1985.

.03 Correction procedure for reasonable errors. Section 7702(f)(8) provides that if a taxpayer establishes to the satisfaction of the Secretary that the requirements of § 7702(a) for any contract year were not satisfied due to reasonable error, and rea-

sonable steps are being taken to remedy the error, the Secretary may waive the failure to satisfy those requirements. The Internal Revenue Service (Service) may waive civil penalties for failure to satisfy the reporting, withholding, and deposit requirements for income deemed received under § 7702(g) and (h), as well. *See* Rev. Rul. 91-17. Section 101(f)(3)(H) provides similar authority for the Secretary to waive the failure to satisfy the requirements of § 101(f). In order to request a waiver under § 7702(f)(8) or § 101(f)(3)(H), a taxpayer generally must request a letter ruling from the Service under the procedures set forth in Rev. Proc. 2008-1, 2008-1 I.R.B. 1 (or any successor).

.04 Changes to correction procedure. In Notice 2007-15, 2007-1 C.B. 503, the Service requested comments as to how various correction procedures — including those for obtaining a waiver with respect to errors that are reasonable within the meaning of § 7702(f)(8) or § 101(f)(3)(H) — may be improved. This revenue procedure incorporates a number of changes that taxpayers suggested in response to Notice 2007-15. Specifically, this revenue procedure provides a simplified procedure under which a taxpayer may obtain a waiver for a limited class of errors under these provisions without incurring the cost of requesting a letter ruling.

SECTION 3. SCOPE

.01 In general. This revenue procedure applies to any issuer of a life insurance contract that failed to satisfy the requirements of § 7702 or § 101(f), as applicable, due to an eligible reasonable error, provided reasonable steps are taken to remedy the error.

.02 Issuer. For purposes of this revenue procedure, the term “issuer” is any company that issues a contract that is intended to satisfy the requirements of § 7702 or § 101(f). The term also includes a company that insures a contract holder under a contract originally issued by another company.

.03 Eligible reasonable error. An eligible reasonable error for purposes of this revenue procedure exists if: (1) the issuer has compliance procedures with specific, clearly articulated provisions that if followed would have prevented the contract from failing to satisfy the requirements of

§ 7702 or § 101(f); (2) an employee or independent contractor of the issuer acted, or failed to act, in accordance with the compliance procedures; and (3) such act or failure to act was inadvertent, and was the sole reason that the contract failed to satisfy the requirements of either § 7702 or § 101(f). Thus, for example, the term eligible reasonable error includes an employee's incorrect recording of the age or gender of the insured, or of the incorrect amount or time of payment of the insured's premium payment.

.04 *Reasonable steps to remedy.* The requirement that reasonable steps be taken to remedy the eligible reasonable error is satisfied for purposes of this revenue procedure if the issuer refunds excess premium with interest and/or increases the death benefit on the contract no later than the date on which the issuer files the federal income tax return to which the tax return attachment described in section 4.03 of this revenue procedure is affixed. The remedy required under this section 3.04 of this revenue procedure does not include changes to the issuer's compliance procedures, since the definition of an eligible reasonable error under section 3.03 of this revenue procedure requires that the system already have specific, clearly articulated procedures that if followed would have prevented the error.

.05 *Non-eligible errors.* Although the automatic waiver provided under this revenue procedure is not available with respect to an error that is not described in section 3.03 of this revenue procedure, relief may be available under other correction procedures. For example, neither a defective legal interpretation nor a computer programming error would satisfy the requirement of section 3.03(1) of this revenue procedure that the issuer's compliance procedures, if followed, would have prevented the error. If such an error is reasonable, however, the issuer may request a waiver by letter ruling under the procedures set forth in Rev. Proc. 2008-1 (or any successor). In addition, errors that are not reasonable may be eligible for correction by closing agreement under the procedure set forth in Rev. Proc. 2008-40, page 151, this Bulletin.

SECTION 4. PROCEDURE

.01 *Automatic waiver.* The failure of one or more life insurance contracts to satisfy the requirements of § 7702 or § 101(f), as applicable, due to reasonable error will be treated as waived pursuant to the authority of § 7702(f)(8) or § 101(f)(3)(H), as applicable, provided the issuer (1) is within the scope of section 3.01 of this revenue procedure, and (2) files both the waiver statement described in section 4.02 and the tax return attachment described in section 4.03 of this revenue procedure.

.02 *Waiver statement.* An automatic waiver for a reasonable error described in section 3 of this revenue procedure is available to an issuer only if it files with the Service, in duplicate, a statement entitled "Automatic Waiver Request under Rev. Proc. 2008-42" in which the issuer (1) provides a brief description of the error and the steps taken to remedy the error; (2) lists the policy numbers of the life insurance contracts for which it seeks an automatic waiver; and (3) provides the representations described in section 4.04 of this revenue procedure. This statement should be signed and dated, and submitted to the Commissioner of Internal Revenue, Attn: CC:FIP:4, Room 3550, 1111 Constitution Avenue, NW, Washington, DC 20224, no later than the date on which the issuer files the federal income tax return to which the tax return attachment described in section 4.03 of this revenue procedure is affixed.

.03 *Tax return attachment.* In addition, the issuer must attach to its timely-filed (including extensions) Federal income tax return, for the taxable year during which the issuer relies upon this revenue procedure to obtain a § 101(f)(3)(H) or § 7702(f)(8) waiver, a statement that reads: "Issuer has submitted an Automatic Waiver Request under section 4.02 of Rev. Proc. 2008-42 for certain errors that caused one or more life insurance contracts it issued to fail to comply with § 7702(f)(8) or § 101(f) of the Internal Revenue Code. An issuer filing its return electronically should attach this statement as an Adobe Portable Document format (PDF) file named "Rev. Proc. 2008-42."

.04 *Representations.* The waiver statement required under section 4.02 of this revenue procedure must include representations to the effect that the issuer is within

the scope of section 3 of this revenue procedure and that the issuer is otherwise entitled to the requested waiver. The representations must be executed under penalties of perjury by an appropriate party (as set forth in section 7.01 of Rev. Proc. 2008-1 (or its successor)). The issuer must retain documentation available for audit to support the representations.

.05 *Electronic submissions.* The waiver statement required under section 4.02 of this revenue procedure may be submitted to the Service electronically, in read-only format, on a CD-ROM. Adobe Portable Document format is a suitable format. Other formats may be arranged on a case-by-case basis. The issuer must provide a total of two CD-ROMs.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective July 21, 2008, the date of its publication in the Internal Revenue Bulletin.

SECTION 6. EFFECT ON OTHER DOCUMENTS

Rev. Rul. 91-17, 1991-1 C.B. 190, is amplified to provide an automatic procedure by which an issuer of a life insurance contract may automatically obtain a waiver for certain reasonable errors that caused the contract to fail to satisfy the requirements of § 7702 or § 101, as applicable.

SECTION 7. PAPERWORK REDUCTION ACT

The collections of information in this revenue procedure have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1752.

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DRAFTING INFORMATION

The principal author of this revenue procedure is Josephine H. Firehock of the

Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this revenue pro-

cedure, contact Branch 4 of that office at (202) 622-3970 (not a toll-free call).