Amendment by section 1821(m) of Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE

Section applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as a note under section 801 of this title.

DELAY IN EFFECTIVE DATE FOR DIVERSIFICATION REQUIREMENTS WITH RESPECT TO ACCOUNTS FOR CERTAIN IMMEDIATE ANNUITIES

Pub. L. 100–647, title I, § 1010(i), Nov. 10, 1988, 102 Stat. 3455, provided that: ''Section 817(h) of the 1986 Code shall not apply until January 1, 1989, with respect to a variable contract (as defined in section 817(d) of the 1986 Code) if—

''(1) such contract provides for the payment of an immediate annuity (as defined in section 72(u)(4) of the 1986 Code),

''(2) such contract was outstanding on September 12, 1986, and

''(3) the segregated asset account on which such contract is based was, on September 12, 1986, wholly invested in deposits insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.''

INSURANCE-DEDICATED EXCHANGE-TRADED FUNDS

Pub. L. 117–328, div. T, title II, § 203, Dec. 29, 2022, 136 Stat. 5333, provided that:

''(a) IN GENERAL.—Not later than the date which is 7 years after the date of the enactment of this Act [Dec. 29, 2022], the Secretary of the Treasury (or the Secretary's delegate) shall amend the regulation issued by the Department of the Treasury relating to 'Income Tax; Diversification Requirements for Variable Annuity, Endowment, and Life Insurance Contracts', 54 Fed. Reg. 8728 (March 2, 1989), and make any necessary corresponding amendments to other regulations, in order to facilitate the use of exchange-traded funds as investment options under variable contracts within the meaning of section 817(d) of the Internal Revenue Code of 1986, in accordance with subsections (b) and (c) of this section.

''(b) DESIGNATE CERTAIN AUTHORIZED PARTICIPANTS AND MARKET MAKERS AS ELIGIBLE INVESTORS.—The Secretary of the Treasury (or the Secretary's delegate) shall amend Treas. Reg. section 1.817–5(f)(3) to provide that satisfaction of the requirements in Treas. Reg. section 1.817–5(f)(2)(i) with respect to an exchange-traded fund shall not be prevented by reason of beneficial interests in such a fund being held by 1 or more authorized participants or market makers.

''(c) DEFINE RELEVANT TERMS.—In amending Treas. Reg. section 1.817–5(f)(3) in accordance with subsection (b), the Secretary of the Treasury (or the Secretary's delegate) shall provide definitions consistent with the following:

''(1) EXCHANGE-TRADED FUND.—The term 'exchange-traded fund' means a regulated investment company, partnership, or trust—

''(A) that is registered with the Securities and Exchange Commission as an open-end investment company or a unit investment trust;

''(B) the shares of which can be purchased or redeemed directly from the fund only by an authorized participant; and

''(C) the shares of which are traded throughout the day on a national stock exchange at market prices that may or may not be the same as the net asset value of the shares.

''(2) AUTHORIZED PARTICIPANT.—The term 'authorized participant' means a financial institution that is a member or participant of a clearing agency registered under section 17A(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78q–1(b)] that enters into a contractual relationship with an exchange-traded fund pursuant to which the financial institution is permitted to purchase and redeem shares directly from the fund and to sell such shares to third parties, but only if the contractual arrangement or applicable law precludes the financial institution from—

''(A) purchasing the shares for its own investment purposes rather than for the exclusive purpose of creating and redeeming such shares on behalf of third parties; and

''(B) selling the shares to third parties who are not market makers or otherwise described in Treas. Reg. section 1.817–5(f) (1) and (3).

''(3) MARKET MAKER.—The term 'market maker' means a financial institution that is a registered broker or dealer under section 15(b) of the Securities Exchange Act of 1934 [15 U.S.C. 78*o*(b)] that maintains liquidity for an exchange-traded fund on a national stock exchange by being always ready to buy and sell shares of such fund on the market, but only if the financial institution is contractually or legally precluded from selling or buying such shares to or from persons who are not authorized participants or otherwise described in Treas. Reg. section 1.817–5(f) (2) and (3).

''(d) EFFECTIVE DATE.—This section shall apply to segregated asset account investments made on or after the date which is 7 years after the date of the enactment of this Act.''

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§ 1101–1147 and 1171–1177] or title XVIII [§§ 1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

§ 817A. Special rules for modified guaranteed contracts

(a) Computation of reserves

In the case of a modified guaranteed contract, clause (ii) of section 807(e)(1)(A) shall not apply.

(b) Segregated assets under modified guaranteed contracts marked to market

(1) In general

In the case of any life insurance company, for purposes of this subtitle—

(A) Any gain or loss with respect to a segregated asset shall be treated as ordinary income or loss, as the case may be.

(B) If any segregated asset is held by such company as of the close of any taxable year—

(i) such company shall recognize gain or loss as if such asset were sold for its fair market value on the last business day of such taxable year, and

(ii) any such gain or loss shall be taken into account for such taxable year.

Proper adjustment shall be made in the amount of any gain or loss subsequently realized for gain or loss taken into account under the preceding sentence. The Secretary may provide by regulations for the application of this subparagraph at times other than the times provided in this subparagraph.

(2) Segregated asset

For purposes of paragraph (1), the term ''segregated asset'' means any asset held as part of

a segregated account referred to in subsection (d)(1) under a modified guaranteed contract.

(c) Special rule in computing life insurance reserves

For purposes of applying section 816(b)(1)(A) to any modified guaranteed contract, an assumed rate of interest shall include a rate of interest determined, from time to time, with reference to a market rate of interest.

(d) Modified guaranteed contract defined

For purposes of this section, the term ''modified guaranteed contract'' means a contract not described in section 817—

(1) all or part of the amounts received under which are allocated to an account which, pursuant to State law or regulation, is segregated from the general asset accounts of the company and is valued from time to time with reference to market values,

(2) which—

(A) provides for the payment of annuities,

(B) is a life insurance contract, or

(C) is a pension plan contract which is not a life, accident, or health, property, casualty, or liability contract,

(3) for which reserves are valued at market for annual statement purposes, and

(4) which provides for a net surrender value or a policyholder's fund (as defined in section 807(e)(1)).

If only a portion of a contract is not described in section 817, such portion shall be treated for purposes of this section as a separate contract.

(e) Regulations

The Secretary may prescribe regulations—

(1) to provide for the treatment of market value adjustments under sections 72, 7702, 7702A, and 807(e)(1)(B),

(2) to determine the interest rates applicable under sections 807(c)(3) and 807(d)(2)(B) with respect to a modified guaranteed contract annually, in a manner appropriate for modified guaranteed contracts and, to the extent appropriate for such a contract, to modify or waive the applicability of section 811(d),

(3) to provide rules to limit ordinary gain or loss treatment to assets constituting reserves for modified guaranteed contracts (and not other assets) of the company,

(4) to provide appropriate treatment of transfers of assets to and from the segregated account, and

(5) as may be necessary or appropriate to carry out the purposes of this section.

(Added Pub. L. 104–188, title I, §1612(a), Aug. 20, 1996, 110 Stat. 1846; amended Pub. L. 115–97, title I, §13518(b), Dec. 22, 2017, 131 Stat. 2148.)

Editorial Notes

AMENDMENTS

2017—Subsec. (e)(2). Pub. L. 115–97 substituted ''and 807(d)(2)(B)'' for '', 807(d)(2)(B), and 812''.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–97 applicable to taxable years beginning after Dec. 31, 2017, see section 13518(c) of Pub. L. 115–97, set out as a note under section 812 of this title.

EFFECTIVE DATE

Pub. L. 104–188, title I, §1612(c), Aug. 20, 1996, 110 Stat. 1847, provided that:

''(1) IN GENERAL.—The amendments made by this section [enacting this section] shall apply to taxable years beginning after December 31, 1995.

''(2) TREATMENT OF NET ADJUSTMENTS.—Except as provided in paragraph (3), in the case of any taxpayer required by the amendments made by this section to change its calculation of reserves to take into account market value adjustments and to mark segregated assets to market for any taxable year—

''(A) such changes shall be treated as a change in method of accounting initiated by the taxpayer,

''(B) such changes shall be treated as made with the consent of the Secretary, and

''(C) the adjustments required by reason of section 481 of the Internal Revenue Code of 1986, shall be taken into account as ordinary income by the taxpayer for the taxpayer's first taxable year beginning after December 31, 1995.

''(3) LIMITATION ON LOSS RECOGNITION AND ON DEDUCTION FOR RESERVE INCREASES.—

''(A) LIMITATION ON LOSS RECOGNITION.—

''(i) IN GENERAL.—The aggregate loss recognized by reason of the application of section 481 of the Internal Revenue Code of 1986 with respect to section 817A(b) of such Code (as added by this section) for the first taxable year of the taxpayer beginning after December 31, 1995, shall not exceed the amount included in the taxpayer's gross income for such year by reason of the excess (if any) of—

''(I) the amount of life insurance reserves as of the close of the prior taxable year, over

''(II) the amount of such reserves as of the beginning of such first taxable year,

to the extent such excess is attributable to subsection (a) of such section 817A. Notwithstanding the preceding sentence, the adjusted basis of each segregated asset shall be determined as if all such losses were recognized.

''(ii) DISALLOWED LOSS ALLOWED OVER PERIOD.—The amount of the loss which is not allowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(B) LIMITATION ON DEDUCTION FOR INCREASE IN RESERVES.—

''(i) IN GENERAL.—The deduction allowed for the first taxable year of the taxpayer beginning after December 31, 1995, by reason of the application of section 481 of such Code with respect to section 817A(a) of such Code (as added by this section) shall not exceed the aggregate built-in gain recognized by reason of the application of such section 481 with respect to section 817A(b) of such Code (as added by this section) for such first taxable year.

''(ii) DISALLOWED DEDUCTION ALLOWED OVER PERIOD.—The amount of the deduction which is disallowed under clause (i) shall be allowed ratably over the period of 7 taxable years beginning with the taxpayer's first taxable year beginning after December 31, 1995.

''(iii) BUILT-IN GAIN.—For purposes of this subparagraph, the built-in gain on an asset is the amount equal to the excess of—

''(I) the fair market value of the asset as of the beginning of the first taxable year of the taxpayer beginning after December 31, 1995, over

''(II) the adjusted basis of such asset as of such time.''

§ 818. Other definitions and special rules

(a) Pension plan contracts

For purposes of this part, the term ''pension plan contract'' means any contract—