

“(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—

(1) entered into with trusts which (as of the time the contracts were entered into) were deemed to be trusts described in section 401(a) and exempt from tax under section 501(a) (or trusts exempt from tax under section 165 of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws);

(2) entered into under plans which (as of the time the contracts were entered into) were deemed to be plans described in section 403(a), or plans meeting the requirements of paragraphs (3), (4), (5), and (6) of section 165(a) of the Internal Revenue Code of 1939;

(3) provided for employees of the life insurance company under a plan which, for the tax-

able year, meets the requirements of paragraphs (3), (4), (5), (6), (7), (8), (11), (12), (13), (14), (15), (16), (17), (19), (20), (22), (26), and (27) of section 401(a);

(4) purchased to provide retirement annuities for its employees by an organization which (as of the time the contracts were purchased) was an organization described in section 501(c)(3) which was exempt from tax under section 501(a) (or was an organization exempt from tax under section 101(6) of the Internal Revenue Code of 1939 or the corresponding provisions of prior revenue laws), or purchased to provide retirement annuities for employees described in section 403(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing;

(5) entered into with trusts which (at the time the contracts were entered into) were individual retirement accounts described in section 408(a) or under contracts entered into with individual retirement annuities described in section 408(b); or

(6) purchased by—

(A) a governmental plan (within the meaning of section 414(d)) or an eligible deferred compensation plan (within the meaning of section 457(b)), or

(B) the Government of the United States, the government of any State or political subdivision thereof, or by any agency or instrumentality of the foregoing, or any organization (other than a governmental unit) exempt from tax under this subtitle, for use in satisfying an obligation of such government, political subdivision, agency or instrumentality, or organization to provide a benefit under a plan described in subparagraph (A).

(b) Treatment of capital gains and losses, etc.

In the case of a life insurance company—

(1) in applying section 1231(a), the term “property used in the trade or business” shall be treated as including only—

(A) property used in carrying on an insurance business, of a character which is subject to the allowance for depreciation provided in section 167, held for more than 1 year, and real property used in carrying on an insurance business, held for more than 1 year, which is not described in section 1231(b)(1)(A), (B), or (C), and

(B) property described in section 1231(b)(2), and

(2) in applying section 1221(a)(2), the reference to property used in trade or business shall be treated as including only property used in carrying on an insurance business.

(c) Gain on property held on December 31, 1958 and certain substituted property acquired after 1958

(1) Property held on December 31, 1958

In the case of property held by the taxpayer on December 31, 1958, if—

(A) the fair market value of such property on such date exceeds the adjusted basis for determining gain as of such date, and

(B) the taxpayer has been a life insurance company at all times on and after December 31, 1958,

the gain on the sale or other disposition of such property shall be treated as an amount (not less than zero) equal to the amount by which the gain (determined without regard to this subsection) exceeds the difference between the fair market value on December 31, 1958, and the adjusted basis for determining gain as of such date.

(2) Certain property acquired after December 31, 1958

In the case of property acquired after December 31, 1958, and having a substituted basis (within the meaning of section 1016(b))—

(A) for purposes of paragraph (1), such property shall be deemed held continuously by the taxpayer since the beginning of the holding period thereof, determined with reference to section 1223,

(B) the fair market value and adjusted basis referred to in paragraph (1) shall be that of that property for which the holding period taken into account includes December 31, 1958,

(C) paragraph (1) shall apply only if the property or properties the holding periods of which are taken into account were held only by life insurance companies after December 31, 1958, during the holding periods so taken into account,

(D) the difference between the fair market value and adjusted basis referred to in paragraph (1) shall be reduced (to not less than zero) by the excess of (i) the gain that would have been recognized but for this subsection on all prior sales or dispositions after December 31, 1958, of properties referred to in subparagraph (C), over (ii) the gain which was recognized on such sales or other dispositions, and

(E) the basis of such property shall be determined as if the gain which would have been recognized but for this subsection were recognized gain.

(3) Property defined

For purposes of paragraphs (1) and (2), the term “property” does not include insurance and annuity contracts and property described in paragraph (1) of section 1221(a).

(d) Insurance or annuity contract includes contracts supplementary thereto

For purposes of this part, the term “insurance or annuity contract” includes any contract supplementary thereto.

(e) Special rules for consolidated returns

(1) Items of companies other than life insurance companies

If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.

(2) Dividends within group

In the case of a life insurance company filing or required to file a consolidated return under

section 1501 with respect to any affiliated group for any taxable year, any determination under this part with respect to any dividend paid by one member of such group to another member of such group shall be made as if such group was not filing a consolidated return.

(f) Allocation of certain items for purposes of foreign tax credit, etc.

(1) In general

Under regulations, in applying sections 861, 862, and 863 to a life insurance company, the deduction for policyholder dividends (determined under section 808(c)), reserve adjustments under subsections (a) and (b) of section 807, and death benefits and other amounts described in section 805(a)(1) shall be treated as items which cannot definitely be allocated to an item or class of gross income.

(2) Election of alternative allocation

(A) In general

On or before September 15, 1985, any life insurance company may elect to treat items described in paragraph (1) as properly apportioned or allocated among items of gross income to the extent (and in the manner) prescribed in regulations.

(B) Election irrevocable

Any election under subparagraph (A), once made, may be revoked only with the consent of the Secretary.

(3) Items described in section 807(c) treated as not interest for source rules, etc.

For purposes of part I of subchapter N, items described in any paragraph of section 807(c) shall be treated as amounts which are not interest.

(g) Qualified accelerated death benefit riders treated as life insurance

For purposes of this part—

(1) In general

Any reference to a life insurance contract shall be treated as including a reference to a qualified accelerated death benefit rider on such contract.

(2) Qualified accelerated death benefit riders

For purposes of this subsection, the term “qualified accelerated death benefit rider” means any rider on a life insurance contract if the only payments under the rider are payments meeting the requirements of section 101(g).

(3) Exception for long-term care riders

Paragraph (1) shall not apply to any rider which is treated as a long-term care insurance contract under section 7702B.

(Added and amended Pub. L. 98-369, div. A, title II, §211(a), title X, §1001(b)(10), (e), July 18, 1984, 98 Stat. 752, 1011, 1012; Pub. L. 99-514, title XI, §§1106(d)(3)(C), 1112(d)(4), 1136(b), title XVIII, §1821(n), (o), Oct. 22, 1986, 100 Stat. 2424, 2445, 2486, 2842; Pub. L. 100-647, title I, §§1010(k), 1011(e)(5)(A), Nov. 10, 1988, 102 Stat. 3456, 3461; Pub. L. 104-191, title III, §332(a), Aug. 21, 1996, 110 Stat. 2069; Pub. L. 106-170, title V, §532(c)(1)(D), (3), Dec. 17, 1999, 113 Stat. 1930, 1931.)

Editorial Notes

REFERENCES IN TEXT

Section 165 of the Internal Revenue Code of 1939, referred to in subsec. (a)(1), (2), was classified to section 165 of former Title 26, Internal Revenue Code. Section 101 of the Internal Revenue Code of 1939, referred to in subsec. (a)(4) was classified to section 101 of former Title 26, Internal Revenue Code. Sections 101 and 165 were repealed by section 7851(a)(1)(A) of this title. For table of comparisons of the 1939 Code to the 1986 Code, see Table I preceding section 1 of this title. See, also, section 7851(e) of this title for provision that references in the 1986 Code to a provision of the 1939 Code, not then applicable, shall be deemed a reference to the corresponding provision of the 1986 Code, which is then applicable.

PRIOR PROVISIONS

A prior section 818, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 133; amended Pub. L. 88-272, title II, §228(b)(1), Feb. 26, 1964, 78 Stat. 98; Pub. L. 91-688, §1(a), Jan. 12, 1971, 84 Stat. 2072; Pub. L. 94-455, title XIX, §§1901(a)(101), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834; Pub. L. 97-248, title II, §§258(a), 260(a), 262, 267(a), Sept. 3, 1982, 96 Stat. 538-540, 550, related to accounting provisions generally, prior to the general revision of this part by Pub. L. 98-369, §211(a).

Another prior section 818, act Aug. 16, 1954, ch. 736, §818, as added Mar. 13, 1956, ch. 83, §2, 70 Stat. 46, related to certain new insurance companies, prior to the general revision of this part by Pub. L. 86-69, §2(a).

A prior section 819, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 136; amended Pub. L. 89-809, title I, §104(i)(3), Nov. 13, 1966, 80 Stat. 1561; Pub. L. 94-455, title XIX, §§1901(a)(102), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1781, 1834, related to foreign life insurance companies, prior to the general revision of this part by Pub. L. 98-369, §211(a). See section 813 of this title.

A prior section 819A, added Pub. L. 94-455, title X, §1043(a), Oct. 4, 1976, 90 Stat. 1639, related to contiguous country branches of domestic life insurance companies, prior to the general revision of this part by Pub. L. 98-369, §211(a). See section 814 of this title.

A prior section 820, added Pub. L. 86-69, §2(a), June 25, 1959, 73 Stat. 137; amended Pub. L. 94-455, title XIX, §§1901(a)(103), 1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1782, 1834, related to optional treatment of policies reinsured under modified coinsurance contracts, prior to repeal by Pub. L. 97-248, title II, §255(a), (c), Sept. 3, 1982, 96 Stat. 533, 534, applicable to taxable years beginning after Dec. 31, 1981, with exception.

A prior section 821, acts Aug. 16, 1954, ch. 736, 68A Stat. 260; Mar. 30, 1955, ch. 18, §2, 69 Stat. 14; Mar. 13, 1956, ch. 83, §3(a)(1), (2), 70 Stat. 47; Mar. 29, 1956, ch. 115, §2, 70 Stat. 66; Mar. 29, 1957, Pub. L. 85-12, §2, 71 Stat. 9; June 30, 1958, Pub. L. 85-475, §2, 72 Stat. 259; June 30, 1959, Pub. L. 86-75, §2, 73 Stat. 157; June 30, 1960, Pub. L. 86-564, title II, §201, 74 Stat. 290; June 30, 1961, Pub. L. 87-72, §2, 75 Stat. 193; June 28, 1962, Pub. L. 87-508, §2, 76 Stat. 114; Oct. 16, 1962, Pub. L. 87-834, §8(a), 76 Stat. 989; June 29, 1963 Pub. L. 88-52, §2, 77 Stat. 72; Feb. 26, 1964, Pub. L. 88-272, title I, §123(a), 78 Stat. 29; Nov. 13, 1966, Pub. L. 89-809, title I, §104(i)(4), 80 Stat. 1562; Oct. 4, 1976, Pub. L. 94-455, title IX, §901(b), title XV, §1507(b)(1), title XIX, §§1901(a)(104), 1906(b)(13)(A), 90 Stat. 1607, 1739, 1782, 1834; May 23, 1977, Pub. L. 95-30, title II, §201(3), (4), 91 Stat. 141; Nov. 6, 1978, Pub. L. 95-600, title III, §301(b)(9), 92 Stat. 2821; Aug. 13, 1981, Pub. L. 97-34, title II, §231(b)(1), (2), 95 Stat. 249, related to tax on mutual insurance companies to which former part II applied, prior to repeal by Pub. L. 99-514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 822 was renumbered section 834 of this title by Pub. L. 99-514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

A prior section 823, added Pub. L. 87-834, §8(c), Oct. 16, 1962, 76 Stat. 992; amended Pub. L. 91-172, title IX,

§907(c)(2)(B), Dec. 30, 1969, 83 Stat. 717, related to determination of statutory underwriting income or loss, prior to repeal by Pub. L. 99-514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

Another prior section 823, act Aug. 16, 1954, ch. 736, 68A Stat. 263, which defined “net premiums” and “dividends to policyholders”, was redesignated section 822(f) of this title by section 8(b)(4) of Pub. L. 87-834.

A prior section 824, added Pub. L. 87-834, §8(c), Oct. 16, 1962, 76 Stat. 993; amended Pub. L. 94-455, title XIX, §1906(b)(13)(A), Oct. 4, 1976, 90 Stat. 1834, related to adjustments to provide protection against losses, prior to repeal by Pub. L. 99-514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 825, added Pub. L. 87-834, §8(c), Oct. 16, 1962, 76 Stat. 995; amended Pub. L. 91-172 title IX, §907(c)(2)(C), (D), Dec. 30, 1969, 83 Stat. 717; Pub. L. 94-455, title VIII, §806(d)(2), title XIX, §1901(a)(106), Oct. 4, 1976, 90 Stat. 1599, 1782; Pub. L. 97-34, title II, §207(b), Aug. 13, 1981, 95 Stat. 225, related to unused loss deduction, prior to repeal by Pub. L. 99-514, title X, §1024(a)(1), Oct. 22, 1986, 100 Stat. 2405, effective for taxable years beginning after Dec. 31, 1986.

A prior section 826 was renumbered section 835 of this title by Pub. L. 99-514, title X, §1024(a)(3), Oct. 22, 1986, 100 Stat. 2405.

AMENDMENTS

1999—Subsec. (b)(2). Pub. L. 106-170, §532(c)(3), substituted “section 1221(a)(2)” for “section 1221(2)”.

Subsec. (c)(3). Pub. L. 106-170, §532(c)(1)(D), substituted “section 1221(a)” for “section 1221”.

1996—Subsec. (g). Pub. L. 104-191 added subsec. (g).
1988—Subsec. (a)(6). Pub. L. 100-647, §1011(e)(5)(A), in subpar. (A) substituted “eligible deferred compensation plan” for “eligible State deferred compensation plan”, and in subpar. (B), inserted “or any organization (other than a governmental unit) exempt from tax under this subtitle,” after “foregoing,” and substituted “agency or instrumentality, or organization” for “or agency or instrumentality”.

Subsec. (f)(3). Pub. L. 100-647, §1010(k), added par. (3).
1986—Subsec. (a)(3). Pub. L. 99-514, §1136(b), substituted “(26), and (27)” for “and (26)”.

Pub. L. 99-514, §1112(d)(4), substituted “(22), and (26)” for “and (22)”.

Pub. L. 99-514, §1106(d)(3)(C), inserted “(17),” after “(16),”.

Subsec. (a)(6)(A). Pub. L. 99-514, §1821(n), in amending subpar. (A) generally, inserted “an eligible State deferred compensation plan (within the meaning of section 457(b)), or”.

Subsec. (e). Pub. L. 99-514, §1821(o), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “If an election under section 1504(c)(2) is in effect with respect to an affiliated group for the taxable year, all items of the members of such group which are not life insurance companies shall not be taken into account in determining the amount of the tentative LICTI of members of such group which are life insurance companies.”

1984—Subsec. (b)(1)(A). Pub. L. 98-369, §1001(b)(10), (e), substituted “6 months” for “1 year” in two places, applicable to property acquired after June 22, 1984, and before Jan. 1, 1988. See Effective Date of 1984 Amendment note below.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 1999 AMENDMENT

Amendment by Pub. L. 106-170 applicable to any instrument held, acquired, or entered into, any transaction entered into, and supplies held or acquired on or after Dec. 17, 1999, see section 532(d) of Pub. L. 106-170, set out as a note under section 170 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Pub. L. 104-191, title III, §332(b), Aug. 21, 1996, 110 Stat. 2069, provided that:

“(1) IN GENERAL.—The amendment made by this section [amending this section] shall take effect on January 1, 1997.

“(2) ISSUANCE OF RIDER NOT TREATED AS MATERIAL CHANGE.—For purposes of applying sections 101(f), 7702, and 7702A of the Internal Revenue Code of 1986 to any contract—

“(A) the issuance of a qualified accelerated death benefit rider (as defined in section 818(g) of such Code (as added by this Act)), and

“(B) the addition of any provision required to conform an accelerated death benefit rider to the requirements of such section 818(g), shall not be treated as a modification or material change of such contract.”

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100-647, title I, §1011(e)(5)(B), Nov. 10, 1988, 102 Stat. 3461, provided that: “The amendments made by this paragraph [amending this section] shall apply to contracts issued after December 31, 1986.”

Amendment by section 1010(k) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by section 1106(d)(3)(C) of Pub. L. 99-514 applicable to benefits accruing in years beginning after Dec. 31, 1988, except as otherwise provided, see section 1106(i)(5) of Pub. L. 99-514 set out as a note under section 415 of this title.

Amendment by section 1112(d)(4) of Pub. L. 99-514 applicable to plan years beginning after Dec. 31, 1988, with special rule regarding collective bargaining agreements ratified before Mar. 1, 1986, and with provision for waiver of the excise tax on reversions, see section 1112(e) of Pub. L. 99-514, set out as a note under section 401 of this title.

Amendment by section 1821(n), (o) 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 OF 1984 AMENDMENT

Amendment by Pub. L. 98-369 applicable to property acquired after June 22, 1984, and before Jan. 1, 1988, see section 1001(e) of Pub. L. 98-369, set out as a note under section 166 of this title.

REGULATIONS

Secretary of the Treasury or his delegate to issue before Feb. 1, 1988, final regulations to carry out amendments made by section 1112 of Pub. L. 99-514, see section 1141 of Pub. L. 99-514, set out as a note under section 401 of this title.

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.

PART II—OTHER INSURANCE COMPANIES

Sec. 831.	Tax on insurance companies other than life insurance companies.
832.	Insurance company taxable income.
833.	Treatment of Blue Cross and Blue Shield organizations, etc.

Sec. 834. 835.	Determination of taxable investment income. Election by reciprocal.
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Editorial Notes

PRIOR PROVISIONS

A prior part II (§§ 821 to 826) related to mutual insurance companies other than life and certain marine insurance companies and other than fire and flood insurance companies which operated on the basis of perpetual policies or premium deposits, consisted of sections 821-826, prior to repeal (except for sections 822 and 826 which were renumbered sections 834 and 835, respectively, by Pub. L. 99-514, title X, §1024(a)(1)-(3), Oct. 22, 1986, 100 Stat. 2405. See Prior Provisions note set out under section 818 of this title.

AMENDMENTS

1988—Pub. L. 100-647, title I, §1010(f)(7), Nov. 10, 1988, 102 Stat. 3454, substituted “Tax on insurance companies other than life insurance companies” for “Tax on insurance companies (other than life or mutual), mutual marine insurance companies, and certain mutual fire or flood insurance companies” in item 831.

1986—Pub. L. 99-514, title X, §§1012(b)(2), 1024(a)(2), (c)(18), Oct. 22, 1986, 100 Stat. 2393, 2405, 2408, redesignated part III (§831 et seq.) as II and added items 833, 834, and 835. Former part II (§821 et seq.) was repealed. 1962—Pub. L. 87-834, §8(g)(4)(C), Oct. 16, 1962, 76 Stat. 999, substituted “and certain mutual fire or flood insurance companies” for “and mutual fire insurance companies issuing perpetual policies” in item 831.

§ 831. Tax on insurance companies other than life insurance companies

(a) General rule

Taxes computed as provided in section 11 shall be imposed for each taxable year on the taxable income of every insurance company other than a life insurance company.

(b) Alternative tax for certain small companies

(1) In general

In lieu of the tax otherwise applicable under subsection (a), there is hereby imposed for each taxable year on the income of every insurance company to which this subsection applies a tax computed by multiplying the taxable investment income of such company for such taxable year by the rates provided in section 11(b).

(2) Companies to which this subsection applies

(A) In general

This subsection shall apply to every insurance company other than life if—

- (i) the net written premiums (or, if greater, direct written premiums) for the taxable year do not exceed \$2,200,000,
- (ii) such company meets the diversification requirements of subparagraph (B), and
- (iii) such company elects the application of this subsection for such taxable year.

The election under clause (iii) shall apply to the taxable year for which made and for all subsequent taxable years for which the requirements of clauses (i) and (ii) are met. Such an election, once made, may be revoked only with the consent of the Secretary.

(B) Diversification requirements

(i) In general

An insurance company meets the requirements of this subparagraph if—