

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking were submitted to the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal author of these proposed regulations is Ann H. Logan, Office of the Associate Chief Counsel (Financial Institutions and Products), Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part I

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.807-2 also issued under 26 U.S.C. 817A(e) * * *
Section 1.811-3 also issued under 26 U.S.C. 817A(e) * * *
Section 1.812-9 also issued under 26 U.S.C. 817A(e) * * *
Section 1.817A-1 also issued under 26 U.S.C. 817A(e) * * *

■ **Par. 2.** Section 1.807-2 is added to read as follows:

§ 1.807-2 Cross-reference.

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A-1(a)(1)), see § 1.817A-1.

■ **Par. 3.** Section 1.811-3 is added to read as follows:

§ 1.811-3 Cross-reference.

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A-1(a)(1)), see § 1.817A-1.

■ **Par. 4.** Section “1.812-9 is added to read as follows:

§ 1.812-9 Cross-reference.

For special rules regarding the treatment of modified guaranteed contracts (as defined in section 817A and § 1.817A-1(a)(1)), see § 1.817A-1.

■ **Par. 5.** Sections § 1.817A-0 and § 1.817A-1 are added to read as follows:

§ 1.817A-0 Table of contents.

This section lists the captions that appear in section § 1.817A-1:

§ 1.817A-1 Certain modified guaranteed contracts.

- (a) Definitions.
 - (1) Modified guaranteed contract.
 - (2) Temporary guarantee period.
 - (3) Equity-indexed modified guaranteed contract.
 - (4) Non-equity-indexed modified guaranteed contract.
 - (5) Current market rate for non-equity-indexed modified guaranteed contract.
 - (6) Current market rate for equity-indexed modified guaranteed contract. [Reserved.]
- (b) Applicable interest rates for non-equity-indexed modified guaranteed contracts.
 - (1) Tax reserves during temporary guarantee period.
 - (2) Required interest during temporary guarantee period.
 - (3) Application of section 811(d).
 - (4) Periods after the end of the temporary guarantee period.
 - (5) Examples.
- (c) Applicable interest rates for equity-indexed modified guaranteed contracts. [Reserved.]
- (d) Effective date.

§ 1.817A-1 Certain modified guaranteed contracts.

(a) *Definitions*—(1) *Modified guaranteed contract.* The term *modified guaranteed contract* (MGC) is defined in section 817A(d) as an annuity, life insurance, or pension plan contract (other than a variable contract described in section 817) under which all or parts of the amounts received under the contract are allocated to a segregated account. Assets and reserves in this segregated account must be valued from time to time with reference to market values for annual statement purposes. Further, an MGC must provide either for a net surrender value or for 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 is treated as a separate contract for purposes of applying section 817A.

(2) *Temporary guarantee period.* An MGC may temporarily guarantee a return other than the permanently guaranteed crediting rate for a period

specified in the contract (the *temporary guarantee period*). During the temporary guarantee period, the amount paid to the policyholder upon surrender is usually increased or decreased by a market value adjustment, which is determined by a formula set forth under the terms of the MGC.

(3) *Equity-indexed modified guaranteed contract.* An equity-indexed MGC is an MGC, as defined in paragraph (a)(1) of this section, that provides a return during or at the end of the temporary guarantee period based on the performance of stocks, other equity instruments, or equity-based derivatives.

(4) *Non-equity-indexed modified guaranteed contract.* A non-equity-indexed MGC is an MGC, as defined in paragraph (a)(1) of this section, that provides a return during or at the end of the temporary guarantee period not based on the performance of stocks, other equity instruments, or equity-based derivatives.

(5) *Current market rate for non-equity-indexed modified guaranteed contracts.* The current market rate for a non-equity-indexed MGC issued by an insurer (whether issued in that tax year or a previous one) is the appropriate Treasury constant maturity interest rate published by the Board of Governors of the Federal Reserve System for the month containing the last day of the insurer's taxable year. The appropriate rate is that rate published for Treasury securities with the shortest published maturity that is greater than (or equal to) the remaining duration of the current temporary guarantee period under the MGC.

(6) *Current market rate for equity-indexed modified guaranteed contracts.* [Reserved]

(b) *Applicable interest rates for non-equity-indexed modified guaranteed contracts*—(1) *Tax reserves during temporary guarantee period.* An insurance company is required to determine the tax reserves for an MGC under sections 807(c)(3) or (d)(2). During a non-equity-indexed MGC's temporary guarantee period, the applicable interest rate to be used under sections 807(c)(3) and (d)(2)(B) is the current market rate, as defined in paragraph (a)(5) of this section.

(2) *Required interest during temporary guarantee period.* During the temporary guarantee period of a non-equity-indexed MGC, the applicable interest rate to be used to determine required interest under section 812(b)(2)(A) is the same current market rate, defined in paragraph (a)(5) of this section, that applies for that period for purposes of sections 807(c)(3) or (d)(2)(B).