

Part III - Administrative, Procedural, and Miscellaneous

Closing Agreements for Certain Life Insurance and Annuity Contracts that Fail to Meet the Requirements of Section 817(h), 7702 or 7702A (As Applicable)

Notice 2007-15

SECTION 1. PURPOSE

This Notice requests comments on how the Internal Revenue Service (the Service) might improve the procedures for obtaining closing agreements to correct inadvertent failures of life insurance or annuity contracts to satisfy the requirements of §§ 817(h), 7702 or 7702A of the Internal Revenue Code (Code), as applicable. This Notice also provides four draft model closing agreements for comment.

SECTION 2. BACKGROUND

.01 Qualification as a life insurance contract under § 7702. (1) Section 7702 defines the term “life insurance contract” for all purposes of the Code. Section 7702(a) provides that a “life insurance contract” is any contract that is a life insurance contract under the applicable law, but only if such contract either (1) meets the cash value accumulation test of § 7702(b), or (2) meets the guideline premium requirements of § 7702(c) and falls within the cash value corridor of § 7702(d). (For flexible premium life insurance contracts issued before January 1, 1985, § 101(f)(1) provides that any amount paid by reason of death of the insured under a flexible premium life insurance contract issued before January 1, 1985, is excluded from gross income only if, under the

contract, the sum of the premiums does not exceed the guideline premium limitation as of such time.)

(2) Charges for benefits that are qualified additional benefits (QABs) within the meaning of § 7702(f)(5) are subject to the expense charge rule of § 7702(C)(3)(B)(ii) for purposes of determining whether a contract satisfies the cash value accumulation test or the guideline premium requirements, as applicable. Section 7702(b)(2)(B); Rev. Rul. 2005-6, 2005-1 C.B. 471.

(3) Section 7702(f)(8) provides that if a taxpayer establishes to the satisfaction of the Secretary that the requirements of § 7702(a) were not met due to reasonable error, and reasonable steps are being taken to remedy that error, the Secretary may waive such failure.

(4) 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 shall be 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 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.

.02 Diversification requirement for variable contracts. (1) Section 817(d) defines the term “variable contract” to mean a contract that (1) provides for the allocation of all or part of the amounts received under the contract to an account that, pursuant to state

law or regulation, is segregated from the general asset accounts of the company, and (2) 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.

(2) Section 817(h) provides that for purposes of §§ 72 and 7702(a), a variable contract (other than a pension plan contract) that is otherwise described in § 817, and that is based on a segregated asset account, is not treated as an annuity, endowment, or life insurance contract for any period (and any subsequent period) for which the investments made by such account are not adequately diversified.

(3) Section 1.817-5(a)(2) of the Income Tax Regulations provides that the investments of a segregated asset account are treated as satisfying the diversification requirements of § 1.817-5(b) for one or more periods if (1) the issuer or holder of a variable contract based on the account shows that the failure to satisfy the diversification requirements was inadvertent; (2) the investments of the account satisfy the diversification requirements within a reasonable time after discovery of the failure; and (3) the issuer or holder agrees to make such adjustments or pay such amounts as the Commissioner may require.

.03 Treatment of Modified Endowment Contracts. (1) Section 7702A defines a modified endowment contract (MEC) as a contract that meets the requirement of § 7702

but fails to meet the 7-pay test of § 7702A(b), or that is received in exchange for a contract that is a MEC. Under § 7702A(b), a contract fails to meet the 7-pay test if the accumulated amount paid under the contract at any time during the first seven contract years exceeds the sum of the net level premiums that would have been paid on or before that time if the contract provided for paid-up future benefits after the payment of seven level annual premiums.

(2) Section 7702A(c)(1) provides that determinations under the 7-pay test are made by applying the rules of §§ 7702(b)(2) and 7702(e), with modifications. Under this provision, charges for QABs are accounted for under the expense charge rule of § 7702(c)(3)(B)(ii).

(3) Section 72(e)(10) provides that a MEC is subject to the rules of § 72(e)(2)(B) (which taxes non-annuity distributions on an income-out-first basis) and § 72(e)(4)(A) (which generally treats loans, assignments, or pledges of any portion of the value of a MEC as non-annuity distributions). Further, under § 72(v), an amount received under a MEC may be subject to a 10% additional tax.

.04 Authority to enter into closing agreements. Under the authority of § 7121, the Service may enter into a closing agreement with a taxpayer in respect of any internal revenue tax for any taxable period.

SECTION 3. EXISTING CORRECTION PROCEDURES

To remedy the significant unforeseen tax consequences for holders of contracts that fail these provisions, the Service provides procedures for issuers of these failed contracts to enter into closing agreements with the Service.

(1) In Rev. Rul. 91-17, 1991-1 C.B. 190, amplified by Rev. Proc. 92-25, 1992-1 C.B. 741, an insurance company issued contracts that qualified as life insurance, endowment, and annuity contracts under the applicable law, but otherwise failed to meet the definition of life insurance contracts under § 7702(a) or the diversification requirements of § 817(h). The ruling concludes that the income on the contracts is a non-periodic distribution for which the insurance company is subject to certain recordkeeping, reporting, withholding and deposit obligations. In addition, if the company's failure to meet those obligations was not due to reasonable cause, the company could be subject to various penalties under the Code. Rev. Rul. 91-17 provides that the Service will waive civil penalties for failure to satisfy the reporting, withholding, and deposit requirements for income deemed received under § 7702(g) if (a) the insurance company requests and receives a waiver of the failure to meet the definition of a life insurance contract pursuant to § 7702(f)(8); (b) the insurance company satisfies the conditions of § 1.817-5(a)(2)(i)-(iii) of the regulations; or (c) the insurance company requests and, in a timely manner, executes a closing agreement under which the company agrees to pay an amount based on the amount of tax that would have been owed by the policyholders if they were treated as receiving the income on the contracts, and any interest with regard to such tax. Notice 99-48, 1999-2, C.B. 429, provides the tax rates to be used to compute the amount of tax that would have been owed by the policyholders if they were treated as receiving the income on the contracts.

(2) Rev. Proc. 92-25, 1992-1 C.B. 741, provides a procedure by which an issuer of a variable contract seeking relief under § 1.817-5(a)(2) of the regulations may request to enter into a closing agreement with the Service. Under the procedure, an issuer of the

failed contracts may remedy the failure by paying an amount based on the tax and interest that the policyholder would be required to pay. A model closing agreement was provided.

(3) Rev. Proc. 2001-42, 2001-2 C.B. 212, modified and amplified by Rev. Proc. 2007-19, page _____, this Bulletin, provides the procedure by which an issuer may remedy an inadvertent non-egregious failure to comply with the MEC rules under § 7702A. Under this procedure, an issuer may remedy such a failure by paying an amount based on the overages on the unintended MECs and the tax and interest that the policyholder would be required to pay on those overages, based on proxy earnings and tax rates. A model closing agreement was provided. Rev. Proc. 2007-19 simplified Rev. Proc. 2001-42 by making it easier for issuers to locate indices used to compute proxy earnings rates, and by permitting electronic filing of templates that are required under the procedure.

(4) Rev. Rul. 2005-6, 2005-1 C.B. 471, provides that for purposes of determining whether a contract qualifies as a life insurance contract under § 7702 or as a MEC under § 7702A, charges for QABs are taken into account under the expense charge rule of § 7702(c)(3)(B)(ii). The revenue ruling provides three alternatives for issuers of life insurance contracts that do not account for QABs under the expense charge rule. Alternative C, which applies after February 7, 2006, provides that an issuer whose compliance system does not properly account for charges for QABs may request a closing agreement under certain terms. Under this alternative, the amount required to be paid is based on the number of contracts for which relief is requested.

SECTION 4. DRAFT MODEL CLOSING AGREEMENTS

Four draft model closing agreements are set forth in Exhibits A through D. Exhibit A would correct inadvertent failures to satisfy the guideline premium requirements of § 7702. Exhibit B would correct failures to satisfy the requirements of § 7702 or the requirements of § 7702A due to improper accounting for charges for QABs. See Rev. Rul. 2005-6, Alternative C. Exhibits C and D would update the model closing agreements previously provided in Rev. Proc. 2001-42 (for inadvertent MECs) and Rev. Proc. 92-25 (for inadvertent failures to satisfy the diversification requirements of § 817(h)).

SECTION 5. REQUEST FOR COMMENTS

.01 In general. Because additional changes to the existing procedures may be warranted, the Service invites comments on how the various correction procedures in general may be simplified.

.02 Draft model closing agreements. The Service requests comments on the model closing agreements that are included in this Notice as Exhibits A, B, C, and D. The Service will consider all comments before issuing final model closing agreements.

.03 Other matters. In addition to the general matters described in section 5.01 and 5.02, the Service requests comments in the following specific areas:

(a) Under what circumstances, if any, should the Service retain the discretion to negotiate different terms and conditions for failures that otherwise would be covered by the final model closing agreement?

(b) Would additional model closing agreements be useful to remedy other failures involving life insurance or annuity contracts, such as the failure of a life insurance contract to satisfy the cash value accumulation test of § 7702(b), or the failure of an annuity contract to contain the distribution provisions required under § 72(s)? If so, please describe the specific failures.

(c) Could the process for obtaining a waiver of reasonable errors under § 7702(f)(8) be simplified? If so, please describe.

(d) Do the three alternatives set forth in Rev. Rul. 2005-6 provide an appropriate model for remedies of other errors under § 7702 that would have been considered reasonable within the meaning of § 7702(f)(8) before, but not after, the Service published guidance on the underlying legal issue?

(e) Could the amounts that are required to be paid under the model closing agreements be determined more simply, without altering the incentives already in place for complying with §§ 72, 817(h), 7702 and 7702A and for coming forward voluntarily once errors are discovered? For example, do the existing procedures require issuers to produce information not otherwise generated in the normal course of administering the contracts? Are there circumstances in which the amount paid under the model closing agreements would more appropriately be determined based on factors other than total income on the contract?

(f) Do the amounts required to be paid under the model closing agreements strike an appropriate balance between making the government whole for the tax that otherwise would be due, and encouraging voluntary compliance with the underlying provisions

once an error is discovered? If lesser amounts might be appropriate in some circumstances, what are those circumstances and how should those amounts be limited?

(g) Should each model closing agreement contain language to the effect the agreement is null and void if the taxpayer does not remit the required payment and undertake the required corrective actions within the time frames set forth in the agreement? Do the time frames in the draft model closing agreements allow taxpayers enough time to satisfy their obligations under those agreements?

.04 Address for submitting comments. Written comments on the issues addressed in this Notice may be submitted to the Office of the Associate Chief Counsel (Financial Institutions and Products), Attention: Melissa S. Luxner (Notice 2007-15), room 3552, CC:FIP:4, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20224. Alternatively, taxpayers may submit comments electronically to Notice.Comments@irsounsel.treas.gov. The Service requests any comments by June 12, 2007.

SECTION 6. PENDING REQUESTS FOR CLOSING AGREEMENTS

The Service will continue to process closing agreements under §§ 72, 817(h), 7702 and 7702A under existing procedures until those procedures are modified by publication in the Internal Revenue Bulletin.

DRAFTING INFORMATION

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

EXHIBIT A

Effective as of date executed by Internal
Revenue Service _____

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

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.

B. Pursuant to Rev. Rul. 91-17, 1991-1 C.B. 190, amplified by Rev. Proc. 92-25, 1992-1 C.B. 741, as supplemented by Notice 99-48, 1999-2 C.B. 429, the Service under certain circumstances will waive civil penalties for failure of a taxpayer to satisfy the reporting, withholding and 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. 2006-1, I.R.B. 2006-1 I.R.B.1 *[or successor Rev. Proc., 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 intended that each of the Contracts meet the definition of life insurance contract under § 7702. For each Contract, however, Taxpayer accepted and retained premiums that exceeded the Contract’s guideline premium limitations under § 7702(c)(2) *[or § 101(f), if applicable]*. As a result, each of the Contracts identified on Exhibit A failed to satisfy the requirements of § 7702.

E. The Service has determined that the errors described in C above which caused the Contracts to fail to satisfy the requirements of § 7702 were not reasonable errors within the meaning of § 7702(f)(8) *[or § 101(f)(3)(H), if applicable]*, but are eligible for relief under Rev. Rul. 91-17.

F. Taxpayer represents to the Service that:

- (1) With respect to Contracts under which the “death benefit,” within the meaning of Notice 99-48, 1999-2 C.B. 429 is less than \$50,000, the aggregate “income on the contract,” within the meaning of § 7702(g)(1), through *[Insert date]*, is \$ *[insert amount]*. The aggregate “income on the contract” for each year of failure is:

<u>Year</u>	<u>Amount</u>
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Total

- (2) With respect to Contracts under which the “death benefit,” within the meaning of Notice 99-48, is equal to or exceeds \$50,000 but is less than \$180,000, the aggregate “income on the contract,” within the meaning of § 7702(g)(1), through **[Insert date]**, is \$ **[insert amount]**. The aggregate “income on the contract” for each year of failure is:

<u>Year</u>	<u>Amount</u>
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Total

- (3) With respect to Contracts under which the “death benefit,” within the meaning of Notice 99-48, is equal to or exceeds \$180,000, the aggregate income on the contract,” within the meaning of § 7702(g)(1), through **[Insert date]**, is \$ **[insert amount]**. The aggregate “income on the contract” for each year of failure is:

<u>Year</u>	<u>Amount</u>
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Total

G. With respect to Contracts under which the death benefit is less than \$50,000, the tax (determined at a tax rate of 15 percent) that would have been owed by the Contract holders if they were treated as receiving the income on the Contracts set forth in E(1) above is \$ **[insert amount]**. With respect to Contracts under which the death benefit is equal to or exceeds \$50,000 but is less than \$180,000, the tax (determined at a rate of 28 percent) that would have been owed by the Contract holders if they were treated as receiving the income on the Contracts set forth in E(2) above is \$ **[insert amount]**. With respect to Contracts under which the death benefit is equal to or exceeds \$180,000, the tax (determined at a tax rate of 36 percent) that would have been owed by the Contract holders if they were treated as receiving the income on the Contracts set forth in E(3) above is \$ **[insert amount]**.

The total tax that would have been owed by the Contract holders if they were treated as receiving the income on the Contracts is \$ **[insert amount]**. Interest on the total tax through **[Insert date]** is \$ **[insert amount]**. The two amounts total \$ **[insert amount]**.

H. To ensure that the Contracts qualify as life insurance contracts under § 7702(a), 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 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 *[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 *[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 *[or §101(f), if applicable]*:
 - (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 *[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 as of such date, Taxpayer will take no corrective action.
- (E) With respect to any Contract which terminated by reason of the death of the insured and (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 guideline premium limitation for the Contract, Taxpayer will pay the

Contract holder or the Contract holder's estate such excess, with interest at the Contract's interest crediting rate.

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 [*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 any corrective action described in Section 1(D) above;
- (B) To treat each Contract that terminated prior to the effective date of this Agreement as having satisfied the requirements of § 7702 [*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 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 or entered into;
- (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 under § 7702; 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 ninety (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 thirty (30) 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 and 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 notwithstanding any other law or rule of law except § 7122.

3. This Agreement is subject to any legislation enacted subsequent to the date of execution hereof if the legislation provides that it is effective with respect to closing agreements.

IN WITNESS WHEREOF, the parties have subscribed their names to these presents in triplicate.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

EXHIBIT B

Effective as of date executed by Internal
Revenue Service _____

CLOSING AGREEMENT AS TO FINAL DETERMINATION
COVERING SPECIFIC MATTERS
UNDER REV. RUL. 2005-6

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 and that provided qualified additional benefits (QABs) within the meaning of § 7702(f)(5).

B. Pursuant to Rev. Rul. 2005-6, 255-1 C.B. 471, the Service under certain circumstances will waive civil penalties for failure of a taxpayer to satisfy the reporting, withholding and 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. 2006-1, I.R.B. 2006-1 I.R.B.1 *[or successor Rev. Proc., 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 intended that each of the Contracts meet the definition of a life insurance contract under § 7702 and not be a modified endowment contract (MEC) within the meaning of § 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, as applicable.

E. The Service has determined that the errors described in C above qualify the issuer for the remedy described in Rev. Rul. 2005-6.

F. To ensure that the Contracts qualify as life insurance contracts under § 7702(a), 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:
 - (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, Taxpayer will take the following corrective action:
 - (a) Increase the death benefit to not less than an amount that will ensure compliance with § 7702, 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 amount necessary to keep the contracts in compliance with the requirements of § 7702, Taxpayer will take no corrective action.
- (E) With respect to any Contract which terminated by reason of the death of the insured and (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 guideline premium limitation for the Contract, Taxpayer will pay the Contract holder or the Contract holder's estate such excess, with interest at the Contract's interest crediting rate.

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 later of (i) the date of the execution of this Agreement by the Service, or (ii) the date of any corrective action described in Section 1(D) 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 or entered into;
- (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 under § 7702 [*and § 7702A, 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 ninety (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 thirty (30) 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 and 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 notwithstanding any other law or rule of law except § 7122.

3. This Agreement is subject to any legislation enacted subsequent to the date of execution hereof if the legislation provides that it is effective with respect to closing agreements.

IN WITNESS WHEREOF, the parties have subscribed their names to these presents in triplicate.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

EXHIBIT C

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. 2001-42, 2001-2 C.B. 212, 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. 2006-1, I.R.B. 2006-1 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 (MEC) under § 7702A. Taxpayer represents that the Contract[s] is [are] not described in Sec. 4.02 of Rev. Proc. 2001-42.
- E. The Service has determined that the contracts identified on Exhibit A are eligible for relief under Rev. Proc. 2001-42.
- F. Taxpayer represents that the cumulative "overage earnings," within the meaning of Sec. 3.06 of Rev. Proc. 2001-42, for the Contract[s] equal \$ ***[Insert amount]***.
- G. Taxpayer represents that the total of the amounts determined under Sec. 5.03(1)(a), (b), and (c) of Rev. Proc. 2001-42, after taking the special rule in Sec. 5.03(2) of that revenue procedure into account, with regard to the Contract[s] are \$ ***[Insert amount]***, \$ ***[Insert amount]***, and \$ ***[Insert amount]***, respectively.
- H. 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 Revenue Procedure 2001-42) 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 1(D) above as having no effect on the date the Contract was issued or entered into;
- (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 sum 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 ninety (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 thirty (30) 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 notwithstanding any other law or rule of law except § 7122.

3. This Agreement is subject to any legislation enacted subsequent to the date of execution hereof if the legislation provides that it is effective with respect to closing agreements.

IN WITNESS WHEREOF, the parties have subscribed their names to these presents in triplicate.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____

EXHIBIT D

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 § 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)), which are based, in whole or in part, on a segregated asset account (the "Account") and that provide for the allocation of amounts received under the variable contracts to the Account.

B. Pursuant to Rev. Proc. 92-25, 1992-1 C.B. 741, 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. 2006-1, I.R.B. 2006-1 I.R.B.1 *[or successor Rev. Proc., if applicable]*, a request for this Agreement that the *[Insert account name]* be treated as adequately diversified under § 817(h) for the period *[Insert period of nondiversification]* ("the period of nondiversification").

D. Taxpayer intended that Account be adequately diversified within the meaning of § 817 and § 1.817-5(b). The failure of the investments of the Account to satisfy the requirements of § 1.817-5(b) for the period of nondiversification was inadvertent.

E. The Service has determined that the failure of Account to satisfy the requirements of § 817(h) is eligible for relief under Rev. Proc. 92-25.

F. Taxpayer represents that the failure of the investments of 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]*.

G. The "income on the contract," within the meaning of § 1.817-5(a)(2) and § 7702(g)(1)(B) (without regard to § 7701(g)(1)(C)), for all contracts based on the Account during the period of non-diversification in the aggregate totals \$*[Insert amount]* for the *[Insert account name]*.

H. The sum of the amounts computed in sections 4.02(1)(A) and (B) and 4.02(2)(A) of Rev. Proc. 92-25 is \$ *[Insert amount]*. The sum of the interest amounts computed in sections 4.02(1)(C) and 4.02(2)(A) of Rev. Proc. 92-25 is \$ *[Insert amount]*.

I. To ensure that variable contracts that provide for the allocation of amounts received thereunder to the 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 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 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 *[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 *[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.

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; and
- (B) To treat no portion of the amounts described in Section 1(A) above as income to the Contract holders.

3. Payment of the sum described in section 1(A) above shall be made within thirty (30) 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 and 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 notwithstanding any other law or rule of law except § 7122.

3. This Agreement is subject to any legislation enacted subsequent to the date of execution hereof if the legislation provides that it is effective with respect to closing agreements.

IN WITNESS WHEREOF, the parties have subscribed their names to these presents in triplicate.

[Insert Taxpayer name]

Date Signed: _____

By: _____

Title: _____

COMMISSIONER OF INTERNAL REVENUE

Date Signed: _____

By: _____

Title: _____