

**MEMO# 31784**

May 30, 2019

## **ICI and SIFMA Submit Follow-Up Letter on UMBS and Section 817(h)**

[31784]

May 30, 2019 TO: ICI Members  
Tax Committee

Variable Insurance Products Advisory Committee SUBJECTS: Tax RE: ICI and SIFMA Submit Follow-Up Letter on UMBS and Section 817(h)

The ICI and SIFMA have submitted the attached letter regarding the treatment of To-Be-Announced (TBA) contracts for Uniform Mortgage Backed Securities (UMBS) for diversification testing purposes under section 817(h). ICI and SIFMA previously submitted a letter to the Treasury Department and the Internal Revenue Service (IRS) asking them to provide that: (1) taxpayers may apply the deemed issuance ratio election described in Rev. Proc. 2018-54 to UMBS TBA contracts; and (2) the deemed issuance ratio election applies separately to a TBA contract and the UMBS delivered pursuant to that contract.[\[1\]](#) We also asked the government to clarify that the “taxpayer” that makes the deemed issuance ratio election with respect to any UMBS or TBA contracts is the entity that acquires those securities (either the insurance company segregated asset account or the insurance-dedicated fund underlying the segregated asset accounts). If the taxpayer is the insurance company, the election should be made separately for each segregated asset account.

ICI and SIFMA met with officials from the Treasury Department and the IRS on April 9 to discuss our request. The attached letter follows up on those discussions by suggesting that the government adopt guidance that would permit taxpayers, for purposes of diversification testing under section 817(h) only, to either (1) apply the deemed issuance ratio to UMBS TBA contracts or (2) treat the counterparty of the TBA contract as the issuer. We also recommend that the government issue such guidance as a safe harbor, rather than as an affirmative election, and similarly amend Rev. Proc. 2018-54 to provide for a safe harbor for physical UMBS. Finally, we reiterate our request for clarification as to the identity of the “taxpayer” for purposes of this guidance.

Karen Lau Gibian  
Associate General Counsel

[Attachment](#)

## endnotes

[1] See Institute Memorandum No. 31608, dated February 12, 2019, which can be found at: [https://www.ici.org/my\\_ici/memorandum/memo31608](https://www.ici.org/my_ici/memorandum/memo31608).

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.