

MEMO# 21505

August 24, 2007

IRS Expands List of "Qualified Pension or Retirement Plans" For Purposes of Variable Contract Diversification Requirements

[21505]

August 24, 2007

TO: PENSION MEMBERS No. 49-07

TAX MEMBERS No. 37-07

VARIABLE INSURANCE PRODUCTS ADVISORY COMMITTEE No. 15-07 RE: IRS EXPANDS LIST OF "QUALIFIED PENSION OR RETIREMENT PLANS" FOR PURPOSES OF VARIABLE CONTRACT DIVERSIFICATION REQUIREMENTS

The Internal Revenue Service has released Revenue Ruling 2007-58, 2007-37 I.R.B. 1 (attached), which expands the list of arrangements treated as qualified pension or retirement plans for purposes of Code section 817(h)'s diversification requirements. Section 817(h) provides that a variable contract must be invested in a segregated asset account that is adequately diversified. The regulations under section 817 permit diversification requirements to be satisfied in certain cases by applying a "look-through" rule. For example, a variable contract holding a beneficial interest in a regulated investment company ("RIC") may satisfy the diversification requirement by looking through to the underlying assets of the RIC. The look-through rule may be applied only if all the beneficial interests of the RIC (or other permitted entity) are held by one or more insurance companies. For purposes of this rule, beneficial interests held by qualified pension or retirement plans are disregarded.

A prior revenue ruling (Rev. Rul. 94-62, 1994-2 C.B. 164) provided a list of nine arrangements that are treated as "qualified pension or retirement plans" and can be

disregarded in determining whether the look-through rule applies. Rev. Rul. 2007-58 updates the prior ruling by adding five arrangements:

- i. a simple retirement account described in section 408(p);
- ii. a deemed IRA described in section 408(q);
- iii. a Roth IRA described in section 408A;
- iv. a section 415(m) plan that is also a "governmental plan" within the meaning of section 414(d); and
- v. a section 457(f) plan that has as its sponsor either (i) a charitable organization described in section 818(a)(4) or (ii) a governmental organization described in section 818(a)(4), whose employees are described in section 403(b)(1)(A)(ii).

Lisa Robinson
Associate Counsel

[Attachment](#)

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.