FOR FURTHER INFORMATION CONTACT: The Budget Analysis and Systems Division, NEOB Room 6002, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Tel. No. (202) 395–6104, FAX No. (202) 395–7230.

Availability

Copies of the current OMB Circular A–76 and the March 1996 OMB Circular A–76 Revised Supplemental Handbook may be obtained by contacting the Executive Office of the President, Office of Administration, Publications Office, Washington, DC 20503, at (202) 395–7332. These documents are also accessible on the OMB Home page. The online OMB Home page address (URL) is http:/www.whitehouse.gov/WH/EOP/omb.

Jacob J. Lew,

Director.

Executive Office of the President,

Office of Management and Budget, Washington, D.C. 20503

March 24, 1999.

Circular No. A–76 (Revised)
Transmittal Memorandum No. 19
To The Heads of Executive Departments and Agencies
Subject: Performance of Commercial Activities

This Transmittal Memorandum updates the Federal pay raise assumptions and inflation factors used for computing the Government's in-house personnel and non-pay costs, as generally provided in the President's Budget for Fiscal Year 2000.

The non-pay inflation factors are for purposes of A–76 cost comparison determinations only. They reflect the generic non-pay inflation assumptions used to develop the FY 2000 Budget baseline estimates required by law. The law requires that a specific inflation factor (GDP FY/FY chained price index) be used for this purpose. These inflation factors should not be viewed as estimates of expected inflation rates for major long-term procurement items or as an estimate of inflation for any particular agency's non-pay purchases mix.

Federal pay raise assumptions effective date	military/civilian (percent)
January 2000	4.4
January 2001	3.9
January 2002	3.9
January 2003	3.9
January 2004	3.9

Non-Pay Categories (Supplies and Equipment, etc.)
FY 1998—1.2%
FY 1999—1.3%
FY 2000—2.0%
FY 2001—2.1%
FY 2002—2.1%
FY 2003—2.1%
FY 2004—2.1%

Geographic pay differentials received in 1999 shall be included for the development of in-house personnel costs. The above pay raise factors shall be applied after consideration is given to the geographic pay differentials. The pay raise factors provided for 2000 and beyond shall be applied to all employees, with no assumption being made as to how they will be distributed between possible locality and ECI-based increases.

In addition, the standard retirement cost factors for the weighted average CSRS FERS pension and Federal retiree health cost numbers are reduced from those published in the March 1996 A–76 Supplemental Handbook. These numbers are being revised because of downward estimates in actuarial normal cost estimates, which more than offset the gradual shift toward FERS in the total. However, the post-retirement health cost was revised up by a full percentage point. The net result is that the cost factors provided at Part II, Chapter 2, paragraph B.6. f. 1.a., are up by 0.3 to 0.6 percentage points. In addition, the current benefit component for Federal employee insurance and health benefits at Part II, Chapter 2, paragraph 6. f. 1.b is revised up by 0.1 percentage points on the health side to 5.7 percent. The Medicare factor of 1.45 at Part II, Chapter 2, paragraph 6. f. 1.b and the cost of miscellaneous fringe benefits of 1.7 percent at Part II, Chapter 2, paragraph 6. f. 1.c ., are unchanged.

Current Handbook—as printed in the March 1996 Revised Supplemental Handbook at Part II, Chapter 2, Paragraph 6.f.1.a (page 20):
23.7% Regular (19.6 pension + 4.1 retiree health)
32.3% Air Traffic Controllers (28.2 pension + 4.1 retiree health)
37.7% Law Enforcement (33.6 pension + 4.1 retiree health)

Revised Handbook—as provided by this Transmittal at Part II, Chapter 2, Paragraph 6.f.1.a (page 20):
24.0% Regular (18.9 pension + 5.1 retiree health)
33.0% Air Traffic Controllers (27.9 pension + 5.1 retiree health)
38.2% Law Enforcement (33.1 pension + 5.1 retiree health)

Other Current Benefits—as provided at Part II, Chapter 2, Paragraph 6.f.1.b (page 20):
Current Handbook (March 1996) 5.6%
Revised per this Transmittal 5.7%

These updates are effective as follows: all changes in the Transmittal Memorandum are effective immediately and shall apply to all cost comparisons in process where the Government's in-house cost estimate has not been publicly revealed before this date.

Agencies are reminded that OMB Circular No. A–76, Transmittal Memoranda 1 through Transmittal Memorandum 14 are canceled. Transmittal Memorandum No. 15 provided the Revised Supplemental Handbook, and is dated March 27, 1996 (**Federal Register**, April 1, 1996, pages 14338–14346). Transmittal Memoranda No. 16, 17 and 18, which provided the last three year's OMB Circular A–76 Federal pay raise and inflation factor assumptions are also canceled.

Sincerely,

Jacob J. Lew,

Director.

[FR Doc. 99–7666 Filed 3–29–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23750; File No. 812–11288]

Security Benefit Life Insurance Company, et al.

March 23, 1999.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of Application for Exemptions under the Investment Company Act of 1940 (''1940 Act''.

APPLICANTS: Security Benefit Life Insurance Company (''Security Benefit''), T. Rowe Price Variable Annuity Account (''Separate Account''), First Security Benefit Life Insurance and Annuity Company of New York (''Security Benefit—NY,'' together with Security Benefit, the ''Insurers''), T. Rowe Price Variable Annuity Account of First Security Benefit Life Insurance and Annuity Company of New York (''Separate Account—NY,'' together with Separate Account, the ''Separate Accounts'') and T. Rowe Price Investment Services, Inc. (''Distributor'') (collectively referred to herein as ''Applicants'').

RELEVANT 1940 ACT SECTIONS: Exemption requested under Section 6(c) of the 1940 Act from Sections 2(a)(32), 22(c), 27(i)(2)(A) and Rule 22c–1 thereunder and an amendment of an Order of Approval requested under Section 11 of the 1940 Act.

SUMMARY OF APPLICATION: Applicants seek an order on behalf of themselves, on behalf of any other person that may become a principal underwriter for contracts issued by the Insurers (''Future Underwriters'') that are similar in all material respects to the flexible premium deferred or single premium immediate variable annuity contracts described in the Application (the ''Contracts''), and on behalf of such other separate accounts as the Insurers shall establish in the future, which at any time may offer variable annuity contracts on a basis which is similar in all material respects to the arrangements described with respect to the Contracts (''Other Separate Accounts'') (a) exempting such persons from the provisions of Sections 2(a)(32), 22(c)

and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary to assess a withdrawal charge, as described herein, against Contract owners and (b) amending an Order of Approval, granted on April 4, 1995, pursuant to Section 11 of the 1940 Act, to approve, to the extent necessary, the terms of a payment arrangement whereby purchasers of Contracts may apply redemption proceeds from shares of a registered open-end investment company for which the Distributor serves as principal underwriter (the ''T. Rowe Price Public Funds'') as a premium payment for a Contract, a conversely, to apply the proceeds of a withdrawal or annuity payment under the Contracts to the purchase of shares of a T. Rowe Price Public Funds(s).

FILING DATE: The application was filed on August 27, 1998, amended and restated on January 20, 1999, and amended and restated on March 19, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 16, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearings requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Amy J. Lee, Esq., Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, Kansas 66636, and Darrell N. Braman, Esq., T. Rowe Price Investment Services, Inc., 100 E. Pratt Street, Baltimore, Maryland 21202. Copies to Keith T. Robinson, Esq., Dechert Price & Rhoads, 1775 Eye Street, N.W., Washington, D.C. 20006–2401.

FOR FURTHER INFORMATION CONTACT: Martha Peterson, Attorney, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth St., N.W., Washington, D.C. 20549–0609 (tel. (202) 942–8090).

Applicants' Representations

Background for Request for Exemptions From Certain Provisions of the 1940 Act

1. Security Benefit is a stock life insurance company organized under the laws of Kansas. Security Benefit is ultimately controlled by Security Benefit Mutual Holding Company, a Kansas mutual holding company. Security Benefit is licensed to conduct life insurance business in the District of Columbia and all state except new York.

2. Security Benefit—NY is a stock life insurance company organized under the laws of New York. Security Benefit—NY is a wholly owned subsidiary of Security Benefit Group, Inc., a financial services holding company which is wholly owned by Security Benefit. Security Benefit—NY offers the Contracts in New York and is admitted to do business in that state.

3. Each Separate Account is a unit investment trust and meets the definitions of ''separate account'' in Section 2(a)(37) under the 1940 Act. Each Separate Account is divided into subaccounts (''Subaccounts'') that will invest exclusively in shares of the corresponding portfolio (''Portfolio'') of one of the following mutual funds; (1) T. Rowe Price International Series, Inc.; (2) T. Rowe Price Equity Series, Inc. and (3) T. Rowe Price Fixed Income Series, Inc. (collectively the ''Underlying Funds''). Each of the Underlying Funds is a Maryland corporation and is currently registered under the 1940 Act as an open-end management investment company.

4. The Distributor, a wholly-owned subsidiary of T. Rowe Price Associates, Inc.,, is the principal underwriter for the Contracts. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended (the ''1934 Act''), and is a member of the National Association of Securities Dealers, Inc. (the ''NASD''). Each Future Underwriter will be registered as a broker-dealer under the 1934 Act and will be a member of the NASD.

5. The Contracts consist of flexible premium deferred variable annuity contracts currently issued by Security Benefit and Security Benefit—NY (the ''Deferred Contracts'') and single premium immediate variable annuity contracts to be issued by Security Benefit and Security Benefit—NY (the ''Immediate Contracts'').

6. The Contracts are available for purchase as non-tax qualified retirement plans. The Contracts are also eligible for use in connection with tax qualified retirement plans, including plans that meet the requirements of Section 408 of the Internal Revenue Code of 1986, as amended (the ''Code'').

7. The Deferred Contracts provide for accumulation of values on either a variable basis, a fixed basis or both during the accumulation phase of the Contracts. The Deferred and Immediate Contracts also provide several options for fixed or variable (or a combination of fixed and variable) annuity payments. Annuity payments are based on the annuity rates for the options provided. Payments made under fixed annuity options will be guaranteed by Security Benefit or Security Benefit—NY, as the case may be.

8. The net premium for Deferred and Immediate Contracts may be allocated to one or more of the Subaccounts of the Separate Account or Separate Account—NY, or the Insurer's general account, where such premium is credited with a fixed rate of interest. Each Subaccount of the Separate Account and Each Subaccount—NY of the Separate Account—NY, will invest exclusively in shares of the corresponding Portfolio of one of the Underlying Funds. Shares of each of the Portfolios are purchased by Security Benefit and Security Benefit—NY for the corresponding Subaccount or Subaccount—NY, respectively, at the Portfolio's net asset value per share, i.e., without any sales load. All dividends and capital gain distributions received from a Portfolio will be reinvested automatically in such Portfolio at net asset value per share, unless otherwise instructed by Security Benefit or Security Benefit—NY, as appropriate. Other insurance companies may invest in each Underlying Fund and Portfolio.

9. None of the Underlying Funds, the Portfolios or any investment adviser of a Portfolio is an affiliated person of Security Benefit or Security Benefit—NY, although it is possible that Security Benefit or Security Benefit—NY may be deemed to be an affiliated person of a Portfolios and an Underlying Fund at a future date by virtue of the Separate Account or Separate Account—NY's ownership of shares in Portfolio.

10. If any Owner (or Annuitant, if the Owner is not a natural person) dies during the accumulation phase under the Deferred Contracts, the Insurer will pay the death benefit proceeds to the Designated Beneficiary upon receipt of due proof of the Owner's death and instruction regarding payment of the Designated Beneficiary. The death benefit proceeds consist of the death benefit less any uncollected premium taxes. Under the Deferred and Immediate Contracts, in the event of the

Owner's death on or after the Annuity Payout Date, the death benefit is determined under the terms of the Annuity Option.

11. Under the Deferred Contracts, if the Annuitants dies during the Accumulation Period, the Owner may designate a new Annuitant within 30 days. If a new Annuitant is not named, the Issuer will designate the Owner as Annuitant.

12. The Contracts offer the following nine Annuity Options: Option 1—Life Income, Option 2—Life Income with Period Certain; Option 3—Life Income with Installment or Unit Refund; Option 4—Joint and Last Survivor, Option 5—Fixed Period; Option 6—Fixed Payment, Option 7—Age Recalculation; Option 8—Perod Certain; and Option 9—Life Income with Liquidity; Annuity Options 1 through 4 and 8 are available as either a fixed or variable annuity; Option 9 is available only as a variable annuity; and Options 5 through 7 are available as a fixed annuity, a variable annuity or a combination fixed and variable annuity.

13. Under the Deferred Contracts, the Owner may select the Annuity Payout Date and Annuity Option at the time of application. If no Annuity Payout Date is selected, the Annuity Payout Date will be the later of the Annuitant's seventieth birthday or the tenth annual Contract anniversary. If no Annuity Option is selected, the Insurer will use Life Income with 10 years period certain. The Owner may change the Annuity Payout Date, Annuity Option or Annuitant prior to the Annuity Payout Date.

14. Under the Immediate Contracts, the owner selects the Annuity Payout Date and Annuity Option at the time of application. The Annuity Payout Date must be within 30 days of the issue date. The Owner may not change the Annuity Payout Date, Annuity Option or Annuitant under the Immediate Contracts.

15. If a variable annuity under Option 1 through 4, 8 or 9 is selected, annuity payments are calculated on the basis of payment units. The number of payment units used to calculate each annuity payment is determined as of the Annuity Payout Date Account Value as of the Annuity Payout Date of the Deferred contracts, or the initial premium for the Immediate Contracts, less any premium taxes, is divided by $1,000 and the result is multiplied by the rate per $1,000 set forth in the annuity tables specified in the Contracts to determine the initial annuity payment for a variable annuity.

16. The initial variable annuity payment is divided by the value as of the Annuity Payout Date of the payment unit for the applicable Subaccount to determine the number of payment units to be used in calculating subsequent annuity payments. The number of payment units will remain constant for subsequent annuity payments, unless the Owner exchanges payment units among Subaccounts or makes a withdrawal under Option 8 or during the Liquidity Period under Option 9.

17. Subsequent annuity payments are calculated by multiplying the number of payment units allocated to a Subaccount by the value of the payment unit as of the date of the annuity payment. If the annuity payment is allocated to more than one Subaccount, the annuity payment is equal to the sum of the payment amount determined for each Subaccount. Annuity payments under Option 9 are made monthly, but the amount is reset only once each year on the 12-month anniversary of the Annuity Payout Date.

18. Option 9, designated the ''Life Income with Liquidity Option,'' provides monthly annuity payments for the life of the annuitant or the lives of the annuitant and a joint annuitant with a period certain of 15 years (or a shorter period under certain circumstances).[1] Annuity payments under Option 9 are guaranteed never to be less than 80 percent of the initial annuity payment (the ''Floor Payment''). The amount of annuity payments under Option 9 will remain level for 12-month intervals, subject to reset on each anniversary of the initial annuity payment. In the event of the death of a joint annuitant, annuity payments continue to the surviving joint annuitant at the level indicated at the time that Option is selected, which may be 100%, 75%, 66⅔%, or 50% of annuity payments.

19. Under Option 9, the Contract owner may allocate premium only to certain subaccounts of the relevant separate account, and no portion of the premium may be allocated to the Insurer's general account. The Contract owner may withdraw Account Value only during the Liquidity Period under Option 9. The Liquidity Period for the Immediate Contracts is the period from the date the Contract begins in force through the date preceding the 61st annuity payment. The Liquidity Period for the Deferred Contracts is the period from the Annuity Payout Date through the date preceding the 61st annuity payment.

20. Under the Deferred Contracts, full or partial withdrawals of Account Value are allowed at any time during the accumulation phase. Under the Deferred and Immediate Contracts, full and partial withdrawals of Account Value are allowed on or after the Annuity Payout Date under Annuity Option 5, 6, or 7 and during the Liquidity Period under Option 9. If a variable annuity under Annuity Option 8 is selected, the Owner may withdraw the present value of future annuity payments commuted at the assumed interest rate. Withdrawals under Option 9 are subject to a Withdrawal Charge discussed below.

21. The Insurer will deduct a daily charge from the assets of the Separate Account or the Separate Acount–NY for mortality and expense risks assumed by it under the Contracts. The mortality and expense risk under the Contracts during the accumulation phase of the Deferred Contracts and after the Annuity Payout Date for all options, except Option 9, is equal to an annual rate of 0.55% of the average daily net assets of each Subaccount or Subaccount–NY that funds the Contracts. The mortality and expense risk charge for Contracts that have annuitized under Option 9 is expected to be equal to an annual rate of 1.40% of the average daily net assets of each Subaccount or Subaccount–NY that funds such Contracts.

22. With respect to Option 9, the Insurer assumes the risks associated with guaranteeing that the annuity payment will never be less than the Floor Payment. The Insurer is entering into a reinsurance arrangement with an unaffiliated insurance company to support its guarantee of the Floor Payment, and the increased mortality and expense risk charge for Option 9 reflects the costs of such reinsurance. The reinsurer will charge the Insurer an asset-based charge equal to a certain percentage of assets allocated to Option 9 under the Contracts and the withdrawal charges imposed under the Contracts will also be paid to the reinsurer. The reinsurance cost will be based upon the reinsurer's estimate of the cost to purchase financial instruments to hedge against the risks assumed (''Hedge Costs''). The reinsurer also expects to profit from the reinsurance arrangement to the extent that it has accurately estimated the ongoing cost of hedging the risks assumed with respect to Option 9 under the Contracts. The reinsurer will agree to assume the risks, and not to increase the charges, during the life of any Contract issued under the arrangement. The Insurers may elect in the future to hedge the risks associated with Option

[1] The period certain may not extend beyond the life expectancy of the annuitant(s) for Contracts issued in connection with tax-qualified retirement plans.

9 themselves in lieu of entering into the reinsurance arrangement.

23. Various states and municipalities impose a tax on premiums on annuity contracts received by insurance companies. The Insurer assesses a premium tax charge to reimburse itself for premium taxes that it incurs. This charge will be deducted upon annuitization or upon full or partial withdrawal if premium taxes are incurred; however, the Insurer reserves the right to deduct premium taxes when due. Premium tax rates currently range from 0% to 3.5%, but are subject to change by a government entity.

24. The Insurer will deduct a Withdrawal Charge from full or partial withdrawals made during the Liquidity Period under Option 9. The Withdrawal Charge does not apply to any of the other annuity options under the Contracts. The Withdrawal Charge is based upon the year in which the withdrawal is made measured from the Annuity Payout Date. The Withdrawal Charge is applied to the amount of the withdrawal at a rate of 5 percent in the first year from the Annuity Payout Date, decreasing to 0 percent in the sixth year from the Annuity Payout Date. A partial withdrawal and any associated Withdrawal Charge is deducted from the Subaccounts in the same proportion as the withdrawal is allocated. A partial withdrawal under Option 9 will result in a reduction of the annuity payment, Floor Payment and payment units used to calculate annuity payments in the same proportion as the withdrawal reduces Account Value.

25. The Withdrawal Charges collected by the Insurers will be paid to the reinsurer each month pursuant to a reinsurance agreement, in whole or in part (depending upon the Subaccount from which the withdrawal is made), for assuming the risk associated with the Floor Payment under Option 9. The reinsurer purchases financial hedging instruments to hedge against the potential losses resulting from the risk assumed. The reinsurer bears the risk that the amount of the Floor Payment will exceed the amount of the annuity payment based upon the performance of the underlying Subaccount(s) and will pay any such shortfall to the Insurers. The Withdrawal Charge is designed so that if a Contract owner surrenders a Contract or withdraws from Account Value under Option 9 prior to expiration of the Liquidity Period, the reinsurer may recover the costs incurred in purchasing such financial hedging instruments.

The Withdrawal charge may be more or less than the Hedge Costs actually incurred by the reinsurer.

26. Each of Security Benefit and Security Benefit—NY guarantees that the charge for mortality and expense risk charges and the Withdrawal Charge will not increase with respect to a Contract once it has been issued. The charge may be increased with respect to new issues of the Contract

Background For Request for Amended Order

27. An Order of Approval pursuant to Section 11 of the 1940 Act was granted to Applicants on April 4, 1995 approving the terms of a payment arrangement whereby purchasers of Deferred Contracts would direct the Distributor to redeem shares of a T. Rowe Price Public Fund(s) and forward redemption proceeds therefore to an Insurer as a premium payment for a Deferred Contract, and conversely, to apply the proceeds of a withdrawal or an annuity payment from the Deferred Contracts to the purchase of shares of a T. Rowe Price Public Fund(s).

28. The Distributor proposes to make the payment arrangement available to owners and purchasers of the Immediate Contracts and any substantially similar variable contracts to be offered by Applicants. Use of this arrangement would be entirely elective; no Contract owner or purchaser would be required to use the payment arrangement to purchase a Contract or shares of a T. Rowe Price Public Fund.

29. Because the T. Rowe Price Public Funds do not impose sales load charges and the Contracts do not impose any sales load charges, Applicants represent that there is no possibility that any sales load would be deducted in connection with the application of redemption proceeds from a T. Rowe Price Public Fund to premium payments on a Contract or the application of withdrawal proceeds or annuity payments from a Contract to the purchase of shares of T. Rowe Price Public Fund. The Withdrawal Charge applicable to withdrawal under Option 9 is designed to recover the Hedge Costs of the reinsurer in connection with the Floor Payment and other guarantees associated with Option 9. Any exchanges deemed to be made in connection with the payment arrangement would be effected at net asset value, except where the Withdrawal Charge or premium tax may be deducted.

Applicants' Legal Analysis

For Exemption From Certain Provisions of the 1940 Act

1. Section 6(c) authorizes the Commission, by order upon application, to conditionally or unconditionally grant an exemption from any provision, rule or regulation of the 1940 Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants state that because the provisions described below may be inconsistent with certain aspects of the Withdrawal Charge structure, Applicants are seeking exemptions from Sections 2(a)(32), 27(i)(2)(A) and 22(c) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary pursuant to Section 6(c) to assess the Withdrawal Charge against Contracts annuitized under Option 9 in the event of a surrender or partial withdrawal from the Contracts prior to expiration of the Liquidity Period. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the 1940 Act and rules thereunder. Rule 6c–8 under the 1940 Act exempts a registered separate account and its depositor or principal underwriter from certain provisions of the Act to permit imposition of a deferred sales load on variable annuity contracts participating in such separate account. Applicants state that Rule 6c–8 was not available with respect to imposition of the Withdrawal Charge because it is a charge for an optional insurance benefit rather than a deferred sales load. For the reasons discussed below, Applicants assert that the deduction of the Withdrawal Charge is in the public interest and consistent with the protection of investors and purposes fairly intended by the 1940 Act. Applicants reserve the right to assert in any proceeding before the Commission or in any suit or action in any court that the Commission does not have authority to regulate such charges.

2. Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his or her proportionate share of the issuer's current net assets, or the cash equivalent thereof. Applicants state that a charge such as the Withdrawal Charge may not be contemplated by Section 2(a)(32), and thus may be deemed inconsistent with the foregoing provision, to the extent that the charge can be viewed as causing a Contract to be redeemed at a price based on less than the current net asset value that is next computed after surrender or after partial withdrawal from the Contract. Although Applicants do not concede that relief is necessary,

Applicants request relief from Section 2(a)(32) to permit the deduction of the Withdrawal Charge.

3. As discussed above, Applicants state that the Withdrawal Charge compensates the Insurers (and indirectly the reinsurer) for the risks assumed should a Contract owner who selects Option 9 surrender or partially withdraw from a Contract during the Liquidity Period. Applicants assert that the Floor Payment represents an optional insurance benefit for which each insurer is entitled to receive compensation. Applicants further assert that the Withdrawal charge is not assessed at redemption for administrative expenses,[2] and that no portion of the Withdrawal charge is paid to, or otherwise used to offset the expenses of the Underlying Funds, their advisers or any of their affiliates. Applicants state that the deduction of the Withdrawal Charge is a legitimate charge for an optional insurance benefit under the Contracts. In this manner, Applicants argue that the Withdrawal charge is similar to other charges made by insurers, and approved by the Commission, at redemption for optional insurance benefits, such as enhanced death benefits.[3]

4. Moreover, Applicants submit that although Section 2(a)(32) does not specifically contemplate the imposition of a charge at the time of redemption, such a charge is not necessarily inconsistent with the definition of ''redeemable security.'' Indeed, a withdrawal charge is little different, for this purpose, from the ''redemption'' charge authorized in Section 10(d)(4) of the 1940 Act. Applicants argue that Congress obviously intended that such a redemption charge, which is expressly described as a ''discount from net asset value,'' be deemed consistent with the concept of ''proportionate share'' under Section 2(a)(32).

5. Consistent with Section 2(a)(32), therefore, Applicants submit that the Contracts are ''redeemable securities.'' The Contracts provide for surrender and partial withdrawal of Account Value. The Contracts and the prospectuses for the Contracts will disclose the contingent nature of the Withdrawal Charge. Accordingly, Applicants state that there will be no restriction on, or impediment to, surrender or partial withdrawal that should cause the Contracts to be considered other than redeemable securities within the meaning of the 1940 Act and rules thereunder. Upon surrender or partial withdrawal of a Contract for which the Contract owner has annuitized under Option 9, Applicants state that Contract owners will receive their ''proportionate share'' of the Separate Account or Separate Account—NY; namely, the amount of the premium reduced by the amount of all applicable charges and increased or decreased by the amount of investment performance credited to the Contract.

6. Section 22(c) of the 1940 Act empowers the Commission to ''make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company.'' Rule 22c–1 under the 1940 Act imposes requirements with respect to both the amount payable on redemption of a redeemable security and the time as of which such amount is calculated. Specifically, Rule 22c–1, in pertinent part, prohibits a registered investment company issuing a redeemable security and its principal underwriter from selling, redeeming, or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchaser or sell such security. Although Applicants do not concede that relief from Section 22(c) and Rule 22c–1 is necessary, to the extent that the imposition of the Withdrawal Charge may be viewed as causing a Contract to be redeemed at a price that is computed at less than current net asset value, Applicants request relief from Section 22(c) and Rule 22c–1.

7. Applicants submit that the deduction of the Withdrawal Charge will comply with the requirements of such rule. Regarding the amount payable, Applicants submit (as discussed above) that the assessment of the Withdrawal Charge upon surrender or partial withdrawal of a Contract for which the Owner has annuitized under Option 9 does not alter a Contract owner's current net asset value. Furthermore, consistent with the requirements of Rule 22c–1, Applicants will determine the net cash surrender value under a Contract in accordance with Rule 22c–1 on a basis next computed after receipt of a Contract owner's request for surrender or partial withdrawal. Accordingly, Applicants submit that they will comply with both the amount payable and timing requirement of Rule 22c–1.

8. In addition, Applicants assert that the deduction of the Withdrawal Charge is consistent with the policy behind Rule 22c–1. Applicants note that the Commission's purpose in adopting Rule 22c–1 was to minimize (i) dilution of the interest of other security holders and (ii) speculative trading practices that are unfair to such holders.[4] Applicants state that the Withdrawal Charge will in no way have the dilutive effect that Rule 22c–1 is designed to prohibit, because a surrendering Contract owner will ''receive'' no more than an amount equal to the Account Value determined pursuant to the formula set out in the Contract after receipt of the Owner's withdrawal request. Furthermore, Applicants state that variable annuities, by nature, do not lend themselves to the kind of speculative short-term trading that Rule 22c–1 was aimed against and, even if they could be so used, the Withdrawal Charge would discourage, rather than encourage, any such trading.

9. Applicants assert that the deduction of the Withdrawal Charge upon surrender or partial withdrawal from Contracts for which the Owner has annuitized under Option 9 will be advantageous to Contract owners for a number of reasons. First, a deferred charge structure has long been accepted as an appropriate feature of variable annuities. The existence of products with deferred charges provides investors a valuable choice, and the Commission and its staff have supported efforts to expand investor choice without sacrificing investor protection.[5] In this context, Applicants state that a deferred charge structure also reinforces the intention that the product be held as a long-term investment.

10. Second, Applicants state that the amount of the Contract owners' premiums that will be allocated to the Separate Account or Separate Account—NY, and that will be available to earn a return for the Contract owners, will be greater than it would be if the charges were deducted from the premiums. Applicants note that the

[2] *John P. Reilly & Assoc.* (pub avail. July 12, 1979) (''a mutual fund may make a charge to cover administrative expenses associated with redemption, but if that charge should exceed 2 percent, its shares may not be considered redeemable'').

[3] *United Investors Life Ins. Co.*, Investment Company Act Release No. 22715 (June 18, 1997) (order), Investment Company Act Release No. 22680 (May 22, 1997) (notice) (prorated optional death benefit charge assessed at contract surrender); *Companion Life Ins. Co.*, Investment Company Act Release No. 21944 (May 8, 1996) (order), Investment Company Act Release No. 21887 (Apr. 10, 1996) (notice) (prorated enhanced death benefit charge assessed at contract surrender); *United of Omaha*, Investment Company Act Release No. 21205 (July 15, 1995) (order), Investment Company Act Release No. 21153 (June 20, 1995) (notice) (prorated enhanced death benefit charge assessed at contract surrender).

[4] Investment Company Act Rel. No. 5519 at 1 (Oct. 16, 1968).

[5] *See Protecting Investors: A Half Century of Investment Company Regulation* (May 1992), Introduction of Richard C. Breeden, Chairman.

Commission recognized this in authorizing deferred sales charges for variable annuity contracts.[6]

11. Finally, Applicants state that the charge structure provides equitable treatment to all Contract owners who annuitize under Option 9. Applicants state the Option 9 charge structure was established so that an Insurer may recover its costs over the life of the Contract. If Contract owners who select Option 9 could surrender or partially withdraw from the Contracts prior to the Liquidity Period expiration date without the imposition of the Withdrawal Charge, the Insurer might not be able to fully recover its costs. Applicants note that the Insurers could have elected not to impose a Withdrawal Charge and simply to have imposed a higher mortality and expense risk charge. In this event the Insurer could be charging persisting Contract owners who choose Option 9 more than otherwise would be necessary to recover the costs attributable to such Contract owners. Accordingly, Applicants submit that the Contracts will satisfy the requirements of Rule 22c–1.

12. Applicants submit that the assessment of a Withdrawal Charge should not be construed as a restriction on redemption, and therefore, maintain that such contract is a redeemable security as required by Section 27(i)(2)(A) of the 1940 Act. Applicants also maintain that the Contracts for which Contract owners choose Option 9 are redeemable securities, and that the Withdrawal Charge upon surrender or partial withdrawal represents nothing more than the deduction of an insurance charge.

For an Amended Order

13. While Applicants do not concede that Commission approval is required for the payment arrangement described in its application, to avoid any possibility that questions may be raised as to the potential applicability of Section 11, the Applicants request that the Commission issue an amended order under Section 11, to the extent necessary, approving the terms of the payment arrangement summarized above. Applicants believe such approval is appropriate, in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

14. Section 11 does not set forth any specific standards for Commission approval of exchange offers. Applicants submit that the public policy underlying Section 11 may be inferred from Section 1(b)(1) of the 1940 Act and the legislative history of the 1940 Act for guidance in determining whether to grant approval of an exchange offer pursuant to Section 11 of the 1940 Act.

15. With respect to the concern articulated in Section 1(b)(1) that offeres of exchange offers may not receive sufficient disclosure, Applicants submit that investors for the Contracts will receive adequate, accurate and explicit information, fairly presented, concerning investment in the T. Rowe Price Public Funds and in the Contracts, and that the prospectus for the Contracts will disclose the principal tax consequences of the exchange offer. With respect to the concern reflected in the legislative history that exchange offers may be made to collect additional sales loads, Applicants assert that this concern is irrelevant to their circumstances. As noted above, the payment arrangement does not offer any opportunity for the imposition of any sales loads or other profits. The Withdrawal Charge applicable to withdrawals under Option 9 is designed to recover the Hedge Costs of the reinsurer in connection with the Floor Payment and other guarantees associated with Option 9; therefore, the Applicants do not derive any benefit or profit from the withdrawal charges. Accordingly, the Withdrawal Charge does not have the potential for abuse associated with a sales load.

16. Moreover, Applicants assert that the payment arrangement is designed for the convenience of investors—not to assess sales charges, the principal abuse at which Section 11 is directed. The payment arrangement offers Contract purchasers and owners the flexibility to make payments expeditiously with funds from any source chosen by them, including proceeds from redemptions of T. Rowe Price Public Fund share or under the Contracts. Applicants state that the payment arrangement is intended solely as an administrative convenience to allow those Contract purchasers and owners who from time to time are or become T. Rowe Price Public Fund shareholders to implement their investment decisions in accordance with their preferred methods.

17. Absent the payment arrangement, Applicants assert that investors would experience an investment delay. Investors who have already determined that a Contract would provide valuable benefits should not be forced to delay investment. Applicants argue that the payment arrangement therefore serves the public interest because it offers those investors who are so interested a means of minimizing the potential loss of return on the investment of their assets due to the delay from processing the liquidation of one investment and purchase of another. As indicated above, the payment arrangement would be wholly elective on the investor's part.

18. Applicants submit that the payment arrangement complies with the general principles of Section 11(a) and Rules 11a–2 and 11a–3. Any exchanges deemed to be made in connection with the payment arrangement would be effected at net asset values, except where the Withdrawal Charge or premium tax may be deducted. In those transactions in which Withdrawal Charge or premium tax may be deducted, Applicants state that the exchange arguably may not be deemed to be made at relative net asset value. However, Applicants state that Rule 11a–2 and Rule 11a–3 permit administrative fees to be deducted upon an exchange and utilization of the payment arrangement would not cause a premium tax or Withdrawal Charge to be deducted that would not have been deducted if the Contract Owner had not elected to utilize the payment arrangement.

Class Relief

19. Applicants seek the relief requested in the application not only with respect to themselves and the Contracts described above, but also with respect to Other Separate Accounts and Future Underwriters. Applicants represent that the terms of the relief requested with respect to Other Separate Accounts and Future Underwriters are consistent with standards set forth in Section 6(c) of the 1940 Act. Applicants state that the Commission has granted comparable class relief in the past.

20. Applicants state that without the requested relief, the Distributor and the Insurer would have to request and obtain Commission approval for any Future Underwriters and Other Separate Accounts that may be established in the future to fund the Contracts. Applicants assert that these additional requests would present no issues under the 1940 Act not already addressed in this application. Applicants state that if the Distributor and Insurer were to repeatedly seek exemptive relief with respect to the same issues addressed in this application, investors would not receive additional protection or benefit, and investors and Insurers could be

[6] Applicants state that the Commission has noted the argument that ''a deferred sales load is more advantageous to investors that a front-end sales load because the amount of investors' money available for investment is not reduced as in the case of a front-end sales load.'' Investment Company Act Rel. NO. 13048 (Feb. 28, 1993) (proposing Rule 6c–8, subsequently adopted to permit contingent deferred sales loads in connection with variable annuity contracts).

disadvantaged by increased overhead costs. Applicants argue that the requested relief and order will promote competitiveness in the variable annuity market by obviating the filing of redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources and enhancing the Applicant's ability to effectively take advantage of business opportunities as such arise. Applicants submit, for all the reasons stated herein, that their request for approval is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that an order of the Commission should, therefore, be granted.

Conclusion

For the reasons stated above, Applicants request that the Commission issue an order granting the exemptions and an amended order as described above. Applicants believe that the requested exemptions and the amended order, in accordance with the standards of Section 6(c), are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Divisions of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–7685 Filed 3–29–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 3017]

National Interest Determination and Waiver of Section 620(q) of the Foreign Assistance Act of 1961, as Amended, Relating to Assistance to Honduras

Pursuant to the authority vested in me by Section 620(q) of the Foreign Assistance Act of 1961, as amended, Executive Order 12163, and the Department of State Delegation of Authority No. 145, I hereby determine that furnishing assistance to Honduras is in the national interest and that the Section's prohibition on assistance is waived. This determination shall be reported to Congress as required by law. The determination shall also be published in the **Federal Register**.

Dated: February 19, 1999.

Strobe Talbott,

Deputy Secretary of State.

[FR Doc. 99–7768 Filed 3–29–99; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–12–C–00–CHO) To Impose a Passenger Facility Charge (PFC) at Charlottesville-Albemarle Airport, Charlottesville, VA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to notice of intent to rule on application.

SUMMARY: This correction revises information from the previously published notice.

In notice document 99–6937 beginning on Page 13841 in the issue of Monday, March 22, 1999, under Notice of Intent to Rule on Application, the correct number should read ''99–12–00–CHO''. Under **SUPPLEMENTARY INFORMATION,** second paragraph the second sentence should read ''The FAA will approve or disapprove the application, in whole or in part, no later than April 30, 1999''.

DATES: Comments must be received on or before April 29, 1999.

FOR FURTHER INFORMATION CONTACT: Art Winder, Project Manager, Washington, Airports District Office, 23723 Air Freight Lane 3911 Hartzdale Dr., Suite 1, Camp Hill, PA 17011. (717) 730–2832.

Issued in Jamaica, New York on March 23, 1999.

Thomas Felix,

Manager, Planning and Programming Branch, AEA–610, Eastern Region.

[FR Doc. 99–7764 Filed 3–29–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Alternatives Analysis/Environmental Impact Statement of the Extension of Subway Service From Manhattan to LaGuardia Airport

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an alternatives analysis/environmental impact statement (AA/EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Metropolitan Transportation Authority (MTA) New York City Transit (NYC Transit) intend to prepare an Alternatives Analysis/Environmental Impact Statement (AA/EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in the corridor between LaGuardia Airport and Lower and Midtown Manhattan. MTA NYC Transit will ensure that the AA/EIS also satisfies the requirements of the New York State Environmental Quality Review Act. The work being performed will also satisfy the FTA's alternatives analysis requirements and guidelines.

This effort will be performed in cooperation with the Federal Aviation Administration (FAA), the Federal Highway Administration (FHWA), the Port Authority of New York and New Jersey, the New York City Departments of Transportation and City Planning and the New York State Department of Transportation. Other interested agencies and elected officials or bodies include the New York State Office of the Governor, the New York City Office of the Mayor, the Office of the Borough President of Queens, the New York City Planning Commission, and the New York City Council.

Its proximity to Manhattan makes LaGuardia Airport ideally suited to the Manhattan-bound business traveler. However, travelers to LaGuardia must use frequently congested highways (Grand Central Parkway, Brooklyn-Queens Expressway, Long Island Expressway) and river crossings (e.g. Midtown Tunnel, Tri-borough Bridge). Peak period travel times between Manhattan and LaGuardia are frequently an hour or more, and uncertainty regarding travel times forces travelers to set aside even more time to avoid missing flights or appointments in Manhattan. Unless corrective actions are taken, these access limitations will reduce both the airport's appeal to travelers and the attractiveness of the city as a national and international center.

Many other major cities in this country and abroad have direct rail rapid transit access to their airports. In contrast, transit service to LaGuardia is infrequent or inconvenient, with relatively high fares and lengthy and unreliable travel times in peak periods (since the available transit modes depend on the same congested highways and local streets). However, many LaGuardia passengers have origins or destinations within the Manhattan Central Business District (CBD), which has an extensive existing rail rapid transit network with extensions into Queens. This