

NUCLEAR REGULATORY COMMISSION

Solicitation of Comments on Draft NRC Inspection Manual Chapter 2600; Fuel Cycle Facility Operational Safety and Safeguards Inspection Program

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of opportunity for comment.

SUMMARY: The Division of Fuel Cycle Safety and Safeguards of the NRC has issued a draft revision to Inspection Manual Chapter (MC) 2600, "Fuel Cycle Facility Operational Safety and Safeguards Inspection Program" for stakeholder review and comment.

The purpose of the revision is to provide updated program administrative guidance for the staff, incorporate current practices and activities into the oversight program while deleting closed or out-of-date procedures, and increase emphases on risk-significant, performance-based inspection activities.

The availability of this document is the latest step in an NRC effort to improve effectiveness of the fuel cycle oversight program and facilitate open communications with stakeholders.

Opportunity to Comment: To provide NRC with stakeholder views on the proposed changes to the oversight program used to evaluate the safety and safeguards performance of NRC fuel cycle licensees.

DATES: Submit written comments by September 18, 2002. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: In accordance with 10 CFR 2.790 of NRC's "Rules of Practice," a copy of this draft MC 2600 is available electronically (accession number ML022200374) for public inspection in the NRC's Agency-Wide Document Access and Management System (ADAMS). ADAMS is accessible from the NRC Web site at <http://www.nrc.gov/reading-rm/adams.html>. A free single copy of the draft revision to MC 2600 may be obtained by writing to the Inspection Section, Special Projects and Inspection Branch (MS T8H9) Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, Maryland 20852. Comments on this document should be sent to the Chief, Rules Review and Directives Branch, ADM, U.S. NRC, Washington, DC 20555, or may be hand delivered to

11545 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m.–4:15 p.m. on Federal work days. Comments should be legible and reproducible, and include the name, affiliation (if any) and address of the submitter. All comments received by the Commission will be made available for public inspection at the Commission's public document room (PDR). Draft NRC IMC 2600 is available for inspection and copying for a fee at the NRC PDR, room 1 F21 at 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William M. Troskoski, Inspection Section, Special Projects and Inspection Branch (MS T8H9) Division of Fuel Cycle Safety and Safeguards, (301) 415–8076 or by electronic mail, WMT@NRC.gov.

Dated at Rockville, Maryland, this 12th day of August 2002.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–20973 Filed 8–16–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Performance Measurement Advisory Council

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of Federal Advisory Committee meeting.

OPEN MEETING NOTICE: The Performance Measurement Advisory Council ("PMAC") will meet on Friday, September 13, 2002 from 9:00 a.m. to 3:00 p.m. Eastern Time. Location for the meeting will be the Truman Room of the White House Conference Center, 726 Jackson Place, Washington, DC. The meeting is open to the public and written statements may be filed with the advisory committee. It is recommended that members of the public wishing to attend bring photo identification. Due to limited availability of seating, members of the public will be admitted on a first-come, first-served basis.

The purpose of the meeting is to provide independent expert advice and recommendations to the Office of Management and Budget regarding measures of program performance and the use of such measures in making management and budget decisions. The agenda and topics to be discussed

include a review of options for the presentation of program performance information in the budget, and review of the application of the Program Assessment Ratings Tool. An agenda may be obtained prior to the meeting at <http://www.whitehouse.gov/omb/budintegration/index.html>. Additional information, including information for members of the public with disabilities, may be obtained by calling Mr. Thomas M. Reilly, PMAC Designated Federal Officer, (202) 395–4926.

Dated: August 13, 2002.

Thomas M. Reilly,

PMAC Designated Federal Officer.

[FR Doc. 02–21001 Filed 8–16–02; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25697; File No. 812–12765]

Preferred Life Insurance Company of New York, et al; Notice of Application

August 12, 2002.

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

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "Act") granting exemptions from the provisions of Sections 2(a)(32) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to permit the recapture of a bonus credit made under certain deferred variable annuity contracts.

APPLICANTS: Preferred Life Insurance Company of New York ("Preferred Life" or the "Company"), Preferred Life Variable Account C ("Account"), and USAllianz Investor Services, LLC ("USAZ") (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order of the Commission exempting them with respect to the support of the variable annuity contracts issued by the Account described herein ("Contracts"), or and also variable annuity contracts issued in the future ("Future Contracts") that are similar in all material respects to the Contracts and are issued by the Account ("Future Account Contracts"), or by any other separate account of the Company and its successors in interest ("Future Accounts"), and certain National Association of Securities Dealers, Inc. ("NASD") member broker-dealers which may, in the future, act as principal underwriter of such Contracts or Future Contracts from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, pursuant to Section 6(c) of the Act, to

the extent necessary to permit the recapture of a bonus credit where the owner exercises his or her free look option.

FILING DATE: The application was filed on January 22, 2002 and amended on August 6, 2002.

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 the Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 5, 2002, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. Applicants, c/o Stewart D. Gregg, Esq., Allianz Life Insurance Company of North America, 5701 Golden Hills Drive, Minneapolis, MN 55416.

FOR FURTHER INFORMATION CONTACT: Harry Eisenstein, Senior Counsel, at (202) 942-0552, or Zandra Y. Bailes, Branch Chief, at (202) 942-0670, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549-0102 ((202) 942-8090).

Applicants' Representations

1. Preferred Life is a stock life insurance company that is principally engaged in the sale of life insurance and annuity products, and is licensed in six states, including the State of New York. Preferred Life is a wholly-owned subsidiary of Allianz Life Insurance Company of North America ("Allianz Life"), a Minnesota stock life insurance company which both issues life insurance and annuity products and acts as a holding company for various financial services companies. All of the stock of Allianz Life is indirectly owned by Allianz Versicherungs-AG Holding, a German holding company.

2. The Account is comprised of subaccounts established to receive and invest net purchase payments under variable annuity contracts issued by the

Company and the Account (the "Subaccounts"). The income, gains and losses, realized or unrealized, from the assets allocated to each Subaccount will be credited to or charged against those assets without regard to the income, gains or losses of the Company or the other Subaccounts. Applicants represent that the Account meets the definition of a "separate account" in Rule 0-1(e) under the Act.

3. The Board of Directors of Preferred Life established the Account on February 26, 1988. The Account is registered under the Act as a unit investment trust (File No. 811-05716). The assets of the Account support flexible premium variable annuity contracts issued by the Company and the Account, and interests in the Account offered through such contracts have been registered under the Securities Act of 1933 ("1933 Act") on Form N-4 (File No. 333-19699). In addition, a Form N-4 registration statement has been filed to register the interests in the Account offered through the Contracts (File No. 333-75718).

4. USAZ, an affiliate of the Company, is the principal underwriter and the distributor of the variable annuity contracts issued by the Company and the Account. USAZ is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, (the "1934 Act"), and is a member of the NASD. USAZ may enter into written sales agreements with various broker-dealers to aid in the distribution of the Contracts for the Account.

5. Each Subaccount will invest exclusively in a designated series of shares, representing an interest in a particular portfolio of one or more designated management investment companies of the series type ("Funds"). Applicants reserve the right to designate the shares of another portfolio of the Funds or of other management investment companies of the series type ("Other Funds") as the exclusive investment vehicle for each new Subaccount that may be created in the future. Subject to Commission approval under Section 26(c) of the Act, Applicants also reserve the right to substitute the shares of another portfolio of the Funds or of Other Funds for the portfolio previously designated as the exclusive investment vehicle for each Subaccount.

6. The Contracts are flexible premium variable annuity contracts issued by the Company through its separate account. The Contracts provide for accumulation of values on a variable basis, fixed basis, or both during the accumulation period, and may provide settlement or annuity

payment options on a variable basis, fixed basis, or both. The Contracts may be purchased on a non-qualified tax basis. The Contracts may also be purchased and used in connection with plans qualifying for favorable Federal income tax treatment.

7. The owner determines in the application or transmittal form for a Contract how the net premium payments will be allocated among the Subaccounts and the Fixed Account. The value of a contract ("Contract Value") will vary with the investment performance of the Subaccounts selected, and the owner bears the entire risk for amounts allocated to a Subaccount.

8. An owner may return his or her Contract for a refund during the free look period. An owner will generally have 10 days to return his or her Contract. Preferred Life will generally return the Contract value (minus any bonus credit) to the owner (the "free look right") in the event of the exercise of the free look right.

9. An owner may surrender the Contract or make a partial withdrawal from the Contract value during the Accumulation Period. If an owner surrenders a Contract or takes a partial withdrawal, the Company may deduct a withdrawal charge. An owner generally may be permitted to withdraw certain limited amounts free of withdrawal charge.

10. For each premium payment an owner makes, the Company may add a bonus credit equal to six percent of the premium payment (less prior partial withdrawals) to the owner's Contract value. The Company does not assess a specific charge for the bonus credit. The Company expects to use a portion of the mortality and expense risk charge, and/or the surrender charge to pay for the bonus credit.

11. The owner may surrender the Contract or make a partial withdrawal from the Contract value during the accumulation period. If an owner surrenders a Contract or takes partial withdrawal, the Company may deduct a withdrawal charge to compensate it for expenses relating to sales, including commissions to registered representatives and other promotional expenses. An owner generally may be permitted to withdraw certain limited amounts free of withdrawal charge. The following chart shows the withdrawal charges that apply to the Contracts:

WITHDRAWAL CHARGE

[As a percentage of premium payments]

Completed years since receipt of premium	Withdrawal charge (%)
0-2	8.5
3	8
4	7
5	6
6	5
7	4
8	3
9+	0

12. The Company deducts various fees and charges, which may include a daily mortality and expense risk fee of 1.90% of the average daily Contract Value, which is increased to 2.10% if the Enhanced Death Benefit is selected; an annual contract maintenance charge equal to \$30, which is currently waived if the Contract Value of a contract is at least \$100,000; premium taxes; and withdrawal charges, which start at 8.5% and decline to 0% for a purchase payment after nine years from the date of receipt of the purchase payment. Asset-based charges are assessed against the entire amounts held in the Account, including the bonus credit amount, during the time the bonus credit has not vested. During such period, the aggregate asset-based charges assessed against an owner's Contract Value will be higher than those that would be charged if the owner's Contract Value did not include the bonus credit.

13. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder to the extent necessary to permit Preferred Life to issue Contracts that permit recapture of bonus credits when an owner exercises the "free-look" option available under the Contract.

Legal Analysis

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 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 Act. Because the provisions described below may be inconsistent with a recapture of a bonus credit, Applicant requests exemptions for the Contracts described herein, and for Future Contracts that are substantially similar in all material respects to the Contracts described herein, from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c-1 thereunder,

pursuant to Section 6(c), to the extent necessary to recapture the bonus credit applied to a premium payment in the instance described above. Applicants seek exemptions therefrom in order to avoid any questions concerning the Contracts' compliance with the Act and rules thereunder. Applicants assert that the recapture of the bonus credit is necessary or appropriate in the public interest and consistent with the protection of investors and purposes fairly intended by the contract and provisions of the Act.

2. Section 27(i) provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, nor to the sponsoring insurance company and principal underwriter of such account, except as provided for in Section 27(i)(2)(A). Section 27(i)(2)(A) of the Act, in pertinent part, makes it unlawful for any registered separate account funding variable insurance contracts, or for the sponsoring insurance company of such account, to sell any such contract unless such contract is a redeemable security. Section 2(a)(32) of the 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 proportionate share of the issuer's current net assets, or the cash equivalent thereof.

3. To the extent that the bonus credit recapture might be seen as a discount from the net asset value, or might be viewed as resulting in the payment to an owner of less than the proportionate share of the issuer's net assets, the bonus credit recapture would trigger the need for relief absent some exemption from the Act. Rule 6c-8 provides, in relevant part, that a registered separate account and any depositor of such account, shall be exempt from Section 2(a)(32), 22(c), 27(c)(1), 27(c)(2), and 27(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit them to impose a deferred sales load on any variable annuity contract participating in such account. However, the bonus credit recapture is not a sales load, but a recapture of a bonus credit the Company previously applied to an owner's premium payments.

4. Applicants submit that the recapture of a bonus credit does not violate Section 2(a)(32) of the Act. Applicants submit that the bonus recapture provisions in the Contracts do not deprive the owner of his or her proportionate share of the issuer's current net assets. An owner's right to the bonus credit will vest after the free look period. Until that time, the Company retains the right and interest

in the dollar amount of any unvested bonus credit amount. Applicants argue that when the Company recaptures a bonus credit that is not vested, such owner would not be deprived of a proportionate share of the Account's assets (the issuer's current net assets) in violation of Section 2(a)(32). Therefore, according to Applicants, such recapture does not reduce the amount of each Account's current net assets an owner would otherwise be entitled to receive. To avoid uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Sections 2(a)(32) and 27(i)(2)(A) to the extent deemed necessary to permit them to recapture the bonus credit under the Contracts and Future Contracts.

5. Section 22(c) of the Act states that the Commission may 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 to accomplish the same ends as contemplated by Section 22(a). Rule 22c-1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing a redeemable security (and a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, any such security) from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security.

6. The Company's addition of the bonus credit might arguably be viewed as resulting in an owner purchasing a redeemable security for a price below the current net asset value. Further, by recapturing the bonus credit, the Company might arguably be redeeming a redeemable security for a price other than one based on the current net asset value of the Account. Applicants contend that these are not correct interpretations or applications of these statutory and regulatory provisions. Applicants contend that the bonus credit does not violate Section 22(c) and Rule 22c-1. In support of this contention, Applicants note that an owner's interest in his or her Contract value or in an Account would always be offered at a price next determined on the basis of net asset value and that the granting of a bonus credit does not reflect a reduction of that price. Instead, the Company will purchase with its own general account assets an interest in an Account equal to the bonus credit. Because the bonus credit will be paid out of Company assets, not Account

assets, Applicants assert that no dilution will occur as a result of the credit.

7. Applicants contend that the recapture of the bonus credit does not involve either of the problems that the Commission intended to eliminate or reduce with Rule 22c-1. The Commission's stated purpose in adopting Rule 22c-1 was to avoid or minimize (1) dilution of the interests of other security holders and (2) speculative trading practices that are unfair to such holders. Applicants claim that the proposed recapture of the bonus credit does not pose such threat of dilution and that the bonus credit recapture will not alter an owner's net asset value. The Company will determine an owner's net cash surrender value under the Contract in accordance with Rule 22c-1 on a basis next computed after receipt of an owner's request for surrender (likewise, the calculation of death benefits and annuity payment amounts will be in full compliance with the forward pricing requirement of Rule 22c-1). The amount recaptured will equal the amount of the bonus credit that the Company paid out of its general account assets.¹ Although an owner will retain any investment gain attributable to the bonus credit, the Company will determine the amount of such gain on the basis of the current net asset value of the Subaccount. Thus, Applicants argue, no dilution will occur upon the recapture of the bonus credit. In addition, Applicants assert that the credit recapture does not create the opportunity for speculative trading.

8. Applicants contend that Rule 22c-1 and Section 22(c) should have no application to the bonus credit, as neither of the harms that Rule 22c-1 was designed to address are found in the recapture of the bonus credit. However, to avoid uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c-1 to the extent deemed necessary to permit them to recapture the bonus credit under the Contracts and Future Contracts.

9. Applicants submit that the Commission should grant the exemptions requested in this Application, even if the bonus credit described herein conflicts with Sections 2(a)(32), 22(c), or 27(i)(2)(A) of the Act or Rule 22c-1 thereunder. According to Applicants, the bonus credit provision

is generally very favorable to the owners. While there may be a downside in a declining market where an owner would incur losses attributable to the credit, any earnings on the bonus credit in an appreciating market would vest immediately with an owner. Applicants assert that the bonus credit recapture provisions do not diminish the overall value of the bonus credit.

10. Applicants state that the Company's recapture of the bonus credit is designed to prevent anti-selection against the Company. The risk of anti-selection would be that an owner could make significant premium payments into the Contract solely in order to receive a quick profit from the credit. The Company generally protects itself from this kind of anti-selection, and recovers its costs in situations where an owner withdraws his or her money early in the life of a Contract, by imposing a withdrawal charge of up to 8.5%. However, where an owner withdraws his money pursuant to a "free-look" provision, the Company generally does not apply this charge. Applicants state that the Company seeks to recapture the bonus credit (which is less than the withdrawal charge under the Contract) only in the circumstance where it does not apply the withdrawal charge.

11. The Applicants also contend that it would be inherently unfair to allow an owner exercising the free-look privilege in the Contract to retain the bonus credit when returning the Contract for a refund after a period of only a few days (usually 10 or less). If the Company could not recapture the bonus credit, individuals might purchase a Contract with no intention of retaining it, and simply return it for a quick profit. By recapturing the bonus credit, the Company will prevent such individuals from doing so.

12. The Applicants submit that the bonus credit involves none of the abuses to which provisions of the Act and the rules thereunder are directed. The owner will always retain the investment experience attributable to the bonus credit, and will retain the principal amount in all cases except under the one circumstance described herein. Further, the Company should be able to recapture such bonus credit to protect itself from investors wishing to use the Contract as a vehicle for a quick profit at the Company's expense, and to enable the Company to limit potential losses associated with such bonus credit.

13. Applicants request exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the Act and Rule 22c-1 thereunder, to the extent necessary to permit the Applicant to recapture the bonus credit applied to a premium

payment under the Contracts and Future Contracts in the circumstance described above.

14. Applicants also seek class relief with respect to Future Underwriters, Future Accounts and Future Contracts. Applicants assert that additional requests for exemptive relief would present no issues under the Act not already addressed herein. Applicants state that if the Applicant were to repeatedly seek exemptive relief on behalf of Future Underwriters, Future Accounts and/or Future Contracts with respect to the same issues addressed herein, investors would not receive additional protection or benefit, and investors and the Applicants could be disadvantaged by increased costs from preparing such additional requests for relief. Applicants argue that the requested class relief is appropriate in the public interest because the relief will promote competitiveness in the variable annuity market by eliminating the need for the Company or its affiliates to file redundant exemptive applications, thereby reducing administrative expenses and maximizing efficient use of resources. Elimination of the delay and the expense of repeatedly seeking exemptive relief would, Applicants opine, enhance each Applicant's ability to effectively take advantage of business opportunities as such opportunities arise.

For the reasons set forth above, Applicants believe that the exemptions requested are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and consistent with and supported by Commission precedent.

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

Margaret H. McFarland,

Deputy Secretary.

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¹ As noted above, asset-based charges applicable to the Account will be assessed against the entire amounts held in the Account, including the bonus credit amount. Applicants state that this is because it is not administratively feasible to track the bonus credit in the Account after the Company applies the credit.