taxes are deductible in computing federal income taxes. Conversely, federal income taxes are not deductible in computing Guardian's federal income taxes. To compensate Guardian fully for the impact of Section 848, Guardian must impose an additional charge to make it whole for the $91.15 additional tax burden attributable to Section 848, as well as the tax on the additional $91.15 itself, which can be determined by dividing $91.15 by the complement of 35% federal corporate income tax rate (*i.e.*, 65%), resulting in an additional charge of $140.23 for each $10,000 of net premiums, or 1.40%.

12. Based on its prior experience, Guardian reasonably expects to fully take almost all future deductions. It is Guardian's judgment that a charge of 1.00% of Basic Scheduled Premiums and unscheduled Premium Payments would reimburse it for the increased federal income tax liabilities under Section 848. Applicants represent that the 1.00% charge will be reasonably related to Guardian's increased federal income tax burden under Section 848. This representation takes into account the benefit to Guardian of the amortization permitted by Section 848 and the use of a 10% discount rate (which is equivalent to Guardian's rate of return on surplus) in computing the future deductions resulting from such amortization.

13. Guardian believes, however, that the 1.00% charge would have to be increased if future changes in, or interpretations of, Section 848 or any successor provision result in a further increased tax burden due to receipt of premiums. The increase could be caused by a change in the corporate tax rate, or in the 7.7% figure, or in the amortization period. The Contracts will reserve the right to increase the 1.00% charge in response to future changes in, or interpretations of, Section 848 or any successor provisions that increase Guardian's tax burden.

14. Applicants assert that it is appropriate to deduct this charge, and to exclude the deduction of this charge from sales load, because it is a legitimate expense of the company and not for sales and distribution expenses. Applicants represent that this charge will be reasonably related to Guardian's increased federal tax burden.

15. The Separate Account is, and the Future Accounts will be, regulated under the 1940 Act as issuers of periodic payment plan certificates. Accordingly, the Separate Account, the Future Accounts, Guardian (as depositor), and Guardian Services (as principal underwriter) are deemed to be subject to Section 27 of the 1940 Act.

16. Section 27(c)(2) prohibits the sale of periodic payment plan certificates unless the following conditions are met. The proceeds of all payments (except amounts deducted for ''sales load'' must be held by a trustee or custodian having the qualifications established under Section 26(a)(1) for the trustees of UITs. Sales loads, as defined under Section 2(a)(35), are limited by Sections 27(a)(1) and 27(h)(1) to a maximum of 9% of total payments on periodic payment plan certificates. These proceeds also must be held under an indenture or agreement that conforms with the provisions of Section 26(a)(2) and Section 26(a)(3) of the 1940 Act.

17. Certain provisions of Rules 6e–2 and 6e–3(T) provide a range of exemptive relief. Rule 6e–2 provides exemptive relief if the separate account issues scheduled variable life insurance contracts as defined in Rule 6e–2(c)(1). Rule 6e–3(T) provides exemptive relief if the separate account issues flexible premium variable life insurance contracts, as defined in subparagraph (c)(1) of that Rule.

18. Applicants state that paragraph (b)(13)(iii) of Rule 6e–2 implicitly provides, and paragraph (b)(13)(iii) of Rule 6e–3(T) explicitly provides, exemptive relief from Section 27(c)(2) to permit an insurer to make certain deductions, other than sales load, including the insurer's tax liabilities from receipt of premium payments imposed by states or by other governmental entities. Applicants assert that the proposed deduction with respect to Section 848 of the Code arguably is covered by subparagraph (b)(13)(iii) of each Rule. Applicants note, however, that the language of paragraph (c)(4) of the Rules appears to require that deductions for federal tax obligations from receipt of premium payments be treated as ''sales load.''

19. Applicants state that paragraph (b)(1), together with paragraph (c)(4), of each Rule provides an exemption from the Section 2(a)(35) definition of ''sales load'' by substituting a new definition to be used for purposes of each respective Rule. Rule 6e–2(c)(4) defines ''sales load'' charged on any payment as the excess of the payment over certain specified charges and adjustments, including a deduction for state premium taxes. Rules 6e–3(T)(c)(4) defines ''sales load'' during a period as the excess of any payments made during that period over certain specified charges and adjustments, including a deduction for state premium taxes. Under a literal reading of paragraph (c)(4) of the Rules, a deduction for an insurer's increased federal tax burden does not fall squarely into those itemized charges or deductions, arguably causing the deduction to be treated as part of ''sales load.''

20. Applicants state that the public policy that underlies paragraph (b)(13) of each Rule, and particularly subparagraph (b)(13)(i), like that which underlies paragraphs (a)(1) and (h)(1) of Section 27, is to prevent excessive sales loads from being charged for the sale of periodic payment plan certificates. Applicants submit that this legislative purpose is not furthered by treating a federal income tax charge based on premium payments as a sales load because the deduction is not related to the payment of sales commissions or other distribution expenses. Applicants assert that the Commission has concurred with this conclusion by excluding deductions for state premium taxes from the definition of sales load in paragraph (c)(4) of each Rule.

21. Applicants submit that the source for the definition of ''sales load'' found in paragraph (c)(4) of each Rule supports this analysis. Applicants believe that, in adopting paragraph (c)(4) of each Rule, the Commission intended to tailor the general terms of Section 2(a)(35) to variable life insurance contracts to ease verification by the Commission of compliance with the sales load limits of subparagraph (b)(13)(i) of each Rule. Just as the percentage limits of Section 27(a)(1) and 27(h)(1) depend on the definition of sales load in Section 2(a)(35) for their efficacy, Applicants assert that the percentage limits in subparagraph (b)(13)(i) of each Rule depend on paragraph (c)(4) of each Rule, which does not depart, in principal, from Section 2(a)(35).

22. Applicants submit that the exclusion from the definition of ''sales load'' under Section 2(a)(35) of deductions from premiums for ''issue taxes'' suggests that it is consistent with the policies of the 1940 Act to exclude from the definition of ''sales load'' in Rules 6e–2 and 6e–3(T) deductions made to pay an insurer's costs attributable to its federal tax obligations. Additionally, the exclusion of administrative expenses or fees that are ''not properly chargeable to sales or promotional activities'' also suggests that the only deductions intended to fall within the definition of ''sales load'' are those that are properly chargeable to sales or promotional activities. Applicants state that the proposed deductions will be used to compensate Guardian for its increased federal tax burden attributable to the receipt of premiums and not for sales or promotional activities. Therefore, Applicants believe the language in