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Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: Conflict of Interest Rule; RIN-1210-AB32
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington DC 20210

Office of Exemption Determinations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue, NW
Suite 400
Washington DC 20210



Eric T. Steigerwalt
Executive Vice President
U.S. Retail
11225 North Community House Road
Charlotte, NC 28277

Tel: 980-949-4400

RE: Second Comment Letter on the 2015 Proposed Definition of the Term “Fiduciary”; Conflict of Interest Rule-Retirement Investment Advice – RIN 1210-AB32

RE: Second Comment Letter on Proposed Best Interest Contract Exemption – ZRIN 1210-ZA25

RE: Second Comment Letter on Proposed Amendment to and Proposed Partial Revocation of Prohibited Transaction Exemption (PTE) 84-24 for Certain Transactions Involving Insurance Agents and Brokers, Pension Consultants, Insurance Companies and Investment Company Principal Underwriters – ZRIN 1210- ZA25

Dear Ladies and Gentlemen

On behalf of Metropolitan Life Insurance Company and its affiliates (“MetLife”), and further to MetLife’s initial comment letter of July 20, 2015, I want to take this opportunity to reaffirm and supplement those comments and address key issues discussed by many panelists during the public hearings that took place on August 10th – 13th, 2015.

MetLife and the Department are aligned in the desire for a simplified Best Interest Contract Exemption that will meet some key goals described herein.

I. Comments on the Best Interest Contract (“BIC”) Exemption.

In recognition of the important and valuable income, longevity and death benefit guarantees that variable annuities offer individuals saving for retirement, MetLife urges the Department to modify the BIC exemption to make it something that issuers of variable annuities sold to, or as, IRAs can use. A modified BIC exemption would:

- broadly permit insurance companies to continue common and transparent fee and compensation practices,
- avoid disruption of advisory services to investors,
- preserve the availability of variable annuities in the market place to investors of all income levels,
- avoid increasing compliance costs passed on to consumers including plans, plan participants and IRA owners,
- achieve the Department’s goal of providing consumers with a fiduciary contract,
- provide more compensation and fee disclosure to consumers.

To accomplish these goals, the BIC needs to be simplified and restructured. MetLife proposes a simplified BIC exemption for variable annuities, with the following requirements:

Written Contract:

MetLife proposes the use of a unilateral contract issued by the entity with supervisory authority for the sales representative (the “Supervisory Entity”). Unilateral contracts are

common when institutions engage in contractual relationships with numerous individuals in the same manner. They are also regularly enforced in courts of law in all states¹. Since consumers do not have the opportunity to negotiate these types of contracts, any ambiguity is routinely interpreted against the drafter and limitations on liability must be clear and conspicuous in order to be enforceable. MetLife requests a simple one-page unilateral contract stating that it is effective with the decision to purchase a MetLife product and or investment allocation and advisory services from a sales representative of the Supervisory Entity or an affiliate. The contract would be required to have the following characteristics:

- A simple introduction explaining the basics of the transaction. Example: “You have agreed to purchase a variable annuity from MetLife. MetLife reminds you to carefully review all fee information provided to you by the sales representative including, but not limited to any mortality and expense charges that will be assessed annually against your benefit base (the guaranteed tracking account within your annuity). We also call your attention to the surrender charge schedule provided by the sales representative, setting forth the charges that will be assessed in the event that you decide to terminate your variable annuity contract before the date set forth in the surrender charge schedule.”
- A clear statement of “best interest” defined with reference to ERISA’s prudence standard. Example: “In making this sale, the sales representative has discussed your retirement savings goals with you and believes this transaction is in your “best interest”

¹ See 50 state study on unilateral contracts from the Pillsbury law firm at:
<http://www.pillsburylaw.com/siteFiles/Publications/0C62DFD605F0471619ADF0E2E5576E98.pdf>

as defined by the Department of Labor. This means that an objective person with knowledge of the information you disclosed about your general retirement situation and goals and with knowledge of this product and substantially similar products available to you would believe that it was reasonable for you to purchase this product. If you hereafter request regular and on-going investment advice on allocating assets and making investments from the sales representative or any other MetLife representative, then the determination that the subsequent advice is prudent and the compensation for such advice are reasonable will be made at the time you request that advice. A more complete definition of this legal standard can be found in the applicable law (ERISA section 404(a)(1)(B)).”

- A representation about accuracy of information. Example: “Your sales representative will act with care and diligence in presenting information about this product that is accurate and will not misrepresent material information about the product, its fees or characteristics.”
- A representation about reasonableness of compensation and conflicts. Example: “Your sales representative may receive cash and non-cash compensation for selling you this product. Sales representatives affiliated with MetLife may sell both MetLife products and products from other carriers. Your MetLife sales representative may receive greater compensation for selling a MetLife product rather than a product from another carrier. Please see the disclosures provided regarding cash and non-cash compensation. MetLife believes that the compensation is reasonable in relation to the total services

provided, the guarantees offered by the product, and the time it takes to explain these guarantees to customers.”

- The contract would include an arbitration clause. As noted on page 30 and 31 of MetLife’s original comment letter, statutory or regulatory limitations on arbitration clauses violate the Federal Arbitration Act, encourage class actions, result in windfalls for unrelated third parties and produce few or no benefits to injured parties. With regard to DOL authority to limit arbitration clauses MetLife refers to and incorporates the argument put forth by Eugene Scalia of the law firm Gibson Dunn & Crutcher in Section II (C) of his comment letter submitted to the Department on July 20, 2015.
- The contract will be entered into exclusively by the Supervisory Entity responsible for the sales representative that made the sale.
- The contract will be delivered at the same time that the annuity contract is delivered or when the customer commits to enter into an advisory agreement. As noted on page 29 of MetLife’s original comment letter, delivery of contracts before customers have decided to transact business is confusing and of no value to the customer. State insurance laws require delivery, whether electronic, in-person or by mail of the annuity contract. Consequently, insurance companies have a compliance structure to ensure such delivery. If the “Best Interest” contract were delivered together with the annuity contract and in the same manner as required by applicable insurance law, companies would be able to track and verify delivery of this document.

Impartial Conduct Standard:

MetLife believes that the Impartial Conduct standard makes the warranties proposed by the Department unnecessary. As proposed above, the contract with the customer would state that the advice to purchase the product meets ERISA's prudence standard. The contract would also state as a representation, instead of a warranty, that the compensation was reasonable in relation to the total services provided, complexity of the product and guarantees offered by the product. This determination takes into account the value of all services and benefits provided. MetLife has also proposed that the contract with the customer make a representation (not a separate warranty) that the sales representative will not make any material misrepresentation of the product, its fees or operation. This expresses the duty of loyalty in a way that is understandable to the customer.

Disclosure Requirements:

During the public hearings many panelists expressed concern with the Department's economic analysis, arguing that it underestimated the cost of compliance to the industry. MetLife reiterates and references the cost concerns expressed in pages 3 through 5 of our original comment letter. MetLife notes that it does not and cannot, without investing millions in IT and accounting restructuring, track revenue to MetLife or affiliates on a per sale or per customer basis. Any entity that makes such investment would have to pass those costs along to consumers through dramatically higher fees, and any attempt to estimate such revenue without making those investments would be inaccurate at best. MetLife can only estimate revenue within a range for a particular product series. MetLife has serious concerns that both PTCEs 84-24 and BIC potentially require revenue to MetLife, affiliates and the sales representative to be tracked and disclosed for each sale. Consequently, MetLife reiterates its

request that the Department set a uniform standard for disclosing “reasonable compensation” on an entity basis and third party compensation disclosed as a potential conflict of interest.

As to compensation disclosure, the Department is well aware that insurers and other financial institutions have expended a great deal of time, effort, and resources to incorporate the disclosure requirement mandated by the regulations under sections 408(b)(2) and 404(a)(5) of ERISA into their retirement practices. These provisions currently permit ranges to be used to disclose compensation.

(1) In MetLife’s view, only simplified and realistic disclosures which follow the guidance under ERISA sections 408(b)(2) and/or 404(a)(5) ought to be required. The American Council of Life Insurers’ comment letter of July 20, 2015, at pages 36-38 describes the simplified disclosure requirements MetLife believes would be workable under the BIC Exemption. MetLife endorses that comment.

(2) The record retention requirements in Section IX of the BIC Exemption would require retention of an extraordinary amount of data. In MetLife’s view, the data to be retained would not help retirement investors make better informed investment decisions. The cost of maintaining this data would be significant and eventually passed on to consumers. Accordingly, MetLife urges the Department to delete the Section IX proposed data retention requirement in its entirety and retain the Department’s standard six-year record retention requirement described in Section V of the BIC Exemption proposal.

Each of the modifications enumerated above are critical in order for MetLife and other variable annuity issuers to utilize the BIC exemption and continue to make these annuity products with an array of valuable guarantees available to consumers of all income levels.

II. Additional Comments to the Proposal.

A few key requests regarding the DOL proposal are worth reaffirming following the testimony of many of the panelists at the hearings.

(1) Applicability Date Should Be Delayed.

MetLife notes that most panelists did not believe compliance within a short period of time would be feasible. MetLife agrees with this assessment. Given the complexities of this proposed regulation and the exemptions, service providers will need at least three years to comply with the rules, rather than the proposed eight-month period.

(2) Interpretive Bulletin 96-1 Should Be Adopted in Its Entirety.

As requested by numerous expert panelists during testimony, Interpretive Bulletin 96-1 regarding investment education must be preserved. MetLife shares the belief that IB 96-1 provides the best avenue for educational assistance to participants and IRA owners. The education carve-out should adopt the entirety of the Bulletin, including the ability to identify specific investment options that meet allocation model results. As noted during testimony, if specific investment alternatives are subject to a fiduciary standard, then sales representative will avoid reviewing them with potential customers to avoid legal risk which will have the effect of reducing consumers' understanding of investment alternatives. This does not assist those

most in need. Only sophisticated investors would be able to implement an allocation model without the identification of specific investment options.

(3) Grandfathered Relief For Ongoing Relationships Prior to Effective Date.

As noted in more detail on pages 32 and 33 of our original comment letter, MetLife strongly believes that advisory arrangements entered into, and annuity contracts sold, prior to Effective Date of the Proposed Regulation should be exempted from compliance with the new rules (“grandfathering”). Altering the legal landscape in which these products operate post-sale is unfair to both the service provider and the consumer. As noted on page 32 of our original comment letter, the sheer burden of contacting close to a million existing IRA customers with a revised contract and re-stated fees when the customer did not request such documentation or modifications to the relationship, would cause enormous confusion, pose significant expense and in many cases would make the impacted products financially unviable. Furthermore, any contractual or fee modifications would likely require approval by the relevant insurance departments for each state; each of which would have the authority to deny or modify these changes.

(4) PTCE 84-24 Should Continue to be Available to Cover the Sale of Annuity

Products

Prohibited transaction exemption 84-24 should continue, as proposed by the Department, to be available to cover the sale of insurance products and annuities other than registered products sold as/to IRAs. The definition of “commission” in PTCE 84-24 should not change. Further, the “Impartial Conduct Standard” or “Best Interest” requirement should be

the ERISA Section 404(a)(1)(B) prudent person standard. PTE 84-24 provides a significant amount of protection, information and disclosures to purchasers of annuity products, and is one of the most comprehensive and effectively utilized exemptions.

MetLife is, however, concerned that the exclusion of “revenue sharing payments, administrative fees or marketing payments” from the definition of “commission” could raise questions with respect to longstanding industry practice under which variable annuity issuers receive revenue sharing payments in connection with the underlying investment options made available through a variable annuity contract. Section III(c) of PTE 84-24 as currently in effect, and Section I(a)(3) of PTE 84-24 as it is proposed to be amended, exempt the purchase, with plan assets, of an insurance or annuity contract from an agent or broker. The industry has always understood the scope of the exemptive relief to cover not only the sale of the variable annuity itself but also the receipt of revenue sharing payments by a company resulting from the allocation of purchase premium among the underlying investment options. Revenue sharing payments under variable annuities are made not to the agent, but to the company itself, and are frequently applied to offset various insurer expenses related to the servicing the contract (e.g., recordkeeping expenses). MetLife urges the Department to confirm in the preamble explanation accompanying the final exemption that the relief available under Section I(a)(3) covers the insurer’s receipt of revenue sharing payments from investment options under the contract, fees paid to the insurer under the contract in addition to the purchase of the contract itself.

(5) Welfare Benefit Plans Should Be Excluded.

As noted on pages 19 through 22 of our original comment letter, MetLife believes that the requirements of the Proposed Rule should not apply to recommendations made to a plan, participant, or beneficiary of a plan that do not relate to investments but rather are incidental to the sale, holding, or disposition of insurance to fund welfare benefits (e.g., dental, life, vision, etc.). This would address the concern, aired at the hearing, that certain welfare plans receive true investment advice, but would avoid inadvertently capturing insurance products with no cash accumulation feature sold to health and welfare plans. Additionally, since no legal or economic analysis was undertaken by the Department relating to health and welfare plans, MetLife requests that the Department defer consideration of investment products and advice sold to welfare benefit plans until such analysis is conducted and appropriate exemptions can be drafted.

If the Department decides to apply the proposed regulation and PTCEs to welfare benefit product sales with an accumulation feature or cash value, then the following modifications are necessary to avoid disruption of sales and the operation of welfare benefits products currently held by customers:

- A small accumulation carve-out for supplemental life purchased to accompany an employer's group life plan. We suggested \$15,000 (with an inflationary factor) in our original letter.
- An expansion of the large plan carve-out in recognition of the fact that almost no welfare benefit plans have assets of over \$100 Million and many "frozen" plans have less than 100 participants even when sponsored by very sophisticated employers. We

suggested that with the advent of the Affordable Care Act, (which requires large employers to provide their employees with minimum essential health benefits), any employer with over 5,000 U.S. employees is familiar with ERISA welfare benefit plans and the complexities of purchasing insurance products to fund them and should reasonably fit within the large plan carve out.

- A carve-out for funding vehicles (often sold to closed life plans) that: (a) have no cash value that can be distributed to the customer or (b) credit a fixed-rate of return on deposited assets. These products are primarily sold to guarantee welfare liabilities (particularly life plan liabilities) and it serves the participants and the plans to have these benefits better secured in a low-risk or guaranteed manner.
- Grandfathering provisions that clearly exempt welfare benefit products:
 - for sales and operation of the product prior to the applicability date of the final regulations; and,
 - for coverage like supplemental life that is renewed by the customer on a periodic basis, suspension of application of the final regulations until the coverage is renewed. (To do otherwise would require re-negotiation of the insurance contract and in many cases a new RFP by the Plan when a valid contract is in place).

(6) The U.K. Is Undertaking a Government Study with the Intent of Modifying a Similar Rule That Went Into Effect in 2012

As MetLife explained on pages 5 and 6 of our original comment letter, the United Kingdom (“U.K.”) implemented investment advice rules in 2012 following the U.K.’s Retail

Distribution Review (“RDR”). Amid continued concerns about an “advice gap” resulting from the RDR reforms², the government of the United Kingdom recently announced that it would formally examine how financial advice, considered in its broadest sense, “could work better for consumers.”³ The Financial Advice Market Review (“FAMR”) was launched in August 2015, after comment letters were submitted to the Department. The scope of the FAMR signifies the U.K. government’s concerns over unintended consequences of the RDR reforms and other recent changes. The FAMR is intended to examine the advice gap and regulatory or other barriers firms may face in giving advice with respect to all types of retail financial products including pensions, savings, mortgages, and insurance. The FAMR will also consider the proportionality of the RDR reforms and their impact on the affordability and availability of financial advice and products. The UK government intends for the FAMR to identify reforms that would empower consumers to make effective decisions about their finances, facilitate a broad-based market for the provision of financial advice to all consumers, and create a regulatory environment which gives firms clarity for competing and innovating to fill the advice gap. The FAMR’s objectives demonstrate the high level of concern over the impacts of the RDR and other new regulations.

MetLife urges the Department not to follow the same path as the U.K. by finalizing exceedingly restrictive regulations that would limit access to financial advice and solutions to those consumers who need it most.

² See statements of Martin Wheatley and John Griffiths-Jones noted on page 5 of MetLife’s comment letter dated July 21, 2015.

³ Statement on the Financial Advice Market Review (Aug. 3, 2015), available at <https://www.fca.org.uk/news/financial-advice-marker-review>.

We appreciate the Department's time and attention. Should any questions arise in connection with our comments, or if MetLife can provide any assistance to the Department in connection with the Proposed Regulation and PTCEs, please contact Phyllis Zanghi at 980-949-3362 or 11225 North Community House Road 8.962, Charlotte, NC 28277.

Sincerely,

A handwritten signature in black ink, appearing to read "E. Steigerwalt". The signature is written in a cursive style with a large, sweeping initial "E" and a horizontal line extending across the top of the signature.

Eric T. Steigerwalt
Executive Vice President