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Office of Regulations and Interpretations
Employee Benefits Security Administration
Attn: 2010 Investment Advice Proposed Rule
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

Re: Comment on Proposed 2010 Investment Advice Regulations

Dear Sirs and Madams:

On behalf of MetLife, I am writing to comment on the proposed regulations that the Department published March 2, 2010 covering the provision of investment advice to participants in individual account plans and IRA owners under the statutory exception to the prohibited transaction rules added in the Pension Protection Act of 2006. The proposed regulations were preceded by final investment advice regulations and a class exemption that the Department published on January 21, 2009 (hereinafter "2009 Final Investment Advice Regulations and Class Exemption"). However, these final regulations and the class exemption ultimately were withdrawn by the Department. MetLife previously had filed comments regarding the 2009 Final Investment Advice Regulations and Class Exemption.

Class Exemption

We appreciate the significant amount of work and effort of the Department in drafting and releasing the proposed investment advice regulations. In the preamble to the 2009 Final Investment Advice Regulations and Class Exemption, the Department recognized the importance of personalized investment advice to ERISA plan participants and IRA holders who are responsible for investing the assets in their accounts. In fact, given the proliferation of participant-directed individual account plans and IRAs, increasingly greater numbers of ERISA plan participants and IRA holders seek to have greater access to professional personalized investment advice. It is all the more important for plan participants and IRA holders to have access to personalized investment advice in the current economic environment. We, therefore, urge the Department to promulgate rules that will promote the availability of personalized investment advice to ERISA plans and participants and IRA holders, enabling them to reach their retirement goals.

Unfortunately, the proposed investment advice regulations published in March restrict, rather than further, the goal of making personalized investment advice available to ERISA plan participants and IRA holders. More specifically, the proposed eligible investment advice arrangement which provides investment advice solely through a computer model is not the type of personalized investment advice sought by most plan participants and IRA holders. Further, by requiring the fiduciary advisor entity to be fee neutral, the proposed fee neutrality exception will make many firms and their registered representatives, agents and employees ineligible to provide investment advice. It is standard industry practice for mutual funds and fund families to pay differing and variable fees (e.g. 12b-1 fees and revenue sharing) to the broker dealers that sell their funds. Based upon the proposed regulations, any broker dealer that receives such fees will not meet the revenue neutrality test.

Even if a firm were to receive the same amount of compensation from all of the mutual funds it offers, there generally is a money market option included among the available investment options. Money markets generally do not pay 12b-1 fees or revenue sharing. Therefore, by definition, under the proposed rules a firm that offers a money market cannot be "revenue neutral," even if the representative receives the same compensation regardless of which fund ultimately is selected. As a consequence, many of these firms and their registered representatives, agents and employees, will be limited to providing investment "education," which, although helpful, will not meet a plan's, participant's, or IRA holder's need for specific advice regarding which investments to choose. MetLife firmly believes that people saving for retirement need all the help they can get when making these choices. To the extent that the proposed rules limit the resources available to the investing public, they will make it even more difficult for the average investor to get the assistance that he or she wants and needs.

The 2009 Final Investment Advice Regulations and Class Exemption recognized the need for broader relief to encourage the development of new personalized advisory products and programs. The Class Exemption struck an appropriate balance between allowing financial institutions to make investment advice available to plan participants and protecting plan participants from potential conflicts of interest in providing that advice. By limiting the fee neutrality requirement to individual representatives, the 2009 Class Exemption recognized the fact that requiring the firm to be fee neutral as well would effectively eliminate many sources of investment advice. Nevertheless, the rule protected investors by requiring that the individual responsible for providing that advice have no economic incentive to favor one investment option over another. Additionally, by allowing for "off model" advice, the 2009 Class Exemption recognized that the investing public often wants and needs more than computer generated recommendations when deciding how to save for retirement. However, stringent requirements were established to ensure that "off model" advice was not used to steer investors to funds that provided the representative with an economic benefit. Because the 2009 Final Regulations and Class Exemption would further the policy under the Pension Protection Act of promoting the availability of investment advice, while maintaining appropriate safeguards against conflicts of interest, MetLife urges the Department to re-issue these rules.

Consideration of Historical Performance

The proposed regulations add a new condition to the computer model exception by requiring computer models to be designed and operated to avoid investment recommendations that "inappropriately distinguish among investment options within a single asset class that cannot confidently be expected to persist in the future." The preamble to the proposed regulations explains that while differences in fees and investment style are likely to persist in the future, differences in historical performance are less likely to persist and therefore are less likely to constitute appropriate criteria for asset allocation. We have concerns that this provision would require substantial changes to the way computer model asset allocation recommendations are made. More specifically, if historical performance cannot be considered as a factor in developing a model, then the basis for investment allocation recommendations will effectively be limited to the fees and expenses associated with the investment options offered. Our concern is that most, if not all, asset computer models will recommend the "least expensive" alternative, even in situations where the least expensive option consistently has underperformed other available options. Thus, by eliminating performance as a factor to be considered, the proposed rules will undermine the very objective that it is attempting to achieve—providing sound investment advice to individuals who are saving for retirement. We therefore request that this proposed computer model provision be withdrawn.

Generally Accepted Investment Theories

We also have concerns with questions raised in the preamble of the proposed regulations regarding generally accepted investment theories and whether the regulations should specify what investment practices are acceptable or unacceptable. Although ERISA requires that the investment advice be prudent, it does not define "prudence." Our position is that the ERISA regulations should not be used to codify the investment principles and practices favored by the Department at a particular point in time and impose these standards on ERISA fiduciaries indefinitely. Since generally accepted investment theories do evolve and change over time, any attempt to limit and define acceptable investment practices would be detrimental to a fiduciary's ability to provide investment advice, and would eliminate the ability to recommend new or different ways to prudently invest.

In-Plan Accumulation Annuities

When the 2009 Final Investment Advice Regulations and Class Exemption were in proposed form, MetLife submitted comments to the Department generally supporting the exemption and regulations. In these comments, MetLife addressed the utilization of an asset allocation computer model as described in ERISA Section 408(g)(3), and the statutory and proposed regulatory requirement that the computer model arrangement must take into account all of the designated investment alternatives available under the plan. More specifically, MetLife noted that some participant-directed retirement plans offer annuity options that include both accumulation and distribution options and recommended that the Department provide for optional inclusion of the in-plan annuity investment option in the computer asset allocation model. This comment was premised on the perception, at the time, that some computer asset allocation models may not have had the ability to take into account annuity products. This comment also reflected the fact that, at the time, and through 2008, plan annuity options were not as prevalent, as well as the expectation that such models that do not take annuity options into account may become generally adopted as a result of clarified guidance in the final regulations.

However, given recent dramatic changes in the retirement plan landscape, many created by the severe market downturn, and the continued freezing and termination of pension plans, annuities are increasingly being considered by many practitioners and plan sponsors as a key and essential component of individual account plans in a variety of ways. More specifically, plan participants are expressing concerns about drawing down the accumulated assets in their individual account plans and exhausting their retirement savings, especially in light of a severe and possibly long-term downturn. In response to these concerns, annuity products are no longer being used solely as plan stable value options, but increasingly are being offered as plan investment options which guarantee monthly income payments during retirement. For example, BlackRock, one of the world's largest asset managers, has been involved in conversations with over 250 plan sponsors about SponsorMatch, the program developed with MetLife and announced in March 2008, under which a fixed deferred annuity is incorporated into the allocation of a target date fund.

Given the increased importance of annuity products as a vehicle for achieving retirement security, MetLife believes that, when annuities are offered as a plan investment option, they should be taken into account to the same extent as any other major asset class for purposes of developing the asset allocation computer model described in ERISA Section 408(g)(3). Asset allocation computer models have become far more sophisticated and should, therefore, be able to take into account major asset classes such as annuities as a plan investment option, or when, for example, the annuities are included as an integral element of a target date fund, or any other plan investment option. For the same reasons, annuities offered as plan investment options should be required to be taken into account in developing Sun America computer asset allocation models. This issue is discussed in more detail in our response to the Department's Request for Information Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans.

On behalf of MetLife, we appreciate the opportunity to comment on the proposed investment advice regulations and are available to discuss these comments with the Department.

Sincerely,

Andrew Varady

Andrew Varady
Associate General Counsel
MetLife