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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Subject: RIN 1210-AB79 – Definition of the Term Fiduciary; Conflict of Interest Rule-Retirement Investment Advice; Prohibited Transaction Exemption 84-24

Dear Sirs and Madams:

On behalf of Metropolitan Life Insurance Company and its affiliates (“MetLife”), we are writing to comment on the Department of Labor’s (“Department’s”) Proposed Rule RIN 1210-AB79 which requests comments on the final rule entitled Definition of the Term “Fiduciary;” Conflict of Interest Rule – Retirement Investment Advice, (the “Fiduciary Rule”), and associated prohibited transaction exemptions (“PTEs”), published in the Federal Register on April 8, 2016. The President by Memorandum to the Secretary of Labor, dated February 3, 2017, directed the Department to examine and re-evaluate the Fiduciary Rule, and to prepare an updated economic and legal analysis of the rule. In this regard, the Department requested comments that would assist it in re-evaluating the Fiduciary Rule.

For over 149 years, MetLife has helped to insure the financial well-being of the people who depend on us. Our success is based on our long history of social responsibility, strong leadership, sound investments, and quality products and services. MetLife is dedicated to meeting the needs of institutional customers and individuals with first-rate financial products and services through various life stages and economic cycles. MetLife’s trusted brand, capital

strength, and existing relationships with millions of institutional customers and individuals around the globe uniquely qualifies MetLife to comment on the Fiduciary Rule.

MetLife believes that the Department should reach an affirmative determination with respect to each of the three considerations identified by the Presidential memorandum. The anticipated applicability of the Fiduciary Rule has –

- Already harmed and is likely to continue to harm U.S. investors by reducing their access to lifetime income retirement savings products and related financial advice;
- Resulted in dislocations and disruptions not only within the retirement industry, but within the annuity and insurance industry in particular that adversely affect U.S. investors and retirees; and
- Created an environment that will lead to increased litigation and litigation-related costs that if left unchanged will ultimately cause U.S. investors and retirees to pay more to gain access to retirement services.

The Fiduciary Rule has already harmed investors by reducing access to retirement savings offerings and advice. As one specific example, last year, MetLife's sale of variable annuities declined, due in part, we believe, to consumer confusion about the benefits of guaranteed benefit products caused by the Fiduciary Rule. If the Fiduciary Rule moves forward as is, more investors will lose access to investment advice and the products that can help them achieve a secure retirement.

The Fiduciary Rule will lead to an increase in litigation as well as an increase in the prices that investors and retirees must pay to gain access to retirement services. The BIC requires warranties and uses private litigation as its primary enforcement mechanism. Any rule that relies on litigation as its primary enforcement mechanism will lead to an increase in litigation. This will increase the cost of doing business, which will result in an increase in the cost of retirement services.

This comment letter addresses three key questions posed by the Department. Below, we have identified each of those respective questions followed in each case by MetLife's responsive information concerning the Department's re-evaluation of the Fiduciary Rule.

Question Number One: Have market developments and preparation efforts since the final rule and PTE's were published in April 2016 illuminated particular provisions that could be amended to reduce compliance burdens and minimize undue disruptions while still accomplishing the regulatory objective of establishing an enforceable best interest conduct standard for retirement investment advice and empowering Americans to make their own financial decisions, save for retirement, and build individual wealth?

Yes, MetLife has identified a number of particular Fiduciary Rule provisions that could and should be changed or clarified with the objective of reducing compliance burdens and minimizing undue disruptions. We address each of those below.

- 1) **Exception for Transactions with Independent Fiduciaries with Financial Expertise (“IFE”)**– MetLife supports the concept of an IFE exception to the Fiduciary Rule because it facilitates the marketing and sale of investment products and management services to sophisticated institutional investors who are independent of the seller, and exempts arm’s length marketing activity, and sales pitches, from being deemed fiduciary investment advice. If properly implemented, this exception should result in minimal if any disruption to the arm’s length transaction that characterizes institutional transactions between professionals, while fostering awareness of buyer fiduciary duty. This helps both parties better understand the benefits and features of the product being sold. What is troublesome is the IFE requirement that the seller of products or management services must know or reasonably believe that (1) the counterparty serves as the fiduciary responsible for evaluating the product for the plan and (2) the independent fiduciary of the plan is capable of evaluating investment risks independently, both in general, and with regard to the particular transactions and investment strategies. Uncertainty surrounding necessary documentation of “reasonable belief” of both of these criteria has led the industry to attempt to reduce this exception to written representations traded between parties. Our Fiduciary Rule preparation efforts demonstrated that bilateral written representations made the exception cumbersome and difficult to use. It is our view that “reasonable belief” can be documented in other manners.

At a minimum, the Department should provide language clarifying that under certain circumstances no representations are required, and that for compliance and audit purposes, a financial institution can assume that it is interacting with an IFE. For example, if a party has knowledge that the other party to a transaction is a bank, broker dealer, insurance company, or manages or controls at least \$50 million, and also has reason to believe that they are utilizing various exemptions under the Fiduciary Rule, then it is the fiduciary responsibility of the sophisticated independent fiduciary representing the plan to independently evaluate the risks of the specific investment transaction as being in the “best interest” of the customer. In such cases, there should be no need for the seller to verify this status through written representations or otherwise. We therefore request the Department clarify that “reasonable belief” can be documented, for audit purposes, through any number of methods including documenting a reasonable belief attained unilaterally by the seller of a product based on publicly available information regarding its counterparty. Alternatively, MetLife believes that the Fiduciary Rule should be simplified to provide that a financial institution is entitled to a presumption that any institutional counter party to a recommended transaction is an IFE unless and except to the extent that the counterparty opts out of IFE status.

Similarly, we support the \$50 million asset level as a workable and reasonable proxy for establishing presumption of sufficient financial sophistication and the ability of an independent institutional plan buyer to engage in the transaction it has initiated, without need for a seller to be required to obtain, or the buyer being required to provide, its written representation.

Alternatively, MetLife believes that the Fiduciary Rule should be changed to provide a broad seller’s exception where a financial institution would be entitled to presume that any counterparty to a recommended transaction is an IFE unless and except to the extent that the counterparty opts out of IFE status.

- 2) **Grandfather Provisions of the Fiduciary Rule** – The Fiduciary Rule does not have a coherent or internally consistent grandfather provision. Instead, the Best Interest Contract Exemption exempts “pre-existing transactions” from the Fiduciary Rule. Unfortunately, this pre-existing transaction provision has numerous conditions and requirements including restrictions on advice to hold, exchange, or add money to a pre-existing contract that is provided after the applicability date. The result is that it is difficult if not impossible to determine whether an existing contract or arrangement is exempt or subject to the Fiduciary Rule. This creates uncertainty about whether contracts are out of compliance with the Fiduciary Rule. In response to this concern, the Department allowed the unilateral issuance of the BIC contract and BIC exemption for all pre-existing contracts prior to January 1, 2018. Our Fiduciary Rule preparation efforts have demonstrated that the emerging marketplace norm is that very few carriers are willing to utilize the unilateral BIC contract. Rather, to avoid unnecessary compliance burdens, and disruptions caused by uncertainties over noncompliance with the Fiduciary Rule, carriers have developed methods to avoid advising on receiving fees or otherwise engaging in any activity that could trigger a loss of grandfathering. We note that it does not necessarily serve the “best interests” of retail consumers, in particular, to receive advice that ignores any and all products they may have purchased or financial planning they may have done prior to the applicability date of the Fiduciary Rule. To facilitate appropriately inclusive and complete future advice to consumers, we recommend a simplified and straightforward grandfather provision which provides that any investment management or advisory contract or investment product sale entered into prior to the applicability date of the Fiduciary Rule is grandfathered and not subject to the Fiduciary Rule, unless the contract is rescinded, and replaced with a new contract effective after the applicability date. This approach would avoid confusion and uncertainty among plans and participants as to which existing contracts and arrangements are subject to the Fiduciary Rule. It also avoids encouraging financial firms and advisors to ignore pre-existing contracts when giving advice because leveraging such contracts may be in the best interest of the customer.
- 3) **The Marketing and Sale of Products to ERISA Welfare Benefit Plans** – The Department clarified that the Fiduciary Rule does not apply to product recommendations made with respect to welfare benefit plans (e.g., health, disability, or term life insurance policies) if these products do not have an investment component. In MetLife’s view, all product sales to welfare benefit plans should be excluded from the Fiduciary Rule. While the Fiduciary Rule is clearly directed at and applicable to ERISA retirement plans, plan participants, and IRAs, the Department’s economic impact analysis did not analyze or even consider sales to welfare benefit plans. It should be noted that the fee arrangements, marketing practices, sales and distribution, and types of products and funding mechanisms sold to welfare benefit plans are fundamentally different from those used in pension plans and therefore warrant different treatment and requirements.

While pension plans and IRA’s have been the subject of considerable scrutiny and concerns, few such concerns have been voiced with respect to investment advice and product sales to welfare benefit plans. Any perceived value of having the Fiduciary Rule apply to welfare benefit plans will be outweighed by the danger of the unintended consequences, disruptions, and Fiduciary Rule compliance burdens and costs borne by welfare benefit plans and participants.

There are many different types and variations of welfare benefit plans offered by employers, and a broad range and variety of products and funding mechanisms made available to these plans. Many of the products sold to welfare benefit plans reflect the unique and complex needs of the welfare benefit plan market. The availability of accumulation-type funds or the presence of insurance reserves within those products generally reflects marketplace demand for arrangements that will dampen premium volatility; it is simply inappropriate to regard such features as “investments” that could give rise to fiduciary advice. Without clarification from the Department as to the status of these products under the Fiduciary Rule, there will be confusion and uncertainty in the marketplace. As we have seen above with regard to grandfathered contracts, uncertainty often leads to disruptions in products or services offered to customers and unnecessary compliance burdens, the cost of which are passed on to consumers. There are many examples of welfare products that have already generated such confusion. While in MetLife’s view all investment product sales to welfare benefit plans should be excluded from the Fiduciary Rule, here are examples of welfare benefit plan products sold by MetLife to ERISA plans that we believe should not be categorized as “investment products” and therefore not subject to the Fiduciary Rule. We request that the Department in either guidance or a simplified rule confirm that the Fiduciary Rule is not applicable, or otherwise clarify its position with regard to these specific products:

- a. **Employer-Paid Group Term Life Insurance with an Associated Funding Arrangement** – MetLife issues group term life insurance policies in connection with employer-sponsored life insurance programs. These life insurance programs are “welfare plans” as defined by section 3(1) of ERISA.

Under such arrangements, the sponsoring employer typically bears 100% of the cost of maintaining the plan, including the expense of life insurance premiums owed to MetLife. Moreover, the sponsoring employer, as opposed to the plan itself or a plan trust is named as the policyholder of the MetLife group life insurance contract. For purposes of this fact pattern and the questions that follow, please assume that the arrangements are always “employer pay-all” plans and that the employer is always named as the policyholder of the MetLife group contract.

These plans frequently continue life insurance coverage for retirees. To pre-fund the future costs of these retiree benefits, MetLife offers employers a choice of associated funding arrangements (“Funding Arrangements”). At its discretion, and subject to limits prescribed by the Internal Revenue Service, an employer may remit amounts to MetLife that exceed the cost of current year term life insurance premium obligations. Any such excess amounts are allocated to the Funding Arrangement selected by the employer. Under a MetLife general account Funding Arrangement, the amounts contributed, together with credited interest, serve as a source of future retiree term life insurance premiums and is an obligation of the MetLife general account. Under a MetLife separate account arrangement, an employer may direct the allocation of contributed amounts among various pooled investment strategies made available through one or more “insulated” separate accounts. No recommendations are made to sponsors for any asset manager or strategy.

The Funding Arrangements are associated with a MetLife group term life insurance policy and only available in connection with a companion policy. As with the group life insurance contract itself, the Funding Arrangement documentation is issued to and is held by the sponsoring employer and generally not the plan or a plan trust. In all cases the Funding Arrangements are paid for entirely from the employer's own resources. Recommendations involving Funding Arrangements should not be subject to the Fiduciary Rule.

Over the years the Department has issued several pieces of guidance addressing the status of monetary amounts generated by or in connection with insurance arrangements issued to welfare benefit plans. Where those amounts were generated under arrangements that were wholly or partially attributable to employer contributions, the Department has consistently reached the conclusion that those amounts should properly be treated as employer property to the extent that the cost of insurance premium obligations had been borne by the employer and the relevant group policy was issued to and held by the employer.

As noted, premium obligations under the group life insurance policies and amounts contributed to their related Funding Arrangements are borne entirely by sponsoring employers. Similarly, the policies and associated Funding Arrangements are issued to and held by the employer. Thus, a recommendation of a Funding Arrangement does not involve a recommendation with respect to "moneys or other property of a plan or IRA" for purposes of the Fiduciary Rule. A recommendation of a Funding Arrangement to an employer in connection with a term life insurance coverage arrangement should therefore not give rise to the delivery of investment advice under the Fiduciary Rule.

- b. Premium Stabilization Reserves** – MetLife also offers group term life insurance arrangements under which the cost of premiums is entirely or primarily funded by employee contributions. As with the employer pay-all arrangements described under the fact pattern above, the benefit rights and features extended to participants under welfare benefit plans that acquire these insurance policies do not include a cash accumulation value of any type. In other words, the benefit rights of participants and beneficiaries are confined to term life insurance coverage.

Insurance arrangements of this type are frequently "experience rated." Under an experience rated policy, the cost of the premium obligations during any given policy year reflects the claims experience of prior years. All other things being equal, relatively low levels of claims over a period of one or more years will result in lower premium costs for subsequent years and *vice versa*. As a means of stabilizing employee contribution costs from one year to the next, MetLife's group term life insurance arrangements include a Premium Stabilization Reserve ("PSR") feature. In years where premium costs are relatively low, reflecting the positive claims experience of prior years, amounts derived from employee contributions, less the current year's costs of insurance, are allocated to the PSR. Conversely, in years where premium costs are relatively high, reflecting the adverse claims experience of prior years, the current year costs of insurance that exceed the amounts available from current year employee contributions are borne by the PSR.

Amounts allocated to the PSR are credited with interest. However, the investment attributes of the PSR, to the extent they exist at all, are *de Minimis* relative to the PSR's core function of smoothing out and stabilizing the cost of life insurance benefit coverage from one year to the next. In the absence of a PSR, the levels of contributions required from participating employees could be volatile from one year to the next. By smoothing and stabilizing the levels of required employee contributions, the PSR helps make the program affordable to participants seeking life insurance coverage. Since any amounts credited to the PSR are ultimately applied to satisfy the costs of insurance, the credited interest feature of the PSR is more akin to a mechanism for accruing discounting credits against future premium expenses rather than as a return on an investment of capital. In light of PSR's cost stabilization function, amounts credited to the PSR balance are more akin to accruals of discounting credits against future costs of insurance than they are to interest earned on invested capital. Therefore, the PSR is clearly not an "investment component" or "investment product" for purposes of the of the Fiduciary Rule since its function is to smooth and stabilize the levels of contributions required of participating employees from one year to the next. A PSR should not be subject to the Fiduciary Rule.

- c. **Welfare Termination Product** – MetLife offers Reserve Buy-Out Contracts. Reserve Buy-Outs are contracts where MetLife agrees to accept a single payment in exchange for assuming a plan's liability under a self-insured insurance plan where some participants are in pay out status. A full or partial risk transfer to the insurer is accomplished through the issuance of a contract to the plan which is typically purchased with a single premium payment.

In order for something to be an "investment product", the plan or participants and beneficiaries of a plan must (i) have a financial interest in the returns generated by an asset, and (ii) have at least a contingent interest in having those financial returns returned to the plan for general use. In the case of Reserve Buy-Outs, neither the plan nor the participants have any interest in the financial returns that MetLife may or may not generate after the premium is paid, and there is no right contingent or otherwise that MetLife will return any premiums to the plan, its participants, or beneficiaries. The product is devoid of investment features and is therefore not an "investment product" for purposes of the Fiduciary Rule. Welfare termination products should not be subject to the Fiduciary Rule.

- d. **Sales of Individual Life Insurance** — The Fiduciary Rule implies that product sales to an individual would be covered if funds from an ERISA plan were used to purchase these products. MetLife's retail segment sells individual term and permanent life insurance contracts. The majority of these contracts are issued to individual owners who apply for and pay the premiums on the contract. Once customers have demonstrated that they have the financial wherewithal to purchase the insurance, the issuer of the policy is not aware if an employer provided a "bonus" that the customer is using to pay premiums on individual insurance. Likewise, the issuer is not aware whether the customer is using money that was part of an annuity distribution from a qualified plan to pay the premiums on the life policy. Only individual life policies sold directly to a qualified plan or trust as

an investment option for an individual participant are clearly subject to ERISA from the issuer's perspective.

During any individual's working life almost all the money allocated to every expenditure from groceries to savings accounts originates from the wages paid by the individual's employer. This does not make savings accounts subject to ERISA regulation. Likewise, once in retirement, almost any purchase a retiree makes would be from money that originated from retirement savings they are using to meet their living needs. This does not make those purchases or savings accounts subject to ERISA. In a similar vein, while companies can and do determine whether permanent life insurance products are suitable for a customer, an attempt to trace the origin of every dollar used to pay premiums or make discretionary deposits into these products would be viewed as intrusive by customers and would not yield clear information. Consequently, an assumption by carriers that all individual permanent life insurance policies are subject to ERISA would lead to unnecessary compliance costs that would be passed on to consumers as well as confusion among customers, the vast majority of whom have no ERISA plan involvement in their purchase.

To promote clarity for consumers and the industry, we therefore request that the Department clarify that individual permanent life insurance policies that are issued to individuals outside of ERISA plans or IRAs are not covered by the Fiduciary Rule.

- 4) **Defined Benefit Retirement Close-Out Products** – MetLife offers Close-Out Annuity Contracts to defined benefit retirement plans. Close-Out Annuity Contracts are contracts where MetLife assumes all of a plan's pension payment obligations either in connection with the plan's termination, or through a partial risk transfer "de-risking" transaction. A full or partial risk transfer to the insurer is accomplished through the issuance to the plan of a group annuity contract that is typically purchased with a single premium payment. There is lack of clarification from the Department regarding a Close-out Annuity and whether recommending this product to an ERISA plan could be deemed fiduciary investment advice. Without clarification from the Department as to the status of these products there will be confusion and uncertainty in the marketplace as to whether recommending the sale of the Close-out Annuity to ERISA plans would be subject to the Fiduciary Rule, and this could cause disruptions and unnecessary compliance burdens for products that the Department in the future determines not to be covered by the Fiduciary Rule. Defined benefit retirement close-out products, which represent the only alternative a plan sponsor has to effect a non-distress plan reduction under ERISA aside from a lump-sum settlement offered to participants, should not be subject to the Fiduciary Rule.

Our position is a Close-Out Annuity Contracts is not an "investment product". In order for something to be an "investment product," the plan or participants and beneficiaries of a plan must (i) have a financial interest in the returns generated by an asset, and (ii) have at least a contingent interest in having those financial returns returned to the plan for general use. In the case of Close-Out Annuity Contracts, neither the plan nor the participants have any interest in the financial returns that MetLife may or may not generate after the premium has been paid. The amounts of the payment streams owed to the former plan participants to whom MetLife has guaranteed the payment of benefits are required to identically match the

participants' pension benefits as specified under the plan document, and are not subject to investment experience. In this sense, Close-Out Annuity Contracts insure against risk in the same manner that term life insurance products do; the only distinction is that term life insurance insures against the financial risk associated with premature death and Close-Out Annuity Contracts insure against the financial risk associated with longevity. The product is devoid of investment features and is therefore not an "investment product" for purposes of the Fiduciary Rule.

- 5) **The Expansion and Consistent Application of the "Platforms or Similar Mechanisms" Exception to the Fiduciary Rule.** – The Department issued on January 13, 2017, a second set of Frequently Asked Questions ("FAQs") regarding the Fiduciary Rule which confirmed that a group annuity contract sold to a DC plan constitutes a "platform or similar mechanism". Our position is that no investment product and funding mechanism sales to welfare benefit plans should be covered under the Fiduciary Rule. However, if the Department makes welfare benefit plan investment products subject to the Fiduciary Rule, a platform provider exception that covers these products should be adopted.

For example, MetLife offers Group Variable Universal Life ("GVUL") policies to employers that wish to make life insurance benefits available to their employees. A GVUL policy can be issued directly to the employer or to a group insurance trust. One feature of a GVUL policy is that it permits plan participants, who receive certificates under the policy, to invest amounts of any premiums paid-in that exceed the cost of insurance for the current policy period in a standard set of investment options, and a fixed account as an obligation of MetLife's General Account. The applicable investment options are made available through MetLife insulated separate accounts or sub-accounts; each such separate account or sub-account invests in shares of an investment company that is available exclusively through insurance products. The "cash value" attributable to such invested amounts may be used to pre-fund the cost of insurance, which increases as employees age, and is also available to be loaned to participants or to be withdrawn. No recommendations are made to employees for any asset manager or strategy. GVUL policies allow employer plan sponsors to make available investment alternatives to plan participants for purposes of investing accumulated cash values. Accordingly, GVUL insurance policies satisfy the definition of a "platform or similar mechanism" set out in the Fiduciary Rule.

MetLife also offers Group Universal Life ("GUL") policies that can also be issued directly to an employer or to a group insurance trust for purposes of making life insurance coverage available, and is also 100% employee paid. Amounts contributed to the GUL policy that exceed the cost of insurance for the current policy period are allocated to a fixed interest account. Under the fixed interest feature, principal preservation is guaranteed, and is an obligation of MetLife's General Account. In addition, invested amounts are credited with stable rates of interest, and comply with minimum interest rates as required by state insurance law. GUL policies allow employer plan sponsors to make available a fixed income investment option to plan participants for purposes of investing their policy's accumulated cash value. To avoid dislocation, these products must not be covered by the Fiduciary Rule.

- 6) **PTE 84-24 Amendments and Applicability to Annuity Products** – PTE 84-24 was substantially revised. It now has an “Impartial Conduct Standard” and it permits the payment of “Insurance Commissions” but this term as defined does not include “revenue sharing payments, administrative fees, or marketing payments”. PTE 84-24 no longer provides exemptive relief for transactions involving variable annuities or fixed-indexed annuities, but covers fixed-rate annuity contracts sold to plans or IRAs. Variable annuities and fixed-index annuities must rely on other exceptions or exemptions including the Best Interest Contract Exemption (“BIC”). Thus, annuity product sales to ERISA plans and IRA’s would no longer be covered by a single exemption, PTE 84-24, but could also be subject to BIC. This will create market disruption, dislocations, confusion and unnecessary compliance burdens in the annuity marketplace, with the result that employer sponsors of the same plan funded with multiple annuity products would be subject to different exemptions with different requirements and conditions. This will have adverse effects on access to and use of annuities to provide guaranteed lifetime income benefits to plan participants. We therefore request that a single exemption PTE 84-24 be available for all annuity product sales.

Further, we suggest that PTE 84-24 need not be revised. PTE 84-24 has been in effect since 1977 and has been effectively utilized since then by sellers and purchasers of all types of annuity products. PTE 84-24 provides for significant protection of, and delivery of information and disclosures to, purchasers of annuity products, and is one of the most comprehensive and effectively utilized PTE’s. MetLife is not aware of any annuity customer complaints or concerns regarding the utilization and application of PTE 84-24, nor is MetLife aware of any inquiries or investigations into abuses of PTE 84-24. Accordingly, the Department’s proposed modifications to PTE 84-24 are unwarranted and will create significant confusion and uncertainty in the annuity sales market for plan sponsors. The Department is well aware of the importance of annuity products for the attainment of retirement security by plan participants and IRA holders, and the importance of annuities for converting deferred savings into a lifetime income option.

Therefore, a Fiduciary Rule and PTE that could hinder annuity purchases and cause confusion by requiring annuity products to use different exemptions, with different requirements and conditions is unwarranted. To avoid dislocation, the Department should use one exemption to cover the distribution of all annuities, and that exemption should be PTE 84-24.

Question Number Two: What changes have been made to investor education both in terms of access and content in response to the rule and PTE’s, and to what extent have any changes helped or harmed investors?

The breadth and scope of the Fiduciary Rule have jeopardized the availability to retirement investors of educational and informational materials. This loss of availability will harm investors. Below we explain the need to preserve the availability of life product illustrations and educational content.

- 1) **Life Product Illustrations** – For some types of permanent life insurance products that are sold to ERISA plans, there is some conflict between what would constitute providing fiduciary investment advice and state insurance law. Many state insurance laws require

insurers to present to the customer initial and periodic personalized illustrations/projections regarding the non-guaranteed elements of the policy, over a period of years. Failure by an insurer to present these personalized illustrations/projections to customers, can subject the insurer to fines and penalties. When life insurance products are sold to an ERISA plan, we would like to confirm that providing personalized life insurance illustrations/projections to customers, or potential customers, as can be required by state insurance law, does not constitute the delivery of fiduciary investment advice, but is rather investor education. Without this clarification, the personalized insurance product illustrations required by state insurance law could inadvertently cause the product provider to become an ERISA fiduciary to the plan participant, even if there is no intent to assume fiduciary responsibility by the product provider, and even if the plan participant has no expectation of entering into a fiduciary relationship based on state mandated product illustrations. The Department should either confirm that state-mandated illustrations will not trigger the existence of a fiduciary relationship or exclude all product sales to welfare benefit plans from the scope of the Fiduciary Rule.

- 2) **Investment Education Exception** – The Department should retain the investment education exception to the Fiduciary Rule which repealed and replaced IB 96-1, and which provides investment as well as retirement income education guidelines. However, some expansion of the updated investment education exception in the Rule is needed based on Individual Retirement Annuity products designed and marketed to retail customers.

Annuities are valuable products that offer features that account based products do not. As the department is aware, those features include (a) guaranteed lifetime income (b) death benefits, (c) protection from market downturns and (d) minimum income guarantees. These features require companies to set aside significant capital and are the reason that annuities can cost more than account-based products. We have found that the most effective way to explain these features to consumers is to demonstrate them through a modeling tool where customers can enter their ages, the specific amount available for deposit into the product, their risk tolerance and when they will likely need access to the money. The tool can then model the performance of a product in various market scenarios so that the customer can see the guarantees in operation. Our data shows that customers use these tools very early in their purchase decision process to determine the type of Individual Retirement Annuity that will best suit their needs. Our fiduciary rule preparation efforts have shown little appetite to create a fiduciary relationship via a modeling tool used very early in a customer interaction, far in advance of any eventual transaction and done without any compensation paid for modeling. The only option that the present education exception leaves consumers is to view hypothetical modeling of an individual whose risk tolerances, time horizon and assets are different than their own. This in turn, has put increased emphasis on providing access to a large number of hypothetical modeling tools with small changes in investment increments and age bands, which are more costly to implement and maintain.

We believe consumers are best served when they have choice. Having choice requires consumers to understand the pros and cons of each potential investment. We believe that consumers are best served when they can see, in a way that is most relatable to them, how a product would work. We are happy to use any conspicuous notifications or disclosures the Department would like to express that a modeling tool is not a guarantee of a rate or return or

of specific performance. We ask that the education exception be expanded, with such disclosures as the Department may require, to include individualized modeling of specific Individual Retirement Annuity products for consumers as we believe that modeling tools are the best way for customers to understand the benefits of complex product features.

Question Number Three: Should the Department allow the Fiduciary Rule and PTEs to become applicable, issue a further extension of the applicability date, propose to withdraw the rule, or propose amendments to the rule and/or the PTEs.

As the Department can see from the numerous issues raised in this letter and in the high volume of letters that will be sent by other financial service firms, the present version of the Fiduciary Rule needs substantial clarification in order to be implemented in a way that will not cause confusion and unnecessary compliance costs to be passed on to consumers. We therefore request that the Fiduciary Rule be withdrawn for further study, and that the June 9, 2017 Fiduciary Rule applicability date is premature and unwarranted and will further exacerbate reluctance to sell certain products and provide information to consumers. These are the very issues that the President's order to review the rule touched upon and subjects it to further examination.

Pursuant to further study of the rule, the Department should issue a rule that reduces compliance and cost burdens, and the new rule should minimize undue disruptions while still accomplishing the regulatory objective of protecting the interests and rights of retirement investors and empowering them to be able to save for retirement. The Department is well aware of the importance of annuity products for the attainment of retirement security by plan participants and IRA holders, and the importance of annuities offering a lifetime income option and therefore, the Fiduciary Rule and PTEs should be withdrawn and then revised and amended so as not to inhibit the marketing and sale of annuity products. The applicability date of a revised and amended rule should be extended by at least a year to afford the Department time to thoroughly conduct the thoughtful analysis required by the Presidential Memorandum and to consider responsive changes to the Fiduciary Rule and PTE's. The extension of the applicability date by at least a year should apply to both the Fiduciary Rule and PTE's.

The Department significantly underestimated the amount of time necessary for financial service companies to get into compliance in an automated, robust and cost-effective manner with a Fiduciary Rule and PTEs. Given the significant questions of law and policy that the Department will have to consider to revise and amend the Fiduciary Rule, this will require the Department to initiate a thoughtful and comprehensive review of the rule and its impact on financial service firms and retirement investors. Therefore we request the Department to devote a significant amount of time and resources to conduct this review and to provide at least a two year period for financial service firms to get into compliance with a revised and amended rule.

Should any questions arise in connection with our comments, or if MetLife can provide any assistance to the Department in connection with the Fiduciary Rule and PTEs, please contact me at 212-578-8331.

Sincerely,

A handwritten signature in cursive script that reads "Andrew Varady". The signature is written in black ink and is positioned below the word "Sincerely,".

Andrew Varady
Vice President & Associate General Counsel