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Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5669
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Attention: Annuity Regulation

Dear Sir or Madam:

I am writing on behalf of MetLife, Inc. with respect to the proposed regulations recently issued by the Department of Labor relating to the selection of an annuity provider for purposes of benefit distributions from a defined contribution plan.

At the outset, we want to thank the Department for their hard work in developing these regulations. The proposed regulations clearly reflect the careful attention given to this project by the Department.

We particularly appreciate the Department's efforts because of the great significance of this regulatory project. As individuals are living longer and defined contribution plans are playing a greater role in our private retirement system, individuals are faced with new challenges in protecting themselves against the risk of outliving their retirement savings. Many employers feel a greater need to help their employees deal with these challenges by providing annuitization options under their defined contribution plans. But until recently, uncertainty about the applicable fiduciary rules has prevented many employers from taking action in this regard. In this context, we need as much clarity as possible regarding employers' duties. The more employers understand about the rules, the more comfortable they will feel about offering annuitization options.

It is in this spirit that we offer our comments. As discussed below, our comments do not ask the Department to reconsider the basic policy decisions underlying the proposed regulations. On the contrary, our comments generally ask for a fuller articulation of the principles and premises that we believe are already implicit in the proposed regulations.

General Rule

In our view, the most important change is also probably the simplest. The regulations provide a safe harbor: if an annuity provider and an annuity contract issued by such provider satisfy the safe harbor criteria, a fiduciary's selection of the contract for purposes of benefit distributions satisfies the general fiduciary standards under ERISA. Our request is simply that the regulations explicitly state what is implicit, *i.e.*, if a fiduciary's actions do not fall within the regulatory safe harbor, the selection of an annuity provider and annuity contract is guided by the generally applicable fiduciary standards under ERISA and is not subject to any standard involving special scrutiny.

There are two reasons that making this explicit is so important. First, for years, employers have been concerned that the fiduciary standards of Interpretive Bulletin 95-1 apply. In the context of employers' concerns, it is very important that the regulations state explicitly that outside the safe harbor, the generally applicable fiduciary standards apply, not standards involving special scrutiny.

The second reason that this is so important is because of the detailed nature of the safe harbor. We do not argue that the factors set forth in the proposed regulations are inappropriate in any sense (though we do suggest certain clarifications below). But the employer that reviews this regulatory safe harbor could feel intimidated by the scope of the factors that must be reviewed. In reality, if any fiduciary decision, such as the choice of investment options, were to be broken down into its many components, there would be a similar number of factors (albeit different ones). But this is one of very few areas where each of those factors is spelled out in a safe harbor. Because such specificity could have the unintended effect of unnecessarily impeding employer actions, it is very important that the regulation itself state explicitly that outside the safe harbor the generally applicable fiduciary standards apply.

In addition, because employers are accustomed to the fiduciary duties involved in choosing investment options, it would be important to explicitly state that outside the safe harbor, the generally applicable standards apply, just as they do with respect to the selection of an investment option. It would, of course, be appropriate to also state that the factors to be considered in choosing an investment option are different from those applicable to choosing an annuity provider for distribution purposes, but in both cases the general fiduciary rules apply.

Scope of the Proposed Regulations

The proposed regulations apply to a plan fiduciary's selection of an annuity provider in connection with the availability of a distribution option under the plan. We ask that this be clarified, as we are concerned that there could be confusion regarding the intended scope of the proposed regulations.

The proposed regulations should be clarified so that they only apply where a fiduciary selects an annuity provider in connection with the offering of that annuity provider's annuities as a distribution option to participants. The regulations should not apply where, for example, the plan does not offer an annuity as a distribution option. Similarly, the regulations should not

apply to the selection of an annuity provider where the plan does not offer that annuity provider's annuities as a designated distribution option. For example, a plan that does not offer an annuity distribution option may be invested in an annuity contract that technically provides annuity purchase rights. Or such a plan may offer an annuity distribution that is unrelated to the annuity contract in which the plan has invested. In these situations, it should be clarified that the selection of the annuity provider is not subject to the regulations. In the latter situation, if the plan offers another annuity provider's annuities as a distribution option, the selection of such other annuity provider would, of course, be subject to the regulations.

Ratings

The proposed regulations do not require a fiduciary to select the annuity provider with the highest ratings from the insurance ratings services. Instead, the proposed regulations require consideration of the ability of an annuity provider to make future payments under the annuity contract. It may well be that a whole range of insurers with different ratings are fully capable of making such payments, rendering it unnecessary for the fiduciary to choose the highest rated provider. Making this explicit would be very helpful.

For example, §2550.404a-4(c)(2)(v) could be revised to read as follows:

(v) Consideration should be given to whether an annuity provider's ratings by the insurance ratings services demonstrate or raise questions regarding the provider's ability to make future payments under the annuity contract. A fiduciary is not required to select the annuity provider with the highest ratings. A fiduciary is only required to select an annuity provider that is sufficiently financially stable at the time of selection to make future payments under the annuity contract.

No Weighting of Factors

There will be a natural inclination on behalf of plan fiduciaries to try to identify "the key factor" among the various factors that the proposed regulations state should be considered. For example, a fiduciary might gravitate toward an insurer's ratings or its aggregate level of capital and surplus as the key consideration, and perhaps not give due consideration to the other important factors. To clarify the Department's intent, we believe that it would be helpful for the proposed regulations to state that the different factors are not intended to be prioritized or weighted differently. On the contrary, all the factors listed should be taken into account and considered as a whole.

In this regard, it would be helpful for the discussion of ratings to be combined with the factors regarding an annuity provider's level of capital, surplus, and reserves, since ratings are based on those factors. Combining those points would clarify that they are focused on the same issue regarding an annuity provider's financial stability.

Inapplicability to Direct Rollovers

The proposed regulations by their terms only apply in connection with annuity distributions from a defined contribution plan. Therefore, they do not apply to the selection of an annuity provider in connection with a direct rollover to an IRA.

For example, assume that a plan fiduciary permits participants to make direct rollovers to any plan or IRA, but also designates, on its distribution forms for participants, a particular individual retirement annuity as a possible receiver of such direct rollovers. Assume further that the plan fiduciary does not otherwise advise the participants regarding the advisability of a direct rollover to any arrangement. In this context, we do not believe that the designation of the individual retirement annuity is a fiduciary act, since it relates to the investment of assets that are no longer assets of the plan. Clarification of that point would be very helpful.

However, at a minimum, we ask that the proposed regulations clarify that they do not apply in such context. Direct rollovers to individual retirement annuities raise a whole set of different technical and policy issues and should not be swept into a regulation targeted at a wholly separate fact pattern.

Separate Accounts

Under Proposed Regulation § 2550.404a-4(c)(2)(vi), the use of separate accounts is a relevant factor. For clarification purposes, we ask that reference to variable payout annuities be made, in order to conform this factor to industry practice. For example, the phrase “in connection with variable payout annuities” could be inserted after “benefit obligations”.

State Guaranty Associations

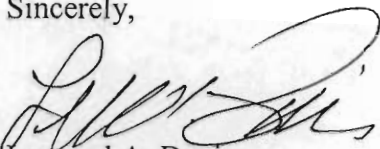
Proposed Regulation §2550.404a-4(c)(2)(vii) refers to consideration of the “availability and extent of additional protection through state guaranty associations”. We understand the relevance of this factor. However, it would be very helpful for the regulations to reflect explicitly the statement in the preamble that:

the type of information that the fiduciary should consider is information that is available to the public and easily accessible through such associations as well as state insurance departments.

Including this clarification in the regulation itself regarding a fiduciary’s duty would provide exactly the type of guidance that fiduciaries need.

Again, we thank the Department for its careful analysis and hard work in issuing these proposed regulations. We also very much appreciate your consideration of the comments set forth in this letter.

Sincerely,



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