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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-AB82 – Request For Information Regarding the Fiduciary Rule and Prohibited Transaction Exemptions

Dear Sirs and Madams:

On behalf of Metropolitan Life Insurance Company and its affiliates ("MetLife"), and Brighthouse Financial ("Brighthouse") we are writing to comment on the Department of Labor's ("Department's") Request for Information ("RFI") published in the Federal Register on July 6, 2017, regarding the Fiduciary Conflict of Interest Regulation (the "Fiduciary Rule") and Prohibited Transaction Exemptions ("PTE's"). In particular, we are pleased to have the opportunity to expand on our previous comments in this area, informed by the past months of actual implementation experience.

Effective August 4, 2017, MetLife will be separated into two independent industry leading companies, MetLife and Brighthouse

For over 149 years, MetLife has helped, and will continue to help to insure the financial well-being of the institutions and 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 and respond to the RFI.

Brighthouse will be a major provider of individual life insurance and annuity products with a strategic focus on developing innovative products to meet the needs of its target markets and distribution partners which uniquely qualifies Brighthouse to comment and respond to the RFI.

MetLife and Brighthouse will each comment and respond to the RFI. The first section of this comment letter addresses MetLife's comments to three of the eighteen questions posed by the Department followed by Section II which provides Brighthouse's responses to two questions of the RFI.

Section I

MetLife Response to the RFI

RFI Question Number Sixteen: Grandfathering – Are there changes to the grandfather provisions that would enhance its ability to minimize undue disruption and facilitate valuable advice?

Yes. The Fiduciary Rule does not have a coherent or internally consistent grandfather provision. Instead, the Best Interest Contract Exemption ("BICE") exempts "pre-existing transactions" from the Fiduciary Rule, implying that absent meeting certain requirements, the BICE would become applicable. This creates uncertainty for transactions that were done pursuant to either an exception or to a different PTE, such as 84-24. In addition, 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 that are proving unworkable in practice, creating uncertainty about whether existing contracts for which no new recommendations have been made are out of compliance with the Fiduciary Rule. Thus, 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 funds 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 only on new contracts 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 retail and institutional consumers, and to facilitate requested or necessary contract amendments or additions of contract riders, 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 effective after the applicability date the contract is rescinded and replaced with a new contract or amendments to the contract are made which are not contemplated by the terms of the contract. 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, or amending contracts, because leveraging such contracts may be in the best interest of the customer.

RFI Question Number Seventeen: PTE 84-24 – Would it facilitate advice to expand the scope of PTE 84-24 to cover all types of annuities after the end of the transition period on January 1, 2018?

Yes. Effective January 1, 2018, variable annuities and fixed-index annuities will no longer be able to rely on PTE 84-24 but must rely on other exceptions or exemptions. Thus, annuity product sales to ERISA plans and IRA's would no longer be covered by a single exemption, PTE 84-24, but could be subject to multiple PTEs or exceptions, each with its own set of disclosures and documentation. This will create unwarranted market disruption, dislocations, confusion and unnecessary compliance burdens in the annuity marketplace for plans, 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, leading to greater reluctance to utilize annuity-based products. 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 not validated by experience, 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, especially within DC plans.

Therefore, the Fiduciary Rule, and effective January 1, 2018, PTE 84-24, could hinder annuity purchases and cause confusion by requiring annuity products to use different exemptions, with different requirements and conditions. To avoid dislocation, the Department should use one exemption to cover the distribution of all annuities, and that exemption should be PTE 84-24.

RFI Question Number Eighteen: The Independent Fiduciaries With Financial Expertise Exception, and Additional Relief – To the extent changes would be helpful, what are the changes, and what are the issues best addressed by changes to the Fiduciary Rule, or by providing additional relief through a prohibited transaction exemption?

- <u>Independent Fiduciaries with Financial Expertise ("IFE")</u> – 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, or negative consent notices traded between parties. Our Fiduciary Rule preparation efforts and implementation of the rule demonstrate that bilateral written representations and exchanges of, and modifications to, negative consent letters have made the exception cumbersome and difficult to use. Because the number of business partners who could potentially serve as financial institutions to a firm is often too large, and two firms may serve as each other's independent fiduciaries depending on the transactions involved, much of the industry has traded IFE exception representations. Metlife has received IFE representation from business partners to whom it had itself sent IFE representations. As a result of the cross-representations it will become *virtually impossible to rely on written representations for audit purposes*. It is our view that "reasonable belief", to the extent needed, can be documented in other manners.

At a minimum, the Department should provide language clarifying that under certain circumstances no representations or negative consent letters are necessary, 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 familiar with the Fiduciary Rule, then it is the fiduciary responsibility of the 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 absent documentation to the contrary.

Similarly, while we have supported including all ERISA plan sponsors with 100 or more eligible employees, a threshold tied to other ERISA reporting responsibilities, as an effective and easily confirmed characteristic in the IFE, 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 institutional plan buyer independent of the seller 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.

- **The Platform Provider Exception** – The platform provider exception should be expanded to include the marketing or making available of a platform or similar mechanism (which may include one or more annuity contracts or managed account services) from which an ERISA plan fiduciary may select or monitor investment alternatives into which plan participants or beneficiaries or the plan sponsor may direct the investments of assets held in, or contributions made to, their individual account(s) provided the platform provider discloses in writing to the plan fiduciary that it is not undertaking to provide impartial investment advice or to give advice in a fiduciary capacity. A plan participant or beneficiary or relative of either shall not be considered a plan fiduciary for purposes of this paragraph.

- **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, the great majority of which do not have a plan trust or assets that would need to be held by such a trust.

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, such as 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. To support MetLife's view that all product sales to welfare benefit plans (including group permanent products) should be excluded from the Fiduciary Rule, we are providing 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 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 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.

- In addition to the exclusion of welfare benefit products from the Fiduciary Rule, we note as well that similar interpretation problems can occur even when certain products are sold to qualified Defined Benefit (DB) plans. In MetLife's view, Close-Out Annuity Contracts offered to DB retirement plans should also be excluded from the rule. 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 view is that a Close-Out Annuity Contract is not an "investment product" for the following reasons:

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. 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, 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.
The product is devoid of investment features. 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. Accordingly, the product is not an "investment product" for purposes of the Fiduciary Rule.

Section II

Brighthouse Response to the RFI

RFI Question Number Thirteen: Are there ways to simplify the BIC Exemption disclosures? If the Department provided an exemption for insurance intermediaries to serve as Financial Institutions under the BIC Exemption, would this facilitate advice regarding all types of annuities?

a. Simplify BIC Disclosures - The fee and compensation disclosures required under the BIC Exemption and PTE 84-24 (the "Exemptions") are unclear and are subject to interpretation. Specifically, the requirement that the point of sale disclosure include "commissions, and other charges, fees or penalties that could apply to the purchase" is very unclear and open to a wide variety of interpretations. Insurance companies that manufacture products for distribution by other unrelated parties have no transparency into the commissions that distributors pay to the agent. Our retail segment can only disclose the total amount paid to the firm, which is not dependent on, and generally does not vary with, any one particular product sale. With regard to charges, fees or penalties, we can only disclose the ones that are built into the operation of the product. Other charges or fees that may be assessed by the servicing firm are not known to the insurance company. Our retail segment intends to provide information regarding product fees and third party compensation to its distributors and other business partners, which we anticipate will vary according to such firms' interpretation of the scope of the Exemptions' fee and compensation disclosure requirements. Satisfying such varied requests will result, unnecessarily, in increased technology expenditures for Brighthouse. Accordingly, we request that the DOL provide more specific guidance on the categories of compensation covered by these Exemptions, including sample disclosures, with respect to various life insurance and annuity products.

b. Insurance Intermediaries - Insurance companies, such as our retail segment affiliates, generally do not supervise, and are not capable of supervising, independent insurance

agents for the sale of annuities. The entities that we use to distribute our products are unaffiliated third parties over whom we have no authority or ability to supervise. Many third parties believe that their sales practices are proprietary and are merely willing to represent that they are in compliance with applicable laws. We rely on these third parties, such as broker dealers, independent marketing organizations and other insurance intermediaries to supervise agents who provide advice regarding annuities. Accordingly, insurance companies that are merely manufacturers generally cannot act as independent fiduciaries with respect to these agents. To the extent that the Department intended to rely on insurance companies to fill this role, it should reconsider its position and provide adequate exemptions to insurance intermediaries, including independent marketing organizations.

RFI Question Number Three: Do the Fiduciary Rule and PTEs effectively allow Advisers to provide a wide range of products that can meet each investor's particular needs?

Below we explain the need to preserve the availability of life product illustrations and educational content to effectively allow advisers to provide life insurance and annuity products that can meet investors' particular needs.

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.

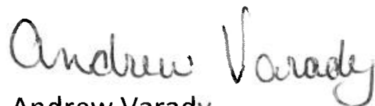
2) Investment Education Exception – The investment education exception to the Fiduciary Rule provides investment as well as retirement income education guidelines. However, some expansion of the updated investment education exception in the Rule is needed based on Individual Retirement Annuity products 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 and compliance 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.

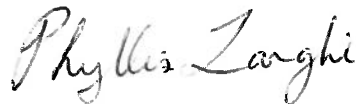
We believe that consumer's particular needs are best served when they can see, in a way that is most relatable to them, how a product would work. We are happy to use any conspicuous notifications or disclosures the Department would like to express that a modeling tool is not a guarantee of a rate or 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.

Should any questions arise in connection with our comments, or if we can provide any assistance to the Department in connection with the Fiduciary Rule and PTEs, please contact Andrew Varady, VP and Associate General Counsel, MetLife at 212-578-8331, or Phyllis Zanghi, Tax Director & Associate General Counsel Brighthouse Financial at 980-949-3362.

Sincerely,



Andrew Varady
VP & Associate General Counsel
MetLife



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August 4, 2017