

Statement for the Record

MetLife, Inc.

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Labor and Pensions

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Hearing:

“Regulatory Barriers Facing Workers and Families Saving for Retirement”

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Introduction

MetLife is pleased to offer comments to the House Education and Workforce Subcommittee on Health, Employment, Labor, and Pensions regarding regulatory barriers facing workers and families saving for retirement.

MetLife is the leading global provider of life insurance, annuities and employee benefits. Since 1868, MetLife has helped people plan for their future by protecting what matters most – their families, their ambitions and their achievements. MetLife has a history of financial strength and stability as well as a proven track record of delivering on promises. MetLife works with families, corporations and governments to provide solutions that offer financial guarantees, including those with a focus on delivering successful retirement outcomes.

MetLife's Retirement & Income Solutions (RIS), the company's institutional retirement business which has historically generated over 20 percent of MetLife's operating earnings, helps its customers meet business, benefits and financial objectives through pension risk management, retirement income solutions, and funding benefit liabilities. For RIS, as of December 31, 2016, Metropolitan Life Insurance Company and MetLife Insurance Company USA managed \$93 billion of group annuity assets, including institutional income annuities; \$38 billion of transferred pension liabilities; \$57 billion of stable value business; and, \$27 billion of nonqualified benefit funding assets.

Today, with two-thirds of full-time workers having access to a workplace retirement plan, U.S. workers are accumulating most of their retirement savings through their employer-sponsored plan.¹ Sponsors of workplace retirement plans have made significant strides in helping to stem the retirement crisis with the adoption of features, such as auto-enrollment and auto-escalation, designed to expand participation and increase participant contributions. Still more work is needed to increase financial literacy and incent Americans to better prepare for retirement, particularly for workers who are self-employed or employed by a small business. It is also equally important for legislative and regulatory solutions to enable workers who have saved for retirement to understand what their savings are worth and how to make their savings last.

In particular, plan sponsors are increasingly being called upon to help their defined contribution (DC) plan participants achieve successful retirement outcomes. Critical to that success is ensuring that participants have easy access to lifetime income options. Last year, MetLife commissioned the MetLife Lifetime Income Poll,² to understand plan sponsors' current perspectives about the core purpose of a DC plan. The survey also looked at the most effective ways to deliver lifetime income to plan participants. The poll gauged plan sponsors' knowledge about the important strides that the U.S. Departments of Labor (DOL) and Treasury have made in recent years – and are contemplating in the future – to strengthen Americans' retirement security through lifelong income.

¹ Pew Analysis of U.S. Census Survey of Income and Program Participation, 2016.

² MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll

We believe that there are two key regulatory barriers related to guaranteed lifetime income where clarity is still needed, either by regulatory or legislative action: (1) lifetime income disclosures on DC plan benefit statements and (2) a workable safe harbor on which plan sponsors could rely for annuity carrier selection in DC plans.³ It is clear from our poll findings that plan sponsors, in large numbers, agree that recent regulatory developments are prompting consideration of plan design changes for DC plans. Many also agree that additional lifetime income regulatory action is needed and would make it easier for plan sponsors to offer – and, in turn, plan participants-to select solutions that provide guaranteed income for life.

Lifetime Income Disclosures on DC Plan Benefits Statements

For many years, MetLife has advocated for a requirement that DC plan account balances be presented as lifetime income in addition to the total account balances on annual benefits statements. We remain steadfast in this belief. Our support of lifetime income disclosures was outlined in MetLife’s 2010 responses to the Request for Information (RFI) Regarding Lifetime Income Options for Participants and Beneficiaries in Retirement Plans [RIN 1210-AB33] and MetLife’s 2013 Comments on the DOL’s Advance Notice of Proposed Rulemaking (ANPRM) for Lifetime Income Disclosure for Defined Contribution Plans [RIN 1210-AB20]. We support the Department’s conclusion that it has authority to require lifetime income illustrations under Section 105(a)(2) of ERISA which contains the content requirements for benefit statements, but would welcome legislation to codify the disclosure.

Presented in simple, easy-to-understand language, and provided by the plan administrator at the direction of the plan sponsor, lifetime income disclosures communicate individual account balances in lifetime income terms in addition to investment terms. Providing both the accumulated balance and its lifetime monthly income equivalent can be one of the most effective ways to enable DC plan participants to think about – and use – their DC plan as a retirement income plan, rather than a retirement savings plan.

Plan Participants and Plan Sponsors Agree: With regard to specific provisions of the disclosures, we believe it is important to show correlation between the current account balance and the future monthly income that current savings will generate – and both plan participants and plan sponsors agree.

Plan participant research released following the issuance of the ANPRM concluded that the overwhelming majority of plan participants (9 in 10 participants surveyed) believe it makes sense to show both the projected account balance and the monthly income equivalent for the projected balance. More than 75% of plan participants surveyed

³ There are three foundational elements to enable plan sponsors and service providers to work together to add an income dimension to DC plans: Education, Income Communication and Lifetime Income Options. The first of these, which is necessary to enable plan sponsors to provide employee education about retirement income topics in addition to investment education without fear of fiduciary liability, has been addressed through the Education Exception in the DOL’s new Fiduciary Rule, which provides this necessary expansion to previously issued IB 96-1.

indicated they would increase their contributions after seeing their retirement income estimates.⁴

According to the Lifetime Income Poll,⁵ nearly all plan sponsors (96%) agreed that it would be helpful for plan participants if account balances were required to be communicated as lifetime income – in addition to the total account balance – on DC plan benefit statements. This includes 62% who believe it would be extremely or very helpful for plan participants. That’s good news since other MetLife research shows that only 39% of DC plan participants recall receiving a written or paper statement illustrating how much income their DC plan would provide in retirement.⁶

Bi-partisan and Bi-cameral Support: On April 6, 2017, bipartisan members of both the House and the Senate re-introduced legislation to require the inclusion of monthly income projections on 401(k) account statements. The Lifetime Income Disclosure Act was introduced in the House by Luke Messer (R-IN), Jared Polis (D-CO) and Mark Pocan (D-WI) as H.R. 2055; and in the Senate by Johnny Isakson (R-GA) and Chris Murphy (D-CT) as S. 868. The bill was previously introduced in the last three Congresses. A provision requiring income projections on plan statements was also included in the Retirement Enhancement and Savings Act (RESA), which was introduced in 2016 and made it through the Senate Finance Committee late in the year. Ultimately there is wide, bi-cameral, bi-partisan support to create greater financial literacy for DC plan participants to allow for sound retirement income planning.

Workable Annuity Carrier Selection Safe Harbor

The second critical missing element needed to adequately enable lifetime income options in DC plans is a workable safe harbor for annuity carrier selection. Such a safe harbor would enable plan sponsors to have a feature in the plan that will turn a portion of the savings into guaranteed lifetime income. By including income annuities in their plans, employers can play an important role in helping to ensure successful retirement outcomes for their employees.

Treasury Department revenue rulings and rules proposed and completed between 2012 and 2015, as well as sub-regulatory guidance from the DOL in a 2015 Field Assistance Bulletin⁷ (FAB), have clearly resulted in increased plan sponsor awareness about the importance of lifetime income options in DC plans. Nearly all respondents (94%) report they are at least somewhat knowledgeable overall about the focus by the DOL and Treasury over the last several years on strengthening Americans’ retirement security through lifelong income solutions. Nearly four in ten plan sponsors (38%) familiar with

⁴ “Consumer Preferences for Lifetime Income Estimates on 401(k) Statements,” Insured Retirement Institute, January 13, 2015

⁵ MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll

⁶ MetLife Paycheck or Pot of Gold Study,SM 2017, www.metlife.com/paycheckstudy

⁷ Field Assistance Bulletin (FAB), published on July 13, 2015. FAB 2015-02, Selection and Monitoring under the Annuity Selection Safe Harbor Regulation for Defined Contribution Plans, was designed to address “concerns about liability by clarifying that an employer’s fiduciary duty to monitor an insurer’s solvency generally ends when the plan no longer offers the annuity as a distribution option, not when the insurer finishes making all promised payments.”

FAB 2015-02 on the selection and monitoring of annuities in DC plans say that the FAB is having some or a significant impact on their interest in offering income annuities to plan participants.⁸

However, increased interest and awareness must be met with a workable safe harbor in order to bear fruit.

As we testified before the ERISA Advisory Council (EAC) in 2012, and as the EAC subsequently recommended to the DOL, the main problem with the current guidance on provider selection is the complexity of the provision on assessing carrier financial strength and the related uncertainty over fiduciary protection. We, together with others, have advocated since then for the need to restructure the carrier selection safe harbor to permit reliance on state insurance regulators for financial strength assessments and focusing on selection process requirements.

We believe that a workable safe harbor for annuity carrier selection is a regulatory necessity, and will be a foundational element in enabling these options for DC plan participants. The focus is narrow, and a path to addressing it has had considerable development. Development has been primarily focused on the condition in the existing regulations relating to evaluating the long-term solvency – the ability to make all future payments under the annuity contract – of annuity carriers. At a time when traditional rules of thumb about the amount of money retirees can safely withdraw from their savings are being questioned,⁹ we believe a workable safe harbor would go far in enabling the widespread availability of income annuities in DC plans.

Plan Sponsors Agree: Nine in ten plan sponsors (92%) agree that it is important for the DOL to provide a workable safe harbor for annuity carrier selection criteria for individual account qualified plans in order to make it easier for plan sponsors to include income annuities in their DC plans. For 70% of plan sponsors, a safe harbor is “extremely” or “very important.” This percentage rises to 96% among those who say they are at least somewhat familiar with proposed amendments to the annuity safe harbor carrier solvency determination requirement. More than a third of plan sponsors (37%) agree that solvency determination is the most pressing issue that still needs to be addressed to ensure a workable safe harbor.¹⁰

In October 2013, the American Council of Life Insurers (ACLI) proposed¹¹ that the fiduciary be allowed to rely on a certification by its chosen carrier that it has met a set of defined standards with respect to state insurance commissioner review. Among those standards is a requirement that the: “The [insurance] carrier would have to be licensed in

⁸ MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll

⁹ Blanchett, David, Finke, Michael S., and Pfau, Wade, The 4 Percent Rule is Not Safe in a Low-Yield World, January 15, 2013

¹⁰ Half of plan sponsors (50%) are at least somewhat familiar with proposed amendments to the annuity safe harbor carrier solvency determination requirement, “primarily focused on the condition of the safe harbor relating to the ability of the annuity provider to make all future payments under the annuity contract,” MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll

¹¹ ACLI, 2013. Of interest, this proposal was covered in Plan Sponsor magazine at the time the proposal was introduced, in a story entitled “Fixing DC Annuities: There’s a Proposal on the Table.”

26 or more states, to prevent ‘forum shopping.’ [The insurer] would have to have a clean certificate of authority from its home insurance commissioner, audited financial statements and reserves that satisfy the requirements of all states where it does business; also, [the insurer] could not have operated under an order of supervision, rehabilitation or liquidation. In addition, the [insurance] carrier would have to undergo a financial examination by the insurance commissioner of the domiciliary state at least every five years.”¹²

Three-quarters (76%) of respondents say that in determining the adequacy of the solvency of a potential annuity provider for their DC plan, they would prefer to be permitted to rely on certifications from the annuity provider based on the regulatory process carried out by a state insurance commissioner. This is preferable to plan sponsors than conducting the solvency due diligence process themselves as part of their regular due diligence process.¹³

Although fewer than one in ten plan sponsors say their 401(k) plan includes a guaranteed lifetime income option, nearly two-thirds (66%) of plan sponsors whose plans do not currently include such an option say that they would be at least somewhat likely to make income annuities available to their DC plan participants when the DOL completes work on an updated safe harbor rule for the selection of an annuity provider.¹⁴

Broad Recognition and Bi-partisan Support: Further supporting this proposed approach, the U.S. Government Accountability Office (GAO) released a report in September 2016¹⁵ in which, among other things, it recommended that steps be taken to improve retirement income options for DC plan participants. Of its seven specific recommendations, two were focused on the safe harbor problem. The first called for clarification of the safe harbor from liability for selecting an annuity provider by providing sufficiently detailed criteria to better enable plan sponsors to comply with the safe harbor requirements related to assessing a provider’s long-term solvency.¹⁶ The second suggested consideration of legal relief for plan fiduciaries offering an appropriate mix of annuity and withdrawal options, upon adequately informing participants about the options, before participants make their investment choices. Legislation that supports these recommendations was included in the Senate Finance Committee passed RESA package in 2016, as well as Reps. Ron Kind and Dave Reichert’s 2015 SAVE Act, H.R. 4067, also introduced in previous Congresses.

¹² ACLI, 2013.

¹³ MetLife Lifetime Income Poll, 2016, www.metlife.com/lifetimeincomepoll

¹⁴ Ibid

¹⁵ The GAO, which undertook the project at the request of Senator Elizabeth Warren (D-MA), surveyed 11 record keepers, 54 plan sponsors, and a “range of stakeholders.”

¹⁶ We note that, following ERISA Advisory Council recommendations (2012) and completion of an NAIC project to assist DOL with understanding the state insurance regulatory regime requirements (2013), DOL established a Regulatory Priority project in 2014 to consider proposed amendments to the safe harbor’s carrier solvency determination requirement, “primarily focused on the condition in the safe harbor relating to the ability of the annuity provider to make all future payments under the annuity contract.” This project currently has not been given a target time frame, as work on the Fiduciary Rule delayed its progress.

We have clearly seen from plan sponsor behavior the existing guidance is not sufficient to enable – or encourage – offerings of guaranteed lifetime income products. Legislative and/or expeditious regulatory action could provide the certainty employers need to consider adding income annuity features to the DC plans they sponsor by providing a safe harbor that would permit plan fiduciaries – solely for purposes of determining the financial ability of an insurer to satisfy its contractual obligations – to rely on the fact that the insurer is licensed and in compliance with certain state insurance solvency standards. This is also needed to create a level playing field for sponsor fiduciary responsibility for annuity-based and non-annuity based income solutions.

Importance of Open Multiple Employer Plans (MEPs)

As indicated in the introduction of this statement, expanding access to those working for small employers that do not yet offer plans, and enabling incentives for the 22 million Americans who describe themselves as self-employed, sole proprietors or independent contractors, is a very important part of the retirement security landscape that requires thoughtful attention. MetLife joins the voices of many others who have concluded that open MEP solutions offer the most practical promise to address these remaining access gaps.

Currently, it is estimated that one-third of private sector workers are employed by small businesses and more than half of these employers do not offer a retirement plan, which translates into millions of workers without access to an employer-sponsored plan.¹⁷ Although a number of retirement plan options are available to small employers, many small employers are reluctant to offer plans to their employees because of concerns regarding potential fiduciary liability, as well as administrative complexity, burdens and costs. This is particularly true if the businesses are new or don't yet have predictable profits. Small employers often do not have the time to obtain the education and third-party resources needed to establish a plan.¹⁸

The DOL and Congress would like to make it easier for multiple small business employers to get together and offer Open MEPs, which would offer them the opportunity to share administrative costs and to reduce the compliance burdens many companies face with offering a DC plan. This platform offers greater economies of scale and the potential to be a low-cost, high-quality option for small businesses. While related employers can set up these arrangements today, current law does not permit unrelated small employers to take advantage of these administrative efficiencies. Allowing for an Open MEP concept that removes some of the regulatory obstacles while still allowing for the robust consumer protections embedded in ERISA would alleviate many of the small business concerns that have created the current retirement plan access gap for their employees. Accordingly, MetLife supports the comments of others in advancing Open MEPS as well

¹⁷ GAO, Testimony Before the Committee on Health, Education, Labor, and Pensions, U.S. Senate, Statement of Charles A. Jeszeck, Director Education, Workforce, and Income Security, "Retirement Security: Challenges and Prospects for Employees of Small Business" (Jul. 16, 2013) at 1, available at <http://www.gao.gov/assets/660/655889.pdf>.

¹⁸ Ibid. at 9-10.

as legislative efforts to create the solution including, most recently, Reps. Vern Buchanan and Ron Kind's Retirement Security for American Workers Act, H.R. 854, and the Senate's RESA package.

We note that, just as access alone has not been sufficient to provide financial security in retirement among DC plans, lifetime income disclosure and a workable safe harbor for annuity selection will also benefit those with expanded access afforded by Open MEPS as their savings process advances.

Conclusion

For more than a decade, those influential in the institutional retirement community, MetLife among them, have called for defined contribution plans to be reframed. No longer can DC plans exist purely for participants to accumulate a pool of assets for retirement, only to leave these individuals – largely on their own – with the responsibility of spending down those assets and trying to manage market, investment and longevity risks. We believe the core purpose of today's DC plans must be recast from retirement savings to retirement income, enabling plan sponsors to provide the education, tools and solutions to help participants make their savings last a lifetime.

In order for this to be achieved, a call to action is in order. Over the past several years, public policymakers have made enormous strides to strengthen retirement security for millions of U.S. workers – strides that are proving to be seminal to the role that DC plans will play in the future provision of lifetime income. However, there is still more regulatory work to be done. Plan sponsors are signaling that they are ready to reframe their DC plans as retirement income plans, including communicating retirement account balances in lifetime income terms and providing solutions to ensure successful retirement outcomes. This makes it especially timely for the infrastructure supporting the retirement income/distribution phase of DC plans to become as complete as the infrastructure that supports the accumulation phase.

We believe these comments offer a framework for a common understanding of the path forward for the retirement industry. The future of millions of DC plan participants is depending on it.