UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARTIN J. WALSH, Secretary of Labor, United States Department of Labor, Petitioner, -against- METLIFE, INC., Respondent.	:	No. 21 Misc. 381 (PGG)

MEMORANDUM OF LAW IN OPPOSITION TO THE SECRETARY OF LABOR'S PETITION TO ENFORCE ADMINISTRATIVE SUBPOENA

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TABLE OF CONTENTS

PRELIMINARY STATEMENT 1

STATEMENT OF FACTS 3

I. BACKGROUND 3

II. THE DOL INVESTIGATION 5

ARGUMENT 8

I. THE DOL HAS NO AUTHORITY OVER METLIFE'S PAYMENT OF BENEFITS UNDER GACS. 9

A. ERISA Does Not Apply to GACs. 9

B. The DOL's Efforts to Extend Its Jurisdiction to Insurance Products Are Unavailing. 12

II. THE DOL'S SUGGESTION THAT IT REQUIRES THE INFORMATION SOUGHT BY THE 2021 SUBPOENA TO DETERMINE WHETHER IT HAS JURISDICTION UNDER ERISA IS UNAVAILING. 13

CONCLUSION 15

TABLE OF AUTHORITIES

CASES

Beck. v. PACE Int'l Union,
551 U.S. 96 (2017)....................9, 10

Cent. Laborers' Pension Fund v. Heinz,
541 U.S. 739 (2004)....................9

Chao v. Cmty. Tr. Co.,
474 F.3d 75 (3d Cir. 2007)....................8, 9, 14

Donovan v. Mehlenbacher,
652 F.2d 228 (2d Cir. 1981)....................8

Lee v. Verizon Commc'ns, Inc.,
No. 3:12-CV-4834-D, 2012 WL 6089041 (N.D. Tex. Dec. 7, 2012)....................13

Lee v. Verizon Commc'ns, *Inc.*,
837 F.3d 523 (5th Cir. 2016)....................9

Mahoney v. Bd. of Trs.,
973 F.2d 968 (1st Cir. 1992)....................9

Reich v. Great Lakes Indian Fish & Wildlife Comm'n,
4 F.3d 490 (7th Cir. 1993)....................8

Sec. Inv. Prot. Corp. v. Jacqueline Green Rollover Acct.,
No. 12 Civ. 1039 (DLC), 2012 WL 3042986 (S.D.N.Y. July 25, 2012)....................10

Thompson v. Prudential Ins. Co. of Am.,
795 .F. Supp. 1337, 1342 (D.N.J. 1992)....................13

Toussaint v. JJ Weiser & Co.,
No. 04 Civ. 2592 (MBM), 2005 WL 356834 (S.D.N.Y. Feb. 13, 2005)....................12

United States v. Newport News Shipbuilding & Dry Dock Co.,
837 F.2d 162 (4th Cir. 1988)....................8, 9

United States v. Powell,
379 U.S. 48 (1964)....................8

United States v. Westinghouse Elec. Corp.,
638 F.2d 570 (3d Cir. 1980)....................8

STATUTES, REGULATIONS, AND OTHER AUTHORITIES

29 C.F.R. § 2509.75–8 12

29 C.F.R. § 2509.95-1(c) 9

29 C.F.R. § 2510.3-3 .... 9, 10, 11, 13

29 C.F.R. § 2510.3-21 12

29 C.F.R. § 4006.6 10

29 C.F.R. § 4041.23 10

29 C.F.R. § 4041.31 10

29 C.F.R. § 4041.47 10

40 Fed. Reg. 24642 (June 9, 1975) 11

60 Fed. Reg. 12328 (Mar. 6, 1995) 11

29 U.S.C. § 1102 12

29 U.S.C. § 1113 .... 4, 15

DOL Adv. Op. 76-36, 1976 WL 5051 (Jan. 15, 1976) 12

Respondent MetLife, Inc. ("MetLife" or "the Company")[1] submits this memorandum in opposition to the Secretary of Labor's Petition to Enforce the Administrative Subpoena (the "Petition").

PRELIMINARY STATEMENT

MetLife comes to this proceeding reluctantly and as a last resort. The Company prides itself on its relationships with its regulators and has worked hard to resolve this dispute without the need for judicial intervention. For nearly two years, MetLife has worked cooperatively with the United States Department of Labor ("DOL"), including by complying in full with an earlier-issued subpoena, holding biweekly status calls with the DOL, making witnesses available for interviews, and producing over 20,000 pages of documents. Just two days before this proceeding was filed, MetLife offered to make a presentation to the DOL walking through and explaining the core information sought by the subpoena at issue, which was issued in January 2021 (the "2021 Subpoena"). MetLife offered to do this without prejudice to the DOL's ability to seek additional information and without waiver of MetLife's defenses. That offer still stands. Instead, the DOL filed this proceeding.

Although MetLife does not relish this dispute, its objections to the 2021 Subpoena are supported by extensive authority—including the DOL's own guidance—confirming that the information sought is outside the DOL's jurisdiction. The 2021 Subpoena concerns the payment of benefits under insurance products known as Group Annuity Contracts ("GACs") issued in connection with pension risk transfer ("PRT") transactions. In a PRT transaction, an employer

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[1] MetLife, Inc. is a public holding company that does not itself offer insurance products. (Declaration of Graham Cox ("Cox Decl.") ¶ 2.) MetLife, Inc. owns a number of operating subsidiaries, including Metropolitan Life Insurance Company. (Cox Decl. ¶ 3.) Metropolitan Life Insurance Company is an insurance company whose core mission is to provide financial protection to its customers, including the payment of retirement benefits. (Cox Decl. ¶ 4.) For purposes of this motion, the term "MetLife" includes MetLife, Inc., its subsidiaries and/or affiliates, or any of them.

that sponsors a defined benefit pension plan governed by ERISA transfers its pension obligations to an insurance company by purchasing a GAC. The defined benefit plan is discharged of its benefit payment obligations, and the ensuing relationship between the group annuitants and the insurance company is a contractual one governed by the GAC. While the DOL has power to investigate and enforce compliance with ERISA by fiduciaries of defined benefit pension plans, it does not have authority to investigate or bring claims related to the insurer's performance under these insurance products, which are no longer assets of the plan, reside wholly outside of the ERISA framework, and are creatures of state law that are regulated by state insurance regulators.

The underlying DOL investigation arose from MetLife's disclosure in late 2017 that its efforts to contact certain individuals who might be eligible for retirement benefits under GACs issued pursuant to PRT transactions had been inadequate. MetLife self-reported the issue, publicly apologized for what then-Chief Executive Officer Steven Kandarian called an "operational failure that never should have happened," and announced that it was reviewing and improving its processes used to locate and contact group annuitants whose benefits were guaranteed by MetLife but who had not yet been in pay status at the time the relevant GACs were issued. MetLife's remediation plan to locate and pay such individuals was known internally as "Project Chestnut." No part of this remediation was or is subject to ERISA.

The subpoena at issue focuses entirely on Project Chestnut and is invalid for multiple reasons. *First*, the DOL does not have jurisdiction over MetLife's administration of the GACs in question, which are fully guaranteed, excepted from ERISA coverage, and regulated under state insurance laws. In keeping with that regulatory scheme, the Company worked closely with its primary insurance regulator, the New York Department of Financial Services (the "NYDFS"), to

address this matter, including by submitting its remediation plan to locate and pay annuitants (*i.e.*, Project Chestnut) to the regulator and the Company's cooperation with the NYDFS continues to this day, including by providing quarterly progress reports to the state regulator. The DOL's suggestion that ERISA applies to GACs until each annuitant is fully paid is entirely baseless and contradicts well established legal authority—including the DOL's own regulations—that the plan's ERISA-governed benefit payment obligations are satisfied upon securing the insurer's annuity payment guarantees, which are expressly enforceable under state contract law. In a PRT transaction, the issuance of a GAC fully guarantees the payment of benefits as a matter of contract and insurance law, and the pension plan is discharged of its ERISA-governed benefit payment obligations. The DOL's jurisdiction over the payment of plan benefits terminates at precisely that moment in time.

Second, the DOL's assertion that it needs the requested documents concerning Project Chestnut to explore "whether" it has jurisdiction over MetLife or third parties does not make sense. The requested documents concern only the Company's remediation efforts with respect to benefits under GACs. Documents concerning an insurance matter over which the DOL has no jurisdiction cannot possibly help the DOL assess potential ERISA violations.

The Court should reject the DOL's petition for enforcement of the subpoena.

STATEMENT OF FACTS

I. BACKGROUND

MetLife has been in the PRT business for decades. (Cox Decl. ¶ 5.) PRT transactions enable employers that sponsor defined benefit pension plans to transfer their pension obligations to select insurance companies, such as MetLife, by purchasing a GAC. (Cox Decl. ¶ 6.) GACs are insurance products, and are thus subject to the insurance laws and regulations of the fifty states. (Cox Decl. ¶ 7.) When a GAC is issued pursuant to a PRT transaction, the plan's benefit

payment obligations are satisfied by the purchase of the annuity and the individual annuitant's status as an ERISA-covered participant or beneficiary ceases. The insurance company that issued the GAC assumes the obligation to pay benefits directly to the annuitants (*i.e.*, the former plan participants) when they reach retirement age. (Cox Decl. ¶ 6.)

In late 2017, MetLife determined that its efforts to contact certain individuals who might be eligible for retirement benefits under GACs issued pursuant to PRT transactions had been inadequate. (Cox Decl. ¶ 8.) The vast majority of the GACs in question were issued prior to 1990, and the impacted individuals were not yet eligible for their pension benefits at the time of issuance.[2] (Cox Decl. ¶ 9.) When these individuals did not respond to two letters from MetLife, one sent at age 65 and one sent at age 70.5, it was presumed that they would not respond and had not become entitled to benefits. (Cox Decl. ¶ 8.) This issue impacted a very small percentage of MetLife's group annuitants. (*Id.*)

MetLife self-reported the issue in December 2017 to the NYDFS and in a Form 8-K, and announced that it was reviewing and improving the processes used to locate and contact group annuitants. (Cox Decl. ¶ 10.) MetLife's then-CEO Steven Kandarian expressed his deep regret, stating that the Company "had an operational failure that never should have happened," and the Company committed to find and pay any group annuitants who were due benefits, including interest on any retroactive payments. (Cox Decl. ¶ 11.)

Following that disclosure, the Company worked closely with its primary regulator, the NYDFS, including submitting its remediation plan and locating annuitants for payment. (Cox Decl. ¶ 12.) The Company also worked with the United States Securities and Exchange

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[2] Given that timeframe, any ERISA-based investigation of such contract purchase transactions is clearly time barred by ERISA's six-year statute of repose. 29 U.S.C. § 1113. Further, MetLife no longer writes GACs with respect to individuals who are not yet in pay at the time of issuance. The Company made a business decision in 2015 to cease offering this option to employer plans. Since then, MetLife has only written GACs for individuals who are already receiving benefits. (Cox Decl. ¶ 9.)

Commission (the "SEC") to resolve an inquiry regarding the impact of the issue on the Company's reserves and financial statements. (Cox Decl. ¶ 13.) In both cases, public orders were entered resolving those regulatory investigations. (Cox Decl. ¶¶ 12, 13; Ex. A.)[3] As part of a Consent Order with the NYDFS, MetLife agreed to provide the NYDFS with a detailed remediation plan which provides for payment or restitution to policyholders or their beneficiaries and procedures for identifying, and locating annuitants. (Ex. A at 5.) That plan, which reflects procedures developed for Project Chestnut, employs robust procedures based on guidance from the Pension Benefit Guaranty Corporation's ("PBGC") missing participants program, two DOL publications, and an Internal Revenue Service ("IRS") Letter to Examiners. (Declaration of Matthew J. Sorensen ("Sorensen Decl."), Ex. 1 at 2.) MetLife has committed to find and pay as many annuitants and beneficiaries as possible, escheat benefits where required by state law, and pay directly any annuitant that comes forward to the Company. (*Id.*) The NYDFS retained authority, "at its sole discretion," to address any potential default with regard to payment of annuitants by MetLife, and continues to receive quarterly reports from the Company under the Consent Order to ensure that progress is being made. (Cox Decl. ¶ 12; Ex. A at 5, 8.)

II. THE DOL INVESTIGATION

On July 22, 2019, the DOL issued a document subpoena to MetLife (the "2019 Subpoena") seeking information concerning specified PRT transactions from 2015 forward. The 2019 Subpoena purported to be an exercise of the DOL's authority to investigate "for compliance with Title I of [ERISA,] which establishes standards governing the operation of employee benefit plans." (Ex. E.) The 2019 Subpoena sought certain categories of information related to MetLife's administration of specified GACs. From the earliest stages of the DOL's

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[3] Unless otherwise stated, citations to Ex. __ are to the exhibits annexed to the declaration of Todd Hassler, dated March 31, 2021, ECF Dkt. No. 10.

investigation, MetLife objected that the requested documents related to insurance matters outside of ERISA's jurisdiction. (*Id.*) Nevertheless, MetLife voluntarily cooperated with the 2019 Subpoena without waiver of its jurisdictional objections and defenses. (Ex. E; Cox Decl. ¶ 15.) MetLife spent significant time and resources complying with the 2019 Subpoena and dozens of additional follow-up requests for documents, information, and witness interviews. (*Id.*) MetLife has produced documents comprising over 20,000 pages and participated, at the DOL's request, in bi-weekly status calls with the DOL. (Cox Decl. ¶ 16; Ex. E.) MetLife also made numerous senior employees available to answer the DOL's questions. (*Id.*)

In response to the 2019 Subpoena, MetLife produced a copy of its expedited procedures for locating and paying individuals with deferred group annuity benefits guaranteed by MetLife whom MetLife had not been able to locate using its prior procedures. That document was titled "Project Chestnut Expedited Outreach Processes." (Cox Decl. ¶ 17.) The DOL asked MetLife for further explanation of what "Project Chestnut" constitutes. (Ex. E.) MetLife explained that Project Chestnut refers to the Company's effort to remediate certain operational failures relating to the payment of contractual benefits to deferred annuitants, and that such issue related to MetLife's performance of annuity payment obligations under state contract and insurance law, not ERISA. (*Id.*) When the DOL pressed for additional information, MetLife responded that the remediation is an insurance issue related to an insurance product and that the background facts had been thoroughly investigated and resolved by the NYDFS and the SEC. (*Id.*) While MetLife objected to a duplicative regulatory investigation in the absence of jurisdiction, MetLife made clear that it remained willing to discuss Project Chestnut with the DOL. (*Id.*)

In response, on January 5, 2021 the DOL issued the 2021 Subpoena. The 2021 Subpoena calls for the production of ten categories of documents related to Project Chestnut, including, among others:

- "All documents memorializing the terms of Project Chestnut, including memoranda, notes, drafts, emails, instructions, reports and any other physical or electronic document."
- "Documents sufficient to identify every individual involved in creating or implementing Project Chestnut, including full names, work addresses and all electronic contact information (phone numbers, email addresses, text addresses, WhatsApp addresses, and all other electronic messaging media addresses used implementing and/or effectuating Project Chestnut)."
- "All communications, by, to and among the individuals identified in request No. 2 relating to Project Chestnut including all physical transmittals and all electronic transmittals of any type."
- "All communications between MetLife officials and any United States or State government or other regulating official regarding Project Chestnut."

(Ex. B at 4-5.) The documents sought relate entirely to MetLife's administration of GACs.

Although the 2021 Subpoena was improper, MetLife endeavored to work with the DOL to determine what, if anything, that the DOL needed to resolve the investigation. Before this action was filed, MetLife offered to provide the DOL information related to Project Chestnut in an effort to move forward towards a resolution of the issues without litigation. (Ex. H.) The DOL elected to file this proceeding instead. On April 8, 2021, MetLife renewed its offer to make a presentation regarding Project Chestnut and MetLife's remediation efforts—with the opportunity for the DOL to ask questions, and seek follow up information, as necessary. (Sorensen Decl., Ex. 1.) MetLife understands that the DOL's central concern is whether all appropriate reasonable steps have been, and are being taken, to ensure that all payments have been or will be made to all annuitants or their beneficiaries. (*Id.*) This is precisely the

information that MetLife has offered to the DOL without waiver of its jurisdictional objections. (*Id.*)

ARGUMENT

The 2021 Subpoena is invalid and unenforceable under well-settled legal standards because (i) the subject of the subpoena—MetLife's payment of benefits under GACs—is outside the DOL's jurisdiction; and (ii) the information sought, which relates solely to MetLife's effort to locate and pay annuitants under a GAC, has no bearing on the question of whether the DOL might have jurisdiction under ERISA over MetLife or a third party.

The investigative powers of an administrative agency are necessarily limited by the jurisdiction conferred to the agency by Congress. An administrative subpoena is valid and enforceable only if it was issued for a proper purpose, and the information sought is relevant to that purpose. *United States v. Powell*, 379 U.S. 48, 57-58 (1964); *see also United States v. Westinghouse Elec. Corp.*, 638 F.2d 570, 574 (3d Cir. 1980) ("The requirements for judicial enforcement of an administrative subpoena *duces tecum*" are that "(1) the inquiry must be within the authority of the agency, (2) the demand for production must not be too indefinite, and (3) the information sought must be reasonably relevant to the authorized inquiry.") (citing *United States v. Morton Salt Co.*, 338 U.S. 632, 652 (1950)); *Donovan v. Mehlenbacher*, 652 F.2d 228, 230 (2d Cir. 1981) ("The subpoena power is limited … by requirements of reasonableness and relevancy.").

Where, as here, an administrative agency issues a subpoena that seeks information relating to matters over which the agency has no jurisdiction, that subpoena is not related to a proper purpose and not enforceable. "Questions of regulatory jurisdiction are properly addressed at the subpoena-enforcement stage if, as here, they are ripe for determination at that stage." *Reich v. Great Lakes Indian Fish & Wildlife Comm'n*, 4 F.3d 490, 492 (7th Cir. 1993) (refusing

to enforce DOL subpoena where the DOL did not have jurisdiction because subpoenaed party was not subject to Fair Labor Standards Act) (citing cases); *see also Chao v. Cmty. Tr. Co.*, 474 F.3d 75, 87-88 (3d Cir. 2007) (holding that "the District Court erred in ruling that the issue of the [DOL's] jurisdiction was not ripe for adjudication" and noting that DOL's jurisdiction depended on whether employee benefit trust was subject to ERISA); *United States v. Newport News Shipbuilding & Dry Dock Co.*, 837 F.2d 162, 165-686 (4th Cir. 1988) (finding subpoena "deficient because it exceeds the proper scope of [agency's] statutory authority").

I. THE DOL HAS NO AUTHORITY OVER METLIFE'S PAYMENT OF BENEFITS UNDER GACS.

The 2021 Subpoena is unenforceable because the underlying PRT transactions "formally sever[ed] the applicability of ERISA" to the benefits at issue and thus terminated the DOL's jurisdiction. *Beck. v. PACE Int'l Union*, 551 U.S. 96, 106 (2017).

A. ERISA Does Not Apply to GACs.

Congress enacted ERISA to protect the interests of retirees and their beneficiaries by imposing legal requirements on employee pension plans. *Cent. Laborers' Pension Fund v. Heinz*, 541 U.S. 739, 746 (2004). ERISA allows plan administrators to arrange for the purchase of annuities, such as GACs, in satisfaction of the plan's benefit payment obligations under ERISA. *See Beck*, 551 U.S. at 99 (citing 29 U.S.C. § 1341(b)(3)(A)(i)). The purchase of annuities may occur in connection with a plan termination or in connection with the "de-risking" of an ongoing plan. Under both scenarios, the selection of an annuity provider is a fiduciary act under ERISA, and plan fiduciaries are required, among other things, to evaluate a range of factors related to a potential annuity provider's "claims paying ability and creditworthiness." 29 C.F.R. § 2509.95-1(c). Once a plan has purchased such an annuity, however, the assets of the

plan attributable to the annuity are fully removed from the ERISA regime.[4] *Beck*, 551 U.S. at 106; *see also* 29 C.F.R. § 2510.3-3(d)(2)(ii)(A). Thereafter, "plan participants and beneficiaries must rely primarily (if not exclusively) on state contract remedies if they do not receive proper payments or are otherwise denied access to their funds." *Beck*, 551 U.S. at 106.

Under federal regulations, an employer wishing to terminate a pension plan by purchasing a GAC must file a notice of intent to terminate with the PBGC, known as a Form 500 and Schedule EA-S. *See* 29 C.F.R. § 4041.23. Such form and schedule are completed by an actuary and the plan administrator and they attest to, among other things, the sufficiency of the annuity that the employer will purchase to cover all benefits under the plan. *See* Form 500 and Schedule EA-S, https://www.pbgc.gov/documents/500and501.pdf. The filing of the notice triggers a 60-day review period during which the PBGC reviews the sufficiency of the annuity and determines whether the plan administrator has complied with other applicable statutory requirements. *See* 29 C.F.R. § 4041.31; *see also* 29 C.F.R. § 4041.47 (requiring the PBGC to issue a notice sufficiency or insufficiency). Upon expiration of the review period, the employer must consummate its purchase of the annuity, close out the plan, and file a certification of the close out with the PBGC within specified time periods. 29 C.F.R. §§ 4041.26, 4041.28, 4041.29.

Regulations issued by the DOL, the IRS, and the PBGC all confirm that the purchase of a GAC by an ERISA-covered plan to satisfy pension obligations removes those benefits from the ERISA framework. *See* 29 C.F.R. § 2510.3-3; 29 C.F.R. § 4006.6; Form 5500, https://www.dol.gov/sites/dolgov/files/EBSA/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2020-form-5500.pdf (issued jointly by DOL, IRS,

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[4] The benefits liabilities covered by the GAC are similarly removed from the purview of ERISA. *See, e.g.*, *Lee v. Verizon Commc'ns, Inc.*, 837 F.3d 523, 538 (5th Cir. 2016) ("the transfer of pension liabilities from an ongoing plan through an annuity transaction amendment is a settlor function permitted under ERISA"); *see also Mahoney v. Bd. of Trs.*, 973 F.2d 968, 974 (1st Cir. 1992) (plan may be terminated as to specific beneficiaries by purchasing a qualifying annuity for such beneficiaries).

and PBGC). For example, a DOL advisory opinion explicitly states that obligations under GACs purchased by benefit plans for their participants are "not within the jurisdiction of the Department of Labor under Title I of ERISA." *Sec. Inv. Prot. Corp. v. Jacqueline Green Rollover Acct.*, No. 12 Civ. 1039 (DLC), 2012 WL 3042986, at *9 (S.D.N.Y. July 25, 2012) (quoting DOL Advisory Opinion No. 2003-05A, 2003 WL 1901900, at *3 (Apr. 10, 2003), at 3). In addition, DOL interpretive bulletins state that ERISA "explicitly recognize[s] a transfer of liability from the plan when such annuity is purchased from an insurance company licensed to do business in a State." Interpretive Bulletins Relating to the Employee Retirement Income Security Act of 1974, 60 Fed. Reg. 12328, 12328 (Mar. 6, 1995); *see also id.* at 12330 ("[T]he purpose of a benefit distribution annuity is to transfer the plan's liability with respect to the individual's benefits to the annuity provider.").

Likewise, DOL regulations defining employee benefit plans provide that an individual "is not a participant covered under an employee pension plan" subject to ERISA if the individual's rights "[a]re fully guaranteed by an insurance company . . . licensed to do business in the State, and are legally enforceable by the sole choice of the individual against the insurance company," and "[a] contract, policy or certificate describing the benefits to which the individual is entitled under the plan has been issued to the individual." 29 C.F.R. § 2510.3-3(d)(2)(ii)(A).

These authorities are clear and consistent: An individual who has been issued a legally enforceable insurance or annuity contract that fully guarantees her benefits under a pension plan is "not to be treated" as a plan participant "[b]ecause these individuals will no longer look to the plan for their benefits." 40 Fed. Reg. 24642, 24650 (June 9, 1975). The DOL likewise is no longer looking to the plans but to MetLife to guarantee the benefits at issue, implicitly

acknowledging that the plans have been terminated and that the GAC—an insurance contract—is now the sole source of benefits.

B. The DOL's Efforts to Extend Its Jurisdiction to Insurance Products Are Unavailing.

The DOL's contention that MetLife's administration of GAC insurance products renders MetLife a fiduciary subject to ERISA is unavailing. ERISA requires every employee pension plan to have a written plan instrument that identifies one or more "named fiduciaries" who owe statutorily prescribed duties to the plan. 29 U.S.C. § 1102. Other individuals or entities may become ERISA fiduciaries to the extent that they exercise discretion over plan assets, plan administration, or render investment advice to the plan for a fee. *See* 29 C.F.R. § 2510.3-21; *see also Toussaint v. JJ Weiser & Co*., No. 04 Civ. 2592 (MBM), 2005 WL 356834, at *6 (S.D.N.Y. Feb. 13, 2005) ("ERISA makes the existence of discretion a sine qua non of fiduciary duty."). But "persons who have no power to make any decisions as to plan policy, interpretations, practices or procedures" are not fiduciaries. 29 C.F.R. § 2509.75–8. MetLife indisputably is not a "named fiduciary" under any of the relevant employee benefit plans. Further, MetLife's payment obligations are owed directly to individuals whose status as ERISA participants or beneficiaries has ceased. Accordingly, MetLife's administration of the relevant insurance products—the GACs—is not an exercise of discretion that can render MetLife a fiduciary under ERISA because the GACs are not assets of any ERISA plan. The authority in support of this position is well established and incontrovertible. And despite receiving over 20,000 pages of documents from MetLife, the DOL has no factual basis to contend that MetLife has exercised discretion over plan assets or plan administration or that MetLife has rendered investment advice to an ERISA plan for a fee. In one of its first advisory opinions regarding the sale of annuities, the DOL opined that an annuity provider is not even a party in interest, much less a fiduciary

exercising discretionary authority under ERISA. *See* DOL Adv. Op. 76-36, 1976 WL 5051 (Jan. 15, 1976). Under the DOL's own regulations, therefore, MetLife—a GAC provider with no oversight or discretion regarding employee pension plans—is not a fiduciary and therefore not subject to ERISA. The DOL has offered no legal authority to the contrary.

The DOL's assertion that "MetLife has fiduciary responsibilities" under ERISA "to the extent that [MetLife] has not actually provided benefits owed to individuals under their original employee benefit plan" is plainly wrong and unsupported by any legal authority. (*See* Pet. Mem. at 8.) The DOL's own regulations make clear that an individual's rights need only be "fully guaranteed" by and "enforceable . . . against" an insurance company—not "fully paid"—for an ERISA-governed plan to terminate. 29 C.F.R. § 2510.3-3(d)(2)(ii)(A).[5] Neither law nor common sense supports the proposition that non-payment under a GAC would somehow revive ERISA duties that were validly extinguished in a PRT transaction. Likewise, the DOL's suggestion that it may have jurisdiction if the relevant employee benefit plans were not successfully terminated is an exercise in counterfactual history. (*See* Pet. Mem. at 8.) The GACs were issued decades ago, and there is no basis to believe that the regulatory review and approval processes set forth above were not followed.

II. THE DOL'S SUGGESTION THAT IT REQUIRES THE INFORMATION SOUGHT BY THE 2021 SUBPOENA TO DETERMINE WHETHER IT HAS JURISDICTION UNDER ERISA IS UNAVAILING.

None of the information requested by the 2021 Subpoena could possibly lead to information that would provide the DOL with jurisdiction over MetLife. Far from being targeted

[5] Numerous courts have confirmed this plain-language reading of the DOL's regulations. *See, e.g., Thompson v. Prudential Ins. Co. of Am.*, 795 .F. Supp. 1337, 1342 (D.N.J. 1992) (benefits are fully guaranteed by GAC within the meaning of DOL regulation if the annuitants have "legal recourse" against the insurer if it fails to make payments); *Lee v. Verizon Commc'ns, Inc.*, No. 3:12-CV-4834-D, 2012 WL 6089041, at *1, n.6 (N.D. Tex. Dec. 7, 2012) (under applicable regulation, retirees "will no longer be participants under the Plan" after closing of PRT transaction because their benefits will be "fully guaranteed by an insurance company").

to a jurisdictional question related to ERISA-governed pension plans or the negotiation of GACs, the 2021 Subpoena is a burdensome inquiry into MetLife's remediation efforts with regard to a payment matter that occurred years after the GACs in question were issued, and it is not enforceable. *See Chao*, 474 F.3d at 86 (rejecting DOL's assertion that it "needs the subpoenaed information to determine jurisdiction").

First, the 2021 Subpoena requests information exclusively about "Project Chestnut," a publicly-disclosed remediation initiative by MetLife to locate and pay individuals benefits due under annuity contracts guaranteed by MetLife whom MetLife had been unable to locate using its former procedures. By definition, documents concerning such a remediation project cannot possibly provide the DOL with a basis for jurisdiction because the administration and payment of insurance benefits is not governed by ERISA— it is governed by state insurance law. To the extent the DOL argues that it is investigating possible breaches of ERISA at the time the relevant GACs were issued, Project Chestnut does not concern the issuance of GACs—it concerns the payment of benefits under such contracts years or decades *after* the relevant PRT transactions closed. Nor, for that matter, has the DOL articulated any reason why the information MetLife has already provided is somehow insufficient for it to determine whether it has jurisdiction in this matter.[6]

Second, the information sought by the 2021 Subpoena will not help the DOL assess potential ERISA violations by other actors because Project Chestnut does not relate in any way

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[6] MetLife has fully complied with the DOL's 2019 Subpoena by producing over 20,000 pages of documents and providing extensive information on topics including: the identity of and points of contact for each plan, the GACs between the plans and MetLife, the identity of and form of benefit for each participant covered by each transaction, samples of each type of certificate used in connection with each transaction, the efforts MetLife undertook to verify the accuracy of plan data, MetLife's responses to the plans' requests for proposal, and the calculation and amount of any rebates paid to the plans. (Cox Decl. ¶ 16.) MetLife also voluntarily allowed the DOL to interview several of its senior executives, and its counsel held bi-weekly status calls with the DOL for much of the investigation to field follow up questions. (Ex. E.)

to MetLife's sale of GACs to ERISA-governed plans. (*See* Pet. Mem. at 8.) Project Chestnut materials relate only to the relationships between MetLife and covered individuals. Those materials do not relate, in any way, to "potential ERISA violations by other actors," which, in any event, are likely time barred by ERISA's six-year statute of repose. (*See id.*; 29 U.S.C. § 1113.) Further, to the extent that any of the employee benefit plans violated ERISA, MetLife has already provided the communications with the plans in negotiating the pension risk transfers, nullifying the relevance of any further document production. (Cox Decl. ¶ 16.)

CONCLUSION

For the foregoing reasons, the Court should deny the Petition to enforce the 2021 Subpoena.

Dated: New York, New York
May 4, 2021

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