



MetLife fights DOL subpoena over missing participants

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MetLife Inc. is challenging a subpoena from the Department of Labor (DOL) seeking information about the company's efforts to find missing annuitants under group annuity contracts (GACs) purchased in pension risk transfers. Although the primary dispute is over DOL's jurisdiction to investigate MetLife's missing annuitant practices, DOL's court filings include a controversial argument about when benefits transferred to an insurer in an annuity purchase cease to have ERISA protection.

MetLife's flawed missing annuitant practices

In 2017, MetLife publicly disclosed that it failed to adequately search for more than 13,700 missing group annuitants whose defined benefit (DB) plan benefits had been transferred to the company. The affected individuals had not started their pensions when their former plan sponsor purchased a GAC. MetLife sent these individuals two letters — one at age 65 and the other at age 70-1/2. If an individual failed to respond to both letters, MetLife assumed that the person would never respond and was not entitled to benefits.

MetLife discovered the problem after voluntarily conducting an internal review of its missing annuitant procedures. According to MetLife, the error affected fewer than 2% of their group annuitants, and the majority of the affected individuals were covered by GACs issued before 1990. MetLife stopped accepting deferred vested participants in risk transfer transactions at the end of 2015. After disclosing the error, MetLife worked with the New York Department of Financial Services (NYDFS) to develop a remediation plan with procedures for identifying and locating individuals owed benefits. MetLife also paid fines of [\\$19.75 million](#) to NYDFS and [\\$10 million](#) to the US Securities and Exchange Commission.

DOL's investigation

DOL opened an investigation to determine whether MetLife, the plan sponsors that purchased GACs or anyone else involved in the transactions violated ERISA. In 2019, DOL sent a subpoena to MetLife seeking information about the company's administration of certain GACs. MetLife voluntarily responded to that subpoena, producing over 20,000 pages of documents — including the specified GACs, communications with plan sponsors during contract negotiations, the identity of each participant covered by the transaction and their form of payment, and MetLife's efforts to verify plan data. MetLife also produced a copy of the procedures developed with the NYDFS to locate deferred annuitants who didn't respond to the company's initial communications.

In 2021, DOL subpoenaed MetLife a second time, seeking additional information about the company's remediation plan. This time, MetLife objected to the subpoena, arguing that DOL does not have jurisdiction because the remediation plan relates only to GACs governed by state contract and insurance law, not ERISA. DOL then [sued](#) to enforce the subpoena.

When are transferred benefits no longer subject to ERISA?

When a plan sponsor purchases a GAC from an insurer, the parties typically understand that the benefits will cease to be subject to ERISA once the transfer is complete. After the transaction, the annuitants have an enforceable contract with the insurer that's subject to state contract and insurance laws. This is the primary basis for MetLife's jurisdictional [argument](#) — i.e., DOL has no investigative authority over these benefits because they are no longer subject to ERISA.

However, DOL asserts that transferred benefits could still be subject to ERISA if the parties did not fully comply with the legal requirements for the transaction. For example, under DOL regulations, an individual's status as an ERISA pension plan participant ends when the individual's benefit is fully guaranteed by an insurance company, and the individual has received a contract, policy or certificate describing the benefits owed. (A complete distribution of the benefit directly to the participant also terminates ERISA coverage.) DOL argues that if any of MetLife's risk transfer transactions failed to fully meet these requirements, then the individuals whose benefits were transferred in those transactions remain plan participants with ERISA protection. As a result, the transactions are subject to DOL investigation.

DOL makes novel argument about termination of ERISA coverage. In its filings with the court, DOL went further: It characterized MetLife's benefits guarantee in a novel way, stating that "MetLife has fiduciary responsibilities to the extent that it has not actually provided benefits owed to individuals under their original employee benefit plan." This surprising statement appears to suggest that DOL believes benefits may remain subject to ERISA until the insurer pays the benefits, even if the risk transfer met all of ERISA's rules. If this is DOL's position, it is contrary to the agency's own regulations on termination of ERISA protection, which require only that an annuitant receive a contract, policy or certificate providing an enforceable right to payment from the insurer.

Investigation includes fiduciaries that purchased MetLife products

DOL's investigation extends beyond MetLife to the plan sponsors and other parties involved in the risk transfers. ERISA specifically authorizes DOL to bring a civil enforcement action when the purchase of an annuity contract violates ERISA's fiduciary rules. Even if MetLife isn't subject to ERISA's fiduciary rules after the transfer (because the GACs are exempt from ERISA), DOL believes documents related to MetLife's remediation plan may still be relevant to the agency's investigation of possible fiduciary breaches by the plan fiduciaries that purchased MetLife's annuity products. The court could resolve the dispute on these grounds and avoid the more thorny issues about the possible continuation of ERISA coverage after a GAC has been purchased.

Related resources

Non-Mercer resources

- [Secretary of Labor's reply to MetLife's opposition to subpoena](#) (S.D.N.Y May 18, 2021)
- [Memorandum of law opposing Secretary of Labor's petition to enforce subpoena](#) (S.D.N.Y May 4, 2021)

- [Memorandum of law supporting Secretary of Labor's petition to enforce subpoena](#) (S.D.N.Y March 31, 2021)

Mercer Law & Policy resources

- [DOL issues guidance on missing participants](#) (Jan. 19, 2021)
- [IRS reviews steps for retirement plans to locate missing participants](#) (Nov. 9, 2020)

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