

DEPARTMENT OF LABOR**Pension and Welfare Benefits
Administration**

[Prohibited Transaction Exemption 98-17;
Exemption Application No. D-10412, et al.]

**Grant of Individual Exemptions;
Metropolitan Life Insurance Company**

AGENCY: Pension and Welfare Benefits
Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

**Metropolitan Life Insurance Company
(MetLife) Located in New York, NY**

[Prohibited Transaction Exemption 98-17; Exemption Application No. D-10412]

Exemption*Section I. Covered Transactions*

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective April 1, 1997, to (1) the purchase or retention by an employee benefit plan (the Plan); and (2) the sale or continuation by MetLife or an affiliate (collectively, MetLife) of a synthetic guaranteed investment contract (the MetLife Trust GIC) entered into between the Plan and MetLife under which MetLife guarantees (the Guarantee) certain amounts (the Guaranteed Value).

This exemption is conditioned upon the following requirements as set forth below in Section II.

Section II. General Conditions

(a) The decision to enter into a MetLife Trust GIC is made on behalf of a participating Plan in writing by a fiduciary of such Plan which is independent of MetLife.

(b) Only Plans with total assets having an aggregate market value of at least \$25 million are permitted to purchase MetLife Trust GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are "plan assets" under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity has purchased a MetLife Trust GIC, the foregoing \$25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$25 million; provided that, if the fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$25 million threshold amount

attributable to plan investment in the commingled entity, which are in excess of \$50 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are "plan assets" under the Plan Asset Regulation, which entity has purchased a MetLife Trust GIC, the foregoing \$25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$25 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to Plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the \$25 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of \$50 million.

(c) Prior to the execution of the MetLife Trust GIC, the Plan fiduciary receives a full and detailed written disclosure of all material features concerning the MetLife Trust GIC, including—

(1) A Letter of Agreement between MetLife and the Plan fiduciary which stipulates the relevant provisions of the GIC, the applicable fees and the rights and obligations of the parties;

(2) Investment Guidelines defining the manner in which an investment manager will manage a MetLife Trust GIC;

(3) A copy of the Investment Management Agreement between MetLife and the Plan fiduciary;

(4) Information explaining in a manner calculated to be understood by a Plan fiduciary that, if a MetLife affiliated manager underperforms or if adverse market conditions occur, the interest rate that is credited (the Credited Rate) to a MetLife Trust GIC account (the Account) may be as low as 0 percent;

(5) The pertinent features of a MetLife conventional GIC (the MetLife Conventional GIC) that a Plan fiduciary may obtain upon the discontinuance of a MetLife Trust GIC, including an explanation that, although a MetLife Conventional GIC will offer a guarantee of principal, it may have a credited rate

as low as 0 percent for the duration of the contract; and

(6) Copies of the proposed exemption and grant notice with respect to the exemptive relief provided herein.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given a summary of the pertinent features of the documents listed above in paragraphs (c)(1), (c)(2) and (c)(5) of this Section II, which are deemed appropriate for distribution to such participant, including a disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent.

(e) Subsequent to a Plan's investment in a MetLife Trust GIC, the Plan fiduciary and, if applicable, the Plan participant, upon such participant's request, receive the following ongoing disclosures regarding such investment:

(1) A monthly report consisting of a Guaranteed Value Statement, which specifies the affected Plan's MetLife Trust GIC balance for the prior month, contributions, withdrawals, transfers, interest earned, the current month's ending balance for the MetLife Trust GIC, the current interest rate and a summary of transactions;

(2) A quarterly report consisting of a Market Value Statement, which specifies the prior quarter's ending market value for a Plan's MetLife Trust GIC, contributions, withdrawals, the fees paid to MetLife, investment income, realized capital gains and/or losses from sales, changes in unrealized appreciation of assets, the current quarter's ending market value and rate of return, and a summary of transactions; and

(3) An annual portfolio listing or letter describing key events, depending upon its arrangements with a Plan fiduciary.

(f) As to each Plan, the combined total of all fees and charges imposed under a MetLife Trust GIC is not in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(g) Each MetLife Trust GIC specifically provides an objective method for determining the fair market value of the securities owned by the Plan pursuant to such GIC.

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife. However, in no event does a MetLife Trust GIC have a maturity date exceeding five years. A Plan fiduciary may extend the maturity date for an additional year upon an affirmative written decision made annually by such fiduciary. Once a Plan fiduciary does not affirmatively extend

the maturity date, no future extensions will occur.

(i) Prior to a Plan fiduciary's decision regarding the extension of a maturity date for a MetLife Trust GIC for one additional year, MetLife informs such Plan fiduciary of the new reset rate for the Credited Rate.

(j) MetLife maintains books and records of each MetLife Trust GIC transaction for a period of six years. Such books and records are subject to annual audit by independent, certified public accountants.

EFFECTIVE DATE: If granted, this exemption is effective as of April 1, 1996.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on October 20, 1997 at 62 FR 54471.

Written comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment, which was submitted by MetLife, suggested modifications to the operative language of the Notice and recommended certain changes to the Summary of Facts and Representations (the Summary) of the Notice. Presented below are the modifications requested by MetLife and the Department's accompanying responses. Also presented are amendments to the Notice made by the Department.

1. Operative Language Changes

a. Exemptive Language

MetLife notes that under the caption "Proposed Exemption," the exemptive language of the Notice does not provide exemptive relief for any payment by MetLife to a Plan pursuant to MetLife's Guarantee. Because a Plan would be required to receive payment under a MetLife Trust GIC arrangement if certain conditions are met, MetLife assumes the Department would consider such payment as part of the exempted arrangement.

The Department agrees that the payment by MetLife to a Plan pursuant to the Guarantee is subsumed under the transactions exempted. Therefore, the Department does not believe any modification to the exemptive language is warranted.

b. Condition (b)

Condition (b) of the Notice requires a Plan investing in a MetLife Trust GIC to have assets that are in excess of \$25

million.¹ MetLife states that in some situations, a Plan fiduciary may act on behalf of a trust in which a number of Plans participate. Although the trust may have assets in excess of \$25 million, MetLife indicates that the individual Plans may not have total assets which would satisfy the minimum threshold amount.

Therefore, MetLife requests that the Department clarify that the scope of the Notice be expanded to include a fiduciary (e.g., an independent investment manager) acting on behalf of a trust with assets in excess of \$25 million regardless of the asset totals of the individual Plans participating in the trust. In MetLife's view, such trust fiduciary would have the same level of sophistication as a fiduciary of a Plan with assets in excess of \$25 million. If this change is made, MetLife also requests that various references in the Notice to Plan sponsors should be construed to include fiduciaries of trusts and references to Plans should be construed to include trusts.

In response to these comments, the Department acknowledges that the use of the term "Plan" in the Notice should be construed to include trusts and other commingled investment vehicles which have assets (either individually or aggregated within the investment vehicle) in excess of \$25 million. Further, the term "Plan fiduciaries" and "Plan sponsors" should be construed to include fiduciaries of such trusts or commingled investment vehicles.

In addition, in recognition of the fact that individual Plans investing in a commingled entity may not be able to meet the \$25 million threshold amount on their own in order to acquire a MetLife Trust GIC, the Department has decided to permit the aggregation of Plan assets within the pooled vehicle in order to satisfy the threshold amount. However, to ensure the sophistication of the fiduciary who is making the decision on behalf of Plans to invest in a MetLife Trust GIC, the Department has imposed certain additional requirements for pooled arrangements involving the assets of either related Plans (i.e., the Related Plans) or unrelated Plans (i.e., the Unrelated Plans). These additional requirements are described as follows:

(1) *Related Plans.* With respect to two or more plans, which are maintained by the same employer, controlled group of corporations or employee organization,

¹ MetLife represents that in instances of a start-up situation, a Plan might not have assets totaling \$25 million. Nevertheless, MetLife explains that it would still allow the Plan to invest in a MetLife Trust GIC as long as the Plan reached the \$25 million threshold within the year.

whose assets are invested in a master trust or any other form of plan asset look-through entity, which entity has purchased a MetLife Trust GIC from MetLife, the Department notes that the \$25 million threshold may be satisfied by aggregating the assets of the investing Plans within the pooled vehicle. In this regard, the Department also notes that an employer may retain an independent investment manager to manage all or a portion of plan assets invested in a master trust. Under these circumstances, the fiduciary must have total assets under its management and control, exclusive of the \$25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$50 million.

(2) *Unrelated Plans.* For two or more plans which are not maintained by the same employer, controlled group of corporations or employee organization, whose assets are invested in a group trust or other plan asset look-through entity, which entity has purchased a MetLife Trust GIC, the \$25 million threshold will apply to the aggregate assets of such entity so long as the fiduciary responsible for making the investment decision on behalf of the group trust or other plan asset look-through entity is not the sponsoring employer, a member of the controlled group of corporations, the employee organization, or an affiliate, and such fiduciary has full investment responsibility² with respect to the plan assets invested therein. Also, the fiduciary must have total assets under its management and control, exclusive of the \$25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$50 million.

Accordingly, Condition (b) of Section II has been revised to read as follows:

“(b) Only Plans with total assets having an aggregate market value of at least \$25 million are permitted to purchase MetLife Trust GICs; provided however that—

(1) In the case of two or more Plans which are maintained by the same employer, controlled group of corporations or employee organization (the Related Plans), whose assets are commingled for investment purposes in a single master trust or any other entity the assets of which are “plan assets” under 29 CFR 2510.3-101 (the Plan Asset Regulation), which entity has purchased a MetLife Trust GIC, the foregoing \$25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$25 million; provided that, if the

fiduciary responsible for making the investment decision on behalf of such master trust or other entity is not the employer or an affiliate of the employer, such fiduciary has total assets under its management and control, exclusive of the \$25 million threshold amount attributable to plan investment in the commingled entity, which are in excess of \$50 million, or

(2) In the case of two or more Plans which are not maintained by the same employer, controlled group of corporations or employee organization (the Unrelated Plans), whose assets are commingled for investment purposes in a group trust or any other form of entity the assets of which are “plan assets” under the Plan Asset Regulation, which entity has purchased a MetLife Trust GIC, the foregoing \$25 million requirement is deemed satisfied if such trust or other entity has aggregate assets which are in excess of \$25 million; provided that the fiduciary responsible for making the investment decision on behalf of such group trust or other entity—

(i) Is neither the sponsoring employer, a member of the controlled group of corporations, the employee organization, nor an affiliate,

(ii) Has full investment responsibility with respect to Plan assets invested therein, and

(iii) Has total assets under its management and control, exclusive of the \$25 million threshold amount attributable to Plan investment in the commingled entity, which are in excess of \$50 million.”

c. Conditions (d) and (e)

MetLife believes the disclosure requirements in the Notice for participants in Section 404(c) Plans go beyond the scope of the disclosure requirements of section 404(c) of the Act and the Department’s accompanying regulation (the Section 404(c) Regulation).³ MetLife explains that funding vehicles, such as the MetLife Trust GIC, are typically part of a Plan’s larger “stable value” or “fixed income” funding option. MetLife believes that to mandate disclosure for one funding vehicle within a Plan’s stable value portfolio may create an administrative hardship for a Plan fiduciary as well as present a competitive barrier for MetLife.

As an alternative, MetLife suggests that the existing provisions of the Section 404(c) Regulation govern the disclosure provided or made available to a Section 404(c) Plan if a MetLife GIC Trust is included in the Plan’s offerings. According to MetLife, under the Section 404(c) Regulation, participants must be provided with descriptions of each designated investment alternative but not with descriptions of separate investments forming a part of the investment alternative. The documents

a participant may obtain upon request pursuant to section 2550.404c-1(b)(2)(i)(B)(2)(ii) of the Section 404(c) Regulation include financial statements and reports and any other materials relating to investment alternatives available under the Plan to the extent provided to the Plan. MetLife further explains that the Section 404(c) Regulation imposes no additional obligation on the administrator to furnish or make available materials relating to the companies in which the equity fund invests. Therefore, MetLife wishes to have the Notice amended to state that the disclosure required for participants in a Section 404(c) Plan which offers a MetLife Trust GIC as an investment option, particularly where the MetLife Trust GIC is one of a number of contracts within a designated investment alternative, is that required by the Section 404(c) Regulation and other existing regulations.

The Department notes that when an investment option, such as a MetLife Trust GIC, is offered by a fiduciary under a Section 404(c) Plan to participants as part of the Plan’s stable value portfolio and a party in interest to an investing Plan is providing the investment, the acquisition of the contract by the plan fiduciary is beyond the scope of the Section 404(c) Regulation. In providing exemption relief for this type of transaction in a participant-directed plan, the Department typically requires, among other things, that the Plan fiduciary provide the participant with full and complete disclosures regarding the nature of the investment. These disclosures will ensure that the directing Plan participant has given informed consent to the investment and continues to be apprised about the ramifications of the investment.

After considering MetLife’s comment, the Department has decided that a Section 404(c) Plan participant should, at a minimum, receive from the appropriate fiduciary, summaries of the pertinent features of: the Letter of Agreement between MetLife and the Plan fiduciary, particularly the disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent; the Investment Guidelines and the MetLife Conventional GIC. However, the Department has decided to delete paragraphs (2) and (3) of Condition (d) of the proposal relating to disclosure of the operative language of the proposed and/or final exemptions. Therefore, Condition (d), which has been redesignated herein as Section II(d), has been revised to read as follows:

² For purposes of this exemption, the term “full investment responsibility” means that the fiduciary responsible for making the investment decision has and exercises discretionary management authority over all of the assets of the group trust or other plan assets look-through entity.

³ 29 CFR 2550.404(c)-1.

(d) Upon the selection by a Plan fiduciary of a MetLife Trust GIC, a participant in a Plan that provides for participant investment selection (the Section 404(c) Plan) is given a summary of the pertinent features of the documents listed above in paragraphs (c)(1), (c)(2) and (c)(5) of this Section II, which are deemed appropriate for distribution to such participant, including a disclosure that the MetLife Trust GIC may have a Credited Rate as low as 0 percent.⁴

Condition (e) of the Notice pertains to ongoing disclosures that will be provided to a Plan fiduciary and, if applicable, Plan participants in a Section 404(c) Plan subsequent to a Plan's investment in a MetLife Trust GIC. Such written disclosures include monthly, quarterly, or annual reports. These documents may also be made available to a Plan participant upon such participant's request.

However, after careful consideration of MetLife's comment, the Department has decided not to modify Condition (e). The Department believes that the condition, as proposed, provides flexibility to the Plan fiduciary by not requiring that mandatory disclosures automatically be provided to each participant. Rather, the participant may obtain copies of such reports at his or her request.

d. Condition (h)

Condition (h) of the Notice provides that each MetLife Trust GIC will have a predefined maturity date or dates selected by a Plan fiduciary and agreed to by MetLife. Upon further consideration of Condition (h), the Department believes it is appropriate to restrict the maximum number of years that a MetLife Trust GIC may remain in effect before the Plan can realize the Guaranteed Value. Therefore, MetLife has agreed to cap the maturity date for a MetLife Trust GIC at five years. This, together with the ability of a fiduciary to annually affirmatively extend the maturity date for an additional year, should ensure that the Plan will have greater investment flexibility and will enable the utilization of third-party benchmark indices having 4–6 year durations. (For a discussion of the revised procedure for extending or locking in the maturity date for a MetLife Trust GIC under Condition (h), see Part 2.c. below of this grant notice).

Thus, based upon the foregoing, the Department has revised Condition (h) of the Notice as follows:

(h) Each MetLife Trust GIC has a predefined maturity date or dates selected by

the Plan fiduciary and agreed to by MetLife. However, in no event does a MetLife Trust GIC have a maturity date exceeding five years. A Plan fiduciary may extend the maturity date for an additional year upon an affirmative written decision made annually by such fiduciary. Once a Plan fiduciary does not affirmatively extend the maturity date, no future extensions will occur.

e. Condition (i)

Condition (i) of the Notice states that MetLife will inform a Plan fiduciary of the new reset rate for the Credited Rate prior to the fiduciary's affirmation of the maturity date. To reflect the fact that MetLife will inform a Plan fiduciary of the new reset rate for the Credited Rate prior to a Plan fiduciary's decision to extend a maturity date for a MetLife Trust GIC for one year or to decline such extension, the Department has revised Condition (i).

(i) Prior to a Plan fiduciary's decision regarding the extension of a maturity date for a MetLife Trust GIC for one additional year, MetLife informs such Plan fiduciary of the new reset rate for the Credited Rate.

2. Changes to the Summary

With the exception of MetLife's suggested change to the Credited Rate formula, which is discussed below in Part 2.b., the Department has made the following substantive modifications to the Summary.

a. Representation 7

MetLife states a possible interpretation of the language of Representation 7 would not allow for the designation of an investment manager other than MetLife or an affiliated sub-manager other than State Street Research and Management Company (State Street Research). Because MetLife wishes to be able to designate other investment managers and affiliated sub-managers by mutual agreement with the Plan sponsor, even though there is presently no affiliate to designate as a sub-manager, MetLife requests that the second sentence in Representation 7 be redrafted as follows:

However, by mutual agreement with the Plan sponsor, MetLife may designate State Street Research or another affiliated investment manager as investment manager or sub-manager with respect to some or all of the assets in an Account.

In addition, in the third sentence of Representation 7, MetLife requests that the words "investment manager or" be inserted before the word "sub-manager."

b. Representation 12

MetLife requests that certain technical changes be made to the description of the Credited Rate because it believes the

references to the duration and yield-to-maturity in the text imply that the source for these two inputs is the Account rather than a third-party benchmark index. Therefore, MetLife requests that in part (a) of the second sentence of the first paragraph of Representation 12, the words "of assets in the Account" be deleted and the following paragraphs be inserted after part (c) of the representation:

If a Plan fiduciary has determined to extend a maturity date (as described in Representation 13), the Yield-to-Maturity component will be the yield-to-maturity of an external index (as described in Representation 8) unless specifically requested by the Plan with MetLife's consent. MetLife represents that it will not calculate the yield-to-maturity of the index. Rather, such calculation will be made by the index provider. Once a Plan fiduciary has determined not to extend a maturity date, the Yield-to-Maturity component will be the yield of a Treasury security with a comparable duration relative to the assets in the Account.

The Credited Rate will not be affected by the length of time that MetLife has managed a MetLife Trust GIC Account.

In addition, MetLife requests that the last sentence of the second paragraph of Representation 12 be deleted and replaced with the following language:

The amortization period or Duration will be no longer than the period specified in the MetLife Trust GIC. If a Plan fiduciary has determined to extend a maturity date (as described in Representation 13), it typically will be the duration of the index (as described in Representation 8) unless specifically requested by the Plan with MetLife's consent. MetLife further represents that the duration of the index will be calculated by the index provider. Once a Plan has determined not to extend a maturity date, the Duration is the period from the effective date of the Credited Rate reset until the maturity date or the average maturity date.

c. Representation 13

Representation 13 of the Summary describes the manner in which the maturity date mechanism for a MetLife Trust GIC will operate. Under the procedure set forth in Representation 13, a MetLife Trust GIC may continue indefinitely since there are no restrictions placed on the number of years the instrument may remain in effect. Also, during an annual notification period, MetLife is required to afford the Plan fiduciary an opportunity to "affirm" the maturity date in writing. If the Plan fiduciary does nothing, the MetLife Trust GIC will continue for another year and the notification procedure will be repeated each year. Assuming, however, the Plan fiduciary "affirms" the maturity date, the MetLife Trust GIC will mature

⁴ Paragraphs (c)(1), (c)(2) and (c)(5) of Section II pertain to the Letter of Agreement, the Investment Guidelines and the pertinent features of the MetLife Conventional GIC.

within the prescribed time frame selected by the Plan fiduciary from the anniversary date of such MetLife Trust GIC.

In order to provide additional safeguards, the Department has decided to revise this procedure in its entirety. Specifically, the Department has proposed that the Plan fiduciary make an affirmative decision to extend the maturity date for a MetLife Trust GIC. Additionally, the Department has determined that a MetLife Trust GIC will never have a maturity date that is in excess of five years. A MetLife Trust GIC may be extended, however, on an annual basis, for only one year as long as the Plan fiduciary provides advance written notice to MetLife agreeing to the extension. If, however, the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will not be extended by one year and the MetLife Trust GIC will mature within the maximum five year time frame. As noted above, MetLife will repeat the notification procedure over successive annual periods if the Plan fiduciary determines that each such extension is appropriate. Should the Plan fiduciary decide not to extend the maturity date on an anniversary date, no further annual notifications will be required of MetLife.

Besides the foregoing changes, the Department emphasizes the fact that the Guaranteed Value for a MetLife Trust GIC will not always reflect the amount of the initial contribution but may be adjusted for contributions and withdrawals.

Therefore, Representation 13 has been revised to read as follows:

13. Although each MetLife Trust GIC will have a defined maturity date or dates selected by the Plan fiduciary and agreed to by MetLife, in no event will a MetLife Trust GIC have a maturity date exceeding five years. However, such date may be extended if specifically requested, in writing, by the Plan fiduciary. Each such extension of the maturity date will be subject to a one year limitation as described below.

One month before the anniversary date of the MetLife Trust GIC, MetLife will notify the Plan fiduciary, in writing, of the impending anniversary of such MetLife Trust GIC, as well as the new reset rate for the Credited Rate, and afford the fiduciary the opportunity to notify MetLife that it will extend the maturity date. If the Plan fiduciary does not inform MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will not be extended by one year and the original maturity date will remain in effect. If, on the other hand, the Plan fiduciary informs MetLife, in writing, prior to the anniversary date of the intention to extend the maturity date, the date will be extended for one

additional year only. A Plan fiduciary which elects to extend the maturity date in this manner will be given another opportunity to do so one month before the next anniversary date of the MetLife Trust GIC.

The notification procedure will be repeated, and the opportunity to extend the maturity date for one more year will be given prior to each subsequent anniversary date, provided the fiduciary has elected to extend the maturity date before the immediately preceding anniversary date. Each extension elected by the fiduciary will be for only one year beyond the maturity date, including any extensions previously in effect. Thus, at no time will a MetLife Trust GIC have a maturity date that is more than five years from the anniversary date.

Upon the maturity of a MetLife Trust GIC, MetLife represents that if the Market Value of the assets invested in the MetLife Trust GIC is less than the Guaranteed Value (as described in Representation 11), it will make up the difference.⁹

d. *Representation 20(b)*. MetLife represents that although the conversion of a MetLife Trust GIC to a MetLife Conventional GIC has been discussed with the Department primarily in the context of Guaranteed Value exceeding Market Value, it wishes to clarify that the MetLife Conventional GIC may still be selected regardless of the relative levels of Guaranteed and Market Values. In some cases, MetLife notes that a Plan fiduciary holding a MetLife Trust GIC with Market Value in excess of Guaranteed Value may consider the MetLife Conventional GIC the most prudent alternative available. If this fiduciary believes that interest rates are about to decline, such fiduciary may decide to lock in the gain by selecting this investment option. Because "any market value loss or gain * * * will be amortized over the period ending with the final maturity date of the MetLife Conventional GIC," MetLife explains that the Plan fiduciary will have secured an above market rate of return guaranteed for an extended fixed period.

Therefore, to cover the full range of situations in which a MetLife Conventional GIC will be offered, MetLife requests that the words "at a time when there are losses and" be deleted in the first sentence of Representation 20(b). Similarly, and for clarification, MetLife requests that the following sentence be substituted for the first sentence of Footnote 16:

The Department notes that the decision by a Plan fiduciary to convert a MetLife Trust GIC into a MetLife Conventional GIC is subject to the provisions of section 404 of the Act, as are all Plan investment decisions.

⁹MetLife notes that the procedures governing the maturity date of a MetLife Trust GIC will not affect the ability of a Plan fiduciary to discontinue such investment as described in Representation 19."

Finally, the Department notes that MetLife's comments with respect to the Notice also contained certain minor clarifications to information included in the Summary. Rather than restate these modifications in this grant notice, the Department wishes to acknowledge all of the technical clarifications made by MetLife to the information in question.

For further information regarding MetLife's comment letter or other matters discussed herein, interested persons are encouraged to obtain copies of the two exemption application files (Exemption Application No. D-10241 and Exemption Application No. D-10412) the Department is maintaining in this case. The complete application files, as well as all supplemental submissions received by the Department, are made available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, Room N-5638, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, after consideration of the entire record, including MetLife's comment letter, the Department has determined to grant the exemption as modified herein.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Consolidated Associations of Railroad Employees Health Care Plan (the Plan) Located in Topeka, Kansas

[Prohibited Transaction Exemption 98-18; Exemption Application No. L-10527]

Exemption

The restrictions of section 406(a) of the Act shall not apply, effective June 10, 1997 to: (1) the current leasing (the Lease) of certain real property (the Property) by the Plan to Century Health Solutions, Inc. (Century), a party in interest with respect to the Plan; (2) the proposed new leasing of substantially the same Property by the Plan to Century (or its successor in name) effective April 1, 1998 (the New Lease); and (3) the possible future sale of the Property by the Plan to Century (or its successor in name) pursuant to a right of first refusal under the terms of the Lease, provided the following conditions are satisfied: (a) the Property represents no more than 25% of the value of the Plan's assets; (b) the terms of the Lease are, and will remain, at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) the fair market rental value is

determined on an annual basis by a qualified, independent appraiser; (d) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries; (e) the Plan's independent fiduciary will continue to monitor the transaction and the conditions of the exemption and take whatever action is necessary to enforce the Plan's rights under the Lease; and (f) the Plan's independent fiduciary acts to ensure that any sale of the Property by the Plan to Century is properly effected under the terms of the Lease, pursuant to Century's right of first refusal in the event the Plan receives a bona fide offer from a third party to purchase the Property, and Century is not in default on any of its obligations under the Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on February 26, 1998 at 63 FR 9867.

Written Comments

The only written comments received by the Department with respect to the proposed exemption were submitted by the applicant, which sought clarification with respect to two points. First, the applicant represented that the New Lease would likely be for fewer square feet of the Property than under the Lease, and sought clarification that the exemption as proposed would still apply to the New Lease. With respect to the New Lease, the Department notes that the exemption would apply to a lease of fewer square feet in the same Property provided all conditions of the exemption are satisfied. Secondly, the applicant requested clarification that the exemption would still apply if Century reorganized as a for-profit corporation, or changed its name, or both. The applicant represented that this change in name will never occur in connection with a sale of the underlying assets of Century to an unrelated third party. The applicant requested that the operative language of the exemption be modified to extend relief to Century or its successor in name. The operative language of the exemption has been amended accordingly to reflect the possible name change.

The Department has considered the entire record, including the comment submitted by the applicant, and has determined to grant the exemption as proposed, with the one change as described above.

EFFECTIVE DATE: This exemption is effective June 10, 1997.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

Thornton, Hegg, Reif, Johnston & Dolan Profit Sharing Plan and Trust (the Plan) Located in Alexandria, Minnesota

[Prohibited Transaction Exemption No. 98-19; Application No. D-10563]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) by the Plan of certain real property (the Property) to Robert M. Hegg, (Mr. Hegg), a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Plan than those which the Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Plan incurs no expenses from the Sale; and

(D) The Plan receives as consideration from the Sale the greater of either the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale, or an amount equal to the funds expended by the Plan in acquiring and maintaining the Property, less any income produced by the Property.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the Notice of Proposed Exemption published on February 26, 1998, at 63 FR 9868.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a

prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 17th day of April, 1998.

Ivan Strasfeld,

*Director of Exemption Determinations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.*

[FR Doc. 98-10693 Filed 4-21-98; 8:45 am]

BILLING CODE 4510-29-P

LEGAL SERVICES CORPORATION

Notice of Availability of 1999 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services.

SUMMARY: The Legal Services Corporation (LSC or Corporation) is the national organization charged with administering federal funds provided for civil legal services to the poor.

The Corporation hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality civil legal services to eligible clients in the states and territories by service area(s) identified below. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 1999 have not been determined.

DATES: Request for Proposals (RFP) will be available after May 15, 1998. Notice of Intent to Compete is due July 1, 1998. Grant proposals must be received at LSC offices by 5:00 p.m. EDT, July 22, 1998.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750