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**MetLife**<sup>®</sup>

May 2, 2012

FILED ELECTRONICALLY  
<http://www.regulations.gov> (IRS REG-115809-11)

Room 5203  
Internal Revenue Service  
P.O. Box 7604  
Ben Franklin Station  
Washington, DC 20044

Dear Sir or Madam:

On behalf of MetLife, I am writing with respect to the proposed regulations regarding longevity annuity contracts and partial annuitization.

MetLife commends the Treasury Department and the Internal Revenue Service for addressing a critical public policy issue in a creative and technically sound manner. Furthermore, MetLife strongly supports the overall guidance package released by Treasury and IRS on February 2<sup>nd</sup>, including the two Revenue Rulings. We believe that this guidance package takes an important step in educating both plan sponsors and participants regarding the need to consider tools that can enable individuals to ensure that they have retirement income that lasts for their entire lifetime.

### **Background**

Our country is facing a looming retirement crisis because of increased life expectancies and the decline of the defined benefit plan pension system. In most cases, defined contribution plans were designed – and are maintained today – as supplemental retirement savings vehicles; they are generally not structured to provide guaranteed lifetime income. As such, the vast majority of private sector workers will be retiring without a private sector source of lifetime guaranteed income.

The longevity risk faced by retirees can be more significant than the investment risks faced at retirement. While individuals can decrease the investment risk by changing their investment strategy, there is no way that individuals on their own can reduce their longevity risk because they cannot accurately predict how long they will live nor do they have a way to recreate the “mortality pool” associated with a large group, unless they have a form of guaranteed lifetime income.

When receiving a lump sum of retirement assets to manage, individuals who spend down these assets based on their life expectancy will run out of savings if they live longer than expected. And individuals who spend as if they will live well beyond their life expectancy will run the risk of underspending, forcing significant changes in lifestyle for fear of running out of money.

Pooling risk is still an individual's best and most cost-effective way to ensure that they will not run out of money in retirement. When mortality experience is pooled, individuals are relieved of the need to accumulate significantly more money than otherwise would be needed to protect themselves from living beyond the time that their retirement savings would run out. An average retiree, for example, would need to have saved about one-third more to attempt to replicate the financial effect of a mortality pool and, even then, could still risk running out of money. With mortality pooling, an individual only needs savings sufficient to last over the average lifetime of the group. On an unpooled basis, an individual's savings would need to last significantly longer than that average lifetime to provide a comparable chance that he/she will not outlive those savings. By pooling this risk, insurers are able to provide through annuities a guaranteed lifetime steady stream of income, which may be viewed as a retirement "paycheck."

Yet, even among individuals who participate in a defined benefit plan, the majority elect to take a lump sum distribution payment at retirement if it is offered rather than guaranteed annuity payments. This is due primarily to the "all or nothing" approach provided by most plans with this payment feature, in addition to the reasons outlined below. Although current law permits defined benefit plans to provide a partial annuitization option, few plans do so today; the partial annuitization proposal will provide welcome clarification to plan sponsors on how this payment alternative would be structured.

In addition to partial annuitization from defined benefit plans, another way of dealing with this public policy challenge is to provide Americans with attractive alternatives to obtain private sector guaranteed income for life either through their qualified defined contribution plans, individual retirement accounts, or both. To date, Americans have generally not taken advantage of opportunities to obtain guaranteed income for life when they have been available. There are many reasons for this, including a lack of awareness about longevity risk, the illusion of wealth created by a lump sum as well as individuals' great hesitancy to part with all or a large part of their retirement benefits for products they may not fully understand or appreciate.

MetLife released the *Qualified Retirement Plan Barometer Study* in January 2011, a qualitative and quantitative survey of plan sponsors. Two key findings that are applicable to this discussion follow:

- Despite recognizing the importance of retirement income, plan sponsors remain more focused on retirement savings than on income as a key objective of their programs. For example, while 93% say that retirement savings is extremely or very important as a focus of their retirement plans, only 65% say retirement income has a comparable level of importance for their retirement program.

- Plan sponsors may be under-communicating with employees about the importance of retirement income. While the majority of plan sponsors provide education about the need to save for retirement and the risks of investing, very few include information about retirement income-related issues such as longer life spans (longevity risk), how to create retirement income, the pros and cons of taking a lump sum versus periodic payments, and when to begin taking Social Security benefits. In fact, seven in 10 plan sponsors (69%) report that all their employees receive information on the risks of investing, which is likely attributed to the regulations under ERISA. Perhaps because no similar requirement exists regarding retirement income, only a minority (38%) say all employees receive communications about retirement income throughout the participant's tenure in the plan.

One of the challenges for plan sponsors, financial advisors, the financial services industry, and the government is to work together to increase that awareness and to create innovative means to address that hesitancy by, for example, simplifying products, and providing access to understandable choices, and supporting both with actionable education.

### **Longevity Insurance Proposed Regulation:**

The proposed regulation will help to facilitate increased awareness of longevity risk and to address barriers to increased use of an approach specifically designed to eliminate that risk, 'longevity insurance', by eliminating an unintended barrier to its use. Under the proposed regulation, longevity insurance would, by its nature, be focused exclusively on longevity risk, rather than on savings, thus highlighting a risk many Americans have not addressed in their planning. Moreover, the regulation, by its terms, requires that longevity insurance be structured in a way to make it inexpensive by precluding features, such as a commutation benefit, that add expense and do not address longevity risk. Finally, the proposed regulation is structured to be consistent with the statutory requirements of the incidental death benefit requirements by limiting the use of retirement plan benefits for purposes other than for retirement income.

In the interest of assisting the Treasury, to help ensure that the rule works as intended in practice MetLife offers three specific suggestions prior to finalization of the regulation:

- Since the rule seeks to encourage individuals to purchase longevity insurance to insure the "tail risk" of living beyond life expectancy, we believe that a correction mechanism is needed to ensure that an inadvertent failure to comply with the \$100,000 or 25% limits can be corrected without disproportionately adverse consequences. Under the proposed regulation, if a participant's purchase exceeds the \$100,000 or 25% limits, the entire contract would not qualify as a Qualifying Longevity Annuity Contract ("QLAC"). We urge Treasury and the IRS to revise the regulation to provide that only the portion of the contract that is proportionate to the purchase amount described above and is in excess of the prescribed maximum would not be considered a QLAC and would, therefore, not be excluded from the participant's required minimum distribution calculation nor be subject to the QLAC requirements.

- The proposed regulation requires that certain language be included in the insurance contract itself in order to qualify as a QLAC. As a practical matter, if taken literally, this requirement would require insurers offering longevity insurance to refile all contracts that they would use as QLACs, which would be a very time-consuming, expensive process. We suggest that this requirement is unnecessary and request the regulation be revised to eliminate it. We believe this is appropriate because the reporting requirements in the proposed regulation provide for adequate notification to both participants and to the Internal Revenue Service when a contract is intended to be a QLAC.
- It may be desirable to issue a QLAC from an annuity contract that does not itself satisfy the QLAC requirements, such as in the case of a retirement plan that is exclusively funded with annuity contracts. To address this, we suggest the QLAC definition be expanded to include a certificate issued from an annuity contract if the certificate satisfies all of the QLAC requirements, notwithstanding that the original contract includes features that do not satisfy such requirements.

#### **Partial Annuitization Proposed Regulation:**

Although current law permits defined benefit plans to provide a partial annuitization option, few plans do so due to the uncertainty of calculating such bifurcated distributions and the additional administrative expense of offering them. This proposed rule will provide welcome clarification on this calculation, and provide plan sponsors who have not implemented such a program with certainty and a clear path forward. We also believe this proposed rule sends an important and timely message to defined benefit plan sponsors about the key role their plans can play in the future retirement security of their employees as they become tomorrow's retirees.

MetLife offers the following suggestions on partial annuitization to help avoid unintended barriers to plan sponsor adoption and plan participant selection:

- It would be very helpful if Treasury affirmed in its final regulation that no negative inference should be drawn from the new rule with regard to the efforts of those sponsors who added a partial lump sum, rather than full lump sum, provision in the past.
- While we believe that the three types of plans in the proposed rule are sufficiently inclusive for plans that never adopted an alternative to a standard annuity payout, and for those that have adopted a 100% lump sum provision, the proposed rule does not address transition issues for sponsors that previously adopted some form of partial annuitization. Providing a transition rule that would enable these sponsors to amend their programs consistent with the new rule, with respect to both participants who have not yet made an election as well as for those who have done so but whose annuity starting dates are still in the future, would be beneficial for both such sponsors and their participants.

### Next Steps

MetLife would like to emphasize several additional points. First, as we all know, longevity insurance is not the answer for everyone, nor is partial annuitization. Effectively addressing Americans' longevity risk requires a multitude of approaches to reflect individuals' very different circumstances, outlooks, and needs. In addition to our support for the proposed regulations addressed above, we also support Revenue Ruling 2012-4 that addresses rollovers to defined benefit plans. These different approaches can be very helpful for many individuals.

Additional longevity solutions that deserve policy attention include the following:

- *Encouraging utilization of partial annuitization in defined contribution plans:* Just as partial annuitization can be very helpful in the defined benefit plan context, it could have an even greater effect in the defined contribution plan context in light of the growth of defined contribution plans. It would be helpful to participants if those plans that currently offer the "all or nothing" annuitization at distribution included a partial feature. And, for those plans currently not offering a lifetime income distribution option at retirement, Treasury's support of the adoption of partial income alternatives for participant might encourage plan sponsors to provide income alternatives at distribution. Longevity insurance is only one form of partial annuitization in the defined contribution/IRA space.
- *Use of annuities for in-plan accumulation:* Other means to stimulate growth of partial annuitization also deserve attention. For example, some 401(k) plans are offering or considering offering annuity contract investments as in-plan accumulation options. These investments provide another approach to ensuring that individuals have at least one private sector source of guaranteed lifetime income. By purchasing guaranteed income over time, rather than at a single point in time, these arrangements address interest rate risk. Moreover, these arrangements allow participants to purchase lifetime income incrementally, thus avoiding the intimidating "big purchase" at retirement. Finally, these arrangements may help increase awareness that individuals not only need to save, but that they should be considering how to replace their income in retirement.

Revenue Ruling 2012-3 was helpful in clarifying certain aspects of the law with respect to annuity contract investments. Similar guidance is needed with respect to portability of these contracts. When plans change service providers or record keepers, the new service provider in some cases will not service existing annuity investments (or the record keeper will not have the platform to support the product). Thus, those investments may need to be liquidated in some circumstances, which inhibits growth of this product. We would like to work with Treasury and the IRS to create solutions to address this portability issue.

- *Actively encourage future innovation:* We applaud Treasury and IRS for providing a clear message that innovation is intended and encouraged in the qualified plan marketplace with regard to retirement income solutions. Innovation is occurring today in the financial services industry, between and among investment banks, mutual funds, and

insurers. As a result, innovative products are emerging that include annuities and longevity insurance as integral elements of managed accounts and target date funds. As a result of this innovation, certain public policy issues have understandably emerged that need to be addressed. These issues include the following:

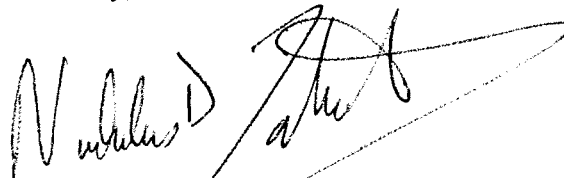
- portability guidance (as described above);
- clarification of the application of the section 401(a)(4) benefits, rights, and features rules to target date funds with this and similar designs; and
- possibly further required minimum distribution guidance.

MetLife would welcome the opportunity to work with the Treasury and IRS on these and other issues that may arise in the future.

**Conclusion**

We applaud Treasury and the IRS for their vision in proposing this guidance package and, more broadly, in addressing one of the most critical retirement income policy challenges we face today and in the future - - longevity risk. We look forward to the prompt finalization of these regulations and encourage their finalization without excessive modification. We also look forward to working with Treasury and the IRS on future guidance in these vitally important areas.

Sincerely,

A handwritten signature in black ink, appearing to read "Nicholas D. Latrenta", written over a large, sweeping, handwritten flourish that extends across the signature area.

Nicholas D. Latrenta  
Executive Vice President and General Counsel

## Attachment to MetLife's Comment Letter (IRS REG-115809-11)

When an individual purchases an Individual Retirement Annuity (IRA) from MetLife, he/she will receive the following documentation in addition to documents and disclosures required by state insurance law:

- IRA Disclosure at the time of purchase
- Quarterly Statements thereafter
- Annual Fair Market Value Statement
- Annual Required Minimum Distribution Statement (from age 70 ½ on)

MetLife believes that the required documents, properly modified to include the required Qualifying Longevity Annuity Contract disclosures, will provide the purchaser with the necessary information at time of purchase and in the future.

The following sample documents are included:

1. MetLife Longevity Income Guarantee<sup>SM</sup> Flexible Premium Deferred Income Annuity Individual Retirement Annuity (IRA) Required Minimum Distribution Disclosure Form. While this is not directly analogous to the features proposed in the Longevity Annuity Contract proposal, it is attached to provide an example of a disclosure for the required minimum distribution rules for a flexible longevity insurance contract.
2. MetLife Longevity Income Guarantee<sup>SM</sup> IRA Disclosure Statement. This is similar to all IRA Disclosure statements and would be modified accordingly to incorporate the Qualifying Longevity Annuity Contract disclosures.



**MetLife Longevity Income Guarantee<sup>SM</sup> Flexible Premium Deferred Income Annuity Individual Retirement Annuity (IRA) Required Minimum Distribution Disclosure Form**

Contract Owner Name \_\_\_\_\_ Contract Number \_\_\_\_\_

The Longevity Income Guarantee (LIG) IRA annuity contract allows you to commence annuity income payments after the IRA required beginning date, generally April 1st of the year after you turn age 70½ per the Internal Revenue Code (IRC), by taking advantage of current permissive aggregation rules under applicable federal tax law. These rules generally provide that your annual required minimum distribution (RMD) must be calculated separately for each of your IRAs but permit you to total the amount of your annual RMDs and take that amount from any one or more of your IRAs.

Since the Longevity Income Guarantee maximum income commencement date is age 85, if you continue to defer the beginning of annuity income payments beyond age 70½, you should understand the following:

1. If you do not satisfy the RMD requirements from your other IRAs and/or do not take sufficient distributions to satisfy the RMD requirements, there is a 50% tax penalty applicable to the shortfall;
2. You should have at least one other IRA with enough assets to satisfy the RMD applicable to both the LIG contract and your other IRA if you defer beginning LIG annuity income payments past 70 ½; and
3. You will need to begin receiving annuity income payments from your LIG contract if you can no longer satisfy the RMD from other IRAs. Please note that you will not be able to begin receiving income payments from this contract to satisfy your RMD until the Minimum Deferral Period (two<sup>1</sup> years from the issue date) has been met. Neither MetLife nor its affiliates or representatives thereof shall be liable for any penalties and interest charged due to your failure to satisfy the RMD requirements if you defer receiving income payments from your LIG contract beyond the required beginning date.

If you have not previously given us notice as to the commencement of annuity income payments and your LIG contract was issued on or before your 68th birthday, we will send you a notice before age 70 to the effect that if you do not notify us to the contrary, we will commence annuity income payments to begin no later than one calendar quarter after your 70<sup>th</sup> birthday. Please note that if you elect to defer the start of annuity income payments and if you are not able to satisfy the RMD after age 70½ for this LIG from another IRA, you must then begin annuity income payments under LIG.

We can give no assurance that federal tax laws will continue to allow you to satisfy the RMD applicable to the LIG contract from your other IRA(s).

Once a year, starting with the year you turn age 70½, we will provide you with a letter stating the amount of the RMD applicable to the LIG contract.

You should consult with your independent tax advisor to discuss the RMD rules.

By signing this form, you agree that you will not defer the start of income payments under this LIG contract unless you have one or more other IRA accounts or IRA annuities from which you can receive the RMD amount with respect to the LIG contract. Further, if you defer receiving income payments under the LIG contract beyond your required beginning date and are no longer able to receive the RMD amount from another IRA, you agree to notify us in a manner in accordance with our forms and procedures; and agree that you will begin income payments from the LIG contract.

Please sign this form to acknowledge your understanding and agreement to the above.

Signature of Owner \_\_\_\_\_ Date \_\_\_\_\_

MetLife, its agents, and representatives may not give legal or tax advice. Any discussion of taxes herein or related to this document is for general information purposes only and does not purport to be complete or cover every situation. Tax law is subject to interpretation and legislative change. Tax results and the appropriateness of any product for any specific taxpayer may vary depending on the facts and circumstances. You should consult with and rely on your own independent legal and tax advisors regarding your particular set of facts and circumstances.

**Pursuant to IRS Circular 230, MetLife is providing you with the following notification: The information contained in this document is not intended to (and cannot) be used by anyone to avoid IRS penalties. This document supports the promotion and marketing of insurance products. You should seek advice based on your particular circumstances from an independent tax advisor.**

<sup>1</sup>One year for contracts issued in FL.



## Metropolitan Life Insurance Company

### **IRA DISCLOSURE STATEMENT**

This Disclosure Statement describes some of the statutory and regulatory provisions applicable to individual retirement annuities ("IRA"). Internal Revenue Service regulations require that this be given to each person desiring to establish an IRA. The tax rules regarding an IRA are very complex. Each individual is advised to seek competent tax advice prior to establishing an IRA.

#### **A. RIGHT TO REVOKE**

Within seven days of the date you receive your Contract, you may revoke it and receive a refund of 100% of your money. You may have additional rights to cancel your Contract under your Contract's "free look" provision. See your Contract for details. Revocation may be made by fax or written notice to Metropolitan Life Insurance Company, Administrative Office, P.O. Box 10359, Des Moines, IA 50306-0359. Written notice will be deemed mailed on the date of the postmark (or certification or registration if mailed in that manner) if it is deposited in the mail in the U.S., first class postage prepaid, properly addressed. Please note that this right to revoke with a return of purchase price applies only to the initial issuance of the Contract; it does not apply to any amendments, endorsements or Roth conversions.

#### **B. IMPORTANT PRODUCT DISCLOSURE**

##### **NOTE:**

- 1. This Contract does not provide a cash value which can be withdrawn, recharacterized (or converted to a Roth IRA), or rolled over to another IRA or eligible retirement plan; except, where made available, during a limited 60 day period following the date that income payments commence under this contract. Notwithstanding the above, excess contributions may be withdrawn and the income annuity purchased will be reduced accordingly as if the excess contribution were never made.**
- 2. This Contract requires a minimum deferral period (the greater of (a) two years from issuance or (b) attainment of age 50 by the owner) prior to the date that income payments can commence).**

#### **C. INTERNAL REVENUE CODE REQUIREMENTS**

Your IRA Contract is created by signing the Application and making a purchase payment. Your IRA Contract is for your exclusive benefit and that of your beneficiaries. The Contract meets the IRA requirements of the Internal Revenue Code (the "IRC") as shown below:

1. It is an individually allocated Contract issued by an insurance company and the premiums are not fixed.
2. Your interest in the Contract is nonforfeitable.
3. The Contract is nontransferable by you and it may not be used as collateral for a loan or as security for the performance of any obligation.
4. Maximum contributions are stated in "Allowance of Deduction and Eligibility" below.
5. Your entire interest in the Contract must begin to be distributed to you by April 1 of the calendar year following the calendar year during which you attain age 70½ ("Required Beginning Date").

Where you have more than one IRA, Treasury Regulation 1.408-8 Q&A 9 provides that your annual required minimum distribution (RMD) must be calculated separately for each of your IRAs and that the separately calculated amounts may then be totalled and the total distribution taken from any one or more of your IRAs. The distribution of your RMDs under the Contract shall be made in accordance with these rules. Accordingly, to the extent permitted by federal tax law and IRS guidance (formal or informal), you may defer the Commencement Date beyond the required beginning date of age 70½ up to the Maximum Commencement Date if you provide Us with notice in accordance with the Endorsement.

In the event you are not able to satisfy the RMD for the Contract from your other IRAs in any calendar year falling between your age 70½ and the Maximum Commencement Age, then you must begin receiving Income Payments from this Contract in order to satisfy your RMDs.

6. Distributions must be made in the form of an income annuity. The income annuity under this Contract must be either (a) an annuity for your life; (b) an income annuity for your life with a guaranteed period not to exceed that permitted under the Uniform Lifetime Table (which is based on your age of the owner and a hypothetical beneficiary who is ten years younger than you), (c) a joint and survivor annuity over the lives of you and the designated beneficiary, and (d) a joint and survivor annuity with a guarantee period not to exceed that allowed under the income tax regulations.
7. Payments under an income annuity must be made in periodic payments at intervals of no longer than one year. In addition, payments must be either non-increasing or they may increase only as provided in the income tax regulations. Under these tax rules, full or partial withdrawals (commutations) are permitted under certain circumstances once income payments begin.

If available in your state, your Contract permits a full or partial withdrawal (commutation) value only for a period of 60 days after your income payment commencement date. The full withdrawal value may not exceed the Total Future Expected Payments as defined under the income tax regulations based on the IRS life expectancy tables. In case of a partial withdrawal, your remaining income payments will be reduced by an amount which bears the same ratio to the scheduled income payments prior to the withdrawal as the amount withdrawn bears to the maximum amount which could be withdrawn on that date. This withdrawal value is not guaranteed, but is based on actuarial factors such as the then current annuity purchase rates being offered for this class of contract at the Income Payment Commencement date.

Additionally, all income payments must satisfy the incidental benefit requirements specified in the income tax regulations. Under these rules pertaining to an annuity form of distributions, any guaranteed period under a life contingent annuity may not exceed the period under the uniform lifetime distribution table computed at issue without recalculation. Additionally, under a joint and survivor annuity, these rules require a reduction in annuity payments after your death to the surviving annuitant who is more than 10 years younger than you. These rules may not apply for certain types of annuities where the designated beneficiary or surviving annuitant is your spouse.

8. If you die on or after the date that income payments have begun over a period and under a form permissible under the income tax regulations and before the entire interest in the Contract has been distributed, the remaining portion of the interest in the Contract will be distributed at least as rapidly as under the method of distribution in effect at the time of your death. In other words, payments will continue to be made as provided under the terms of your income annuity.
9. If you die before the date that income payments commence under this contract, then, where permitted under state law, a death benefit equal to purchase payments with interest credited thereon at 3% will be paid out to your designated beneficiary in a lump sum as soon as we receive satisfactory proof of death.
10. Required Minimum Distribution Reporting Requirements for IRAs

The issuer of the IRA annuity contract is required to provide notice by the end of January that upon your request it will compute the required distribution amount for you (using certain assumptions). Alternatively, the issuer may satisfy this requirement by providing you with the required minimum distribution amount for the year (using these same assumptions).

Additionally, the issuer is required to notify the IRS if you are subject to the minimum distribution requirements for the year.

#### **D. ALLOWANCE OF DEDUCTION AND ELIGIBILITY**

1. Annual premiums may be made up to the date your Federal Income Tax is due, not including extensions. For a calendar year taxpayer, this means you have up to and including April 15th of each year to make your contribution for the prior year.
2. Except in the case of a rollover contribution, a deductible IRA contribution may be made in an amount not exceeding the lesser of the deductible amount for the year under section 219(b)(1)(A) or 100% of compensation. Furthermore, IRA contributions of up to \$4,000 (\$5,000 if he or she is over age 50) may be made for your spouse, if the combined compensation of both spouses is at least equal to the amount contributed. The spousal contribution rule applies if you and your spouse file a joint tax return for the year and the amount of compensation (if any)

includible in your spouse's income is less than the compensation includible in your gross income for that tax year. (See 3. below for contribution limitations for individuals covered by employer-sponsored plans.)

3. Compensation means wages, salaries, professional fees, or other amounts derived from or received for personal service actually rendered (including, but not limited to, commissions paid salesmen, compensation for services on the basis of a percentage of profits, commissions on insurance premiums, tips, and bonuses) and includes earned income, as defined in Section 401(c)(2) (reduced by the deduction the self employed individual takes for contributions made to a self employed retirement plan). For purposes of this definition, Section 401(c)(2) shall be applied as if the term trade or business for purposes of Section 1402 included service described in subsection (c)(6). Compensation does not include amounts derived from or received as earnings or profits from property (including, but not limited to, interest and dividends) or amounts not includable in gross income. Compensation also does not include any amount received as a pension or annuity or as deferred compensation. The term "compensation" shall include any amount includable in the individual's gross income under Section 71 with respect to a divorce or separation instrument described in subparagraph (A) of Section 71(b)(2).

**Note:** Certain annuity contracts may impose additional limits on contributions you can make including:

- (a) limits on the number of contributions you can make (e.g., an annuity contract which will only accept a single contribution), or
- (b) establishing minimum amounts on the contribution required to purchase the annuity.

Please refer to your IRA annuity contract for any specific limits, which may apply in your case.

4. If either you or your spouse is an active participant in an employer sponsored plan and has a certain level of income, the amount of the deductible IRA contribution will be phased down and in some cases eliminated.

An individual (or his or her spouse) is an active participant in an employer sponsored tax-qualified retirement plan if under the plan, money is added to that individual's account or if the individual is eligible to earn retirement credits. An individual may be an active participant without being vested in any portion of his or her accrued benefits. Furthermore, anyone who files a joint tax return will be considered an active participant if his or her spouse is an active participant. However, if an individual return is filed, one spouse's active participation will not preclude the other spouse from making a deductible IRA contribution if the spouses live apart at all times during the taxable year. The Form W-2, which you receive from your Employer, contains a box indicating whether you are covered by any employer-sponsored plan. If you are uncertain as to your participation, you should ask your employer.

**Note:** The table below shows the deductible amount for each year including the increase in the deductible amount for the 50+ catch-up. The contribution limits in excess of \$2,000 as provided under EGTRRA are set to return to the pre-EGTRRA limits after 2010 unless further action is taken by Congress.

<u>For tax years beginning in</u>	<u>Contribution limit for taxpayers under age 50</u>	<u>Limit for taxpayers age 50 and older</u>
2007	4,000	5,000
2008 and after	5,000	6,000

**Note:** The \$5,000 limit above will be adjusted for inflation in years after 2008.

With the exception of permissible rollover contributions, you may not make total contributions of more than the contribution limits shown above to all of your Traditional and Roth IRAs in the aggregate for any year.

The following types of plans are considered employer sponsored plans under Section 219 of the IRC for purposes of determining active participation and IRA contribution deductions:

- (a) qualified plans under IRC Sections 401(a) or 403(b);
- (b) annuity contracts under IRC Section 403(b);
- (c) government sponsored plans for its employees other than deferred compensation plans under IRC Section 457;
- (d) employer pay-all plans under IRC Section 501(c)(18);
- (e) simplified employee pensions under IRC Section 408(k),
- (f) any SIMPLE IRA within the meaning of section 408(p) and
- (g) a qualified annuity plan.

Virtually all retirement plans sponsored by an employer are considered employer sponsored plans under the above categories. However, certain members of the reserve component of the Armed Forces and certain volunteer firemen will not be deemed active participants under plans sponsored by the federal or local governments. If you are an active participant (or your spouse in the case of a joint tax return) in an employer sponsored plan, the deductibility of your IRA contribution will depend on your adjusted gross income or combined adjusted gross income, in the case of a joint tax return.

Your adjusted gross income for these purposes is called "modified AGI." If you file Form 1040A, this is the amount on Page 1 "Total Income" line. If you file your tax return on Form 1040, your modified AGI is your adjusted gross income before taking any deduction for IRA contributions (and before any foreign earned income exclusion or foreign housing exclusion or deduction)

The following table applies to you if you or your spouse is deemed active participants under employer-sponsored plans:

<u>Married and file a joint federal tax return with your spouse:</u>		
<u>Taxable Year</u>	<u>Threshold Amount</u>	<u>Phase out Amount</u>
2001	\$53,000	\$63,000
2002	\$54,000	\$64,000
2003	\$60,000	\$70,000
2004	\$65,000	\$75,000
2005	\$70,000	\$80,000
2006	\$75,000	\$85,000
2007 and thereafter	\$80,000	\$100,000

<u>Single and file a federal tax return using any non-married filing status:</u>		
<u>Taxable Year</u>	<u>Threshold Amount</u>	<u>Phase out Amount</u>
2001	\$33,000	\$43,000
2002	\$34,000	\$44,000
2003	\$40,000	\$50,000
2004	\$45,000	\$55,000
2005 and thereafter	\$50,000	\$60,000

Married filing a separate return:

The Threshold Amount is generally \$0 each year and the Phase-out Range extends to \$10,000.

If your AGI is less than \$10,000 above your threshold level, you will still be able to make a limited deductible contribution. You can estimate your deduction limit using the following formula:

$$\frac{\$10,000 - \text{Excess AGI}}{\$10,000} \times \text{Maximum Allowable Deduction}$$

It should be noted that under no circumstances can your IRA contribution and deduction be greater than your earned income. In the event that both spouses are working and each have a separate IRA, the above calculation result applies to each spouse separately. If one spouse contributes less than the amount allowed to his or her IRA, the unused amount cannot be used by the other spouse. In the case of a spousal IRA for a non-working or low-income spouse, the reduced amount is applied proportionately for each spouse. Instructions for this computation and the overall reductions discussed herein are provided in the instructions for Forms 1040 and 1040A and in Publication 590, Individual Retirement Arrangements, issued by the IRS.

Effective for tax years beginning January 1, 1998, an individual is no longer considered an active participant in an employer-sponsored plan merely because the individual's spouse is an active participant. This will allow a spouse who is not an active participant to contribute up to the amount shown in section 219 (b) (1) (A) (the "deductible amount.") to an IRA if the AGI for the individual and spouse is not more than \$150,000. The allowable contribution is phased down for AGI amounts between \$150,000 and \$160,000. You can determine the amount which may be contributed by the non-participant by using the worksheet above (steps (a) through (d)) with the following table:

<u>You are Entitled To:</u>	<u>If Your Tax Filing Status Is:</u>
	<u>Married, Filing Jointly or Qualifying Widow(er)</u>
A. A full deduction if AGI is not more than	\$150,000
B. A partial deduction if AGI within the range of	\$150,000 to \$159,000
C. No deduction of AGI is	\$160,000 or more

5. You may make non-deductible contributions to an IRA, to the extent that you cannot make deductible contributions. The non-deductible contributions cannot, when added to any deductible contributions, exceed the overall limits for IRA contributions (i.e. the lesser of the deductible amount or 100% of compensation). Any earnings on such non-deductible contributions are not subject to tax until distributed from the IRA. You may elect to treat a deductible contribution as a non-deductible contribution. Such election need not be made until the date for filing of the tax return for that year. You must file Form 8606 with your tax return to show the amounts designated as non-deductible contributions. A \$50 penalty may be imposed for failure to file Form 8606.
6. For a plan adopted as a SEP-IRA, see IRS Publication 590 for any forms and the other necessary requirements. The rules generally permit your employer to make a contribution which is excludable from your income in the amount of: 15% (25% beginning in 2002) of your includible compensation or \$35,000 (\$40,000 for 2002) whichever is less. You may also make additional IRA contributions to your SEP funding vehicle as permitted under the tax laws. For salary reduction SEPs ("SARSEPs") which were in existence as of December 31, 1996, the pre-tax contributions made by salary reduction are further limited, along with all salary reduction contributions made to other qualified employer plans under section 402(g). New SARSEPs cannot be established after December 31, 1996, but you can continue to make contributions to existing plans even if you became eligible to participate in the plan after December 31, 1996. Note: The Job Creation and Workers Assistance Act of 2002 increased the percentage limitation on excludable SEP contributions starting in 2002 from 15% to 25% of includible compensation, but apparently retained the requirement that compensation be reduced by all elective deferrals and similar amounts not includible in gross income.

#### **E. ROLLOVERS**

1. In General. The cash or assets you receive from certain other retirement programs may be contributed to your IRA. These contributions are called "rollover contributions." A rollover contribution to an IRA is not subject to the annual contribution limitations, but you may not deduct it on your tax return. Once in the IRA, a rollover contribution is subject to all of the usual rules governing IRAs. There are two kinds of rollover contributions to an IRA. In one, you contribute the amounts received from another IRA. In the other, you contribute amounts received from an employer's qualified plan. There is no dollar limit on the amount to be rolled over and rollovers can be done even after age 70½ (but amounts that are required to be distributed under the minimum distribution rules will not be eligible to be rolled over).
2. Rollover from One IRA to Another IRA. Part or all of a distribution you receive from an IRA may be rolled over to another IRA. To do this, you must: (a) make the rollover within 60 days of receiving the distribution; and (b) if the distribution included both money and property, you must roll over the same property. As you are not required to roll over all of the distribution you received, you may keep part and roll over the remainder. However, you may not roll over a distribution from an IRA within one year of the receipt of an earlier IRA distribution which you rolled over to that same IRA. If you inherit an IRA and you are not a spousal beneficiary, you may not roll over a distribution from the inherited IRA. Amounts that are required to be distributed under the minimum distribution rules will not be eligible to be rolled over. Additionally, if you are under age 59 ½ when income payments commence, any attempted rollover of income payments under this contract prior to the later of (a) age 59 ½ or (b) 5 years from the commencement date, will generally subject the taxable portion of the income payments to the additional 10% penalty tax (including recapture of the penalty tax plus interest for income payments already made). Amounts under this Contract may only be rolled over during a limited 60 day period following the date that income payments commence. Otherwise the contract has no cash value which can be rolled over (except with respect to a precommencement death benefit paid to the owner's surviving spouse).
3. Rollover from a Qualified Employer Plan to an IRA. You may rollover part or all of certain distributions you receive from an employer's qualified retirement plan, Section 403(b) program, or section 457(b) plan of a state or local governmental employer into your IRA. Distributions which are not eligible for rollover are:
  - (a) required minimum distributions;
  - (b) distributions that are one of a series of substantially equal payments over your life expectancy (or the joint life expectancy of you and your beneficiary) or over a specified period of ten or more years;
  - (c) distributions on account of hardship as defined under section 401(k)(2)(B)(i)(IV), and
  - (d) certain distributions attributable to after-tax contributions as provided under section 402(c).

Distributions which are eligible for rollover can be "directly" rolled over from the qualified retirement plan or Section 403(b) plan to your IRA. In order to qualify as a direct rollover, the plan must wire or mail the funds

directly to the IRA trustee, insurer or custodian or give you a check payable only to the IRA trustee, insurer or custodian.

If you chose to receive the eligible distribution instead of having it directly rolled over you must then rollover the distribution within sixty (60) days of receipt by you. Any eligible distribution which is not "directly" rolled over is subject to twenty (20%) percent withholding of Federal income taxes. In order to make a roll over of the full amount of the distribution, you will need to contribute from other sources the 20% withheld for taxes.

You may also roll over a lump sum or partial distribution to you of your spouse's benefits under a qualified plan of your spouse's employer, if you receive the distribution after your spouse's death and comply with the applicable rules described above.

Rollover treatment is also available for certain distributions from an employer's plan made to a spouse, former spouse, child, or other dependent of the covered employee by reason of a "qualified domestic relations order." In general, a "qualified domestic relations order" means any judgment, decree or order that has been issued pursuant to a state domestic relations law and that directs the payment of all or a portion of the plan benefits on account of the payee's rights to child support, alimony payments or marital property rights. The payee will be entitled to roll over treatment if, within one tax year, the total balance to the credit of the payee under the plan is paid to the payee and the payee rolls over all or part of the distribution within 60 days of the receipt of the distribution.

4. **Rolling Over Proceeds From the Sale of Property.** If you receive property (stocks, bonds, etc.) other than cash in a distribution that qualifies for a rollover, you may sell part or all of the property and roll over the cash proceeds from the sale into your IRA. You would have to do all of this within the 60-day period described above. If you roll over the entire proceeds, the sale has no tax effect. In this case, the rollover will be treated as if you had simply received the proceeds and rolled them over. If you only roll over part of the proceeds, you are taxed on the part you do not roll over.
5. **Using Your IRA as a Conduit for Rollovers.** If you receive a distribution from your employer's qualified plan, a Section 403(b) plan or other eligible retirement plan and roll it over to an IRA, you may later roll over those assets into a new employer's qualified plan (to the extent otherwise permitted under the terms of this contract). Your IRA serves as a holding account or conduit for those assets. However, you will lose the benefit of any 10-year averaging or capital gains treatment (assuming you otherwise were eligible for it) on the distributions from your employer's qualified plan if you take distributions from this IRA or make other contributions to it.

Additionally, you may not roll over after-tax amounts to eligible retirement plans other than IRAs. You must keep records which indicate how much in after tax- contributions (including rollovers) were made to the IRA. In general you may treat any rollover distribution from your IRA as being attributable first to any pre-tax contributions for this purpose.

6. **SIMPLE IRAs.** Contributions to a SIMPLE IRA can only be made under a SIMPLE plan. Your IRA is not a SIMPLE IRA and therefore cannot accept contributions under a SIMPLE plan. Your IRA may not accept a rollover from a SIMPLE plan prior to the expiration of the 2-year period beginning on the date you first participated in your employer's SIMPLE plan.
7. **Guidance for Rollovers.** Rollovers can be complicated and must be made correctly. You should be careful to make the rollover in time and to avoid rolling over more than is permitted. A rollover not properly made may be considered a distribution which will be subject to income taxation and possibly a premature distribution penalty of ten (10%) percent. The IRS will treat rollovers as irrevocable. Therefore, you may lose the use of other, perhaps more beneficial, tax options by electing to roll over a distribution to you from a qualified plan. You should consult with your own tax adviser and the employers plan administrator to help you make the decision that best fits your financial circumstances. Federal law requires that the plan administrator of an employer's qualified plan provide a written statement explaining whether the distribution is eligible to be rolled over to an IRA.

#### **F. PROHIBITED TRANSACTIONS**

1. As a participant in the Contract, you are subject to the prohibited transaction rules of the Internal Revenue Code Section 4975 and will be treated as the creator with respect to those provisions. Examples of prohibited transactions are the borrowing of the income or corpus from the Contract, selling property to or buying from the Contract, or receiving more than reasonable compensation for services performed for the Contract.

2. If you (or your beneficiary) engage in a prohibited transaction, your Contract will lose its exemption from taxation. This will be effective as of the first day of the tax year in which the prohibited transaction occurs. Once your contract loses its exempt status, you are required to include its value reduced by any applicable charge, in your income for that tax year. This value is determined as of the first day of the tax year in which the prohibited transaction occurred. You may also be subject to the 10% tax on premature distributions.
3. You or any disqualified person involved in the prohibited transaction may be subject to a 15% excise tax on the amount involved in the transaction and, to an additional tax of 100% of the amount involved if the transaction is not corrected within the taxable period.
4. If you use your Contract or any portion thereof as security for a loan, the portion so used will be treated as distributed to you and therefore includable in your taxable income for that year, and will disqualify your entire contract as an IRA.

#### **G. PREMATURE DISTRIBUTIONS**

Generally, any distribution from an IRA to the person for whose benefit the IRA was established will be subject to a 10% penalty tax if such person has not attained age 59 1/2. However, the 10% penalty tax will not apply to distributions:

- (a) made after death;
- (b) made on account of disability;
- (c) which are a part of a series of substantially equal periodic payments (at least annually) made for the life (or Life expectancy of the individual or the joint lives of the individual and his beneficiary);
- (d) which are used for medical expenses and do not exceed the amount allowable as a deduction under IRC Section 213;
- (e) which are used to pay for health insurance premiums for you or your dependents after your separation from employment if:
  - (i) you have received unemployment compensation for 12 consecutive weeks;
  - (ii) such distributions are made during the taxable year in which such unemployment compensation is paid or the succeeding taxable year; and
  - (iii) such distributions do not exceed the amount paid during the taxable year for such health insurance premiums as described in IRC Section 213(d)(i)(D).

This exception will not apply after you have been re-employed for at least 60 days.

- (f) which are used to pay for qualified higher education expenses of you, your spouse, child or grandchild. Qualified higher education expenses include tuition, fees, books and supplies required for enrollment or attendance at a post-secondary educational institution. Qualified higher educational expenses are reduced by the amount of any qualified scholarship educational assistance or payment (other than a gift or inheritance) which is excludable from gross income
- (g) which are qualified first-time homebuyer distributions. These distributions consist of withdrawals of up to \$10,000 during your lifetime which is used within 120 days to buy, build or rebuild a first home which is the principal residence of a first-time homebuyer who is you, your spouse, child or grandchild or your or your spouse's ancestor. In order to qualify as a first-time homebuyer such individual (and if married, such individual's spouse) must not have had an ownership interest in a principal residence during a two-year period ending on the date that the new home is purchased; or
- (h) which are used to pay a federal tax levy under section 6331 of the Code.

You should consult your tax advisor prior to taking a full or partial withdrawal during the 60 day period following the income payment commencement date as the withdrawal will generally be subject to the 10% penalty tax, in addition to ordinary income tax, unless an exception applies. In addition, if you are under age 59 1/2 when income payments commence, the withdrawal may cause the retroactive imposition of the 10 % penalty tax with respect to the taxable portion of income payments.

#### **H. ESTATE AND GIFT TAX**

Pursuant to Internal Revenue Code Section 2039, any distributions to a beneficiary under the Contract are generally not exempt from Federal Estate taxes. Furthermore, the irrevocable designation of a beneficiary is not exempt from Federal gift taxes.



**I. DISTRIBUTIONS**

Taxable distributions from the Contract are taxed as ordinary income regardless of their source. They are not eligible for capital gains treatment or the special 10-year averaging rules that may apply to lump-sum distributions from qualified employer plans.

**J. EXCISE TAX ON EXCESS CONTRIBUTION**

Generally, any contributions exceeding the limitations mentioned in Section C above are excess contributions and, if not withdrawn by the date your tax return for the year is due, are subject to a nondeductible 6% excise tax. The excess is taxed for the year of the excess contribution and for each year after that until corrected. The amount of this excise tax of any year cannot exceed 6% of the value of your Contract as of the close of the year.

**K. 50% EXCISE TAX**

A 50% excise tax will generally be imposed on the under-distribution representing the difference between the minimum payout required for the tax year in question and the amount actually paid out to you or to your beneficiary. This tax is to be paid by the individual to whom the minimum payments should have been made. For example, if the minimum payout that you should have received is \$1,000 for the taxable year and you only receive \$600, an excise tax of \$200 (50% of the \$400 underpayment) must be paid by you.

**L. FORM 5329**

You must file a form 5329 for any year in which a penalty tax (e.g., you failed to receive required minimum distributions made excess contributions, or received premature distributions) applies to your IRA.

**M. FURTHER INFORMATION**

You may obtain additional information from any district office of the Internal Revenue Service.

**N. IRS QUALIFICATION**

Your annuity Contract with endorsement has been submitted to the Internal Revenue Service for approval for use as an Individual Retirement Annuity. Such approval, if obtained, would be a determination only that the form of the annuity met IRS requirements for IRA's and would not represent a determination of the merits of the investment aspects of the annuity. IRS approval is not required for the contract to be considered a valid IRA.

**O. FINANCIAL INFORMATION**

See attached supplemental material for important financial information regarding your IRA annuity.