



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 26, 1999

MEMORANDUM

TO: RON M. HARRIS  
PRESS OFFICER  
PRESS OFFICE

FROM: ROBERT J. COSTA *RJC*  
ASSISTANT STAFF DIRECTOR  
AUDIT DIVISION

SUBJECT: PUBLIC ISSUANCE OF THE AUDIT REPORT ON  
METROPOLITAN LIFE INSURANCE COMPANY (METLIFE)  
EMPLOYEES' POLITICAL PARTICIPATION FUND A

Attached please find a copy of the audit report and related documents on Metropolitan Life Insurance Company (METLIFE) Employees' Political Participation Fund A, which was approved by the Commission on February 16, 1999.

Informational copies of the report have been received by all parties involved and the report may be released to the public.

Attachment as stated

cc: Office of General Counsel  
~~Office of Public Disclosure~~  
Reports Analysis Division  
FEC Library

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REPORT OF THE AUDIT DIVISION  
ON THE  
**METROPOLITAN LIFE INSURANCE  
COMPANY  
(METLIFE) EMPLOYEES' POLITICAL  
PARTICIPATION  
FUND A**

Approved February 16, 1999



**FEDERAL ELECTION COMMISSION  
999 E STREET, N.W.  
WASHINGTON, D.C.**

2025.07.025.4000

## **TABLE OF CONTENTS**

### **METROPOLITAN LIFE INSURANCE COMPANY (METLIFE) EMPLOYEES' POLITICAL PARTICIPATION FUND A**

	<b>Page</b>
<b>Executive Summary</b>	<b>1</b>
<b>Final Audit Report</b>	<b>3</b>
<b>Background</b>	<b>3</b>
<b>Finding</b>	<b>4</b>
<b>Legal Analysis</b>	<b>7</b>
<b>Transmittal to Committee</b>	<b>11</b>
<b>Chronology</b>	<b>13</b>

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REPORT OF THE AUDIT DIVISION  
ON THE  
METROPOLITAN LIFE INSURANCE COMPANY  
(METLIFE) EMPLOYEES' POLITICAL PARTICIPATION  
FUND A

EXECUTIVE SUMMARY

The Metropolitan Life Insurance Company (Metlife) Employees' Political Participation Fund A registered with the Federal Election Commission on November 25, 1975.

The audit was conducted pursuant to 2 U.S.C. Section 438(b), which states that the Commission may conduct audits of any political committee whose reports fail to meet the threshold level of compliance set by the Commission.

The one finding arising from the audit was presented to representatives of Metlife at an exit conference held at the conclusion of fieldwork on July 24, 1998, and later in an interim audit report. The following is an overview of the finding contained in the audit report.

**MAINTAINING EMPLOYEE PAYROLL DEDUCTION AUTHORIZATION FORMS**

11 CFR §104.14(b)(1). Metlife was unable to locate about 50% of its employee payroll deduction authorization forms. Metlife asserts that there is no legal basis for the finding because the cited regulation does not specify that employee payroll deduction authorization forms must be maintained. Metlife set forth an alternative argument that even if they were required to keep such forms, the records need only be maintained for three years. Metlife did not comply with the recommendation in the Interim Audit Report, which requested that the missing forms be located or that written confirmations be obtained from contributors regarding their authorizations. The finding concluded that the cited regulatory provisions both require the payroll authorizations to be kept, and that the three year record retention requirement does not begin to run while the authorizations are in effect.

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**REPORT OF THE AUDIT DIVISION  
ON THE  
METROPOLITAN LIFE INSURANCE COMPANY (METLIFE)  
EMPLOYEES' POLITICAL PARTICIPATION FUND A**

**I. BACKGROUND**

**A. AUDIT AUTHORITY**

This report is based on an audit of the Metropolitan Life Insurance Company Employees' Political Participation Fund A (MetLife), the separate segregated fund of Metropolitan Life Insurance Company, undertaken by the Audit Division of the Federal Election Commission in accordance with the provisions of the Federal Election Campaign Act of 1971, as amended (the Act). The audit was conducted pursuant to Section 438(b) of Title 2 of the United States Code which states, in part, that the Commission may conduct audits and field investigations of any political committee required to file a report under Section 434 of this title. Prior to conducting any audit under this subsection, the Commission shall perform an internal review of reports filed by selected committees to determine if the reports filed by a particular committee meet the threshold requirements for substantial compliance with the Act.

**B. AUDIT COVERAGE**

The audit covered the period from January 1, 1995 through December 31, 1996. MetLife reported a beginning cash balance of \$36,036; total receipts for the period of \$355,150; total disbursements of \$360,940; and an ending cash balance of \$30,246.<sup>1</sup>

**C. CAMPAIGN ORGANIZATION**

MetLife registered with the Federal Election Commission on November 25, 1975. The Treasurer of record during the audit period was Robert C. Tarnok, who continues to serve in that capacity. MetLife maintains its headquarters in New York, New York.

To manage its financial activity, MetLife used three bank accounts (two checking and one money market). It made approximately 390 disbursements totaling about \$360,900. MetLife received contributions from individuals of approximately \$353,300, the majority of which were collected through payroll deduction. In addition, it received refunds of contributions (\$1,500) and interest (\$313).

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<sup>1</sup> All amounts in this report have been rounded to the nearest dollar.

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**D. AUDIT SCOPE AND PROCEDURES**

The audit included testing of the following general categories:

1. The receipt of contributions or loans in excess of the statutory limitations;
2. the receipt of contributions from prohibited sources; such as those from corporations or labor organizations;
3. proper disclosure of contributions from individuals, political committees and other entities, to include the itemization of contributions when required, as well as, the completeness and accuracy of the information disclosed;
4. proper disclosure of disbursements including the itemization of disbursements when required, as well as, the completeness and accuracy of the information disclosed;
5. proper disclosure of committee debts and obligations;
6. the accuracy of total reported receipts, disbursements and cash balances as compared to committee bank records;
7. adequate recordkeeping of committee transactions; and
8. other audit procedures that were deemed necessary in the situation.

Testing of contributions was limited due to MetLife's inability to locate approximately 50% of the contributor authorizations for payroll deduction. (see Audit Finding and Recommendation)

Unless specifically discussed below, no material non-compliance was detected. It should be noted that the Commission may pursue the matter discussed below in an enforcement action.

**II. AUDIT FINDING AND RECOMMENDATION - MAINTAINING EMPLOYEE PAYROLL DEDUCTION AUTHORIZATION FORMS**

Section 104.14 (b) (1) of Title 11 of the Code of Federal Regulations provides that each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports or statements. Records to be maintained with respect to the matters required to be reported, include bank records, vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.

As noted above, the majority of the contributions received by MetLife were made through payroll deduction. The Audit staff reviewed these contributions on a sample basis. For 53% of the sample items, the related payroll deduction authorization form was not available. Those that were available were dated between 1995 and 1997. The forms reviewed implemented changes in the amount to be deducted, enrolled new participants, or canceled prior authorizations. Authorization forms prior to 1995, although apparently still in effect, could not be located.

This matter was discussed with the Treasurer at an interim conference and at the exit conference. The Treasurer stated that the person responsible for the authorization forms prior to 1995 had been replaced and that a search for the missing records would be made. No additional authorization forms had been provided at the time of the interim audit report.

The interim audit report recommended that MetLife locate the missing employee payroll deduction authorization forms or obtain written confirmations from contributors regarding their authorizations and provide copies for review. The written confirmations were to include the employee's name, address, amount authorized for payroll deduction (or lump sum amount), and the date of the authorization.

In response to the interim audit report, Metlife's attorney submitted a letter which requested that the Commission delete from the Final Audit report the finding regarding Metlife's failure to keep records of payroll deduction authorization forms. The response stated, in part, that:

"There is no legal basis for the Report's finding or recommendations. The Report relies on 11 CFR § 104.14(b) which requires a PAC to maintain for three years records, 'including vouchers, worksheets, receipts, bills and accounts,' which provide in sufficient detail the necessary information to verify the reports which the PAC filed with the FEC. However, nowhere in that rule, or anywhere else in the FEC regulations, are PACs required to keep records of Authorization Forms....

It is important to note that although not required by law, Metlife PAC maintained the Authorization Forms going back three years. As confirmed in the Report, Metlife PAC has on file Authorization Forms 'dated between 1995 and 1997' and is only missing Authorization Forms signed before 1995. Thus, even if Metlife was required to keep payroll authorization forms, nothing specifies that those records must be maintained three years.... The auditors are now seeking forms they have no authority to demand under the rules, outside the time for maintaining any records, and outside the coverage dates of the audit."

"For the above reasons, the Commission should delete from the Final Audit Report the finding regarding Metlife PAC's failure to keep records of Authorization Form. If the Commission desires PACs to maintain records of payroll deduction authorization form, particularly those beyond the three year period in Section 104.14(b), we suggest that the Commission amend its



regulations to specify that payroll deductions authorization forms must be maintained and because of the continuing nature of payroll deduction, further specify the retention period for those forms.”

Metlife attempts to apply 11 CFR §104.14(b) very narrowly, by stating that it does not explicitly require that authorization forms be maintained. The examples of documentation contained within in the cite are not an all encompassing list; rather they are intended to be illustrative. An attempt to create such a list would be cumbersome and inevitably miss some necessary document referred to by some name by some reporting entity. The substantive wording of the cite requires records be maintained “...which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness.” The authorization forms, which are used to implement employees payroll deductions, provide the “necessary information” needed to verify the “accuracy and completeness” of the reports filed.

Additionally, the response argues that even if Metlife was required to keep authorization forms, nothing specifies that those records must be maintained for more than three years and that authorizations had been maintained for the period 1995 - 1997. Again, Metlife errs in its interpretation of the requirements. Under 11 CFR §104.14(b), all reports are required to be preserved for not less than three years after the report is filed, and 11 CFR §102.9(c) requires the supporting records to be maintained for the same period. A payroll deduction authorization form is a record supporting each report on which a contribution made pursuant to that authorization is reported. Therefore, it is not the age of the authorization form that governs, but the age of the last report on which a related contribution is reported. All of the authorization forms sought during the audit were current records supporting the reports filed during the audit period. There is no reason for the Commission to amend its regulations regarding retention of payroll deductions authorization forms. Records must be maintained three years from the date of the report to which they pertain.

Finally, although not discussed in the interim audit report, the response raises the issue of the FEC’s prohibition on reverse check-off payroll deduction plans which result in involuntary contributions. See, FEC v National Education Ass’n (“NEA”), 457 F. Supp. 1102, 1106-1107 (D.C.D.C. 1978); 2 USC § 441b(b)(3); 11 CFR § 114.5. Metlife notes that the FEC prohibition does not require a PAC to maintain records of authorization forms and that “it is inappropriate and outside the scope of the NEA decision to bootstrap a recordkeeping requirement on a prohibition against involuntary contributions.” We agree that NEA does not require a PAC to maintain records of authorization forms. However, Metlife fails to note that NEA did require that written affirmations of intent to contribute be obtained and, that absent receipt of such affirmations, money collected through the reverse check-off plan was required to be returned.

It is concluded that Metlife was required to maintain the payroll deduction authorization forms to support the contributions it reported during the audit period. It is also concluded that Metlife did not comply with the recommendation in the Interim Audit Report.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 10, 1999

MEMORANDUM

TO: Robert J. Costa  
Assistant Staff Director  
Audit Division

THROUGH: James A. Pehrkon  
Acting Staff Director

FROM: Lawrence M. Noble  
General Counsel

BY: Kim Bright-Coleman  
Associate General Counsel

Lorenzo Holloway  
Assistant General Counsel

Jamila I. Wyatt  
Attorney

SUBJECT: Final Audit Report on the Metropolitan Life Insurance Company  
Employees' Political Participation Fund A (LRA #524)

The Office of General Counsel has reviewed the Final Audit Report on Metropolitan Life Insurance Company Employees' Political Participation Fund A ("MetLife") that was submitted to this Office on January 6, 1999. The following memorandum provides our comments on the Final Audit Report. We concur with the finding in the Report. If you have any questions concerning our comments, please contact Jamila Wyatt, the attorney assigned to this audit.<sup>1</sup>

The proposed Audit Report found that a majority of contributions to MetLife were received through payroll deductions. However, the Audit Report found that

<sup>1</sup> This Office recommends that the Commission consider this document in open session since the proposed Final Audit Report does not include matters exempt from public disclosure. See 11 C.F.R. § 2.4.

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MetLife did not maintain payroll deduction authorization forms to support the contributions it reported during the period covered by the scope of the audit.<sup>2</sup>

MetLife asserts that there is no legal basis for requiring separate segregated funds to keep records of authorization forms, and that absent a statutory or regulatory provision, the Commission cannot require MetLife to keep records of authorization forms. Furthermore, MetLife argues that authorization forms are not necessary to verify the accuracy and completeness of disclosure reports. MetLife sets forth an alternative argument that even if they were required to keep the authorization forms, the records need only be maintained for three years. The Committee states that some of the records sought by the auditors are outside of the three year period for maintaining records.

Section 114.5(a) of the Commission's regulations prohibit committees from using contributions that were obtained involuntarily or secured by the threat of force or job reprisals. 11 C.F.R. § 114.5(a). While the Commission's regulations do not specifically require committees to utilize authorization forms, in the case of payroll deductions where the donative intent may not be apparent when the contribution is made,<sup>3</sup> such written authorization is necessary to insure that the funds that are being collected were not secured by physical force, job discrimination, financial reprisals, or the threat of such acts. 11 C.F.R. § 114.5(a).<sup>4</sup>

Payroll authorization forms include the contributors name, the amount and date of the contribution, type of contribution,<sup>5</sup> and the contributor's signature. Accordingly, the authorization form is a record of the employee's contribution to the separate segregated fund. 11 C.F.R. § 104.14(b)(1). The Commission's regulations provide that each political committee or other person required to file any report or statement "shall maintain all records including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and

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<sup>2</sup> The Interim Audit Report recommended that MetLife either find the missing authorization forms, or obtain written confirmations from contributors regarding their authorizations and provide copies for review.

<sup>3</sup> A contribution is not made until the contributor relinquishes control of the funds. 11 C.F.R. § 110.1(b)(6).

<sup>4</sup> Section 114.5(a)(2) provides other various safeguards to ensure contributions are made freely.

<sup>5</sup> "Type of contribution" refers to either a lump sum contribution, or a specific amount to be deducted from each pay period.

completeness.” 11 C.F.R. § 104.14(b)(1). Payroll authorization forms are examined in the context of the audit to verify the accuracy and completeness of contributions to the separate segregated fund on the disclosure reports. While section 104.14(b)(1) does not explicitly list authorization forms, the items in the regulation merely cite examples of records that must be maintained to verify the accuracy and completeness of the disclosure reports, and is not exhaustive. *Id.* Generally, in statutory construction there is the doctrine of *expressio unius* which states that a list within a statute should be deemed exhaustive unless there is language in that portion of the statute to indicate otherwise. *See* Singer, Sutherland Statutory Construction § 45 (5<sup>th</sup> ed. 1992). The list of necessary records to be kept in section 104.14(b)(1) is preceded by the term “including.” This language indicates that the list is not intended to be exhaustive. Therefore, the Office of General Counsel believes there is a basis to require the Committee to maintain records of authorization forms.

MetLife’s second argument is that even if they were required to keep payroll authorization forms, MetLife is only required to preserve these documents for three years. MetLife’s argument relies on the date of the authorization forms for the purpose of calculating the beginning of the three year period. However, the Commission’s regulations set out that the treasurer shall preserve all records and accounts required to be kept under 11 C.F.R. § 102.9 for three years after the report to which such records and accounts relate is filed. 11 C.F.R. § 102.9(c); *see also* 11 C.F.R. § 104.14(b)(3). Therefore, the date of the authorization forms is not relevant. The date that is determinative is the date of the most recent disclosure report that relies on the information contained in the authorization form.

MetLife filed monthly disclosure reports from February 21, 1995 until January 24, 1997. MetLife received notice of an audit in June 1998. The authorization forms contained information about contributions disclosed in monthly reports for February 1995 through June 1995. Some of the records supporting these disclosure reports are older than three years. Payroll deduction contributions are unique in that the expressed donative intent in the authorization forms and the receipt of the contribution may not be simultaneous.<sup>6</sup> Payroll deduction authorization is also unique because the forms are indicative of donative intent for subsequent contributions.<sup>7</sup> Because of this continuing nature of authorization forms supporting subsequent contributions, the authorization

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<sup>6</sup> A contribution is considered received on the date the committee obtains possession of the contribution. 11 C.F.R. § 102.8(a).

<sup>7</sup> The Commission has stated that when contributions made through payroll deductions are authorized by the contributor for an indefinite period or if the authorization is subject to termination at any time, the deduction from the payroll check rather than the authorization of the deduction, constitutes a contribution. *See* Advisory Opinion 1978-16. (authorization of payroll deductions would not in itself be a contribution before the proceeds are actually distributed since the authorization is subject to termination at any time, and no certain total amount is assured).

forms are necessary to verify disclosure reports that were filed inside of the three year period.<sup>8</sup>

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<sup>8</sup> Many of the employee contributors had contributions deducted from their payroll checks over an extended period of time.

22-07-025-4044



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

February 19, 1999

Mr. Robert C. Tarnok, Treasurer  
Metropolitan Life Insurance Company  
(METLIFE) Employees' Political  
Participation Fund A  
One Madison Avenue  
New York, NY 10010

Dear Mr. Tarnok:

Attached please find the Report of the Audit Division on the Metropolitan Life Insurance Company (METLIFE) Employees' Political Participation Fund A. The Commission approved the report on February 18, 1999. As noted on page 2, the Commission may pursue the matter discussed in an enforcement action.

The Commission approved Audit Report will be placed on the public record on February 25, 1999. Should you have any questions regarding the public release of this report, please contact the Commission's Press Office at (202) 694-1220.

Any questions you may have related to matters covered during the audit or in the audit report should be directed to Henry Miller or Alex Boniewicz of the Audit Division at (202) 694-1200 or toll free at (800) 424-9530.

Sincerely,

A handwritten signature in black ink that reads "Robert J. Costa".

Robert J. Costa  
Assistant Staff Director  
Audit Division

Attachment as stated

EE-07-025-4012



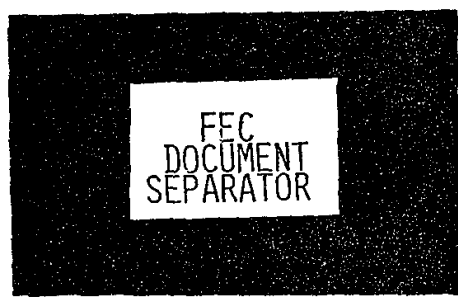
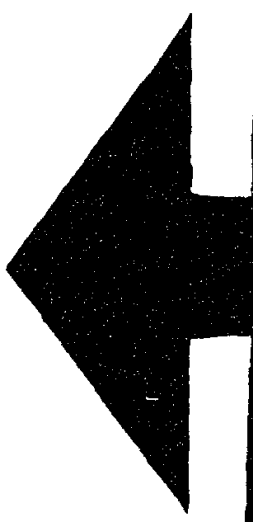
CHRONOLOGY

METROPOLITAN LIFE INSURANCE COMPANY  
(METLIFE) EMPLOYEES' POLITICAL PARTICIPATION  
FUND A

Audit Fieldwork	7/20/98 - 7/24/98
Interim Audit Report to the Committee	10/20/98
Response Received to the Interim Audit Report	11/23/98
Final Audit Report Approved	2/16/98



22.07.025.4015



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