RETIREES FOR JUSTICE

October 2, 2021

**VIA EMAIL** (khawar.ali@dol.gov)
**- AND -**
**FIRST CLASS MAIL**

Ali Khawar
Acting Assistant Secretary
U.S. Department of Labor
200 Constitution Ave. N.W.
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Washington, DC 20210

Dear Mr. Khawar:

I am the Executive Director of Retirees for Justice, a retiree advocacy group committed to preserving earned benefits for retirees and their families.

I am writing in support of a proposal that seeks to add clarity and concrete guidelines for 29 CFR Section 2509.95-1 specifically as that Interpretive Bulletin pertains to fiduciary standards under ERISA with regard to the choice of annuity provider ("insurer") in a pension risk transfer context.

Since 2012, close to $200 Billion in retiree liabilities have been transferred to insurance companies in pension de-risking transactions, also referred to as a pension risk transfer or "PRT". Once a PRT is complete, retirees lose all of the uniform protections intended by Congress under ERISA and retirees become subject to non-uniform state laws.

Meanwhile, insurance companies are selling off blocks of business to private equity firms at an unprecedented pace. Apollo is on the verge of acquiring 100% of Athene; Prudential Financial just sold off $31 Billion in variable annuity contracts to Fortitude Re and Blackstone Group recently acquired most of Allstate's life insurance business. History suggests that private equity firms are more concerned about generating a return for their investors than policyholder security.

Given the fact that retirees lose so much post-PRT it is critically important that Defined Benefit Plan Sponsors undertake rigorous and thorough evaluations of both the claims paying ability and financial security of any annuity provider or insurer being considered for a PRT and do so in a manner that is consistent with ERISA's fiduciary requirements. Unfortunately, there is no set criteria for Defined Benefit Plan Sponsors to consider when choosing an insurer and no clear guidance from the Department of Labor about what factors need to be taken into consideration before choosing an insurer for a PRT.

In our view, Defined Benefit Plan Sponsors should consider the financial ability of the insurer to satisfy its obligations under the underlying pension or guaranteed retirement income contract, taking into consideration the following:

1. Whether or not the selected insurer is properly reserved under Statutory Accounting Principles ("SAP") in all States where the insurer does business taking into consideration the extent to which the selected insurer has taken credit for reinsurance with wholly owned captive reinsurers or affiliates that do not file annual statements in accordance with SAP;
2. Whether or not the selected insurer has significant exposure to affiliated reinsurers located outside of the United States;
3. Whether or not the selected insurer has segregated assets into a separate account that is managed solely for the benefit of the retirees;
4. Whether or not the selected insurer maintains an appropriate level of capital and surplus that is not dependent in any way upon conditional letters of credit, surplus notes or circular parental guarantees; and
5. Whether or not the selected insurer is rated A or better by two or more nationally recognized rating agencies.

Retiree earned benefits are not handouts. Many of today's retirees worked for decades based upon promises made by their employers about their benefits packages- often trading higher salaries for pensions, life insurance and health care for life. These benefits need to be protected consistent with ERISA's original protective purpose. With literally hundreds of billions in pension liabilities at stake, retirees and their families who did not choose a pension risk transfer need to know that the chosen insurer was fully and completely vetted by a Defined Benefit Plan Sponsor that is held to ERISA's highest fiduciary standards.

Sincerely,

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