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AMERICA'S UNIONS

**American Federation
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Congress of Industrial
Organizations**

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December 13, 2021

The Honorable Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave N.W.
Washington, D.C. 20210

Dear Secretary Walsh:

We, the undersigned labor leaders representing millions of American workers, many of whom are beneficiaries of single-employer defined benefit pension plans, urge the Department of Labor to reexamine, revise, and expand the guidance set forth in Interpretive Bulletin 95-1 in response to the rapidly growing role of private equity in the annuity and pension risk transfer markets.

Interpretive Bulletin 95-1 was issued in 1995 in the wake of the failure of the Executive Life Insurance Companies, which sold products including group annuity contracts to pension plans and municipalities. The Interpretive Bulletin was written to provide guidance to defined benefit plan fiduciaries when selecting an annuity provider to assume pension benefit obligations. It established the "safest available annuity" standard to protect retirees' benefits.

Much has changed since 1995. In recent years, private equity firms have entered the annuity and pension risk transfer markets after making a series of acquisitions of state-regulated life insurance companies and blocks of annuities. Apollo Global Management, a pioneer of this trend, created an affiliated insurance company, Athene, which entered the pension risk transfer market in 2017.

Last year, Apollo-affiliated Athene had the largest market share of any insurer in the U.S. pension risk transfer market, assuming management of \$5.5 billion of pension assets.¹

¹ Athene Holding Ltd., July 2021, "Benefits of Pension Risk Transfer to U.S. Retirees", see p.10 <https://athenecentral.widen.net/s/8rxmm5xvkt/25120>

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This year, Athene has assumed liabilities from JCPenney,² Sonoco,³ and Lockheed Martin⁴ pension plans, impacting 56,300 participants with \$8.6 billion in pension obligations.⁵

Recent reports have raised concerns about the risks associated with private equity-backed insurers' investment practices, particularly their investments in illiquid structured securities such as Collateralized Loan Obligations,⁶ their use of offshore captive reinsurance entities,⁷ and their affiliates' "shadow banking" activities that occur outside the purview of state or federal regulation.⁸

Private equity's growing presence in the pension risk transfer space adds urgency to the need for plan fiduciaries to have the strongest possible guidance for assessing the safety and claims-paying ability of potential annuity providers.

We respectfully urge the Department of Labor to strengthen and update the "safest available annuity" standard to reflect the emergence of a new breed of annuity provider with a higher tolerance for risk and illiquidity, offshore reinsurance affiliates, and units engaged in leveraged lending via non-bank lending affiliates.

² Athene Holding Ltd., April 1, 2021, "Athene Completes Significant Pension Risk Transfer Transaction with JCPenney," available at <https://ir.athene.com/news/news-details/2021/Athene-Completes-Significant-Pension-Risk-Transfer-Transaction-with-JCPenney/default.aspx>

³ Sonoco Products Company, June 24, 2021, "Sonoco Reduces Pension Obligation by Approximately \$1.4 Billion with Purchase of Group Annuity Contracts and Distribution of Lump-Sum Payments," available at <https://investor.sonoco.com/news-releases/news-release-details/sonoco-reduces-pension-obligation-approximately-14-billion>

⁴ Athene Holding Ltd., August 3, 2021, "Athene Announces \$4.9 Billion Pension Risk Transfer Transaction with Lockheed Martin," available at <https://ir.athene.com/news/news-details/2021/Athene-Announces-4.9-Billion-Pension-Risk-Transfer-Transaction-with-Lockheed-Martin/default.aspx>

⁵ The transaction with JCPenney includes 30,000 participants and \$2.8 billion in obligations. The transaction with Sonoco includes 8,300 participants and \$900 million in obligations. The transaction with Lockheed Martin includes 18,000 participants and \$4.9 billion in obligations.

⁶ See NBC News, June 14, 2020 ("As insurance companies take over pension plans, are your payments at risk?"), available at <https://www.nbcnews.com/business/personal-finance/insurance-companies-take-over-pension-plans-are-your-payments-risk-n1229226>; Reuters, June 1, 2021 ("Chasing yield, U.S. private equity firms nudge up risk on insurers"), available at <https://www.reuters.com/article/private-equity-insurance-risks-idCNL2N2NJ1DG>; Federal Insurance Office, U.S. Department of the Treasury, September 2021, "Annual Report on the Insurance Industry" pp. 50-2, available at <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>

⁷ Federal Insurance Office, U.S. Department of the Treasury, September 2021, "Annual Report on the Insurance Industry" pp. 50-2, available at <https://home.treasury.gov/system/files/311/FIO-2021-Annual-Report-Insurance-Industry.pdf>

⁸ Foley-Fisher, Nathan and Heinrich, Nathan and Verani, Stephane, Are US Life Insurers the New Shadow Banks? (September 10, 2021). available SSRN: <https://ssrn.com/abstract=3534847> or <http://dx.doi.org/10.2139/ssrn.3534847>

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We look forward to working together to strengthen protection for beneficiaries and provide practical guidance for single-employer pension plan fiduciaries.

Sincerely,

Elizabeth H. Shuler
President, AFL-CIO

D. Taylor
President, UNITE-HERE

Anthony ("Marc") Perrone
President, UFCW

Joe Sellers
President, SMART

Lonnie Stephenson
President, IBEW

Thomas Conway
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