September 16, 2021

Marty Walsh
Secretary of Labor
200 Constitution Ave NW
C-2318
Washington, DC 20210

Dear Secretary Walsh,

We write to express our concern regarding the role of insurance companies in managing pension assets and obligations, and specifically to ask that the Department of Labor (DOL) consider issuing additional guidance to better protect the hard-earned savings of workers, retirees and their beneficiaries in the United States.

As State Treasurers, we are keenly interested in advocating for policies and practices that ensure the safekeeping of retirement assets in an orderly, transparent, and fiduciarily responsible manner. Accordingly, we recognize the critical role of DOL in ensuring that retirement assets, including those removed from ERISA and Pension Benefit Guaranty Corporation (PBGC) protections, are safely managed and that plan fiduciaries have up-to-date guidance on evolving areas of concern and uncertainty.

One area of growing concern among plan fiduciaries, beneficiaries and administrators is the role of private equity-backed insurers in the Pension Risk Transfer (PRT) market. Exemplified by private equity sponsors such as Apollo Global Management and its affiliated insurance company Athene, a new business model has emerged whereby private equity firms have established affiliated insurers to acquire blocks of annuities and pension plan assets, which the private equity firms manage for fees. The insurers seek to profit from the spread between investment returns and benefits paid to retirees. In 2017, Athene entered the PRT market and now emphasizes that its PRT business includes over 300,000 annuitants.[1] Recently, it announced a transaction with the JCPenney pension plan.[2]

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[1] Athene Holding Ltd., https://www.athene.com/pension-risk-transfer, as of March 31, 2021, Retrieved June 22, 2021

[2] Athene Holding Ltd., "Athene Completes Significant Pension Risk Transfer Transaction with JCPenney," press release, April 1, 2021, https://ir.athene.com/news/news-details/2021/Athene-Completes-Significant-Pension-Risk-Transfer-Transaction-with-JCPenney/default.aspx

As private equity-backed insurers have acquired retirement assets, they have moved some assets away from traditional investments like government bonds to more illiquid and potentially riskier investments. In 2020, The U.S. Department of the Treasury Federal Insurance Office (FIO) reported on the types of assets held by private equity-backed insurers.[3] FIO found that they "generally own more structured assets relative to capital as compared to traditional life insurers – particularly CLOs [Collateralized Loan Obligations] including lower tier tranches." FIO reported that Athene was the largest holder of CLOs as a percent of group surplus (325%). Further, the FIO noted that "private equity-backed insurers have become significant investors in illiquid and macroeconomic sensitive assets such as CMLs [Commercial Mortgage Loans] and private placements, which are loans made to mostly private middle-market domestic and foreign companies." FIO concluded, "Based on their investment holdings, private equity-backed insurers could potentially be more sensitive to downturns in the credit markets."

This concern has also been expressed in recent media coverage. On June 14, 2020, *NBC News* published an article titled, "As insurance companies take over pension plans, are your payments at risk?" The article reported on Athene's investment practices, including the illiquidity of some of its investments, its high concentration of investments in Apollo-related entities, and its use of reinsurance agreements with affiliated, Bermuda-domiciled companies. On June 1, 2021, *Reuters* published an article titled "Chasing yield, U.S. private equity firms nudge up risk on insurers."

When retirement assets are put into riskier, more complex financial instruments outside the governance of ERISA and PBGC, it behooves regulatory agencies – at both the federal and state level – to ask tough questions and provide guidance to protect plan fiduciaries and beneficiaries.

We believe that this fast-evolving area of pension transactions requires additional review and regulatory guidance. Accordingly, we urge DOL to issue additional guidance to pension plan fiduciaries. DOL's Interpretative Bulletin 95-1 provides guidance on fiduciary duties when selecting an annuity provider to distribute plan benefits. However, as it was created in 1995, it predates the entry of private equity-backed firms into the annuity and PRT markets.

We ask that DOL consider the following questions:

- How should plan fiduciaries assess the risks associated with insurance companies – and specifically private-equity backed insurance companies – when selecting an annuity provider to distribute plan benefits?
- How should plan fiduciaries consider the safety of investment portfolios with more complex, structured products than traditional insurers' portfolios?
- How should plan fiduciaries assess an insurer's investments in affiliated "shadow banking" entities that directly originate loans and structured products, such as Athene's investments in Apollo-related entities?

[3] Federal Insurance Office, U.S. Department of the Treasury, "Annual Report on the Insurance Industry," September 2020 https://home.treasury.gov/system/files/311/2020-FIO-Annual-Report.pdf, pp. 125-6

- How should plan fiduciaries assess the use of “modified coinsurance” reinsurance agreements with affiliated, offshore entities, which under some circumstances may allow an insurer to invest more in risky assets without impacting its Risk Based Capital (RBC) ratio?[4]

Thank you for your attention to this issue and we look forward to your response.

Sincerely,

Michael Frerichs

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Illinois State Treasurer

Sarah Godlewski

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Wisconsin State Treasurer

David L. Young

David L. Young
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[4] Kim, K., Leverty, J., & Schmit, J. (2019, December 29) *Regulatory Capital and Asset Risk Transfer* [Paper presentation] 2019 American Risk and Insurance Association Annual Meeting San Francisco, CA. https://www.aria.org/wp-content/uploads/2020/06/ReinsuranceARIA02152019combined.pdf