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Thank you for this opportunity to submit written testimony. UNITE HERE, the hospitality union with 300,000 members in the US and Canada, has been raising concerns about private equity-backed insurers and their stewardship of retirement assets since at least 2013.
We applaud Congress for including in the recently enacted SECURE 2.0 legislation a provision requesting study of this issue by the DOL, with input from the Advisory Council.
In short, we believe state insurance regulators have all but abdicated their responsibility to monitor, much less regulate, private-equity-backed group annuity providers, or to protect group annuity beneficiaries. All the more so because of those failures, we believe a modernization of the current guidance for plan fiduciaries (IB-95) is urgently needed.
Since group annuity beneficiaries lose their ERISA rights once they've been lifted-out of their defined benefit plans in a PRT, it is imperative that plan fiduciaries are able to differentiate between those providers whose core competency is long-term risk management versus those who bill themselves as expert asset managers and spread investors.
We appreciate the opportunity to participate in one of EBSA's consultations on this growing problem, and to share with EBSA staff some questions that we believe plan fiduciaries should ask themselves when trying to differentiate between the two very different types of annuity providers described above. (See "Metrics Needed" below.)

<u>Need for Updated Guidance</u>

The continued growth of private equity-backed insurers in the U.S. group annuity market raises a number of concerns for fiduciaries of single-employer defined benefit plans who may be considering pension risk transfer (PRT) transactions. In recent years, a handful of private equity firms with global reach have established holding companies and reinsurers in Bermuda and the Cayman Islands, acquired large blocks of annuities, and begun replacing many of the safe assets backing those retirement obligations with complex, often illiquid securities. Through pension risk transfer (PRT) transactions with corporate sponsors of defined benefit plans, these private equity giants now steward a large and growing share of the assets that back the payments which millions of Americans are counting on to pay their day-to-day expenses when they retire.
IB-95 predated by more than a decade the emergence of alternate asset manager-backed annuity providers and their investment strategies and corporate structures. The bulletin does not provide any specific guidance on how fiduciaries should factor risks such as those raised by investments in structured credit, or in the relatively new and rapidly expanding private credit industry, which receives scant regulatory oversight and has never been tested in an environment of rising interest rates or a prolonged recession. Nor does IB-95 contemplate, much less provide guidance to fiduciaries on how to evaluate, the proliferation of complex and illiquid related-party investments that private equity asset-managers are placing on the books of life insurer annuity providers with breathtaking speed.

These related concerns, and the need for robust guidance for addressing them, are exemplified by the investment behavior of American National Insurance Company in the fourteen months since its acquisition by Canadian-based private equity giant Brookfield Corporation.

The speed-up of PE-backed insurer asset replacement, including an increased focus on private credit.

American National was acquired in May 2022 by Brookfield Reinsurance, a Bermuda-based affiliate of Brookfield Corporation.[i] Brookfield had previously entered the Canadian Pension Risk Transfer (PRT) market through its affiliate Brookfield Annuity Company, a start-up that received its charter in 2016 and completed its first group annuity buy-out in 2017.[ii] In only a few years, Brookfield Annuity has become one of the leading PRT companies in Canada. Brookfield CEO Bruce Flatt said on a 2022 earnings call, "We expect to further grow our PRT efforts through expanding into the U.S. and European markets."[iii] American National was the first large US life insurer acquisition through which Brookfield began building its presence in the U.S. PRT market, but it is unlikely to be the last or the largest. Just last month, Brookfield Reinsurance made an offer to purchase Des Moines-based American Equity, the 17th largest fixed annuity provider in the US as of yearend 2022.[iv]

American National entered the U.S. PRT market in December 2022.[v] Also in December 2022, Brookfield Corporation CEO Bruce Flatt elaborated in his company's insurance investment strategy:

> *But just take our insurance business, we bought a book, we bought three pools of insurance money 24 months ago on the assumption that interest rates would go up some time. They happened to go up quicker than we thought. And we've locked in 3% over here. And we put all of the assets* ***we liquidated -- all of the equities and all of the fixed income instruments beyond 18 months****, so we're sitting on an enormous amount of cash -- we're now putting that into incredible fixed income opportunities. And I think on the distress side Oaktree is going to have an unbelievable next 24 months putting money to work both in the fund they have today, but in the next fund that we raise.* ***In addition to that, the Direct Origination Credit business is evolving around the world.***[vi]

According to Preqin, "Private debt burst onto the private asset stage following the Global Financial Crisis (GFC), and has enjoyed 11% average annual growth in North American AUM ever since."[vii] *Bloomberg* recently described private credit as an "inherently risky industry" that "received little oversight," and whose institutional holders have yet to be tested by (or survive) a default wave of the sort that could accompany a prolonged recession.[viii]

Annuity providers may represent a new frontier for private credit. S&P Global has reported, "Recently, we've seen further pairings between alternative asset managers and insurers, where the insurance company can provide a source of perpetual capital for the lending platform.

Alternative asset managers place illiquid credit assets in the buy-and-hold portfolios of insurers to earn the illiquidity premium."[ix]

The strategy Mr. Flatt laid out to his investors of selling the liquid assets backing the insurance company's policies and replacing them with complex and illiquid assets, including private credit loans, mirrors that of Brookfield's private equity peers. But the speed at which Brookfield has executed this playbook is remarkable. In the first five months after Brookfield's acquisition, American National placed its entire bond portfolio into "available for sale" status, sold billions of dollars worth of liquid securities, and began reinvesting the proceeds primarily in complex, illiquid securities, most of which were acquired from other Brookfield affiliates.

The failure of state regulators to supervise massive global asset managers and their related-party transactions.

Pursuant to Brookfield's acquisition of American National Group, Brookfield Asset Management (BAM) filed a Disclaimer of Affiliation with the Texas Department of Insurance (TDI), requesting that BAM and American National's parent company ANAT be considered "unaffiliated." TDI approved that request, with certain conditions. However, TDI does not appear to have disclosed either BAM's request or, at least initially, the Department's order. The existence of these documents only came to light after a Public Information Act request submitted by UNITE HERE eleven months later. UNITE HERE subsequently requested a copy of BAM's Disclaimer of Affiliation application itself, to understand Brookfield's rationale for claiming American National and other affiliates under common control should be considered unaffiliated. TDI declined to provide the document, citing state law providing confidentiality to insurer merger applicants.[x]. TDI's refusal to provide the rationale for the disclaimer of affiliation means that policyholders and other interested parties can only speculate why Brookfield wants its asset manager and its PRT company to be considered unaffiliated. However, the disclaimer of affiliation warrants a closer examination of the many related-party investments that have appeared on American National's investment schedules since the Brookfield takeover. UNITE HERE has identified more than $3 billion in related-party investments on American National's investment schedules over the past four quarterly reporting periods. However, the majority of these were listed as "unaffiliated." Absent TDI or Brookfield's rationale for the disclaimer of affiliation, it is impossible to know why these assets – some of which are properly listed as controlled or managed affiliates in documents filed with the SEC – are nonetheless listed as "unaffiliated." We also wonder whether Texas regulators – not to mention regulators in other states who rely on the same filings - are even aware that these are in fact related-party investments.
The abundance of related-party investments listed as "unaffiliated" on American National's investment schedule may have serious consequences for American National policyholders,

including future PRT group annuity beneficiaries. Many of these investments are debt instruments issued by Brookfield affiliates that own or manage office real estate. Brookfield affiliates and joint ventures have already defaulted on more than $1 billion of office real estate loans so far in 2023.[xi] Bonds on American National's investment schedule include over $500 million related to one of the Bermuda-based holding companies of Brookfield Property Partners (BPY), which Brookfield took private in 2021 after it took $2 billion in losses in 2020.[xii] Also on American National's investment schedule are three bonds from "Canary Wharf Investment Holdings." London's Canary Wharf development is owned by a joint venture between Brookfield and the government of Qatar. Canary Wharf is also reportedly in financial distress and has recently lost some large noteworthy tenants.[xiii] But given the opacity of these investments, including their listing as "unaffiliated," a plan fiduciary or consultant evaluating a PRT proposal from American National would have no way of knowing, at least from the insurer's statutory filings, that American National had exposure to at least a half billion dollars of unsecured debt of Brookfield-controlled or managed office properties.

<u>More Detailed Guidance Needed</u>

The recent activity of American National since its takeover by Brookfield, and the failure of Texas regulators to oversee the integrity of the insurer's statutory filings, at least with respect to related-party investments, exemplify the severe informational challenges that plan fiduciaries can face when trying to identify the "safest available" group annuity option under the current guidance.

In closing, we believe the ERISA Advisory Council could make its most valuable contribution and help reestablish the integrity of the group annuity industry, by developing clear metrics that will allow plan fiduciaries to make apples-to-apples comparisons among group annuity providers,.

Working with an ad-hoc coalition of unions, we developed the categories listed below as a starting point for developing such metrics. We shared this list with EBSA staff earlier this year, and now we invite the Advisory Board to add its collective expertise to the effort.

<u>Metrics Needed:</u>

Relating to the risk profiles of annuity providers' investment portfolios, and their reserving and reinsurance practices

- The extent to which a provider's group annuity obligations are likely to be backed by illiquid or hard-to-value assets
- The extent to which group annuity obligations are likely to be backed in significant part by loans and securities originated or securitized by a provider's own affiliates
- The extent to which reserves backing group annuity obligations are likely to be reinsured with offshore affiliates, and how such arrangements might affect a provider's reported risk-based capital (RBC) ratio.

- The extent to which a provider intends to fund its purchase and assumption of pension obligations using third-party capital from "side-car" vehicles, and the extent to which the limited partners of such vehicles can be identified, and their credit-worthiness assessed.

Relating to gaps and limits of the state guaranty associations; whether group annuity benefits can be shielded from the claims of creditors; and whether fiduciaries should seek to determine the legal rights and priorities of group annuity beneficiaries with respect to a provider's future insolvency, conservatorship, or rehabilitation

- The extent to which plan participants subject to potential risk transfer transaction may have future benefit claims in excess of their respective state guaranty association's lifetime maximums.
- The extent to which group annuity benefits would be shielded from the claims of creditors.
- The extent to which assets backing a provider's group annuity obligations are held in affiliates not subject to US state regulation or to US state judicial oversight in the event of insolvency, conservatorship, receivership or liquidation.
- Priority rights of group annuity holders (versus other classes of claimants) in the event of a provider's insolvency, conservatorship, receivership or liquidation.

Relating to complexity, group-level regulation, and potential exposure to systemic financial crises

- The extent to which an annuity provider may be interlinked with the wider financial system, or susceptible to financial market shocks, policyholder runs (surrenders), asset-liability duration mismatches, or counterparty risk.
- The extent to which an annuity provider is part of a holding company structure that also includes large non-bank financial affiliates not subject to prudential regulation by US or state regulators.
- The extent to which a provider's corporate structure, choice of domicile, and/or transactions with affiliates may be designed to limit, avoid or minimize regulation, transparency, capital requirements, or taxation.
- The extent to which a provider's assets (reserves) are held in jurisdictions not subject to US law or prudential supervision
- Whether the state guaranty association system could prevent loss of benefits or delays in benefit payments to annuity holders in the event of a provider becoming impaired or insolvent, including in the context of multiple coterminous failures of large, systemically-important life insurance companies

Relating to the PRT bidding process, the weighing or scoring of competing bids, the future transferability of assumed liabilities, and best practices with respect to communicating and informing affected plan participants

- In evaluating risk transfer proposals, how should fiduciaries weigh different factors such as price (premium), sufficiency of guaranty association coverage, illiquidity risk, related-party investments, susceptibility to financial shocks, use of affiliated offshore reinsurance, existence of non-bank financial affiliates not subject to prudential regulation, and/or other factors?
- Following the consummation of a PRT transaction, what would prevent a provider from transferring the assumed obligations to an affiliate or third party with a lower credit rating, lower capitalization, or with a domicile outside the reach of US law or regulation?
- How many bids from annuity providers are sufficient to make an informed decision with respect to risk transfer transactions? Is a single bid sufficient?
- What information should be made available to plan participants who are or could be affected by a potential risk transfer transaction, and at what point in the process should participants be so informed?

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[i] https://bnre.brookfield.com/press-releases/brookfield-reinsurance-completes-51-billion-acquisition-american-national

[ii] https://www.brookfieldannuity.com/en/news/2017/03/brookfield-annuity-announces-its-first-group-annuity-deal.html

[iii] https://seekingalpha.com/article/4533077-brookfield-asset-management-inc-bam-ceo-bruce-flatt-on-q2-2022-results-earnings-call

[iv] https://www.limra.com/siteassets/newsroom/fact-tank/sales-data/2022/q4/2022-total_va_fixed.pdf See also: https://insurancenewsnet.com/innarticle/business-as-usual-if-brookfield-reinsurance-acquires-american-equity In its press release announcing its offer, Brookfield said: "Brookfield Reinsurance intends to continue AEL's focus on alternative asset strategies and expects BAM will manage a significant portion of AEL's assets. As a result, AEL will gain access to BAM's leading direct origination platforms and asset management capabilities while maintaining its current high-quality bias and investment grade focus."

[v] https://bcgpension.com/about/news/American-National-Insurance-Company.asp

[vi] https://seekingalpha.com/article/4563062-brookfield-asset-management-ltd-bam-ceo-bruce-flatt-presents-goldman-sachs-2022-us-financial

[vii] https://www.alterdomus.com/media/46312658-3cf7-4b47-9bab-abb2099d33e1/preqin-markets-in-focus-alternative-assets-in-the-americas-2021.pdf , p.7.

[viii] https://www.bloomberg.com/news/articles/2023-01-13/what-is-private-credit-industry-poses-regulatory-risks#xj4y7vzkg

[ix] Evan Gunter, Abby Latour, and Joe Maguire, "Private Debt: A Lesser-Known Corner Of Finance Finds The Spotlight," S&P Global, 10/12/2021.

[x] After UNITE HERE appealed, the Texas Office of the Attorney General agreed with TDI's reasoning that the document should remain confidential.

[xi] Defaults consisting of $275 million for L.A. EY Tower (https://www.commercialsearch.com/news/la-brookfield-office-tower-goes-to-receivership); $784 million for 2 L.A. office towers (https://www.recapitalusa.com/brookfield-los-angeles-defaults-could-mark-new-phase-for-us-office-market/); $161 million for Washington DC area office portfolio (https://therealdeal.com/new-york/2023/04/18/brookfield-defaults-on-more-office-buildings/). The EY Tower and the 2 L.A. office towers were owned by Brookfield DTLA Fund Office Trust Investor, which is a subsidiary of Brookfield DTLA Holdings LLC, which is "an indirect partially-owned subsidiary of Brookfield Property Partners (BPY). See https://www.sec.gov/ix?doc=/Archives/edgar/data/1575311/000157531123000009/dtlapr-20221231.htm#i0924904499ac49d7bbd38e0f7c8a7fcb_37 , p. 29.

[xii] https://www.bloomberg.com/news/articles/2021-02-02/brookfield-property-partners-loses-2-billion-in-pandemic-year#xj4y7vzkg

[xiii] https://www.ft.com/content/40ff10b9-6e8e-4df6-8753-0e3af571b794