I am Norman Stein, Senior Policy at the Pension Rights Center.

The Pension Rights Center is a national, nonpartisan consumer organization committed to protecting and promoting the retirement income security of American workers, retirees, and their families.

The Center has provided direct services to thousands of individuals as well as serving as the technical advisor for six regional pension counseling projects, which provide hands-on help to individuals with retirement plan problems.

We very much appreciate the Advisory Council holding this hearing and thank you for inviting our participation.

I want to make an important initial point, less it be overlooked, and that is that a plan fiduciary and a plan sponsor should consider, even though the law might not mandate its consideration, the distress and emotional upheaval that participants and their families experience during a pension risk transfer. They watch as their retirement benefits are transferred from their employer's retirement plan to a commercial insurer. The plan and its administrative apparatus with which they are familiar and the generous PBGC guarantees that they understand and on which they have relied upon for years, disappear in favor of a new entity that they did not choose and an arcane system of state regulation and state insurance guarantee associations that they do not understand.

Here, I want to quote Richard Schreitmueller, a highly respected actuary, who moderated a Society of Actuary panel on Interpretative Bulletin 95-1 one year after it was adopted. Here is what he said:

"From a philosophical viewpoint, I find something wrong with the system. We have this very elaborate system set up to protect plans before they terminate, to see that money goes in and that benefits are guaranteed [by the PBGC]. Then when you get to the point of plan termination, you put all the annuity money in one insurance company and you're into a whole different realm as far as guarantees go. . .. As a participant, I would rather have the government guarantee."

The participants we hear from agree.

I want to make three principal points here:

First, that the safest available annuity standard is a necessary component of a fiduciary's obligation in transferring assets to an insurer, but it is not sufficient. A fiduciary's obligation under ERISA should include replicating as much of ERISA's protective scheme as possible. This in turn means that the fiduciary should arrange additional long-term assurance that ERISA benefits will be paid, at least up to ERISA guarantee levels, in the event of an insurer's insolvency, and without missed benefit payments. Thus, we strongly advocate a fiduciary's duty to purchase back-up insurance in case of the primary insurer's insolvency.

Second, it should also mean that the fiduciary should negotiate with the annuity provider for contractual provisions designed to replicate ERISA rights and protections that otherwise might be lost on the transfer of the plan's liabilities to an annuity provider. Our written statement includes some examples and I want to note here that the few insurance contracts we have been able to review have addressed some but not all of the identified issues.

Third, we are concerned that some insurance companies, especially those owned by or closely affiliated with private equity firms, have increased investment risk exposure, have engaged in possibly risky offshore reinsurance strategies, and may face conflicts of interest with the private equity firms that own or partly own them. The comments you've heard today address with nuance and sophistication the possible dangers a fiduciary should consider. We are especially alarmed that these new firms may be underbidding more traditional insurance companies.

I also want to mention a few ideas and concerns that we did not include in our written statement.

First, the Interpretative Bulletin requires that a fiduciary select the safest available annuity but also recognizes that there can be more than one annuity provider that meets that standard. But the bulletin does not indicate how to determine which "safe" annuity providers belong in the "safest available" category. As some of the written comments suggest, there are significant differences among insurers that are considered "safe" and a plan's fiduciary should, in our view, include such differences in its "objective, thorough and analytical search" to winnow out merely safe annuities from the "safest available annuities."

We also believe that a fiduciary has an obligation to report to its participants, in writing and in detail, on its process and analysis so that those impacted by the fiduciary's decision can evaluate whether the fiduciary satisfied its statutory duties, as outlined in the interpretative bulletin.