ORAL ARGUMENT NOT YET SCHEDULED
No. 26-7035

In the United States Court of Appeals for the District of Columbia Circuit

MARTHA BRENNAN CAMIRE, et al.,

Plaintiffs-Appellants,

v.

ALCOA USA CORP., et al.,

Defendants-Appellees.

AMICUS CURIAE BRIEF OF THE U.S. SECRETARY OF LABOR SUPPORTING DEFENDANTS-APPELLEES AND AFFIRMANCE

On Appeal from the United States District Court for the District of Columbia, No. 1:24-cv-1062, Hon. Loren L. AliKhan

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28, amici curiae certify as follows:

A. Parties and Amici

Except for the amici joining this brief and any other amici who have not entered an appearance in this case as of the filing of this brief, all parties, intervenors, and amici appearing before the district court and in this Court are listed in Appellants' and Appellees' briefs.

B. Rulings Under Review

References to the ruling at issue appear in Appellants' and Appellees' briefs.

C. Related Cases

Amici are not aware of any related cases.

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GLOSSARY

ERISA: Employee Retirement Income Security Act of 1974

IB 95-1: U.S. Department of Labor Interpretive Bulletin 95-1

PBGC: Pension Benefit Guaranty Corporation

SGA: State Guaranty Association

IDENTITY AND INTEREST OF AMICUS CURIAE[1]

As the United States Officer with chief authority over Title I of the Employee Retirement Income Security Act ("ERISA"), the Secretary of Labor has a profound interest in "assur[ing] the . . . uniformity of enforcement of . . . ERISA." *See Sec'y of Lab. v. Fitzsimmons*, 805 F.2d 682, 693 (7th Cir. 1986) (en banc). This interest is strongest in cases that turn on the "standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans." *See* 29 U.S.C. § 1001(b). The fiduciary-centered issue in this case—one of many similar putative class actions to reach the federal courts of appeal—resides in the heartland of the sort of standards for which clarity, uniformity, and consistency must prevail. For that reason, the Secretary offers the following to aid the Court's deliberation.

[1] The Secretary files this brief under Federal Rule of Appellate Procedure 29(a)(2), which provides that a United States Officer "may file an amicus brief without the consent of the parties or leave of court."

INTRODUCTION AND SUMMARY OF THE ARGUMENT

This case involves a process ERISA expressly gives employers the right to perform called a "pension risk transfer," or "PRT." The concept is simple: because no employer must sponsor a pension plan for its employees, ERISA incentivizes them to do so by providing them an off-ramp for pension liabilities they no longer wish to manage. Employers can transfer some or all their defined-benefit pension plans liabilities to an annuity provider (typically, an insurance company). For plan participants and beneficiaries, a PRT changes little. They get the same benefits whether their employer or an annuity provider pays them. Plan sponsors, meanwhile, can use PRTs to safely manage financial risks by moving pension-plan obligations off their books without jeopardizing their employees' benefits.

PRTs have proven consistently safe. Over the last three decades, no PRT annuity has defaulted or failed. By contrast, participants and beneficiaries in employer-run pension plans lost at least $8.5 billion during that time because their sponsors could not fund their plans.[2] PRTs thus have a proven track record of guaranteeing participants' and beneficiaries' benefits while allowing employers to effectively steward company finances.

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[2] *See* ERISA Advisory Council, U.S. Dep't of Lab., Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1 (Aug. 29, 2023) at 4, available at https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/statement-regarding-interpretive-bulletin-95-1.pdf.

And this makes sense. Here, for instance, Alcoa USA Corporation is an aluminum production company specializing in making and selling that product—not providing retirement benefits, whether through annuities or otherwise.[3] After ensuring thousands of its employees' long-term financial security by creating defined-benefit pension plans, Alcoa decided to entrust an annuity provider with paying them—i.e., a company that specializes in paying out such benefits.

PRTs benefit employers and participants/beneficiaries alike, which is why ERISA makes them a plan-sponsor right (and why the Secretary supports businesses' right to engage in them). But when opportunistic plaintiffs' lawyers force PRT decisions like Alcoa's into federal-court litigation, those upsides are (at best) obstructed or (at worst) obliterated. When that occurs, the damage does not stop with employers like Alcoa or its employees. Congress intended PRTs to be a clean break in which states would be the annuity products' regulators without confusing and overlapping federal oversight. If the ever-present specter of litigation thwarts employers from conducting PRTs, the delicately calibrated balance Congress established between federal and state regulatory prerogatives will deteriorate.

[3] *See* Alcoa Corporation, *About Us*, https://www.alcoa.com/global/en/who-we-are (last visited Nov. 3, 2026).

And if employers cannot conduct PRTs as intended, they are far less likely to offer pension plans to their employees in the first place. Cases like this punish employers for their considered choice to protect the long-term financial health of their aging workforce through a PRT, as ERISA entitles them to do. The result: employees like the thousands at Alcoa who benefited from the company's decision to offer pension plans for decades will suffer, as opportunistic litigants (or more precisely, opportunistic litigators) erode incentives for employers to enter the pension-plan market at all.

Given the stakes and his duty to protect the American worker, the Secretary offers his views on the issue of standing; specifically, proper application of the Supreme Court's decision in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020). Read faithfully, *Thole* did no more than apply uncontroversial and bedrock standing precedents, all of which require plausible allegations that a threatened injury is "certainly impending" before it can trigger federal-court subject-matter jurisdiction. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 401 (2013). *Thole*'s principles govern this case, which the Court should dismiss for lack of standing.

BACKGROUND

A. ERISA explicitly gives employers the right to perform pension risk transfers. *See* 29 U.S.C. § 1341(b)(3)(A)(i). In a PRT, a plan's sponsor (usually an employer) transfers the plan's assets and liabilities to an insurance company in

exchange for an annuity contract covering the plan's liabilities. *See Beck v. PACE Int'l Union*, 551 U.S. 96, 99 (2007). Nothing about the plan's benefits changes except for which entity must pay them. *See id.* at 103 (citing 29 U.S.C. § 1341(b)(3)(A)(i)–(ii)).

A crucial point bears emphasis: the decision to transfer a plan to an insurance company through a PRT is not a fiduciary act of the employer who sponsors the plan. In ERISA parlance, this is a "settlor decision" for which the employer bears no ERISA-fiduciary liability.[4] *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 444 (1999) ("[T]he switch from federal to state oversight cannot form the basis of an Article III injury in fact."). The fiduciary duties at issue in this case (and all other PRT cases) arise *only* when examining the process of selecting one annuity provider over another. And because ERISA gives plan sponsors complete discretion to

[4] Settlor decisions are plan design and structure choices like creating the plan that the plan sponsor, usually an employer, makes in its sole discretion. These differ from fiduciary decisions about discretionary plan administration. In this case, Alcoa was both plan sponsor and fiduciary because it created the plans at issue and administered them. All settlor decisions are elective and cannot give rise to a breach of fiduciary duty claim. *Hughes Aircraft Co.*, 525 U.S. at 444. Because Alcoa's decision to undertake a PRT, which as a matter of law transfers regulatory authority from the federal Department of Labor to state insurance regulatory apparatuses, is a settlor decision, the switch from federal to state oversight cannot form the basis of an Article III injury in fact. Thus, Plaintiffs are wrong insofar as they argue switching from federal regulation to state regulation could bolster their standing allegations with regard to a breach of fiduciary duties.

conduct a PRT, any legal standard for the subsequent fiduciary considerations that would meaningfully interfere with that front-end decision is immediately suspect.

Because ERISA's fiduciary duties apply to the annuity-provider selection decision, employers (and any plan fiduciaries making the decision) must act "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use," 29 U.S.C. § 1104(a)(1)(B), and "solely in the interest of the participants and beneficiaries" of that plan, *id.* § 1104(a)(1). These are, respectively, the fiduciary duties of prudence and loyalty.

ERISA (and the cases interpreting it) recognize fiduciaries have discretion when they act, and that courts must give "due regard to the range of reasonable judgments a fiduciary may make" based on particular facts. *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022). In other words, ERISA creates a process-based regulatory scheme, not an ends- or results-based one. *In re Quest Diagnostics ERISA Litig.*, 179 F.4th 217, 224 (3d Cir. 2026) ("[I]f the fiduciary's process was prudent, that ends the inquiry and plaintiffs lose.") (citing *Renfro v. Unisys Corp.*, 671 F.3d 314, 322 (3d Cir. 2011)). If the *means* by which a fiduciary acts are prudent and loyal, the relative success of the *ends* matters little for determining legal liability. "[W]hether a fiduciary's actions are prudent cannot be measured from . . . hindsight" because "'[ERISA's fiduciary] standard is not concerned with results; rather it is *a test of*

how the fiduciary acted viewed from the perspective of the time of the challenged decision[.]'" *DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 424 (4th Cir. 2007) (quoting *Roth v. Sawyer-Cleator Lumber Co.*, 16 F.3d 915, 917–18 (8th Cir. 1994) (emphasis added)).

After a PRT concludes, so too does ERISA coverage. This is a feature, not a bug, of the system. Once an annuity provider assumes the plan's assets and liabilities, it becomes immediately subject to rigorous state regulatory regimes, including state guarantee associations ("SGAs") that protects persons receiving annuity payments and other insurance-company beneficiaries similarly to ERISA's comparable regime with the Pension Benefit Guaranty Corporation ("PBGC").

B. This case centers around Alcoa's decision to move, via several PRTs, multiple defined-benefit plans' liabilities to an annuity provider. JA34 (Am. Comp. ¶ 80). In a defined-benefit plan, the plan sponsor promises participants and beneficiaries a consistent stream of income during retirement. *See Hughes Aircraft Co.*, 525 U.S. at 439–40. Defined-benefit plans differ from defined-contribution plans, in which plan participants and beneficiaries have individual accounts that are attributable to them. *Id*. In a defined-benefit plan (at issue here), the value of the plan's total assets has no effect whatsoever on the amount due to any specific participant or beneficiary. In a defined-contribution plan (not at issue here), the value

of the plan's total assets generally does have such an effect. *See Thole*, 590 U.S. at 540.

After consulting with an independent fiduciary, Alcoa selected Athene Annuity and Life Company and Athene Annuity & Life Assurance Company of New York ("Athene") as its annuity provider. JA34–35 (Am. Comp. ¶ 80–81). By Plaintiffs' own admission, Athene had an A1 rating from Moody's and an A+ rating from S&P Global. JA32 (Am. Comp. ¶ 74). It has performed annuity transfers totaling more than $50 billion and covering more than half a million pension-plan participants and beneficiaries. Athene, *Pension Group Annuities*, https://www.athene.com/pension-group-annuities (last visited Nov. 3, 2026). At most recent inquiry, neither Athene nor any other PRT annuity provider had a single default or failure.[5]

Plaintiffs Martha Brennan Camire, Craig Jefferson, and their putative class all participated in the plans whose liabilities Alcoa transferred to Athene. JA12 (Am. Comp. ¶¶ 12–15). Their putative class action alleges that Alcoa violated its ERISA-

[5] *See* ERISA Advisory Council, U.S. Dep't of Lab., Statement of the 2023 Advisory Council on Employee Welfare and Pension Benefit Plans to the U.S. Department of Labor Regarding Interpretive Bulletin 95-1 (Aug. 29, 2023) at 1, available at https://www.dol.gov/sites/dolgov/files/ebsa/about-ebsa/about-us/erisa-advisory-council/statement-regarding-interpretive-bulletin-95-1.pdf.

imposed fiduciary duties by choosing Athene, which, in their view, "[could not] be considered the 'safest available' annuity." JA30 (Am. Comp. ¶ 69).[6]

As evidence, Plaintiffs cite "Athene's complex investment structure, focus on private equity, questionable creditworthiness, and use of untrustworthy credit rating agencies." JA36 (Am. Comp. ¶ 85). Plaintiffs also plead PRTs' general regulatory effects as an injury, noting that because of the PRTs "their retirement benefits are not backed by the Plans, Alcoa, or the PBGC." JA40 (Am. Comp. ¶ 96). Plaintiffs acknowledge that Athene has paid all benefits to date but allege a "greatly increased the risk" that they "will not receive the retirement benefits that they have earned," JA40 (Am. Comp. ¶ 97), and that the choice of Athene created "losses . . . [to] the monetary value" of their benefits, JA45 (Am. Comp. ¶ 106). Plaintiffs claim Alcoa ignored these risks and selected the lower-cost Athene to "advance corporate interests by saving [the company] money and enhancing corporate profits." JA44 (Am. Comp. ¶ 105). This, according to the Plaintiffs, violated Alcoa's fiduciary duties. JA43–45 (Am. Comp. ¶¶ 101–08).

Alcoa moved to dismiss, arguing that the Plaintiffs lacked standing because they failed to allege a concrete injury in fact. JA479–80. The district court granted

[6] Plaintiffs also plead knowing-participation-in-a-fiduciary-breach, failure-to-monitor, and prohibited-transaction counts. JA45–50 (Am. Comp. ¶¶ 109–11; 117–32). The Secretary proposes taking no position on these claims.

the motion, ruling that merely pleading that Alcoa "assigned [its pension-plan liability] to a different entity with a different risk profile" did not establish concrete harm. JA482. It also held that even if Alcoa had violated its fiduciary duty of loyalty by selecting Athene to solely save money, Plaintiffs would still not have Article III standing without such a harm. JA484–85. The district court concluded by noting that a "substantially increased risk of harm" was not enough for standing either, as Plaintiffs had not shown that "Athene [was] substantially likely to fail" sufficient for a constitutionally cognizable "certainly impending" future injury. JA489 (quoting *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)).

ARGUMENT

I. THE PLAINTIFFS LACK STANDING.

Supreme Court jurisprudence makes clear this fundamental point: plaintiffs alleging fiduciary mismanagement of a defined-benefit pension plan must plead either that (1) they have not received the benefits their plan sponsor promised them or (2) a default is "certainly impending." *Clapper*, 568 U.S. at 409. Plaintiffs did not plausibly allege either, so they have not demonstrated they have Article III standing. This type of PRT litigation does little more than obstruct the use of this crucial, ERISA-approved process, to American workers' detriment. As discussed at greater length below, *see infra* at 20–23, this hindrance will inflict a grave wound on the pension system writ large by restricting plan sponsors' ability to responsibly manage

their finances and pension liabilities while severely disincentivizing employers to adopt retirement plans in the first place.

A. Under *Thole* and *Clapper*, the Plaintiffs have not alleged a sufficiently concrete injury in fact.

In *Thole*, the Supreme Court decided a standing case materially identical to this one. *Thole*'s pensioner-plaintiffs sued their employer after a series of bad investments resulted in a $750-million loss to the employer's pension plan. *See* 590 U.S. at 540–41. Although the plaintiffs received the benefits owed to them, they alleged that the loss to the plan's overall worth was a violation of the employer's ERISA-imposed fiduciary duties and a cognizable injury in fact. *See id.*

The Supreme Court disagreed. Because a "defined-benefit plan is . . . in the nature of a contract" and "[t]he plan participants' benefits are fixed and will not change, regardless of how well or poorly the plan is managed," the Court reasoned that plan participants and beneficiaries only have an interest in their promised benefits—*not* the overall plan value itself. *See id.* at 542–43. With only a nonconcrete apprehension that someday their employer might not pay their benefits, the plaintiffs in *Thole* had no injury that federal courts could redress.

In so holding, *Thole* briefly addressed an amici's argument that "plan participants in a defined-benefit plan" might have "standing to sue if the mismanagement of the plan was so egregious that it substantially increased the risk that the plan and the employer would fail and be unable to pay the participants'

future pension benefits." *Id* at 546. Because *Thole*'s plaintiffs had not made this argument or the requisite showing to satisfy it, the Court declined to guess whether such a circumstance created a cognizable injury in fact. *Id*. As this passing mention was not part of *Thole*'s holding, it was dicta. *See Central Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 363 (2006) ("[W]e are not bound to follow our dicta in a prior case in which the point now at issue was not fully debated").

This stray recitation of an argument floated by *Thole*'s amici that had nothing to do with *Thole*'s holding has been exploited quickly and mercilessly. The Supreme Court decided *Thole* in 2020. By 2026, *thirteen* putative class action complaints (consolidated to ten) cited *Thole*'s egregious-mismanagement dicta to support standing in PRT-stymying lawsuits.

This is one such erroneous case. Plaintiffs incorrectly treat *Thole* as if it deviated from the Supreme Court's otherwise-unbroken line of threatened injury-in-fact jurisprudence. It did not. As the Supreme Court stated in *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013)—and applied to ERISA in *Thole*—*some* threatened injuries are so pressing and certain that they are concrete injuries in fact. *Clapper* emphasized, however, that those instances are rare exceptions to the general rule.[7] According to *Clapper*, future injuries "must be *certainly impending*" to be

[7] Even if there was any tension between *Clapper* and *Thole* (and there is none), *Thole* did not sub silentio overrule *Clapper* or create an ERISA-based exception to the general rule that the irreducible constitutional standing requirement

injuries in fact. 568 U.S. at 409 (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (emphasis in original). "Allegations of *possible* future injury," in contrast, "are not sufficient." *Id*. (quoting *Whitmore*, 495 U.S. at 158) (emphasis in original). *Thole* accorded; there, the plaintiffs alleged only a speculative risk that they would not receive "monthly benefits that they [were] already slated to receive." *Thole*, 590 U.S. at 541. The Court rightly held they had "no concrete stake in th[e] lawsuit." *Id*.

Thole, read faithfully, controls this case. Here, Plaintiffs alleged that Alcoa's PRTs created a "substantial risk . . . that [they] will not receive the retirement benefits that they have earned and which they are owed." JA40 (Am. Comp. ¶ 97). They have not alleged—as *Thole* and *Clapper* require—there is a "certainly impending" risk that Alcoa's PRTs will result in their failure to receive the "fixed payment each month" their defined-benefit plan promised them. As noted above, Alcoa chose an annuity provider with an A+ credit rating from Standard & Poor's and an A1 rating from Moody's. JA32 (Am. Comp. ¶¶ 73–74). Those ratings are investment grades indicating a strong capacity to meet obligations, low risk, and a potential for a 5-percent default rate over a twenty-year period, nowhere near *Clapper*'s "certainly impending" bar. *Bueno v. Gen. Elec. Co.*, No. 1:24-CV-0822

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now, in the context of ERISA, requires something less than a certainly impending threatened injury. *See Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 18 (2000) ("This Court does not normally overturn, or so dramatically limit, earlier authority sub silentio.").

(GTS/DJS), 2025 WL 2719995, at *18 (N.D.N.Y. Sept. 24, 2025).[8] At bottom, Plaintiffs did not allege a certainly impending risk they will not receive their annuity because of Alcoa's PRTs. That failure commands dismissal for lack of standing and emphatic clarification regarding the harmony between *Thole* and *Clapper*.

B. Plaintiffs cannot state an Article III injury by alleging PRTs' regulatory effects as one

Plaintiffs' allegations—that their benefits have "decrease[d] in value," JA45 (Am. Comp. ¶ 106), because they "are not backed by . . . the PBGC," JA40 (Am. Comp. ¶ 96)—also cannot create a cognizable injury in fact. *All* PRTs result losing Pension Benefit Guaranty Corporation backing. Any time a PRT occurs, SGA guarantees replace this ERISA and PBGC protection. As previously noted, the decision to engage in a PRT is a settlor decision not subject to ERISA's fiduciary duties. Thus, the decision to engage in a PRT alone cannot, as a matter of law, give rise to any liability whatsoever; if not, every PRT would give rise to legal liability. PRTs' attendant regulatory changes cannot, as a matter of law, be a legally cognizable injury in fact for purposes of Article III standing.

Congress expressly intended to allow employers to engage in PRTs by giving them the right to do so. When it did, Congress was keenly aware of the effects on

[8] *See also Beck v. McDonald*, 848 F.3d 262, 266–67 (4th Cir. 2017) (holding that a thirty-three percent chance of the alleged injury occurring was not enough to show the injury was certainly impending for Article III standing)

regulatory protections that PRTs entail. *See* 29 U.S.C. § 1341(b)(3)(A)(i). Plaintiffs' regulatory-change standing theory, then, is no more than a policy disagreement with Congress's prerogative masquerading as an injury.

Characterizing the regulatory effects' impact on Plaintiffs' benefits as a "decrease in value" does not improve their theory. *Thole* made clear that defined-benefit plans' quasi-contract structure entitles plan participants only to the benefits the plan promises them. 590 U.S. at 542–43. In other words, "[t]he plan participants' benefits" in a defined pension plan "are fixed and will not change, regardless of how well or poorly the plan is managed." *Id*. at 543. With or without the regulatory effects that Plaintiffs lament, they are entitled to receive, and have continued to receive, "the exact same monthly benefits that they [were] already slated to receive" both before and after Alcoa effectuated its PRTs. *See id*. at 541. Because Plaintiffs have nothing more than an interest in receiving their contractually guaranteed defined benefits, their claims of a "decrease in value" cannot conjure an injury sufficient for Article III standing.

C. Plaintiffs cannot manufacture standing by alleging a bare fiduciary-duty breach without a certainly impending risk that the breach will prevent them from receiving their plan benefits.

At bottom, Plaintiffs' case turns on challenging a business decision in which they lack a concrete stake by alleging a bare legal injury. As noted above, "alleged instability and potential risk of failure" do not cut it under *Clapper* or *Thole*. And

simply adorning that insufficient allegation with the "fiduciary duty" moniker changes nothing.

Standing requires a *concrete* injury. That means an injury that has "traditionally been regarded as providing a basis for a lawsuit in English or American courts." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016) (citing *Vt. Agency of Natural Resources v. United States ex rel. Stevens*, 529 U.S. 765, 775–77 (2000)). Historically, this included harm to one's person, finances, reputation, or other interests. Breach of an abstract legal principle *without* any accompanying concrete harm, however, has never sufficed.

For that reason, "an injury in law is not an injury in fact." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 427 (2021). Only plaintiffs "who have been concretely harmed by a defendant's [legal] violation may sue that private defendant over that violation in federal court." *Id*. And "[a]s then-Judge Barrett succinctly summarized, 'Article III grants federal courts the power to redress harms that defendants cause plaintiffs, not a freewheeling power to hold defendants accountable for legal infractions.'" *Id.* (quoting *Casillas v. Madison Ave. Assocs., Inc.*, 926 F.3d 329, 332 (7th Cir. 2019) (Barrett, J.)).

Fiduciary-breach allegations are not talismanic phrases by which Plaintiffs can conjure Article III standing where none otherwise exists. Even if Alcoa acted imprudently or disloyally in selecting Athene (and the Secretary respectfully asserts

that Plaintiffs have not adequately pled that Alcoa did either), Plaintiffs still lack standing because they have not—and cannot—show that Alcoa's purported breach caused any monetary harm or has created a certainly impending threat of monetary harm. Without more, Plaintiffs stand in the same place as the *Thole* plaintiffs: because "[t]hey have received all of their vested pension benefits so far, and they are legally entitled to receive the same monthly payments for the rest of their lives," they have "no concrete stake in this dispute." *Thole*, 590 U.S. at 547.

II. THE PLAINTIFFS MISINTERPRETED INTERPRETIVE BULLETIN 95-1.

Above and beyond the opportunity to clarify the correct Article III inquiry in this case, this Court should also crystallize what Interpretive Bulletin 95-1 ("IB 95-1") does and, more importantly, what it does not do. The parties hotly debated IB 95-1 before the district court. For that reason, the Court should clarify interpretation for this important interpretive device.

IB 95-1 (codified at 29 C.F.R. § 2509.95-1) explains the Department's views on how the duties of loyalty and prudence apply to a fiduciary's selection of an annuity provider.[9] Specifically, IB 95-1 advises fiduciaries to "take steps calculated

[9] Although interpretive bulletins are guidance documents that do not have the force of law under the Administrative Procedure Act, they "receive 'Skidmore deference,'" *Humana Health Plan, Inc. v. Nguyen*, 785 F.3d 1023, 1027 n.5 (5th Cir. 2015) (internal citation omitted), and are therefore entitled to consideration as "a body of experience and informed judgment to which courts and litigants may properly resort for guidance . . . depend[ing] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later

to obtain the safest annuity available, unless under the circumstances it would be in the interests of participants and beneficiaries to do otherwise." 29 C.F.R. § 2509.95-1(c). In so doing, IB 95-1 does little more than restate a fiduciary's general duty of loyalty and process-based duty of prudence; then, it applies those duties to the specific PRT context.

The process IB 95-1 articulates states that a fiduciary should consider (among other things, such as cost savings) the following six factors when selecting an annuity provider:

> (1) The quality and diversification of the annuity provider's investment portfolio;
>
> (2) The size of the insurer relative to the proposed contract;
>
> (3) The level of the insurer's capital and surplus;
>
> (4) The lines of business of the annuity provider and other indications of an insurer's exposure to liability;
>
> (5) The structure of the annuity contract and guarantees supporting the annuities, such as the use of separate accounts;
>
> (6) The availability of additional protection through state guaranty associations and the extent of their guarantees.

Id. § 2509.95-1(c)(1)–(6).

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pronouncements, and all those factors which give it power to persuade," *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944); *see also Bussian v. RJR Nabisco, Inc.*, 223 F.3d 286, 297 (5th Cir. 2000) (applying *Skidmore* deference to IB 95-1 governing annuity selection).

IB 95-1 does not weigh these factors for fiduciaries—it does not instruct, for instance, that low "capital and surplus" necessarily trumps "the size of the insurer relative to the proposed contract," or vice versa. Instead, IB 95-1 requires fiduciaries to weigh these factors themselves. Following the process (and, specifically, following it in accordance with the fiduciary duty of loyalty to identify the safest option), may lead different fiduciaries to different annuity providers.

For that reason, the Secretary deliberately opted not to endorse (and continues to explicitly disclaim) the proposition that there is one single "safest" annuity that a fiduciary must select on pain of legal liability, without regard to whether the fiduciary properly followed a prudent process. Indeed, IB 95-1 emphasizes that "[a] fiduciary may conclude, after conducting an appropriate search, that more than one annuity provider is able to offer the safest annuity available." *Id*. § 2509.95-1(c)(6). This statement reflects the Supreme Court's observation that "the circumstances facing an ERISA fiduciary" will at times "implicate difficult tradeoffs, and courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise." *Hughes*, 595 U.S. at 177. The process is what matters.

And because opportunistic litigants who foresee monetary windfalls have exploited IB 95-1 to ask federal courts to inappropriately second-guess fiduciary actions, the Court should emphasize that fiduciaries enjoy flexibility and discretion

if they follow the prudently and loyally follow IB 95-1's process. IB 95-1 has become a sword in ways that are inconsistent with its text read as a whole. It has never stood either for the proposition that there is necessarily a single safest annuity in all cases or that a PRT fiduciary that otherwise loyally follows IB 95-1 can be sued for violating their ERISA duties if they do not choose it.

III. THIS CASE AND THE OTHERS THAT FOLLOW WILL WREAK HAVOC ON THE AMERICAN PENSION-PLAN SYSTEM (AND AS A RESULT, THE AMERICAN WORKER) IF THEY ARE NOT CURTAILED.

The magnitude of this case is hard to overstate. Since the district court dismissed this case, four district courts have addressed materially identical motions to dismiss.[10] They are not in accord: three have (incorrectly) found that plaintiffs have standing, and three have (correctly) found that they lack it.

While the Court resolves these issues, the Secretary urges it to keep in mind a fundamental thread that the Supreme Court pronounced more than fifteen years ago. "Congress enacted ERISA to ensure that employees would receive the benefits they

[10] *See Bueno*, 2025 WL 2719995, at *19 (N.D.N.Y. Sep. 24, 2025) (finding plaintiffs lacked Article III standing); *Schoen v. ATI, Inc.*, No. 2:24-cv-1109-NR-KT, 2025 WL 2970339, at *7 (W.D. Pa. Oct. 7, 2025) (same); *Dow v. Lumen Techs., Inc.*, No. 24-CV-02434-LTB-TPO, 2026 WL 2582196, at *4 (D. Colo. Sept. 1, 2026) (same); *Konya v. Lockheed Martin Corp.*, No. 24-750-BAH, 2025 WL 962066, at *9 (D. Md. Mar. 28, 2025) (finding plaintiffs had Article III standing); *Piercy v. AT&T Inc.*, No. 24-CV-10608-NMG, 2025 WL 2505660, at *12 (D. Mass. Aug. 29, 2025), report and recommendation adopted, 2025 WL 2809008 (D. Mass. Sept. 30, 2025) (same); *Maneman v. Weyerhauser Co.*, No. C24-2050-KKE, 2026 WL 884985, at *6 (W.D. Wash. Mar. 31, 2026) (same).

had earned." *Conkright v. Frommert*, 559 U.S. 506, 516 (2010). ERISA puts the American worker first. The Secretary, as ERISA's steward, takes this responsibility seriously.

It remains true that the American workers' interests reach their apex when their employers provide them with pension plans. That said, "Congress did not require employers to establish benefit plans in the first place." *Id*. at 516–17 (citing *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996)). ERISA does not require employers to offer their employees pension plans at all, so employees benefit most when the statute's incentives that they do so operate properly.

Incentivization requires tradeoffs, and, accordingly, "ERISA represents a 'careful balancing' between ensuring fair and prompt enforcement of rights under a plan and the encouragement of the creation of such plans.'" *Id.* (quoting *Aetna Health Inc. v. Davila*, 542 U.S. 200, 215 (2004)). That was intentional; "Congress sought 'to create a system that is [not] so complex that administrative costs, or litigation expenses, unduly discourage employers from offering [ERISA] plans in the first place.'" *Id.* (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)). And since ERISA took effect in 1974, it has served the purpose that Congress intended, all to the advantage of the American worker.

PRTs are a vital component of the delicate calibration Congress established. Suffice it to say, creating and running pension plans for (as is the case here) more

than thirty-thousand participants and beneficiaries represents a tremendous, and tremendously unpredictable, financial undertaking. This is especially true for the employee-friendly defined-benefit plans, which guarantee participants and beneficiaries a fixed payment each month regardless of the plan's overall worth. If companies like Alcoa cannot eliminate oversized financial risks with PRTs, they will have terrifically reduced incentives to provide their employees with defined-benefit pension plans in the first place.

And it bears repeating: defined-benefit plan participants and beneficiaries lose *nothing* if their employer undertakes a PRT. They remain entitled to receive the same compensation they had before the PRT; the only thing that changes is which entity pays it. And setting aside Plaintiffs' handwringing, not one plan participant/beneficiary has lost a single red cent to a PRT in the last thirty years.

Industry experts have recognized the inherent risks in overregulation for the pension market (particularly overregulation achieved by litigation). A decade ago, the American Academy of Actuaries noted that, "[i]n light of the voluntary nature of sponsorship, plan sponsors generally believe that the ability to close a plan to new entrants, reduce or freeze benefits, or completely terminate a plan (after providing for all accrued benefits) if business conditions dictate such actions has been and

remains necessary to encourage adoption and continuation of plans."[11] More bluntly, "a rational business person would not adopt a plan with uncertain future costs and no ability to control those costs if the business can no longer afford them."[12] And for that reason, "it is important to keep in mind that existing regulatory restrictions on unwinding or de-risking plans might further reduce employers' willingness to offer defined-benefit plans, and further proposals to restrict employers' flexibility in this area could produce a rush to exit sponsorship of plans."[13]

The Academy sounded this warning years before the current PRT litigation onslaught, which has besieged several of the globe's biggest employers: e.g., Alcoa, Bristol-Myers Squibb, Lockheed Martin, Verizon, and IBM, among others. In other words, the precarious situation described by the Academy is primed to get much, much worse—unless this Court steps up. The time to do so is now, and the American worker is counting on this Court getting it right.

CONCLUSION

Dismissing Plaintiffs' wayward standing argument is right as a matter of blackletter law and unbroken Supreme Court standing precedent. It is right as a

[11] American Academy of Actuaries, Issue Brief, Pension Risk Transfer 2 (Oct. 2016), available at https://actuary.org/wp-content/uploads/2017/11/PensionRisk Transfer10.16.pdf.

[12] *Id.* at 3.

[13] *Id.*

matter of fact. It is right as a matter of our Nation's structural separation of powers. And is it right as a matter of American worker protection.

For all these reasons, the Secretary respectfully urges the Court to affirm the district court's order and dismiss this case for lack of subject-matter jurisdiction.

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Respectfully submitted,

/s/ Edward M. Wenger

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/s/ Edward M. Wenger
November 6, 2026

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 6th day of November, 2026, a true copy of the foregoing brief was filed electronically with the Clerk of Court using the Court's CM/ECF system, which will send by email a notice of docketing activity to all registered attorney filers.

/s/ Edward M. Wenger
November 6, 2026