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August 6, 2020

*Via:* <https://www.regulations.gov> and e-mail

The Honorable Jeanne Klinefelter Wilson  
Acting Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

Re: Application No. D-12011  
ZRIN 1210-ZA29  
Improving Investment Advice for Workers & Retirees  
Docket ID #: EBSA-2020-0003  
Request for a Hearing Pursuant to ERISA §n 408(a)

Dear Acting Assistant Secretary Wilson:

AARP requests the opportunity to testify at the public hearing on the Class Exemption for Improving Investment Advice for Workers & Retirees. The issues presented by this proposed Class Exemption are extremely important and, in accordance with section 408(a) of ERISA, the Secretary must afford an opportunity for a hearing before any exemption from section 406(a) and self-dealing is granted. Accordingly, AARP requests an opportunity for a hearing and to present testimony.

In issuing an exemption from ERISA's prohibited transactions, the Secretary may not grant such an exemption unless it is (1) administratively feasible, (2) in the interests of the plan and of its participants and beneficiaries, and (3) protective of the rights of participants and beneficiaries. 29 U.S.C. § 1108(a). Having reviewed the Proposal, AARP submits that it does not meet that standard.

AARP will discuss the reasons the Proposal is neither in the interests of participants and beneficiaries nor protective of their rights. Among other issues, AARP will discuss the following:

- The estimated amount of investment losses from conflicted advice.
- Compliance with other federal and state regulatory schemes is not adequately protective of participants and beneficiaries in ERISA plans or IRAs.
- The 1975 regulation is not consistent with ERISA's statutory text and legislative history.
- Retirement plan investments differ from personal investments because of the heavy tax subsidy and need to promote the long-term horizon required for retirement security.
- Increasing access to investment advice for individual account plan participants, alone, is not enough for a finding that this Class Exemption is in the interests of the plan and its participants.
- Research shows that financial illiteracy is widespread among the general population and particularly acute among certain groups.
- Given the difficulty in fashioning understandable disclosures, the Class Exemption should not be finalized until a model form is vetted through proper testing.
- Disclosures alone are inadequate to protect participants and beneficiaries. Even if one believed that a disclosure regime can be protective, the disclosures suggested here are inadequate.
- The proposal will encourage advisers to not always act solely in the best interests of individuals.
- Self-regulation, without directives from the Department, is inadequate to protect participants and beneficiaries.

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We also request additional time of at least 10 business days after the close of the hearing to respond to any testimony. AARP looks forward to the opportunity to present its views at the hearing on the Department's Proposal. If you have any questions, please feel free to contact me or Michele Varnhagen at 202-434-3829 or at [mvarnhagen@aarp.org](mailto:mvarnhagen@aarp.org).

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner  
Legislative Counsel and Legislative Policy Director  
Government Affairs

cc: Lyssa Hall  
Susan Wilker  
Erin Hesse

## EVIDENCE

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