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August 27, 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 to testify at public hearing pursuant to ERISA § 408(a),
85 Fed. Reg. 40834 (July 7, 2020), and 85 Fed. Reg. 52292 (Aug. 25, 2020)

Dear Acting Assistant Secretary Wilson:

AARP requests the opportunity to testify at the public hearing to be held on September 3 and 4, 2020, 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 to present testimony at this public hearing.

On August 6, 2020, AARP previously submitted an outline of some of the topics which we will address at the hearing as well as a list of new and/or supplemental evidence we will enter into the record. We are attaching that letter as a convenience for you. In addition, we will testify about an upcoming report detailing findings from an AARP Retail Investor Survey About Advisor-Client Relationships And Fees as well reports concerning investor reaction to the SEC's revised CRS disclosures. This information was unavailable at the time of the submission of our letter due in part to the short comment period provided by the Department.

The Honorable Jeanne Klinefelter Wilson
AARP Request for Hearing
August 28, 2020

Pursuant to the August Federal Register Notice, David Certner, AARP's Legislative Counsel and Legislative Policy Director, will act as AARP's witness. His contact information is: 601 E Street, NW Washington, DC 20049; and dcertner@aarp.org. The date of AARP's comment letter and original hearing request was August 6, 2020.

We also request additional time of at least 10 business days after the close of the hearing to respond to any testimony and to submit additional evidence should it become available.

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



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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.

The Honorable Jeanne Klinefelter Wilson
AARP Request for Hearing
August 6, 2020
Page 3 of 3

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.

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

U.S. Dep't of Labor, *Regulating Advice Markets Definition of The Term "Fiduciary" Conflicts of Interest - Retirement Investment Advice Regulatory Impact Analysis For Final Rule And Exemptions* (April 2016), <https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/historical-information-on-regulations/1210-AB32-2-archive/ria.pdf>

Do Financial Advisers Influence Savings Behavior?
Jeremy Burke and Angela A. Hung, 2015 | [Report](#)

Financial Advice Markets: a Cross-Country Comparison
Jeremy Burke and Angela A. Hung, 2015 | [Report](#)

Effective Disclosures in Financial Decision Making
Angela A. Hung, Min Gong, and Jeremy Burke, 2015 | [Report](#)

Comments on a Review of a White House Report on Conflicted Investment Advice
Constantijn W.A. Panis, 2015 | [Report](#)

Rates of Return of Broker-Sold and Direct-Sold Mutual Funds
Karthik Padmanabhan, Constantijn Panis, and Timothy J. Tardiff, 2016 | [Report](#)

Review of Selected Studies and Comments in Response to the Department of Labor's Conflict of Interest 2015 Proposed Rule and Exemptions
Karthik Padmanabhan, Constantijn Panis, and Timothy J. Tardiff, 2016 | [Report](#)

[Labor Cost Inputs Used in the Employee Benefits Security Administration, Office of Policy and Research's Regulatory Impact Analyses and Paperwork Reduction Act Burden Calculations, 2016](#)

Classifying Portfolio Volatility
Michael J. Brien and Constantijn W.A. Panis, 2013 | [Full Report](#)

Impacts of Conflicts of Interest in the Financial Services Industry
Jeremy Burke, Angela A. Hung, Jack W. Clift, Steven Garber, and Joanne K. Yoong, 2014 | [Full Report](#)

UK RDR and US Fiduciary Reforms 2014 | [Letter from David Geale, UK Financial Conduct Authority, Head of Savings, Investments, & Distribution, to Joseph Piacentini, EBSA Chief Economist](#)

Review of Study by Quantria Strategies, LLC
Constantijn W.A. Panis, 2014 | [Memorandum](#)

Financial Asset Holdings of Households in the United States: 2014 Update
Constantijn W.A. Panis and Michael J. Brien, 2014 | [Full Report](#)

401(k) Plans: Response to Statements Concerning GAO's March 2013 Report on Rollovers in Quantria Report

U.S. Government Accountability Office, 2014 | [Letter from Charles A. Jeszeck, Director, GAO Education, Workforce, and Insurance Security Team to the Honorable George Miller, Ranking Member, House Committee on Education and the Workforce](#)

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Potential Economic Effects on Individual Retirement Account Markets and Investors of DOL's Proposed Rule Concerning the Definition of a 'Fiduciary'
Steven Garber, Jeremy Burke, Angela Hung, and Eric Talley, 2015 | [Full Report](#)
Research/Analysis

The Ability of Investors to Time Purchases and Sales of Mutual Funds
Karthik Padmanabhan, Constantijn W.A. Panis and Timothy J. Tardiff, 2017 | [SEC Cover Memo and Full Report](#)

Financial Asset Holdings of Households in the United States in 2013
Constantijn W.A. Panis and Michael J. Brien, 2016 | [Abstract](#) | [Full Report](#)

Rates of Return of Broker-Sold and Direct-Sold Mutual Funds
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| [Abstract](#) | [Report](#)

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Brokerage Accounts in the United States
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Mark L. Egan, Shan Ge, Johnny Tang, *Conflicting Interests and the Effect of Fiduciary
Duty -- Evidence from Variable Annuities* (NBER Working Paper No. 25577 Issued in
July 2020).

Commissioner Kara M. Stein. *Statement on Proposals Relating to Regulation Best Interest, Form CRS, Restrictions on the Use of Certain Names or Titles, and Commission Interpretation Regarding the Standard of Conduct for Investment Advisers* (April 18, 2018), <https://www.sec.gov/news/public-statement/stein-statement-open-meeting-041818>

Commissioner Robert J. Jackson Jr., *Statement on Final Rules Governing Investment Advice* (June 5, 2019), <https://www.sec.gov/news/public-statement/statement-jackson-060519-iabd>

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A. Lusardi, *Household Saving Behavior: The Role of Financial Literacy, Information, and Financial Education Programs* (February 2008), <http://www.nber.org/papers/w13824>.

Americans are Befuddled by Financial Jargon, http://moneysmarts.com/survey/survey_befuddled.cfm.

The Simple Truth: Speak Plainly and They Will Come, http://moneysmarts.com/survey/survey_simpletruth.cfm