**STATEMENT FOR THE RECORD**

**SUBMITTED TO THE**

**UNITED STATES DEPARTMENT OF LABOR**
**EMPLOYEE BENEFITS SECURITY ADMINISTRATION**

**On**

**Conflict of Interest Proposed Rule**

**Public Hearing**

**August 10, 2015**

**AARP**
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As the largest nonprofit, nonpartisan organization representing the interests of older Americans and their families, AARP appreciates the opportunity to testify in support of the Department's proposal to update the definition of fiduciary investment advice under ERISA. Last month, AARP submitted two detailed comment letters to the Department of Labor, one in support of the rule, http://www.aarp.org/content/dam/aarp/politics/advocacy/2015-07/AARP-%20Comments-on-the-DOL-Proposed-Fiduciary.pdf, and one in support of the Best Interest Contract exemption, http://www.aarp.org/content/dam/aarp/politics/advocacy/2015-07/AARP-Comments-on-the-DOL-Proposed-Best-Interest-Contract.pdf.

A major priority for AARP has long been to assist our over 38 million members and all Americans in accumulating and effectively managing the assets they will need to supplement Social Security, so that they can maintain an adequate standard of living in retirement. Unfortunately, both economic trends and changes in employer-provided benefits have made the goal of achieving and maintaining an adequate income in retirement more challenging. It is hard enough to save for retirement. Conflicted investment advice should not be one of the barriers millions of Americans face as they work to save for their retirement.

Over 80 million households are counting on employer-sponsored plans and IRAs to supplement Social Security for their retirement security. In order to ensure adequate retirement savings, investors need to know the advice provided by financial service professionals is solely in their interest. In fact, investors currently expect and believe that all financial advisers are already acting in their best interest, and this view has been encouraged by most financial advisers, whether they are acting as fiduciaries or not. AARP believes that the proposed rule would appropriately subject more advice to ERISA's fiduciary and conflict of interest rules, and the related proposed exemptions would permit established business models to continue to be available, preserving choice for individuals in the marketplace, while minimizing conflicts of interest that affect the quality of the advice.

The need for this rule is urgent. The potential negative impact of conflicted advice is enormous, costing retirement investors billions of dollars each year. The Government Accountability Office has estimated that $20,000 in a 401(k) account that had a one percentage point higher fee for 20 years would result in an over 17% reduction--over $10,000--in the account balance. Over a 30-year period, the account would be about 25 percent less. Even a difference of only half a percentage point-- 50 basis points--would reduce the value of the account by 13 percent over 30 years.

The Department has found that the negative impact of conflicted investment advice is increasing as Baby Boomers retire and move money from protected ERISA plans to IRAs. Indeed, the Department found that conflicted advice could cost retirees between 12% and 24% of their retirement savings over thirty years. Acting upon its unique jurisdiction in the retirement arena, the Department is compelled to act to fulfill its role to protect those deserving of a secure retirement. That is the purpose of this rulemaking.

Conflicted advice can result in costs and losses other than direct higher fees and expenses. For example, investors may end up with higher-risk investments, and they may incur excessive transaction costs. Conflicted advice also frequently leads to the purchase of investments that underperform the market. And, as the Department points out, when investors end up with less money to spend, there is a significant cost to the economy, in addition to the individual.

In particular, AARP is concerned about IRA investors who are closer to retirement and may be more vulnerable to the negative impact of conflicted advice, because the assets they have to invest are larger, they may lack strong financial literacy skills, and they are making significant and often one-time decisions to move retirement savings from more protected employer based plans into significantly less protected IRAs. In addition, we agree with the Department that individuals with modest balances—who some call "small savers"--can be most negatively impacted by the detrimental effects of conflicted advice. They have fewer economic resources—and any additional costs or losses diminish what little savings they have.

Because the impact of conflicted advice is so great on individuals who are close to retirement, our members have responded to this proposed rule by submitting over 60,000 individual petitions to the Department as comments in support of investment advice in the best interest of those saving for retirement. In general, the public is overwhelmingly in favor of the goal of this rulemaking. According to an AARP survey, more than nine in ten (93%) respondents favored requiring retirement advice to be in their best interest, and nearly nine in ten (89%) plan sponsors said that they would favor such a requirement.

The goal of this rulemaking is not only broadly supported by the public, but is long overdue. The dramatic shift since 1975, when ERISA was established, from defined benefit plans, in which advice was generally provided to more sophisticated employer fiduciaries, to participant directed defined contribution plans, has been well documented.

At the time of the initial regulation, IRAs were brand new, and today's most popular retirement vehicle--the 401(k) plan—had not yet been created. Today, most Americans with retirement savings are in individual account plans, and are therefore solely responsible for their investment decisions. In addition, as account holders change jobs or approach retirement age, we have seen a significant movement of assets from employer-sponsored plans to IRAs. Indeed, the amount of assets in IRAs now exceeds that of defined contribution plans, with most of that money coming from an employer plan.

As participants retire or terminate employment and are encouraged to move their 401(k) assets into IRAs, they are moving from a heavily regulated system with fiduciary protection to one without similar protections. The sums involved are very significant-- the Department has noted that "such 'rollovers' will total more than $2 trillion over the next 5 years." This same money, with similar tax subsidies and a similar national interest to ensure retirement security, should enjoy similar regulatory protections.

It is also important to underscore that for many people, the account balance in their 401K or IRA represents the bulk of their personal savings. As a result, the distribution decision will often determine the value of a working lifetime of retirement savings. Few financial decisions will be as important as the determination of when and how to take a distribution from a retirement plan or IRA. Accordingly, it is essential that an adviser providing guidance at this critical juncture be subject to ERISA's fiduciary duties. Moreover, AARP supports the Department's determination not to require investment advice to be provided with any particular frequency. AARP believes that the current requirement that advice must be provided "on a <u>regular basis</u>," ignores the reality that distribution advice may be a one-time transaction, but also be the largest, most significant--and potentially irreversible--decision that can be made with retirement savings. The proposed rule would close this and other loopholes.

In short, since ERISA's enactment 40 years ago, retirement plans and investments have so significantly changed that there is no longer any justification, if there ever was one, for the current regulation's narrow definition of fiduciary investment advice. The Department of Labor is the agency clearly responsible for assuring fairness and transparency in retirement security. With this proposal, the Department has made great strides to protect the retirement savings of millions of Americans. Today's proposal is the result of nearly five years of discussion and debate among all stakeholders. The time is long past to ensure that advice provided to those who spend a lifetime working to save and invest for a secure retirement is in their sole interest. We thank the Department for its thorough and thoughtful proposal and for the opportunity to provide AARP's views today and in our written comments.