AARP Real Possibilities

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Submitted via: e-OED@dol.gov

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Re: Proposed Conflict of Interest Rule [RIN-1210-AB32]
Re: Best Interest Contract Exemption [D-11712, ZRIN 1210-ZA25]

Ladies and Gentlemen:

AARP appreciates the opportunity to respond to the written comments and oral testimony previously provided to the Department of Labor (the Department) on the proposed regulation relating to the definition of a fiduciary under 29 CFR §2510.3-21[1] and the proposed Best Interest Contract Exemption. To better reflect changes in our retirement system, the proposed regulation updates the definition of who is a fiduciary as a result of providing investment advice for a fee to retirement investors. The proposed Best Interest Contract Exemption would provide conditional relief for financial entities that are fiduciaries by reason of the provision of investment advice to receive

[1] AARP is the largest nonprofit, nonpartisan organization representing the interests of Americans age 50 and older and their families. Nearly half of our members are employed full or part-time, with many of their employers providing retirement plans. A major priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets to supplement Social Security. The shift from defined benefit plans to defined contribution plans has transferred significant responsibility to individuals for investment decisions that will directly impact the adequacy of the assets available to fund future retirement needs.

compensation when participants and beneficiaries, IRA owners, and small plans purchase, hold or sell investment products in accordance with the fiduciaries' advice. The Department proposed this class exemption in connection with the publication on the same date of its proposed regulation updating the definition of who is an investment advice fiduciary under the Employee Retirement Income Security Act (ERISA).

AARP submits the following reply comments on the proposed regulation and class exemption:

Proposed Conflict of Interest Rule

1. The Current Regulation Conflicts With Plain Text Of The Statute.

AARP believes that the current 1975 regulation does not derive from ERISA's statutory language. Section 3(21)(A)(ii) provides that anyone who provides investment advice for a fee or other compensation, direct or indirect, with respect to any moneys or other property of the plan shall be considered a fiduciary. The Department's initial interpretation is unduly narrow, and given changes in the retirement plan landscape, now falls woefully short of ERISA's main purpose of protecting participants and beneficiaries from conflicts of interest by plan service providers. The 1975 regulation's five-part test effectively insulates many advisers from any harm to plans resulting from imprudent and/or disloyal advice. The significantly changed investing environment demands a different interpretation of section 3(21)(A)(ii) that AARP believes more closely follows the statutory definition and purposes of fiduciary duty.

2. The Department Has The Authority To Establish New Standards For Retirement Plan Advisers.

Some commenters have argued that the Department lacks the authority to establish new standards for broker-dealers and other retirement plan advisers, and that the authority rests with the Securities and Exchange Commission (SEC) as a result of the Dodd-Frank legislation. AARP strongly suggests that the Department reject this argument for a number of reasons. First, the securities laws and ERISA operate pursuant to different statutory requirements and often affect a different universe of entities. Although ERISA impacts broker-dealers and registered investment advisers who elect to provide services to plans, the breadth of ERISA's jurisdiction extends to a wider variety of other service providers and fiduciary relationships with plans not under the SEC's jurisdiction. Any service provider that renders investment advice to a plan, as described in the proposed rule, would be a fiduciary regardless of the type of services it provides or the fact that it may be subject to another regulatory scheme by a Federal, state or local authority. Second, service providers to plans are not entitled to rules under ERISA that are necessarily the same as the rules promulgated by the SEC. As noted in AARP's initial comments on the proposed rule, ERISA plays a crucial role in ensuring the protection of retirement funds subsidized by taxpayers so that participants have sufficient assets for a secure and adequate retirement. No similar taxpayer subsidy underwrites investments made outside a retirement plan. Rather than abdicating the authority to define fiduciary to a federal agency operating under a different statutory regime, as some commenters have suggested, AARP believes that the more sensible approach is for the agencies that directly or indirectly impact broker-dealer activities to cooperate and coordinate with each other on related but distinct issues.

3. The Definition Of Fiduciary Under Section 3(21)(A)(ii) Of ERISA Includes Payment For Provided Advice And For Execution.

The definition of fiduciary investment advice requires the payment of "a fee or other compensation, direct or indirect, with respect to any moneys or other property of such plan." AARP believes that "direct or indirect" in the fiduciary definition contemplates the payment of compensation that is broader in scope than that suggested by some commenters and captures more than a direct payment for advice provided. The Department has long taken the position that the receipt of a commission by a broker that provides investment advice to a plan satisfies the fee requirement in the statutory definition. See, e.g., Prohibited Transaction Exemption 84-24, 71 FR 5887, 2/3/2006. AARP sees no reason to revisit this issue that was resolved by DOL shortly after ERISA was enacted.

4. The Provision of Investment Advice Does Not Depend On Mutual Agreement or Understanding.

Some commenters have argued that the final rule should be modified to require, in a manner similar to the 1975 regulation, that the advice must be rendered pursuant to a mutual written or verbal agreement, arrangement or understanding. AARP continues to believe that the proposal correctly omits any requirement that the parties have a mutual agreement, arrangement or understanding regarding the provision of investment advice. AARP believes that it would be extremely difficult for largely unsophisticated investors to prove that both parties accepted the same mutual agreement. Without clear proof, the investor has no claim against even the most fraudulent of advisers. The proposed rule attaches fiduciary status to an adviser with respect to whom it is understood by the parties that the adviser's advice is individualized to, or that advice is specifically directed to, the advice recipient for consideration in making investment decisions. The Department also should retain the "or specifically directed to" caveat; without this caveat, advisers could claim many forms of advice are not "individualized." AARP endorses this straightforward approach for determining fiduciary status.

Others have suggested revisions to the proposed rule that essentially replicate the five-part test contained in the 1975 rule but use different terminology to achieve a similar result. AARP believes that the proposed rule would close the loopholes under the current regulation which now permits financial advisers to play a significant role with respect to the plan's investment portfolio and avoid liability for conflicted or imprudent advice. AARP urges the Department not to revisit the five-part test which now falls well short of ERISA's main purpose of protecting participants and beneficiaries.

5. Advice Provided on Distributions Is Investment Advice.

A number of comments have argued that a distribution is not an investment, and therefore a recommendation to roll over plan assets is outside the scope of the statute. As previously noted in AARP's comment letter dated July 21, 2015, AARP believes that a recommendation to take a distribution or roll over plan assets constitutes the provision of investment advice since the distribution recommendation is essentially a recommendation that the participant sell the underlying assets in his or her individual account or IRA. A recommendation to sell plan assets is certainly the type of advice contemplated by the statutory definition of fiduciary investment advice. In this regard, we believe the Department's 2005 Advisory Opinion on investment advice regarding 401(k) plan distributions - which inappropriately opened the door to this issue without public comment or review - is contrary to ERISA's intent and should be withdrawn.

6. Investment Education May Permit an Asset Allocation Model to Identify <u>All</u> Investments Available Under a Plan for Each Asset Category.

The decision by DOL to exclude advice or recommendations as to specific investment products from the investment education carve-out has drawn many negative comments from those who believe that providing examples of investments that fit within specific asset classes assists plan participants in making informed decisions about investing their account balances. IB 96-1 currently permits the identification of specific investments available under the plan as long as those specific references are accompanied by a statement that other investment alternatives having similar risk and return characteristics may be available. AARP is concerned that participants may rely on the identification of specific funds or investments as investment advice, notwithstanding or without reviewing the accompanying disclosures.

However, AARP appreciates the education value in helping participants to understand the investments available by asset class – assets that have already been selected by a fiduciary. AARP therefore supports a carve-out for investment education that permits the asset allocation model to identify <u>all</u> investments available under a plan for each asset category. The identification of all investments that satisfy a particular asset class would help participants, while at the same time reduce the likelihood that participants would be inappropriately "steered" to specific investment products.

Although AARP supports a revision to the investment education carve-out that would permit the identification of specific investments within each asset class, AARP urges further protections to prevent inappropriate steering (e.g., always listing "preferred" investments within an asset class first, since participants may rely on the identification of the first investment in each asset class). To the extent that the Department is favorably disposed to comments on the use of asset allocation models that refer to specific investments, AARP recommends that the Department adopt a rule that does not permit the investment education provider to unfairly favor certain investments, such as its own proprietary funds, when identifying specific investments available under a plan within each asset class.

AARP believes that one option to minimize bias in identifying specific investments is for the Department to require the ordering of investments based on an objective standard, such as the lowest total cost of each investment option or past performance over consistent periods of time. Another option could require the ordering of investments based on random order presentation models when listing investments within each asset class.

AARP does not support a revision to the investment education carve-out that would permit the identification of specific investments to a participant in the context of an open brokerage window offered under a participant directed individual account plan. Under those circumstances, the participant does not have the benefit of an independent plan fiduciary who would be responsible for the selection and periodic monitoring of the investment options offered under the plan.

Similarly, AARP has concerns with the identification of specific investments in the context of providing investment education to IRA owners. In the absence of an independent plan fiduciary responsible for the selection and monitoring of investment options, and the potentially unlimited universe of investments available to an IRA owner, AARP believes that the Department should consider the inclusion of additional standards should it decide to permit education providers to identify specific investment alternatives for IRA owners. AARP believes that any asset allocation model used to provide investment education to an IRA owner that identifies specific investments must operate in an objective manner which can be verified by an independent third party. Moreover, the model should provide for a choice of investments in each class, and the determination of which specific investments will be used to populate each asset class must be based on objective considerations such as past investment performance or total costs. The goal should be to ensure that IRA owners are offered the best investments within each asset category under a particular asset allocation model.

7. Clarification Is Desirable To Determine When Call Centers Provide Education and Advice.

AARP is concerned with the arguments made during the comment period that call centers and call center personnel should not be treated as investment advice fiduciaries. It is AARP's position that, to the extent that call center employees engage in the types of activities described in the proposed rule, there is no rational basis to exclude them from the scope of the regulation. However, AARP recognizes that call centers are often an excellent source of basic information for plan participants. AARP suggests that the final rule provide examples which clarify the types of information that can be provided by call center personnel without triggering fiduciary status. AARP believes that this approach is consistent with the carve-out for investment education.

8. Examples Of Marketing Activities That Do Not Constitute The Provision Of Investment Advice Should Be Provided.

The proposal has drawn a number of negative comments from those who are concerned that sitting down for the first time with a potential plan client to discuss available services, responding to requests for proposal, and the general marketing of services to plans and fiduciaries would constitute the provision of fiduciary investment advice. Certain of these commenters have posited interpretations that appear to be beyond the intended scope of the proposed rule. Based upon the written comments submitted, AARP recognizes that there are a number of language refinements and revisions that need to be made in order to cure potential misinterpretations and unintended consequences. AARP urges DOL to clarify and include examples of the types of normal marketing activities that DOL believes would not constitute the provision of investment advice. Service providers are entitled to rules that clearly delineate the types of marketing activities that are not captured by the proposed rule.

Proposed Best Interest Contract Exemption

1. The Department Has Authority To Issue Administrative Exemptions For Plans, Including IRAs.

While an Individual Retirement Account (IRA) is subject to the prohibited transaction provisions of section 4975 of the Internal Revenue Code, subsequent to the issuance of the 1975 fiduciary advice regulation, the Department was given the authority to interpret the prohibited transaction provisions for both the Code and ERISA. Executive Order: Reorganization Plan No. 4 of 1978, (92 Stat. 3790 (1978)). Included within that authority is the ability of the Department to issue administrative exemptions for plans described in section 4975(e)(1) of the Code, including IRAs. Since the effective date of the Reorganization Plan, the Department has exercised this exemption authority under the Code on many occasions to provide prohibited transaction relief for transactions involving IRAs on both an individual exemption basis and as part of a class exemption. The Department's exercise of its exemption authority under both ERISA and the Code is subject to making findings that an exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of the plan's participants and beneficiaries. In order to ensure exempted relief is in the interest of the participants, the Department rightfully concludes that participants need an adequate enforcement mechanism. AARP believes the Department correctly concluded that a written contract between the Adviser and the IRA owner is an appropriate required pre-condition for the Department to make the necessary findings for relief – without such contract, neither the Department nor the IRA owner has any recourse against the Adviser for losses to the IRA that resulted from the Adviser's conflicted advice.

Arguments have been made that the Department in the past issued exemptions pursuant to its authority under ERISA and the Code that have been framed in the "traditional manner." AARP notes that in the last decade the variety and complexity of investments created by Wall Street and others in the financial services industry have dramatically changed. This constantly evolving investment marketplace - along with the evolution of the retirement landscape - demonstrates a need for administrative exemptions granted by the Department that are flexible and that are not necessarily constrained by past "precedent." AARP believes that the Department has the authority under ERISA and the Code to fashion relief on an individual or class basis that is appropriate under the particular circumstances.

As a part of the exemption program administered by the Department, AARP encourages the Department to periodically reevaluate, and update as necessary, administrative exemptions in response to changed circumstances either in the financial services industry or the retirement community to ensure adequate participant protections.

2. The Best Interest Standard As Proposed Is Appropriate But Clarifications Are Desirable.

Under the Best Interest Standard, the Adviser must provide investment advice that is in the Best Interest of the Retirement Investor (i.e., advice that reflects the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances and needs of the Retirement Investor, without regard to the financial or other interests of the Adviser, Financial Institution or any Affiliate, Related Party, or other party). Certain commenters have suggested that "without regard to the financial or other interests" could be interpreted to prohibit any investment advice that takes into account the compensation that the Adviser will earn for providing the advice or any compensation that varies with an investment recommendation. AARP notes that the phrase "without regard to the financial or other interests of the Adviser..." tracks the language found in section 913 of Dodd-Frank, and is evidence of the Department's coordination with the SEC.

AARP recognizes that financial institutions are entitled to reasonable payment for services rendered to plans. Accordingly, AARP recommends that DOL clarify in the final exemption the meaning of that language in the context of an Adviser complying with the Best Interest Standard and provide examples of its application with respect to appropriate reasonable compensation for the type of investment and level of investment features or services required.

DOL noted in the preamble to the proposed exemption that the Best Interest Standard is defined to effectively mirror the ERISA section 404 duties of prudence and loyalty, as applied in the context of fiduciary investment advice. AARP suggests that, in order to avoid any confusion regarding the meaning of the best interest standard, DOL revise the best interest standard to explicitly incorporate the prudence standard set forth in section 404 of ERISA.

As discussed earlier, the exemption is subject to the Department's findings that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries and protective of the rights of the plan's participants and beneficiaries. The proposed exemption is designed to provide relief for the receipt of variable compensation by service providers subject to various requirements designed to protect the interests of the plan participants and beneficiaries, IRA owners and small plan sponsors. The focus of the exemption is on adherence by the Financial Adviser to the Best Interest Standard when providing investment advice to the Retirement Investor.

AARP suggests that the final exemption provide examples which clarify the types of investment transactions that will satisfy the Best Interest Standard. For example, AARP believes the rule should, and does, permit the sale of proprietary products. However, such sales must be in the best interest of the Retirement Investor, therefore, for example, be prudent for the individual, subject to no more than reasonable compensation, and be free of conflicted sales incentives. Further guidance from the Department on the sale of proprietary products would be helpful. Also in this regard, several commenters raised concerns about the application of the exemption to annuity products. AARP believes that guaranteed lifetime income streams can be an important element of retirement planning and that the proposed exemption currently provides accommodation for such products. AARP urges the Department to clarify its views on the pricing practices that could meet a Best Interest Standard. For example, if an Adviser recommends an annuity product from a more highly rated provider over another product - with identical features, but from a lower rated provider - a higher commission, and a higher overall cost to the participant, may meet a Best Interest Standard. AARP believes that in this hypothetical transaction, a higher commission for a "safer" annuity may be justified, and would then fall within the scope of relief provided by the exemption. Similarly, the Department could generally clarify its view on whether two otherwise identical investment products for the consumer - that have identical costs to the consumer but come with different compensation pricing for the Adviser - could fall within the scope of the exemption.

3. Simplified Point Of Sale Disclosures Should Be Provided Reasonably In Advance Of The Execution Of The Investment Transaction.

A number of commenters were concerned about the difficulty in incorporating point of sale disclosures into the interview process or when responding to an RFP. AARP believes that this is another example of interpretations of the disclosure requirements under the proposed rule that appear to go beyond DOL's intent. Although AARP welcomes DOL clarification of these issues, AARP believes that it is essential that such disclosures be provided to the Retirement Investor reasonably in advance of the execution of the investment transaction in order to enable the Retirement Investor to have sufficient time to assess the impact of the total costs of the recommended investment and any limitations on the advice provided before purchase.

Several commenters were concerned about the breadth and scope of the disclosures required under the proposed exemption. According to the comments, the sheer volume of information will prove confusing and will not assist Retirement Investors in making more informed investment decisions. AARP recognizes that Retirement Investors may not have the time or inclination to peruse a large amount of investment information. However, Retirement Investors need sufficient information under the proposed exemption in order to make informed investment choices. AARP supports a one-page disclosure document that is provided to the Retirement Investor reasonably in advance of the execution of the investment transaction. The Department already has been considering a summary guide that could serve this purpose. That document, written in plain English, would contain the most relevant information to an investor, including the investment goals or objectives of the investment, material conflicts, length of service of the manager of the fund, past performance over specified periods and the fees and expenses associated with the investment and any other costs such as advice, trading, or surrender charges. At a minimum, the Department could require providers to distribute the section 408(b)(2) and 404 disclosures that providers already prepare and are required to provide to participants. However, given that the Department has found significant shortcomings with the current disclosures, it should consider publishing model language and formatting and/or reference existing best in class disclosures. AARP also suggests that the document prominently display the specific website address where more detailed information can be found.

AARP believes that more detailed website disclosure is important as a readily available repository for important information for investors, their advocates, and government agencies responsible for proper oversight. Full and fair public disclosure and an educated consumer are the best protector of a healthy market economy.

Under the Best Interest Contract Exemption, investment advice can be provided in person, through the internet, or by telephone. AARP recommends that the disclosures required under the proposed exemption be provided to Retirement Investors in the same manner as the provision of investment advice. Thus, for example, Retirement Investors who choose to receive investment advice through the internet would receive the required disclosures electronically, Retirement Investors who prefer in person advice would receive the disclosures in person, and Retirement Investors who receive investment advice by phone would receive notice of the disclosure by phone and receive the actual disclosures by mail (or electronically, if the customer prefers).

4. Negative Consent Of The Written Contract Requirement Could Be Permissible For Existing Plan And IRA Clients, But Affirmative Consent Should Be Required For New Clients.

Some commenters have argued that the requirement that the Adviser and Financial Institution enter into a written contract with the Retirement Investor is burdensome and should be modified to permit a unilateral contract without a requirement for a signature from the Retirement Investor. AARP continues to believe that a written contract signed by all of the parties that emphasizes the rights and obligations of such parties springing from the executed agreement is an important requirement of the exemption. AARP has also stated that the contract itself is more important than the timing of the contract (e.g., as long as there is proper advanced disclosure and the Best Interest Standard applies, the contract may be signed along with other client documents). However, AARP recognizes that there may be administrative hurdles associated with amending existing plan and IRA client contracts. Accordingly, AARP could support a revision to the proposed exemption which permits existing plan and IRA clients to enter into binding agreements with the Adviser and Financial Institution through a negative consent process pursuant to which the client is informed in plain English within a reasonable period of time of all of the terms and conditions contained therein. Investors must automatically be sent a copy of the contract and it should be readily available on the Adviser's website.

AARP believes that the terms of the arrangement and the obligations of the parties must meet the requirements of the exemption and be the same regardless of whether the parties are operating pursuant to a signed agreement or one that became legally binding through a negative consent process. Model language should be developed by the Department to assist firms and ensure the contract is understandable to investors. In addition, the Department should state that these contracts are "other instruments under which the plan is established or operated" within the meaning of section 104(b)(4). Lastly, the contract must be equally enforceable by plan and IRA clients regardless of the mechanism used for entering into the contract.

5. "Reasonable Compensation" Is Already A Well Established Standard.

Under the Impartial Conduct Standards, the Adviser and Financial Institution must affirmatively agree that they will not recommend an investment if the total amount of compensation anticipated to be received in connection with the purchase, sale or holding of the investment will exceed "reasonable compensation" in relation to the total prudent services provided to the Retirement Investor. Several comments suggested that it would be difficult for service providers to demonstrate that their compensation is reasonable in the absence of further guidance from the Department. AARP believes that whether compensation is reasonable is already a well-established standard. There are many industry fee and product benchmarks readily available in the public domain (e.g., Morningstar, Brightscope and the Investment Company Institute regularly and publicly report on industry compensation). Moreover, AARP notes that several class exemptions currently have a reasonable compensation requirement (e.g., PTE 84-24, 71 Fed. Reg. 5887, February 3, 2006, and PTE 2006-16, 71 Fed. Reg. 63786, October 31, 2006), as well as the service provider statutory exemption (i.e., section 408(b)(2) of ERISA). Reasonable compensation, while a standard term, is not further defined in any of those administrative or statutory exemptions. AARP is not aware of any concerns expressed by service providers regarding the reasonable compensation standard used in prior exemptions, and believes this accepted standard is appropriate for this exemption as well.

6. The Definition Of Retirement Investors And Small Participant Directed Plans.

Some commenters have argued that the definition of Retirement Investor should be expanded to include small, participant-directed plans. Currently, the definition includes a plan sponsor of a non-participant directed plan with fewer than 100 participants to the extent that it acts as a fiduciary who has authority to make plan investment decisions. According to the comment, the modification is necessary to preserve the services currently available to the small plan marketplace. AARP would not be opposed to the expansion of the definition of Retirement Investor to include small participant directed plans should the Department determine that such an expansion is protective of the interests of plan participants and beneficiaries.

As the Department properly concluded in its sellers' exemption, advisers should only be relieved of their statutory duties if it is clearly established that another party is actively acting as the responsible fiduciary on all aspects of the transaction. It is often said that small retirement plans are sold, not bought, and thus, it is critical that advisers act in the best interest of unwary small employers and plans. The GAO has documented that most small employers rely on advisers and other third parties to design their retirement plans and often do not know that legally they are fiduciaries. Firms should not be entitled to market their "fiduciary" services to small employers only to disclaim all liability in small print buried in the final documents. Small employers, and their employees, are struggling to achieve a modest level of retirement security and the Best Interest Standard offers a fair model for all of the parties.

7. Insurance Products With Securities Or Investments Features Should Be Covered By The Best Interest Contract Exemption.

Some commenters have expressed concerns with the Department's proposal to treat insurance products differently based upon whether the investment is a fixed insurance guarantee tied to life expectancy or a variable investment tied to a combination of life expectancy and securities market returns. As stated in our previous comments, AARP supports the Department's proposed revocation of PTE 84-24 as it applies to IRA transactions involving annuity contracts that contain securities features (including variable annuity contracts) and mutual fund shares. As proposed, PTE 84-24 would remain available for investment advice fiduciaries to receive commissions for IRA purchases of insurance and annuity contracts that are not securities.

AARP believes that the fee disclosures mandated by PTE 84-24 are substantively similar to the proposed section III(a) and (b) disclosures. AARP notes that variable annuity contracts and mutual fund shares are similar to many of the investment products included within the definition of "Assets" under the proposed exemption, which often fluctuate in value on a daily basis. This is in contrast to fixed annuity contracts, which offer the Retirement Investor the security of fixed payments for the life of the contract.

8. Court Access Is Imperative To Protect The Rights Of Retirement Investors.

Testimony provided during the hearing only served to heighten AARP's concerns with the Department's decision not to exclude pre-dispute binding arbitration provisions from the written contract with the Retirement Investor. Mandatory arbitration provisions deny the Retirement Investor the opportunity to seek redress through the courts for losses incurred.

While the best protection for the Retirement Investor is a ban on pre-dispute mandatory binding arbitration provisions, the following provisions would help to mitigate some of the shortcomings of mandatory binding arbitration: the Arbitrator should be qualified and independent; the arbitration should be held in the location of the person challenging the action; the costs of arbitration should be borne by the entity that includes the binding mandatory arbitration provision in the contract; defendant's attorney's fees should not be shifted to the Retirement Investor, even if the challenge is unsuccessful; statutory remedies cannot be limited or altered by the contract; access to adequate discovery is necessary; there must be a written record and decisions, and confidentiality requirements and protective orders which would prohibit the use of evidence in subsequent cases should be prohibited. We note that FINRA has adopted some but not all of these provisions.

AARP reiterates its support for the prohibition against the waiver or qualification of the Retirement Investor's right to bring or participate in a class action or other representative action in court in a dispute with the Adviser or Financial Institution.

AARP appreciates this opportunity to provide its additional views on the proposed rule defining who is a fiduciary as a result of providing investment advice to a plan or its participants or beneficiaries and the Best Interest Contract Exemption. If you have any questions, please feel free to contact me or Michele Varnhagen of our Government Affairs office at 202-434-3829.

Sincerely,

David Certner

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Government Affairs