

Electronically Submitted

August 28, 2020

Office of Exemption Determinations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW  
Suite 400 Washington, DC 2010

**RE: Docket ID Number EBSA-2020-003, Improving Investment Advice for Workers & Retirees**

Ladies and Gentlemen:

Pursuant to the Announcement of Hearing published at 85 Fed. Reg. 52292, Principal Review, LLC (dba RetireAware) hereby requests the opportunity to testify at the pending hearing on the proposed class exemption “Improving Investment Advice for Workers & Retirees.”

RetireAware submitted comments on the proposed class exemption on August 5, 2020.

<https://www.dol.gov/sites/dolgov/files/EBSA/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA29/00036.pdf>

#### **Information About Witness**

RetireAware’s testimony will be provided by Mr. Dan Alexander, RetireAware’s Managing Director.

From 2000-2017, Mr. Alexander worked in a series of sales and leadership roles for a retirement plan recordkeeper and broker/dealer. Mr. Alexander served as a financial advisor before moving into various management roles; his last role with a recordkeeping firm was a regional leadership role where he served as an officer for the firm’s broker/dealer. Mr. Alexander’s responsibilities included winning new plans, sales (plan and non-plan related to plan participants) and taking part in sales and growth strategies to grow the firm’s presence in the group market space while growing sales in the firm’s proprietary products, including retail annuities, mutual funds and life insurance.

Mr. Alexander’s seventeen years of experience in selling recordkeeping services provides him with valuable insights into the marketplace practices used by providers to generate revenue in ways that undermine the protections contained in ERISA and that erode participants’ retirement income--practices that would only expand under the proposed exemption.

Mr. Alexander's contact information is as follows:

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### **Outline of Testimony**

During the course of our testimony RetireAware proposes to address the following issues raised by the proposed exemption:

- Certain plan providers have significant -- often overwhelming-- incentives to promote non-plan financial services and products to plan participants. The ability to provide "investment advice" to participants is a powerful tool, frequently wielded by these providers in order to promote these non-plan products.

Under the guise of providing investment advice, these plan providers will actively solicit plan participants to transfer assets from their ERISA-covered plan into investments in retail investment products. The use of these retail products impairs participants' retirement readiness. These retail products introduce investment options not reviewed by a plan fiduciary, introduce numerous confusing fees (such as surrender schedules), and eliminates fiduciary oversight of investment performance.

Mr. Alexander's testimony will describe how these solicitations serve the economic interests of the recordkeeper--to the detriment of participants. Mr. Alexander will also describe how risks posed by these practices will be impacted by the proposed exemption.

- Solicitations by plan "representatives" (who are employed by plan providers) to transfer retirement assets from employer-sponsored plans into these individual products are driven by elaborate compensation structures that include commissions and advisory fees (as well as sales contests and noncash remuneration) that reward these representatives for encouraging participants to transfer assets to non-plan products and services.

Here too, Mr. Alexander's testimony will describe how the risks posed by these practices will be affected under the proposed exemption.

- Providers that have economic incentives to promote non-plan products (particularly proprietary products) have a unique ability to obscure the cost of their recordkeeping services. As a result, plan fiduciaries cannot properly compare the cost of different recordkeeping services to ERISA plans. This undermines a key fiduciary function under ERISA.

Mr. Alexander's testimony will describe how certain recordkeepers utilize indirect revenue to undermine ERISA fiduciaries' ability to effectively compare plan costs and the impact of the proposed exemption on these practices.

- The incentives to move assets from employer-sponsored plans into individual products further undermines the overall financial health of a plan--by reducing assets in the plan and average account balance. Both of these metrics affect a plan's administrative costs and declines in these metrics adversely affect all participants.

Mr. Alexander's testimony will describe the impact, on plans' financial health, of the outflow of assets and how the risks posed by these outflows will be affected under the proposed exemption.

We believe this testimony presents material factual issues that is both germane to factual issues needing exploration at the hearing that could not have been submitted in writing, and are not duplicative of material previously included in the RetireAware's comment letter.

### **About RetireAware**

RetireAware is an independent consulting firm. We are singularly focused on protecting plan participants and group sponsored retirement plans from conflicted service structures.

In recent years, increased focus on plan fees and downward fee compression has caused plan providers to reduce plan fees directly charged to retirement plans. However, this reduction in direct fees is accompanied by the increase in efforts to generate replacement sources of revenue for the provider. These efforts include a range of practices in which plan providers may promote and steer retirement participants into the purchase of non-plan related and non-plan approved products and services.

These practices, and the revenue they generate for plan providers, may not be identified or described in material provided to plan fiduciaries or participants. These practices are particularly insidious because they undermine the financial health of participants (and of the plan itself), occur outside of the plan (such as when a participant takes a nontaxable distribution from a plan), and are enabled by a vendor's status as plan recordkeeper.

RetireAware provides plan sponsors and employees with information and insight into plan provider service structures that may undermine retirement savings. We are focused solely on conflicted service structures.

### **Conclusion**

Thank you for the opportunity to provide this additional testimony. Shortcomings in the proposal represent a significant risk to the retirement security of millions of American workers and RetireAware is in a unique position to identify and articulate those risks.

Very truly yours,



Daniel S. Alexander  
Managing Director, Principal Review LLC