



**STATEMENT OF DAVID CERTNER  
ON BEHALF OF AARP**

**BEFORE THE SECURITIES AND EXCHANGE COMMISSION  
INVESTOR ADVISORY COMMITTEE**

**ON**

**PROPOSED FORM CRS RELATIONSHIP SUMMARY**

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On behalf of our 38 million members and all Americans saving for their retirement, AARP thanks the Securities and Exchange Commission (SEC) for tackling this important issue in rulemaking and we appreciate the opportunity to testify today at the Investor Advisory Committee meeting on the proposed Regulation Best Interest (BI) and Customer Relationship Summary form. AARP welcomes the chance to be part of this process and intends to play an active role in educating and informing all Americans age 50 and older regarding the applicable standards of conduct of financial professionals.

AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, and the U.S. territories, AARP works to strengthen communities and advocates for what matters most to families with a focus on financial security, retirement planning, healthcare, and protection from financial abuse.

A priority for AARP is to assist Americans in accumulating and effectively managing adequate retirement assets to supplement Social Security. Nearly half of our members are employed full or part-time, with many of their employers providing retirement plans. The shift from defined benefit plans to defined contribution plans has transferred significant responsibility to individuals for investment decisions that directly impact the adequacy of the assets available to fund future retirement needs. Unfortunately, the state of America's retirement landscape is cause for great concern. According to calculations by the Center for Retirement Research at Boston College, only about half of households have retirement savings and the rest of Americans have no source of income other than Social Security and the "retirement income deficit" for American households continues to grow.<sup>1</sup> According to recent analysis by EBRI, 47 percent of workers in 2017 reported that the total value of their household's savings and investments, not just for retirement, was less than \$25,000 and 24 percent had less than \$1,000.<sup>2</sup> Given these trends, it is critical to do all we can to help Americans keep as much of their hard-earned nest egg as possible and AARP has historically supported the development of rules and regulations that protect savers when they make investment decisions concerning their retirement monies. We believe that without such protections, it is difficult for individuals to effectively plan for a secure and adequate retirement.

All financial professionals should act in the best interest of the savers they are serving -- they should put the client's best interest first, and ahead of their own interest. AARP members and the public generally have demanded and supported the protections of a fiduciary standard. In survey after survey, we have found that retirement savers overwhelmingly want advice that is in their best financial interest. In a 2013 AARP survey of over 1,400 adults who had money saved in either a 401(k) or a 403(b) plan,

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<sup>1</sup> Alicia H. Hummell, *401(K)/IRA Holdings in 2013: An Update from the SCF* (Sept. 2014), [http://crr.bc.edu/wp-content/uploads/2014/09/IB\\_14-151.pdf](http://crr.bc.edu/wp-content/uploads/2014/09/IB_14-151.pdf).

<sup>2</sup> Lisa Greenwald et al., *The 2017 Retirement Confidence Survey: Many Workers Lack Retirement Confidence and Feel Stressed About Retirement Preparations* (Mar. 21, 2017), [https://www.ebri.org/pdf/briefspdf/EBRI\\_IB\\_431\\_RCS.21Mar17.pdf](https://www.ebri.org/pdf/briefspdf/EBRI_IB_431_RCS.21Mar17.pdf). This figure refers to the total value of their household's savings and investments, excluding the value of their primary home.

more than nine in ten (93 percent) respondents favored requiring retirement advice to be in their sole interest, and fewer than four in ten (36 percent) respondents indicated they would trust the advice from an adviser who is not required by law to provide advice that is in their best interests.<sup>3</sup> A survey taken after the Department of Labor's Fiduciary Rule was promulgated demonstrated that an overwhelming percentage of respondents were in favor of the rule and believed it was important for financial professionals to give advice in a client's best interest.<sup>4</sup> Among those individuals who have received professional financial advice, the support was the deepest, with nearly 8 in 10 (78 percent) strongly agreeing with a fiduciary rule.

In addition to the support of individuals saving for their retirement, many states agree a fiduciary rule is needed to protect residents and deter potential exploitative practices. California, Missouri, South Carolina and South Dakota already impose a fiduciary standard on brokers in their states. And in response to efforts to invalidate the Department of Labor's fiduciary rule, Nevada enacted legislation to subject broker-dealers and investment advisers to a fiduciary standard, with the support of AARP Nevada. We expect more states to establish this standard going forward.

**I. The proposed Customer Relationship Summary Form should be simplified in order to better meet the needs of investors.**

AARP applauds the Commission's objectives in proposing a relationship summary that seeks to "fill the gaps" between investor expectations and legal requirements by "mandating clear disclosures" about how financial professionals describe the customer relationship to retail investors.<sup>5</sup> We also appreciate that the Commission is committed to testing these proposed disclosures with retail investors who will be able to provide valuable insight into the forms' efficacy. We believe that the relationship summary plus a strong and enforceable best interest standard could provide invaluable investor protections to Americans saving for retirement.

AARP encourages the SEC to amend and test its relationship summary in order to ensure a more easily used and valuable resource for retail investors. A short, plain language, user-friendly form with key information, enabling retail investors to evaluate brokers' and investment advisers' obligations to them are essential for a useful tool. Therefore, it is imperative that the relationship summary provide information in a

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<sup>3</sup> AARP, *Fiduciary Duty and Investment Advice: Attitudes of 401(k) and 403(b) Participants* (Sept. 2013), <http://www.aarp.org/research/topics/economics/info-2014/fiduciary-duty-and-investment-advice---attitudes-of-401-k--and-4.html>.

<sup>4</sup> S. Kathi Brown, *Attitudes Toward the Importance of Unbiased Financial Advice* 4, 6 (May 2016), [http://www.aarp.org/content/dam/aarp/research/surveys\\_statistics/econ/2016/attitudes-unbiased-fin-advice-rpt-res-econ.pdf](http://www.aarp.org/content/dam/aarp/research/surveys_statistics/econ/2016/attitudes-unbiased-fin-advice-rpt-res-econ.pdf).

<sup>5</sup> <https://www.sec.gov/news/public-statement/clayton-overview-standards-conduct-investment-professionals-rulemaking>

manner that is clear, understandable, and not overwhelming in order to facilitate the retail investor's ability to make informed decisions about their investments.

Retail investors should be empowered to make informed decisions. They should understand their choices and what they are selecting -- especially when their hard earned savings are on the line. Numerous surveys have shown that consumers need and want complete disclosures concerning their investment options in order to help them make informed decisions about their investments.<sup>6</sup> Financial professionals should be required to tell prospective and engaged retail investors the applicable standard of care and nature of their relationship. The more consistent the standards of care available, the less confusion we can anticipate on the part of retail investors. In addition, clarity is key to breaking through investor confusion -- especially around complex financial investment instruments. During the April 18, 2018, open meeting on Standards of Conduct for Investment Professionals, Chairman Clayton stated:

Misalignment between reasonable investor expectations and actual legal standards can cause investor harm. For example, retail investors may be harmed if they do not understand when BDs and IAs may have conflicting financial interests. In addition, without sufficient clarity, retail investors may be more deferential to, or place greater reliance on, their BD or IA than they otherwise would. I believe that clarifying the legal standards of conduct that apply and reducing investor confusion through disclosure can significantly mitigate these potential harms as well as increase investor protection.<sup>7</sup>

Chairman Clayton further stated, "Put bluntly, we want investors to understand who they are dealing with, i.e., what category — IA, BD, or dual-hatted — their investment professional falls into and, then, what that means and why it matters."<sup>8</sup> This intent, as described by Chairman Clayton, is exactly the right one and would benefit retail investors. In order to meet that objective, however, the relationship summary should be updated to meet a number of critical core components.

First, the standard of care should be clear, concise, and defined. Distinctions between different standards of care should be clear and easy for "Mr. and Mrs. 401(k)"<sup>9</sup> -- the

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<sup>6</sup> The report is titled *401(k) Participants' Awareness and Understanding of Fees*, available at <https://assets.aarp.org/rgcenter/econ/401k-fees-awareness-11.pdf>.

<sup>7</sup> <https://www.sec.gov/news/public-statement/clayton-overview-standards-conduct-investment-professionals-rulemaking>

<sup>8</sup> *Id.*

<sup>9</sup> Chairman Clayton has a well-documented record of referring to Main Street investors as "Mr. and Mrs. 401K" beginning with his first public speech as SEC Chair before the Economic Club of New York (July

average retail investor -- to understand. The standard of care should be explained in plain language and terms like “fiduciary” and “best interest,” which are used in the three iterations of the relationship summary currently available, must be well-defined.

In addition, the relationship summary should be reformatted. The forms should be short, preferably with key information on no more than one page (a few supplemental pages with additional information may be helpful) in order to avoid information overload. The information disclosed should be written plainly and concisely, for the purpose of informing the investor, not simply to meet a legal standard. The fee structure should be straightforward and should avoid technical jargon. Finally, the forms should be shared with retail investors in a timely manner, prior to any decisions or actions that may be taken.

**a. Standards of Care must be clearly defined.**

The SEC’s hypothetical, four-page relationship summary forms are intended to explain and clarify whether retail investors are working with an investment adviser (IA), broker-dealer (BD), or dually registered representative. Unfortunately, we believe the intended clarity is lost in the forms as currently drafted.

For example, under “Obligations to You,” the relationship summary forms fail to distinguish between the broker’s new “best interest” standard and the investment adviser’s existing “fiduciary” obligation.<sup>10</sup> The duty of investment advisers is explained as, “We are held to a fiduciary standard that covers our entire investment advisory relationship with you.” Nowhere in the relationship summary is the technical term “fiduciary standard” defined. The broker-dealer obligation is illustrated as “We must act in your best interest and not place our interest ahead of yours when we recommend an investment strategy involving securities.” However, the practical definition and application of acting in the “best interest” is not articulated in the standalone relationship summary for broker-dealers.<sup>11</sup> This leaves many open questions – particularly, what is the meaning of best interest, and how does it differ from a fiduciary standard, if at all. Even an expert would struggle to understand the difference and a retail customer would surely be confused. Because of this lack of clarity, AARP is concerned that the relationship summary will further confuse investors, or worse, provide them with a false sense of security.

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12,2017) See <https://www.sec.gov/news/speech/remarks-economic-club-new-york>; see also <https://www.sec.gov/news/testimony/testimony-clayton-2017-09-26>.

<sup>10</sup> <https://www.sec.gov/rules/proposed/2018/34-83063-appendix-c.pdf>

<sup>11</sup> <https://www.sec.gov/news/statements/2018/annex-b-2-bd-registrant-mock-up.pdf>

Another example of where the relationship summary can be improved is on the dual registrant's disclosure. In that form, the relationship summary attempts to provide useful guidance on dual registrants, including tabular formatting that illustrates advisory and brokerage services side-by-side. However, although the visual formatting is helpful, the substantive information laid out within the table remains technical and is likely to be confusing to the average retail investor -- someone who does not have expertise in complex financial products. In addition, the relationship summary does not explain how and when these financial professionals must notify investors if they are switching hats. Such information is critical and should be included in order to assist the retail investor with understanding the potential fluidity of the relationship.

**b. The relationship summary should be reformatted to ensure accessibility to key information.**

Clear information is essential for making informed decisions, understanding how investments and financial relationships operate, and preparing for retirement. Based on our experience, the format of disclosure forms as well as the vocabulary used can have a significant impact on the comprehension of and value of the information being shared with retail customers. We encourage the SEC to strike a balance between sharing concise, non-technical information in as short a form as possible.

We believe that the current four page relationship is too long, technical, and therefore too onerous for the average investor and household to process. The text of the relationship summary should be simply written and should avoid technical terms like "fiduciary" and "asset-based fee" unless such complex terms are clearly defined. Behavioral science has shown that when faced with a complicated choice, people often simplify by focusing on only two or three aspects of the decision.<sup>12</sup> The less they are able to frame the decision in narrow terms, the more likely they will end up overwhelmed, undecided or procrastinating. As with other disclosure statements, it is best if key information can be included on one page – additional secondary information can be attached as supplemental information. A good disclosure statement will highlight the information most important to the consumer.

AARP commissioned a report in 2007 to determine the extent to which 401(k) participants were aware of fees associated with their accounts and whether they knew how much they actually were paying in fees. The report revealed participants' lack of knowledge about fees as well as their desire for a better understanding of fees. In response to these findings, the report suggested that information about plan fees be distributed regularly and in plain English, including a chart or graph that depicts the

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<sup>12</sup> Daniel Read et al., *Choice Bracketing*, 19 J. Risk & Uncertainty 171, 171–73 (1999).

effect that the total annual fees and expenses can have on a participant's account balance.<sup>13</sup>

A form that is perceived as easy to understand and helpful is more likely to be used to weigh the advantages and disadvantages of available options and to make informed decisions than one that is more confusing. Layout and design elements can be used to enhance understanding of key information in the relationship summary. Side by side comparisons can be helpful, but the information should be simplified and reduced to the key elements. For example, using bold type, underlining, bullets, and borders to highlight important information may enhance comprehension by drawing attention to it. In addition, while tables are a viable way to convey information, testing to ensure retail investors think the specific tables contained in the form are helpful would be beneficial.

**c. The delivery of the relationship summary should allow adequate time for review and questioning.**

Of particular importance to AARP is when the relationship summary will be delivered to the retail investor. When a retail investors fails to receive accurate and complete information regarding the financial professionals' potential conflicts then they are seriously disadvantaged and unable to make an informed decision about their financial security. Given the importance of these forms and potential actions by retail investors, the timing and method by which they receive this information is significant. Investors should have clear and reasonable opportunities to protect their interest and discuss conflicts that may place them at a disadvantage.

As currently drafted, retail investors would receive a relationship summary at the beginning of a relationship with a firm, and would receive updated information following a material change. AARP recommends that such information be made available upon the first interaction with a prospective retail investor with time allowed for review.

Furthermore, the relationship summary should also include information like the timing of when, and if, the financial professional has an obligation to notify the investor if a conflict arises.

**d. Disclosure alone is not enough. Evidence shows that disclosures can do more harm and may add confusion.**

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<sup>13</sup> The report is titled *401(k) Participants' Awareness and Understanding of Fees*, available at [http://www.aarp.org/research/financial/investing/401k\\_fees.html](http://www.aarp.org/research/financial/investing/401k_fees.html).

AARP agrees that all financial professionals should disclose and mitigate or eliminate material conflicts of interest. The Commission should require financial professionals to eliminate practices that directly conflict with the best interest standard appropriate for personalized advice such as bonuses, competitions, and rewards. A best interest standard that does not require firms to prohibit incentives that reward and encourage advice that is not in investors' best interests is likely to be a best interest standard in name only.

Recent behavioral science studies have shown that disclosures are largely ineffective because they tend to increase conflict in advisers and make the investor more likely to trust the adviser and thus follow biased advice.<sup>14</sup> Indeed, simply disclosing conflicts does not provide adequate protection and does not shield investors from potential financial harm of conflicted advice. Disclosure may even have unintended effects, such as making a consumer more confident that a financial professional is meeting a higher standard than he or she actually may be meeting. In fact, the less substantive protection there is in the Regulation Best Interest, the more critical the need for a strong relationship summary that discloses the critical components of the investor-financial professional relationship.

Furthermore, the relationship summary should include a duty on the financial professional's part to document key aspects of the client relationship. This should include precise capturing of what the client wanted, what the financial professional recommended and why. The financial professional should also be required to document not only if conflicts exist, but also how they will be mitigated or minimized, and when and how this conflict was disclosed to the retail investor. The financial professional should acknowledge his/her standard of care, agree to adhere to the standard of care, and document steps taken to comply with that standard. This acknowledgement should be disclosed and delivered in writing to the retail investor and with adequate time for the investor to review (and follow up with questions) prior to engagement.

**e. AARP urges the SEC to delay the comment deadline until 90 days after testing results are made public.**

A fundamental premise of the Commission's proposed regulatory approach is that a summary disclosure document can be developed that will enable investors to better

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<sup>14</sup> Sunita Sah, *Gray Matter: The Paradox of Disclosure*, NEW YORK TIMES, July 8, 2016, [https://www.nytimes.com/2016/07/10/opinion/sunday/the-paradox-of-disclosure.html?\\_r=0](https://www.nytimes.com/2016/07/10/opinion/sunday/the-paradox-of-disclosure.html?_r=0); Sunita Sah and George Loewenstein, *Nothing to Declare: Mandatory and Voluntary Disclosure Leads Advisors to Avoid Conflicts of Interest*, 25(2) PSYCHOL. SCI. 575–584 (2014); cf. Sunita Sah, Angela Fagerlin, and Peter Ubel, *Effect of physician disclosure of specialty bias on patient trust and treatment choice*, <http://www.pnas.org/content/113/27/7465.full.pdf>.

understand the differences between brokerage and advisory accounts, including the standards of conduct that apply, and make an informed choice among the available accounts and services. Until testing results are published, then we cannot properly evaluate the Commission's proposal. Reviewing the findings of the disclosure testing before the end of the comment deadline is particularly important given that past testing has shown how difficult it is to communicate simple concepts in a way that investors understand. If testing shows that the proposed relationship disclosures do not provide the intended clarity then that would have vast implications for the three part regulatory proposal. Furthermore, if multiple iterations of testing occur, AARP would want to review the findings of each version of the disclosure forms and provide feedback.

If the testing results demonstrate continued investor confusion, the Commission will need to take additional steps to distinguish brokers from advisers including but not limited to possibly making further changes to its proposed forms, developing tighter restrictions on titles and marketing practices, and further minimizing differences between the standards that apply to brokers and investment advisers.

Information gained through testing will prove important not only to our comments on specific aspects of the CRS, but on the fundamental adequacy of Regulation BI. Until we know whether an effective disclosure document can be developed, any comment on the overall proposed regulatory approach will necessarily be merely speculative.

## **II. Failure To Impose A Fiduciary Standard Undermines The Financial Security Of Americans Saving For Retirement.**

As consumers move closer to retirement, they may be more vulnerable to the negative impact of advice that is not in their best interests for three reasons: (1) the assets they have to invest are larger; (2) they may lack strong financial literacy skills;<sup>15</sup> and, (3) reduced cognition may affect financial decision-making.<sup>16</sup> In addition, the detrimental

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<sup>15</sup> Annamaria Lusardi, et al., *Financial Literacy and Financial Sophistication in the Older Population: Evidence from the 2008 HRS* (Sept. 2009), <http://www.mrrc.isr.umich.edu/publications/papers/pdf/wp216.pdf> ("In view of the fact that individuals are increasingly required to take on responsibility for their own retirement security, this lack of [financial] knowledge has serious implications."); see also Annamaria Lusardi & Olivia S. Mitchell, *Financial Literacy and Planning: Implications for Retirement Wellbeing*, Nat'l Bureau of Econ. Research Working Paper 17,078, at 6 (May 2011), <http://www.nber.org/papers/w17078.pdf> (one-third of survey respondents did not understand compound interest, one-quarter did not understand inflation implications and half did not know about risk diversification).

<sup>16</sup> E.g., Keith Jacks Gamble, et al., *How Does Aging Affect Financial Decision Making?* (Issue Brief No. 15-1), Ctr. for Retirement Research at Boston College, at 1, 6 (Jan. 2015), [http://crr.bc.edu/wp-content/uploads/2015/01/IB\\_15-1-508.pdf](http://crr.bc.edu/wp-content/uploads/2015/01/IB_15-1-508.pdf) (declining cognition begins to accelerate after age 60 and has a noticeable effect on financial literacy; "given the increasing dependence of retirees on 401(k)/IRA savings, cognitive decline will likely have an increasingly significant adverse effect on the well-being of the elderly."); see generally Tara Siegel Bernard, *As Cognition Slips Financial Skills Are Often the First to Go*, NEW YORK TIMES (Apr. 24, 2015), [Page 9 of 15](http://www.nytimes.com/2015/04/25/your-money/as-cognitivity-slips-</a></p></div><div data-bbox=)

effects of advice that is not in the investors' best interests may have the most negative potential impact on individuals with modest balances<sup>17</sup> as they have fewer economic resources -- any additional costs or losses diminish what little savings they have. For all these reasons, investors close to retirement are especially vulnerable as they make significant and often one-time decisions such as moving retirement savings out of more protected employer-based plans.

Increasingly, the way that most Americans save and invest is through their employer sponsored retirement plans, most typically a 401(k) type savings plan. The Government Accountability Office (GAO) 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 percent reduction in the account balance, a loss of over \$10,000.<sup>18</sup> We estimate that 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. Conflicted advice resulting in higher fees and expenses can have a huge impact on retirement income security levels.

Lower and middle-income retirement investors need every penny of their retirement savings. "Among the 48 percent of households age 55 and older with some retirement savings, the median amount is approximately \$109,000 — commensurate to an inflation-protected annuity of \$405 per month at current rates for a 65- year-old."<sup>19</sup> DOL likewise reported that "small investors" (that is, those with low balances or those with modest means) are most negatively impacted by the detrimental effects of conflicted advice. Those with small accounts have fewer economic resources, and consequently any additional costs or losses diminish what little savings they have worked so hard to amass.

### **III. Despite its best effort, the Proposed Regulation Best Interest undercuts retail investors' ability to distinguish between the standards of care applicable to financial professionals.**

Both broker-dealers and investment advisers play an important role in helping Americans manage their financial lives, and accumulate and manage retirement savings. Retail investors receiving investment advice should receive a consistent standard of care that is solely in their best interest, regardless of whether the advice comes from a broker-dealer or an investment adviser. In 2011, AARP supported the SEC staff recommendation in its Section 913 Study to adopt parallel rules under the Advisers Act and the Securities Exchange Act of 1934 establishing an over-arching fiduciary duty that is identical for brokers and advisers, but only if, as the Dodd-Frank

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financial-skills-are-often-the-first-to-go.html?\_r=0 ("A person's financial decision-making ability peaks at age 53, or more generally, in their 50s").

<sup>17</sup> See n. 1, *supra*.

<sup>18</sup> U.S. Gov. Accountability Office, *GAO-07-21, Private Pensions: Changes Needed to Provide 401(k) Plan Participants and the Department of Labor Better Information on Fees* 7 (Nov. 2006).

<sup>19</sup> U.S. Gov't. Accountability Office, *GAO-15-419, Retirement Security: Most Households Approaching Retirement Have Low Savings* 11 (May 2015), <http://www.gao.gov/assets/680/670153.pdf>.

Act mandates, it is no less stringent than the existing standard under the Advisers Act. We believe that such an approach, if properly implemented, could both enhance investor protections and preserve key beneficial elements of the transaction-based broker-dealer business model.

AARP appreciates that the SEC's proposal under discussion today seeks to impose a higher standard than the existing suitability standard on broker-dealers. AARP has long supported advice in the best interest of individuals saving or investing. To that end, AARP was very supportive of the DOL's fiduciary rule, which required that retirement investment advice be in the best interest of the client saving for retirement -- that means advice that minimizes conflicts of interest, is solely in the interest of the client, and which is provided with the care, skill, prudence and diligence that a prudent person would use. Unfortunately, in its current form, the Commission's proposed Regulation Best interest does not impose a fiduciary standard and further fails to define the contours of the "best interest" standard. Absent a full fiduciary standard, investors will continue to be vulnerable and will not receive the protections they need and deserve. AARP has long stated that a suitability standard does not protect investors from the potentially detrimental impact of conflicted advice. AARP recommends that the Commission amend its proposal and adopt the state trust definition of best interest (which the Employee Retirement Income Security Act (ERISA) also adopted). Such a definition is of long-duration and understandable to industry stakeholders and consumers. A financial professional would have to make recommendations both "solely in the interest" of the consumer and with the "care, skill, prudence, and diligence that a prudent person acting in a like capacity and familiar with such matters would use." Quite simply, it is not enough for the financial professional to solely rely on their own opinion. The professional must assess what a prudent expert would recommend and document their decision-making process.

**a. The proposal leaves investors confused and at risk.**

AARP commends the Commissions' effort to restrict the use of the terms "adviser" and "advisor" by a broker-dealer in its proposed relationship summary. The regulatory imbalance between the duties of brokers and investment advisers has persisted for many years, even as evidence demonstrating that brokers have transformed themselves from salesmen into advisers has grown. Many brokers today call themselves "financial advisers," offer services that clearly are advisory in nature, and market themselves based on the advice offered. For example, one firm advertises that it "proudly strive[s] to embrace [its] own fiduciary responsibilities" and that its "highest value is to 'always put the client first,'"<sup>20</sup> even though its Form ADV brochure (a regulatory filing that the SEC requires to be given to clients after a transaction is completed) demonstrates otherwise, noting that "[d]oing business with our affiliates could involve conflicts of interest if, for example, we were to use affiliated products and

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<sup>20</sup> Letter from Robert Reynolds, President and CEO of Putnam Investments, to U.S. Dep't of Labor (July 20, 2015), *available at* <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-ZA25/00077.pdf>.

services when those products and services may not be in our clients' best interests."<sup>21</sup> As a result of such marketing and misleading statements, the average investor cannot distinguish between brokers and advisers and does not recognize that their "financial adviser" operates under a lower legal standard than that to which an investment adviser is held. Nor is it surprising that investors expect that those who advertise themselves as a trusted adviser will provide financial advice in the best interest of the investor.

Federal regulations have not kept pace with changes in business practice, and broker-dealers and investment advisers continue to be subject to different legal standards when they offer advisory services. According to the Commission's 2011 Study on Investment Advisers and Broker-Dealers, as of the end of 2009, FINRA-registered broker-dealers held over 109 million retail and institutional accounts and approximately 18 percent of FINRA-registered broker-dealers also are registered as investment advisers with the Commission or a state.<sup>22</sup>

Consumers and regulators face a fundamental problem – there are tens of thousands of financial products, many of which contain complex rules, requirements, and fees. Regulators face the enormous challenge of ensuring that these products are fairly structured and sold, and that consumers understand all of the key terms and conditions of these products. Where there are different standards of conduct dependent merely upon which investment and for what purpose the investment will be used, the result can be not only continued investor confusion and reduced personal savings but also an unfair system which only the most sophisticated investors can navigate.

Ensuring all securities professionals who offer investment advice to retail investors are subject to a fiduciary standard is needed to ensure a level and transparent market for investors seeking advice. Investors deserve a regulatory system that is designed to promote the best interests of the investor and imposes comparable standards on investment professionals who are performing essentially the same function as financial advisers. Research has found that investors typically rely on the recommendations they receive from brokers and investment advisers alike. The trust most investors place in financial professionals is encouraged by industry marketing, leaving investors vulnerable not only to fraud but also to those who would take advantage of that trust in order to profit at their expense. Investors who place their trust in salespeople who market services as acting in their best interest can end up paying excessively high costs for higher risk or underperforming investments that only satisfy a suitability standard, but not a fiduciary standard. That is money most middle-income investors cannot afford to lose; every penny counts.<sup>23</sup>

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<sup>21</sup> Putnam Advisory Company, LLC, SEC Form ADV Part 2A at 25 (Mar. 30, 2016), *available at* [http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd\\_iapd\\_Brochure.aspx?BRCHR\\_VRSN\\_ID=375046](http://www.adviserinfo.sec.gov/IAPD/Content/Common/crd_iapd_Brochure.aspx?BRCHR_VRSN_ID=375046). (Putnam Investments wholly owns Putnam Advisory Company through various subsidiaries.)

<sup>22</sup> S.E.C., *Study on Investment Advisers and Broker-Dealers* (Jan. 11, 2011).

<sup>23</sup> See Craig Copeland, *2015 Update of the EBRI IRA Database: IRA Balances, Contributions, Rollovers, Withdrawals, and Asset Allocation*, EBRI ISSUE BRIEF NO. 437, at Figures 2, 4, 6, 19 (Sept. 2017), [https://www.ebri.org/pdf/briefspdf/EBRI\\_IB\\_437\\_IRAs.12Sept17.pdf](https://www.ebri.org/pdf/briefspdf/EBRI_IB_437_IRAs.12Sept17.pdf) (finding that the average IRA account balance in 2015 was \$99,017, but 45% of those owning IRAs had less than \$25,000 in their accounts at year-end 2015; accounts were largest closest to retirement age); Alicia H. Munnell & Anqi Chen,

These are not theoretical issues and the risk includes direct harm to the retirement savings of retail investors. For example, retiree Janice Winston testified at a Senate briefing on the importance of unconflicted advice. In her testimony she shared, “I thought that anyone I paid to advise me would be guided only by my best interests. This is important, because I really have no good way to evaluate whether my investments are performing well or whether I am paying too much in fees. Imagine my surprise when I learned that my investment adviser was not necessarily required to act in my best interest.”<sup>24</sup>

In addition, AARP recently spoke with Anna Duressa Pujat, a retired university librarian who contributed to her employer provided retirement account for 20 years before retiring.<sup>25</sup> When Anna retired, she rolled her savings into a ROTH IRA and was ultimately deceived twice by unscrupulous advisers. Anna states, “I want people to know that investors often don’t know what is happening with their accounts until something goes wrong... even with the information at one’s disposal, it can be hard to fully comprehend.” Anna and her husband shared that outside of their home, her retirement accounts were their greatest financial assets and they depend on this money for their basic needs and financial security. After suffering the financial losses from exorbitant service fees and inappropriate and risky investments with her retirement funds from previous advisers, Anna recently shared, “Having the fiduciary rule would give me confidence that I am receiving the financial guidance I know I need.”

**b. The duties of brokers must be clearly defined.**

The current SEC proposal does not define what is definitively a best interest standard. Instead the question of whether a broker acted in the best interest of its retail investor is left to be determined by consideration of the facts and circumstances surrounding the recommendation. However, AARP’s research indicates that investors do not understand the different legal standards that apply to different types of financial professionals. Investors expect that financial professionals are required to act in the investor’s best interest. Further, older Americans may not be able to tell you the precise legal definition of fiduciary but they have clear views on what they expect from financial professionals.

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*401(k)/IRA Holdings in 2016: An Update from the SCF* (Issue Brief No. 17-18), Ctr. for Retirement Research at Boston College (Oct. 2017), <http://crr.bc.edu/briefs/401k-ira-holdings-in-2016-an-update-from-the-scf/> (households approaching retirement had approximately \$135,000 in 401(k) and IRA assets which provides only \$600 per month in retirement).

<sup>24</sup> Pension Rights Center, Retiree Janice Winston speaks out in support of strong fiduciary regulations (September 13, 2013), <http://www.pensionrights.org/newsroom/speeches-statements/retiree-janice-winston-speaks-out-support-strong-fiduciary-regulation-0>

<sup>25</sup> See Declaration of Anna Duressa Pujat, attached to AARP’s Motion to Intervene in Chamber of Commerce v. U.S. Dep’t of Labor, Case No. 17-10238 (5th Cir. filed Apr. 26, 2018).

In six state specific opinion polls conducted by AARP, AARP asked residents age 50 plus questions related to the various investor and consumer reforms.<sup>26</sup> Respondents overwhelmingly favored requiring financial professionals to put the consumer's interest ahead of their own when making recommendations. In addition to a fiduciary duty of care, respondents favored upfront disclosure of fees, commissions, and potential conflicts that could bias advice. The level of support for this commonsense reform ranged from a low of 88 percent (Arkansas) to a high of 95 percent (Indiana).<sup>27</sup> Moreover, not only do investors believe that investment advice should be provided in their best interests, but the financial services industry generally agrees. See, e.g., SIFMA Comment Letter 506 to Department of Labor (DOL) ("The industry ... shares that goal" "to ensure financial services providers are looking out for their customer's best interest").<sup>28</sup> For decades, registered investment advisors and certified financial planners have successfully and profitably provided fiduciary advice. Expanding that model to the broker-dealer space would provide consistency across the regulatory landscape as well as much need consumer protection.

#### **IV. The financial services industry agrees that a fiduciary standard is the appropriate standard for providing retirement investment advice.**

The financial services industry repeatedly states that investment advice should be provided in the best interests of the participant and retirement investor. Registered investment advisers and certified financial planners have for decades successfully provided fiduciary advice. Noting that the public demand for fiduciary advice has increased dramatically and that the market continues to move in the direction of providing fiduciary advice, earlier this year the Certified Financial Planner (CFP) Board of Standards approved revisions to its *Standards of Professional Conduct*, which sets forth the ethical standards for CFP® professionals. The revision broadens the application of the fiduciary standard, effectively requiring CFP® professionals to put a client's interest first at all times.

There should be no surprise about this consensus since these statutory standards have been in place since ERISA was enacted in 1974. Indeed, treating those who provide investment advice for a fee as a fiduciary is consistent with both the statute and the common law of trusts upon which ERISA was based. Significantly, although there have been attempts to weaken the rule requiring those who provide investment advice for a fee to be treated as a fiduciary, Congress has never agreed to dilute the standard adopted over 40 years ago to protect and preserve employees' hard-earned retirement savings.

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<sup>26</sup> To view the state-specific surveys go to [http://www.aarp.org/money/scams-fraud/info-04-2010/finprotect\\_states.html](http://www.aarp.org/money/scams-fraud/info-04-2010/finprotect_states.html).

<sup>27</sup> *Id.*

<sup>28</sup> <https://www.dol.gov/sites/default/files/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB32-2/00506.pdf>.

## **V. Conclusion**

We thank the Commission for the opportunity today to share AARP's views on your proposed rule and required disclosures. AARP remains committed to the strongest possible fiduciary standard for investment advice. For disclosure to be truly effective, it must reflect an underlying clear and strong rule that protects the best interest of investors. AARP stands ready to serve as a resource and partner in developing an effective standard for investment advice that will promote and protect the financial and retirement security of American families.