



October 27, 2008

Office of Regulation and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210

Re: Hearing on Class Exemption and Proposed Regulation
for the Provision of Investment Advice

Dear Mr. Leibowitz:

During my testimony at the hearing on the Class Exemption and Proposed Regulation for the provision of investment advice, you asked me what AARP's position was on ICI's contention that the Department of Labor did not need additional remedies to deal with an adviser's "pattern or practice" of noncompliance. I stated that I was not familiar with ICI's comments, but from your description, AARP would not agree them.

After further reviewing ICI's comments as well as Part V of the Class Exemption, I can emphatically state that AARP would not agree with ICI's comments. If a fiduciary adviser is violating the Exemption through use of a pattern or practice of noncompliance, the Department of Labor should use the strongest remedies available to punish the advisers, including withdrawing the Exemption for all transactions.

Of course, under the current jurisprudence, the participants will be left with losses which they most likely cannot remedy. What this vividly points out, once again, is the necessity that any investment advice be independent and not conflicted.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Certner', is written over a light blue horizontal line.

David Certner
Legislative Counsel and Legislative Policy Director
Government Relations and Advocacy

cc: Bradley Campbell, Assistant Secretary, Employee Benefits Security
Administration
Robert Doyle, Director, Office of Regulations and Interpretations
Joseph Piacentini, Chief Economist and Director of the Office of Policy
and Research
William Taylor, Regulation Counsel, Plan Benefits Security Division
Fred Wong, Senior Pension Law Specialist