AARP
Real Possibilities

October 31, 2018

The Honorable Jay Clayton
Chairman
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549

RE: RIN 3235-AM28
File No. S7-12-18
Request for Comment on Fund Retail Investor Experience and Disclosure

Dear Chairman Clayton:

On behalf of our 38 million members and all Americans saving for retirement, AARP[1] writes today in response to the Security and Exchange Commission's (Commission) request for comment on Fund Retail Investor Experience and Disclosure. We welcome the chance to be a part of this process and intend to play an active role in educating and engaging all Americans to help them make informed investment decisions that will impact their financial security.

A 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 directly impact the adequacy of the assets available to fund their 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, in mid-career, have retirement savings. The rest have little to no sources of retirement income other than Social Security [2] and the "retirement income deficit" for American households continues to grow. Recent analysis by the Employee Benefit Research Institute (EBRI) showed that 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.[3] Given these trends, it is critical to do all we can to help Americans keep as much of their hard-earned savings as possible. AARP has historically supported the development of rules and regulations that protect retail investors when they make investment decisions concerning their retirement monies. We believe that

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[1] AARP, with its nearly 38 million members in all 50 States, the District of Columbia, and the U.S. territories, is a nonpartisan, nonprofit, nationwide organization that helps empower people to choose how they live as they age, strengthens communities, and fights for the issues that matter most to families, such as healthcare, employment and income security, retirement planning, affordable utilities and protection from financial abuse.
[2] Federal Reserve Bulletin (Sept. 2017), https://www.federalreserve.gov/publications/files/scf17.pdf.
[3] 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. This figure refers to the total value of their household's savings and investments, excluding the value of their primary home.

without such protections, it is difficult for individuals to effectively plan for a secure and adequate retirement.

I. FUND DISCLOSURES SHOULD FACILITATE INFORMED DECISION-MAKING.

AARP commends the Commission's effort to improve the fund disclosure system to reflect the way retail investors currently seek, receive, view, and digest information. Historically, federal regulations have not kept pace with changes in the financial sector's business practices. Consumers and regulators face tens of thousands of financial products, many of which contain complex rules, requirements, and fees. Furthermore, regulators face the enormous challenge of ensuring that these products are fairly structured and sold, and that consumers understand the terms and conditions of these products. Currently only the most sophisticated investors can navigate our financial system and the resulting investor confusion poses tremendous risk to their financial security. For the most part, current fund disclosures are not understandable to the average retail investor and more can and should be done to assist Americans so that they can be better equipped to compare investment choices and products.

a. Information should be clearly written to enhance readability and comprehension.

Retail investors should be empowered to make informed decisions -- they should understand their options and what they are selecting, especially when their hard-earned savings are on the line. AARP encourages the Commission to amend, reformat, and test its prospectuses and other required fund disclosures to make them more user-friendly and ultimately more valuable resources for retail investors. The format should be concise and written in plain language, with key data points emphasized in a standardized format. The enclosed information must be carefully organized and presented in order to optimize comprehension. The behavioral economist, Shlomo Benartzi, recently noted that "[P]eople make decisions based upon the immediately available information – what we see at first glance—and forget that there might be more relevant information that isn't visible."[4] An error that Noble Laureate Daniel Kahneman refers to as the "what you see is all there is."[5] We encourage the Commission to strike a balance between sharing brief, well-organized, non-technical information in as short a form as possible. Based on our experience, the format of disclosure forms, as well as the terminology used, can have a substantial impact on comprehension.

The Commission should examine the impact on consumer understanding of its previous rulings including the 2009[6] rewrite of the summary prospectus, which required a standardized format, amended information disclosed, and shifted placement of fee information. The Department of Labor's (DOL) related fee disclosure[7] requirements may provide further insight.

[4] Shlomo Benartzi, *The High Financial Price of Our Short Attention Spans*, WSJ (Oct. 21, 2018), https://www.wsj.com/articles/the-high-financial-price-of-our-short-attention-spans-1540174321.
[5] *Id*.
[6] SEC, Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-end Management Investment Companies, 17 CFR Parts 230, 232, 239, and 274, (Mar. 31, 2009), https://www.sec.gov/rules/final/2009/33-8998.pdf.
[7] 408(b) US Department of Labor, https://www.dol.gov/.../final-regulation-service-provider-disclosures-under-408b2.pdf.

While the DOL required standardized investment performance and fees disclosures, it separated the display of the information making holistic comparisons difficult for retail investors.

Often financial documents and disclosures are too long, technical, and onerous for the average retail investor to process. AARP recommends that the text in fund disclosures be simply written and avoid technical terms unless such complex terms are clearly defined. The disclosure should be written for the purpose of informing the retail investor, not simply to meet a legal standard. 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.[8] The less they are able to frame the decision in narrow terms, the more likely they will end up overwhelmed, undecided, or procrastinating.

The Commission should require the disclosure of detailed information regarding the total dollar amount of fees and commissions that will be paid for investing in a particular product in a clear, standardized format so investors can compare the fees, commissions, and rates of return among various investment products. As with other disclosure statements, it is best if key information (like fees) can be included on one page -- including actual dollar amounts and not just percentages. Additional secondary data can be attached as supplemental material. A good disclosure statement will highlight the data most important to the consumer. Numerous surveys have shown that consumers need and want complete disclosures concerning their investment options.[9] These disclosures can be both complete and concise in order to avoid information overload. The fee structure should be straightforward and avoid technical jargon such as “front-end load” or “12b-1 fees”. All fees should be presented in a single location and should show the total fees. Any additional or variable fees should also be highlighted, with links to full explanations, so consumers can be fully informed of all potential charges against their assets or earnings.

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 effect that the total annual fees and expenses can have on a participant’s account balance.[10]

Layout and design elements can be used to enhance understanding. Side by side comparisons may be helpful but the material should be simplified and reduced to the main elements. For example, using bold type, underlining, bullets, and borders to highlight significant data may enhance comprehension by drawing attention to it. A form that is perceived as easy to

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[8] Daniel Read et al., *Choice Bracketing*, 19 J. Risk & Uncertainty 171, 171–73 (1999).
[9] 401(k) Participants’ Awareness & Understanding of Fees, (Feb. 2011), https://assets.aarp.org/rgcenter/econ/401k-fees-awareness-11.pdf
[10] *Id*.

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. The Commission has previously used some of these concepts to require standardized formatting and use of terminology, as well as providing model language and documents.

b. Paper disclosure should be the default delivery method.

AARP urges the Commission to require funds to deliver a paper copy of their prospectuses or summary prospectuses unless the retail investor has affirmatively chosen to receive these documents electronically. Retail investors need access to this information in order to optimize their decision-making. Retail investors should always timely receive key information about their funds and benefits, including annual summaries of earned benefits, summary of plan terms and conditions, notice of changes, and explanation of fees in the form they want. Industry studies have found that individuals understand and retain financial information better on paper than in electronic form.[11] Developing research has also found that electronic delivery encourages individuals to make immediate decisions that often are not in their financial interest.[12] The Commission should review the effects that its recent regulatory mandates related to electronic communication have had on consumer receipt and understanding of required financial information. Whatever future actions the Commission takes to enhance fund disclosures must be centrally focused on improving retail investors' ability to make investment decisions more efficiently rather than simply reducing issuer compliance costs.

In 2012, AARP commissioned a national survey of over 1000 retirement plan participants and found an overwhelming preference for receiving retirement documents in paper format rather than in electronic, with 66 percent of respondents ages 25 - 49 and 84 percent of those 50 plus preferring paper document delivery. Similarly, Epsilon's 2012 Channel Preferences Survey found that paper mail was the top delivery choice and 73 percent of respondents stated that they do not open all emails.

In addition, millions of individuals simply do not use computers or do not have reliable broadband access. As of 2017, the Pew Research Center found that a third of individuals age 65 and older do not use the internet, only half have broadband at home, and only approximately 40 percent own a smartphone. Among all adults, a third do not have high-speed internet at home and 13 percent only own a smartphone. Disadvantaged populations have even less access -- approximately only half of rural Americans, African Americans, and Americans with a high school degree or less have broadband internet at home.

With such discrepancies in access, it is crucial that important material be distributed in paper form and that electronic disclosure not become the default method of delivery. AARP supports default paper delivery of disclosures and supports the availability of electronic disclosures when a participant chooses to opt into it. Default paper delivery with an option to receive electronic

[11] TIAA Institute, Financial Communications and Asset Allocation Decisions: The Effects of Reading Style, Financial Knowledge, and Individual Differences (June 2017).
[12] TIAA Institute, Millennial Financial Literacy and Fin-tech Use: Who Knows What in the Digital Era (Sept. 2018).

disclosures is consistent with consumer preferences, internet and broadband availability, and cognitive research.

c. Retail investors should be provided adequate time to carefully examine and question the material disclosed.

Of particular importance to AARP is when the fund disclosures are delivered to the retail investor – consumers should be able to easily and reliably obtain timely information in advance of any investment decision. When a retail investors fails to receive accurate and complete material regarding their accounts, or prospective accounts, then they are seriously disadvantaged and unable to make informed decisions 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 is significant. Investors should have clear and reasonable opportunities to review and discuss the fund disclosures with their financial advisor or portfolio manager. Information such as investment objectives, fees and expenses, strategies, risks, and performance are essential components that should be communicated to retail investors in advance of investing or purchasing fund shares. If documents are delivered electronically, it is essential that access to the documents remain available -- sometimes indefinitely -- since retail investors may need to reference them at a later date. The Commission should reexamine its document retention requirements to ensure that consumers will retain full access to all needed disclosures and materials.

II. CONCLUSION

AARP appreciates the opportunity to share its views on these regulations, and we commend the Commission for its commitment to improving investor protections by enhancing disclosure requirements. We look forward to working with you and your colleagues to ensure the Commission can develop meaningful improvements to fund disclosures. If you have any questions, please feel free to contact me or Jasmine Vasquez of our Government Affairs office [redacted] or at [redacted]

Sincerely,

David Certner
Legislative Counsel and Legislative Policy Director

cc: Commissioner Kara M. Stein
Commissioner Robert J. Jackson, Jr.
Commissioner Hester M. Peirce