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CHAIRMAN, SENATE STEERING COMMITTEE

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# United States Senate

September 20, 2012

COMMITTEES:

SENATE RANKING MEMBER, JOINT ECONOMIC

COMMERCE, SCIENCE, AND TRANSPORTATION

BANKING, HOUSING, AND URBAN AFFAIRS

FOREIGN RELATIONS

Mr. Thomas C. Nelson  
Chief Operating Officer  
AARP  
601 E Street NW  
Washington, DC 20049

Dear Mr. Nelson:

Today my office is releasing a report, "Profits Before Principles," regarding your organization's practices in selling health insurance. The report finds that AARP has a strong financial interest in keeping Medigap supplemental insurance premiums high – because you receive greater profits the more seniors pay in premiums. I am greatly concerned by these questionable business practices, and by the numerous exemptions granted to Medigap insurance in the Patient Protection and Affordable Care Act (PPACA). Therefore, I ask you to respond to the following questions:

1. As you know, members of the House Ways and Means Committee wrote to the Internal Revenue Service in December 2011 requesting an investigation into AARP's royalty fee relationships with several businesses. Has AARP been contacted by the IRS regarding this investigation? If so, what is the status of those discussions?
2. A Ways and Means Committee member report issued in March 2011 found that AARP receives 4.95% of every Medigap premium dollar paid by seniors. Does this not serve as an inherent conflict of interest for AARP – because your organization benefits financially the more premiums rise?
3. What specific protections has AARP put in place to ensure that senior citizens considering Medigap insurance are not sold policies they may not need or want, just so AARP can receive additional "royalty fee" revenue?
4. As you may be aware, the National Association of Insurance Commissioners (NAIC) has previously expressed concern about the potential for conflicts-of-interest associated with percentage-based compensation arrangements. Section 18 of NAIC's Producer Model Licensing Act recommends that states require explicit disclosure by insurer affiliates, and clear written acknowledgement by consumers, of any percentage-based compensation arrangement, due to the potential for financial abuses. Please outline the steps AARP has taken to ensure that your Medigap percentage-based compensation model is in full compliance with the letter and spirit of Section 18 of the Producer Model Licensing Act.

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5. Since January 2008, has AARP's percentage-based compensation model for Medigap been subject to any complaints by consumers that have been investigated by state insurance commissioners? If yes, please provide details as to the state(s), the circumstances of the investigation(s), the findings of the investigation(s), and any remedial actions taken by your organization, if applicable.
6. The 2011 House Ways and Means Committee report found that PPACA could lead to more than \$1 billion in new "royalty fee" revenue for your organization, because the law's cuts to Medicare Advantage will reduce enrollment in that program, and encourage seniors to purchase supplemental Medigap insurance instead. Do you agree with the report's premise that PPACA will lead seniors to migrate from Medicare Advantage coverage to Medigap plans – thereby increasing AARP's "royalty fee" revenues? If not, on what basis do you disagree with the non-partisan experts at the Congressional Budget Office and the Medicare Office of the Actuary, who have concluded the law will reduce Medicare Advantage enrollment by millions?
7. You have previously claimed that AARP's policy positions are not influenced by royalties or other financial considerations. However, documents released by the House Energy and Commerce Committee found that AARP members overwhelmingly opposed Democrats' health care legislation. In three days in July 2009, a total of 7,861 members called to oppose the Democrat bills, with only 136 members in favor. And on a single day in July 2009, 1,897 individuals cancelled their membership in AARP to protest its position on the legislation. Does AARP take its own members' positions into account when formulating its policy agenda – and if so, why did it endorse PPACA at all, given the responses cited above?
8. According to the documents released by the House Energy and Commerce Committee, then-AARP executive John Rother, in responding to a request by the White House for AARP executives to appear at a roundtable, said in a November 6, 2009 e-mail that "our polling shows we are more influential when we are seen as independent, so we want to reinforce that positioning....The larger issue is how best to serve the cause." How does this e-mail to the White House about being "seen as independent" while serving the Obama Administration's "cause" comport with claims that your organization serves no one but its members?
9. Various Medigap reforms proposed by the Simpson-Bowles commission, the Rivlin-Domenici commission, and others have endorsed limitations on first-dollar cost-sharing of supplemental insurance. Because these reforms would all lower Medigap insurance premiums, they would also by definition harm AARP financially by reducing its "royalty fee" income, would they not?
10. According to a July 2011 Kaiser Family Foundation report, Medigap reform could benefit nearly four out of five seniors, with seniors saving an average of \$415 annually. Given this potential for significant savings to America's seniors, why does AARP oppose Medigap reform?

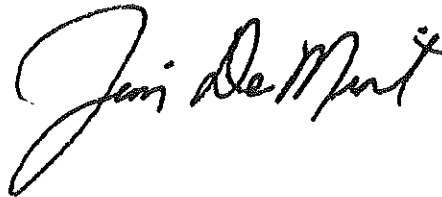
11. Is your organization aware that, according to the July 2011 Kaiser Family Foundation report, AARP could lose an estimated \$1.8 billion in “royalty fee” income over the next decade if reform lowers Medigap premiums substantially?
12. Why did your organization not publicly release the portions of its October 19, 2011 letter to the deficit reduction “supercommittee,” in which it advocated against changes to Medigap insurance? If AARP has no financial conflict-of-interest regarding between its Medigap business and its policy positions on Medigap reform, why did AARP hide its position from its members?
13. As you know, the text of PPACA exempts Medigap supplemental insurance plans from several new requirements: Section 1103 exempts plans from medical-loss ratio requirements; Section 1202(2)(A) exempts plans from the prohibition on pre-existing condition exclusions; Section 9014 exempts plans from caps on industry executive compensation; and Section 10905(d) exempts plans from the tax applied to all other health insurers. Does AARP support any of these exemptions?
14. At a December 2009 House Energy and Commerce Health Subcommittee hearing, why did AARP’s then-Board Chair not know that Medigap insurance was exempted from numerous regulatory requirements in precursor legislation to PPACA (H.R. 3962) that AARP had previously endorsed?
15. House Democrats’ June 2009 health care reform discussion draft – one of the initial legislative proposals that eventually led to PPACA – included provisions in Section 1234 that would have ended health status discrimination for all Medigap applicants. Did AARP endorse this particular provision at the time, consistent with its call to end health status discrimination as part of health reform? If so, please provide contemporaneous documentary materials showing AARP’s endorsement, and the lobbying efforts your organization took to secure its enactment. If not, please explain why this silence is consistent with AARP’s stated position that its Medigap business has no effect on its policy positions.
16. A March 2011 Washington Post article quoted a House Democratic congressional aide as saying the provision ending health status discrimination in Medigap “was dropped from the legislation...because it would have increased Medicare costs.” Yet the Congressional Budget Office estimated that the provision would have cost only about \$400 million per year – far less than the \$700 million AARP made in royalty fees last year, or even the \$458 million in royalties received just from United Health Group. If AARP “would gladly forego every dime of revenue to fix the health care system,” as you claimed in a November 2009 letter to Rep. Dave Reichert, why did AARP not offer to forego its insurance profits in order to end health status discrimination – your organization’s supposed top priority – in the Medigap marketplace?

17. According to its Lobbying Disclosure Act filings, AARP has lobbied against Medigap reform proposals since the fourth quarter of 2011. Yet AARP's LDA filings also indicate that your organization did NOT lobby on Medigap at all during 2009 and 2010. Why did AARP not lobby to end health status discrimination – your organization's supposed top priority – for Medigap plans while PPACA was being considered? Conversely, why did AARP start lobbying on Medigap issues at a time when Congress was debating reforms that could cost AARP billions in Medigap "royalty fees?"
18. In January 2010, David Certner of AARP claimed in an on-camera interview with CNN that Medigap was "not even an issue we have lobbied on at all." Why not? If the benefits of banning pre-existing condition exclusions and other insurance reforms were as strong as AARP claims, then why did your organization not fight for them to be extended to Medigap plans as well? Why did AARP sell its members short?
19. Please outline (e.g., names, dates, places, topics of discussion, etc.) any and all contacts with Congressional or Administration staff since January 1, 2008 regarding Medigap supplemental insurance, including but not limited to the exemptions provided to Medigap insurance in PPACA, and Medigap reforms discussed by the Congressional "supercommittee" on deficit reduction. Please also forward copies of any and all documents pertaining to these contacts, as well as any other documents related to the development of AARP's policy positions on Medigap insurance.
20. Since PPACA's enactment on March 22, 2010, how many applicants for AARP-sponsored Medigap coverage had their application denied?
21. Since PPACA's enactment on March 22, 2010, how many applicants for AARP-sponsored Medigap coverage were subjected to a waiting period for some or all of their coverage (i.e., coverage of a pre-existing condition)? Please indicate both the number of individuals subjected to a waiting period, and the average length of that waiting period.
22. In June 2010, your organization submitted comments on HHS' new web portal indicating that insurance companies "should be required" to disclose information on "benefits, exclusions, and limitations," and "indicate prominently that plans may charge individuals higher premiums based on their age, gender, or health status." Given this position, how does AARP publicize its own policy of imposing waiting periods and rating increases based on age and health status for the insurance products it sells? For instance, do television advertisements for AARP-sponsored Medigap plans "indicate prominently" that vulnerable seniors with pre-existing conditions could be subject to waiting periods until their coverage becomes effective?
23. Are AARP members aware that AARP currently imposes waiting periods on Medigap applicants with pre-existing conditions? Are these facts included in AARP's "You've Earned a Say" campaign materials? Why or why not?

24. Do AARP's "You've Earned a Say" campaign materials include reference to the Kaiser Family Foundation analysis stating that nearly four in five Medigap plan holders could benefit financially from reform to supplemental insurance? Why or why not?
25. Are AARP members aware that your organization's contractual arrangements mean that AARP has a strong financial incentive to keep Medigap premiums high – because AARP receives more revenue when seniors pay more in premiums? Has this indisputable fact been included in AARP's "You've Earned a Say" campaign materials? If not, why not?

Consistent with your organization's message of transparency, I look forward to receiving AARP's response on these issues within two weeks. If you have any questions, feel free to contact Alec Aramanda or Chris Jacobs of my staff at (202) 224-6121. Thank you for your time, and I look forward to your reply.

Sincerely,

A handwritten signature in black ink that reads "Jani DeMont". The signature is written in a cursive style with a large, looping initial "J".