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April 9, 2019

The Honorable Patty Murray
Ranking Member
U.S. Senate Committee on Health, Education, Labor, and Pensions
648 Hart Senate Office Building
Washington, DC 20510

Dear Senator Murray:

On behalf of our nearly 38 million members nationwide and all Americans age 50 and older, AARP is writing to express our support for several provisions of the BE HEARD Act that will strengthen protections for older workers against age-based harassment and other forms of age discrimination. AARP commends you for introducing these long-needed reforms to the Age Discrimination in Employment Act (ADEA).

Studies find that older workers are creative, connected, and experienced; they bring higher levels of engagement to their work, which contributes directly to their productivity and their employers' bottom lines. Yet, outdated stereotypes and age discrimination in the workplace remain a pervasive problem. AARP's national survey in 2018 found that more than 60% of all workers ages 45 and older had seen or experienced age discrimination on the job. An Urban Institute study found that more than half of older workers are involuntarily pushed out of longtime jobs; 90% of these prematurely sidelined workers never go on to earn as much as their prior jobs.

The BE HEARD Act would help address age discrimination in several ways. First, it would more meaningfully address age-based harassment on the job. About one-quarter of older workers report having been subjected to negative comments about their age, from either a boss or a coworker. Your legislation would codify a prohibition on harassment under the ADEA and make it unlawful if it unreasonably alters the worker's terms and conditions of employment.

Second, BE HEARD would create legal parity in remedies for age discrimination with all other forms of employment discrimination under the civil rights laws. The ADEA's lack of compensatory or punitive damages, even for economic injuries, means that the law fails to make victims of proven age discrimination whole, and workers' rights often don't get

vindicated. BE HEARD would not only address the current loophole in the law that renders the prohibition on age harassment a right without a remedy, it would more broadly address the ADEA's inadequate remedial structure for other violations as well.

Finally, the BE HEARD Act would clarify the law to restore Congress' intent that no amount of discrimination or retaliation in the workplace is acceptable or legally permissible. This had been the standard for decades, but in recent years, the Supreme Court has held that it's not enough to prove that discrimination or retaliation tainted an employment action. Instead, it increased the burden of proof, requiring workers to prove discrimination or retaliation was a *decisive* factor in their treatment on the job. BE HEARD would make clear that the civil rights laws have zero tolerance for discrimination, including age discrimination, in the workplace.

Thank you for your leadership in proposing several important improvements for older workers under the ADEA, and AARP supports their adoption. If you have any questions or need additional information, please feel free to contact me, or have your staff contact Deborah Chalfie on our Government Affairs staff at 202-434-3723.

Sincerely,

A handwritten signature in black ink, appearing to read "David Certner", with a long horizontal flourish extending to the right.

David Certner
Legislative Counsel and Legislative Policy Director
Government Affairs