DOL Proposal to Expand Definition of Fiduciary

THE ISSUE: The Department of Labor (DOL) has finalized its "conflict of interest" rule, which became effective June 7, 2016. Portions of the rule became applicable June 9, 2017, and the remaining provisions will be applicable as of January 1, 2018. The rule expands the definition of fiduciary advice. All advice for a fee to plan sponsors, plan participants, IRA rollover clients, and investment advice to IRA owners will be considered fiduciary advice under the rule's expanded definition. The Department also issued a new Prohibited Transaction Exemption (PTE) and modified another that permits fiduciaries providing advice to continue receiving commissioned-based compensation.

In February 2017, President Trump issued a memorandum directing the DOL to review the rule. As a result of the Administration's directive, the DOL is undertaking a new cost-benefit analysis. President Trump has instructed that DOL revoke or revise the regulation if the DOL determines that the rule would limit access, increase costs, increase litigation risk or disrupt the marketplace. The Department has indicated it may need to extend the January 1 applicable date as a result of its new analysis.

To comply with the rule from June 9 to January 1, advisors must satisfy the rule's "impartial conduct standards." Advisors are required to work in their client's best interest, charge no more than reasonable compensation, and avoid any misleading statements. During this phased implementation period the DOL has stated it will not pursue claims against advisors working in good faith to comply with the rule.

NAIFA is concerned that if fully implemented without significant changes, the rule will disrupt the marketplace and result in higher costs and reduced access to advice. NAIFA is also working with lawmakers to seek legislative solutions, in order to protect the security of today's retirement savings programs and their participants.

BACKGROUND: Many NAIFA members provide guidance to employers, their employees, and individuals about their retirement goals and planning options, including investments in IRAs and 401(k) accounts. With over 10,000 people retiring every day for the next 16 years, it is imperative that future retirees plan, save and have choices about whom they consult for help and guidance.

For many, especially those with small-to-medium size accounts, consulting with a trusted advisor using a commission-based compensation agreement is more cost-efficient, provides greater access to advice and service and is preferable to a fee-based arrangement. Fee-based arrangements often have minimum account requirements, making them inaccessible to small account holders. Ninety-eight percent of all IRAs with $25,000 or less in assets are serviced under the broker-dealer model.

NAIFA's testimony, meetings and other efforts on the proposed rule had a tangible impact and resulted in significant changes reflected in the final rule. NAIFA's efforts focused on educating Congress, the DOL, the Office of Management and Budget (OMB) and others, both in Washington, D.C., and in district offices, about unintended negative ramifications of the original proposal. However, further modifications are needed to limit adverse effects on retirement savers.

Just before the June 9 applicablity date, NAIFA conducted a survey of 1,084 NAIFA members who found the rule severely limits the ability of low- and mid-market retirement savers to access advice, services and retirement products. Most notably, 91% of respondents have already experienced or expect to experience restrictions on product offerings to their clients. Nearly 90% believe consumers will pay more for professional advisory services, and 75% have seen or expect to see increases in minimum account balances for the clients they serve.

NAIFA POSITION: Retirement savers need access to education, business owners need encouragement and advice in setting up retirement savings plans for their employees, and guaranteed lifetime income provided by annuities are a cornerstone of retirement planning for many.

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NAIFA continues to support efforts to ensure that retirees receive professional, ethical guidance in planning for their retirement. Lawmakers and regulators pursuing solutions to the currently impractical DOL rule must pursue policies that preserve:

- access to understandable investment education;
- advice to small businesses offering retirement plans;
- advice to savers with low incomes and small account balances;
- access to lifetime income options;
- access to rollover and distribution advice;
- clear and easy-to-understand disclosures;
- and, employ common sense compliance and transition periods.

CURRENT STATUS: NAIFA is encouraged the Department issued a Request for Information (RFI) asking for input from stakeholders regarding possible alternative or additional approaches, whether the January 1, 2018, scheduled applicability date for the rule's major provisions should be further delayed, and other overall changes to the rule. NAIFA has submitted comments to the Department expressing concerns the rule has disrupted the marketplace, negatively impacted consumer access to services and products, and increased costs.

Legislators also remain extremely concerned about the adverse consequences of the rule on retirement savers. House and Senate leaders have re-introduced common sense legislation that improves existing policy governing financial advice. Reps. Phil Roe (R-TN) and Peter Roskam (R-IL) introduced H.R. 2823, the *Affordable Retirement Advice for Savers Act,* and Sen. Johnny Isakson (R-GA) introduced S. 1321 the *Affordable Retirement Advice Protection Act*. Both proposals aim to protect Main Street savers access to affordable retirement and ensure advisors serve the best interests of their clients.

For More Information Please Contact:

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ABOUT NAIFA: Founded in 1890 as The National Association of Life Underwriters, NAIFA is the nation's oldest and largest association representing the interests of insurance professionals from every Congressional district in the United States. NAIFA members assist consumers by focusing their practices on one or more of the following: life insurance and annuities, health insurance and employee benefits, multiline, and financial advising and investments. NAIFA's mission is to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members.