NAIFA SECURING AMERICA'S FINANCIAL FUTURE

# Advice on Plan Distributions and Rollovers

**THE ISSUE:** The Department of Labor's (DOL's) proposed new regulation on investment advice fiduciaries will not allow advisors to provide guidance, services or investments to retirement plan participants on plan withdrawals and/or rollovers from plans to other plans or IRAs, except on a fee-for-service basis.

**EXPLANATION:** The DOL's fiduciary proposal excludes from its list of permissible activities within the best interest contract (BIC) prohibited transaction exemption (PTE) advice to plan participants on distributions from plans, rollovers from a plan to an IRA and/or rollovers to a new plan, when the advisor will be paid via commissions or other so-called "conflicted compensation." That means such advice would only be available (within the fiduciary duty rules) for an up-front fee. Many retirement investors of modest means will not qualify for fee-for-service advice because it is too costly or they will not have the required minimum amount to invest.

**THE PROBLEM:** One of the most often-occurring situations for which professional investment advice is sought is the question of what to do with 401(k) balances when an individual changes jobs, or if the plan does not provide for systematic withdrawals. Only a small percentage of plans offer an annuity as an investment option, but many employees need a guaranteed lifetime income that an annuity can provide.

This type of situation must be covered by a PTE or many middle and lower income retirement investors will be priced out of getting individualized professional investment advice. Many investors of modest means simply will not have the resources with which to pay an upfront fee for service. Plus, if the fee comes from the retirement fund that needs to be invested, it would result in leakage from retirement plans or IRAs. This is not a situation intended by DOL, and is therefore one that must be resolved by clarification of the proposal's language as it is currently drafted. To fail to do so risks a significant increase in job-changing Americans prematurely spending their savings (whether on investment advice fees or in other ways) rather than preserving it for retirement.

**THE SOLUTION:** The DOL must clarify the language of the BIC PTE to make clear that the BIC PTE encompasses advice on plan distributions and rollovers. It must be clear that advice in these situations can be compensated by commissions, 12b-1 fees, fee-sharing or other non-fee based forms of compensation, so long as the advisor and his/her financial institution are in compliance with the terms of the BIC PTE.

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