



**SECURING AMERICA'S  
FINANCIAL FUTURE**

## **DOL Fiduciary: NAIFA Settles the Score for Main Street Savers**

**ISSUE:** On June 21, 2018 the 5<sup>th</sup> Circuit Court of Appeals issued a formal mandate to vacate the Department of Labor's fiduciary rule. This is the final step completely removing the Department's rule re-defining who is a fiduciary advisor when working with ERISA and IRA plans and participants. To ensure a successful outcome and fulfill the commitment to protect our members and the Main Street families they serve, NAIFA engaged all three branches of government with an "all of the above" strategy that included legislative alternatives, substantial changes from regulators to their proposal, including delays in the effective dates and litigation.

**BACKGROUND:** In 2010 the DOL began working on a complex regulation that would apply to financial professionals who provide investment advice to participants or sponsors of retirement savings plans, including 401(k) plans and IRAs. The DOL's 2010 proposal was withdrawn after objections by Members of Congress from both parties.

After withdrawing its 2010 proposal, the DOL sought only limited input from stakeholders as they re-drafted the rule nor did they collaborate in a significant way with the Securities and Exchange Commission (SEC) or with Financial Industry Regulatory Authority (FINRA). As a result, the 2015 re-proposal was equally as concerning as the 2010 proposal. Under the 2015 proposed regulation and the new "Best Interest Contract" Exemption (the BIC exemption) advisors would only be able to receive commissions and other forms of "conflicted compensation" under very stringent conditions. The BIC exemption required a contract between the advisor and financial institution that prominently disclosed conflicts of interest, and directed consumers to a webpage disclosing the compensation arrangements. It also required the financial institution to warrant that it had adopted policies and procedures designed to mitigate conflicts of interest. The proposal also limited the kinds of education that could be provided to a plan sponsor or participant without triggering fiduciary obligations. After testifying before Congress and the DOL, lawmakers introduced bipartisan, bicameral legislation that provided consumers with the necessary protections, without limiting access or increasing the costs of advice.

On April 8, 2016, the DOL issued a final rule with certain portions becoming effective on June 9, 2017, and the remainder of the rule delayed until July 2019. 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. However, serious concerns remained that if fully implemented without significant changes, the rule would disrupt the marketplace and result in higher costs and reduced access to advice leading NAIFA, the ACLI, NAIFA-Texas, and several of NAIFA's local associations in North Texas to bring litigation against the DOL.

On March 15, 2018, the Fifth Circuit Court of Appeals ruled in favor of NAIFA and vacated the DOL fiduciary rule. On April 26, 2018, Attorneys General for California, New York, and Oregon filed a motion to intervene in the 5th Circuit DOL case. That request was denied. The DOL did not appeal the decision and the formal mandate ensures the regulations that would have made it difficult or impossible for advisors to serve clients with modest or moderate means are not just delayed, but fully null and void.

**NEXT STEP:** The Securities and Exchange Commission (SEC) "Regulation Best Interest" proposal is in the early stages of the rulemaking process, and NAIFA has already met with the Chairman and with most of the Commissioner's offices. As a recognized industry leader, NAIFA will file a formal comment letter and will work with lawmakers and regulators to make sure that members can continue to serve Main Street families as they plan and prepare for a secure financial future.

**ABOUT NAIFA:** Founded in 1890 as The National Association of Life Underwriters (NALU), NAIFA is the oldest, largest and most prestigious association representing the interests of insurance professionals from every Congressional district in the United States. Our mission – to advocate for a positive legislative and regulatory environment, enhance business and professional skills, and promote the ethical conduct of its members – is the reason NAIFA has consistently and resoundingly stood up for agents and called upon members to grow their knowledge while following the highest ethical standards in the industry.

**For More Information:**

**Diane Boyle**  
Sr. Vice President  
Government Relations  
(703) 770-8252  
[dboyle@naifa.org](mailto:dboyle@naifa.org)

**Judi Carsrud**  
Assistant Vice President  
Government Relations  
(703) 770-8155  
[jcarsrud@naifa.org](mailto:jcarsrud@naifa.org)

**Michael Hedge**  
Director  
Government Relations  
(703) 770-8158  
[mhedge@naifa.org](mailto:mhedge@naifa.org)