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NAFA Urges DOL to Withdraw 2023 Fiduciary Advice Proposal in Its Entirety

Comment Letter Outlines Proposed Rulemaking’s ‘Fatal Flaws’ and Potential Harm to Independent Producers, Carriers and Consumers

WASHINGTON (Jan. 2, 2024) — NAFA, the National Association for Fixed Annuities, submitted [a letter](#) in response to the Department of Labor’s request for comments regarding its Retirement Security Rule: Definition of an Investment Advice Fiduciary. This rulemaking package, which was introduced on Nov. 3, 2023, represents the Department’s fourth attempt at imposing a new fiduciary standard on investment advice, and is accompanied by significant amendments to existing PTEs. The comment letter details NAFA’s concerns regarding the Department’s new definition of persons who render investment advice as fiduciaries under the Employee Retirement Income Security Act of 1974 (ERISA) and the Internal Revenue Code, and its potentially harmful implications for insurance agents and financial professionals who sell fixed annuities.

“Since 2008, NAFA has been at the forefront of combatting the Department of Labor’s continued efforts to move well beyond its rulemaking authority. This fourth iteration of its tired fiduciary rule is the most offensive yet, as it flies in the face of the Fifth Circuit vacatur of the 2016 fiduciary rule NAFA and other groups worked so hard to overturn. Moreover, it seeks to tilt the playing field toward fee-based advice, which would ultimately leave millions of middle- and low-income retirement savors devoid of the products and professional advice they need to retire securely.

In the process of crafting this flawed rulemaking package, the Department took direct aim at fixed index annuities, using outdated data and biased conclusions to support its desperate attempts to implement burdensome overreach in the name of ‘consumer protection’ and the elimination of ‘junk fees.’ In reality, fixed and fixed index annuities, typically sold on a transaction basis, are the *only* products that protect consumers against the risks of investment losses associated with market fluctuations and the risk of outliving one’s savings in retirement,” said Chuck DiVencenzo, NAFA President and CEO.

Key points within NAFA’s letter include that:

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- the proposal reflects a false assumption on the part of the Department that it holds the authority to comprehensively regulate standards of conduct applicable to broker-dealers, registered investment advisers, and insurance agents;
- the proposal jettisons the “primary basis” prong of the five-part test for determining fiduciary status as set forth in the Department’s longstanding 1975 regulation;
- the Department failed in its attempt to reconcile the Fifth Circuit’s *Chamber* decision by simply making all rollover transactions fiduciary in nature without regard to what type of services or product offerings an independent agent is providing a client;
- the proposed amendment of PTE 84-24 would overturn the settled expectations of the life insurance and annuity provider community – formed over a period of more than 40 years;
- the Department’s preference for PTE 2020-02, which is largely designed around a broker-dealer distribution model, ignores the fact that different segments of the industry are subject to differing bodies of law and regulatory oversight; and
- the proposal threatens to place unnecessary, administratively burdensome and risk-inducing requirements upon insurance carriers and independent producers, which could ultimately put many small businesses and entrepreneurs out of business, leaving a sea of retirement-needing and retirement-ready individuals left without professional financial help.

NAFA’s comment letter is the latest in a series of actions the association has taken to engage with the Department and policymakers to reverse course on its proposal. In addition to visiting with lawmakers on Capitol Hill last month, NAFA signed onto a joint trades letter seeking additional time in the comment period. DiVencenzo, along with NAFA’s Director of Government Affairs and Legal Counsel Pam Heinrich and outside legal counsel Tom Roberts of Groom Law Group, also **testified** publicly in a hearing the Department held in mid-December seeking feedback on the proposal.

NAFA plans to continue advocating for the protection of fixed annuities and the independent distribution channel, which are essential to America’s retirement future.

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About NAFA

NAFA, the National Association for Fixed Annuities, is the premier trade association exclusively dedicated to fixed annuities. Our mission is to promote the awareness and understanding of fixed annuities. We educate annuity salespeople, regulators, legislators, journalists, and industry personnel about the value of fixed annuities and their benefits to consumers. NAFA’s membership represents every aspect of the fixed annuity marketplace covering 85% of fixed annuities sold by independent agents, advisors and brokers. NAFA was founded in 1998. For more information, visit www.nafa.com.