

All eyes in the retirement marketplace are focused on the Department of Labor's fiduciary proposal, which has consumed massive amounts of bandwidth from trade associations and companies since its April 14 release, as stakeholders analyze the scope and impact of this sweeping proposed rule.

NAFA formed a working group that recently met for two days to review the DOL's nearly 700-page proposal. The proposal consists of a base proposed rule that would amend the fiduciary definitions in ERISA and the Internal Revenue Code, and it includes new and updated **Prohibited Transaction Exemptions (PTEs)**, which allow for certain compensation and business models, subject to conditions. Essentially, as drafted, all retirement professionals, including insurance agents, will be considered fiduciaries with respect to IRAs and employer-sponsored plans. Unfortunately, once subject to a fiduciary standard, annuity advisors will have to seek "relief" under PTE 84-24 or a new PTE called a "Best Interest Contract Exemption." Both of these exemptions add board "Impartial Conduct Standards" and contain numerous impractical and unworkable conditions. Clearly, the DOL is trying to move most IRA regulation to the Best Interest Contract Exemption, and although the DOL has no enforcement authority, "retirement investors" can enforce contract claims and class action lawsuits are allowed. For the insurance industry, PTE 84-24 offers the strongest avenue forward under the proposed rule, but a number of substantive changes are needed.

Fundamental to the proposal is adherence to a new "best interest standard," which requires an

advisor to "act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person would exercise based on the investment objectives, risk tolerance, financial circumstances and needs of the retirement investor, without regard to the financial or other interests of the [fiduciary]... any affiliate, related entity, or other party." Additionally, the advisor must disclose conflicts of interests and make no misleading statements. While DOL's intent to craft a "best interest standard" is laudable, as drafted, the proposal will have the effect of paralyzing many retirement professionals, leaving assistance mostly for the wealthy.

If these proposals are finalized in current form, there will likely be adverse consequences for middle-class consumers, small businesses and insurance professionals. NAFA urges the DOL to accept constructive changes to define a workable definition of "best interest" when advisors provide investment advice. However, the proposal limits the seller's exception such that effectively there is no seller's exception (as it is focused only on large plans), and it restricts education materials such that the mere mention of any specific investment products or specific plan or IRA alternatives or the value of any property or securities would be deemed "investment advice," thus triggering fiduciary obligations. Accordingly, NAFA requests that the DOL also consider a practical seller's exception for needs-based sales transactions and that reasonable definition of educational materials be included.

The proposals were published in the Federal Register on April 20, and comments are due by July 21. Originally, comments were due by

July 6, but after strong outcry from the Hill and from the industry (NAFA signed a joint trade letter urging extension), the DOL granted 15 additional days. After the comment period closes, there will be a public hearing the week of August 10, followed by another 30-45 day public comment period. The DOL will then review all comments and it is anticipated that a final rule will be published sometime in early 2016, with the rule going into effect, eight months after publication.

It is clear the DOL is moving on a fast track to implement this proposal before the next Administration, and many industry observers believe that Congressional legislation will be necessary.

NAFA is keeping all of its options open, but is currently focused on a drafting a comment letter and working with the DOL to protect access to the annuity marketplace.

Lastly, NAFA just completed a successful Annuity Leadership Forum conference in Washington, D.C. on June 17-18. The DOL fiduciary proposal was the central focus of the fly-in, and participants had the opportunity to hear from senior congressional speakers, including Missouri Representatives Blaine Luetkemeyer and Ann Wagner. Additionally, NAFA coordinated nearly 200 meetings for conference attendees to "Walk the Hill" and meet with their respective Senators and Representatives to discuss this and other issues important to our industry and to make NAFA's voice heard.