NAPA
NATIONAL ASSOCIATION OF PLAN ADVISORS

NAPA Members:

A recent NAPA PAC fundraising email regarding the pending Department of Labor regulation on the definition of investment advice under ERISA (often referred to as the "DoL fiduciary rule") was heavy on rhetoric and lacking in the clarity and precision typically provided in our communications to NAPA members. For that we apologize. However, as evidenced by the recent launch of the opposition website saveourretirement.com, which paints the plan advisor community as a "colony of termites" eating away at the retirement savings of Americans, rhetoric rather than rationality is unfortunately driving much of the discussion.

NAPA's Position

NAPA has been very consistent in our stance, and we want to make sure that you, as a NAPA member, understand clearly our longstanding position on the DoL's proposed fiduciary rule and why we have such significant policy concerns. Our position was thoughtfully developed by a special NAPA Government Affairs Committee (GAC) Task Force that includes fee-only and hybrid advisors from both wire house and independent firms. As you know, we pride ourselves in looking beyond the limits of specific business models to the critical central mission of promoting our nation's retirement plan system to help working Americans achieve a more secure financial future.

First and foremost, NAPA has *never* opposed applying an ERISA fiduciary standard to plan advisors, and we have repeatedly testified to that point. Our primary concern is *not* about the fiduciary standard per se, but rather the potential prohibited transactions resulting from application of the standard. Particularly, we have serious concerns about the impact of the proposed DoL rule on the rollover process.

Our Primary Concern With the Proposed DoL Rule

We expect the proposed DoL rule to provide that discussing the idea of a rollover with a 401(k) participant will be considered "investment advice" under ERISA, making you an ERISA fiduciary subject to the prohibited transaction rules. As such, if there is any fee differential in the rollover IRA relative to the 401(k) plan (e.g., something as little as 5 basis points), an advisor would be precluded under the prohibited transaction rules from working with that participant on the rollover. In our view, it simply makes no sense to block 401(k) participants from being able to continue a relationship with their trusted 401(k) advisor merely because a change in the nature of the relationship results in a slightly different fee structure.

Possible Solutions

We have tried to work proactively with all parties involved to resolve these issues. We have proposed to DoL that the plan advisor be allowed to continue the relationship with the 401(k) participant as long as any fee differential is clearly and completely explained in advance of any rollover. We also have provided a detailed and comprehensive proposal in several meetings with the White House on this issue. Unfortunately, we recently were told that the administration sees any disclosure-based solution as insufficient. Further, and to our great disappointment, the strong signal from the White House is that they want to politicize this issue and characterize it as a Main Street vs. Wall Street issue. A recent White House memo from the Chair of the Council of Economic Advisors reflects that. We had hoped that this issue could be resolved constructively, and we still would welcome that, but it appears the overwhelming political climate in Washington has apparently taken control.

Other Issues

We do have other concerns about DoL's proposed rule. It has the potential to increase costs for smaller plans,

which would inhibit the expansion of retirement plan coverage. To counter this, we believe that the seller's exemption for small plans must be preserved. We also have concerns about the application of the rule to IRAs in general, particularly the impact it could have on access to financial assistance for investors with smaller accounts (e.g., less than $50,000). We have presented the White House with a detailed IRA fee disclosure alternative, but this apparently has been rejected as well.

Notwithstanding, our main concern is, and always has been, the potential impact DoL's proposed rule will have on the rollover process and its serious potential to interfere with the trusted relationships between plan advisors and participants. We hope this is helpful and informative. Most of all, we wanted you to hear this directly from us.

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