

Retirement Income Journal

The information forum of the decumulation industry

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To Secretary of Labor Thomas Perez and Deputy Secretary Phyllis Borzi:

I've been following the progress of the Department of Labor's fiduciary/conflict-of-interest proposal closely. Its opponents have succeeded in putting the proposal, rather than conflicts of interest, on trial. It was easy to do.

Aside from Mercer Bullard, none of the witnesses at the August hearings came close to detailing the problems that the DOL is trying to address. Most of the anti-consumer conflicts in the industry that I know to be common knowledge within the industry have not even been mentioned. No single abuse is characteristic of the entire industry; any example I might give could be challenged by exceptions or counter-examples. Regulation and reform of financial services is a game of whack-a-mole.

In my opinion, the DOL has made some key errors. In retrospect, the decision to condone third-party commissions seems like a mistake. It gave away the agency's best bargaining chip. If the DOL had suggested banning commissions, commissions and other indirect compensation might have been put under a microscope. Serious conflicts of interest and consumer-unfriendly incentives might have been exposed for everyone to judge.

Instead, the opposition has been able to say, if commissions are OK, where's the problem? Without having to defend commissions, the opposition was free to attack the proposal. It can't win on the facts, so it must attack the proposal or (as its lawyers plan to in the future) the law.

Second, Tim Hauser of the DOL didn't seem adequately prepared for the August hearings. He did not appear to have a firm grasp of the differences between how intermediaries (independent advisers, registered reps, planners, wirehouse, RIAs, insurance agents, Certified Financial Planners, fee-based and fee-only advisers) get paid. He didn't understand the way revenues are split between registered reps and broker-dealers or between insurance agents and insurance marketing organizations. He wasn't able to articulate the difference between advice and distribution.

This is very complex, ever-changing stuff that can take years of close proximity and attention to understand. But the DOL had five years to understand it, and many, like the Financial Planning Association, were ready to help. Some of it can be Googled. At one point, Mr. Hauser asked a witness if he (Hauser) was naive to believe that commissions were compatible with a "best-interest" pledge. He answered the question just by asking.

A missed opportunity, from my perspective, was the DOL's neglect to stress the importance of retirement income planning expertise among those who would handle rollovers and help IRA owners turn their tax-deferred savings into pension-like income.

At least three national organizations offer certificates in the relatively new field of retirement income planning. In asking the investment industry to embrace this new expertise, the DOL would arguably have had a more positive and constructive story to tell. Requiring would-be advisors of IRA clients to demonstrate “retirement expertise” would have pushed the industry in a direction in which it is already moving.

But my main concern is that, despite the hearings and the hundreds of comments, the real story still hasn’t been told. As someone who has worked for nine years in a big mutual fund/401(k)/IRA complex, who has written hundreds of trade articles and one consumer book (*Annuities for Dummies*) about retirement financing, who has advised policymakers, and who was once nicked for \$5,000 in those “hidden fees” the DOL talks about, I have been dismayed by the lack of correspondence between the rhetoric (on both sides) and the realities of the situation.

Given opposition control of Congress, and the complexity of the advice industry, the DOL was in a difficult spot. But I believe it also misplayed the cards it had.

Sincerely,

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