
Conflict of Interests

By Kerry Pechter *Thu, Aug 6, 2015*

On Monday, the hearings on the Department of Labor's fiduciary proposal will begin in Washington. Will they deal with the fundamental issues, or with legal technicalities? (Link to the agenda is included here.)



Three and a half days of hearings on the DOL's controversial fiduciary proposal, which will be available to viewers worldwide through a live webcast, begin at 9 a.m. next Monday morning at the Francis Perkins Building, a stolid limestone cube on Capitol Hill.

I will watch from home on my laptop, hoping for spectacle but prepared for something more like a C-SPAN speech-athon. (Click [here](#) for a link to the schedule.)

Given the stakes, and the underlying emotion, this hearing would, in less polite society, turn into a melee. The DOL's proposal, in its current form, would disrupt the funding mechanism of the sales and distribution of load mutual funds and variable annuities to rollover IRA owners. The industry that relies on that mechanism, and any intermediary who receives third-party compensation for advising retail clients, would suffer financially if it becomes the regulation of the land.

Brokers, agents and certain investment advisers would probably either have to accept a smothering new layer of recordkeeping tasks and compliance chores, or get out of the vendor-financed advice business. This way of delivering financial products and services, they believe, works better than any alternative. But it is now threatened by digital advice, fee compression and the Obama administration's zeal to reform it.

It's a turf war, and the turf is very valuable. The DOL believes that the \$7.2 trillion in rollover IRAs is 401(k) money that went AWOL; in a perfect world, it should be treated with the same forbearance that applies to ERISA plans as long as it stays tax-deferred. Ideally, in the DOL's world, it would be used to buy lifetime income.

The financial services industry believes that the rollover IRA money is, aside from the

nuisance of tax deferral and required distributions, no different from the money in ordinary after-tax retail accounts. Neither side is right, and neither side is wrong. The status of rollover IRA money is ambiguous. Hence the struggle.

Neither side has a good solution to a very complicated problem with an ad hoc and opportunistic history. Both appear to be in denial. The DOL doesn't recognize what a huge expensive mess that its proposal would create in the financial services world. The industry doesn't admit to the deception that's implicit in its third-party payment regime.

The saddest part is that both sides seem to think that it's possible to "manage" conflicts-of-interest. It isn't. The conflicts are embedded in the product designs, the compensation schemes and even in the business models of the financial service industry. Unless those change, the conflicts (and the effects of the conflicts) that the DOL frets over will still exist.

These hearings haven't gotten much attention outside of the financial industry, even though the proposal's impact would be huge. The *New York Times'* Maureen Dowd didn't even mention it in her recent review of President Obama's campaign of regulatory activism. Most of the world finds the retirement business boring, I guess.

So, while I'm hoping for fireworks, the hearings will probably be sedate and bureaucratic. About 100 witnesses, most of them representing companies, institutions, and advocacy groups, will testify. Department of Labor panelists will ask questions. If the witnesses just read the comments that they posted on the EBSA website, I may surf over to C-SPAN for relief.

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