For DoL’s fiduciary campaign, an unsympathetic hearing

By Editor Test *Wed, Aug 3, 2011*

During the July 26 hearing on the DoL plan, Phil Roe (R-TN), chairman of the House Subcommittee on Health, Employment, Labor, and Pensions described the department’s proposal to strengthen the fiduciary standard as “ill-conceived."

A hearing in Washington last week pitted Labor Department. officials against financial services industry groups and a Republican committee chairman, in a classic debate over the costs and benefits of new regulations.

The DoL’s effort to apply the fiduciary standard to providers of advice to workplace retirement plans appears to be tasting the impact of last fall’s Republican capture of the House of Representatives, a victory that includes control of committee chairmanships.

But the DoL isn’t giving up, apparently, on its effort to purge conflicts of interest from the 401(k) world, where it believes direct or indirect investment advice from investment providers often helps the providers more than it helps the participants.

“The [current fiduciary] regulation is broken,” Phyllis Borzi, an assistant Labor secretary, told the W*all Street Journal*. “We have a responsibility to protect beneficiaries and participants.”

During the July 26 hearing on the DoL plan, Phil Roe (R-TN), chairman of the House Subcommittee on Health, Employment, Labor, and Pensions described the department’s proposal to change the fiduciary standard as “ill-conceived” and advised Assistant Labor Secretary Phyllis Borzi to “take a step back and start over.”

“While we support looking at ways to enhance this important definition, the current proposal is an ill-conceived expansion of the fiduciary standard,” said Phil Roe (R-TN). “It will undermine efforts by employers and service providers to educate workers on the importance of responsible retirement planning. Regrettably, the proposal may deny investment opportunities and drive up costs for the individuals it is intended to protect.”

“With all due respect, Assistant Secretary, if this proposal is so disruptive to our system of retirement saving, then the department needs to take a step back and start over,” Roe added. “I would like to join my Republican and Democrat colleagues in urging the administration to do just that.”

A number of witnesses from the financial industry made the customary arguments against new regulations—that they would raise the cost of providing advice and perhaps discourage the provision of any advice at all.

Companies that are fighting the rule proposal include Morgan Stanley, Bank of America Corp., Wells Fargo & Co., Blackrock Inc. and MetLife, the Wall Street Journal reported.

Kenneth E. Bentsen of the Securities Industry and Financial Markets Association (SIFMA), said:

“The real question is the cost to plans and their participants and the impact on their retirement savings. And while the department’s cost analysis leaves alarming gaps in what it does appear to understand or be certain about, its list of uncertainties does not even once mention IRAs.”

Kent Mason, of the law firm of Davis & Harmon, said, “There is great concern that the proposed regulation would sharply decrease the provision of investment education… providers of needed education will likely restrict the information that they provide due to the chance that they might become fiduciaries for providing what they consider to be educational materials.” The proposed rule is “actually severely counterproductive for exactly the kind of persons that you want to protect.”

Jeffrey Tarbell, of the investment bank Houlihan Lokey, testified, “As you know, earlier this year, the White House issued an Executive Order directing federal agencies to use ‘the least burdensome tools for achieving regulatory ends,’ and to ‘select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits.’ However, the DOL has provided no meaningful cost-benefit analysis that would satisfy the Administration’s directive.”

According to the *Wall Street Journal*:

Under proposed rules, the agency would apply what is known as the fiduciary-duty standard among a wider pool of brokers and financial advisers who provide investment advice for a fee to retirement plans and IRA holders. The Labor Department’s current powers are far narrower using the fiduciary standard, which requires brokers and others to act in the best interests of the retirement-plan client.

The department’s main concern is that current rules make it easy for various financial participants to give advice that may hurt the investor but generates high fees for the middleman.

Labor Department officials said it makes sense for the agency to flex its muscle because of its history regulating corporate retirement plans. At securities firms, though, the pending rules are seen as another threat to profits.

At the House hearing Tuesday, industry officials and some lawmakers called for the proposed rules to be overhauled or shelved. Ms. Borzi said the Labor Department isn’t backing down.

“We’ve had nearly 40 years of experience in our own enforcement activities to identify the problem,” Ms. Borzi said. Final rules set for completion later this year will respond to concerns without watering down changes needed to protect workers and retirees, she added.

The Labor Department traditionally isn’t known as a financial cop. But the agency is more concerned about potential abuses now that assets in pension plans, 401(k)s, IRAs and other retirement accounts have swelled to $18 trillion. IRAs hold about $4.9 trillion and are an important nest egg for roughly 50 million U.S. households.

"The IRA market is like the Wild West," said Brian Graff, chief executive of the American Society of Pension Professionals and Actuaries, a trade group. "Things go on that would make people wince."