Things Heard and Overheard

By Editor Test *Wed, Jun 29, 2011*

Here's a follow-up on our earlier report on the recent SPARK conference, with more news and comment about DoL enforcement strategy, the threat to the tax deferral for savings, and what might happen when participants see how much their plans cost.

You can see a lot just by looking, said Yogi Berra. Here's a corollary to that rule: you can hear a lot just by listening. Below are a few things I heard at the SPARK Institute conference in D.C. earlier this month.

John Karl, the president of the Retirement Learning Center and executive director of the PLANSPONSOR Institute, warned members of the 401(k) advisor and provider community to prepare for a big uptick in enforcement actions from the Department of Labor.

The DoL is authorized to hire 997 new people for 2012, he said. Of those, 941 are new enforcement officers at the Employee Benefits Security Administration. EBSA apparently intends to put teeth in the new regulations, such as fee disclosure, that it is currently pushing through.

The two easiest ways for plan sponsors to get pinched by EBSA for excessive fees, he said, are the following: First, if the plan has grown but the fees haven't fallen to reflect the new economies of scale. Second, if the sponsor is unconsciously still mailing checks to advisors who no longer provide advice.

In what he called "a terrible reflection on us as an industry," Karl said that the DoL considers 77% of plans non-compliant with regulations. So DoL will soon be "deploying record numbers of people to kick the tires," he predicted. They'll be looking for "low-hanging fruit," he warned, in order to maximize the number of successful actions and demonstrate efficient use of resources.

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Mark Iwry, the deputy assistant Secretary of the Treasury for retirement and health policy and a Senior Advisor to the Secretary, spoke at length—Iwry speaks slowly and deliberately—about the Treasury's partnership with DoL in promoting retirement security.

While at the Brookings Institution, he co-invented the Auto-IRA, which small employers can use in lieu a 401(k) plan to give their employees a chance to save through payroll deferral.

During the Q&A period, Iwry was asked about the contradictory impressions that different parts of the government are offering about the sanctity of the tax deferral on contributions to workplace plans.

Some legislators are making noises about cutting the subsidy to reduce the budget deficit. Administration policymakers, like Iwry, seem to want to strengthen the existing system—the system that puts bread on the kitchen tables of most of the people in the room.

Iwry's answer suggested that the tax deferral is not in jeopardy (at least not during an Obama presidency).

Here's what he said:

"The defense [against removal of the deferral] is to be hard at work to improve it and to make sure it reaches more of the public. To the extent that it doesn't reach everyone, or that its results are not meaningful to tens of millions of workers, it becomes more vulnerable to cutbacks. To the extent that it reaches more people, it's easier to justify." He compared taxpayers to "equity investors" in the 401(k) system, and the question is whether they are getting enough "bang for the buck" in terms of retirement security.

My reflexive thoughts: Why should the government get rid of tax deferral—and have to replace the existing system with something new—as long as it can use the threat of removing tax deferral to keep the retirement industry responsive to its needs?

Such is the bargain that the retirement industry has made—the bargain of a regulated oligopoly.

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It was suggested at the conference that the DoL, though undoubtedly well-intentioned, may be opening up a big can of worms by requiring plan sponsors to tell participants exactly how much they've been paying for a "benefit" that many of them thought was free.

Some wondered what will happen next year when plan participants—and it might only take one Paul Revere per company to arouse the rest from their slumber—discover that their 401(k) bill (depending on the size of their account) is as big as their electric bill.

"[The number] will jump out there for the large-balance fees," said Bob Kaplan, a vice president and national training consultant for ING, who led a breakout session called Helping Your Clients Cope with Fee Disclosure. "People will say, 'I knew I was paying something but I didn't realize how much it was.' People react to dollars. Percentages don't resonate."

Kaplan said that fee disclosure will create some interesting challenges for plan sponsors. "How many sponsors know exactly what their fees are? And if you don't know what they are, how do you know if they're reasonable or not?" he asked rhetorically. The new precision about fees will certainly end the practice of bundling fees, he said: "This ends 'Give me the investment management and I'll throw in the plan administration."

At the very least, he noted, fee disclosure will create a competitive shake-up in the plan provider world. Plan sponsors will have to solicit bids every three to five years just as a defense against accusations of being asleep at the switch. Smart companies, someone said, will "get out in front of" the arrival of fee disclosure and institute a communications plan that assures employees that the plan's fees have been examined and are, at the least, comparable to fees at similar companies.