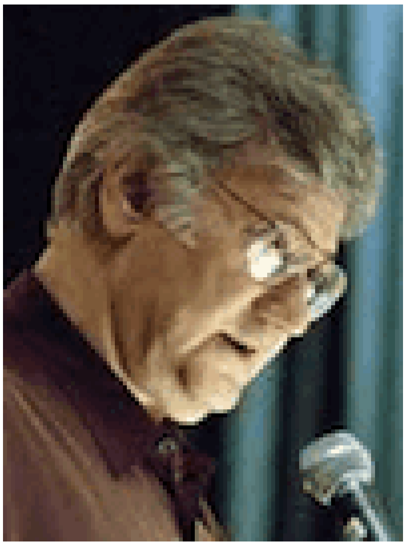
Retirement Income
JOURNAL

Vocal reactions to the New 401(k) Rules

By Editor Test *Wed, Feb 8, 2012*

Professionals from across the retirement income industry express their views of the DoL/Treasury announcement last week on fee disclosure and annuities.



Was the Groundhog Day announcement by the Department of Labor (about 401(k) fee disclosure) and by the Treasury Department (about new rules for buying annuities with qualified money):

A. Motivated by Democratic election-year politics?

B. A big step toward a higher fiduciary standard for plan sponsors and advisors?

C. A potential source of new business for your company?

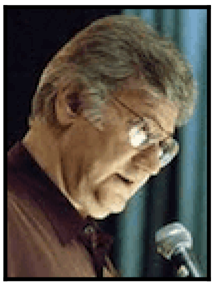
D. The trigger for a participant-led rebellion against high plan fees?

E. A modest step forward in the long campaign to get Americans to prepare better for retirement?

Whichever answer you chose, you would definitely find at least a few like-minded thinkers within the retirement income industry. Each of these ideas was expressed by one or more of the interested parties who spoke to RIJ about the long-delayed government announcement last week. Here are excerpts from a wide range of lively conversations:

"It's political": Phil Chiricotti, president, CFDD.

"[Department of Labor Hilda] Solis' statement on fee disclosure clarifies and confirms what many in the industry had already assumed: that the delay in releasing the final fee disclosure regulation was politically motivated," said Chiricotti, who runs the Center for Due Diligence, a Chicago-based organization that serves plan sponsor advisors.



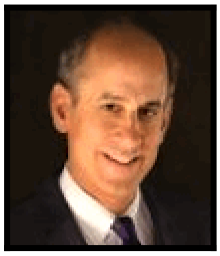
"The release was delayed until after Obama's State of the Union address. This allowed the Administration an opportunity to follow up with a real world example of how the Administration was implementing the populist, pro-middle class (and anti-Wall Street) themes of the President's speech.

"According to the top advisors in the CFDD network, the proposed guidance is unlikely to be finalized ahead of the Presidential election. Whether it moves forward or not will depend on whether the Democrats retain the White House.

"If Obama is re-elected, there is reasonable probability that the guidance will be formalized, perhaps as a regulation. If not, there might be a last minute push to get something released during the lame duck period prior to the inaugural. But it's more likely that Republican appointees to Treasury/EBSA would simply allow the proposal to die on the vine."

"Silent tax on the system": Charles D. Epstein, the "401k Coach".

Epstein, author of *Paychecks for Life: How to Turn Your 401(k) into a Paycheck Manufacturing Company* (2012) and a consultant to plan sponsor advisors, told *RIJ* that the government's action are changing the plan advisors' roles but that fees will always be necessary. He also had strong political views.



"I was at a conference in Florida recently and a panel of experts was asked, What keeps you up at night? They said, 'The fear that the government will take over the retirement business if we're not careful.' There are people in government, and in the Department of Labor, who want to do a land grab of the 401(k) system," said Epstein. "They think government can run things better. But, no, I don't think the majority in the Treasury and the Department of Labor want to take over the 401(k) system."

In the future, the advisor's role will be not just to sell the plan, but also to foster the participants' success, Epstein said.

"The advisors need to help get people into the plan, help them figure out how much to save, help them maximize their savings with asset allocation and rebalancing, and show them whether they need a Roth 401(k) account or not. In short, to get in the trenches and help participants understand the plan. The advisor has to say to the sponsor, 'I'll be your 401(k) success consultant.'

"Now, does the advisor charge an additional fee or extra basis points to do that job? The advisor now has to re-do all his service agreements. He has to go to an ERISA attorney. The fees will be going down but the advisor's expenses will be going up.

"Who will pay for that? The advisors can add an additional asset-based fee to the plan. Or they can charge the employees individually [for education]. Or they can get money from employees outside the plan [during the rollover stage]. But anytime there's a new regulation it's a silent tax on the system."

"It's net new business": Tim Slavin, senior vice president, Broadridge.

“Nobody knows how participants will react, frankly. I don’t see wholesale changes. For the vast majority of people who don’t even open their statements, nothing will change,” said Slavin, senior vice president of Broadridge, a printing and data firm that many third-party administrators (TPAs) use to mail or e-deliver statements, including the new fee disclosures, to plan participants.

“Some people may open their annual disclosure statement and begin to understand. If you’re in a large plan, you’ll already have a low price. On the small plan side, the people with insurance products [such as group variable annuities] might say, ‘I didn’t know this was costing me 200 basis points!’ So I do think you’ll see some movement from older expensive insurance plans to open architecture plans. A fiduciary will say, ‘Maybe we’re overpaying.’ And you might see pressure from participants.

“When I myself was a fiduciary in the small plan space, the fees weren’t something we thought a lot about. Some plans were considered free. We went the provider that charged the firm the lowest cost. That may not have been the firm that charged the participant the lowest fees. The participants thought the plan was free.”

“But no matter what your politics are, transparency is a good thing. This was a long time coming, and it will become an ongoing thing. Younger folks will know what things are costing them. The younger generation will be able to track things better than ours did. An, for [Broadridge], it’s net new business.”

“This will act like a safe harbor”: Blaine Aikin, CEO, fi360.

“The new rules will have several potential impacts,” said Aikin, CEO of fi360, a Pittsburgh-based association that trains and certifies plan fiduciaries. “Part of the problem [for plan sponsor and vendors who have been sued for not monitoring plan fees] was that they weren’t able to make a full disclosure. But full disclosure also accentuates the burden that plan sponsors have to do due diligence. That’s how they will get the liability protection.

“This will act like a safe harbor. Plan sponsors have always had responsibility to enter into ‘reasonable’ agreements. But there was never a consensus on what data they had to consider. This reinforces the idea that due diligence needs to be done. It also gives fiduciaries a better roadmap to what the elements of due diligence are.

"When the new disclosures take hold, and when they see the compensation that they were paying but were unaware of, there will be some shocked plan sponsors. Some of these services were marketed as free but they are not. The most typical instance would be in a bundled platform, where investments are wrapped up with the administration costs.

"If a plan sponsor asked about the administration cost, it would be billed as 'free.' But it would be paid for by through revenue sharing.

"Now every direct and indirect cost needs to be clearly identified. That will allow for a comparison between bundled and unbundled products and will enable fiduciaries and non-fiduciaries to see who is getting paid how much and for what."

"It's a very positive development": David John, the Heritage Foundation

"This is a very, very positive development," said John, a senior research fellow in Retirement Security and Financial Institutions at The Heritage Foundation, a Washington think-tank associated with conservative views. "The changes announced today eliminate unintentional barriers to differing approaches that use lifetime income products without dictating how individuals should use them. They open up new options to future retirees, and should encourage even more market innovations."

"Income is the next story": Jody Strakosch, MetLife.

"We're so excited for the people at Treasury. They've been working on this a long time," said Strakosch, national director, Retirement Products at MetLife, which partners with Barclays Capital on the LifePath Retirement Income program, which allows plan participants to purchase increments of future income through their target date funds.

"They did great work on a couple of specific issues. Savings is critical, but *income* is the next story. We need to focus participants on income and this is a way to do it.

"Nowhere in the [previous] regulations was there a clear message that said it's OK to offer partial annuitization from DB plans. Now you have that. You can have monthly income coming in from a portion of your retirement savings. It's another way to allow people to create an income stream if they want one."

"Problems will still persist": Robert Hiltonsmith, Demos.

"These fees parallel the high and in fact excessive fees that characterize the private retirement market in general—fees caused by both lack of financial education and lack of true investment choice," said Hiltonsmith, a policy analyst in the Economic Opportunity Program at Demos, a New York-based advocacy group.

"Both problems will still persist after the Treasury's rule changes, which is why more retirement reform is desperately needed to provide all Americans with a safe, low-cost way to supplement their income from Social Security in retirement."

"No magic": Teresa Ghilarducci, professor of economics, the New School for Social Research.

"Disclosing fees is a crucial step for savers to know what their true rate of return is on their accounts," said Ghilarducci, a critic of the current approach to retirement saving in the U.S. "But the disclosure does nothing to help savers get low-fee, high- performance investment managers. There is no magic link between knowing the fees and getting better and more efficient performance."

"There will be sticker shock": David B. Loeper, author, *Stop the 401(k) Rip-Off*.

Loeper, a writer and Registered Investment Advisor who works with individuals and retirement plans up to $30 million in assets, said plan participants should agitate peacefully for fee reductions at their plans.

"There are a lot of small plans that pay huge fees, and when the regulations go into effect and vendors are forced to do that they should have been doing all along, there will be a big retirement plan 'sticker shock.' Absolutely. It's hard to imagine that they wouldn't. Most people don't think they're paying anything for their 401(k)s. If they have $100,000 in their account and they think they're paying nothing, and then realize that they're paying fees, they'll respond."

"In my book, *Stop the Retirement Rip-Off*, I explained how to figure out what you're paying [in plan fees] and, if you're paying too much, how to organize your peers in a proactive positive manner, not as a complainer, to get your employer to shop for a better plan.

"Protest in a proactive manner, not in a way that's destructive to your career. If you're the only who asks, Why do we have this 100 bps fund, your opinion will be dismissed. If you can get others to ask the same question, it can change the perspective of management.

“GMWBs will to be addressed in the ‘next wave”: Unidentified federal official.

Issues regarding the offering of GMWBs in 401(k) plans weren’t addressed by the rules announced last week. But a governmental official familiar with the development of the regulations explained that omission.

“We wanted to pursue [GMWB issues] after we addressed a few plain vanilla issues regarding the simpler products, such as regular fixed immediate or deferred annuities. The issues presented by the GMWB weren’t on the first wave, and most of the people who have asked for guidance on those products are aware that they wouldn’t be. But there’s no question that [the GMWB] is on our radar screen. We’re not approaching the retirement income challenge with a bias [toward any particular product].”