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Phyllis C. Borzi: "We're trying to give stakeholders a chance to come in and make their case." (Photo: Martin Simon)

Phyllis Borzi: Protecting the Everyman's benefits

By Liz Skinner
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Phyllis C. Borzi has come a long way since her days as a high school English teacher.

Today, Ms. Borzi — assistant Labor secretary for employee benefits security — is a fixture on Capitol Hill, where she has a reputation for being a tireless crusader for protecting the benefits of average working-class Americans.

Currently leading a charge to widen the fee disclosures that must be made to retirement plan participants, she also is poised to issue new rules that would significantly increase the information that plan participants receive about target date funds.

While busy on those fronts, Ms. Borzi also is pushing ahead with a controversial plan to broaden the fiduciary umbrella to cover a broader swath of those who serve retirement plans. That proposal, which was issued in October and is expected to become finalized before the end of the year, would abandon the five-part fiduciary test that has allowed brokers and service providers to give advice for a fee without being fiduciaries under the law. It has garnered more than 200 comment letters.

Finally, more than 14 months ago, the department proposed changes in how investment advice is given to retirement plan participants, including a controversial exemption that would allow unbiased computer models to be used to choose funds.

In each of these issues, Ms. Borzi has put investor protection at the forefront.

“Ms. Borzi is an extraordinarily intelligent, effective, hard-working and knowledgeable woman,” said Marcia S. Wagner, managing director of The Wagner Law Group. “She has administered the [Employee Retirement Income Security Act of 1974] to the best of her ability to benefit plan participants and beneficiaries.”

Q. About 30 comment letters were submitted this year on the DOL's proposal to increase the information investors are given about target date funds. What's the next step?

A. The next step will be the final rules. We're on target for publishing the final regulation in November.

Q. How much information do you believe investors should get on target date funds?

A. As someone who has money in a target date fund, I was not completely aware of what the so-called target was. I think it's really important that people get the information they need. Concerns were first raised on the Hill and by the [Government Accountability Office] and we share those concerns. But people are asking us to put heavier disclosure rules and other kinds of restrictions on the use of these funds, and that puts your finger on the scale one way or the other, so we're treading very gingerly here. On the other hand, there are important disclosure issues.

Q. In October, the department proposed significant changes to its definition of who is a “fiduciary” for retirement plans. Will we see final regulations issued next or will the department propose different rules?

A. We've been meeting with anybody who wants to meet with us. We got lots of comments on it. We extended that comment period twice. Then we did public hearings and we opened the comment period again, and now we're busy talking to all sorts of people. We haven't made any decisions.

Our current intention is to move forward to finalize the regulation. We've met with group after group after group and, honestly, there are very few new issues that anybody puts on the table. We're hearing the same issues over and over again. That normally means you deal with the issues and move forward.

Q. Although some in the financial services industry want you to slow down on the definition of fiduciary, others argue the department is moving too slowly. What do you say to those complaints?

A. We're trying to get it right. We're trying to give stakeholders a chance to come in and make their case, but at some point, we just have to move forward. There comes a point where you can overstudy things. It's difficult to understand why people continue to make these arguments that we need to delay and delay and delay when there's nothing new.

Q. Will you exempt certain investments from the rules?

A. We have the ability to do broad class exemptions if we find they are in the best interest of participants and beneficiaries. We have no interest in disrupting the flow of investment advice. Of all the times in our history, as more and more people move into the [individual retirement account] marketplace and more employers move to participant-directed 401(k) plans, there's no question people need advice. The only question really is, can they rely on the advice?

Q. So IRAs are an example of a place where you could issues a broad class exemption?

A. Right. Some of our existing exemptions may not fully cover the IRA marketplace, so that's certainly one of the things we're looking at. But even if we don't issue a class exemption, we always have individual-exemption authority. The combination of our class exemptions and our individual exemptions would cover just about every single thing we're heard.

Q. So we can expect this out in final form by the end of the year?

A. That's our plan. What we would probably do is, at the time we issue the final rule, we would be proposing a variety of class exemptions. Our current goal is to have them come out simultaneously.

Q. Fourteen months ago, the DOL proposed a change relating to how investment advice is given to retirement plan participants. When will that be finalized?

A. That will be out in a couple months, too. That went to the Office of Management and Budget at the end of May and we allow for about 90 days there before it comes back to us.

Q. Is there a reason that the proposal took more than a year?

A. There were a couple of really significant questions about the computer model about which we asked for comments. The proposed regulation didn't require any particular model to be used for certain kinds of investments, and we got a lot of push-back, saying, “Why don't you have target date funds, employer stock, annuities?” So then we had to work through the question of whether we should put them in or shouldn't put them in, and if we did put them in, how to do it. It was more complicated than we thought it would be. Everything seems to take more time.

Q. After almost two years on the job, what has surprised you the most?

A. There are two things: The first is the amount of administrative work that comes with the job. The second thing is how long it takes to get anything done. That's both good and bad. It's good because it assures the process is going to be thoughtful, but it's very frustrating.

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