

# **Bond Case Briefs**

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## **DOL Fiduciary Redraft Likely Out by May.**

The Department of Labor's redraft of its fiduciary rule was said to be on Labor Secretary Thomas Perez's desk in mid-November, so it's likely the redraft could be at the Office of Management and Budget by year-end, with a proposed regulation out by April or May, said Brian Graff, executive director of the American Society of Pension Professionals and Actuaries (ASPPA) and the National Association of Plan Advisors (NAPA).

As Phyllis Borzi, assistant secretary of labor for DOL's Employee Benefits Security Administration, said Oct. 29 at ASPPA's annual conference, EBSA is coming "very close" to finishing its work on the repropoed rule.

Even if the SEC had a larger budget and more resources, it is doubtful that the Commission would have the resources to regularly examine all RIAs. Therefore, the SEC is likely to continue relying on risk-based oversight to fulfill its mission of protecting investors.

### **Advertising Advisor Services and Credentials**

Section 206 of the Investment Advisers Act contains the anti-fraud provision of the statute and ensures that RIAs' advertising and marketing practices are consistent with the fiduciary duty owed to clients and prospective clients.

In his comments at the Schwab IMPACT conference in Washington, Graff noted the problems he sees with the DOL's fiduciary reproposal.

"It's not so much that more people will be fiduciaries" under the proposal, Graff said, "but how they will get paid." From an enforcement standpoint, DOL will get at the fiduciary problem "by limiting forms of compensation."

The potential limit on compensation will affect the small-business market in that if a small business "doesn't have a [401(k)] savings plan, who's going to sell them a plan if they won't get paid?"

Another problem, Graff said, is DOL including IRAs in the reproposal—which Borzi has confirmed will happen. If the definition of fiduciary advice is the same for retirement plans and IRAs, the DOL "will not have the authority to enforce" the IRA portion, Graff said, as IRAs are the jurisdiction of the Internal Revenue Service. The IRS, he said, has six employees devoted to IRAs.

"If there's no enforcement teeth, [DOL] could be creating a Wild West."

By Melanie Waddell, ThinkAdvisor