

Tom Anderson Goes To Washington

By Tom Anderson, PENSCO Trust CEO and Founder

I would like to share my experience at an event this July that I think you may find very interesting. First, it is an opportunity to hear about the inner machinations of your Government at work and secondly it will provide some insight into how the Government is looking at retirement planning for the American public. As we know, there is quite a bit of interest in savings planning, especially for retirement—the lead question being whether Americans are saving enough for their retirement and if their overall strategy will be successful in achieving not just a secure, but a comfortable retirement. Now that we Americans are living longer than ever, and, on average, well beyond “retirement” age, the Government realizes that people not only have to increase their savings, but actively invest and manage their savings portfolio well beyond retirement so that they don’t run out of funds. It is no longer feasible for an investor to simply cash out and put his portfolio entirely into low yield/low risk investments as he approaches retirement.

The event that is the subject of this article was held on July 31st, at the Department of Labor, in Washington, D.C. I provided verbal testimony at the request of the Employment Benefits Security Administration Division of the Department of Labor (DOL), representing the self-directed IRA industry. Spokespeople from a handful of the major securities firms were in attendance as well.

The session was a public hearing to discuss the feasibility and ramifications of acting on a provision of the Pension Protection Act of 2006, enacted by Congress calling for the use of a standardized computer model for investment advice programs used for IRAs and similar types of plans. The computer model would be used by financial advisors requiring them to take an investor’s risk tolerance, age, and financial objectives into consideration, as well as all permitted investment options under the law. Another discussion topic was the concept of placing restrictions on these advice programs and whether allowing recommendations of proprietary products would affect the individual investor’s ability to obtain objective investment advice.

My concerns were two-fold. First, I was interested in having any computer model that was to be developed for IRAs satisfy the Government’s and investors’ requirements for diversification. Simply put my concern was that it not be too narrowly focused (e.g., to financial markets investments only). I argued that any



such model should include some percentage of non-correlated assets, like real estate and private equity. Non-correlated assets are ones that do not react the same way at the same time to economic conditions as others in a portfolio, like market-traded assets like stocks, bonds and mutual funds, do. Diversification into other non-correlated asset classes, I argued, would help prevent the kind of retirement plan losses (\$1.7 trillion) that occurred in the stock market downturn from 2000-2004.

My second concern was that it appeared that unless the DOL could find or develop and approve such a computer model, they were essentially going to allow financial advisors working for firms that sell proprietary products like mutual funds, to only recommend the products their firms sell to their investment advisory clients (in that no restriction against such recommendations would exist).

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Without a Federal exemption, such advice would violate rules in effect currently that aim to control self-dealing and instead urge financial advisors to act objectively, in the clients' best interests. In fact, in the past, this would be an obvious conflict and breach of the self-dealing rules defined in IRS code IRC 4975.

Unfortunately, following the testimony of the 13 organizations that presented, a computer model meeting Congress' requirements does not appear to exist or to be feasible. Thus, it appears that the DOL will be looking into granting financial advisors the right to self-deal (e.g., to be paid for advising clients to invest only in the products their employers sell). I believe this is an obvious step backward for IRA holders, and I went on record with this opinion. I believe Congress' intention, as reflected throughout the Pension Protection Act, was to ensure more (not less) diversification within IRA portfolios to avoid the type of retirement account crisis created by the ENRON scenario, for example. Again, it appears Congress' intention will not be affected, due to the apparent absence of an acceptable computer model.

The discussion itself was quite enlightening. In fact, the readers might be interested in knowing that two presenters went even further and suggested that IRAs be eliminated altogether—one gentleman essentially said that the American public is not savvy enough to manage their own retirement accounts, and that, therefore, IRAs should be abolished by moving IRAs into 401(k)s restricted by ERISA, which would result in only a few investment choices being permitted! Another said, "Can you believe some people are crazy enough to put real estate in their IRA?"! Needless to say, I was quite outspoken about how I and the American public (I spoke for you; I hope you don't mind) would view such a move!

Though disappointing in the end, I found the experience of taking part in a forum of national financial institutions quite fascinating. I hope that I have been able to impart at least some of the experience to you, as I strive to make PENSICO Trust's clients the most informed in the country.

- Tom Anderson

For more information about the DOL hearing from Anderson's personal experience, visit www.tomandersonblog.com.

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November 7 and December 5, 2007



Tom's Column

Q. Can I use the Solo(k) if I am running a professional corporation? I am a dentist, self-employed with no employees. Does it matter if it is a C Corp or an S Corp?

A. Yes, you can use the Solo(k), and you can use either a C or an S Corp.

Q. I listened to one of PENSICO's Webinars about the Solo(k), and it sounded like you could invest in foreign real estate with it. Is that correct, and is it because it does not come under ERISA? I thought you had to have a U.S. presence to invest in foreign placements.

A. You are thinking along the right lines. Because the Solo(k) is not subject to ERISA, it can invest directly in foreign real estate, just like an IRA. Also, real estate is not considered a security or "private placement".

Q. Could you go over the scenario where a real estate property is being held within the self-directed IRA, and how expenses (property management, maintenance/repairs, insurance, taxes, legal fees and tax filing fees, etc.) are paid out of the self-directed IRA? To whom are the invoices made out, and who pays them?

A. All income and expenses associated with an asset held within a self-directed IRA flow through the custodian. You, as the IRA owner, can improve the logistics by arranging a third party firm or individual to service the property, review the bills, and forward them to us for payment, along with your authorization. Having a property manager use an expense account, minimizes the frequency with which you will need to interact with the custodian. The bills are addressed to the owner of the property, which is the IRA in this case (e.g., "PENSICO Trust Company, Custodian FBO "Your Name", IRA Acct.#") and are forwarded to us with your signed PENSICO authorization form for payment. Similarly, rent checks are made payable to the IRA as indicated above, and are sent to us for deposit. You will get e-mail confirmations from us regarding all transactions in and out, and by logging in to our website, you will be able to view both your IRA's receipt of the rent checks, as well as outgoing expense payments.