

Insurers push pols to study broker regulation

Critics claim that the move to lobby senators is intended to delay passage of rules requiring uniform fiduciary standard

By **Sara Hansard**
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With the Senate set to reconvene this week, the insurance industry is stepping up its efforts to encourage members of the Banking Committee to support a comprehensive study into whether brokers should be forced to adhere to a fiduciary standard.

Since December, the American Council of Life Insurers, the National Association of Insurance and Financial Advisors and other insurance groups have been quietly pushing for a study aimed at uncovering regulatory deficiencies with regard to brokers who provide investment advice. The Securities and Exchange Commission, which the insurance groups hope will be charged with overseeing the study, would then be expected to issue rules to remedy those deficiencies.

Critics contend that such a study is unnecessary and is intended to delay the passage of regulations that would hold all advice givers — whether they call themselves brokers or investment advisers — to a uniform fiduciary standard.

“A study is simply a way to prevent extension of the fiduciary duty,” said Neil Simon, vice president of government relations for the Investment Adviser Association. “It is simply a means to try to kill the effort to extend the fiduciary duty to all those who provide investment advice.”

For their part, the insurance groups insist that they aren't trying to delay the passage of fiduciary regulations.

“We're not trying to kick [current reform efforts] down the road,” said Jill Edwards, assistant vice president of federal government relations for NAIFA.

Other insurance groups pushing for the study are the Association for Advanced Life Underwriting and the National Association of Independent Life Brokerage Agencies.

Insurers and brokers oppose a draft Senate plan released in November under which brokers giving advice would be required to register as investment advisers and be held to be fiduciaries.

Requiring brokers to act as fiduciaries would increase their liability, they argue.

“How do you apply a fiduciary duty in the context of the sale of product,” Ms. Edwards said. “It sets up an expectation that the product being recommended is going to perform best,” which could not be guaranteed, she said.

The new study would be intended to go beyond a well-known report issued by Rand Corp. in 2008. That report found that there is much confusion among investors about the differences between brokers and advisers.

In the contentious debate on whether to impose a fiduciary standard on brokers, the Rand study is often cited as proof that a single standard is necessary.

The Senate reconvenes tomorrow, and members of the Banking Committee will try to come up with bipartisan financial services reform legislation by the end of this month.

With committee members focused on bigger issues, however, lobbyists representing brokers and advisers have had to scramble to get attention for their issues.

The adviser issues “affect very big constituencies, and they’re very big issues,” said Alex DePizzo, a partner in the lobbying firm Winning Strategies Washington DC, which represents NAILBA.

Mr. DePizzo said that some Banking Committee members are not comfortable with the approach to adviser regulation backed by Sen. Christopher Dodd, D-Conn. Insurance lobbyists are hoping that those misgivings will make members more likely to go along with the study proposal instead, Mr. DePizzo added.

Banking Committee members and staff recognize the Dodd draft proposal on adviser regulation is “a significant leap from where current law is,” Mr. DePizzo said. “There’s been receptivity to a different approach than what was presented in the draft legislation,” he said.

To be sure, adviser and consumer groups are trying to counter the insurance industry’s efforts.

Last week, seven organizations representing the advisory industry, consumers and state regulators released a letter they sent to Mr. Dodd and Sen. Richard Shelby of Alabama, the ranking Republican on the committee, charging the insurance groups with launching “a particularly virulent attack on the

legislation, aimed at eliminating entirely the provision requiring a fiduciary duty for financial professionals and replacing it with an unnecessary study at taxpayer expense.”

The Jan. 7 letter, signed by the Financial Planning Association, the Investment Adviser Association, the Certified Financial Planner Board of Standards Inc., the National Association of Personal Financial Advisors, the North American Securities Administrators Association Inc., the Consumer Federation of America and Fund Democracy Inc., argues that the insurance groups have made arguments against fiduciary standards that are “myths.”

Instituting a fiduciary standard for brokers would not limit their ability to charge commissions or require them to charge fees for advice, nor would it limit the ability to sell propriety products or sell from a limited menu of products, the letter said.