GRINKMEYER LEONARD
FINANCIAL

When "I'll Scratch Your Back"

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Over the past few years, the Department of Labor has focused heavily on protecting hard-working Americans through their introduction of new fiduciary rules. But, despite all their efforts, we are still concerned that many conflicts of interest continue to exist between plan fiduciaries and service providers. Now is the time to eliminate any potential conflicts before the enforcement period begins.

So, why are we concerned? It isn't uncommon when meeting with new plan sponsors to identify fiduciaries who are potentially breaching their obligations to their participants. At our initial meeting, the trustee will tell us about his or her 401(k) plan and will identify strengths and weaknesses they would like to address. This is often followed by, "We are not currently interested in making changes to our plan because we have a personal or other unrelated business relationship with our service provider [or financial advisor]." When asked to explain a little further, common responses often begin with, "We do legal work for the company," or "They're a big client of ours so we don't want to jeopardize that relationship," or perhaps even, "We do all our banking with this institution and they are good to us."

In the South, cases like these are typically referred to as "the good ol' boy network." It is often perfectly acceptable in most business relationships to do business with your best clients, but when a retirement plan is involved, things can get a little dicey. Under ERISA provision 406(a), transactions between a plan and a party of interest can be seen as a prohibited transaction violation.

ERISA 406(a) prohibits plan fiduciaries from doing business or entering in to certain transactions with "parties of interest," typically plan attorneys, accountants, investment consultants, or plan vendors. According to ERISA 404(a), "a fiduciary shall discharge his duties with respect to the plan solely in the interest of the participants and beneficiaries." Unfortunately for plan sponsors, the courts have dictated that even if the transaction brings no harm to the plan and the plan participants, it can still be seen as a violation or conflict of interest and can carry severe consequences for all fiduciaries involved.

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But what's the big deal? ERISA's standards for fiduciaries are extremely tough. In the case of *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enters., Inc*., the courts refer to fiduciary standards as "the highest known to law." At the very least, the appearance of a potential conflict creates the question of whether a fiduciary is acting in the best interest of the participants. The biggest concern is whether actions by the fiduciary are negligent and are adversely impacting the plan. For instance, could the conflict of interest mean participants are paying unreasonable compensation to the vendor or investment advisor? Are there better investment options available from other plan vendors? Do the participants have access to adequate educational tools and resources?

This highlights only one example of a potential conflict of interest. Many other examples exist. But, what can fiduciaries do to avoid a prohibited transaction? We recommend that you demonstrate procedural prudence in all decisions you make:

1. **Research and understand your fiduciary responsibilities,**
2. **Take Action – Do what is required to keep the plan in compliance, and**
3. **Document all decisions and compliance-related activities.**

To find out more about your responsibilities to oversee your service providers and financial advisor, visit www.grinkmeyerleonard.com or contact us today.

About Grinkmeyer Leonard Financial
Grinkmeyer Leonard Financial is an industry leader in helping to provide focused, full-service defined contribution consulting services to employers looking for efficient, effective strategies for their retirement plans. We seek to help employers maximize plan efficiency, minimize fiduciary risk, increase participation and diversification, boost investment possibilities, and improve the overall plan experience. Grinkmeyer Leonard Financial is a proud member of Retirement Plan Advisory Group, one of the largest independent consulting networks in the U.S.

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