

## Tips for Plan Sponsors

**Conflicts of interest rise to the top of the list of problems that retirement plan sponsors must fix.**

### Plan Sponsors Must Open their Eyes to Conflicts of Interest

July 15, 2008  
Dallas, Texas

#### ***Conflicts of Interest Get the Supreme Court's Attention***

*Inherent conflicts of interest in the U.S. retirement plan industry have expanded over the years. Without realizing it, many Plan sponsors allow their participants' accounts to be unfairly charged by one or more service providers that operate behind a façade of independence.*

*Many Plan sponsors do not realize that it is their duty, not their service providers' duty, to evaluate conflicts and reduce bias in such activities as investment option selection and money management.*

*The U.S. Supreme Court's recent decision in the MetLife vs. Glenn case is a wake up call that Plan officials need to heed.*

*New enforcement in the form of the Department of Labor's Regulation 408(b)(2) will also force Plan officials to do their duty with respect to fixing conflicts among their Plans' service providers.*

#### ***Conflicts of Interest Can No Longer be Ignored***

For years, Roland|Criss has been advising its clients on the importance of identifying and reducing the conflicts of interest that have become an inherent part of the retirement plan landscape. We have found that some pension consultants, investment firms, recordkeepers, and directed trustees fall into a category of providers that tend to wear multiple hats and perform multiple services for Plan sponsors, all the while promoting their "co-fiduciary" status. Far from independent, they expose Plan sponsors to a grave risk.

The Department of Labor's new Regulation 408(b)(2), which is expected to be effective on January 1, 2009, makes disclosure of conflicts of interest a legal mandate. On June 19, 2008 the U.S. Supreme Court sent out its own red flag in the monumental decision *Metropolitan Life Insurance Company et. al. v. Glenn*.

The MetLife decision goes beyond the DOL's mandate. The precedent that it set means that mere disclosure of conflicts of interest will not save a Plan sponsor or its officials from substantial liability.

The Supreme Court's decision addressed the standards for managing conflicts of interest for Plan sponsors and the consequences to a Plan's fiduciaries if they allow their Plan's vendors to engage in conflicts of interest. The decision will have repercussions in the Pension and Health and Welfare industry for years to come. How far down the food chain its effect will travel is not known, but as the news broadcasters say, "here is what we do know:"

- Any Plan official that allows vendors to provide "other services", that is services other than a single category of deliverables, places their Plan and himself/herself at risk.
- Plan officials cannot waive conflicts of interest.
- The way to avoid conflicts of interest liability is to require service providers to do only one thing.

Here is a word of wisdom from the Supreme Court's Justices; "*Conflict of interest is a real or seeming incompatibility between one's private interests and one's public or fiduciary duties.*" Notice the implication that the appearance of a conflict of interest may have nearly as serious consequences as a "real" conflict.

## ***How to Fix Your Plan's Conflicts of Interest***

The Fiduciary Standard of Excellence, which is substantiated by the Employee Retirement Income Security Act ("ERISA") requires of Plan sponsors; "*Service agreements and contracts are in writing, and do not contain provisions that conflict with fiduciary standards of care.*" ERISA's intent, as echoed in the MetLife decision, is that Plan officials are required to promote accuracy and **reduce bias** in the handling of employees' assets.

Examples of how to reduce your exposure to conflict of interest risk include;

- commission an independent assessment of your Plan's investment conflicts of interest;
- use investment firms and recordkeepers that are CEFEX certified;
- restrict investment advisors to the monitoring of investments;
- make actuaries be just actuaries;
- require that insurance agents only sell insurance;
- insist that your recordkeeper only performs recordkeeping activities;
- be sure that your Plan's directed trustee, if it uses one, is not affiliated with another service provider employed by your Plan;
- obtain guidance and monitoring on fiduciary practices from a service provider who does nothing else.

In other words investment firms, consultants, insurance agents, directed trustees, and recordkeepers must wear one hat and one hat only. The MetLife case gives attorneys and the courts a foundation on which to pursue claims against Plan sponsors that until recently were hard to win.

**The solution:** Find out where conflicts of interest between your Plan and its service providers exist, (get independent help) develop a program to eliminate conflicts, and take the action needed to see the program to completion.

Roland|Criss offers investment conflicts of interest assessments. Learn more about how an assessment can improve your retirement plan's safety at [www.rolandcriss.com](http://www.rolandcriss.com).

Learn about CEFEX certified investment firms and recordkeepers at [www.rolandcriss.com](http://www.rolandcriss.com).

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