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DOL Issues Field Assistance Bulletin No. 2026-01 Signaling a Major Shift in ERISA Enforcement Priorities: What Plan Sponsors and Fiduciaries Need to Know

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On April 14, 2026, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) issued Field Assistance Bulletin No. 2026-01 (FAB) which sets out four enforcement priorities and guiding principles that are designed to ensure that EBSA's enforcement "***is fair, even-handed, responsive, and focused***" and its enforcement authority is used in a manner that "***promotes transparency, consistency, and the rule of law***." While the FAB is styled as internal guidance to EBSA staff, its practical implications for plan sponsors and fiduciaries are substantial.

Priority 1: EBSA will prioritize investigations evidencing the most egregious conduct or significant harm.

EBSA announced that it will concentrate its enforcement resources on cases involving the most egregious misconduct or the greatest harm to plan participants and beneficiaries. On the criminal side, EBSA will prioritize cases addressing the most significant harm to the employee benefits system. On the civil enforcement side, EBSA's highest priority will be targeting breaches of the duty of loyalty—that is, conduct taken other than for the "exclusive purpose of providing benefits to participants and their beneficiaries." This includes targeting individuals who misappropriate pension assets in bad faith, as well as fiduciary self-dealing and other conduct designed to advance goals unrelated to participants' best interests, such as the promotion of environmental, social, or governance (ESG) objectives.

In explaining its focus on the duty of loyalty, EBSA notes that ERISA is "a law of process and not results." Accordingly, EBSA is not looking to pursue cases that "unfairly second-guess process-based fiduciary judgments." In contrast, breaches of the duty of loyalty and conflicts of interest pose a greater risk of harm to participants.

EBSA also emphasized that it remains committed to protecting plan participants and beneficiaries through enforcement of health benefit rules under Part 7, disclosure requirements, claims processing, and adjudication requirements.

Priority 2: Consistent with the principles of fairness and our mission, EBSA will not regulate through enforcement whenever possible.

The FAB directs EBSA staff not to regulate through enforcement or use enforcement to drive policy. In furtherance of this goal, the FAB notes that EBSA must provide clear and advance guidance as to its interpretation of ERISA and fiduciary duties so as to not cause "unfair surprise." For example, novel legal theories or new ERISA interpretations should be introduced through notice-and-comment rulemaking or sub-regulatory guidance rather than being raised for the first time in enforcement actions.

In general, all enforcement activity must have a close factual nexus to either (i) the plain language of ERISA, (ii) clearly established guidance in final regulations or prominently published sub-regulatory guidance, or (iii) clearly established case law.

Notably, the FAB states that all pending and proposed ESOP valuation investigations must be reviewed against this fairness principle, suggesting that ESOP valuation investigations will be put on hold until EBSA establishes "acceptable standards and procedures to establish good faith fair market value for shares of a business to be acquired by an employee stock ownership plan."

Priority 3: To ensure that EBSA is meeting its enforcement priorities and guidelines, and to ensure consistency of enforcement across all regions, all proposed significant enforcement activities must be reviewed by EBSA's leadership.

In order to ensure consistency across all regions and adherence to the FAB's enforcement priorities, all proposed significant enforcement activities (including proposed settlements and voluntary corrective actions) must be reviewed by EBSA's leadership, ideally at least two weeks before any pertinent deadline or proposed action. Significant issues requiring senior review include novel legal theories, circuit court split issues and positions that deviate from prior EBSA positions. This centralization of review authority is designed to promote national consistency in enforcement and reduce the risk of outlier actions by individual regional offices.

Priority 4: EBSA's enforcement must be responsive and timely.

Acknowledging concerns raised by investigated parties and Congress that some investigations drag on for extended periods, EBSA is committed to completing investigations within a reasonable timeframe and to conducting its enforcement activities in a proper and respectful manner. In particular, EBSA commits to the following concrete investigation timelines absent exceptional circumstances: routine investigations involving less complicated issues, such as delinquent employee contributions, disclosure violations and bonding violations, should be completed within 18 months; and more complex investigations should be completed within 30 months.

To keep investigations on track, the Director of Enforcement must conduct quarterly reviews of any civil investigation that has exceeded those timeframes and must report quarterly to the Deputy Assistant Secretary for Program Operations and the Assistant Secretary on the status of overdue investigations. Additionally, the FAB encourages EBSA professionals to provide timely compliance assistance to conscientious plan sponsors and service providers, rather than relying solely on enforcement as a corrective tool.

Independence from Plaintiff Lawyers Pursuing Private Actions

In a notable aside, the FAB also directs EBSA investigators not to do anything that compromises the DOL's independence, integrity or credibility, including eliminating any appearance that enforcement activities or priorities are being coordinated with plaintiff lawyers pursuing private actions.

Proskauer's Perspective

The FAB represents a meaningful recalibration of EBSA's enforcement posture. Several practical points stand out:

- First, the emphasis on loyalty over prudence as an enforcement priority, combined with the caution against second-guessing process-based fiduciary decisions, underscores the importance of maintaining robust fiduciary governance processes and thoroughly documenting decision-making.
- Second, the explicit mention of ESG objectives as an example of goals "unrelated to participants' best interests" signals continued scrutiny of ESG-related investment strategies and activities (including proxy voting) for ERISA plans. Plan fiduciaries considering ESG factors in investment decisions should ensure that those factors are tied to financial analysis and participant welfare.

- Third, the commitment not to regulate by enforcement should provide an opportunity for fiduciaries to defend good faith processes.
- Finally, the new investigation timelines and quarterly review requirements reflect a welcome commitment to efficiency.

It is important to keep in mind that, by its own terms, this memorandum is an internal DOL policy and does not create any enforceable rights for any party. It provides a valuable window into the current EBSA leadership's priorities, but does not bind future administrations.

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