

Insights

U.S. DEPARTMENT OF LABOR ISSUES NEW EBSA ENFORCEMENT PRIORITIES: KEY CONSIDERATIONS FOR PLAN SPONSORS

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On April 14, 2026, the Employee Benefits Security Administration (“EBSA”) issued a memorandum titled “Guiding Principles for EBSA Enforcement Priorities” (the “Memorandum”) from the Assistant Secretary for EBSA (the “Assistant Secretary”), setting forth EBSA’s enforcement priorities and guiding principles. The Memorandum reflects the Department of Labor’s periodic review of its enforcement and regulatory efforts under the Employee Retirement Income Security Act of 1974 (“ERISA”) and establishes four core priorities designed to ensure that the “EBSA’s enforcement is fair, even-handed, responsive, and focused.”

Plan sponsors and fiduciaries should carefully review these priorities, as the Memorandum represents a significant recalibration of EBSA’s enforcement approach with the apparent intent of providing greater predictability for plan sponsors and fiduciaries. Plan fiduciaries should nonetheless remain vigilant, particularly with respect to the enforcement priorities included in the Memorandum. We will continue to monitor EBSA guidance as these principles are implemented. Please contact us or a member of your BCLP team with any questions.

Following is a summary of the four enforcement priorities:

1. EBSA WILL FOCUS INVESTIGATIONS ON EGREGIOUS CONDUCT AND SIGNIFICANT HARM

The Memorandum states that EBSA will use its enforcement discretion to:

- prioritize criminal cases addressing the most significant harm to the employee benefits system.
- focus civil enforcement investigations on breaches of the ERISA fiduciary duty of loyalty, with the highest priority being to target individuals and entities who have acted in bad faith to improperly administer plan benefits or misappropriate plan assets, including conduct “designed to enrich themselves or other goals unrelated to participants’ best interests.” Of

note, EBSA includes in this category the promotion of environmental, social, or governance (“ESG”) objectives.

- focus on direct evidence of non-exempt prohibited transactions.

The stated goal of the Memorandum is to seek out and target cases with the most significant impact in addressing harm to plan participants and beneficiaries, while remaining committed to enforcement of ERISA (including health benefit rules under Part 7 of ERISA such as ACA, MHPAEA, GINA, and WHCRA; disclosure requirements; and claims processing and adjudication).

Key Considerations:

- The Memorandum specifically identifies the promotion of ESG objectives as an example of bad faith conduct designed to enrich individuals or entities unrelated to participants’ best interests. Plan sponsors and investment committees should review current policies for ESG considerations and carefully document that investment decisions are made exclusively in the financial interests of participants.
- EBSA will focus enforcement resources on direct evidence of non-exempt prohibited transactions involving impermissible conflicts of interest. Sponsors should review service provider arrangements and fee structures for potential conflicts, document exemptions and related disclosures, and monitor and correct any delinquent contributions.
- The Memorandum describes ERISA as “a law of process and not results.” Accordingly, plan fiduciaries who maintain robust, well-documented decision-making processes will be better positioned to withstand scrutiny and “second guessing” by EBSA.

2. EBSA WILL NOT “REGULATE THROUGH ENFORCEMENT”

The Memorandum states that a key principle to EBSA’s ERISA enforcement will be “fairness.” In furtherance of this, EBSA commits to providing clear and advance notice to the public of its interpretation of ERISA and related fiduciary responsibilities, citing the guiding principles of Executive Order No. 13892 issued during the first Trump Administration. EBSA will not use enforcement activities to drive policy; instead, it will use notice-and-comment rulemaking and sub-regulatory guidance.

The Memorandum provides that novel legal theories or interpretations of ERISA should be subject to the ordinary regulatory and sub-regulatory process and should not be first articulated in enforcement actions and commits that, unless both EBSA’s Director of Enforcement and the Assistant Secretary have provided written approval to the contrary, enforcement activity must have a close nexus to: (i) the plain language of ERISA; (ii) clearly established guidance in final Department of Labor regulations or prominently published sub-regulatory guidance; or (iii) clearly established case law.

Key Consideration:

- As an example of its approach, EBSA stated that “until EBSA complies with the Congressional directive to provide ‘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,” all pending and proposed ESOP valuation investigations will continue to be reviewed based on the integrity of fiduciary process in determining whether the plan paid no more than adequate consideration for the shares, whether the transaction is in the best interests of plan participants and beneficiaries and whether the transaction is fair to the plan from a financial point of view. Potential ESOP sponsors should monitor for forthcoming guidance.

3. ALL PROPOSED SIGNIFICANT ENFORCEMENT ACTIVITIES MUST BE REVIEWED BY EBSA’S SENIOR LEADERSHIP

The Memorandum also stated that EBSA’s senior leadership should generally be given two weeks’ notice of any proposed “significant enforcement activity,” including proposed settlements and voluntary corrective actions. This notice should include a fair and clear description of the matter’s significance, a detailed summary of the rationale behind the enforcement recommendation, and all material and written correspondence between EBSA and the subject of the investigation.

“Significant Issues” for this purpose include, but are not limited to:

- Novel legal theories or novel areas of enforcement;
- Issues that are or are “reasonably likely to be” the subject of circuit court splits;
- Issues that will be resolved by adopting a position that deviates from a prior position of EBSA; and
- Any other issues that EBSA leadership believes may be of interest or importance to the Assistant Secretary.

4. TIMELY AND RESPONSIVE ENFORCEMENT

The Memorandum acknowledges concerns that some investigations have continued for extended periods and commits to completing investigations within reasonable timeframes:

- Routine investigations (e.g., delinquent contributions or disclosure and bonding violations) should generally be completed within 18 months; and
- Complex investigations must be completed within 30 months, absent exigent circumstances.

Open investigations exceeding these time frames will be subject to quarterly review.

The Memorandum provides that investigations should be “intentional and deliberate,” while directing EBSA professionals to “take any available opportunities” to provide compliance assistance to conscientious plan sponsors and service providers. The Memorandum also directs that EBSA must maintain its independence, integrity, and credibility and confirms that EBSA will eliminate any appearance or actions that its enforcement activities are being coordinated with plaintiffs’ lawyers pursuing private actions.

Key Considerations:

- With the Memorandum’s direction to EBSA professionals to provide compliance assistance whenever possible, plan sponsors facing compliance questions or complex situations are likely to gain additional comfort that contacting EBSA with questions is a viable compliance solution rather than the potential opening of an investigation.
- EBSA’s entrance into certain “common interest agreements” with private plaintiff firms was the subject of judicial, congressional, and public scrutiny in late 2024. The Memorandum notes that the investigation into these agreements is ongoing by the Department of Labor’s Inspector General and that the Memorandum may be updated after the results of that investigation. Plan sponsors will gain comfort that EBSA’s official public position is that it will not enter into private agreements with plaintiffs’ firms in furtherance of EBSA’s enforcement activities.

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