



FIELD ASSISTANCE BULLETIN 2026-01

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MEMORANDUM FOR: EMPLOYEE BENEFITS SECURITY ADMINISTRATION OFFICE OF
ENFORCEMENT

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FROM: DANIEL ARONOWITZ, ASSISTANT SECRETARY

SUBJECT: **GUIDING PRINCIPLES FOR EBSA ENFORCEMENT
PRIORITIES**

Through its regulatory and investigatory authority under the Employee Retirement Income Security Act of 1974 (ERISA), the U.S. Department of Labor (the Department) through its Employee Benefits Security Administration (EBSA) is charged with ensuring the security of the retirement, health, and other workplace-related benefits of American workers and their beneficiaries.

EBSA is the steward of ERISA and the United States' voluntary employee benefits system. ERISA was created because employee benefit plans, such as retirement, health, disability and other plans, are of national interest. The continued well-being of these plans is crucial to both employers who sponsor those plans and to American workers and their families who rely upon those plans to provide promised retirement, health and other benefits. The Department periodically reviews and evaluates the responsiveness and effectiveness of its enforcement and regulatory efforts to stay on mission.

This memorandum sets forth EBSA's enforcement priorities and guiding principles. These priorities and principles are designed to ensure that **EBSA's enforcement is fair, even-handed, responsive, and focused**. The four priorities address:

1. Focusing enforcement on the most egregious conduct and significant harm;
2. Ensuring, whenever possible and consistent with our mission, that EBSA does not regulate by enforcement and instead promotes fairness, prior notice, and clarity to the regulated community;
3. Requiring proper review by senior agency officials of all critical enforcement initiatives; and
4. Committing to timely and responsive enforcement.

These principles will ensure that the Department's enforcement authority is used in a manner that promotes transparency, consistency, and the rule of law.

Guiding Principles for EBSA's Enforcement Decisions

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

As a matter of EBSA's enforcement discretion, EBSA will prioritize criminal cases to address the most significant harm to the employee benefits system.

In civil enforcement, EBSA will prioritize investigations where the facts-at-issue support a breach of the duty of loyalty, which requires actions be taken "for the exclusive purpose of providing benefits to participants and their beneficiaries." Consistent with EBSA's national enforcement projects for a given year, our highest priority will be to target individuals and entities who, acting in bad faith, improperly administer plan benefits or misappropriate (or, aid in the misappropriation of) assets set aside for the benefit of the American worker. This includes conduct designed to enrich themselves or other goals unrelated to participants' best interests, such as the promotion of environmental, social, or governance objectives.

EBSA will continue to enforce both the duties of loyalty and prudence under ERISA. Nevertheless, a significant percentage of our enforcement resources must be focused on enforcement of loyalty breaches, or direct evidence of non-exempt prohibited transactions that involve impermissible conflicts of interest. While breaches of the duty of prudence can and do threaten the security of the American worker's promised benefits, the costliest breaches of the duty of prudence tend to be accompanied by concomitant loyalty breaches. To the extent any enforcement activity is solely based on a prudence breach, and given that ERISA is a law of process and not results, EBSA must avoid cases that unfairly second-guess process-based fiduciary judgments.

In sum, EBSA investigators should seek out and target cases where the Department can make the most significant difference in addressing harm to plan participants and beneficiaries -- particularly when there is direct evidence of disloyalty or impermissible conflicts of interest.

While adhering to the principles and priorities discussed in this memorandum, including our focus on matters evidencing the most harm to participants, beneficiaries and the employee benefit system, EBSA remains committed to protecting benefits for plan participants and beneficiaries through the enforcement of ERISA, including but not limited to health benefit rules under Part 7, disclosure requirements, claims processing, and adjudication requirements.

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

A key principle guiding EBSA enforcement is fairness. To achieve this goal, EBSA must provide clear and advance notice to the regulated public about its interpretation of ERISA and fiduciary responsibilities. This is consistent with Executive Order No. 138927, "The Civil Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication," which directed governmental agencies to limit industry regulation "only [to] standards of conduct that have been publicly stated in a manner that would not cause unfair surprise." Whenever possible and consistent with our

mission, EBSA must not regulate through enforcement activities, or use enforcement to drive policy. Instead, we should use notice-and-comment rulemaking and sub-regulatory guidance.

Although circumstances may arise requiring EBSA to act to fulfil its mission to protect the security of the employee benefit plan system, novel legal theories or interpretations of ERISA should not be first articulated during enforcement actions. Instead, they should be subject to the ordinary regulatory and sub-regulatory processes. Accordingly, unless both EBSA's Director of Enforcement and the Assistant Secretary (or his delegate) have provided written approval to the contrary, the factual predicate for all enforcement activity must have a close nexus to:

- The plain language of ERISA's text;
- Clearly established guidance in final Department regulations or prominently published sub-regulatory guidance; or
- Clearly established case law.

For example, 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 must be reviewed against this guiding principle of fairness.

As noted above, exigent or novel circumstances may require EBSA to act to protect participants and beneficiaries from significant harm, including in cases involving novel legal theories. These actions must first be vetted and approved by EBSA senior officials (see the third priority below).

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.

The Deputy Assistant Secretary for Program Operations, the Director of Enforcement, and each Regional Director must inform EBSA's Assistant Secretary (or his delegate) of significant enforcement activity, including proposed settlements and voluntary corrective actions. When possible, this notice should be provided at least two weeks before any pertinent deadline or proposed action.

Significant issues 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 EBSA position; or
- Any other issues that the Deputy Assistant Secretary for Program Operations, Director of Enforcement, or any Regional Director independently believes may be of interest or importance to the Assistant Secretary.

In significant actions, EBSA leadership should receive sufficient information, including:

- A fair and clear description of the matter's significance;
- A detailed summary of the matter evidencing the rationale behind EBSA's enforcement recommendations; and
- All material and written correspondence between EBSA and the subject of the investigation or their counsel.

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

Investigated parties and Congress have expressed concerns that some EBSA investigations are open-ended and unduly continue for extended periods of time. EBSA takes these concerns seriously and, absent exceptional circumstances, commits to completing investigations within a reasonable timeframe and to conduct its enforcement activities properly and respectfully.

Routine investigations involving less complicated issues, such as delinquent employee contributions, disclosure and bonding violations, should be completed within 18 months, unless there are exigent circumstances that are communicated to the Director of Enforcement.

More complex investigations must be completed within 30 months unless there are exigent circumstances. Consideration will be given for any cases in which EBSA's enforcement activities are delayed for documented reasons beyond the control of EBSA's enforcement personnel.

EBSA investigations should be intentional and deliberate with specific planning and focus. In addition, while investigations should address egregious ERISA violations and matters involving significant harm, EBSA professionals should take any available opportunities to provide timely compliance assistance to conscientious plan sponsors and service providers under EBSA's jurisdiction.

To ensure that EBSA's investigations are timely and responsive, the Director of Enforcement (or designee) must conduct quarterly reviews of any civil investigation that has remained open longer than the timeframes stated above, and take appropriate corrective action to ensure that EBSA is meeting this enforcement priority.

The Director of Enforcement should also report to the Deputy Assistant Secretary for Program Operations and the Assistant Secretary quarterly on the status of any investigation that exceeds the timeframes stated above.

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Finally, EBSA investigators and professionals will not do anything that compromises the Department's independence, integrity and credibility with the regulated or participant communities. This includes eliminating any appearance that EBSA enforcement activities and priorities are being coordinated with plaintiff lawyers pursuing private actions.¹

¹ DOL's Inspector General is investigating the use of certain common interest agreements between EBSA and private plaintiff law firms. These guiding principles may be updated after the findings of that investigation.

This memorandum is an internal Department policy directed at EBSA and its employees. As such, it is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any matter, civil or criminal.

EBSA leadership remains responsible for reviewing significant enforcement activity and ensuring that enforcement actions are consistent with the principles set forth in this document. Specifically, the Deputy Assistant Secretary for Program Operations, Director of Enforcement, and each Regional Director must review and implement these principles immediately and advise their staff as appropriate. Thank you for your hard work, assistance, and cooperation in this matter.