



EBSA Enforcement Sharpens its Focus on Duty of Loyalty

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The Employee Benefits Security Administration (EBSA), a division of the Department of Labor (DOL), recently issued a memorandum outlining its enforcement priorities for ERISA covered health and welfare plans (the “Memo”). The guidance is relevant for employers serving as plan sponsors and fiduciaries, as it clarifies how EBSA will assess fiduciary conduct and where enforcement resources will be concentrated. These changes take effect July 17, 2026.

■ Background

EBSA is responsible for enforcing ERISA requirements applicable to employer sponsored plans, including claims and appeals, COBRA administration, Mental Health Parity, ACA and Consolidated Appropriations Act transparency mandates, disclosure requirements, and the proper handling of plan assets. Employees and their dependents may initiate investigations by filing complaints with EBSA when they believe a plan is not being administered in compliance with ERISA.

When EBSA takes enforcement action, it often results in settlements, required corrective actions, reprocessed claims, restored plan assets, and operational changes. The Memo sets forth EBSA’s four priorities:

- Focus on the most egregious conduct and significant harm
- Ensure no regulation by enforcement and promote fairness, prior notice and clarity
- Require proper reviews by senior leaders of critical enforcement initiatives
- Timely and responsive enforcement

■ Core Fiduciary Duties for Employers

All ERISA governed employers are subject to four fundamental fiduciary duties:

1. **Duty of Loyalty** – Act solely in the interest of plan participants and beneficiaries
2. **Duty of Prudence** – Act with care, skill, and diligence
3. **Plan Document Rule** – Follow the terms of the plan documents
4. **Duty to Avoid Conflicts of Interest** – Avoid self dealing and prohibited transactions

Failure to meet any of these obligations exposes employers to enforcement risk.

■ EBSA Key Enforcement Priority: Duty of Loyalty

The Memo makes clear that EBSA's highest enforcement priority will be investigations involving breaches of loyalty, particularly where employers or service providers act in bad faith or place interests other than participants' best interests first.

This includes:

- Improper administration of benefits
- Misuse or misappropriation of plan assets
- Non exempt prohibited transactions
- Conflicts of interest that benefit the employer, a service provider, or a third party
- Actions designed to advance goals unrelated to participant benefits

■ What Employers Can Expect from EBSA Enforcement

In the Memo, it will target cases involving the greatest harm to participants and beneficiaries and prioritize matters with clear evidence of disloyalty or impermissible conflicts. Senior leadership will review major investigations, and enforcement must be responsive and timely.

The Memo also states that EBSA will avoid regulating through enforcement whenever possible and base enforcement actions on clear statutory language, established regulations, published guidance, or settled case law.

As a result of this more targeted enforcement approach, the volume of investigations may decline. However, plan sponsors should not interpret this shift as diminishing their ongoing fiduciary obligations or as a reduction in enforcement risk.

■ Employer Action

- Review fiduciary governance practices and ensure decisions are made exclusively in participants' best interests
- Document fiduciary processes, including reasons for vendor selection, plan design, and compliance decisions
- Monitor conflicts of interest involving employers, vendors, and service providers
- Ensure operational compliance with claims procedures, disclosures, parity requirements, COBRA administration, and transparency requirements