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Insights

EBSA Issues New Enforcement Guidance with Significant Implications for ESOPs

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On April 14, 2026, the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) released Field Assistance Bulletin No. 2026-01, outlining new enforcement priorities and guiding principles under ERISA. While the Bulletin applies broadly to employee benefit plans, several aspects are particularly significant for employee stock ownership plans (ESOPs) and for fiduciaries, trustees, valuation firms, and plan sponsors involved in ESOP transactions.

Overview of the Guidance

The Bulletin announces a recalibrated enforcement approach centered on fairness, transparency, and the appropriate use of enforcement discretion. Among other things, EBSA states that it will:

- Focus enforcement resources on the most egregious conduct and cases involving significant harm, rather than lower-dollar or technical violations.
- Avoid "regulating through enforcement" whenever possible, instead relying on notice-and-comment rulemaking and published sub-regulatory guidance.
- Require senior-level review of significant enforcement initiatives, including cases involving novel legal theories.
- Commit to timelier investigations, with stated benchmarks for closing routine and complex cases.

Key Takeaways for ESOPs

Reduced Reliance on Novel Theories in ESOP Valuation Cases

One of the most notable aspects of the Bulletin for ESOP stakeholders is EBSA's emphasis on fair notice and clearly established law. EBSA states that, absent senior leadership approval, enforcement actions must have a close nexus to:

- The plain text of ERISA,
- Clearly established regulations or published guidance, or
- Clearly established case law.

This is particularly relevant to ESOP valuation investigations, an area that has historically been a focus of EBSA enforcement despite limited formal guidance. The Bulletin expressly acknowledges the statutory directive for EBSA to issue guidance on “acceptable standards and procedures” for ESOP valuations and states that, until such guidance is issued, pending and proposed ESOP valuation investigations must be assessed under the Bulletin’s fairness principles.

For ESOP fiduciaries and transaction parties, this signals a potential shift away from enforcement actions premised on evolving or unstated valuation standards and toward greater deference to well-documented, process-driven fiduciary decisions.

Emphasis on Loyalty Breaches Over Process-Based Prudence Claims

The Bulletin makes clear that EBSA’s civil enforcement priorities will focus primarily on breaches of the duty of loyalty, including self-dealing, conflicts of interest, and bad-faith conduct. While EBSA reiterates its authority to pursue prudence violations, it cautions against enforcement actions that unfairly second-guess fiduciary process where there is no evidence of disloyalty.

For ESOP fiduciaries, this distinction is critical. Many ESOP enforcement matters arise from hindsight challenges to valuation methodology or transaction pricing. The Bulletin suggests that, where fiduciaries act in good faith, follow a reasoned process, and rely on qualified advisors, EBSA will be less inclined to pursue enforcement solely because it disagrees with the outcome.

Conclusion

EBSA Field Assistance Bulletin No. 2026-01 reflects a more restrained and process-oriented enforcement philosophy that may be welcome news for the ESOP community. While it does not eliminate enforcement risk, it signals increased attention to fairness, predictability, and adherence to clearly articulated legal standards, principles that are especially important in the ESOP context.

For specific assistance regarding ESOP administration or transactions, please contact Fenton D. Strickland, Griffin F. O’Gara, or any member of the Krieg DeVault Employee Benefits team.
