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DOL ERISA RETIREMENT PLAN ENFORCEMENT 2022 UPDATE

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DOL Enforcement Background

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DOL Enforcement – Background

The DOL has civil and criminal investigatory and litigation enforcement authority over ERISA’s fiduciary duties and prohibited transaction rules.

- This presentation assumes a level of knowledge about ERISA, DOL and DOL’s enforcement jurisdiction.
- For a primer on the above, see next few slides.

Information about DOL investigations available in “DOL Enforcement Manual,” located at:

www.dol.gov/agencies/ebsa/about-ebsa/our-activities/enforcement/oe-manual



DOL Operations

National EBSA

- Within EBSA, enforcement is primarily directed from the National EBSA Office in Washington, DC.
- The National Office sets enforcement priorities and supervises investigations and corrections of violations.

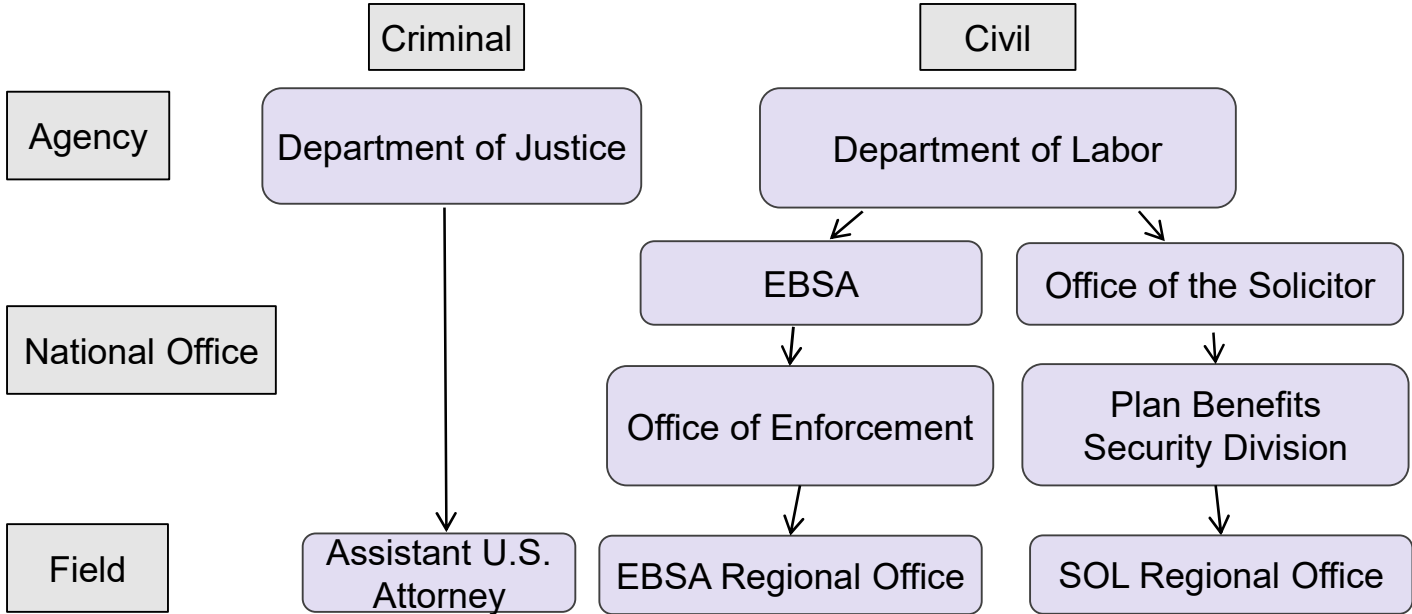
EBSA Regional Offices (10)

- Investigations are conducted at the regional level by investigators. There are 10 regional offices, plus five sub-regional district offices.
- Typically, investigators have relevant specialized training or education, with many being lawyers or Certified Public Accountants.

DOL Office of the Solicitor

- Office provides general legal counsel to EBSA and handles all civil ERISA Title I litigation.
- Unlike many other federal agencies, the Office of the Solicitor's litigation authority is independent of the DOJ.

Civil and Criminal ERISA Enforcement Jurisdictions



DOL Enforcement Is Robust

- In recent years, the DOL has continued its robust investigatory program of enforcing the fiduciary and prohibited transaction provisions of ERISA.
- With the arrival of the Biden administration, the DOL's ERISA enforcement program is expected to remain robust if not more aggressive.



In 2001, EBSA recovered

\$721 Million

Total monetary results



By 2020, EBSA had raised that number to

\$3.1 Billion

- The Office of Enforcement supports enforcement through policy formulation, project identification, guidance, and coordination of investigations.
 - There is a new acting Office of Enforcement Director, and this might lead to more enforcement activities.

Timeline of a Typical Investigation

1

Investigating Opening Letter

- Investigations typically open with a letter from a DOL regional office
- Letter typically includes broad document request

2

Complying with Document Request

- Investigator has discretion with regard to how investigation will proceed
- Negotiation of scope may be possible

3

Interviews

- Investigator may conduct in-person interviews

4

Waiting

- After providing documents and completing interviews, considerable time (e.g., years) may pass
- ERISA's statute of limitations may run out, in which case DOL may request a tolling agreement

5

Closing or Findings Letter

- The DOL will conclude its investigation by issuing a "closing letter" terminating the investigation or a "findings letter" identifying violations

6

If a Findings Letter, Negotiating a Resolution

- The DOL will look for a voluntary resolution
- If no voluntary resolution can be agreed to, the DOL may refer the matter for enforcement litigation

A Common Question: What Is the Source of Investigation?

- Possible sources include:
 - Participant or beneficiary complaint
 - DOL's own benefits advisor program
 - Initiatives
 - Other "targeting" through computer-generated list or review of required filings (e.g., Form 5500)
 - Media reports
 - Existing private ERISA litigants
 - Referrals from other government agencies or state regulators, or another DOL sub-agency
 - Random selection

How Is the DOL Different from Private Plaintiffs?

DOL

- The DOL's enforcement remedies are broader than those of private litigants.
- The DOL can subpoena documents before filing litigation and the DOL has a low bar for subpoenaing documents (e.g., does not need to have a definitive claim).
- The DOL can be interested in claims that are not economical for private litigants, such as small plan claims and prohibited transactions without significant monetary loss.
- The DOL can and does make and receive referrals from other regulators, including the IRS, the SEC, FINRA, and the OCC.

Private Litigants

- Certain remedies are not available to private litigations, such as certain penalties or claims related to fully funded defined benefit plans.
- Private litigants cannot engage in discovery until filing a complaint and surviving a motion to dismiss.
- Private litigation cases will typically be matters that are economical for litigation (i.e., class actions focused on certain claims, such as fees and expenses).

And Now for a Top Ten List....



Top 10 Considerations in Dealing with DOL

1. First things first: Consider insurance notice.
2. Each investigation/investigator will have its own style; expect that there are limited guidelines and rules.
3. Attempt to build a cooperative relationship with the investigator/examiner.
 - Build a proactive relationship with your regulators (through internal and/or outside counsel).
 - Keep an open dialogue with DOL investigators in order to clarify any issues and address concerns.
4. In-person (or virtual) meetings, when possible, are often productive.
5. But there will be moments where pushing back is appropriate.

Top 10 Considerations in Dealing with DOL (con't)

6. Consider having one contact for the DOL, ideally a lawyer or compliance team member.
7. Keep good records.
8. Respond in a timely fashion, but consider extension requests as appropriate.
9. Understand that the DOL can move very slowly.
10. Remember the DOL's mission and frame responses accordingly. *Do not think you can 'blow off' the DOL.*

Subpoena Enforcement

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Can I Not Respond? Risk of Subpoena Enforcement



DOL Subpoena Enforcement Power

DOL subpoena enforcement power is very broad and typically supported by the courts.

Recent DOL Subpoena Enforcement Example

In February 2021, the DOL filed subpoena enforcement in Illinois by recordkeeper.

- A national recordkeeper contested the DOL's investigatory authority because, among other reasons, the service provider was not a fiduciary, the DOL has not articulated any conduct constituting a violation of ERISA, and the subpoena was too broad.
- The DOL objected and filed subpoena enforcement, arguing that it "may seek information that 'might assist in determining whether any person is violating or has violated any provision of Title I of ERISA.'"

Takeaways from Recent DOL Subpoena Enforcement

In a recent decision, Illinois District Court found for the DOL, and the Seventh Circuit affirmed, underscoring the breadth and scope of the DOL's investigatory powers.

1

DOL's enforcement and subpoena power extends to non-fiduciaries and is not simply limited to named or implied fiduciaries of a plan.

2

DOL has the authority to investigate cybersecurity practices.

3

DOL's subpoena power is broad, but it is not a "blank check." Courts should weigh the relevance of the documents requested against the burden on the respondent to produce them.

DOL Enforcement Current Priorities

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Official DOL Enforcement Priorities

- National Enforcement Priorities
 - “Major case enforcement” priority
 - “Employee contributions” initiative
- National Enforcement Projects
 - Health Benefits Security Projects
 - Contributory Plans Criminal Project
 - Protecting Benefits Distribution
 - Employee Stock Ownership Plans (ESOPs) Project
 - Plan Investment Conflicts

DOL Service Provider Focus

- DOL identifies a “major case enforcement” priority
 - EBSA describes it as a focus on large service providers rather than individual plans, intended to “focus [EBSA’s] enforcement resources on areas that have the greatest impact on the protection of plan assets and participants’ benefits” and, in particular, by “focusing more investigative resources on professional fiduciaries and service providers with responsibility for large amounts of plan assets and the administration of large amounts of plan benefits.”
 - This corresponds with what we have seen, which is a focus on the service provider (i.e. “book of business” reviews)

Current DOL Retirement Plan Enforcement Priorities



**Newest DOL Focus:
Cybersecurity**



Plan Investment Conflicts



ESOP Project



Emerging Areas:

- **DB Investments**
- **CITS**
- **Cryptocurrency**
- **ESG**



**Protecting Benefit
Distributions: TVPP/Missing
Participant Investigations**

Cybersecurity

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Current Issues: Cybersecurity

Cybersecurity Incidents Involving ERISA Plan Assets Are Happening

Increasing reports of theft of plan data and plan assets. *For example*, a 700% increase in ransomware attacks in 2020

In some cases, this has resulted in litigation against the plan

Possible Fiduciary Duty

ERISA's prudence standard may require Plan Sponsor fiduciaries to be proactive and reactive to ever-changing data security threats (mostly by monitoring service providers)

DOL Guidance Issued in 2021

1) Tips for Hiring a Service Provider with Strong Cybersecurity Practices
DOL view of "best practices" for plan fiduciaries when hiring a service provider

2) Cybersecurity Program Best Practices
DOL view of 12 "best practices" for recordkeepers and other service providers
Often aligns with industry standards

3) Online Security Tips
Tips for participants

DOL Conducting Investigations

At the same, the DOL has been auditing plans related to their cybersecurity practices

Plan Sponsor Guidance: Six Tips for Hiring a Service Provider

1. Ask about the service provider's data security standards, practices, policies, and audit results, and benchmark those against industry standards.
2. Analyze the service provider's security standards and security validation practices.
3. Evaluate the service provider's track record in the industry.
4. Ask about past security events and responses.
5. Confirm that the service provider has adequate insurance coverage for losses related to cybersecurity and identity theft events.
6. Ensure that the services agreement between the plan fiduciary and the service provider includes provisions requiring ongoing compliance with cybersecurity standards.

12 Cybersecurity Best Practices

Practices 1–6

1. Have a formal and well-documented cybersecurity program.
2. Conduct prudent annual risk assessments.
3. Have a reliable annual third-party audit of security controls.
4. Clearly define and assign information-security roles and responsibilities.
5. Have strong access-control procedures.
6. Ensure that any assets or data stored in a cloud or managed by a third party are subject to appropriate safeguards.

Practices 7–12

7. Conduct periodic cybersecurity training.
8. Implement and manage an SDLC program.
9. Have an effective business resiliency program addressing BCDR and incident response.
10. Encrypt sensitive data, stored and in transit.
11. Implement strong technical controls in accordance with best practices.
12. Appropriately respond to any past cybersecurity incidents.

Cybersecurity DOL Investigatory Initiative

We see evidence of active reviews of recordkeepers and plans. This appears to be a high DOL priority.

- DOL requests have covered categories like:
 - ✓ **Breach and Fraud Events and Responses**
 - ✓ Policies and Procedures
 - ✓ Assessments and Audit Reports
 - ✓ Technical Controls and Practices
 - ✓ Insurance Coverage

What can the DOL do? What is the risk?

- At a minimum, the DOL can subject plans to long (multi-year) and resource-taxing investigations.
- At worst, the DOL can make findings of fiduciary breach.
 - Although breach findings are probably more likely only if the DOL is investigating after a breach incident.
- But it is too early to predict where the DOL is going.

Practical Steps to Respond to This Guidance

Review the guidance and consider direct changes or working with service providers to ensure that existing data security protocols reflect the best practices set forth by the DOL.

Consider fiduciary training on how best to address fiduciary exposure to cybersecurity events.

Consider reviewing plan documents, including SPDs and participant communications.

Consider contract terms, especially older contracts.

Consider questionnaires for vendors (and vendors, proactive communications to plans)

Consider establishing formal procedures designed to ensure that cybersecurity issues are regularly considered and properly addressed.

Consider educating participants as to their obligations with respect to cybersecurity and advising them of the DOL's *Online Security Tips*.

Consider engaging counsel and third-party vendors to conduct a benefit plan cybersecurity audit to analyze potential weaknesses in cybersecurity practices and the best way to resolve such weaknesses.

- There may be value to engaging third-party vendors through counsel in order to maintain privilege.

Plan Investment Conflicts

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Plan Investment Conflicts

The Plan Investment Conflicts Project (PIC) began in fiscal year 2016.

- Focuses on concerns pertaining to compensation and conflicts of interest by fiduciary service providers to ERISA plans and around ERISA plan assets, such as:
 - Conflicts of interest that may lead to conflicted decision making processes, imprudent application of investment guidelines, and payment of excessive fees.
 - Whether a plan's fiduciaries are adequately engaging in due diligence related to such plan investments and service providers in order to address conflicts of interest.
- Fits within traditional DOL focus on enforcing ERISA's core fiduciary duties and prohibited-transaction rules, especially by service providers.

Plan Investment Conflicts (con't)

- Examples of enforcement measures under the PIC include:
 - Service providers (such as advisors, insurance brokers, etc.) collecting higher-than-disclosed fees or improper compensation from ERISA plan assets.
 - Prohibited transactions involving investments.
 - Proprietary fund investments by mutual fund companies and proprietary investment products (e.g., PTE 77-3 and PTE 77-4)
 - Whether plan assets are being used to pay nonplan expenses.
 - Whether there are loans using plan assets that run afoul of the prohibited-transaction rules.
 - Improper or undisclosed compensation, such as undisclosed indirect compensation.
 - Criminal investigations of potential fraud, kickback, and embezzlement involving investment managers and advisers to plans and participants.
 - Starting to see questions about QPAM compliance, but unclear DOL's focus.

PIC: Recent Examples

- Company invested the bulk of the plan's assets (allegedly 70%) in a bank owned by a co-owner of company.
- The DOL alleged losses of \$18 million, although settled for less than \$4 million.

- Several resolutions in recent years of "proprietary fund" cases, often targeting mutual fund companies that are smaller than the firms that are being sued in private litigation (for example plans with under \$500M in assets).
- Even for these smaller firms, the DOL can make significant loss allegations, e.g., up to \$20 million, if they can document underperformance of proprietary funds relative to benchmarks.
- We are seeing more questions from the DOL about PTE 77-4.

- Plan administrator commingled plan assets received from ERISA-plan clients into a standard bank account and used account to pay fees and make loans to self and affiliates without proper disclosure to the employers.

- Plan sponsor engaged investment advisor and manager that applied an investment strategy of "non-diversification" and intentionally invested the plan's assets on a concentrated basis in a small number of securities for a long period of time.
- This resulted in plan holding 45.4% of assets in one security.
- The manager also operated without an investment policy statement.
- Notably, the DOL sued both the manager AND the plan sponsor and its fiduciary committee.

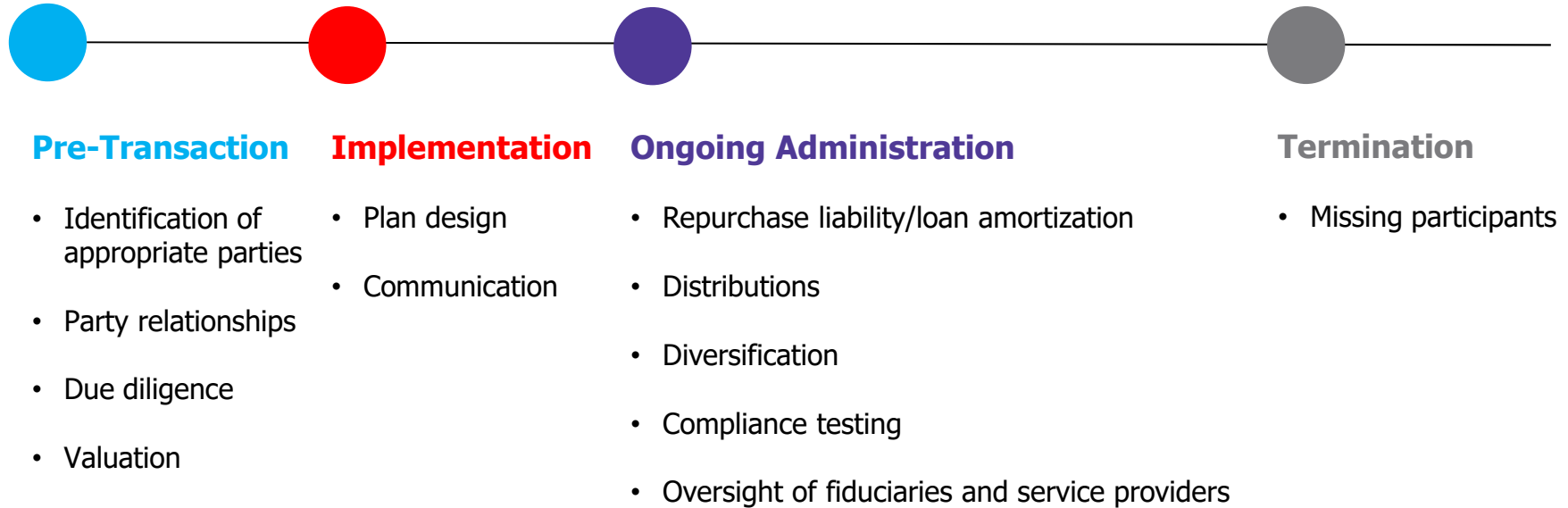
PIC DOL Enforcement: Tips for Fiduciaries

- Under DOL guidance and fiduciary case law, process is paramount.
- Certain practices can help build a prudent process, including:
 - Document, document, document.
 - Make delegations to experts, including investment advisory.
 - Review delegations periodically and carefully.
 - Have and follow a written investment policy and other policies.
 - Provide initial and periodic fiduciary training.
 - Have regular meetings of fiduciary committees with documentation.

ESOP Project

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ESOP Life Cycle



ESOP Valuations

Valuation is an inexact science and frequently the focus of ESOP investigations



Is the financial advisor's opinion consistent with the report or the opinion letter and supporting documentation relied upon by the financial advisor?



Were adjustments to historical EBITDA appropriate? Did the adjustments lead to an inflated valuation?



Did the ESOP pay for "control" without receiving control?



Is the debt service manageable?

ESOP Valuations (cont.)

Prohibited transaction exemption hinges on “adequate consideration,” and the fiduciary is expected to probe the work of the financial advisor

Were appropriate valuation approaches and assumptions properly considered and weighed?

Does the valuation factor in all prior indications of value or include an explanation as to why a certain indication is irrelevant?

Does the valuation appropriately reconcile conflicting information?

Does the valuation rely on unreasonable projections or unreasonable data?

Focus on Process Agreements

- Through a series of recent settlement agreements and consent orders, the DOL has offered fiduciary process guidance for transactions involving a purchase from, or sale to, an ESOP.
 - *Perez v. GreatBanc Trust Co.*
 - *Acosta v. First Bankers Tr. Servs., Inc.*
 - *Acosta v. BAT Masonry (Joyner)*
 - *Acosta v. Mueller (Alpha Inv. Consulting Grp., LLC)*
 - *Acosta v. Cactus Feeders, Inc. (Lubbock)*
 - *Scalia v. Farmers Nat'l Bank of Danville (FNB)*

Focus on Process Agreements (cont.)

- DOL has cautioned that other ESOP fiduciaries would “do well to take notice of” process agreement provisions
- Neither has the force of law nor the ability to change current law, but they provide helpful roadmap for:
 - Steps for selection and oversight of valuation advisor (focus on potential conflicts of interest)
 - Steps for fiduciary review of valuation report
 - Steps for assessing reasonableness of projections
 - Financial statement analysis standards
 - Consideration of fairness opinion
 - Consideration of ability to service debt
 - Document preparation and preservation standards
 - Steps for obtaining trustee insurance coverage
 - Consideration of clawbacks

ESOP Valuations: Recent Litigation

- *Walsh v. Preston*, No: 1:14-CV-04122-ELR (N.D. Ga., Sept. 20, 2022)
- Court offered substantive conclusions regarding proper valuation mechanics in the context of this specific ESOP:

It was reasonable for a valuation to apply a 0% company-specific risk premium in the absence of specific, identifiable factors to counter it.

It was reasonable to add back an ESOP expense to increase cashflow, because the ESOP was an incremental benefit that does not replace any prior benefits.

It was improper to rely on post-valuation date information that suggested management was or should have been aware that the 2008 Great Recession was coming prior to the collapse of Bear Stearns.

It was improper to add an additional minority discount for lack of control when the valuation already utilized "as is" cash flows.

ESOP Valuations: Recent Settlement

In September, a large banking company agreed to settle an ongoing DOL investigation of the ESOP feature of its 401(k) plan for \$145 million (\$131.8 million paid to the ESOP and \$13.2 million paid to the DOL) without admitting or denying DOL allegations



DOL alleged ESOP overpaid for non-publicly traded convertible preferred shares of company stock



DOL alleged leveraged transaction was designed to cause the ESOP to pay more for each share of stock than ESOP participants would ever receive



DOL alleged the company used dividends paid on the preferred shares to repay ESOP loans, thereby defraying obligations to contribute to the ESOP

Emerging Issues

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Emerging Issues: DB Investments

DB Investments

- We are seeing multiple examples of defined benefit plans being subject to broad reviews of investments and investment decision making.
- It would appear this might be a new area of DOL focus.
- Historically, we have not seen the DOL focus on broad reviews of investments and investment decision making.
- Perhaps this is a reaction to *Thole v. U.S. Bank, N.A.*, which removes standing for participants if a DB plan is funded.

What might this mean?

- Don't assume DB plan decision-making is immune from liability.
- If a DB plan is subject to DOL review, the scope and duration of the investigation could be long (given the nature of DB plans).

Emerging Issues: CITs

CITS

- CITs (collective investment trusts, also known as group trusts) have exploded in use in ERISA plans, in part due in part to explosion of fee litigation
- Historically, the DOL has not had a significant regulatory focus on CITs
- However, we have seen evidence of DOL interest in CITs, including in the investigatory space

What might this mean?

- Could we see a DOL focus on CITS?
- For example, on area of possible DOL concern could be whether CIT trustees are “rent-a-trustees”?

Emerging Issues: Cryptocurrency

Cryptocurrency

- In Compliance Assistance Release No. 2022-01, the DOL cautions plan fiduciaries about offering cryptocurrency exposure to plan participants.
- DOL appears concerned with cryptocurrency being volatile, disclosure, custody and recordkeeping, valuation, and the evolving regulatory environment.
- The release states that the DOL **expects to conduct investigations of investments in cryptocurrencies** and related products.

What might this mean?

- The DOL might start investigations regarding the use of digital assets.
- Critically, the DOL has indicated it might be concerned about the use of digital assets in brokerage windows.

Emerging Issues: ESG

ESG

- The use of ESG factors in investment decision-making can implicate ERISA's fiduciary duties.
- The key issue is how ESG factors fit within the fiduciary's obligation to act prudently and solely in the interest of plan participants.
- In October 2021, the DOL issued a proposed rule that would ease consideration of certain ESG factors, as it suggests that certain ESG factors can be material to an investment's risk/return analysis.
- Final version of the proposed rule is expected by the end of fall 2022.

What might this mean?

- When DOL issued ESG rule in 2020, it engaged in a corresponding investigatory initiative of plans that had ESG assets.
- Could we see a similar undertaking again, such as a focus on greenwashing?

Protecting Benefit Distributions: TVPP/Missing Participant Investigations

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Protecting Benefit Distributions: TVPP (Missing Participants) Investigations

- Since 2015, the DOL has had an investigatory initiative, the Terminated Vested Participant Project (TVPP) that is focused on whether plans and service providers have taken sufficient steps to search for, outreach, and encourage payment starts for terminated vested participants who are missing.
 - Many plans and service providers have been subject to lengthy investigations that require significant plan resources.
 - Especially early on, the DOL was making findings of breaches of fiduciary duty.
 - The DOL is continuing the TVPP, but possibly with a less adversarial approach.

Background: Different Types of “Missing Participants”

Participants that cannot be located (e.g., incorrect address, missing information).

Nonresponsive participants at normal retirement date or required beginning date.

Participants who are likely deceased, but the death cannot be confirmed.

Participants with uncashed checks or stopped payments.

Beneficiaries who cannot be located or identified.

New DOL Subregulatory Guidance

Missing Participant – Best Practices for Pension Plans

Suggested practices for fiduciaries seeking to navigate missing participant issues.

Compliance Assistance Release No. 2021-01: TVPP Defined Benefit Pension Plans

Instructions to DOL investigators on TVPP investigations.

Missing Participant Best Practices Guidance:

1 **Maintain Accurate Census Information**

2 **Implement Effective Communication Strategies**

3 **Improve Missing Participant Searches**
➤ Note that this is the category that was already addressed in existing DOL guidance.

4 **Document Procedures and Actions**

Observations on Risks

- The DOL acknowledged that “[n]ot every practice . . . is necessarily appropriate for every plan”:
 - Plan fiduciaries “should consider what practices will yield the best results in a cost-effective manner.”
 - Plan fiduciaries are permitted to consider “the size of a participant’s accrued benefit and account balance as well as the cost of search efforts.”
 - The appropriate steps to locate and communicate with a missing or nonresponsive participant “will depend on the facts and circumstances particular to a plan and participant.”
- ***Nonetheless, the DOL (or private litigants) may attempt to frame the DOL guidance as a baseline of expected practices.***

Guidance 2: Compliance Assistance Release No. 2021-01 (TVPP Guidance to Investigators)

- Identifies errors that the DOL looks for, such as:
 - Systemic errors in plan recordkeeping and administration,
 - Inadequate procedures for identifying and locating missing participants and beneficiaries,
 - Inadequate procedures for contacting term-vested participants and beneficiaries of deceased term-vested participants, and
 - Inadequate procedures for addressing uncashed distribution checks.
- Articulates examples of what the DOL views as insufficient practices, such as:
 - “Continuing to deliver required communications to a known ‘bad address’ without taking steps to verify the correct address.”
 - Plans with “clearly flawed data” such as birthdates of “1/1/1900” or names of “John Does.”
- Outlines how cases are closed

TVPP Investigations: Tips for Fiduciaries

- If in an investigation, use DOL guidance to your advantage
- If not yet under investigation, now is a good time to get missing participant program in order.
- DC plans could become area of new focus.
- Uncashed checks could become a new focus.

Other Areas of Current and Possible DOL Focus

**Late Contributions and
Loan Repayments**

**Required Plan
Documents, Disclosures,
and Bonding**

Claims and Appeals

**Trade Error
Corrections**

Hard-to-Value Assets

For More Information

- For more information:

Practical Guidance®

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Department of Labor as ERISA's Cops: DOL ERISA Enforcement Overview and Current Priorities

A Practical Guidance® Article by Elizabeth Goldberg, Michael Richman, and Emily Rickard, Morgan, Lewis & Bockius LLP



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This article discusses the U.S. Department of Labor's (DOL) enforcement strategy and 2022 priorities.

In this article, we provide an overview of ERISA's fiduciary duties and prohibited transaction rules. We then describe the DOL's ERISA enforcement organizational structure and its enforcement resources. We follow this with details regarding the recent increase in DOL enforcement activities. We conclude with a discussion of the DOL's current and potential future enforcement priorities.

Overview of ERISA's Fiduciary Duties and Prohibited Transaction Rules

ERISA empowers the DOL (through the Secretary of Labor) to pursue investigations and civil litigation related to ERISA fiduciary breaches and prohibited transactions. Title I of ERISA imposes a series of fiduciary duties on "fiduciaries" to ERISA plans and prohibits certain transactions between ERISA plans and "parties in interest" as well as transactions involving ERISA plans and their plan fiduciaries. ERISA fiduciaries can range from plan officials and plan sponsor employees to ERISA plan service providers, such as investment consultants and managers. The DOL also has investigatory authority over certain ERISA plan service providers that are not fiduciaries.

<https://www.morganlewis.com/-/media/files/publication/outside-publication/article/2022/update-department-of-labor-as-erisas-cops-dol-erisa-enforcement-overview-and-current-priorities-practical-guidance.pdf>

Biography



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Liz advises employee benefit plan sponsors and service providers to those plans (including financial service firms) on ERISA US Department of Labor (DOL) enforcement investigations, DOL ERISA regulatory matters, and ERISA fiduciary counseling and compliance.

Liz has broad experience representing both plan and service provider clients in DOL ERISA investigations. Liz has worked on more than 35 such DOL investigations including matters that have involved significant monetary disputes or enterprise risk. In assisting in such matters, Liz draws on her prior work experience that includes six years at the DOL's Office of the Solicitor, primarily as an ERISA litigator.

Biography



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Rachel works with a team of lawyers to counsel publicly and privately held companies on executive compensation and employee benefits issues. Rachel handles complex matters involving equity and incentive compensation, employment, retention and severance arrangements, Employee Retirement Income Security Act (ERISA) compliance, and qualified retirement, pension, and health and welfare plans.

She frequently publishes on the intersection of ERISA and environmental, social, and governance (ESG) issues and regulations, and actively participates in and authors client communications for the firm's ESG Working Group.

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Emily focuses her practice on the Employee Retirement Income Security Act of 1974 (ERISA), and has devoted a substantial portion of her practice to the implementation and maintenance of employee stock ownership plans (ESOPs). She regularly represents companies, internal ESOP trustees, and external ESOP trustees in transactions as well as in ongoing compliance matters.

Outside of the ESOP context, Emily advises clients—including employers, insurers, plan administrators, and consultants—on health and welfare programs, qualified retirement plans, nonqualified retirement plans, and executive compensation.

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