JULY 30, 2025

DOL Signals Shift to a More Fiduciary-Friendly Enforcement of ERISA

by R. Sterling Perkinson

One of the key questions that plan sponsors and fiduciaries have had about the second Trump Administration is how the Department of Labor ("DOL") would advance the Trump Administration's policy goals given the Administration's deregulatory agenda and the erosion of authority of the regulators by the courts. (See "Recent Shifts in the Role of the Regulator"). This summer the DOL has started to show signs of taking a more fiduciary-friendly stance to the enforcement of the Employee Retirement Income Security Act of 1974 ("ERISA") in a couple of ways.

On July 9, 2025, the DOL filed an amicus brief in favor of the defendant-employer in a lawsuit challenging the use of 401(k) plan forfeitures in the Ninth Circuit Court of Appeals. The DOL took the position that the funding of a plan is inherently a settlor function, not a fiduciary function, so an administrator's use of forfeitures to fund matching contributions does not support a fiduciary breach claim. The DOL argued that because funding is inherently a settlor function, allocating forfeitures to fund employer contributions should not give rise to a breach of fiduciary duty claim, especially where the plan document explicitly allows allocations to be used for this purpose. In addition, if the administrator was forced to use forfeitures to pay administrative expenses instead of funding employer contributions, the DOL argued that this may not be in the best interest of participants because the plan administrator could not compel the plan sponsor to fund matching contributions on a timely basis if the sponsor refused. This is a significant shift in policy given that, over the last few years, the DOL frequently weighed in favor of plaintiffs on a number of issues where guidance had not been previously issued.

In addition, on June 2, 2025, the DOL announced an enhanced opinion letter program, which will increase official guidance on how employee benefits laws apply to specific situations. This announcement reflects a renewed commitment to providing compliance assistance and meaningful outreach to employers and workers. Opinion letters do this by offering practical answers to help employers, workers, and legal professionals understand their obligations and rights. The announcement stated that the public should expect to see new opinion letters providing guidance on ERISA compliance published in the weeks and months ahead.

The recent shift to a more fiduciary-friendly enforcement position will likely be supported by the nominee for Assistant Secretary of Labor for the DOL's Employee Benefits Security Administration ("EBSA"), Dan Aronowitz, who has not yet been confirmed by the full Senate. Aronowitz pledged in his testimony before the U.S. Senate HELP Committee to "end the practice of open-ended investigations that go on for years"

and to halt “regulation by litigation.” [1] With this new leadership and recent shift in policy, it can be anticipated that EBSA will aim to address recent challenges to plan fiduciaries, including the recent wave of fiduciary breach claims, and provide more clarity to plan fiduciaries and administrators with respect to compliance with ERISA.

---

[1] See: EBSA Nominee Aronowitz Vows to Streamline Retirement Plan Oversight, End ‘War on ESOPs’ | PLANSPONSOR.