New DOL Guidance on ESOPs

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PRACTICES Employee Benefits and Executive Compensation

In January 2026, the Employee Benefits Security Administration ("***EBSA***") in the Department of Labor ("***DOL***") revised its enforcement priorities to no longer include ESOPs as part of its national enforcement projects. (See here). Then, on April 14, 2026, EBSA published its current enforcement priorities and guiding principles in Field Assistance Bulletin 2026-01 (the "***Memo***," available here). One notable aspect of the Memo is EBSA's shift in focus toward the ERISA fiduciary duty of loyalty—that is, the requirement that actions be taken for the exclusive purpose of providing benefits to participants and their beneficiaries, accompanied by a shift away from prudence issues. The Memo states that while EBSA will continue to enforce both the duties of loyalty and prudence under ERISA, a significant percentage of EBSA's 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 the Memo could be interpreted as a signal that EBSA will be taking a less aggressive stance on ESOP valuation issues going forward, sponsors of ESOPs should be mindful that, regardless of EBSA's focus, participant litigation can still result from violations of the duty of prudence and issues involving ESOP valuation issues. Moreover, even though the Memo is public, it is technically an internal DOL policy directed at EBSA and its employees, and therefore may not be relied upon to create any rights, substantive or procedural, enforceable by law by any party in any civil or criminal matter. Therefore, ESOP sponsors should take care to ensure that they continue to meet all their ERISA fiduciary obligations, notwithstanding the DOL's announced shift in focus.