

Major Restructuring of the Employee Benefits Security Administration

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AUTHORS: Jon Breyfogle, Jennifer Eller, Lars Golumbic, Michael Kreps, David Levine, Seth Perretta, Michael Prame, Thomas Roberts, Stephen Saxon, Brigen Winters

On August 27, 2019, Assistant Secretary Preston Rutledge emailed staff in the Employee Benefits Administration (“EBSA”), the agency that broadly exercises interpretive and enforcement authority over Title I of ERISA, announcing that effective October 1, 2019, EBSA is being reorganized. As of then, there will be three deputy assistant secretaries who report directly to Assistant Secretary Rutledge in place of the two who operate today. Additionally, oversight responsibilities will be allocated differently among the deputy assistant secretaries.

EBSA has traditionally had two deputy assistant secretaries. One has been a political appointee and the other has been a member of the career staff. The political appointee serves as the assistant secretary’s principal advisor and directs the policy, legislative, and research functions of EBSA. Traditionally, the career staff deputy assistant secretary has overseen program operations, including the office of enforcement, the office of exemption determinations and the office of regulations and interpretations, and other programs.

Regional offices have historically maintained significant independence and regional directors have had wide latitude in opening investigations and interpreting ERISA to determine if there have been violations.

Under the EBSA reorganization, there will be three deputy assistant secretaries. The political appointee will now oversee the office of exemption determinations and the office of regulations and interpretations. The career staff deputy assistant secretary will now oversee the office of enforcement, the office of technology and information services, and the office of outreach, education, and assistance. A new deputy assistant secretary will be appointed to oversee the regional offices.

The impact of this reorganization remains to be seen. However, it appears intended to, among other things, bring more uniformity in their interpretations and enforcement activities on complex and emerging issues.

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