DOL Retirement Exemption Changes Signal Innovation, Risks Ahead

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The US Department of Labor's plan to ease how asset managers seek exemptions allowing them to directly oversee workers' retirement funds may lead to innovation and risks as the Trump administration continues its efforts to rollback or alter Biden-era regulatory actions.

The regulatory agenda for DOL posted July 3 included plans to simplify the prohibited transaction exemption procedures. The agency wants to "reduce regulatory burdens on applicants for exemptions and improve the operation of the prohibited transaction exemption program," but it offered few specifics on the purpose and nature of the planned changes.

Asset managers, such as Goldman Sachs Inc., Citigroup, and JPMorgan Chase, must apply for exemptions to avoid penalties and eliminate the need for third-party fiduciary oversight of the $14 trillion US private retirement market or handle transactions that otherwise would be prohibited under the Employee Retirement Income Security Act because of conflict of interest concerns or prior criminal activity.

The exemptions can allow firms to retain their status as a qualified professional asset manager, which is the gold standard for managers in the 401(k) market and provides a shield from certain prohibited transactions under ERISA.

A DOL spokesperson declined to provide more detail, referring only to the item posted on the regulatory agenda. ERISA attorneys and former EBSA officials said specifics about the changes won't be known until the agency puts out its proposed amendments, but that the DOL is likely to target some of the adjustments the Biden administration made in 2024 to the exemption process to make it easier for plan sponsors, trade groups, and service providers to apply.

"If the Labor Department is interested in providing guidance that allow for more innovations for new products and services for creative ways to solve problems, then using its authority to issue exemptions would be one way to do that," said Scott Mayland, a principal at Groom Law Group.

The Employee Benefits Security Administration typically issues a handful of individual prohibited transaction exemptions each year, having published four so far in 2026 after publishing five in 2025.

The exemptions typically come with conditions that must be met, such as regular audits. Recent recipients of these exemptions include Goldman Sachs and UBS Group AG.

Biden-Era Changes

The rollback of certain changes to the prohibited transaction exemption process would mark the latest instance of the Trump era department and EBSA moving to unwind moves enacted by their predecessors. Trump's DOL has already reversed course on the Biden administration's fiduciary rule, its rule on environmental, social, and governance investing, and on the use of cryptocurrency in retirement plans.

Changes to the prohibited transaction exemption process have been infrequent. Before the Biden update, there hadn't been regulatory changes to the process since 2011.

The Biden administration in 2021 revoked a policy implemented in the final months of Trump's first term allowing banks to maintain key retirement asset management waivers after foreign convictions. The Biden DOL in 2024 then finalized its own set of updates to the prohibited transaction exemption filing process.

Those changes added more details and requirements to exemption applications, which the Biden DOL said ensured more transparency and consistency. The Biden-era update clarified the type of documentation required for an application and revised the definitions of a qualified independent fiduciary and qualified independent appraiser.

Who Bears Risk

"The more information the department has, the more efficient the exemption process is. This is not a rubber stamping exercise," said Ali Khawar, who served as principal deputy assistant secretary at EBSA during the Biden administration, and is now a non-resident scholar at Georgetown University's Center for Retirement Initiatives.

Mayland said one item the Trump DOL may look to undo is the changes that were made regarding independent fiduciaries and appraisers. In some cases, a plan sponsor might have a conflict of interest that would require an independent fiduciary to be engaged. The Biden administration's changes caused an independent fiduciary to bear more contractual risk than they otherwise would have had to, Mayland said, leading some to question whether they would even get involved in those transactions.

"That's probably one thing that the Trump administration may be looking at rolling back because that was pretty controversial, especially for the companies that have that role," Mayland said.

Those who have expressed skepticism over DOL's upcoming changes are warning of the risks of taking a more lax approach that would allow for interested parties to more easily receive exemptions.

"I'd be worried about anything that makes it more difficult for the department to actually protect people's interests when these guys are engaging in conflicted transactions," said Tim Hauser, who worked at DOL for nearly 35 years before retiring last December.

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