



Rewards Policy Insider 2025-10



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DOL Thinking About Rescinding 2024 Independent Contractor Regulation

The Department of Labor’s (DOL) Wage and Hour Division will no longer follow the Biden Administration’s

2024 final regulations “when determining employee versus independent contractor status” in investigations under the Fair Labor Standards Act (FLSA). This is consistent with the position DOL is taking in several lawsuits challenging the validity of the 2024 final regulations, in which DOL has stated it is reconsidering the final regulations and may rescind them.

Background

This latest development is one of many twists in the long-running debate over the proper standard for determining if an independent contractor should be reclassified as an employee for purposes of the FLSA. The final regulations the Biden Administration issued in 2024 rescinded the regulations the first Trump Administration issued in 2021.

The 2021 final regulations implemented a five factor test for determining employee status, but identified two of the five – regarding control over work and the worker’s opportunity for profit and loss – as “core factors.” The 2024 final regulations replaced this five-factor test with a “totality-of-the-circumstances analysis of the economic reality test in which the factors do not have a predetermined weight and are considered in view of the economic reality of the whole activity.”

The policy dispute, which pre-dates both the Trump and Biden Administrations, involves balancing the desires of organizations and individuals to enter into valid independent contractor arrangements with concerns that some organizations will try to misclassify workers as independent contractors in order to avoid minimum wage and overtime obligations, as well as employment taxes among other things.

What Rules Should Employers be Following?

According to [Field Assistance Bulletin 2025-1](#), DOL’s Wage and Hour Division will now enforce the FLSA according to a 2008 Fact Sheet (Fact Sheet #13), which is incorporated into the text of the Field Assistance Bulletin. The Fact Sheet basically lays out the same factors as the 2021 final regulations but does not suggest that any of those factors should be given greater weight than the others.

However, as the Field Assistance Bulletin also points out, the 2024 final regulations continue to be in effect for purposes of private litigation. As a result, employers should continue following the standards in those regulations unless and until the Trump Administration takes action to rescind or otherwise modify them through the normal rulemaking process.

Annual Prescription Drug Report Due by June 1

As a reminder, group health plans are required to annually disclose information about the plan's prescription drug and healthcare spending to the Centers for Medicare & Medicaid Services ("CMS"). This year's report must be submitted no later than June 1, 2025.

Background

The Consolidated Appropriations Act, 2021 enacted a requirement for insurance companies and employer-sponsored group health plans to submit information about their prescription drug and healthcare spending to CMS on an annual basis. The so-called Prescription Drug Data Collection ("RxDC") report collects, for example, information about prescription drugs that account for the most spending, the most frequently prescribed drugs, prescription drug rebates from drug manufacturers, and premiums and cost-sharing that patients pay.

The reports are used to identify the drivers of increases in prescription drug and healthcare spending and promote transparency in prescription drug pricing. CMS shares the reports with the Department of Health and Human Services, the Department of Labor, the Treasury Department, and the Office of Personnel Management.

2025 Deadline is Fast Approaching

CMS provides resources on how to file the RxDC report [here](#). Group health plans are permitted to contract with a third party to submit the report on their behalf.

Employers who are required to submit the report should make sure they are registered with CMS's Health Insurance Oversight System ("HIOS"), which is the platform for submitting the RxDC report.

This year's report, covering information for the 2024 calendar year, is due no later than June 1, 2025.

Trump Executive Order Targets Plan Investments in "Foreign Adversary" Countries

One of President Trump's many recently-issued Executive Orders ("EOs") takes aim at investments in "foreign adversaries," such as China and Iran and orders several federal agencies to take action regarding such investments. Notably, the EO directs the Department of Labor ("DOL") to publish updated fiduciary standards

under ERISA for investments in public market securities of foreign adversary companies.

EO Overview

On February 21, 2025, President Trump signed an EO entitled the ["America First Investment Policy."](#) The EO focuses chiefly on directing several federal agencies to take a variety of actions regarding investments in so-called "foreign adversaries," which the EO defines as including China (including Hong Kong and Macau), Cuba, Iran, North Korea, Russia, and the regime of Venezuelan president Nicolás Maduro.

EO Directs DOL to Take Action

Currently, ERISA does not contain specific rules addressing foreign investments, except for general rules permitting investments outside of the United States as long as they are custodied by an entity subject to the jurisdiction of U.S. courts. ERISA plans generally do not directly invest in any of these foreign adversary countries, but some global index funds available in plans may include investments in, for example, Chinese companies.

Most relevant to ERISA plans, the EO says that the Trump Administration will "restore the highest fiduciary standards as required by [ERISA], seeking to ensure that foreign adversary companies are ineligible for pension plan contributions." As noted above, the EO provides a definition for "foreign adversaries," but it does not define the term "foreign adversary companies."

In addition to this broad policy statement, the EO also specifically directs DOL to "publish updated fiduciary standards under [ERISA] for investments in public market securities of foreign adversary companies." The EO does not contain a timeline for DOL to take this action.

Looking Ahead

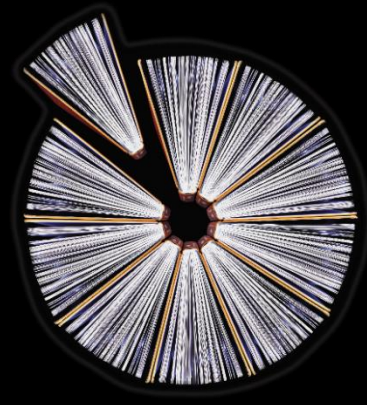
At this stage, we do not know much about what actions DOL will take to respond to President Trump's directive. The EO does not specify what form the guidance must take, nor does it say what must be contained in the guidance. It is possible that the future guidance issued by DOL could confirm that it does not violate ERISA's standards for a plan fiduciary to avoid investment companies domiciled in foreign adversary countries. Or, DOL could provide that allowing investments in public market securities of foreign adversary companies violates ERISA. Any future guidance would likely primarily impact investment managers, but could also extend to plan sponsors.

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