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Genworth Decision Raises New Obstacles to Class Certification in ERISA 401(k) Fiduciary Breach Litigation

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The U.S. Court of Appeals for the Fourth Circuit recently declined to rehear its decision vacating certification of a mandatory class under Federal Rule of Civil Procedure 23(b)(1) in *Trauernicht v. Genworth Financial Inc.* The Court held that fiduciary-breach claims under the Employee Retirement Income Security Act of 1974 ("ERISA") involving a defined contribution plan sought individualized monetary relief and did not satisfy Rule 23's commonality requirement. In doing so, the Court narrowed the availability of mandatory class certification in ERISA fiduciary breach litigation involving defined contribution plans and may significantly affect class-certification strategy in future ERISA cases. If the Fourth Circuit's reasoning is adopted in other circuits, it would have a major impact on ERISA cases involving the manner in which plan assets are invested.

Class Certification under Rule 23

Federal Rule of Civil Procedure 23 governs the process of class certification and involves a two-step analysis. First, the party seeking certification must satisfy each element of Rule 23(a) and prove (1) that the class is sufficiently numerous that joining all members of the class is impracticable; (2) that there are questions of law or fact common to the class; (3) that the claims of the named plaintiffs are typical of the class, and (4) that the named plaintiffs and their attorneys will vigorously represent the interests of the absent class members. Then, the proposed class must satisfy one of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3) in order to get certified by the court.

A class certified under (b)(1) and (b)(2) is mandatory and does not provide class members with an opportunity to opt out and does not require notice to absent class members. In contrast, Rule 23 (b)(3) "allows class certification in a much wider set of circumstances" and provides greater procedural protections to class members, including the right to receive "the best notice that is practicable under the circumstances" and the

right to withdraw from the class. The Supreme Court has instructed that "individualized monetary claims belong in Rule 23(b)(3) because of its greater procedural protections, which are necessary when each class member has an "individualized claim for money."

Case Background

In August 2022, two former employees of Genworth Financial, Inc. ("Genworth") filed a putative class action against Genworth, alleging that Genworth breached its fiduciary duties by imprudently selecting and retaining the BlackRock LifePath Index Target Date Funds ("Black Rock TDFs") as investment options in Genworth's 401(k) plan ("Plan"). Plaintiffs alleged that the funds were imprudent investments and significantly underperformed alternative investment options available to the Plan at the beginning of the class period, which caused losses to their individual accounts.

After denying Genworth's motion to dismiss, the United States District Court for the Eastern District of Virginia certified a class of participants invested in the BlackRock TDFs during the class period under Rule 23(b)(1). The district court reasoned that ERISA §502(a)(2) fiduciary-breach claims are derivative in nature because they are brought on behalf of the plan and seek recovery for plan-wide losses. The district court concluded that the claims inherently presented common issues suitable for class treatment and that mandatory class certification was appropriate.

Fourth Circuit's Decision

The Fourth Circuit reversed, rejecting both of the District Court's conclusions. The Court held that ERISA § 502(a)(2) claims seeking recovery for losses to individual accounts are inherently individualized and cannot be joined in a mandatory class under Rule 23(b)(1), which does not provide class members with notice or opt-out rights. The Fourth Circuit also concluded that the plaintiffs' claims failed to satisfy the commonality prerequisite because many class members did not experience the same injury in their BlackRock TDFs investment.

In June 2026, the Fourth Circuit denied the plaintiffs' petition for rehearing *en banc*. The plaintiffs argued that the panel's decision conflicted with ERISA's text, U.S. Supreme Court precedent, and decisions from other circuits. With rehearing denied, the case returns to the district court, where the plaintiffs may seek class certification under a different provision of Rule 23(b).

Holding 1: Rule 23(b)(1) certification was improper

The Fourth Circuit held that ERISA § 502(a)(2) claims arising from a defined contribution plan are "individualized monetary claims" and therefore cannot automatically be certified as a mandatory class under Rule 23(b)(1). Although such claims are brought on behalf of the plan, the court emphasized that, unlike a defined benefit plan, where recoveries generally inure to a collective pool of plan assets, gains and losses in a defined contribution plan are allocated to individual participant accounts. As a result, any recovery ultimately flows to participants' individual accounts based on their individual losses. Those losses may vary significantly depending on factors such as the amount invested, the length of time an investment was held, and the timing of purchases and sales. The court therefore concluded that these claims seek individualized monetary relief rather than a single plan-wide remedy and thus cannot be certified as a mandatory class under Rule 23(b)(1).

Relying on U.S. Supreme Court precedent, the court further reasoned that claims seeking individualized monetary relief belong, if anywhere, in a Rule 23(b)(3) class, which provides class members with greater procedural protections, including notice and the opportunity to opt out of the lawsuit.

Holding 2: Commonality was not satisfied

The Fourth Circuit also concluded that Plaintiffs' claims failed to satisfy the commonality requirement under Rule 23(a)(2), which requires plaintiff to demonstrate that class members suffered the same injury. The Court rejected the district court's view that ERISA fiduciary-breach claims are inherently common and emphasized that participants experienced the challenged investments differently and did not have the same injury. Participants made their own investment decisions, invested in different vintages of the BlackRock TDFs, which carried different risks, and bought, sold, and withdrew assets at different times under different market conditions. As a result, participants' gains and losses under the BlackRock TDFs varied based on their individual investment experience.

The court also found that some putative class members may not have suffered any injury at all. Plaintiffs measured injury by comparing the BlackRock TDFs to four comparator target-date funds, two of which were actively managed and two of which were passively managed. Because the BlackRock TDFs were passively managed, the court viewed the two passive comparator funds as the more appropriate benchmark. The court noted that the two passive comparator funds underperformed the BlackRock funds during the class period, meaning that some participants would have been better off invested in the challenged BlackRock TDFs than in the proposed comparators. The court therefore concluded that the proposed class had not demonstrated the "same injury" required to establish commonality under Rule 23(a).

More broadly, in the context of a defined contribution plan, the Fourth Circuit held that courts may not assume commonality nor that all participants suffered the same injury simply because an alleged fiduciary breach affected the plan. Instead, courts must conduct a "rigorous analysis" of whether class members suffered the same injury, particularly where gains and losses depend on individualized investment decisions and account performance. Because the district court relied on an assumption of "inherent" commonality rather than undertaking the analysis, the Fourth Circuit concluded that Rule 23(a)(2)'s commonality requirement was not satisfied.

Why It Matters

The Fourth Circuit's decision represents a significant challenge to the long-standing assumption in ERISA litigation that fiduciary-breach claims brought under ERISA § 502(a)(2) are generally suitable for certification as mandatory Rule 23(b)(1) classes because the claims are asserted on behalf of the plan. The court rejected that premise in the context of defined contribution plans, holding that losses and recoveries in such plans are ultimately tied to individual participant accounts and therefore, the impacts on the participants may differ substantially from participant to participant.

The decision is equally significant for its treatment of commonality. Rather than assuming that all participants suffered the same injury because an alleged fiduciary breach affected the plan, the court required a closer examination of whether class members actually suffered the same injury. The court emphasized that participants selected different investment vintages, entered and exited investments at different times, and

experienced different market conditions. The court also found that some participants may not have suffered any injury because the passively managed comparator funds identified by the plaintiffs underperformed the challenged BlackRock TDFs during the class period.

As a practical matter, *Trauernicht* may make class certification more difficult in certain ERISA excessive-fee and imprudent-investment cases involving defined contribution plans, particularly within the Fourth Circuit. Defendants are likely to rely on the decision to argue that participant-specific differences defeat commonality and that claims seeking recovery for losses to individual participant accounts should not proceed as mandatory Rule 23(b)(1) classes.

Whether other circuits will adopt the Fourth Circuit's reasoning remains to be seen. Although the plaintiffs' petition for rehearing *en banc* was unsuccessful, it received support from a group of employee benefits law professors, who argued in an amicus brief that the panel's reasoning departs from longstanding interpretations of ERISA. For now, however, Defendants in cases across the country are likely to cite *Trauernicht* for the proposition that courts may be less willing to treat fiduciary-breach claims involving defined contribution plans as inherently suitable for class treatment. Instead, courts may increasingly focus on whether participants actually suffered the same injury and whether recovery is truly plan-wide or instead reflects individualized account losses.

DOL Field Assistance Bulletin No. 2026-01—Practical Takeaways for ERISA Plan Sponsors and Other Fiduciaries

Joelle Tavan

On April 14, 2026, the U.S. Department of Labor (DOL) issued Field Assistance Bulletin No. 2026-01 ("FAB 2026-01" or the "FAB"), setting forth guidance concerning the Employee Benefits Security Administration's (EBSA's) approach to the investigation and enforcement of the Employee Retirement Income Security Act of 1974 (ERISA). Although the FAB is directed principally to EBSA investigators and constitutes internal agency guidance, rather than a regulation or other source of law, it provides critical insight into EBSA's enforcement priorities and investigative practices. In particular, the FAB offers an important heads-up in terms of how the DOL intends to shape ERISA enforcement and the manner in which EBSA may exercise its investigative and enforcement authority in the coming years.

A Different Enforcement Philosophy

FAB 2026-01 articulates a distinct shift in the DOL's enforcement philosophy. The FAB identifies four priorities and guiding principles intended to guide EBSA's exercise of its investigative and enforcement authority:

- prioritizing the most serious violations and significant participant harm;
- avoiding "regulation by enforcement;"
- providing senior-level oversight of significant enforcement initiatives; and
- conducting investigations in a timely and efficient manner.

These priorities, which are discussed in greater detail below, do not alter the substantive fiduciary obligations imposed by ERISA. The duties of prudence and loyalty remain unchanged, and ERISA-covered plans must continue to comply with the statute, applicable regulations, and controlling judicial precedent. The principal change contemplated by FAB 2026-01 is instead one of enforcement policy: how EBSA prioritizes matters, allocates investigative resources, exercises enforcement discretion, and determines which cases warrant continued agency involvement.

Priority No. 1: Focus on the most egregious conduct or significant harm. FAB 2026-01 directs EBSA to prioritize investigations involving the most egregious conduct or significant harm. It distinguishes between criminal and civil enforcement in describing this priority.

With respect to criminal matters, FAB 2026-01 directs EBSA to prioritize cases addressing the most significant harm to the employee benefits system. In civil enforcement, the FAB places particular emphasis on investigations in which the facts directly support a breach of the duty of loyalty. It identifies as a priority conduct involving individuals or entities that, acting in bad faith, improperly administer plan benefits or misappropriate—or aid in the misappropriation of—plan assets. And it further identifies conduct undertaken to enrich plan fiduciary or advance objectives unrelated to participants' best interests as falling within this priority.

FAB 2026-01 expressly states that EBSA will continue to enforce both ERISA's duties of loyalty and prudence. Nevertheless, it directs that a significant portion of the agency's enforcement resources be focused on loyalty breaches and direct evidence of non-exempt prohibited transactions involving impermissible conflicts of interest. The FAB recognizes that breaches of the duty of prudence can threaten the security of participants' benefits, while observing that the costliest prudence violations often occur in conjunction with loyalty breaches. Where enforcement activity is based solely on an alleged breach of the duty of prudence, EBSA is directed to avoid unfairly second-guessing process-based fiduciary judgments, emphasizing that ERISA is "a law of process, not results."

FAB 2026-01 appears to signal a shift in enforcement emphasis. While plan sponsors and fiduciaries remain subject to both the duties of prudence and loyalty, EBSA's enforcement resources will place particular emphasis on bad-faith conduct, misappropriation of plan assets, impermissible conflicts of interest, and other circumstances in which participant harm is accompanied by evidence of disloyalty or other serious misconduct.

Priority No. 2: Ending "Regulation by Enforcement." FAB 2026-01 directs EBSA to avoid using enforcement actions as a means of establishing new legal standards or advancing novel interpretations of ERISA. It emphasizes the importance of fairness, clarity, and adequate notice to regulated parties and generally favors the use of notice-and-comment rulemaking or published guidance when the DOL seeks to establish or clarify generally applicable legal requirements.

The FAB does not restrict EBSA from enforcing existing statutory or regulatory requirements, nor does it prevent the DOL from pursuing novel legal issues where necessary to protect participants and beneficiaries. Rather, it establishes a general expectation that enforcement actions will be grounded in legal requirements that have been adequately communicated through ERISA, applicable regulations, published guidance, or established case law. For plan sponsors, fiduciaries, and service providers, this approach may provide greater predictability and reduce the risk of enforcement based on legal theories that have not previously been articulated.

Priority No. 3: Enhanced Senior-Level Oversight of Significant Enforcement Matters. FAB 2026-01 contemplates increased involvement by senior EBSA leadership in significant enforcement matters. The FAB identifies certain matters—including those involving novel legal theories, circuit splits, departures from established EBSA positions, and other issues of particular significance—as warranting elevation for review before enforcement activity proceeds.

This heightened level of oversight may promote greater consistency in the manner in which EBSA evaluates and pursues significant enforcement matters across its regional offices. Historically, differences in investigative approaches, legal positions, and settlement expectations among regional offices have, at times, contributed to uncertainty for plan sponsors, fiduciaries, and their advisers. Greater involvement by senior agency leadership could reduce such variability, particularly in matters involving novel or significant legal issues.

The extent to which this process will result in greater uniformity in EBSA's enforcement practices remains to be seen. Nevertheless, FAB 2026-01's emphasis on senior-level review reflects an express objective of promoting consistency, accountability, and alignment between significant enforcement actions and the DOL's broader enforcement priorities.

Priority No. 4: Timely Resolution of Investigations. As a practical matter for plan fiduciaries and their service providers, one of the FAB's most significant provisions addresses the expected duration of EBSA investigations. FAB 2026-01 provides that, in general, routine investigations should be completed within 18 months, while more complex investigations ordinarily should conclude within 30 months, absent exceptional circumstances. Investigations that remain open beyond those timeframes are subject to quarterly review by agency leadership.

These provisions appear responsive to concerns that certain investigations have remained open for extended periods, creating prolonged uncertainty and imposing significant costs on plan sponsors and other regulated parties. Greater emphasis on timely resolution could reduce the administrative and financial burdens associated with protracted investigations and promote more efficient use of agency resources.

The practical implications of these timelines, however, may extend beyond the duration of the investigation itself. If investigators are expected to complete matters within defined timeframes, they may likewise expect plan sponsors, fiduciaries, and service providers to produce documents and respond to requests more promptly. Consequently, shorter investigations may require more intensive engagement and more efficient responses during the investigative process. The FAB's emphasis on timely resolution therefore may reduce the burden of prolonged investigations while simultaneously increasing the importance of prompt, organized, and substantive cooperation once an investigation begins.

Practical Considerations for Plan Sponsors, Fiduciaries, and Service Providers

Although FAB 2026-01 reflects an emphasis on fairer, more targeted, and more predictable enforcement, its practical significance lies in the DOL's stated approach to enforcing ERISA—not in any change to the substantive requirements applicable to ERISA-covered plans. The FAB does not amend ERISA, create new legal rights or obligations, or alter the statutory and regulatory framework governing employee benefit plans. The duties of prudence and loyalty remain fully applicable, and the DOL has made clear that it will continue to enforce those requirements.

At the same time, if implemented as described, FAB 2026-01 could result in investigations that are more focused, targeted, and predictable. The FAB may provide plan sponsors, fiduciaries, and service providers with greater insight into the factors likely to influence EBSA's exercise of investigative and enforcement discretion. In particular, its emphasis on fiduciary process and opposition to "regulation by enforcement" may provide greater assurance that good-faith fiduciary decisions will not be subjected to enforcement merely because EBSA, with the benefit of hindsight, would have reached a different conclusion.

These principles do not, however, lessen the importance of sound fiduciary governance. Plan sponsors and fiduciaries should continue to maintain disciplined processes and practices, including:

- maintaining thorough and accurate committee minutes;
- documenting the basis for significant investment and administrative decisions;
- monitoring service providers, fees, and other relevant plan expenses;
- identifying, evaluating, and appropriately managing conflicts of interest;
- following established fiduciary policies and procedures;
- identifying and correcting operational errors promptly; and
- emphasizing transparency and effective conflict-of-interest management.

Given the FAB's particular emphasis on loyalty breaches, self-dealing, and prohibited transactions, documentation demonstrating that potential conflicts were identified, evaluated, and appropriately addressed are especially important.

Ultimately, the most prudent response to FAB 2026-01 is neither complacency nor a wholesale change in existing compliance practices. Plan sponsors and fiduciaries should continue to comply with ERISA's substantive requirements while ensuring that significant decisions are made through sound processes, conflicts are appropriately managed, and the basis for fiduciary decisions is adequately documented.

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