

## Investigations &amp; Enforcement

# Courts Giving DOL More Time to Claim ERISA Violations

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The Department of Labor (“DOL”) is relying on a recent Supreme Court decision to effectively extend the amount of time the agency has to bring fiduciary breach claims. DOL investigations often last years, so it is common for DOL to run up against the statute of limitations under ERISA. Section 413 bars claims before the earlier of –

1. *six years after (A) the date of the last action which constituted a part of the breach or violation, or (B) in the case of an omission the latest date on which the fiduciary could have cured the breach or violation, or*

2. *three years after the earliest date on which the plaintiff had actual knowledge of the breach or violation; except that in the case of fraud or concealment, such action may be commenced not later than six years after the date of discovery of such breach or violation.*

All of the information DOL needs to have knowledge of a breach is often in the plan’s Form 5500 filing, so one would think that the filing itself should start the clock running on the three-year limitations period. However, the Supreme Court recently ruled in *Intel Corp. Investment Policy Committee v. Sulyma* that the “actual knowledge” condition is only met where there is actual knowledge. 589 US \_\_ (2020) (available [here](#)). In other words, it is not enough to merely be in possession of the information that would make you aware of a fiduciary breach.

Relying on that precedent, DOL recently persuaded a federal court that the filing of Form 5500 in October of 2013 did *not* provide DOL actual knowledge because the filing “was only a disclosure that was not actually reviewed by anyone in the Government until December 2014.”

*Walsh v. Bowers*, 2021 WL 4240365 (D.HI Sept. 17, 2021). The Court acknowledged that actual knowledge would be attributed to DOL if the agency is “willfully blind” but concluded that the defendants had not presented evidence establishing willful blindness.