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DOL Proposes New Guidance on Evaluating Designated Investment Alternatives in 401(k) Plans

The Department of Labor (DOL) has issued proposed regulations addressing fiduciary responsibilities when selecting designated investment alternatives (DIAs) for participant-directed individual account plans subject to the Employee Retirement Income Security Act (ERISA) of 1974. The proposal responds to Executive Order 14330, *Democratizing Access to Alternative Assets for 401(k) Investors*, which directed the DOL to provide guidance on evaluating alternative investments as potential plan investment options.

Although prompted by interest in alternative investments, the proposal applies broadly and does not favor any specific investment type. While framed as a clarification, it introduces detailed factors and examples that, in practice, may influence how fiduciaries document and demonstrate prudence. It would also establish a new process-based safe harbor for fiduciaries who follow a careful, analytical evaluation process, reinforcing that fiduciary decisions are judged based on the quality of the process, not investment outcomes.

Background

The proposal builds on established fiduciary standards, particularly the duty of prudence described in ERISA Section (ERISA Sec.) 404(a)(1)(B). This standard requires fiduciaries to make careful, informed decisions using the skill and judgment of a knowledgeable person under similar circumstances. Courts have consistently emphasized that, for investment selection, this duty focuses on how decisions are made, not on how the investment ultimately performs.

The DOL presents the proposal as an extension of existing ERISA principles and earlier guidance, including the 1979 Investment Duties Regulation, rather than as a substantive change. The 1979 Investment Duties Regulation explains that fiduciaries satisfy their investment-selection obligations by thoughtfully considering relevant facts and circumstances, such as investment risk and expected return, and acting on that analysis.

The proposal also emphasizes that meeting the standard of prudence depends on the facts and circumstances of the investment selection process. More complex investments generally require closer review or greater expertise. This includes a disciplined, well-documented process to evaluate how the investment fits within the overall portfolio and meets participant needs, such as age, financial goals, and investment time horizons.

The proposal also reflects the DOL's evolving position on alternative investments in defined contribution (DC) plans. It indicates that these investments may be appropriate in certain circumstances and are not categorically prohibited. Instead, fiduciaries must evaluate each option based on the plan's specific facts and circumstances. The proposal also makes clear that meeting technical requirements, including those for qualified default investment alternatives (QDIAs), does not replace diligent case-by-case fiduciary review.

Finally, the proposal is consistent with court decisions that afford fiduciaries deference when they use sound judgment and follow a disciplined process. It also offers specific examples of how fiduciaries can demonstrate prudence, which may increase confidence that well-supported decisions will withstand legal challenges.

Definition of Designated Investment Alternative

The proposal defines a DIA broadly as any investment option a plan fiduciary selects for participants and beneficiaries to choose from when directing the investment of assets in their individual accounts, including QDIAs. The definition excludes brokerage windows, self-directed brokerage accounts, and similar arrangements that allow participants to invest outside the plan's designated investment lineup. The proposal also makes clear that features built into the plan's design are not included in the definition of a DIA. Choices about how the plan is structured or how benefits are paid, such as payout options, are not included in the definition of a DIA, even if they affect participant outcomes. For example, a longevity risk-sharing feature is not a DIA if it is part of the plan's design.

The DOL explains that the definition of a DIA includes managed account services used as a QDIA. The DOL acknowledges this reflects a broader interpretation than under the participant-level disclosure rules, which exclude managed accounts for practical disclosure reasons rather than any meaningful difference in how they function.

Safe Harbor

The proposal would establish an optional, process-based safe harbor for fiduciaries selecting DIAs for participant-directed individual account plans. Under the safe harbor, fiduciaries that engage in a thorough, analytical review of relevant facts and circumstances would be presumed to have satisfied the duty of prudence with respect to the investment selection decision.

The safe harbor is designed to reinforce the principle that the fiduciary duty of prudence is evaluated based on the decision-making process at the time the investment is selected, rather than based on investment outcomes viewed in hindsight.

The proposal also recognizes that fiduciaries may rely on qualified outside experts, including investment advisers, managers, or consultants, when evaluating investment options. However, fiduciaries remain responsible for prudently selecting and monitoring those experts and for determining whether reliance on their analysis is reasonable under the circumstances.

To qualify for the safe harbor, fiduciaries would need to evaluate each investment option based on its own characteristics and how it contributes to the overall investment lineup offered by the plan. This includes considering performance, fees, liquidity, valuation, comparability to alternatives, and complexity, among other factors. The proposal also clarifies that more complex investments may require more careful and detailed review.

The factors described below are illustrative and not exhaustive. Fiduciaries must evaluate relevant considerations based on the facts and circumstances of each investment.

- **Performance.** Requires evaluation relative to a reasonable set of similar alternatives, ensuring comparisons reflect comparable asset classes, strategies, and risk profiles. Performance analysis must account for the full range of risks, including market, economic, sector-specific, investment-specific, and counterparty risks, as well as the risk capacity of plan participants.

  The proposal requires evaluation over an appropriate time horizon, often aligned with participants' long-term retirement needs, rather than short-term results. In addition, fiduciaries must assess returns net of fees and expenses, ensuring comparisons reflect true participant value.

  The DOL also indicates that plan fiduciaries may engage an investment advice fiduciary, as described in ERISA Sec. 3(21)(A)(ii), to support performance evaluation.

- **Fees.** Emphasizes that fees and expenses are a central part of evaluating investment options. It requires plan fiduciaries to take a thoughtful, step-by-step approach to reviewing fees when selecting DIAs. This process includes comparing fees across a reasonable range of similar alternatives, with conclusions based on the relevant facts and circumstances rather than an exhaustive survey of the marketplace.

  The proposal also clarifies that fees should be judged in relation to value, not cost alone. Fiduciaries should consider fees in the context of an investment's expected risk-adjusted returns (net of fees), and any additional features or services that support the plan's objectives.

  Importantly, the DOL does not impose a lowest-cost requirement. Higher-fee options may be selected where fiduciaries determine that the additional cost is justified by commensurate value.

- **Liquidity.** Recognizes liquidity as a required consideration in evaluating DIAs, while making clear that full liquidity is not required. The DOL acknowledges that defined contribution plans are long-term in nature and do not need to rely exclusively on highly liquid investments.

Fiduciaries must ensure that investment options provide sufficient liquidity to meet both plan operations and participant needs. At the same time, the proposal affirms that reduced liquidity may be appropriate where it is supported by the potential for improved risk-adjusted returns.

The DOL acknowledges that alternative investments often involve liquidity tradeoffs, including the potential for an illiquidity premium. However, fiduciaries must still assess liquidity risks, including whether redemption activity by other investors could impair access.

- **Valuation.** Establishes valuation as a required fiduciary consideration when evaluating DIAs, with a focus on process rather than outcomes. The DOL emphasizes that fiduciaries must ensure investments can be valued accurately and on a timely basis, consistent with the plan's operational needs.

  This requirement applies across asset types, reinforcing ERISA's neutrality while recognizing that valuation approaches may vary depending on the investment. Fiduciaries must determine that adequate valuation measures are in place to support participant transactions, plan administration, and ongoing oversight.

- **Performance Benchmark.** Requires fiduciaries to use at least one "meaningful benchmark" for each DIA, comparing the DIA's risk-adjusted expected returns to appropriate comparators.

  A meaningful benchmark must have similar mandates, strategies, objectives, and risks, ensuring valid comparison. The DOL rejects a one-size-fits-all approach, allowing that a DIA may have multiple benchmarks, and that no single benchmark fits all investments.

  Fiduciaries may rely on a DIA's own performance history or, where limited, use comparable investments with similar characteristics. The rule also accommodates innovative or newer investments, requiring fiduciaries to identify the best available comparators and assess value accordingly.

- **Complexity.** Establishes complexity as a fiduciary prudence factor, requiring fiduciaries to assess whether they have the expertise and capacity to understand a DIA's structure, risks, and mechanics. The DOL clarifies that complexity alone does not make an investment imprudent.

  If a fiduciary lacks sufficient understanding, they must seek qualified assistance, such as an investment advice fiduciary described in ERISA Sec. 3(21) advisor or an investment manager defined in ERISA Sec. 3(38). Fiduciaries remain responsible for the prudent selection and monitoring of any advisor, although they are not liable for the individual investment decisions of an ERISA Sec. 3(38) investment manager.

Grounded in ERISA case law, the proposal reinforces that fiduciaries must obtain expertise when needed, without mandating advisor use. The key question is whether the fiduciary has sufficient understanding, independently or with support, to act prudently.

Overall, the proposed safe harbor seeks to provide a clearer framework for demonstrating prudence while preserving fiduciary discretion. It does not require fiduciaries to select any particular investment type, nor would it eliminate fiduciary obligations. Instead, it emphasizes that fiduciaries who follow a reasoned process should be afforded deference in selecting DIA options.

Next Steps

The DOL closed the public comment period for the proposed regulation on June 1, 2026, and has begun reviewing feedback to inform a final rule. Ascensus will continue to monitor developments and provide updates as additional guidance becomes available.

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