

DOL Proposed Safe Harbor for Selecting Plan Investment Alternatives

April 8, 2026

PRACTICES Employee Benefits and Executive Compensation

As we previously reported [here](#), the DOL recently issued a proposed rule (the “**Proposed Rule**”) which clarifies, and provides a safe harbor for, a plan fiduciary’s compliance with ERISA’s duty of prudence when selecting investment alternatives (including alternative asset investments) for the investment menu for an individual account plan (e.g., a 401(k) plan). The Proposed Rule establishes a process-based safe harbor by identifying the following six non-exhaustive factors for a plan fiduciary to consider and evaluate when selecting plan investments:

1. **Performance:** Fiduciaries must appropriately consider a reasonable number of similar investment alternatives and determine that the risk-adjusted expected returns of the investment alternative, over an appropriate time horizon and net of fees, further the purposes of the plan.
2. **Fees:** Investment fees should be reviewed in consideration of risk-adjusted expected returns and any other value the investment alternative brings to furthering the purposes of the plan.
3. **Liquidity:** Investment alternatives should be evaluated to determine if they will have sufficient liquidity to meet the plan’s anticipated needs at the plan and participant levels.
4. **Valuation:** Fiduciaries must appropriately consider and determine that the investment alternative has adopted adequate measures to ensure that the investment alternative is capable of being timely and accurately valued in accordance with the needs of the plan.
5. **Performance Benchmarks:** The selected investment alternatives should be properly measured against a “meaningful benchmark.” The Proposed Rule defines “meaningful benchmark” as “an investment, strategy, index, or other comparator that has similar mandates, strategies, objectives, and risks to the designated investment alternative.”
6. **Complexity:** Fiduciaries should consider whether they have the appropriate knowledge and skills to comprehend the investment alternative sufficiently under ERISA or whether they should seek assistance from an investment professional.

The Proposed Rule is available [here](#) and is subject to a 60-day comment period through June 1, 2026. As a reminder, the Proposed Rule does not alter a plan fiduciary’s responsibility to provide prudent investment alternatives to the plan’s participants and beneficiaries in accordance with ERISA. We will continue to monitor developments regarding the status of this rule.