

April 2026

DOL Proposed Regulations Provide New Safe Harbor Framework for Selecting Investment Alternatives, Expand Clarity on Alternative Assets

On March 31, 2026, the U.S. Department of Labor (DOL) issued proposed regulations (Proposed Regulations) titled "Fiduciary Duties in Selecting Designated Investment Alternatives," in response to the August 7, 2025, [Executive Order](#) directing the DOL to assess existing guidance with respect to defined contribution plans subject to the Employee Retirement Income Security Act (ERISA) offering asset allocation funds investing in alternative assets. (For more information on the Executive Order, see the August 2025 *Voya Alert* "POTUS Signs Executive Order Promoting Asset Allocation Funds with Alternative Assets for Defined Contribution Plans Subject to ERISA.")

The Proposed Regulations are open for public comment through June 1, 2026.

The full text of the Proposed Regulations is at <https://www.govinfo.gov/content/pkg/FR-2026-03-31/pdf/2026-06178.pdf>. The DOL Fact Sheet is at <https://beta.dol.gov/document/2335>.

Background

The Proposed Regulations would apply to all defined contribution plans subject to ERISA where the participant (or, if applicable, beneficiary) may direct the investment of their retirement plan benefits. The Proposed Regulations would not apply to the following plans, although a nonERISA plan might look to these ERISA principles as a best practice:

- 401(a), 401(k), 403(b) or 457(b) plans of a governmental employer (including a public school);
- Top hat 457(b) plans of a non-profit organization;
- 401(a), 401(k), or 403(b) plans of a church or church-related entity unless the plan administrator has irrevocably elected to have ERISA apply to that plan; and
- 403(b) plans of a non-governmental/non-church 501(c)(3) organization that meets the non-ERISA regulatory safe harbor rules.

Key Provisions of the Proposed Regulations

Process-Based Safe Harbor for Fiduciaries Selecting Designated Investment Alternatives

The Proposed Regulations establish a safe harbor under which an ERISA fiduciary is deemed to have acted prudently in selecting designated investment alternatives (defined as "any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, including a qualified default investment alternative"). A designated investment alternative does not include brokerage windows, self-directed brokerage accounts, or similar plan arrangements that enable participants and beneficiaries to select investments beyond those designated by the plan.

To meet the ERISA fiduciary duty of prudence under the Proposed Regulations' safe harbor, a plan fiduciary must follow and document a thorough, objective, and analytical evaluation process for selecting designated investment alternatives, focusing on a non-exhaustive list that includes the following six factors:

1. Performance
2. Fees and expenses
3. Liquidity
4. Valuation
5. Performance benchmarking
6. Complexity

The Proposed Regulations include examples and analysis of fiduciary assessment under each of those six factors.

An ERISA fiduciary must act with care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use. The DOL notes that such prudence may entail an ERISA plan fiduciary, where appropriate, seeking analysis of professional advisors, such as third-party investment advice fiduciaries. An ERISA plan fiduciary who has objectively, thoroughly, and analytically considered and made a determination using the safe harbor process is presumed to have acted prudently and is entitled to significant deference.

No Per Se Restrictions on Asset Classes

The scope of the Proposed Regulations is broader than guidance focused only on asset allocation funds that invest in alternative assets. Instead, reflecting a broader DOL policy shift toward "asset neutrality," the DOL has chosen to provide guidance for an ERISA fiduciary's duty of prudence when selecting any designated investment alternative available under a defined contribution plan that provides for participant-investment direction. In addition, the Proposed Regulations introduce a process-based safe harbor framework for fiduciaries of such participant-directed ERISA defined contribution plans, emphasizing that fiduciary prudence is determined based on the quality of the decision-making process, not investment outcomes.

Policy Objective

The DOL states that the proposal aims to reduce regulatory uncertainty and litigation risk that may discourage fiduciaries from offering diversified investment options. The overarching goal is to enhance participants' ability to achieve improved long-term returns and portfolio diversification in pursuit of retirement security.

The DOL also anticipates issuing interpretive guidance in the near term to assist ERISA plan fiduciaries in meeting their ERISA obligations to monitor designated investment alternatives after those investment offerings are included in an ERISA defined contribution plan's fund menu.

Voya continues to monitor these and all legal developments impacting retirement plans.

Any tax discussion contained in this communication was not intended or written to be used and cannot be used by the recipient or any other person, for the purpose of avoiding any Internal Revenue Code penalties that may be imposed on such person. Any tax discussion contained in this communication was written to support the promotion or marketing of the transactions or matter discussed herein. Any taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

Neither Voya Financial® nor its affiliated companies or representatives offer legal or tax advice. Please seek the advice of a tax attorney or tax advisor prior to making a tax-related insurance/investment decision.