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RETIREMENT

Keeping Pace with Washington:

The Latest Department of Labor Updates Affecting Retirement Plans

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Agenda

1. DOL's New "Fiduciary Safe Harbor" Proposal
2. Implications & Practical Effects
3. DOL Enforcement Update
4. Proxy Voting & ESG

DOL's New "Fiduciary Safe Harbor" Proposal

Issued on **March 30,2026**, comment due **June1**. **Key Takeaways from the Proposed Regulation:**

- ERISA has **no bias for or against** any type or asset class (active, passive, mutual funds, CITs, private funds, insurance providers, etc.)
- Virtually any type of investment can be offered if fiduciaries engage in proposed objective, thorough and analytical safe harbor process
- Proposed guidance takes long established principles and works them into new structure that is a regulatory "safe harbor"
- If a fiduciary meets the criteria in the safe harbor – the fiduciary will be deemed to have satisfied a prudent fiduciary process
- DOL wants courts to provide deference to the reasonable judgments fiduciaries make by virtue of completing this prudent process safe harbor

What does this mean for Plan Sponsors?

DOL is trying to make it harder for you to be sued.

Source: https://www.federalregister.gov/documents/2026/03/31/2026-06178/fiduciary-duties-in-selecting-designated-investment-alternatives

DOL Proposal: It's All About the Litigation

"The **overarching goal** of the proposed regulation **is to alleviate certain regulatory burdens and litigation risk**…This goal can be achieved only by clarifying that ERISA gives fiduciaries (not opportunistic trial lawyers) the discretion and flexibility [to make investment decisions]…"

"…three key principles form the bedrock of the [proposal] ...First, there is a need to **affirm ERISA as a law grounded in process.** Second, **ERISA gives maximum discretion and flexibility to plan fiduciaries**…Third, when ERISA fiduciary decision-making follows a prudent process…**arbiters of disputes should defer to fiduciaries under a presumption of prudence.**"

Source: https://www.federalregister.gov/documents/2026/03/31/2026-06178/fiduciary-duties-in-selecting-designated-investment-alternatives

New Safe Harbor, Old Legal Principles

- The fiduciary principles reiterated in the Proposal are long-established and well supported by case law. Proposal builds on 1979 “all relevant factors” regulation (no “pecuniary only” text).
- Woven into a new structure — a six-point, process-based, regulatory safe harbor for the404(a)(1)(B) duty of prudence.
- Safe harbor for selecting “designated investment alternatives” for participant-directed individual account plans.
- No specific statutory authority (unlike QDIA or SECURE annuity provider safe harbor), but DOL has done this before (2008 annuity safe harbor regulation, 29 CFR 2550.404a-4).
- Rule also addresses utilizing alternative assets in DC plans.

What does this mean for Plan Sponsors?

DOL will likely complete this rule – change is coming to your IPS and fiduciary process.

Source: https://www.federalregister.gov/documents/2026/03/31/2026-06178/fiduciary-duties-in-selecting-designated-investment-alternatives

Investment Alternative Safe Harbor

When selecting designated investment alternatives, fiduciaries must "objectively, thoroughly and analytically" evaluate:

- Performance
- Fees
- Liquidity
- Valuation
- Benchmarking
- Complexity

Proposal provides 20 examples illustrating these factors — this will be a big issue in the comments. Unintended consequences?

What does this mean for Plan Sponsors?

Your plan committee/advisors should begin reviewing your current process and consider what changes will be needed.

Source: https://www.federalregister.gov/documents/2026/03/31/2026-06178/fiduciary-duties-in-selecting-designated-investment-alternatives

Implications and Practical Effects

How effective will it be? DOL asserts Skidmore deference.

Principles, not “check-the-box" provides blueprint for compliance argument but leaves lots of room for court interpretation, just like Section 404(a)(1)(B) already does!

Burden of implementation likely to fall on investment managers and advisors. IPS revisions, new documentation needed to show consideration of all six factors EVEN THOUGH the factors are things that plans are largely already doing.

What does this mean for Plan Sponsors?

Not a complete liability shield but will be useful for plans that are well advised with a good process.

DOL Enforcement Update: New Policies

FAB 2026-01: Significant DOL enforcement policy change — four new principles for enforcement:

1. Focus on bad actors: Prioritize duty of loyalty breeches (conflicts, misappropriation) over prudence disputes (i.e., avoid “unfairly second-guessing process-based fiduciary judgements”)
2. No regulation by enforcement: Enforcement positions should be based on existing statute, case law or guidance (specifically identifies ESOP cases as problematic, exceptions with agency leadership review).
3. Review by agency leadership of major initiatives: Must seek approval for novel theories, cases in major litigation, new positions, etc.
4. Timely and responsive: Routine investigations should take no more than 18 months, complex investigations no more than 30 months (exceptions)

What does this mean for Plan Sponsors?

DOL is substantively reforming its enforcement program to do more with less.

https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/field-assistance-bulletins/2026-01

Proxy Voting and ESG

- EBSA renewing objections to ERISA investment decisions based on ESG or other non-economic factors in speeches and guidance.
- **FAB 2026-01** notes that ESG voting would fall into conflicts enforcement, not fiduciary process judgement calls.
- **Technical Release 2026-01**: Guidance on proxy voting:
  1. Proxy voting is a fiduciary duty
  2. Proxy voting services likely are fiduciaries when they advise or act on behalf of ERISA plans.
  3. Plan sponsors need to monitor their activities
  4. State law requiring reporting on non-economic based voting activities are not preempted, because plans can't engage in such behavior.

What does this mean for Plan Sponsors?

Do your plan investments have voting rights? Time to review your process!

Source: https://www.dol.gov/agencies/ebsa/employers-and-advisers/guidance/technical-releases/26-01

Thank you

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