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Torrillo & Associates

Benefit Plan Audit Specialists

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DOL Issues Proposed Rule for Fiduciary Duties in Selecting Designated Investment Alternatives



The U.S. Department of Labor's Employee Benefits Security Administration issued a [proposed regulation](#) that clarifies, and provides a safe harbor for, a fiduciary's duty of prudence under the

Employee Retirement Income Security Act of 1974 (ERISA) in connection with selecting designated investment alternatives for a participant-directed individual account plan, including asset allocation funds that include alternative assets.

The goal is to increase potential retirement investment options to 401(k) plan participants. While managers of defined contribution plans have always had the authority to consider alternative assets, historically, almost none have done so.

The proposed regulation explains the steps that managers of 401(k) plans should take when considering alternative assets as a component in their investment lineups and establishes a set of process-based safe harbors for plan fiduciaries to

use when selecting designated investment alternatives. The proposal follows the [President Executive Order, “Democratizing Access to Alternative Assets for 401\(k\) Investors.”](#)

Under the proposed rule, when selecting investment alternatives, plan fiduciaries would need to objectively, thoroughly, and analytically consider, and make determinations on factors including performance, fees, liquidity, valuation, performance benchmarks, and complexity.

The overarching goal, per the proposed regulation, is to alleviate certain regulatory burdens and litigation risk that interfere with the ability of American workers to achieve, through their retirement accounts, the competitive returns and asset diversification necessary to secure a dignified and comfortable retirement. In support of this overarching goal, there are three key principles of the proposed regulation. First, there is a need to affirm ERISA as a law grounded in process. Second, ERISA gives maximum discretion and flexibility to plan fiduciaries in selecting designated investment alternatives. Third, when ERISA fiduciary decision-making follows a prudent process—such as the process reflected in the proposed regulation—arbiters of disputes should defer to fiduciaries under a presumption of prudence.



Plan sponsors should [read the notice of proposed rulemaking on fiduciary duties in selecting designated investment alternatives](#) and consider consulting their advisors and ERISA counsel when making any Plan design changes.



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional states that have passed firm mobility.

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