

US Department of Labor Proposed Rule *Fiduciary Duties in Selecting Designated Investment Alternatives*

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Introduction

On March 30, the US Department of Labor (DOL) released a rule proposal 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 proposal carries out a section of President Trump's Executive Order 14330, Democratizing Access to Alternative Assets for 401(k) Investors.

BlackRock submitted a comment letter to the DOL in response to the proposed rule, *Fiduciary Duties in Selecting Designated Investment Alternatives* (the **Proposal**), which would establish a process-based safe harbor under ERISA for fiduciaries selecting investment options for participant-directed retirement plan menus. The Proposal is designed to help modernize retirement plan investment menus and expand access to investment opportunities that can improve long-term retirement outcomes, by providing fiduciaries with an optional framework for satisfying their duty of prudence when selecting designated investment alternatives.

BlackRock supports the Proposal's asset-neutral, principles-based approach and believes it represents a meaningful step toward improving retirement outcomes.

Our comment letter recommends targeted refinements to ensure that the safe harbor preserves ERISA's longstanding deference to fiduciary judgment, avoids unintended prescriptiveness, and accommodates innovation. A central focus of BlackRock's comments is the Proposal's six-factor framework, which we support but recommend refining to enhance administrability, consistency with existing regulatory regimes, and fiduciary discretion.

Overview of the Proposal

The Proposal implements an Executive Order provision directing the DOL to clarify fiduciary obligations and provide a safe harbor for the selection of designated investment alternatives in participant-directed individual account plans. The Proposal establishes a process-based safe harbor under which a fiduciary is presumed to satisfy ERISA's duty of prudence if it objectively, thoroughly, and analytically considers and makes determinations on specified factors when selecting an investment option.

The safe harbor is asset-neutral and applies to all types of designated investment alternatives, including asset allocation funds that incorporate alternative assets. The Proposal identifies six factors that a fiduciary must appropriately consider and make determinations on as part of a prudent selection process: performance, fees, liquidity, valuation, performance benchmarks, and complexity. For each factor, the Proposal sets forth an operative standard and provides illustrative examples intended to demonstrate processes that satisfy (or in some cases, fail to satisfy) the standard.

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Key Recommendations

BlackRock's comment letter provides several overarching recommendations to strengthen the Proposal. For example, we recommend that it:

- 1 Clarify that all the included examples are illustrative only and do not impose additional or prescriptive conditions for safe harbor relief.
- 2 Reinforce that while plan sponsors may choose to enlist professional advisors to support their decision-making, they retain discretion to make investment selections independently where they have the skills, knowledge, experience, and capacity to do so.
- 3 Clarify that fiduciaries who apply the safe harbor processes during appropriate monitoring cycles are presumed to satisfy their duty to monitor.
- 4 Refine each factor and related illustrative examples to preserve flexibility, avoid unintended bias toward particular investment vehicles or methodologies, and align with existing regulatory and market practices.

Review of the Six-Factor Framework and BlackRock's Recommendations

What the Proposal Includes	BlackRock's Recommendations
01 Performance The performance factor requires fiduciaries to consider a reasonable number of similar investment alternatives and determine that the designated investment alternative's risk-adjusted expected returns, over an appropriate time horizon and net of anticipated fees and expenses, further the purposes of the plan by enabling participants and beneficiaries to maximize risk-adjusted returns on investment net of fees and expenses.	<p>BlackRock supports the inclusion of performance as a safe harbor factor and agrees with the core principles that inform the standard. To improve the rule, we recommend clarifying how fiduciaries may determine risk-adjusted expected returns, including for new funds that lack long performance histories. BlackRock also recommends that the final rule (or its preamble) state that fiduciaries' reasonable judgment in identifying and considering "a reasonable number of similar alternatives" is entitled to significant deference.</p> <p>With respect to the examples, BlackRock recommends generalizing language that could be read as endorsing particular risk profiles, metrics, or time horizons. The final rule should reflect that plan fiduciaries have flexibility in choosing and applying the methods, data and tools that they use to analyze performance.</p>
02 Fees The fees factor requires fiduciaries to consider a reasonable number of similar alternatives and determine that fees and expenses of the designated investment alternative are appropriate, taking into account its risk-adjusted expected returns and other value, including features or services. The Proposal makes clear that fiduciaries are not required to select the lowest-cost option.	<p>BlackRock supports the fees standard, which appropriately underscores fiduciaries' discretion when considering fees. We recommend that the final rule or preamble state that fiduciaries' reasonable judgment in identifying and considering "a reasonable number of similar alternatives" is entitled to significant deference.</p> <p>BlackRock also recommends targeted revisions to certain related illustrative examples to make them clearer and align them more closely with the proposed fees standard.</p>
03 Liquidity The liquidity factor requires fiduciaries to consider and determine that a designated investment alternative has sufficient liquidity to meet anticipated plan-level and participant-level needs. The Proposal clarifies that fiduciaries are not required to select only fully liquid investments and may appropriately sacrifice some liquidity in pursuit of higher expected risk-adjusted returns.	<p>BlackRock supports the inclusion of liquidity as a standalone factor but raises concerns that several examples rely heavily on liquidity risk management frameworks designed for open-end mutual funds under the Investment Company Act of 1940. We note that this approach may inadvertently disadvantage other regulated vehicles, such as collective investment trusts, which are subject to robust legal, regulatory, and supervisory regimes.</p> <p>We therefore recommend revising the related illustrative examples to more accurately reflect the liquidity risk management practices of a range of investment options and strengthen the Proposal's asset-neutral approach.</p>

What the Proposal Includes

BlackRock's Recommendations

04 Valuation

The valuation factor requires fiduciaries to consider and determine that a designated investment alternative has adopted adequate measures to ensure it can be timely and accurately valued in accordance with the needs of the plan. It includes examples addressing the valuation of both publicly traded and less liquid assets.

BlackRock agrees that valuation is a fundamental consideration in a fiduciary's selection of designated investment alternatives and we support the principles that inform the proposed standard. However, we recommend revising the standard to better align with valuation requirements and practices established under existing regulatory frameworks. Specifically, we suggest revising the standard to focus on whether a designated investment alternative is subject to reasonably designed valuation policies and procedures.

BlackRock also recommends revising certain related illustrative examples that introduce undefined concepts such as "conflict-free" valuation processes, which may substantially diverge from existing regulatory frameworks. We generally recommend alignment with established governance and oversight models. We also recommend that the final rule clarify that a designated investment alternative managed by an investment manager that is subject to ERISA's fiduciary requirements may be presumed to have adequate valuation practices for purposes of the safe harbor factor.

05 Performance Benchmarks

The performance benchmark factor requires fiduciaries to consider and determine that each designated investment alternative has a meaningful benchmark and compare the risk-adjusted expected returns of the designated investment alternative to the meaningful benchmark. A "meaningful benchmark" is defined as an investment, strategy, index, or other comparator that has similar mandates, strategies, objectives, and risks to the designated investment alternative.

BlackRock supports the inclusion of a performance benchmark factor and recommends minor textual changes to ensure that the rule does not impose a higher standard on new or innovative products.

With respect to the related illustrative examples, BlackRock recommends clarifying that custom or composite benchmarks may be developed by investment managers, fiduciaries, or other qualified parties, provided potential conflicts are appropriately evaluated.

06 Complexity

The complexity factor requires a fiduciary to consider the complexity of a designated investment alternative and determine that it has the skills, knowledge, experience, and capacity to comprehend it sufficiently to discharge its duties under ERISA and the governing plan documents, or whether it must seek assistance from a qualified professional.

BlackRock agrees that an investment alternative's complexity is relevant to the prudent selection of that alternative and we support the language of the proposed standard. Importantly, the proposed standard does not require a plan fiduciary to engage a professional advisor where the fiduciary is capable of carrying out its obligations.

We recommend refining or removing examples that could be read as imposing specific analytical requirements or disfavoring certain products, such as managed accounts.

BlackRock appreciates the opportunity to comment on the Proposal. We support the DOL's objective of providing clear, asset-neutral guidance that strengthens fiduciary confidence, supports prudent decision-making, and expands retirement plan participants' access to investment opportunities while preserving ERISA's core protections. We look forward to continued engagement with the DOL as it refines the Proposal to ensure that the final rule promotes innovation, reinforces fiduciary discretion, and advances retirement security for American workers.

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