



U.S. Department of Labor Proposed Rule, Fiduciary Duties in Selecting Designated Investment Alternatives

April 2026

The U.S. Department of Labor (the Department), acting through the Employee Benefits Security Administration (EBSA), has proposed a rule establishing a process-based safe harbor focused on six factors (performance, fees, liquidity, valuation, benchmarking, and the complexity of the designated investment alternative) governing fiduciary duties in the selection of designated investment alternatives for participant-directed defined contribution (DC) plans.

The overarching goal of the proposed regulation is to reduce certain “regulatory burdens and litigation risk” that may “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.”¹

This document is an initial analysis intended to inform ILPA members of key elements of the proposed rule. ILPA will continue to assess the proposal’s implications for institutional Limited Partners (LPs), the broader private markets industry, and the growing connections among the different pools of capital investing in private markets. Within the U.S., DC plans hold “about \$13.8T” in assets, which represent a meaningful new pool of capital to engage with investment alternatives. As the Department’s own analysis acknowledges, “the tradeoff for increased market penetration is a reduction in illiquidity premium,” thereby directly affecting the return characteristics that have historically justified institutional allocations to private markets.²

ILPA is mindful of the Department’s objective of promoting American workers’ ability to retire with dignity, comfort, and financial security. The proposed rule represents a consequential change in the regulatory framework governing retirement plan investments and private markets more broadly, and requires deliberate review to fully evaluate its far-reaching implications. ILPA will continue to evaluate the proposal’s potential effects on LPs and market structure, with work underway towards drafting a comment letter on behalf of our member LPs in response to the proposed rule.

Impact on LPs

The proposed rule may have implications for LPs and the broader private markets ecosystem.³ Increased access to participant-directed DC capital has the potential to influence several interrelated dynamics, including:

- The composition of market participants
- Competition for private market investment opportunities, including co-investments
- Investment decisions and the overall investment discipline of GPs

¹ Department of Labor, [Proposed Rule on Fiduciary Duties in Selecting Designated Investment Alternatives](#), March 2026.

² *Ibid.*

³ To see a more comprehensive breakout of the issues with the broader opening of private markets to retail capital, review the [ILPA Retail Capital Analysis: Primer and Questions to Ask GPs](#).

- Returns compression given increased market penetration—with a reduction in the illiquidity premium acknowledged by the Department⁴
- Governance and negotiation frameworks between LPs and GPs
- Additional legal, regulatory, and compliance risks for the industry
- Reputational and market health considerations

The introduction of participant-directed capital—often through intermediated vehicles such as target date funds (TDFs)—represents a meaningful shift in the traditional private markets’ investor base. As discussed in the *ILPA Retail Capital Analysis*, this introduction has the potential to create a “right strategy, wrong structure” dynamic, in which multiple pools of capital invest in private markets with vastly different needs and profiles across risk, liquidity, diversification, time horizons, and performance expectations.⁵ While the structure of TDFs can have advantages over other retail vehicles, there are still fundamental issues that must be addressed, including conflicts of interest, investments and allocations, liquidity, valuations, governance, and fees.

Over time, increased capital inflows may affect fund capacity and pricing dynamics, particularly in capacity-constrained market segments, with potential implications for long-term performance outcomes across the asset class. This shift is likely to have other interrelated effects. Expanding DC access may increase competition for a finite set of investment opportunities. Private markets are inherently capacity-constrained, and the introduction of additional capital flows may place upward pressure on valuations, reduce access to top-tier managers, and compress returns. Increased reliance on intermediated investment structures may also reduce the use of traditional governance mechanisms. As private market exposure is incorporated into pooled vehicles designed for participant-directed plans, the direct relationship between institutional LPs and managers may be diminished, with implications for oversight, alignment, and negotiation practices.

The proposal does not eliminate the structural mismatch between participant-directed plans and private market investments. Instead, it seeks to manage that mismatch through procedural requirements. While this approach provides fiduciaries with a framework for decision-making, it does not resolve the underlying tension between participant expectations for liquidity and simplicity and the inherent characteristics of private market assets.

While the proposed rule does not use the term “institutional investor,” its potential effects extend to market participants that have historically provided long-term capital, engaged in governance oversight, and supported market stability.

There are also broader reputational and market health implications, given that the proposal raises questions about the readiness of the DC fiduciary infrastructure for private markets. These issues also directly and indirectly impact LPs and their allocation decisions within private markets.

⁴ *Supra* 1.

⁵ ILPA, [ILPA Retail Capital Analysis: Primer and Questions to Ask GPs](#), October 2025.

Overview of the Proposed Rule⁶

The proposal, published in March 2026 and open for comments until June 1, 2026, reflects a broader federal policy objective of expanding access to a wider range of investment options within retirement plans while providing fiduciaries with greater clarity regarding their obligations under ERISA. The proposal:

- Reaffirms ERISA’s focus on process rather than investment outcomes
- Establishes a procedural safe harbor for fiduciaries at the point of investment selection
- Emphasizes asset class neutrality, including with respect to alternative and private market investments

Under the proposed framework, fiduciaries who follow an “objective, thorough, and analytical decision-making process” may rely on a procedural safe harbor with respect to the duty of prudence when selecting a designated investment alternative.⁷

Procedural Requirements and Evaluative Factors

The proposed rule identifies six non-exhaustive considerations that fiduciaries should evaluate, based on the facts and circumstances relevant to the investment, when selecting a designated investment alternative. Those considerations include:

- Performance
 - Consideration of performance should focus on expected risk-adjusted returns over an appropriate time horizon, taking into account the investment’s strategy, asset class, and underlying risks, rather than short-term results
- Fees
 - Fees should be evaluated for reasonableness in light of the investment’s structure, complexity, and anticipated value, including consideration of management fees, performance-based compensation, and any indirect or layered costs
- Liquidity
 - Liquidity analysis should examine redemption terms, restrictions, and potential liquidity risks, as well as how those features align with participant needs and the operation of participant-directed defined contribution plans

⁶ The proposed rule applies broadly to designated investment alternatives and is not limited to private market investments. It also addresses other asset categories, including emerging and non-traditional investments such as digital assets. ILPA’s focus in this update is on private markets.

⁷ The proposed rule establishes a procedural safe harbor under which a plan fiduciary is presumed to have satisfied ERISA’s duty of prudence with respect to the selection of a designated investment alternative, provided the fiduciary engages in an “objective, thorough, and analytical evaluation” of relevant factors and appropriately documents that process. The safe harbor applies solely to the investment selection decision and does not extend to the construction of the overall plan menu or to ongoing monitoring obligations.

- Valuation Methodologies
 - Valuation methodologies should be reviewed for appropriateness and consistency, including the use of fair value processes, pricing frequency, and the transparency of assumptions, given the nature of the investment
- Benchmarking Approaches
 - Benchmarking should consider whether meaningful comparisons exist for the investment, recognizing that traditional public-market benchmarks may be limited or unavailable for certain strategies or asset classes
- The Overall Complexity of the Investment
 - The overall complexity of the investment should be assessed based on structural features, operational demands, and the extent to which it can be prudently evaluated, monitored, and communicated within a participant-directed plan framework

The Department makes clear that fiduciaries may consider additional relevant facts and circumstances as appropriate. Fiduciaries are not required to select the lowest-cost or most liquid option, but rather to assess overall value through a documented, reasoned process that reflects the characteristics of the investment under review.

The rule acknowledges that investments with infrequent pricing, non-standard fee structures, or limited liquidity may require analytical approaches that differ from those applied to traditional public market offerings.

Nature of the Safe Harbor

The safe harbor provided by the proposed rule is procedural. When the specified evaluative process is followed and appropriately documented, fiduciaries receive a presumption of prudence with respect to the selection decision.

- The safe harbor applies to the selection of a designated investment alternative;
- It does not apply to overall plan menu construction or ongoing monitoring; and
- It does not mandate or favor any particular asset class or investment structure.

By clarifying how fiduciary decision-making will be evaluated, the proposal seeks to reduce litigation risk while preserving flexibility across investment types.