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5 Key Takeaways from the April 2026 DOL Investment-Selection Webinar

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1. Not Just about Alternative Assets. The Department of Labor's proposed rule does not favor or restrict any particular asset type—its framework is asset-neutral. While it reinforces that alternative asset classes (such as private equity) are permissible for 401(k) plans, the rule emphasizes a process-based fiduciary standard applicable to all designated investment alternatives. Delegation to investment advisors is allowed, but fiduciaries must read, critically review, and understand advisor recommendations and retain responsibility for ongoing monitoring.

2. Six Factors: A Non-Exhaustive, Structured Guide to Investment Selection. The proposed regulation provides a non-exhaustive list of six factors for fiduciaries to evaluate when selecting investment options: Performance, Fees, Liquidity, Valuation, Benchmarking, and Complexity. The framework is process-based—fiduciaries must demonstrate that they have methodically and analytically considered these (and, if appropriate, additional) factors. The regulation's six factor requirements are a minimum baseline for prudent decision-making, not a true safe harbor. The regulation encourages courts to give substantial weight to fiduciaries who follow a documented, thorough process.

3. Benchmarking: Active Engagement Required. Under the DOL's proposed regulation, fiduciaries must "read, critically review, and understand" the benchmarks used to evaluate investment options—they cannot simply defer to advisor recommendations. Fiduciaries should be prepared to explain and defend their benchmark choices and how they relate to the plan's investments. Communicating the benchmarks used by plan fiduciaries to participants may help protect against claims based on inappropriate comparisons. Accordingly, fiduciaries should review the benchmarks reflected in annual participant disclosures and consider disclosing meaningful benchmarks used by the plan fiduciaries as secondary benchmarks when appropriate.

4. Review Fiduciary Investment Policy Statements and Other Fiduciary Documentation Now. A fiduciary's strongest defense is a well-documented process. Even though the regulations are only in a proposed form, plan fiduciaries should start reviewing their investment policy statements and investment processes now to ensure they reflect the fiduciary processes outlined by the regulations.

5. Fiduciaries Must Remain Mindful of Recordkeeping Expenses and ESG/Proxy Issues. In addition to the fiduciary issues in investment selection raised by the proposed regulations, fiduciaries must remain vigilant in monitoring and evaluating the reasonableness of plan expenses, including recordkeeping fees, and carefully consider proxy voting policies for plan investments. Fiduciaries should ensure their

practices around fees, ESG considerations, and proxy voting are well-documented, reasonable, and aligned with plan participants' financial interests.