

SEI Trust Company Special Update April 2026



REGULATORY UPDATE

In an effort to keep you updated on changing regulations, requirements and/or litigation that may affect our industry, we are providing you with a summary of recent legislation, legal decisions and/or regulatory guidance that may impact collective investment trusts (“CITs”) and their service providers, such as banks and investment managers.

SPECIAL REGULATORY UPDATE

U.S. Department of Labor Releases Proposed Safe Harbor Under ERISA Prudence Rules in Connection with the Selection of Designated Investment Alternatives for Participant Directed Plans, Including Alternative Assets

In accordance with the goal of the Trump Administration the (“Administration”) to broadening investment options available to participants in participant directed plans, and in follow up to the Administration’s directive to the U.S. Department of Labor (“DOL”) to issue guidance that would permit participants in those plans to have access “to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets”,¹ the DOL issued a proposed regulation that addresses a fiduciary’s responsibilities under the prudence fiduciary duties under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) as well as a safe harbor under those requirements to assist in protecting those fiduciaries who do make such selections from frivolous suits from alleged governmental overregulation and a very active plaintiff’s bar. The proposed rule was issued on March 31, 2026, and the comment period on the proposal runs for 60 days, or until May 29, 2026.

In the preamble to the regulations, the DOL notes there are three key principles of ERISA form the “bedrock” of the proposal: (1) acknowledgement that ERISA’s duties are founded in a law “grounded in process”; (2) ERISA gives a fiduciary “maximum discretion and flexibility to plan fiduciaries selecting designated investment alternatives², including those described in EO 14330³; and (3) an ERISA fiduciary who follows a prudent process – including the one outlined in the proposal, “arbiters of disputes should defer to fiduciaries under a presumption of prudence”.⁴ After reviewing the current 1979 DOL regulations regarding

¹ President Trump’s Executive Order 14330 (EO 14330), Democratizing Access to Alternative Assets for 401(k) Investors, issued on August 7, 2025.

² A designated investment alternative under this proposal includes any investment alternative designated by the plan in which participants or beneficiaries invest into, but does not include a self-directed brokerage window, or similar offering.

³ EO 14330 defines alternative assets a bit more broadly than normally used in the industry, including private market investments, including direct and indirect interests in equity, debt, or other financial instruments that are not traded on public exchanges, including those where the managers of such investments, if applicable, seek to take an active role in the management of such companies; direct and indirect interests in real estate, including debt instruments secured by direct or indirect interests in real estate; holdings in actively managed investment vehicles that are investing in digital assets; direct and indirect investments in commodities; direct and indirect interests in projects financing infrastructure development; and lifetime income investment strategies including longevity risk-sharing pools. Referenced generally as “Alternative Assets” in this update.

⁴ *Selection of Designated Investment Alternatives for Participant Directed Plans, Including Alternative Assets*, Federal Register / Vol. 91, No. 61, Page 16088 (“Proposed Regulations”), Executive Summary. The word “litigation” comes up more than 100 times in the proposal.

prudence with respect investment duties⁵, the proposed regulations expand those regulations in the context of designated investment alternatives for participant directed individual account plans, and does this by identifying six relevant factors for a fiduciary to review in light of the proposed alternative investment under consideration and then further explains what it means for a fiduciary to act in accordance with those considerations (and therefore, how to act prudently under ERISA with respect to those investments).

An important note is that the both EO 14330 and the proposed regulations are drafted to clarify the ERISA fiduciary duties related to the selection and offering of an asset allocation fund (or funds) that include an allocation to one or more Alternative Assets, and not necessarily to the offering of an Alternative Asset directly as a designated investment alternative on a plan's investment menu.⁶ But the DOL does go on to state that the same requirements can be used to review the offering of other investments on a plan's menu, including more standard equity, fixed income and/or stable value products. In expanding the guidance to other asset classes, the DOL confirmed that it did not intend to give the impression that asset allocation products with an allocation to Alternative Assets are more favored or not by the DOL.⁷

Moving to the six factors that the DOL note that a fiduciary should review when making an investment determination, those factors are: performance, fees, liquidity, valuation, benchmarking and the complexity of the designated investment alternative, although the DOL notes that not all of those six factors will be as applicable to each proposed investment alternative under review. With respect to each of those factors, a more detailed analysis is addressed below:

- **Performance:** A fiduciary must appropriately consider a reasonable number of similar investment alternatives and then must determine that the risk-adjusted expected return of the designed investment alternative over an appropriate time horizon and net of fees and expenses, furthers the purpose of the plan. As an example, the DOL describes a fiduciary who, after considering the risks of a potential investment, selects a target date fund series that has lower expected return, but lower expected risk, as compared to the similar alternative date series considered. The considerations are built on the advice of a third-party investment fiduciary under Section 3(21)(A)(ii) of ERISA.⁸
- **Fees:** Fees are also identified as a relevant factor for a fiduciary's consideration. The fiduciary should consider "objectively, thoroughly and analytically" a reasonable number of other similar alternatives, and should consider the risk adjusted expected performance, net of fees and expenses, as well as any other value that the proposed alternative has (which includes any benefits, features or services other than the risk adjusted returns net of fees). Importantly, the DOL concludes that a fiduciary is not imprudent if it does not select the lowest cost product, as a fiduciary may choose to pay more in order to obtain greater services. Each of the examples provided note that a fiduciary should compare every proposed investment alternative to similar alternatives available in the market.⁹
- **Liquidity:** A fiduciary must appropriately consider whether or not a proposed designative alternative will have sufficient liquidity to meet needs at both the plan and the participant level. Noting that many alternative assets generally offer less liquidity, but often for a benefit in the overall returns over time, designed investment alternatives that include an allocation to an alternative investment

⁵ The 1979 regulations state that a fiduciary must give appropriate consideration to applicable facts that the fiduciary knows or should know that are relevant to a particular investment including the role that the investment plays in the plan's investment portfolio and then the fiduciary should act in line with that consideration. The 1979 regulations were issued prior to the prefoliation of 401(k) and other participant directed plans although are generally accepted as applicable to those plans as defined benefit plans. See 29 CFR 2550.404a-1.

⁶ This would require some additional guidance and/or rule changes from the U.S. Securities & Exchange Commission as well.

⁷ The proposed rule does not address the DOL's long standing requirements to continue to monitor designed investment alternatives for the duration of the time that they are put on a plan's investment menu, but the DOL did note that it may issue additional guidance on what is required by a fiduciary with respect to the continual monitoring requirements at some point in the future. Section 4.1 of the preamble of the Proposed Regulation. The DOL also notes that there is no guidance issues about how to create the menu of investments overall, but that in order to obtain fiduciary relief under Section 404(c) of ERISA, the investment fiduciaries of participant directed plan needs to provide a broad range of investment alternatives that meet specific diversification and risk return requirements so that a participant can build a portfolio in the plan that meets the participant's specific risk and return characteristics.

⁸ Other examples are also provided other than those included in this update.

⁹ This might be difficult for products with new features in the marketplace.

may benefit retirement savers, especially those younger savers with a longer time horizon to retirement. The proposal also notes that plans do not need to offer fully liquid investment options, although fiduciaries should ensure that any promise of liquidity in a fund is made available as offered, so review of all of the appropriate liquidity disclosures are important. Here specifically for a collective investment fund (“CIF”), one of the examples notes that a fiduciary should review whether or not the CIF has adopted and implemented a liquidity management program substantially similar to the programs required of open-end mutual funds under the Investment Company Act of 1940.¹⁰

- Valuation: The proposal goes on to state that a fiduciary must appropriately consider whether the proposed designated alternative has adopted measures to be timely and accurately valued in accordance with the needs of the plan. The proposal includes four examples where all asset of a funds are being valued in accordance with a national securities or other public exchange, where some of the assets are being valued the same way, while others are non-publicly traded securities (either in accordance with certain accounting standards or in good faith by the manger). Further, the DOL provides an example where a private fund manager may make valuation decisions on its own, which to the DOL, appears to be fraught with conflicts of interest, and something that a fiduciary should consider carefully before investing.
- Performance Benchmark: A fiduciary, according to the DOL, must appropriately consider and determine that each designed investment alternative has a meaningful benchmark and compare the risk adjusted returns, net of fees, to the meaningful benchmark. For purposes of the proposal, a meaningful benchmark is something that has “similar mandates, strategies, objectives and risks” to the proposed alternative. There could be more than one meaningful benchmark, but there is no preference or presumption of prudence when using a well-established benchmark rather than a new or innovative benchmark, as long as the fiduciary uses the “best possible” benchmark. The examples suggest when using a composite benchmark that the fiduciary should get an explanation of how the composite benchmark is constructed.
- Complexity. While a fiduciary should not be precluded from selection of a product that may be more complex than others, it should be something a fiduciary should consider when making a determination to include the option on the plan’s investment menu, and they should consider when it has the appropriate skills, knowledge, experience and capacity to understand it sufficiently in order to oversee its implementation or whether it needs assistance from a qualified investment fiduciary, manger or other individual. Also, fiduciaries should consider if they truly understand the risks attendant to the investment if it is more complex than others available in the marketplace. Here the DOL leans heavily on the use of those experts in assisting a fiduciary in making a decision, rather than stating outright that a complex investment should be used. Examples of funds with either performance fees, carried interest components or other variable fee structures are given as items where a fiduciary may need assistance in understanding how the product will work before approving for use on a plan’s investment menu.

Again, it is worth noting that the DOL does not expect this to be an exhaustive list, but these factors should be reviewed by fiduciaries for all proposed designed alternatives. There may be other important factors that should be considered, depending on the nature and structure of the proposed investment.

The comment period on the proposal ends on June 1, 2026.

This information is for educational purposes only and should not be considered investment advice.

¹⁰ Rule 22e-4 of the Investment Company Act of 1940, as amended. This is also the only specific reference to CIFs in the proposal.

About SEI Trust Company

SEI Trust Company (STC) is a non-depository trust company chartered under the laws of the Commonwealth of Pennsylvania that provides trust and administrative services for various collective investment trusts. SEI Trust Company is a wholly-owned subsidiary of SEI Investments Company (SEI). For more information, visit www.seic.com/stc.

About SEI

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