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Memorandum

Department of Labor Releases Proposed Rule Aiming to Reduce Litigation Risk Associated With 401(k) Plans Including Access to Private Markets Assets

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Introduction

The U.S. Department of Labor ("DOL") has released a proposed rule (the "Proposed Rule")[1] designed to facilitate an ability for individuals in 401(k) plans to allocate a portion of their investments to alternative assets, such as private equity and private credit. At its core, the Proposed Rule constitutes a framework for employers and other fiduciaries of 401(k) plans who are responsible for selecting investment funds that sit on plan menus, regardless of whether that plan investment option has an allocation to alternative assets. Thus, the Proposed Rule is broader than many envisioned, yet it nonetheless likely paves the way for greater inclusion of alternative assets, especially inside of plan options, such as target date funds ("TDFs"). The Proposed Rule is intended to curtail litigation risk against employers over their choices of investment funds for their 401(k) plan menus. Private fund sponsors are not subject to the Proposed Rule (other than, potentially, with respect to their own 401(k) plans, or if an affiliate separately provides plan-level advisory services or otherwise acts as a sponsor or manager of a fund that sits directly on a 401(k) plan menu).[2]

More specifically, the Proposed Rule provides a process-based, presumptive safe harbor for an employer's selection of designated investment alternatives ("DIAs") in 401(k) plans.[3] The safe harbor is meant to facilitate access to alternative assets by 401(k) plan savers by "help[ing] shield" plan fiduciaries "from the risk of excessive litigation about such selection" in plan menus. The framework embedded in the Proposed Rule seeks to provide further clarity on a plan fiduciary's duty of prudence when selecting investment options (including alternative asset classes) for a 401(k) plan. This added clarity, coupled with the safe harbor, is likely to result in greater interest by employers in adding plan investment options with alternatives exposure.

[1] U.S. Department of Labor, *Fiduciary Duties in Selecting Designated Investment Alternatives* (Mar. 30, 2026), available here.

[2] Many private investment funds are structured as "venture capital operating companies," "real estate operating companies, "25% exception funds," or rely on another exception under the DOL's "plan assets" regulation. Those fund sponsors and managers, therefore, are not fiduciaries under the Employee Retirement Income Security Act of 1974, as amended ("ERISA") in their capacities as such. We reiterate that no fund sponsor or manager is subject to the Proposed Rule, other than potentially in the context of their own ERISA plans or if an affiliate provides plan-level advisory services or otherwise acts as a sponsor or manager of a fund that sits directly on a 401(k) plan menu.

[3] A private investment fund is not a DIA for purposes of the Proposed Rule if the investment fund that sits directly on the 401(k) plan menu makes an allocation to the private investment fund.

The Proposed Rule sets forth six factors that a plan fiduciary already would likely consider when deciding whether to offer an investment fund directly on a 401(k) plan menu: Performance, Fees, Liquidity, Valuation, Performance Benchmarks, and Complexity. The proposal, through examples, provides plan fiduciaries a presumption of prudence if they follow certain processes when evaluating each such factor. As noted above, the application of these factors will have an indirect effect on private fund sponsors in that it will affect an employer's appetite for adding plan investment options with alternatives exposure, as well as the management and marketing of the plan investment options themselves (*e.g.*, TDF sponsors and managers) in the construction of their funds.

The Proposed Rule is open for comments from the public, which must be submitted to the DOL by June 1, 2026.

Background

DESIGNATED INVESTMENT ALTERNATIVES

401(k) plans typically offer a menu of investment options known as DIAs into which plan participants can direct the investment of their contributions. Most (but not all) of these investment options are commingled funds, such as target date funds, which are structured as either collective investment trusts ("CITs") or registered investment companies. A plan committee usually acts as the fiduciary responsible for populating the plan's menu of investment options, though there has been an increasing trend for these decision-making responsibilities to be outsourced to third party consultants and advisers.

In recent years, sophisticated asset managers have developed a wide range of investment vehicles that offer exposure to alternative assets, including private equity, private credit, real estate and other alternative strategies. The inclusion of these vehicles as DIAs within 401(k) plans, or the increased allocation of 401(k) assets to alternatives through commingled fund structures, has raised complex fiduciary considerations regarding valuation, liquidity, fees and risk. However, increased allocations to alternative assets can provide much needed diversification, increased downside protection and the potential for better risk-adjusted returns over the long term. The Proposed Rule has the potential to expand allocations to alternative assets in 401(k) plans by addressing some of the most pressing fiduciary considerations.

DUTY OF PRUDENCE

Under section 404(a)(1)(B) of ERISA, plan fiduciaries are subject to a duty of prudence, which requires them to discharge their duties "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims." ERISA also provides a private right of action to plan participants and beneficiaries who may bring civil actions for breach of fiduciary duty.[4]

[4] Sections 409 and 502 of ERISA authorize participants to file suit to hold fiduciaries "personally liable to make good to such plan any losses to the plan resulting from each such breach," and provides for "other equitable or remedial relief."

In 1979, the DOL adopted a regulation describing the fiduciary duty of prudence in the context of plan investment selection (the "1979 Investment Duties Regulation").[5] The 1979 Investment Duties Regulation, in relevant part, provides that a plan fiduciary meets its duty of prudence when selecting an investment if the fiduciary gives "appropriate consideration to those facts and circumstances that … the fiduciary knows or should know are relevant to the particular investment …" and if the fiduciary "acted accordingly." Such considerations include the "risk of loss and the opportunity for gain … associated with the investment" as compared to other available options, and under certain circumstances, "the diversification, liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan, and projected return of the portfolio relative to the funding objectives of the plan." The Proposed Rule is not intended to replace or contradict any of the principles set forth in the 1979 Investment Duties Regulation. Rather, the Proposed Rule is intended to supplement and expand on the 1979 Investment Duties Regulation, other DOL guidance, and existing case law in the context of investment selection.[6]

AN EVOLVING RETIREMENT LANDSCAPE

The federal government, including the U.S. Securities and Exchange Commission ("SEC"), is pursuing a broad initiative to expand access to private market alternative investments.[7] To further that initiative, President Donald Trump signed an executive order on August 7, 2025 (the "Executive Order"[8]) instructing the DOL to, among other things, propose rules, regulations, or guidance, as it deems appropriate, to clarify the duties that a fiduciary owes to plan participants under ERISA when deciding whether to make available to plan participants an asset allocation fund that includes investments in "alternative assets." The Executive Order noted that the DOL should "prioritize actions that may curb ERISA litigation that constrains fiduciaries' ability to apply their best judgment in offering investment opportunities to relevant plan participants."

The Executive Order defined "alternative assets" to include:

i. Private market investments, including direct and indirect interests in equity, debt, or other financial instruments;

ii. Real estate;

iii. Actively managed investment vehicles that invest in digital assets;

iv. Commodities;

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[5] 29 CFR 2550.404a-1(b)(1); 44 Fed. Reg. 37225 (June 26, 1979), available here.

[6] The Proposed Rule's safe harbor is limited to the duty of prudence and does not address the duty of loyalty or prohibited transaction issues (*e.g.*, a private equity fund sponsor adding its own funds to its in-house plan menu).

[7] *See* Chairman Paul S. Atkins, Speech, *Remarks at the Investor Advisory Committee Meeting* (Sep. 18, 2025), available here. *See* Commissioner Mark T. Uyeda, Speech, *The Diversification Deficit: Opening 401(k)s to Private Markets* (Nov. 20, 2025), available here. *See* Commissioner Hester M. Peirce, Speech, *Let Them Ride: Remarks at the Meeting of the SEC Investor Advisory Committee* (Sep. 18, 2025), available here. On March 4, 2026, the SEC hosted a roundtable to discuss governance, valuation, and other considerations with the aim of promoting responsible retailization of private markets, webcast available here.

[8] Democratizing Access to Alternative Assets for 401(k) Investors – The White House (Aug. 7, 2025), available here.

v. Infrastructure finance; and

vi. Lifetime income investment strategies such as longevity risk-sharing pools.

The Executive Order also directed the DOL to consult, as appropriate, the SEC and other Federal regulators, to determine whether those agencies should implement related regulatory changes to give effect to the purpose of the Executive Order. Accordingly, the Proposed Rule has the explicit support of the Chair of the SEC and the Secretary of the Treasury.[9] We expect the DOL, SEC, and the Treasury Department to continue to coordinate on policy efforts to facilitate access to alternative assets in 401(k) plans.

Discussion of Proposed Rule

SCOPE

The Proposed Rule implements the Executive Order by providing guidance regarding the ERISA duty of prudence as it relates to the selection of DIAs. Notably, the Proposed Rule would apply to the selection of *any* type of investment as a DIA, including (but not limited to) investments through an asset allocation fund.[10] The Proposed Rule broadly defines a DIA as "any investment alternative designated by the plan into which participants and beneficiaries may direct the investment of assets held in, or contributed to, their individual accounts, including a qualified default investment alternative…." The DIA definition does not extend to self-directed brokerage windows (or similar plan arrangements that enable participants to select investments beyond those designated by a plan), which are not included under the Proposed Rule. Private fund sponsors are not directly subject to the Proposed Rule (other than with respect to their own 401(k) plans or if an affiliate separately provides these types of services to plans).

Additionally, the scope of the Proposed Rule extends only to the individual selection of potential DIAs for a 401(k) plan and does not address the duty of prudence with respect to the creation of a menu of investments as a whole. The DOL noted that it is considering whether to issue guidance on the process for curating a prudent menu of investments overall in a plan.

Further, while ERISA itself applies a duty of prudence to investment selection and ongoing monitoring responsibilities, the Proposed Rule only provides its safe harbor framework for DIA investment selection and not to the ongoing monitoring of DIAs. However, the DOL notes that it "is generally of the view" that the factors and processes in the Proposed Rule apply to the ongoing duty of monitoring and that it anticipates issuing interpretive guidance on monitoring in the "near term." Nevertheless, this approach may create unnecessary distinctions between the fiduciary duties applicable to investment selection, on the one hand, and ongoing monitoring on the other.

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[9] *See* U.S. Department of Labor, News Release, *US Department of Labor Proposes Landmark Rule to Democratize Access to Alternative Investments in 401(k) Plans* (Mar. 30, 2026), available here.

[10] The DOL notes that its decision not to provide a safe harbor for specific asset classes follows its historical approach of neutrality across asset classes rather than picking winners and losers.

SAFE HARBOR FACTORS

The Proposed Rule establishes a process-based, presumptive safe harbor by introducing a non-exhaustive list of six factors that a plan fiduciary should consider when selecting a DIA. The DOL believes the six factors included in the Proposed Rule are integral to the vast majority of DIAs provided within participant-directed individual account plans. With respect to each factor, a plan fiduciary can conduct their own evaluation or can reasonably rely on the recommendations of an investment advice fiduciary (*e.g.*, a "3(21)" fiduciary) or an investment manager (*e.g.*, a "3(38)" fiduciary). An employer's appointment of a 3(21) or 3(38) fiduciary is indicative of a prudent process under the Proposed Rule, and an employer or one of its outsourced fiduciaries that evaluates a factor in accordance with the processes described in the Proposed Rule would fall under the safe harbor with respect to that factor and is "entitled to significant deference." We discuss the likely effect of this presumption in more detail in the "Key Takeaways" section below.

Performance

Employers must evaluate whether a potential DIA's expected risk-adjusted returns, considered over an appropriate time horizon and net of anticipated fees and expenses, support a plan's objective. Accordingly, plan fiduciaries need not select an investment strategy with the highest returns, nor aim to achieve the highest possible returns, but rather should seek to maximize returns for a given level of appropriate risk, consistent with plan participants' likely needs over the course of the anticipated investment. The DOL notes that "it may be prudent to select a lower-risk strategy with lower expected returns" such as by seeking diversification benefits from alternative assets that have low correlations to stocks and bonds.[11] Given the long-term nature of retirement savings, it may often be prudent for a plan fiduciary to give greater weight to long-term historical performance over short-term performance.

Fees

A plan fiduciary must also assess a "reasonable number" of "similar" investment alternatives to the potential DIA and evaluate their fees. The fee factor is best viewed as requiring an analysis of the value proposition of a DIA; the Proposed Rule explicitly rejects a lowest-cost requirement and instead requires that fees be "appropriate" in light of other values the DIA provides to the plan.[12] The fiduciary can evaluate expected risk-adjusted returns and other benefits, which may include features such as diversification, downside protection or lifetime income. As an example, the Proposed Rule highlights that a plan fiduciary may offer actively managed funds with higher fees

[11] For this proposition, the DOL cites *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015 (9th Cir. 2025), cert. granted, No. 25-498 (Jan. 16, 2026), which is expected to be argued before the Supreme Court in the coming term. Given its reliance on the 9th Circuit's decision, the DOL may wait until the Supreme Court publishes its opinion before finalizing the rule.

[12] Consistent with case law, the Proposed Rule notes that it would be imprudent for a fiduciary to select a more expensive share class when a less expensive class is available if both share classes are otherwise identical.

alongside passively managed funds with lower fees if the fiduciary concludes that the value of the diversification of the actively managed funds justifies their higher fees.

Liquidity

Fiduciaries must ensure that a potential DIA provides sufficient liquidity at both the plan and participant level to meet events such as participant withdrawals, asset reallocations and plan loans. The rule recognizes that some illiquidity (including in alternative assets) may be appropriate if balanced against participant needs and supported by reasonable liquidity management processes.

If a DIA is a registered open-end fund under the Investment Company Act of 1940, as amended, (the "1940 Act"), its implementation of a written liquidity and risk management program as required by Rule 22e-4 of the 1940 Act would satisfy the liquidity factor. If a DIA is not an open-end fund, such as a CIT, a plan fiduciary may meet the liquidity factor by relying on a written representation by the DIA's manager that it has implemented a liquidity risk management program "substantially similar" to that required under Rule 22e-4. It is not clear from the Proposed Rule whether such a "substantially similar" program would be required to implement the 15% illiquid investment limit or any other specific provision of Rule 22e-4.

Alternatively, a plan fiduciary may conduct a separate analysis to assess whether a pooled investment fund is sufficiently liquid to offer as a DIA. The plan fiduciary must conclude, based on its diligence, that the DIA appropriately balances future liquidity needs with the ability of the DIA to achieve increased risk-adjusted return on investment net of fees, and the ability to maintain its asset allocation targets, even if the DIA faces a significant volume of redemption requests. Further, the plan fiduciary must ensure that investments can deliver on any promises of liquidity that are made to participants and beneficiaries. The Proposed Rule includes an example finding that a plan fiduciary can prudently determine that a DIA with a quarterly liquidity feature is appropriate for the needs of the plan and its participants in light of the expected increase in risk-adjusted return net of fees.

We discuss how this factor is likely to favor DIAs that are 1940 Act-registered open-end funds in the "Key Takeaways" section below.

Valuation

Employers or other responsible fiduciaries must determine that a potential DIA can be valued accurately and in a timely manner in accordance with the needs of the plan. Plan fiduciaries may rely on asset valuations derived from a generally recognized market where valuations are "readily and accurately determinable in a timely manner" such as a national securities exchange. For securities without a generally recognized market value (*e.g.*, private assets),

a fiduciary must ensure that valuation methodologies are independent, robust and free from conflicts of interest.[13] A fiduciary may rely on a written representation that the securities are valued at least quarterly through an independent, conflict-free process consistent with the Financial Accounting Standards Board Accounting Standards Codification 820, titled Fair Value Measurement (or any successor standard).

As with the liquidity factor, above, the valuation factor also incorporates by reference the protections of the 1940 Act. With respect to 1940 Act-registered funds and business development companies ("BDCs"), a fiduciary will have met the safe harbor requirement if it reviews the fund's audited financial statements and valuation-related prospectus disclosures for conformity with Rule 2a-5 under the 1940 Act, which generally governs such funds' valuation methodologies and reporting.

We discuss how this factor is likely to favor DIAs that are 1940 Act-registered funds and BDCs in the "Key Takeaways" section below.

Performance Benchmarks

Fiduciaries must compare a potential DIA to a "meaningful benchmark" with similar "mandates, strategies, objectives, and risks." The Proposed Rule allows flexibility to use composite or customized benchmarks for complex or hybrid strategies, which is of particular importance to alternative investment strategies that can be difficult to benchmark using existing indices or strategies.

Complexity

Fiduciaries must evaluate whether they possess the expertise necessary to understand a potential DIA's structure, risks and fees (such as sophisticated and variable fee arrangements involving performance fees or carried interest), or whether they must seek assistance from qualified advisers. In an example that is particularly relevant to many investments in alternatives, the Proposed Rule confirms that a plan fiduciary could prudently conclude that a fee structure with carried interest or performance fees will deliver increased value that outweighs the variability and potential unpredictability of the amount and timing of such fees. However, the Proposed Rule also includes an example in which the fiduciary "appears to not understand how the [DIA] delivered value to the plan and therefore failed to operationalize it accordingly." The inclusion of this cautionary example stresses the importance that a plan fiduciary understand the "value proposition" of a DIA with exposure to alternative assets and the importance of this value proposition across many of the factors, including performance, fees and complexity.

[13] The valuation of a DIA's assets by its affiliate does not satisfy the safe harbor because such a valuation methodology reflects a "flawed selection process" that does not demonstrate that the fiduciary appropriately considered and determined that the DIA had adopted adequate measures to ensure that the DIA was capable of being timely and accurately valued in accordance with the needs of the plan. The DOL notes: "Where those conflicts could impact risk-adjusted return on investment, the duty of prudence generally requires a fiduciary to take appropriate steps to understand and mitigate any such adverse impacts and make a determination that the conflict of interest has not and will not render the designated investment alternative's valuation inaccurate."

Key Takeaways

The Proposed Rule is designed to reduce litigation risk for plan fiduciaries, and while continued litigation is to be expected, the safe harbor will likely make litigation easier to manage for courts and plan fiduciaries alike.

The DOL notes, "given where the burden lies, a fiduciary that can actively demonstrate that compliance should be able to confidently rely on it to successfully defend its actions." In other words, where an employer can demonstrate a thorough reliance on the safe harbor factors, even post-*Loper Bright*, judges will have a clear roadmap to assess prudence claims against plan fiduciaries with DIAs in plan menus. In the event a case proceeds past the motion to dismiss stage, judges may be inclined to limit discovery to the fiduciary's reasonable documentation evidencing compliance with the safe harbor factors.[14]

However, there are areas in which the safe harbor can be improved to further reduce litigation risk for plan fiduciaries allocating to alternative strategies in DIAs. It is unclear whether the DOL's adoption of a presumption of prudence through rulemaking will affect a court's analysis of a claimed breach of fiduciary duties under ERISA, namely whether courts grant deference to the safe harbor. Features of the Proposed Rule could also raise disputable facts (*e.g.*, whether alternatives considered for fee comparisons were "reasonable" and "similar" and the "sufficiency" of liquidity features). Further, as noted above, any future DOL interpretive guidance on the fiduciary duties for DIA monitoring could prove vulnerable to revision or rescission in the future, which could further dissuade plan fiduciaries from making alternatives available in their plan menus. Industry participants may ultimately seek greater protections for plan fiduciaries in litigation such as a more deferential standard of review or through other proposals to further lower the risk of prolonged litigation.

To be sure, the availability of the safe harbor in the Proposed Rule offers plan fiduciaries a significant tool to defend against prudence claims. Indeed, the DOL notes that the Proposed Rule "would reestablish that plan fiduciaries have the discretion to determine whether to include an investment as a [DIA] without fear of facing litigation, provided they follow the prudent process described in the safe harbor." To the extent courts begin to consistently rely on the safe harbor as described in the Proposed Rule, we would expect a significant reduction in such claims against plan fiduciaries with DIAs, including those with exposures to alternatives.

The widespread adoption of such safe harbor is not without precedent in the courts. In the context of Section 36(b) of the 1940 Act, the Supreme Court adopted the *Gartenberg* standard for breach of fiduciary claims regarding excessive fees charged by investment managers.[15] There, the Supreme Court noted that judges should give significant weight to the fee evaluation conducted by the fund and its independent trustees, focusing on the sufficiency of process. Only if the investment manager withheld important information would a court look beyond

[14] The Supreme Court recently squarely addressed the discretionary authority of district court judges to "expedite or limit discovery as necessary to mitigate unnecessary costs" in the context of ERISA duty of loyalty claims. *Cunningham v. Cornell*, 604 U.S. 693, 709 (2025).

[15] *Jones v. Harris Assocs. L.P.*, 559 U.S. 335 (2010).

process and instead at the actual fee rates.[16] In the same vein, the Proposed Rule's safe harbor should be viewed as empowering judges to defer to the process conducted by plan fiduciaries before ever addressing the merits of the DIA. In fact, no court has ever ruled in favor of the plaintiff in a final disposition of an excessive fee lawsuit under Section 36(b). A reduction in such similar claims in the 401(k) space would significantly reduce overall litigation risk for plan fiduciaries and likely increase exposure to alternatives in DIAs in more plan menus.

The Proposed Rule provides a clearer pathway for alternative assets in 401(k) menus.

The Proposed Rule lowers perceived barriers to inclusion of alternative strategies in DIAs, particularly within asset allocation products. These lower barriers could encourage financial institutions to design new products and translate into a significant movement of capital into alternatives strategies, particularly given the large existing asset base in target date funds and other asset allocation products.

However, because the liquidity and valuation safe harbor factors would allow a plan fiduciary to rely, in large part, on a simple verification of a 1940 Act-registered fund's liquidity and valuation programs, this comparatively clear verification process may encourage plan fiduciaries to favor DIA structures that are in a 1940 Act-registered fund structure, which is not well-suited for many alternative asset classes. In contrast, for a pooled investment vehicle that is not registered under the 1940 Act, such as a CIT, the safe harbor could be understood as requiring that a bank-trustee operate a CIT with liquidity and valuation provisions that are "substantially similar" to the corresponding requirements under the 1940 Act, leading to questions as to who makes that determination and how that determination would be impacted by any future SEC rulemakings under the 1940 Act related to these provisions. Therefore, the Proposed Rule could be viewed as creating an unnecessary impediment to including alternatives in DIAs. Requiring such 1940 Act specific standards ignores the commercial reality that managers of alternative retail products, including those that are not registered under the 1940 Act, are carefully designed to meet the liquidity demands of retail investors and implement thorough conflicts evaluation frameworks that otherwise address the concerns raised in the Proposed Rule.

The Proposed Rule supplements, but does not replace, existing law on the ERISA duty of prudence.

The DOL developed the safe harbor factors based on pertinent case law, existing regulations and previous sub-regulatory guidance. The Proposed Rule does not attempt to remake the duty of prudence or establish a different standard of care with respect to alternative asset classes. Rather, the DOL cites historical cases and guidance in support of a new framework that is designed to help plan fiduciaries operationalize their evaluation of a DIA of any asset class under existing fiduciary principles. As a result, if the safe harbor framework is adopted as proposed

[16] *See id.* at 352 (quoting *Burks v. Lasker*, 441 U.S. 471, 481 (1979)) (emphasizing that the standard "does not call for judicial second-guessing of informed board decisions," and that courts are not to "supplant the judgment of disinterested [trustees] apprised of all relevant information, without additional evidence that the fee exceeds the arm's-length range); *see also id.* at 352-53 (recognizing Congress's approach in Section 36(b) was to reflect that "courts are not well suited to make such precise calculations").

and the courts do not grant deference to the safe harbor, then the rulemaking will still serve as a modern restatement of the DOL's views on the duty of prudence.

The Proposed Rule emphasizes process.

The Proposed Rule highlights the importance of a reasoned, analytical process for compliance with the ERISA fiduciary duty of prudence, which is consistent with its longstanding interpretation as a procedural duty at the time of the investment decision rather than an ex-post assessment with the benefit of hindsight. Additionally, the DOL strongly encourages plan fiduciaries to use third-party advisers, stating that the decisions to hire an investment advice fiduciary or an investment manager is "indicative of" a prudent process. However, the Proposed Rule makes no mention that the qualifications and/or historic performance of the fund manager(s) of the DIAs or the manager(s) of the underlying alternative assets are relevant to satisfying the safe harbor. The six safe harbor factors can likely be satisfied through documentation and third-party diligence materials, but further detail is required on how this will operate in practice.

What's Next

The Proposed Rule is open for comments from the public, including from private fund sponsors, which must be submitted to the DOL by June 1, 2026.

Conclusion

The Proposed Rule represents a meaningful step toward expanded access to alternative investments through defined contribution plans. It supports a more diversified retirement system by emphasizing a plan fiduciary's discretion in determining the best investment options for 401(k) plan participants. This is particularly important in the context of alternative assets that can enhance diversification, improve risk-adjusted returns and better align retirement portfolios with the long-term investment horizons of participants. However, there remain several opportunities for the DOL to refine further the safe harbor framework and clarify terminology.

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