Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue N.W., Room N–5655
Washington, DC 20210

Via electronic submission: https://regulations.gov

June 1, 2026

Re: Fiduciary Duties in Selecting Designated Investment Alternatives, RIN 1210-AC38

Dear Assistant Secretary Aronowitz:

On behalf of its members, the American Investment Council welcomes the opportunity to comment on the Department's Proposed Rule, *Fiduciary Duties in Selecting Designated Investment Alternatives*. AIC is an advocacy and research organization focused on the private investment industry and its contributions to the U.S. economy, American businesses, and workers' retirement security. AIC's members include many of the country's leading private equity and private credit firms.

AIC strongly supports the Proposed Rule because it addresses a serious practical problem: many workers' retirement plans lack access to investment options that include alternative assets, even though those options would improve long-term retirement outcomes.

In a 401(k) plan, workers choose from a menu of investment options selected by plan fiduciaries. Under the Employee Retirement Income Security Act (ERISA), those fiduciaries must act prudently and solely in the interests of plan participants when they build and maintain that investment menu. But many fiduciaries avoid options that include alternative assets, not because those options are inappropriate for retirement plans, but because fiduciaries fear costly and time consuming lawsuits if they offer investments that are different than traditional stock and bond indexes.

That fear has real consequences. Alternative assets—including private equity, private credit, real estate, and infrastructure—can diversify retirement portfolios and improve long-term returns.[1] Defined-benefit pension plans, public retirement systems, endowments, and other large

[1] *See, e.g.*, Comm'r Mark T. Uyeda, *The Diversification Deficit: Opening 401(k)s to Private Markets* (Nov. 20, 2025), https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025 (noting that given the high level of concentration of large cap technology companies in the S&P 500, "even broadly diversified index funds may be more exposed to sector-specific risks than many investors realize"); Stephanie Dhue & Sharon Epperson, *Private Equity Wants a Larger Piece of the $12.5 trillion Workplace Retirement*

investors have invested in alternative assets for years. But workers in 401(k) plans, including workers in nearly identical situations to those in defined-benefit plans, have far less access. At a time when many Americans doubt they will be able to save enough for retirement, limiting access to alternative assets reinforces retirement insecurity and prevents younger workers from investing in the broader range of assets they increasingly seek.[2] That gap should not persist simply because fiduciaries fear litigation that, while often baseless, can still be quite costly.

The Proposed Rule would help close that gap. ERISA requires fiduciaries to use a prudent process for acting in the best interest of plan participants and beneficiaries. It does not require fiduciaries to predict the future, choose only the lowest-cost investments, or avoid options simply because they are less common in 401(k) plans. The Proposed Rule reflects that principle by giving fiduciaries a clearer roadmap for selecting investment options. If fiduciaries follow a careful process and consider the relevant factors, their decision would be presumed to have fulfilled the duty of prudence and would be entitled to significant deference.

That approach would benefit retirement savers, by helping ensure that fear of litigation does not needlessly exclude desirable investment options from 401(k) plans. Under the Proposal, fiduciaries would have greater confidence to evaluate a wider range of investment options, including products that provide exposure to alternative assets. Courts would benefit as well, from having a clearer means of distinguishing claims that identify a real flaw in a fiduciary's decision-making process from claims that simply second-guess reasonable decisions after the fact.

AIC therefore urges the Department to finalize the Proposed Rule. AIC also recommends several targeted revisions to make the final rule clearer, more consistent with the policy objectives of the rule and Executive Order 14330, and therefore more effective in helping fiduciaries select retirement investments that further workers' best interest.[3]

First, the Department should provide a set of examples that demonstrates how a fiduciary could evaluate one product—such as a target-date fund with exposure to alternative assets—under each factor. That would make the rule clearer for fiduciaries to understand, simpler for courts to apply, and more effective in reducing unnecessary litigation. The final rule would thereby better

---

Plan Market, CNBC (Mar. 11, 2025), https://www.cnbc.com/2025/03/11/private-equity-wants-a-larger-piece-of-workplace-retirement-plan-assets.html.

[2] *See, e.g.*, 2026 EBRI/Greenwald Retirement Confidence Survey at 5-6 (April 21, 2026), https://www.ebri.org/content/2026-ebri-greenwald-retirement-confidence-survey (finding that workers' financial well-being has declined and debt has increased while workers "expect to retire later and plan to work in retirement"); Adams Street, *2026 Advisor Outlook: Private Markets Go Mainstream*, at 7 (April 8, 2026), https://www.adamsstreetpartners.com/news/2026-advisor-outlook/ (noting alternatives demand is increasing among younger generations with longer investment horizons for retirement savings).

[3] AIC recognizes that the proposed rule's safe harbor is asset-neutral and applies to the selection of any type of designated investment alternative. AIC's comments, however, are focused on designated investment alternatives that include exposure to alternative assets.

serve its central purpose: improving workers' investment returns and retirement security, by increasing fiduciaries' confidence in the proper way to evaluate a broader range of investment options.

Second, the Department should refine the rule's individual factors so they remain flexible and do not unintentionally disfavor products that include alternative assets. The final rule should make clear that:

- Different products may manage liquidity in different ways and, accordingly, the rule should not suggest any artificial limit on the amount of alternative assets an investment option may hold;
- Plan fiduciaries may rely on designated investment alternative managers' policies and procedures for identifying, disclosing, and appropriately addressing potential conflicts in the valuation of the designated investment alternatives' investments;
- Fees should be evaluated in light of expected returns and services, not in an isolated manner that fails to account for the value provided in exchange for the fees;
- Fiduciaries should consider the experience and track record of the designated investment alternative manager;
- Fiduciaries should use reasonable benchmarks, but need not prove they found the single best benchmark; and
- The complexity of a product is not itself a reason to reject an investment option, and plan fiduciaries may rely on the knowledge and expertise of independent investment advisers or other members of internal investment committees.

Third, the Department should make clear that fiduciaries should evaluate the plan's investment option as a whole. Many retirement-plan investment options, such as target-date funds and other asset-allocation funds, are made up of many underlying investments. A fiduciary should not be required to separately evaluate every underlying asset as though each were a separate option on the plan menu. Such a requirement would be burdensome, create new litigation risk, and discourage the use of diversified products specially designed for retirement plans.

Fourth, the Department should make certain changes to clarify the operation of the safe harbor as a whole. The final rule should explain that, in ordinary cases, the factors listed in the rule are the only ones fiduciaries need consider. It should also make clear that the rule's examples are illustrative. They should not be treated as the only acceptable way to act prudently or as a mandatory checklist that fiduciaries must follow word-for-word.

Finally, AIC appreciates the Department's intention to provide guidance concerning plan fiduciaries' obligations to monitor existing designated investment alternatives. AIC strongly

encourages the Department to issue a notice of proposed rulemaking to codify a safe harbor addressing plan fiduciaries' obligations to monitor existing designated investment alternatives as soon as possible after finalizing this pending rulemaking.

AIC's comments below explain these recommended changes in greater detail.

TABLE OF CONTENTS

I. Workers Should Have Greater Access to Alternative Assets In Their 401(k) Accounts.

The American retirement system is marked by a significant disparity. Defined-benefit pension plans (including Taft Hartley plans for union members), public retirement systems, university endowments, and other large investors have long invested in alternative assets as a part of their larger retirement portfolios. In 2023, 68% of Fortune 1000 companies that sponsored a defined-benefit plan invested in alternative assets.[4] Alternative assets accounted for 17.9% of those plans' assets in aggregate (and 10.3% on average, reflecting that larger plans are more heavily invested in alternatives).[5] Taft Hartley plans use them even more widely: 90% of multi-employer union plans invest in alternatives, with an average allocation of 17%.[6] Similarly, 89% of public pension plans invest in alternative assets,[7] allocating, on average, 33.1% to alternatives (including real estate) in 2024.[8]

Workers with 401(k) plans and other defined-contribution plans generally have not enjoyed the same exposure to alternative assets. As the Department noted, "only 0.1 percent of all defined contribution plan assets were in alternative investments in 2024."[9]

That gap does not exist because alternative assets are categorically unsuitable for defined-contribution plans—just as they do in other portfolios, alternatives can increase 401(k) plans' risk-adjusted returns while providing valuable diversification benefits. Nor does the gap exist because the market lacks products designed for 401(k) plans. Asset managers have developed target-date funds, asset-allocation funds, managed accounts, and similar products that can provide professionally managed exposure to alternative assets while addressing liquidity, valuation, fee, and administrative considerations.

The principal obstacle is unwarranted litigation risk. Fiduciaries know that adding a new, or less common, investment option to a 401(k) plan can invite costly ERISA litigation, even when the fiduciary prudently selected a product designed to benefit participants after careful

---

[4] *See* Mercedes Aguirre & Brandon McFarland, *2023 Asset Allocations in Fortune 1000 Pension Plans*, Willis Towers Watson (Apr. 30, 2025), https://www.wtwco.com/en-us/insights/2025/04/2023-asset-allocations-in-fortune-1000-pension-plans?utm; *see also* Keith Brainard & Alex Brown, *Public Fund Survey Summary of Findings For FY 2024*, at 15 fig. R, Nat'l Ass'n of State Retirement Administrators (Dec. 2025), https://www.nasra.org/files/Public%20Fund%20Survey/FY24/Public%20Fund%20Survey%20Summary%20of%20Findings%20for%20FY%2024.pdf. (concluding that alternatives and real estate comprise nearly 1/3 of state retirement assets).

[5] Aguirre & McFarland, *supra*.

[6] *See Taft-Hartley Survey*, at 23, Morgan Stanley (2025), https://www.morganstanley.com/cs/pdf/MS-2025-Taft-Hartley-Survey.pdf.

[7] American Investment Council, *2025 Retirement Security Report*, https://www.investmentcouncil.org/wp-content/uploads/2025/07/AIC-2025-Pensions-Report.pdf.

[8] Brainard & Brown, *supra*, at 15 fig. R.

[9] 91 Fed. Reg. at 16106.

consideration.[10] The Department recognized that problem in the Proposed Rule's preamble, explaining that fiduciaries should not be subjected to "constant Monday morning quarterbacking over [their] decisions, with the benefit of 20/20 hindsight," because doing so would "eviscerate the discretion that is at the core of the statutory framework."[11] Executive Order 14330 identified the same problem directly: public pension plans already invest in alternative assets, while most Americans participating in employer-sponsored defined-contribution plans remain unable to access similar growth and diversification opportunities because fiduciaries face significant litigation risk.[12] The time and expense entailed in defending even meritless lawsuits is a significant deterrent to offering participants access to investment products that would improve retirement security for millions of workers. The Proposed Rule is an important step toward fixing that problem.

A. Alternative Assets Can Improve Long-Term Retirement Outcomes.

Alternative assets have become an important part of institutional retirement investing for many reasons. They can offer favorable returns, diversification, and risk-management benefits over the long-term horizons relevant to retirement saving. Those benefits explain why defined-benefit pension plans, public retirement systems, endowments, and other sophisticated large investors have long invested in alternative assets. The benefits also help explain why in a recent survey more than 70% of workers said they want access to these investments in their 401(k) plans.[13]

Retirement saving is long-term saving. Many 401(k) participants are decades away from retirement, and many remain invested for years after they retire. In 2022, nearly two-thirds of 401(k) participants were in their forties or younger, while only 14% were in their sixties.[14] Those younger participants generally had at least ten years before they could withdraw from their 401(k) accounts without penalty, and many had decades before retirement.[15] Over those long time

[10] *See, e.g.*, *Anderson v. Intel Corp. Inv. Pol'y Comm.*, 137 F.4th 1015 (9th Cir. 2025), *cert. granted*, No. 25-498, 2026 WL 120679 (Jan. 16, 2026).

[11] 91 Fed. Reg. at 16092.

[12] Exec. Order No. 14330 § 1, 90 Fed. Reg. 38921 (Aug. 12, 2025).

[13] Empower, *American Workers Want Access to Private Assets in Retirement Plans* (July 9, 2025), https://www.empower.com/press-center/american-workers-want-access-private-assets-retirement-plans ("*American Workers*"); *see also* Drew Carrington, *The investment selection rule: Clarity that strengthens fiduciary conviction*, Pensions & Investments (Apr. 20, 2026), https://www.pionline.com/partner-content/pi-investment-selection-rule-fiduciary-conviction-clarity/ (86% of survey respondents were interested or potentially interested in having private market investments included in their employer-sponsored retirement savings plan).

[14] *Ten Important Facts About 401(k) Plans*, at 2, Investment Company Institute Research (Jul. 2024), https://www.ici.org/system/files/2023-10/ten-facts-401k.pdf (age breakdown).

[15] *See* 26 U.S.C. § 72(t)(2)(A)(i) (imposing a penalty for distributions made before an employee is 59 ½ years old).

horizons, private equity, private credit, real estate, infrastructure, and other alternative assets can provide higher return opportunities that are not available through public stocks and bonds alone.

The historical data support that point. Professor David Robinson of Duke University's Fuqua School of Business has shown that alternative assets, adjusted for risk and net of fees, have outperformed public benchmarks over time horizons of ten years or more.[16] A survey of the academic literature likewise found that buyout funds with vintage years from 1980 through 2014 outperformed the S&P 500 on a net-of-fees basis.[17] Other research has found that buyout funds outperformed the S&P 500 by 3.7% per year over a typical ten-year fund life.[18] And while public equity markets have been more competitive with private equity more recently, that is due substantially to the outsized performance of a small number of technology companies (with significant implications for investment diversification).[19] An aberrational three years in which the S&P 500's three-year returns are in the 99th percentile of its historical average since 2001, while private equity's returns are in its 26th percentile, should not obscure that private equity has overperformed public equity in the long run.[20] Even during this period of high performance in public equities, moreover, top-tier private market firms have continued to outperform public markets, and over the long term "[t]here's little reason to believe that US equities will somehow break out of" their cyclical pattern and consistently "sustain … double-digit returns."[21]

---

[16] *See* David T. Robinson, *Fiduciary Duties in Selecting Designated Investment Alternatives: Opportunities and Considerations* ¶¶ 35-40 (June 1, 2026) (Ex. A).

[17] Council of Economic Advisers, *Retail Access to Alternative Investments Via Defined Contribution Plans*, at 10 (2025), https://www.whitehouse.gov/wp-content/uploads/2025/08/Retail-Access-to-Alternative-Investments-Via-Defined-Contribution-Plans-2.pdf ("*Retail Access to Alternative Investments*").

[18] Stephen L. Nesbitt, *Private Equity Performance Through the Last Quarter-Century*, Cliffwater (Dec. 11, 2025), https://cliffwater.com/ResourceArticle/longterm-private-equity-performance-20002024?docId=26043.

[19] *See* Three on Thursday, First Trust Economics, *The S&P 500 Index in 2024: A Market Driven Once Again by the Mag 7* (Jan. 8, 2025), https://www.ftportfolios.com/Commentary/EconomicResearch/2025/1/8/the-sp-500-index-in-2024-a-market-driven-once-again-by-the-mag-7 (finding the Magnificent 7—Apple, NVIDIA, Microsoft, Amazon, Tesla, Alphabet and Meta Platforms represented 53.7% of the returns in the S&P 500).

[20] *See* Hamilton Lane, *Private Markets Overview*, at 48 (2026).

[21] Bain & Co., *Global Private Equity Report 2020*, at 84, https://tinyurl.com/3ybzx3ce; *see also id.* at 85-87 (describing performance of top-tier private market firms); American Investment Council, *2024 Public Pension Report*, at 10 (July 2024) (finding even the bottom 25th percentile private equity return for pension investments exceeds the median public equity return); Goldman Sachs, *Building Long-Term Returns: Our 10-Year Forecasts*, at 3 (Nov. 2025), https://www.gspublishing.com/content/research/en/reports/2025/11/12/0c292cc7-ce42-4fba-a026-744231e9f4f4.html (forecasting annualized public equity returns for the next 10 years "in the 35th percentile of the historical distribution of rolling 10-year returns since 1985"). In general, much of the variation in private-fund risk-adjusted performance occurs at the fund level, and is attributable to the fund manager, not sector or geography. *See* Gregory Brown *et. al.*, *Risk-Adjusted Performance of Private Funds: What Do We Know?*, at 23, Inst. for Private Capital (Mar. 27, 2025), https://tinyurl.com/5n6yak47; *Private Markets Overview*, *supra*, at 64 (finding 65-70% of top half performance across all areas of private markets is repeated by fund managers).

The benefits are not limited to buyout funds: growth equity funds performed similarly to buyout funds from 2014 to 2019, and private credit outperformed public-market leveraged loans by 3.9%.[22] Indeed, for "nearly 25 years, private credit has demonstrated positive performance in every vintage year and benchmark outperformance in every vintage year," and any current stresses are largely idiosyncratic and attributable to defaults by borrowers that have been contained.[23]

These return differences can meaningfully improve retirement outcomes. Research from the Georgetown Center for Retirement Initiatives—which found that private-market returns, net of fees, outpaced public markets by 3.6% on an annualized basis since 2000—shows that even modest exposure to private real assets, private credit, and private equity could improve defined-contribution outcomes by 7% to 8% across a range of participant savings patterns.[24] The Council of Economic Advisers similarly estimated that allowing workers to allocate part of their portfolios to private markets would increase lifetime income across all age groups, with the greatest benefits for younger workers: an estimated 2.5% increase in annuitized lifetime income for those with the longest time in the market, and a 1% increase even for workers aged 55 to 64.[25] That translates to $35 billion on aggregate.[26] Other research found that including private assets through target-date funds could increase retirement income by up to 15% over 40 years.[27]

Building on that research, Professor Robinson performed a simulation "compar[ing] retirement portfolio savings accumulation over forty years between" an allocation fund that invests 60% in public equities and 40% in public debt instruments and a "portfolio that is also 60-40 equity-debt, but invests 15% of each of these allocations in private markets."[28] In 99.2% of the simulations, the portfolio integrating alternative assets "accumulates more savings" over a 40-year

[22] Hugh MacArthur et al., *Growth Equity: A Risk/Return Profile That's Hard to Ignore*, Bain & Co. (Feb. 2019), https://www.bain.com/insights/growth-equity-global-private-equity-report-2019.

[23] Nayef Perry, *2026 Credit Focus: Keeping Calm and Carrying On*, Hamilton Lane (Apr. 6, 2026), https://www.hamiltonlane.com/en-us/insight/private-credit-focus; *see also 2026 Outlook: Disciplined Growth, Resilient Returns*, Antares Capital, https://www.antares.com/private-credit-outlook-2026 ("Despite negative headlines, direct lending performance has held up well, outperforming leveraged loans and only modestly trailing high yield.").

[24] Angela Antonelli, *Making the Case: Addressing The Myths About Private Assets in Defined Contribution Retirement Plans*, at 11, Georgetown Univ. Ctr. for Retirement Initiatives & Willis Towers Watson (Aug. 2025), https://cri.georgetown.edu/wp-content/uploads/2025/08/Addressing-the-myths-about-private-assets.pdf ("Antonelli, *Myths*"); Angela M. Antonelli, *Making the Case: The Effect of Private Market Assets on Retirement Income in Cases of Disrupted Savings*, at 15, Georgetown Univ. Ctr. for Retirement Initiatives & Willis Towers Watson (Aug. 2025), https://cri.georgetown.edu/wp-content/uploads/2025/08/Effect-of-private-market-assets.pdf.

[25] *Retail Access to Alternative Investments*, *supra*, at 18-21(2025).

[26] *Id.* at 21.

[27] *See* Vanguard, *Do Private Assets Belong in 401(k) Plans?* (September 2025), https://corporate.vanguard.com/content/corporatesite/us/en/corp/articles/do-private-assets-belong-in-401k-plans.html.

[28] Ex. A ¶ 68.

period, with an "average difference" of "$114,000, an increase of 23% over the public-only portfolio."[29] He also performed a similar analysis on a model target date fund with a 15% allocation to private assets compared to a target date fund investing in only public assets, with similar results. In 98.2% of simulations, the fund that allocates to private assets "accumulates more savings" over a 40-year period, with an "average difference" of $147,000, an increase of 23% over the public-only TDF."[30] Moreover, the greater the allocation to private assets, the greater the benefits to the investor.

Similarly, Professor Conrad Ciccotello of the University of Denver's Daniels College of Business calculated the total expected increase in savings across defined-contribution plan participants if the Department finalizes this rule.[31] Professor Ciccotello analyzed the "efficient frontier"—"[t]he set of optimal portfolios that maximize return for a given level of risk or minimize risk for a given level of return"—for portfolios that include no private assets and those that allocate up to 15% of the portfolio to them.[32] He determined that allocating up to 15% of a portfolio to private assets improves risk-adjusted returns, net of fees, by 0.7% annually.[33] Over a 30-year period, that translates into a 16.8% increase in portfolio value.[34] Professor Ciccotello also determined that allocating more than 15% to alternative assets in aggregate would further increase portfolio value: maximum allocations of 20%, 25%, and 33% led to 20.6%, 24.3%, and 27.4% increases in portfolio values respectively.[35] Finally, Professor Ciccotello calculated what the total impact on savings would be if 40% of target date funds include up to a 15% allocation to private assets.[36] Given that target-date funds currently hold $3.4 trillion in assets, workers across the country would accumulate an additional $205 billion in aggregate over a 10-year period and $955

[29] *Id.* ¶ 69.

[30] *Id.* ¶ 64.

[31] *See* Conrad S. Ciccotello, *Private Investments in Defined Contribution Retirement Portfolios,* at 31-32 (June 1, 2026) (Ex. B) .

[32] *See id.* at 22-28.

[33] *See id.* at 25.

[34] *See id.* at 28, tab. 5.

[35] *See id.* at 29, tab. 6. These simulations allocated no more than 15% to a particular type of alternative asset. Increasing those allocations could also increase portfolio values even more.

[36] This assumption may be conservative. Target date funds hold 42% of all defined-contribution plan assets. *See* n.53, *infra*. If 40% of target-date funds allocate 15% of their assets to private assets, therefore, approximately 2.5% of total assets held by defined-contribution plans would be private assets. A recent Deloitte study, however, forecasts that private assets could comprise 6% of defined-contribution assets by 2030. *See* Valentina Baez, *Private Capital in DC Plans May Reach $1T by 2030, per Deloitte*, PlanAdviser (May 21, 2026), https://www.planadviser.com/private-capital-in-dc-plans-may-reach-1t-by-2030-per-deloitte/.

billion over a 20-year period, in 2025 dollars.[37] Larger allocations to private assets would result in even greater benefits.

Alternative assets can also reduce risk and improve risk-adjusted returns at the portfolio level, primarily by improving diversification, which has become more important as the public markets have become more concentrated over time.[38] In 1996, there were more than 8,000 publicly listed companies in the United States.[39] By 2025, there were fewer than 4,000.[40] And much of the public market returns in recent years have been attributable to small handful of companies, as noted above.[41] Many companies have gone private, and many others remain private for longer.[42] A portfolio limited to public stocks and bonds may therefore give workers less exposure to the broader economy than it once did. Alternative assets can help fill that gap.[43]

Moreover, because private markets do not always move in lockstep with public markets, investments in private markets can be particularly beneficial during periods of public-market stress. In the ten worst quarters for public equities between 2000 and 2024, the S&P 500 lost an average of 15.4%, while private equity, private credit, and real assets lost just 4.4%, 2.5%, and 0.2%, respectively, net of fees.[44] In some periods of crisis and slow recovery, private markets even

[37] *See* Ex. B at 32.

[38] *See Retail Access to Alternative Investments*, *supra*, at 12-13 (finding a "diversification benefit" resulting in higher risk-adjusted returns from including private equity in portfolios).

[39] World Bank Group, Listed Domestic Companies, Total – United States, https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US.

[40] *Id.*

[41] *See* Ex. A ¶ 31 (explaining that the "Magnificent Seven" returned 1,263% between 2015-2025, while the rest of the S&P 500 returned only 192%).

[42] *See* Ex. A ¶¶ 27-29; *see also Retail Access to Alternative Investments*, *supra*, at 4-5 (noting that the share of private firms rose from 62% in 2002 to 87% by 2022).

[43] Alternative assets also can be less volatile than traditional stocks. (Volatility is a measurement of risk based on how quickly prices move.) For example, one study found that private equity returns had volatility of 14.5% from 1996 to 2016, compared with 17.2% for the S&P 500. *See Expanding Opportunities For U.S. Investors And Retirees: Private Markets*, at 21 Committee on Capital Markets Regulation (Aug. 2025), https://capmktsreg.org/wp-content/uploads/2025/08/CCMR-Expanding-Access-to-Private-Markets-08.07.25-Final.pdf. Another found that private credit, private equity, and real assets were about half as volatile as public equities. *See* Antonelli, *Myths*, *supra* at 8. In any event, volatility is a less important metric for investments that have longer time horizons and are less likely to be sold in the short or medium term.

[44] Antonelli, *Myths*, *supra* at 8, 11.

produced positive returns.[45] Even at the nadir of recent market history—the Great Recession—private equity produced a positive 10-year rolling return whereas the S&P 500 did not.[46]

Professor Robinson's modeling of asset allocation and target date funds confirms that including alternative assets in the fund decreases risk and increases risk-adjusted returns. For both types of products, inclusion of private assets "improv[es] the expected return distribution of their portfolios"—meaning that the fund with private market exposure produced higher returns at both the high end and the low end of projected outcomes.[47] In plain terms, adding private-market exposure can improve average returns while also reducing downside risk.

Large investors have recognized these benefits for years. Defined-benefit pension plans, public retirement systems, endowments, and other institutional investors use alternative assets as part of their diversified portfolio. These investors use alternative assets because they can provide long-term return potential, reduce reliance on public markets, and help manage risk across a portfolio.

The millions of Americans who depend on 401(k) plans for their retirement security should not be excluded from those benefits. Demand for access is already strong. In one recent survey of retirement plan participants, 72% of respondents said diversifying their 401(k) with private investments would improve their long-term retirement outcomes,[48] and 79% said retail investors should have access to the same products as institutional investors.[49] The desire for access to private market investments and parity between 401(k)s and defined-benefit pensions cuts across partisan, racial, and socioeconomic lines.[50] Demand is especially strong among younger workers, who have

[45] *See, e.g.*, Antonelli, *Myths*, *supra* at 11 (showing positive returns for certain private asset classes in 2001 Q1, 2002 Q2, 2002 Q3, and 2010 Q2).

[46] *See Private Markets Overview*, *supra* at 49 (using the same time-weighted return metric used to evaluate evergreen funds that DIAs would acquire for exposure to alternative assets).

[47] *See* Ex. A ¶ 65 & fig. 15.

[48] *American Workers*, *supra*; *see also Redefining Retirement – It's All of Our Work*, Blackrock (2026), https://www.blackrock.com/us/individual/insights/redefining-retirement-alternative-investments (66% of voters "support access to alternative investments in retirement plans").

[49] State Street Investment Management, *Perceptions of Private Markets in 401(k) Plans*, at 25 (Aug. 31, 2025), https://www.ssga.com/library-content/assets/pdf/north-america/private-markets/private-markets-survey-results.pdf.

[50] *See* Mitchell Brown, Cygnal & Brian Stryker, Impact Research, *Voters Show Strong Backing for Fair Access in 401(k)s*, at 1 (Dec. 9, 2025) https://www.retiresafer.org/wp-content/uploads/2025/12/Public-Poll-Fact-Sheet.pdf ("65% of voters support the inclusion of private market options in 401(k) plans, with support cutting across party lines"); *see also id.* at. 1 ("This proposal is supported by 73% of Trump supporters, 62% of Harris supporters, along with Black voters (62%), Hispanic voters (69%), working-class voters (68%), middle-class voters (66%), and upper-middle-class voters (67%)."); *id.* at 1 (84% agree "that workers should have the same investment opportunities, regardless of whether they have a 401(k) or a pension").

the longest time horizons and are best positioned to benefit from long-term investment strategies.[51] Increased exposure to alternative investments early in a worker's career is entirely consistent with the theory underlying target date funds' glide path: that workers farther from retirement can and should invest to pursue higher returns, gradually shifting to more conservative investments as they approach retirements. And even if a worker who changes jobs liquidates or rolls over her 401(k)—which workers do not usually do—she would have benefited from the growth in value and diversification that exposure to alternative investments provided—and would continue to do so if her new retirement investment account also includes such exposure.[52]

The point is not that every plan must offer alternative assets, or that every participant should have exposure to them. The point is simpler: alternative assets can provide meaningful long-term benefits when used appropriately, and fiduciaries should be able to evaluate professionally managed products that include alternative assets and decide, through a prudent process and on the merits, whether those products are appropriate for their plans. More participants should have a wider range of options when determining how best to secure their own retirement.

B. Products Designed for Defined-Contribution Plans Exist.

Broader access to alternative assets is achievable. The market is developing products that are designed for 401(k) plans and other defined-contribution plans. These products give workers exposure to alternative assets without requiring them to choose or manage a standalone private equity fund, private credit fund, or other private-market investment on their own.

The most common approach is to include alternative assets as one part of a diversified, professionally managed investment option. That option may be a target-date fund, an asset-allocation fund, a balanced fund, or a managed account. These are familiar structures in 401(k) plans. They are designed to give participants diversified exposure across asset classes, with professional management and, in many cases, automatic adjustments over time, all while meeting the liquidity and valuation needs of the plan and its participants.

The target-date fund is an increasingly prevalent model. Approximately 84% of plan participants used a target-date fund in 2024, accounting for 42% of assets.[53] These funds are tied to a participant's anticipated retirement date; as the date approaches, the mix of assets held by the

[51] *American Workers*, *supra*; *see also* Adams Street, *supra*, at 7 (noting alternatives demand is increasing among younger generations with longer investment horizons for retirement savings).

[52] *See* Vanguard, *How America Saves 2025*, at 108 fig. 120 (June 2025), https://corporate.vanguard.com/content/dam/corp/research/pdf/how_america_saves_report_2025.pdf (about two-thirds of participants remain in their 401(k) plan after changing jobs).

[53] *See How America Saves 2025*, *supra*, at 73 fig. 79; *see also 401(k) Plan Asset Allocation, account Balances, and Loan Activity in 2023*, Investment Company Institute (Apr. 2026), https://www.ici.org/system/files/2026-04/per32-02.pdf (similar).

fund gradually becomes more conservative along a glide path. Alternative assets can fit within that structure as one "sleeve" of the broader portfolio. For example, a target-date fund may allocate a minority of its assets to private equity, private credit, real estate, or infrastructure, while the rest of the fund remains invested in public stocks, bonds, cash, or other liquid assets.

Managed accounts can work in a similar way. A managed account is "designed to create a customized portfolio targeted to each participant's unique financial circumstances," such as age, expected retirement date, savings rate, and other factors.[54] Depending on those circumstances, the managed account may include some exposure to alternative assets as part of a broader allocation across public and private markets.

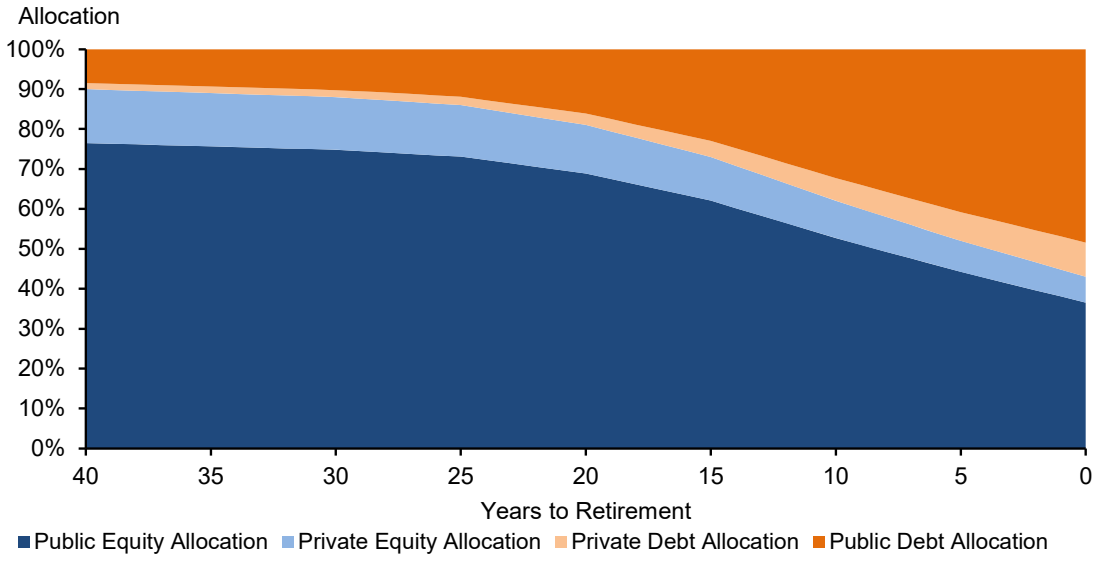
Critically, these and other 401(k) investment options do not require (or allow) participants to make decisions about private market investments on their own—there is an ecosystem of professionals guiding participants' choices. The company's fiduciary committee, often with guidance from an investment adviser who is also a fiduciary, selects options for the participant to choose from, or be defaulted into. Those investment options will be managed by professional asset management firms (such as Capital Group, Vanguard, and Blackrock) that are regulated by the SEC. The product's asset manager decides how much exposure to alternative assets is appropriate, how that exposure should change over time, how it should fit with the rest of the portfolio, and how to manage liquidity across the entire portfolio. And those asset managers are closely tracked and ranked by publications such as Morningstar.

For example, Company A offers a 401(k) plan to its employees. Company A establishes a committee to oversee the plan; that committee and its members are ERISA fiduciaries. Company A's fiduciary committee engages an investment adviser, John Smith, to advise on the selection of the investment options that will be available to participants and to advise the committee as it monitors the performance of those options. John Smith is a fiduciary. One of the selected options is a target-date fund; Capital Group manages the fund, including choosing the fund's investments and adjusting them over time. And if the target date fund is a collective investment trust ("CIT"), or if ERISA plan investments account for 25% or more of the target-date fund's assets under management, then Capital Group is also an ERISA fiduciary with respect to that target-date fund and any CIT it manages.[55] Morningstar and other publications track the Capital Group target-date fund and rank it compared to other target-date funds. Smith uses Morningstar, among other sources, to evaluate Capital Group's target-date fund.

[54] 91 Fed. Reg. at 16103.

[55] *See* 29 C.F.R. § 2510.3-101(a)(2), (h)(1) (assets invested in by a collective investment trust are considered plan assets and the trustee is an ERISA fiduciary); *id.* § 2510.3-101(a)(2), (f)(1) (when ERISA plan investments in a non-public pooled vehicle that is not covered by the Investment Company Act of 1940 reach 25%, the assets held by the pooled vehicle are considered plan assets and the manager of the pooled vehicle is an ERISA fiduciary).

The investment structures used by target-date funds, balanced funds, and managed accounts can vary. A target-date fund, balanced fund, or managed account may invest directly in an alternative asset vehicle. Or it may invest through another pooled vehicle, such as a collective investment trust, that itself invests in one or more private-market vehicles. In either case, alternative assets usually make up only a portion of the total retirement product. The rest of the portfolio remains invested in more traditional and liquid assets. And for target date funds, the portion of alternative assets could decrease along a glide path as the worker's anticipated retirement date approaches while exposure to different classes of alternative assets would also rebalance. The chart below illustrates a sample glide path.[56] Of course, the amounts allocated to alternatives (or different types of alternatives) at any given time could be more or less, depending on the target-date fund.



The private-market vehicles used in these products also are often different from traditional closed-end private funds. A traditional drawdown fund raises capital, calls that capital over time, invests it, and then returns capital and profits after assets are sold, often over a period of seven to ten years. That structure can be highly illiquid. By contrast, many products designed for the defined-contribution market use "evergreen" structures. These vehicles have no fixed termination date, invest capital on a continuous basis, update valuations regularly, and maintain sufficient liquidity to permit redemptions on a periodic basis, such as quarterly, monthly, or even on demand.

[56] The chart is taken from Robinson, *Fiduciary Duties in Selecting Designated Investment Alternatives: Opportunities and Considerations*, Ex. A at 40, fig. 13.

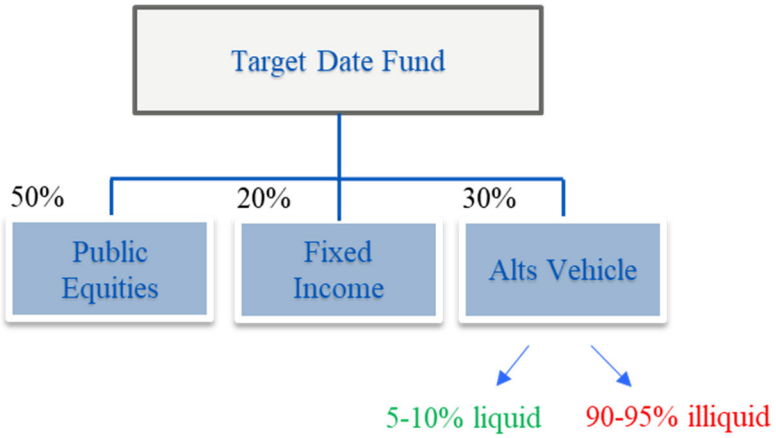
Moreover, because capital can be invested continuously through evergreen and similar structures, returns may compound more efficiently.[57]

These features help address the practical needs of 401(k) plans.

***First*, these products address liquidity needs.** A target-date fund, balanced fund, or managed account that includes alternative assets does not consist only of private market investments. It would also hold public securities, including stocks and bonds, cash, and other liquid assets. Those liquid holdings can be used to meet participant withdrawals, transfers, loans, and other routine plan needs without requiring the fund to sell less-liquid private assets at an inopportune time.

The charts below illustrate two common ways that liquidity can be built into a target-date fund with alternative asset exposure.

Example 1
Target Date Fund Direct Investment In Alts Vehicle

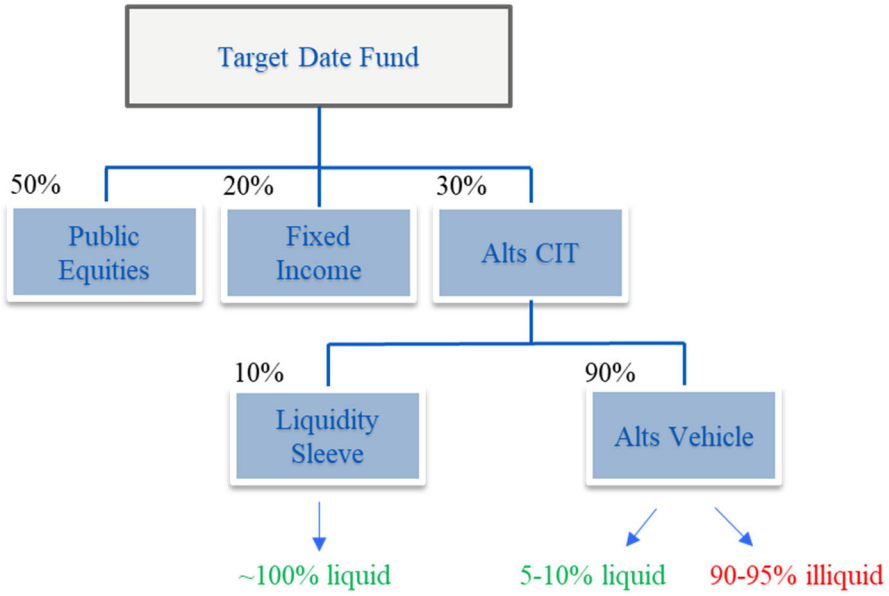


In this first example, the target-date fund invests directly in an evergreen alternatives vehicle, as well as in public equities and fixed income products that constitute the majority of the fund's holdings. The evergreen alternatives vehicle itself maintains a liquidity sleeve alongside

[57] *See* Michael Ewens & Jacob Faber, *Liquid Claims on Illiquid Assets: The Economics of Retail Access to Private Markets* (February 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6524419 (citing Brown and Volckmann (2025) who "formalize this intuition through a simulation comparing evergreen and drawdown structures over a 12-year holding period. The results reveal what they term a 'consistency premium': the evergreen fund achieves the highest mean annualized return at 13.5%, compared to 12.7% for a rolling drawdown series—an 80 basis point advantage. The difference arises because evergreen funds maintain stable exposure to the asset class over time, while drawdown investors experience substantial variation in percent invested."); *id.* ("[R]etail investors exhibit weaker performance-flow sensitivity than qualified purchasers (Table 8), bounding one instability channel: discretionary flight from underperformers is not the primary threat to fund stability").

less-liquid private investments. Of course, the exact allocations could differ among investment options; for example, an alternative asset vehicle invested in by another target-date fund could have a smaller or larger liquidity sleeve.

Example 2
Target Date Fund Investment In Alts CIT



In the second example, the target-date fund invests in a collective investment trust, or CIT. The CIT then invests in the underlying evergreen alternatives vehicle. This structure adds another layer of liquidity because the CIT holds its own liquidity sleeve, which consists of cash, public equities, and/or liquid fixed-income investments. As in the first example, the exact allocations to the liquidity sleeves of the CIT and underlying alternatives vehicle could differ. The TDF's different "vintages," that is, the different funds in the TDF targeted at different retirement dates, invest in the CIT and the trustee of the CIT can monitor cash flows, rebalance holdings, and adjust liquidity reserves as needed. As vintages far from their target retirement date are adding exposure to private markets through the CIT, vintages close to their target date would be reducing their private market exposure. These changes in exposure would to a large extent offset one another at the CIT level. (The offset would result from the netting of inflows and outflows; there would not be lending or borrowing between the vintages).

These structures can create liquidity at several levels. At the top level, the target-date fund or other investment option may hold public equities, fixed income, cash, and other liquid assets that can be used to meet ordinary participant withdrawals, transfers, loans, and other plan needs. At the intermediate level, a CIT or similar vehicle may hold its own liquidity sleeve, creating another source of cash or easily sold assets. And at the underlying-vehicle level, the private-market

vehicle itself likely has liquidity features. As noted, many private-market products designed for defined-contribution plans use evergreen structures rather than traditional closed-end funds. Unlike traditional closed-end private funds, which generally lock up investor capital for a set period while assets are bought and later sold, evergreen vehicles are designed to operate continuously. They may accept new capital over time, update valuations regularly, and maintain sufficient liquidity to permit redemptions on a periodic basis. As a result, even when part of the overall portfolio is invested in less-liquid assets, routine liquidity needs are readily met through other parts of the structure.

Like defined-benefit plans, defined-contribution plans generally experience predictable liquidity demands, including participant withdrawals due to job changes, loans, and retirement-related distributions.[58] Even for high-turnover businesses, plans' liquidity needs are relatively stable. Approximately two-thirds of workers who leave their jobs actually remain in their plans.[59]

Cash-flow data of 401(k) plans confirms that liquidity needs can be managed. Professor Robinson analyzed defined-contribution plan distribution data based on Form 5500 filings between 2009 and 2024 by plans with at least 100 participants and $10 million in net assets.[60] He determined that, after accounting for inflows from participant contributions, the median plan had *positive* cash flows (that is, the contributions from participants exceeded the distributions).[61] And 75% of plans experienced less than 3% in outflows.[62] Even in extreme scenarios, cash outflows are relatively modest: 99% of plans experienced less than 20% in net cash outflows, with 95% experiencing just over 10% in outflows.[63] Based on that data, Professor Robinson determined that a fund with a 35% allocation to private assets could meet the liquidity demands even if it experienced withdrawal demands greater than those experienced by 99% of plans and still retain 56% of its remaining assets in liquid positions.[64]

Professor Robinson's conclusion is corroborated by a study by the Committee on Capital Markets Regulation, which analyzed cash inflows and outflows for every 401(k) plan with more

[58] Antonelli, *Myths*, *supra*, at 10; *see also id.* (explaining that the predictable outflows near and in retirement allow for the higher allocations to less-liquid assets for early-career DC plan participants).

[59] *See How America Saves 2025*, *supra*, at 108 fig. 120.

[60] Ex. A, ¶ 74.

[61] *Id.* at ¶ 74 & fig. 20.

[62] *Id.* at 51, fig. 20.

[63] *Id.* at ¶ 74 & fig. 20.

[64] *Id.* ¶ 76.

than $10 million in assets that filed a Form 5500 with the Department between 1999 and 2024.[65] The Committee found that the liquidity of 401(k) plans is remarkably stable. Average plan net cash flows (inflows minus outflows) were positive in every single year, including during market crises, and 90% of plans experienced less than 10% in net negative cash flows in the worst year (2020, at the height of the COVID-19 pandemic).[66] Based on that 26-year data set, the Committee also found that plans could withstand significant liquidity stress if a fund held a substantial allocation to illiquid assets. The Committee calculated that if a fund held 33% of its portfolio in illiquid assets and then experienced withdrawal demands greater than those experienced by 90% of plans, its illiquid allocation would increase only to 40.78%.[67] Put differently, even under that severe stress scenario, nearly 60% of the fund would remain invested in liquid assets available to meet additional liquidity needs. That evidence confirms that alternative-asset exposure can be structured in a way that is compatible with the liquidity needs of defined-contribution plans.[68]

***Second*, these products address the need for frequent valuations.** Private-market assets are not valued in the same way as publicly traded stocks, which have market prices available throughout the trading day. But that does not mean private-market assets cannot be valued in a timely and reliable fashion. Private-market vehicles typically use established valuation standards, including FASB ASC 820 and similar frameworks. Many vehicles are audited annually by a Public Company Accounting Oversight Board registered auditor, and obtain regular review from third-party valuation firms. And many evergreen vehicles are registered under the Investment Company Act of 1940 or the Securities Exchange Act of 1934 and therefore publicly report their financial results.

Although many private-market vehicles historically provided annual valuations to their investors, many now provide quarterly or monthly valuations. Some also provide more frequent estimated values between formal valuation dates. Technology has made those processes faster and more reliable by allowing managers to collect, update, and analyze valuation inputs more efficiently.

---

[65] *See* Committee on Capital Markets Regulation, Comment on *Fiduciary Duties in Selecting Designated Investment Alternatives*, at 17-22 (May 29, 2026), https://capmktsreg.org/wp-content/uploads/2026/05/CCMR-DOL-401k-Safe-Harbor-Comment-Letter-and-Market-Practices-and-Liquidity-Report-Final.pdf.

[66] *Id.* at 19-20.

[67] *Id.* at 24.

[68] If a plan terminates or decides to cease offering a particular designated investment alternative that includes investments in evergreen funds holding alternative investments, the evergreen funds' periodic redemption limits may mean that the DIA cannot be fully liquidated immediately. But that is consistent with the rule that the assets of a terminated plan must be distributed "as soon as administratively feasible, generally within one year after the date of plan termination." *401(k) Plan Termination*, IRS, https://www.irs.gov/retirement-plans/plan-sponsor/401k-plan-termination.

These valuation processes use objective information. For private equity investments, valuations may consider cash flow, recent comparable transactions, and long-term valuation multiples for similar public companies. For private credit investments, valuations may consider credit quality, recent transaction data, underwriting information, and interest-rate conditions. The manager will often have important information about the underlying assets, but the valuation process can be, and typically is, supported by third-party reviews and established valuation policies. The discipline of the market discourages inflated valuations—studies have shown that investors "punish" fund managers by withholding further capital investment if there is an "appearance of overstated performance."[69]

Firms that implement these processes or similar ones produce timely, accurate valuations that can be reliably considered by managers of target-date funds, asset-allocation funds, balanced funds, and managed accounts. The plan fiduciary, in turn, does not need to value each underlying individual asset, such as a portfolio company or private loan itself. The key is for the manager that is including alternative assets in its fund to have reasonable policies and procedures for obtaining timely and accurate valuations for the assets.

***Third*, these products charge fees justified by the returns and benefits they provide.** Alternative-asset vehicles are often actively managed, meaning the investments are selected, improved, and managed by the manager after substantial due diligence, and the investment thesis typically involves active value creation, which means their fees are typically higher than passive index funds. But higher fees do not make an investment option imprudent. The relevant question is whether the fees are reasonable in light of the value the product is expected to provide, including expected returns net of fees, diversification, risk management, and access to experienced managers.

The fee picture is also changing. Research indicates that currently, average private-market fees are competitive and the lowest in two decades.[70] As more products are developed for defined-contribution plans, competition and economies of scale should cause fees to decline further. Managers of large target-date funds, asset-allocation funds, managed accounts, and other investment options may also be able to negotiate better terms with managers of the underlying alternative-assets.[71] 401(k) plans can get better rates than off-the-shelf retail investors because 401(k) plans offer scale similar to institutional investors such as university endowments and large

[69] Gregory W. Brown *et al.*, *Do Private Equity Funds Manipulate Reported Returns*, 132 J. Fin. Econ. Issue 2 (May 2019), https://www.sciencedirect.com/science/article/abs/pii/S0304405X18303015

[70] Antonelli, *Myths*, *supra*, at 12.

[71] *See* Ewens & Faber, *supra* at 37 (citing Senosy, Wang and Weisbach, 2014, "on how LP experience and scale improve fund access and terms").

defined-benefit plans. Fiduciaries should be able to consider those net-of-fee benefits and market developments when deciding whether a product is appropriate for a plan.

C. Litigation Risk Has Discouraged Fiduciaries From Offering Those Products.

Despite the demonstrable benefits of alternative assets and the development of products designed specifically for defined-contribution plans, most 401(k) participants still do not have access to private equity, private credit, and other alternative investments. The main reason is class-action litigation risk.[72]

ERISA lawsuits challenging 401(k) investment menus have become common. According to one report, 155 lawsuits alleging fiduciary breaches against retirement plans were filed in 2025 alone.[73] Plaintiffs often claim that fiduciaries selected investment options with excessive fees, poor performance, or better alternatives available elsewhere. These claims often rely on hindsight. A plaintiff may point to an investment that later performed better, or to a lower-cost fund that was available at the time, and argue that the fiduciary should have made a different decision.[74]

Excessive-fee suits are particularly relevant here. Products that include alternative assets may have higher fees than passive index funds because they involve active management, substantial due diligence, private-market access, liquidity management, valuation processes, professional oversight, and efforts to improve the invested-in companies to make them more valuable. Even when those fees are reasonable in light of the value the product is expected to provide, they can become an easy litigation target. One report described excessive-fee litigation as "a major business," with an average of 57 suits being filed each year since 2016 and settlement payments totaling $556.5 million in just two years, 2023 and 2024.[75] Another report states that more than $1.3 billion has been paid across more than 200 settlements in the past five years.[76] In this litigation, the winners are the plaintiffs' lawyers, not workers: the "median of the average per-participant award was just $67.79 compared to an average plaintiffs' attorneys' fees of $1.59 million."[77]

---

[72] *See* Exec. Order No. 14330 § 1.

[73] *See* Brian Anderson, *155 Fiduciary Lawsuits Filed in 2025 as Litigation Broadens*, 401k Specialist Mag. (Feb. 10, 2026), https://401kspecialistmag.com/155-erisa-fiduciary-lawsuits-filed-in-2025-as-litigation-broadens (discussing Encore Fiduciary report).

[74] *See Anderson*, 137 F.4th 1015.

[75] Chris Cumming & Luis Garcia, *Plaintiffs' Lawyers Are Ready to Pounce if Private Equity Pushes Into 401(k) Plans*, Wall St. J. (July 20, 2025).

[76] Anderson, *supra*.

[77] *Davis & Harman Survey Highlights Massive Gap Between Participant and Attorney Recoveries in ERISA Lawsuits* (Jan. 14, 2026), https://www.davis-harman.com/dh-survey-highlights-gap-attorney-fee-participant-recovery-insight/.

Even weak claims can be expensive to defend. As Justice Alito (joined by Justice Thomas and Justice Kavanaugh) recently explained, litigation costs can lead ERISA defendants to conclude "that it is efficient to settle a case even though they are convinced that they would win if the litigation continued."[78] That settlement pressure matters. A fiduciary deciding whether to add an investment option must consider not only whether the product is prudent, but also whether offering it could make the plan a litigation target.

That risk is especially acute when a fiduciary selects an investment option that is newer, less common, or harder to compare to a traditional stock or bond index. Products that include alternative assets may involve private-market valuations, liquidity management, fees, and benchmarks that differ from familiar public-market indexes. Each difference from traditional investments can provide opportunistic plaintiffs' lawyers an additional angle to exploit, even when the fiduciary followed a careful process and selected a product designed to benefit participants. One former chair of the Department's ERISA Advisory Council under President Obama put it bluntly: "as soon as I see a platform that has private equity or a hedge fund" or any other "type of alternative asset, I will sue in a second."[79]

The result is a herding effect.[80] Fiduciaries conclude that the safest course is to offer only the most familiar investment options, even if other products would better serve participants over the long term.[81] The Department has recognized that problem, citing survey evidence that "roughly 29% of respondents" had "decided against offering services or investment options simply because other similar plans were not doing so, making the additional services or options vulnerable to litigation."[82] That might reduce litigation risk for the fiduciary, but at the cost of limiting investment choice for workers, who lose access to the long-term return and diversification opportunities that defined-benefit plans, public retirement systems, endowments, and other large investors have benefited from for years.

This is the problem the Proposed Rule is designed to address.

---

[78] *Cunningham v. Cornell Univ.*, 604 U.S. 693, 710-11 (2025) (Alito, J., concurring).

[79] *As Private Equity Firms Work to Access 401(k) Market, Plaintiff Lawyers Gear Up to Sue*, The Capital Forum (Apr. 10, 2023), https://thecapitolforum.com/as-private-equity-firms-work-to-access-401k-market-plaintiff-lawyers-gear-up-to-sue/.

[80] *See* Erin Cho & Richard Novak, *401(k) Alternative Investment Critiques Gloss Over Key Details*, Bloomberg (Mar. 24, 2026), https://news.bloomberglaw.com/in-house-counsel/401k-alternative-investment-critiques-gloss-over-key-details.

[81] *See Expanding Access to Alternative Investments in ERISA Plans—Litigation Risks and Practical Considerations*, Lexology (Sept. 10, 2025), https://www.lexology.com/library/detail.aspx?g=c22489dc-3f2b-4fcb-9a85-2ccf53a9ec83.

[82] 91 Fed. Reg. at 16106.

II. The Proposed Rule's Process-Based Safe Harbor Is the Right Solution.

The Proposed Rule addresses the problem in the right way. It would not require fiduciaries to offer alternative assets. And it would not protect fiduciaries who use a careless process or make imprudent decisions. Instead, the Proposed Rule gives fiduciaries a clearer process for selecting designated investment alternatives ("DIAs"), including those that may include alternative assets. If fiduciaries follow that process, their judgment is presumed to have fulfilled the duty of prudence and is entitled to significant deference. That is important because ERISA has always focused on process. Fiduciaries are not required to predict the future. They are required to make careful, informed decisions based on the facts available at the time.

That approach will help reduce unnecessary litigation. Plaintiffs should not be able to point to an investment's later performance, allege that there was a cheaper, though materially different fund, or otherwise argue with hindsight that the fiduciary should have made a different choice. The safe harbor would give courts a practical framework for asking the right question: whether the fiduciary used a prudent process when selecting the investment option.

That would benefit workers, who would have greater opportunities to access investment options that can improve long-term retirement outcomes. Fiduciaries would have greater confidence to evaluate a broader range of investment options, including products that provide exposure to alternative assets. And courts would have a clearer way to distinguish real fiduciary failures from lawsuits that opportunistically second-guess reasonable decisions after the fact.

A. The Safe Harbor Is Well-Grounded In ERISA.

The safe harbor fits squarely within ERISA's duty of prudence. ERISA requires fiduciaries to act "with the care, skill, prudence, and diligence" that a prudent person would use under the circumstances.[83] That standard focuses on how the fiduciary made the decision, not on whether the investment later performed well or poorly. It makes clear that fiduciaries are judged by their process, not by hindsight.

The Department's existing Investment Duties Regulation reflects the same principle. It asks whether the fiduciary gave "appropriate consideration" to the relevant "facts and circumstances" and then "acted accordingly."[84] In other words, the fiduciary must gather the relevant information, consider it carefully, and make a reasoned decision.

Courts have long applied ERISA's duty of prudence in the same process-focused way. ERISA requires "prudence, not prescience."[85] A fiduciary's conduct "cannot be measured in

[83] 29 U.S.C. § 1104(a)(1)(B).

[84] 29 C.F.R. § 2550.404a-1(b).

[85] *DeBruyne v. Equitable Life Assurance Society of the United States*, 920 F.2d 457, 465 (7th Cir. 1990).

hindsight."[86] The relevant question is not whether fiduciaries "could have obtained better results," but whether they used prudent "methods" when making the decision.[87]

The Proposed Rule reinforces that settled law. It identifies certain factors that fiduciaries generally should consider and provides examples showing how fiduciaries can evaluate those factors. When a fiduciary objectively, thoroughly, and analytically considers the relevant factors and makes reasoned determinations, the fiduciary's judgment is presumed to satisfy the duty of prudence and is entitled to significant deference. That approach is consistent with the Supreme Court's instruction that "courts must give due regard to the range of reasonable judgments a fiduciary may make based on her experience and expertise," regardless of the outcome of that reasonable exercise of judgment.[88] The Proposed Rule is therefore a specific application of ERISA's existing prudence standard to the selection of plan investment options.

The final rule thus should receive substantial respect from courts under *Skidmore v. Swift & Co.*[89] The Department is the agency charged with administering ERISA, and the Proposed Rule reflects the Department's reasoned judgment about how ERISA's duty of prudence applies when fiduciaries select plan investment options. Courts should treat the final rule as persuasive authority when deciding whether a complaint plausibly alleges an imprudent process or whether a fiduciary's decision falls within the range of reasonable judgments ERISA permits.[90]

B. The Safe Harbor Will Materially Reduce Litigation Risk.

Many ERISA prudence claims challenge a fiduciary's selection of plan investment options by pointing to alternative investment options that allegedly had lower fees or would have performed better. Those claims usually depend on hindsight. They ask a court to infer imprudence from the fact that another option later performed better or cost less.

The Proposed Rule would make those claims harder to maintain when the fiduciary followed a prudent process. ERISA prudence claims should not proceed unless the plaintiff alleges facts supporting a plausible inference that the fiduciary used an imprudent process. It should not be enough to allege that an investment later underperformed or accrued higher fees over time. A complaint should identify facts about what the fiduciary actually did wrong.

The Proposed Rule gives courts a clear framework for applying that standard. It identifies the factors fiduciaries should consider and explains what a prudent process can look like. If a

[86] *Ellis v. Fidelity Management Trust Co.*, 883 F.3d 1, 10 (1st Cir. 2018).

[87] *Anderson*, 137 F.4th at 1021.

[88] *Hughes v. Nw. Univ.*, 595 U.S. 170, 177 (2022).

[89] 323 U.S. 134 (1944).

[90] The safe harbor also would not be the first promulgated by the Department. *See* 29 C.F.R. § 2550.404a-4.

complaint does not plausibly allege a defect in that process, the case should be dismissed before costly discovery.

That matters because discovery costs are a major source of settlement pressure in ERISA class actions. Discovery in civil litigation is extremely expensive, in part because "[p]laintiffs' attorneys routinely burden defendants with costly discovery requests and engage in open-ended 'fishing expeditions' in the hope of coercing a quick settlement.[91] As Justice Alito explained in *Cunningham*, defendants may settle even when they believe they would win, because the cost of continuing to litigate can make settlement the economically rational choice.[92] The safe harbor gives courts a way to reduce that pressure.

First, if a complaint does not plead facts supporting an allegation that a fiduciary failed to follow the process the Proposed Rule outlines, it may be dismissed at the outset. Although the Proposed Rule does not establish a pleading standard, it does crystallize fiduciaries' process-based duty. If a plaintiff cannot plead facts showing that the fiduciary has failed to satisfy those obligations, the case should be dismissed.

Second, where a fiduciary pleads, in its answer to a complaint, that it satisfied the safe harbor, a court can require the plaintiff to file a reply under Federal Rule of Civil Procedure 7(a)(7), identifying specific, nonconclusory facts showing why the safe harbor does not apply. If the plaintiff cannot do so, the court can dismiss the claim at the pleading stage. The Supreme Court endorsed the use of this procedure to dispose of cases subject to a prohibited transaction exemption in *Cunningham*, and it could work equally well for applying the safe harbor.[93]

Third, even if a plaintiff identifies a specific alleged flaw, the safe harbor can help narrow the case. Discovery should focus on the factor at issue—more specifically, the fiduciary's process for considering that factor. For example, if the plaintiff challenges the fiduciary's determination that an investment option would provide sufficient liquidity, discovery should be tailored to whether the fiduciary appropriately considered the investment's liquidity profile. It should not become a broad search through every aspect of the plan's investment process.

This narrowing function will reduce litigation costs and the pressure to settle weak cases, deterring plaintiffs from filing claims that are merely designed to beget expensive discovery and extract a settlement.

The practical effects will be significant. Participants will be more likely to receive access to diversified investment options that can improve long-term retirement outcomes. Fiduciaries

[91] J. Beisner, *Discovering a Better Way: The Need for Effective Civil Litigation Reform*, 60 Duke L. J. 547, 549 (2010).

[92] *Cunningham*, 604 U.S. at 710–11 (Alito, J., concurring).

[93] *Id.* at 708 (majority op.).

will have more confidence to consider investment options that include alternative assets. And courts will have a clearer framework for separating real process failures from hindsight attacks.

For those reasons, the Department should finalize the Proposed Rule's process-based safe harbor. It is grounded in ERISA, consistent with case law and the Department's regulations, and well suited to address the litigation risk that has limited access to alternative assets in defined-contribution plans.

III. The Proposed Rule's Benefits Outweigh Its Costs.

The Proposed Rule's benefits far outweigh its costs. As explained above, the rule would not require fiduciaries to offer alternative assets, favor any particular asset class, or lower ERISA's fiduciary standards. It would instead clarify how fiduciaries can satisfy their existing duty of prudence when selecting DIAs. That clarification would produce meaningful benefits: broader access for workers to investment options that may improve long-term retirement outcomes, lower litigation risk, and more predictable judicial review. At the same time, the rule should not impose any significant burdens because most fiduciaries already consider most if not all of the factors the Proposed Rule identifies.

The most important benefit is improved retirement outcomes for plan participants. By reducing litigation risk, the Proposed Rule would make it more likely that fiduciaries will evaluate and offer diversified products that include alternative assets where appropriate. Participants who gain access to those products benefit from diversification and, quite possibly, higher long-term returns, net of fees. Enclosed with this comment, AIC submits two reports from distinguished academics quantifying those benefits.

As discussed *supra* at 9-10, Professor Robinson of Duke University's Fuqua School of Business found that if a portfolio with 60% in equity and 40% in debt were to allocate 15% to private markets, the result, over a 40 year period, would be an additional $114,000 in savings on average, an increase of 23%. And a target-date fund that allocated just 15% to private markets would accrue an additional $147,000 over 40 years on average, an increase of 23%. Corroborating this, Professor Robinson "simulated retirement savings from a single $10,000 initial investment" and found that allocating 15% of the portfolio to private capital resulted in $98,000 more than a portfolio without private capital after 40 years, a 25% increase; allocating 35% increased savings by even more—$258,000, a 67% increase.[94] That benefit is for just a *single* participant—about 70 million Americans are actively participating in a 401(k).[95] And Professor Ciccotello of the University of Denver's Daniels College of Business calculated that under the Department's

[94] *See* Ex. A ¶ 71 & fig. 19. Professor Robinson also found that "each portfolio incorporating private capital underperforms the portfolio without private capital on less than 1% of simulations over the 40 year retirement investment horizon." *Id.* ¶ 71.

[95] *See* 401(k), Investment Company Institute https://www.ici.org/resource-hubs/401k.

proposal in aggregate, participants in defined-contribution plans would earn an additional $262 billion over 10 years, and additional $1.565 trillion over 20 years.[96] That translates to $205 billion and $955 billion in 2025 dollars, respectively.

The Department should not assume that broader defined-contribution access to alternative assets would reduce those benefits. The Proposed Rule suggests that significant inflows into alternative assets could affect return characteristics.[97] That is incorrect. Studies have shown that retail-held assets "generate comparable [internal rates of return] to same-vintage institutional peers while distributing significantly more cash," consistent with managers selecting "liquid, distribution friendly assets to satisfy repurchase obligations."[98] And Professor Ciccotello found no evidence that retail vehicles systematically hold underperforming private funds.[99] Nor is it the case that there would be too much money chasing too few deals: 86% of companies with revenues over $250 million are private, and private companies have a higher growth rate than public companies.[100] This is why JP Morgan Private Wealth recently concluded that "fears that PE has lost its way are overstated."[101] Moreover, investors in evergreen funds can receive greater compounding returns than investors in drawdown funds, because drawdown funds tend to experience lower performance or even negative returns in their first few years while capital is initially being deployed. Investors in established evergreen funds, by contrast, share in returns immediately, and those returns compound the longer the capitals remain invested in the fund.[102]

The Department should recognize those quantifiable benefits in its cost benefit analysis. The non-quantifiable benefits addressed in the Department's regulatory impact analysis—such as increasing protections for plan participants, and decreasing uncertainty—are important, of course.[103] But the quantifiable benefit of increasing defined-contribution plan participants' exposure to alternative assets makes even clearer that the rule's benefits far surpass any costs.

Indeed, as the Department has correctly recognized, the only costs associated with the rule are one-time familiarization costs and the small annual cost of documenting compliance with the processes required to fulfil the safe-harbor.[104] Even if those costs were understated (and even if

[96] *See* Ex. B at 32.

[97] *See* 91 Fed. Reg. at 16128.

[98] Ewens & Faber, *supra*, at abs.

[99] *See* Ex. B at 31-32.

[100] *See* Blackstone, *Rethinking the 60%* (Nov. 3, 2025), https://www.blackstone.com/insights/article/rethinking-the-60/.

[101] *See* J.P. Morgan, *No, private equity has not lost its way*, https://privatebank.jpmorgan.com/nam/en/insights/markets-and-investing/ideas-and-insights/no-private-equity-has-not-lost-its-way

[102] *See* Ex. A ¶ 14; Ewens & Faber, *supra*, at 4-5.

[103] *See* 91 Fed. Reg. at 16110.

[104] *See id.*

the savings resulting from shorter investment committee meetings are overstated), those costs are dwarfed by the quantifiable benefit flowing from participants' better returns through increased exposure to alternative investments.

IV. The Proposed Rule Could Be Made Even Stronger.

AIC strongly supports the Proposed Rule and urges the Department to finalize it promptly. Several targeted revisions, however, would make the final rule clearer, more reliable, and more effective in reducing unnecessary litigation risk. Those revisions would not alter the rule's basic approach. They would instead help ensure that fiduciaries can rely on the safe harbor with confidence, that courts can apply it consistently, and that the rule does not inadvertently discourage diversified products that may improve long-term, risk-adjusted outcomes for plan participants.

In particular, the Department should clarify four aspects of the safe harbor. First, the Department should add a running example that demonstrates how a fiduciary could evaluate, under each factor, a target-date fund with exposure to alternative assets. Second, the Department should refine the individual factors so that the final rule remains flexible, asset-neutral, and practical for products being developed for defined-contribution plans. Third, the Rule should clarify that fiduciaries should generally evaluate the plan-level DIA, not every underlying asset held within that option, consistent with practice today. Fourth, the listed factors should be treated as sufficient in ordinary cases, and the examples should serve to illustrate prudent processes rather than to impose mandatory requirements.[105]

A. The Department Should Add A Running Example Addressing Alternative Investments To Each Factor.

AIC strongly supports the Proposed Rule's clarification that there is no per se rule against investment in alternative assets or the inclusion of private market investments in a DIA.[106] AIC also appreciates that the Proposed Rule includes examples addressing investments in alternative assets.

The Department should build on that guidance. More practical examples would help fiduciaries understand how to apply the rule to products that include alternative assets. These examples would also further Executive Order 14330's goal of ensuring that Americans saving for retirement can access funds that include alternative assets when their plan fiduciary determines that such access is appropriate and could enhance net risk-adjusted returns.

[105] The Department also should include a severability clause in the final rule. In the unlikely event that a court finds that a portion of the rule is invalid, a severability clause would protect the remainder of the rule.

[106] 91 Fed. Reg. at 16136 (proposed § 2550.404a-6(c)).

In particular, the Department should add a running example involving a common structure: a target-date fund structured as a CIT that includes an allocation to alternative assets throughout its term that varies in relative weight depending on time to retirement and is deployed through multiple evergreen alternative asset vehicles. The same basic fact pattern could be used to help illustrate each of the rule's factors, with modest adjustments as needed, to show how a fiduciary would evaluate performance, benchmarks, fees, liquidity, valuation, and complexity for the same target-date fund with an alternative asset sleeve.

That approach would make the rule clearer and more practical. Fiduciaries would see how the factors work together in practice, rather than having to apply separate examples involving different products and different facts. Courts would also have a clearer framework for evaluating whether a fiduciary used a prudent process.

Other agencies, including the Internal Revenue Service, often use related examples across regulatory provisions to show how rules function as a whole.[107] The Department should take a similar approach here.

AIC offers proposed text for these examples in Section B below addressing each factor.[108]

B. The Department Should Refine the Individual Factors So the Rule Remains Flexible and Asset Neutral.

The Department should also refine several of the rule's individual factors. These changes would not alter the safe harbor's basic structure. They would instead make the factors clearer, preserve flexibility for different investment products, and reduce the risk that plaintiffs' counsel will turn valuable guidance into rigid litigation standards. As discussed more below, the Department should adjust language throughout the rule to avoid suggesting that a fiduciary must evaluate the assets held by a DIA, rather than the DIA itself.[109] The Department should also adjust language throughout the rule to avoid phrasing that sounds mandatory where flexibility is intended.

---

[107] *See, e.g.*, 26 C.F.R. §§ 1.1502-13(c)(7)(ii)(D), 1.861-4(b)(2)(ii)(G), 1.861-8(d)(2)(v)(B).

[108] The Department also should clarify the rule's definitions. First, the Department should define "investments in alternative assets" to make clear that the term covers a broad range of asset classes. The definition should be drawn from Executive Order 14330. Second, the definition of "designated investment alternative" should expressly include asset-allocation funds that contain alternative assets by adding the following sentence after paragraph (m)(1): "An asset allocation fund, including but not limited to asset allocation funds containing investments in alternative assets, may be a designated investment alternative, including a qualified designated investment alternative." Third, the Department should clarify that its specification that the definition of designated investment alternative "extend[s] to managed account services that are qualified default investment alternatives" does not mean the definition excludes managed accounts that are not a qualified default investment alternative. 91 Fed. Reg. at 16103. These definitional changes would make the final rule clearer. They would confirm that asset-allocation products can be designated investment alternatives, that those products may include alternative assets, and that the rule applies to the range of alternative assets identified in Executive Order 14330.

[109] *See* 56-57, *infra*.

Words such as "must" or "requires" can be read by litigants as hard-edged obligations, even when the Department intended to illustrate one prudent path. More flexible phrasing would better preserve ERISA's process-based standard and help ensure that fiduciaries can evaluate products that include alternative assets on their merits.

These revisions are especially important to preserve asset neutrality. The final rule should not unintentionally favor traditional public-market products, open-end mutual funds, or investment options with simple public-market benchmarks. It should help fiduciaries to evaluate a range of products—including target-date funds, asset-allocation funds, managed accounts, collective investment trusts, and other products that include alternative assets—through a prudent process.

1. The Performance Factor Should Recognize The Appropriateness Of Considering Manager Experience.

Successful investment depends on manager's skill. That is particularly true for alternative assets and other active management strategies. Accordingly, a fiduciary evaluating a target-date fund or other multi-asset product should consider the experience, scale, investment process, risk controls, and track record of the manager of that product—particularly when the DIA does not have close comparators. Those considerations help protect participants by encouraging fiduciaries to distinguish between experienced managers and untested managers seeking access to retirement savings. Where relevant, the fiduciary also would consider the process and criteria used by the manager of the DIA to evaluate the experience, scale, risk management, and track record of the manager of alternative assets into which the DIA is invested, and the basis for the DIA manager's selection of that particular alternative asset manager.

The Department has recognized this point before. In its 2020 information letter addressing private equity in DIAs, the Department encouraged fiduciaries to consider whether the DIA is "managed by investment professionals that have the capabilities, experience, and stability to manage" such a product.[110] That remains the right approach. Manager quality can be an important indicator of whether an investment option is likely to perform as expected and whether the manager can prudently handle the risks, liquidity needs, valuation issues, and operational demands associated with alternative assets.[111]

[110] Information Letter 06-03-2020, https://tinyurl.com/34frycxc.

[111] *See The State of Private Markets 2026*, at 20 MSCI (May 12, 2026) (showing that larger private credit funds have had materially fewer write-downs than smaller peers); *see also id.* at 25 (showing that the biggest funds are getting bigger, demonstrating that they are successful in fundraising and establishing investor confidence); ; *see also Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries*, EBSA (Feb. 2013), https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/fact-sheets/target-date-retirement-funds-tips-for-erisa-plan-fiduciaries (encouraging fiduciaries to examine both "a TDF's investment strategy" and its "management team").

It therefore makes sense for fiduciaries to consider, as part of the Performance factor, the capabilities and experience of the DIA manager, as well as that manager's process and criteria for evaluating the capabilities and experience of managers of the vehicles invested in by the DIA, such as the underlying managers' experience, historical performance, and scale. In a developing market for defined-contribution products that include alternative assets, plan fiduciaries may reasonably give weight to a DIA manager with an evaluation process designed to select alternative asset offerings only from established, reputable alternative asset firms with strong track records. In the next section below, AIC proposes language that would implement this suggestion in the Performance factor.

2. The Performance and Benchmark Factors Should Account for New Products That May Lack Existing Comparators.

The Proposed Rule asks the fiduciary to consider "similar" alternatives under both the Performance factor at paragraph (g) and the Benchmark factor at paragraph (k). Both factors operate at selection, but they ask the fiduciary to do different kinds of work. The relevant comparator universe is not the same for each.

The Performance factor is a comparison among candidates. A fiduciary first identifies the role the designated investment alternative will play in the plan's investment lineup. The fiduciary then evaluates the investments that could prudently fill that role. The relevant universe is the universe of investments that could reasonably serve the same plan-menu purpose. That universe may include investments of different styles, vehicles, and, where appropriate, different asset classes. An actively managed target-date fund with a private-markets sleeve, for example, may prudently be evaluated against the universe of products that could fill the same default-investment-alternative role, not only against other target-date funds with private-markets sleeves.

The Benchmark factor is a different exercise. The fiduciary identifies (or constructs) a meaningful comparator for the designated investment alternative the fiduciary is selecting. As the Proposed Rule itself provides, a "meaningful benchmark" must have "similar mandates, strategies, objectives, and risks to the designated investment alternative." The fiduciary is not comparing candidates against one another. The fiduciary is identifying or constructing a comparator that will be used to evaluate the designated investment alternative against its own stated strategy.

Recognizing this distinction matters because the two universes are not the same. The candidate-comparison universe under paragraph (g) may include investments of different styles or asset classes that serve the same plan-menu role. The comparator under paragraph (k) must be matched to the designated investment alternative's actual style and asset-class composition. Treating "similar alternative" as a single uniform concept across the two factors creates unintended consequences. A too narrow candidate comparison under paragraph (g) can foreclose consideration of products that would prudently serve the same plan-menu role. A too-broad comparator under paragraph (k) can fail to properly account for the designated investment

alternative's actual strategy or composition. Both consequences are particularly likely for newer or innovative products, which often lack obvious comparators.

Accordingly, the Department should add the following to the preamble of the Final Rule and reflect it in the operative text.

> For purposes of paragraph (g), the universe of "similar" alternatives consists of the investments that could prudently fill the same role in the plan's investment lineup, which may include investments of different styles, vehicles, or asset classes. For purposes of paragraph (k), the "similar mandates, strategies, objectives, and risks" standard refers to a comparator for the designated investment alternative as actually designed and implemented, so that the fiduciary may meaningfully evaluate whether the designated investment alternative is performing as designed.

The Department also should make clear that a new or innovative investment option is not imprudent simply because it lacks a long operating history. Products designed for defined-contribution plans may be new even when the underlying investment strategy, manager, or asset class is well established. That may be particularly true following publication of the Department's final rule; firms will respond to increased demand for investment options that include alternative asset exposure. The absence of a long track record for the exact product should not, by itself, prevent a fiduciary from selecting it. The Department thus should revise the Performance factor to expressly acknowledge that the Performance factor does not create a presumption or preference against new investment options or new DIA designs.

> (g) *Performance.* The plan fiduciary ~~must~~ appropriately considers a reasonable number of similar alternatives, where available, and determines that the risk-adjusted expected returns, over an appropriate time-horizon, of the designated investment alternative, 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. There is no presumption or preference against new investment options or new or innovative designated investment alternative designs.

The Benchmark factor should be revised for a related but distinct reason. As an initial matter, in framing the Benchmark factor the Department should remain mindful that the "meaningful benchmark" standard historically has been a burden borne by ERISA plaintiffs, not by plan fiduciaries. This is reflected in the cases the Department cites as authority for the standard: the courts in those cases ruled that when a plaintiff seeks to allege the imprudent selection (or retention) of an investment option by comparison to an alternative that was available to the fiduciary, that alternative must be "a relevant comparator with similar objectives" to the option the

fiduciary selected.[112] Simply, when high fees or low performance are alleged through a comparison to another product, the comparison must be apples-to-apples. While AIC supports a safe harbor factor regarding benchmarking—in order to prevent such lawsuits predicated on inapt benchmarks—the Department should still proceed carefully when converting what has historically been the plaintiffs' burden into a burden that fiduciaries bear in fulfilling the safe harbor requirements.

In this regard, AIC recommends revising the proposal's instruction that fiduciaries identify benchmarks that are "as meaningful *as possible*," and seek the "*best* possible comparators."[113] Plaintiffs could use that language to argue, after the fact, that the fiduciary acted imprudently because some other benchmark might have been better. That would require fiduciaries to prove a negative, and that already impossible exercise would be doubly challenging because what constitutes the "best" or most "meaningful" benchmark is inherently subjective. It also would create the kind of hindsight litigation risk the Proposed Rule is designed to reduce.

Fiduciaries should use recognized benchmarks where such benchmarks are readily available. But the duty of prudence does not require fiduciaries to identify the single best benchmark or prove that no better comparator exists. For some products, the appropriate benchmark may be a public-market index. For others, it may be a blended benchmark, a custom composite benchmark, a peer group, a strategy benchmark, or another reasonable comparator. For new or innovative products, a fiduciary may also consider related strategies, manager history, modeled performance, and the product's expected value proposition. Accordingly, the Department should consider revising the language stating that the fiduciary "must … determine that each DIA has a meaningful benchmark," which pre-supposes that a pre-existing benchmark must exist, undermining the effectiveness of the safe harbor.[114]

> (k) *Benchmark Performance.* The plan fiduciary ~~must appropriately consider and~~ determines that each designated investment alternative has a meaningful benchmark, and compares the risk-adjusted expected returns of the designated investment alternative to the meaningful benchmark. There may be more than one meaningful benchmark for a designated investment alternative, however no single benchmark is a meaningful benchmark for all designated investment alternatives on a plan investment menu. A ''meaningful benchmark'' is an investment, strategy, index, or other comparator that has similar mandates, strategies, objectives, and risks to the designated investment alternative. The ''risk-adjusted expected returns'' of the designated investment alternative may be determined based on its historical performance unless it has none, in which case it may be determined based

[112] *See, e.g.*, *Anderson*, 137 F.4th at 1022.

[113] 91 Fed. Reg. at 16142 (proposed § 2550.404a-6(k)) (emphases added).

[114] 91 Fed. Reg. at 16142.

on the historical performance of a different investment with similar mandates, strategies, objectives, and risks and that is not the meaningful benchmark. When evaluating a target-date fund or other asset allocation fund without a reasonably similar comparator, the plan fiduciary may use a composite benchmark that approximates the allocations in the designated investment alternative. ~~While a plan fiduciary should identify benchmarks that are as meaningful as possible, t~~ There is no presumption or preference against new or innovative designated investment alternative designs. Instead, when considering a new or innovative product design, a fiduciary should seek to identify ~~the best possible~~ a reasonable comparator~~s~~ to it while also scrutinizing the potential value proposition presented by the new or innovative design.

The Department should also add examples showing how these principles apply. For the Performance factor, the Department should include an example involving a new target-date fund with an allocation to alternative assets, deployed through multiple evergreen alternative asset vehicles, that varies based on time to retirement. The example should show that in evaluating the target-date fund, a fiduciary may generally consider the experience and track record of the target-date fund manager and that manager's basis for selecting the underlying private-market managers, including the target-date fund manager's process and criteria for evaluating the experience and track record of the underlying private-market managers, even if the specific vehicle has little or no operating history. It should also show that a fiduciary may consider expected risk-adjusted returns, net of fees, over the relevant participant time horizon, including expected diversification benefits.

(3) *Example. New Investment Option—(i) Facts.* A plan fiduciary conducts diligence on a designated investment alternative that is a target date fund. The plan's menu of investment options currently includes several designated investment alternatives with de minimis or no exposure to alternative assets. The target date fund's illiquid assets include investments in multiple evergreen private market vehicles. (An evergreen vehicle invests in alternative assets, operates continuously without a fixed end date, and continuously raises new capital and makes new investments). The target date fund has little to no operating history, but the target date fund manager has experience, expertise, and strong historical performance in managing retirement products and established criteria for selecting managers of vehicles invested in by the target date fund. The target date fund manager informs the plan fiduciary of the identities of the managers of underlying vehicles and, to the extent appropriate, explains the target date fund manager's basis for selecting the underlying vehicle managers, including the process and criteria used to evaluate those managers' experience, scale, risk management, and track record compared to managers of vehicles with similar mandates, strategies, objectives, and risks. In evaluating its findings, the plan fiduciary determines that the target date fund would provide attractive expected risk-adjusted return, accounting for diversification

benefits, compared to existing or other potential plan options without exposure to alternatives or with lower exposures to alternatives.

(ii) Analysis. The plan fiduciary should conduct a thorough, well-documented diligence process with the manager of the designated investment alternative that addresses the appropriateness of this plan option given the expected plan participants' general investment horizon. This diligence process should include examining expected risk-adjusted performance compared to other investment options determined to be appropriate by the fiduciary.

(iii) Conclusion. The plan fiduciary satisfies this paragraph (g) and ERISA section 404(a)(1)(B). In evaluating the designated investment alternative, the fiduciary appropriately ensured that there are other designated investment alternatives available for its plan participants to choose that do not have meaningful exposure to alternative assets. In assessing expected performance of the target date fund, the fiduciary considered the investment time horizon of its plan participants and the experience, expertise, and historical performance of the target date fund manager and that manager's basis for selecting managers of vehicles invested in by the target date fund, such as consideration of the underlying managers' experience, historical performance, and scale. The plan fiduciary considered and documented the expected risk-adjusted returns to plan participants, net of fees, including diversification benefits from investing in a target date fund with an alternative asset sleeve, compared to existing or other potential plan options.

This example demonstrates how the considerations discussed above—the identity and qualifications of the manager of a new designated investment alternative—can be addressed by a fiduciary in practice.

For the Benchmark factor, the Department should include a related example showing that when no single benchmark captures the product's strategy, a fiduciary may use a composite benchmark prepared by the target-date fund manager or an independent investment adviser that reflects the underlying private equity, private credit, real estate, infrastructure, or other private-market exposures in the product.[115]

(4) *Example. Custom composite benchmark; Fund manager provided—(i) Facts.* A plan fiduciary conducts diligence on the target date fund described in Example (g)(3). With respect to the alternative asset sleeve, the target date fund manager or a qualified investment advice fiduciary identifies private market vehicles in the same asset class with reasonably similar mandates, strategies,

[115] A composite benchmark could in effect be composed of multiple benchmarks, one for each sleeve or strategy that the DIA pursues.

objectives, and risks. For the target date fund's sleeves that invest in publicly traded products, the target date fund manager or qualified investment advice fiduciary identifies appropriate benchmarks.

(ii) Analysis. The plan fiduciary should conduct a thorough, well-documented diligence process with the manager of the designated investment alternative or the qualified investment advice fiduciary that addresses the appropriateness of the composite benchmark that is used to assess the performance of the target date fund, including the alternative asset sleeve.

(iii) Conclusion. The plan fiduciary satisfies this paragraph (k) and ERISA section 404(a)(1)(B) with respect to the target date fund. The fiduciary appropriately determined that the target date fund manager or qualified investment advice fiduciary is using an appropriate composite benchmark that reflects the strategy of the target date fund, including the underlying private market vehicles.

The revisions suggested above would make the Performance and Benchmark factors more practical and more consistent with the Proposed Rule's purpose, while preserving flexibility for plan fiduciaries and their advisers. They would preserve the need for careful fiduciary review while avoiding a rule that unintentionally favors older, simpler, or more conventional products. In order to achieve the objective of ensuring appropriate access to alternative asset classes that have benefited so many other investors and retirees, the final rule should ask whether the fiduciary used a reasonable process to evaluate expected performance—not whether the product had a perfect comparator.

3. The Fees Factor Should Continue to Focus on Value, Not the Lowest Cost.

The Fees factor should continue to make clear that the lowest-fee option is not always the most prudent option. ERISA requires fees to be reasonable. It does not require fiduciaries to select the cheapest investment. Indeed, inordinate emphasis on low fees without considering the expected returns or the services provided would be imprudent.

This point is critical for products that include alternative assets. These products often involve active management, substantial due diligence, value creation, private-market access, liquidity management, valuation processes, and professional oversight. Those services typically cost more than a passive index fund. But higher fees are reasonable where the fiduciary prudently concludes that the product is expected to provide value through stronger net-of-fee returns, diversification, risk management, or access to experienced managers.

The final rule should therefore direct fiduciaries to evaluate fees in context. The relevant question is whether the fees are reasonable in light of the product's expected benefits and role in

the plan menu. That approach furthers participants' interests while preserving fiduciary discretion. The proposed rule largely adopts this approach, and AIC supports it.[116]

The Department should also consider adding an example showing how relatively higher fees may be justified by enhanced expected risk-adjusted returns and diversification. For example, a fiduciary might evaluate a target-date fund that includes an allocation to alternative assets and charges higher fees than an otherwise similar target-date fund invested only in public stocks and bonds. The example should show that the fiduciary may prudently select the higher-fee option if, after considering the relevant facts, the fiduciary reasonably concludes that the additional fees are justified by the product's expected net-of-fee performance, diversification benefits, risk-management features, or role in the plan's investment menu. Such an example would reinforce that ERISA requires fees to be reasonable in context, not simply as low as possible.

> (6) *Example. Fees; Diversification benefits—(i) Facts.* A plan fiduciary conducts diligence on the target date fund described in Example (g)(3). While the alternative asset sleeve causes the target date fund's expenses to increase, the plan fiduciary has reviewed a thorough, well-documented diligence report prepared by the target date fund manager or qualified investment advice fiduciary modeling estimated risk-adjusted returns, on a net of fees basis, as a result of its particular asset allocation to the alternative asset vehicles. In evaluating the target date fund, the plan fiduciary determines that it generates an attractive expected risk-adjusted return, on a net of fees basis, accounting for diversification benefits, compared to other options without exposure to alternatives or with lower exposure to alternatives.
>
> *(ii) Analysis.* The plan fiduciary should conduct a thorough, well-documented diligence process with the manager of the designated investment alternative or qualified investment advice fiduciary that addresses the appropriateness of the plan option, as compared to other alternative options, given the expected plan participants' general investment horizon, taking into account the target date fund's fees, expected risk-adjusted returns (on a net of fees basis), and diversification benefits.
>
> *(iii) Conclusion.* The plan fiduciary satisfies this paragraph (h) and ERISA section 404(a)(1)(B). In assessing expected performance of the target date fund, the fiduciary appropriately considered and documented thoroughly the expected risk-

[116] Example 4 in the Fees subsection should not, however, state that modifications to a DIA can be "tantamount to selecting a designated investment alternative from scratch." 91 Fed. Reg. at 16139. Instead, changes in a designated investment alternative, including a manager's decision to add alternative investments to a target-date fund, should be considered in conjunction with the fiduciary's ongoing monitoring of investments.

adjusted returns to plan participants, net of fees, as well as diversification benefits from the alternative assets sleeve.

4. The Liquidity Factor Should Preserve Flexibility Across Product Structures.

The Liquidity factor should recognize that liquidity is managed differently in different types of investment vehicles. The final rule should not favor one vehicle—such as an open-end mutual fund—over other vehicles, such as collective investment trusts, target-date funds, asset-allocation funds, managed accounts, or other structures that may be appropriate for defined-contribution plans. Favoring open-end mutual funds over other vehicles would be contrary to ERISA's process-based, asset-neutral framework.

As an initial matter, the final rule should make clear that participant-level liquidity is evaluated at the plan level, not participant by participant. Example 1 correctly explains that the "participant-level liquidity needs of a given plan depend on the type of plan at issue, its features, and the overall profile of the participants and beneficiaries of the plan as a whole."[117] That is the right approach. But the text of the Liquidity factor itself could be misread to require fiduciaries to evaluate individual participants' liquidity needs. That would be impractical and unnecessary. Fiduciaries should be able to evaluate liquidity by looking at the plan and participant population as a whole. They should not be required to conduct a participant-by-participant liquidity analysis. The final rule should therefore revise the Liquidity factor to make clear that fiduciaries may consider the anticipated liquidity needs of the plan based on plan-level features, historical participant behavior, expected cash flows, and the overall participant population.

> (i) *Liquidity*. The fiduciary ~~must~~ appropriately considers and determines that the designated investment alternative will have sufficient liquidity to meet the anticipated needs of the plan, taking into account the overall participant population ~~at both the plan and individual levels~~. For example, because participant-directed individual account plans are long-term retirement savings vehicles, particularly for participants early in their careers, there is no requirement that a fiduciary select only fully liquid products. Indeed, a prudent fiduciary process may regularly lead to a decision to sacrifice some plan- or individual-level liquidity, or both, in pursuit of additional risk-adjusted returns.

The Department should also revise the examples so they do not unintentionally favor open-end mutual funds over other vehicles. AIC appreciates that the Department included examples showing how fiduciaries can evaluate liquidity. But while Examples 1 and 3 make clear that open-

[117] 91 Fed. Reg. at 16139 (proposed § 2550.404a-6(i)(1)(iii)).

end mutual funds satisfy the Liquidity factor, the treatment of non-1940 Act vehicles—such as CITs—is less clear.

The examples suggest that collective investment trusts and similar vehicles satisfy the factor only if their liquidity risk management programs are "substantially similar" to those required for open-end mutual funds under the Investment Company Act; otherwise, the plan fiduciary must engage in a highly burdensome, detailed investigation of how the fund manager manages liquidity.[118]

AIC understands that the Department may not have intended to require non-1940 Act vehicles, such as CITs, to comply with SEC Rule 22e-4. But as written, the examples could be read to import Rule 22e-4 into products that are not subject to that rule, including its 15% limit on illiquid investments and particular governance requirements designed for mutual funds.[119]

Such a requirement would be problematic. It would undercut the Proposed Rule's asset-neutral approach by disadvantaging CITs, even though CITs are widely used for defined-contribution plans (including target date funds) and hold 42% of all defined-contribution assets.[120] CITs' advantages include fees that are often lower than mutual funds fees because CITs are less expensive to manage. And CITs are more flexible and easier to customize than SEC-registered funds, and can be integrated with recordkeepers. CITs also are subject to their own regulatory protections: OCC regulations require CITs to address liquidity and contingency funding needs, and CIT trustees are subject to ERISA fiduciary obligations.

In the final rule, Rule 22e-4's 15% limit on illiquid investments, and its mutual-fund-specific governance requirements, should not be imposed on CITs or other non-1940 Act vehicles. A hard cap on illiquid investments would unnecessarily restrict fiduciary judgment and could prevent fiduciaries from selecting products that may improve risk-adjusted returns for plan participants. Research indicates that allocations above 15% to alternative assets, including private equity and private credit, have historically produced strong risk-adjusted performance through a combination of enhanced net returns and lower volatility.[121] Indeed, higher allocations to

[118] *See* 91 Fed. Reg. at 16139-41 (proposed § 2550.404a-6(i)(1), (3), (4)).

[119] 17 C.F.R. § 270.22e-4(b).

[120] *See* Morningstar, *2026 Retirement Plan Landscape Report*, at 16 (Mar. 2026), https://www.morningstar.com/content/cs-assets/v3/assets/blt9415ea4cc4157833/blt5047a0122b583af1/69bc5b858f084711f4bbe81f/2026-Retirement-Plan-Landscape-Report.pdf.

[121] *See, e.g.* Pew Charitable Trusts, *Increased Risk, Complex Investment Landscape Require Prudent Pension Management Practices*, at fig. 1 (April 16, 2025), https://www.pew.org/en/research-and-analysis/issue-briefs/2025/04/increased-risk-complex-investment-landscape-require-prudent-pension-management-practices (showing allocations to alternatives has nearly doubled from 18% in 2009 to 35% in 2022; Brainard & Brown, *supra*, at 15 fig. R (finding allocations to alternatives and real estate to be nearly 1/3 of state retirement assets); BNY Wealth, *2025 Investment Insights for Single Family Offices*, at 6 (2025) (noting average allocations of 48% to alternatives for family offices); Cliffwater, *Institutional Embrace of Alternatives Reaches 40% of Assets* (March 5, 2024),

alternatives have historically improved returns; institutions with more than 30% allocated to private assets generated roughly 200 basis points higher annual returns than those with less than 10%.[122] And as the Department itself notes, the Council of Economic Advisers found the "estimated optimal portfolio allocation to private equity rang[ed] from 23 percent for those under 25 to 13 percent for those above age 65."[123] Recently, the SEC revised prior guidance requiring a 15% limit on private-fund investments for certain registered closed-end fund investors that are not accredited investors.

The Department can avoid this problem by clarifying that references to a "substantially similar" liquidity risk management program refer only to the Rule 22e-4(b)(1)(i)'s general requirement to maintain a written program designed to assess and manage liquidity risk.[124] The references to Rule 22e-4, it should be made clear, do not incorporate all the requirements of that regulation, including fixed asset-allocation caps and governance requirements designed for open-end mutual funds.

Finally, the Department should revise Example 4 to avoid suggesting that redemption limits make a product imprudent. Example 4 states that the product permits quarterly redemptions and does not impose any specific limits or restrictions on the timing or payment of redemptions. Class action counsel might seize on that language to argue that a product with periodic redemption limits, such as a 5% quarterly cap, is imprudent by comparison. That is not correct. Many evergreen vehicles use redemption limits to protect all investors and avoid forced sales of less-liquid, well-performing assets. These redemption limits are a feature, not a bug, of evergreen vehicles—the limits are the necessary tradeoff to longer term outsized returns as a result of underlying value creation by the managers of such vehicles, and protect the value of shares that investors have

https://www.cliffwater.com/ResourceArticle/institutional-embrace-of-alternatives-reaches-40-of-assets?docId=22394 (finding that state pension allocations reached 40% of state pension assets in 2022 and remained at that level in 2023).

[122] Cambridge Associates, *Better Alternative(s): Private Investments May Improve Outcomes for Defined Contribution Plan Participants*, at Fig. 4 (Mar. 11, 2024), https://www.cambridgeassociates.com/insight/better-alternatives-private-investments-may-improve-outcomes-for-defined-contribution-plan-participants/; *see also Retail Access to Alternative Investments*, *supra*, at 19-21 (a 20% allocation to private equity gives a 2.5% increase in annuitized lifetime income for the youngest workers); *Do Private Assets Belong in 401(k) Plans?*, *supra* (Vanguard research using Morningstar and MSCI data found that adding 10-20% allocations of private assets to TDFs, assuming top-tier managers, could boost retirement wealth by 7-22% and retirement income by 5-15% net of fees over 40 years); Gregory W. Brown *et al.*, *Why Defined Contribution Plans Need Private Investments*, DCALTA/IPC Research Paper (Oct. 2019), https://www.northerntrust.com/content/dam/northerntrust/pws/nt/documents/asset-servicing/why-defined-contribution-plans-need-private-investments.pdf (finding that the reallocation of 20% of a portfolio consisting entirely of public equity to buyout funds increased average annual returns from 8.05% to 8.69% and reduced the standard deviation of returns from 9.89% to 8.50%).

[123] 91 Fed. Reg. at 16120. Of course, plan fiduciaries could prudently determine that a higher or lower allocation to alternative investments is prudent.

[124] 17 C.F.R. § 270.22e-4(b)(1)(i).

chosen to retain.[125] Those limits can be a prudent liquidity-management tool—especially when evergreen private market funds are embedded within larger vehicles (such as a CIT) that itself has substantial liquidity.

The final rule should therefore make clear that reasonable redemption limits, notice periods, or other liquidity-management features do not make a DIA imprudent. The relevant question is whether the fiduciary evaluated those features in light of the plan's liquidity needs, the product's overall structure, and the role of the investment option in the plan menu. That approach would preserve flexibility, protect participants, and avoid turning the Liquidity factor into a preference for one product structure over another.[126]

AIC suggests the following revisions to Examples 1, 3, and 4 to avoid those unintended consequences. These revisions would preserve the Department's useful examples while making clear that non-1940 Act vehicles need not comply with every requirement of Rule 22e-4, that fiduciaries may rely on reasonable liquidity diligence, and that ordinary redemption limits are not per se imprudent.

> [Example 1] …. In the case of a designated investment alternative that is not such a mutual fund, a plan fiduciary will be deemed to have met the consideration and determination requirements of paragraph (i) of this section and section 404(a)(1)(B) of ERISA if ~~three conditions are met. First, the fiduciary obtains a written representation from~~ the person responsible for managing the designated investment alternative provides information demonstrating, or the plan fiduciary otherwise ~~performs~~ determines through appropriate due diligence, that the designated investment alternative has adopted and implemented a liquidity risk management program, including policies and procedures similar to those required under SEC Rule 22e-4(b)(1)(i), 17 C.F.R. § 270.22e-4(b)(1)(i), which requires a fund to assess, manage, and annually review its liquidity risk. But the designated investment alternative does not need to satisfy other requirements in SEC Rule 22e-4, such as the limit on illiquid investments in Rule 22e-4(b)(1)(iv), 17 C.F.R. § 270.22e-4(b)(1)(iv). ~~that is substantially similar to a program that meets the requirements of such Act~~. ~~Second, the fiduciary reads, critically reviews, and understands any~~

[125] *See* Sonali Basak *et al.*, *BDC Redemptions: Looking Beyond the Gates*, iCapital (Mar. 3, 2026), https://icapital.com/insights/investment-market-strategy/bdc-redemptions-looking-beyond-the-gates/.

[126] The Department also should omit the language that requires "the fiduciary" to "read[], critically review[], and understand[] any written representation" received from the DIA manager. *E.g.*, 91 Fed. Reg. at 16140 (proposed § 2550.404a-6(i)(1)(iii)). AIC, of course, agrees that plan fiduciaries should only rely on written representations that the fiduciaries prudently evaluate. But whether a representation was "critically reviewed" and "understood" in *all* respects by *each* member of an investment committee is a subjective inquiry that cannot be firmly documented. The responsibility of a fiduciary committee is to prudently evaluate written representations. The steps necessary to that will vary and should not be precisely defined in a manner that could support litigation—years after the relevant decision was made—focused on each fiduciary committee member's subjective understanding.

~~written representation and consults a qualified professional where appropriate. Third, the fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question any written representation.~~

[Example 3] …. If the designated investment alternative is not such a fund, the fiduciary will be deemed to have met the consideration and determination requirements of paragraph (i) of this section and section 404(a)(1)(B) of ERISA if ~~must meet three conditions. First, the fiduciary obtains a written representation from~~ the person responsible for managing the designated investment alternative provides information demonstrating, or the plan fiduciary otherwise ~~performs~~ determines through appropriate due diligence, that the designated investment alternative has adopted and implemented a liquidity risk management program including policies and procedures similar to those required under SEC Rule 22e-4(b)(1)(i), 17 C.F.R. § 270.22e-4(b)(1)(i), which requires a fund to assess, manage, and annually review its liquidity risk. But the designated investment alternative does not need to satisfy other requirements in SEC Rule 22e-4, such as the limit on illiquid investments in Rule 22e-4(b)(1)(iv), 17 C.F.R. § 270.22e-4(b)(1)(iv). ~~that is substantially similar to a program that meets the liquidity risk management requirements under such Act. Second, the fiduciary reads, critically reviews, and understands any written representation and consults a qualified professional where appropriate. Third, the fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question any written representation~~

[Example 4] …. A participant-directed individual account plan offers a designated investment alternative that is a pooled investment vehicle with an investment strategy involving target positions in particular types of assets, including holdings in private assets. According to information provided by ~~written representations from~~ the person responsible for managing the designated investment alternative ~~product~~, ~~it is structured so that the timing of the product's ability to liquidate private-asset investments aligns generally with the redemption rights of plans investing in the product. Representations also are made that~~ the vehicle holding private-asset investments ~~product~~ permits quarterly redemptions by investors, and the designated investment alternative manager indicates that it has concluded that any limits by that vehicle on redemptions are reasonable in light of the design and purposes of the designated investment alternative ~~does not otherwise impose any specific limits or restrictions on timing or payment of redemptions~~. ~~For individual participants, representations are made to the plan fiduciary that~~ According to information provided by the person responsible for managing the designated investment alternative, the designated investment alternative has adopted and implemented a liquidity risk management program that includes policies and procedures similar to those required under SEC Rule 22e-4(b)(1)(i), 17 C.F.R.

§ 270.22e-4(b)(1)(i), which requires a fund to assess, manage, and annually review its liquidity risk. But the designated investment alternative does not need to satisfy other requirements in SEC Rule 22e-4, such as the limit on illiquid investments in Rule 22e-4(b)(1)(iv), 17 C.F.R. § 270.22e-4(b)(1)(iv). ~~that imposes requirements substantially similar to the requirements related to liquidity risk management programs for mutual funds registered as open-end management investment companies with the SEC under the Investment Company Act of 1940. The fiduciary reads, critically reviews, and understands the written representations and consults a third-party investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA. The fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question the written representations.~~ A plan fiduciary does not need to engage a third-party investment advice fiduciary within the meaning of Section 3(21)(A)(ii) of ERISA unless a fiduciary decides on its own that it is unable to evaluate the liquidity needs of the plan with its in-house resources. The fiduciary does not know, or have reason to know, other information which would cause the fiduciary to question the information provided by the person responsible for managing the product ~~written representations~~.

To further avoid unintended consequences, AIC also suggests that the Department add an example addressing a fiduciary's evaluation of a non-1940 Act vehicle with a target alternative asset allocation that would not satisfy every requirement of Rule 22e-4 and that permits limited, periodic redemptions. The example should clarify that those features do not make the product imprudent if the fiduciary reasonably evaluates the product's liquidity risk management program, redemption terms, liquidity reserves, and fit with the plan's anticipated liquidity needs.

(5) *Example. Participant and plan-level liquidity; Non-1940 Act fund—(i) Facts.* A plan fiduciary conducts diligence on the target date fund described in Example (g)(3). The target date fund is a collective investment trust that includes investments in multiple private-market vehicles. The private market vehicles are evergreen vehicles. (An evergreen vehicle invests in alternative assets, operates continuously without a fixed end date, and continuously raises new capital and makes new investments). The trustee of the collective investment trust complies with 12 C.F.R. § 9.18 or applicable state law and has implemented a liquidity risk management program. The collective investment trust's investments in illiquid assets exceeds 15 percent of the collective investment trust's assets, and thus does not meet the requirements of SEC Rule 22e-4(b)(1)(iv). The private market vehicles maintain a liquidity buffer and permit limited, periodic redemptions. The plan fiduciary considers net plan cash flows, historic participant level withdrawal rates, and transfer activity across the plan, and determines that the collective investment trust's liquidity risk management program takes into account the liquidity profile of the alternative assets sleeve and is sufficient for the plan to meet

expected liquidity demands of plan participants including in the event liquidity demands are above average compared to historic liquidity demand levels. The plan fiduciary further determines that the liquidity within the target date fund, accounting for the underlying exposures to illiquid assets, would not materially impact the target date fund's investment strategy or the target date fund's ability to meet expected liquidity demands of the plan.

(ii) Analysis. The plan fiduciary should conduct a thorough, well-documented diligence process with the manager of the designated investment alternative that assesses the liquidity needs of the plan, taking into account the overall participant population. The fiduciary may rely on the information provided to it by the designated investment alternative manager to understand how the underlying asset liquidity profile can meet expected liquidity demands.

(iii) Conclusion. The plan fiduciary satisfies this paragraph (i) and ERISA section 404(a)(1)(B). The fiduciary confirmed through its diligence that the trustee of the collective investment trust complies with 12 C.F.R. § 9.18 or applicable state law and has implemented a liquidity risk management program that includes policies and procedures similar to those required under SEC Rule 22e-4(b)(1)(i), which requires a fund to assess, manage, and annually review its liquidity risk, notwithstanding that the program permits allocations in illiquid investments that exceed the limit set by SEC Rule 22e-4(b)(1)(iv) and does not otherwise comply with SEC Rule 22e-4. Further, the fiduciary properly considered whether a liquidity buffer exists in the designated investment alternative capable of withstanding average and above average liquidity demands from plan participants based on historic plan withdrawal patterns, considered in light of liquidity buffers maintained by the underlying private market vehicles and the experience of the trustee of the collective investment trust and of the managers of the underlying private market vehicles.

In sum, adding the example described above and revising Examples 1, 3, and 4 would preserve flexibility for products designed to meet the needs of defined-contribution plans. Those changes would allow private-market products to continue to develop within existing regulatory frameworks, while making clear that fiduciaries may prudently evaluate different liquidity structures based on the needs of the plan and its participants.

5. The Valuation Factor Examples Should Be Refined.

AIC agrees with the Department that plan fiduciaries should examine whether the DIA "has adopted adequate measures to ensure that the designated investment alternative is capable of

being timely and accurately valued in accordance with the needs of the plan."[127] AIC also appreciates the Department's recognition that FASB ASC 820 is an appropriate valuation standard.[128] But the Department should revise the valuation examples to focus on whether the fiduciary reasonably evaluated the DIA's valuation process and determined that there were reasonable policies and procedures in place to address potential conflicts.

Examples 2 and 4 both state that plan fiduciaries must determine that assets underlying DIAs are valued through a "conflict-free" and "independent" process.[129] AIC is concerned that this language could be misunderstood to prohibit alternative asset managers from having any role in the valuation of the assets under their management. Private assets do not have public market prices; their valuation often depends on non-public information about the asset, including material information held by the alternative asset manager. That information may include cash flow, comparable transactions, public-company multiples, credit quality, underwriting information, interest-rate conditions, and other data relevant to value. The information may also include important strategic plans, operational initiatives, and other work to improve the profitability of the invested-in company being overseen by the alternative asset manager as part of its active management of the private asset. Because the manager often has the best information about a private asset, excluding the manager from the valuation process would not make the valuation more reliable. It could make it less accurate.

A fiduciary should be able to satisfy the Valuation factor by determining that the manager of the DIA has reasonable policies and procedures to identify, disclose, and appropriately address potential conflicts in the valuation process pursuant to the regulations that govern the manager. Importantly, the appropriate means for identifying and addressing conflicts will be those applicable to the particular investment in issue: while the DIA manager is often an ERISA fiduciary, funds and products the DIA invests in will include securities governed by the conflicts requirements of the securities laws, for example, or collective investment trusts subject to conflicts requirements administered by the OCC, state regulators, and DOL. The DIA manager's policies and procedures should reflect that managers of underlying assets implement safeguards consistent with the regulatory regimes applicable to those underlying asset managers. Those safeguards may include written valuation policies, established accounting standards, independent financial statement audits, third-party valuation reviews, valuation committees, use of prohibited transaction exemptions where necessary, and/or periodic testing or review of valuation practices. If valuation processes satisfy the requirements applicable to the vehicle, that should be sufficient.

The Department also should avoid suggesting that fiduciaries must look through a DIA and separately evaluate the valuation process for every underlying asset. That would be unworkable

[127] 91 Fed. Reg. at 16141 (proposed § 2550.404a-6(j)).

[128] *See id.* at 16,141-42 (proposed § 2550.404a-6(j)(2)).

[129] *Id.* at 16141 (proposed § 2550.404a-6(j)(2)); *id.* at 16142 (proposed § 2550.404a-6(j)(4)).

for many diversified products. A target-date fund, asset-allocation fund, managed account, or CIT may have exposure to hundreds of private-market assets through one or more underlying vehicles. Requiring the plan fiduciary to review the valuation process for each vehicle, portfolio company, loan, real estate asset, or infrastructure investment would impose significant unnecessary burdens and discourage fiduciaries from considering these products.

The better approach is to focus on the valuation process at the level of the DIA. A fiduciary should be able to evaluate whether the DIA manager has reasonable policies to ensure the integrity of the valuation of the DIA, including the DIA manager's basis for concluding that conflicts in valuations provided by managers of underlying sleeves are addressed pursuant to the regulations governing the managers of those sleeves and consistent with industry-standard practices. The fiduciary should be able to rely on information from the DIA manager about those valuation practices, so long as that reliance is reasonable and documented.

The Department should also reconsider Example 4. As written, the example could be read to suggest that continuation funds present valuation concerns that make them inherently problematic. It also may not reflect how DIAs are likely to obtain exposure to such vehicles in practice. AIC is not aware of any existing DIA structures that invest directly in continuation vehicles.

If the Department retains an example involving continuation funds, it should revise the example to focus on process. Continuation funds can present conflicts, but as the Institutional Limited Partners Association has recognized, those conflicts are typically subject to investor approval through the Limited Partner Advisory Committee and are often appropriately addressed through safeguards such as third-party pricing input, competitive processes, approval by independent parties, fairness opinions, or the presence of a third-party buyer.[130] The final rule should not discourage fiduciaries from considering innovative structures where conflicts are identified, disclosed, and appropriately addressed pursuant to applicable regulations and consistent with industry-standard practices.

For these reasons, the Department should revise Examples 2 and 4.

> [Example 2] … (ii) *Analysis.* For purposes of determining the prudence of an investment, plan fiduciaries may rely on asset valuations that result from the application of generally recognized procedures for measuring the fair value of assets for purposes of disclosure in financial statements prepared in accordance

[130] *See Continuation Funds: Considerations for Limited Partners and General Partners*, ILPA (May 2023), https://ilpa.org/wp-content/uploads/2023/05/Continuation-Funds-Considerations-for-Limited-Partners-and-General-Partners.pdf; Emily Lai, *Europe's continuation funds surge faces growing scrutiny over asset quality*, Pitchbook (June 18, 2025), https://pitchbook.com/news/articles/europes-continuation-funds-surge-faces-growing-scrutiny-over-asset-quality ("[I]t is now the norm to have some form of intermediary or banker involved in transactions of any scale to ensure the processes run well and to give fairness opinions on valuation.").

with U.S. generally accepted accounting principles, including valuations provided by a manager of a designated investment alternative, if the manager has provided a written representation, or otherwise provided information to the fiduciary, describing its valuation processes, including policies and procedures to address potential conflicts pursuant to regulations applicable to the manager and consistent with industry-standard practices~~if applied through a conflict-free, independent process with respect to acquisition, disposition, or management of the assets~~.

(iii) *Conclusion.* The named fiduciary of this plan is deemed to have met the consideration and determination requirements of paragraph (j) of this section, and section 404(a)(1)(B) of ERISA, with respect to this designated investment alternative, because the designated investment alternative manager's written representation, or information provided to the fiduciary through diligence, described policies and procedures to address conflicts pursuant to regulations applicable to the manager and consistent with industry-standard practices. ~~under the following scenario~~. ~~First, the named fiduciary reads, critically reviews, and understands the written representation, or otherwise performs appropriate due diligence on the valuation process, and consults a qualified professional where appropriate. Second, the named fiduciary does not know, or have reason to know, other information which would cause the named fiduciary to question any written representation.~~ This conclusion would not change solely because the designated investment alternative permits its manager, acting in good faith, to adopt alternative valuation procedures if the manager determines and documents a temporary emergency that could result in a negative impact on investors if the generally applicable valuation procedures are followed (*e.g.*, if investors would be able to redeem their interests based on a valuation that the manager believes is inflated and that would result in a significant harm to remaining investors).

[Example 4] (4) *Valuation; Conflicts of interest with respect to a continuation fund*—(i) *Facts.* The plan document for a participant-directed individual account plan specifies that the plan sponsor's chief financial officer is the named fiduciary of the plan and responsible for the establishment of the plan investment menu and selection and monitoring of designated investment alternatives. The named fiduciary selects an asset allocation fund as a designated investment alternative. The designated investment alternative manager has informed the named fiduciary that it intends to invest indirectly in ~~(or part of a broader investment alternative)~~ a continuation fund (Fund) managed or controlled by an entity (Manager) that has recently acquired or contemplates an imminent acquisition of assets from an investment vehicle, such as another fund or vehicle with alternative assets, that is managed or controlled by the Manager or an affiliate of the Manager. The assets that were or will be purchased for the Fund from the investment vehicle do not trade

on a public exchange and lack readily observable market prices, and the Manager was or will be able to control or influence—directly or indirectly—the price or other material terms on which the assets are transferred to the Fund. The Manager represents to the designated investment alternative manager ~~named fiduciary~~ that valuation of the purchased assets is based on application of its proprietary valuation methods that rely on inputs provided by the Manager or its affiliates. The designated investment alternative manager provides the named fiduciary with information demonstrating that the indirect investment into the Fund is done through a partial disposition to a third-party, through an arms-length transaction or otherwise involves an investment by a third party, or another similar process. The designated investment alternative manager also provides information to the plan fiduciary demonstrating that the manager has appropriate policies and procedures for obtaining accurate valuations of the asset allocation fund's component investments.

(ii) *Analysis.* The named fiduciary ~~must~~ should assess whether the designated investment alternative manager has policies and procedures that requires both it and the managers of the vehicles it invests in to address potential conflicts in the valuation process pursuant to applicable regulations and industry standard practices ~~the assets have been or will be valued through a conflict-free and independent process~~. Policies and procedures of the designative investment alternative manager that look for the presence of practices such as investing alongside third-party buyers, engaging a valuation committee, obtaining a third-party valuation review, obtaining a fairness opinion, and/or disclosing the conflict to limited partners and investors would typically mitigate any actual or potential conflict of interest involving the Manager. ~~When a designated investment alternative is a continuation fund that has recently acquired or contemplates an imminent acquisition of assets in a transaction that may be materially and adversely affected by a significant conflict of interest, the fiduciary must determine that the conflict of interest has not and will not render the designated investment alternative's valuation inaccurate. The facts do not demonstrate that the fiduciary can make this determination.~~

(iii) *Conclusion.* ~~The facts in this example do not establish that the named fiduciary satisfied section 404(a)(1)(B) of ERISA and paragraph (j) of this section when selecting the designated investment alternative.~~ The named fiduciary of this plan is deemed to have met the consideration and determination requirements of paragraph (j) of this section, and section 404(a)(1)(B) of ERISA, with respect to this designated investment alternative, because the plan fiduciary determined that the designated investment alternative manager has appropriate policies and procedures for obtaining accurate valuations of the asset allocation fund's component investments. The designated investment alternative manager's policies

and procedures may appropriately rely on one or more of the following: the fact that the Manager invests alongside third-party buyers or otherwise at arms-length, engages a valuation committee, obtains fairness opinions provided by the Fund Manager, obtains third-party valuation reviews, and/or discloses the conflict to limited partners and investors.

The Department also should add a new example showing how a fiduciary can prudently assess the valuation practices of a target-date fund or similar product that invests in private vehicles. That example would give fiduciaries practical guidance while preserving flexibility for different product structures.

(5) *Example. Valuation; Target date fund*—(i) *Facts.* A plan fiduciary conducts diligence on the target date fund described in Example (g)(3). The target date fund is a collective investment trust, and the trustee of the collective investment trust is an ERISA fiduciary. The target date fund's illiquid assets include investments in multiple private-market vehicles. Valuations of those private-market vehicles are prepared by the private vehicle managers. The private-market-vehicle managers use written valuation policies, established accounting standards, independent financial statement audits, third-party valuation reviews, valuation committee reviews, audit committee reviews, periodic testing or review of valuation practices, and/or investing alongside third-parties at arms-length. Consistent with 12 C.F.R. § 9.18 or applicable state law, the manager of the target date fund maintains valuation policies and procedures, whereby it reviews, with the assistance of a valuation consultant, the valuations of all assets of the target date fund including Level 3 assets pursuant to Financial Accounting Standards Board Accounting Standards Codification 820, titled Fair Value Measurements (or any successor standard) or pursuant to a substantially similar method. The target date fund's valuation advisor is compensated by either the target date fund or the underlying asset managers in which the target date fund invests. The manager of the target date fund provides the plan fiduciary information describing the target date fund's valuation processes, including a summary of the target date fund manager's policies and procedures for ensuring that conflicts in valuation of the target date fund's investments are addressed pursuant to applicable regulations and consistent with industry-standard practices, which provide for appropriate reliance on prohibited transaction exemptions where necessary.

(ii) *Analysis.* A plan fiduciary should document the valuation approach employed by designated investment alternative manager, including that the manager maintains policies and procedures to ensure that potential or actual conflicts of interest that may exist at or below the target date fund level, pursuant to applicable regulations and industry-standard practices. The target date fund manager may take

into account the use by the private market vehicle managers of written valuation policies, established accounting standards, independent financial statement audits, third-party valuation reviews, valuation committee reviews, audit committee reviews, periodic testing or review of valuation practices, and/or investing alongside third-parties at arms-length, and reliance on prohibited transaction exemptions where necessary. A plan fiduciary may, but is not required to, rely on information provided by the designated investment alternative manager.

(iii) *Conclusion.* The plan fiduciary is deemed to have met the consideration and determination requirements of paragraph (j) of this section, and section 404(a)(1)(B) of ERISA, with respect to this designated investment alternative, because the plan fiduciary received information explaining the designated investment alternative manager's valuation processes, including appropriate policies and procedures for mitigating any conflicts.

6. The Department Should Not Appear To Disfavor Complex Products.

The Proposed Rule requires fiduciaries to "appropriately consider the complexity of the designated investment alternative" to determine whether they sufficiently understand the investment option or need help from an expert. AIC agrees with that basic principle. If a fiduciary does not have the expertise needed to evaluate an investment option, it should seek assistance from a consultant, adviser, or other qualified professional.

But complexity itself should not be treated as a substantive reason to reject an otherwise prudent investment option. That makes the Complexity factor different from the other factors in the Proposed Rule. Performance, fees, liquidity, and valuation, all concern features of the investment option itself, and benchmarking concerns how those features compare to other options. The Complexity factor, by contrast, considers the fiduciary's ability to understand and evaluate those features. The relevant inquiry is not whether the product is complex, which is fundamentally a subjective question. The relevant question is whether the fiduciary understands the product sufficiently to make a prudent decision, or has obtained appropriate help to do so.

Treating complexity as a standalone "factor" thus could unintentionally discourage products that include alternative assets. A private-market allocation within a target-date fund may be more complex than a public index fund. But that does not mean it is less prudent. Target date funds and other pooled-asset investments are valuable because of features that make them more complex than a simple stock index fund. If fiduciaries whose limited resources prevent them from hiring a qualified investment adviser treat complexity as a reason to avoid target-date funds and similar products altogether, workers may lose access to investment options that could improve long-term risk-adjusted returns, net of fees. That result would undermine the purpose of the Proposed Rule.

The final rule should therefore avoid suggesting that simpler products are presumptively safer or more prudent. Target-date funds, managed accounts, collective investment trusts, and products that include alternative assets all involve certain basic features that fiduciaries must understand. But once those features are evaluated through a prudent process, complexity should not count against the product. The Complexity subsection should ask whether the fiduciary has enough information and expertise to evaluate the product's strategy, expected returns, risks, fees, liquidity, valuation process, and role in the plan menu. If not, the fiduciary should seek appropriate assistance. That approach would protect participants without creating an unintended bias against sophisticated or innovative investment options. AIC offers suggested edits to both the Complexity and Safe Harbor subsections below.

Of course, if the plan fiduciary does obtain advice from a prudently selected investment adviser, the plan fiduciary should be able to rely on that advice. While ERISA does not require that a fiduciary consult an independent investment adviser when selecting plan investment options, when a fiduciary does so, the fiduciary may reasonably rely on the expertise and judgment of the adviser, including with regard to complex financial-related matters in which the adviser has expertise and with which the fiduciary is less familiar. The final rule should acknowledge that all plan fiduciaries are permitted to rely on expert advice, as the Proposed Rule does in the Safe Harbor subsection.

The Department also should explicitly recognize that members of a fiduciary committee may reasonably rely on the experience and expertise of other committee members. DIAs are typically selected by committees, not by a single person.[131] Those committees often include people with different roles and different areas of expertise, such as finance, human resources, benefits administration, legal, and investment oversight.[132]

That structure is useful. Committee members bring different perspectives and competencies to the decision-making process. One member may be particularly expert in plan administration. Another may having a deep understanding of participant communications. Another may have extensive investment or finance experience. A prudent committee process should allow members to draw on that collective expertise.

[131] *See, e.g.*, Marcia S. Wagner & Thomas E. Clark, *The Evolution of ERISA Fiduciary Best Practices*, Wagner Law Group (2016), https://www.wagnerlawgroup.com/wp-content/uploads/sites/1101401/2021/07/ERISAFiduciaryBestPractices.pdf; John Hancock, *What are some best practices for ERISA retirement plan fiduciaries?* (Jul. 12, 2023), https://retirement.johnhancock.com/us/en/viewpoints/erisa--plan-design/what-are-some-best-practices-for-erisa-retirement-plan-fiduciari.

[132] *See* Mercer, *Best practices for assembling fiduciary committees that are responsible for the management of retirement plans* (May 22, 2025), https://www.mercer.com/en-us/insights/retirement/defined-contribution-plans/a-guide-to-fiduciary-committee-governance.

The Proposed Rule refers to investment committees in some examples, but much of the rule appears to describe a single fiduciary making the decision. The final rule should account more directly for committee decision-making. It should make clear that a committee member does not act imprudently merely because the member reasonably relies on another committee member's relevant experience, expertise, or analysis as part of the committee process.

That clarification would be especially helpful if the Department retains the Complexity factor. The question should not be whether every committee member independently arrived at the same depth of understanding. The question should be whether the committee, acting through a prudent process, had enough information and expertise to evaluate the investment option. Committee members should be able to rely on one another, just as fiduciaries may rely on outside advisers and other experts when appropriate.

AIC therefore recommends adding language to the safe-harbor subsection and, if retained, to the Complexity factor confirming that fiduciary committee members may reasonably rely on the experience and expertise of other committee members when doing so is prudent under the circumstances. This clarification would align the rule with how defined-contribution plans are actually governed and avoid unnecessary litigation over whether each individual committee member personally internalized every aspect of the committee's analysis.

> (f) *Safe harbor.* Paragraphs (g) through ~~(l)~~ (k) of this section set forth a non-exhaustive list of factors …. When a plan fiduciary does so, following the process described in paragraphs (g) through ~~(l)~~ (k) with respect to such factors, which may include relying on recommendations of a prudently selected investment advice fiduciary within the meaning of section 3(21)(A)(ii) of ERISA with respect to a particular factor or factors, or prudently delegating compliance with respect to a particular factor or factors to an investment manager within the meaning of section 3(38) of ERISA, or relying on the experience and expertise of another member of an investment committee, then the plan fiduciary's judgment with respect to the particular factor or factors, including the relationship between the factors, is presumed to have met the duties under section 404(a)(1)(B) of ERISA of such fiduciary and is entitled to significant deference.
>
> (*l*) *Complexity.* If the ~~The~~ plan fiduciary ~~must appropriately consider the complexity of the designated investment alternative and determine that it has~~ lacks the skills, knowledge, experience, or ~~and~~ capacity to ~~comprehend it sufficiently to~~ discharge its obligations under ERISA and the governing plan documents with respect to a designated investment alternative, the plan fiduciary should ~~or whether it must~~ seek assistance from a qualified investment advice fiduciary, investment manager, or other individual, including another member of an investment committee.

At minimum, the Department should revise Example 1 in the Complexity factor subsection so that it does not create unintended implications for the review of fees. As written, the example could be read to suggest that plan fiduciaries or their advisers must directly examine the detailed fee calculations for each underlying investment in a target-date fund, asset-allocation fund, or similar product. It also could be read to suggest that DIA managers must "internalize" the fees of underlying vehicles. Neither of these should be required or suggested as necessary for a plan fiduciary to act in a prudent manner.

The Department should not create a preference for or against any particular fee or compensation structure. As with other factors, the relevant question should be whether the fiduciary used a prudent process to evaluate whether the fees are reasonable in light of the product's expected value and role in the plan menu. For multi-asset products, it should be sufficient for a plan fiduciary or its adviser to receive and evaluate a written explanation of how fees are determined, including how underlying fees are reflected in the overall cost of the product.

AIC therefore suggests that the Department revise Example 1 as follows:

> … (ii) *Analysis.* As described in more detail in paragraph (h), the fiduciary should ~~must~~ determine that the fees and expenses of the designated investment alternative are appropriate, taking into account the designated investment alternative's risk-adjusted expected returns and any other value the designated investment alternative brings to furthering the purposes of the plan. In order to make this determination, the plan fiduciary must comprehend the fees that will be charged to the plan and determine, within its discretion, that such fees are appropriate given the value proposition offered by the designated investment alternative.
>
> (iii) *Conclusion.* A plan fiduciary is deemed to have met the comprehension requirements of paragraph (l) of this section, and section 404(a)(1)(B) of ERISA, with respect to the complexity of a designated investment alternative's fee structure if it receives from the designated investment alternative manager an explanation of relevant fees, and understands the fees being charged. In reaching this understanding, the plan fiduciary may rely on the advice and expertise of financial professionals or experts, including other plan fiduciaries~~in either of the two following scenarios~~. [Delete the rest of the "Conclusion" subparagraph.]

It also would be helpful for the Department to include examples that demonstrate how a fiduciary could use a step-by-step approach to evaluate a more complex product such as target-date funds or other multi-asset vehicles, with or without reliance on a qualified investment adviser. AIC offers two examples below, one involving a target-date fund that invests only in public securities and another involving a target-date fund that invests in both public securities and private assets. If the Department adopts these or similar examples, it should expressly state that they are

merely illustrative of acceptable approaches to assessing particular products and, therefore, are not meant to establish required processes to access the safe harbor.

(3) *Example. Complexity; Public Asset Target Date Fund—(i) Facts.* In connection with selecting a new target date fund series ("TDF") that does not invest in alternative assets (the "Public Asset TDF") to be added as a designated investment alternative on a 401(k) plan's investment menu, to objectively, thoroughly, and analytically consider (and make determinations with respect to) each of the factors listed in paragraphs (g) through (l) of this section, the named fiduciary identifies at least three other target date funds with comparable risk profiles based on the stated investment glidepaths of the respective funds (the "Comparator Public Asset TDFs"). In determining which other TDFs are Comparator Public Asset TDFs, the fiduciary determines that it should compare the risk profiles of each fund considered as a comparator. Because the named fiduciary determines it does not have the expertise to conduct this comparison, it retains the assistance of an investment professional (which may or may not be a 3(21) fiduciary) to identify which other TDFs should be included as Comparator Public Asset TDFs. Other than as the named fiduciary deemed necessary to assist it in determining the appropriate Comparator Public Asset TDFs, the named fiduciary concludes that it has the knowledge and experience to evaluate whether the Public Asset TDF should be selected as a potential designated investment alternative. The named fiduciary of the plan determines that the liquidity and valuation components of the safe harbor are satisfied with respect to the Public Asset TDF based on the nature of the assets held in the Public Asset TDF but without assessing the individual underlying vehicles through which the Public Asset TDF holds its assets. To assess the performance of the Public Asset TDF, the named fiduciary compares the performance of the Public Asset TDF over such different time periods as the fiduciary determines to be appropriate under the circumstances to conduct a reasonable comparison with the Comparator Public Asset TDFs. To assess whether the fees charged with respect to investments in the Public Asset TDF are appropriate and consistent with the services provided, the named fiduciary compares the historical and target performance of the Public Assets TDF, net of fees, against the historical and target performance of the Comparator Public Asset TDFs, net of fees. The named fiduciary also benchmarks the Public Asset TDF against each of the Comparator Public Asset TDFs.

(ii) Analysis. The plan fiduciary should conduct a thorough, well-documented diligence process that examines the designated investment alternative as a whole. Where the designated investment alternative is a target date fund or other asset allocation or pooled vehicle, the plan fiduciary is not required to determine that

each factor is independently satisfied with respect to each vehicle through which the designated investment alternative holds its assets.

(iii) Conclusion. Because the fiduciary followed an objective, thorough, and analytical process and considered and made determinations on each applicable factor in paragraphs (g) through (l) of this section in selecting the Public Asset TDF as a designated investment alternative, the fiduciary's judgment with respect to the particular factors is presumed to have met the duties under section 404(a)(1)(B) of ERISA and is entitled to significant deference under the proposed safe harbor.

(4) *Example. Complexity; Target Date Fund Including Private Assets—(i) Facts.* The manager of the Public Asset TDF also establishes the TDF described in Example (g)(3) (the "Partial Alternative Asset TDF"), in which the manager intends to invest in alternative assets (the "Alternative Asset Component"). The assets of the Partial Alternative Asset TDF not invested in alternative assets are intended to be invested in publicly traded securities. The named fiduciary evaluates whether to offer the Partial Alternative Asset TDF as a designated investment alternative shortly following the inception of the Partial Alternative Asset TDF. The named fiduciary determines that there are no other TDFs with a sufficient history of investments in alternative assets to serve as a like-to-like comparator to the Partial Alternative Asset TDF. Accordingly, the named fiduciary compares the Partial Alternative Asset TDF to the Public Assets TDF and the Comparator Public Asset TDFs to assist in informing its evaluation. The named fiduciary also apprises itself of the process and criteria the designated investment alternative manager used to select the manager of the Alternative Asset Component, and the basis for that selection. Additionally, the named fiduciary considers the impact the Alternative Asset Component is expected to have (if any) with respect to each of the safe harbor factors in the context of the Partial Alternative Asset TDF as a whole. In doing so, the named fiduciary relies on information provided by the manager of the Partial Alternative Asset TDF, publicly available information pertinent to the assessment, and/or on the advice of another investment professional identified in Example 1 above. Following this review, the named fiduciary determines that the anticipated benefits to the plan participants of having the Partial Alternative Asset TDF as a designated investment alternative, in lieu of or in addition to the Public Asset TDF or any of the Comparator Public Asset TDFs, support the determination that adding the Partial Alternative Asset TDF as a designated investment alternative is in the best interests of the plan participants.

(ii) Analysis. Section 404(a)(1)(B) of ERISA does not require or restrict any specific type of designated investment alternative. There is no *per se* rule regarding investment in alternative assets generally or the inclusion of private market

investments. The named fiduciary may consider and select a designated investment alternative that holds interests in alternative assets and will be entitled to a presumption of prudence under the safe harbor as long as it objectively, thoroughly, and analytically considers and makes determinations on the applicable factors.

(iii) Conclusion. The fiduciary followed an objective, thorough, and analytical process and considered and made determinations on each applicable factor in paragraphs (g) through (l) of this section in selecting the Partial Alternative Asset TDF as a designated investment alternative. In doing so, it recognized that additional diligence was appropriate with respect to the Alternative Asset Component, and apprised itself of the identity of the manager of the Alternative Asset Component and the process and criteria the designated investment alternative manager used in selecting the manager of the Alternative Asset Component (including the experience, historical and target performance, and scale of the manager of the Alternative Asset Component), and of the impact that the Alternative Asset Component is projected to have (if any) with respect to each of the safe harbor factors in the context of the designated investment alternative as a whole. The fiduciary's judgment with respect to the Partial Alternative Asset TDF as a whole is presumed to have met the duties under section 404(a)(1)(B) of ERISA and is entitled to significant deference under the proposed safe harbor.

C. Fiduciaries Should Generally Evaluate The Designated Investment Option, Not Every Asset Class.

The Department should make clear that fiduciaries ordinarily evaluate the DIA as a whole. That clarification is especially important for target-date funds, asset-allocation funds, balanced funds, managed accounts, and similar products.

Those products are composed of many underlying investments. A target-date fund, for example, may hold public equities, fixed income, cash, private-market investments, and other assets.[133] The fiduciary's job is to evaluate whether the DIA is a prudent investment option for the plan menu. The fiduciary is not expected to separately evaluate every underlying asset or sleeve of the DIA, as though each were a separate investment alternative. Nor are fiduciaries expected to have the same degree of financial acumen as the manager of the DIA who was hired to provide plan services.

A contrary rule would be burdensome and unnecessary. Indeed, taken to its logical conclusion, a fiduciary who selected a target-date fund that invests in an S&P 500 index fund would have to evaluate all 500 companies. This approach would also discourage the use of diversified products that are designed to simplify investment decisions for participants.

[133] *See Target Date Retirement Funds – Tips for ERISA Plan Fiduciaries*, *supra*.

Participants do not select each underlying holding in a target-date fund. They select (or are defaulted into) the target-date fund itself. The fiduciary should therefore be able to focus on the process used to evaluate that fund as a whole, including the experience of the target-date fund's manager, the target-date fund's strategy, its expected performance, and its fees, liquidity, and valuation process.

That does not mean fiduciaries should ignore the product's underlying investments. The fiduciary should understand the DIA's investment strategy (e.g. whether it is passive or active), the types of assets in which it is invested (e.g. public equity, public debt, alternatives, including those investments' risk characteristics), the general qualifications and reputation of the managers of underlying investments, and those underlying investments' historic performance over an appropriate time period relative to other comparable investments. But the final rule should not impose a rigid "look-through" requirement that forces fiduciaries to conduct a full separate review of every underlying asset, fund, or portfolio company, duplicating the efforts of the manager of the DIA hired to make those decisions.

The Department should state clearly that, for multi-asset products, the relevant DIA is the plan-level investment option. That clarification would reduce unnecessary litigation risk and align the rule with how these products are actually selected and used in defined-contribution plans. AIC suggests that the Department include the following language in subsection (f):

> (f) *Safe harbor.* Paragraphs (g) through (l) of this section set forth a non-exhaustive list of factors, when applicable, that a plan fiduciary that is responsible for establishing and maintaining a plan investment menu of designated investment alternatives for a participant-directed individual account plan must objectively, thoroughly, and analytically consider, and make determinations on, when selecting each such designated investment alternative for the plan investment menu. These factors apply to the plan fiduciary's consideration of a designated investment alternative as a whole; the factors do not, for example, require a plan fiduciary to apply the factors to each underlying asset included in an asset allocation fund. ….

D. The Safe Harbor Should Be Clear and Reliable.

The safe harbor will work only if fiduciaries can rely on it. If the final rule leaves uncertainty about whether the safe harbor has been satisfied, that uncertainty will create litigation risk, undermining the rule's purpose.

The Department should therefore clarify that an objective, thorough, and analytical evaluation of the listed factors is sufficient to satisfy ERISA's fiduciary duty of prudence in ordinary cases. The factors cover the core issues a prudent fiduciary would consider when selecting a DIA. The final rule can and should remain flexible and non-exhaustive, but fiduciaries should not be left to guess whether considering the listed factors is enough in the mine-run of

cases. That clarification would preserve the Department's longstanding position that fiduciaries must consider facts and circumstances they "know are relevant to the particular investment," while preventing the safe harbor from being diluted by litigation over peripheral or invented considerations.[134] A fiduciary that carefully considers the listed factors and makes a reasoned decision should receive the protection of the safe harbor absent unusual facts requiring additional inquiry.

The Department should also clarify that the rule's examples are examples only. They should not be treated as mandatory checklists, minimum requirements, or the only acceptable way to satisfy the duty of prudence. That clarification is important because regulated parties and litigants sometimes treat safe harbors as establishing hard-and-fast rules, even when they were intended to provide one path to compliance.[135] If the examples are read too rigidly, plaintiffs may argue that a fiduciary acted imprudently simply because it did not follow an example word for word, even if the fiduciary used a different but equally reasonable process. The final rule should avoid that result by stating that neither the safe harbor nor the examples establish minimum requirements. The Department could borrow from the existing safe harbor for selecting annuity providers for individual account plans, which provides that the safe harbor "is not the exclusive means" of satisfying ERISA's fiduciary duties.[136]

V. The Department Should Address Fiduciaries' Monitoring Duties In A Separate Rulemaking Following The Adoption Of The Proposed Rule.

AIC urges the Department to codify a monitoring safe harbor in a separate rulemaking following the adoption of the Proposed Rule. As the Department recognized, ERISA fiduciaries have a continuing duty to monitor plan investments and remove imprudent options.[137] That duty is separate from the duty to prudently select investments in the first instance. But, as the Department recognized, the basic process is similar.[138] A fiduciary monitoring a DIA should review the relevant facts, consider the same kinds of factors that were considered when the investment was selected, and decide whether the investment option remains appropriate for the plan.

AIC appreciates the Department's intention to issue "interpretive guidance in the near term concerning fiduciary obligations under ERISA to monitor designated investment alternatives

[134] 29 C.F.R. § 2550.404a-1(b)(1)(i); 91 Fed. Reg. 16136 (proposed § 2550.404a-6(e)).

[135] *See* Susan C. Morse, *The Truth About Safe Harbors*, 92 Tenn. L. Rev. 743 (2025) (describing the tendency for specific safe harbor provisions to be treated like minimum requirements).

[136] 29 C.F.R. § 2550.404a-4(a)(2).

[137] 91 Fed. Reg. at 16093-94; *see Tibble v. Edison International*, 575 U.S. 523, 529 (2015); *see also Hughes*, 595 U.S. at 175-77.

[138] 91 Fed. Reg. at 16094

following their inclusion on a plan's investment menu."[139] But a codified monitoring safe harbor would be more stable across administrations (as shown by the Department's shifting guidance in 2020, 2021, and 2025) and would be given more weight by courts under *Skidmore*.[140] The Department thus should propose a rule addressing monitoring as soon as possible after completing this pending rulemaking.

* * *

For the foregoing reasons, AIC respectfully urges the Department to finalize the Proposed Rule, with the revisions described above. The Rule is an important step toward ensuring that fiduciaries may evaluate DIAs—including those with private market exposure—under a clear, process-based, and genuinely asset-neutral standard. A final rule along these lines would help expand access to investment opportunities that can strengthen Americans' retirement security, reduce unnecessary litigation risk, and preserve room for prudent innovation.

Sincerely,

/s/ Shelby Telle

Deputy General Counsel
American Investment Council

[139] *Id.*

[140] *See, e.g.*, *In re Bernard L. Madoff Inv. Sec. LLC*, 779 F.3d 74, 82 (2d Cir. 2015); *Seaview Trading, LLC v. Comm'r of Internal Revenue*, 858 F.3d 1281, 1285 (9th Cir. 2017); *Mellow Partners v. Comm'r of Internal Revenue Serv.*, 890 F.3d 1070, 1079 (D.C. Cir. 2018).

AIC Comment Letter
Exhibit A

Fiduciary Duties in Selecting Designated Investment Alternatives: Opportunities and Considerations

David T. Robinson, Ph.D.[*]

JUNE 1, 2026

[*] I am the James and Gail Vander Weide Professor of Finance at Duke University's Fuqua School of Business. I am also a Research Associate at the National Bureau of Economic Research. The American Investment Council has provided funding for this project.

Table of Contents

I. Introduction and Executive Summary

1. Millions of Americans rely on 401(k) and other defined contribution ("DC") plans as their primary retirement savings vehicle. At present, these plans usually do not offer participants the option to diversify into private capital investments. As part of its "Fiduciary Duties in Selecting Designated Investment Alternatives" proposal (the "Proposed Rule"), the Department of Labor ("DOL") aims to expand access to private capital investments by clarifying fiduciary requirements under the Employee Retirement Income Security Act of 1974 ("ERISA").[1] In this comment letter, I evaluate the potential benefits to DC plan participants from receiving access to private capital investments, focusing primarily on private equity and private credit.[2]

2. I first provide historical background on the development of private capital markets. Since the 1980s, private capital markets have experienced exceptional growth. A growing share of companies are forgoing public equity and debt markets in favor of being financed in the private markets. During this period, institutional investors, including pension plans, have been the primary investors in private capital. At the same time, the predominant retirement savings vehicle for U.S. workers has shifted from pension plans to DC plans. Taken together, these trends mean a growing number of retirement savers have become locked out of this expanding asset class while other investors have been increasing their allocation to capture its benefits.

3. Next, I draw on academic literature to provide an overview of private capital's historical performance relative to public markets. I explain that academic studies analyzing private markets have found private equity and private credit funds have historically outperformed public markets on a net-of-fee basis. I further explain the outperformance of private capital persists in the literature even after controlling for differences in risk between public and private assets. I also discuss the drivers of value creation for private capital identified by academic literature, focusing on operational and governance optimizations. As explained by the literature, the unique ownership model in private capital investments helps explain their superior performance.

---

[1] Proposed Rule Summary, § 1 ("ERISA gives fiduciaries…the discretion and flexibility to determine when designated investment alternatives, including those that contain alternative investments, offer the opportunity for participants to maximize risk-adjusted returns on their retirement assets net of fees.").

[2] I focus my commentary on private equity and private credit as these assets are the primary focus of my academic research. My omission of other types of private capital assets, such as private real estate, is not meant as a negative commentary on their suitability for retirement investors.

4. I then present my own empirical analysis examining the performance of private markets. Consistent with the literature on private capital, I find that private assets produce attractive returns, outperforming public markets net of fees on both an absolute and risk-adjusted basis. My analysis finds that this outperformance persists through time, as private equity funds have outperformed public markets net of fees in 26 of 31 vintage years between 1990 and 2020. Indeed, after controlling for the impact of certain stocks that have become disproportionate drivers of public index performance, I find private equity funds outperformed public markets net of fees in 29 of 31 vintage years.

5. The sustained historical outperformance of private capital means that a portfolio containing a mix of private-public assets can experience meaningful excess savings relative to a public-only portfolio over a long-term investment horizon, such as that of an investor saving for retirement. I illustrate the excess savings retirement savers might expect to receive from investing in retirement vehicles that incorporate private capital through a series of portfolio simulation analyses. As an illustrative example, I show that allocating just 15% of portfolio funds to private capital would generate significant long-term savings benefits for DC plan participants relative to investing exclusively in public markets. In particular, my simulation finds a 26% median increase in total retirement savings for target date fund investors from allocating 15% of funds to private capital and a 25% median increase in retirement savings for allocation fund investors.

6. Finally, I also show that DC plans can meet their liquidity needs while still permitting retirement investors to benefit from private capital's superior performance. Using historical plan filings, I establish that plan liquidity needs typically represent a small fraction of plan assets. I further show that DC plans should be able to meet extraordinary levels of withdrawals without running out of liquid assets.

7. In sum, as shown by my empirical analysis, and confirmed by findings from academic literature, private capital investments have historically produced attractive risk-adjusted returns for investors, outperforming public markets net of fees. Thus, for retirement savers who have historically been restricted from investing in private markets through DC plans, gaining access to these markets can thus help these investors earn higher risk-adjusted returns while potentially improving the diversification of their investment portfolios.

II. Background on Private Asset Markets

A. The History of Professional Private Capital in the U.S.

8. In this section, I trace the emergence of private capital as an asset class. Professionally managed private capital traces its origins to the late 1940s. Following changes in the regulatory environment during the 1970s, private capital in its modern form grew rapidly in the ensuing decades. Since the turn of the century, macroeconomic conditions and regulatory developments have led to further growth in this asset class.

1. Origins of the Modern Private Capital Firm

9. The origins of professionally managed private capital can be traced to the post-World War II era. Academic literature documents that this period was marked by "intense concern" about the "rate of new business formation and the unavailability of long-term financing for new ventures."[3] In 1946, the American Research and Development Corporation ("ARD"), an early private investment vehicle, was created as "a private-sector solution to the lack of financing for new enterprises and small businesses."[4] ARD pursued three innovative strategies relative to existing capital providers: first, it focused on raising capital from institutional investors rather than wealthy individuals; second, it sought to provide managerial expertise, in addition to capital, to new businesses; and third, it hired its own staff of professional managers for identifying new venture investments.[5] Despite these innovations, ARD failed to attract significant interest from institutional investors, raising only $7.4 million (in nominal dollars) of funding in its first thirteen years.[6]

10. The structure of the modern private capital firm, namely the limited partnership fund, emerged in the 1960s. Under the traditional limited partnership fund ownership structure,

---

[3] George W. Fenn et al., "The Private Equity Market: An Overview," *Financial Markets, Institutions & Instruments* 6, no. 4, 1997 ("Fenn et al. (1997)"), p. 10. *See also* David H. Hsu, and Kenney, Martin, "Organizing Venture Capital: The Rise and Demise of American Research & Development Corporation, 1946–1973," *Industrial and Corporate Change* 14, no. 4, 2005, pp. 579–616 ("Hsu and Kenney (2005)") at 580 ("ARD's promoters believed that two developments had combined to cut off the supply of risk capital to new firms. The first development was the implementation of New Deal financial system reforms, which dramatically increased income taxes and reorganized the financial system in a way that dampened private investment in high-risk ventures. The second development was the rise of investment trusts (progenitors of mutual funds) that provided safe, conservative investments that may have crowded out higher risk investments.").

[4] Fenn et al. (1997), p. 10 (emphasis removed). *See also* Hsu and Kenney (2005), p. 580.

[5] Fenn et al. (1997), p. 10.

[6] Fenn et al. (1997), p. 12.

investors in a private capital fund are either General Partners ("GPs") or Limited Partners ("LPs").[7] **Figure 1** below illustrates this traditional limited partnership fund structure. LPs provide funding that the GPs (*i.e.*, the private capital firm) use to make investments in private companies or public companies taken private. Historically, LPs in private capital partnerships typically are large, sophisticated institutional investors (*e.g.*, pension funds, sovereign wealth funds, insurance companies, or university endowments) or accredited investors.[8] GPs also invest their own capital, in addition to the capital from LPs, in the fund. In addition to selecting the fund's investments, GPs monitor and manage investments after acquisition.[9] In return for managing the fund's investments, GPs receive compensation from LPs. The traditional fund GP compensation structure involves a management fee based on a percentage of capital committed from LPs to the fund and carried interest based on a percentage of the fund's investment returns.[10]

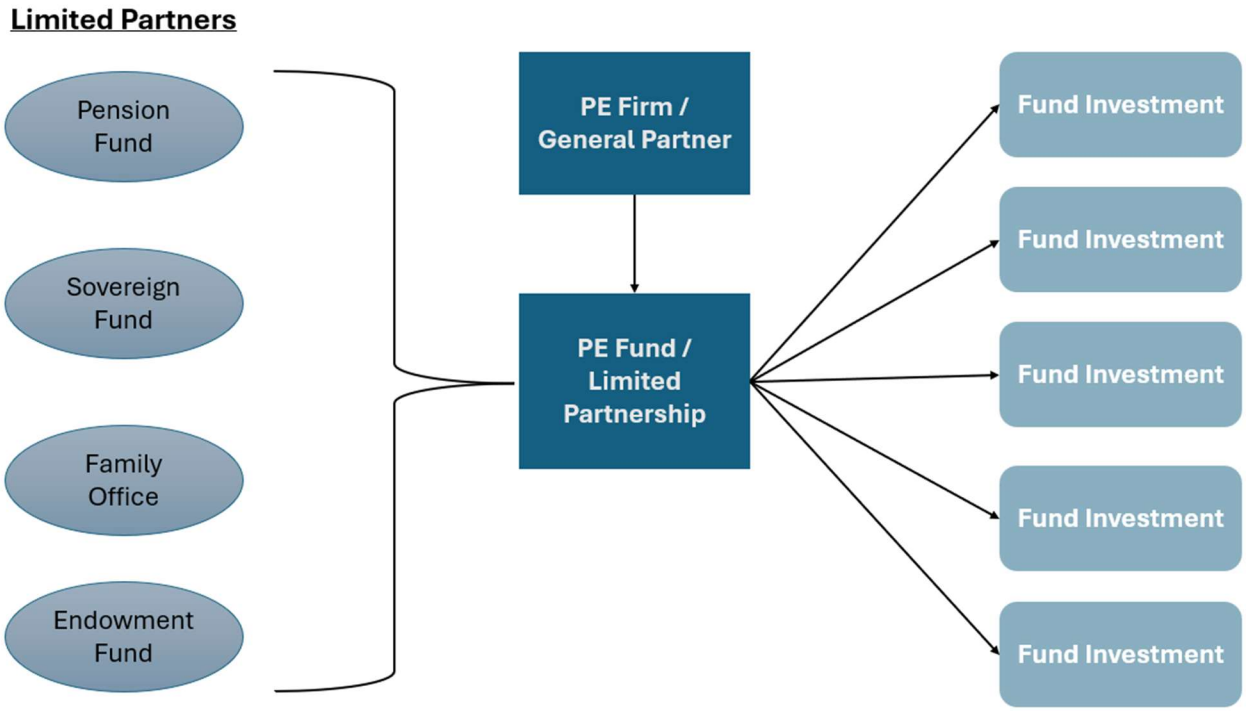
[7] David P. Stowell, *Investment Banks, Hedge Funds, and Private Equity,* Third Edition, 2018 ("Stowell (2018)"), p. 419 ("A private equity fund is usually structured as a limited partnership that is owned jointly by a private equity firm (General Partner (GP)) and other investors such as pension funds, insurance companies, high net-worth individuals, family offices, endowments, foundations, fund of funds, and sovereign wealth funds (all of which are Limited Partners (LPs)). The GP manages and controls the private equity fund.").

[8] For a breakdown of limited partners by type, *see* Stowell (2018), p. 348.

[9] Stowell (2018), pp. 413 ("Governance engineering refers to initiatives by private equity firms to create value in portfolio companies by improving incentives and creating monitoring processes that focus on improvements in cash flow through cost reductions and increases in revenues."), 416 ("Private equity owners are fully enfranchised in all key management decisions because they appoint their partners as nonexecutive directors to the company's board and sometimes bring in their own managers to run the company. … [I]nvestors expect private equity managers to take an active role in corporate governance to create incremental value.").

[10] Management fees provide a base level of compensation to general partners for management of the partnership. A common management fee is 2% of committed or unreturned capital. Carried interest share limited partner investment profits with general partners, incentivizing general partners to maximize fund returns. A common carried interest fee paid to general partners is 20% of the profits above returned capital. *See* David T. Robinson, and Sensoy, Berk A., "Do Private Equity Fund Managers Earn Their Fees? Compensation, Ownership, and Cash Flow Performance," *The Review of Financial Studies* 26, no. 11, 2013, pp. 2760–2797 at 2761 ("The typical fund follows a '2/20/1' rule: a management fee of 2% per year, carried interest (carry) of 20%, and GP ownership of 1% of the total fund size."); Andrew Metrick, and Yasuda, Ayako, "The Economics of Private Equity Funds," *The Review of Financial Studies* 23, no. 6, 2010, pp. 2303–2341 at 2310–2311 ("The most common initial [management] fee level is 2%... The overwhelming majority of funds—including all 144 BO funds—use 20% as their carry level.").

FIGURE 1
Traditional Limited Partnership Structure



11. The institutional arrangements of traditional closed-end, drawdown funds present unusual liquidity considerations for ordinary investors. The lifecycle of such a fund typically spans at least ten years,[11] with contracted provisions that often extend the partnership several years further,[12] and is driven by the longer timeline needed (relative to public markets) to make private investments. Typically, LPs commit capital at the inception of the fund, but do not provide capital until GPs have identified specific investment opportunities. Once commitments are secured, a GP may draw down committed capital during the first few years of a fund's life as it makes investments in portfolio companies.[13] These drawdowns do not necessarily occur at a pre-specified time, which means that traditional LPs need to be able to provide cash at unexpected times. The GP then holds investments in the fund for a period (often spanning several years)

[11] Private credit funds are typically shorter in duration, usually five to seven years. *See* "Primer: What Is Private Credit & Direct Lending?" *Managed Funds Association*, accessed May 27, 2026, accessible at https://www.mfaalts.org/industry-research/primer-what-is-private-credit-direct-lending/.
[12] Fenn et al. (1997), p. 46 ("Each partnership has a contractually fixed lifetime, generally ten years, with provisions to extend the partnership, usually in one- or two-year increments up to a maximum of four years.").
[13] Fenn et al. (1997), p. 46 ("During the first three to five years the partnership's capital is invested.").

before selling its positions and ultimately liquidating the fund.[14] Because the fund's exit from its investments is partially driven by market conditions, LPs traditionally face uncertainty on the timeline for receiving distributions and the return of invested capital. Liquidity arrangements like this may not be well suited for typical retail investors. However, through my discussions with industry practitioners actively designing products for retail investment, I understand that retail investment products will not generally operate with the same liquidity features.[15] Rather, I understand private capital funds open to retail investment will typically be structured as evergreen funds.

12. "Evergreen" funds emerged in recent decades as an alternate vehicle for investing in private capital, attracting significant amounts of investor interest since the mid-2010s.[16] Examples of such investment vehicles include certain Business Development Companies ("BDC"),[17] real estate investment trusts ("REITs"), interval funds,[18] and tender offer funds.[19] Unlike traditional private capital funds, evergreen funds do not return capital to investors at the end of a fixed term. Instead, evergreen funds periodically raise capital from investors, selling shares at the net asset value of the fund and in turn invest capital on a continuous, permanent basis.[20]

---

[14] I note GPs sometimes distribute intermediate cash flows to LPs before the fund's liquidation as the fund sells investments or receives dividends from investments. *See* Stowell (2018), p. 343 ("Investors sign investment contracts that lock up their money for as long as 10–12 years. Typically, however, distributions are made to investors as soon as investments are turned into cash through completion of an exit strategy such as an IPO or sale of the company.").

[15] I describe my understanding of the private capital products being designed for retirement investors in Section IV.B.

[16] Morningstar reports that evergreen funds had $530 billion assets under management in 2025, and projects that evergreen vehicles will manage $1.1 trillion in assets by 2029. *See* Juan Mier, "The Rise of Evergreen Funds: A New Way to Access Private Markets," *Morningstar*, April 10, 2026, accessible at https://www.morningstar.com/business/insights/blog/rise-of-evergreen-funds#what-are-evergreen-funds; Keith Crouch, "The Ascendance and Implications of Evergreen Funds in Private Markets," *MSCI*, 2026, accessible at https://www.msci.com/research-and-insights/blog-post/the-ascendance-and-implications-of-evergreen-funds-in-private-markets.

[17] BDCs are investment vehicles created by Congress in the 1980s that make debt and equity investments in small- and mid-sized companies. Some BDCs are publicly traded on traditional stock exchanges, allowing any investor to purchase or sell shares in a company that invests in private capital at prices that are not necessarily reflective of the underlying inherent values of such private assets. However, other BDCs only trade over the counter or in private markets, and are thus restricted to investors meeting certain eligibility requirements.

[18] "Interval Fund," *U.S. Securities and Exchange Commission*, accessible at https://www.investor.gov/introduction-investing/investing-basics/glossary/interval-fund ("An interval fund is a type of investment company that periodically offers to repurchase its shares from shareholders. That is, the fund periodically offers to buy back a stated portion of its shares from shareholders. Shareholders are not required to accept these offers and sell their shares back to the fund.").

[19] Dare Dickson, "Tender Offer Funds Description," *Charles Schwab*, December 15, 2022, accessible at https://www.schwab.com/tender-offer-funds-description ("Tender offer funds are closed-end funds that offer an unlimited number of shares, sell them on a continuous basis and, at the discretion of the fund's board of directors/trustees, may periodically offer to repurchase a certain portion of shares from shareholders.").

[20] Juan Mier, "The Rise of Evergreen Funds: A New Way to Access Private Markets," *Morningstar*, April 10, 2026, accessible at https://www.morningstar.com/business/insights/blog/rise-of-evergreen-funds#what-are-evergreen-funds.

13. Evergreen funds provide investors with exit liquidity beyond what is available in traditional closed-end private capital funds through their share repurchase programs. Evergreen funds typically hold a small share of assets in liquid investments which they can sell for cash to meet the demands of investors withdrawing capital.[21] Because of the need to facilitate investor entry and exit, reporting transparency of evergreen funds has a couple key distinctions from traditional draw-down private funds. First, evergreen funds routinely report NAV valuations to investors and file public periodic reports with the U.S. Securities and Exchange Commission.[22] Second, evergreen funds report time-weighted return performance which calculates compounded rate of returns on an investment assuming the investment is made at the beginning of a period. The time-weighted return is also reported by mutual funds, allowing prospective investors in evergreen funds to more easily compare performance across different potential investment alternatives.[23]

14. An additional advantage of the perpetual evergreen fund structure is that they continuously hold an established portfolio of private capital assets. As a result, investors in evergreen funds have their capital deployed and earning returns on private capital immediately, and those initial returns compound as they remain invested in the fund.[24] In contrast, investors in traditional draw-down funds commit uncalled capital to draw-down funds and can wait years before capital is called and begins earning returns. Academic literature suggests that this design distinction has the potential to enable stronger overall performance for evergreen funds. In a simulation assuming the underlying returns of the assets are the same, Brown and Volckmann (2025) show that investors in an evergreen fund would modestly outperform drawdown fund investors due to the immediate deployment of capital in evergreen funds.[25]

---

[21] Greg Brown, and Volckmann, William, "Evergreen vs. Drawdown Funds: Risk, Returns and Cash Flows," *Institute for Private Capital,* Working Paper, 2025 ("Brown and Volckmann (2025)"), p. 2.

[22] "Evergreen Funds," *Carta*, 2025, accessible at https://carta.com/learn/private-funds/private-equity/pe-fund-structures/evergreen-funds/ ("Many evergreen vehicles use NAV-based models, where investor entries and exits are processed at the current NAV, usually calculated monthly or quarterly. … Frequent and accurate NAV calculation required for investor entry and exit.").

[23] Pulkit Sharma et al., "Assessing the Benefits of Open-End Alternative Investments," *J.P. Morgan Asset Management*, 2024, accessible at https://am.jpmorgan.com/us/en/asset-management/institutional/insights/portfolio-insights/alternatives/assessing-the-benefits-of-open-end-alternative-investments/ ("[O]pen-end funds use time-weighted returns (TWR)—essentially the same way open-end mutual fund performance is calculated… TWR is used to measure performance in open-end alternative funds that invest in core and core-plus assets. TWR assumes all cash flows are invested at the beginning of the period and then calculates the compound rate of growth over a specified period.").

[24] Brown and Volckmann (2025), pp. 3–4.

[25] Brown and Volckmann (2025), p. 7.

15. Like traditional closed-end private capital funds, evergreen funds charge investors management fees and incentive fees, with some differences on how these fees are assessed. In particular, evergreen fund management fees are typically applied to net asset values rather than committed capital, and incentive fees are derived from rolling total returns instead of returns realized since a fund's inception.[26] Evergreen fund incentive fees can be subject to hurdle rates, requiring the fund to reach certain performance benchmarks before incentive fees are applied.[27]

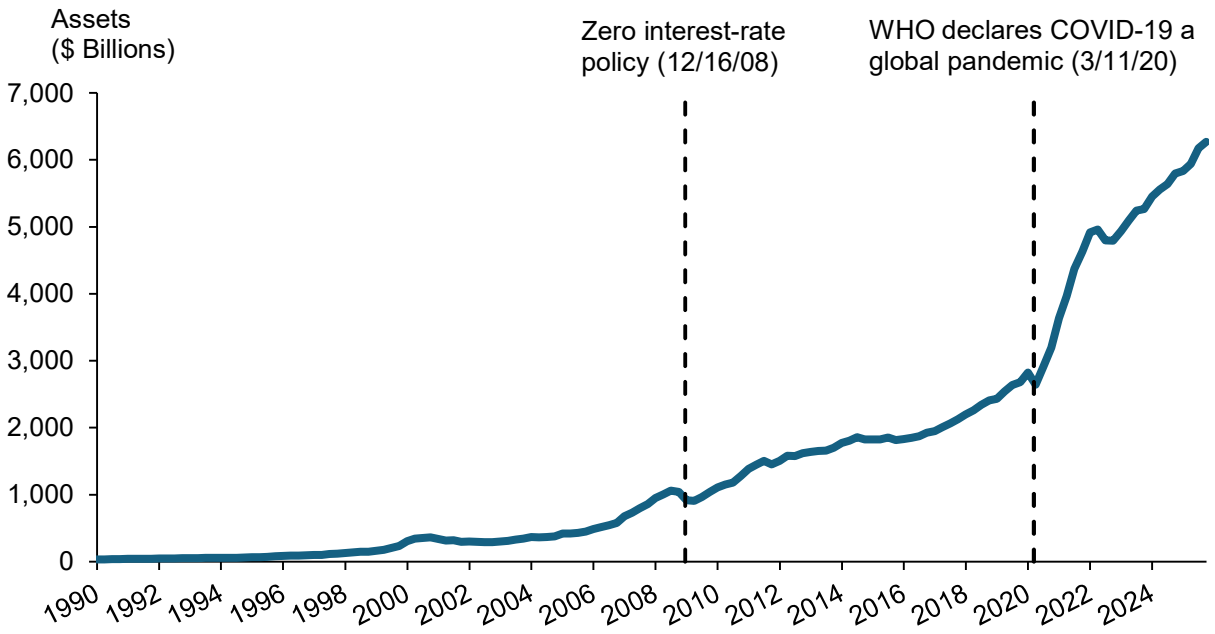
2. Private Capital as a Mainstream Asset Class

16. The modern era of growth in private equity was unlocked by a regulatory shift in the late 1970s. Given the unfavorable macroeconomic environment in the 1970s, the private equity market grew little during this decade.[28] With policymakers once again concerned about a perceived shortage of capital for new ventures, the DOL revised its interpretation of the "prudent man" provision of the Employee Retirement Income Security Act of 1974 ("ERISA").[29] Previously, this provision "had been widely interpreted as prohibiting pension fund investments in securities issued by small or new companies and venture capital funds."[30] In early 1979, the DOL adopted a rule deeming such investments permissible provided they did not put the entire portfolio at risk.[31] With these regulatory barriers gone, ERISA-regulated fiduciaries began allocating pension plan funds (defined benefit plans) to private capital almost immediately.[32] Today, public pension funds invest over 33% of assets in alternative assets (*i.e.*, private capital,

[26] Brown and Volckmann (2025), p. 2.
[27] For example, the Blackstone Private Credit Fund charges a management fee of 1.25% per annum of NAV and incentive fees equal to 12.5% of net investment income and realized gains subject to a 5% performance hurdle rate. *See* "Blackstone Private Credit Fund (BCRED) Fact Card," *Blackstone*, April 30, 2026, accessible at https://www.bcred.com/wp-content/uploads/sites/66/blackstone-secure/Fact-Card.pdf.
[28] Fenn et al. (1997), pp. 14–15.
[29] Fenn et al. (1997), p. 16.
[30] Fenn et al. (1997), p. 16.
[31] Fenn et al. (1997), p. 16.
[32] Fenn et al. (1997), p. 16.

hedge funds, and real estate).[33] Similarly, private sector union defined benefit plans on average invest 17% of their assets in alternative assets and often much more.[34]

FIGURE 2
MSCI Private Capital Asset Universe, 1990–2025



Source: *MSCI*

Note: The MSCI Private Capital Asset Universe in a given quarter is calculated as the product of the capitalization and pooled valuation of funds tracked by MSCI.

17. Since this regulatory shift, coupled with the emergence of "retail" vehicles offering exposure to an unlimited number of wealthy investors, private capital has experienced "explosive growth."[35] Commitments of private capital were $3.5 billion from 1980-1982, 2.5 times as much

[33] Keith Brainard, and Brown, Alex, "Public Funds Survey Summary of Findings for FY 2024," *NASRA*, Figure R, accessible at https://www.nasra.org/publicfundsurvey. There is dispersion among individual retirement plans on the share of assets allocated to private capital investments, with some funds allocating substantially more capital to these investments than the average. For example, the California Public Employees' Retirement System ("CalPERS") announced in 2024 that it planned to increase private market allocations to 40%, including a 17% allocation to private equity and 8% allocation to private debt. *See* "CalPERS Will Increase Private Markets Investments," *CalPERS*, March 19, 2024, accessible at https://www.calpers.ca.gov/newsroom/calpers-news/2024/calpers-will-increase-private-markets-investments.

[34] Jeremy France, "Taft-Hartley Survey," *Morgan Stanley*, p. 23, accessible at https://www.morganstanley.com/cs/pdf/MS-2025-Taft-Hartley-Survey.pdf.

[35] In conjunction with regulatory developments, Congress also enacted several pieces of legislation incentivizing the growth of the private equity industry. The Small Business Investment Incentive Act of 1980 exempted private equity firms from having to register as investment adviser subject to the Investment Company Act of 1940. The Incentive Stock Option Act in 1981 resulted in a more favorable tax treatment for stock options. *See* Fenn et al. (1997), p. 17.

as during the entire 1970s. **Figure 2** above shows the growth in value of assets held in private capital funds tracked by MSCI from 1990 to 2025. Between 1990 and 2008, the assets in private capital funds grew from $33 billion to $918 billion.

18. Private capital markets experienced substantial growth in the immediate aftermath of the global financial crisis. Following the onset of the crisis, the U.S. Federal Reserve lowered its policy rate to zero on December 16, 2008,[36] and kept it at this level for the next seven years.[37] Low interest rates following the financial crisis left many investors and financial institutions "search[ing] for yield," meaning they shifted their portfolios into assets with higher yields.[38] As shown in **Figure 2**, in the period between 2008 and 2019, private capital assets in funds tracked by MSCI grew from $918 billion to $2.8 trillion. Investment in private capital markets has continued its explosive growth since the COVID-19 pandemic, with assets in funds tracked by MSCI accelerating to $6.3 trillion in value as of September 2025.

19. In conjunction with the inflows of funds into private capital markets, the years since the financial crisis also saw a proliferation of new investment strategies in the private capital markets. In particular, infrastructure funds,[39] real estate funds,[40] growth funds,[41] and private credit funds have become well-established strategies within the broader private capital asset class.[42] As a result, investors in private markets today can get exposure to several types of assets

---

[36] Federal Reserve Board Press Release, "FOMC Statement," December 16, 2008, accessible at https://www.federalreserve.gov/newsevents/pressreleases/monetary20081216b.htm.

[37] Federal Reserve Board Press Release, "Federal Reserve Issues FOMC Statement," December 16, 2015, accessible at https://www.federalreserve.gov/newsevents/pressreleases/monetary20151216a.htm.

[38] Yoshiaki Ohshima, "Search for Yield," *Journal of Economics and Business* 115, 2021, 105981.

[39] Infrastructure funds are private market vehicles that finance physical assets that provide or support essential services. *See* Pamela Espinosa, "Infrastructure Funds: A Masterclass," *Moonfare*, May 26, 2025 ("Infrastructure funds invest in public assets and services that are essential for a functioning society, such as power, transport, water and waste. The funds benefit from consistent, long-term returns, low volatility and low correlation to the wider market, making them an attractive addition to a private equity portfolio.").

[40] Private real estate involves the ownership of a portfolio of income-producing real estate properties. *See* "An Introduction to Private Real Estate," *CAIS Group*, 2026, https://www.caisgroup.com/articles/an-introduction-to-private-real-estate ("Real estate is generally defined as tangible property consisting of land, buildings, and related structures. Private real estate is a private markets asset class focused on pooling ownership of property assets in a fund.").

[41] Private growth funds focus on relatively mature companies looking for capital to expand. *See* "Growth Capital: Definition and Use Cases," *Durity*, *Glossary*, June 12, 2025 ("Growth capital, also known as expansion capital and growth equity, is a type of private equity investment, usually a minority interest, in relatively mature companies that are looking for capital to expand or restructure operations, enter new markets or finance a significant acquisition without a change of control of the company.").

[42] Private credit allows companies, public or private, to RAISE debt without going through a public bond ISSUANCE process or traditional loan syndication process. It is often linked to traditional private equity firms. *See* David T. Robinson, and Wallskog, Melanie, "Why is Private Lending So Popular?" *National Bureau of Economic Research,* Working Paper 34617, 2026 ("Robinson and Wallskog (2026)") ("Private lending has exploded over the past two decades. To explore its rise, we focus on Business Development Companies (BDCs). We show that their growth is intimately connected to growth in private equity. Many BDCs are directly connected to large private equity organizations, and their compensation structures mirror those in private equity. BDCs not only provide debt for PE-

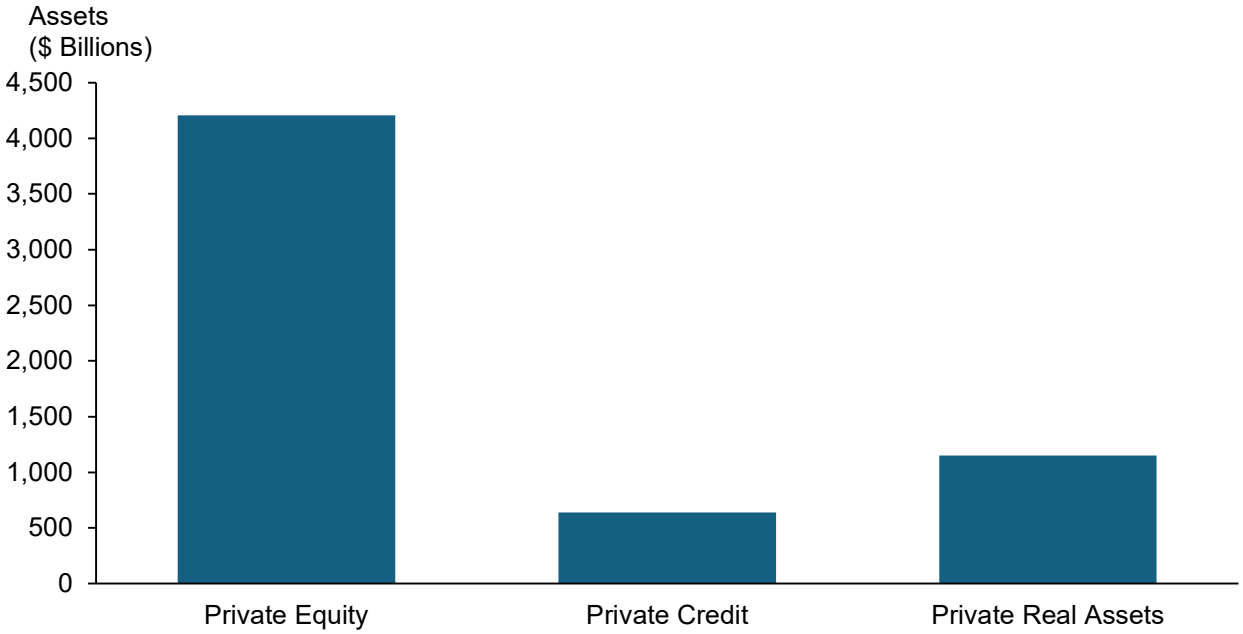
with different risk-return profiles and cash flow periodicity. For example, while buyouts were slow through the third quarter of 2025, infrastructure grew 70% on a year-on-year basis.[43] **Figure 3** below shows the valuation of assets in private capital funds tracked by MSCI as of September 30, 2025. Private equity funds comprise the largest share of private capital in the MSCI fund universe with $4.2 trillion in investments, but private credit funds and real asset funds are a significant share of MSCI-tracked private capital investments as well, holding $0.6 trillion and $1.2 trillion in assets, respectively—and other estimates suggest the private markets are significantly larger.[44]

sponsored deals, they make PE-like investments themselves involving deferred interest, preferred equity, and exposure to underlying assets.").

[43] "Preqin's Latest Global Reports Spotlight Key Private Markets Trends from 2025 and Beyond," *Financial Times Markets Data*, December 17, 2025 ("Aggregate capital raised [for infrastructure] surged 70% year-on-year in Q1–Q3 2025, making it the only asset class to surpass the full-year 2024 total in this period. The asset class has delivered annualized returns of between 9% and 11% over one-, three-, and five-years ending June 2025, emerging as a top performer within private markets in recent years.").

[44] The remaining $0.3 trillion in assets held in private funds tracked by MSCI as of September 2025 are classified as generalist funds, other funds, or unknown. I note MSCI only captures a subset of the private capital universe. As of late 2025, S&P Global forecasted that private equity investments would exceed $6.7 trillion in 2025, while private credit funds' assets under management were forecasted to be near $2.3 trillion. *See* "Private Credit Gains Ground Among Top Private Equity Managers," *S&P Global Market Intelligence*, November 2025, accessible at https://www.spglobal.com/market-intelligence/en/news-insights/articles/2025/11/private-credit-gains-ground-among-top-private-equity-managers-94290783.

FIGURE 3
MSCI Private Capital Asset Universe, September 30, 2025



Source: *MSCI*

Note: The MSCI Private Capital Asset Universe in a given quarter is calculated as the product of the capitalization and pooled valuation of funds tracked by MSCI.

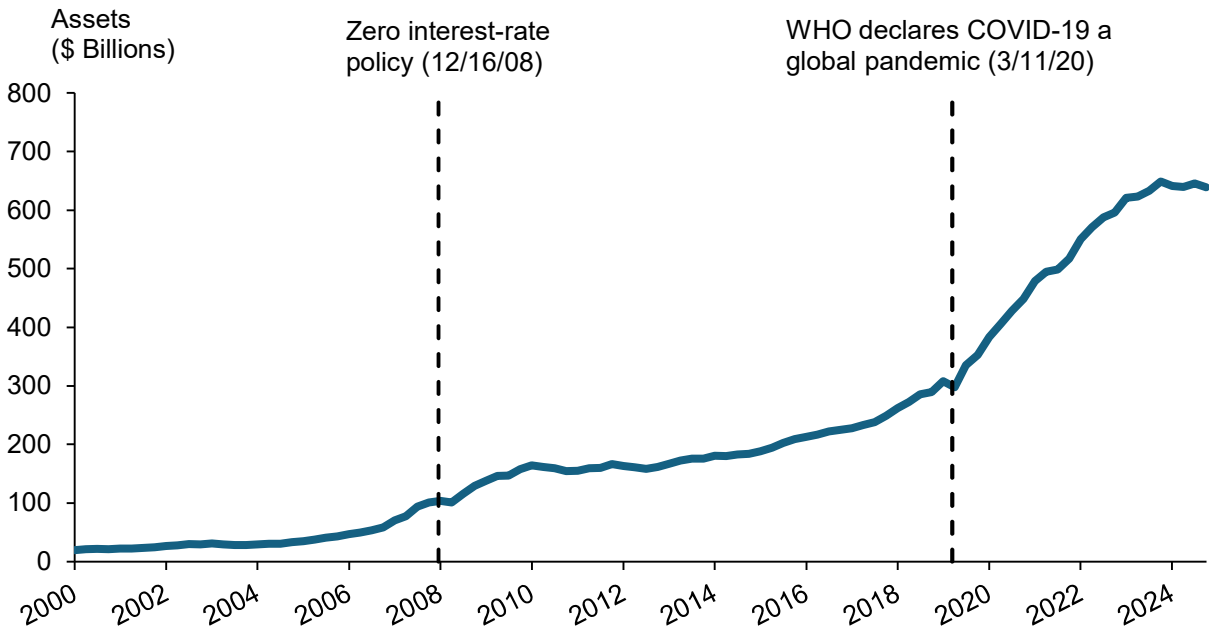
20. Private credit in particular has been the subject of recent academic focus as a growing number of companies rely on private credit markets to fund their businesses, bypassing the public syndicated loan markets. This shift accelerated after the 2008 financial crisis when traditional banks curtailed lending to middle-market and other companies perceived as riskier, and private credit emerged as an alternative source of capital.[45] Private credit has also become an important source of debt funding for private equity investments, contributing to growth in the asset class in tandem with private equity growth.[46] These shifts are highlighted in **Figure 4**, which shows the private credit fund assets tracked by MSCI between 2000 and 2025. During

[45] "Evolution of Direct Lending," *Morgan Stanley*, 2026, accessible at https://www.morganstanley.com/im/publication/insights/articles/article_evolutionofdirectlending.pdf ("Historically, corporate borrowers have looked to banks for their lending needs. However, the number of US banks declined by 75% between 1986 and 2025. Much of that consolidation occurred in the years following the Global Financial Crisis ('GFC') in 2008, as regulations and increasingly conservative lending policies among banks reduced their willingness to lend. As a result of these changes, the market opportunity for Private Credit has evolved over the last several decades as private lenders have stepped in to fill the need for capital.").

[46] "Evolution of Direct Lending," *Morgan Stanley*, 2026, accessible at https://www.morganstanley.com/im/publication/insights/articles/article_evolutionofdirectlending.pdf ("To address the growing debt capital need from private equity, Direct Lending has become a source of funding for private equity sponsors.").

this period, private credit fund assets grew from a niche asset class into an important market, with managed assets, as tracked by MSCI, increasing from near zero to over $600 billion.[47]

FIGURE 4
MSCI Private Credit Asset Universe, 2000–2025



Source: *MSCI*

Note: The MSCI Private Capital Asset Universe in a given quarter is calculated as the product of the capitalization and pooled valuation of funds tracked by MSCI.

B. Rise of Defined Contribution Plans

21. Understanding the role of private capital in DC plans requires first understanding important trends in retirement savings vehicle usage over the past half century. Since the 1980s, the landscape of retirement savings has undergone a fundamental transformation from being dominated by defined benefit ("DB") plans (*e.g.*, traditional pension plans) to DC plans (*e.g.*,

[47] As noted above, MSCI only tracks a subset of the private credit universe. Other estimates have private credit assets under management exceeding $2 trillion in 2025. *See* "Private Credit Gains Ground Among Top Private Equity Managers," *S&P Global Market Intelligence*, November 2025, accessible at https://www.spglobal.com/market-intelligence/en/news-insights/articles/2025/11/private-credit-gains-ground-among-top-private-equity-managers-94290783.

401(k) plans).[48] One of the key differences between DB and DC plans is in which entity is responsible for the selection and allocation of the plan's assets. Whereas the plan sponsor is responsible for investment decisions in DB plans, investment decisions in the DC plan are made by the participant (typically from a curated list of options).[49]

22. A significant share of U.S. workers today rely on DC plans for their retirement savings. Since the 1980s, DC plans have become the most common vehicle for retirement savings for private-sector employees in the U.S. Following regulatory changes in the 1970s and 1980s aimed at solidifying the solvency of pension plans, DB plans have become relatively rare for private-sector workers in the U.S.[50] The U.S. Bureau of Labor Statistics estimates that whereas "[s]eventy percent of private industry workers had access to defined contribution plans" as of 2025, only "14 percent had access to defined benefit plans."[51] Consistent with these trends, active participation—*i.e.*, being employed by the plan sponsor and earning credit under the plan—in private-sector DB plans in the U.S. peaked in 1984 at 30.1 million active participants and has since shrunk by two thirds, amounting to only 11.1 million participants in 2023 (**Figure 5** below).[52] In contrast, during the same 1984–2023 period, participation in DC plans grew from 30.5 million active participants to 96.4 million participants.[53] The shift in the retirement

[48] As their respective names indicate, DB and DC plans differ from each other by the type of guarantee they confer on the plan participant. Under a DB plan, the plan participant receives as retirement income a defined benefit (*i.e.*, a guaranteed payment amount) while in retirement. Under a DC plan, the employer contributes a defined amount towards the plan participant's retirement during the savings accumulation phase, but the employer is not responsible for guaranteeing the amount of income that the participant receives in retirement. *See* "Types of Retirement Plans," *U.S. Department of Labor*, September 2023 ("A defined benefit plan promises a specified monthly benefit at retirement... A defined contribution plan, on the other hand, does not promise a specific amount of benefits at retirement.").

[49] When a DC plan participant fails to provide investment direction for their account, their contributions are automatically allocated to the plan's qualified default investment alternative ("QDIA"). In general, the QDIA must provide a mix of investments that considers age or expected retirement characteristics of plan participants. Participants must also be provided with the option of switching out from the QDIA to their preferred investment option(s) from among the plan's offerings. *See* "Regulation Relating to Qualified Default Investment Alternatives in Participant-Directed Individual Account Plans," *U.S. Department of Labor*, April 2008, accessible at https://www.dol.gov/sites/dolgov/files/EBSA/about-ebsa/our-activities/resource-center/fact-sheets/default-investment-alternatives.pdf.

[50] "ERISA: 50 Years of Shaping the Single-Employer Defined Benefit Landscape," *American Academy of Actuaries*, August 2024, p. 1 ("Overall, employer-provided defined benefit retirement plan coverage has declined, due in part to the complex and rigorous legal and regulatory requirements combined with significant changes in the economic landscape since 1974.").

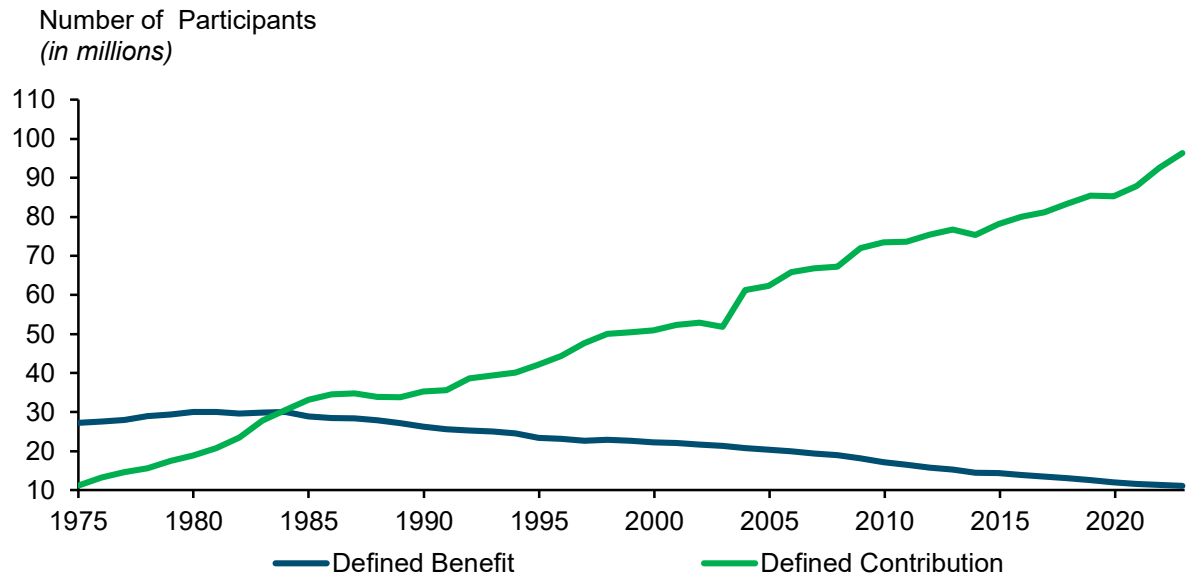
[51] "Employee Benefits in the United States — March 2025," *U.S. Bureau of Labor Statistics*, September 25, 2025 ("Seventy percent of private industry workers had access to defined contribution plans and 14 percent had access to defined benefit plans.").

[52] "Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023," *U.S. Department of Labor*, accessible at https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf.

[53] "Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023," *U.S. Department of Labor*, accessible at https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf.

landscape towards DC plans is not a U.S.-only phenomenon, as similar shifts have taken place in other advanced economies.[54]

FIGURE 5
Active Participants in Retirement Plans, 1975–2023



Source: "Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023," *U.S. Department of Labor*, p. 9, accessible at htpps://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf

23. As the Proposed Rule points out, this shift has created a structural segmentation for ordinary American workers on whether they have access to certain types of investments. While a great many defined benefit plans offered exposure to alternative investments, almost no defined contribution plan offers such opportunities. The result is a peculiar structural exclusion of almost all Americans, except the wealthiest and the relatively few middle-class Americans who happen to be able to save through DB plans, from investment products that have historically

[54] *See, e.g.*, Annika Sundén, "The Swedish Experience with Pension Reform," *Oxford Review of Economic Policy* 22, no. 1, 2006, pp. 133–148 at 133 ("In 1998, Sweden passed legislation that transformed Sweden's public pension system to a notional defined-contribution (NDC) plan—that is, a defined-contribution (DC) plan financed on a pay-as-you-go basis."); Clifford Chance, "The Future of Pensions Act—The New Dutch Pension System," June 2023, pp. 1–3 at 1 ("This Act will radically change the Dutch pension system and mean that the Netherlands will be moving from a system geared towards equal accrual to a system based on allocating an equal contribution.").

outperformed public markets. Recent research illustrates that this systemic exclusion has contributed to growing wealth inequality in the U.S.[55]

C. Waning Availability of Select Assets in Public Markets

24. As I explained in the prior section, a significant share of U.S. workers today rely on DC plans for their retirement savings. In this section, I explain that financial markets have bifurcated, such that certain types of assets are nowadays primarily found in private markets. Combined, these trends mean that while a significant (and growing) proportion of investable assets are only available in private markets, retirement savings are primarily held in plans with restricted access to these assets.

1. Recent Trends in Public Markets

25. The number of publicly listed companies in the U.S. has significantly declined over the last two decades, from over 8,000 publicly listed U.S. companies in the mid-1990s to fewer than 4,000 by 2025.[56] This has occurred not because of increased business failure, but because fewer private firms are choosing to go public and because more public firms are being acquired by private owners.[57] Indeed, the U.S. Council of Economic Advisers reports that companies with revenue greater than $100 million have more than doubled between 2002 and 2022, with the share of such companies under private ownership increasing from 62% to 87% over the same period.[58]

26. As a result, scholars estimate that the United States has abnormally few publicly listed firms. Doidge et al. (2025) estimate the U.S. has about half as many public companies per capita

[55] Gocmen et al. (2025) find that the share of early-stage companies financed by high net-worth individuals tripled in the first two decades of the 21st century, and that the excess returns on these investments relative to public stocks was a major driver behind the rise in income concentration observed over this period. *See* Aararat Gocmen, Martizen-Toledano, Clara, and Mittal, Vrinda, "Private Capital Markets and Inequality," Working Paper, 2025.
[56] "Listed Domestic Companies, Total – United States," *World Bank Open Data*, available at https://data.worldbank.org/indicator/CM.MKT.LDOM.NO?locations=US.
[57] *See, e.g.*, Craig Doidge et al., "Eclipse of the Public Corporation or Eclipse of the Public Markets?" *Journal of Applied Corporate Finance* 30, no. 1, 2018, pp. 8–16; Craig G. Doidge, Karolyi, Andrew, and Stulz, René M., "The U.S. Listing Gap," *Journal of Financial Economics* 123, no. 3, 2017, pp. 464–487.
[58] *See* "Retail Access to Alternative Investments Via Defined Contribution Plans," *The Council of Economic Advisers*, August 2025, Figure 2, accessible at https://www.whitehouse.gov/wp-content/uploads/2025/08/Retail-Access-to-Alternative-Investments-Via-Defined-Contribution-Plans-2.pdf.

as other developed economies.[59] For investors whose investment opportunity set is limited to public stocks and bonds, this in turn means that investments are becoming less diversified.

2. Small and High-Growth Firms' Shift to Private Markets

27. The decline in public listings is most prominent among smaller and younger companies. Indeed, Stulz (2020) finds that young firms find it costlier to enter public markets (relative to obtaining funding in private markets) due to the specialized knowledge necessary needed to understand their business models.[60] As a result, modern public indices have less exposure to companies in a higher growth phase now than they did twenty years ago.[61] Put differently, many companies that would have been considered "small cap" stocks prior to this shift in the market now operate as private companies.

28. Small firms with high growth potential have a higher likelihood of being privately held. As discussed further in Section III, buyout funds tend to target established, mid-sized companies that may need operational improvements.[62] Meanwhile, growth equity funds capture younger, innovative companies during their most rapid expansion phases—a stage that had historically occurred on public exchanges but now takes place frequently in the private domain.[63] Both private equity-backed firms undergoing operational transformations and innovative startups remaining private represent significant sources of growth potential that are increasingly absent from public markets.

---

[59] Craig Doidge et al., "Are There Too Few Publicly Listed Firms in the US?" *National Bureau of Economic Research*, Working Paper 33556, 2025.

[60] René M. Stulz, "Public versus Private Equity," *Oxford Review of Economic Policy* 36, no. 2, 2020, pp. 275–290 ("Stulz (2020)") at 275 ("The increase in the importance of intangible assets makes it costlier for young firms to be public when the alternative is funding through private equity from investors who have specialized knowledge that enables them to better understand the business model of young firms and contribute to the development of that business model in contrast to passive public equity investors."); Xiaohui Gao, Ritter, Jay R., and Zhu, Zhongyan, "Where Have All the IPOs Gone?" *Journal of Financial and Quantitative Analysis* 48, no. 6, 2013, pp. 1663–1692 at 1663 ("During 1980-2000, an average of 310 companies per year went public in the United States. Since 2000, the average has been only 99 initial public offerings (IPOs) per year, with the drop especially precipitous among small firms.").

[61] "Why Are Small-Cap Stocks Underperforming? Private Markets May Play a Role," *Morningstar*, January 2026 ("This extreme concentration has downstream effects on the makeup of mid- and small-cap indexes. Since 2018, the mid-cap index's portfolio has shrunk by 32.04%, and the small-cap index's portfolio has shrunk by 15.18%. Why does this contraction happen? The US investable market shrinks when more companies become ineligible for indexes than new ones become eligible.").

[62] Viral V. Acharya et al., "Corporate Governance and Value Creation: Evidence from Private Equity," *The Review of Financial Studies* 26, no. 2, 2013, pp. 368–402 ("Acharya et al. (2013)") at 402 ("Higher abnormal performance is related to improvement in sales and operating margin during the private phase, relative to that for quoted peers.").

[63] Stulz (2020), p. 275.

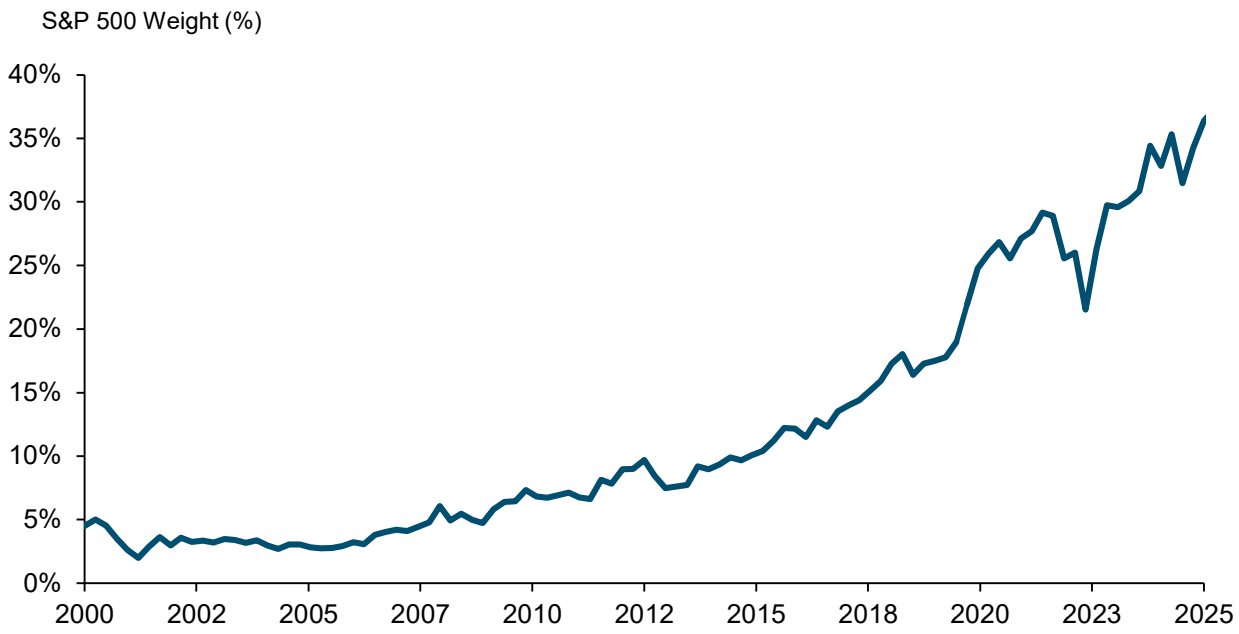
29. Not only are there fewer small public companies now, but the remaining small cap public companies are less profitable or have lower growth potential than they did in the past. J.P. Morgan documents that small cap stocks are not as profitable today as they were in the past, with "46% of the [small cap] Russell 2000 [consisting] of unprofitable companies—a dramatic shift from the 27% average before the global financial crisis."[64] At the same time, high-growth companies are likelier to be private, there are now 1,680 so-called "unicorns" —private companies valued at over $1 billion—at a global level, up from approximately 200 in 2016.[65]

3. Increasing Concentration of Public Markets

30. In recent years, market observers have attributed the outperformance of U.S. equity markets to a group of seven stocks (the so-called "Magnificent 7")—namely Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla. **Figure 6** below shows the Magnificent 7's weight in the S&P 500 has grown from approximately 5% to 35% between 2000 and 2025.

[64] Aaron Mulvihill, "Is Private Equity the New Small Cap for Growth Investors?" *J.P. Morgan Asset Management: On the Minds of Investors*, August 20, 2025 ("But today's small cap universe looks different from its predecessors. 46% of the Russell 2000 now consists of unprofitable companies — a dramatic shift from the 27% average before the global financial crisis.").
[65] Franco Granda and Harrison Rolfes, "Q1 2026 Global Unicorn Tracker," *PitchBook*, accessible at https://pitchbook.com/news/reports/q1-2026-global-unicorn-tracker.

FIGURE 6
Magnificent 7 Weight in S&P 500, 2000–2025



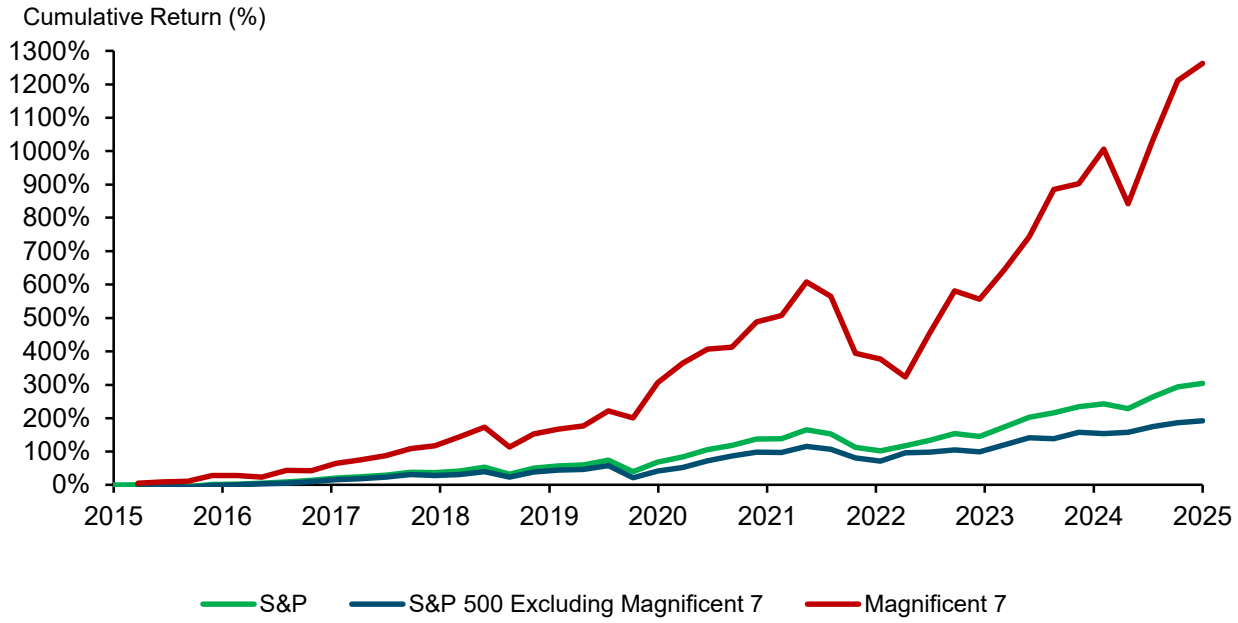
Source: *Bloomberg*; *LSEG*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The Magnificent 7 weight in the S&P 500 measures Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla's collective share of S&P 500 market capitalization. Market capitalizaitons of individual Magnificent 7 companies are only included once the company is included in the S&P 500.

31. Because the S&P 500 index weights the constituent firms by their market capitalization, the Magnificent 7 stocks have played an outsized role in the performance of the index in recent years. To illustrate the effects of this increasing concentration on public equity index performance,[66] I re-construct the S&P 500 excluding the returns of the Magnificent 7. **Figure 7** below shows the influence of the Magnificent 7 on S&P 500 returns between 2015 and 2025. During this period, Magnificent 7 cumulatively returned 1,263%. In contrast, the S&P excluding the Magnificent 7 returned only 192%.

[66] *See* Section II.C.3 for a discussion on the Magnificent 7's increasing share of the S&P 500.

FIGURE 7
Cumulative S&P 500 and Magnificent 7 Returns, 2015–2025



Source: *Bloomberg*; *LSEG*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The S&P 500 Excluding Magnificent 7 return measures the performance of the S&P 500 after removing Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla from the index. The Magnificent 7 return measures the performance of the aforementioned companies, incorporating returns once the company is added to the S&P 500.

32. The increasing concentration of public equity indices has important implications for investors looking to build diversified public-only portfolios, as greater index concentration leaves investors' portfolios more vulnerable to firm-specific risk factors. For a highly concentrated index, the outperformance (or underperformance) of its biggest stocks may drive the outperformance (or underperformance) of the index.

4. Potential Diversification Benefits of Private Capital

33. As I have explained in the prior sections, exposure to certain sectors of the economy is increasingly only found in private markets. This phenomenon has meaningful implications for investors restricted to investing in public markets, because it can reduce their ability to build well-diversified "efficient" portfolios using publicly traded assets exclusively.[67] In general,

[67] Portfolio theory concerns itself with the study of how investors can allocate their money to different assets to achieve their desired level of risk-return. For any given asset, finance theory tells us its risk can be divided into two

investors benefit from the ability to hold well-diversified portfolios.[68] Further, recent academic literature suggests some investors would be able to improve the efficiency of their portfolios by including an allocation to private assets. Ghysels et al. (2024) find that public equity returns cannot fully span the returns produced by a combination of public and private equity portfolios.[69] Importantly, the study posits that an optimal long-only portfolio designed to maximize risk-adjusted returns would include a substantial allocation to private equity, ranging from approximately 11% to 24% of the portfolio's equity allocation.[70] Similar diversification benefits are observed within private credit, which produces returns distinct from traditional corporate debt. Erel et al. (2024) document that while private credit correlates with certain equity-specific risk factors, it allows investors to purchase debt claims in corporate assets that are often unavailable through public syndicated loan or bond markets.[71]

components: (1) firm-specific risk (*i.e.*, risk impacting only the asset, such as a firm's factory burning down) and (2) market risk (*i.e.*, risk common to the whole economy, such as a recession). At the core of portfolio theory is the insight that investors can eliminate the firm-specific risk of holding a particular asset by holding alongside it a diversified portfolio of many assets with different risk return profiles. An efficient portfolio is the diversified portfolio that maximizes its expected return for a given level of risk. *See* Zvi Bodie, Kane, Alex, and Alan J. Marcus, *Investments*, Thirteenth Edition, 2023, pp. 195–210 at 197 ("The risk that remains even after diversification is called market risk... Risk that can be eliminated by diversification is called unique risk, firm-specific risk, nonsystematic risk, or idiosyncratic risk.").

[68] Although the Magnificent 7 currently capture the public's attention because of their connections to disruptive innovations, the fact that a relatively small number of publicly traded stocks generates the bulk of index returns is not a new phenomenon. It is instead a pervasive feature of the historical record. Importantly, even in light of such outperforming stocks, investors benefit from holding well-diversified portfolios given the difficulty of identifying outperforming stocks on an *ex ante* basis. *See* Henrik Bessembinder, "Do Stocks Outperform Treasury Bills?" *Journal of Financial Economics* 129, 2018, pp. 440–457 at 441 ("Perhaps the most striking illustration of the degree to which long-term return performance is concentrated in relatively few stocks arises when measuring aggregate wealth creation in the US public stock markets. …I calculate that the approximately 25,300 companies that issued stocks appearing in the CRSP common stock database since 1926 are collectively responsible for lifetime shareholder wealth creation of nearly $35 trillion, measured as of December 2016. However, just five firms (Exxon Mobile, Apple, Microsoft, General Electric, and International Business Machines) account for 10% of the total wealth creation. … For those who are inclined to focus on the mean and variance of portfolio returns, the results presented here reinforce the importance of portfolio diversification. Not only does diversification reduce the variance of portfolio returns, but also non-diversified stock portfolios are subject to the risk that they will fail to include the relatively few stocks that, ex post, generate large cumulative returns.").

[69] Eric Ghysels, Gredil, Oleg, and Rubin, Mirco, "Do Public Equities Span Private Equity Returns?" Working Paper, 2024 ("Ghysels et al. (2024)"), p. 1 ("We show that, albeit over 90% of PE returns may be explained by factors common with the matched public equities, the remaining variation exhibits robust factors that are distinct to PE.").

[70] Ghysels et al. (2024), p. 1.

[71] Isil Erel, Flanagan, Thomas, and Weisbach, Michael S., "Risk-Adjusting the Returns to Private Debt Funds," *National Bureau of Economic Research*, Working Paper, 2024 ("Erel et al. (2024)"), p. 5 ("The results in our paper are consistent with the view that private debt funds enjoy high yields from lending to firms that typically cannot receive financing from banks or public markets.").

III. Historical Risk-Return of Private Assets

34. In this section, I examine academic literature assessing the historical performance of private capital. These studies show that private assets have historically outperformed comparable public assets on a net-of-fee basis. I also discuss the drivers of value creation for private capital identified by academic literature. As explained by the literature, the unique ownership model in private capital investments help explain their superior performance.

A. Private Capital Has Historically Outperformed Public Markets

35. The empirical literature on private capital indicates that these assets have historically generated returns exceeding public markets on a net-of-fee basis. Because private assets are neither frequently nor publicly traded, market prices for these assets—as would be needed for a traditional return calculation—are not readily observable. Given this characteristic of the private market, academic literature uses multiple common specialized metrics in order to evaluate the performance of private capital funds: Internal Rate of Return ("IRR")[72] and Public Market Equivalent ("PME").[73] The following subsections provide a review of academic literature documenting the historical performance of private capital investments through the lens of these metrics. I review in turn two types of private capital funds actively studied in the literature, namely buyout funds and private credit funds.

1. Buyout Funds

36. Buyout funds are a subset of private equity funds that seek a controlling stake in mature, cash-flow generating companies,[74] both already-private companies or public companies that subsequently transition to private ownership. The academic literature generally provides broad

[72] The IRR of a fund represents the discount rate at which the net present value of all cash inflows and outflows of the fund is zero. The IRR provides an annualized measure of the return on invested capital over the fund or underlying asset's investment horizon. *See* Stowell (2018), pp. 96, 373.

[73] The PME facilitates an evaluation of fund cash flows to a specified index. The PME is calculated by discounting fund distributions and capital calls by the returns of a public market index. By discounting the fund cash flows at the return of a public index, the PME ratio quantifies the value an investor receives relative to an equivalent public market investment. A PME ratio exceeding 1.0 indicates that the private capital fund generated a return superior to the public market index. The choice of index is a key decision when calculating a PME. A common index used in the literature is the S&P 500, but additional indices are also found in the literature. *See* Steven N. Kaplan, and Schoar, Antoinette, "Private Equity Performance: Returns, Persistence, and Capital Flows," *Journal of Finance* 60, no. 4, 2005, pp. 1791–1823 ("Kaplan and Schoar (2005)") at 1797.

[74] Stowell (2018), p. 339 ("Leveraged buyout (LBO) refers to the purchase of all or most of a company or a business unit … The targets of LBOs are typically mature companies that generate strong operating cash flow.").

empirical support for the premise that the performance of buyout funds exceeds the performance of public markets.[75] In an analysis of buyout funds with vintage years between 1984 and 2008, Harris, Jenkinson, and Kaplan (2014) find an average IRR of 15.7% and a PME of 1.27. They estimate that this equates to an abnormal return of 3.7% per year relative to the S&P 500.[76] My own research corroborates these findings, reporting a mean IRR of 12% and PME of 1.18.[77] More recent studies suggest that this outperformance has persisted through 2015 fund vintages. For instance, Brown et al. (2020) calculates a mean excess return of 3.6% and PME of 1.15,[78] and Harris et al. (2023) calculates a mean IRR of 14.2% and PME of 1.18.[79]

37. Some market observers have suggested that the reason why investors receive higher returns in buyout funds than in public markets is to compensate them for taking on higher amounts of risk when making private equity investments. Buyout fund investments are often concentrated in companies with higher leverage, smaller size, and value orientations, factors that typically demand higher return premiums.[80] Brown et al. (2020) compare buyout fund returns to select public indices—the Russell 2000 Value index and the S&P 500 with adjustments to reflect risk characteristics of buyout fund investments more closely. This study finds buyout funds outperform public markets, even when their performance is evaluated relative to these alternative index returns that attempt to control for higher risk characteristics.[81] In addition, Robinson and Sensoy (2016) develop alternative index returns that account for the fact that private equity

[75] A subset of the older academic literature finds buyout funds underperform public markets, but these findings can be attributable to limitations in the underlying data used by these studies. In particular, estimates by Kaplan and Schoar (2005) and Phalippou and Gottschalg (2009)—both of which indicate buyout fund PMEs below 1.0—rely on Venture Economics data. This data source is known to underestimate private equity returns because of systemic inaccuracies in fund cash flow and net asset value reporting after 2001. Furthermore, the scope of these studies is limited to vintages between 1980 and 1995, omitting more recent private equity performance. Consequently, I consider the more recent literature documenting buyout fund outperformance to more closely reflect the prevailing academic consensus. *See* Robert S. Harris, Jenkinson, Tim, and Kaplan, Steven N., "Private Equity Performance: What Do We Know?" *Journal of Finance* 69, no. 5, 2014, pp. 1851–1882 ("Harris et al. (2014)") at 1854; Kaplan and Schoar (2005), p. 1815; Ludovic Phalippou, and Gottschalg, Oliver, "The Performance of Private Equity Funds," *Review of Financial Studies* 22, no. 4, 2009, pp. 1747–1776 at 1750, 1756.

[76] Harris et al. (2014), pp. 1860, 1863–1864.

[77] David T. Robinson, and Sensoy, Berk A., "Cyclicality, Performance Measurement, and Cash Flow Liquidity in Private Equity," *Journal of Financial Economics* 122, no. 3, 2016, pp. 521–543 ("Robinson and Sensoy (2016)") at 526.

[78] Greg Brown et al., "Private Equity: Accomplishments and Challenges," *Journal of Applied Corporate Finance* 32, no. 3, 2020, pp. 8–20 ("Brown et al. (2020)") at 15.

[79] Robert S. Harris et al., "Has Persistence Persisted in Private Equity? Evidence from Buyout and Venture Capital Funds," *Journal of Corporate Finance* 81, 2023, 102361 at p. 5.

[80] Brown et al. (2020), p. 16.

[81] Brown et al. (2020), pp.16–17.

assets are often purchased with leverage; they find that these leverage adjustments have only a modest effect on average historical relative performance assessments.[82]

38. Although buyout funds have on average outperformed public markets, performance variance does exist at the individual fund level. For example, Robinson and Sensoy (2016) note that funds in the 25th percentile of performance yield a PME of 0.82, while funds at the 75th percentile of performance earn a PME of 1.46.[83] Manager selection thus can make a difference in performance, as can diversifying capital across funds to reduce exposure to any given fund's performance variance.[84] Brown et al. (2021) shows that an investment strategy which commits a fixed amount each year to buyout funds produces an IRR of 16.5% and a PME of 1.15.[85] Similarly, Robinson and Sensoy (2016) find that a significant component of buyout fund risk can be reduced by investing in a broad portfolio of buyout funds.[86] Thus, while buyout fund performance may vary idiosyncratically and over time, holding a broad portfolio of buyout funds allows investors to diversify away this risk and still capture the superior returns offered by these assets.

2. Private Credit Funds

39. Private credit has experienced rapid growth in recent years. Although the asset class has existed for several decades, its assets under management have grown substantially in the aftermath of the global financial crisis.[87] Given its more recent rise to prominence, historical evaluation of private credit fund performance is an area of ongoing research in the academic literature. The academic studies available that evaluate the performance of private credit funds indicate that this asset class has historically provided attractive returns for investors. Erel et al. (2024) examines the returns on private credit funds with vintages between 1992 and 2015,

---

[82] Robinson and Sensoy (2016), p. 539.
[83] Robinson and Sensoy (2016), p. 526.
[84] Hamilton Lane finds approximately 65% to 70% of top-half performing funds persist as top-half performing funds, highlighting the importance of manager selection. *See* "2026 Market Overview," *Hamilton Lane*, 2026, p. 64, accessible at https://www.hamiltonlane.com/2026-market-overview/narrative.
[85] Gregory Brown et al., "Can Investors Time Their Exposure to Private Equity," *Journal of Financial Economics* 139, no. 2, 2021, pp. 561–577 at 567.
[86] Robinson and Sensoy (2016), p. 523 ("We find that most variation in fund-level cash flows is purely idiosyncratic across funds of a given age at a given point in time, or associated with lifecycle effects whereby funds call capital when they are young and distribute it as they age. From an investor's perspective, this suggests that liquidity shocks arising from the uncertain timing of calls and distributions can be significantly mitigated by holding a portfolio of investments diversified both across different funds of the same age and across funds of different ages.").
[87] *See* Section II.A. *See also* Erel et al. (2024), Figure 1.

finding that private credit funds have produced an IRR of 8.6%.[88] Brown et al. (2025) examine North American private credit funds and find these funds outperformed an index of public market leveraged loans, calculating an IRR of 9.5% and a PME of 1.13. These correspond to an annualized excess return of 3.9%.[89]

40. Similar to their private equity counterparts, academic literature finds that private credit funds exhibit dispersion in individual fund performance. For example, in a study of private credit funds, Munday et al. (2018) found these funds outperformed a leveraged loan index on an aggregate basis. When examining performance by inception year, the study finds PMEs greater than 1.0 in eight of thirteen years between 2004 and 2016, including all vintages after 2009, with no vintage years below 0.9.[90] Similarly, Munday et al. (2018) find that the average fund IRR is 8.1%, with the top quartile fund IRR being 17.0% and the bottom quartile IRR being -1.8%.[91] In sum, studies in the literature indicate that private credit outperforms public markets on average. Although the studies have found dispersion in performance among funds, they find private credit as an asset class has consistently outperformed public benchmarks. Thus, as with private equity funds, prudent manager selection and holding a broad portfolio of private credit funds allows investors to diversify away this risk and still capture the superior returns offered by these assets.

B. Private Equity's Ownership Model Creates Value for Investors

41. Academic literature and industry surveys indicate that private equity's ownership model facilitates value creation. Specifically, the literature identifies operational, governance, and financial optimizations as tactics applied by private equity firms to their portfolio companies after acquisition that result in these investments experiencing an increase in value. In this

[88] The authors compare performance of private credit funds to both corporate bonds and equity, calculating an alpha of 1.8% relative to corporate bonds and a statistically insignificant abnormal return relative to stocks or a mix of stocks and bonds. *See* Erel et al. (2024), p. 31.
[89] Gregory Brown, Lundblad, Christian, and Volckmann, William, "Risk-Adjusted Performance of Private Funds: What Do We Know," *Institute for Private Capital*, Working Paper, 2025, p. 49.
[90] Shawn Munday et al., "Performance of Private Credit Funds: A First Look," *Institute for Private Capital,* Working Paper*,* 2018 ("Munday et al. (2018)"), Table 9.
[91] Munday et al. (2018), Table 4. *See also* Pascal Boni, and Manigart, Sophie, "Private Debt Fund Returns, Persistence, and Market Conditions," *Financial Analysts Journal* 78, no. 4, 2022, pp. 121–144 at 122 ("We find that the average PD fund renders a 9.19% net-of-fees IRR to LPs. There is a large dispersion between top quartile funds, with an IRR of 23.3%, as compared to the bottom-quartile funds, with an IRR of -3.6%.").

section, I discuss the literature on two of these tactics, namely operational and governance optimization.

1. Improvements to Operations

42. Operational optimization refers to the "industry and operating expertise that" private equity firms "apply to add value to their investments."[92] Numerous studies in the literature have found that sales, profitability, and cash flow of portfolio companies increase following acquisition or investment by a private capital firm.[93] These operational improvements in turn translate into value for the fund's investors.

43. Operation improvements enabled by private equity investment extend beyond improvements to financial metrics. For example, Cohn et al. (2021) show that workplace injuries decline following private equity buyouts due to operational changes implemented after acquisition.[94] Similarly, Lerner et al. (2011) find that innovation quality improves following private equity buyouts, with the acquired firm's patents being cited more frequently and new patents being more "more concentrated in the most important and prominent areas of [acquired] companies' innovative portfolios."[95] Likewise, Davis et al. (2014) find that private equity

---

[92] Steven N. Kaplan, and Stromberg, Per, "Leverage Buyouts and Private Equity," *Journal of Economic Perspectives* 23, no. 1, 2009, pp. 121–146 ("Kaplan and Stromberg (2009)") at 132 ("Today, most large private equity firms have added another type [of optimization] that we call 'operational engineering,' which refers to industry and operating expertise that they apply to add value to their investments.").

[93] *See*, *e.g.*, Steven Kaplan, "The Effects of Management Buyouts on Operating Performance and Value," *Journal of Financial Economics* 24, no. 2, 1989, pp. 217–254 at 217 ("In the three years after the buyout, these companies experience increases in operating income (before depreciation), decreases in capital expenditures, and increases in net cash flow."); Quentin Boucly, Sraer, David, and Thesmar, David, "Growth LBOs," *Journal of Financial Economics* 102, no. 2, 2011, pp. 432–453 at 432 ("In the 3 years following a leveraged buyout, targets become more profitable, grow much faster than their peer group, issue additional debt, and increase capital expenditures"); Acharya et al. (2013), p. 402 ("Higher abnormal performance is related to improvement in sales and operating margin during the private phase, relative to that for quoted peers."). *See also*, "Private Equity: Clearer View, Tougher Terrain," *McKinsey & Company*, 2026, accessible at https://www.mckinsey.com/industries/private-capital/our-insights/global-private-markets-report/private-equity ("Analysis by StepStone Group indicates that, for deals done between 2010 and 2022, leverage and multiple expansion comprised 59 percent of returns. The remaining 41 percent came from revenue growth and EBITDA margin expansion net of dividends and debt paydown (Exhibit 7). Over the past decade, however, the share of debt as a percentage of entry multiples has declined from 44 percent in 2016 to 37 percent in 2025, reflecting that GPs are relying less on leverage to generate returns. In addition, the increase in entry multiples over the last decade has forced managers to focus on operational improvements to achieve their target returns.")

[94] Jonathan Cohn, Nestoriak, Nicole, and Wardlaw, Malcolm, "Private Equity Buyouts and Workplace Safety," *The Review of Financial Studies* 34, no. 10, 2021, pp. 4832–4875 at 4832 ("We find that firms experience fewer OSHA safety violations after buyouts and that a larger decline in injury rates is associated with an increased probability of exit via IPO."), 4834 ("[T]hese declines were a result of operational changes within the acquired company and, in some cases, were an explicit objective. Specific operational changes that executives linked to a decline in workplace injury rates include refocusing on core operations and increased monitoring at all levels of the organization.").

[95] Josh Lerner, Sorensen, Morten, and Stromberg, Per, "Private Equity and Long-Run Investment: The Case of Innovation," *Journal of Finance* 66, no. 2, 2011, pp. 445–477 at 447 ("We find some evidence that patent portfolios become more focused in the years after private equity investments. The increase in patent quality is greatest in the patent classes on which the firm has historically been focused and in the classes where the firm increases its

investment increases the total factor productivity of acquired companies through divestment of less productive establishments (*i.e.*, factories, offices, retail outlets, and other distinct physical locations) and acquisition of more productive establishments.[96]

44. Academic literature finds that private capital firms hire specialists whose expertise helps improve the operating performance of the firm's investments. Kaplan and Stromberg (2009) report that "most top private equity firms are now organized around industries."[97] Consistent with this organization, the literature documents that, in addition to the more traditional hiring of professionals with financial expertise, private equity firms also hire professionals that possess operating or industry-specific knowledge relevant for the firm's portfolio companies.[98]

45. Academic literature has linked portfolio companies' operational improvements to the industry-specific expertise that private capital firms provide. For example, in a study of restaurant franchises acquired by private equity firms, Bernstein and Stein (2016) find that the restaurants "bec[a]me cleaner, safer, and better maintained" after acquisition, and that this effect was particularly pronounced when private equity managers had prior restaurant experience.[99] Similarly, in a study of private equity investments of hotels, Spaenjers and Steiner (2024) find that private equity managers with hotel operating expertise reduce costs and achieve higher profitability than generalist private equity investors.[100]

46. Academic literature also finds that portfolio companies benefit from the financial expertise possessed by managers of private capital firms. For example, Biesinger et al. (2023)

---

patenting activity after the transaction. … P]rivate equity investments appear to be associated with a beneficial refocusing of firms' innovative portfolios.").

[96] Steve J. Davis et al., "Private Equity, Jobs, and Productivity," *American Economic Review* 104, no. 12, 2014, pp. 3956–3990 at 3956 ("Buyouts also bring TFP gains at target firms, mainly through accelerated exit of less productive establishments and greater entry of highly productive ones.").

[97] Kaplan and Stromberg (2009), p. 132.

[98] Kaplan and Stromberg (2009), p. 132 ("In addition to hiring dealmakers with financial engineering skills, private equity firms now often hire professionals with operating backgrounds and an industry focus. For example, Lou Gerstner, the former chief executive officer of RJR and IBM is affiliated with Carlyle, while Jack Welch, the former chief executive officer of GE, is affiliated with Clayton Dubilier. Most top private equity firms also make use of internal or external consulting groups."); Acharya et al. (2013), p. 368 ("General partners who are ex-consultants or ex–industry managers are associated with outperforming deals focused on internal value-creation programs, and ex-bankers or ex-accountants with outperforming deals involving significant mergers and acquisitions.").

[99] Shai Bernstein, and Sheen, Albert, "The Operational Consequences of Private Equity Buyouts: Evidence from the restaurant Industry," *The Review of Financial Studies* 29, no. 9, 2016, pp. 2387–2418 at 2387 ("Store level operational practices improve after private equity buyout, as restaurants become cleaner, safer, and better maintained… These changes are particularly apparent when private equity partners have prior industry experience. The results suggest that by bringing in industry expertise, private equity firms improve firm operations.").

[100] Christophe Spaenjers, and Steiner, Eva, "Specialization and Performance in Private Equity: Evidence from the Hotel Industry," *Journal of Financial Economics* 162, 2024, 103930 at p. 1 ("Using granular data on U.S. hotel investments over the past two decades, we show that industry-specialist PE firms achieve higher net income from operations and higher capital gains from sale than generalist PE firms for comparable properties. Those results are driven by specialists implementing more and larger cost savings without compromising revenues.").

find that one of the ways in which private equity-backed companies improve operations is by pursuing add-on acquisitions.[101] Acharya et al. (2013) find that private equity partners with a financial background are "more successful[]" at pursuing M&A strategies.[102] Portfolio companies can benefit from private capital firm's financial expertise beyond the realm of acquisitions. For example, Hotchkiss et al. (2021) find that private equity-backed companies in financial distress restructure more quickly and are more likely to avoid bankruptcy.[103]

2. Improvements to Governance

47. Academic literature indicates that the improvements to governance that private equity firms achieve are due to their ability to better monitor agency problems relative to passive shareholders in a public company.[104] As Kaplan and Stromberg (2009) explain, governance optimization "refers to the way that private equity investors control the boards of their portfolio companies and are more actively involved in governance than public company boards."[105] Private equity firms' superior ability to monitor management—thus reducing agency losses—arises from the incentive structure for the firm and management that is created by the private equity model.

---

[101] Markus Biesinger, Bircan, Çagatay, and Ljungqvist, Alexander, "Value Creation in Private Equity," *Swedish House of Finance*, Research Paper 20-17, p. 4 ("Portfolio companies whose playbooks involve plans to improve operations by buying, upgrading, or selling assets or pursuing add-on acquisitions experience significant increases in net investment and engage in significantly more acquisitions and divestments than portfolio companies without such plans…PE firms, in our sample, are good at reshaping portfolio companies through CAPEX and M&A transactions.").
[102] Acharya et al. (2013), p. 371 ("[P]artners with a background in finance (e.g., ex-bankers or ex-accountants) more successfully follow an M&A-driven, 'inorganic' strategy.").
[103] Edith S. Hotchkiss, Smith, David C., and Stromberg, Per, "Private Equity and the Resolution of Financial Distress," *The Review of Corporate Finance Studies* 10, no. 4., 2021, pp. 694–747 at 694 ("PE-backed firms restructure more quickly, avoid bankruptcy court more often, and liquidate less often compared to other highly leveraged firms experiencing financial distress… PE investors appear to manage financial distress at lower cost compared to other owners.").
[104] The principal-agent problem is a well-studied issue in economics (since at least Adam Smith's time) positing that when the one entity (the agent) makes decisions on someone else's behalf (the principal), a rational utility-maximizing "agent will not always act in the best interests of the principal." In the context of a corporation, the firm's shareholders and bondholders are the principals and the firm's management the agent. *See* Michael C. Jensen, and Meckling, William H., "Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure," *Journal of Financial Economics* 3, no. 4, 1976, pp. 305–360 ("Jensen and Meckling (1976)") at 305 ("The directors of such [joint-stock] companies, however, being the managers rather of other people's money than of their own, it cannot well be expected, that they should watch over it with the same anxious vigilance with which the partners in a private copartnery frequently watch over their own. Like the stewards of a rich man, they are apt to consider attention to small matters as not for their master's honour, and very easily give themselves a dispensation from having it. Negligence and profusion, therefore, must always prevail, more or less, in the management of the affairs of such a company."), 308 ("We define an agency relationship as a contract under which one or more persons (the principal(s)) engage another person (the agent) to perform some service on their behalf which involves delegating some decision making authority to the agent. If both parties to the relationship are utility maximizers, there is good reason to believe that the agent will not always act in the best interests of the principal.").
[105] Kaplan and Stromberg (2009), p. 131.

48. First, private equity investors hold concentrated positions in their portfolio companies in contrast to the dispersed ownership structure typically found in public equity markets. This ownership structure incentivizes the private equity firm to exert greater effort at managing or monitoring companies in order to maximize profits.[106] Consistent with this incentive, academic literature finds that private equity firms frequently report being "actively involved" in the management of their portfolio companies. Indeed, Gompers et al. (2016) find that the median private equity investor claims to actively advise the portfolio company on strategic choices "in all of his or her deals."[107] Academic literature also finds that portfolio companies of private equity firms have smaller boards "than comparable public company boards and meet more frequently."[108] Some studies suggest smaller boards lead to better firm governance.[109]

49. Second, private equity firms pay close attention to aligning portfolio company management's incentives with their own. Academic literature finds that management's ownership stake in a public company acquired by a private equity firm typically increases "by a factor of four" after the buyout.[110] Indeed, Kaplan and Stromberg (2009) document that private equity firms typically require management to make a "meaningful investment" in the portfolio company, helping align both their upside and downside incentives.[111] Also, academic literature finds private equity firms are active in the selection of portfolio firm management, frequently replacing incumbent managers upon acquisition.[112]

---

[106] Andrei Shleifer, and Vishny, Robert W., "Large Shareholders and Corporate Control," *Journal of Political Economy* 94, no. 3, 1986, pp. 461–488 at 461 ("In a corporation with many small owners, it may not pay any one of them to monitor the performance of the management. We explore a model in which the presence of a large minority shareholder provides a partial solution to this free-rider problem."); Jensen and Meckling (1976), p. 313 ("[A]s the manager's ownership claim falls, his incentive to devote significant effort to creative activities such as searching out new profitable ventures falls.").

[107] Paul Gompers et al., "What Do Private Equity Firms Say They Do?" *Journal of Financial Economics* 121, no. 3, 2016, pp. 449–476 ("Gompers et al. (2016)") at 462 ("[T]able [16] reports the fraction of deals in which the sample PE investors become involved in the management of portfolio companies, i.e., actively advising the company on strategic choices. … Table 16 indicates that PE investors are actively involved in advising their companies in the great majority of their deals. In fact, the median PE investor claims to be actively involved in all of his or her deals."). *See also* Kaplan and Stromberg (2009), pp. 131–132.

[108] Kaplan and Stromberg (2009), p. 131.

[109] *See, e.g.*, David Yermack, "Higher Market Valuation of Companies with a Small Board of Directors," *Journal of Financial Economics* 40, 1996, pp. 185–211 at 185 ("I find an inverse association between board size and firm value[.]"); Theodore Eisenberg, Sundgren, Stefan, and Wells, Martin T., "Larger Board Size and Decreasing Firm Value in Small Firms," *Journal of Financial Economics* 48, no. 1, 1998, pp. 35–54 at 35 ("We find a significant negative correlation between board size and profitability[.]").

[110] Kaplan and Stromberg (2009), p. 132.

[111] Kaplan and Stromberg (2009), p. 132.

[112] Gompers et al. (2016), p. 463 ("After the investment, roughly 50% of the PE investors end up recruiting their own senior management team. This is consistent with some of the PE investors becoming more actively involved in the governance of their companies after the investment. When we combine the PE investors who recruit their own teams before, or after, or both before and after investing, we find that almost 58% of the PE investors recruit their own senior teams."); Kaplan and Stromberg (2009), p. 132 ("Acharya and Kehoe (2008) report that one-third of chief executive

50. Finally, academic literature indicates that private equity ownership incentivizes managers to focus on longer-term value-maximizing investments as opposed to short-term profit generation.[113] Private equity ownership can reduce short-term pressure associated with quarterly earnings reports. In contrast to publicly traded companies, privately held companies are not required to report quarterly financial statements to the SEC. Academic literature has recognized that public reporting requirements may create pressure to generate quarterly profits at the potential expense of long-term investments to meet earnings expectations and satisfy public financial markets.[114]

IV. Retail Investors Would Benefit from Access to Private Capital Investment Options

51. In the prior section, I surveyed academic literature highlighting that private capital has historically outperformed public markets. I also documented some of the drivers of value creation in private markets that help explain that outperformance. In this section, I illustrate empirically why access to private assets benefits retail investors. As these analyses show, a portfolio that includes both public and private components is expected to experience higher risk-adjusted returns than a public-only portfolio.

A. Empirical Evidence Confirms Outperformance of Private Capital

52. Consistent with the findings in the literature, data on private capital performance indicates private assets have performed well relative to public markets. **Figure 8** below compares the annualized return of private capital against public markets.[115] As the figure shows, private equity and private credit have historically outperformed their respective public market index.

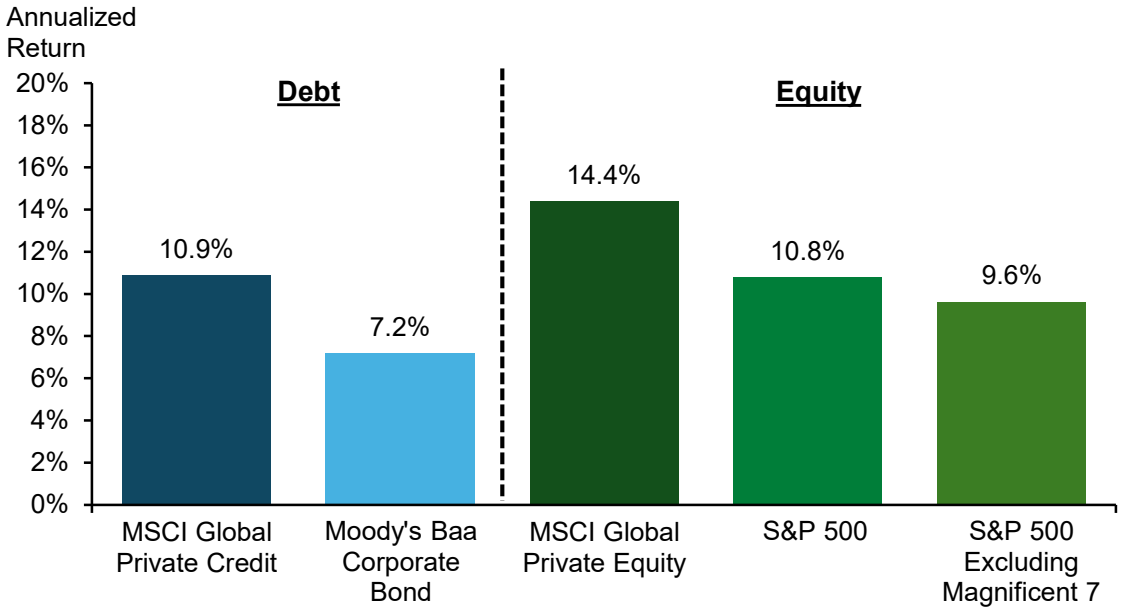
officers of these firms are replaced in the first 100 days while two-thirds are replaced at some point over a four-year period.").

[113] Kaplan and Stromberg (2009), p. 131 ("Moreover, because the companies are private, management's equity is illiquid—that is, management cannot sell its equity or exercise its options until the value is proved by an exit transaction. This illiquidity reduces management's incentive to manipulate short-term performance.").

[114] Jeremy C. Stein, "Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior," *The Quarterly Journal of Economics* 104, no. 4, 1989, pp. 655–669 at 655 ("In an effort to mislead the market about their firms' worth, managers forsake good investments so as to boost current earnings.").

[115] I measure private capital returns using historical returns from MSCI Private Capital indices. These indices measure quarterly performance to private capital, accounting for fund-level contributions, distributions, and net asset values within the index asset class.

FIGURE 8
Annualized Return of MSCI Private Capital Indices vs. Public Market Indices, 1990–2025



Source: *Bloomberg*; *LSEG*; *FRED*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The S&P 500 Excluding Magnificent 7 annualized return measures the performance of the S&P 500 after removing Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla from the index.

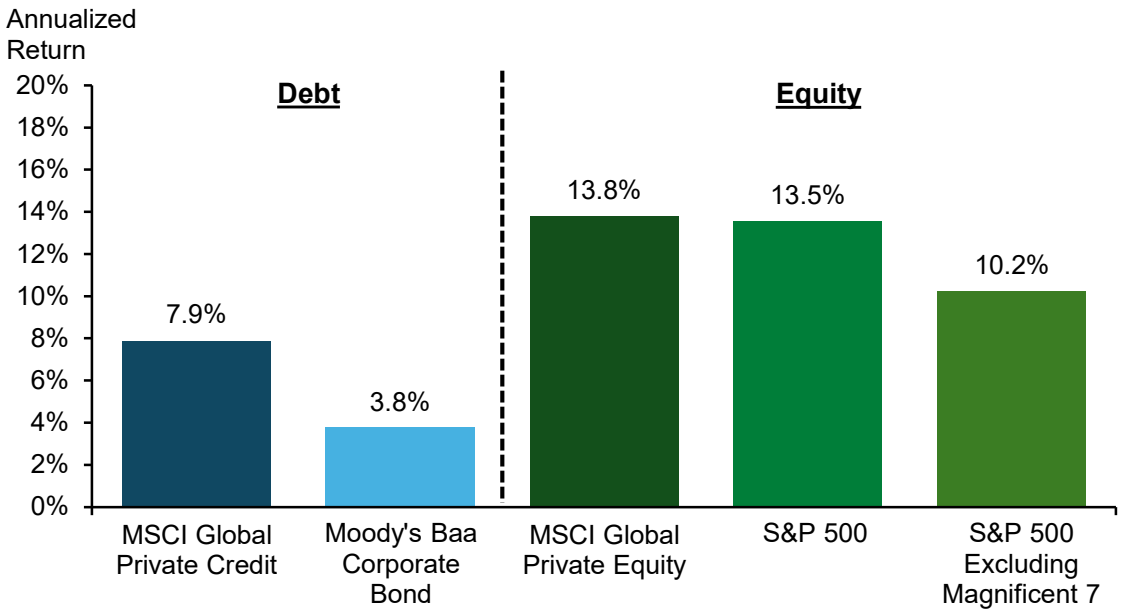
53. In equity markets, the MSCI Global Private Equity index returned 14.4%. Over the same period, the S&P 500 has returned on average 10.8% per year between 1990 and 2025. In credit markets, the MSCI Global Private Credit index has returned on average 10.9% per year between 1990 and 2025. Over the same period, the Moody's Baa Corporate Bond index has returned on average 7.2% per year. As discussed in Section II.C.3, the Mag 7 have become important drivers of performance for public equity indices in the U.S. **Figure 8** also shows that without these seven companies, public equity markets returned only 9.6% annualized between 1990 and 2025 (versus 14.4% for the MSCI Global Private Equity index).

54. The time period for the construction of **Figure 8** begins in 1990, long before some of the Magnificent 7 even existed. This fact minimizes the difference between the historically observed S&P 500 return and that which is obtained from removing them. **Figure 9** below repeats this exercise but focuses on more recent years, beginning in 2015.[116] The MSCI Global Private

[116] Analysis of historical returns should incorporate evaluation of returns, net of fees, over long investment horizons. Sustained performance over many years is more likely to reflect genuine, rather than anomalous returns. Returns

Equity index returned 13.8% annualized between 2015 and 2025. In comparison, the S&P 500 returned 13.5% annualized over the same period. After excluding the Magnificent 7, the S&P 500 significantly underperformed private equity markets, returning only 10.2% between 2015 and 2025.

FIGURE 9
Annualized Return of MSCI Private Capital Indices vs. Public Market Indices, 2015–2025



Source: *Bloomberg*; *LSEG*; FRED; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The S&P 500 Excluding Magnificent 7 annualized return measures the performance of the S&P 500 after removing Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla from the index.

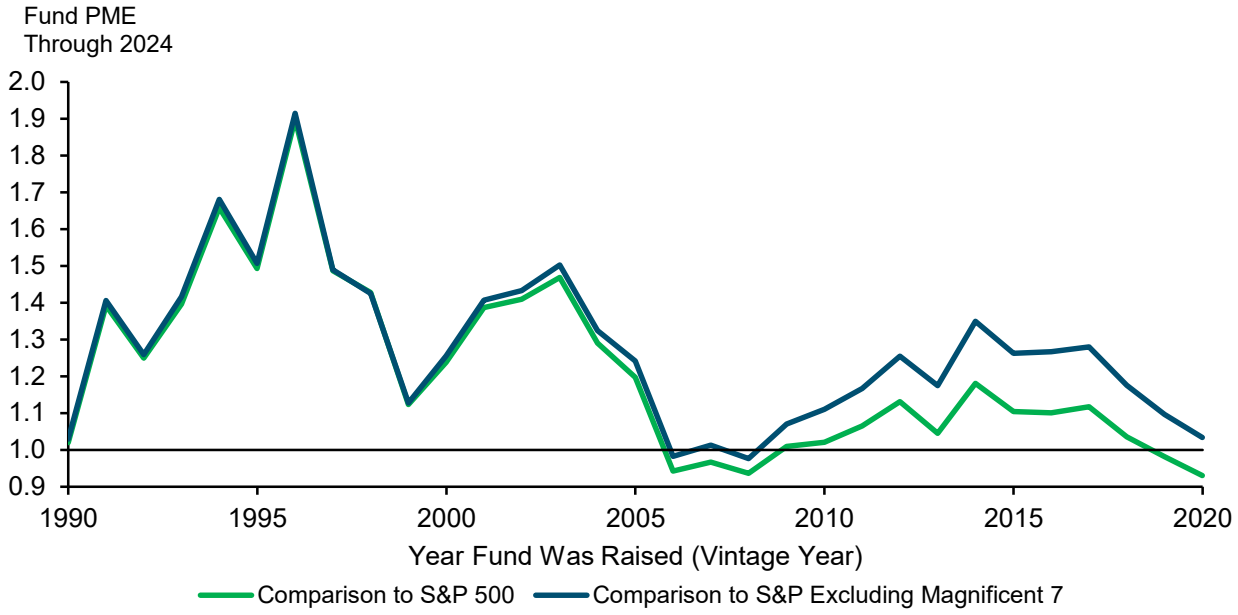
55. Private equity funds have also consistently outperformed the S&P 500 across fund vintages.[117] **Figure 10** below shows private equity funds' pooled PME through the end of 2024

over a short investment window, such as three-years, may be misleading and unlikely to persist. In my perspective, ten years is a sufficiently long period to draw comparisons between assets. In the case of private equity, one article finds that "past periods of underperformance were followed by strong multi-year rebounds." *See* "2026 Market Overview," *Hamilton Lane*, accessible at https://www.hamiltonlane.com/2026-market-overview/performance#long-term.

[117] MSCI defines a fund vintage as the year of a fund's first capital flow. A vintage represents the beginning of a fund's investment cycle. Vintage years are a concept that primarily pertains to traditional closed-end drawdown funds rather than evergreen vehicles, which are permanent investment facilities. Although I understand retail investors are expected to access private capital via evergreen funds rather than drawdown funds (*see* Section IV.B, analyzing performance of drawdown funds across vintage years is a useful indicator of the persistence of private capital outperformance relative to public markets.

using the S&P 500 as a comparison index.[118] I present my analysis by the year that the funds were raised, with each point on the graph representing the PME associated with all funds raised in a particular year. Further, I restrict my analysis to funds raised between 1990 and 2020 because funds raised in more recent years are still early in their investment cycle and likely have not yet realized returns on a significant portion of their investments.

FIGURE 10
PME Through 2024 by Vintage Year of Private Equity Fund, Funds Raised Between 1990–2020



Source: *Bloomberg*; *MSCI*; *LSEG*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: PME is calculated by vintage year as the sum of all fund distributions through 2024 and the remaining value of funds at the end of 2024 divided by the sum of all paid-in capital to funds through 2024. Analysis is performed only through 2024 as cashflow data for full-year 2025 was not available from MSCI in time to incorporate before publication. The degree to which PMEs would change from adding incremental years depends on the value of assets remaining in funds relative to historical distributions. For funds in vintage years prior to 2017, the remaining value of fund assets is lower than historical distributions and thus the impact on PMEs of adding incremental data is likely low. Cash flows are discounted using the returns of the S&P 500 or S&P 500 Excluding Magnificent 7. The S&P 500 Excluding Magnificent 7 return measures the performance of the S&P 500 after removing Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla from the index.

56. My analysis finds that private equity funds raised in 26 of 31 vintage years between 1990 and 2020 outperformed the S&P 500 (*i.e.*, their PME was above 1.0) through the end of 2024. For example, through the end of 2024, the PME for vintage year 2000 funds is 1.24. A simple

[118] *See* Section III.A for a description of PME. PME values greater than 1.0 indicate that the private equity funds in the respective vintage year on average outperformed the S&P 500 net of fees.

way of interpreting this statistic is that, by the end of 2024, vintage year 2000 funds had returned $1.24 to their investors for every $1 that these investors would have received by buying instead the S&P 500. More generally, the average vintage year PME is 1.22, indicating investors in private equity funds received 22% more than they would have if they invested the same capital in the S&P 500.

57. The blue line represents the PME for funds raised in each vintage year when compared against the revised S&P 500 excluding the Magnificent 7 instead.[119] As expected, the performance of private equity funds through 2024 is even stronger relative to this index. After excluding the Magnificent 7, private equity funds outperformed the S&P 500 net of fees in 29 of 31 vintage years and produced an average vintage year PME of 1.28. The tech sector has experienced sharp growth since the 2008 financial crisis, making the impact of the Magnificent 7 most relevant in the post-crisis period. For funds raised between 2010 to 2020, the average vintage year PME relative to the S&P 500 was 1.06, but the average vintage year PME relative to the S&P 500 excluding the Magnificent 7 was 1.20 over the same period.

58. These comparisons between public and private asset returns do not account for the possibility that these assets have different risk profiles. In other words, a potential explanation for private capital's outperformance relative to public markets is that these assets are simply riskier, thus requiring greater returns to compensate investors for this risk.[120] However, I find that the data do not support this hypothesis. **Figure 11** below shows the Sharpe ratios of each of these indices over the period between 1990 and 2025. The Sharpe ratio is a measure of the attractiveness of a portfolio accounting for the volatility of the returns, and a higher Sharpe ratio means investors obtained better risk-adjusted returns.[121] On the equity side, the MSCI Global Private Equity index has a Sharpe ratio of 0.69 whereas the S&P 500 and the S&P 500 excluding Magnificent 7 have Sharpe ratios of 0.55, and 0.51, respectively. On the credit side, the MSCI Global Private Credit index has a Sharpe ratio of 0.89 whereas the Moody's Baa Corporate Bond

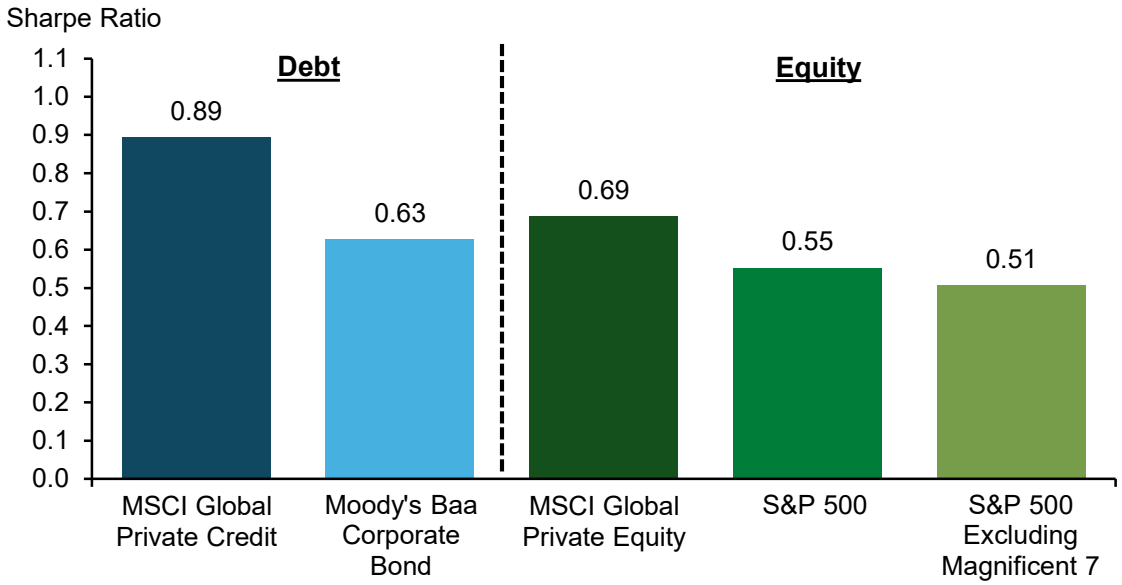
[119] As discussed in Section II.C.3, the Magnificent 7 stocks have become an increasingly important driver of public equity index performance.

[120] Zvi Bodie, Kane, Alex, and Marcus, Alan, *Investments*, McGraw-Hill Education, 2018 ("Bodie et al. (2018)"), p. 10 ("[T]here should be a risk-return trade-off in the securities markets, with higher risk assets priced to offer higher expected returns than lower-risk assets.").

[121] The Sharpe ratio of a portfolio is calculated as the portfolios expected excess return over risk free rate divided by the standard deviation of the return. The Sharpe ratio is used to measure risk-adjusted performance. *See* Bodie et al. (2018), p. 133 ("The importance of the trade-off between reward (the risk premium) and risk (as measured by standard deviation or SD) suggests that we measure the attraction of a portfolio by the ratio of its risk premium to the SD of its excess returns. This reward-to-volatility measure was first used extensively by William Sharpe and hence is commonly known as the *Sharpe ratio.* It is widely used to evaluate the performance of investment managers.").

index has a Sharpe ratio of 0.63. In sum, even adjusting for the risk of these assets, the performance of private capital exceeds public market indices.

FIGURE 11
Sharpe Ratios of MSCI Private Capital Indices vs. Public Market Indices, 1990–2025



Source: *Bloomberg*; *LSEG*; *FRED*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The Sharpe ratio is calculated as the average of the difference between the annual index return and the risk free rate, divided by the standard deviation of the difference between the annual return and the risk free rate. The risk free rate is the 3-Month Treasury bill secondary market rate. The S&P 500 Excluding Magnificent 7 annualized return measures the performance of the S&P 500 after removing Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla from the index.

B. Investing in Private Capital Would Benefit Retirement Savers

59. The sustained historical outperformance of private capital means that a portfolio containing a mix of private-public assets can experience meaningful excess savings relative to a public-only portfolio over a long-term investment horizon, such as that of an investor saving for retirement. In this section, I illustrate the excess savings retirement savers might expect to receive from investing in retirement vehicles that incorporate private capital.

1. Target Date Fund Investors

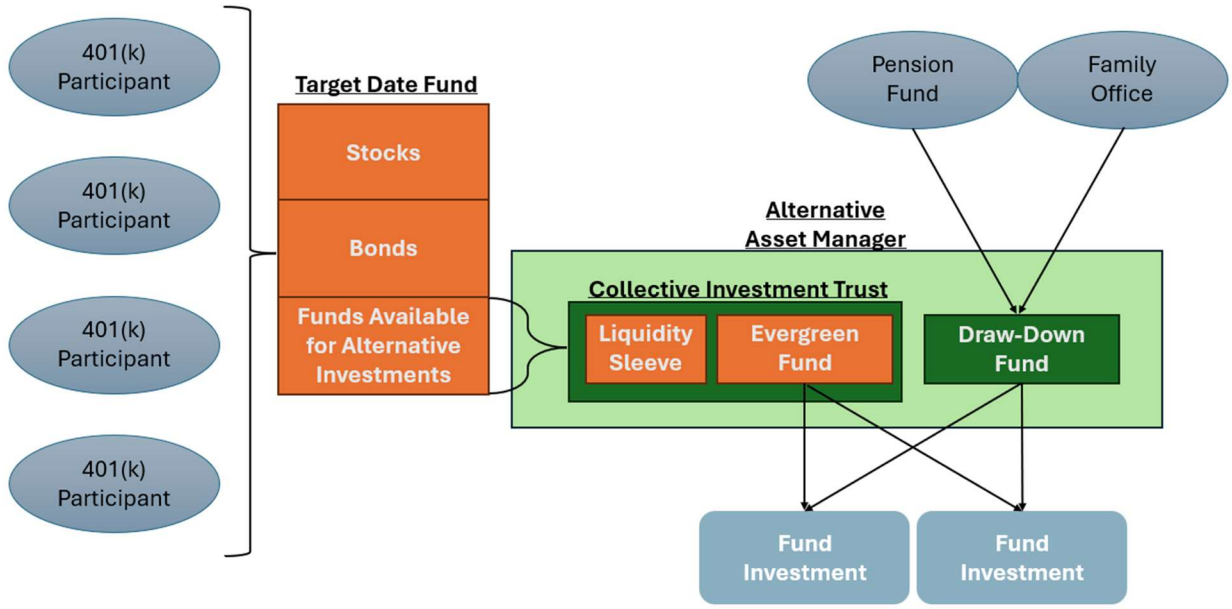
60. A Target Date Fund ("TDF") is a fund that invests in a diversified portfolio of assets.[122] TDFs are so named because the asset allocation of the fund is designed for the needs of an investor who expects to retire on the "target date" of the fund.[123] Specifically, the asset allocation of a TDF follows a risk "glide path" as its target date approaches, shifting from a riskier allocation (*i.e.*, higher allocation to public equities) focused on capital appreciation when the investor is young to a more conservative allocation focused on capital preservation when the investor is in retirement.[124] TDFs are commonly offered to DC plan participants.[125] Academic literature indicates investing in TDFs benefits retirement investors who are unable to construct an efficient portfolio on their own.[126]

61. Based on interviews I have conducted with industry practitioners, I understand that one of the ways in which retirement savers are expected to access private capital is by holding TDFs that allocate a portion of assets to such investments.[127] **Figure 12** below shows how this investment structure might work. Among the assets held by the TDF would be a stake in a private capital investment vehicle. This vehicle would typically be structured as a Collective Investment Trust ("CIT") or a similar custodial arrangement.[128] This CIT would contain a

[122] Bodie et al. (2018), p. 955 ("A target-date retirement fund (TDRF) is a fund composed of other funds, diversified across stocks, bonds, and money market accounts, in which the asset allocation becomes progressively more conservative as the investor approaches his or her retirement date.").
[123] Bodie et al. (2018), p. 955 ("TDRFs are marketed as enabling investors to put their investment plans on autopilot. Once you choose a fund with a target year matching your investment horizon, the life cycle manager gradually moves some of your money out of stocks and into bonds as your retirement date nears.").
[124] As an illustrative example, consider the glide path used by Vanguard TDFs. Early in the investor's career (*i.e.*, when the investor is at least 25 years from retirement), Vanguard allocates 90% of assets to equity and 10% to assets to bonds. After the investor turns 40, the TDF begins sliding down the glide path such that the asset allocation gradually switches from emphasizing equities to emphasizing bonds. By the time the investor turns 72, the allocation has switched to 30% equity and 70% bonds. *See* "Target-date Fund Glide Path," *Vanguard*, accessible at https://workplace.vanguard.com/investment/strategies/tdf-glide-path.html.
[125] According to the Investment Company Institute, approximately 85% of 401(k) plans offered TDFs in 2022. *See* "Quick Facts on Target Date Fund Use in Retirement Plans," *ICI*, 2025, accessible at https://www.ici.org/system/files/2025-12/25-ici-quick-facts-target-date-funds-retirement.pdf.
[126] Olivia S. Mitchell, and Utkus, Stephen P., "Target-Date Funds and Portfolio Choice in 401(K) Plans," *Journal of Pension Economics and Finance* 21, 2022, pp 519–536 at 533 ("[T]arget-date investors take greater risks across the lifecycle, follow a lifecycle-based age gradient, and enhance their exposure to factors embedded in the funds designed by the portfolio manager. These changes could be welfare-enhancing under the joint assumptions that the target-date design represents an efficient portfolio frontier (selected by the sponsor and fund manager), and that workers without TDFs would fail to construct efficient portfolios, or would choose suboptimal points on that frontier, due to either investment literacy problems or behavioral biases.").
[127] The retirement saver would allocate a portion of their retirement savings towards a TDF that offered private capital exposure either by making an affirmative election or defaulting into it through a QDIA.
[128] "Collective Investment Trust (CIT)," *U.S. Securities and Exchange Commission*, accessible at https://www.investor.gov/introduction-investing/investing-basics/glossary/collective-investment-trust-cit ("A collective investment trust (CIT), also called a collective trust fund, is a pooled investment vehicle that combines the money of multiple investors into a single portfolio with a specific investment strategy.").

"liquidity sleeve," that is a proportion of the fund's assets and would be held in highly liquid investments earning market returns. The remainder of the CIT's assets would be invested in an evergreen fund or an underlying vehicle, such as another CIT, that invests directly into an evergreen fund (see Section II.A), which would provide periodic liquidity opportunities. The evergreen fund would be managed by an alternative asset manager that also manages traditional draw-down funds for institutional investors. The evergreen fund and the drawdown fund could coinvest in the same companies.

FIGURE 12
Example of Target Date Fund Private Market Investment Vehicle



62. As the figure illustrates, the liquidity available to retirement investors would differ significantly from that available to investors in traditional draw-down funds. The liquidity sleeve that exists at the CIT level would allow for a good deal of idiosyncratic liquidity demand without requiring the evergreen fund to sell any of its investments. At the same time, the

evergreen fund would have its own liquidity buffer, so that it could meet excess demand for liquidity without interrupting its own natural investment opportunities.[129]

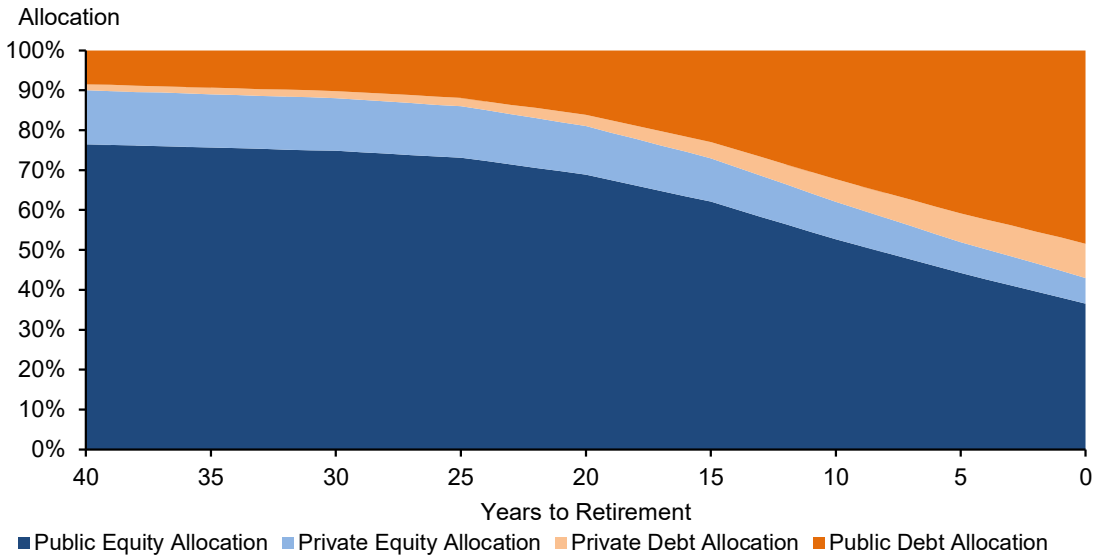
63. To illustrate the impact of providing retirement investors with access to private capital, I perform a simulation comparing the performance of two retirement portfolios over forty years—one a TDF that invests in both public markets and private capital and the other a public-only TDF. I construct these hypothetical TDFs using the average equity-debt split for all TDFs tracked by Morningstar to construct their glide path.[130] However, for the TDF incorporating private capital, I allocate 15% of its assets to private markets, using the equity-debt glide path split to make a pro rata allocation to private equity and private credit. For example, suppose that for a given year on the glide path, the public-only target date fund allocates 90% of assets to equity and 10% debt. For the TDF with a private capital allocation, I would assign a 13.5% allocation to private equity (76.5% allocation to public equity) and 1.5% allocation to private credit (8.5% allocation to public bonds). **Figure 13** below illustrates the glide paths of each TDF through the period of my simulation, namely 40 years leading up to retirement.

[129] As noted in Section II.A above, evergreen funds provide periodic liquidity opportunities. The CIT's liquidity sleeve would permit it to meet *excess* demand for liquidity without interrupting the evergreen fund's own natural investment opportunities.

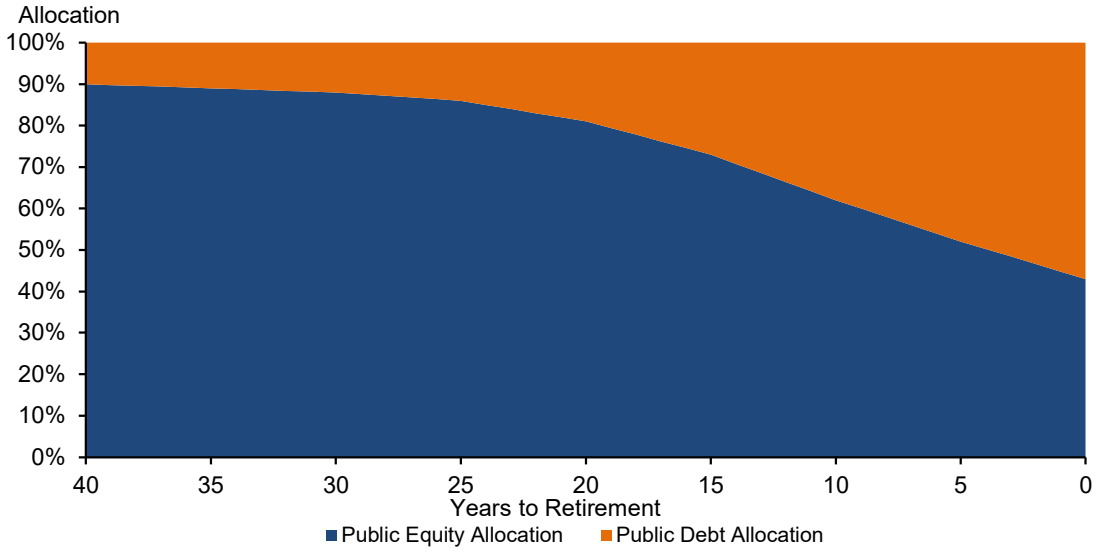
[130] Specifically, I use Morningstar's average TDF equity glide path from forty years before retirement to retirement to construct a glidepath for my public-only and public-private TDFs. *See* "American Funds Target Date Retirement Series," *Morningstar*, Target-Date Fund Series Report, December 31, 2025, p. 1.

FIGURE 13
Glide path of hypothetical public-private TDF vs. public-only TDF

Panel A: Glidepath Allocations in Public-Private Target Date Fund Simulation (15%)



Panel B: Glidepath Allocations in Public-Only Target Date Fund Simulation

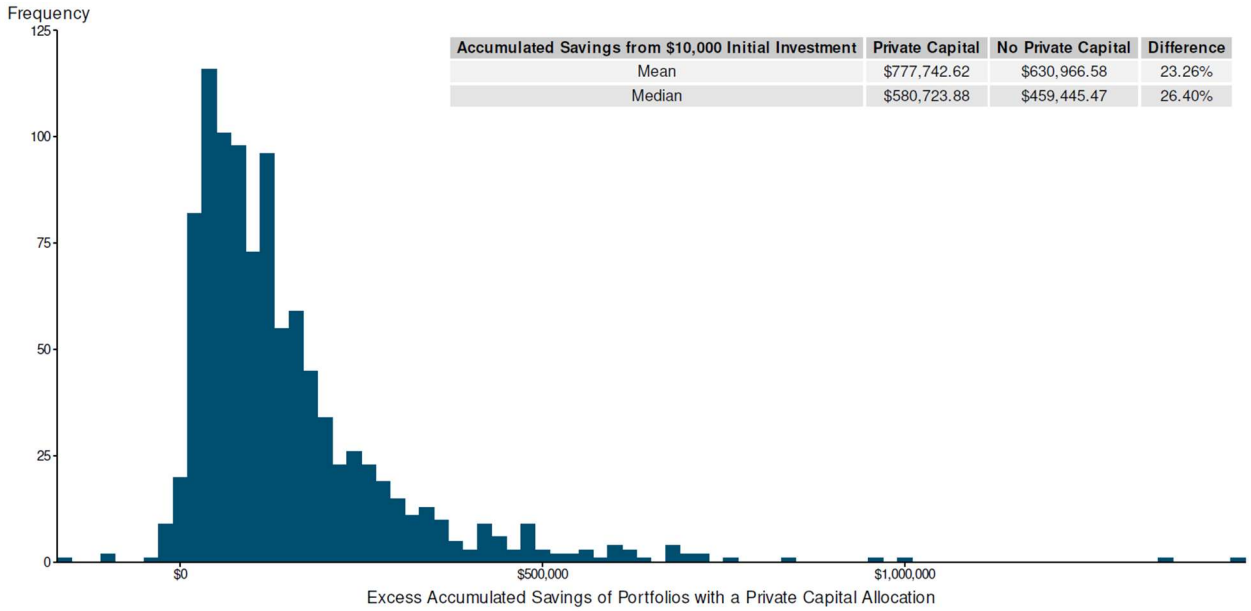


Source: *Morningstar*

Note: The chart shows the difference in allocation of assets to public and private assets between two target date funds simulated over a 40-year time horizon. As the fund nears the target date, assets are allocated away from equity and shifted towards debt to minimize risk in the approach to retirement. The glidepath data with equity targets benchmarked every five years is interpolated across the 40-year time horizon to calculate yearly asset allocations.

64. My simulation analysis demonstrates that retirement investors benefit on average from access to private capital. **Figure 14** shows the result of my simulation by plotting the distribution of the excess savings experienced from an initial $10,000 investment in the private-public TDF relative to the public-only TDF after 40 years.[131] In 982 of 1,000 simulations (98.2%), the TDF integrating private capital accumulates more savings. The average difference in savings is $147 thousand, an increase of 23% over the public-only TDF.

FIGURE 14
Distribution of the Simulated Difference in Savings from $10,000 Investment in TDF with Private Capital Allocation vs. without Private Capital Allocation



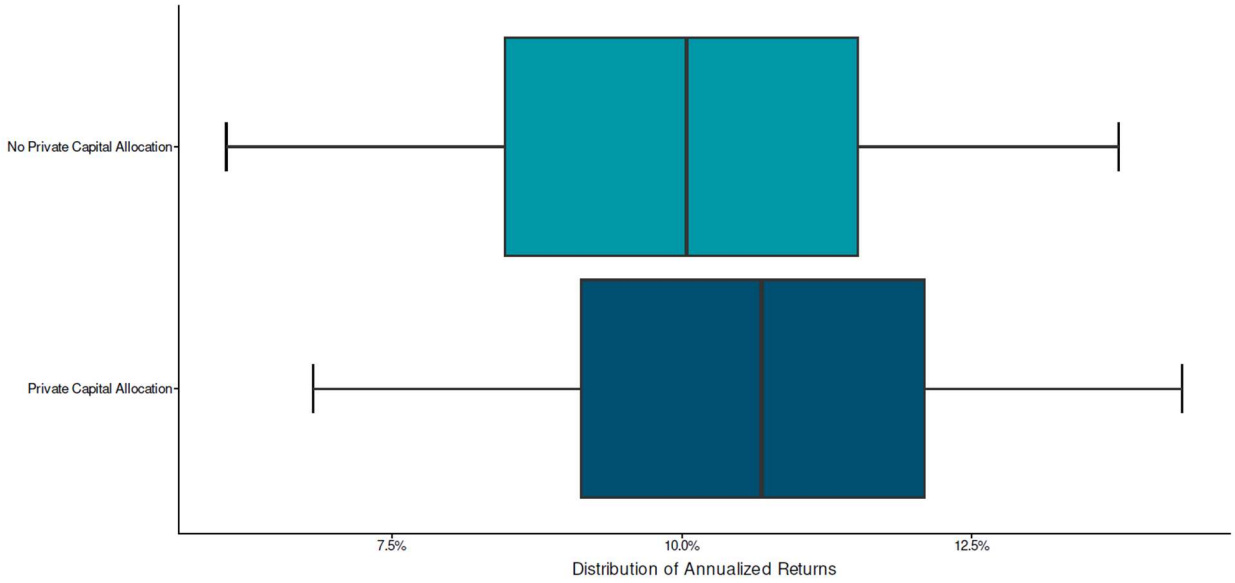
Accumulated Savings from $10,000 Initial Investment	Private Capital	No Private Capital	Difference
Mean	$777,742.62	$630,966.58	23.26%
Median	$580,723.88	$459,445.47	26.40%

Source: *Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html; *Morningstar*
Note: The histogram shows the frequency of simulated excess accumulated savings of a $10,000 investment TDF portfolio that includes a private capital allocation relative to a $10,000 investment TDF portfolio that excludes private capital. I assume the entire $10,000 is invested at the portfolio's inception and that there are no futher contributions. Forty years of returns are simulated 1,000 times using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. The TDF investment options include the S&P 500 index, the Moodys Baa Corporate Bond index, the MSCI Global Private Equity index, and the MSCI Global Private Credit index. The investment allocations for the portfolio adjust over the simulation based on the average TDF equity glide path reported by Morningstar as of December 31, 2025. In the portfolio with private capital, a 15% pro rata private capital allocation is assigned to the equity and debt glide path allocations. The portfolio excluding private capital invests exclusively in the S&P 500 and the Moodys Baa Corporate Bond index. Investment portfolios are rebalanced each year. This process is repeated 1,000 times to create the simulated distribution of portfolio returns.

[131] Each portfolio starts with $10,000. I simulate the savings accumulation of the two portfolio options 1,000 times.

65. Importantly, the inclusion of private assets in the TDF fund also benefits investors by improving the expected return distribution of their portfolios and reducing downside risks. **Figure 15** shows the distribution of annualized returns for each portfolio and illustrates that diversifying into private assets lowers downside risk. As shown in the figure, for the private-public TDF, an outcome at the 5th (25th) percentile earned annualized returns of 6.8% (9.1%). In contrast, in the public-only TDF, the annualized return at the 5th (25th) percentile is only 6.1% (8.5%). Additionally, including private assets also increases average returns. The median return of the private-public TDF exceeds the public-only TDF by 0.6% per year. Therefore, a TDF that incorporates a 15% allocation of assets to private capital not only enhances returns on average but also mitigates downside risk.

FIGURE 15
Distribution of the Simulated Annualized Returns from Investment Portfolio with Private Capital Allocation vs. without Private Capital Allocation

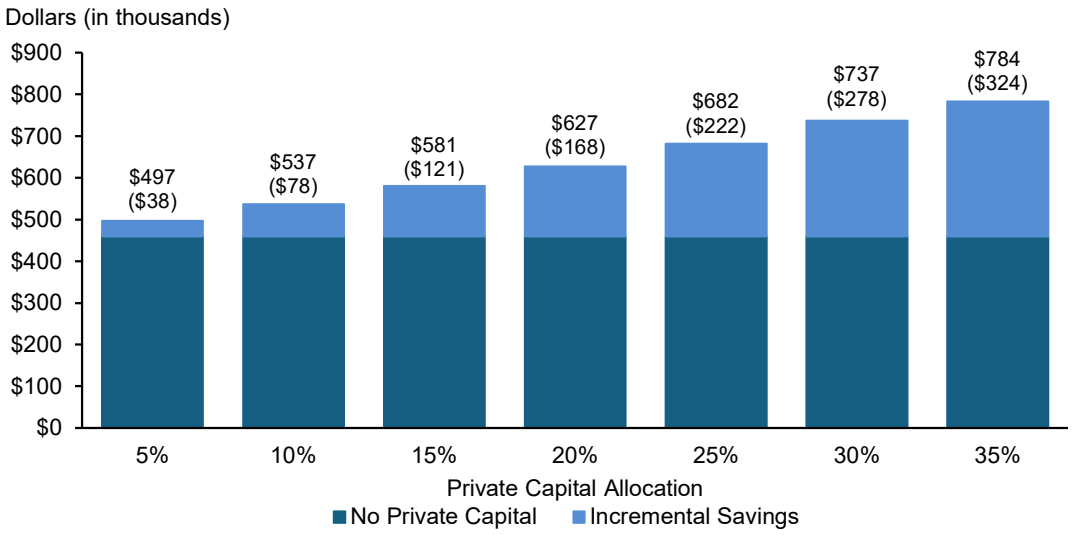


Source: *Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html; *Morningstar*
Note: The box and whisker plot shows the distribution of simulated annualized returns of a TDF investment portfolio that includes a private capital allocation and a TDF investment portfolio that excludes private capital. Forty years of returns are simulated 1,000 times using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. The TDF investment options include the S&P 500 index, the Moodys Baa Corporate Bond index, the MSCI Global Private Equity index, and the MSCI Global Private Credit index. The investment allocations for the portfolio adjust over the simulation based on the average TDF equity glide path reported by Morningstar as of December 31, 2025. In the portfolio with private capital, a 15% private capital allocation is assigned on a pro rata basis to the equity and debt glide path allocations. The portfolio excluding private capital invests exclusively in the S&P 500 and the Moodys Baa Corporate Bond index. The box and whisker plot indicates returns at the 5%, 25%, 50%, 75%, and 95% of the simulated return distribution.

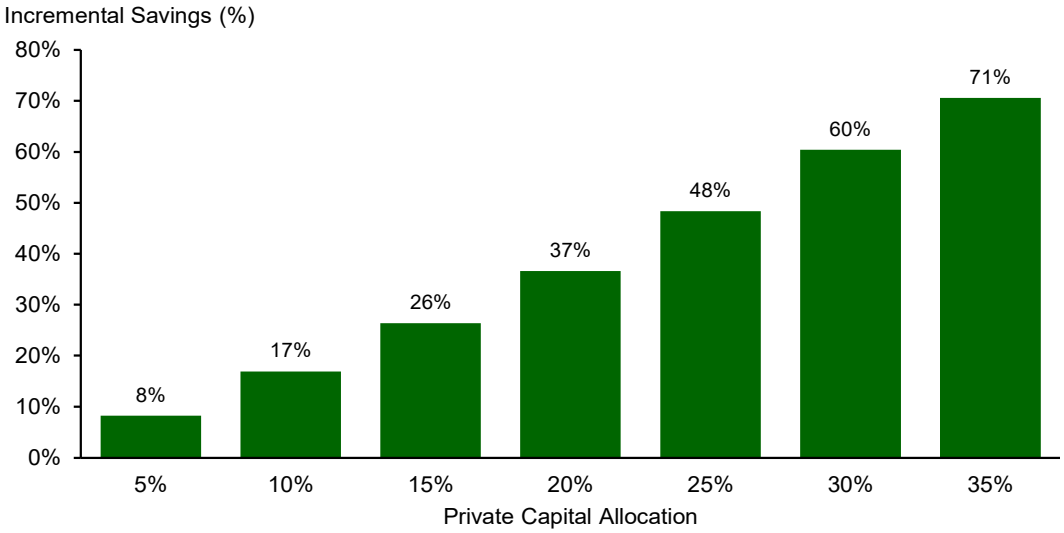
66. As noted in Section II.A, there is a wide dispersion in pension plans allocations to private capital, with some plans allocating considerably more than 15% of assets to these alternative assets. In **Figure 16** below, I show how the median simulated retirement savings from a $10,000 initial investment changes under a range of alternative private capital allocations between 0% and 35%. The accumulated retirement savings after forty years monotonically increases as the TDF private capital allocation rises. For example, the median TDF portfolio with a 10% private capital allocation accumulates $537 thousand in savings, 17% more than the TDF without private capital. Increasing the private capital allocation to 25% improves median simulated savings to $682 thousand, 48% more than the TDF without private capital. Furthermore, TDF portfolios with private capital outperform the TDF without private capital on at least 98% of simulations, demonstrating that the TDFs incorporating private capital rarely underperform over a retirement investment horizon.

FIGURE 16
Median Incremental Simulated Savings from $10,000 Investment in TDF by Private Capital Allocation

Panel A: Median Value of Public-Private Portfolio at Retirement (Incremental Savings)



Panel B: Incremental Savings (%) Accrued by Median Public-Private Portfolio



Source: *Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html; *Morningstar*

Note: The chart shows the median savings from 1,000 simulations of a $10,000 investment in a TDF portfolio over forty years using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. I assume the entire $10,000 is invested at the portfolio's inception and that there are no futher contributions. The TDF investment options include the S&P 500 index, the Moodys Baa Corporate Bond index, the MSCI Global Private Equity index, and the MSCI Global Private Credit index. The investment allocations for the portfolio adjust over the simulation based on the average TDF equity glide path reported by Morningstar as of December 31, 2025. Each bar represents a different assumed pro rata private capital allocation of the equity and debt glide path allocations. Investment portfolios are rebalanced each year.

2. Allocation Fund Investors

67. Based on my discussions with industry practitioners, I understand that retirement savers may also access private capital through allocation funds. An allocation fund (also called a balanced fund) is a fund investing in a diversified portfolio of assets.[132] Allocation funds are similar to TDFs in that they make investments across multiple asset classes; however, unlike a TDF, allocation funds hold their asset mix constant in perpetuity (i.e., there is no glide path).[133] A common example of allocation funds are 60-40 funds, which invest 60% of their assets in equity and 40% in debt.[134] For investors in an allocation fund, the private capital investment chain would closely resemble **Figure 12** above, with the allocation fund (rather than the TDF) investing into the CIT. As with the TDF, the CIT would contain a "liquidity sleeve" to meet the allocation fund's demands for deposits and withdrawals.

68. I perform similar retirement portfolio simulations mimicking retirement savings growth under an allocation fund investment structure. In particular, I compare retirement portfolio savings accumulation over forty years between a 60-40 allocation fund that only invests in public markets against another portfolio that is also 60-40 equity-debt, but invests 15% of each of these allocations in private markets.

69. As with my analysis on TDFs, I find that retirement savers in allocation funds would benefit from access to private capital. **Figure 17** below shows the result of my simulation by plotting distribution of the excess savings experienced from an initial $10,000 investment in the private-public portfolio relative to the public portfolio after 40 years.[135] In 992 of 1,000 simulations (99.2%), the portfolio integrating private capital accumulates more savings after

---

[132] "Balanced Fund," *U.S. Securities and Exchange Commission*, accessible at https://www.investor.gov/introduction-investing/investing-basics/glossary/balanced-fund ("A balanced fund or an asset allocation fund is a mutual fund, exchange-traded fund (ETF), closed-end fund, or unit investment trust (UIT) that invests in stocks, bonds, and money market instruments in an attempt to reduce risk but still provide capital appreciation and income.").

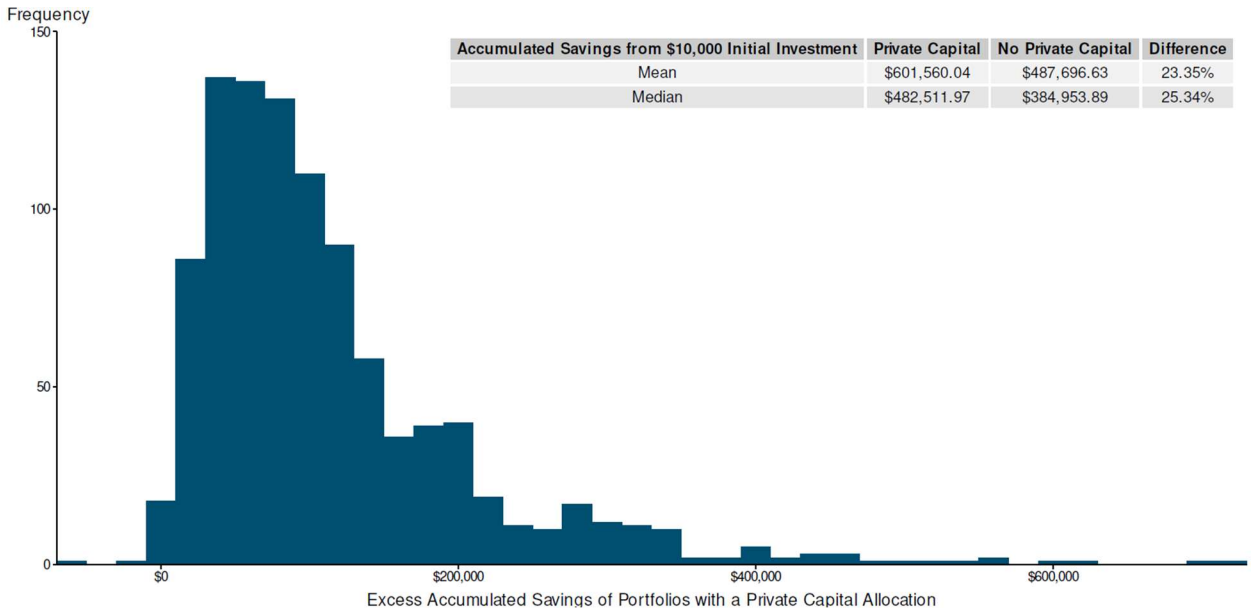
[133] "Balanced Fund," *U.S. Securities and Exchange Commission*, accessible at https://www.investor.gov/introduction-investing/investing-basics/glossary/balanced-fund.

[134] Nga Pham, Cui, Bei, and Ruthbah, Ummul, "The Performance of the 60/40 Portfolio: A Historical Perspective," *CFA Institute Research and Policy Center*, 2025, p. 4 ("The traditional 60/40 portfolio has 60% invested in equity and 40% invested in fixed-income securities, such as government bonds. It combines the potentially high returns of equity investments and the stability of bond income…The 60/40 portfolio earns much of its popularity from its straightforward approach to portfolio construction and implementation, making it an appealing choice for investors seeking simplicity in their investment strategy.").

[135] Each portfolio starts with $10,000. I simulate the savings accumulation of the two portfolio options 1,000 times.

forty years. The average difference in savings is $114 thousand, an increase of 23% over the public-only portfolio.

FIGURE 17
Distribution of the Simulated Difference in Savings from $10,000 Investment Portfolio with Private Capital Allocation vs. without Private Capital Allocation



Accumulated Savings from $10,000 Initial Investment	Private Capital	No Private Capital	Difference
Mean	$601,560.04	$487,696.63	23.35%
Median	$482,511.97	$384,953.89	25.34%

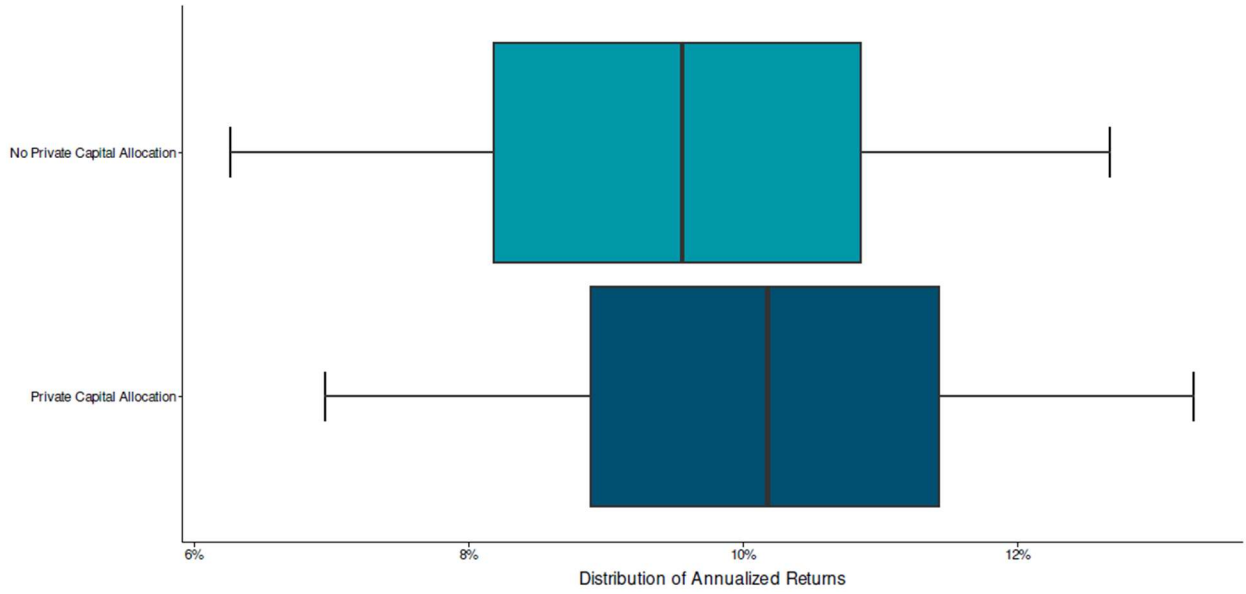
Source: *Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The histogram shows the frequency of simulated excess accumulated savings of a $10,000 investment portfolio that includes a private capital allocation relative to a $10,000 investment portfolio that excludes private capital. I assume the entire $10,000 is invested at the portfolio's inception and that there are no futher contributions. Forty years of returns are simulated 1,000 times using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. The investment allocations for the portfolio including private capital are 51% to the S&P 500 index, 34% to the Moodys Baa Corporate Bond index, 9% to the MSCI Global Private Equity index, and 6% to the MSCI Global Private Credit index. This process is repeated 1,000 times to create the simulated distribution of portfolio returns. The investment allocations for the portfolio excluding private capital are 60% to the S&P 500 index and 40% to the Moodys Baa Corporate Bond index. Investment portfolios are rebalanced each year.

70. Exposure to private capital also benefits allocation fund investors by improving the expected return distribution of their portfolios. **Figure 18** below shows the distribution of annualized returns for each allocation fund. As shown in the figure, for the private-public allocation fund, an outcome at the 5th (25th) percentile earned annualized returns of 6.9% (8.9%). In contrast, in the public-only allocation fund, the annualized return at the 5th (25th) percentile is only 6.3% (8.2%). The median return of the private-public allocation fund exceeds the public-only allocation fund by 0.6% per year. These results mirror the TDF findings, further

demonstrating that a portfolio that incorporates even a 15% allocation of assets to private capital can enhance returns on average while mitigating downside risk.

FIGURE 18
Distribution of the Simulated Annualized Returns from Investment Portfolio with Private Capital Allocation vs. without Private Capital Allocation



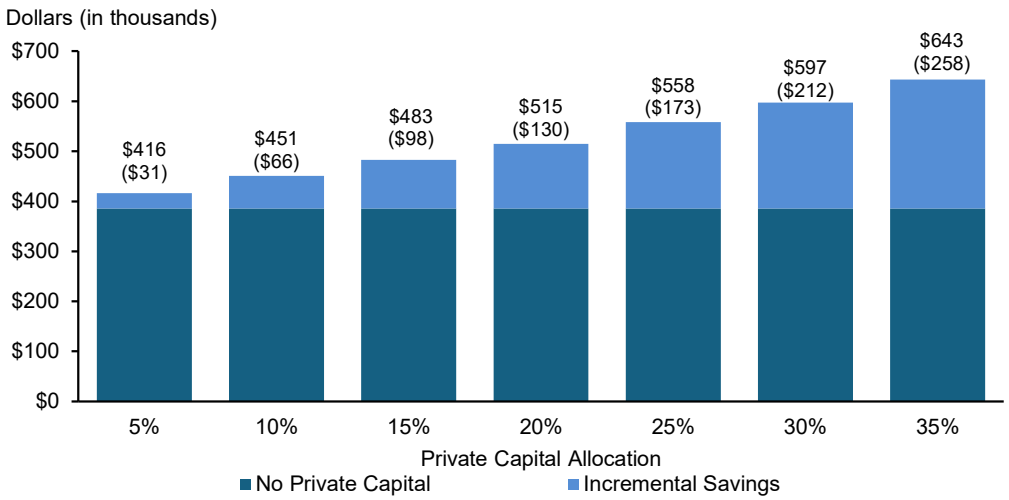
Source: *[Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html

Note: The box and whisker plot shows the distribution of simulated annualized returns of an investment portfolio that includes a private capital allocation and an investment portfolio that excludes private capital. Forty years of returns are simulated 1,000 times using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. The investment allocations for the portfolio including private capital are 51% to the S&P 500 index, 34% to the Moodys Baa Corporate Bond index, 9% to the MSCI Global Private Equity index, and 6% to the MSCI Global Private Credit index. The investment allocations for the portfolio excluding private capital are 60% to the S&P 500 index and 40% to the Moodys Baa Corporate Bond index. The box and whisker plot indicates returns at the 5%, 25%, 50%, 75%, and 95% of the simulated return distribution.

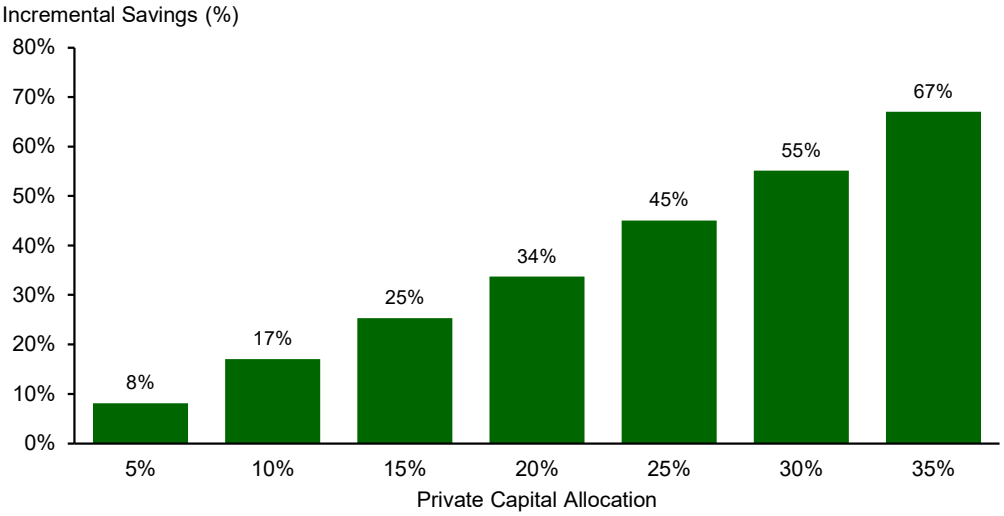
71. In **Figure 19** below, I show how the median simulated retirement savings from a $10,000 initial investment changes under a range of alternative private capital allocations between 5% and 35%. The accumulated retirement savings after forty years monotonically increases as the private capital allocation rises. For example, the median portfolio with a 10% private capital allocation accumulates $451 thousand in savings, 17% more than the fund without private capital. Increasing the private capital allocation to 25% improves median simulated savings to $558 thousand, 45% more than the fund without private capital. Furthermore, each portfolio incorporating private capital underperforms the portfolio without private capital on less than 1% of simulations over the 40 year retirement investment horizon.

FIGURE 19
Median Incremental Simulated Savings from $10,000 Investment in Allocation Fund by Private Capital Allocation

Panel A: Median Value of Public-Private Portfolio at Retirement (Incremental Savings)



Panel B: Incremental Savings (%) Accrued by Median Public-Private Portfolio



Source: *Bloomberg*; "Historical Returns on Stocks, Bonds, and Bills: 1928-2025," *Damodaran Online*, accessible at https://pages.stern.nyu.edu/~adamodar/New_Home_Page/histretSP.html; *Morningstar*

Note: The chart shows the median savings from 1,000 simulations of a $10,000 investment in a portfolio over forty years using expected returns and covariances of assets estimated with historical return data from 1990 to 2024. I assume the entire $10,000 is invested at the portfolio's inception and that there are no futher contributions. The investment options include the S&P 500 index, the Moodys Baa Corporate Bond index, the MSCI Global Private Equity index, and the MSCI Global Private Credit index. The investment allocations each include 60% allocations to equity and 40% allocations to debt. Each bar shows a simulation with a different proportion of the equity and debt investment that is pro rata allocated to private capital. Investment portfolios are rebalanced each year.

72. In summary, private capital has historically outperformed public capital markets on a return and risk-adjusted basis. Private capital outperformance has persisted across a majority of private capital fund vintages. Public equity markets have increasingly concentrated in the Magnificent 7, thereby reducing diversification for S&P 500 investors. Private capital investments can help investors to diversify, and private equity outperformance is even greater when compared to a more diversified public equity index that excludes the Magnificent 7. By simulating retirement portfolios based on historical asset return data, I find portfolios that allocate a modest investment share to private capital almost always outearn portfolios invested in only public markets, accumulating meaningful incremental retirement savings. Together, these findings show that retail investors can benefit from adding private capital investments to their investment portfolios.

C. Retirement Plans Should Be Able to Meet Their Liquidity Needs Even When Holding Private Capital Assets

73. Although private capital investment alternatives may be less liquid than public assets, I show in this section that DC plans should be able to meet their liquidity needs while still permitting retirement investors to benefit from private capital's superior performance. DC plan participants' long investment horizons make their liquidity needs different from savers using cash-on-demand vehicles such as bank savings accounts. In particular, there are three general scenarios under which a fiduciary might expect a DC plan participant to need liquidity: (1) distributions, (2) hardship withdrawals, and (3) liquidation of the plan upon change of employment:

a. **Distributions** are standard withdrawals from the DC plan by participants. Since distributions before retirement carry early-withdrawal penalties,[136] most distributions occur during retirement years and are highly predictable based on the age of plan participants and the size of their portfolio.

[136] *See* "Hardships, Early Withdrawals, and Loans," *Internal Revenue Service*, accessible at https://www.irs.gov/retirement-plans/hardships-early-withdrawals-and-loans.

b. **Hardship withdrawals** are pre-retirement withdrawals to meet immediate financial needs for events such as medical bills.[137] Hardship events are rare so do not account for significant outflows from plan balances.[138]

c. **Plan liquidations** often occur when participants change employers.[139] Plan liquidations contribute the largest unexpected source of DC plan liquidity needs.

74. Data on DC plans distributions indicates the liquidity needs of most plans are modest. **Figure 20** below shows annual plan distributions (as a share of net assets) in the past 15 years based on Form 5500 filings submitted to the DOL.[140] I find that the median plan only distributes 8% of their assets to participants in a given year. After accounting for plan inflows from contributions, the median plan year has *negative* net distributions of -1% (*i.e.*, the median plan receives more contributions than distributions). Even in extreme withdrawal scenarios, I find net distributions amount to a modest amount of DC plan assets. At the 95th (99th) percentile of distribution, only 10% (20%) of plan assets are distributed on a net-of-contributions basis.

[137] "Hardships, Early Withdrawals, and Loans," *Internal Revenue Service*, accessible at https://www.irs.gov/retirement-plans/hardships-early-withdrawals-and-loans.

[138] According to Vanguard, 6% of participants took hardship withdrawals in 2025. The median hardship withdrawal amount was $1,900. *See* Jeffrey W. Clark, "How America Withstands Financial Hardship," *Vanguard*, 2026, accessible at https://workplace.vanguard.com/content/iig-transformation/pdf/how-america-uses-hardship-withdrawals.html.

[139] In 2024, the median worker in the U.S. had been at their job for just under 4 years. *See* "Employment Tenure in 2024," *U.S. Bureau of Labor Statistics*, September 26, 2024, accessible at https://www.bls.gov/news.release/pdf/tenure.pdf.

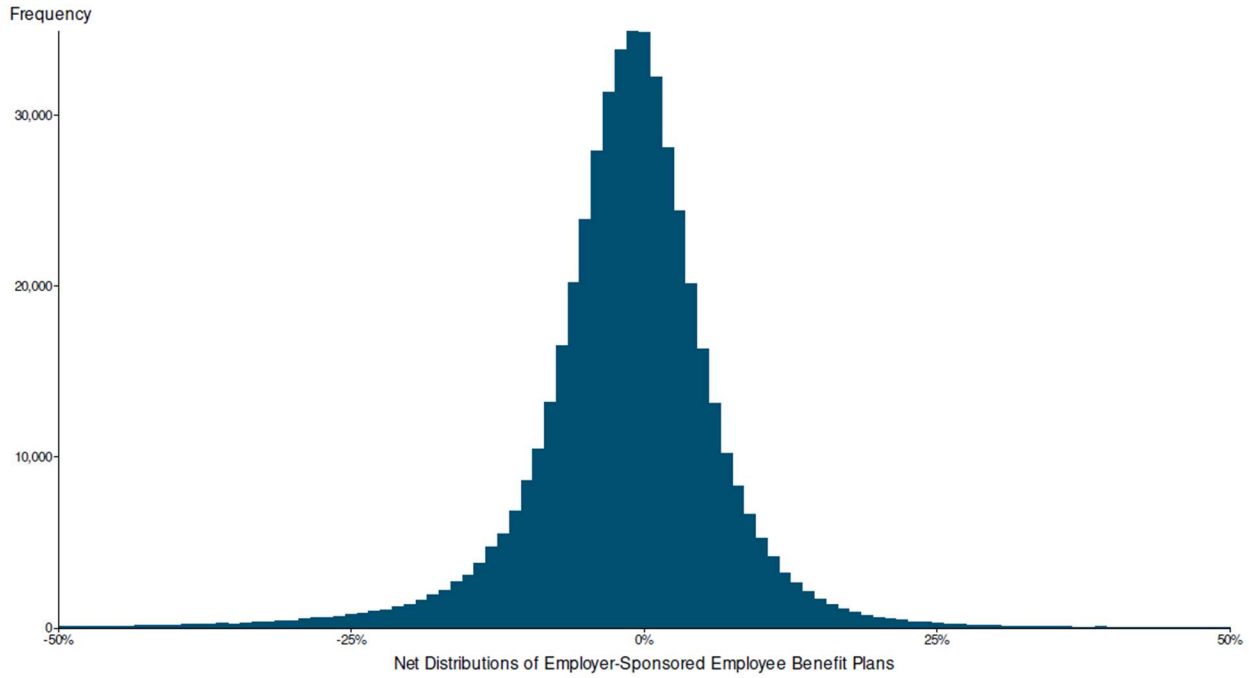
[140] I focus my analysis on established DC plans to avoid skewing the distributions and contributions data with plans that are either newly established or being wound down. I restrict my analysis to DC plans with at least 100 participants at the start of a plan year and $10 million in net assets at the beginning and end of the plan year.

FIGURE 20
Statistical Distribution of DC Plan Distributions, Plan-Years 2009–2024

Panel A: Distributions as Share of Plan Assets

	Percentile of Distributions						
	1%	5%	25%	50%	75%	95%	99%
Gross Distribution	1.15%	2.65%	5.56%	8.08%	11.32%	18.63%	28.16%
Net Distribution	-32.26%	-15.08%	-5.21%	-1.15%	2.69%	10.23%	19.93%

Panel B: Histogram of Distributions as a Share of Plan Assets



Source: DOL Form 5500 data

Note: Distributions are shown for Form 5500 filings from DC plan years between 2009 and 2024. Filings are filtered to DC plans with at least 100 participants at the start of a plan year and $10 million in net assets at the beginning and end of the plan year. Gross Distributions are calculated as the plan year's distributions divided by the plan year's net assets at the beginning of the year. Net Distributions are calculated as the plan year's distributions minus contributions divided by the plan year's net assets at the beginning of the year.

75. Although the liquidity needs of DC plans are typically modest, traditional private market investment vehicles such as closed-end, drawdown funds may still not meet all the needs of DC plan participants.[141] However, as I explained in Section IV.B, I understand that the liquidity

[141] As discussed in Section II.A, these traditional private market investment vehicles require commitments of at least ten years and are relatively illiquid during the lock-up period. Fenn et al. (1997), p. 46 ("Each partnership has a contractually fixed lifetime, generally ten years, with provisions to extend the partnership, usually in one- or two-year increments up to a maximum of four years.").

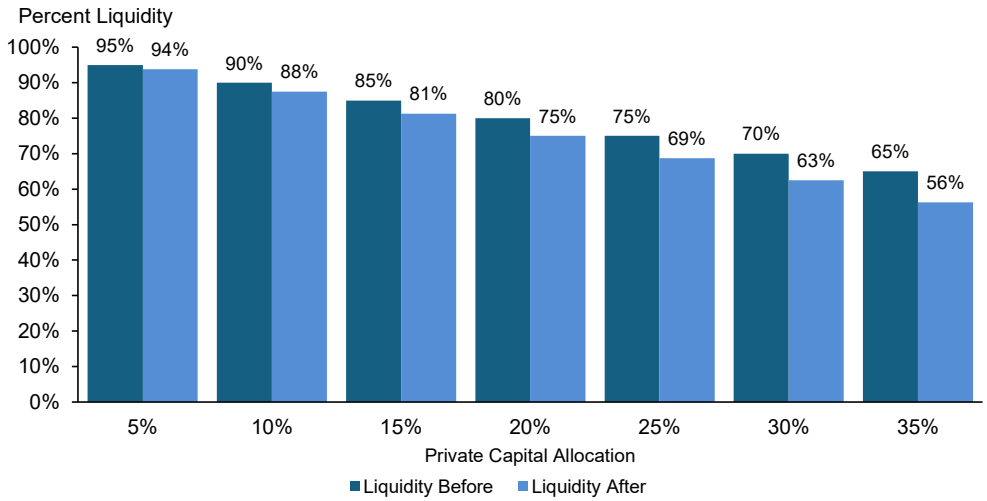
arrangements associated with private capital products designed for DC plans will differ substantially from what we imagine when we think of institutional investors investing in private capital funds (**Figure 12**). In particular, my interviews with industry practitioners highlighted private capital products under design for DC plan participants will offer liquidity sleeves aimed at helping these vehicles meet idiosyncratic liquidity demands. Such liquidity solutions are not typically found in traditional funds aimed at institutional and qualified investors.

76. A target-date or allocation fund that allocates a portion of assets to private capital should still be able to meet its liquidity needs, even under extreme withdrawal scenarios. Consider a series of hypothetical funds with private capital allocations between 5% and 35%, with the remainder of fund assets in liquid public market investments. **Figure 21** below shows that even when experiencing extreme levels of liquidity needs—that is, withdrawals mirroring the 95th or 99th percentile of net distributions in DC plan years—these target-date and allocation funds would still possess sufficient liquid assets to meet the needs of plan participants.[142] For example, even after experiencing liquidity demands at the 99th percentile of net distributions, a fund with a 35% allocation to private capital can meet withdrawal requests and still retain 56% of their remaining assets in liquid positions. As such, holding a portion of fund assets in illiquid investments (such as private capital investments) would not pose a significant impediment to target-date and allocation funds' ability to meet DC plans' liquidity needs.

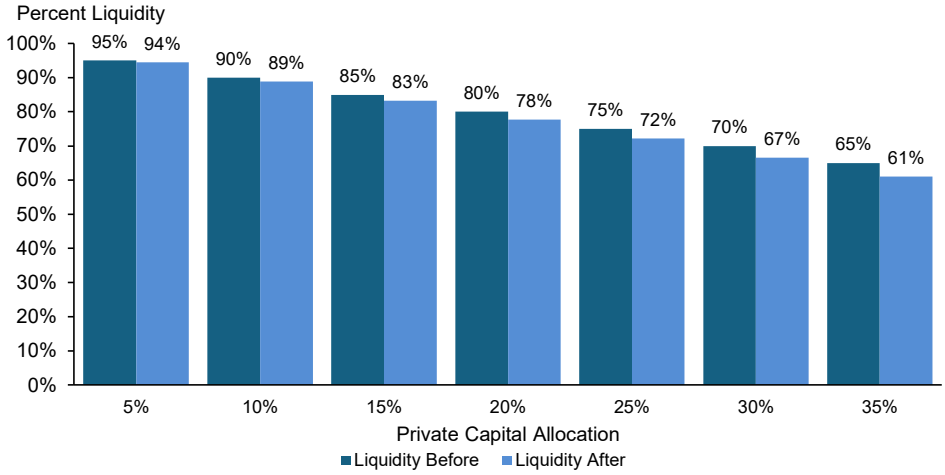
[142] As I explained in the prior section, I understand from my conversations with industry participants that private capital vehicles targeted at retirement investors will be equipped with liquidity sleeves, that is a portion of assets will be invested in public market securities, to help the fund meet *ad hoc* liquidity needs.

FIGURE 21
Fund Liquidity Stress Tests at 95th and 99th Percentile of DC Plan Net Distributions

Panel A: Withdrawals at 99th Percentile of Plan Net Distributions (20% of Assets)



Panel B: Withdrawals at 95th Percentile of Plan Net Distributions (10% of Assets)



Source: DOL Form 5500 filings

Note: Bars represent the share of a hypothetical fund's assets held in liquid investments before and after experiencing withdrawal requests at the 95th or 99th percentile of DC plan year net distributions calculated using DOL Form 5500 filings. The Form 5500 filings are filtered to DC plans with at least 100 participants at the start of a plan year and $10 million in net assets at the beginning and end of the plan year. Net Distributions are calcuated as the plan year's distributions minus contributions divided by the plan year's net assets at the beginning of the year.

77. My interviews with industry practitioners also highlighted how the asset mix is an important factor for evaluating how much a particular investment alternative would need to rely on its liquidity sleeve for meeting plan needs. As this comment letter has illustrated, private market investments come in many forms, ranging from less liquid private equity investments to much more liquid private credit investments, which generate a substantial portion of their total return through the current yield on the debt that is part of the overall investment.[143] Diversifying investments across the private market liquidity spectrum will provide an important source of flexibility for retirement savings vehicles in meeting plan needs.

V. Proposed Rule's Cost-Benefit Analysis

78. The Proposed Rule includes an analysis of potential costs and benefits associated with the proposed rulemaking ("CBA").[144] From a financial economist's perspective, the most important benefit for retirement savers identified in the CBA is the potential "to help improve risk-adjusted returns for plan participants and beneficiaries."[145] Consistent with my discussion of academic literature in Section III.A, the CBA recognizes that "alternative assets may offer opportunities to enhance risk-adjusted returns" obtained by retirement savers.[146] As I discuss previously, academic literature finds that private capital assets typically outperform public assets on a net-of-fees basis. Unsurprisingly, and in line with the findings from the simulation analysis I present in Section IV, the CBA identifies numerous academic and policy studies establishing that including alternative assets in retirement portfolios improves outcomes for retirement savers.[147] Consistent with my discussion in Section II.C.4, the CBA also recognizes the potential diversification benefits that private capital assets can bring to public-only portfolios.[148] Thus, I find reasonable

[143] Robinson and Wallskog (2026), p. 13 ("The majority of [BDC private loan] securities…are debt securities without any deferred income.").
[144] Proposed Rule, §§ 12.7–12.8.
[145] Proposed Rule, § 12.7.3.
[146] Proposed Rule, § 12.7.3.1.3.
[147] Proposed Rule, § 12.7.3.1.3.
[148] Proposed Rule, § 12.7.3.1.2.

the CBA's perspective that removing access barriers to alternative investments benefits retirement savers.[149]

VI. Conclusion

79. As shown by my empirical analysis, and confirmed by findings from academic literature, private capital investments have historically produced attractive returns for investors, outperforming public markets net of fees. Thus, for retirement savers who have historically been restricted from investing in private markets through DC plans, gaining access to these markets can thus help these investors earn higher risk-adjusted returns while potentially improving the diversification of their investment portfolios.

[149] I note this comment letter has also discussed benefits to retirement investors not identified in the CBA. For example, in Section IV.A, I show that private equity funds outperform public market equivalents across nearly all vintages after accounting for the effect of the Magnificent 7 in driving public index returns. As explained earlier in this comment letter, the increasing concentration of public indices exposes investors to firm-specific risk.

AIC Comment Letter
Exhibit B

Private Investments in Defined Contribution Retirement Portfolios

Conrad S. Ciccotello, JD, PhD[1]

I. Executive Summary

Over the past few decades, private sector businesses have dramatically shifted away from offering their employees defined benefit (DB) plans. During the DB plan era, defined contribution (DC plans, e.g., the 401(k)) were introduced as a supplemental benefit aimed at distributing company profits in a tax-advantaged manner. Over time, factors such as DB plan cost, shorter employment horizons, and the complexities of funding and valuing DB liabilities resulted in fewer employers offering DB plans. The DC plan structure then moved into the role of primary retirement plan in the private sector.

Beginning in 2006 with the Pension Protection Act (PPA), twenty years of bipartisan policy initiatives have resulted in DC plans functioning more like DB plans. For example, the PPA established target date funds (TDFs) as a qualified default investment alternative (QDIA). Today, TDFs comprise a supermajority of 401(k) plan assets. Like DB plans, TDFs relieve participants from making investment decisions. Initiatives that began with the Obama Administration and continued through the Secure Act of 2019 have addressed longevity risks by encouraging the offering of annuities in DC plans. Having annuities in DC plans offers participants a lifetime income option (that can extend to a spouse) similar to the payouts in DB plans.

In furtherance of this twenty-year policy trend, in March 2026, the Department of Labor (DoL) proposed a rule that outlines the processes and considerations involving the selection of designated investment alternatives for 401(k) plans, including private assets and other non-traditional assets. The proposed DoL rule focuses on six factors for fiduciary process consideration (performance, fees, liquidity, valuation, performance benchmarking and complexity) and assesses the benefits, costs, and transfers associated with the rule.

Adding private assets to DC plans would bring them more in line with DB plans' investments. The empirical evidence from DB plans shows that private assets improve DB plans' risk adjusted

[1] Director, Reiman School of Finance, Professor, Daniels College of Business, University of Denver, Colorado. Dr. Ciccotello received assistance from staff at Charles River Associates in preparing this report.

returns. Consistent with this evidence, this report's analysis shows that TDFs in 401(k) plans with private asset components can lead to increases of 16.8% to 27.4% in asset value at retirement, with a commensurate increase in annual income during the distribution phase. The projected increase in retirement income from adding private assets to DC plans would reduce the current gap in replacement income between households that have DB plans and those that do not.

The report concludes with an examination of the benefits of DoL's proposed rule. The report assesses the potential for improved risk-adjusted performance of TDFs with private assets as significantly positive. Over 10 and 20-year horizons, 401(k) participants could accumulate $205 billion and $955 billion more assets (measured in 2025 dollars) from the inclusion of private assets in TDFs. The adoption of the rule will increase the probability that sponsors will add private assets to TDFs, thereby making the benefits estimated more likely.

II. DB and DC retirement plans

Retirement plans are employer-sponsored arrangements designed to help workers accumulate wealth that can be used in their retirement years. In the U.S., the two major types of employer-sponsored retirement plans are defined benefit (DB) plans and defined contribution (DC) plans.

DB Plans are employer-sponsored retirement plans that promise participants a specified formula-based retirement benefit, tied to years of service and salary (e.g., final average pay), payable for life. To fulfill the promised benefits, the employer bears:

1) Accumulation risk/Contribution risk: ensuring that enough assets are contributed and invested over time to fund the promised benefits
2) Investment risk: fluctuations in the investment returns of the plan's assets
3) Longevity risk: paying benefits for as long as retirees live, even if life expectancy exceeds actuarial assumptions.

DB plans are now largely confined to the public sector, unionized workplaces, and legacy corporate plans. According to the Annual Survey of Public Pensions by the Census Bureau, in 2024, state and local government pension plans held $5.99 trillion in assets and covered more than 36 million participants.[2] Corporate and union DB plans held approximately $3.0 trillion in assets at 2023 year-end and covered more than 29 million participants.[3]

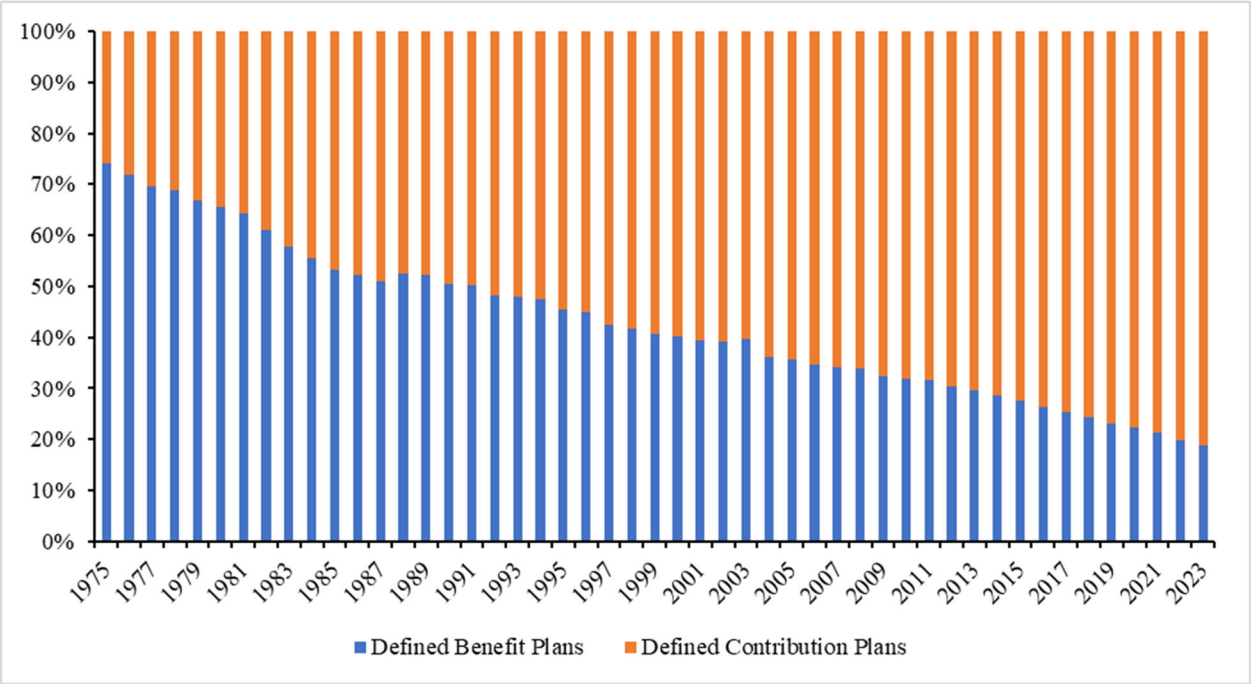
In comparison, the total assets held by DC plans as of year-end 2023 were approximately $9.4 trillion, of which $7.9 trillion were in 401(k) plans and the remaining in 403(b) and other defined contribution plans.[4] Thus, as of year-end 2023, the total assets in DC plans exceeds the amount held in government, corporate, and union plans ($9.4 trillion to $9.0 trillion).

The amount of assets invested in DB plans has been in a long-term decline relative to the amount of assets invested in DC plans.[5] The percentage of private sector participants in DB versus DC

[2] https://www.census.gov/newsroom/press-releases/2025/2024-annual-survey-public-pensions.html
[3] Corporate DB plans are defined as single employer and multiple-employer Private Pension Plan Bulletin, Abstract of 2023 Form 5500 Annual Reports, Department of Labor, January 2026. Table A6, https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf.
[4] US Department of Labor, Employee Benefits Security Administration, Private Pension Plan Bulletin, Abstract of 2023 Form 5500 Annual Report, Data Extracted on 6/30/2025, September 2025, available at https://www.dol.gov/sites/dolgov/files/ebsa/researchers/statistics/retirement-bulletins/private-pension-plan-bulletins-abstract-2023.pdf
[5] Federal Reserve Bank of St. Louis, FRED, compare series Defined Benefit Pension Funds; Total Financial Assets (BOGZ1FL594090045Q) to Defined Contribution Pension Funds; Total Financial Assets (BOGZ1FL594090055Q). https://fred.stlouisfed.org/

plans has also been declining sharply over time. Figure 1 shows that, as of 2023, DC plan participants were 81.1% of private company plan participants compared to 26% in 1975.[6]

Figure 1: Percentage of private sector participants in DB plans and DC plans[7]



There are a variety of reasons which led to a decline of DB plans in the private sector,[8,9]

- longer life expectancies resulted in retirees collecting benefits for more years than originally projected.
- more stringent funding, reporting, and disclosure requirements for DB plans.[10]
- employers preferred predictable costs over the open-ended liabilities of DB plans.
- labor market mobility reduced average tenures with employers, preventing DB plan participants from fully benefiting from traditional DB accrual formulas.

[6] Employee Benefits Security Administration, U.S. Department of Labor, Private Pension Plan Bulletin Historical Tables and Graphs 1975-2023 (September 2025), Available at: https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf

[7] https://www.dol.gov/sites/dolgov/files/EBSA/researchers/statistics/retirement-bulletins/private-pension-plan-bulletin-historical-tables-and-graphs.pdf

[8] Bank of International Settlements, "The Shift from Defined Benefit to Defined Contribution Pension Plans - Implications for Asset Allocation and Risk Management," December 2006.

[9] https://legalclarity.org/why-are-defined-benefit-pension-plans-disappearing/

[10] For example, the Pension Protection Act of 2006 increased cost and risks as tightened funding rules which increased required contributions and year-to-year contribution volatility. https://www.milliman.com/en/insight/pension-protection-act-of-2006united-states

The rise of the 401(k) plan into the dominant private-sector retirement system was not a result of a deliberate retirement policy design, instead it evolved gradually through regulatory interpretation and employer adoption.

Section 401(k) was added to the Internal Revenue Code by the Revenue Act of 1978, originally to clarify the tax treatment of cash or deferred arrangements (CODAs) within profit-sharing and stock bonus plans.[11] The rapid growth of the 401(k) plans didn't happen until the early 1980s, when IRS regulations (issued in 1981–1982) confirmed that employees could make pre-tax salary deferrals into employer-sponsored plans. This clarification opened the door for widespread adoption of 401(k) plans as a tax-advantaged retirement savings vehicle.

Initially, many employers offered 401(k)s as supplemental plans, layered on top of traditional DB pensions and often funded through bonuses or discretionary contributions.[12] Over time, however, rising pension costs, regulatory and accounting pressures on DB plans, increased workforce mobility, and employers' desire for cost predictability led firms to freeze or terminate DB plans and rely increasingly on 401(k)s as the primary retirement benefit.[13]

Subsequent policy changes reinforced this shift. Higher contribution limits, employer matching features, and most notably, the PPA of 2006, which encouraged automatic enrollment and default investments (such as target-date funds), strengthened participation and normalized 401(k)s as the default retirement platform.[14] As a result, what began as a profit-sharing and tax-deferral mechanism evolved into the primary retirement system.

Retirement income from employer plans is an important component of maintaining a household's standard of living after working life. For example, pension and retirement savings contribute a

[11] ICI Research Perspective, 401(k) Plans: A 25-Year Retrospective, November 2006, available at https://www.ici.org/system/files/attachments/per12-02.pdf

[12] "The 401(k) plan had originally been designed to offer additional retirement benefits to the pension plans already in place." https://getbuilding.com/perspectives/the-entire-history-of-the-401k/.

[13] See A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector, Congressional Research Services, December the 27th, 2021. "Employer costs are generally higher for DB plans than for DC plans, because the benefit in a DB plan is typically funded entirely by the employer, while a smaller portion of the typical DC plan benefit is from employer contributions"; "For some employees, DC plans may be preferable to DB plans because DC plan account balances are portable." From an employer's perspective, contributions to DC plans tend to be a more predictable cost than contributions to DB plans are". also See, The Shift From Defined Benefit Plans To Defined Contribution Plans, Lewis & Clark Law Review, 2007. "As to the first part of that question, the most cogent explanations that have been offered are: (i) the weight of federal regulation on DB plans, most particularly affecting smaller plans."

[14] United States, Government Accountability Office, 401(k) retirement plans, Department of Labor should update guidance on target date funds, March 2024, available at https://www.gao.gov/assets/gao-24-105364.pdf; Pension Rights Center, Permanent Increase in Contribution Limits, January 2011, available at https://pensionrights.org/resource/permanent-increase-in-contribution-limits/; Holland & Knight, The Pension Protection Act of 2006, December 5, 2006, available at https://www.hklaw.com/en/insights/publications/2006/12/the-pension-protection-act-of-2006.

large portion (27.3%) of retirement income for middle-income households.[15] One study finds that households with DB pensions are able to meet the threshold of 70-75% of pre-retirement income to preserve their standard of living in retirement, while those without pensions are able to attain a replacement rate of only 62-63%.[16,17] Improving the risk-adjusted performance of DC plans would help to close this retirement income gap and allow DC plan retirees to enjoy an improved standard of living.

[15] Congressional Research Service, "Income for the Population Ages 65 and Older: Evidence from the Health Retirement Study (HRS)," August 5, 2025, available at https://www.congress.gov/crs_external_products/R/PDF/R47341/R47341.5.pdf

[16] Munnell, Alicia H. and Mauricio Soto. 2005. "What Replacement Rates Do Households Actually Experience in Retirement?" Working Paper 2005-10. Chestnut Hill, MA: Center for Retirement Research at Boston College; https://crr.bc.edu/wp-content/uploads/2005/08/wp_2005-10.pdf

[17] Studies have found that an income of 75%-85% of pre-retirement income is often assumed to preserve the standard of living in retirement (although individual-specific circumstances may warrant higher or lower replacement rates). Brady, Peter J., "Measuring Retirement Resource Adequacy," (February 1, 2008). Available at SSRN: https://ssrn.com/abstract=1092590 or http://dx.doi.org/10.2139/ssrn.1092590; MacDonald, Bonnie-Jeanne and Kevin D. Moore, "Moving Beyond the Limitations of Traditional Replacement Rates," Society of Actuaries' Pension Section (September 2011). Available at https://www.soa.org/globalassets/assets/files/research/projects/research-moving-beyond-report.pdf

III. Policy initiatives have moved DC plans toward functioning more like DB plans

Over the past 20 years, (2006-2025), bipartisan policy initiatives have moved DC plans toward functioning more like DB plans. For example, in a DB plan, a participant does not have to make investment decisions during her working life. But in a DC plan, a participant must choose from amongst the investment options the plan offers. The PPA of 2006 included a major change to ERISA by establishing qualified default investment alternatives (QDIAs), which are default investment vehicles that plan sponsors can use for participants who fail to make an active investment election. TDFs were designated as a QDIA, which allows plan sponsors to automatically enroll participants into them.[18]

TDFs relieve participants from making investment decisions by automatically adjusting asset allocation over time. Behavioral economics research shows that properly structured default options can have a large positive influence on retirement savings behavior.[19] Studies find that when employees are automatically enrolled in a retirement plan with a default investment and contribution level, participation rates and savings outcomes rise significantly compared with plans that require active enrollment.[20]

TDFs have become the dominant QDIA in DC plans. As noted by Partners Group: "[w]ith most plans designating a target-date product as their qualified default investment alternative (QDIA), these professionally managed investment options capture a significant portion/majority of participant contributions. Nearly two-thirds (65.2%) of 401(k) contributions flow into target-date products and this figure is expected to increase to 69.1% by 2030. As a result, target-date products are the largest single asset class in 401(k) plans, currently holding $3.4 trillion in assets as of 2024, which are expected to nearly double to $6.5 trillion by 2030, making up nearly half (49.0%) of total 401(k) assets."[21]

Regulatory relief under ERISA has also led to lower costs and greater flexibility for TDFs to hold a wider range of assets that more closely resemble the portfolios in DB plans. For example, TDFs can now be offered to 401k plans through mutual funds or a Collective Investment Trust (CIT). CITs are tax-exempt pooled investment vehicles managed by a bank or trust company, regulated by the Office of the Comptroller of the Currency (OCC) or state banking authorities

[18] https://www.robertsandholland.com/news-and-insights/provisions-of-the-pension-protection-act-of-2006-affecting-401k-and-other-defined-contribution-plans/
[19] Scientific Background on the Sveriges Riksbank Prize in Economic Sciences in Memory of Alfred Nobel 2017, Richard H. Thaler: Integrating Economics with Psychology, The Committee for the Prize in Economic Sciences in Memory of Alfred Nobel, October 9, 2017.
[20] John Beshears, James J. Choi, David Laibson, and Brigitte C. Madrian, "The Importance of Default Options for Retirement Savings Outcomes: Evidence from the United States," NBER Working Paper 12009 (2006), https://doi.org/10.3386/w12009;
[21] Partners Group, "Unlocking the Potential of Private Investments in Defined Contribution Plans," September 2025, p. 6.

rather than the Securities and Exchange Commission (SEC). Individuals cannot typically access CITs in their ordinary accounts, but they are available to them through employer-sponsored retirement plans.[22]

CITs offer greater investment flexibility than mutual funds as they have flexibility to invest in illiquid alternatives such as real estate, commodities, high-yield bonds, and hedge funds. In contrast, mutual funds are constrained by 15% cap on illiquid securities.[23] With this added flexibility, a TDF can include a wider range of assets (like those held in DB plans) and improve its risk-adjusted performance.

Because CITs are not subject to SEC registration and have reduced administrative and marketing costs, they typically have lower fees,[24] charging 10 to 30 basis points less than mutual funds.[25] As a result, CITs have become the dominant vehicle through which TDFs are offered inside 401(k) plans. As of 2024, CITs account for over $7 trillion of the $12.4 trillion in defined contribution plan assets, according to reports from SEC and ICI.[26]

Starting in 2008, policy and regulatory changes focused on enhancing retirement income options for DC plan participants. In that year, the Employee Benefit Security Administration (EBSA) promulgated a "safe harbor" to satisfy the fiduciary responsibilities associated with selecting an in-plan annuity provider.[27] In early 2012, Treasury Secretary Timothy Geithner issued rules easing the purchase of annuities in 401(k) plans.[28] In 2014, the U.S. Treasury issued Notice 2014-66, which allowed for deferred-income annuities in target-date funds to be used as a default investment.[29]

In continuance of the trend of policy initiatives that have moved the DC plan structure and outcomes toward a focus on retirement income, the SECURE Act of 2019 created a safe harbor for the inclusion of annuities in DC plans.[30] As a result, DC plans are increasingly incorporating annuities, which allow participants to address longevity risk with lifetime (single or joint life)

---

[22] https://clsbluesky.law.columbia.edu/2023/11/09/overtaking-mutual-funds-the-hidden-rise-and-risk-of-collective-investment-trusts/

[23] Even so, the SEC's rule 22e-4 allows a funds exceeding the 15% limit to return to the limit within a "reasonable period of time." Securities and Exchange Commission, "Investment Company Liquidity Risk Management Programs," Release Nos. 33-10233; IC-32315; File No. S7-16-15.

[24] https://www.troweprice.com/content/dam/retirement-plan-services/pdfs/insights/investment-insights/CITs_as_investment_options_in_qualified_plans.PDF

[25] https://www.plansponsor.com/cits-lower-fees-seen-as-an-advantage-over-mutual-funds/

[26] https://www.comerica.com/insights/wealth-management/wealth-preservation/CIT.html; https://www.cohenco.com/knowledge-center/insights/may-2025/understanding-collective-investment-trusts-alternative-strategies

[27] Selection of Annuity Providers--Safe Harbor for Individual Account Plans. 73 Fed. Reg. 58,447 (Oct. 7, 2008) (codified at 29 C.F.R. § 2550.404a-4).

[28] Mary Williams Walsh, *New Treasury Rules Ease 401(k) Annuity Purchase,* N.Y Times, February 2, 2012.

[29] IRS, Notice 2014-66, Lifetime Income Provided Through Target Date Funds in Section 401(k) Plans and Other Qualified Defined Contribution Plans, available at https://www.irs.gov/pub/irs-drop/n-14-66.pdf.

[30] Section 204, Fiduciary Safe Harbor for Selection of Lifetime Income Provider. Public Law 116–94, December 20, 2019, 133 STAT. 3165.

payouts like those in DB plans. According to Life Insurance Agency Management Association (LIMRA) research, 70% of workers are interested in guaranteed income products and more than 40% of DC plan sponsors intend to add one or are actively considering it.[31]

[31] https://www.limra.com/en/newsroom/industry-trends/2024/in-plan-annuities-are-gaining-momentum-in-the-workplace-are-they-poised-to-be-the-next-big-thing-maybe/

IV. Current Context

In late 2025-early 2026, U.S. retirement policy began moving toward expanding access to private and alternative assets within DC plans. This shift was formalized in August 2025 with President Trump's executive order directing the DoL, SEC, and the Department of Treasury to review and revise existing guidance and rules that previously limited the inclusion of private market investments in DC plans.[32] The order sought to expand practical access to private equity, real estate, digital assets, and other strategies as potential investment options for plan participants. The process-based safe harbor contemplated by the order aims to reduce the litigation risk that has discouraged fiduciaries from considering these alternative assets.

Consistent with this perspective, SEC Commissioner Mark T. Uyeda, in remarks delivered in November 2025, highlighted the diversification benefits of including private assets in 401(k) plans noting that "[p]rivate investments—such as private equity, private credit, venture capital, infrastructure, and real estate—offer return profiles that may be less correlated to the traditional public markets. When included as part of a diversified portfolio, these assets can enhance overall performance and reduce volatility."[33]

On March 30, 2026, DoL released a proposal that clarifies fiduciary duties under ERISA when selecting investment options for participant-directed retirement plans and introduced a process-based safe harbor.[34] The proposal applies broadly to all designated investment alternatives, while emphasizing that fiduciary prudence is determined by the decision-making process rather than specific outcomes.

The proposal outlines six non-exhaustive factors and provides guidance to evaluate those factors as summarized below:

- Performance: evaluate whether the investment's risk-adjusted expected returns (net of fees) compare favorably to similar alternatives over an appropriate time horizon.
- Fees: Assess whether fees and expenses are reasonable relative to risk-adjusted expected returns and any additional value or features provided.
- Liquidity: Confirm that the investment has sufficient liquidity to meet plan and participant needs, including withdrawals and re-allocations.
- Valuation: Confirm that investments can be valued accurately and in a timely manner using appropriate and reliable methods.

[32] https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/.
[33] Remarks at the ICI Retail Alternatives and Closed-End Funds Conference, The Diversification Deficit: Opening 401(k)s to Private Markets, New York, November 20, 2025, available at https://www.sec.gov/newsroom/speeches-statements/uyeda-remarks-diversification-deficit-opening-401ks-private-markets-112025
[34] Department of Labor, Fiduciary Duties in Selecting Designated Investment Alternatives; Proposed Rule, Federal Register, Vol. 91, No. 61, March 31, 2026.

- Performance benchmarks: Compare the investment's performance against a meaningful benchmark with similar strategy, objectives, and risks.
- Complexity: Determine whether the fiduciary has sufficient expertise to understand the investment or needs to seek qualified assistance.

V. Private Assets in DB Plans

A. Private equity, private credit, and real assets

Private investments have limited liquidity as they do not trade in a public marketplace like a stock exchange. Private investments include

- Private equity: the principal types of private equity investments include buyout (control investments, often leveraged, in mature businesses typically focused on value improvements), growth equity (typically minority investments in established companies seeking capital to accelerate expansion), and venture capital (early-stage investments in startup and young companies, typically minority stakes).
- Private credit: loans to companies outside of public debt markets and traditional bank lending.
- Real assets: private real estate or infrastructure

The private investment universe is quite large. For example, most mid-to-large scale businesses are private: currently, approximately 87% of US companies with over $100 million in revenue are privately owned.[35]

Private investments often require a long-term commitment that starkly contrasts with the short-term trading environment associated with some public assets, especially equities. Daily liquidity is certainly a desirable feature, but long-term commitment can also be valuable. Illiquidity offers the potential for enhanced returns and diversification.

Private asset funds are the primary investment vehicles through which these investments are made; they pool capital to make multiple private investments. As of 2026, the private investment industry is segmented by fund size, ranging from lower middle market funds that target smaller businesses with $100 million to $500 million in enterprise value, to institutional mega funds, which can exceed $20 billion for a single vintage.[36]

The estimated size of private markets is summarized in Table 1 below.[37]

[35] Apollo Academy. (2025). The Rise of Private Markets: 87% of Large US Firms are Private.
[36] Growthequity Interview Guide. (2025). Private Equity Middle Market vs. Mega Funds: Comparative Overview.
[37] Source: Preqin

Table 1: Estimated size of private markets as of June 30, 2025[38]

Private Equity	$9,796 billion
Buyout	$4,418 billion
Venture Capital	$3,623 billion
Growth Equity	$1,755 billion
Private Credit	$1,753 billion
Real Assets	$3,639 billion
Real estate	$2,033 billion
Infrastructure	$1,606 billion

B. DB and DC plans' allocations to private assets

There are over 5,000 public DB retirement systems in the US. They collectively hold around $6 trillion in assets, covering about 15.3 million active workers and 12.4 million retirees. Approximately $405.5 billion is paid out in benefits annually.

Public DB pension plans invest heavily in private and alternative asset classes to increase diversification and improve long-term returns. In 2024, 13.8% of state and pension plan assets were allocated to private equity, 9.1% were in real estate, and 6.5% were in hedge funds. As these are the *average* allocations across different state and pension plans, many plans have allocations above these averages.[39] The allocation to private equity has grown significantly since 2001, when private equity represented about 3.6% of the plan assets.[40] In contrast, over the same period, the DB plan allocations to public equities have declined. In 2001, equities made up approximately 60% of pension plan assets, but by 2024 that allocation had fallen to 42.3%.[41]

Table 2 shows that the sum of the average alternative asset allocations for DB plans in 2024 is 29.4%. Compared with DB plans, DC plans only make limited use of private market investments. DoL notes that only 0.1% of all DC plan assets are allocated to alternative assets in 2024.[42]

[38] Preqin. The total size includes unrealized asset value and dry powder. Fund of funds and secondaries are excluded to avoid double counting of available capital and unrealized value.
[39] https://www.investmentcouncil.org/wp-content/uploads/2025/07/AIC-2025-Pensions-Report.pdf; https://publicplansdata.org/public-plans-database/browse-data/
[40] https://publicplansdata.org/quick-facts/national/
[41] https://publicplansdata.org/quick-facts/national/
[42] Department of Labor, Fiduciary Duties in Selecting Designated Investment Alternatives; Proposed Rule, Federal Register, Vol. 91, No. 61, March 31, 2026, p. 16106.

Table 2: Investments of DB plans and DC plans in private equity, real estate, and hedge funds (alternative assets) in 2024

	DB plans	DC plans
Investments in alternative assets	29.4%	0.1%

DB plans typically do not buy private companies or issue loans directly. Instead, they act as Limited Partners (LPs) in private funds.[43] As an example, Connecticut's pension system implements PE exposure by allocating capital to a PE Combined Investment Fund (PE CIF). The PE CIF invests in a range of private equity strategies and vehicles with the objective of earning returns above public equity markets. The private investment is done through externally managed limited partnerships or separate accounts that specialize in PE, and the fund may also make co-investments or transact in secondary interests in PE funds.[44]

The use of private assets in retirement plans is not limited to the United States. Australia's superannuation funds have invested up to 38% of their portfolio in private assets with an intention to increase their exposure to private assets.[45] According to a global pension assets study in 2022, the pension funds' allocation to private assets have increased from 7% to more than 26% between 2002 to 2022.[46]

Private assets in DC plans are currently a very small allocation, but the trend to add them is strongly positive. For example, in May 2025, Empower announced that it will offer private market funds from asset managers, including Apollo, to retirement plans through CITs.[47, 48]

Blackrock similarly has suggested that it will include investment in private assets in 401(k) plans through TDFs. It noted that "our preferred approach would include private strategies that are purpose-built for use solely in target date solutions. This approach would help to mitigate the impact of liquidity-driven shocks by giving us full control of the target date solution's building-block architecture, cash flow and allocation management, where we could have tighter control of allocations and align liquidity more closely with expected flow."[49]

---

[43] "Pension plans typically invest in private equity through limited partnerships in which the general partner develops an investment strategy and limited partners provide the large majority of the capital." United States, Government Accountability Office, Defined Benefit Pension Plans, "Guidance Needed to Better Inform Plans of the Challenges and Risks of Investing in Hedge Funds and Private Equity," August 2008.
[44] https://portal.ct.gov/OTT/Pension-Funds/Combined-Investment-Funds
[45] ASIC, Australia's evolving capital markets: A discussion paper on the dynamics between public and private markets, February 2025, p. 23, available at https://download.asic.gov.au/media/44hh5ctv/australia-s-evolving-capital-markets-a-discussion-paper-on-the-dynamics-between-public-and-private-markets.pdf.
[46] Thinking Ahead Institute, Global Pension Assets Study, 2022, p. 10, available at https://www.thinkingaheadinstitute.org/content/uploads/2022/02/GPAS_2022.pdf.
[47] https://www.spglobal.com/market-intelligence/en/news-insights/articles/2025/6/sec-opening-door-for-private-equity-in-12-trillion-us-retirement-plans-90315436
[48] https://www.psca.org/news/psca-news/2025/5/empower-will-offer-private-assets-in-401k-plans/
[49] Blackrock, The power of private markets, Unlocking the benefits of private assets in defined contribution plans, June 2025.

VI. Benefits of Private Assets in Defined Contribution Retirement Plans

A. Overview of Fund Structures Used for Private Asset Investments

In a DC plan context, daily valuation, liquidity, and participant transactions are expected. So traditional private asset investment structures such as "drawdown funds" that have long lockups, capital calls, and irregular cash flows might not be appropriate. To accommodate the features of DC plans, using an "evergreen" fund structure is a better fit. Evergreen funds are open-ended perpetual vehicles with no fixed termination date. Capital is invested on a continuous basis, and investors can subscribe or redeem periodically. Valuations are updated regularly, and returns are often distributed over time rather than only at exit.[50] Evergreen funds are used across private equity, credit, and real asset strategies.

"Semi-liquid" funds are a subset of evergreen funds. An example is an interval fund, which typically allows investors to purchase shares at net asset value (NAV) daily. Interval funds offer limited periodic liquidity, typically with caps on redemptions (e.g., five percent of NAV) to manage cash needs and avoid forced asset sales. Interval funds use NAV-based pricing with regular valuations, providing more flexibility and transparency than traditional drawdown funds.

Evergreen funds (including "semi-liquid" funds) are more appropriate for DC plans because they offer NAV based pricing, continuous capital deployment, and limited periodic liquidity, allowing plan fiduciaries to manage contributions, withdrawals, and rebalancing. As a result of these features, these vehicles are also becoming more accessible to individual investors, with AUM now over $500 billion.[51]

Evergreen funds typically charge management fees based on NAV rather than on committed capital like drawdown funds. The fee on NAV incentivizes the managers to deploy the capital efficiently. The funds use a "crystallized" carry structure with highwater marks and performance hurdles, ensuring managers earn incentive fees only when investors receive gains above prior portfolio highs or specified return thresholds.[52]

A report from Morningstar examines the rapid growth of evergreen private market funds. The study reported that traditional public market benchmarks are not well suited to evergreen funds because they have different risk profiles, leverage, liquidity structure, and underlying assets. To

[50] Drawdown funds can make distributions after exiting investments, though typically they limit distributions before the end of their investment period. Distributions are subject to manager discretion to retain cash for fund needs.
[51] MSCI, Research and Insights, "The Ascendance and Implications of Evergreen Funds in Private Markets," March 2026; https://www.msci.com/research-and-insights/blog-post/the-ascendance-and-implications-of-evergreen-funds-in-private-markets
[52] Bocconi Students Investment Club, Evergreen Funds: An Open-Ended Alternative to Private Markets, April 2025, https://bsic.it/evergreen-funds-an-open-ended-alternative-to-private-markets/

address these differences, Morningstar introduced a new family of evergreen fund indices to track the performance of evergreen funds across private market strategies.[53]

A study by Morgan Stanley Capital International documented that evergreen funds have generated returns consistent with broader private-market asset classes over time.[54] Brown and Volkmann (2025) find that evergreen funds and closed-end drawdown funds have similar risk-adjusted performance, and that evergreen funds may have less variation and unpredictability of cash flows and portfolio risk than drawdown funds.[55] Hamilton Lane found a sample of 13 evergreen funds produced higher annualized returns than traditional PE funds over a period of five years.[56]

Despite the relatively recent emergence of evergreen funds, the evidence to date suggests they are likely to produce similar returns as traditional drawdown funds, particularly after controlling for liquidity and performance measurement differences between the fund structures.[57]

B. Recent literature illustrates how private assets can improve the performance of a portfolio and retirement plan outcomes

Several studies and industry analyses find evidence illustrating how private assets can improve portfolio performance and retirement plan outcomes, although estimates vary depending on data, methodology, and time period analyzed.[58] For example, an American Investment Council study analyzed 200 U.S. public pension funds and found that PE investments provided a median annualized return of 13.5% over a 10-year period, which is higher than all other asset classes

[53] Morningstar Indexes, Benchmarking the Evergreen Evolution, https://files.pitchbook.com/website/files/pdf/Q4_2025_Benchmarking_the_Evergreen_Evolution_20536.pdf
[54] MSCI, Research and Insights, "The Ascendance and Implications of Evergreen Funds in Private Markets," March 2026; https://www.msci.com/research-and-insights/blog-post/the-ascendance-and-implications-of-evergreen-funds-in-private-markets
[55] Gregory W. Brown and William Volckmann, "Evergreen vs. Drawdown Funds: Risk, Returns and Cash Flows," Institute for Private Capital, June 2025.
[56] Hamilton Lane, "Evergreen Funds and Private Wealth," available at https://explore.hamiltonlane.com/2025-market-overview/evergreen-funds.
[57] An analysis by Neuberger Berman shows the need to adjust evergreen funds' performance for their liquidity holdings when comparing their performance to traditional drawdown funds where cash is managed via capital calls. Neuberger Berman, "Comparing Evergreen and Traditional Fund Returns in Private Equity," September 2024.
[58] According to the SEC's Division of Economic and Risk Analysis, the private equity literature is evolving and has not reached consensus on the methodology to measure risk-adjusted returns and improvements in portfolio efficiency. Their assessment first notes disagreement regarding how to best measure risk-adjusted performance but also notes that the literature has been consistent in finding private equity has outperformed public benchmarks. Their assessment further notes disagreement regarding whether investors can replicate private-equity risk exposures through public market alternatives like investing in small capitalization illiquid stocks. Even if it were possible to earn a liquidity premium through public market investing, it is unlikely that can be achieved at scale or at low cost given the limited capitalization of the public market for small companies. SEC Division of Economic and Risk Analysis, Memorandum to Private Investments Subcommittee of the Asset Management Advisory Committee, September 1, 2020, available at https://www.sec.gov/files/amac-memo-academic-literature-09162020.pdf.

including public equity (9.7%), real estate (7.4%), and fixed income (1.9%).[59] The study showed that even the bottom quartile private equity return exceeds the top quartile public equity returns.[60]

Brown et al (2025) show that buyout funds, private debt, and infrastructure funds have performed well on a risk-adjusted basis using data on 7,816 funds with vintage years from 1988 to 2019.[61] Similarly, Kortweg and Nagel (2024) analyze returns of 1,073 US buyout funds (vintages from 1978 to 2016) and find that these funds outperformed their public market equivalents.[62]

Balloch et al. (2025) uses an anonymized dataset covering 65,000 investments made by 17,900 high-net-worth investors across more than 4,500 private funds closed between 2000 and 2020. The study finds that the aggregate portfolio outperforms public markets. Public market equivalents adjusted for asset-class risk (beta) average 1.21 for buyout funds, 1.01 for venture capital funds, and 1.07 for fund of funds.[63]

A study by the Council of Economic Advisers finds that portfolios with private asset allocations generated higher risk-adjusted returns (measured by Sharpe Ratio) consistent with the diversification benefit of adding private assets to traditional portfolios.[64]

A study by the National Institute on Retirement Security shows that since the 2008 financial crisis, public pensions' diversification into private and alternative assets has generated better results over long periods compared to traditional portfolios.[65] Consistent with those findings, a study by Cliffwater found that the pension portfolios with higher allocations to private and alternative assets outperform by approximately 0.6% per year during the 2001-2024 period.[66]

Recent analyses also show how the *failure* to include private assets in DC plans harms participant retirement outcomes. For example, a 2023 study from the Center for Retirement Initiatives finds that failing to include allocations to private equity, real estate, and infrastructure in a TDF results in a 15-basis point annual return disadvantage. This translates into roughly $5

[59] https://www.investmentcouncil.org/new-study-private-equity-delivers-the-strongest-returns-for-retirees-across-america/
[60] https://www.investmentcouncil.org/wp-content/uploads/2025/07/AIC-2025-Pensions-Report.pdf
[61] Gregory Brown, Christian Lundblad & William Volckmann, Risk-Adjusted Performance of Private Funds: What Do We Know?, Institute for Private Capital, March 2025, available at https://uncipc.org/wp-content/uploads/2025/03/Private-Risk-Adjusted-Returns-1.pdf
[62] Arthur Korteweg & Stefan Nagel, Risk-Adjusted Returns of Private Equity Funds: A New Approach, The Review of Financial Studies, (Oct. 11, 2024).
[63] Cynthia Balloch et al., Democratizing Private Markets: Private Equity Performance of Individual Investors, The Ohio State University, Fisher College of Business Working Paper Series, June 2025.
[64] The Council of Economic Advisers, Retail Access to Alternative Investments Via Defined Contribution Plans, August 2025, available at https://www.whitehouse.gov/wp-content/uploads/2025/08/Retail-Access-to-Alternative-Investments-Via-Defined-Contribution-Plans-2.pdf.
[65] National Institute on Retirement Security, Evolution and Growth: How Public Pension Plans have diversified their investments amid changing markets, June 2025.
[66] Cliffwater, Alternatives Benefit Long-Term State Pension Performance, June 9, 2025.

billion less in aggregate annual retirement income for participants, equivalent to about $2,400 per year additional income for a retiree in the study.[67] Including private assets in TDFs provides both long-term performance and diversification benefits that translate into improved retirement outcomes for participants.[68]

DC plan participants could also improve their financial outcomes in retirement by making higher contributions to their plan while working. But higher contributions require foregoing consumption and can put stress on maintaining the current standard of living. In addition, since the average job tenure is about five years, interruptions in DC plan contributions are common as an average retiree will hold nine different jobs in her working life.[69] However, a 2025 study by Center for Retirement Initiatives shows that including private equity, real assets, and private credit in TDFs can bridge savings gaps from career interruptions or financial stress. The results illustrate a 7-8% improvement in retirement outcomes over a range of different DC participant profiles.[70]

Industry commentary aligns with this research by emphasizing potential benefits of expanding access to private assets in DC plans. Cambridge Associates suggests that a modest allocation to private investments can boost retirement income replacement and diversify risk, especially when implemented through multi-asset funds.[71] BlackRock's analysis similarly highlights that a strategic mix of private assets could increase participant's account values by about 15%. [72]

An Alliance Bernstein analysis places private assets in a broader asset-allocation context, noting their growing role as public markets shrink.[73] Given the large decline in the number of publicly traded companies as well as the growing concentration risks in large-cap public equities, the case for including private assets in DC plans is increasingly supported by risk-adjusted return considerations.

---

[67] https://cri.georgetown.edu/press-releases/study-concludes-lack-of-asset-diversification-in-defined-contribution-retirement-plans-has-been-5-billion-annual-missed-opportunity/

[68] https://cri.georgetown.edu/press-releases/study-concludes-lack-of-asset-diversification-in-defined-contribution-retirement-plans-has-been-5-billion-annual-missed-opportunity/

[69] Vanguard Research, Job transitions slow retirement savings, September 2024. https://digital-assets.vanguard.com/corp/research/pdf/job_transitions_slow_retirement_savings.pdf

[70] Georgetown University, Center for Retirement Initiatives, "Making the case: The effect of private market assets on retirement income in cases of disrupted savings," August 2025.

[71] https://www.cambridgeassociates.com/en-as/insight/better-alternatives-private-investments-may-improve-outcomes-for-defined-contribution-plan-participants/

[72] https://www.blackrock.com/institutions/en-us/insights/thought-leadership/defined-contribution-dc/private-markets-in-tdfs

[73] https://www.alliancebernstein.com/us/en-us/defined-contribution/insights/investment-insights/the-role-of-private-assets-in-strategic-asset-allocation-a-macro-perspective.html

C. A Comparison of Public and Private Asset Performance

a. Return and risk comparisons

Building on the literature in the previous section, Table 3 uses data from December 31, 2000 to September 30, 2025 from Bloomberg and Preqin to compare the risk and return of public and private assets. The returns on both public and private assets are calculated net of fees.[74] The private asset data are available at a quarterly frequency, and all return and volatility estimates are based on these quarterly observations.[75]

Table 3: Returns and volatility for all asset classes (December 31, 2000 to September 2025)[76]

Asset Class	Average Return	Volatility
Public Equities:		
Large Stocks	9.5%	16.7%
Small Stocks	12.0%	22.7%
Fixed Income:		
Long term corporate bonds	5.6%	10.2%
Long term government bonds	4.5%	14.7%
Intermediate term government credit	3.0%	3.4%
Cash:		
Money market	1.5%	0.9%
Private Assets:		
Buyout and Growth	13.8%	16.3%
Venture Capital	6.9%	27.8%
Private Credit	10.4%	10.3%

The table above shows that the buyout and growth equity strategies offer higher expected returns (13.8%) than the large public stocks (9.5%) while carrying similar risk (volatility of 16.3% and

[74] Note that the private asset returns are net of fees charged within traditional drawdown fund structures, including fees that would not be applicable to TDF-directed investment into a private asset sleeve (e.g., fees related to marketing the fund or sourcing investment capital, maintaining investor accounts, providing shareholder services). This analysis is conservative to the extent that elimination of such fees for 401(k) investors could improve the net of fee returns.

[75] See the appendix for details. Due to the appraisal-based nature of private asset valuations, reported values may be stale, resulting in return smoothing and the presence of autocorrelation. To mitigate any effects of staleness, the analysis adjusts the return series to remove autocorrelation and computes de-smoothed returns that more reasonably reflect the underlying economic risk.

[76] See the Appendix for data sources.

16.7%). Similarly, the returns on private credit (10.4%) are higher than the returns on long-term corporate bonds (5.6%) with a similar risk profile (volatility of 10.3% and 10.2%).[77]

The sample period is relevant for understanding venture capital returns. During the first three years of the sample (2001-2003), venture capital experienced very negative returns following the collapse of the dot-com bubble in 2000. These negative returns depressed longer-horizon return averages despite stronger performance in subsequent years.[78] In the subsequent analyses, these lower historical risk-adjusted returns for venture capital result in a zero allocation to optimal risk-return portfolios.

b. Sources of higher returns

Private assets provide higher returns through risk factor exposures – in particular, liquidity risk. Young to middle-aged DC plan investors have long investment horizons that allow them to take advantage of exposure to liquidity risk in their retirement plans. The source for all asset returns above a risk-free rate is exposure to risk factors that provide opportunities to earn premia. Empirical literature shows that factor returns are not perfectly correlated, providing an opportunity for diversification. Exposure to more risk factors can thus result in higher risk-adjusted returns (e.g., as measured by Sharpe ratio).[79] As private assets have exposure to liquidity risk, long-term investors can benefit since liquidity risk exposure provides higher expected returns.[80] Previous empirical observations show that private assets have as a class outperformed public market benchmarks, consistent with the view that the return premium is likely driven by exposure to a liquidity risk factor.[81] Thus, given the long horizons of DC plan investing, adding the ability to earn a liquidity risk premium should be beneficial to plan participants as it will improve long-term risk-adjusted returns.

---

[77] The spread between the private credit and public credit markets is a premium required to compensate for, among other things, illiquidity, and smaller issue size. The spread has been documented to be close to 5% as of 2024. https://www.nepc.com/the-nepc-guide-to-private-debt/. As of November 2025, BlackRock documented a private credit yield of approximately 10%, in line with the long term average return; https://www.blackrock.com/us/financial-professionals/insights/the-growth-in-private-credit.

[78] Alternatively using the data from March 2004 to September 2025, the de-smoothed average returns of venture capital strategy are 10.5% with a volatility of 17.4%.

[79] Ilmanen, Antti and Jared Kizer, "The Death of Diversification Has Been Greatly Exaggerated," Journal of Portfolio Management, vol 38, no 3 (Spring 2012).

[80] Angela M. Antonelli, Center for Retirement Initiatives, Georgetown University, Making the Case: Addressing the Myths About Private Assets in Defined Contribution Retirement Plans (2025), https://cri.georgetown.edu/wp-content/uploads/2025/08/Addressing-the-myths-about-private-assets.pdf. For an earlier paper studying liquidity risk premia in public markets, see Pastor, Lubos and Robert F. Stambaugh, "Liquidity Risk and Expected Stock Returns," NBER Working Paper 8462 (September 2001), Available at: www.nber.org/system/files/working_papers/w8462/w8462.pdf

[81] The higher returns could also be due to manager's intervention, improved governance, and value creation. For example, there could be increases in productivity (Aldatmenz & Brown (2019)), reductions in workplace injuries (Cohn et al 2021), fewer health violations (Bernstein & Lerner 2016), and better performance in a financial crisis (Bernstein and Lerner (2017).

While a risk premium is a benefit for holding illiquid or volatile assets, alpha depends on a manager's ability to consistently beat benchmarks. If projected outperformance is driven by an expectation of alpha, the investment analysis should consider the fund's management, historical track record, process, and stability.

D. Private assets improve risk-adjusted portfolio performance by increasing diversification benefits

To assess the potential role of private assets in a DC plan, it is important to examine their impact on overall portfolio performance. As noted above, private assets generally offer higher expected returns than comparable public assets at similar levels of risk. In this section, the report analyzes whether including private assets provides portfolio diversification benefits.

The goal of portfolio optimization is to allocate capital across assets to maximize return for a given target level of risk or minimize risk for a given level of target return. The optimization is implemented using the Markowitz mean-variance framework which provides a quantitative method to calculate the optimal portfolio weights for asset classes based on their expected return, risk (measured as volatility), and correlation across asset classes.[82]

The total portfolio risk is not just the weighted average of the individual volatilities but rather it depends on the correlation across all asset classes. By combining imperfectly correlated assets, the overall portfolio risk reduces without reducing expected return. Private and public equity markets tend to be positively correlated, but the correlations are well below 1.0. Correlations below 0.7 can have significant diversification benefits as the assets share less than half of their variance.[83]

A study by LSEG reports that during 1986 to 2023, the correlations between US private and public equities range from a high of 0.73 between PE and the Russell 1000 to a low of 0.41 between growth equity and the Russell 2000 value index.[84, 85] Table 9 (Appendix) shows correlation between the PE Buyout and Growth index and the large public stock index of 0.75 and correlation between the PE Buyout and Growth index and the small public stock index is

[82] The Markowitz mean-variance framework was developed by Nobel prize winning economist, Harry Markowitz. https://www.nobelprize.org/prizes/economic-sciences/1990/markowitz/facts/

[83] This follows directly from the coefficient of determination (R^2), which equals the square of the Pearson correlation coefficient (ρ); when $\rho = 0.7$, $R^2 = 0.49$, implying that the two assets share 49% of their variance. In other words, about half of the movement in one asset can be statistically explained by the movement in the other asset, while the other half is driven by other factors, thus providing diversification benefits if the two assets are combined.

[84] https://www.lseg.com/content/dam/ftse-russell/en_us/documents/research/managing-risk-exposures-to-private-equity-through-public-equity.pdf

[85] The correlation between public investments and private investments is time varying. The correlations during the mid-1990s were low but rose sharply around the late 1990s and early 2000s. Since then, the correlations have remained at around 0.80. https://www.lseg.com/content/dam/ftse-russell/en_us/documents/research/managing-risk-exposures-to-private-equity-through-public-equity.pdf

0.68 using Preqin data from 2001 to 2025. Table 9 also shows that correlations among private and public fixed income indices are markedly lower than equity correlations. For example, the correlation between private credit and long-term corporate bond returns is 0.18 during 2001 to 2025.[86]

The set of optimal portfolios that maximize return for a given level of risk or minimize risk for a given level of return are represented by an efficient frontier along the risk-return continuum. Portfolios lying below the frontier are inefficient because another feasible combination of assets that offers either higher return for the same risk or lower risk for the same return exists. Calculating the efficient frontier relies on the use of expected returns, volatility, and the correlation across asset classes to maximize returns for a given level of risk.

In Figure 2, the efficient frontier is calculated by considering portfolios of: (i) only public equities, fixed income, and money market instruments,[87] and (ii) all asset classes including private assets (growth equity, venture capital, and private credit). The orange dots show the return-risk profile of all individual asset classes. The blue line shows the efficient frontier when private assets are excluded, and the green line shows the efficient frontier when private assets are included.

[86] The low correlation could reflect the countercyclical nature of private credit. Traditional bank lending pulls back in volatile times, expanding private credit lending opportunities. https://www.guggenheiminvestments.com/perspectives/portfolio-strategy/investing-in-private-debt

[87] More details of the asset classes and the methodology to calculate the optimal portfolios is in the Appendix.

Figure 2: Efficient frontier with and without private asset classes

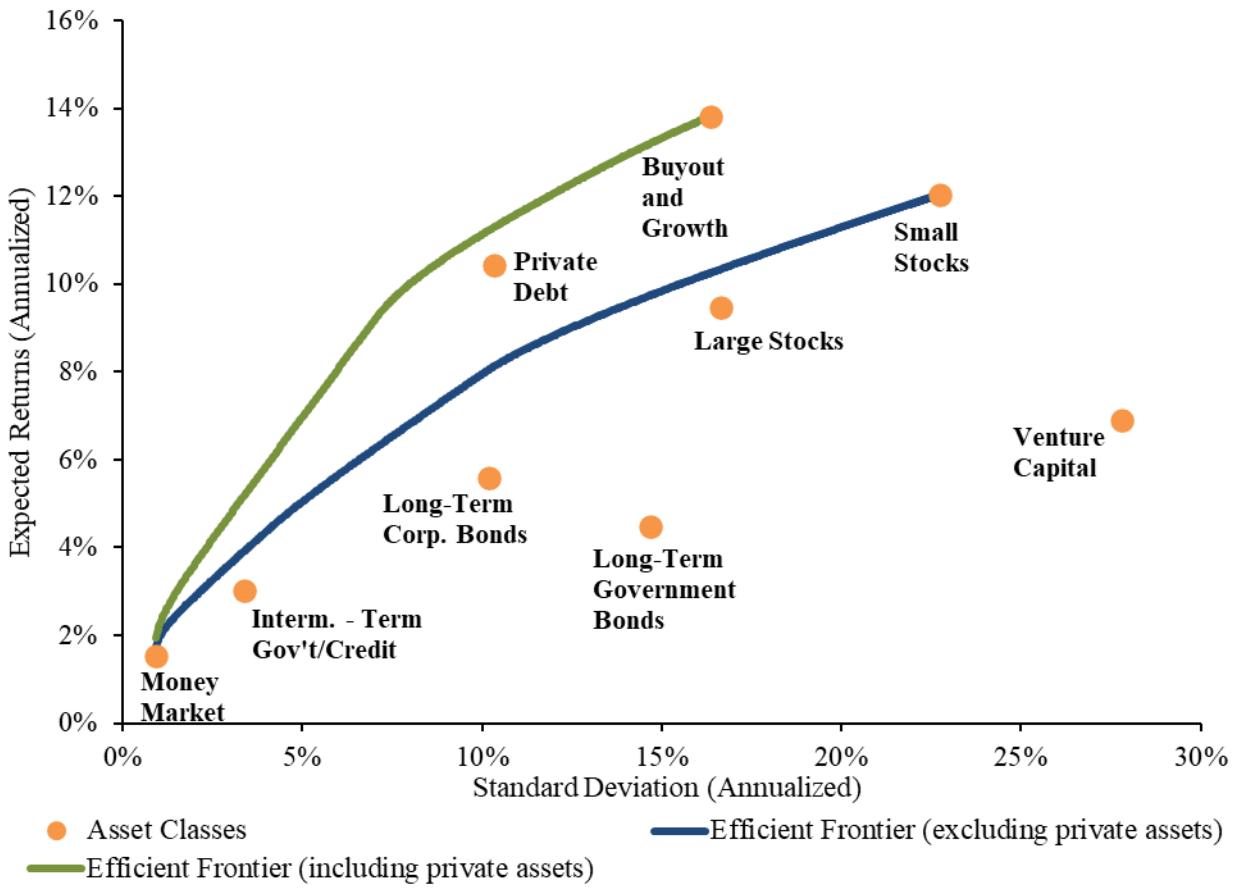


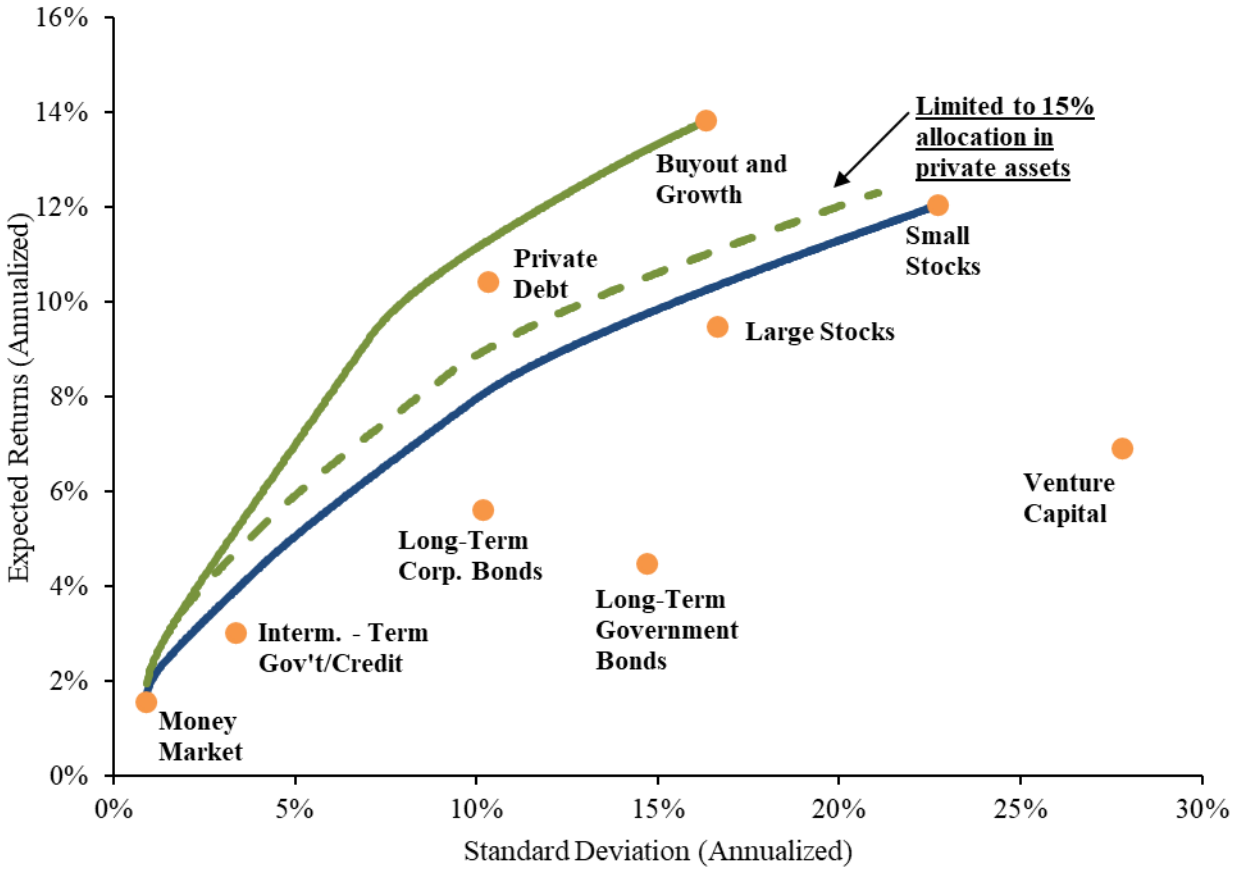
Figure 2 shows the risk–return trade-off across major asset classes and compares efficient frontiers constructed with and without private assets. The efficient frontier constructed using both public and private assets shifts outward relative to the frontier that doesn't include private assets. The shift in the efficient frontier indicates higher expected returns for a given level of risk or equivalently, lower risk for a given return. This improvement reflects the diversification benefits and the higher return potential of private assets, which allow portfolios to achieve more favorable risk–return outcomes than portfolios composed solely of public assets.

a. Constrained optimization

The green dashed line in Figure 3 shows an illustrative constraint of only 15% on private assets. The green dashed line illustrates that imposing such a constraint still allows for improvement in portfolio risk-adjusted expected returns compared to no allocation to private assets. The efficient frontier with the 15% allocation shifts inward relative to the frontier without any constraints on private assets (solid green line) but is still an improvement over the frontier without any private

assets (blue line). The initial focus on a 15% limit should not be taken to imply this is a recommended – or even desirable – limit, nor that a hard limit is required to manage liquidity.[88] Indeed, Figure 3 illustrates the benefit of a liquidity management plan that would employ techniques to manage liquidity beyond relying solely on private asset concentration limits.

Figure 3: Efficient frontier with limited allocation to private assets



b. Improvement in expected return for a TDF portfolio with 30 years to retirement

A typical TDF portfolio with 30 years to retirement has about 89% of its assets invested in public equities and about 11% of its assets in fixed income, reflecting the higher risk tolerance that a

[88] SEC guidelines do limit an open-end fund's aggregate holdings of illiquid assets to no more than 15% of the fund's net assets but no such limit exists for other structures that are likely to be used in defined contribution plans such as CITs: https://www.sec.gov/files/rules/final/2016/33-10233.pdf

long investment horizon facilitates.[89] Table 4 shows that the expected annual return of that TDF portfolio is approximately 11.2% with a risk (standard deviation) of 19.6%. Based on the risk-return results in Figure 3, if the TDF were to reallocate 15% of its assets from public to private, its expected return could improve without increasing risk.

Table 4 shows that the TDF allocation with 30 years to retirement to private assets results in an estimated increase in expected returns of 0.7% (from 11.2% to 11.9%) compared with a solely public assets portfolio. Expected returns also increase similarly across portfolios with varying levels of risk. This is an important consideration given that the TDF "glide path" adjusts the portfolio risk downward as the target date gets closer. Thus, the target risk of the TDF portfolio will decline but the risk-adjusted performance will continue to be improved by maintaining allocation to private assets in the portfolio even up to retirement date. As a result, the incremental benefit of investing in private assets remains relatively consistent over a TDF lifecycle.[90]

Table 4: Portfolio allocation and outcomes with different constraints on private assets

	No allocation to private assets	Max of 15% allocation to private assets	No limit on private assets
Equities	89.0%	80.0%	0%
Fixed Income	11.0%	5.0%	0%
Buyout and Growth	0.0%	15.0%	100%
Expected Portfolio Return	**11.2%**	**11.9%**	**13.8%**
Standard deviation	**19.6%**	**19.6%**	**16.3%**

Table 4 also shows a scenario without any constraints on private assets in the TDF to illustrate the improvement in risk-adjusted expected returns. When the private asset constraint is fully removed, the portfolio with the highest risk and highest return allocates entirely to PE buyout and growth, which dominates all other portfolios. This results in a much higher expected return of 13.8% and lower standard deviation of 16.3%. The result is due to the PE Buyout and Growth returns being higher than public equity returns at similar level of risk.[91] In sum, the Table 4 results highlight both the return enhancement from private assets and their diversification benefits.

[89] Georgetown University, Center for Retirement Initiatives, "The Evolution of Target Date Funds: Using Alternatives to Improve Retirement Plan Outcomes," Policy Report 18-01, June 2018.
[90] The TDF invests 15% in private assets for all portfolios with an annual standard deviation above 4%, which includes the TDF portfolio at the target date.
[91] The risk is based on de-smoothed private equity returns.

c. Analysis of the increase in retirement income from 16.8% to 27.4% by adding private assets to a TDF

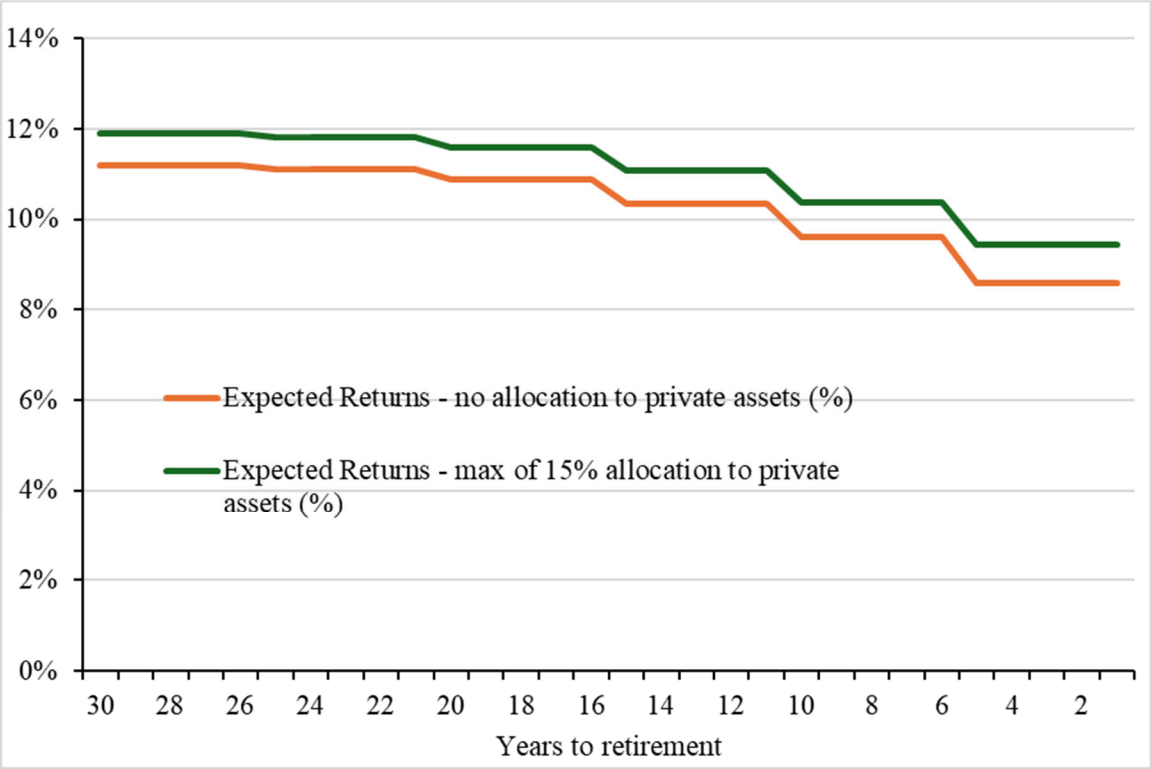
Figure 4 illustrates the benefits for a representative DC plan participant who contributes a fixed amount to her DC retirement plan every year for 30 years. The annual contributions of $10,000 are based on the median participant income of $89,000 and the median contribution rate (considering both employee and employer contributions) of 11.5% in 2024.[92] The analysis is conservative in two respects. It assumes that contributions do not increase with wage inflation and there are no "catch up" contributions after age 50.

The analysis assumes that the contributions are invested in a TDF which generates returns based on its portfolio allocation at various stages of the accumulation phase. TDF allocation becomes more conservative as it approaches the target date. With decreasing allocation to equity assets over time, the optimal portfolio moves left on the efficient frontier as the participant approaches retirement. As the optimal portfolio moves left, the expected return of the portfolio, both with and without private asset allocation, decreases.

Figure 4 presents the expected returns of a TDF portfolio with and without private assets. The green line (15% allocation to private assets) shows the incremental benefit of adding private assets is relatively consistent across varying levels of portfolio risk. This is because risk-adjusted performance continues to be improved by maintaining allocation to private assets, even for portfolios with lower risk.

[92] See https://workplace.vanguard.com/content/dam/inst/iig-transformation/insights/pdf/2025/has/2025_How_America_Saves.pdf.

Figure 4: Expected returns of a TDF portfolio as the participant approaches retirement



Using the expected returns and the assumed contributions, Table 5 illustrates the total assets at retirement in two cases: (a) TDF has no allocation to private assets, and (b) TDF allocated 15% to private assets. The accumulated assets at retirement in those two cases are $1.8 million and $2.1 million, respectively, in terms of 2055 nominal dollars.[93] Using the current annual inflation expectations for a 30-year period of 2.3%,[94] the accumulated retirement assets in 2025 dollars are $925k and $1,080k, respectively.[95]

[93] These estimates do not account for withdrawals from the plan upon job changes. Approximately two-thirds of terminated participants remain in their plans upon job changes and approximately 12%-13% rollover assets into another plan. This results in approximately up to 80% of participants preserving their TDF assets; https://workplace.vanguard.com/content/dam/inst/iig-transformation/insights/pdf/2025/has/2025_How_America_Saves.pdf

[94] https://fred.stlouisfed.org/series/T30YIEM

[95] These figures should not be compared to average or median 401(k) balances at retirement age today, given the progressive policy changes that have increased 401(k) participation and contributions over the last two decades. These include the adoption of automatic enrollment, default contribution rates, automatic escalation features, catch-up contributions starting at age 50, and increases in the prevalence and level of employer match contributions. Comparing retirement asset balances would also need to consider IRAs, given that 401(k) assets may be rolled over into an IRA account after job changes. Fidelity reported in 2025 that the average 401(k) balance is about $250 thousand and the average IRA balance is about $257 thousand for baby boomers (ages 61-79). This figure could understate the amount available at retirement age given the inclusion of age cohorts who have taken distributions for many years in retirement. https://www.fidelity.com/learning-center/personal-finance/average-retirement-savings

To measure the income benefit to a retiree, the analysis assumes that the assets at retirement are converted into an annuity, which provides annual payments for life.[96] The 10-year guaranteed single life annuity rate is ~ 7%.[97]

Table 5 compares the benefits after retirement under the no allocation to private assets and the 15% allocation to private assets scenarios. By allowing investments in private assets, retirement assets increase by 16.8% (approximately $155k increase from $925k with no private assets to $1,080k with a 15% allocation).[98] The higher retirement assets translate into higher annual retirement income using a life annuity. The annual income during retirement increases by $10.9k (from $64.8k to $75.6k) with a 15% private asset allocation. This 16.8% income increase would substantially reduce the retirement income replacement disparity between DB and DC plan households. Aggregating the annual benefit for 20 years as the expected retirement period results in a total benefit of $217.3k with a 15% private asset allocation.[99]

Table 5: Retirement outcomes with 0% versus 15% allocation to private assets[100]

Amounts in $ thousands	No allocation to private assets	Max of 15% allocation to private assets
Assets at retirement	$925	$1,080
10-year single life guarantee rate for a 65-year old	7%	7%
Annual income during retirement	$64.8	$75.6
Incremental income per year by including private investments		$10.9
Incremental income per year by including private investments (%)		16.8%
Aggregated benefit for 20 years		$217.3

Table 6 illustrates scenarios of allocating 20%, 25% and 33% to private assets in the TDF with a limit of only 15% each on private equity, venture capital, and private credit. The 15% limit on

[96] Complete annuitization is a simplifying assumption that allows a lifetime income comparison of the private asset TDF and the public asset TDF. Participant circumstances differ and some may remain invested in the TDF well beyond retirement. To the extent that private assets remain in the TDF after the target date, its superior performance over a public-asset only TDF may continue.

[97] Based on a survey of annuity rates, the annuity rate for single life with 10-year guarantee is approximately 7%. https://www.immediateannuities.com/annuity-rates/by-age.html. Based on the survey results, the average annual payment for a $100,000 premium is ($592 + $573) / 2 * 12 = $6,990 where $592 is the monthly payment for a 64-year-old male and $573 is the monthly payment for a 64-year-old female. The annual payment of $6,990 is equivalent to a rate of 6.99%.

[98] An estimate of the aggregate benefits of the allocation to private assets is presented in Section VII below.

[99] The aggregate benefit is even higher if there is no limit to private asset allocation., though this must be weighed against the risks of private equity investments.

[100] The assets and income are shown in 2025 dollars. As noted above, typical current 401(k) balances may be lower than the one modelled here because in the past automatic enrollment and default contribution rates were uncommon, and employer matching was more limited. Even after adjusting for inflation, then, under modern plans one would expect greater accumulation of the contributions in constant dollars.

each asset class illustrates one approach a TDF might use to deploy private asset strategies. Under this approach, even if there is remaining capacity under the overall allocation limit to private assets, the portfolio's allocation is constrained by the 15% cap applied to each private asset class.

Table 6: Analysis of scenarios with allocation of 20%, 25%, and 33% to private assets with a limit of maximum of 15% each on private equity, venture capital, and private credit asset classes[101]

Amounts in $ thousands	No allocation	Max of 20% allocation	Max of 25% allocation	Max of 33% allocation
Panel A: Improvement in returns of a portfolio with 30 years to retirement				
Equities	89.0%	77.8%	76.1%	76.1%
Fixed Income	11.0%	2.2%	0.0%	0.0%
Buyout and Growth	0.0%	15.0%	15.0%	15.0%
Private Credit	0.0%	5.0%	8.9%	8.9%
Expected Portfolio Return	**11.2%**	**12.0%**	**12.2%**	**12.2%**
Standard deviation	**19.6%**	**19.6%**	**19.6%**	**19.6%**
Panel B: Improvement in assets at retirement and income during retirement[102]				
Assets at retirement	$925	$1,116	$1,150	$1,178
10-year single life guarantee rate for a 65-year old	7%	7%	7%	7%
Annual income during retirement	$64.8	$78.1	$80.5	$82.5
Incremental income per year by including private investments		$13.3	$15.7	$17.7
Incremental income per year by including private investments (%)		20.6%	24.3%	27.4%
Aggregated benefit for 20 years		$266.9	$314.9	$354.5

Table 6 shows that increasing private asset allocations improves expected lifetime income for TDF retirees. Annual income (in 2025) dollars increases from $64.8K with no private assets to

[101] The assets and income are shown in 2025 dollars.

[102] Panel B accounts for the allocations shown in Panel A changing as the plan participant approaches retirement. For example, the TDF portfolio in the scenario with max 33% allocation that allocates 8.9% to private credit with 30 years to retirement will allocate 15% to private credit with 5 years to retirement date, while the TDF portfolio in the scenario with max 25% allocation will allocate 10% to private credit with 5 years to retirement date. The increasing allocation to private credit as the TDF rebalances its portfolio closer to retirement date results in accumulation of higher assets at retirement and higher income during retirement in the scenario with max 33% allocation relative to the scenario with max 25% allocation.

$82.5K with a 33% allocation. The last two columns in the table above show that the allocation to private assets is 23.9% (the sum of Buyout and Growth (15%, the limit under this modeling scenario) and Private Credit (8.9%), below the overall private asset limits of 25% and 33%.

VII. Discussion of the benefits of DoL's proposed rule

In the proposed rule, DoL assessed the benefits, costs, and transfers associated with this regulatory action.[103]

On the benefits side, DoL expects that the proposed rule would

- decrease plan fiduciary uncertainty about fulfilling their duty of prudence and reduce litigation risks;
- provide flexibility to select any alternative asset that improves risk-adjusted returns; and
- increase protections to plan participants and beneficiaries by providing the plan fiduciaries the relevant factors to consider which would improve the evaluation of investment alternatives.

On the cost side, DoL expects that the proposed rule would generate net cost savings of approximately $578 million primarily due to reduction of time spent in preparing, presenting, and discussing litigation analyses.

DoL has also described the potential transfers from fiduciary insurance underwriters to plan fiduciaries from lower costs of insurance, and transfers from financial institutions offering public assets to financial institutions offering alternative investments.

In their analysis, DoL has considered the incremental benefits and costs of following the process to offer investment alternatives to plan participants and beneficiaries. In this section, the analysis of the benefits accrued when the plan selects such alternative assets to offer to plan participants is presented. For example, the Table 5 and Table 6 results show that there are benefits to DC plan participants that accrue from the improved risk-adjusted performance of TDFs with private assets.

DoL's process based safe harbor rule makes it more likely that plan sponsors/committees will adopt private asset strategies in TDFs leading to the significant increases in asset balances/retirement income shown in Tables 5 and 6. According to the most recent 2022 Survey of Consumer Finances, 54.3% of U.S. households, approximately 71.2 million out of a total of 131.1 million households, have retirement accounts in 2022.[104] Among the households with accounts, the average asset balance is equal to $334,097, implying a total balance of $23.8 trillion in retirement assets.

[103] The DoL was unable to quantify all the benefits, costs, and transfers, but provided a description of the non-quantified impacts.

[104] "Because many households roll over assets from DC accounts to IRAs at job change or retirement, examining DC account and IRA savings on a combined basis can provide a more complete picture of the retirement account assets available to a household during retirement." Ownership of Retirement Accounts in 2022: Amounts in Defined Contribution Plans and Individual Retirement Accounts; https://www.congress.gov/crs-product/R48143#_Ref171594142

A study by Partners Group finds that nearly two-thirds of 401k contributions flow into target-date funds and that approximately $3.4 trillion in assets is held by TDFs as of 2024.[105] Assuming that 40% of the plans by assets adopt private-asset TDFs would result in $1.4 trillion allocated to such TDFs.

Table 4 shows that TDFs with private assets can generate incremental net-of-fee returns of 0.7% per year over TDFs without any allocation to private assets. This incremental return would accumulate $262 billion in additional assets over a 10-year period and $1,565 billion in additional assets over a 20-year period.[106] These additional assets are denominated in 2035 and 2045 dollars respectively. Using the current inflation expectations for both 10-year and 20-year period of approximately 2.5%,[107] the incremental accumulated assets in 2025 dollars are $205 billion and $955 billion, respectively.[108] Even if only half the 0.7% per year return improvement were achieved, the incremental benefit to plan participant balances over time would be about $100 billion in 10 years and about $463 billion in 20 years (in 2025 dollars).

[105] Partners Group, "Unlocking the Potential of Private Investments in Defined Contribution Plans," September 2025, p. 6.
[106] $1,400 billion * (1 + 11.9%) ^ 10 - $1,400 billion * (1 + 11.2%) ^ 10 = $262 billion; $1,400 billion * (1 + 11.9%) ^ 20 - $1,400 billion * (1 + 11.2%) ^ 20 = $1,565 billion.
[107] https://fred.stlouisfed.org/series/T10YIE; https://fred.stlouisfed.org/series/T20YIEM.
[108] $266 billion / (1 + 2.5%) ^ 10 = $205 billion; $1,565 billion / (1 + 2.5%) ^ 20 = $955 billion

VIII. Conclusion

The evolution of the U.S. retirement system reflects a sustained shift from employer-sponsored DB plans to DC plans. Over the past two decades, bipartisan policy efforts have progressively introduced DB-like features into DC plans.

DoL's proposed rule in March 2026 provides a process-based safe harbor to enable the inclusion of private market assets in DC plans. This development aligns DC plans more closely with the asset allocation of DB plans, where private assets have historically contributed to improved risk-adjusted returns.

The inclusion of private assets into DC plans will likely happen through evergreen or semi-liquid fund structures rather than traditional drawdown funds, as these vehicles offer continuous capital deployment, NAV-based pricing, and periodic liquidity which are features better suited to DC plan participants.

Academic, industry, and policy research suggests that allocations to private assets can improve long-term risk-adjusted returns and improve retirement outcomes within TDFs. Tables 5 and 6 of the analysis shows that adding private capital to a TDF can improve risk-adjusted accumulation performance and increase retirement income by 16.8% to 27.4%. This increase in projected retirement income from adding private assets to DC plans would reduce the current gap in retirement replacement income between households that have DB plans and those that do not.

DoL expects that the proposed rule would provide fiduciaries with greater flexibility to include alternative assets in DC plans while reducing litigation risk, with estimated cost savings driven largely by lower compliance and litigation-related expenses. The Table 4 results show that TDFs with private assets would (under the assumptions modeled) generate incremental net-of-fee returns of 0.7% per year over TDFs without any allocation to private assets. The incremental return would accumulate additional assets of $205 billion and $955 billion (in 2025 dollars) over a 10-year and 20-year horizon.

IX. Appendix

A. Data description

The analysis uses price and returns data for the public asset classes and the private asset classes from December 31, 2000, to September 30, 2025. The table below shows the index used for each asset class and the source of the index.

Table 7: Index description and source for each asset class

Asset Class	Index	Source
Large Stocks	S&P 500 Total Return Index	Bloomberg
Small Stocks	DFA U.S. Micro Cap Portfolio	Bloomberg
Long-term Corporate Bonds	Bloomberg US Corporate 10+ Years Total Return Index	Bloomberg
Long-Term Government Bonds	Barclays 20+ Year Treasury Bond Fund Index	Bloomberg
Intermediate-Term US Government/Credit	Bloomberg Barclays Intermediate US Govt/Credit TR Index Value Unhedged Index	Bloomberg
Money Market	Bloomberg U.S. Treasury Bills: 1-3 Months	Bloomberg
Buyout and Growth	Preqin Buyout and Growth Index	Preqin
Venture Capital	Preqin Venture Capital Index	Preqin
Private Credit	Preqin Private Credit Index	Preqin

B. Net of fee returns for public assets

The returns of private asset classes are net of fees obtained from Preqin. While for public asset classes, fees are subtracted from the gross returns to calculate net of fee returns. The gross quarterly returns are calculated from the price as of the previous quarter-end to the current quarter-end.

$$Gross\ Quarterly\ Returns = \frac{(price_q - price_{q-1})}{price_{q-1}}$$

The shareholder cost, load fees, and total expense ratios are subtracted from the gross returns to calculate net returns. The fee data is obtained from Investment Company Institute (ICI)

Research.[109] The expenses for equity, hybrid, and bonds were then converted from annual fees to quarterly fees and subtracted from the quarterly gross returns.

C. De-smoothing private asset returns

The analysis de-smooths private asset returns to adjust for the auto-correlation in the private asset returns over time. The analysis estimates the autocorrelation in the returns by running a regression of quarterly private asset returns on lagged quarterly returns using the model below:

$$return_t = \alpha + \rho \cdot return_{t-1} + \mu$$

The parameter ρ measures the autocorrelation in the returns. Then, the analysis adjusts the returns to remove the autocorrelation using the below formula:

$$De - smoothed\ return_t = \frac{(return_t - return_{t-1} \cdot \rho)}{(1-\rho)}$$

The de-smoothed returns reflect an estimate of the underlying economic risk. The table below shows the returns and volatility of private assets before and after de-smoothing.

Table 8: Comparison of Original to De-smoothed Private Asset Returns

	Original	De-smoothed
Buyout and growth		
Returns	13.4%	13.8%
Volatility	8.5%	16.3%
Venture Capital		
Returns	5.2%	6.9%
Volatility	10.4%	27.8%
Private Credit		
Returns	10.4%	10.4%
Volatility	6.9%	10.3%

D. Correlation

The table below presents the correlation across the various asset classes. The correlations are calculated using de-smoothed returns for private asset classes.

[109] Data obtained from communications with ICI and ICI Research Perspective, Vol. 29, No. 3, March 2023, p. 3; ICI Research Perspective, March 2025, Vol. 31, No. 1, p. 3; ICI Research Perspective March 2026, Vol. 32, No. 1, p. 1.

Table 9: Correlation Matrix

	Large Stocks	Small Stocks	Long-Term Corp. Bonds	Long-Term Gov Bonds	Interm-Term Gov't/ Credit	Money Market	Buyout and Growth	Venture Capital	Private Credit
Large Stocks	1.00	0.86	0.32	-0.34	-0.13	-0.06	0.75	0.64	0.56
Small Stocks	0.86	1.00	0.24	-0.42	-0.17	-0.10	0.68	0.61	0.57
Long-Term Corp. Bonds	0.32	0.24	1.00	0.60	0.74	-0.03	0.22	0.10	0.18
Long-Term Gov Bonds	-0.34	-0.42	0.60	1.00	0.72	0.02	-0.41	-0.37	-0.37
Interm-Term Gov't/Credit	-0.13	-0.17	0.74	0.72	1.00	0.23	-0.13	-0.17	-0.06
Money Market	-0.06	-0.10	-0.03	0.02	0.23	1.00	-0.11	-0.11	-0.06
Buyout and Growth	0.75	0.68	0.22	-0.41	-0.13	-0.11	1.00	0.72	0.66
Venture Capital	0.64	0.61	0.10	-0.37	-0.17	-0.11	0.72	1.00	0.53
Private Credit	0.56	0.57	0.18	-0.37	-0.06	-0.06	0.66	0.53	1.00