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

August 20, 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 submits this response to correct three fundamental errors in comments urging the Department to abandon its Proposed Rule, *Fiduciary Duties in Selecting Designated Investment Alternatives*, 91 Fed. Reg. 16088 (Mar. 31, 2026).[1]

AIC previously urged the Department to adopt the Proposed Rule with targeted revisions. *See* AIC, Comment Letter on Fiduciary Duties in Selecting Designated Investment Alternatives (June 1, 2026), bit.ly/4ob2riO ("AIC Letter"). The rule would give workers in 401(k) and similar retirement plans greater access to professionally managed funds that include alternative investments—such as private equity, private credit, real estate, and infrastructure—alongside public stocks and bonds. That broader mix can spread risk and improve workers' long-term returns, even after fees. Yet some commenters would keep funds that include alternative investments out of workers' retirement plans based on cherry-picked short-term market results, mistaken claims about valuation, and misunderstandings about how periodic redemption provisions function in certain private-credit funds. Those objections do not withstand scrutiny.

First, some commenters claim that private assets underperform public markets. But that claim rests on the selective use of inapposite benchmarks, such as the S&P 500, instead of benchmarks, such as the Russell 2000, that track smaller-cap public companies and are better reflective of the kinds of companies generally acquired by private equity. Worse, the claim rests on the S&P 500's performance during a few recent years in which seven giant companies—the "Magnificent 7"—drove an extraordinary share of the index's gains. The record over the longer term shows that private assets have delivered strong returns, even after accounting for risk and fees. And forecasters do not expect the recent extraordinary performance of large-cap public

[1] 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.

equities to persist over the long term.[2] With public markets increasingly concentrated in a handful of companies, the diversification provided by private funds is more important, not less.

Second, some commenters claim that private assets cannot be valued reliably because they are not bought and sold on public markets every day. That confuses a constantly changing daily share price with the inherent value of an enterprise. Private funds use established valuation methods, independent review, and accepted tools for comparing their performance with public investments.

Third, some commenters point to the use of periodic redemption provisions by a few private-credit funds as evidence that private credit is unsuitable for retirement plans. That sweeping conclusion does not follow from a few isolated events. It also ignores how workers would be expected to invest. Workers generally would gain limited exposure to private credit through diversified funds that also hold liquid public stocks and bonds, not by placing their retirement savings directly into a single private-credit fund.

None of these objections justifies denying workers access to a broader range of investments as proposed by the Department. The Department should finalize the Proposed Rule with the targeted revisions identified in AIC's prior comment letter.

I. The Magnificent 7's Recent Run Does Not Erase Decades of Strong Private-Market Returns, Even After Fees.

AIC's prior comment letter documented decades of evidence, across multiple market cycles, showing that a measured allocation to alternative investments can strengthen a retirement portfolio.[3] Private-market investments can provide sources of growth and income that are not available in the public markets, reduce dependence on public stocks and bonds, and improve

[2] *See, e.g.*, Goldman Sachs, *Building Long-Term Returns: Our 10-Year Forecasts,* at 3 (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"); Hamilton Lane, *2026 Market Overview: Pandora's Box*, at 46 (2026) (noting "the most important chart in this market overview" is the finding that at the current 12-month forward price / earnings ratio of 23x, the subsequent returns of the S&P 500 annualized over the next five years are expected to be approximately 5%).

[3] *See* David T. Robinson, *Fiduciary Duties in Selecting Designated Investment Alternatives: Opportunities and Considerations*, at 24 (2026) (attached to AIC Letter); Robert S. Harris *et al.*, *Has Persistence Persisted in Private Equity? Evidence from Buyout and Venture Capital Funds*, J. Corp. Fin. art. no. 102361, at 5 tbl. 1 (2023) (showing a "PME" above 1 for buyout funds in all vintages from 1987 through 2015 except three); Greg Brown *et al.*, *Private Equity: Accomplishments and Challenges*, J. Applied Corp. Fin., Summer 2020, at 8, 15-16; David T. Robinson & Berk A. Sensoy, *Cyclicality, Performance Measurement, and Cash Flow Liquidity in Private Equity*, 122 J. Fin. Econ. 521, 526 (2016) ("[T]he average buyout fund in our sample has outperformed the S&P 500 by 18% over the life of the fund, or about 3% per year at an investment holding period of about five years"); Robert S. Harris *et al.*, *Private Equity Performance: What Do We Know?*, 69 J. Fin. 1851, 1863-64 (2014) (Harris, *Private Equity Performance*).

returns for the amount of risk taken, even after fees. That long-term record is what matters for workers who are saving for retirement over 20, 30, or 40 years.

Opponents do not seriously confront that record. Instead, they point to short periods that coincided with an exceptional run by a handful of large U.S. stocks. The Americans for Financial Reform Education Fund, for example, cited comparisons showing that private-market funds lagged the S&P 500 over periods ranging from one to ten years and returned 7% in 2024, compared with 25% for the S&P 500.[4] The Private Equity Stakeholder Project similarly emphasized that fifteen large private-equity evergreen vehicles returned a median of 11.97% in 2025, below the returns of the MSCI ACWI and S&P 500 indexes.[5]

Those comparisons answer the wrong question and depend on the selective use of particular benchmarks and time periods. The question, properly understood, is whether adding a measured amount of private-market investments can improve a diversified portfolio over decades and through changing economic conditions. The aim of diversification is not to invest only in whatever performed best most recently—a worker saving for retirement is not choosing which asset class happened to perform best in 2024 or 2025. The purpose of diversification is to avoid depending too heavily on any one market or group of companies, to provide for a retirement that can be decades into the future. Over the longer time horizons associated with retirement investing, private equity has outperformed a range of public-market benchmarks, including the Russell 2000, Russell 3000, MSCI ACWI, and S&P 500.[6]

The time periods cherry-picked by the proposal's opponents are especially misleading because much of the public market's recent performance came from just seven companies—the "Magnificent 7": Alphabet, Amazon, Apple, Meta, Microsoft, Nvidia, and Tesla.[7] From 2015 through 2025, the S&P 500 without those seven stocks significantly underperformed private equity.[8] And even against the full index—including the Magnificent 7—the strongest private-

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[4] Americans for Financial Reform Education Fund Letter, attached report, at 12; *see also* Economic Policy Institute Letter, at 11 (similar); The American Federation of State, County and Municipal Employees (AFSCME) Letter, at 3-4 (similar).

[5] Private Equity Stakeholder Project Letter at 2-4.

[6] *See* Caryn Slotsky & Drew Carneal, *US PE/VC Benchmark Commentary: Calendar Year 2025*, Cambridge Associates (July 31, 2026), https://www.cambridgeassociates.com/insight/us-pe-vc-benchmark-commentary-calendar-year-2025/ (reporting ten-year U.S. private-equity returns of 15.2%, compared with 15.1% for the S&P 500 and 9.9% for the Russell 2000, and twenty-year returns of 13.2%, compared with 11.3% and 8.7%, respectively); Cambridge Associates, *US Private Equity: Index and Selected Benchmark Statistics*, at 3 (Dec. 31, 2025), https://www.cambridgeassociates.com/wp-content/uploads/2026/06/2025-Q4-USPE-Benchmark-Book.pdf (reporting U.S. private-equity value-add of 236 basis points over MSCI ACWI and 58 basis points over the Russell 3000 over ten years, and 402 basis points and 212 basis points, respectively, over twenty years).

[7] *See* Robinson, *supra*, at 19.

[8] *See id.* at 33.

market firms still came out ahead.[9] The broader historical record points in the same direction: over longer periods, private equity has outperformed public equity.[10]

There is no sound reason to assume that the Magnificent 7's extraordinary run will continue for the decades that workers are saving for retirement. In 2025, the ten largest companies in the S&P 500 accounted for almost 40% of the index—the highest concentration since the 1960s.[11] The last time the index was this concentrated, the companies dominating it performed poorly in the years that followed.[12] Retirement policy should not bet workers' savings on the continued dominance of a handful of stocks. That is precisely the concentration risk that diversification is meant to reduce.

The growing dominance of a handful of companies is already making public-market portfolios less diversified. Nearly 40 cents of every dollar invested in the S&P 500 goes to just 10 companies, leaving only 60 cents for the other 490. At the same time, many young, fast-growing companies are staying private longer, so public-market investors miss more of their growth.[13] A portfolio limited to public stocks is therefore less diversified than its hundreds of holdings might suggest. Adding private equity—and, similarly, private credit—can broaden that exposure.[14]

Fees do not change the analysis. Several commenters, including Senators Markey and Warren, emphasized that private funds may charge "higher fees" than public stock-index funds.[15] But the relevant question is not which investment charges the lowest fee in isolation. It is which

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[9] *See* Bain & Co., *Global Private Equity Report 2020*, at 84-87 (2020), https://www.bain.com/globalassets/noindex/2020/bain_report_private_equity_report_2020.pdf.

[10] *See* AIC Letter, at 7-9. Evaluations of historic private equity performance have largely focused on traditional drawdown funds. Evergreen vehicles will likely perform even better, because new capital and capital returned after a sale of an asset can be deployed immediately. *See* Robinson, *supra*, at 8; Gregory Brown & William Volckmann, Inst. for Priv. Cap., *Evergreen vs. Drawdown Funds: Risk, Returns and Cash Flows*, at 7-8 (2025).

[11] Tim Edwards & Nick Didio, S&P Dow Jones Indices, *In the Shadows of Giants: Navigating the Long-Term Dynamics of Performance and Concentration in U.S. Equities*, at 1 (2026), https://www.spglobal.com/spdji/en/documents/research/research-in-the-shadows-of-giants.pdf.

[12] *See id.* at 3 ("The aggregate performance of the June 1965 Top 10 cohort was underwhelming. Three entered bankruptcy proceedings, all fell to represent much smaller weights, and several represent potential business school case studies in 'what went wrong' with once widely admired and dominant U.S. corporations.").

[13] *See* Robinson, *supra*, at 17-19; Zachary Evens, *Why Are Small-Cap Stocks Underperforming? Private Markets May Play a Role*, Morningstar (Jan. 29, 2026), https://www.morningstar.com/en-ca/business/insights/blog/small-cap-stock-underperformance/.

[14] *See* Robinson, *supra*, at 21-22; Eric Ghysels *et al.*, *Do Public Equities Span Private Equity Returns?*, at 4 (Apr. 5, 2025) (unpublished working paper), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5025008.

[15] *See* Senators Markey & Warren Letter, at 1; *see also* Better Markets Letter, at 7; AFSCME Letter, at 4.

investment produces the stronger return after fees. Private-market investments have historically outperformed public markets on that basis.[16]

There is also no basis for Professor Teresa Ghilarducci's claim that workers in defined-contribution plans will pay more for private-market investments than large institutional investors.[17] For one, because alternative assets would be offered through asset-allocation funds rather than marketed directly to plan participants, their inclusion would not entail additional distribution fees. Workers also are expected to gain access primarily through large target-date funds and other diversified funds managed by established, highly regarded firms. By pooling the assets of many plans, those funds can bring substantial bargaining power to fee negotiations.[18] And as more funds compete to offer alternative investments, that competition should place further downward pressure on fees, just as it did in the mutual-fund market.[19]

The type of investment vehicles most likely to be used will also have fee structures better suited to retail investors. Many are "evergreen" vehicles that remain open rather than raising money for a single investment period and then winding down. Those vehicles often charge fees based on net asset value, rather than the larger amount investors have committed to provide "as is common in a traditional drawdown fund."[20] That feature can materially reduce investor costs.[21]

Finally, some commenters, including the Economic Policy Institute ("EPI"), point to defined-benefit pension plans that invested in private markets but failed to beat a portfolio consisting of 60% stocks and 40% bonds.[22] That comparison is flawed in multiple respects. First, defined-benefit plans typically hold more cash, government bonds, and other low-risk assets—and

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[16] *See supra* note 3; *see also* Ghysels *et al.*, *supra*, at 4-5 (finding that private-equity-specific factors materially improve portfolio Sharpe ratios through higher expected returns and diversification, and suggesting an optimal private-equity allocation of 11% to 24% of risky portfolios).

[17] *See* Prof. Ghilarducci Letter, at 2.

[18] *See* Michael Ewens & Jacob Faber, *Liquid Claims on Illiquid Assets: The Economics of Retail Access to Private Markets* (Feb. 2026) (unpublished manuscript), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6524419 (citing Berk A. Sensoy *et al.*, *Limited Partner Performance and the Maturing of the Private Equity Industry*, 112 J. Fin. Econ. 320 (2014), "on how LP experience and scale improve fund access and terms").

[19] *See* John C. Coates IV & R. Glenn Hubbard, *Competition in the Mutual Fund Industry: Evidence and Implications for Policy*, 33 J. Corp. L. 151, 173 (2007) (explaining that the "net decline in distribution costs from load and 12b-1 fees provides unambiguous evidence of price competition in the total fees facing equity mutual fund customers").

[20] Brown & Volckmann, *supra*, at 2.

[21] *See* Robinson, *supra*, at 9.

[22] Economic Policy Institute Letter, at 8; *see also* AFSCME Letter, at 4 ("[T]he founder of the Center for Retirement Research at Boston College has stated, '[O]ur studies on the performance of state and local pension plans show that the addition of private equity has not increased the return or reduced the volatility in these plans.'" (second alteration in original)).

less stock—than a 60-40 portfolio.[23] A portfolio designed to match long-dated liabilities and limit funding volatility will yield lower total returns than a less conservative benchmark when equity markets are rising. Comparing such a portfolio against a 60-40 benchmark therefore tells us about the plan's overall risk posture, not about the contribution of any particular asset class.

Second, and more fundamentally, EPI's comparison looks at each plan's entire portfolio, not its private-market investments in isolation. It therefore cannot establish whether those investments improved the plan's returns relative to what the plan otherwise would have earned. The relevant question is not whether a plan with a 20% allocation to alternative investments beat a hypothetical 60-40 portfolio. It is whether that 20% allocation performed better than the assets the plan otherwise would have held consistent with the plan's risk profile and liability-driven investment strategy. Indeed, other analyses of actual pension performance have found that alternative investments made a significant positive contribution to overall returns.[24]

Third, to the extent some defined-benefit plans have achieved disappointing results from private-market allocations, the evidence points to plan-specific implementation factors—including manager selection—rather than any inherent deficiency in private markets as an asset class.[25] Recent evidence underscores the importance of manager selection: more established private-equity managers, measured by fund size, have generated higher returns and better risk-adjusted performance, with lower volatility, than less established managers.[26] That variation in outcomes is a reason for careful selection of alternative investments, not to exclude private-market

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[23] *See* Alicia H. Munnell *et al.*, Ctr. for Ret. Rsch. at Bos. Coll., *Investment Returns: Defined Benefit vs. Defined Contribution Plans*, at 4 fig. 1 (2015) (showing defined benefit plans hold less than 60% of their assets in equity); Donghyeok Jang & Youchang Wu, *Investment Performance of Private Pension Plans: Defined Benefit vs. Defined Contribution*, Mgmt. Sci., at 7 tbl. 1 (Apr. 17, 2026) (accepted for publication).

[24] *See* Stephen L. Nesbitt, *Alternatives Benefit Long-Term State Pension Performance*, Cliffwater (June 9, 2025), https://www.cliffwater.com/ResourceArticle/alternatives-benefit-longterm-state-pension-performance?docId=27838 (finding that state pensions outperformed a risk-comparable 70/30 passive benchmark by 63 basis points annually from 2001 through 2024, with 42 basis points attributable to allocations to alternatives, and that alternatives contributed 92 basis points of annual excess return over the ten years ending in 2024).

[25] *See* Aleksandar Andonov *et al.*, *Political Representation and Governance: Evidence from the Investment Decisions of Public Pension Funds*, 73 J. Fin. 2041, 2041, 2069 (2018) (finding that pension fund board composition—particularly political appointments—is "related to the performance of private equity investments" and that underperformance "could be due to different allocations across PE fund types or to the selection of managers within PE fund types"); Josh Lerner *et al.*, *Smart Institutions, Foolish Choices: The Limited Partner Performance Puzzle*, 62 J. Fin. 731, 742-44 (2007) (documenting large heterogeneity in institutional investor returns from private equity driven by differences in manager selection); Alexander Dyck *et al.*, *Outraged by Compensation: Implications for Public Pension Performance*, 35 Rev. Fin. Stud. 2928, 2929 (2022) (showing that public pension governance constraints on investment-staff compensation lead to underperformance in alternative asset classes).

[26] *See* Arun Gupta, *The Performance of Private Equity: Evidence from Confidential Filings*, J. Private Markets Investing, Spring 2026, at 90, 93, https://www.pm-research.com/content/iijpriveq/24/3/90 (finding strong economies of scale in private equity, with annual internal rates of return and reward-to-risk ratios increasing with fund size while risk declined, and finding that funds in the largest size quintile earned limited partners an annual excess premium of 4.9 percentage points over comparable funds in the smallest size quintile).

investments altogether. The Department's Proposed Rule promotes such a careful process by requiring that plan fiduciaries follow rigorous, documented steps to avail themselves of the safe harbor. The experience of some defined-benefit plans therefore supports the Proposed Rule's emphasis on careful fiduciary process; it does not support barring alternative investments altogether. A complementary Department rule addressing ongoing monitoring of designated investment alternatives, as the Department has contemplated, would strengthen those protections further by helping ensure that fiduciaries not only select investments prudently at the outset, but also continue evaluating their performance, fees, and other relevant characteristics over time.

II. Private-Market Investments Can Be Meaningfully Valued.

Some commenters claim that private-market investments cannot be valued reliably or compared fairly with public investments. They are wrong on both counts. For more than fifty years, sophisticated institutional investors have subjected private-market investments to rigorous valuation and performance analysis. The absence of a price flashing on a public exchange does not make an asset impossible to value. And the use of different measures of return does not make performance impossible to compare.

Start with performance. The American Federation of State, County and Municipal Employees focuses on the internal rate of return, or IRR, and notes that it cannot be compared directly with the returns reported by public-market indexes.[27] But that proves only that IRR is not the right measure for every purpose. It does not mean that no valid comparison can be made.

The Public Market Equivalent, or PME, was designed to make that comparison. It asks what an investor would have earned if the same amounts invested in and returned by a private fund, on the same dates, had instead been invested in a public-market index.[28] In other words, PME provides precisely the comparison the commenters claim is unavailable. A large body of academic research has used it to compare private and public investments and has found that private markets have historically outperformed public markets.[29]

[27] *See* AFSCME Letter, at 3. The IRR is the discount rate that sets a project's net present value to zero and can represent the project's annualized return. *See* Jonathan Berk & Peter DeMarzo, *Corporate Finance* 160, 248 (4th ed. 2017).

[28] Robinson, *supra*, at 23 n.73.

[29] *See* Robinson, *supra*, at 23-31 (collecting studies); *see also, e.g.*, The Council of Economic Advisers, *Retail Access to Alternative Investments via Defined Contribution Plans*, at 9-10 (Aug. 2025), https://www.whitehouse.gov/wp-content/uploads/2025/08/Retail-Access-to-Alternative-Investments-Via-Defined-Contribution-Plans-2.pdf;
Robinson & Sensoy, *supra*, at 523; Gregory Brown *et al.*, *Can Investors Time Their Exposure to Private Equity?*, 139 J. Fin. Econ. 561, 563-64 (2021); Gregory Brown *et al.*, *Risk-Adjusted Performance of Private Funds: What Do We Know?*, at 49 (2025) (Brown, *Risk-Adjusted Performance*) (using "KS-PME"); Shawn Munday *et al.*, Inst. for Priv. Cap., *Performance of Private Credit Funds: A First Look*, at 36 tbl. 9 (2018).

The funds most likely to be included in 401(k) plans—evergreen vehicles—also often report time-weighted returns. That measure shows how the fund's investments performed while removing the effect of when investors added or withdrew money. Open-end mutual funds report returns in essentially the same way, allowing a direct comparison.[30]

Former Department official Timothy Hauser treats the existence of several "measure[s] of return" as a defect. It is not. Different measures answer different questions. IRR accounts for when a private fund receives and returns investors' money. PME compares those cash flows with a public-market benchmark. Time-weighted returns measure the fund's performance without allowing the timing of deposits and withdrawals to distort the result. Using the right measure for the question produces a more accurate picture, not a less reliable one.[31]

Other commenters challenge the values assigned to the underlying investments. Better Markets, for example, argues that private assets are difficult to value because they are not easily sold and do not trade publicly.[32] Public Citizen similarly suggests that private valuations cannot be trusted because private funds are not subject to the same public-disclosure requirements as public companies.[33]

Those differences may make valuation less automatic. But they do not make it unreliable. A private asset may lack a continually adjusted market price, but its value can still be assessed through established valuation methodologies that account for financial statements, cash flows, comparable companies and transactions, and other objective evidence. Indeed, the SEC has recognized these as legitimate methods to value assets "for which no readily available market

[30] Pulkit Sharma *et al.*, *Assessing the Benefits of Open-End Alternative Investments*, J.P. Morgan Asset Mgmt. (Sept. 18, 2024), https://am.jpmorgan.com/us/en/asset-management/adv/insights/portfolio-insights/alternatives/assessing-the-benefits-of-open-end-alternative-investments; *see also* Robinson, *supra*, at 8.

[31] Hauser Letter, at 18; *see also* Senator Markey Letter, at 2. Hauser also argues that litigation risk is overstated because fewer than 0.1% of 401(k) plans have been subject to excessive-fee class actions since 2016 and only about 0.0135% were subject to any ERISA class action in 2025. Hauser Letter, at 25. But those percentages obscure the practical risk confronting fiduciaries. The Department has found that fiduciary litigation has accelerated in recent years and that settlement amounts have increased sharply. Stated differently, even a limited number of lawsuits can have a severe chilling effect. And the litigation risk facing fiduciaries who include alternative assets has been even higher. *See As Private Equity Firms Work to Access 401(k) Market, Plaintiff Lawyers Gear Up to Sue*, The Capitol Forum (Apr. 10, 2023), https://thecapitolforum.com/as-private-equity-firms-work-to-access-401k-market-plaintiff-lawyers-gear-up-to-sue/ ("active class action ERISA attorney" stating that "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").

[32] Better Markets Letter, at 6 (citing Benjamin Schiffrin, *The Risks the Private Markets Pose to Retail Investors, the Economy, and Financial Stability*, The Public Interest by Better Markets (Mar. 24, 2025), https://bettermarkets.substack.com/p/the-risks-the-private-markets-pose); *see also* AFSCME Letter, at 3 (similar).

[33] Public Citizen Letter at 2; *see also* AFSCME Letter at 3; State AG Letter at 12; Economic Policy Institute Letter, at 10 (all similar).

quotation exist," such as private assets.[34] And private-fund managers often have access to substantially more information about a portfolio company's operations and outlook than is available to public-market investors, including through board representation and regular engagement with management.

Private funds generally report the fair value of their investments to investors at least quarterly,[35] and some evergreen vehicles value their underlying assets as frequently as monthly. They also typically undergo independent annual audits, SEC review, and obtain review from independent valuation specialists and independent valuation and audit committees. Those checks test the information, methods, and assumptions supporting the manager's valuation and help guard against inflated or unsupported numbers.[36] As AIC explained in its prior comment letter (at 45), audits are often required by law or demanded by investors as a condition of investing.[37]

Investors and the market provide additional discipline. A manager that overstates asset values risks losing investors' trust and making it harder to raise its next fund. Research confirms that aggressive valuations reduce the likelihood that a manager will successfully raise another fund.[38] And evergreen vehicles are subject to additional safeguards: they regularly calculate and report their net asset value, and many are subject to extensive SEC reporting, auditing, and disclosure requirements, including periodic public reporting. The suggestion that evergreen vehicles lack meaningful transparency therefore overlooks the regulatory and reporting framework to which they are already subject.[39]

Private asset valuations therefore rest on financial evidence and accepted methods and are tested through audits, independent review, investor scrutiny, and market consequences. The fact

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[34] Good Faith Determinations of Fair Value, 86 Fed. Reg. 748, 748 n.1 (Jan. 6, 2021); *see, e.g.*, *id.* at 770-71 & n.326 (discussing the application of FASB Accounting Standard Codification Topic 820: Fair Value Measurement to level 3 assets, identifying the discounted cash flow method as an example of a valuation technique or method used to determine fair value and noting that "[e]xamples of the records that may be needed for level 3 inputs include documentation supporting the inputs, assumptions, and calculation methodology used in determining fair value, for example selected financial models, financial reporting information, income or growth projections, or public company comparable data").

[35] *See* Harris, *Private Equity Performance*, *supra*, at 1861 ("[S]ince the end of 2008, the Financial Accounting Standards Board (FASB) has required PE firms to value their assets at fair value every quarter.").

[36] Memorandum from Mitra Surrell, Assoc. Gen. Counsel, Inv. Co. Inst., to Inv. Co. Dirs. et al., Summary of SEC Rules on Private Fund Advisers; Documentation of Registered Investment Adviser Compliance (Aug. 28, 2023), www.idc.org/node/51928.

[37] *Fund Audits: Turning Compliance into an Operational Advantage*, Carta (Apr. 3, 2026), https://carta.com/learn/private-funds/management/fund-audits/.

[38] *See* Gregory W. Brown *et al.*, *Do Private Equity Funds Manipulate Reported Returns?* 132 J. Fin. Econ. 267, 267 (2019).

[39] Robinson, *supra*, at 8; *see also Evergreen Funds*, Carta (Aug. 14, 2025), https://carta.com/learn/private-funds/private-equity/pe-fund-structures/evergreen-funds/.

that private investments do not trade or disclose information in exactly the same way as public companies does not make their valuations unreliable.

III. Periodic Redemption Provisions at a Few Funds Do Not Make Private Credit Unsuitable for Retirement Plans.

Some commenters seize on recent headlines about periodic redemption provisions at a few private-credit funds and treat them as proof that private credit is troubled and too illiquid for retirement plans. Neither conclusion follows.

Better Markets, for example, points to reports that one manager limited "withdrawals from one of its private credit funds at 5%."[40] A coalition of State Attorneys General likewise argues that the "heightened withdrawal requests" show it is "not the time to funnel Americans' retirement investments" into private credit.[41]

Those headlines are easily misunderstood. A request to withdraw money from a fund is not evidence that the businesses receiving the fund's loans have stopped paying or that the loans have lost value. Nor does the triggering of a periodic redemption provision mean that the fund has run out of cash. It means that investors requested more money during a particular period than the fund had agreed in advance to make available for redemption.

Those periodic redemption provisions are part of the fund's design and are well-disclosed. Private-credit funds make loans that cannot always be sold immediately at a fair price because they must hold such loans to maturity. If a fund had to satisfy every redemption request at once, it could be forced to sell sound, income-producing loans at fire-sale prices rather than at their inherent value. Enforcing a pre-agreed periodic redemption provision prevents that, protecting the investors who remain in the fund. It is not evidence that the fund—or private credit generally—is failing.

The broader performance record points in the opposite direction. As AIC explained in its prior comment letter, private-credit funds launched in each of the past nearly 25 years have outperformed comparable public investments.[42] Academic studies likewise find that private credit

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[40] Better Markets Letter, at 8-9.

[41] State AG Letter, at 11-12; *see also* Public Citizen Letter, at 3 (similar); Eileen Appelbaum Letter, at 3-4 (similar).

[42] 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 Cap. (Jan. 12, 2026), 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.").

has outperformed public markets for similar business loans.[43] A few funds enforcing their agreed periodic redemption provisions do not erase that record.[44]

More generally, commenters' concerns about liquidity misunderstand how workers would invest in private credit.[45] A 401(k) participant would not place retirement savings directly into a single private-credit fund. As Executive Order 14330 contemplates, a participant instead would invest through a target-date or other diversified fund that holds a mix of assets, including liquid investments, and which allocates only a limited portion to alternative assets such as private credit.[46] Most of that broader fund would remain invested in readily saleable assets, including public stocks and bonds. The private-credit fund itself would also generally hold cash and other liquid assets to meet ordinary withdrawals. If a worker needed to move or withdraw money, the broader fund could use those liquid holdings. It would not need to sell each type of investment—including its private loans—at the same time or in the same proportion. Professor Robinson found that even a fund with a substantial allocation to private assets could satisfy withdrawal demands exceeding those experienced by nearly all plans while retaining a majority of its remaining assets in liquid investments.[47]

Retirement plans are in fact especially well suited to holding a prudent amount of less-liquid assets, because participants rarely need to trade or withdraw their savings.[48] Retirement

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[43] *See* Robinson, *supra*, at 25-26; Isil Erel *et al.*, *Risk-Adjusting the Returns to Private Debt Funds*, at 4, 31 (Nat'l Bureau of Econ. Rsch., Working Paper No. 32278, 2024) (estimating the "risk-adjusted profit" of private credit compared to corporate debt as "a positive, statistically significant $0.11 to $0.12 per $1 of capital invested," translating "to a 1.8% net alpha"); Brown, *Risk-Adjusted Performance*, *supra*, at 6 ("When we estimate performance for diversified portfolios of private credit funds, we find positive risk-adjusted returns relative to the leverage loan index."); Munday *et al.*, *supra*, at 1 ("[P]rivate credit funds have performed about as well, or better than, leveraged-loan, high-yield and BDC indexes"); Fang Cai & Sharjil Haque, *Private Credit: Characteristics and Risks*, FEDS Notes (Bd. of Governors of the Fed. Rsrv. Sys. 2024), https://www.federalreserve.gov/econres/notes/feds-notes/private-credit-characteristics-and-risks-20240223.html ("Over the past decade, [Private Credit], particularly direct lending, has generated higher returns than most other comparable asset classes, including 2-4 percent over syndicated leveraged loans.").

[44] *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/.

[45] *See, e.g.*, Private Equity Stakeholder Project Letter, at 9-10; AFL-CIO Letter, at 5; Better Markets Letter, at 9.

[46] Exec. Order No. 14330 § 3(c), 90 Fed. Reg. 38921, 38922 (Aug. 12, 2025) ("Within 180 days of the date of this order, the Secretary shall further, as the Secretary deems appropriate and consistent with applicable law, seek to clarify the Department of Labor's position on alternative assets and the appropriate fiduciary process associated with offering asset allocation funds containing investments in alternative assets under ERISA.").

[47] Robinson, *supra*, at 49-53; *see also* 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.

[48] *See Hardships, Early Withdrawals, and Loans*, IRS (Feb. 26, 2026), https://www.irs.gov/retirement-plans/hardships-early-withdrawals-and-loans.

accounts are designed for long-term saving, not frequent trading. Most participants behave accordingly. One study of 16,000 TIAA-CREF participants found that almost half made no active change to their investments during the nine years studied.[49] Another found that "the average number of annual transactions" in a sample of over 7,000 401(k) accounts was "0.26, or one trade every 3.85 years."[50] Vanguard reported that only 11% of participants in the plans it managed traded in 2025—and only 5% did so after managed accounts were excluded.[51] And recent Vanguard data on distributions following job changes indicate that as many as two-thirds of participants remain in their plan.[52]

The commenters thus draw sweeping conclusions from a few misleading headlines. The periodic redemption incidents they cite do not show that private credit is underperforming, nor that exposure to private credit would threaten workers' access to retirement savings. They show only that a few funds operated as designed to prevent forced sales and protect all investors. A diversified retirement fund can hold an appropriate amount of private credit, meet participants' limited withdrawal needs, and seek stronger long-term returns.

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[49] John Ameriks & Stephen Zeldes, *How Do Household Portfolio Shares Vary With Age?* (Sept. 2004) (unpublished working paper), https://business.columbia.edu/sites/default/files-efs/pubfiles/16/Ameriks_Zeldes_age_Sept_2004d.pdf.

[50] Julie Agnew *et al.*, *Portfolio Choice and Trading in a Large 401(k) Plan*, 93 Am. Econ. Rev. 193, 194 (2003).

[51] Vanguard, *How America Saves 2026*, at 88-89, https://workplace.vanguard.com/content/iig-transformation/pdf/how-america-saves-2026.html.

[52] Conrad S. Ciccotello, *Private Investments in Defined Contribution Retirement Portfolios*, at 27 n.93 (2026) (attached to AIC Letter).

For these reasons, AIC respectfully urges the Department to reject the commenters' objections and finalize the Proposed Rule with the targeted revisions identified in AIC's prior comment letter. More than 70 million American workers participate in 401(k) and similar defined-contribution plans. Yet for decades, those workers have been denied access to the same types of diversified investment options that defined-benefit pension plans have long used on behalf of nearly 35 million public-sector employees. The Proposed Rule would begin to close that gap. Workers should not continue to be shut out of a broader range of retirement investments based on short-term market comparisons, mistaken claims about valuation, and exaggerated concerns about periodic redemption provisions.

Sincerely,

/s/ Shelby Telle

Deputy General Counsel
American Investment Council