

Private Equity in 401(k) Plans: What Advisors Need to Know

Traditionally, 401(k) retirement plans have offered a familiar menu of active and passively managed equity and fixed income funds. However, as 401(k) plans and technology evolve, new possibilities are emerging, including the inclusion of private equity investments. Although private equity has historically been excluded from plan menus due to high fees and concerns about liquidity and regulatory oversight, some advisors, plan sponsors, and participants are becoming increasingly open to adding private equity exposure to plans' investment lineups in hopes of obtaining higher long-term returns and increased portfolio diversification. Should your clients consider it?

All Eyes on Private Equity: In 2020, the DOL released an Information Letter affirming that plan fiduciaries may include private equity within diversified vehicles. A year later, the DOL released a supplemental statement, clarifying that a plan fiduciary would not violate its fiduciary duties under ERISA Sections 403 and 404 solely by offering a professionally managed asset allocation fund with a PE component as an investment alternative, so long as the investment is prudent and made solely in the interest of the plan's participants and beneficiaries. The supplemental statement cautioned, however, that the DOL believed only certain experienced plan fiduciaries would be capable of evaluating such investments.

In August, the White House released an Executive Order that directs the DOL to reexamine its previous guidance on a fiduciary's duties regarding alternative asset investments, including private equity investments, in 401(k) and other defined contribution plans. Additionally, the Executive Order directs the DOL to provide guidance on the appropriate fiduciary process associated with offering funds containing investments in alternative assets.

Critical Considerations for Advisors: Before recommending private equity options or adding them to a plan's menu options, plan advisors should consider the following:

- **Fiduciary Prudence:** Can plan fiduciaries demonstrate a well-reasoned decision-making process leading to inclusion of private equity?
- **Operational Complexity:** Do plan fiduciaries and other plan-related personnel have the ability to appropriately monitor investments with private equity exposure?
- **Fees:** Can plan fiduciaries justify and properly communicate the fees associated with investments with private equity exposure?

As plan advisors, your role is critical. You will need to help plan fiduciaries evaluate whether investments with private equity exposure align with your plan sponsor's goals, risk tolerance, and participant profile. With proper structure and communication, sponsors may find value in offering private equity investment options to their participants.

Reminders:

- **October 3, 2025:** Beginning of period to distribute various annual notices for calendar year plans (e.g., safe harbor, autoenrollment, and QDIA notices). These generally are distributed from 90 to 30 days before the end of the plan year.
- **October 15, 2025:** Deadline for adopting retroactive amendment to correct Code Section 410(b) or 401(a)(4) failures.
- **October 15, 2025:** Deadline for filing 2024 Form 5500 for calendar year plans that filed a Form 5558 extension.

by **Jesse St. Cyr**, Partner, Poyner Spruill