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DOL cautions DC plan fiduciaries about private equity offerings

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A recent Department of Labor (DOL) [statement](#) cautions fiduciaries of “typical” defined contribution (DC) plans about private equity (PE) investments as components of investment options, such as target-date or balanced funds. The statement supplements — but doesn’t withdraw — DOL’s 2020 [information letter](#) detailing factors for DC plan fiduciaries to consider when evaluating a professionally managed asset allocation fund with a PE component as a potential investment option.

Original information letter. Responding to a specific set of facts, the 2020 information letter concluded that DC plan fiduciaries wouldn’t necessarily violate their ERISA duties by selecting an investment option with a PE component after objectively considering the factors identified by DOL. A fiduciary might have many valid reasons to prudently select such a fund, DOL said. However, before evaluating investments that include a PE component, fiduciaries should consider — as they must for all investments — whether they have the skills, knowledge and experience to do so, either alone or with assistance from an investment advisor.

No endorsement or recommendation of PE investments. Based on feedback from unidentified stakeholders — as well as a Securities and Exchange Commission (SEC) [risk alert](#) issued several weeks after the information letter — DOL grew concerned that plan fiduciaries could expose participants to “unwarranted risks” by misinterpreting the information letter as an indication that PE investments are generally appropriate for typical DC plans. The supplemental statement clarifies that the information letter was not an endorsement or recommendation of investments with PE exposure.

Not all plan fiduciaries have adequate expertise. DOL explains that the original letter was intended primarily for DC plan fiduciaries that also oversee defined benefit (DB) plans and already have experience evaluating PE investments for those plans. DOL notes that the information letter responded to concerns that some of these fiduciaries were reluctant to consider investments with a PE component for their DC plans solely out of fear of liability. Stressing that certain characteristics of PE — including complex fee and investment structures, difficulties with valuation, lack of liquidity, and reduced transparency — are more complicated than conventional DC plan investments, DOL cautions that fiduciaries of small DC plans are unlikely to have the necessary expertise to evaluate these investments.

Neither the information letter nor the supplemental statement addresses other federal or state laws that may apply to PE investments. The guidance also doesn't address offering PE funds as stand-alone investment options in DC plans, which would present distinct legal and operational issues.

Related resources

Non-Mercer resources

- [Supplemental statement on PE in DC plan designated investment alternatives](#) (DOL, Dec. 21, 2021)
- [News release](#) (DOL, Dec. 21, 2021)
- [Risk alert](#) (SEC, June 23, 2020)
- [Information letter](#) (DOL, June 3, 2020)
- [News release](#) (DOL, June 3, 2020)

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- [DC plans can offer investment funds with private equity, DOL says](#) (June 17, 2020)

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