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The DOL Rules Apply to More Than Alternatives

Proposed rules may expand access to private markets, but could also allow DC plan sponsors to consider a wider range of traditional investments.

The Department of Labor ("DOL") recently issued eagerly anticipated proposed rules on including alternative investments in defined contribution plans, but the effects could be significantly broader.

The proposed rules were issued pursuant to an Executive Order ("Democratizing Access to Alternative Assets for 401(k) Investors") back in August 2025, which sought to level the playing field in the DC context for alternative investments, including private equity, private real estate and cryptocurrency. Beyond creating a safe harbor for these assets, the DOL proposed rule brought to the table a neutral framework with a focus on enhancing what participants can receive on a net-of-fee risk-adjusted return basis.

The importance of this framework becomes evident in the context of broader DC trends. For years, the industry engaged in a "race to the bottom" in fees, which had a generally constructive impact on expense structures, but also steered plan sponsors away from higher-fee products to avoid litigation risk—even if those products might provide additional value, whether in terms of return potential or risk mitigation and diversification. This had a notable dampening effect on the acceptance of private markets strategies, but also brought into question any active strategy that could not match the near-zero expenses associated with large passive index funds.

The new framework is subject to public comment, and may change, but if adopted as written, would create a safe harbor against liability for fiduciaries who follow a well-documented process that involves six factors:

1. **Performance.** The fiduciary must consider a reasonable number of similar alternatives and determine that the risk-adjusted expected returns of such alternatives, over an appropriate time horizon and net of fees.

2. **Fees.** The lowest-cost option is not required, but higher fees should be balanced with a clear value proposition.

3. **Liquidity.** The fiduciary must determine if the investment will have sufficient liquidity to meet plan needs at both the participant level (e.g., withdrawals, loans, hardship distributions) and plan level (e.g., potential termination, recordkeeper changes).

4. **Valuation.** The fiduciary must determine that the investment has adequate measures to ensure timely and accurate valuation.

5. **Benchmark.** The fiduciary must determine that the investment has a meaningful benchmark and compare risk-adjusted expected returns, net of fees, to that benchmark.

6. **Complexity.** The fiduciary must determine whether they have the skills, knowledge, experience and capacity to understand the investment sufficiently—or must seek assistance from a qualified adviser, investment manager or other professional.

In our view, the new standards could encourage the adoption of alternative investments where appropriate, but it may also enhance interest in active managers across various other market segments, including, but not limited to, those below:

- **Small-cap stocks.** Small-cap indices may include a number of low-quality, low-earning names that may be included regardless of their fundamentals. By the same token, plenty of strong, financially sound names may go unrecognized due to spotty investment coverage or unglamorous businesses. These names can potentially add growth for participants with less potential downside risk.

- **Value stocks.** The risk mitigation and potential return opportunity of value stocks generally requires thorough research that moves beyond optics to an understanding of the elements that could drive a discounted name to higher levels. An essential element is to distinguish “value traps” from discounted names with a potential catalyst to generate share appreciation.

- **Flexible fixed income.** We see extensive potential in finding relative value across duration, credit and geography. The ability to move beyond index weightings, especially at times of market inflection, allows managers to seek return and manage risk in ways that may be unavailable to those invested in index funds and ETFs.

Ultimately, a key is whether the added value associated with a given market segment or strategy can more than offset any additional fees. By following the proposed rules, plan sponsors will at least have the freedom to explore more options in search of enhancing participant outcomes over time.

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