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<https://www.federalregister.gov/documents/2026/03/31/2026-06178/fiduciary-duties-in-selecting-designated-investment-alternatives#open-comment>

Office of Regulations and Interpretations  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210

*Attention: Daniel Aronowitz, Assistant Secretary / Fred Wong*

***Re: Fiduciary Duties in Selecting Designated Investment Alternatives (RIN 1210–AC38)***

Dear Assistant Secretary Aronowitz and Mr. Wong,

CFA Institute welcomes the opportunity to provide comments on the Department of Labor’s (“Department”) proposed rule, **Fiduciary Duties in Selecting Designated Investment Alternatives**, published on March 31, 2026. CFA Institute<sup>1</sup> speaks on behalf of its members and advocates for investor protection and market integrity before standard setters, regulatory authorities, and legislative bodies worldwide. We focus on issues affecting the profession of financial analysis and investment management, education and competencies for investment professionals, and the fairness, transparency, and accountability of global financial markets.

### ***Executive Summary and Core Policy Positions***

- **CFA Institute Supports an Asset-Neutral Approach that Does Not Prohibit Any Asset Class.** CFA Institute supports the Department’s asset-neutral framework and recognizes that private-market assets may offer diversification, a broader opportunity set, and potential risk-adjusted return benefits.
- **Strengthen the Six-Factor Test for Selecting Designated Investment Alternatives (DIAs).** The proposed multi-factor test improves the current principles-based ERISA framework, but each factor needs further detail for private-asset exposures. Performance, fees, liquidity, valuation, benchmarking, and complexity, including operational portability risk, carry unique considerations in this context and require clearer obligations for plan fiduciaries.

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<sup>1</sup> CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 170,000 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 161 local societies.

- **Require Participant-Profile Analysis and Stronger Education and Communication.** Plan fiduciaries should assess private-market exposure based on each participant's age, income, liquidity needs, risk capacity, and glide path, and explain key risks directly. Any safe harbor should not reduce fiduciary duties to participants and beneficiaries.
- **DC Participants and Private-Market Economics.** The final rule must consider whether individual DC plan participants can obtain the same private-market benefits as institutional investors. Dry powder, limited deal availability, and competition with sophisticated institutional investors and fund managers may leave 401(k) plans with lower-quality, higher-cost, or less liquid private-market exposures.
- **Private-Market Options Should Not Be the Plan's Default Investment Option.** The Department should not allow private-market-enabled options to be the default DIA for plan participants. This approach preserves participant choice while protecting defaulted savers.

## **Introduction**

The Department's proposal would clarify ERISA's duty of prudence in selecting Designated Investment Alternatives (DIAs) for participant-directed individual account plans, including asset-allocation funds with exposure to alternative assets. CFA Institute supports the Department's asset-neutral approach and recognizes that private-market assets can offer diversification, access to a broader opportunity set, potential illiquidity premia, and professional portfolio construction benefits when used in prudent structures. We also support broader access to private markets when such access is delivered with strong governance, transparent costs, reliable valuation, adequate liquidity management, and effective participant protections.

That said, our support comes with important qualifications. Serious concerns remain about the suitability of meaningful private-market exposure for many individual DC plan participants and about whether the current proposal provides sufficient guardrails. While private assets have been prudent investments for long-term institutional portfolios, whether those same private-market exposures can be delivered to 401(k) participants in a way that protects them from flawed product design, residual deal flow, opaque fees, stale valuation, limited liquidity, and plan-sponsor inexperience remains a serious concern. Here are three issues we encourage you to integrate in formulating your final rules.

### **1. The Six-Factor Test for Selecting 401(k) Investment Products Lacks Detail**

CFA Institute welcomes the Department's effort to convert broad ERISA principles of prudence, loyalty, and care into a more structured test for selecting DIAs. As proposed, the new test can improve fiduciary practice by requiring consideration of performance, fees, liquidity, valuation, benchmarking, and complexity. This is a useful improvement over a purely principles-based framework. However, private assets pose risks that cannot be addressed through general factor

labels alone. The final rule should specify how each factor applies when a DIA includes meaningful private-market exposure.

i.) On benchmarking, we support the Department's effort to avoid superficial comparisons. The proposal correctly states that a fiduciary must use a meaningful benchmark and recognizes that, for a fund with a private-equity sleeve, a composite benchmark may appropriately rely on methods such as internal rate of return and public market equivalent analysis. That is sensible. Still, the final rule should expressly caution fiduciaries against false precision. Private assets do not always lend themselves to a single, apples-to-apples benchmark. The final rule should therefore make clear that fiduciaries may use the best available composite or range of comparators, together with an explanation of the limits of those comparators.

ii.) On valuation, liquidity, and conflicts associated with private assets, the final rule must be more explicit. The proposal rightly requires that a DIA be capable of timely and accurate valuation and have sufficient liquidity to meet anticipated needs at both the plan and individual participant levels.

For example, SEC staff have identified valuation failures that led to overcharging of management fees and carried interest, undisclosed preferential liquidity rights, inaccurate expense allocations, and conflicted fund restructurings.<sup>2</sup> These are not merely theoretical concerns. For unsophisticated retirement investors in particular, they can directly affect fairness, redemption outcomes, and reported performance. The final rule should therefore require stronger written controls around valuation governance, independent review of material valuation judgments, and clear explanations of the nature and source of assets making up the private-asset allocations. We reiterate the need to protect 401(k) investors from being the off-ramp for the large stock of unsold and underperforming private-market assets held by institutions.

iii.) We also recommend that the Department strengthen the rule's competence expectations of both plan sponsors and plan fiduciaries. The proposal's discussion of complexity properly acknowledges that sophisticated strategies are expected, but it also recognizes that fiduciaries must have the skills, knowledge, experience, and capacity to understand what they are selecting or obtain independent, qualified professional advice.

**In practice, some of the hardest problems in this area do not arise from a lack of disclosure from the product sponsor, but from the inability of the responsible fiduciary to challenge optimistic assumptions, understand how a composite benchmark was built, evaluate liquidity promises under stress, or recognize when headline return expectations obscure poor product design.** A fiduciary considering private-market exposure inside a DIA must

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<sup>2</sup> <https://www.sec.gov/newsroom/press-releases/2023-112>  
<https://www.sec.gov/compliance/risk-alerts/observations-examinations-private-fund-advisers>

therefore ensure and document either in-house expertise or the use of independent, qualified professional services.

iv.) The Department itself asks whether plan fiduciaries should review the profiles and characteristics of participants who allocate to private-market options as part of the final rule.<sup>3</sup> CFA Institute strongly supports this review process and recommends enhanced participant communication and investor education for any designated investment alternative that contains meaningful private-market exposure. Our recommendation stems from CFA Institute's own *Standards of Practice Handbook (12<sup>th</sup> edition, 2024)*. Standard III(A) requires loyalty, prudence, and care, and Standard V(B) requires disclosure of the nature of services, the costs to the client, the basic principles of the investment process, and significant limitations and risks.<sup>4</sup> The *CFA Asset Manager Code*<sup>TM</sup> likewise requires firms to act for the benefit of clients, act with skill, competence, and diligence, and communicate with clients in a timely and accurate manner.<sup>5</sup> In this context, those principles support plain-English disclosures that explain, at minimum, the role of private-market assets in the overall strategy, valuation frequency and method, liquidity mechanics, benchmark limitations, fee layers, conflict-management practices, and the practical limits on participant transfers or reallocations.

v.) Our final comment on this practical issue concerns the Department's proposed complexity factor, especially operational portability risk. In retirement solutions, fund design often matters more than headline return assumptions. The glide path, rebalancing framework, liquidity sleeve, cash reserves, redemption architecture, fee load, and operational portability of a product may do more to shape participant outcomes than an assumed private-market premium viewed in isolation. Portability is closely related to liquidity, but it raises distinct complexity concerns because it addresses whether participants and plans can move, transfer, map, redeem, or exit a private-market-enabled DIA on a fair, practical, and timely basis. This issue is especially important when participants change jobs, roll assets to another plan or IRA, rebalance among plan options, take distributions, or move out of a default investment, and when plans change recordkeepers, replace providers, merge, terminate, or restructure after corporate transactions.

GAO findings confirm that variation in target-date fund design affects performance and risk, especially nearer retirement.<sup>6</sup> The final rule should require that these matters be addressed as part of the review of a plan participant's circumstances and the education provided by the plan

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<sup>3</sup> *Fiduciary Duties in Selecting Designated Investment Alternatives* (Proposed Rule), 91 Fed. Reg. 16096. U.S. Federal Register.

<sup>4</sup> <https://www.cfainstitute.org/sites/default/files/-/media/documents/code/code-ethics-standards/standards-practice-handbook-12th-edition.pdf>

<sup>5</sup> <https://rpc.cfainstitute.org/codes-and-standards/asset-manager-code>

<sup>6</sup> <https://www.gao.gov/products/gao-24-105364>

sponsor and plan fiduciary about investment in any private-asset option. Doing so would help fiduciaries focus on the features that most directly affect retirement readiness rather than simply repeating the narrative of higher expected returns.

## **2. Private-Market Benefits May Be Elusive for DC Participants Without Strong Oversight of the Allocation Process**

CFA Institute is concerned that the projected benefits of private-market assets may not carry over automatically to DC plans. Institutional investors often access private markets through long-standing manager relationships, direct co-investments, negotiated fees, governance rights, and preferential allocation to scarce, high-quality opportunities. By contrast, DC participants will typically access private assets indirectly, through packaged products, without direct control over manager selection, deal access, valuation, liquidity terms, or fee arrangements.

This concern is heightened by current market conditions. Bain & Company reports that global buyout dry powder remained near record levels as of the end of 2025,<sup>7</sup> that a significant share of capital is tied to recent fund vintages, and that private fund managers and institutional investors continue to hold a large stock of unsold portfolio companies. The Department should recognize the risk that new DC inflows may compete with sophisticated institutional capital for a limited pool of attractive private deals. If DC capital is used to absorb higher-priced, less liquid, or lower-quality exposures after premier opportunities have been allocated elsewhere, the expected benefits of private-market access could prove elusive. We are concerned that 401(k) participants could be relegated to poorly performing residual exposures rather than institutional-quality access.

## **3. QDIA: A Phased Approach to Private-Market Integration**

We also urge the Department to consider a phased implementation framework for private-market exposure: permit private-market-enabled options first as participant-elected designated investment alternatives, then establish a realistic review period before allowing those exposures in Qualified Default Investment Alternatives (QDIAs) as default investment options. Only after that review period should private-market exposures be permitted in QDIAs, and only if they have developed sufficient performance history, passed liquidity testing, met reliable benchmark standards, and demonstrated practical exit experience.

This approach provides three key benefits. First, it gives the market time to absorb and respond to the change, while a more gradual adoption process enables new capital from defined contribution plans to be allocated more effectively toward higher-quality investment opportunities. Second, it allows private-market-enabled target-date funds to build an operating history that fiduciaries can use to evaluate performance and develop more reliable benchmarks.

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<sup>7</sup> [https://www.bain.com/globalassets/noindex/2026/bain-report\\_global-private-equity-report-2026.pdf](https://www.bain.com/globalassets/noindex/2026/bain-report_global-private-equity-report-2026.pdf)

Third, it gives participants who affirmatively seek private-market exposure access to those investments while reducing the risk that defaulted participants are exposed to newly launched products, weak vintages, or highly illiquid legacy funds seeking an exit.

The empirical backdrop supports this concern. Academic research on automatic enrollment shows that default contribution rates and default investment selections strongly influence participant behavior. Many participants remain in the default because of inertia and may interpret the employer-selected default as advice. A RAND working paper using Vanguard administrative data found that only 17.1% of participants in automatic-enrollment plans selected an investment portfolio different from the default, meaning 82.9% did not. This evidence reinforces why the final rule should require heightened review before private-market exposure enters QDIAs.<sup>8</sup>

### *Conclusion*

**CFA Institute supports broader access to private-market assets and other alternative assets in defined contribution plans where fiduciaries can demonstrate that these investments are prudent, well governed, and aligned with participant interests.** The Department's asset-neutral framework is a constructive step. Any safe harbor should guide fiduciary review, but it should not change the nature or scope of the duties owed by plan fiduciaries, including plan sponsors acting as fiduciaries, to plan participants and beneficiaries.

As noted, the final rule must strengthen 401(k) participant protections by adding a modest list of refinements. These include participant-profile analysis, improved disclosures and education, and tighter safeguards around benchmarks, valuation, liquidity, fees, conflicts, and fiduciary competence. **Done well, the rule can expand investment opportunity while preserving the core ERISA principles of loyalty, prudence, and care.**

CFA Institute recognizes the growing importance of private-market investing in U.S. capital markets and is devoting substantial research attention to private-market questions, including in retirement contexts. Please also refer to recent publications from the Institute's Research and Policy Center on private-market investing and venture capital ([Private Market Investing | CFA Institute Research & Policy Center](#)), including our recent publications on governance in private markets and ethics.

CFA Institute thanks the Department for considering our comments. We look forward to a final rule that supports innovation with accountability and would welcome further engagement with the Department on the final rule.

Sincerely,

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<sup>8</sup> <https://www.dol.gov/sites/dolgov/files/EBSA/researchers/analysis/retirement/opting-out-of-retirement-plan-defaults.pdf>



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