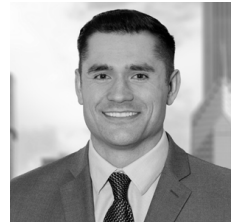


Fiduciary Duties in Selecting Designated Investment Alternatives



On March 30, 2026, the Department of Labor (DOL) issued its proposed regulation: Fiduciary Duties in Selecting Designated Investment Alternatives.

This comes after the executive order released by the Trump Administration last August which asked the DOL to clarify its position on alternative assets as well as provide guidance to plan sponsors on fiduciary processes for incorporating alternative investments into DC plans. Marquette's first DC Perspectives paper on this topic can be found [here](#).

The key takeaways from this newly proposed process-based safe harbor regulation for fiduciaries selecting designated investment alternatives (DIAs) in participant-directed defined contribution (DC) plans include:



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 PROCESS	Decisions are evaluated by following a prudent and well-documented process
 ASSET NEUTRALITY	Does not restrict or require any investment type
 SAFE HARBOR REQUIREMENTS	To qualify, fiduciaries will be evaluated on the following six factors:
1 PERFORMANCE	Expected risk-adjusted returns, net of fees, over an appropriate time horizon
2 FEES	Must be "appropriate" relative to value and returns; lowest cost is not required
3 LIQUIDITY	Meet participant level and plan level needs; illiquid assets may be used if justified
4 VALUATION	Must have timely and reliable valuation processes
5 BENCHMARKING	Identify a meaningful benchmark with comparable mandates and risks
6 COMPLEXITY	Fiduciaries must understand the investment or engage qualified experts

DIA's have been defined as a plan menu option by which participants can direct investment of assets. This also extends into both qualified default investment alternatives (QDIAs) and managed accounts. The rationale is that even though participants may be defaulted into these investment types, they have the opportunity to "opt-out" and direct investment of assets to other options. Additionally, a DIA does not include brokerage windows or self-directed brokerage accounts.

WHAT DOES THIS MEAN?

Under the ERISA fiduciary process, plan decisions should be made solely in the best interest of the participant while following a prudent and documented process. This proposed process-based safe harbor guidance is intended to provide clear procedural guidelines for plan sponsors and fiduciaries.

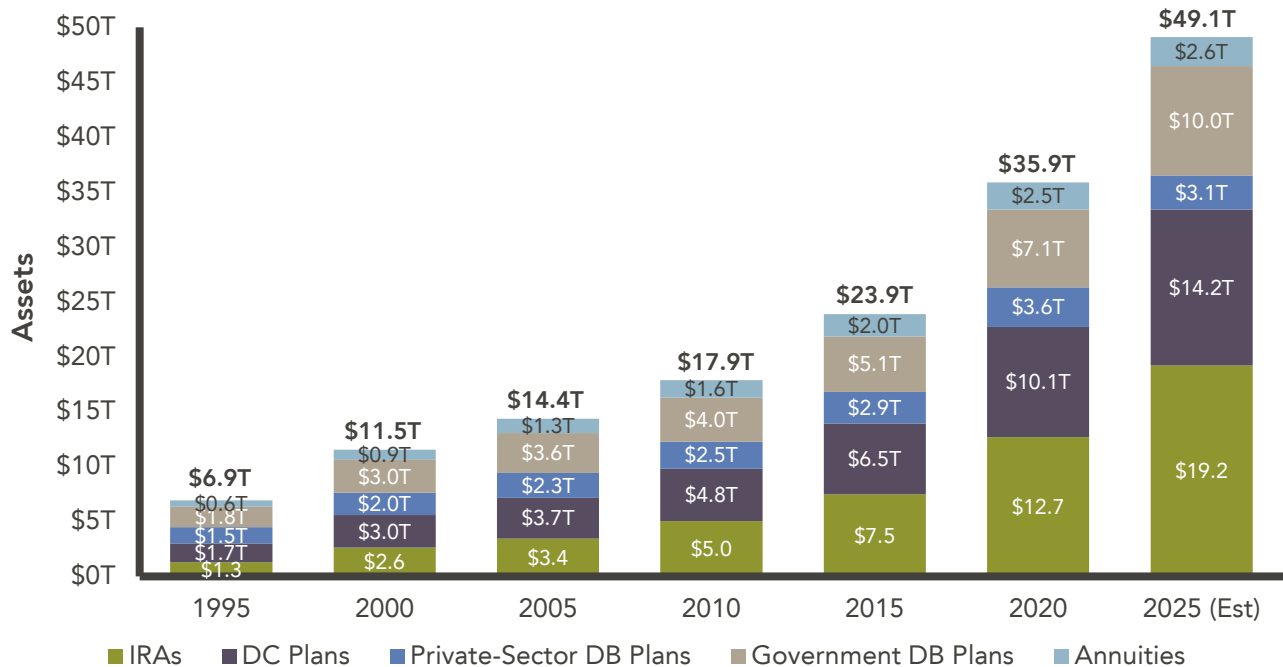
With this neutral stance by not requiring or restricting certain asset classes within DC plans, fiduciaries have a clearer blueprint for investment innovation. This blueprint is also intended to help mitigate litigation risk through the inclusion of the safe harbor provision.

Some plans may determine that certain investments including the inclusion of alternative assets are appropriate while others may not. This proposal reinforces that any decision should be made through a prudent and documented process.

WHY THE (CONTINUED) FOCUS ON DC PLANS?

To reinforce why there has been a continued focus on DC plans, particularly with alternative assets managers, Exhibit 1 shows the estimated total U.S. retirement market assets as of the end of 2025 was \$49.1 trillion, with \$14.2 trillion in DC plan assets. Since 2000, DC plan assets have grown an estimated \$11.2 trillion, almost quintupling in size.

Exhibit 1: U.S. Total Retirement Market Assets



Source: Investment Company Institute, *The US Retirement Market*, Fourth Quarter 2025

This growth in assets has contributed to the trend of investment managers launching new products and/or establishing partnerships with other investment managers designed specifically for the DC plan market.

ADDRESSING THE COMMON QUESTIONS

Are we required to add investments such as private markets to our DC plan now?

No. This proposed rule does not mandate DC plans to adopt alternative asset classes such as private markets. It clarifies how fiduciaries can evaluate and implement DIAs, including those with private market exposure, using the safe harbor process.

Now that the DOL has issued this proposal, will my DC plan's investment options suddenly include private markets tomorrow?

No. This DOL issued guidance does not modify current plan investment menus. Change will occur only if the plan fiduciary chooses to add or replace the current plan investment menu options.

Specific to private markets, what types of alternative asset classes are most commonly discussed for use within a DC Plan?

The four primary private market asset classes that are receiving the most attention for DC Plans include private equity, private credit, real estate, and infrastructure.

- **Private Equity:** Ownership stakes in private companies that are not traded on public stock exchanges. Private equity funds deploy capital to improve performance of a business and increase its value using strategic, financial, and operational initiatives.
- **Private Credit:** Also referred to as private debt, these are privately negotiated loans and other credit originated predominately by non-bank financial institutions to privately held businesses. These strategies span the capital structure (e.g., senior, subordinated, mezzanine, preferred equity) and may be supported by cash flows, hard assets, or other collateral.
- **Real Estate:** Direct investments in physical properties such as apartments, office buildings, industrial warehouses, and commercial retail.
- **Infrastructure:** Represents the physical assets necessary to operate a society and sustain economic, industrial, and social growth. Examples can include roads, bridges, airports, and energy systems.

All of the private market asset classes mentioned above are commonly used in defined benefit retirement plans as well as endowment & foundation asset pools today. While these private market asset classes offer opportunities for higher long-term risk-adjusted returns with more diversification, they do come with other considerations. Those considerations can include higher fees, less liquidity, valuation processes, and other operational complexities.

For the products with private market exposure being launched specifically for DC plans, how is that being done?

Most commonly, these newer products are being designed in a collective investment trust (CIT) vehicle. Operationally, the products fit as an underlying component within the glidepath of an "off-the-shelf" or "custom" target date fund, a custom multi-asset white label fund, or a component of a managed account portfolio solution. The plan recordkeeper will play a critical role in ensuring the investment options can function appropriately within a daily-valued DC plan system.

You mentioned collective investment trusts (CITs)... what if my plan is a 403(b) or I have a non-governmental "non-qualified" 457(b) plan option in addition to my qualified 401(k) plan?

At the time of this writing, CITs are still ineligible for use in a 403(b) plan (excluding Church plans). If you have a 403(b) "non-church plan", most of the newer products being launched would be ineligible for your plan currently. Another hypothetical example is if you were an organization such as a healthcare system that

offers a both a qualified 401(k) plan with an additional non-governmental “non-qualified” 457(b) plan option. The 457(b) plan would not be able to use the products in a CIT vehicle. Most commonly multi-plan offerings mirror the plan investment lineups and that would be an additional consideration for plan fiduciaries to consider.

CONCLUSION

This proposed guidance is not final and will be subject to a comment period from the public. For plan sponsors and fiduciaries, the DOL remains asset-neutral and will not require or prohibit a particular asset class. For plans that are interested in investment innovation, the inclusion of the safe harbor provision will hopefully reduce the litigation risk that has made plans more hesitant to adopt in the past.

A strong focus on a prudent and documented fiduciary process remains of critical importance under ERISA. As this legislation moves along to become finalized by the DOL, Marquette will continue to provide updates to clients. In the meantime, do not hesitate to reach out to your consultant to discuss these issues or other measures impacting the defined contribution space. ■

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