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BLOG

DOL Letter Clarifies 2020 Letter on Private Equity in Defined Contribution Plans

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In a June 2020 Information Letter (“Letter”), the Department of Labor (“DOL”) opened the window slightly for defined contribution retirement plans to offer indirect investment in private equity funds. Our analysis of the Letter can be found here.

Concerned that the Letter was construed inappropriately, in December, the DOL issued a clarifying “Supplemental Statement.” The Supplemental Statement is more cautionary about private equity investments than the Letter. The DOL indicated that various stakeholders raised concerns about the perception that the Letter was broadly construed to endorse the benefits of private equity in individual account defined contribution plans. Desiring to prevent undue risk in plans, the Supplemental Statement makes two central clarifications to the Letter:

1. First, the Supplemental Statement cautioned that some of the information provided in the Letter about private equity investments was not balanced. The Supplemental Statement acknowledges stakeholder concerns that private equity investments do not have standardized disclosures like those of registered investment companies (mutual funds), and that retirement savers may often need to liquidate or transfer assets at an earlier stage than long-term investors and private equity investments may not afford such an opportunity. The DOL stressed that fiduciaries with the necessary expertise must rigorously investigate the private equity investments as provided in the Letter.
2. Second, the DOL expressed the view that private equity investments, even as a component of professionally managed asset allocation funds, are complicated and require sophisticated assessment. The DOL suggested that a plan-level fiduciary—who has experience evaluating private equity investments in a defined benefit pension plan to diversify investment risk—may be best suited to analyze these investments for a participant-directed individual account plan. As a result, in the DOL’s view, except in the “minority of situations, plan-level fiduciaries of small, individual account plans are not likely suited to evaluate the use of [private equity] investments in designated investment alternatives in individual account plans.”

Any defined contribution plan considering utilizing a professionally managed investment fund with a private equity component should proceed cautiously and should seek the advice of a sophisticated plan fiduciary consistent with the guidelines described in the Letter.

Please contact a member of the Winston & Strawn Employee Benefits and Executive Compensation Practice Group or your Winston relationship attorney for further information.
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