

Private Equity in 401(k) Plans: A Holiday Sequel

January 11, 2022

If you thought the “Matrix” and “Spider-Man” sequels were impressive, you will be delighted to know that in a matter of weeks after revisiting its [guidance on ESG retirement plan investments](#), the Department of Labor also issued a sequel to its [2020 information letter](#) about the use of private equity (PE) investments in retirement plans.

In this [2021 supplementary statement](#), the DOL clarifies that its 2020 letter provides that 401(k) plan fiduciaries can permit investment in PE funds without automatically violating fiduciary duties to provide proper investment opportunities to participants, without saying that such fiduciaries should permit PE investment. The 2021 supplement, issued December 21, highlights that the 2020 letter considered 401(k) plan fiduciaries with experience analyzing PE investments from also serving as fiduciaries over defined-benefit plans already using PE investments. These experienced fiduciaries may be able to prudently analyze the relevant PE investment issues while, according to the sequel, “plan-level fiduciaries of small, individual account plans are not likely suited to evaluate the use of PE investments.” This prompts our recollection of ERISA section 404(a)(1)(B), requiring judgments that would be considered reasonable by those familiar with the subject matter.

The DOL’s holiday season sequel also noted that its 2020 letter may have assumed unrealistically favorable facts that were provided by the requester of that letter. Still, the 2020 letter outlined myriad issues to be addressed with PE investment, which are still relevant and important. For more information, including a summary of 13 considerations for fiduciaries considering PE investment, see our previous article “[DOL Warms Up to Private Equity in 401\(k\) Plans](#),” *Expect Focus – Life, Annuity, and Retirement Solutions* (September 2020).

Authored By



Lowell J. Walters

Related Practices

[Employee Benefits, Compensation & ERISA
Life, Annuity, and Retirement Solutions](#)

Related Industries

[Life, Annuity, and Retirement Solutions
Life, Annuity, and Retirement Solutions](#)

©2024 Carlton Fields, P.A. Carlton Fields practices law in California through Carlton Fields, LLP. Carlton Fields publications should not be construed as legal advice on any specific facts or circumstances. The contents are intended for general information and educational purposes only, and should not be relied on as if it were advice about a particular fact situation. The distribution of this publication is not intended to create, and receipt of it does not constitute, an attorney-client relationship with Carlton Fields. This publication may not be quoted or referred to in any other publication or proceeding without the prior written consent of the firm, to be given or withheld at our discretion. To request reprint permission for any of our publications, please use our Contact Us form via the link below. The views set forth herein are the personal views of the author and do not necessarily reflect those of the firm. This site may contain hypertext links to information created and maintained by other entities. Carlton Fields does not control or guarantee the accuracy or completeness of this outside information, nor is the inclusion of a link to be intended as an endorsement of those outside sites.