

May 26, 2026

Office of Regulations and Interpretations
Employee Benefits Security Administration
Room N-5655
U.S. Department of Labor
200 Constitution Ave. NW, Washington, DC 20210

RE: Fiduciary Duties in Selecting Designated Investment Alternatives; RIN 1210-AC38

Dear Assistant Secretary Aronowitz,

The Private Equity Stakeholder Project (PESP) is a non-profit financial watchdog organization that seeks to bring transparency and accountability to the private equity industry for the benefit of impacted communities and investors.

We appreciate the opportunity to express our concerns in response to the Department of Labor's (DoL) notice of proposed rulemaking on "Fiduciary Duties in Selecting Designated Investment Alternatives" (the "Proposal"). This Proposal seeks to limit retirement savers' ability to sue plan sponsors and other fiduciaries that choose to invest plan assets in alternative investments, including private equity. Given the risks associated with investing in alternative assets generally, and private equity specifically, PESP opposes any limitation on liability for plan sponsors that would weaken fiduciary protections for retirement savers.

Additionally, the Department of Labor should hold private equity to the same disclosure and transparency standards expected of publicly-traded stocks, mutual funds, and ETFs. Such disclosures should include clear reporting on what funds are investing in, the fees and expenses retirement savers are paying, the amount of debt funds are using, and how these investments are actually performing compared with stocks. They should also share a common format to the information disclosed by public companies to enhance comparability.

Enhanced safeguards for retail investors are particularly important given recent trends in private equity's overall investment forecast. Indeed, this Proposal will expose retail investors to a private equity environment plagued by the lagging performance and limited liquidity from which their traditional institutional investor base is retreating.

I. Lagging Performance and high fees

Private equity has significantly underperformed stocks over the last several years. State Street's private equity index delivered a 7.08% return in 2024, compared with a 25.02% total return for the S&P 500 index. As of the end of 2024, S&P 500 index outperformed private equity on a one, three, five and 10-year basis.¹ Indeed, "[a]lts bring extraordinary costs but ordinary returns," according to influential investment consultant Richard Ennis, co-founder of EnnisKnupp, whose research predicts the demise of alternatives as an asset class.²

In an interview with *Bloomberg*, Ennis described the complexity and high fees of private equity and venture capital as "costly and wasteful."³ The failure of alternatives like private equity to deliver superior risk-adjusted returns after fees in the 15+ years since the Great Financial Crisis will spell the unraveling of the industry, Ennis forecasted, saying, "Alts cost too much to endure as a permanent part of institutional investment portfolios."⁴

In March 2025 *Bloomberg* reported from the Qatar Economic Forum, quoting the head of Kuwait's \$1 trillion sovereign wealth fund, "Private equity is very troubled, I believe, especially in the large buyouts, venture capital and the rise of continuation vehicles — that's a very worrying sign," Sheikh Saoud Salem Al-Sabah said, "Their time is coming up."⁵ Egyptian billionaire investor Nassef Sawiris told the *Financial Times*, "Private equity has seen its best days."⁶ The *Wall Street Journal* wrote in April 2025 that "Private Equity World (is) Engulfed by Perfect Storm" as firms struggle with a

¹ "Private Market Funds Lag US Stocks over Short and Long Term." *Financial Times*, 10 June 2025.

² Ennis, Richard M. "What Is the Future of Alternative Investing?" Richard M. Ennis, <https://richardmennis.com/blog/what-is-the-future-of-alternative-investing>. Accessed 3 May 2026.

³ "The \$17 Trillion Alts Boom Gets Blasted as Costly and Wasteful." *Bloomberg*, 3 June 2025, <https://www.bloomberg.com/news/articles/2025-06-03/the-17-trillion-alts-boom-gets-blasted-as-costly-and-wasteful>. Accessed 3 May 2026.

⁴ Ennis, Richard M. "What Is the Future of Alternative Investing?" Richard M. Ennis, <https://richardmennis.com/blog/what-is-the-future-of-alternative-investing>. Accessed 3 May 2026.

⁵ "\$1 Trillion Kuwait Fund KIA Boss Sounds Warning on Private Equity." *Bloomberg*, 21 May 2025, <https://www.bloomberg.com/news/articles/2025-05-21/-1-trillion-kuwait-fund-kia-boss-sounds-warning-on-private-equity>. Accessed 3 May 2026.

⁶ "Private Equity Has Seen Its Best Days." *Financial Times*, <https://www.ft.com/content/cb3eb78e-8412-4af3-a29e-2200f9816ae5>. Accessed 3 May 2026.

multi-year logjam of portfolio companies that has ballooned to 29,000 with no relief in sight (that number has since increased to 32,000 portfolio companies⁷).⁸

At the \$500 billion asset manager Neuberger Berman, the head of European private equity Joana Rocha Scaff last year told *Bloomberg*, “You typically would see 25 percent of your portfolio being harvested, and realizing cash being sent to you annually, that is very precious money.”⁹ But over the past three years, she said the exit rate is more like 12 to 13 percent. “This is a big problem.”¹⁰

Private equity evergreen funds underperform, despite charging very high fees

The typical private equity investment vehicles geared towards retirement savers are known as evergreen funds. Evergreen funds, or “open-ended funds,” are pooled-investment vehicles with no fixed termination date that allow for continuous contributions and distributions of capital. A review of the top private equity evergreen funds shows that the largest private equity-focused evergreen funds dramatically underperformed publicly-listed stock indexes last year (2025) despite charging much higher fees than public equity (stock) index funds.

The fifteen largest private equity-focused evergreen funds (see below table), including some managed by private equity giants Apollo,¹¹ Blackstone,¹² KKR,¹³ Carlyle Group,¹⁴ and Ares Management,¹⁵ generated a median return of 11.97% last year, about half the 22.34% return

⁷ Bain & Company. *Global Private Equity Report 2026*. Bain & Company, 2026, p. 5, https://www.bain.com/globalassets/noindex/2026/bain-report_global-private-equity-report-2026.pdf.

⁸ “Private Equity World Engulfed by Perfect Storm.” *Wall Street Journal*, Apr. 2025, <https://www.wsj.com/finance/investing/private-equity-world-engulfed-by-perfect-storm-2a2da2ad>. Accessed 3 May 2026.

⁹ “Private Equity to See Another Muted Year for Exits: Neuberger.” *Bloomberg*, 4 June 2025, <https://www.bloomberg.com/news/articles/2025-06-04/private-equity-to-see-another-muted-year-for-exits-neuberger>. Accessed 3 May 2026.

¹⁰ *Id.*

¹¹ “Apollo Aligned Alternatives (AAA E-1).” *Apollo*, <https://www.apollo.com/wealth/strategies/products/apollo-aligned-alternatives-e1>. Accessed 19 May 2026.

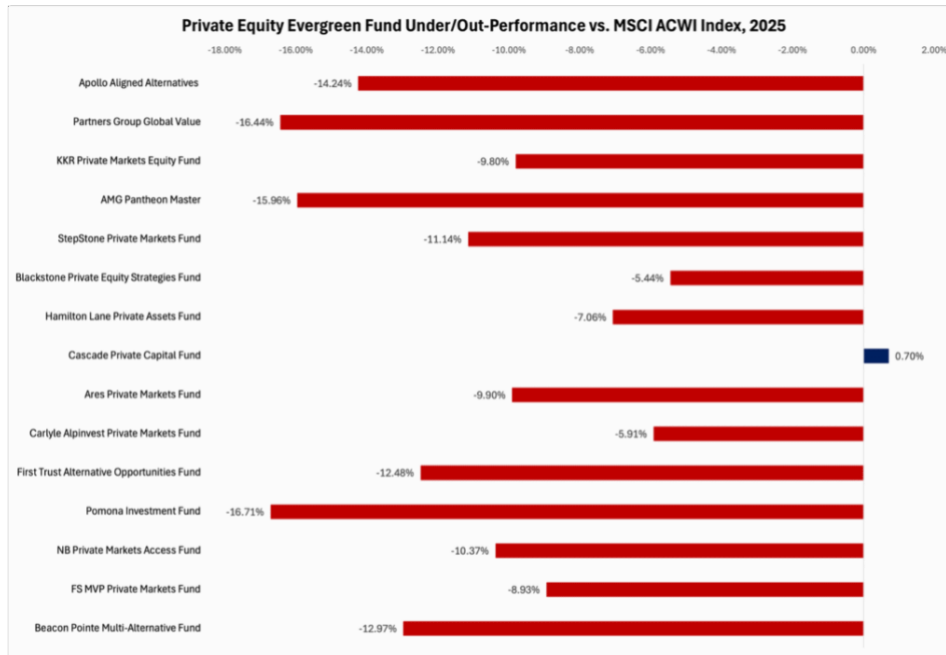
¹² “The Largest Publicly Traded Developer in the United States.” *BXP*, <https://www.bxp.com/>. Accessed 19 May 2026.

¹³ “KKR: A Leading Global Investment Firm.” *KKR*, <https://www.kkr.com/>. Accessed 19 May 2026.

¹⁴ “Carlyle AlInvest Private Markets Fund.” *The Carlyle Group*, <https://www.carlyle.com/capm>. Accessed 19 May 2026.

¹⁵ “Ares Private Markets Fund (APMF).” *Ares Management*, <https://www.ares.com/us/businesses-and-products/our-products/ares-private-markets-fund#performance>. Accessed 19 May 2026.

generated by the MSCI ACWI Index,¹⁶ and significantly less than the S&P 500 Index,¹⁷ which returned 17.43% in 2025.



**Private equity evergreen fund returns were compared to 2025 MSCI ACWI index net return of 22.34%.*

Private equity evergreen funds' underperformance was not just limited to 2025. The private equity evergreen funds generated a median annualized return of 11.31% over the last three years (2023-2025), just half the return of the S&P 500 index (22.48%) and slightly more than half the return of the MSCI ACWI index (20.65%) over the same period.

¹⁶ "MSCI ACWI Index (USD)." MSCI, Apr. 2026, <https://www.msci.com/documents/10199/255599/msci-acwi-net.pdf>. Accessed 19 May 2026.

¹⁷ "S&P 500." S&P Dow Jones Indices, S&P Global, <https://www.spglobal.com/spdji/en/indices/equity/sp-500/#overview>. Accessed 19 May 2026.

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Private Equity Fund	Evergreen	Class	Assets (\$b)	Expense Ratio	Max Sales Charge (Load)	1-Year Net Return (LTM)	3-Year Net Return	Return as of
Apollo Aligned Alternatives		A1	\$25.0	3.54%		8.10%	NA	12/31/25
Partners Group Global Value		R-N USD	\$9.1	3.45%	5.00%	5.90%	6.30%	12/31/25
KKR Private Markets Equity Fund		N	\$6.9	5.20%		12.54%	NA	12/31/25
AMG Pantheon Master		1	\$6.4	3.03%		6.38%	12.09%	12/31/25
StepStone Private Markets Fund		S	\$5.6	3.19%	3.50%	11.20%	11.80%	12/31/25
Blackstone Private Equity Strategies Fund		A-A	\$5.3	4.76%		16.90%	NA	12/31/25
Hamilton Lane Private Assets Fund		R	\$5.0	4.08%	3.50%	15.28%	11.98%	12/31/25
Cascade Private Capital Fund			\$4.8	3.17%		23.04%	24.18%	12/31/25
Ares Private Markets Fund		A	\$4.6	5.14%	3.50%	12.44%	16.34%	12/31/25
Carlyle Alpinvest Private Markets Fund		A	\$3.4	3.76%	3.00%	16.43%	NA	12/31/25

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First Trust Alternative Opportunities Fund	A	\$3.3	4.06%	4.50%	9.86%	9.40%	12/31/25
NB Private Markets Access Fund	A-2	\$2.0	3.66%		11.97%	8.69%	12/31/25
FS MVP Private Markets Fund	A	\$1.6	4.05%	3.50%	13.41%	10.81%	12/31/25
Median			3.76%		11.97%	11.31%	
MSCI ACWI (net)					22.34%	20.65%	12/31/25
S&P 500 (total net return)					17.43%	22.48%	12/31/25

Private equity’s underperformance compared to stocks is not limited to evergreen funds. State Street’s private equity index delivered a 7.08% return in 2024, compared with a 25.02% total return for the S&P 500 index. As of the end of 2024, S&P 500 index outperformed private equity¹⁸ on a one, three, five and 10-year basis.¹⁹

Despite underperformance, private equity evergreen funds charge extremely high fees

While significantly underperforming public equity indexes, these private equity evergreen funds also charge investors extremely high fees. The median expense ratio for the fifteen private equity evergreen funds reviewed is 3.76%,²⁰ not including sales charges. By comparison, the Vanguard S&P 500 ETF,²¹ which tracks the S&P 500 index and outperformed nearly all the evergreen private

¹⁸ “Private Market Funds Lag US Stocks over Short and Long Term.” *Financial Times*, 10 June 2025, <https://www.ft.com/content/c21a5ca9-6175-498a-bf32-9c91e4366085>. Accessed 19 May 2026.

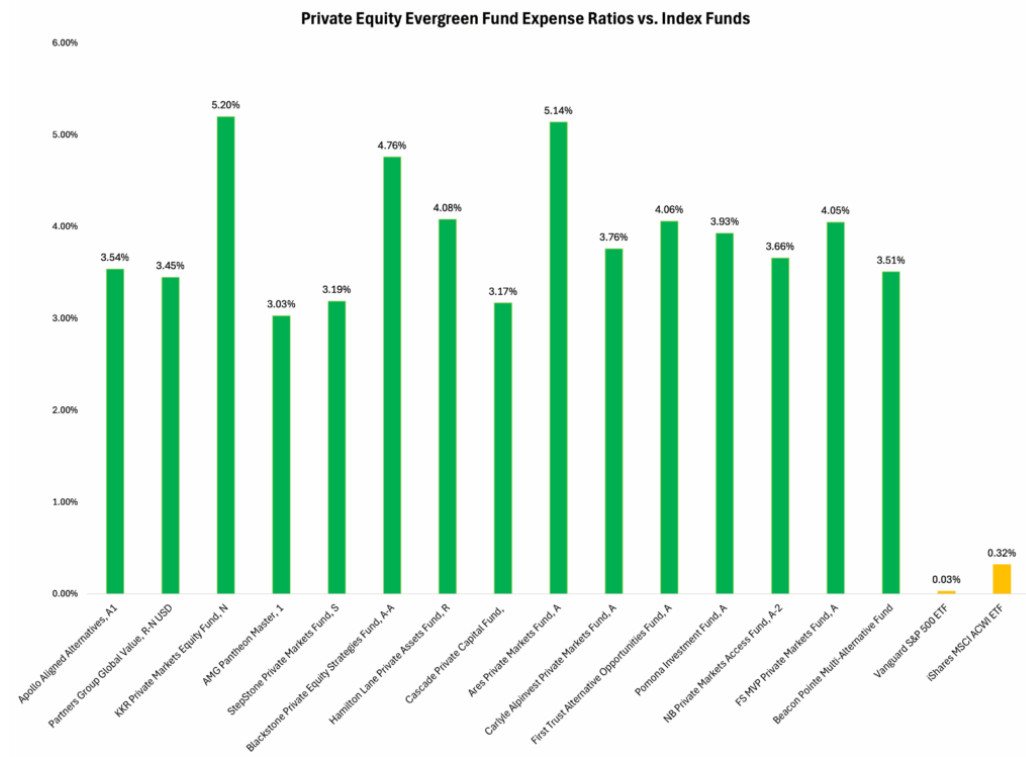
¹⁹ *Id.*

²⁰ *Id.*

²¹ “VOO: Vanguard S&P 500 ETF.” *Vanguard*, <https://investor.vanguard.com/investment-products/etfs/profile/voo#overview>. Accessed 19 May 2026.

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equity funds reviewed, charges a total expense ratio of 0.03%, less than 1% of the median expense ratio charged by the private equity evergreen funds.



For example, the Pomona Investment Fund²² (class A), which provides retail investor access to private equity, generated a net return of just 5.63% in 2025,²³ yet charges investors an expense

²² “Pomona Investment Fund.” *Voya Investment Management*, <https://advisors.voya.com/pomona-investment-fund#performance>. Accessed 19 May 2026.

²³ “Pomona Investment Fund (PIF): Fact Sheet.” *Voya Investment Management*, Apr. 2026, <https://advisors.voya.com/document/fund-fact-sheet/pomona-investment-fund-fact-sheet.pdf>. Accessed 19 May 2026.

ratio of 3.93%.²⁴ Private equity giant Apollo's \$25 billion Apollo Aligned Alternatives²⁵ fund (class A1) generated a 8.1% return²⁶ last year, yet estimates total costs to investors of 3.54%²⁷ per year.

State Street appears to have already incorporated²⁸ Apollo's Apollo Aligned Alternatives fund into target date funds for retirement savers. On Apollo's recent earnings call,²⁹ Apollo CEO Marc Rowan touted private assets in 401(k)s, claiming, "The addition of private assets to a portfolio given the length of time these employees will be in these plans are 50% to 100% better outcomes." Given Apollo Aligned Alternatives' significant underperformance relative to stocks and much higher fees, Marc Rowan's claim of "50% to 100% better outcomes" for retirement savers does not add up.

In addition to charging expense ratios ranging from 3.19% to 5.2%, some of these funds also allow sales charges as high as an additional 5% to compensate brokers responsible for selling the investments in the funds. These sales charges can substantially reduce the returns that retail investors receive. For example, Ares Management's Ares Private Markets Fund (class A) generated a 12.44% net return³⁰ last year after taking out the fund's 5.14% expense ratio. Yet with the sales charge of up to 3.5%³¹ included, the 2025 net return for Ares Private Markets Fund (class A) drops

²⁴ *Pomona Investment Fund Prospectus*. Voya Investment Management, 1 July 2025, <https://advisors.voya.com/document/product/full-prospectus-pomona-investment-fund.pdf>. Accessed 19 May 2026.

²⁵ "Apollo Aligned Alternatives (AAA E-1)." *Apollo*, <https://www.apollo.com/wealth/strategies/products/apollo-aligned-alternatives-e1>. Accessed 19 May 2026.

²⁶ "Apollo Aligned Alternatives E-1 Monthly Fund Update: Class A Share." *Apollo*, <https://www.apollo.com/content/dam/apolloaem/documents/fund-documents/private-funds/apollo-aligned-alternatives-e1/fund-literature/apollo-aligned-alternatives-e1-monthly-fund-update-class-a-share.pdf>. Accessed 19 May 2026.

²⁷ "Apollo Aligned Alternatives E1 Key Information Document: Class A1." *Apollo*, <https://www.apollo.com/content/dam/apolloaem/documents/fund-documents/private-funds/apollo-aligned-alternatives-e1/key-information-document-uk/apollo-aligned-alternatives-e1-key-information-document-en-uk-class-a1.pdf>. Accessed 19 May 2026.

²⁸ "State Street Target Retirement IndexPlus Strategies." *State Street Global Advisors*, <https://www.ssga.com/us/en/institutional/capabilities/dc-overview/target-date-funds/state-street-target-retirement-indexplus-strategies>. Accessed 19 May 2026.

²⁹ "Apollo Global Management Inc. (APO) Q4 2025 Earnings Call Transcript." *mcal.vc*, <https://mcal.vc/asks/APO/earnings-call-transcript/Q4/2025/>. Accessed 19 May 2026.

³⁰ "APMF Performance." *Ares Wealth Management Solutions*, <https://www.areswms.com/solutions/apmf/performance>. Accessed 19 May 2026.

³¹ "APMF Prospectus." *Merrill Connect*, <https://merrillconnect.iscorp.com/blackcreek/services/viewDocument?itemNbr=APMF-PRO-MURL>. Accessed 19 May 2026.

to 8.50%.³² Brokers may therefore have an incentive to steer retirement savers to investments with higher sales charges even if their performance is subpar.

II. Liquidity Issues

For most Americans, the basic expectation of a 401(k) is reliability. While retirement savings are meant for the long term, they are built around daily liquidity. Stocks and index funds can be bought or sold any business day. If someone changes jobs, needs to rebalance, or faces an emergency, their savings aren't locked away or impossible to access.

Private equity and private credit operate very differently. These investments are illiquid by design. They rely on long lockups, limited redemption windows, and rules that allow fund managers to delay or restrict withdrawals during periods of stress. That structure may be manageable for large pension funds with decades-long horizons. It is far riskier for individual retirement savers who may need access to their savings at exactly the wrong time.

That reality has become more visible³³ in recent months,³⁴ as private credit firms have limited³⁵ investor withdrawals when redemption requests³⁶ surged. Warnings about retail investors being exposed to these risks are not coming only from critics. In a recent Reuters interview,³⁷ Apollo co-founder Joshua Harris said expanding private markets to retirement savers is “not going to end well,” noting that many investors may not understand that these structures “may not be liquid

³²“New Report: Private Equity Won’t Save Retirement.” *Private Equity Stakeholder Project*, <https://pestakeholder.org/news/new-report-private-equity-wont-save-retirement/>. Accessed 19 May 2026.

³³ Fishlow, Olivia, *et al.* “Blue Owl’s Woes Expose Private Credit Risks for Retail Investors.” *Bloomberg*, 19 Feb. 2026, <https://www.bloomberg.com/news/articles/2026-02-19/blue-owl-redemption-halt-stirs-private-credit-unease>. Accessed 19 May 2026.

³⁴ Brown, Silas, *et al.* “Blue Owl Anxiety Rattles \$1.8 Trillion Private Credit Market.” *Bloomberg*, 22 Feb. 2026, <https://www.bloomberg.com/news/features/2026-02-22/blue-owl-redemptions-halt-intensifies-private-credit-fears>. Accessed 19 May 2026.

³⁵ Oguh, Chibuiké, and Herbert Lash. “Blackstone’s \$69 Bln REIT Curbs Redemptions in Blow to Property Empire.” *Reuters*, 2 Dec. 2022, <https://www.reuters.com/business/finance/blackstone-limits-redemptions-69-billion-reit-2022-12-01/>. Accessed 19 May 2026.

³⁶ Brush, Silla, and Olivia Fishlow. “BlackRock \$26 Billion Private Credit Fund Limits Withdrawals.” *Bloomberg*, 6 Mar. 2026, <https://www.bloomberg.com/news/articles/2026-03-06/blackrock-s-26-billion-private-credit-fund-limits-withdrawals>. Accessed 19 May 2026.

³⁷ French, David, and Isla Binnie. “Private Markets for Retail Savers Will Not End Well, Private Equity Executive Josh Harris Says.” *Reuters*, 3 Feb. 2026, <https://www.reuters.com/markets/wealth/private-markets-retail-savers-will-not-end-well-private-equity-executive-josh-2026-02-03/>. Accessed 19 May 2026.

when things go wrong.” Carlyle CEO Harvey Schwartz has similarly acknowledged³⁸ the issue, remarking that some funds might more accurately be described³⁹ as “sometimes not liquid at all.”

That risk is not theoretical. As The Wall Street Journal recently reported,⁴⁰ a record share of workers have taken hardship withdrawals from their 401(k)s to cover medical expenses, avoid eviction or meet other urgent needs. Retirement accounts are not just long-term investment vehicles. For many households, they are the only line of defense.

Private equity managers’ inability to exit investments has exacerbated liquidity issues for investors in private funds. According to industry data,⁴¹ private equity firms are holding approximately 32,000 unsold companies worth an estimated \$3.8 trillion, while distributions to investors have remained below 15 percent of net asset value (NAV) for four consecutive years (compared to an average of 25 percent of NAV for much of the previous decade).⁴² At the same time, average holding periods have increased, underscoring the challenges firms face in exiting investments.

Continuation Funds

Given the issues associated with continuation funds, we were pleased to see that they were explicitly rejected as an imprudent example of a selection process for the purpose of determining valuation.

As private equity managers have struggled to exit investments in their portfolios, they have employed strategies like secondary sales and continuation funds to obtain liquidity. According to McKinsey, in 2024 total secondaries deal volume grew by 45 percent year over year to \$162 billion,

³⁸ Hoffman, Liz. “‘Sometimes Not Liquid at All’: Carlyle CEO on Private Capital’s Retail Push.” *Semafor*, 10 Dec. 2025, <https://www.semafor.com/article/12/10/2025/sometimes-not-liquid-at-all-carlyle-ceo-on-private-capitals-retail-push>. Accessed 19 May 2026.

³⁹ McNeely, Allison. “Carlyle CEO Says Firms Erred Labeling Retail Funds ‘Semi-Liquid.’” *Bloomberg*, 26 Feb. 2026, <https://www.bloomberg.com/news/articles/2026-02-26/carlyle-ceo-says-firms-erred-labeling-retail-funds-semi-liquid>. Accessed 19 May 2026.

⁴⁰ Tergesen, Anne. “Record Numbers of Workers Are Raiding Their 401(k) Savings.” *The Wall Street Journal*, 4 Mar. 2026, <https://www.wsj.com/personal-finance/retirement/record-numbers-of-workers-are-raiding-their-401-k-savings-bc89d5c3>. Accessed 19 May 2026.

⁴¹ Bain & Company. *Global Private Equity Report 2026*. Bain & Company, 2026, p. 5, https://www.bain.com/globalassets/noindex/2026/bain-report_global-private-equity-report-2026.pdf.

⁴² Balaj Singh and Luke Riela, “Cash Flow Gridlock: Understanding the Private Equity Distribution Challenge,” *Meketa Investment Group*, Nov. 2024, https://meketa.com/wp-content/uploads/2024/11/MEKETA_Distribution-Bottleneck.pdf; “Private Equity Market Update: Q1-2025,” *Northleaf Capital Partners*, 15 May 2025, <https://www.northleafcapital.com/news/private-equity-market-update-q1-2025>.

breaking previous records.⁴³ General partner-led secondaries similarly increased by 44 percent to \$75 billion.⁴⁴

Secondary sales refer to the sale of existing stakes in a commingled fund, usually at a discount, before the fund has been liquidated by the general partner (GP). Continuation funds usually refer to when a GP plucks an asset (or sometimes multiple assets) out of a commingled fund and sells it to itself as a new vehicle inviting new investors to participate.

While such strategies may provide some short-term relief from the liquidity drought, they also can be complex and it is not clear that the growth of GP-led secondary sales and continuation funds will yield favorable outcomes. Investors in private equity funds would prefer traditional exits, and fewer than 1 in 5 would opt for a continuation fund exit, according to a Bain-ILPA poll.⁴⁵

The complexity of continuation funds, usually led by the general partners (GPs), have been a source of frustration for investors in private equity funds, according to the Institutional Limited Partners Association (ILPA), which noted, “These transactions are conflicted by nature, with the GP sitting on both sides of the transaction.”⁴⁶ BNP Paribas, an international bank and finance company, opined that continuation funds bring complexity and risk, including conflicts of interest, misalignment and “artificial” liquidity that “doesn’t necessarily reflect a true exit from the asset.”⁴⁷

III. Institutional Investors Retreating

Given industry’s current financial health, it may come as no surprise that this Proposal would expose retail investors to the risks of private equity at a time when its traditional investors are exiting. On average, US public pensions allocate 14% to private equity,⁴⁸ reflecting the shift toward alternatives over the past 15 years – which are higher risk, high fee and illiquid. However, private

⁴³ “Global Private Markets Report.” McKinsey & Company, <https://www.mckinsey.com/industries/private-capital/our-insights/global-private-markets-report>. Accessed 3 May 2026.

⁴⁴ Id.

⁴⁵ “Private Equity Midyear Report 2025.” Bain & Company, 2025, <https://www.bain.com/insights/private-equity-midyear-report-2025/>. Accessed 3 May 2026.

⁴⁶ “Continuation Funds: Considerations for Limited Partners and General Partners.” Institutional Limited Partners Association, <https://ilpa.org/resources-tools/resource-library/continuation-funds-considerations-for-limited-partners-and-general-partners/>. Accessed 3 May 2026.

⁴⁷ “Private Equity’s New Frontier: The Promises and Challenges of Continuation Funds.” BNP Paribas, <https://securities.cib.bnpparibas/private-equitys-new-frontier-the-promises-and-challenges-of-continuation-funds/>. Accessed 3 May 2026.

⁴⁸ “National Public Pension Quick Facts.” Public Plans Data, Center for Retirement Research at Boston College, <https://publicplansdata.org/quick-facts/national/>. Accessed 3 May 2026.

equity's rapid growth paired with deteriorating economics have led to a logjam of zombie companies.⁴⁹

Traditional investors in private equity have seemingly responded to these trends – global private equity fundraising fell 11.0% in 2025,⁵⁰ making last year the fourth year in a row that private equity fundraising has declined.⁵¹ Based on data from S&P, global private equity fundraising fell to its lowest level in a decade last year.⁵² In March 2025, the *Financial Times* reported that “Private equity assets under management fell last year for the first time in decades as investors confronting a \$3tn backlog of ageing and unsold deals pulled back from committing new funds to the sector.”⁵³

Private equity industry publication *Private Equity International* (PEI) reported⁵⁴ that one quarter of institutional investors in private equity reduced their allocations last year, with public pension funds the most active in reducing their exposure. Nearly one-third of public pension funds reduced their exposure to private equity last year, PEI reported.⁵⁵ Among the public asset owners that have stepped back from private equity are state retirement systems in Ohio, Maine, Nevada, Washington, Oregon, Texas and Alaska.⁵⁶

Alaska's sovereign wealth fund, the Alaska Permanent Fund (APFC), is also preparing to scale down. Managing \$85 billion in assets⁵⁷ APFC's current allocation to private equity is 18%, but staff have

⁴⁹ “Why Private Equity Is Stuck with Zombie Companies It Can't Sell.” CNBC, 12 Nov. 2025, <https://www.cnbc.com/2025/11/12/why-private-equity-is-stuck-with-zombie-companies-it-cant-sell.html>. Accessed 3 May 2026.

⁵⁰ “Private Equity Fundraising Totals Continue to Decline in 2025.” S&P Global Market Intelligence, 9 Jan. 2026.

⁵¹ “Global Private Equity Fundraising Sinks for 3rd Straight Year.” S&P Global Market Intelligence, 16 Jan. 2025.

⁵² Based on the \$490.81 billion fundraising total for 2024, compared with fundraising totals greater than \$500 billion for 2015-2024. See “Private Equity Fundraising Totals Continue to Decline in 2025.” S&P Global Market Intelligence, 9 Jan. 2026; and “Global Private Equity Fundraising Sinks for 3rd Straight Year.” S&P Global Market Intelligence, 16 Jan. 2025.

⁵³ “Private Equity Assets Under Management Fall for First Time in Decades.” *Financial Times*, Mar. 2025, <https://www.ft.com/content/c7acc472-477c-496c-bf88-cf1be4b2879c>. Accessed 3 May 2026.

⁵⁴ “A Quarter of Institutional LPs Cut PE Allocations in 2025.” Private Equity International, 19 Jan. 2026, <https://www.privateequityinternational.com/download-a-quarter-of-institutional-lps-cut-pe-allocations-in-2025>. Accessed 3 May 2026.

⁵⁵ “A Quarter of Institutional LPs Cut PE Allocations in 2025.” Private Equity International, 19 Jan. 2026.

⁵⁶ “Ohio Pension to Cut Long-Term Exposure to PE.” *Buyouts*, <https://www.buyoutsinsider.com/ohio-pension-to-cut-long-term-exposure-to-pe/>. Accessed 3 May 2026.

⁵⁷ “Performance.” Alaska Permanent Fund Corporation, <https://apfc.org/performance/>. Accessed 3 May 2026.

recommended a reduction to 15% for the board to review in early 2026, with investment staff suggesting private equity’s “golden era” is in the rearview mirror.⁵⁸

Staff for AFPC presented the board with declining return expectations for private equity in October, noting a performance peak in 2021 with 5-year annualized returns dropping and expected to “trend even lower towards around 6%” in 2026,⁵⁹ per analysis from Callan and Cambridge Associates. Alaska’s \$36 billion Retirement Management Board also approved a cut to its private equity allocation to 12 percent from 14 percent at its December meeting.⁶⁰

Oregon’s \$100 billion state pension has been paring down its private equity portfolio. Consultant Meketa has noted private equity is dragging down the OPERF’s overall fund returns, acknowledging that “Private Equity (-1.5%) overweight and underperformance was the largest detractor from third quarter (2025) benchmark relative returns.”⁶¹ Oregon Treasurer Elizabeth Steiner has announced she is working with investment staff to continue paring down to reach the current 20 percent target, and indicated she’s open to adjusting the target further.⁶²

The \$110 billion⁶³ Ohio Public Employees Retirement System voted in November to trim private equity by 1 point to a 14 percent target, “expressing concerns over lack of opportunities in the asset class, along with liquidity risk,” per *Buyouts*.⁶⁴ The article also quotes Meketa as saying there are “significantly fewer opportunities for finding value in the private equity market[.]”⁶⁵

⁵⁸ “October 1-2, 2025 APFC Board of Trustees Annual Meeting Packet.” Alaska Permanent Fund Corporation, Sept. 2025, <https://apfc2017.wpenginepowered.com/wp-content/uploads/2025/09/October-1-2-2025-APFC-Board-of-Trustees-Annual-Meeting-Packet.pdf>. Accessed 3 May 2026.

⁵⁹ “October 1-2, 2025 APFC Board of Trustees Annual Meeting Packet.” Alaska Permanent Fund Corporation, Sept. 2025, <https://apfc2017.wpenginepowered.com/wp-content/uploads/2025/09/October-1-2-2025-APFC-Board-of-Trustees-Annual-Meeting-Packet.pdf>. Accessed 3 May 2026.

⁶⁰ “December 3-4, 2025 Board of Trustees Meeting Packet, Day 1.” Alaska Retirement Management Board, Dec. 2025, https://treasury.dor.alaska.gov/docs/treasurydivisionlibraries/armb/meetings-minutes/board-of-trustees/meeting-packets/2025/2025.12.03-04_armb_bot_packet_v.f.2---day-1.pdf. Accessed 3 May 2026.

⁶¹ “December 3, 2025 Public Book.” Oregon Investment Council, Oregon State Treasury, Dec. 2025, <https://www.oregon.gov/treasury/invested-for-oregon/Documents/Invested-for-OR-47OIC-Agenda-and-Minutes/2025/12-03-25-Public-Book.pdf>. Accessed 3 May 2026.

⁶² “Treasurer Steiner Announces Investment Principles.” Oregon State Treasury, Oregon Newsroom, <https://apps.oregon.gov/oregon-newsroom/OR/OST/Posts/Post/Treasurer-Steiner-Announces-Investment-Principles>. Accessed 3 May 2026.

⁶³ “Defined Benefit Fund Total.” Ohio Public Employees Retirement System, <https://www.opers.org/investments/Defined-Benefit/total.shtml>. Accessed 3 May 2026.

⁶⁴ “Ohio Pension to Cut Long-Term Exposure to PE.” *Buyouts*, <https://www.buyoutsinsider.com/ohio-pension-to-cut-long-term-exposure-to-pe/>. Accessed 3 May 2026.

⁶⁵ *Id.*

The \$70 billion⁶⁶ Nevada Public Employees Retirement System reduced its target private equity allocation by 1 point to 5 percent, *Private Equity International* reported in September.⁶⁷ NVPRS already has a much lower allocation to private markets allocation target at 15 percent, half the average size for public pensions.⁶⁸

Maine PERS, with \$21 billion AUM,⁶⁹ voted to adopt a staff recommendation for a 2.5 percent reduction at the November board meeting which cut private equity to a 10 percent allocation,⁷⁰ following a 2022 reduction from 15 percent.⁷¹ Texas Teachers Retirement System, currently with \$225 billion in assets,⁷² was one of the early funds to make a significant reduction in its private equity target, dropping it by 2 points to 12 percent in 2024 in light of the asset class’s “dwindling returns,” *Bloomberg* reported.⁷³

Recent Private Equity Allocation Cuts

Asset Owner	AUM (billions)	PE Reduction	Revised PE Target	Allocation
Alaska Permanent Fund*	\$85	-3%	15%	

⁶⁶ “PERS Investments: June 2025.” Public Employees’ Retirement System of Nevada, Aug. 2025, <https://www.nvpers.org/sites/default/files/2025-08/PERS-Investments-Jun2025.pdf>. Accessed 3 May 2026.

⁶⁷ “Investor Intentions: NVPERS Is Lowering Its PE Allocation Target.” Private Equity International, <https://www.privateequityinternational.com/investor-intentions-nvpers-is-lowering-its-pe-allocation-target/>. Accessed 3 May 2026.

⁶⁸ Id.

⁶⁹ “Holdings and Market Value.” Maine Public Employees Retirement System, <https://www.mainebers.org/investments/holdings-and-market-value/>. Accessed 3 May 2026.

⁷⁰ “November 13, 2025 Public Board Book.” Maine Public Employees Retirement System, Nov. 2025, <https://www.mainebers.org/wp-content/uploads/pdfs/Board-Packets/2025/11-13-25-Public-Board-Book.pdf>. Accessed 3 May 2026.

⁷¹ “Maine Considers Another Slash to PE Allocation.” Buyouts, <https://www.buyoutsinsider.com/maine-considers-another-slash-to-pe-allocation/>. Accessed 3 May 2026.

⁷² “Fund Insights.” Teacher Retirement System of Texas, <https://www.trs.texas.gov/about/who-we-are/fund-insights>. Accessed 3 May 2026.

⁷³ “Texas Teachers to Pull Almost \$10 Billion from Private Equity.” Bloomberg, 18 July 2024, <https://www.bloomberg.com/news/articles/2024-07-18/texas-teachers-to-pull-almost-10-billion-from-private-equity>. Accessed 3 May 2026.

PRIVATE EQUITY STAKEHOLDER PROJECT

Maine Retirement System	Public	Employees	\$21	-2.5%	10%
Washington State Investment Board			\$230	-2%	23%
Alaska Retirement Board	Retirement	Management	\$36	-2%	12%
Texas Teachers Retirement System			\$225	-2%	12%
Ohio Public Employees Retirement System			\$110	-1%	14%
Nevada Retirement System	Public	Employees	\$70	-1%	5%
New Jersey State Council	State	Investment	\$80	-2%	11%
US Public Pension Average					14%

*proposed

Given the shift away from alternative investment allocations by some of the nation's largest pension funds, regulators and the public should be wary of the motivation to fill traditional fundraising gaps with retirement savers' 401(k) savings. Private equity will likely continue to employ a range of financial engineering tricks to juice their income in the face of ongoing headwinds (including the aforementioned secondary sales and continuation funds⁷⁴) to afford current investors some relief from illiquidity as dealmaking has slowed,⁷⁵ and global market turbulence, trade wars, high interest rates, and a reluctant IPO market persist.

⁷⁴ "Private Equity Turns to Continuation Funds amid Liquidity Pressures." Financial Times, <https://www.ft.com/content/74ad08d8-53cb-4050-af6f-7b95c19a001d>. Accessed 3 May 2026.

⁷⁵ "Private Equity Midyear Report 2025." Bain & Company, 2025, <https://www.bain.com/insights/private-equity-midyear-report-2025/>. Accessed 3 May 2026.

Exposing retirees to private markets therefore invites the risk of private equity turning their 401(k) plans into a dumping ground for stagnant assets. That risk is even greater given the current turbulence shaking the industry.⁷⁶

IV. Portfolio Companies, Employees and other Stakeholders

Private equity firms have demonstrated overreliance on cost-cutting measures and aggressive financial policies that have limited long-term prospects. Focusing on immediate financial gains can lead to significant mismanagement and economic instability, contributing to higher bankruptcy rates among private equity-owned firms.

A company's workforce is a key driver of its success, and failures to manage labor appropriately can create additional risks for investors (e.g. underperforming companies, regulatory actions, headline risks, etc.). In fact, poor labor practices can be an early indicator of operational failures.

The following examples illustrate the long-term material impacts on investors when private equity firms fail to ensure fair labor practices:

Packers Sanitation

After a child labor scandal at Blackstone-owned Packers Sanitation (PSSI) erupted in 2022, the company struggled with lost business and looming debt, ultimately handing the business over to lenders three years after the allegations came to light. Children were found with caustic chemical burns and injuries from cleaning head splitters and other meat processing equipment, prompting regulators to accuse slaughterhouse sanitation company PSSI of "oppressive child labor" in late 2022.⁷⁷

PSSI settled with the US Department of Labor in February 2023, paying a \$1.5 million penalty after findings that over 100 children – some as young as 13 – were employed in 13 facilities across eight states.⁷⁸ Private equity giant Blackstone had acquired PSSI in 2018, and in the years after the

⁷⁶ "Private Equity Wants Your Retirement Nest Egg." Center for Economic and Policy Research, <https://cepr.net/publications/private-equity-wants-your-retirement-nest-egg/>. Accessed 3 May 2026.

⁷⁷ "Federal Court Orders Packers Sanitation Services Inc. to Comply with Child Labor Laws." U.S. Department of Labor, 9 Nov. 2022, <https://www.dol.gov/newsroom/releases/whd/whd20221109>. Accessed 3 May 2026.

⁷⁸ "More Than 100 Children Illegally Employed in Hazardous Jobs." U.S. Department of Labor, 17 Feb. 2023, <https://www.dol.gov/newsroom/releases/whd/whd20230217-1>. Accessed 3 May 2026.

takeover there were indications⁷⁹ the company was putting profits over worker safety.⁸⁰ The DOL investigation spurred extensive media coverage, including a 2023 *60 Minutes* segment that found “systemic failures” at PSSI.⁸¹

Several of Blackstone’s largest investors expressed concern about child labor, including CalPERS and CalSTRS.⁸² In March 2023, the New York State Comptroller sent Blackstone a letter saying, “The alleged practices are abhorrent and could imperil the reputation and financial success of PSSI.”⁸³

In May of 2023, Moody’s downgraded⁸⁴ the company’s credit rating, and again in November⁸⁵ saying, “[t]he ability to manage compliance and labor related risk has implications on the company’s earnings.” A year later, in October 2024, Moody’s issued another downgrade due to PSSI’s “unsustainable debt load.”⁸⁶ By December 2025, after missing a debt payment, PSSI (now rebranded as Fortex) had completed an out-of-court restructuring and lenders took control of the company’s equity.⁸⁷

⁷⁹ “Injuries at Meatpacking-Related Company Were High Even before Private Equity’s Profit Push.” NBC News, <https://www.nbcnews.com/news/us-news/injuries-meatpacking-related-company-high-even-private-equities-profit-rcna16734>. Accessed 3 May 2026.

⁸⁰ “Profit over Safety: Private Equity’s Leveraged Bet on Packers Sanitation.” Private Equity Stakeholder Project, <https://pestakeholder.org/reports/new-report-profit-over-safety-private-equitys-leveraged-bet-on-packers-sanitation/>. Accessed 3 May 2026.

⁸¹ “Government Investigation into Slaughterhouse Cleaning Company That Hired Children.” *60 Minutes*, CBS News, 7 May 2023, <https://www.cbsnews.com/news/government-investigation-into-slaughterhouse-cleaning-company-that-hired-children-60-minutes-transcript-2023-05-07/>. Accessed 3 May 2026.

⁸² “CalPERS, CalSTRS Worried about Child Labor.” *Wall Street Journal*, 16 Mar. 2023, <https://www.wsj.com/livecoverage/stock-market-news-today-03-16-2023/card/calpers-calstrs-worried-about-child-labor-0XyGJypQO2HuRAD0vP4x>. Accessed 3 May 2026.

⁸³ “Blackstone Takes Heat from NY after Portfolio Company Is Fined for Child Labor.” *Bloomberg*, 30 Mar. 2023, <https://www.bloomberg.com/news/articles/2023-03-30/blackstone-takes-heat-from-ny-after-portfolio-company-is-fined-for-child-labor>. Accessed 3 May 2026.

⁸⁴ “Packers Holdings LLC.” Moody’s Ratings, <https://www.moodys.com/reports?entity=824231749>. Accessed 3 May 2026.

⁸⁵ “Moody’s Downgrades Packers Holdings CFR to Caa2 from Caa1 Due to Compliance and Labor Risk.” Moody’s Ratings, https://www.moodys.com/research/Moodys-downgrades-Packers-Holdings-CFR-to-Caa2-from-Caa1-due-Rating-Action--PR_482306. Accessed 3 May 2026.

⁸⁶ “Packers Holdings LLC.” Moody’s Ratings, <https://www.moodys.com/reports?entity=824231749>. Accessed 3 May 2026.

⁸⁷ “Fortex Completes Out-of-Court Restructuring.” S&P Global Ratings, <https://www.spglobal.com/ratings/en/regulatory/article/-/view/type/HTML/id/3501917>. Accessed 3 May 2026.

Hearthside Food Solutions

Hearthside Food Solutions, which makes snacks, cereals, and baked goods for various brands at dozens of facilities, showed a pattern of health and safety violations before becoming embroiled in a child labor scandal. The company filed for bankruptcy less than two years after its use of child labor came to light and lenders subsequently took over.

Hearthside was acquired by private equity firms Charlesbank Capital and Partners Group in 2018.⁸⁸ In April 2022, the DOL cited Hearthside “after a maintenance employee suffered the amputation of one finger and the partial amputation of another,” announcing that Hearthside had “violated federal safety procedures for the 20th time in 5 years.”⁸⁹

A New York Times investigation in February 2023 on unlawful child labor interviewed several minors who worked in Hearthside facilities, some hired through subcontractors, and often working night shifts under dangerous conditions.⁹⁰ In May 2023, Moody’s downgraded Hearthside and gave it a ‘negative’ outlook, citing inflation, supply chain issues and labor problems.⁹¹ The company paid \$4.5 million to settle child labor charges in late 2024, then landed in bankruptcy.⁹²

PESP’s bankruptcy tracker⁹³ contains key insights into private equity’s contribution to bankruptcies in 2025:

Disproportionate Role in Bankruptcies and Distressed Exchanges

- Private equity firms played a role in **54% (19 out of 35)** of the largest U.S. corporate bankruptcies during 2025 (bankruptcies with liabilities of \$1 billion or greater at the time of filing).

⁸⁸ “Hearthside Food Buyout Backed by US\$1.645 Bn in Loans.” Reuters, <https://www.reuters.com/article/markets/commodities/hearthside-food-buyout-backed-by-us1645bn-in-loans-idUSL1N1RW0QS/>. Accessed 3 May 2026.

⁸⁹ “Hearthside Food Solutions Cited after Maintenance Employee Suffers Amputation.” Occupational Safety and Health Administration, U.S. Department of Labor, 26 Apr. 2022, <https://www.dol.gov/newsroom/releases/osha/osha20220426-0>. Accessed 3 May 2026.

⁹⁰ Dreier, Hannah. “Alone and Exploited, Migrant Children Work Brutal Jobs across the U.S.” New York Times, 25 Feb. 2023, <https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html>. Accessed 3 May 2026.

⁹¹ “Moody’s Downgrades Hearthside’s CFR to Caa1; Outlook Remains Negative.” Moody’s Ratings, https://www.moody.com/research/Moodys-downgrades-Hearthsides-CFR-to-Caa1-outlook-remains-negative-Rating-Action--PR_476829. Accessed 3 May 2026.

⁹² “Hearthside Food Solutions Settles Illinois Child Labor Probe.” Crain’s Chicago Business, <https://www.chicagobusiness.com/consumer-products/hearthside-food-solutions-settles-illinois-child-labor-probe>. Accessed 3 May 2026.

⁹³ “Private Equity Bankruptcy Tracker.” Private Equity Stakeholder Project, <https://pestakeholder.org/reports/private-equity-bankruptcy-tracker/>. Accessed 3 May 2026.

- Private equity firms played a role in **51% (21 out of 41)** of large U.S. corporate bankruptcies during 2025 (bankruptcies with liabilities of \$500 million or greater at the time of filing).
- Private equity firms played a role in **10% (39 of 388 filings)** of all corporate bankruptcies in 2025, despite the fact that private equity accounts for 7% of the U.S. economy.⁹⁴
- According to S&P data, private equity firms played a role in 44% (18 out of 41) of distressed exchanges, which are out-of-court debt exchanges that allow companies to circumvent a formal bankruptcy process, but are often accompanied by similar outcomes to those seen in bankruptcies.

Sectoral Overrepresentation

- The impact of private equity ownership is notable in specific sectors. In manufacturing, private equity-backed companies accounted for 60% (3 of 5) of the largest bankruptcies.
- In the largest consumer discretionary bankruptcies, private equity-backed companies account for 71.43% (5 of 7), including brands like Joann Fabrics, At Home, and Claire's.

Worker and Community Impacts

- Large bankruptcies, which are overrepresented among private equity-owned companies, disproportionately affect workers and local economies.
- Private equity-related bankruptcies in 2025 have resulted in at least **36,802 layoffs** in only 13 private equity backed bankruptcies, likely a significant undercount as it only counts required or voluntarily disclosed numbers (typically, companies are only required to report when 50 or more employees are laid off from a single location).
- Private equity-backed companies account for **44% of the largest** (4 of 9) healthcare bankruptcies in 2025. These bankruptcies are especially devastating to consumers and may leave people without access to essential care.

Effects on Patients

Across the country, bankruptcies and closures of private equity-controlled healthcare facilities have harmed healthcare workers and the patients they serve. Private equity has invested over \$1 trillion in the US healthcare sector over the last decade⁹⁵ and touches virtually every corner of healthcare. Private equity's growing footprint is contributing to horizontal consolidation, which is

⁹⁴ "Economic Contribution of the US Private Equity Sector." American Investment Council and EY, Mar. 2025, <https://www.investmentcouncil.org/wp-content/uploads/2025/03/EY-AIC-2024-Economic-contribution-of-the-US-private-equity-sector.pdf>. Accessed 3 May 2026.

⁹⁵ Blumenthal, David. Private Equity's Role in Health Care, Commonwealth Fund, 17 Nov. 2023, www.commonwealthfund.org/publications/explainer/2023/nov/private-equity-role-health-care.

often accompanied by higher prices in various subsectors, including primary care,⁹⁶ emergency medicine,⁹⁷ eye care, gastroenterology,⁹⁸ durable medical equipment,⁹⁹ anesthesiology,¹⁰⁰ dental care,¹⁰¹ fertility clinics,¹⁰² methadone treatment centers,¹⁰³ and air ambulances.¹⁰⁴

Private equity ownership is also associated with lower quality of care, including increases in hospital-acquired conditions,¹⁰⁵ reduced staffing levels,¹⁰⁶ and increases in emergency visits and

⁹⁶ Singh, Yashaswini, et al. "Growth of Private Equity and Hospital Consolidation in Primary Care and Price Implications." *JAMA Network*, JAMA Health Forum, 17 Jan. 2025, jamanetwork.com/journals/jama-health-forum/fullarticle/2829224. (The study found that an increasing share of primary care physicians (PCPs) are affiliated with hospitals and private equity firms, and that such affiliated PCPs on average charge higher prices for the same services relative to independent PCPs).

⁹⁷ Adler, Loren, et al. "Measuring Private Equity Penetration and Consolidation in Emergency Medicine and Anesthesiology." *Oxford Academic*, Health Affairs Scholar, Volume 1, Issue 1, July 2023. Published online 20 June 2023, academic.oup.com/healthaffairsscholar/article/1/1/qxad008/7203733. (The study found that, from 2009 to 2019, there were substantial increases in local market concentration in emergency medicine practices and that physician groups owned by private equity or publicly traded companies grew from 8.6% of the national emergency medicine market to 22.0%).

⁹⁸ Weber, Lauren. "Private Equity Sees the Billions in Eye Care as Firms Target High-Profit Procedures." *KFF Health News*, 19 Sept. 2022, kffhealthnews.org/news/article/private-equity-ophthalmology-eye-care-high-profit-procedures/.

⁹⁹ O'Grady, Eileen, and David Card. *Private Equity in Durable Medical Equipment: How Private Equity Profits Off of Disabled and Chronically Ill Americans*, PESP & NDRN, Nov. 2023, pestakeholder.org/wp-content/uploads/2023/11/PESP_Report_DME_2023.pdf. (Explaining that the risk of fraud in private equity-owned durable medical equipment companies is evident, as such companies have paid millions of dollars in recent years to settle lawsuits alleging fraud that occurred while under private equity ownership).

¹⁰⁰ See Adler, et al., *supra* note 12. (The study also found that, from 2009 to 2019, there were substantial increases in local market concentration in anesthesiology practices and that physician groups owned by private equity or publicly traded companies grew from 3.2% of the national anesthesiology market to 18.8%).

¹⁰¹ Timmerman, Anna M., et al. "Pushing Upmarket: Consolidation of DSOs and Secondary Private Equity Sales." *McGuireWoods*, 5 May 2023, www.mcguirewoods.com/client-resources/alerts/2023/5/consolidation-dsos-secondary-private-equity-sales/.

¹⁰² Stevenson, David. "Private Equity Drives Consolidation in Maturing Fertility Market." *PitchBook*, 16 Nov. 2023, pitchbook.com/news/articles/private-equity-buyouts-fertility-consolidation.

¹⁰³ Facher, Lev. "The Methadone Clinic Monopoly: Opioid Treatment Chains Backed by Private Equity Are Fighting Calls for Reform." *STAT*, 19 Mar. 2024, www.statnews.com/2024/03/19/methadone-clinics-opioid-addiction-private-equity/.

¹⁰⁴ Stanton, Chris. "The Air-Ambulance Vultures." *NY Magazine*, *Intelligencer*, 20 Apr. 2022, nymag.com/intelligencer/2022/04/how-private-equity-took-over-air-ambulances.html.

¹⁰⁵ Kannan, Sneha, et al. "Changes in Hospital Adverse Events and Patient Outcomes Associated with Private Equity Acquisition." *JAMA Network*, *JAMA*, 26 Dec. 2023, jamanetwork.com/journals/jama/fullarticle/2813379.

¹⁰⁶ Borsa, Alexander, et al. "Evaluating Trends in Private Equity Ownership and Impacts on Health Outcomes, Costs, and Quality: Systematic Review." *BMJ*, *British Medical Journal*, 11 June 2023, www.bmj.com/content/382/bmj-2023-075244.

hospitalizations for nursing home residents.¹⁰⁷ In addition, private equity also threatens the stability of the healthcare system. In 2024, one-fifth (21%) of healthcare bankruptcies involved private equity-owned companies, and seven of the eight largest healthcare bankruptcies (having liabilities over \$500 million) involved private equity.¹⁰⁸

The high-profile bankruptcies of two large hospital systems, Steward Health and Prospect Medical Holdings, are salient examples of the risks associated with private equity ownership in healthcare.

Steward Health

Steward Health was a multistate hospital system that was owned by private equity firm Cerberus Capital Management from 2010 to 2020, and its 2024 bankruptcy was one of the largest hospital bankruptcies in decades. In Steward's bankruptcy filing, it reported over \$9 billion in liabilities, including \$290 million in unpaid employee wages and benefits, nearly \$1 billion in unpaid bills to vendors and suppliers, and \$6.6 billion in long-term rent obligations to its landlord, Medical Properties Trust (MPT).¹⁰⁹

In the six years leading up to Steward's bankruptcy, Steward closed six hospitals across the US, resulting in the layoffs of at least 2,650 workers and reduced access to care for the communities they served. Steward also cut important service lines, such as obstetrics, behavioral health, and cancer care. Two of the hospital closures happened in 2024 when the health system was on the eve of bankruptcy.¹¹⁰

Around the time of Cerberus' exit, Steward paid out a \$111 million dividend to its owners, including de la Torre.¹¹¹ Not long after, de la Torre bought himself a \$40 million yacht. The company also bought two private jets and a private suite at Dallas' AA arena.¹¹² Together, Cerberus and MPT siphoned approximately \$1.3 billion from Steward.¹¹³

¹⁰⁷ Braun, Robert Tyler, et al. "Association of Private Equity Investment in US Nursing Homes With the Quality and Cost of Care for Long-Stay Residents." *JAMA Network*, JAMA Health Forum, 19 Nov. 2021, jamanetwork.com/journals/jama-health-forum/fullarticle/2786442.

¹⁰⁸ Dabos, Valentina. *Private Equity Bankruptcy Tracker*, PESP, 12 Feb. 2025, pestakeholder.org/reports/private-equity-bankruptcy-tracker/.

¹⁰⁹ Bugbee, Mary. *Steward Health Care's Bankruptcy: One Year Later*, Private Equity Stakeholder Project, 6 May 2025, pestakeholder.org/news/steward-health-cares-bankruptcy-one-year-later/.

¹¹⁰ *Id.*

¹¹¹ Weil, Jonathan. "The Private-Equity Deal That Flattened a Hospital Chain and Its Landlord." *WSJ*, May 7, 2024, sec. Markets. <https://www.wsj.com/finance/the-private-equity-deal-that-flattened-a-hospital-chain-and-its-landlord-3096747d>; Tkacik, Maureen. "A Hospital Heist Seeks Protection in the Ponzi-Friendliest Court in America." *The American Prospect*, May 6, 2024. <https://prospect.org/api/content/a989ab44-0c1c-11ef-8071-12163087a831/>.

¹¹² Tkacik, Maureen. "A Hospital Heist Seeks Protection in the Ponzi-Friendliest Court in America." *The American Prospect*, May 6, 2024. <https://prospect.org/api/content/a989ab44-0c1c-11ef-8071-12163087a831/>.

¹¹³ Sharife, Khadija. "How Private Equity and an Ambitious Landlord Put Steward Health Care on Life Support." *OCCRP*, October 9, 2024. <https://www.occrp.org/en/investigation/how-private-equity-and-an-ambitious-landlord->

The financial harms wrought by Steward’s private equity owners had real downstream effects on patients. Last year a Utah Judge awarded a family nearly \$1 billion dollars after finding that Steward was so negligent in handling an infant’s delivery that she will likely suffer a lifetime of disabilities.¹¹⁴

Prospect Medical Holdings

Between 2010 and 2021, private equity firm Leonard Green & Partners owned Prospect Medical Holdings.¹¹⁵ After Leonard Green acquired Prospect in 2010, it used the hospital chain as a platform to raise debt so it could siphon off hundreds of millions of dollars in dividends and fees. According to Prospect’s own financial statements, the owners collected at least \$658 million from the hospitals—despite dramatic operating challenges, substantially underfunded pensions, and increasing regulatory scrutiny.¹¹⁶

Prospect was eventually able to pay off the existing \$1.1 billion in debt it had accrued in part to fund dividends, but only by selling off the bulk of Prospect’s real estate to MPT. The transaction replaced debt with lease liabilities and left Prospect with fewer assets.¹¹⁷ These lease liabilities would come to play a central role in Prospect’ 2025 bankruptcy. As reported by *Bloomberg*, Prospect’s second largest creditor in the bankruptcy is MPT, to which Prospect reportedly owed \$1.7 billion in unpaid rent and loans as of January 2025.¹¹⁸

Patients at Prospect suffered due to private equity’s mismanagement. For example, in 2019 the California Attorney General formally charged Prospect executives with “gross negligence” related to persistent mold contamination of a hospital pharmacy, including in equipment used to mix patient medications. In March 2021, the California Attorney General and State Pharmacy Board

[put-steward-healthcare-on-life-support](#); Sabrina Willmer. “Cerberus Quadruples Money After Unusual Exit From Hospital Giant.” *Bloomberg.Com*, May 27, 2021. <https://www.bloomberg.com/news/articles/2021-05-27/cerberus-quadruples-money-after-unusual-exit-from-hospital-giant>.

¹¹⁴ “Judge Awards Family Nearly \$1B for Botched Delivery of Baby at Utah Hospital He Blasted as ‘Most Dangerous Place on the Planet,’” *New York Post*, 28 Aug. 2025, <https://nypost.com/2025/08/28/us-news/judge-awards-family-nearly-1b-for-botched-delivery-of-baby-at-utah-hospital/>.

¹¹⁵ “Prospect Medical Holdings Incorporated: News & Locations.” Accessed February 28, 2025. <https://www.pmh.com/>.

¹¹⁶ Elkind, Peter. “Rich Investors Stripped Millions from a Hospital Chain and Want to Leave It Behind. A Tiny State Stands in Their Way.” *ProPublica*, February 4, 2021. <https://www.propublica.org/article/rich-investors-stripped-millions-from-a-hospital-chain-and-want-to-leave-it-behind-a-tiny-state-stands-in-their-way>.

¹¹⁷ O’Grady, Eileen. “Broken Promises: Regulators Question Leonard Green’s Investment in Prospect Medical Holdings.” *Private Equity Stakeholder Project* (blog), July 31, 2020. <https://pestakeholder.org/news/broken-promises-rhode-island-regulators-question-leonard-greens-investment-in-prospect-medical-holdings-2/>.

¹¹⁸ Dorothy Ma and Jonathan Randles. “Prospect Medical Faces Landlord Brawl, Cash Burn in Bankruptcy.” *Bloomberg*, January 15, 2025. <https://www.bloomberg.com/news/articles/2025-01-15/prospect-medical-faces-landlord-brawl-cash-burn-in-bankruptcy>.

entered into a settlement with Prospect’s Southern California subsidiary, placing its hospital pharmacy permit and sterile compounding on probation for two years.¹¹⁹

Effects on Housing

The last decade has seen private equity companies and other types of corporate landlords rapidly expand into all housing sectors – multifamily, manufactured housing, student housing, senior housing, subsidized housing, and of course single-family rentals. However, it is difficult to know the full extent of their ownership or to know their full impact on communities and the housing market because of their use of subsidiary LLCs or “shell companies,” which obscure the actual ownership structure.

Tenants in private equity-owned housing have reported problems such as large rent increases, hidden fees, poor maintenance and repairs, lack of responsiveness to tenant concerns, and aggressive eviction practices.¹²⁰ Furthermore, rising corporate housing investment creates unfair competition that effectively shuts out middle- and working-class families from homeownership.¹²¹

Many of the potential retail investors in private equity will be tenants or prospective first-time homebuyers. It is unconscionable that their retirement savings might indirectly contribute to their inability to find quality, affordable housing by investing with private equity landlords.

V. Concerns around Protections for Retirement Savers

PESP worries that the proposal’s approach will not guide fiduciaries to make better decisions, but instead will add complexity, raise fees, and increase risk, while not protecting plan participants from poor investment choices.

There are several features of the Proposal that particularly alarm us:

- A checklist without a reasonableness requirement. Under the Proposal, a fiduciary who runs through the six factors can pick essentially any investment and be protected, even if any

¹¹⁹ Peter Elkind, “Investors Extracted \$400 Million From a Hospital Chain That Sometimes Couldn’t Pay for Medical Supplies or Gas for Ambulances,” ProPublica, September 30, 2020, <https://www.propublica.org/article/investors-extracted-400-million-from-a-hospital-chain-that-sometimes-couldnt-pay-for-medical-supplies-or-gas-for-ambulances>.

¹²⁰ Vogell, Heather. When Private Equity Becomes Your Landlord, ProPublica, 7 Feb. 2022, www.propublica.org/article/when-private-equity-becomes-your-landlord.

¹²¹ Fabino, Alexander. *Housing Market Trend Raises Red Flags*, Newsweek, 14 Feb. 2024, www.newsweek.com/housing-market-trend-investor-purchases-legislation-merkley-smith-act-1870096.

careful expert would have rejected it. It is significant that the Department has removed the longstanding regulatory instruction that fiduciaries must “act accordingly” after their investment analysis. This means there would be nothing stopping a fiduciary from reviewing the analysis – and then making an unreasonable decision despite it. This result renders the notion of “fiduciary responsibility” meaningless.

- An impermissible “presumption of prudence.” The Proposal purports to shield fiduciaries from review and accountability if they followed its process. The Supreme Court, however, has already squarely rejected the idea that ERISA fiduciaries are entitled to a presumption of prudence.¹²² The Department cannot create through regulation what the Court has unanimously refused¹²³ to read into the statute.
- Six ill-defined factors. The Proposal leaves important questions unanswered. Can a fiduciary always and very easily justify paying higher fees, based on any feature of the investment? Can a fiduciary use an investment category’s worst-performing funds as the benchmark, so the selected investments always look like they are performing well? Can a fiduciary uncritically rely on a seller’s representations of the product, or must he or she look behind those representations? Several other consequential issues go almost entirely unaddressed, i.e. how to analyze conflicts of interest at the fund level; how those conflicts might, in particular, harm small businesses (since they frequently rely on fund menus provided by a service provider); the quality and incentives of the management team (including their track record); how an investment alternative (including an alternative asset) fits with the rest of the plan menu; and the sophistication of the plan participant population.
- No disclosure to participants. Most strikingly for us, the Proposal says nothing about what plan participants will be told. Alternative-asset products are genuinely hard to evaluate – fee structures are complex and variable, valuations are infrequent and often based on the manager’s own judgment, redemption rights may be suspended at the fund’s discretion, and performance is reported in metrics unfamiliar to ordinary investors. Without additional targeted, plain-English disclosure tailored to these features, participants cannot meaningfully compare options or make informed choices. That is a fatal flaw for a rule that would apply even to the default investments selected for participants who never affirmatively choose anything at all.

¹²² *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 424 (2014) (rejecting argument that a presumption of prudence was “an appropriate way to weed out meritless lawsuits”).

¹²³ *Id.*

VI. Conclusion

Given the foregoing, PESP reiterates our concerns about the Proposal. Its limitation of legal remedies for plan participants will expose retail investors to risky private equity investments without providing recourse. Rather than relying on self-interested asset managers to determine which benchmarks and performance metrics warrant regulatory protection, the bar for including private equity in 401(k)s should be extremely high.

Private equity funds have lagged public markets while charging much higher fees, and public pension funds are pulling back from the asset class. Far from protecting the financial futures of retirees, the Proposal risks shifting more financial risk onto workers who rely on their retirement savings for long-term security.

Retirement accounts exist to provide security for working people, not to bail out private market investments by shifting liquidity risk onto workers when markets turn.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Noble". The signature is fluid and cursive, with a large initial "C" and a stylized "Noble".

Chris Noble, Esq.
Policy Director
Private Equity Stakeholder Project