COMMITTEE ON CAPITAL MARKETS REGULATION

EXPANDING U.S. RETIREMENT ACCESS TO PRIVATE MARKETS: AN ANALYSIS OF EXISTING REGULATIONS, MARKET PRACTICES AND LIQUIDITY

MAY 2026

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EXECUTIVE SUMMARY

The Committee on Capital Markets Regulation ("**CCMR**") supports facilitating the expansion of 401(k) plan access to alternative investments. This report by CCMR demonstrates that the growing market for continuously operating investment vehicles that invest in alternative assets ("evergreen funds") is well positioned to provide a safe and efficient means for 401(k) investors to obtain investment exposure to private equity and private credit investments consistent with the safe harbor proposed by the Department of Labor ("**DOL**"). The report consists of two main sections.

Section I overviews the evergreen fund structure and explains why this structure can effectively integrate private equity and credit investments into 401(k) investment options. We first review the regulatory protections under the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), and federal and state banking regulations applicable to 401(k) multi-asset master funds organized as collective investment trusts, which are expected to serve as the principal vehicles through which private market exposure is incorporated into 401(k) plans. We then review the market practices and regulatory frameworks that apply to evergreen funds and how they address: (i) fees and performance, (ii) disclosure, (iii) valuation, and (iv) liquidity—each of which we believe will be important for managers of investment options to consider as they provide information to plan fiduciaries for purposes of satisfying the safe harbor. We also review empirical evidence indicating that these market practices and regulatory frameworks are functioning effectively for current evergreen fund investors, which supports the conclusion that evergreen fund structures can effectively incorporate private equity and private credit investments into 401(k) portfolios.

Section II presents the results of our original study of historical 401(k) withdrawal and contribution patterns. Our study analyzed data on plan assets, cash inflows, and cash outflows for all 401(k) plans with over $10 million in assets from 1999 through 2024, covering 540,317 annual filings by 60,463 plan sponsors. Our analysis provides empirical confirmation that 401(k) investor liquidity demands are highly limited, even during periods of severe market stress, including the 2000 dot com crisis, 2008 global financial crisis and 2020 COVID crisis. We also present data indicating that 401(k) withdrawals are uncorrelated with market returns, which shows that 401(k) accounts are not subject to heightened liquidity pressure in down markets. We evaluate the effects of historical withdrawal patterns on a range of potential allocations to private assets within an investment option that is aligned with prevailing market practices, with allocations of up to 33%, consistent with the upper end of allocations observed in the market. The analysis demonstrates that a 401(k) plan investment option that allocates up to one third of its assets to private assets through evergreen funds could continue to provide daily liquidity to 401(k) investors, without relying on *any* liquidity from the evergreen fund itself.

These findings together show that incorporating private equity and credit assets into 401(k) plans through evergreen funds can be achieved in a manner that preserves investor protections and plan functionality and supports daily liquidity and broad diversification for 401(k) plan participants while providing plan participants with strong expected risk-adjusted returns.

SECTION I: EXPANDING RETIREMENT ACCESS TO PRIVATE MARKETS THROUGH EVERGREEN FUNDS

Evergreen funds are investment vehicles that invest in alternative assets, including private equity, private credit, real estate, and infrastructure, operate continuously without a fixed end date, and continuously raise new capital and make new investments.[35] This is unlike traditional alternative asset funds, which have a set lifespan (often around 10 years for private equity funds and 5-8 years for private credit funds) after which the fund liquidates.[36]

Evergreen fund structures are widely expected to be the structure used to integrate private equity and private credit into 401(k) accounts.[37] We focus on private equity and private credit because they have been the primary focus of prior Committee research calling for expanded retirement account access to alternative assets, although we have also supported broader access to other alternative asset classes.[38] Our report focuses on how evergreen fund structures can provide access to private equity and private credit strategies by making direct equity and lending investments in private companies or investing in other private equity or credit funds.

Section I first overviews the basics of the evergreen fund structure. We then show how evergreen funds providing private equity and credit investment exposure can be integrated into 401(k) investment options consistent with the ERISA safe harbor proposed by the DOL for the incorporation of alternative assets into 401(k) accounts (the "**DOL Safe Harbor**").

A. Overview of the Evergreen Fund Market

Evergreen funds offer exposure to private equity and credit strategies by pooling interests in multiple private equity and credit investments. Many evergreen funds do so by making direct equity and credit investments in private markets. Others – known as "funds of funds" – obtain this exposure by investing in other underlying private equity and credit funds.[39]

Evergreen fund structures are particularly well suited to incorporation into 401(k) investment options because their operating structure facilitates a stable and continuous allocation to private

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[35] KKR, *What is an Evergreen Fund*, https://www.kkr.com/wealth/alternatives-unlocked/evergreen-fund (last visited May 28, 2026).

[36] GOODWIN PROCTOR, *What Is the Typical Life Cycle of a Closed-End Fund?* (Nov. 13, 2024), https://www.goodwinlaw.com/en/insights/publications/2024/11/insights-practices-pif-how-long-do-closed-ended-funds-last.

[37] *See*, *e.g.*, INVESTMENT & WEALTH INSTITUTE, *Investment & Wealth Review – The Last Mile: Alternatives in Defined Contribution Plans* (Aug. 10, 2025), https://investmentsandwealth.org/advisor-publications/blog/the-last-mile-alternatives-in-defined-contribution-plans; IQEQ, *Compliance Implications of Evergreen Funds in 401(k) Plans Under the Trump Administration's Drive for Broader Alternative Investments* (Nov. 17, 2025), https://iqeq.com/insights/compliance-implications-of-evergreen-funds-in-401k-plans-under-the-trump-administrations-drive-for-broader-alternative-investments.

[38] *See*, *e.g.*, COMMITTEE ON CAPITAL MARKETS REGULATION, *Expanding Opportunites for Investors and Retirees: Private Equity* (Nov. 2018), https://capmktsreg.org/wp-content/uploads/2022/11/Private-Equity-Report-FINAL-1-1.pdf; CCMR 2025 Report.

[39] FINANCIAL INDUSTRY REGULATORY AUTHORITY, *What Are Funds of Funds* (Jan. 13, 2026), https://www.finra.org/investors/insights/funds-of-funds; *see*, *e.g.*, AMG PANTHEON MASTER FUND, LLC, *infra* note 80.

markets within a diversified multi-asset portfolio. This contrasts with traditional drawdown fund structures, in which capital is deployed incrementally through capital calls over multiple years, making it more difficult to maintain a stable private market allocation and immediate investment exposure within a 401(k) framework.[40]

Because private equity and credit investments typically have multi-year holding periods, non-traded evergreen fund structures provide periodic, rather than daily, redemption rights to their shareholders.[41] This liquidity structure is meant to protect shareholders by avoiding forced asset sales in order to satisfy redemption requests and instead allow the fund to generate strong returns on its longer-term investment strategies. It reflects the bargain offered to investors to earn a premium on their investments compared to more liquid investments.[42] Evergreen funds structured as "interval funds," non-traded real estate investment trusts ("**REITs**"), or non-traded business development companies ("**BDCs**") commit to redeem up to a specified percentage of the fund's net asset value (typically 3%-5%) every quarter (or less commonly, semi-annually or annually),[43] whereas those structured as "tender offer" funds conduct periodic repurchase offers on a discretionary basis.[44] They are able to provide this periodic liquidity by holding a portion of their portfolios (typically 8%-15%) in liquid assets.[45] Some evergreen funds offered only to institutional investors may allow for periodic redemption requests that are satisfied based on available liquidity without committing to periodic liquidity in a manner that requires a liquidity sleeve.

The market for evergreen funds has grown rapidly. As of Q4 2025, U.S. evergreen funds held approximately $535 billion in assets under management (consisting of $193 billion in non-traded BDCs, $117 billion in tender offer funds, $132 billion in interval funds, and $93 billion in non-traded REITs), up from approximately $262 billion in 2022.[46]

401(k) accounts are legally eligible to invest in evergreen funds that pursue private equity and credit strategies. However, as the Committee has explained in past reports, the sponsors of 401(k) plans rarely provide investment options with such exposure because of the risk of costly litigation alleging that providing such an option violates the plan sponsor's fiduciary duty of prudence under ERISA.[47] The DOL Safe Harbor is designed to reduce this litigation risk for 401(k) plan sponsors

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[40] GOLDMAN SACHS, *Private Markets Developments for Retirement Plans* (Aug. 1, 2025).
[41] *See*, *e.g.*, SECURITIES AND EXCHANGE COMMISSION, *Interval Fund*, https://www.investor.gov/introduction-investing/investing-basics/glossary/interval-fund (last visited May 29, 2026).
[42] MOONFARE, *Inside an Evergreen Fund: Redemptions, gating and liquidity explained* (Apr. 2, 2026), https://www.moonfare.com/blog/inside-evergreen-fund.
[43] 17 CFR § 270.23c-3; *see also* David H. Roberts, *The Past, Present, and Future of the Non-Traded NAV REIT Structure* (Jan. 27, 2026), https://www.goodwinlaw.com/en/insights/publications/2026/01/alerts-realestate-the-past-present-and-future; Brad Green et al., *Funds in Focus 2018: Private Investment Funds Annual Review Conference*, PROSKAUER ROSE, https://prfirmpwwwcdn0001.azureedge.net/azstgacctpwwwct0001/uploads/4695e8714144b3a1f94a3f51daa1075c.pdf.
[44] 17 CFR § 240.13e-4.
[45] Michael Ewens and Jacob Faber, *Liquid Claims on Illiquid Assets: The Economics of Retail Access to Private Markets*, SSRN Working Paper (Apr. 20, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6524419.
[46] MORNINGSTAR, *The Rise of Evergreen Funds: A New Way to Access Private Markets* (Apr. 30, 2026), https://www.morningstar.com/business/insights/blog/rise-of-evergreen-funds
[47] CCMR 2025 Report.

that offer investment exposure to alternative assets, including private equity and credit, as part of a multi-asset fund allocation strategy.[48]

B. How Evergreen Funds Can Incorporate Private Asset Investments into 401(k) Accounts

a. The master fund vehicle

A substantial and growing percentage of 401(k) investment options are structured as collective investment trusts ("**CITs**"). CITs are trust vehicles that can only be offered to certain retirement plans.[49] They have been used for decades as a core investment structure for a broad range of traditional 401(k) investment options, including target date funds, equities, fixed income and stable value.[50] CITs must have a trustee that is a nationally chartered bank or a state-chartered bank subject to comparable state oversight.[51] They are also commonly offered by non-bank asset managers that partner with a bank, which allows 401(k) plans to benefit from non-bank asset managers working under the supervision of a bank. In these structures, the bank maintains and administers the CIT as its legal trustee, while the asset manager is responsible for portfolio management and investment selection, subject to the trustee's oversight.[52]

As of 2024, about 37% of 401(k) account assets were invested in investment options structured as CITs.[53] The remainder of 401(k) assets are predominantly invested in investment options structured as open-end registered investment funds ("**open-end funds**").[54] CITs are widely expected to become the primary structure through which private asset investments are incorporated into 401(k) plans.[55] This is largely because open-end funds are subject to a 15% limit on illiquid assets, including private assets.[56] However, targeted private asset allocations for diversified multi-asset vehicles may exceed 15%. This makes open-end funds a less suitable vehicle for investment options with exposure to private assets than CITs. CITs also generally operate with low administrative costs, which can help reduce costs for 401(k) participants.[57]

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[48] DEPARTMENT OF LABOR, *US Department of Labor proposes landmark rule to democratize access to alternative investments in 401(k) plans* (Mar. 30, 2026), https://www.dol.gov/newsroom/releases/ebsa/ebsa20260330.

[49] NEUBERGER BERMAN, *Collective Investment Trusts: What You Need to Know* (2019), https://www.nb.com/-/media/NB/Article-Assets/s0134_0319_cits_what_you_need_to_know_brochure.pdf.

[50] *Id*.

[51] *Id*.; 12 C.F.R. § 9.18(a).

[52] OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Collective Investment Funds and Outsourced Arrangements (OCC Bulletin 2011-11)* (Mar. 29, 2011), https://www.occ.gov/news-issuances/bulletins/2011/bulletin-2011-11.html.

[53] INVESTMENT COMPANY INSTITUTE, *Investment Company Fact Book* (2026) at Fig. 3.11, https://www.icifactbook.org/pdf/2026-factbook.pdf

[54] INVESTMENT COMPANY INSTITUTE, *The Economics of Providing 401(k) Plans: Services, Fees, and Expenses, 2024* at 7 (Jul. 2025), https://www.ici.org/system/files/2025-07/per31-05.pdf.

[55] CERULLI ASSOCIATES, *Unlocking the Potential of Private Investments in Defined Contributions Plans* (Sept. 17, 2025), https://www.cerulli.com/resource/custom-research-unlocking-the-potential-of-private-investments-in-defined-contribution-plans.

[56] 17 C.F.R. § 270.22e-4(b)(1)(iv).

[57] Rob Barnett et al., *Collective Investment Trusts: An Important Piece in the Retirement Planning Puzzle* at 4, WILMINGTON TRUST (2021), https://www.sparkinstitute.org/wp-content/uploads/2021/10/RICS-CIT-White-Paper.pdf.

A master fund organized as a CIT provides 401(k) plan investors with two layers of regulatory protections. First, there is ERISA's fiduciary standards, which apply to the 401(k) plan fiduciary's selection and monitoring of a CIT master fund and to the CIT's trustees. Second, CIT trustees are subject to oversight under Office of the Comptroller of the Currency ("**OCC**") regulations or equivalent state banking regulation. These protections will apply to CIT master funds that incorporate private asset exposure. We summarize the main features of each framework below.

ERISA Fiduciary Obligations

ERISA requires plan fiduciaries to select and monitor investment options prudently.[58] Fiduciaries must also provide participants with disclosures about an investment option's portfolio composition and the value of the participant's interest in the investment option.[59] ERISA requires 401(k) plan sponsors to ensure reasonableness of fees charged by 401(k) investment options, which, as provided in the Proposal, would be determined based on target returns net of fees.[60] All of these protections apply to the selection and monitoring of all investment options, including those that provide private markets exposure, regardless of the master fund's legal structure.

In addition, because CITs are generally composed of retirement plan assets, the CIT's trustees are also subject to ERISA's stringent duties of loyalty and prudence,[61] as well as the duty to avoid non-exempt prohibited transactions, further reinforcing oversight.[62] Although not legally required, CITs also typically provide 401(k) investors with daily redemption rights and disclosures as to the CIT's holdings as plan sponsors generally demand these features as part of the plan sponsor's ERISA obligations.[63]

Banking Regulatory Requirements

CIT trustees must also comply with fiduciary obligations to investors administered by the OCC for nationally chartered banks and state banking authorities for state-chartered banks.[64] These duties are codified in OCC regulations and analogous state laws, which require the trustee to act solely in the interest of participating plans, maintain prudent investment and valuation processes, and implement written governance policies governing the operation of the trust.[65]

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[58] 29 U.S.C. §1104; DEPARTMENT OF LABOR, *Information Letter 06-03-2020* (Jun. 3, 2020), https://www.dol.gov/agencies/ebsa/about-ebsa/our-activities/resource-center/information-letters/06-03-2020.

[59] 29 CFR §2550.404a-5; INTERNAL REVENUE SERVICE, *401(k) resource guide - Plan participants - Summary plan description* (last updated Nov. 16, 2025), https://www.irs.gov/retirement-plans/plan-participant-employee/401k-resource-guide-plan-participants-summary-plan-description.

[60] Proposal at 16,088.

[61] 29 U.S.C. §1104; DEPARTMENT OF LABOR, *Fiduciary Responsibilities* (last visited May 21, 2026), https://www.dol.gov/general/topic/retirement/fiduciaryresp.

[62] 29 U.S.C. §1106.

[63] STATE STREET, *Collective Investment Trusts: Lower Costs and Greater Flexibility* (Apr. 14, 2023), https://www.ssga.com/us/en/institutional/insights/collective-investment-trusts; NEUBERGER BERMAN, *supra* note 49.

[64] OFFICE OF THE COMPTROLLER OF THE CURRENCY, *Comptroller's Handbook: Collective Investment Funds* (May 2014), https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/collective-investment-funds/pub-ch-collective-investment.pdf.

[65] *See id.*; 12 C.F.R. § 9.18; *see*, *e.g.*, Mass. Gen. Laws ch. 167G, §3.

OCC regulations require that a CIT operate pursuant to a written trust document approved by the trustee's board of directors, with detailed provisions addressing investment authority, valuation methodologies, fees and expenses, participant admissions and withdrawals, auditing, and the allocation of gains and losses.[66] These regulations further require the trustee to exercise exclusive management and fiduciary oversight of the CIT, maintain proportionate participant interests, and conduct regular asset valuations.[67] More broadly, OCC fiduciary regulations impose requirements relating to conflicts of interest, annual reviews of fiduciary accounts, custody of fiduciary assets, recordkeeping, internal controls, and independent audits.[68]

Under OCC regulations, the bank trustee and investment managers of a CIT must maintain written valuation policies and procedures governing the pricing of portfolio assets, including assets without readily available market quotations.[69] These procedures typically require the use of fair value methodologies, periodic review and testing of valuation practices, oversight by fiduciary committees and compliance personnel, input from independent valuation advisers, and independent annual audits.[70] Plan fiduciaries are also responsible under ERISA for prudently selecting and monitoring CIT investment options.[71] Together, these regulatory and governance frameworks help protect investors by promoting accurate pricing, consistent treatment of entering and exiting participants, and ongoing oversight of valuation processes.

b. Adding evergreen funds to a 401(k)-master fund

401(k) multi-asset master funds typically construct their portfolios by investing in other investment vehicles that provide exposure to desired asset classes ("**underlying funds**").[72] For example, multi-asset funds typically obtain exposure to U.S. public equity markets by investing in underlying funds that provide exposure to domestic equity indices like the S&P 500 and obtain exposure to domestic public debt markets by investing in underlying funds that provide exposure to domestic debt indices like the Bloomberg U.S. Corporate Bond Index.

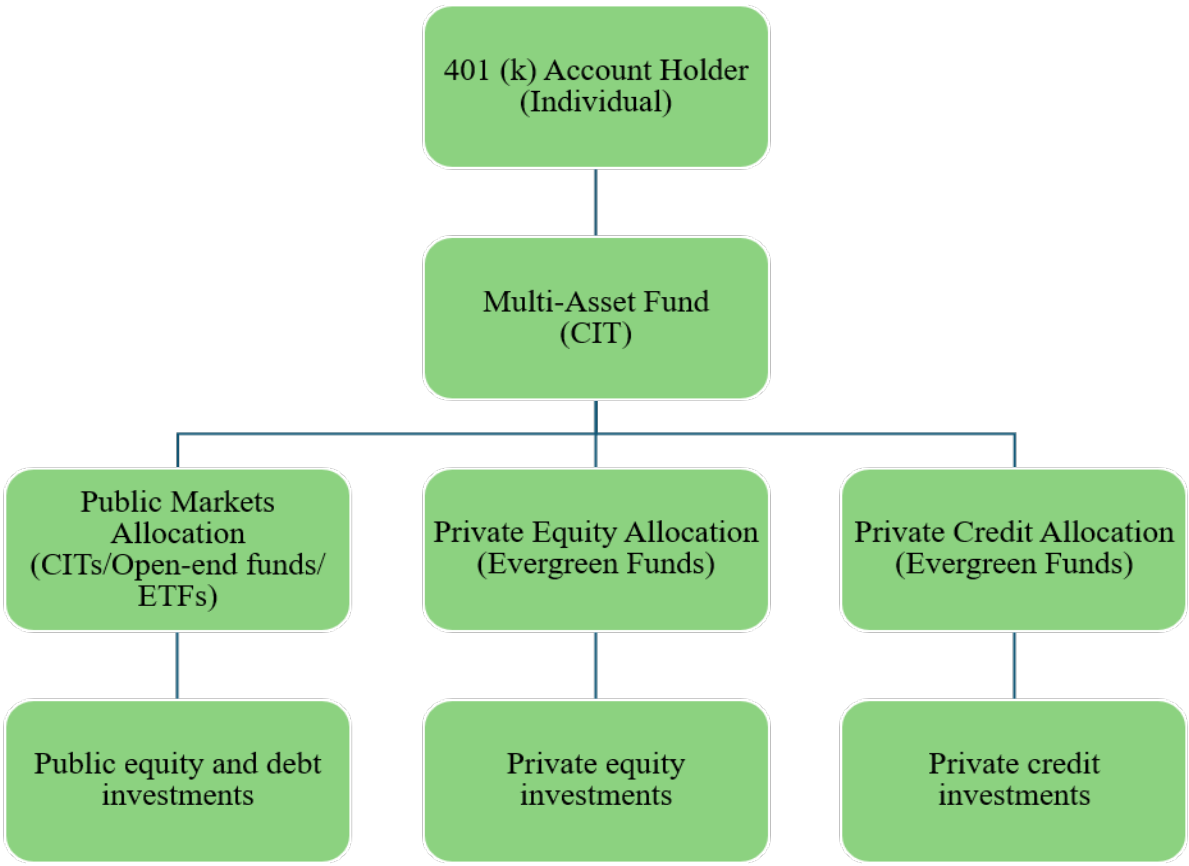
Constructing a multi-asset portfolio in this way allows the fund to efficiently deploy its capital and adjust its portfolio because the multi-asset fund does not need to purchase and sell thousands of individual equity and debt investments. The multi-asset fund can instead subscribe for and redeem interests in the underlying funds that constitute its portfolio as needed to achieve desired portfolio adjustments.[73] A 401(k)-master fund structure can similarly add an allocation to private equity and credit strategies by investing in one or more evergreen funds. In this way the evergreen fund

[66] 12 C.F.R. §9.18 (b)(1).
[67] 12 C.F.R. §9.18 (b)(2)-(4).
[68] 12 C.F.R. §9.18 (b)(8); 12 C.F.R. §9.6 (c); 12 C.F.R. §9.13; 12 C.F.R. §9.8; 12 C.F.R. §9.5; 12 C.F.R. §9.18(b)(6).
[69] 12 C.F.R. §9.18(b).
[70] *Id*.
[71] *See* 29 U.S.C. §1104; Tibble v. Edison International, 575 U.S. 523 (2015).
[72] SECURITIES AND EXCHANGE COMMISSION, *Target Date Funds – Investor Bulletin*, https://www.investor.gov/introduction-investing/general-resources/news-alerts/alerts-bulletins/investor-bulletins/target-date-funds-investor-bulletin (last visted May 29, 2016).
[73] *Id*.

manager also provides specialized expertise in sourcing, selecting, and managing the fund's private market investments exposures within specific strategies.

Figure 1 illustrates this basic investment structure where a master fund vehicle obtains exposure to private equity and credit investments by allocating a portion of its assets into one or more evergreen funds.

Figure 1: 401(k) Investment Option Integrating Private Markets Exposure via Evergreen Funds



C. Evergreen Fund Market Practices and Regulatory Protections

Section C explains how existing market practices and regulatory protections in the evergreen fund market apply to: (a) performance and fees, (b) disclosure, (c) valuation, and (d) liquidity. We also review empirical evidence indicating that these market practices and regulatory frameworks are functioning effectively for evergreen fund investors, thus illustrating their potential to enhance outcomes for 401(k) plan participants.

We note that evergreen funds may adopt a variety of legal and regulatory structures, and our analysis does not presuppose a particular structure. For example, an evergreen fund can take the form of a privately offered fund, a fund registered under the Investment Company Act of 1940, or a CIT. For purposes of this discussion we focus on the regulatory requirements that are most

commonly applicable to the investment advisers across all such structures, particularly those under the Investment Advisers Act of 1940 (the "**Advisers Act**"). These evergreen fund-level regulatory protections operate in addition to the ERISA and bank regulatory frameworks applicable to the 401(k) master fund structures discussed above.

a. Disclosure

The Advisers Act imposes anti-fraud obligations and liability to investors for misleading disclosures and evergreen fund advisers are subject to SEC examination and enforcement authority for misleading disclosures.[74] The Advisers Act also requires private equity and private credit fund advisers registered with the SEC to provide regulators with detailed information about the funds they manage.[75] In addition, through Form ADV, all private fund advisers publicly disclose information about their business, ownership, clients, investment strategies, assets under management, fee structures, conflicts of interest, and disciplinary history.[76]

Additionally, in the case of evergreen funds registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940, evergreen funds that provide exposure to private equity and private credit typically provide investors with regular and detailed disclosures regarding the fund's investment strategy, portfolio composition, risks, performance, expenses, and fees. These publicly filed quarterly and otherwise regular periodic disclosures encompass independently audited annual financial statements prepared according to U.S. Generally Accepted Accounting Principles ("**U.S. GAAP**") as well as annual and semiannual shareholder reports.[77] Shareholder reports include a schedule of investments providing investment-specific information regarding portfolio holdings, including fair value, cost, and percentage of net assets, as well as portfolio-level information such as industry and sector exposures. For direct private equity investments, disclosures typically identify the investment or portfolio company or segment of portfolio companies and report cost and fair value. For direct private credit investments, disclosures

[74] Kevin Neubauer and Kevin Cassidy, *Evergreen and Semi-Liquid Private Credit Funds for Institutional Investors*, GLOBAL LEGAL INSIGHTS (Apr. 11, 2025), https://www.globallegalinsights.com/practice-areas/private-credit-laws-and-regulations/evergreen-and-semi-liquid-private-credit-funds-for-institutional-investors; 17 CFR § 275.206(4)-8.

[75] 17 C.F.R. § 275.204(b)-1.

[76] *See* SECURITIES AND EXCHANGE COMMISSION, *Form ADV* (last accessed May 21, 2026), https://www.sec.gov/filees/formadv.pdf.

[77] Evergreen funds are required to make public filings under the Securities Exchange Act of 1934 if the fund reaches 2,000 holders of record of a class of their equity securities or 500 holders of record that are not accredited investors. *See* 17 C.F.R. § 240.12g-1(b)(1).
See also, *e.g.*, PARTNERS GROUP PRIVATE EQUITY (MASTER FUND), LLC, *Form N-2* (Oct. 27, 2025), https://www.sec.gov/Archives/edgar/data/1447247/000139834425019857/fp0095819-1_n2a.htm; PARTNERS GROUP PRIVATE EQUITY (MASTER FUND), LLC, *Annual Report* (Mar. 31, 2025), https://www.sec.gov/Archives/edgar/data/1447247/000139834425011615/fp0093755-3_ncsr.htm; PRIVATE EQUITY (MASTER FUND), LLC, *Semi-Annual Report* (Sept. 30, 2019), https://www.sec.gov/Archives/edgar/data/1447247/000139834419021851/fp0047809_ncsrs.htm; ARES PRIVATE MARKETS FUND, *Prospectus* (Jul. 31, 2024), https://www.sec.gov/Archives/edgar/data/1876006/000110465925000844/tm251684d1_424b3.htm; ARES PRIVATE MARKETS FUND, *Annual Report* (Mar. 31, 2025), https://www.sec.gov/Archives/edgar/data/1876006/000110465925056793/tm2516981d1_ncsr.htm; ARES PRIVATE MARKETS FUND, *Semi-Annual Report* (Sept. 30, 2025), https://www.sec.gov/Archives/edgar/data/1876006/000110465925118846/tm2532411d1_ncsrs.htm.

generally include the borrower, investment type, interest rate, maturity date, cost basis, fair value, and other material terms where applicable.[78]

Similar disclosure practices will apply to evergreen funds structured as CITs. CIT trustees must prepare annual financial reports based on the fund's audited financial statements. The report must disclose the fund's fees and expenses, provide a list of investments showing both cost and current market value, and include summaries of purchases, sales, income, disbursements, and any investments in default. The report must also be made available to 401(k) plan fiduciaries. [79]

For evergreen funds that operate as funds of funds, disclosures generally identify the underlying funds and report the evergreen fund's cost and fair value of its interest in each fund.[80] These disclosures are typically prepared in accordance with U.S. GAAP and fair value accounting principles and may be supplemented by industry reporting and valuation practices, including guidance developed by the American Institute of Certified Public Accountants ("**AICPA**") and the Institutional Limited Partners Association ("**ILPA**").[81]

b. Fees and performance

i. *Regulation and market practices*

The regulatory frameworks applicable to evergreen funds backstop market competition through fiduciary standards and regulatory enforcement authority that prohibit and impose liability for abusive or misleading fee practices.[82] The Advisers Act also imposes fiduciary duties on investment advisers with respect to compensation practices and conflicts of interest and authorizes SEC enforcement against misleading or abusive fee practices.[83]

Competitive market dynamics place downward pressure on manager fees in the evergreen fund market and support net-of-fee investment performance that preserves the benefits of private equity and private credit investments for 401(k) investors. These competitive dynamics similarly contribute to the broader market trend toward lower management fees and more investor-favorable fee structures observed in private markets, which have resulted in historically low management

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[78] *See, e.g.*, APOLLO DEBT SOLUTIONS BDC, *Form 10-K* (Dec. 31, 2025), https://www.sec.gov/Archives/edgar/data/1837532/000119312526197873/ads_-_123125_10k_ars_fil.pdf, BLUE OWL CREDIT INCOME CORP., *Form 10-K* (Dec. 31, 2025), https://www.sec.gov/Archives/edgar/data/1812554/000181255426000011/orcic-20251231.htm; CLIFFWATER CORPORATE LENDING FUND, Form N-CSR: Consolidated Schedule of Investments (Mar. 31, 2025), https://www.sec.gov/Archives/edgar/data/1735964/000121390025052571/ea0241342-01_ncsr.htm.

[79] 12 C.F.R. § 9.18(b)(6)(ii).

[80] *See, e.g.*, AMG PANTHEON MASTER FUND, LLC, *Semi-Annual Report* (Sept. 30, 2024), https://www.sec.gov/Archives/edgar/data/1609212/000119312524273351/d893056dncsrs.htm.

[81] *See*, *e.g.*, INSTITUTIONAL LIMITED PARTNERS ASSOCIATION, *ILPA Reporting Template*, https://ilpa.org/industry-guidance/templates-standards-model-documents/ilpa-templates-hub/ilpa-reporting-template/ (last visited May 28, 2026).

[82] *See*, *e.g.*, SECURITIES AND EXCHANGE COMMISSION, *Commission Interpretation Regarding Standard of Conduct for Investment Advisers*, 84 FED. REG. 33669 (Jul. 12, 2019), https://www.federalregister.gov/documents/2019/07/12/2019-12208/commission-interpretation-regarding-standard-of-conduct-for-investment-advisers.

[83] *Id*.

fees across the market as of 2025.[84] In the case of evergreen funds that operate as funds-of-funds, fund managers apply extensive due diligence and research processes to identify and obtain access to private funds with above average targeted net-of-fee performance.[85]

ii. Evidence of effectiveness

As we review below, several industry analyses and academic studies provide strong evidence that the market forces and regulatory protections reviewed above result in competitive fees and strong net-of-fee investment performance for evergreen fund investors and that evergreen funds can in fact *enhance* the net performance and diversification benefits of private assets.

In 2025 CCMR reviewed the extensive empirical evidence of strong net risk-adjusted performance and diversification benefits of private equity and credit asset classes that evergreen funds invest in.[86] Additional evidence confirms that these advantages extend to evergreen funds. In particular, unlike traditional private fund structures, in which investor capital is drawn down and invested gradually, evergreen funds allow investors to deploy all of their committed capital immediately, enabling a larger portion of investor assets to remain invested and compounding over the long term. A recent economic analysis illustrates how this structural feature translates into higher returns for investors. Brown and Volckmann (2025) modeled the net-of-fee investment performance of evergreen funds over a 12-year holding period and found that evergreen funds achieved net-of-fee returns that are comparable to, and sometimes exceed, the returns to investing in traditional private equity funds.[87] The analysis attributes this strong performance to an evergreen fund's ability to provide individual investors with a more stable allocation to the private fund asset class over time compared to direct investing in a portfolio of private funds, where capital is typically deployed incrementally over multiple years. Evergreen funds can thus also give investors immediate exposure to a diverse array of private equity and credit investments at different stages in their lifecycles, some of which are closer to realization.[88] By contrast, investing through traditional funds generally requires investors to wait at least 3-5 years for any investments to be realized.

Empirical evidence indicates additional advantages of evergreen funds. A 2025 analysis of historical data from the evergreen fund market found that a diversified portfolio of private equity fund assets held through evergreen funds enhanced investment diversification and limited

[84] Leslie Picker, *Private Equity Management Fees Hit New Low in 2025*, CNBC (Jan 6, 2026), https://www.cnbc.com/2026/01/06/private-equity-management-fees-new-low.html; *See also* COMMITTEE ON CAPITAL MARKETS REGULATION, *A Competitive Analysis of the U.S. Private Equity Fund Market* (Apr. 2023), https://capmktsreg.org/wp-content/uploads/2023/04/CCMR-Private-Equity-Funds-Competition-Analysis-04.11.20231.pdf.

[85] Darren Spencer, *The power of a fund-of-funds approach in private markets*, RUSSELL INVESTMENTS (Jul. 20, 2023), https://russellinvestments.com/us/blog/fof-private-markets-approach.

[86] CCMR 2025 Report.

[87] Greg Brown and William Volckmann, *Evergreen vs. Drawdown Funds: Risk, Returns and Cash Flows*, INSTITUTE FOR PRIVATE CAPITAL (Jun. 11, 2025), https://uncipc.com/wp-content/uploads/2025/11/Evergreen_vs_Drawdown_Jun-11-2025.pdf.

[88] *See also* MORGAN STANLEY, *supra* note 13.

investors' downside exposure during periods of financial stress.[89] The evergreen fund structure also allows managers to continually adjust the fund's liquidity profile to respond to evolving market conditions and investor liquidity needs.[90]

c. Valuation

Valuation of an evergreen fund's assets is critical to ensuring fair treatment among investors entering and exiting the fund. If assets are overvalued, new investors bear the cost by purchasing shares at inflated prices, reducing their expected returns. If assets are undervalued, redeeming investors are disadvantaged by receiving less than fair value for their shares. These risks raise concerns about potential mispricing, but as discussed below, both regulatory requirements and market dynamics work to mitigate valuation concerns and promote accurate and consistent pricing. Because private assets generally do not trade on public exchanges, the daily market quotations that are used to value publicly traded assets are unavailable to value the underlying private equity and credit funds and underlying companies and loans that evergreen funds invest in.[91] However, evergreen funds have developed rigorous valuation procedures designed to produce accurate and consistently applied valuations notwithstanding the absence of public market pricing.

i. Regulation and market practices

Regulatory frameworks applicable to evergreen funds reinforce market-based valuation discipline through fair value requirements, disclosure obligations, anti-fraud protections, and SEC oversight.[92] Depending on the fund's structure, these frameworks may also require the adoption of written valuation policies and procedures, regular periodic review of valuation methodologies by an independent audit committee or a valuation committee, review by one or more independent valuation advisers, independent annual audits of financial statements, and detailed disclosure regarding valuation methodologies and material valuation risks in offering documents and periodic reports.[93] Evergreen fund advisers are also subject to anti-fraud provisions under the Advisers Act,

[89] VANGUARD, *Benefits of a Fund-of-Funds Strategy in Private Equity* (Sept. 2025), https://corporate.vanguard.com/content/dam/corp/research/pdf/benefits_of_a_fund_of_funds_strategy_in_private_equity.pdf.

[90] *See* MOONFARE, *supra* note 42.

[91] Currently, evergreen funds providing exposure to private equity or private credit are not exchange-listed. However, the SEC's 2025 policy change allowing 1940 Act-registered funds that invest substantially in private funds to be offered to non-accredited investors could potentially facilitate the exchange-listing of some evergreen funds. *See* MSCI, *The Ascendance and Implications of Evergreen Funds in Private Markets* (Mar. 3, 2026), https://www.msci.com/research-and-insights/blog-post/the-ascendance-and-implications-of-evergreen-funds-in-private-markets *and* SECURITIES AND EXCHANGE COMMISSION, *ADI 2025-16: Registered Closed-End Funds of Private Funds* (Aug. 15, 2025), https://www.sec.gov/about/divisions-offices/division-investment-management/fund-disclosure-glance/accounting-disclosure-information/adi-2025-16-registered-closed-end-funds-private-funds.

[92] 17 C.F.R. § 270.2a-5; 17 C.F.R. § 275.206(4)-8.

[93] SECURITIES AND EXCHANGE COMMISSION, *Good Faith Determinations of Fair Value (File No. S7-07-20)* (Dec. 3, 2020), https://www.sec.gov/files/rules/final/2020/ic-34128.pdf; SECURITIES AND EXCHANGE COMMISSION, *Form N-2* (last accessed May 21, 2026), https://www.sec.gov/files/formn-2.pdf; 17 C.F.R. § 275.206(4)-2(b)(4).

which prohibit the provision of materially misleading valuations to investors.[94] In addition, fund valuation processes are subject to SEC examination and enforcement authority.[95]

Market discipline also plays an important role: competition for capital and reputational considerations create strong incentives for private fund advisers to produce credible valuations, providing an effective check against manipulation.[96]

We now review the principal valuation practices commonly used in the evergreen fund market. Valuations are calculated by the fund manager's internal valuation teams, which frequently have access to more detailed information about private assets compared to the information available to the public or third parties. Valuation teams frequently choose to incorporate third-party appraisals by professional valuation firms as part of this process as a check on accuracy.[97] Independent valuation firms employ professionals with recognized valuation credentials and apply methodologies consistent with valuation standards maintained by the Financial Accounting Standards Board.[98] Independent audit committees and valuation committees may also provide oversight over these valuations and related processes.

Valuations are then subject to review as part of the fund's independent annual audit. Evergreen funds document and disclose valuation back testing, which compares prior fair value estimates of portfolio investments with subsequent observable outcomes such as transaction prices, realizations, or updated market inputs.[99] This process helps assess the accuracy and consistency of the fund's valuation methodologies over time and is used by independent audit committees, independent valuation advisers, independent auditors, and regulators to evaluate whether fair value determinations appropriately reflected available information at the time they were made.[100]

In the case of private credit assets, many private credit instruments are rated by major credit rating agencies,[101] and secondary market trading activity in private credit has grown substantially,[102]

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[94] 17 C.F.R. § 275.206(4)-8.

[95] Michael Hackett et al., *Putting a Premium on Illiquidity: Some Reflections on the SEC's Scrutiny of Valuation Practices and Disclosures*, PROSKAUER ROSE LLP (Aug. 22, 2016), https://www.jdsupra.com/legalnews/putting-a-premium-on-illiquidity-some-22819/.

[96] *See*, *e.g.*, Gregory W. Brown et al., *Do Private Equity Funds Manipulate Reported Returns*, 132 JOURNAL OF FINANCIAL ECONOMICS 267 (2019), https://www.sciencedirect.com/science/article/abs/pii/S0304405X18303015.

[97] STANDARDS BOARDS FOR ALTERNATIVE INVESTMENTS, *Private Market Valuations: Governance, Transparency and Disclosure Guidelines* at 11-13 (Jan. 30, 2025), https://www.sbai.org/resource/private-market-valuations---governance-transparency-and-disclosure-guidelines.html.

[98] *See*, *e.g.*, BAKER TILLY, *Valuations*, https://www.bakertilly.com/services/valuations (last visited May 26, 2026).

[99] 17 CFR 270.18f-4; INDEPENDENT COMPANY INSTITUTE, *An Introduction to Fair Valuation* (2005), https://www.ici.org/system/files/attachments/05_fair_valuation_intro.pdf.

[100] *See* INTERNATIONAL PRIVATE EQUITY AND VENTURE CAPITAL VALUATION, *2025 Guidelines* at 20 (Dec. 2025), https://www.privateequityvaluation.com/Portals/0/Documents/Guidelines/2025%20IPEV%20Valuation%20Guidelines.pdf.

[101] *See*, *e.g.*, FITCH RATINGS, *Private Credit*, https://www.fitchratings.com/private-credit (last visited May 26, 2026); MOODY'S, *Private Monitored Private Placement Rating*, https://www.moodys.com/web/en/us/solutions/ratings/pmppr.html (last visited May 26, 2026); S&P GLOBAL, *Private Credit*, https://www.spglobal.com/ratings/en/research/private-markets/private-credit (last visited May 26, 2026).

[102] *See* Alfonso Ricciardelli, *Private Credit Secondaries: From Niche Strategy to Core Portfolio Tool*, CFA INSTITUTE, https://rpc.cfainstitute.org/blogs/enterprising-investor/2025/private-credit-secondaries-from-niche-strategy-to-core-portfolio-tool.

often approaching the scale of trading volumes seen in certain public credit markets.[103] Increased secondary market volume provides additional market-based reference points for evergreen funds' direct private credit interests and for the managers of private credit funds that evergreen funds invest in.[104] Evergreen fund managers of private credit typically apply rigorous multistage valuation procedures similar to those used in public debt markets, including fundamental underwriting analysis, ongoing credit and risk monitoring, and the use of broker quotes or recent transaction data to corroborate valuations. These processes are supported by extensive internal and third-party due diligence and, in many cases, independent valuation reviews.[105]

In the case of private equity assets, valuations are typically based on a combination of comparable public company multiples, recent transaction data, and discounted cash-flow analyses, supplemented by increasingly robust datasets on private market transactions and fund performance that provide additional benchmarks for valuation.[106] In addition, the private fund industry has developed widely adopted valuation standards. For example, the International Private Equity and Venture Capital Valuation Guidelines set valuation best practices that private funds apply for determining the fair value of their investments. These practices comply with both International Financial Reporting Standards and U.S. GAAP.[107]

The market infrastructure for the valuation of private assets has continued to improve over recent years, allowing evergreen funds to enhance the accuracy of their valuations. In particular, private markets increasingly provide frequent valuation reference points similar to those that exist in public markets that support daily valuation needs of 401(k) plans.[108] Fund managers determine these daily valuations based on recent performance of the fund itself, liquid market performance and the fund's correlation to liquid markets.

To aid fund managers, auditors and investors in benchmarking, there is also an increasingly large volume of historical data on private equity and private credit fund performance, including historical valuation volatility and frequency of write-downs of fund assets. These indices provide timely reference points for returns, valuation multiples, and market trends across comparable funds and transactions, allowing managers, auditors, and investors to assess whether returns and reported valuations are consistent with broader market conditions and peer performance.[109] The largest private markets data set now covers 50 years of performance history and over 200,000 individual

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[103] APOLLO GLOBAL MANAGEMENT, *Private Credit: Fact vs. Fiction* at 48 (Dec. 2025).

[104] INVESTMENT COMPANY INSTITUTE, *Valuation Governance Considerations for Private Credit Assets in Regulated Funds* (Apr. 2026), https://www.ici.org/system/files/2026-04/26-ppr-valuation-governance-for-private-credit-assets.pdf.

[105] *See*, *e.g.*, APOLLO DEBT SOLUTIONS BDC, *supra* note 78.

[106] *See*, *e.g.*, ARES PRIVATE MARKETS FUND, *Annual Report*, *supra* note 77.

[107] *See* INTERNATIONAL PRIVATE EQUITY AND VENTURE CAPITAL VALUATION, *2025 Guidelines* (Dec. 2025), https://www.privateequityvaluation.com/Portals/0/Documents/Guidelines/2025%20IPEV%20Valuation%20Guidelines.pdf.

[108] David A, Kirchner et al., *Practical Considerations for Retirement Plan Sponsors Evaluating Alternative Assets in 401(k)s*, ROPES & GRAY (Oct. 30, 2025), https://www.ropesgray.com/en/insights/podcasts/2025/10/practical-considerations-for-retirement-plan-sponsors-evaluating-alternative-assets-in-401ks.

[109] *See, e.g.*, MSCI, *Put Performance in Context with Private Asset Benchmarks*, https://www.msci.com/data-and-analytics/private-asset-solutions/benchmarking-private-asset-performance (last visited May 26, 2026); PREQIN, *Preqin Private Capital Indices,* https://www.preqin.com/data/preqin-benchmark-indices (last visited May 26, 2026).

funds.[110] In addition, evergreen vehicles provide extensive publicly available disclosure with respect to their underlying private asset holdings, such as the cost and fair value of each loan on its balance sheet, and therefore provide another helpful comparable data point for fund managers to compare private asset valuations.[111]

ii. Evidence of effectiveness

Evidence from the evergreen fund market including empirical academic analyses show that funds are successful in maintaining accurate and timely valuations of private equity and private credit assets. As discussed further below, this evidence indicates that a 401(k) account that incorporates an allocation to private assets through evergreen funds can maintain accurate and timely valuations of the 401(k) account's portfolio.

Empirical market evidence indicates that private equity assets are frequently realized at prices above their previously reported fair values, suggesting that reported valuations are generally conservative rather than inflated and reinforcing confidence in the integrity of prevailing valuation practices. An industry analysis of sales of portfolio assets by global buyout funds from 2019 to 2024 found that sales prices for the sold assets on average exceeded the manager's valuation of the asset one year before the sale (the "exit mark-up") by a substantial margin.[112] For example, in 2021, the median exit mark-up across all global buyout fund exits was 39%, meaning that the sale price was 1.39 times the fund manager's valuation of the asset.[113] Some have raised concerns that conservative valuations could harm 401(k) investors that exit an investment option with exposure to evergreen funds because the exiting investor receives a price for their interest that does not reflect the true higher value of the underlying assets.[114] However, evergreen funds generally hold interests in multiple investments that are realized periodically and maintain consistent valuation practices across those investments. Thus, even if undervaluation exists, investors in evergreen funds would "buy low" with respect to some assets when they enter the fund and "sell low" with respect to other assets when they exit. In other words, the investment return is not affected by an evergreen fund's valuation practices, so long as valuation practices do not change and capital deployment is relatively consistent.

Certain recent market data show that exit mark-ups have declined since 2021, and that in 2025 the sales of private equity assets on average reflected modest discounts to valuations.[115] However, evidence indicates that investors tend to identify and avoid managers that systematically inflate asset valuations. For example, Brown et al. (2017)[116] analyzed valuation practices across a sample of 2,071 U.S. private equity funds over a 35-year period. The analysis found overvaluation was

[110] PREQIN, *Private Market Data Sets*, https://wrds-www.wharton.upenn.edu/pages/about/data-vendors/preqin. (last visited May 29, 2026).
[111] *See*, *e.g.*, APOLLO DEBT SOLUTIONS BDC, *Form 10-K*, *supra* note 78.
[112] HAMILTON LANE, *Market Overview* at 32 (2025), https://explore.hamiltonlane.com/2025-market-overview/home.
[113] *Id*.
[114] *See*, *e.g.*, Moonfare, *supra* note 42; Sloan Smith, *Is the Growth of Evergren Funds Good or Bad for Private Markets*, ADVISOR PERSPECTIVES (Oct. 28, 2025).
[115] Rod James, *PE firms started selling companies at a loss last year*, PITCHBOOK (May 14, 2026), https://pitchbook.com/news/articles/pe-firms-started-selling-companies-at-a-loss-last-year.
[116] Brown et al., *supra* note 96.

confined to a small minority of funds, and that investors detect this practice and do not invest in future funds raised by managers that inflate valuations. The analysis also showed that valuation accuracy improved across the sample of funds over time. Market pressures are, therefore, unlikely to allow such overvaluations to persist or become widespread. Chakraborty and Ewens (2018),[117] Barber and Yasuda (2017),[118] Harris et al. (2023),[119] Hüther (2022),[120] and Kaplan et al. (2025)[121] provide similar evidence indicating that valuation discrepancies are generally associated with individual manager practices rather than a systemic market-wide problem.

d. Liquidity

i. Regulation and market practices

Evergreen funds are often structured as interval funds and tender-offer funds, meaning that they provide investors with periodic liquidity by offering to repurchase investors' shares at fixed periodic intervals (in the case of interval funds, REITs and BDCs) or at the times determined by the fund's board (in the case of tender offer funds). By contrast, investors in most private equity and private credit funds typically have very limited redemption rights and may be unable to access their capital for many years.[122] The securities laws and SEC regulations require evergreen funds structured as interval and tender offer funds to adhere to their disclosed liquidity commitments, including periodic repurchase policies for interval funds[123] and board-authorized tender offers for tender-offer funds.[124] Such funds must disclose their repurchase policies[125] or tender-offer terms in registration statements and applicable periodic or tender-offer filings,[126] including the size and timing of repurchase offers. The SEC has brought enforcement actions where funds or advisers misled investors about liquidity or redemption practices.[127]

Moreover, experienced evergreen fund managers continually monitor a fund's liquidity position and redemption activity to identify potential liquidity pressures in advance and manage the fund's

[117] Indraneel Chakraborty & Michael Ewens, *Managing Performance Signals Through Delay: Evidence from Venture Capital*, 64(6) MANAGEMENT SCIENCE 2875 (2018).
[118] Brad M. Barber and Ayako Yasuda, *Interim Fund Performance and Fundraising in Private Equity*, 124 JOURNAL OF FINANCIAL ECONOMICS 172 (2017).
[119] Robert S. Harris et al., *Has Persistence Persisted in Private Equity? Evidence from Buyout and Venture Capital Funds*, 81 JOURNAL OF CORPORATE FINANCE 102,361 (2023).
[120] Niklas Hüther, *Do Private Equity Managers Raise Funds on (Sur)real Returns? Evidence from Deal-Level Data*, 58(7) Journal of Financial and Quantitative Analysis 2,959 (2023).
[121] Steven N. Kaplan et al., *Interim Valuations, Predictability, and Outcomes in Private Equity*, NBER Working Paper No. 33,637 (Apr. 2025), https://www.nber.org/papers/w33637.
[122] *See*, *e.g.*, Catherine Skulan, *Interval and Tender Offer Funds for Private Fund Managers*, ROPES & GRAY (Aug. 29, 2024), https://www.ropesgray.com/en/insights/podcasts/2024/08/interval-and-tender-offer-funds-for-private-fund-managers.
[123] 17 CFR §270.23c-3.
[124] SECURITIES AND EXCHANGE COMMISSION, *Tender Offer Rules and Schedules* (last updated Feb. 11, 2026), https://www.sec.gov/rules-regulations/staff-guidance/corporation-finance-interpretations/tender-offer-rules-schedules.
[125] SECURITIES AND EXCHANGE COMMISSION, *Interval Fund* (May 21, 2026), https://www.investor.gov/introduction-investing/investing-basics/glossary/interval-fund.
[126] 17 CFR § 240.14d-100 - Schedule TO.
[127] *See, e.g.*, SEC v. Pinnacle Advisors, LLC, No. 5:23-cv-00547-FJS-MJK, 2023 WL.

portfolio accordingly. Competitive market dynamics further reinforce prudent liquidity management because investors, financial advisers, and distribution platforms place significant value on funds' ability to maintain reliable liquidity practices and honor stated redemption policies. Funds that fail to manage liquidity effectively risk reputational harm, reduced capital inflows, and diminished access to distribution channels.[128]

ii. Evidence of effectiveness

A recent empirical analysis of evergreen funds offering periodic redemptions indicates that these funds consistently satisfy their stated redemption commitments.[129] We acknowledge that recently, significant withdrawal demands have placed certain private credit evergreen funds under liquidity stress.[130] However, as we discuss further in Section II below, these events should not present liquidity concerns for 401(k) investment options incorporating private assets within a diversified multi-asset strategy, because such strategies will maintain substantially larger allocations to liquid assets compared to the private credit funds at issue. Moreover, as we also discuss in Section II, 401(k) participant liquidity demands have historically been highly limited.

[128] *See*, *e.g.*, Linge Sun and Nicholas Reade, *The Potential Trade-Offs of Private Market Fund Structures: Part One*, CAIS (Apr. 6, 2023), https://www.caisgroup.com/articles/the-potential-tradeoffs-of-evergreen-fund-structures; Brown et al. *supra* note 96.

[129] Michael Ewens and Jacob Faber, *Liquid Claims on Illiquid Assets: The Economics of Retail Access to Private Markets Preliminary and Incomplete*, SSRN Working Paper (Apr. 20, 2026), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6524419.

[130] *See* Sami Vukelj, *Private Credit BDC Redemption Requests Likely to Peak in Q2 2026 – The Bank of America Analysts Still Hold Buy Ratings on Apollo, Ares, Blackstone, KKR, and Blue Owl*, PITCHBOOK (Apr. 29, 2026), https://pitchbook.com/news/articles/private-credit-bdc-redemption-requests-likely-to-peak-in-q2-2026-bofa.

SECTION II: 401(K) HISTORICAL LIQUIDITY ANALYSIS

Section II presents the results of our study of 401(k) participant withdrawal history and the ability of 401(k) plans with exposure to private assets to satisfy participant withdrawals. The study proceeds in two parts. In Part A, we demonstrate that investments in 401(k) plans are highly stable for the 26-year period from 1999-2024, including during periods of market stress. Part B finds that a 401(k) investment option would be able to satisfy participants' historical withdrawal demands while maintaining an asset allocation to private markets of up to 33%. Our study therefore offers strong evidence that incorporating private assets into 401(k) investment options would not pose liquidity issues for beneficiaries.

A. Analysis of Historical 401(k) Liquidity Data

As noted in Section I, certain academics, media commentators, and policymakers claim that private assets are unsuitable for 401(k) plans because private assets are less liquid than public markets investments.[131] They argue that a 401(k) plan's investment in private assets could limit the ability of 401(k) account holders to withdraw cash from their accounts. They claim that this risk is heightened by the possibility of large withdrawal requests from 401(k) plans during periods of financial distress.

There has thus far been no empirical test to confirm the withdrawal patterns of 401(k) plan participants and thus their liquidity needs. This new study by CCMR fills this gap by examining data on 401(k) plan inflows and outflows over a 26-year period (1999 through 2024).

1. Methodology

Sponsors of 401(k) plans with 100 or more participants must file an annual form ("**Form 5500**") with the DOL reporting the value of the plan's assets and the value of cash that entered the plan from additional participant investments (cash inflows) and the amount of cash that left the plan due to participant withdrawals (cash outflows).[132] Form 5500s are publicly available. Although Form 5500 data does not allow us to measure participant-specific flows, the total figures for a plan indicate typical liquidity patterns because they reflect the total of all individual plan participants' contributions and withdrawals for the year.

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[131] *See, e.g.*, Alicia H. Munnell, *Workers Do Not Need Private Equity in their 401(k) Plans*, CENTER FOR RETIREMENT RESEARCH (Aug. 11, 2025), https://crr.bc.edu/workers-do-not-need-private-equity-in-their-401k-plans/; Remy Samuels, *401(k)s Not the Place for Private Equity, Says Johns Hopkins Study*, PLAN ADVISER (Mar. 20, 2025), https://www.planadviser.com/401ks-not-place-private-equity-says-johns-hopkins-study/; U.S. SENATE COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS, *Warren Seeks Answers from Empower Retirement on Threats to Americans' 401Ks from Private Equity and Private Credit* (Jun. 20, 2025), https://www.banking.senate.gov/newsroom/minority/warren-seeks-answers-from-empower-retirement-on-threats-to-americans-401ks-from-private-equity-and-private-credit; Jessica Hall, *Private equity in 401(k) plans? 'Highly risky' for the average investor*, MARKETWATCH (Jan. 11, 2025), ttps://www.morningstar.com/news/marketwatch/20250111254/private-equity-in-401k-plans-highly-risky-for-the-average-investor.

[132] DEPARTMENT OF LABOR, *Schedule H (Form 5500) Financial information*, https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/form-5500/2022-schedule-h (last visited May 29, 2026).

We collected data on 401(k) plan assets, cash inflows, and cash outflows from all Form 5500s filed by 401(k) plans with over $10 million in assets over the 26-year period from 1999 through 2024. The data captures all withdrawals from the plans, including those associated with participant rollovers between retirement plans, for example, as a result of a job change. Excluding plans with $10 million in assets and under 100 participants does not materially affect the scope of our analysis because those plans constitute less than 1% of total 401(k) assets. We selected this period because it represents an extensive time period sufficient to determine annual withdrawal patterns and includes several years with market stress, including the dot-com crash, 2008 financial crisis, and 2020 COVID pandemic.

Our dataset covers 540,317 annual filings by 60,463 plan sponsors. Form 5500 filings are annual and therefore do not permit analysis of month-by-month or day-by-day cash flows. Form 5500 data also do not allow us to measure transfers between investment options within the same 401(k) plan. However, existing evidence indicates that these transfers typically represent a very small portion of 401(k) plan assets (i.e., 1-2% annually).[133]

Form 5500 data allowed us to calculate the "gross withdrawal amount" and "net withdrawal amount" for each plan for every year that it appeared in the dataset. The gross withdrawal amount represents the total cash outflows from the plan for the year while the net withdrawal amount represents the plan's total cash inflows for the year minus cash outflows. However, we note that contributions to one participant's account cannot be used to meet withdrawals from another account.

The gross or net withdrawal amount divided by the plan's total assets expresses each withdrawal amount as a percentage of the plan's portfolio assets, which we refer to as the plan's "gross liquidity percentage" or "net liquidity percentage." The liquidity percentages indicate the relative liquidity demands on a plan for a given year, since a gross or net cash outflow of a given size represents a more significant liquidity demand for a plan with a smaller asset base compared to a plan with a larger asset base.

We calculated the average gross and net liquidity percentages across all 401(k) plans in our sample for every year from 1999 through 2024. We also looked specifically at the gross and net liquidity percentages for the plans at the 90th percentile – i.e., the plans that had gross and net liquidity needs greater than 90 percent of all other plans in the sample for the year.

We analyzed 401(k) plan data at the aggregate plan level across all investment options for each employer because data on inflows and outflows for specific investment options within a single plan are not available. As a result, we cannot test directly whether withdrawals vary for investment options with different asset allocations. However, plan-level aggregates capture total participant cash inflows and outflows across all options, thereby reflecting the full liquidity demands faced by the plan from participant withdrawals. And because all 401(k) investment options function as

[133] ALIGHT, *Alight Solutions 401(k) Index: 2024 Observations*, https://www.alight.com/thought-leadership/alight-solutions-401k-index-full-year-2024.

long-term retirement savings with daily liquidity, there is no reason to expect significantly different withdrawal behavior across individual investment options.

Indeed, industry surveys indicate that the primary driver of participant withdrawals is when participants move to new employers. The investment performance of a specific investment option is not cited as a common reason for participant withdrawals.[134] Our findings further support this notion. For example, 2008 was the worst performing year from 1999 through 2024 with annual market returns of -39%. Despite these losses, the average 401(k) plan and 401(k) plans with liquidity needs at the 90th percentile had *below average* gross withdrawals in 2008 as compared to other years.

2. Summary of findings

Table A shows the average gross and net liquidity percentages across all plans for each individual year in the sample period. We found that the average gross liquidity percentage across 401(k) plans for all years in our sample period was -9.7%. We find that the average net liquidity percentage across all 401(k) plans for all years in the sample period was +2%. This means that the typical 401(k) plan has net inflows each year and positive liquidity.

In 2008, the average 401(k) plan's gross liquidity percentage was -8.37% and its net liquidity percentage was +3%. Indeed, the average net liquidity percentage was positive for each individual year in the sample period. This indicates that 401(k) plans continue to experience net inflows even in periods of financial distress.

Table A: Average Gross and Net Liquidity Percentages for 401(k) Plans by Year

Year	Gross liquidity percentage	Net liquidity percentage
Average	**-9.7%**	**2%**
1999	-10.36%	2.45%
2000	-10.27%	1.68%
2001	-8.80%	3.51%
2002	-8.93%	4.14%
2003	-9.19%	5.06%
2004	-8.99%	3.94%
2005	-9.00%	3.43%
2006	-9.65%	2.91%
2007	-9.81%	2.45%
2008	-8.37%	3.13%

[134] *See, e.g.*, EMPLOYEE BENEFIT RESEARCH INSTITUTE, *Workplace Retirement Account Leakage: By the Numbers* https://www.ebri.org/docs/default-source/by-the-numbers/ebri_leakage_facts-and-figures_111722.pdf?sfvrsn=22dd382f_6&utm.

2009	-9.82%	3.59%
2010	-9.05%	2.38%
2011	-8.38%	2.44%
2012	-9.33%	2.38%
2013	-9.56%	1.61%
2014	-9.15%	1.13%
2015	-9.12%	1.50%
2016	-9.22%	2.04%
2017	-9.38%	2.07%
2018	-9.13%	1.75%
2019	-10.65%	1.66%
2020	-10.57%	0.08%
2021	-10.23%	0.56%
2022	-8.45%	2.18%
2023	-11.08%	2.28%
2024	-11.85%	0.65%

Table B shows the gross and net liquidity percentages for the 90th percentile plan for each year in the sample period. We focus on the 90th percentile because it represents a plan with elevated liquidity needs while still reflecting a plausible scenario, though even at the 99th percentile the data do not indicate liquidity pressures sufficient to impair the ability of a diversified investment option to satisfy participant withdrawal demands. Table B demonstrates that 90th percentile plans had a -16.1% average gross liquidity percentage and an average net liquidity percentage of -7.2% across the entire sample period. Table B also shows that in 2008 — the worst performing market year in the past 50 years — the gross liquidity percentage for the 90th percentile plan was -13.85% and its net liquidity percentage was -5.61%, so liquidity demands were *lower than* the average year from 1999-2024.

Table B: 90th Percentile Plan Gross and Net Liquidity Percentages by Year

Year	Gross liquidity percentage	Net liquidity percentage
Average	**-16.1%**	**-7.2%**
1999	-17.71%	-8.26%
2000	-17.24%	-8.72%
2001	-14.81%	-6.48%
2002	-15.04%	-6.25%
2003	-15.28%	-5.31%
2004	-14.65%	-5.90%

2005	-14.82%	-5.86%
2006	-15.87%	-6.78%
2007	-16.09%	-7.00%
2008	-13.85%	-5.61%
2009	-16.55%	-7.87%
2010	-14.64%	-6.72%
2011	-13.64%	-5.69%
2012	-15.04%	-6.14%
2013	-15.45%	-6.70%
2014	-14.94%	-6.77%
2015	-15.02%	-6.58%
2016	-15.26%	-6.53%
2017	-15.40%	-6.56%
2018	-14.85%	-6.46%
2019	-17.29%	-7.78%
2020	-17.96%	-9.71%
2021	-16.72%	-8.54%
2022	-13.79%	-5.89%
2023	-17.95%	-7.69%
2024	-19.03%	-9.34%

3. Historical withdrawal and market return analysis

We also directly examine whether there is a correlation between annual S&P 500 returns and annual gross and net liquidity percentages to test whether liquidity demands imposed on 401(k) plans increase during periods of market stress. To do so, we calculated correlations for each of the four liquidity percentages reported in Tables A and B above, i.e. correlations between S&P 500 returns and the (i) gross liquidity percentage for the 90th percentile plan (i.e., the plan with liquidity demands that are more severe than 90% of all plans in the sample), (ii) net liquidity percentage for the 90th percentile plan, (iii) gross liquidity percentage for the average plan, and (iv) net liquidity percentage for the average plan.

Our analysis found no statistically significant relationship between negative returns to the S&P 500 and higher net or gross withdrawals for either the average plan or 90th percentile plan. This finding shows that liquidity demands on 401(k) plans are not elevated during periods of poor equity market performance and reinforces our finding that investments in 401(k) plans are highly stable, including during periods of market stress.

4. *Conclusion*

Our findings demonstrate that investments in 401(k) plans are highly stable from 1999-2024 on a gross and net basis and offer strong evidence that 401(k) accounts are unlikely to be expected to suffer a liquidity crisis due to withdrawals.

B. Analyzing the Impact on a 401(k) Private Asset Allocation

We now analyze the withdrawal data presented in Part I to assess whether a 401(k) investment option that allocates a portion of its portfolio to private assets via evergreen funds would be able to satisfy participants' liquidity demands from the portion of its portfolio that it allocated to public assets. This approach reflects that public assets are more liquid and can be readily sold to meet daily withdrawals demands, whereas evergreen funds cannot be sold on a daily basis and are not intended to be used for routine liquidity needs. We evaluate a range of potential private market allocations consistent with prevailing market practice for allocation funds, with 33% representing the upper end of that range. We also assess the extent to which relying on public assets to meet withdrawals would affect the fund's target allocation over time, because allocation funds seek to provide investors with a stable asset mix and using only public assets to satisfy withdrawals will alter a fund's asset allocation.

1. Maintaining a stable private asset allocation with typical liquidity demands

As established in Part A, the average annual net liquidity percentage for 401(k) plans was positive across the entire sample period and was also positive for each individual year in the sample period, including years of significant financial distress. 401(k) investment options are thus on average not required to sell assets to generate liquidity and an investment option's private asset allocation would thus not be expected to increase as a result of such sales. Historical participant withdrawals would therefore not require an investment option to alter its targeted asset allocation to private markets, even in years of financial distress.

2. Maintaining a stable private asset allocation with the highest gross liquidity demands

To confirm that 401(k) investment options experiencing above average or extreme liquidity demands can also maintain a stable allocation to private assets consistent with a 33% allocation to private markets, we now model the effect of the most extreme gross withdrawal rates observed in our 26-year period for the 90th percentile plan on a range of hypothetical 401(k) investment option portfolios with varying allocations to private assets.

We focus on gross withdrawals rather than net withdrawals to examine the most extreme possible scenario because gross withdrawals ignore the effect of participant inflows and therefore overstate liquidity pressure. In addition, this scenario reflects an exceptionally rare outcome, representing the maximum withdrawal rate observed for a 90th percentile plan only once over the 26-year sample period (-19.03%). This reflects the liquidity demand for a plan with withdrawal activity higher than 90% of other plans, during the year with the highest level of outflows over the 26-year sample period.

Table D below shows how an investment option's private asset allocation would change with gross withdrawals of -19.03%. We show the effects of these withdrawal rates for several potential private asset allocations ranging from 5% to 33% of an investment option's total assets. We evaluate allocations below the 33% threshold because many diversified multi-asset investment options (commonly referred to as "target date" funds) are designed to reduce exposure to private assets over time as part of their lifecycle or risk management framework. We also assume that 401(k)

plans would exclusively liquidate non-private assets to meet gross withdrawals thereby increasing the 401(k) plan's allocation to private markets by doing so.

As illustrated in **Table D**, none of the investment option examples would experience a substantial shift in asset allocation. For example, a portfolio with a 5% allocation to private assets would rise to 6.18% after the most extreme gross withdrawal scenario. Even a 25% allocation rises by only 5.88 percentage points after the most extreme gross withdrawal scenario in our 26-year sample. An investment option that maintains a 33% allocation to private assets that experiences a one-time withdrawal of 19.08% of its assets would after the withdrawal have an allocation of 40.78%. In this case we expect that the manager of a multi-asset fund would be able to gradually reallocate the fund's portfolio to the desired exposure level using cash inflows and by drawing on periodic liquidity from its evergreen fund holdings.

Table D: Impact of extreme withdrawal scenario on private asset allocation

Private asset allocation before withdrawals	**Private asset allocation after extreme withdrawal scenario**
5%	6.18%
10%	12.35%
15%	18.53%
20%	24.70%
25%	30.88%
26.72%	33%
33%	40.78%

3. Conclusion

Based on the withdrawal data presented in Part I, we find that a 401(k) investment option with a private asset allocation of up to 33% would be able to satisfy participants' liquidity demands from the portion of its portfolio that it allocated to public assets even in the most extreme historical withdrawal scenarios.

CONCLUSION

Our report has reviewed the regulatory frameworks and competitive market practices governing evergreen funds and how they address the issues of performance and fees, disclosure, valuation, and liquidity. We identified empirical evidence indicating that these structures are functioning well for current evergreen fund investors. Our empirical analysis further confirms that 401(k) investor liquidity demands are highly limited and stable, even in periods of market stress, and that investment options with substantial allocations to private assets can continue to provide daily liquidity and stable asset allocations. These findings together show that incorporating private equity and credit assets into 401(k) plans through evergreen funds can be achieved in a manner that preserves investor protections and plan functionality and supports daily liquidity and broad diversification for 401(k) plan participants while providing plan participants with strong risk-adjusted returns.

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