

Beyond the Perimeter: How Retirement Plans Are Re-Entering a Deregulated Marketplace



AUTHORED BY:

Erik Daley, CFA

Table of Contents

Chapter 1: Beyond the Perimeter: How Retirement Plans Are Re-Entering a Deregulated Marketplace.....	3
Chapter 2: The Regulatory Perimeter: How Investor Protections Were Designed and Where They Stop	4
Chapter 3: ERISA in a DC World: When Participants Became Their Own CIOs.....	6
Chapter 4: CITs vs. Mutual Funds: Optimization or Functional Deregulation?	8
Chapter 5: Private Equity and Private Credit in DC Plans: The Next Phase of the Perimeter Shift.....	11
Chapter 6: Insurance, Crypto, and the Edges of the DC Investment Menu	16
Chapter 7: Why the Pendulum Is Swinging: Economics, Regulation, and Behavioral Pressure	19
Chapter 8: A Risk Map for Modern DC Plans: What Could Go Wrong?.....	22
Chapter 9: A Practical Framework for Fiduciaries Evaluating Perimeter-Edge Products.....	26
Chapter 10: Innovation with Guardrails: Re-Centering the Retirement System on Participants.....	30

Chapter 1

Beyond the Perimeter: How Retirement Plans Are Re-Entering a Deregulated Marketplace

Over the last 80+ years, the U.S. has built a robust investor-protection architecture ('33/'34 Acts, Investment Company Act of 1940, ERISA, public company disclosure). Those regimes were intentionally designed to protect retail investors from fraud, abuse, and information asymmetry, but they come with real costs.

In retirement plans, especially defined contribution (DC) plans, assets are increasingly moving into structures that live outside the strictest “retail” regimes (CITs, private equity, insurance separate accounts, alternative vehicles). This is not classic “deregulation by repeal” but functional deregulation via product migration: the same unsophisticated investor, a different regulatory bucket.

Why This Matters for Plan Sponsors and Fiduciaries

- Plan participants are being exposed to complex, less transparent products through vehicles and wrappers originally designed for institutional investors.
- The fiduciary overlay under ERISA is stronger than it’s ever been—but it may not fully compensate for diminished product-level protections.
- There is a real risk of unintended downstream consequences: participant harm, litigation, and a policy backlash.

What This Paper Will Do

- Describe how the investor-protection architecture was built and what it was meant to solve.
- Show where and how the perimeter is shifting in the retirement marketplace.
- Provide a practical framework for fiduciaries to evaluate “non-40 Act” and private-market exposures in DC plans.
- Suggest policy and industry responses that balance innovation with durable investor protections.

Chapter 2:

The Regulatory Perimeter: How Investor Protections Were Designed and Where They Stop

How We Got Here: The Investor-Protection Architecture

The Problem to Be Solved: Retail Investors as a Protected Class

Modern U.S. financial regulation starts with a simple observation: left to their own devices, markets tend to disadvantage small, unsophisticated investors.

The 1929 crash and the Great Depression exposed three core problems:

1. Information asymmetry – issuers and intermediaries knew far more than buyers.
2. Conflicted distribution – products were sold with heavy conflicts and little disclosure.
3. Fraud and manipulation – there were few effective guardrails on market conduct.

Congress' response in the 1930s and 1940s was to treat retail investors as a protected class and to design a regulatory regime that forces issuers and pooled vehicles to provide “full and fair disclosure” of material information before and after securities are sold, regulates trading venues and intermediaries (exchanges, broker-dealers) rather than just the instruments, and imposes structural and governance constraints on pooled vehicles like mutual funds, so they cannot easily be used to extract value from small investors.

Later, with ERISA in 1974, Congress extended that logic to the workplace retirement system, explicitly to “provide protection for individuals” in private retirement and health plans, even though in 1974 participants had little direct exposure to investment products. The majority was held in defined benefit pension plans, where investment decisions were made by the fiduciary of the sponsoring employer.

For purposes of this paper, it's useful to think in terms of a regulatory perimeter. Inside the perimeter sit public companies, registered funds, and ERISA plans, subject to heavy disclosure and fiduciary standards. Outside the perimeter are private funds, insurance balance sheets, and bespoke vehicles with lighter or different rules, assumed to be the domain of “sophisticated” capital. The core question we'll return to is: what happens when retail investors' money is pushed toward the edge of, or outside, that perimeter?

The Public Markets Regime

The Securities Acts of 1933 and 1934

The public markets regime rests on two foundational statutes:

1. **The Securities Act of 1933 governs the offering of securities.** The Securities Act of 1933 requires issuers to register public offerings with the Securities and Exchange Commission (SEC) and provide investors with financial and other significant information. Its twin objectives are to ensure that investors receive material information and to prohibit deceit, misrepresentation, and other fraud in the sale of securities.
2. **The Securities Exchange Act of 1934 governs the trading of securities and the ongoing life of public companies.** The Securities Act of 1934 regulates exchanges and over-the-counter markets and seeks to prevent “inequitable and unfair practices” on those markets. It empowers the SEC to require periodic

reporting—annual, quarterly, and current reports—so that investors receive updated information over time, not just at issuance.

This framework is intentionally disclosure-based rather than merit-based. The government generally doesn't tell investors what a “good” or “bad” investment is; it forces issuers and intermediaries to provide standardized information and prohibits fraud.

The Investment Company Act of 1940: Mutual Funds as a Regulated Answer

The Investment Company Act of 1940 ('40 Act) brought pooled investment vehicles, primarily mutual funds and ETFs, firmly inside the perimeter. The key features, many of which matter to retirement savers:

- **Registration and structure.** Funds with more than 100 investors generally must register with the SEC and comply with detailed rules on capital structure, operations, and disclosures.
- **Governance requirements.** At least 40% of a fund's board must be independent of the adviser and affiliates; affiliated transactions and self-dealing are sharply restricted.
- **Custody and asset protection.** Strict rules on custody, reconciliation, and fidelity bonding are designed to prevent theft or misuse of fund assets.
- **Liquidity and pricing.** Daily NAV, “forward pricing,” and detailed valuation requirements make it harder to game the timing of purchases and redemptions.
- **Standardized disclosure.** Prospectuses, statements of additional information, and periodic reports must follow SEC formats and are subject to review and enforcement.

For retail investors, the mutual fund was meant to be the regulated answer to pooled investing: constrained in how it can be run, transparent in what it holds and charges, and overseen by both a board and the SEC.

The Public Company Disclosure Framework

Overlaying all of this is a dense public company disclosure regime. Public issuers (companies) must file detailed registration statements and ongoing reports (Forms S-1, 10-K, 10-Q, 8-K, etc.) that include audited financial statements, descriptions of the business, risk factors, management biographies, and executive compensation. The SEC periodically modernizes and expands these obligations, including recent examples of climate risk, cyber risk, and other thematic disclosures, thereby increasing the breadth and cost of reporting.

The intended outcome is that any member of the public can, in principle, pull up an issuer's filings on the SEC's website and see:

- What the company does
- How it makes money
- How it is financed
- Who runs it and how they are paid
- What are the major risks

From an investor-protection standpoint, this is the high-water mark: frequent, standardized, public, and enforceable disclosures backed by the threat of SEC enforcement and private litigation.

Chapter 3:

ERISA in a DC World: When Participants Became Their Own CIOs

The Retirement Regime

ERISA and the Fiduciary Overlay

The Employee Retirement Income Security Act of 1974 (ERISA) applied a different set of tools to retirement assets held in employer plans.

At its core, ERISA provides:

- Minimum standards for participation, vesting, funding (for defined benefit plans), and reporting.
- Fiduciary duties imposed on those who manage plan assets or have discretionary authority over plan administration:
 - Exclusive benefit and loyalty: act solely in the interests of participants and beneficiaries.
 - Prudence: act with the care, skill, prudence, and diligence of a knowledgeable expert.
 - Diversification: avoid unnecessary concentration of risk.
 - Adherence to plan documents consistent with ERISA.
- Enforcement and remedies through Department of Labor (DOL) oversight and a private right of action for participants.

Where the securities laws primarily regulate issuers and intermediaries, ERISA regulates the stewards of other people's money, such as plan sponsors, investment committees, trustees, and investment managers. In practice, this means a retirement plan can hold a wide range of vehicles (mutual funds, CITs, separate accounts, private funds), but those who choose and monitor them must meet a high fiduciary standard in doing so.

The Shift from Defined Benefit to Defined Contribution

In 1974, when ERISA was enacted, the retirement landscape was dominated by defined benefit (DB) plans. Over the subsequent decades, the U.S. has experienced a profound shift toward DC plans, like 401(k), 403(b), and 457(b) plans.

- Among private-sector workers with access to an employer plan, only about 15% had access to a DB plan in 2021, versus 65% with access to a DC plan; some had access to both¹.
- Survey of Consumer Finances data show the share of workers covered by DB plans falling from roughly 59% in 1989 to 21% in 2022, while DC coverage rose from 55% to 83%.²
- As of early 2025, roughly half of private-sector workers saving for retirement are doing so through 401(k) plans, with access and participation boosted by auto-enrollment and new mandates.³

This shift fundamentally changed who bears risk and who makes investment decisions. In DB plans, sponsors and their advisers made asset allocation decisions, and participants bore relatively little market risk. In DC plans, participants bear investment and longevity risk directly, often through participant-directed accounts where they select from a menu of options or default into target-date or balanced funds.

ERISA's fiduciary standards were crafted initially with DB plans in mind, with minimal adjustments made to reflect the reality of the defined contribution role. Today, these are applied to a world in which participants are effectively their own CIOs, even if they default into QDIAs, and the investment menu is populated by a growing mix of vehicles, some

¹ A Visual Depiction of the Shift from Defined Benefit (DB) to Defined Contribution (DC) Pension Plans in the Private Sector. Congress.gov, December 27, 2021

² Pension or 401(k)? Retirement Plan Trends in the U.S. Workplace. Michael T. Owyang, Julie Bennett, Brooke Hatthorn. Federal Reserve Bank of St. Louis, March 20, 2025

³ The 401(k) Has Reached a Tipping Point in Its Takeover of American Retirement. Anne Tergesen. Wall Street Journal, February 5, 2025

squarely inside the “Regulatory Perimeter” and an increasingly large number outside of it.

That mismatch between participant sophistication and product complexity is the backdrop for the deregulation questions we’ll explore later.

The Cost of Protection

None of these protections are free. The public markets and retirement regimes impose direct and indirect costs on issuers, pooled vehicles, and intermediaries, which in turn show up as fees, operational overhead, and sometimes a lower willingness to use the most heavily regulated structures.

Examples of cost layers:

1. **Public company reporting.** Preparing and auditing financial statements; producing 10-Ks, 10-Qs, 8-Ks, and proxy materials; implementing internal controls; and responding to SEC comments all require significant legal, accounting, and internal staff resources. Studies and policy analyses routinely cite increased disclosure and governance requirements as a key driver of the declining number of public companies, and the SEC’s own estimates for implementing new disclosure rules run into the billions of dollars.⁴
2. **’40 Act fund compliance.** Registered funds must maintain compliance programs, designate a chief compliance officer reporting to the board, and implement detailed policies for trading, valuation, liquidity, derivatives, custody, and advertising. Prospectus updates, shareholder reports, board meetings, and regulatory filings add recurring legal, printing, and distribution costs.
3. **ERISA governance and litigation risk.** Plan sponsors and fiduciaries bear ongoing costs for committee governance, expert advice, benchmarking, vendor oversight, and preparing participant disclosures. The risk of fiduciary litigation has increased, prompting many sponsors to devote more resources to process, documentation, and insurance.

From a policy standpoint, these are features, not bugs: robust protections require real work and real money. But for manufacturers and intermediaries facing fee compression, this also creates a strong incentive to stay private rather than go public; to prefer vehicles and structures with lighter or different regulatory obligations; and to innovate in ways that preserve economics while skirting the heaviest retail-oriented rules.

That incentive structure is a key driver of the “functional deregulation” dynamic we see today in the retirement marketplace: the search for lower regulatory overhead and higher margins by moving participant assets away from the most heavily regulated regimes, even as ERISA fiduciary expectations tighten.

⁴ Regulatory costs of being public: Evidence from bunching estimation. Michael, Ewens, Kairong Xiao, Ting Xu, Journal of Financial Economics, March 2024

Chapter 4:

CITs vs. Mutual Funds: Optimization or Functional Deregulation?

Shifting the Perimeter: What's Happening in Today's Retirement Marketplace

CITs vs. Mutual Funds: Same Portfolios, Different Regimes

What Is a CIT?

A collective investment trust (CIT) is a pooled investment vehicle maintained by a bank or trust company that commingles assets from multiple tax-qualified retirement plans and certain other institutional investors.

Key structural points:

- **Bank-administered trust.** CITs (often called collective investment funds or CIFs in banking regs) are established and operated under banking laws and regulations and relevant state banking rules for state-chartered institutions.
- **ERISA and tax-qualified focus.** They are designed primarily for ERISA plans and other tax-qualified arrangements and are generally exempt from federal income tax under Internal Revenue Code section 584 if regulatory conditions are met.
- **Not registered mutual funds.** CITs typically rely on exemptions from registration under the Securities Act of 1933 and the Investment Company Act of 1940, meaning they are not “registered investment companies” in the mutual fund sense.
- **Limited eligibility and access.** Participation is generally restricted to eligible retirement plans and certain institutional accounts; they are not offered directly to the general retail public.

From a participant's vantage point on a 401(k) website, a CIT can look almost identical to a mutual fund with the same strategy label, same benchmark, and same daily value on the statement. But the regulatory chassis underneath is fundamentally different.

Why CITs Have Grown in DC Plans?

Over the last decade, CITs have moved from niche to mainstream in defined contribution plans, particularly as the underlying vehicle for target-date funds. Several data points illustrate the shift. Morningstar data show that by mid-2024, CIT-based target-date series held just over half of all target-date assets (about 50.5%), up from roughly half that share a decade earlier.⁵ Sway Research and industry coverage indicate that by early 2025, CIT target-date assets reached roughly \$2.0 trillion, edging past mutual-fund-based TDFs at about \$1.95 trillion, out of nearly \$4 trillion in combined TDF assets.⁶

Why plan sponsors and consultants have moved in this direction - cost and fee compression. CITs generally avoid some of the distribution, marketing, and shareholder-servicing costs embedded in mutual funds (e.g., 12b-1 fees, certain transfer-agency and platform fees) and can pass some of those savings through in lower expense ratios. They can offer multiple unit classes with tailored pricing for large plans, accommodating different revenue and fee-level arrangements more flexibly than a single retail share class.

CITs also facilitate flexibility in design and implementation. CITs can be customized more easily than registered funds, allowing white-label structures, bespoke glide paths, or plan-specific overlays without launching a new mutual fund

⁵ Morningstar. 2025 Target-Date Fund Investment Strategy

⁶ Sway Research. State of the Target-Date Market: 2025

registration. They can incorporate changes (e.g., manager changes, benchmark adjustments) with fewer public filing frictions.

At least as importantly, CITs change the economics of recordkeepers and asset managers. Increasingly, recordkeepers are launching proprietary CIT “replicates” of popular institutional mutual funds. These structures allow for recordkeepers to receive undisclosed asset-based compensation on investment products managed by third parties.

The result is that CITs have become the default institutional chassis for many DC investment strategies, particularly where scale and fee negotiation are paramount.

Key Differences in Protections and Transparency

CITs and mutual funds can hold the same underlying portfolio, often managed by the same firm. The difference lies in which regulatory framework applies and what that means for participant protections.

The contrasts can be grouped into several dimensions:

1. **Regulatory regime and primary overseer.** Mutual funds are registered investment companies under the Investment Company Act of 1940 and overseen by the SEC, with detailed statutory requirements for structure, governance, disclosure, and shareholder rights. CITs are bank-maintained trust funds governed primarily by bank regulators (e.g., OCC under 12 CFR 9.18), state banking authorities, and ERISA/DOL rules for plan assets, with SEC involvement limited and indirect.
2. **Eligibility and distribution.** Mutual funds are broadly available to retail investors; shares can typically be bought directly or through brokerage and retirement platforms. CITs are restricted to eligible retirement plans and certain institutional accounts; they cannot be marketed as retail products to the general public.
3. **Disclosure and data availability.** Mutual funds must produce statutory prospectuses, Statements of Additional Information (SAIs), and annual/semiannual reports; these documents are filed with the SEC and are freely available on public databases. CITs do not file SEC prospectuses. Instead, they typically offer trust documents, participation agreements, and fact sheets directly to plan sponsors and participants. Disclosure to participants is mediated through ERISA and DOL rules—primarily the 404a-5 participant disclosure regime, which requires standardized fee and performance information for all designated investment alternatives, including CITs. Public third-party data on CITs (e.g., in retail fund databases and research tools) is improving but remains less comprehensive and less standardized than mutual fund data.
4. **Governance and investor rights.** Mutual fund shareholders elect boards (with independent director requirements), receive proxy materials, and have voting rights on certain fundamental matters. CIT investors are beneficiaries of a bank-administered trust; governance is exercised by the trustee under trust documents and banking/ERISA fiduciary standards, not by participant-level voting.
5. **Valuation, pricing, and operations.** Both CITs and mutual funds typically strike daily values and provide daily liquidity in DC platforms, but valuation, pricing, and operational controls for CITs are overseen through banking supervision and fiduciary obligations rather than through the mutual fund rulebook (e.g., 2a-5 valuation rules).

For plan participants, DOL’s 404a-5 regime narrows some of these gaps at the point of decision—fee tables, benchmarked performance, and website disclosures can look similar whether the option is a mutual fund or a CIT. But at the infrastructure level, the protections, rights, and enforcement mechanisms are not identical.

Case Example: Target-Date Funds in CIT Form

Target-date funds (TDFs) are the dominant default in 401(k) plans, making their choice of vehicle a powerful illustration of functional deregulation. Total TDF assets in the U.S. retirement market now exceed \$3.8–4.7 trillion,

depending on the source and cutoff date. Within that, CIT structures have gone from a minority share to more than half of target-date assets, recently surpassing their mutual fund cousins.

In practice, that means many default options labeled “2040 Retirement Fund” or “Target Retirement 2050” on a participant’s statement are now CIT-based rather than mutual-fund-based. The underlying asset allocation and manager may be identical (e.g., the same glide path implemented in a mutual fund and a CIT). However, the legal wrapper, primary regulator, disclosure regime, and investor rights are different.

From a fiduciary perspective, the question is not whether CIT-based TDFs are inherently better or worse—they often deliver real fee savings at scale—but whether committees fully appreciate the regime shift that has occurred beneath the label “target-date fund,” especially when these options are used as QDIAs for large participant populations.

Is This Deregulation or Optimization?

CIT adoption in DC plans can be told as either a success story or a deregulation story, depending on what you emphasize. Both narratives have truth to them.

Optimization narrative (what the industry emphasizes)	Deregulation narrative (what this paper is probing)
<ul style="list-style-type: none"> ▪ CITs are pitched as an institutional chassis that delivers lower fees and greater flexibility while still subject to ERISA fiduciary standards and bank regulatory oversight. ▪ DOL’s 404a-5 rules mean participants see broadly comparable fee and performance disclosures at the plan level, regardless of whether an option is a CIT or a mutual fund. ▪ Governance proponents argue that bank trustees administering CITs are themselves ERISA fiduciaries for the plan assets in the trust, adding an additional fiduciary layer to the sponsor’s own oversight. 	<ul style="list-style-type: none"> ▪ By moving from 1940 Act mutual funds to CITs, participant assets leave the most mature, retail-focused product regime and enter a more bespoke, bank-supervised trust regime. ▪ Public transparency and third-party scrutiny are reduced; analysts, journalists, and independent researchers have less uniform data to review and compare. ▪ Participants themselves have fewer direct rights (e.g., no fund-shareholder voting) and must rely more heavily on fiduciary intermediaries (plan committees, trustees, consultants) to interpret and police the structure on their behalf.

This paper’s thesis is not that CITs are “bad.” In many cases, they are a sensible optimization within the existing rules. The concern is that, at scale, they are part of a broader pattern. Over time, cost and competitive pressures are pulling retirement assets away from the most stringent retail regimes and into alternative structures. That shift may be rational at the plan level. Still, it is, in effect, a soft form of deregulation for the end participant, who now depends more on fiduciaries and less on standardized product-level protections.

CITs, particularly in target-date form, are the clearest early example of that trend. The next sections examine how the same dynamics are now playing out across private equity, private credit, and other non-traditional exposures in DC plans.

Chapter 5:

Private Equity and Private Credit in DC Plans: The Next Phase of the Perimeter Shift

Private Equity and Private Credit Inside DC Plans

The Policy Opening: DOL Information Letter and Subsequent Guidance

For most of ERISA's history, private equity and similar private-market strategies were effectively confined to defined benefit plans and large institutional investors. That began to change with the Department of Labor's June 3, 2020, Information Letter.

In that letter, issued in response to a request from Pantheon and Partners Group, the DOL addressed whether a fiduciary of a participant-directed individual account plan (such as a 401(k)) could offer professionally managed asset allocation funds that include a private equity component such as a custom target-date, target-risk, or balanced fund using a sleeve of private equity accessed through a collective trust or similar vehicle.

In their 2020 Information Letter, the DOL made the following points:

- A plan fiduciary may offer an asset allocation fund with a private equity component without automatically violating ERISA, provided the decision is prudent and in participants' best interests.
- The analysis was limited to private equity exposure embedded in a diversified multi-asset fund, not offered as a standalone option on the core menu. Direct participant investment into private equity funds presents distinct legal and operational issues for fiduciaries of ERISA-covered individual account plans.
- Fiduciaries are expected to undertake an "objective, thorough, and analytical process" evaluating diversification, expected risk/return net of all fees and carried interest, liquidity, valuation, and the capabilities of the manager before adding such a fund.

In effect, the DOL "opened the window slightly" for private equity in DC plans, under tightly framed conditions and with a strong emphasis on fiduciary process.

In December 2021, the DOL issued a Supplemental Statement that walked back some of the industry's more enthusiastic interpretations of the 2020 letter. In the supplemental statement, the DOL:

- Reiterated that the Information Letter did not endorse or recommend private equity in 401(k) plans; it merely described circumstances under which it might be prudent.
- Expressed concern that the original letter had presented private equity's potential benefits largely from the industry's perspective, without balancing them against independent research or counterarguments.
- Emphasized that direct application to typical small DC plans was not presumed appropriate, stating that for "the majority of cases," fiduciaries of smaller individual account plans were unlikely to have the expertise to evaluate these investments as designated alternatives.

The tone was unmistakably cautionary: proceed only in limited circumstances, and only with substantial expertise and advisor support.

In August 2025, a new Executive Order directed the DOL to facilitate broader access to alternative investments (private equity, private credit, real estate, and other private assets) in 401(k) plans. Within days of the Executive Order, the DOL rescinded the 2021 Supplemental Statement, explicitly noting that it had a "chilling effect" and was inconsistent with a neutral, principles-based approach to fiduciary investment decisions.

As of early 2026, the landscape is as it was prior to the 2021 Supplement. The 2020 Information Letter remains in place, signaling that private equity (and by extension other private markets) can be included in professionally managed DC options under ERISA if fiduciaries meet a high bar for prudence, and the more restrictive 2021 guidance has been rescinded, and DOL’s posture is officially “neutral,” focusing on process rather than banning categories of assets.

That combination of regulatory permission with a demanding process standard has catalyzed the next phase: industry innovation to embed “alternative investments” into DC defaults.

Industry Response: Private Markets as the “Next Frontier” for DC

Asset managers and recordkeepers have read the regulatory signals as an invitation to build new DC products that incorporate private markets into target-date funds (TDFs) and multi-asset defaults, which dominate asset collection in defined contribution plans.

A few examples and data points:

- BlackRock has publicly laid out its vision for integrating private equity, private credit, infrastructure, and real estate into TDFs, positioning “private markets in target date funds” as a way to enhance retirement outcomes. Its materials describe a purpose-built TDF design with calibrated private-asset sleeves and an explicit focus on liquidity, fees, and transparency.
- In mid-2025, BlackRock announced a new TDF series, built with Great Gray Trust, that will allocate roughly 5–20% of assets to private markets over the glidepath, with launch targeted for the first half of 2026.
- Other large firms—Apollo, Franklin Templeton, Goldman Sachs, among others—have announced or are developing DC solutions with private equity or private credit exposures, typically accessed through CITs or fund-of-funds structures embedded in TDFs or managed accounts.

The adoption curve is still early but steepening. A 2025 BlackRock/industry survey cited in trade coverage found that roughly 21% of DC plan advisors expected to add private market investments to plans they manage, with target-date strategies as the preferred delivery mechanism. A late-2025/early-2026 adviser survey reported that about one-quarter of plan advisers already recommend, or expect to recommend, alternative investments in DC menus following the 2025 policy shift. Among those, 43% mentioned private equity and 42% private credit as categories they recommend or expect to recommend.

The marketing proposition is straightforward:

- Return enhancement and diversification. Firms such as BlackRock and others estimate that adding private assets could improve TDF returns by on the order of 50 basis points per year, which compounding over a 40-year horizon could raise participant balances by around 15%.
- “Institutionalization” of DC portfolios. By incorporating private equity and private credit—assets long used by DB plans and endowments—TDFs are pitched as giving DC participants access to the same opportunity set as large institutions.

In short, private equity and private credit are being framed as the “next frontier” for DC plan innovation, but one that comes with nontrivial complexity and cost.

How Private Equity and Private Credit Regimes Differ from Public Equity

From a participant’s statement, a TDF with a private markets sleeve looks like any other diversified fund. Under the hood, however, private equity and private credit operate under regimes very different from those that govern public equity and traditional mutual funds.

Key differences include:

Structure and time horizon

- Private equity and private credit funds are typically closed-end, limited-partnership vehicles with multi-year investment and harvest periods, often 8–12 years or longer. Investors commit capital upfront, which is drawn down over time through capital calls and repaid as investments are exited.
- There is generally no daily liquidity at the underlying fund level; transfers are restricted, and secondary sales, if available, are negotiated, not exchange-traded.

By contrast, public-equity mutual funds and ETFs offer daily dealing at NAV, with underlying securities traded on public markets and subject to exchange and reporting rules.

Disclosure and transparency

- Private funds typically rely on exemptions from Securities Act registration (e.g., Regulation D) and from 1940 Act registration. They provide offering memoranda and periodic investor reports, but there is no standardized, public filing regime comparable to mutual fund prospectuses and shareholder reports.
- Information on holdings, portfolio companies, and performance methodologies is often limited and available only under confidentiality restrictions, making independent third-party analysis harder.

Public-equity funds, by contrast, must comply with SEC-specified disclosure formats, publish holdings with some regularity, and file reports that are publicly accessible and subject to enforcement.

Valuation and pricing

- Private equity and private credit positions are typically valued quarterly (or less frequently) using appraisal-based methodologies, discounted cashflows, or comparable multiples rather than exchange prices. Valuations involve significant judgment by the manager and its valuation committees.
- DOL's 2020 letter acknowledges this, emphasizing that fiduciaries must consider the valuation approach and whether the asset-allocation fund has features to handle capital calls and participant liquidity needs.

Public-equity portfolios, while not free from valuation questions, benefit from observable market prices and daily pricing of the fund itself.

Fees and costs

- Private equity and private credit funds generally charge management fees plus performance allocations (carried interest), and may layer on transaction, monitoring, and other portfolio-company-level fees. A DC participant's exposure is often further layered through a fund-of-funds or CIT structure.
- Industry analyses highlight that, even after some institutional fee breaks, private strategies tend to increase the total expense ratio of TDFs that include them, relative to all-public-market counterparts.

Mutual funds and ETFs, by contrast, face intense fee competition and a mature disclosure regime for expense ratios and trading costs.

Governance and oversight

- Investors in private funds typically have limited governance rights. They may serve on limited partner advisory committees, but operational decisions remain with the general partner, subject to the partnership agreement.
- There is no independent board governed by the 1940 Act, nor the same style of SEC oversight; instead, protections rely on contract, general anti-fraud rules, and, for retirement assets, ERISA fiduciary duties at the plan and product-design level.

For DC participants, the practical implication is that when private equity or private credit is embedded in a TDF or other default, they are indirectly exposed to an asset class whose legal and operational norms are materially different from the public-equity world they're used to.

Participant-Facing Implications

From the participant's vantage point, private equity and private credit typically show up as invisible components of a familiar-looking option: "2045 Retirement Fund," "2050 Target Retirement," or a "Balanced Growth Fund." The private sleeve is not a menu choice; it is an ingredient.

That has several implications:

- 1) Limited ability to assess or act on the exposure. Participants do not select "private equity" or "private credit" directly; they select a TDF or balanced fund that happens to include these assets at the design level. As a result, participants cannot adjust, increase, or decrease the private-markets sleeve specifically; their only lever is to move out of the entire default or TDF, requiring them to make more ongoing and affirmative elections about the investments in their account. Yet, the characteristics of that embedded sleeve (higher fees, illiquidity, valuation practices) can materially influence long-term outcomes.
- 2) Communication and comprehension challenges. The DOL's 2020 letter assumes that fiduciaries and managers will design products that maintain sufficient liquidity to handle participant contributions, exchanges, and withdrawals. The letter expects that the private-equity allocation is limited and calibrated to participants' horizons and plan demographics and that disclosures appropriately describe the strategy, including its risks and fees. Turning that into clear participant communications, however, is nontrivial. Plain-language explanations of what it means to own illiquid assets through a daily-priced fund; how valuations are determined; why fees are higher but allegedly justified; are difficult to deliver in a two-page fact sheet or a short web module, particularly for participants with low financial literacy. Additionally, ERISA's focus on additional disclosures has done little more than prove that most disclosures are not read by participants and, as a result, don't impact behavior.
- 3) Expectation and trust risk. Because the product label and participant experience (daily balance updates, familiar risk descriptors) look similar to traditional TDFs, there is a risk of expectation mismatch. Participants may assume "this is just like any other mutual fund" when, in reality, a portion of the portfolio behaves very differently in stress scenarios. If private exposures underperform, are gated, or exhibit valuation surprises, participants may feel blindsided, eroding trust not just in the specific product but in the plan as a whole.

Fiduciary Burden and Litigation Risk

For plan sponsors and investment committees, the decision to embed private equity or private credit in DC options is not a simple product selection; it is a governance and risk decision with long-tail implications.

The 2020 Information Letter lays out a non-exhaustive list of factors fiduciaries should consider, including:

- Whether the fund with a private equity component offers an appropriate range of expected returns and diversification net of all fees;
- The capabilities and stability of the manager in handling private equity within a DC-appropriate structure;
- The fund's design features for liquidity, valuation, and participant-driven cash flows;
- Comparison with alternative funds that do not include private equity.

Subsequent commentary from law firms and consultants has consistently interpreted this as a high bar, not a casual green light. They emphasize that only fiduciaries (and their advisers) with substantial expertise in private markets should consider these structures and that documentation of the analysis, including scenario testing and comparison to simpler alternatives, is critical. Further, ongoing monitoring of fees, performance, liquidity, and valuation practices

is required, not a one-time box-checking exercise.

The 2025 rescission of the 2021 supplemental statement removed a chilling signal, but it did not change the underlying ERISA standard. The DOL itself described the move as restoring a neutral, principles-based approach while reiterating that fiduciaries must still meet traditional prudence and loyalty obligations in evaluating alternatives.

In practice, this means there is more regulatory room for creative private-market designs in DC, but any fiduciary choosing to use that room is likely to face heightened scrutiny if the strategy later underperforms, experiences liquidity issues, or generates participant complaints.

The recent wave of DC fee and investment-option litigation has already shown that plaintiff firms are willing to challenge choices that deviate from simple, low-cost public-market solutions. In the event of litigation, courts are left to examine process: what committees knew, what they considered, and how they documented their decisions.

If a plan adopts a TDF with a private-markets sleeve, and that sleeve significantly underperforms or creates liquidity or valuation stress, plaintiffs can be expected to argue that the added complexity and cost were imprudent, especially if simpler alternatives were available.

Even if litigation risk does not materialize, adverse headlines around “401(k) private equity blow-ups” or “locked-up retirement assets” would carry material reputational costs for sponsors.

Private equity and private credit can be integrated into DC defaults, but doing so moves fiduciaries into a higher-stakes prudence regime. The legal standard has not changed; what changes is the level of expertise, documentation, and governance required to credibly defend the decision when, not if, it is tested.

In the next section of the paper, we will step back from private markets specifically and look at the broader economic and structural forces that are pushing DC assets toward the edges of the traditional investor-protection perimeter.

Chapter 6: Insurance, Crypto, and the Edges of the DC Investment Menu

Insurance Separate Accounts and General Account Products

Insurance-based structures like stable value funds and guaranteed lifetime income (GLI) / group annuity products are another way DC assets move outside the familiar 1940 Act mutual fund regime into a different regulatory universe: state insurance law and ERISA.

Stable value and group annuity structures in DC plans

In most large DC plans, “stable value” is delivered through insurance company contracts, broadly falling into three buckets:

- 1) Traditional guaranteed investment contracts (GICs).
 - The plan holds a contract with an insurer that guarantees a fixed rate of return backed by the insurer’s general account.
 - The insurer owns the underlying assets; participants see only a book-value crediting rate.
- 2) Separate account contracts.
 - Assets supporting the contract are held in a legally segregated separate account, distinct from the insurer’s general account.
 - The contract may guarantee a rate of return or credit a rate tied to the performance of the separate account’s underlying portfolio.
- 3) Synthetic GICs and wrapped portfolios.
 - The plan (or a commingled fund) owns a portfolio of fixed income securities; one or more insurers provide “wrap” contracts that smooth returns and guarantee book-value withdrawals under specified conditions.

GLI products and in-plan annuities often piggyback on similar insurance structures:

- **General account GLI** - The insurer guarantees income based on its general account, with participant benefits an obligation of the insurance company.
- **Separate account GLI** - Income promises are supported by a separate account that may hold a mix of fixed income and other assets, with performance passed through to policyholders.

In regulatory terms, these contracts are insurance products, governed by state insurance regulation and ERISA (to the extent plan assets are involved), not by the 1940 Act mutual fund regime. Where a separate account’s performance is passed through to plans, ERISA’s fiduciary responsibility rules apply to the insurer with respect to those assets.

Protection tradeoffs vs. mutual funds

From a participant’s perspective, stable value funds and GLI options often present as “conservative,” “capital-preserving,” or “income” choices. Under the hood, the protection profile is different from a registered fund.

Credit and counterparty risk - General-account stable value and GLI benefits are promises of the insurer; they depend on the insurer’s solvency and claims-paying ability. Separate accounts can mitigate this somewhat by segregating assets, but contract terms still govern the extent of protection.

Transparency into underlying assets. Participants typically see a crediting rate and an account value, not a portfolio of observable securities or a prospectus with holdings and risk disclosures. Detailed asset-level information may be available to the plan sponsor or consultant under NDAs, but not to participants or the broader market.

Liquidity terms and restrictions. Stable value contracts often include put provisions, market value adjustments, or exit conditions if a plan freezes contributions or changes recordkeepers. Participants often experience “daily liquidity at book value,” but that liquidity is conditional on the plan remaining in good standing with the contract.

Regulatory and oversight regime. Oversight rests with state insurance departments and ERISA fiduciary rules, not the SEC’s mutual fund governance and disclosure framework.

The net effect: these products can provide valuable capital preservation and income smoothing, but they do so through a regime that is less transparent and more dependent on contractual promises than a 1940 Act bond fund.

Functional deregulation?

Stable value and GLI options illustrate a pattern similar to CITs in which participant-facing communications and statements suggest a conservative, low-volatility option, often sitting beside registered bond and money market funds, but the underlying structure is an insurance contract backed by a general or separate account, operating outside the mutual fund rulebook.

It is not that these products are unregulated; they are heavily regulated as insurance products. The concern, from an investor-protection standpoint, is that participants may believe they hold a “fund-like” conservative option, when in reality they hold a claim on an insurer’s balance sheet or a contract with complex terms that would be difficult for a typical retail investor to fully evaluate on their own.

That dependence on intermediary fiduciaries such as plan sponsors, consultants, and insurers, rather than standardized, public product-level protections, is a hallmark of the perimeter shift.

Crypto and Digital Assets in Retirement Plans

Cryptoassets are a different, more volatile frontier, but they raise the same core question: how far can DC plans stray from traditional, regulated asset classes before investor protections become inadequate for typical participants?

DOL’s “extreme care” guidance and its rescission

In March 2022, the Department of Labor’s Employee Benefits Security Administration (EBSA) issued Compliance Assistance Release 2022-01, titled “401(k) Plan Investments in ‘Cryptocurrencies’.”

That release warned that EBSA had become aware of firms marketing crypto investments to 401(k) plans as potential menu options and directed plan fiduciaries to exercise “extreme care” before considering adding a cryptocurrency option, citing concerns about extreme price volatility; valuation difficulties; custody and recordkeeping challenges; and susceptibility to fraud and theft. The release went further, suggesting that offering crypto could, in some cases, be inconsistent with ERISA’s duties of prudence and loyalty. Although the release did not ban crypto in 401(k)s, the “extreme care” standard had a significant chilling effect, and most sponsors and recordkeepers chose to avoid crypto options altogether.

In May 2025, EBSA issued Compliance Assistance Release 2025-01, rescinding the 2022 guidance. The agency stated that it was returning to a neutral stance on particular investment types and that fiduciaries (not regulators) should evaluate whether crypto belongs in a plan menu, under the usual ERISA prudence standard.

The rescission:

- Removed the “extreme care” language, which had no direct analogue in ERISA,

- Did not endorse crypto; rather, it reiterated that fiduciaries must evaluate risks and suitability like any other asset.

Crypto as a perimeter stress test

Cryptoassets magnify many of the themes in this paper.

- **Regulatory fragmentation and uncertainty** - Crypto's regulatory treatment straddles securities, commodities, banking, and payments law, with evolving standards for what constitutes a security token vs. other forms of digital assets. Investor-protection regimes are still being built; there is no settled, mutual-fund-like framework for many crypto exposures.
- **Extreme volatility and valuation challenges** - Crypto prices can experience double-digit percentage swings in short periods; valuations may depend on thinly traded markets on lightly regulated exchanges.
- **Custody and operational risks** - Safekeeping digital assets requires specialized custody arrangements, with risks around hacking, key management, and operational errors that are qualitatively different from holding stocks and bonds.

The 2022 DOL release explicitly tied these features to potentially “devastating” impacts on participants’ retirement savings if misused. Even after the 2025 rescission, those risk factors have not changed; only the regulatory messaging has. Neutrality restores discretion to fiduciaries, but it also removes a bright, cautionary signal that many sponsors relied on to justify a firm “no.”

Implications for participants and fiduciaries

In theory, crypto in retirement plans could appear in several forms as a standalone menu option (e.g., a crypto fund or trust), as an allocation within a multi-asset fund that includes digital assets as a sleeve, or through brokerage windows that allow participants to access crypto-related securities or ETPs.

In each case, the perimeter question is sharp:

- **Participant comprehension** - It is difficult to explain, in plain language, how crypto works, why prices move, what could cause a permanent loss of value, and how custody risks are managed.
- **Suitability and risk concentration** - Left unconstrained, some participants might allocate large portions of their retirement savings to crypto, attracted by past price spikes, without appreciating the downside.
- **Process and documentation** - Fiduciaries considering crypto must build a record that they understood and evaluated these risks, assessed fees and platform arrangements, and considered alternatives.

From the perspective of this paper's thesis, crypto is a stress test of the system. If we allow highly speculative, lightly settled assets into DC plans at scale, relying primarily on fiduciary process and generic disclosure, we are pushing retirement savers well beyond the environment for which the historical protection architecture was designed.

Whether sponsors embrace or reject crypto, the policy arc from DOL's 2022 “extreme care” warning to its 2025 neutral stance illustrates how quickly regulatory signals can change, even as the core challenge remains: matching complex, edge-of-perimeter assets with the realities of retail investors’ understanding and risk-bearing capacity.

Chapter 7:

Why the Pendulum Is Swinging: Economics, Regulation, and Behavioral Pressure

Why the Pendulum Is Swinging: Motivations Behind the Shift

Economic Pressures

As with nearly every aspect of the retirement savings industry, the most straightforward driver is economic: the traditional public-market, mutual-fund-based business model is under sustained fee pressure, and providers are looking for ways to restore margins.

Over the last two decades, broad equity and fixed income markets have increasingly been delivered via low-cost index funds and ETFs, with expense ratios measured in single-digit basis points for core exposures. Active managers have responded with lower fees, performance-based fee structures, and consolidation, but the net effect is clear: less revenue per dollar of public-market AUM.

DC recordkeeping fees have also been driven down by competitive bidding, litigation, and sponsor bargaining power. Asset-based fees have declined; per-participant charges are often heavily negotiated. Where revenue sharing and higher fund expense ratios once subsidized recordkeeping, shifts to lower-cost share classes, CITs, and explicit fee arrangements have squeezed that cross-subsidy.

In this environment, private equity, private credit, and other alternative strategies offer meaningfully higher fee potential both at the product level and for the broader asset/recordkeeping relationship. Even when “institutional discounts” are applied, private strategies typically carry multiples of the fee rates seen in core equity and bond index funds. Similarly, insurance-based products (stable value, GLI, group annuities) and specialty vehicles (interval funds, non-traded REITs, BDCs) often support higher embedded margins than plain-vanilla mutual funds.

CITs have been used to deliver lower-fee implementations of core strategies, which is positive for participants, but they also enable more tailored revenue structures and unit classes that can preserve economics in ways that are harder to replicate in simple retail share classes.

From an industry perspective, then, moving away from the pure public-market mutual fund chassis is, at least in part, about defending profitability in a world where “beta is nearly free.” That economic pressure is not inherently sinister, but it does create an incentive to favor products and structures where pricing power and opacity are greater, especially when wrapped in a narrative of innovation and diversification.

Regulatory and Structural Incentives

Alongside pure economics, the shape of the regulatory landscape creates structural incentives to favor vehicles at the edge of, or outside, the traditional retail regimes.

The 1940 Act and public issuer regime are mature and prescriptive. Registered mutual funds and public companies operate under well-defined but heavyweight rulebooks: board composition rules, detailed disclosure requirements, liquidity and derivatives regulations, marketing and advertising constraints, and frequent SEC reporting. These regimes are relatively inflexible. Adjusting strategies, launching new share classes, or incorporating non-traditional assets can trigger lengthy filing, review, and compliance processes.

Alternative regimes offer more flexibility. Bank trust law (CITs): Allows faster product customization, multiple unit classes, white-labeling, and easier structural changes without the full securities-registration overhead. Insurance

regulation (separate and general accounts) focuses on solvency and policyholder protections, but generally does not require the same portfolio-level transparency and standardized reporting that mutual funds provide. Private fund exemptions (Reg D, 3(c)(1), 3(c)(7)): Permit offerings to accredited or qualified purchasers with greatly reduced public-disclosure burdens, relying heavily on contractual arrangements and general anti-fraud provisions.

The path of least resistance for innovation runs outside the tightest regimes. When firms want to introduce new asset classes (private equity in TDFs, private credit, specialty real assets), the regulatory path of least resistance often leads them toward CITs, separate accounts, or private fund sleeves rather than pure mutual fund structures. Even under the 1940 Act, vehicles such as interval funds and non-listed BDCs are used to accommodate less liquid assets while relaxing the daily-redemption discipline that has historically constrained mutual funds.

Successive policy discussions, from broadening accredited investor definitions to encouraging “access to private markets” for long-term savers, send a signal that expanding product types is desirable, not suspect. In retirement specifically, DOL’s stance of “neutral but open” on private markets and crypto (so long as fiduciaries meet the prudence standard) effectively says: the structure is permissible if you can defend it.

The combined effect is a structural one: it is simply easier and more attractive to innovate outside the most mature retail regimes. That doesn’t guarantee bad outcomes, but it shifts where experimentation happens and where the limits of the investor-protection architecture are tested.

Behavioral and Political Drivers

Not all of the momentum is structural; a meaningful share is psychological and political. Human factors on both the supply and demand side exert a quiet but powerful pull toward complexity and novelty.

Plan sponsors and committees do not want to be seen as behind the curve. Offering “institutional-caliber strategies” (private equity, private credit, alternatives) feeds an understandable desire to appear sophisticated and aligned with what endowments and large DB plans use. Consultants and asset managers reinforce this with messaging that frames these moves as modernization of DC menus, not as boundary-pushing.

It is easier to tell a compelling story about “unlocking value in private companies”, “direct lending to the engine room of the economy,” or “owning infrastructure that underpins everyday life” than about owning another low-cost index fund.

Narratives about “illiquidity premia” and “diversification benefits” resonate with committees eager to demonstrate that they are actively improving participant outcomes, even if the empirical evidence is mixed.

Investment committees often benchmark themselves not just on returns and fees, but on menu design relative to peers. If a peer plan of similar size adopts a private-markets sleeve in its TDFs, or a sophisticated-looking stable value or GLI solution, it can create subtle pressure: “Are we missing something? Will we look unsophisticated if we do not consider this?”

Policymakers across the spectrum have endorsed ideas like:

- *Expanding worker access to “the same opportunities as institutions and wealthy investors.”*
- *Democratizing private markets.*
- *Using retirement assets to support infrastructure, climate transition, or small-business lending.*

These narratives make it politically attractive to reframe regulatory perimeter expansion as empowerment, not deregulatory risk-taking.

Together, these behavioral and political forces help explain why complexity tends to be framed positively, as innovation and access, rather than as a potential erosion of tested protection frameworks. For committees under time pressure and bombarded with attractive pitches, saying “no” can feel more difficult than saying “yes with caveats,” even when the prudent course would be to stick to simpler, better-understood structures.

Is This Regulatory Arbitrage?

A natural question, and one that many plan sponsors are reluctant to ask explicitly, is whether these trends amount to regulatory arbitrage: the deliberate use of alternate structures to secure economic benefits by sidestepping more demanding rules. The answer is nuanced.

When an asset manager runs economically identical strategies in a mutual fund and a CIT, but favors the CIT for DC because it avoids certain distribution constraints and disclosures while preserving higher fee flexibility, that has a regulatory-arbitrage flavor even if the underlying investment process is the same.

When private equity exposure is delivered via opaque fund-of-funds or multi-layered structures, in part because that is the only way to insert it into a DC-appropriate wrapper without triggering a full-blown 1940 Act registration or detailed participant-level reporting, the structure is as much about circumventing friction as it is about diversification.

In many cases, the shift is less about dodging regulation and more about adapting to constraints.

- CITs solve genuine problems in fee compression and customization.
- Stable value solves a real participant’s need for capital preservation in a low-yield environment.
- Interval funds address the illiquidity of certain assets while still providing some regulated framework.

Here, the “arbitrage” is a byproduct: the most practical solution happens to sit outside the most stringent retail regime, even if that was not the primary design goal.

For fiduciaries, intent matters less than outcome. ERISA does not punish or reward motive; it focuses on process and prudence. From a fiduciary standpoint, the key questions are:

- What protections are we giving up by using this vehicle instead of a simpler, more regulated alternative?
- Are the incremental benefits (net of all fees, complexity, and operational risk) sufficient to justify those tradeoffs for our participants?
- Can we explain those tradeoffs in language that a typical participant would recognize as reasonable?

Regardless of motive, the cumulative effect of these decisions is a form of functional deregulation:

More participant assets reside in vehicles where direct product-level protections, transparency, and public scrutiny are weaker. More of the protection burden is shifted onto intermediaries’ fiduciary processes and internal controls, which are harder for participants and even regulators to monitor in real time.

In that sense, “regulatory arbitrage” may be too narrow a term. The more accurate description is that economic and structural incentives systematically favor the edges of the regulatory perimeter, and the system has not yet fully grappled with whether the traditional investor-protection architecture can comfortably stretch that far while still serving retail savers well.

Chapter 8:

A Risk Map for Modern DC Plans: What Could Go Wrong?

A Risk Map: What Could Go Wrong?

Participant-Level Risks

At the ground level, all of this shows up not as “regulatory perimeter drift,” but as ordinary people making choices inside their 401(k)s. The first set of risks is about whether participants can realistically understand and bear what we’re asking them to hold.

Complexity vs. financial literacy

The academic and practitioner literature is blunt. Many workers struggle with even basic investment concepts (risk/return, diversification, inflation). Surveys consistently find that a large share of eligible workers can’t correctly define core terms or answer simple literacy questions.

Financial literacy and retirement outcomes are correlated: more literate workers are more likely to participate, contribute adequately, and hold equity, while those with lower literacy are more sensitive to framing and more likely to under-save.

Against that backdrop, we are introducing:

- CITs with bank-trust governance
- TDFs with 10–20% allocations to private assets under certain design assumptions
- Stable-value/GLI structures backed by insurer balance sheets
- Interval funds with gated redemptions
- Non-traded REITs/BDCs, and potentially crypto sleeves

The information burden is pushing in the opposite direction of participant capacity. Participants see familiar labels (“Target 2045,” “Stable Value,” “Alternative Income”), daily account values, and simple risk icons, but the underlying mechanics are increasingly complex. That gap is the starting point for most participant-level risk.

Illiquid assets inside vehicles that promise frequent liquidity create classic mismatch risks. Recent commentary on private assets in open-end structures (and SEC guidance) notes that funds holding private capital and offering frequent redemptions are vulnerable to runs when redemptions outstrip the ability to sell assets without fire-sale discounts. This is not a theoretical risk. In 2008, the largest private real estate product available to 401(k) plans had to be gated and queued through well into 2010 due to market liquidity risks. Stable value as an asset class experienced a similar crisis in 2008–2009. Many stable funds saw market values fall below book values, with wrap providers and sponsors forced to manage transfer restrictions and covenant tensions behind the scenes.

For a participant who only sees “\$1 stable value” or a smooth TDF line on a chart, the non-obvious risk is that in stress scenarios:

- Redemptions may be limited, pro-rata, or subject to delays
- Crediting rates may reset lower
- The NAV may gap down after a long period of apparent stability

These are entirely rational outcomes given the structures, but they feel like a betrayal of expectations to participants who believed they had daily liquidity and low risk. Going back to the 2008 period, not only were participant expectations not met, but litigation ensued.

As we layer in private equity, private credit, non-traded vehicles, and structured solutions, total costs will inevitably rise. Analyses of private-asset allocations in TDFs acknowledge that, even with institutional pricing, private assets increase expense ratios relative to all-public-market designs; their case for inclusion is explicitly “higher expected net returns despite higher fees.”

Non-traded REITs/BDCs routinely embed high upfront and ongoing fees, with Research documenting sales loads and offering costs that can consume 10–15% of invested capital.

For a participant, that fee drag is largely invisible. They see a single TDF expense ratio or a stable-value crediting rate. They have no insight into the layered management/performance fees, transaction fees, and wraps broken out in a way they can interpret.

Over a multi-decade horizon, an extra 30–70 bps of all-in cost on a default can erase a significant portion of the theoretical return benefit from private or complex assets. If the realized returns are merely average, participants end up worse off than in a simpler, cheaper design.

Complex products raise stakes around behavior and trust. Behavioral finance research demonstrates the human tendency toward impatience and myopia. Investors prefer near-term gratification and react negatively to salient shocks. If a default that promised “institutional diversification” delivers an unexpected loss, delayed redemption, or headline scandal (e.g., crypto losses, a troubled private credit sleeve), participants may overreact by de-risking permanently, disengage from the plan, or reduce contributions; lose confidence not just in the product but in the employer and the system.

Once trust is impaired, it is extremely hard to rebuild.

Fiduciary and Plan-Sponsor Risks

The second set of risks sits with plan sponsors, committees, and named fiduciaries. As the product set moves toward the perimeter, the legal and governance risks increase even if the headline ERISA standard does not change.

The DC litigation wave of the last decade has shown a clear pattern. Class actions have focused on excessive fees and imprudent investment options, including higher-cost share classes when cheaper ones were available, custom TDFs that underperform off-the-shelf series, and lineups concentrated in expensive active funds that trail simple index benchmarks. More recently, 2025 litigation surveys highlight that stable value funds have become a primary target, with plaintiffs alleging below-market crediting rates and underperformance versus allegedly comparable conservative alternatives.

This is all happening before most plans have meaningful private equity, private credit, or crypto exposures. Add those, and you are layering new, harder-to-explain, higher-fee, less-transparent risks into an environment where plaintiffs and courts already scrutinize deviation from low-cost, simple benchmarks, and any underperformance or “surprise behavior” is likely to be second-guessed with hindsight.

Regulators have been clear that moving into perimeter-edge assets does not change ERISA’s standard; it raises the bar for what prudence looks like in practice. The DOL’s crypto and private-asset communications, even when rescinded or neutralized, repeatedly emphasize that fiduciaries must be able to demonstrate how they evaluated volatility, valuation, custody, liquidity, and fees, and why the decision was in participants’ best interests.

Practically, this means:

- More complex RFPs and manager due diligence

- Heavier reliance on external experts, whose own conflicts and competencies must be vetted
- More time-intensive committee education and meeting time devoted to understanding vehicles that are inherently more opaque

For many mid-sized sponsors, this is a real capacity issue. The governance bandwidth required to responsibly oversee perimeter-edge products may not exist without adding bodies or outsourcing more decisions.

Recent DOL moves, including rescinding the 2021 private-equity supplemental statement and the 2022 crypto “extreme care” release, are often interpreted as “green lights.” They’re better seen as removing bright red lights.

In a neutral posture, DOL and plaintiffs’ lawyers can treat any incident (e.g., losses, gating, operational missteps) as evidence that a fiduciary failed to live up to the standard they voluntarily chose to test and argue that the sponsor should have known that retail-facing DC plans are a poor venue for complex, opaque assets when simpler, well-understood options were readily available.

Neutrality simply restores discretion; it does not remove after-the-fact scrutiny. If anything, it gives enforcers and courts more room to say: “You chose this path; show us the record.”

Beyond courts and regulators, sponsors face reputational consequences. If a default with private markets or crypto sleeves is later portrayed, fairly or not, as a “risky experiment with workers’ retirement,” the employer is likely to see:

- Damage to its employer brand and employee relations
- Distrust in HR and benefits leadership
- Pressure from unions, works councils, or internal advocacy groups

This is particularly salient for public and mission-driven employers, where reputational capital is both fragile and central to stakeholder relationships.

System-Level and Policy Risks

Finally, there are system-level risks that go beyond any single plan. How does widespread perimeter drift affect the resilience and legitimacy of the retirement and financial systems as a whole?

Concentrated exposure to private credit and other shadow-banking channels

A significant share of the “new” risk in DC plans is likely to come through private credit and other non-bank lending. Research on the rise of private credit emphasizes that the shift of corporate borrowing from regulated banks into largely unregulated private funds creates uncertain but potentially significant systemic risks, particularly if credit standards loosen and risk management erodes in the hunt for yield and market share.

If DC defaults increasingly allocate to private credit through CITs, interval funds, or fund-of-funds structures, retirement assets become a large, sticky capital base supporting this shadow-banking system.

This can create feedback loops. In a downturn, pressure on private credit portfolios may coincide with participant risk aversion, amplifying stress in vehicles that already have liquidity constraints. Conversely, persistent inflows from DC assets could help mask growing fragility in private markets until an abrupt repricing occurs.

Liquidity mismatches at scale

What looks manageable at the single-plan level can become more problematic when adopted system-wide. A Darden/SEC-focused analysis⁷ recently highlighted that open-end funds holding private assets are particularly vulnerable to redemption pressure and run dynamics when many investors seek to exit at once. If a meaningful share

⁷ Financial Economists Roundtable. (2025). Expanding Access to Private Capital Markets: Proceed with Caution.

of the \$10-plus trillion DC market ends up in structures that depend on disciplined, staggered redemption behavior, the system becomes more fragile to macro shocks, policy changes, or loss of confidence.

The risk is less about a classic “bank run” and more about market plumbing under stress: delayed redemptions, swing pricing, gates, and valuation adjustments that can propagate uncertainty across plans and providers.

Policy whiplash and politicization

The last few years have shown how quickly policy signals can flip.

- DOL went from “extreme care” on crypto to a neutral posture in just over three years.
- An August 2025 Executive Order explicitly presses regulators to expand the availability of alternative assets in 401(k)s, including crypto and private equity, framing this as access and growth policy.

When retirement plan investment policy becomes a political football tied to administrations’ views on crypto, private markets, ESG, or industrial policy, the system inherits regulatory uncertainty for sponsors (what is encouraged today may be criticized tomorrow) and the risk that product design choices become proxies for political alignment, amplifying controversy and reducing the focus on participant outcomes.

Erosion of confidence in the retirement system

The cumulative effect of the risks above is a confidence problem. If participants experience losses, illiquidity, scandals, or confusing communications tied to “sophisticated” options they did not knowingly choose, they may become skeptical of employer-sponsored plans, the advice and guidance they receive, and the fairness of the system itself.

Retirement savings are uniquely sensitive to trust because we have developed a system where contributions are mandatory or strongly nudged, horizons are long, and the system rests on the assumption that people will accept complexity because the rules and fiduciary structures protect them.

If enough participants conclude that the system is too complex, too risky, or too captured by industry interests, they are more likely to under-save, opt out, or seek to withdraw assets into vehicles with even less protection (e.g., speculative retail platforms). That is the ultimate system-level risk: a degradation not just of portfolios, but of participation and faith in the architecture we’ve spent decades building, and data shows is working.

Chapter 9:

A Practical Framework for Fiduciaries Evaluating Perimeter-Edge Products

A Practical Framework for Plan Fiduciaries

This section assumes you will be pitched CITs, private markets, insurance solutions, interval funds, and “alts” for your DC plan. The goal is not to provide a yes/no answer for each product, but to give a repeatable framework you can use to reach, document, and defend prudent decisions.

A Simple Regime-Comparison Lens

Before debating performance charts or marketing narratives, start with one basic question. Under what regulatory and fiduciary regimes does this option live, and how do those regimes compare to a plain-vanilla 1940 Act mutual fund?

Identify the chassis clearly. Is the option a 1940 Act mutual fund, ETF, CIT, group annuity, insurance separate account, interval fund, private fund sleeve, or something else? Ask the provider to state this in plain language at the top of any proposal.

Map the key regimes. For each candidate option, document:

- primary regulator(s): SEC, OCC/state banking, state insurance, or exempt/private.
- Applicable product laws: 1940 Act, banking regs, insurance codes, private-fund exemptions, etc.
- ERISA status: Is the vehicle itself an ERISA plan asset “look-through” vehicle? Who is an ERISA fiduciary at the product level?

Compare protections to a mutual fund baseline. Relative to a simple mutual fund, what is:

- Stronger? (e.g., contractual guarantees, additional fiduciary layers)
- Weaker? (e.g., fewer disclosure requirements, less public data, no shareholder voting)
- Just different? (e.g., bank trust oversight instead of an independent fund board)

Document what participants “give up” and “gain.” In one short paragraph each:

- What protections and rights are reduced or altered?
- What expected benefits justify those tradeoffs? (net of all fees and complexity)

Check for alignment with your plan’s profile.

- Does this structure make sense given your participant demographics, plan size, and governance capacity?
- Would a typical participant reasonably assume they are getting more protection with this option, when in fact they may be getting less?

If you can’t complete this regime comparison on one page, or if the provider can’t/won’t help you fill it in, that is itself a red flag.

Due Diligence Questions for Non-40 Act and Private-Market Products

Once you understand the regime, you can move to a deeper, product-specific due diligence. At a minimum, committees should be able to answer and document the following categories for any non-mutual-fund or private-market exposure (including CITs, stable value/GLI, interval funds, private equity/credit sleeves).

Structure and regulatory status

- What exactly do we own—units of a CIT, interests in a separate account, LP interests held through a fund-of-funds, a wrapped portfolio, an interval fund, etc.?
- Under which exemptions or product rules does the underlying vehicle operate?
- Is there any leverage or structural complexity (e.g., feeders, blockers, SPVs) we need to understand?

Economics: all-in fees and expenses

What is the total expense load participants will bear, including

- Management and advisory fees (at each layer)
- Performance fees or carried interest
- Wrap, guarantee, or insurance charges
- Fund-of-funds or platform fees
- Trading and transaction costs were material

How does this all-in cost compare to the cheapest available public-market alternative that could reasonably fill the same role? Where do revenues go (manager, recordkeeper, trustee, insurer), and are there any embedded cross-subsidies or revenue-sharing arrangements?

Liquidity and cash-flow management

- What liquidity is offered at the plan level (daily, periodic, gated, pro-rata redemptions)?
- What liquidity is available at the underlying asset level (e.g., private equity capital calls, lockups, redemption windows)?
- How are contributions, withdrawals, QDROs, loans, and required minimum distributions funded in stress scenarios?
- What has to happen before liquidity to participants can be restricted, and who decides?

Valuation and pricing

- How frequently are assets valued (daily, monthly, quarterly)?
- Who determines valuations, and what methodologies are used?
- Are there independent valuation agents or oversight committees?
- How are stale prices, hard-to-value positions, or model risk addressed?
- Does the product use tools like swing pricing, fair-value adjustments, or smoothed crediting rates, and how are these communicated?

Risk and performance profile

- What is the expected role of this option in the lineup or default (return driver, diversifier, capital preservation, income)?
- What are the credible downside scenarios over 1, 3, 5, and 10 years?
- How has a similar strategy behaved in prior crises (e.g., 2000–02, 2008–09, 2020), recognizing data limitations?
- How sensitive are returns to rates, spreads, liquidity conditions, and manager skill?

Governance, fiduciary roles, and conflicts

- Who is an ERISA fiduciary with respect to the product (e.g., discretionary trustee, 3(38) manager, insurer)?
- How are conflicts of interest identified, disclosed, and managed (e.g., affiliated managers, cross-trades, fee sharing)?
- What are the escalation paths if the committee loses confidence in the manager or product?

Participant communication and suitability

- Can we describe the product's purpose, risks, and key mechanics in plain English on one page?

- What disclosures, education, and modeling will participants see, particularly if the product sits in a QDIA?
- For brokerage-window or opt-in options, what guardrails (e.g., minimum age, contribution caps, warnings) are in place?

Exit strategy

- Under what conditions would we decide to exit this option?
- How long would it realistically take to unwind the position, and what costs or restrictions would apply?
- Are there scenarios in which we cannot exit without impairing participant interests?

If you cannot get satisfactory, documented answers across these categories, you don't have an investable product for a retail-facing DC plan, you have a research project.

Implementation and Governance Considerations

Even if a vehicle passes your regime and due-diligence tests, how you implement it can significantly alter the risk profile.

Start with constrained, diversified exposures

- Prefer embedding non-traditional assets in diversified, professionally managed options (e.g., TDFs, balanced funds, managed accounts) rather than as standalone core menu choices.
- For illiquid or private assets, set explicit allocation caps (e.g., 5–15% of a default fund), with a rationale tied to demographics and horizon.
- Avoid “all-or-nothing” participant decisions where a single click moves someone from 0% to heavy exposure in a complex product.

Align with your committee's bandwidth and expertise

- Be realistic about your governance capacity. Do you have members or advisers with real private-markets, insurance, or complex-products experience? How many hours per year can you realistically devote to ongoing oversight of this one structure?
- If the honest answer is “very limited,” consider whether delegating to a 3(38) discretionary manager or independent fiduciary is necessary—and whether even that is sufficient.

Embed requirements in the IPS and committee charter

- Update your Investment Policy Statement to define permissible vehicle types and conditions (e.g., CITs are allowed if fee savings exceed X and transparency standards are met; private assets are permitted only through diversified options with allocation caps). Require a regime comparison and “what participants give up/gain” analysis for any non-40 Act or private-market product.
- Reflect these expectations in the committee charter: who is responsible for complex-product oversight, how often it is reviewed, and what authority exists to adjust or terminate.

Plan-level stress testing and scenario analysis

- Ask providers to show how the product and the overall plan lineup/default behave under stress scenarios (e.g., deep recession, rate shock, credit crunch).
- Model participant flows: what happens if 10–20% of participants try to move out of the default at once? How does that interact with liquidity and valuation mechanics?
- Use these exercises to calibrate allocation sizes and to identify monitoring triggers.

Monitoring, reporting, and escalation

- Define key risk indicators (KRIs) for each complex option—e.g., allocation to illiquids, use of gates, tracking error, fee drift, deviation from expected behavior.

- Require regular reporting from managers in a format the committee can digest, not just raw data dumps.
- Establish a clear escalation protocol: when do you put a product on watch, when do you freeze new flows, and when do you move to exit?

When to Say No

A robust framework needs a clear recognition that “no” is sometimes the most prudent answer, even when a product is permissible and marketed as a best practice.

Practical “stop” criteria include:

You can't explain it to a participant in one page

If, after working with the provider, you cannot craft a one-page, plain-language summary that a typical participant could reasonably understand, the product is likely too complex for a core DC role, especially as a QDIA.

You can't calculate or compare the all-in fee load

If you cannot express, in basis points, the total participant cost (including performance fees, wraps, embedded vehicles), and compare it to a simpler alternative that could serve a similar function, you don't have enough information to judge prudence.

The risk/return justification is thin or purely narrative

If the case for the product rests heavily on stories (“access to the same deals as institutions,” “illiquidity premia”) rather than robust, net-of-fee analysis and scenario testing, be cautious. If the expected incremental benefit over a simpler alternative is modest and highly uncertain, the additional complexity and governance burden likely aren't justified.

Your governance structure isn't ready

If your committee (and advisers) lack credible experience with the asset class or structure, and you're not prepared to add or hire that expertise, it is prudent to wait. If your internal risk management, legal, or audit teams express discomfort they can't resolve, take that seriously.

Exit paths are unclear or unacceptably constrained

If you cannot unwind the exposure in a reasonable time frame and on reasonable terms should conditions change, you may be locking participants into a decision you can't reverse—especially problematic for defaults.

The decision is being driven primarily by “optics”

If, in honest conversation, the dominant reasons to proceed are: “Our peers are doing it,” “It looks sophisticated,” “We're being pressured by a key provider,” rather than a clear, documented benefit for participants, that is a sign to stop.

A helpful litmus test you can embed in your minutes. *If this product underperforms or misbehaves and we are sitting in a deposition or on the witness stand five years from now, could we look a participant, or a judge, in the eye and calmly explain why the tradeoffs we made were prudent and necessary, given the simpler alternatives we chose not to use?*

If you are not comfortable with your ability to answer that question today, the default decision should be to decline or defer until the structure, the evidence, or your governance capacity improves.

Chapter 10:

Innovation with Guardrails: Re-Centering the Retirement System on Participants

Policy and Industry Recommendations

This section assumes we are not going back to a world of only plain-vanilla mutual funds in DC plans. The question is: if private markets, CITs, insurance products, and complex wrappers are going to be in the mix, how do we upgrade the protection architecture so it follows the participant, not just the product?

Toward Vehicle-Neutral Baseline Protections for Retail-Facing Capital

Right now, protections depend heavily on the chassis: mutual fund, CIT, separate account, LP, interval fund, etc. A more coherent approach would define a category of “retail-facing retirement capital” and attach a minimum set of protections to that capital, regardless of vehicle.

Concretely, regulators (primarily Department of Labor and Securities and Exchange Commission) could:

- 1) Clarify a baseline disclosure package for all “designated investment alternatives.”
DOL’s 404a-5 rules already require comparative charts of fees and performance for designated investment alternatives in participant-directed DC plans. That framework could be tightened and modernized so that any option on the core menu (mutual fund, CIT, stable value, GLI, interval fund, private-asset TDF) must clearly disclose, in a standardized format:
 - Vehicle type and underlying regulatory regime (bank trust, insurance, 1940 Act, private fund exemption).
 - All-in fees (including estimated embedded performance fees, wraps, and insurance charges).
 - Liquidity profile: redemption frequency, gates, notice periods, and conditions under which withdrawals can be restricted.
 - Use of illiquid or hard-to-value assets and the basic valuation approach.
- 2) Require a “regime comparison” for defaults and complex options.
For QDIAs and any option with private assets, regulators could require a short, participant-facing explanation of what protections and rights exist relative to a simple mutual fund alternative and committee-facing documentation comparing protections, governance, and disclosure across chassis as part of the prudence record.
- 3) Extend baseline protections to IRAs and similar retail retirement accounts (at least for recommended products).
Where financial professionals serve as fiduciaries or under a best-interest standard, a similar “vehicle-neutral” disclosure package should follow the advice, not just the plan type. This would reduce the temptation to route retail retirement assets into the least transparent structures simply because they sit outside 401(k)/404a-5 coverage.

The goal is not to equalize all rules across vehicles but to ensure that participants don’t lose basic comparability and visibility simply because sponsors chose a different wrapper.

Improving Data and Disclosure for CITs and Other Non-Registered Vehicles

CITs now hold nearly 30% of DC plan assets, up from about 13% a decade ago, and more than \$5 trillion as of early 2025. They are fast becoming the default DC chassis, especially for target-date funds. At the same time, academic work has flagged that lower CIT fees often come “at the expense of transparency and disclosure, including public

disclosure about CIT fees.”⁸

Industry articles argue that CIT transparency is improving and can be “comparable to mutual funds” when trustees use NSCC/FundSERV, standardized fact sheets, and robust trust documents. Both can be true: the best CITs are transparent; the floor is still low, and there is no mutual-fund-like public baseline.

This is where public policy and industry steps would help.

Create a centralized public data hub for DC CITs. Require bank trustees offering CITs to DC plans above a modest asset threshold to file standardized data (strategy, fees, performance, benchmarks, asset mix, vehicle characteristics) with DOL or SEC. Make this accessible in a public database, similar in spirit to mutual fund data, so third parties (researchers, journalists, advisors) can monitor and compare options.

Standardize CIT fact sheets and reporting for DC use. Working with banking regulators, DOL could promulgate a model DC CIT disclosure template that mirrors the 404a-5 comparative chart but adds: vehicle type, regime, valuation frequency, and liquidity mechanics. Industry associations could adopt this template voluntarily in advance of regulation, signaling good-faith commitment to transparency.

Encourage plain-language explanations of fee structures and unit classes. Because CIT pricing often involves custom fee schedules and multiple unit classes, trustees should be required (or strongly encouraged) to provide a one-page, plain-English fee summary for each plan, including any revenue-sharing or platform payments, so sponsors can compare apples to apples with mutual funds and other CITs.

Extend similar expectations to other non-registered DC vehicles. Group annuity separate accounts, GLI products, and private-asset sleeves in CITs should be expected to meet comparable data and disclosure standards when used in participant-directed DC plans, even if their underlying regulatory regimes remain distinct.

The aim is not to shut down CITs—they often provide real fee benefits—but to eliminate the “black box” perception and reduce the monitoring burden on individual sponsors by making high-quality information broadly available.

Aligning DOL and SEC Perspectives on Private Markets in Retirement Plans

As private equity, private credit, and other alternatives move into 401(k)s, the current regulatory structure splits responsibilities. The SEC governs how private funds are offered, what disclosures public funds must provide, and how semi-liquid structures (interval funds, non-traded BDCs) operate. The DOL governs ERISA fiduciary behavior and participant disclosures in DC plans.

Both agencies are now under political direction to “democratize access” to alternative assets in retirement plans, following the Aug. 7, 2025, Executive Order, while also facing pushback from lawmakers concerned about risk, fees, and transparency. Trade groups report that the two agencies have begun informal coordination on private-markets rulemaking.

Rather than parallel, uncoordinated moves, there is a strong case for a joint DOL–SEC framework for private-market exposure in DC plans that would:

- Define what “good” looks like for private-asset use in defaults.
- Create safe harbors tied to concrete conditions, not asset labels.
- Coordinate data collection and risk monitoring.
- Provide consistent messaging to sponsors.

⁸ Overtaking Mutual Funds: The Hidden Rise and Risk of Collective Investment Trusts. Natalya Shnitser. The Yale Law Journal (2025)

- Right now, the policy signals are mixed: an Executive Order encouraging more alternatives, rescinded “extreme care” language on crypto, and cautionary speeches from regulators.

Without alignment, sponsors remain caught between political pressure to innovate and legal incentives to stay simple; the unsurprising outcome is confusion and uneven risk-taking.

Guardrails Around Retailification of Institutional Strategies

Finally, if private and complex strategies are going to be “retailized” for 401(k) participants, there should be clear guardrails that reflect the reality of participant understanding and risk tolerance.

Policy and industry measures could strike a better balance by:

Setting soft or hard caps on illiquid/private exposure in QDIAs. For default options, regulators could establish a recommended maximum range for illiquid/private assets (e.g., 10–15% of the fund, varying by age cohort and horizon), with higher levels requiring special justification. This would require disclosure of the maximum targeted illiquid/private allocation and actual range over time. This would preserve room for diversification benefits while reducing the tail risk of over-concentration in hard-to-value assets.

Tier access based on plan size and governance capacity. For small plans with limited governance resources, DOL could signal that certain structures (e.g., private-asset TDFs, complex GLI solutions) are strongly discouraged unless plan assets and committee expertise meet clearly specified thresholds. Conversely, large plans with documented private-markets expertise and robust external advice could operate under more flexible guidelines.

Mandate simple, standardized risk labeling for complex strategies. Similar to nutrition labels, participant-facing materials for any option with private assets, leverage, or non-daily liquidity should include a simple risk panel describing:

- Liquidity (daily / periodic / gated),
- Use of hard-to-value assets,
- Fee tier (e.g., low/medium/high relative to plan options),
- Historical or modeled worst-case drawdowns.

Align incentives: complexity should require lower, not higher, margins. Regulators and industry can work toward a norm that complexity does not automatically justify higher fees in DC defaults. For example:

- Require committees, when using private assets in a default, to demonstrate that all-in fees are within a specified range of a high-quality public-market alternative.
- Consider supervisory scrutiny where providers appear to use complexity primarily to reclaim margin lost in core public-market products.

Reserve a default “plain-vanilla” path. Even as private-asset and alt-enhanced defaults emerge, regulators could explicitly support (and perhaps prefer) plain-vanilla QDIAs, low-cost, broadly diversified public-market portfolios, for sponsors that choose not to take perimeter risk. This matters politically as well as financially: it creates space for sponsors who want to keep their plans simple without appearing regressive or negligent in light of pro-alternative policy pushes.

In combination, these recommendations aim to re-center the system on the participant: ensuring that innovation in product design and capital markets does not outpace the protections, disclosures, and governance structures that small investors reasonably expect when they hand over a percentage of every paycheck to their retirement plan.

Conclusion

The story this paper has tried to tell is simple, even if the mechanics are not. Over the past century, the U.S. built an elaborate investor-protection architecture largely aimed at protecting unsophisticated savers from fraud, abuse, and information asymmetry.

In today's retirement marketplace, we are not tearing down that architecture. Instead, we are routing more and more participant assets around its most protective features into bank-maintained CITs, insurance separate accounts, private funds, interval structures, and other vehicles that were not designed with retail investors as the primary audience.

This is happening for understandable reasons: fee compression, the search for diversification and return, product innovation, and political enthusiasm for "access" to private markets. But the cumulative effect is a form of functional deregulation for the end participant, even as formal fiduciary standards grow stricter.

None of that leads to a conclusion that innovation is bad or that DC menus should be frozen in a 1990s mutual-fund world. It does lead to a different, more pointed question. **Are we thoughtfully modernizing investor protections to match the new product universe, or are we silently deconstructing them via product design and distribution choices that participants cannot see or evaluate?**

Re-centering on the Participant

From a participant's point of view, the label on the screen still says "2045 Retirement Fund" or "Stable Value." Account balances still update daily. Risk is still shown on a 1–5 scale. Behind those familiar visuals, however, the nature of the promise has changed:

- Less reliance on standardized, public-facing disclosure regimes;
- More reliance on internal models, contractual terms, and opaque fee structures;
- More dependence on committees, trustees, and insurers to translate complexity into something that is effectively safe for people who will never read a trust document or partnership agreement.

If the system is going to lean more heavily on fiduciaries and less on product-level protections, then fiduciary process and governance must realistically be up to that task.

A participant-centric approach requires three shifts:

- Treat the regulatory regime as a core part of the investment decision, not an afterthought.
- Demand vehicle-neutral baseline protections for any product used as a default or core option.
- Be explicit and transparent about what is being traded away in liquidity, transparency, and fees when moving outside the mutual-fund paradigm.

Innovation with Guardrails, Not Defaults with Surprises

Innovation in capital markets and product design is not inherently at odds with investor protection. Private markets, insurance solutions, and semi-liquid structures can all have a legitimate place in long-horizon retirement portfolios if:

- Their use is constrained (by allocation limits, liquidity controls, and design principles);
- The governance infrastructure—expertise, monitoring, stress-testing—is commensurate with the complexity;
- The economic case (net of all fees and operational risk) is clearly stronger than simpler alternatives; and
- Participants are not exposed by surprise to risks they never had a reasonable chance to understand.

The wrong model is "everything that is legally permissible is presumptively appropriate for DC defaults." The right model is closer to "complexity is earned, not assumed" and is earned through demonstrable participant benefit, robust evidence, and governance that is capable of carrying the weight.

A Challenge to Fiduciaries and Policymakers

For fiduciaries, the near-term challenge is practical:

- Embed a regime comparison step in your process.
- Apply a consistent risk/benefit and governance capacity test to any non-40 Act or private-market product.
- Be willing to say “no” or “not yet” when the tradeoffs are not clearly in participants’ favor, even when policy winds or peer behavior are pushing in the other direction.

For policymakers and industry leaders, the challenge is structural:

- Build vehicle-neutral protections that follow the participant wherever their capital is deployed.
- Improve data and transparency for CITs, insurance vehicles, and private-asset wrappers so that sponsors and participants are not flying blind.
- Coordinate across agencies to set clear, conditional guardrails for the use of institutional strategies in retail retirement channels.

The DC system has become the primary retirement engine for tens of millions of workers. It can accommodate innovation. It cannot afford a slow drift into a world where participants carry institutional risks without institutional protections, and where the next crisis reveals that we asked too much of governance frameworks designed for a simpler product set.

The final test is the same one we suggested for committees, applied at the system scale. If, 10 years from now, a cohort of participants looks back after a period of stress and asks, “Why did you put my savings into these structures instead of simpler, cheaper, more transparent alternatives?”, will we be able to answer in a way that is both factually defensible and intuitively fair?

If the honest answer today is “not yet,” then the path forward is not to halt innovation, but to slow it down, tighten the guardrails, and upgrade the architecture until the protections are once again aligned with the people the system is meant to serve.