



## David C. Olstein

### Partner

David Olstein's practice focuses on the fiduciary responsibility provisions of ERISA and the prohibited transaction excise tax provisions of the Internal Revenue Code. He has an extensive background advising financial institutions, plan sponsors, and investment committees on ERISA matters, including compliance with ERISA's fiduciary duty and prohibited transaction rules in connection with the investment of pension plan assets.

David regularly advises fund sponsors on the application of ERISA's "plan asset" rules as they relate to the establishment and operation of private investment funds. From representing issuers and underwriters in connection with marketing securities to investors, to advising plan sponsors and independent fiduciaries in connection with the selection of annuity providers, David offers substantial experience at the intersection of ERISA and fiduciary responsibility.

David is an active member of the American Bar Association's Section of Taxation and the New York City Bar Association's Employee Benefits & Executive Compensation Committee. He is also a contributing author to the BNA treatise *ERISA Fiduciary Law*, and has authored or co-authored articles that have been published in the *Employee Relations Law Journal*, *Employee Benefit News* and *Thompson Reuters Practitioner Insights*.

"David is an exceptional ERISA lawyer who combines unparalleled technical knowledge with strong commercial judgment." — *Chambers USA*

#### New York

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#### Related Services

- Corporate
- Employee Benefits, Executive Compensation and ERISA
- Private Funds and Asset Management
- Real Estate Investment Management

#### Education

J.D., University of Virginia School of Law  
B.A., Johns Hopkins University

#### Representative Matters

- Advising named fiduciaries, trustees, investment managers, broker-dealers and custodians on matters relating to compliance with the fiduciary responsibility provisions of ERISA and Section 4975 of the Internal Revenue Code, including prohibited transaction restrictions and exemptions, fee arrangements, bonding and indicia of ownership requirements.
- Advising high net worth individuals and discretionary trustees on matters relating to compliance with Section 408, Section 408A and Section 4975 of the Internal Revenue Code in connection with the investment of IRA assets.
- Advising managers of private investment funds on matters relating to compliance with exceptions under the Department of Labor "plan assets" regulation and compliance with the fiduciary responsibility provisions of ERISA and Section 4975 of the Internal Revenue Code.

- Drafting ERISA provisions of private investment fund organizational and offering documents.
- Drafting opinion letters regarding VCOC/REOC status of private investment funds.
- Advising issuers and underwriters on matters relating to compliance with exceptions under the Department of Labor “plan assets” regulation and prohibited transaction exemptions in connection with the offering of mortgage-backed, asset-backed and other securities to benefit plan investors.
- Preparing prohibited transaction exemption applications.
- Advising fiduciaries of defined benefit plans in connection with pension de-risking transactions.

#### Honors & Awards

- Recognized by *Chambers New York* and *Chambers USA* for Employee Benefits & Executive Compensation
- Nationally recognized by *Super Lawyers* for Employee Benefits

#### Memberships

- Member, American Bar Association
- Member, New York City Bar Association
- Member, District of Columbia Bar Association
- Member, Institute for Portfolio Alternatives

#### Speeches & Events

- Speaker, “Employee Benefits Fiduciary Responsibility,” American Bar Association Section of Taxation, May 13, 2022
- Speaker, “Retirement Plan Investments: Plan Asset Hedge Fund; PE Fund Investing, 401k and IRA; ESG and Plan Voting Regulations,” Strafford Publications, January 12, 2022
- Speaker, “Pension Plan Investments 2021: Advanced Perspectives,” PLI, November 16, 2021
- Panelist, “Defined Contribution Access to Alternative Investment Products,” Institute for Planning Alternatives, June 17, 2021
- Speaker, “DOL Final ERISA Regulations for Private Equity Investments: New Prudence Rules, Pecuniary Factors, Exceptions, and More,” Strafford Webinar, January 21, 2021
- Panelist, “Governmental, Taft-Hartley, IRA and Non-U.S. Investors,” PLI Webinar, October 13, 2020
- Panelist, “Qualified Opportunity Funds, Opportunity Zones and ESG Investing Conference,” NYSSCPA, September 17, 2020
- Speaker, “Employee Benefits and Executive Compensation Update,” American Bar Association Webinar, May 27, 2020
- Speaker, “ERISA Considerations for Investments in Private Funds,” LexisNexis Webinar, May 19, 2020
- Speaker, “PLI’s Pension Plan Investments 2020: Current Perspectives,” PLI Webinar, May 4, 2020

- Speaker, "Employee Benefits Fiduciary Responsibility & Plan Investments Update," ABA's 2020 Midyear Tax Meeting, January 31, 2020
- Speaker, " Outsourcing Fiduciary Responsibility - Know Your Options," The Worldwide Employee Benefits (WEB) Monthly Meeting, November 21, 2019
- Speaker, "Tax Issues Affecting Family Offices," Stroock's Second Annual Family Office Symposium, November 13, 2019
- Speaker, "ERISA Fiduciary Investment Basics 2015," Practising Law Institute, February 4, 2015
- Speaker, "ERISA Developments Affecting Private Equity & Hedge Funds," New York City Bar Association, September 9, 2014
- Speaker, "ERISA Fiduciary Investment Basics 2014," Practising Law Institute, February 5, 2014
- Speaker, "Sun Capital Partners: Impact on Private Equity Funds," Bloomberg BNA Webinar, November 19, 2013
- Speaker, "ERISA Regulatory Update 2013," New York City Bar Association, October 10, 2013
- Speaker, "ERISA Litigation: A View from Both Sides of the Bar on Key Developments in 2011," New York City Bar Association, February 13, 2012

#### Publications

- Co-author, "Department of Labor Cautions Plan Fiduciaries Considering Cryptocurrency-Based Investments: Compliance Assistance Release No. 2022-01 Highlights Duties and Risks," *Stroock Client Alert*, March 16, 2022
- Co-author, "IRS Extends COVID Relief for Qualified Opportunity Zone Funds and Investors," *Stroock Client Alert*, January 26, 2021
- Co-author, "Business-Related Tax and Employee Benefits Provisions in the Consolidated Appropriations Act," *Stroock Client Alert*, December 31, 2020
- Co-author, "Monitoring of Redemptions from Open-End Funds under ERISA," *Stroock Client Alert*, December 28, 2020
- Co-author, "U.S. Department of Labor Proposes Amendments to 'Investment Duties' Regulation to Address ESG Investments," *Employee Relations Law Journal*, October 6, 2020
- Co-author, "What you need to know about IRS guidance on CARES Act retirement plan provisions," *Benefits Pro*, June 16, 2020
- Co-author, "IRS Issues Guidance on CARES Act Retirement Plan Distribution and Loan Provisions," *Stroock Special Bulletin*, May 11, 2020
- Co-author, "Federal Agencies Extend Employee Benefit Plan Deadlines in Response to COVID-19 Pandemic," *Stroock Special Bulletin*, May 5, 2020
- Co-author, "The CARES Act's Tax Provisions: an Overview," *Stroock Special Bulletin*, March 30, 2020

- Co-author, "First Circuit Holds Sun Capital Funds Not Liable for Portfolio Company Withdrawal Liability," *Pratt's Journal of Bankruptcy Law*, February/March 2020
- "SECURE Act Passed in Year – End Spending Package," *Stroock Special Bulletin*, December 23, 2019
- Co-author, "Opportunity Zones for Operating Businesses," *Stroock Special Bulletin*, August 7, 2019
- Co-author, "House Passes Retirement Plan Reform Legislation on Bipartisan Vote," *Stroock Special Bulletin*, May 29, 2019
- Co-author, "The Final Fiduciary Rule: Impact on Investment Managers," *Lexis Practice Advisor*, December, 2016
- Co-author, "Department of Labor Proposes New Fiduciary Regulation and Prohibited Transaction Exemption Relief for Investment Advice Fiduciaries," *Employee Relations Law Journal*, August, 2015
- Co-author, "The Silver Lining in 401(k) Supreme Court Decision," *Employee Benefit News*, May 22, 2015
- Co-author, "Dudenhoeffer: An Effective Tool to 'Weed Out Meritless' Stock Claims," *Thompson Reuters Practitioner Insights*, February 5, 2014
- Co-author, "Sun Capital Ruling Exposes PE Funds to Pension Liabilities," *Law360*, July 31, 2013
- Co-author, "Application of Plan Asset Rules to Plan Investments and Contributions," in *ERISA Fiduciary Law* (Second Edition 2006 and Cumulative Supplements)

**Admitted To Practice**

District of Columbia

New York