



The Real Estate Roundtable

Democratizing Access to Alternative Assets for 401(k) Investors

Capital and Credit

Summary

On Aug. 7, 2025, President Trump issued an Executive Order entitled, "Democratizing Access to Alternative Assets for 401(k) Investors," signaling a fundamental shift in federal policy regarding access to asset classes previously reserved for institutional investors.

The Executive Order aims to allow ordinary workers to invest in alternative assets such as private equity and real estate through their 401(k) plans. The initiative seeks to reduce regulatory obstacles for plan fiduciaries and clarify their duties through ongoing work by the U.S. Department of Labor (DOL) and the U.S. Securities & Exchange Commission (SEC).

The DOL is nearing the release of a proposed rule on advisors' duties when recommending alternative investments for defined contribution plans. According to the White House's Office of Management and Budget (OMB), the DOL submitted its proposed rule entitled, "Fiduciary Duties in Selecting Designated Investment Alternatives" on Jan. 13, 2026.

Key Takeaways

- In the August order, Trump directed the DOL to propose new regulations on alts in retirement plans subject to the Employee Retirement Income Security Act (ERISA) within six months. It also directed the DOL to work with other regulators to determine necessary rule changes to ease alternative investment access in 401(k)s, and for the SEC to help with that effort in participant-directed retirement plans.
- While such alternative investments have long been part of defined-benefit plan portfolios, such as pensions, they are not expressly barred from defined contribution plans. Nonetheless, fiduciary rules make it challenging to include them in 401(k)s.

Background

Action Post-Executive Order

- Since the Executive Order was issued in August, SEC Chair Paul Atkins has affirmed the need for access to retail alternative investments—such as real estate—“within reason,” while Commissioner Mark Uyeda called for litigation reform to protect plan sponsors by making it harder for investors to sue ERISA fiduciaries for offering alts in 401(k) plans.
- While the Executive Order and rescission of DOL guidance demonstrate a change may be on the horizon for 401(k) plans and investors, they do not bring with them any regulatory change; further guidance and rulemaking from the DOL and SEC will clarify what comes next for fund sponsors, general partners, and their institutional investors.

Recommendations

Prepare for DOL Public Comment and Next Steps: Once the OMB signs off on the proposal, the DOL's Employee Benefits Security Administration will then release it for public comment, which typically is a 60-day period.

- RER will continue to engage with regulatory agencies on this issue.