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 titled "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 EO aims to expand access to alternative assets, including private equity and real estate, through 401(k) plans by reducing regulatory obstacles and clarifying fiduciary responsibilities. The U.S. Department of Labor (DOL) and Securities and Exchange Commission (SEC) are responsible for advancing related regulatory changes.

The DOL released a proposed rule on advisors' duties when recommending alternative investments for defined contribution plans on March 30, 2026. RER submitted comments in support of the proposed rule. On Nov. 5, 2026, the DOL submitted its final rule to the White House Office of Management and Budget (OMB) for review, a key step before the rule can be published.

Key Takeaways

- In the August order, President 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

- SEC Chair Paul Atkins has supported expanding retail investor access to alternative investments, including real estate, "within reason." Commissioner Mark Uyeda has also called for litigation reforms to protect plan sponsors offering alternative investments in 401(k)s. 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.
- The DOL's March 30 proposed rule addresses the selection of alternative investments in defined contribution plans, including:
    - Private equity and private debt/credit.
    - Digital assets, including cryptocurrency.
    - Real estate, infrastructure projects, and commodities.
- On Nov. 5, 2026, the DOL sent its final rule to OMB for review. The final rule is expected to be published once OMB completes its review.

Recommendations

Support Regulatory Implementation: RER submitted comments supporting the DOL's proposed rule to expand access to alternative investments in 401(k) plans. RER will continue monitoring the rulemaking process, including OMB's review of the final rule, and related SEC actions affecting real estate investment opportunities.