

Securities Regulation Daily Wrap Up, ALTERNATIVE INVESTMENT FUNDS—White House EO would let 401(k) plans offer employee retirement savers exposure to PE and other assets, (Aug 7, 2025)

By [Mark S. Nelson, J.D.](#)

DOL's implementation of the executive order could indirectly address the lack of IPOs to replenish and augment holdings in funds already offered via 401(k)s.

The Trump Administration today issued an executive order directing the DOL and other federal financial regulators to mull how their regulations may be revised to allow employee retirement savers who contribute a portion of their earnings to 401(k) plans to gain exposure through those plans to alternative assets such as private equity investments, real estate investments, and digital assets. The [executive order \(Fact Sheet\)](#) calls on the Department of Labor to reconsider its regulations and guidance within 180 days and calls for the SEC to likewise reconsider its regulations but without a specific time frame. The DOL and SEC would have to coordinate any regulatory moves because their authorities separately address different aspects of the retirement savings market.

Mechanics of the executive order. According to the executive order, the DOL must reconsider its guidance regarding fiduciary duties and alternative asset investments for 401(k) plans and other defined contribution plans that are subject to the Employee Retirement Income Security Act of 1974 (ERISA). Specifically, the executive order calls for the DOL to clarify its position regarding alternative assets and the fiduciary process for offering asset allocation funds that contain these assets. The DOL is directed to act within 180 days and must also consider whether to rescind its December 21, 2021 Supplemental Private Equity Statement.

The text of the executive order spells out the purpose of the policy change: "It is the policy of the United States that every American preparing for retirement should have access to funds that include investments in alternative assets when the relevant plan fiduciary determines that such access provides an appropriate opportunity for plan participants and beneficiaries to enhance the net risk-adjusted returns on their retirement assets."

The executive order also anticipates the potential that retirement offerings in alternative assets may result in additional costs to plan participants. As a result, the DOL is directed to provide criteria under which ERISA fiduciaries can "prudently balance potentially higher expenses against the objectives of seeking greater long-term net returns and broader diversification of investments."

Under the executive order, the SEC, in consultation with the DOL, also would be directed to facilitate access to alternative assets for participant-directed defined-contribution retirement savings plans via updates to the agency's regulations and/or guidance. Here, the executive order directs the SEC to consider whether changes may be needed to existing rules governing accredited investor and qualified purchaser status. Unlike with the DOL, the executive order does not direct the SEC to take action within a fixed time frame.

Moreover, the DOL would have to consult with the Treasury Department and other federal agencies (including the SEC) regarding whether any other federal agencies need to amend their regulations to accommodate 401(k) and related plan offerings of alternative assets.

Why private equity and what risks? By way of background, for more than a decade, lawmakers and multiple Democratic and Republican administrations have grappled with how to spur more high growth startup companies. To date, the most prominent example is the Jumpstart Our Business Startups (JOBS) Act of 2012, which eased some securities regulations for emerging growth companies, revised the rules for some exempt offerings, and created an alternative offering system for crowdfunding.

Yet many retail investors remain shut out of exempt offerings because of the need, with few exceptions, to be an accredited investor, typically a wealthy person who in the words of the Supreme Court can fend for themselves by using their wealth and presumed financial sophistication to negotiate for financial disclosures before making an investment in a private company. Part of the impetus for today's executive order likely arises from Congress's inability to significantly revise the JOBS Act or for regulators to take other actions that might spur more initial public offerings (IPOs).

Historically, ERISA fiduciaries to 401(k)s and other types of retirement funds have offered traditional investment opportunities such as managed stock and bond funds and stock and bond index funds that, even if managed, track broad-based indices. The only significant departures would be for plans that allow employees to also accumulate company stock.

So why the push for private equity now? Those who advocate that retirement funds should provide their investors with exposure to private equity typically argue that, because private markets have been awash in cash for roughly the last decade, more fast-growing startup companies now elect to remain private longer and that in turn has reduced the number of IPOs that would provide new equity offerings for managed and index funds to include in the funds they offer to employees through 401(k)s.

But it is also noteworthy that some index funds that track popular stock indices have become disproportionately weighted in favor of the stocks of a very small number of mostly very large technology companies. Allowing employees to gain private equity exposure may help provide a degree of investment diversification overall, but if the private companies included in a fund's offering lean toward a particular industry, such exposure may not address the weighting issue that has recently bedeviled some major stock indices. Employees also will need to assess their risk tolerance when deciding whether to opt into funds that offer exposure to private equity, a world in which the underlying investments often are less liquid and may not pay off, if they ever do, for many years.

Real estate-based funds and funds based on digital assets like funds providing exposure to private equity can produce significant profits, although they too carry risks unique to the real estate markets and to the markets for digital assets. The most recent real estate example is the subprime mortgage market crash during the Great Recession. The occasional crypto winters also offer a cautionary tale, but some crypto assets have soared in value since the beginning of the second Trump Administration, at least in part, based on the expectation that the current administration will continue to be more friendly to crypto markets and is likely to maintain a lighter touch on crypto regulation, especially now that a statutory framework is in place for the payment stable coin portion of crypto markets.

It remains to be seen what regulations the DOL and/or SEC may adopt to implement the executive order on alternative assets. One possible speedbump towards implementation could be litigation over the validity of any regulations aimed at allowing 401(k) plans to offer funds with exposure to alternative asset investments.

Moreover, it also remains unknown if any regulatory changes will remain in place such that there is continuity between the current administration and future administrations. Recent Democratic and Republican administrations, for example, have issued dueling DOL regulations on environmental, social, and governance (ESG) investing and the related ERISA fiduciary duties, with Republicans favoring rules limiting investments to those with a pecuniary purpose and Democrats seeking to expand the types of investments that can meet an ERISA fiduciary's duties.

Early industry reaction. Investment Company Institute (ICI) President and CEO Eric J. Pan issued a [statement](#) welcoming the Trump Administration's executive order on alternative assets. "Retirement savers are the ultimate long-term investors and would benefit from the diversification offered by the inclusion of private assets," said Pan.

Benjamin Schiffrin, Director of Securities Policy for Better Markets, by contrast, issued a [statement](#) warning of significant consequences for retirement savers if the executive order is fully implemented.

“This executive order exemplifies the administration’s determination to prioritize the interests of Wall Street over the interests of Main Street and retail investors,” said Schiffrin. “Let’s be clear: neither 401(k) plan sponsors or 401(k) plan participants—regular, hardworking Americans—are asking to replace stocks and bonds in their 401(k)s with risky private assets. Instead, the private funds industry needs a way to get its hands on the \$12 trillion in Americans’ retirement accounts to boost its profits and make up for the fact that institutional investors are fleeing the private markets due to mediocre returns, higher fees, and more risk.”

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