DOL Proposed Rule for Alternative Assets: Are Your Plan Investment Menus Ready?

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Plan sponsors of defined contribution retirement plans, along with their applicable plan committees, should be aware of a recent trend encouraging the possible use of alternative assets on plan investment menus. As we previously reported here, the Trump administration issued an executive order to provide 401(k) plan participants greater access to invest in alternative assets such as private equity, cryptocurrency, real estate, lifetime income strategies, and other related investments (the "***Executive Order***").

In response to the Executive Order, the DOL recently issued a proposed rule titled "Fiduciary Duties In Selecting Designated Investment Alternatives" (the "***Proposed Rule***"), which explains the steps that plan sponsors should take when considering alternative assets on their plan investment menus and establishes a set of process-based safe harbors for plan fiduciaries to use when selecting plan investments in accordance with ERISA. The Proposed Rule follows several pieces of guidance issued by the DOL under the Trump administration concerning plan investments in private equity, cryptocurrency, and lifetime income options as we reported here, here, and here, respectively.

Furthermore, states are now starting to consider alternative assets for their public employee defined contribution plans. Indiana recently passed a law (available here) requiring that its public employee plan participants have access to at least one cryptocurrency investment option through a brokerage window for certain state-run defined contribution plans no later than July 1, 2027.

Due to the recent federal and state guidance summarized above, plan sponsors and their underlying plan committees should be prepared to respond to questions from participants and service providers regarding this recent investment trend. Although the above guidance demonstrates that there is a trend towards providing more access to alternative assets in defined contribution plans, as a reminder, it does not alter a plan fiduciary's responsibility to provide prudent investment options to the plan's participants and beneficiaries in accordance with ERISA.

The DOL's news release, including the Proposed Rule, is available here. We will continue to monitor developments in this area.

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