

DOL Rescinds its Prior Guidance on Alternative Assets in 401(k) Plans

August 20, 2025

PRACTICES Employee Benefits and Executive Compensation

On August 12, 2025, the DOL issued a press release (the “**Release**”) announcing that it is rescinding its prior guidance regarding the use of alternative assets as an investment option under a 401(k) plan’s investment menu. As we previously reported [here](#), the DOL, in 2021 under the Biden administration (the “**2021 Guidance**”), cautioned plan fiduciaries of smaller plans from offering private equity investments on the plan’s investment menu. The Release is a response to the Trump Administration’s recent executive order directing the DOL and other administrative agencies to reexamine its guidance for the purpose of making available alternative assets through 401(k) plans (the “**Executive Order**”). Our prior article on the Executive Order is available [here](#).

In the Release, the DOL is taking the position that the 2021 Guidance marked a departure from prior DOL norms, which historically have provided for a neutral, principle-based approach to fiduciary investment decisions consistent with ERISA. Further, the Release states that the DOL should not single out particular investments or investment strategies for additional or special scrutiny. Rather, when a fiduciary evaluates any particular investment type, a plan fiduciary’s decision should consider all relevant facts and circumstances.

Although the Release is another example of the current administration’s interest in providing access to alternative assets in 401(k) plans similar to the Executive Order and the DOL’s recent cryptocurrency guidance (as we previously reported [here](#)), the Release does not alter a plan fiduciary’s responsibility to prudently select and provide investment options to plan participants and beneficiaries in accordance with the requirements of ERISA.

The Release is available [here](#).