Trump Administration Issues Executive Order Regarding 401(k) Plan Investments in Alternative Assets

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On August 7, 2025, the Trump Administration issued an executive order to provide 401(k) plan participants with greater access to invest in "alternative assets" (the "***Executive Order***"). Pursuant to the Executive Order, "alternative assets" are broadly defined to include investments in private markets, real estate, digital assets, commodities, projects financing infrastructure development, and lifetime income investment strategies including longevity risk-sharing pools.

The Executive Order states that 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 plan's 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. In order to accomplish the Executive Order's objectives, the administration directed the DOL, the Treasury Department, and the SEC to do the following within the next 180 days:

- DOL Guidance: The Secretary of Labor shall reexamine the DOL's ERISA fiduciary investment guidance, in connection with making available to participants an asset allocation fund with alternative investments, including whether to rescind the DOL's 2021 Supplemental Private Equity Statement issued under the Biden Administration (our prior alert on this guidance is available here). The Secretary of Labor should also clarify the DOL's position on alternative assets and the appropriate fiduciary process associated with offering asset allocation funds containing investments in alternative assets, including whether to issue safe harbors.
- Litigation Reform: The Secretary of Labor shall prioritize actions that may curb ERISA litigation that constrains fiduciaries' ability to apply their best judgment in offering investment opportunities to relevant plan participants.
- Agency Coordination: The Secretary of Labor should consult with the Treasury Department, the SEC, and other federal regulators to carry out the Executive Order's objectives, including as to parallel regulatory changes that may be incorporated by such other federal regulators.
- SEC Guidance: The SEC shall, in consultation with the Secretary of Labor, consider ways to facilitate access to alternative assets for participant-directed defined contribution retirement savings plans, including revisions to applicable regulations and guidance.

Although the Executive Order demonstrates the current administration's interest in providing access to alternative assets in 401(k) plans, as a reminder, the Executive Order does not alter a plan fiduciary's responsibility to provide prudent investment options to the plan's participants and beneficiaries in accordance with ERISA. Fiduciaries are responsible for overseeing the selection and monitoring of each investment option, with appropriate considerations regarding, among other things, risk, potential returns, liquidity, and reasonableness of fees. Fiduciaries must avoid engaging in prohibited transactions, regardless of whether alternative assets are offered as a plan investment option or not.

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We will continue to monitor and report on any further guidance issued in response to the Executive Order, which is available here.

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