



August 2025

## President Trump Issues Executive Order on Alternative Investments

On August 7, 2025, President Trump issued an executive order (the Order) relating to “alternative investments” in defined contribution retirement plans. While the Order does not by itself change the law, it will shape retirement policy as implemented by the Department of Labor (the DOL) for at least several years. Consequently, the fiduciary landscape around alternative assets is evolving.

### What Are “Alternative Assets”?

The Order specifically defines what types of assets are included within the scope of alternative assets:

- private market investments not traded on public exchanges
- digital assets
- real estate
- commodities
- projects financing infrastructure developments; and,
- lifetime income products.

While many defined contribution plans provide exposure to real estate through equity REIT funds, direct ownership of physical real estate is limited. Additionally, Gallagher has previously addressed the DOL’s recent guidance on digital assets – [See our white paper on the subject](#).

The Order is broadly seen as focusing primarily on private equity—a diverse asset class that generally invests in or acquires stakes in unlisted, private companies. Several recordkeepers have recently begun rolling out private-market products designed to access the large pool of retirement investments held in defined contribution plans. The most likely method of including private equity exposure in a defined contribution plan would be through adding these investments to a managed account or a target date fund.

### What Does the Executive Order Say?

The Order aims to expand access to alternative investments by participants in defined contribution plans. However, it stresses that fiduciaries still must determine that such access could enhance the net risk-adjusted returns of plan participants before adding any specific investment to the plan’s lineup.

**The Order states that fiduciaries “*must carefully vet and consider all aspects of private offerings, including investment managers’ capabilities, experiences, and effectiveness in managing alternative asset investments.*”**

The Order gives the DOL 180 days to reexamine their past and present guidance regarding a fiduciary’s duties under the Employee Retirement Income Security Act (ERISA) in connection with making private equity options available to participants. New guidance is expected to clarify the DOL’s position on alternative assets and the appropriate fiduciary process associated with offering funds containing those

investments. However, the Order is clear that the purpose of any new guidance should be to facilitate defined contribution plan investments in alternative assets, not inhibit them.

## Existing DOL Guidance

In June 2020, under the first Trump administration, the DOL issued an information letter concluding that a plan fiduciary would not violate their ERISA duties solely by offering a professionally managed asset allocation fund with a private equity component. Under the Biden administration, the DOL issued supplemental guidance in 2021.

The 2021 guidance did not strictly prohibit defined contribution plans from investing in non-public assets. However, it raised a number of concerns relating to private equity investments. Within a matter of days after the Order was issued, the DOL repealed the 2021 guidance. Still, defined contribution fiduciaries will need to address many of the concerns raised by the DOL in 2021 before moving forward with private equity investments.

## Concerns Around Private Equity

Nothing in ERISA nor current DOL guidance prohibits defined contribution plans from adding private equity to their investment lineup. Nevertheless, defined contribution plans have historically avoided this option. Potential concerns addressed by the repealed 2021 DOL guidance include:

- significantly higher fees
- less transparency
- less liquidity,
- less regulatory oversight; and
- additional risks as compared to publicly traded assets.

These investments most often involve complex organizational structures and long time horizons. While defined benefit plans have been investing in private market opportunities for decades, they are generally vetted by experienced attorneys and investment managers. Moreover, the risk of loss usually falls on the plan sponsor, who is ultimately responsible for funding the promised benefits. Conversely, defined contribution plans frequently do not have the resources or expertise to perform the due diligence required of private assets, while the risk of loss falls on the participant.

Once new DOL guidance has been issued – likely in 2026 – retirement plan fiduciaries will need to conduct their own independent assessment of any alternative investment options they wish to offer. As always, following and documenting a prudent process will be key to meeting ERISA fiduciary duties.

***Given the complexity associated with private investments, closely adhering to the duties of prudence and loyalty will be crucial.***

Appropriate disclosures to participants around the potential downsides to private equity will also be essential. Most retirement plan participants do not understand the risks associated with private equity investments, and are not demanding their addition to the plan investment lineup. Consequently, any addition of private equity exposure, or private assets in general, would necessarily require robust education and disclosures.

## The Potential for Litigation

Another potential barrier to adoption of alternative investments by defined contribution plans could be the likelihood for litigation. Earlier this year, the Ninth Circuit ruled that the inclusion of private equity investments in a defined contribution plan did not by itself violate the duties of prudence or loyalty.

*Anderson v. Intel Corp.*, (9th Cir. 2025).

*Still, some prominent plaintiffs' attorneys have already expressed a willingness to target plans that add funds associated with private equity.*

The Order specifically addresses this concern. It requires the DOL to prioritize actions that may curb ERISA litigation around the offering of innovative investment opportunities, even perhaps offering a “safe harbor”. This directive might encourage the DOL to file more “friend of the court” briefs supporting fiduciary defendants. Whatever approach is taken by the DOL, the risk of a fiduciary breach claim is one more factor fiduciaries must weigh when considering any investment involving private equity.

## Gallagher Insight

Plan administrators may receive inquiries from participants about the possibility of investing their retirement funds in digital assets. They might also receive sales pitches from their recordkeeper or from private asset management firms around adding funds that include private investments. Proceeding with these types of investments will require the consideration of factors that are not a concern when dealing with publicly traded mutual funds, ETFs, stocks or bonds. Questions must be asked regarding fees, investment strategy, performance, liquidity and transparency before adding these types of investments to an investment lineup.

Fiduciaries should exercise caution. Waiting for the DOL guidance required by the Order may be wise. And plan administrators should review (and possibly revise) the plan’s investment policy statement before adding alternative investments to the plan lineup. As always, your Gallagher consultant is here to help you sort through the relevant concerns, guide you through necessary discussions addressing the issues and properly document the steps taken to meet the duties imposed by ERISA.

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