

SEC Commissioner Signals Support for Private Assets in 401(k) Plans

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SEC Commissioner Mark T. Uyeda recently gave [remarks](#) in which he argued that the target date funds that are typically included in many 401(k) and other defined contribution plans may be missing out on higher returns and increased diversification by not having any exposure to private market investments.

After highlighting the potential benefits that private market investments could have if included in 401(k) plan target date funds, the Commissioner flagged that ERISA-related litigation risks pose a major practical barrier to the inclusion of private market investments in target date funds and ultimately argued that without legal clarity or reforms to mitigate hindsight-driven lawsuits, 401(k) plan sponsors may shy away from offering private market exposure, even when it may be prudent.

The Commissioner's comments mark a continuation of the recent regulatory thawing around the use of alternative asset classes within investment options offered under 401(k) and other defined contribution plans that has been championed by the Trump Administration. In August, the Trump Administration issued an Executive Order (discussed in detail [here](#)) directing the DOL and the SEC to consider issuing guidance that would relieve the regulatory burdens and litigation risks that currently impede investments by 401(k) plans in alternative assets.

We will continue to monitor how this issue develops and update our readers when and if the SEC or DOL issues any formal guidance on this matter.

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