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Coming Soon: DOL's Proposed Rules Facilitating Alternative Assets in 401(k) Plans

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On January 13, 2026, the Department of Labor (the "DOL") submitted to the White House Office of Management and Budget ("OMB") proposed rules (the "Proposed Rules") relating to the inclusion of alternative assets (such as digital assets, private equity, private credit and real estate) within 401(k) and other defined contribution plans (collectively, "DC Plans").

As outlined in more detail here, on August 7, 2025, President Trump signed an executive order (the "Executive Order") which directed the DOL and the Securities and Exchange Commission to relieve regulatory burdens and litigation risk that have impeded investments in alternative assets by DC Plan participants. In particular, the Executive Order directed the DOL to reexamine its existing guidance regarding an ERISA fiduciary's duties in connection with making available to DC Plan participants an asset allocation fund that includes investments in alternative assets and, as it deems appropriate and consistent with applicable law, to propose new guidance (including safe harbors) that would curb ERISA litigation that constrains ERISA fiduciaries' ability to apply their best judgment in allowing alternative investments for DC Plan participants. While the DOL has not yet indicated the contents of the Proposed Rules, we expect the Proposed Rules to be consistent with the directives of the Executive Order.

OMB typically has 90 days to review proposed rules, but the Executive Order directed the DOL to issue guidance within 180 days (*i.e.*, no later than February 3, 2026). As such, it would not be surprising if OMB fast-tracks its review of the Proposed Rules and if the DOL releases them for public comment soon.

When the Proposed Rules become available, we will follow up with another post outlining the material terms thereof and will otherwise keep you appraised of any developments in this area.

Related Professionals

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