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MAGAZINE

Alternative Investments—Coming to a 401(k) Plan Near You?

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Until now, alternative investments in retirement plans have largely been limited to high-net-worth individuals and large institutional defined benefit (DB) plans. These investments, which can include commercial real estate, private equity, cryptocurrency and other digital assets, have been considered too risky or complex for individual investors.

That could change under a proposed rule published by the Department of Labor (DOL) in March 2026.[1] The proposed rule would create a framework to allow the inclusion of alternative investments within designated investment alternatives offered in participant-directed individual account retirement plans such as 401(k) plans. The proposal has drawn significant attention, reportedly receiving more than 50,000 comments as of the June 1, 2026 comment deadline.

This article explains what alternative investments are, the legal framework proposed by the DOL and the practical issues fiduciaries should consider when adding them to participant-directed retirement plans. This article will refer to such participant-directed account plans as 401(k) plans.

A proposed Department of Labor (DOL) rule would allow retirement plans with participant-directed accounts to offer alternative investments. This article explains the practical considerations plan fiduciaries should weigh before adding alternative assets to a participant-directed plan.

A Primer on Alternative Assets

In basic terms, *alternative investments* are nontraditional assets and strategies that fall outside the categories of publicly traded, regulated securities such as stocks (equities), bonds (fixed income) and cash equivalents. The four primary private market alternative asset classes defined below are receiving the most attention to be included in 401(k) plans.

- **Private equity:** Investments in privately held companies that are not listed on public exchanges, typically made through pooled funds that acquire controlling or significant ownership stakes. Private equity managers generally seek to increase value over a multiyear holding period and exit through a sale, merger or public offering.
- **Private credit:** Portfolios of privately negotiated loans and other debt investments, typically made by nonbank lenders to companies that do not borrow through the public bond markets. Private credit is also referred to as private debt. Strategies are generally designed to generate income through contractual interest payments, fees and, in some cases, additional returns tied to the borrower's future growth.
- **Real estate:** Investments in income-producing or development-oriented physical properties and related real estate assets, such as housing, offices, industrial facilities and more. These strategies typically seek to generate returns through rental income, property appreciation, redevelopment or improved operations.
- **Infrastructure:** Portfolios that invest in essential physical and related operating assets that support the functioning of the economy and everyday life. These investments often include transportation, energy, utilities, communications and certain social infrastructure assets.

These private market asset classes are most commonly used in institutional portfolios such as DB pension plans to achieve higher returns relative to public market investments. They can provide opportunities for higher returns, portfolio diversification, and lower market "beta" and volatility, but they come with trade-offs that investors must understand. For example, private market investments can be associated with significantly higher manager fees compared with publicly traded investments. A $30 million allocation to a traditional fixed income strategy at a 0.35% fee would cost about $105,000 annually, whereas a $30 million allocation to a private credit strategy with a 1% management fee and a 10% incentive fee would cost substantially more—approximately $600,000 per year, assuming a 10% profit.

In addition to fees, the holding periods and uniqueness of portfolio investments are key differentiators for alternative investments. Traditional strategies such as stock and bond funds usually provide daily liquidity and complete transparency, but alternatives are significantly less liquid and therefore not easily sold prior to the end of the holding period without incurring a loss in value.

Given the relative cost, opaqueness and liquidity profile of alternatives like private equity, private credit, infrastructure and real estate, many DB pension plans constrain their overall allocation to alternatives to a range of approximately 5-35% of total assets. It is critical that 401(k) plan participants have the right tools, guardrails, guidance and disclosures to determine whether alternative strategies are appropriate investments for their individual portfolios.

Why Did DOL Propose This Rule Now?

The impetus for the DOL's proposed rule was an August 7, 2025 executive order from President Trump in

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- The U.S. Department of Labor (DOL) has issued a proposed rule that would allow participant-directed retirement plans to offer alternative investments, including private equity, private credit, real estate and infrastructure.
- Alternative asset classes are more commonly used in institutional portfolios such as defined benefit pension plans and can provide higher returns, portfolio diversification and other benefits.
- 401(k) plan participants would need the right tools, guardrails, guidance and disclosures to determine whether alternative strategies are appropriate investments for their individual portfolios.
- The proposed DOL rule would provide some protection for 401(k) plan participants who select alternative investments, but these decisions are likely to come under scrutiny.
- Qualified default investment alternatives (QDIAs), which are often target-date funds, may be the most likely landing spot for alternative investments to be included in 401(k) plans.
- Many plans may choose to "dip their toes in" with limited exposure, especially while courts, regulators and the marketplace sort through the proposed rule.

which he determined that prior federal regulations and guidance improperly denied access to alternative investments to the broader population of U.S. workers whose retirement investments are primarily housed in employer-sponsored plans.[2] The order directed the DOL to issue regulations easing the incorporation of seven categories of "alternative" investments into participant-directed plans and to provide a legal framework to give fiduciaries some comfort in making these investments options available to 401(k) plan participants. The DOL has weighed in on alternative investments before, with positions on their suitability for 401(k) plans changing with presidential administrations.[3, 4, 5]

Alternative asset managers have long sought access to this market segment, since participant-directed retirement accounts collectively hold more than $10 trillion. However, the traits inherent to alternative investments (illiquidity, risk, difficulty in arriving at a determined value and overall complexity) have historically served as hurdles.

Proponents of alternative investments argue that restricting the ability to access what can be risky, but also at times very profitable, investments may be unfair. Opponents say that workers need protection from riskier investments, but others would say the decision to invest in alternatives should be left to the workers and not their employers.

Since the rules can change with political administrations, fiduciaries should likely move slowly and with caution.

Digital Assets

While private equity, private credit, real estate and infrastructure investments are receiving the greatest attention within 401(k) plans, there has also been discussion about actively managed investment vehicles that provide exposure to digital assets, including cryptocurrencies defined as follows.

- **Digital assets:** A digital file that generally refers to blockchain-based assets that exist in electronic form and derive value from ownership rights, network utility or market demand. Examples include cryptocurrencies and other tokenized assets recorded on distributed ledger technology.
- **Cryptocurrency:** A digital currency secured by cryptography. Transactions are verified and records are maintained by a decentralized system based on blockchain technology. There is no physical product, only balances kept on a public ledger. The coins themselves have no intrinsic value and are not issued, backed or controlled by any government, bank or other central authority.

Cryptocurrency valuations can be highly influenced by investor sentiment, adoption trends, regulatory developments and market speculation that all contribute to significant price volatility. These characteristics, combined with the complexity of the asset class and evolving regulatory considerations, have caused many plan sponsors and fiduciaries to approach cryptocurrency cautiously within 401(k) plans.

The Proposed Rule—New Content, but not Quite Breaking New Ground

The stated purpose of the proposed rule was to set out a safe harbor for fiduciaries who wanted to include alternative assets in their retirement plans. The DOL set forth six factors to consider, but it is difficult to conclude that the proposed rule broke much new ground. The proposed rule in large part pulls from long-standing legal authority that has been relatively static since the passage of the Employee Retirement Income Security Act (ERISA).

The proposed rule cites the seminal 1979 regulation entitled "Investment Duties," which has largely been unchanged over the past 40-plus years. From this foundation, the proposed rule builds a framework to evaluate alternative investments, referred to in the order as *designated investment alternatives*, by outlining the following six factors for fiduciaries to consider.

1. Performance

Fiduciaries must consider a reasonable number of similar investment alternatives and determine whether the expected risk-adjusted returns of the designated investment alternative further the purposes of the plan and enable participants and beneficiaries to maximize risk-adjusted returns on investment. Notably, the proposed rule does not require a fiduciary to select the investment with the highest returns but, instead, emphasizes the maximization of risk-adjusted returns for plan participants over an appropriate time horizon.

2. Fees

Fiduciaries must objectively, thoroughly and analytically consider a reasonable number of similar alternatives and determine that the fees and expenses of the designated investment alternative are appropriate, considering its risk-adjusted expected returns, net of fees and expenses, and any other value the designated investment alternative brings to furthering the purposes of the plan. The proposed rule does not impose a lowest cost rule.

3. Liquidity

Plans do not need to offer fully liquid investment options, but fiduciaries must ensure that investments can deliver on any promises of liquidity made to participants and beneficiaries.

4. Valuation

Fiduciaries must appropriately consider and determine that the designated investment alternative has adopted adequate measures to ensure that it is capable of being timely and accurately valued in accordance with the needs of the plan. This factor is particularly important if the investment involves private or less frequently priced assets.

5. Benchmarking

The proposed rule requires each designated investment alternative to have a meaningful benchmark, meaning an investment strategy, index or other comparator with similar mandates, strategies, objectives and risks. The proposed rule emphasizes apples-to-apples comparisons; a benchmark that is too dissimilar does not satisfy the rule merely because it is convenient or broadly recognized. Under the proposed rule, more than one meaningful benchmark may exist for a given investment, and innovative products are not disfavored simply because benchmarking is more specialized.

6. Complexity

Fiduciaries are allowed to select sophisticated investment strategies, but they need to consider the complexity of an alternative investment carefully. The obligations of ERISA and the governing plan documents are real. Fiduciaries need to determine whether the plan actually has the skills, knowledge, experience and capacity to handle the complexity of the strategy or whether it must seek assistance from a qualified investment consultant or investment manager. Further, if a plan fiduciary decides to seek assistance, the fiduciary must make a prudent selection of the investment professional by considering all the relevant circumstances, including the knowledge, skill and compensation of the investment professional.

It is noteworthy that this framework of evaluating designated investment alternatives includes qualified default investment alternatives (QDIAs). Federal regulations define QDIAs specifically, but they can broadly be thought of as comprehensive investment vehicles that invest a participant's entire account balance when the participant fails to make their own elections from the menu of direct investment alternatives. QDIAs, which often consist of target-date funds (TDFs), are the most likely landing spot for alternative investments. For example, a 2060 retirement date series does not expect its participant to retire for more than three decades, so it could theoretically absorb a degree of illiquidity in its composition. The alternatives also could be phased out as the retirement date approaches, moving automatically to a safer and fully liquid position over the years. However, defaulting a participant into an investment vehicle with exposure to alternative assets, even if those assets will not be tapped for an extended period, arguably carries more risk for a fiduciary than when the participant actively chooses that exposure. It further could significantly complicate the valuation process when participants roll over account balances or take in-service distributions, such as hardships.

Does the Proposed Rule Create a Safe Harbor?

Including alternative investments in these plans would create several legal, accounting and administrative challenges. According to the proposed rule, a plan fiduciary that follows the process with respect to any of the six factors is presumed to have met the duty of prudence, so it certainly seems that a safe harbor is intended. But this presumption has drawn a good deal of scrutiny from commenters on the proposed rule. While ERISA emphasizes a prudent process, even decisions supported by robust due diligence and good faith reliance on existing regulations are not completely immune from scrutiny.

Even if the DOL views this structure as a true safe harbor, courts may not agree, especially now that the Supreme Court dispensed with the Chevron doctrine. If there is a legal challenge to the rule or a participant alleges that the inclusion of these assets caused them harm, courts could conclude that the DOL exceeded its authority and that the presumption of prudence the proposed rule would establish is inconsistent with ERISA.

Practical Considerations for Plan Fiduciaries

When evaluating whether to add alternative assets to the investment choices in a participant-directed plan under the DOL's proposed factors, plan sponsors should consider the following.

Complexity

Even if the TDF solution mitigates the illiquidity concern, alternatives remain complex investments that might be difficult for participants to understand. Unlike prospectuses for mutual funds, operative documents for alternative investments can be hundreds of pages long. They are often set up in complex partnership arrangements, with an array of holding companies (some offshore). Few plan participants will have the necessary legal and financial background to understand these investments. Fiduciaries should ensure that managers generate materials that plan participants can reasonably understand to make informed decisions. Complexity requires more professional assistance, so plans adopting alternative assets should anticipate a modest cost increase in their operational and professional expenses, at least initially.

Valuation

In addition to communicating to participants the value of their accounts, plans would have to develop a way to value alternative holdings when undergoing a financial audit and develop audit procedures to allow the plan auditor to categorize and value those holdings. As a result, plan auditors need to be involved from the beginning. Plans will need to discuss with asset managers how the investments will be valued and what reporting they will provide to the plan. Trustees proceeding without a structure for classification and valuation of these investments may receive qualified opinions and management letters identifying deficiencies in their controls.

Litigation Risk

There remains an active plaintiffs' bar that regularly pursues litigation against plan fiduciaries, and many trustees may be concerned that adding alternatives to a participant-directed plan will increase the risk of litigation.

Although that risk is always there, this is a new initiative and even the protections under Section 404(c) of ERISA for fiduciaries who select reasonable investments for a plan's lineup are not unlimited. Many plans thus may avoid a head-first dive into the alternative asset pool and instead dip their toes in with limited exposure if plan participants demand access to this class of investments.

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Moreover, plan fiduciaries should exercise caution when adding these investments into QDIAs. It would be easier to defend a participant's active decision to invest in alternatives than expose the participant to asset classes by default, particularly when more traditional investments are available and performing well. Including alternative investments as a standalone option alongside traditional offerings outside of the default options may provide a less risky path for plans that want to move forward with adding these investments.

Next Steps

Whatever form the proposed rule ultimately takes, plan fiduciaries considering alternative assets should proceed with care and consider the following steps.

Consult Plan Advisors

Fiduciaries should work closely with the plan investment consultant, auditor, recordkeeper, administrator and legal counsel. They should ask thorough questions to ensure that the plan's board understands the scope of the proposed investments and how they will be valued, reported and managed over time.

Example questions include the following.

- Does the expected benefit of adding these investments to our plan justify the added complexity, risk and cost?
- How much excess return would be required to justify the additional fees?
- What valuation metrics and liquidity management tools are being used?
- Can our plan recordkeeper support the investment structure?

Not all assets are created equal. For example, investments in critical infrastructure projects may be viewed differently than digital currencies. Investment consultants should present trustees with clear information on the risk profiles, pros and cons, and realistic expectations.

Educate Participants

Individual participants typically do not allocate to their portfolios with the same levels of guidance, scrutiny or nuance as an institutional investor. A plan should insist that managers generate summaries of these investments that the average investor can understand to make an informed decision. And, as discussed previously, fiduciaries should exercise caution when including these assets as part of QDIAs.

Document the Investment Selection Process

Although fiduciaries may be protected from liability resulting from participant losses when reasonable investment options have been selected, evidence of a careful and prudent process—one that ensures both fiduciaries and participants understand the risks and structure of these investments—will be critical if the decision to add alternative assets is later challenged.

Conclusion

Plan fiduciaries should proceed deliberately when considering alternative assets in participant-directed plans. They should consider the following.

- Which types of alternative investments are appropriate
- Where those investments should appear in the lineup, including whether they belong in a default option
- How participants will receive clear, understandable information about risks, fees, liquidity and valuation
- What process will be used to evaluate, monitor and document the decision over time

Once finalized, the proposed rule may provide some protection for plan fiduciaries, but no ERISA fiduciary decision is entirely insulated from scrutiny. For that reason, a measured approach—one that allows these products, practices and related guidance to develop over time—is likely preferable to rapid adoption.

Editor's note: Benefits Magazine goes to press a few weeks before distribution. The status of the proposed rule discussed in this article was current at the time of publication.

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Endnotes

1. U.S. Department of Labor (DOL), Employee Benefits Security Administration (EBSA), "Fiduciary Duties in Selecting Designated Investment Alternatives," proposed rule, Federal Register 91, no. 61 (March 31, 2026).
2. The White House, "Democratizing Access to Alternative Assets for 401(k) Investors," Executive Order 14330, August 7, 2025.
3. DOL EBSA, "Information Letter 06-03-2020," June 3, 2020.
4. DOL EBSA, "Supplemental Statement on Private Equity in Defined Contribution Plan Designated Investment Alternatives," December 21, 2021, rescinded August 12, 2025.
5. DOL EBSA, "Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in 'Cryptocurrencies,'" March 10, 2022.
6. Matt Nowak, "Fiduciary Duties in Selecting Designated Investment Alternatives," Marquette Associates, DC Perspectives, April 2026.