



News Release

US DEPARTMENT OF LABOR PROPOSES LANDMARK RULE TO DEMOCRATIZE ACCESS TO ALTERNATIVE INVESTMENTS IN 401(K) PLANS

Proposed rule would clear regulatory burdens, lower litigation risks for prudent fiduciaries

WASHINGTON – The U.S. Department of Labor’s Employee Benefits Security Administration today issued a historic proposed regulation increasing potential retirement investment options for more than 90 million Americans.

The proposed regulation explains the steps that managers of 401(k) plans should take when considering alternative assets as a component in their investment lineups and establishes a set of process-based safe harbors for plan fiduciaries to use when selecting designated investment alternatives. The proposal follows President Trump’s Executive Order, “[Democratizing Access to Alternative Assets for 401\(k\) Investors](#).”

“Our goal is to deliver on President Trump’s promise for a new golden age by fostering a retirement system that allows more Americans to retire with dignity,” said U.S. Secretary of Labor Lori Chavez-DeRemer. “This proposed rule will show how plans can consider products that better reflect the investment landscape as it exists today. This greater diversity will drive innovation and result in a major win for American workers, retirees, and their families.”

“The Treasury Department is proud of this rulemaking effort, which is another step in ushering in President Trump's Golden Age,” said U.S. Secretary of the Treasury Scott Bessent. “This proposed rule is an initial step in implementing the President's Executive Order in a safe and smart manner, broadening access to additional retirement plan options for millions of Americans while being mindful of the importance of protecting retirement assets. Treasury is grateful for the Department of Labor’s partnership and looks forward to continued engagement as the rulemaking process continues.”

“Americans’ ability to participate more fully in innovation and economic growth through well-diversified long-term investments is a vitally important priority for effective retirement planning. The Securities and Exchange Commission is pleased to have joined our colleagues at the Department of Labor to help formulate this proposal for these long-overdue improvements. We look forward to continuing our work to expand opportunities for Americans to build wealth and save for the future,” said SEC Chairman Paul S. Atkins.

The proposed regulation reflects long-standing retirement law principles. Prudence under ERISA is grounded in process and plan fiduciaries are given maximum discretion and flexibility in selecting any particular investment as a designated investment alternative.

Under the proposed rule, when selecting investment alternatives, plan fiduciaries would need to objectively, thoroughly, and analytically consider, and make determinations on factors including performance, fees, liquidity, valuation, performance benchmarks, and complexity.

While managers of defined contribution plans have always had the authority to consider alternative assets, historically, almost none have done so. In 2022, the Biden Administration further stifled these investments through a [rescinded compliance release](#) that warned fiduciaries about including cryptocurrency options in 401(k) plans. The guidance deviated from the Employee Retirement Income Security Act’s requirements and marked a departure from the department’s decades-long approach to fiduciary investment decisions.

“The department’s days of picking winners and losers are over. Our rule clearly spells out that managers must evaluate any and all potential product offerings by following a prudent process,” said U.S. Deputy Secretary of Labor Keith Sonderling. “This proposal is decidedly neutral and refrains from saying that any asset class is any better or worse than other investment types, as the law requires.”

EBSA ensures the security of retirement, health, and other job-based benefits for American workers and their families. The agency is responsible for protecting more than 156 million workers, retirees, and their families, who are covered by approximately 2.6 million health plans, 801,000 private retirement plans, and 514,000 additional welfare benefit plans. Together, these plans hold about \$13.8 trillion in assets.

Employers and workers can contact EBSA at askebsa.dol.gov or call 866-444-3272 toll-free for help with private sector job-based retirement and health plans.

[Read the notice of proposed rulemaking on fiduciary duties in selecting designated investment alternatives.](#)

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