Trump Labor Secretary 'applauds' Trump and his executive order to put 'alts' in 401(k)s, but president is overstepping Congress, fiduciary expert says

The DOL says it is being directed to loosen up fiduciaries to apply best judgment when selecting investments without fear of legal ramifications.

Author **Brooke Southall** August 8, 2025 at 12:36 AM

0 Comments

Lori Chavez-DeRemer: I applaud President Trump.

> ***Brooke's Note: Diversification might be a portfolio manager's best friend. Diversity of sources also happens to be what saves us journalists on complex topics on tight deadlines. This article proves the point because every third-party source ends up bringing an 'aha' to the story. Even the DOL brought an aha because each statement in its release, it seemed, led with an outright spoken 'applause' of Donald Trump. I've never seen anything quite like it. The ICI and Empower used the same obsequious clap-clap-clap wording.***

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The move will unleash trillions of dollars in new investment for private equity and cryptocurrencies and is triggering widely divergent views among experts on its soundness, according to RIABiz interviews.

Trump Department of Labor (DOL) Secretary Lori Chavez-DeRemer and Deputy Secretary Keith Sonderling “applauded” the executive order, signed by the president today (Aug. 7).

Ron Rhoades: “I would suggest the plan sponsors avoid alternative investments as they would the plague.”

“The federal government should not be making retirement investment decisions for hardworking Americans, including decisions regarding alternative assets,” Chavez-DeRemer said.

In Trump's order, the DOL secretary was also "directed to prioritize actions that curb frivolous ERISA litigation, which can constrain fiduciaries from applying their best judgment when selecting investments and investment options,” the release reads.

"I applaud President Trump for taking decisive action,” Chavez-DeRemer added in the release.

But Knut Rostad, president of the Institute for the Fiduciary Standard, finds the applause disturbingly misplaced.

“The executive order is poison and is nothing less than a direct attack on the essence of the fiduciary standard,” he says.

“The attack is clear and blatant because it calls for fiduciaries to justify products that are generally far more costly, complicated, risky, opaque, and Illiquid than those typically chosen for retirement accounts.”

Alts all good

Ari Sonneberg, partner with Wagner Law Group, says as long as ERISA guides the investment of pension dollars on behalf of plan participants, putting alts onto the menu is all good.

“I think this is a win for the retirement plan world,” he says.

ERISA's fiduciary standards could not afford plan participants deemed necessary protection in relation to those investments.
"That is an assumption that flies in the face of ERISA's historical success."

Ari Sonneberg: 'This is a win for the retirement plan world.'

ERISA will keep succeeding, regardless of what Trump says about alts, said Ron Rhoades, a lawyer and Associate Professor of Finance at Western Kentucky University's Gordon Ford College of Business.

Hence, it's a caveat-emptor for RIAs, plan sponsors and anyone else tempted to roll the dice on private investments on behalf of 401(k) participants, he adds. "Regardless of any presidential proclamation, liability will come to assert itself, by way of class actions against plan sponsors.

"I would suggest the plan sponsors avoid private equity and other alternative investments as they would avoid the plague," he added.

Leveling playing field

Jason Roberts, CEO of the Pension Resource Institute, says it's important to know that it's not quite as black or white as people think in terms of introducing alts to 401(k) portfolios.

Jason Roberts: 'We are not talking about alts as a standalone.'

"The entirety of the EO relates to making available to participants an asset allocation fund that includes investments in alternative assets," he says by email.

"Consequently, we are not talking about alts as standalone investment options into which participants could direct the entirety of their retirement savings. Rather, we are talking about an [alts] allocation within a diversified, professionally managed fund or account."

Sonderling interpreted the executive order as a win for mass affluent consumers, hungering for investments offered to wealthy investors.

“American workers should be able to make choices that best meet their personal financial needs, and President Trump’s Executive Order will empower them to do that.”

Federal rules currently prevent most defined-contribution plans as a breach of fiduciary duty from investing in alt assets like private equity, private credit, real estate and cryptocurrencies.

Improving flexibility

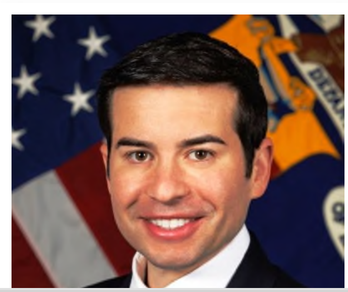
The applause for Trump – perhaps a first in cheerleading for a DOL release – follows the Aug. 1 firing of the head of the Bureau of Labor Statistics (BLS) for publishing data showing sharp downward revisions in job growth over the past three months. Trump alleged the data was “fake” to make him look bad. The BLS is a division of DOL.

The Department of Labor has already taken action to rescind the Biden Administration’s guidance that disadvantaged crypto investments. "This executive order further supports our efforts to improve flexibility and eliminate unfair one-size-fits-all approaches," the DOL statement said.

ERISA itself, however, may need to be rewritten, the DOL release observes.

“[Trump's order] also directs the Secretary to clarify the department’s position on alternative assets, including the appropriate fiduciary process associated with offering asset allocation funds containing alternative asset investments under the Employee Retirement Income Security Act of 1974.”

Accountability a must



“Unless ERISA (the Employee Retirement Income Security Act of 1974) is changed by the U.S. Congress to eliminate the application of the prudent investor rule, which I don’t believe would happen, I would caution every plan sponsor, and every investment adviser," said Rhoades, who is recognized as a top fiduciary expert and winner of the Tamar Frankel Fiduciary of the Year Award, H defined benefit and defined contribution plans that are subject to ERISA (and therefore subject to the prudent investor rule)."

Those investments would include cryptocurrencies, oil and gas limited partnerships, gold, and similar products that had previously only been available to accredited investors.

To move forward with alts, Rhoades said a plan sponsor would need to be sure advice is coming from a "true fiduciary," who acknowledges himself as such and will be held accountable for recommendations.

That includes having "adequate E&O insurance" and indemnification "against any losses or costs arising from litigation due to the inclusion of alternative investments in the plan."

"Plan sponsors often receive recommendations to include inappropriate investments from broker-dealers and insurance agents who then deny fiduciary status," he says.

That leaves the plan sponsor "on the hook" for liability and with little to no recourse against the person or firm that actually recommended the poor investments.

ERISA filter needed

Be very wary of the vagaries of alts --and why they were prohibited in the first place, wrote Morningstar's Hal Ratner in a July 21 article anticipating the order.

"Plan sponsors, who have been told for years that fees are critical to building plan menus, will now need to get their heads around complex fee structures and double-digit expense ratios," he stated.

Ratner adds: "Asset managers and plan advisors will need to contend with frequent contributions and withdrawals, as well as the sometimes unpredictable cash flow needs of defined-contribution plans."

American Retirement Association CEO Brian Graff said he likes arming fiduciaries with "private or digital" assets – albeit with ERISA as the filter.

"The decision to include various assets—whether public, private, or digital—should be guided by this rigorous process, rather than by regulatory limitations."

The Department of Labor has 180 days to reevaluate existing rules and, if necessary, propose regulatory changes. The Securities and Exchange Commission (SEC) received a similar order to revise applicable rules and guidance to include alt assets.

Paying the price

Ultimately, however, the order passes the buck to business owners, Rhoades says.

"Sadly, those most at risk from fiduciary breaches are plan sponsors - business owners who seek to run their businesses, and who are not experts themselves in the world of investing," he says.

"It is small, medium-sized, and large businesses that will be most adversely affected by this ill-advised effort (long promoted by Wall Street firms) to include private equity investments in ERISA-covered plans."

Plan participants have a remedy - in the form of class actions against plan sponsors.

Brooke lives on a houseboat, works in an office and juggles calls across the five time zones and four countries his small team works. He's out to prove an economic major can make a living as a journalist and that articles need not be a loss leader if they are written well and geared to an intelligent readership. @RIABiz

Keith Girard contributed to the editing of this article.

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