PERSONAL FINANCE

401(k) alternative asset rule proposed by Labor Department

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Sarah Agostino
@SARAHTGOBRIEN

Stephanie Dhue
@/STEPHANIE-DHUE/
@STEPHANIEDHUE

Greg Iacurci
@GREGIACURCI

KEY POINTS

- The Labor Department proposed a rule on including alternative assets in 401(k)s, following an August executive order from President Donald Trump directing regulators to expand access.
- Alternative investments are a broad category that includes real estate, cryptocurrencies and private market assets such as private equity and private credit.
- Although 401(k) plans are already not prohibited from including such assets, fears of lawsuits challenging their investment decisions have kept most plan sponsors on the sidelines.

A sign is displayed at the Department of Labor Frances Perkins Building on June, 2025, in Washington.
Kevin Carter | Getty Images

The Department of Labor on Monday proposed a rule that would allow 401(k) plans to more easily include alternative assets such as cryptocurrency, real estate and private market assets.

The proposal is in response to President Donald Trump's executive order, released in August, which directed the Labor Department and the Securities and Exchange Commission to facilitate expanded access to alternative assets in 401(k)s.

"This proposed rule will show how plans can consider products that better reflect the investment landscape as it exists today," Labor Secretary Lori Chavez-DeRemer said in a statement.

Proponents say including alternative investments in 401(k)s could provide retirement savers with greater diversification away from public markets and potentially higher returns. But some financial advisors have expressed concerns that many 401(k) investors lack the knowledge or experience to incorporate these more sophisticated investments, which can be riskier and more costly.

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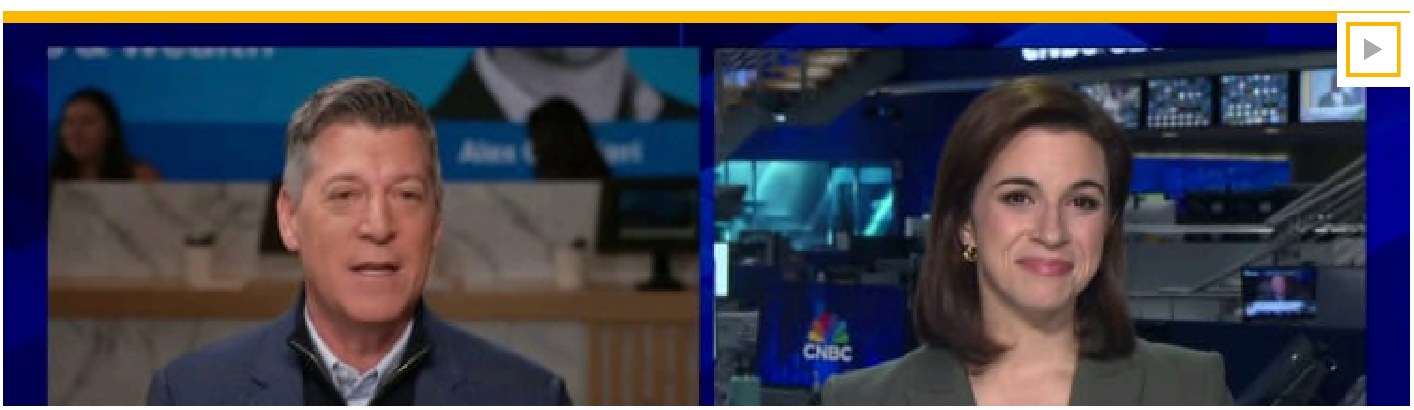
The Labor Department proposal comes as private credit markets are under stress from investor redemptions and concerns about overexposure to software investments amid artificial intelligence disruptions.

Although 401(k) plans are already not prohibited from including alts, fears of lawsuits challenging their investment decisions have kept most plan sponsors on the sidelines, Labor Department officials said on a press call Monday morning.



VIDEO 01:25

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The rule is subject to further review, including a 60-day public comment period, before it can be finalized.

Why alts uptake in 401(k) plans may be slow

Even if finalized, adoption of the rule is likely to be slow, experts say.

"We remain skeptical that this will encourage fiduciaries to include alternatives in 401K plans until the courts have concurred that this language protects advisors from litigation," Jaret Seiberg, financial services and housing policy analyst at TD Cowen, wrote Monday in a research note. "That means it could be several years before we see the real impact from this proposal."

Erin Cho, a partner with the law firm of Mayer Brown in Washington, D.C., said the proposed rule does not change how alts can be included in 401(k) options. Investors can "only obtain limited exposure" through vehicles such as target-date funds, she said.

VIDEO 12:26

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Andrew Oringer, partner and general counsel in The Wagner Law Group's New York City office, said the Labor Department proposal wouldn't undo existing rules around the need for investors to be "accredited" to access standalone private-equity and other alts funds.

Along the same lines, employers would have to figure out how to offer alternative funds without running afoul of "nondiscrimination" rules in 401(k) plans, Oringer said. Those rules aim to prevent higher-income employees from accessing a benefit that's unavailable to lower earners.

Alts funds are also relatively illiquid, meaning they may not be equipped, as structured, to easily handle withdrawals from 401(k) investors, Oringer said.

"You still need the practical impediments [for alts funds] to be sheared away," Oringer said. "And for that you'd really need action from the SEC, and possibly even legislative action."

Why alts may not work for the typical 401(k) investor

Even if alts were to become available, some financial advisors say most 401(k) investors would be better off without them.

"The average investor by definition does not need alternative assets in their portfolio," Brown said.

There's "absolutely no chance" 401(k) investors would get access to the best alts managers or the best funds, Brown said. Even if they did, they'd "pay through the nose for it" because they don't

For example, the Labor Department in May rescinded guidance put in place during the Biden administration that urged employers to be cautious before adding cryptocurrency and related digital assets like bitcoin, nonfungible tokens and meme coins to 401(k) plans.

At the time, the Biden labor officials cautioned employers to exercise "extreme care" before making such investments available to their workers, citing "serious concerns" about the prudence of exposing investors' retirement savings to crypto, given "significant risks of fraud, theft, and loss."

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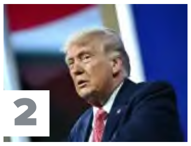

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