



September 4, 2025

The Honorable Lori Chavez-DeRemer
Secretary of the U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

Re: Guidance on Alternative Investments

Dear Secretary Chavez-DeRemer:

The undersigned organizations write in response to the recent Executive Order directing the removal of regulatory barriers that impede American workers' from accessing prudent alternative investments to encourage the Department to provide plan fiduciaries with immediate sub-regulatory guidance in advance of completing a formal notice and comment rulemaking.

On August 7, 2025, the President issued an Executive Order¹ directing the Department of Labor to (1) examine its guidance regarding a fiduciary's duties in connection with making available to retirement plan participants a fund that includes investments in alternative assets, and (2) clarify within 180 days the appropriate fiduciary process associated with offering funds containing such assets. In particular, with respect to the second directive, the Department was directed to propose appropriate rules, regulations, or guidance that clarify the fiduciary duties applicable when deciding whether to make a fund that includes alternative assets available to plan participants, prioritizing actions that may curb litigation that constrains fiduciaries' ability to apply their best judgment in making such a decision.

Background

The U.S. investment landscape has evolved rapidly. With the number of public companies declining and private markets now representing more than \$30 trillion in assets, participants in defined contribution plans have fewer opportunities to gain exposure to the types of alternative strategies that defined benefit plans, endowments, and other institutional investors have long used to diversify portfolios and enhance long-term outcomes.

¹ Executive Order Democratizing Access to Alternative Assets for 401(K) Investors, *available at* <https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/> (visited September 4, 2025).

At the same time, fiduciaries are increasingly cautious about considering such investments in the absence of clear guidance because of the threat of litigation. This uncertainty discourages fiduciaries from objectively determining whether funds with alternative assets might be appropriate for their participants, which in turn discourages the development of such products even where the fiduciary process and data support their value for participants.

Plan fiduciaries and product providers need regulatory clarity to begin offering high-quality products that responsibly incorporate alternative assets. Without timely guidance, fiduciaries face a chilling effect that hinders innovation and leaves participants with narrower diversification and market participation opportunities than are available to other sophisticated investors.

The Need for Timely Action

Plan sponsors, in their capacity as plan fiduciaries, will ultimately decide whether 401(k) participants are granted access to private asset investments. As a number of the undersigned represent plan sponsors nationwide, we recommend the Department swiftly provide sub-regulatory guidance, accompanied by a commitment to promptly follow up with notice-and-comment rulemaking. Such timely action will avoid prolonging the exclusion of savers from full participation and diversification in prudent investments while the Department processes a formal rule.

We first acknowledge and commend the Department's rapid action to rescind the 2021 Supplemental Statement regarding information letters on private equity investments in defined contribution plans. That action removed an unnecessary impediment to fiduciaries' consideration of private market strategies and sent an important signal that the Department recognizes both the legitimacy of these investments and the critical role of fiduciary judgment in determining their appropriateness.

Building on this progress, we recommend the Department provide sub-regulatory guidance on the fiduciary process that should be used when considering a fund with alternative assets. While we strongly support the use of notice-and-comment rulemaking to provide a comprehensive, durable framework for fiduciaries considering alternative assets, we also recognize that a full rulemaking process will take a significant amount of time, during which fiduciaries will be left with uncertainty that will continue to chill consideration and development of diverse funds that include alternative assets. To mitigate the fiduciaries' uncertainty and comply with Executive Order's clear directive to act within 180 days, we urge the Department to issue sub-regulatory guidance in the interim—such as a Compliance Assistance Release, Field Assistance Bulletin, Tip Sheet, or Interpretive Bulletin—to clarify the Department's current views and provide fiduciaries with immediate direction. Interim guidance would not displace the importance of rulemaking but would serve as an essential bridge, enabling fiduciaries and product innovators to begin adapting and developing participant-ready solutions more quickly.

Importantly, acting rapidly through sub-regulatory guidance would address the Executive Order's directive to curb unnecessary litigation. Ambiguity in fiduciary duties has historically created an environment ripe for costly and burdensome lawsuits. By issuing timely guidance, the Department can reduce the legal uncertainty that fosters litigation, thereby empowering fiduciaries to exercise their best judgment with regard to funds that include alternative assets. This approach not only aligns with the President's call for democratizing access to alternative assets but also promotes a more effective and efficient retirement system by allowing fiduciaries to focus on acting in participants' best interests rather than navigating unclear legal risks.

By combining timely sub-regulatory guidance with a commitment to formal rulemaking, the Department can provide fiduciaries with the confidence needed to evaluate alternative investments today and create a lasting framework for the future. This dual approach will ensure that America's retirement savers benefit from a modernized investment environment while continuing to enjoy the robust fiduciary protections that are central to the Employee Retirement Income Security Act of 1974 (ERISA).

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We appreciate the opportunity to work with the Department on these issues, and we welcome the opportunity to discuss these comments further with you. Thank you for your time and consideration.

Sincerely,

/s/

Brian H. Graff, Esq., APM
Executive Director/CEO
American Retirement Association

/s/

David T. Bellaire
Executive Vice President & General Counsel
Financial Services Institute

/s/

Chatrane Birbal
Vice President, Public Policy and Government
Relations
HR Policy Association

/s/

Casey M. Clark
President & CEO
**National Association of Professional
Employer Organizations**

cc:

The Honorable Keith Sonderling
Deputy Secretary of Labor

The Honorable Janet Dhillon
Acting Assistant Secretary of Labor
Employee Benefits Security Administration