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FIDUCIARY BRIEF

Alternative Assets in Your 401(k): What the New DOL Rule Actually Changes

Private equity and crypto are getting easier to add to a 401(k) menu. That doesn't mean your plan should add them — or that “easier” means “safe.”

WHY IT MATTERS NOW

Following an August 2025 executive order, the DOL rescinded its prior guidance that had cautioned fiduciaries against private equity, and on March 30, 2026 proposed a rule that would create a process-based safe harbor for fiduciaries who consider alternative assets — private equity, private credit, real estate, infrastructure, and digital assets — as designated investment options. The rule is still a proposal, with public comments due June 1, 2026, and applies only to funds selected for the plan menu, not self-directed brokerage windows.

THE PROPOSED SAFE HARBOR'S SIX FACTORS

Factor	What It Requires Fiduciaries to Document
Performance	Historical and expected performance relative to a meaningful benchmark
Fees	All costs, including layered fees typical of private fund structures
Liquidity	How easily the asset can be valued and redeemed for participant transactions
Valuation	How the asset is priced, given many alternatives lack daily market pricing
Benchmarking & complexity	Comparison to objective standards and suitability for a participant-directed plan

WHAT THIS MEANS FOR YOUR PLAN

- A safe harbor reduces litigation risk for a documented, prudent process — it does not eliminate the duty of prudence itself, and it doesn't protect a fiduciary who adds alternatives without following the process.
- The realistic near-term path for most plans isn't offering private equity as a standalone fund — it's exposure through target-date or multi-asset funds that allocate a modest slice to alternatives, letting participants gain diversification without picking funds themselves.
- This rule is still a proposal. Nothing requires your plan to act now, and rushing to add alternatives ahead of a finalized rule — and ahead of your own documented process — is its own fiduciary risk.

CWM'S TAKE

We're watching this rule closely, but watching is the operative word — it isn't final, and “new and available” isn't the same as “right for your plan.” If a recordkeeper or provider approaches your committee about adding alternatives, that conversation deserves the same documented, six-factor scrutiny the rule itself describes, not urgency.

Getting pressure to add alternatives to your lineup? A complimentary CWM Fiduciary Benchmarking Study can help you evaluate it objectively.

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