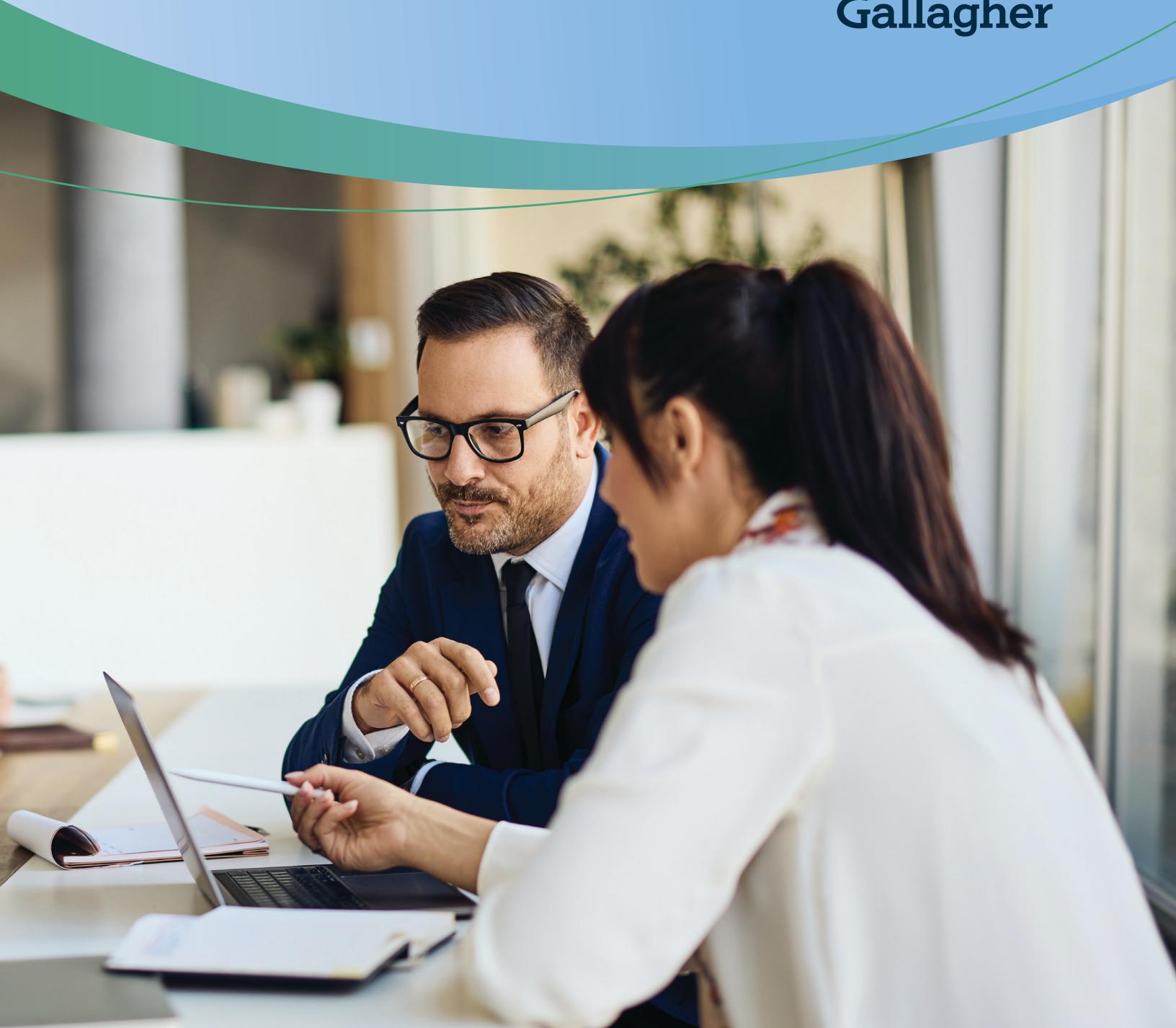


Alternative Investments in Defined Contribution Plans

Potential Implications for Plan Sponsors
and Participants.



Gallagher



Executive Summary

On August 7, 2025, President Trump signed Executive Order 14330, titled “Democratizing Access to Alternative Assets for 401(k) Investors.” This order directs the Department of Labor (DOL) to re-examine guidance on fiduciary duties related to alternative asset investments in ERISA-governed defined contribution (DC) plans, potentially providing average American workers greater access to private market and alternative asset classes previously reserved for institutional investors and high-net-worth individuals.

The order defines “alternative assets” broadly to include private equity, private credit, real estate, digital assets held in actively managed vehicles, commodities, infrastructure investments and lifetime income strategies. This represents a significant policy reversal from the previous administration’s more cautious stance and signals what could be a new chapter for DC plan investment menus.

Background and Policy Rationale

The executive order seeks to address a longstanding disparity in the American retirement system. Public pension plans and defined benefit plans have long allocated meaningful portions of their portfolios to alternative investments, benefiting from diversification and potentially higher long-term returns. Meanwhile, 401(k) participants have been largely limited to publicly traded securities due to a number of factors, including certain structural limitations of DC plans, such as daily valuations and the need for full liquidity on demand. Regulatory uncertainty and litigation concern also play a role in the limited utilization of alternatives across the DC landscape.

The order explicitly states that “burdensome lawsuits” and “stifling Department of Labor guidance” have denied millions of Americans these investment opportunities. By directing the DOL to clarify fiduciary processes and potentially establish safe harbors, the administration aims to reduce regulatory barriers while preserving core ERISA protections.



Key Provisions of the Executive Order

Covered asset classes

The order defines alternative assets to include:

- Private market investments (private equity and private credit)
- Direct and indirect real estate interests
- Actively managed investment vehicles investing in digital assets

- Commodities investments
- Infrastructure development projects
- Lifetime income strategies, including longevity risk-sharing pools

Notably, digital asset exposure must be through actively managed vehicles, not direct cryptocurrency purchases by participants.

Regulatory directives

The order gives the DOL 180 days to reexamine existing guidance, consider rescinding the December 2021 Supplemental Private Equity Statement, and propose rules or safe harbors that clarify fiduciary duties when offering alternative assets. The DOL must also coordinate with the SEC and Treasury to facilitate parallel regulatory changes across agencies.

Industry hesitancy

In addition to providing a much-needed regulatory framework for DC Plan sponsors, time will determine if the EO sufficiently addresses the long-standing industry-wide hesitancy to introduce alternative investments into participant-directed plans. Such reluctance has centered on three main areas of concern: costs, liquidity and investment complexity/due diligence.

1. Cost challenges: Litigation concerns have led to an extensive focus on controlling DC plan-related costs and expenses. Alternative investments typically charge higher fees, sometimes 5-20x higher than the 2-12 basis point index funds that dominate some DC plan menus. Plan sponsors may fear ERISA litigation risk if “unreasonable” fees are deemed to be paid for alternative investments that subsequently underperform public market investments after fees.

2. Liquidity challenges: DC plan participants can make investment changes, take hardship withdrawals or even make full distributions on very short notice, while the investments underlying private market strategies are valued only periodically. This presents a liquidity challenge that can make these funds difficult to adopt. Even “evergreen” or “interval” funds can have gates that typically limit redemptions to some percent of total assets. And the liquidity buffers that are incorporated into these structures can have the undesirable effect of diluting long-term returns.

3. Investment complexity/due diligence challenges: Alternative investments can present significant due diligence challenges for plan sponsors. These strategies can often be opaque, have concentrated positions, apply varying degrees of leverage and come with higher dispersion of manager results. Some estimates show the difference between top-and bottom-performing private equity managers can be up to 10x greater than the dispersion of public equity strategies over the long-term.¹

¹“Guide to Alternative,” *JPMorgan Asset Management*, 31 Aug 2025.

Fiduciary Considerations for Plan Sponsors

While the executive order signals policy direction, it does not alter existing ERISA fiduciary obligations. Plan sponsors considering alternative assets must still satisfy duties of prudence and loyalty. Key considerations include:

- **Due diligence:** Thoroughly vet investment managers' capabilities and track records in alternative asset management.
- **Fee analysis:** Balance potentially higher expenses against expected long-term net returns.
- **Liquidity management:** Address valuation frequency and withdrawal restrictions inherent in many alternative investments.
- **Participant education:** Develop robust materials explaining risks and characteristics of illiquid assets.
- **ERISA §404(c) compliance:** Confirm proper disclosures and participant control to maintain liability protection.

Plan sponsors cannot rely solely on agency guidance; they must independently confirm compliance with ERISA's statutory requirements.

Digital Assets: A Measured Approach

The order takes a nuanced approach to cryptocurrency and digital assets. By limiting exposure to "actively managed investment vehicles," it signals that direct participant purchases of individual cryptocurrencies are not contemplated. This structure provides professional management oversight and aligns with the DOL's May 2025 rescission of guidance that had urged "extreme care" regarding cryptocurrency options.

For plan sponsors, this means digital asset exposure would likely come through diversified funds or managed accounts rather than self-directed crypto wallets, providing a layer of professional oversight while still offering potential exposure to this emerging asset class.

Looking Ahead

The Retirement Investment Choice Act, introduced in October 2025, seeks to codify the executive order's principles into law. Congressional action could provide more durable regulatory clarity than executive action alone.

The industry will likely see a multi-pronged approach to developing alternative investment solutions for the DC Plan marketplace. Plan sponsors contemplating a move into alternatives should expect to see iterations of popular asset allocation strategies such as target-date and target-risk funds coming to market with alternative investment exposures already imbedded, providing sponsors a choice to "build it or buy it."

Plan sponsors interested in evaluating alternative investments for their DC plan should monitor DOL rulemaking, begin preliminary due diligence on potential alternative investments, review and revise governance documents and investment policy statement provisions as necessary, and evaluate impacts on fiduciary insurance and plan audits.

While immediate wholesale changes to investment menus are premature, the regulatory landscape is clearly shifting toward expanded access.



Conclusion

Executive Order 14330 represents a meaningful shift in retirement policy, potentially bringing institutional-quality investment options to everyday American workers. However, fiduciary obligations remain paramount. Plan sponsors should approach this opportunity thoughtfully, develop robust processes, appropriate participant education, and careful attention to evolving regulatory guidance. The goal — a dignified, comfortable retirement for all Americans — requires balancing innovation with prudent risk management.

If you are interested in further exploring this issue, please contact your Gallagher consulting team for more information.

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