

Trump-Era Guidance on 401(k) Investments—Crypto, Private Equity, and What It Means for Plan Providers

By Ary Rosenbaum, Esq.

I've been around the block long enough to know that ERISA doesn't care about the latest shiny object. It doesn't care whether CNBC is hyping Bitcoin as the new gold, or whether private equity firms are pounding the table about "democratizing access" for working Americans. The Department of Labor doesn't weigh in on fads; it weighs in on process. You can love crypto like it's the next internet revolution, or hate it like it's a scam cooked up in someone's basement—it doesn't matter. The only thing that matters is whether fiduciaries did their homework, documented their process, and acted solely in the interest of participants. That's why the latest round of guidance out of Washington matters so much for plan providers. The Trump administration's moves on crypto and private equity don't mean you can toss a Bitcoin fund or a leveraged buyout strategy into your plan menu tomorrow and call it innovation. What it means is that the official posture has shifted—from a tone of "don't you dare" to "show us your work." That difference may sound small, but for those of us in the retirement plan business, it's a seismic change.

From "Extreme Care" to Neutral Ground

Not too long ago, the DOL essentially told fiduciaries that crypto didn't belong in 401(k) plans. The infamous Compliance Assistance Release said fiduciaries needed to exercise "extreme care" before offering crypto in any form. "Extreme care" wasn't defined in ERISA; it was bureaucratic code for: "try this and expect a subpoena." Plan sponsors got the message loud and clear—if you even think about adding crypto, you'd better clear your calendar for regula-

tor visits. Fast forward to today, and that release has been rescinded. We're back to neutral ground. The DOL is no longer telling fiduciaries that crypto is radioactive; instead, it's saying, "ERISA applies the same way it always has. If you can prove prudence, loyalty, and reasonableness, knock yourself out." That's not a blessing—it's a burden. The risk is still there, but now the government isn't actively wagging its finger. And that's a subtle, but important shift.



Enter the Executive Order

At the same time, the Trump White House dropped an Executive Order directing the DOL, the SEC, and other agencies to lower barriers to alternatives in retirement plans. That order name-checked crypto, private equity, hedge funds, and real assets. If you think about it, that's a big deal. For decades, defined contribution plans were the land of index funds, target-date funds, and

maybe a sprinkle of actively managed equity or bonds. Alternatives were reserved for defined benefit plans, endowments, and the ultra-wealthy. The Executive Order doesn't rewrite ERISA overnight, but it's a clear signal: the administration wants to expand the menu. That doesn't mean the DOL is giving anyone a safe harbor. It means the regulatory climate is friendlier for fiduciaries who want to make the case for alternatives.

The Private Equity Saga

Private equity in 401(k) plans isn't a brand-new concept. In 2020, the DOL issued an Information Letter saying, in essence, "Sure, you can include private equity inside a diversified, professionally managed vehicle—like a target date fund or balanced fund—so long as you do your homework." That meant analyzing liquidity, fees, valuation methods, and manager experience. Then in 2021, the DOL added a supplemental statement that sounded a lot more cautious. It basically told sponsors: "Don't get carried away; this stuff is complicated, and DC plans may not be equipped to handle it." That cooled the industry's enthusiasm. Now, under Trump, that cautionary statement has been withdrawn. We're back to the 2020 posture: private equity

can be considered, but only under strict conditions. Again, that's not a greenlight; it's a "proceed at your own risk" sign.

What This Means for Plan Providers

So, what's a plan provider supposed to do with this mess of changing signals? Here's the truth: this is your opportunity to show value. Sponsors don't live and breathe regulatory nuance; they just want to know if they're allowed to do some-

thing. Your job is to help them understand that while the door is open, they still need to walk through it carefully.

Here's what I recommend:

1. Modernize Your IPS

Your Investment Policy Statement needs to reflect the modern world. If it doesn't even mention alternative assets, you're behind. Update it to outline under what conditions alternatives like crypto or private equity could be considered. Spell out due diligence requirements, risk controls, and operational constraints.

2. Avoid the "Shiny Object" Mentality

The worst mistake you can make is bolting a stand-alone crypto fund onto the menu like it's just another equity index fund. That screams imprudence. If crypto or private equity has any place in a DC plan, it's inside a diversified, professionally managed structure where allocations are capped and rebalanced.

3. Re-underwrite Your Vendors

If your recordkeeper or investment manager pitches you a product with alternatives, grill them like a litigator. How do they handle valuation? Who is the custodian? How are fees layered? What liquidity terms apply? Don't accept "trust us" as an answer.

4. Fix the Plumbing

Remember, a 401(k) plan is an operational machine. Alternatives don't run on daily liquidity like mutual funds. Recordkeepers need to be able to process restrictions, NAV delays, and valuation quirks. If the plumbing doesn't work, you've got a disaster waiting to happen.

5. Educate Without Selling

Plan sponsors and participants need plain-English explanations. If participants don't understand the risks, you've failed. Alternatives aren't a marketing gimmick; they're a fiduciary challenge. Be brutally honest in your communications.

6. Treat Political Winds as Just That

Executive Orders come and go. Don't mistake a political directive for a safe harbor. Courts will care about your process, not about what the White House said on a given Tuesday.

The Crypto Reality

Crypto is still the wild card. Volatility,



custody risks, forks, hacks—you name it, it's an issue. Fiduciaries who think they can just drop a Bitcoin fund into the lineup are asking for trouble. The only defensible way to even consider crypto is in a small, capped allocation inside a professionally managed product. And even then, you'd better have the disclosures of the century.

The Private Equity Reality

Private equity has more legitimacy, but it's no picnic either. The fees are high, valuations are murky, and liquidity is limited. Still, if included carefully inside a target date fund or balanced strategy, it can provide diversification. The key is manager experience and operational readiness. If your recordkeeper can't handle quarterly liquidity, don't even think about it.

Litigation is Coming

Let's be real: plaintiff's lawyers are licking their chops. They've already made a living suing plans over recordkeeping fees and retail share classes. If crypto or private equity loses participants money, you can bet there will be lawsuits claiming imprudence. That's why your defense file has to be immaculate—document every step, every question you asked, every option you rejected.

Practical Playbooks

When a sponsor asks about crypto:

- Ask why they want it. What problem does it solve?
- Get independent risk analysis.
- Run stress tests by participant demographics.
- Keep it in a managed account with caps and controls.
- Provide plain-English disclosures.

When a sponsor asks about private equity:

- Limit exposure to diversified vehicles.
- Analyze fees and liquidity.
- Confirm recordkeeper capabilities.
- Draft participant FAQs.
- Document everything.

Governance Over Headlines

The worst look is a committee that suddenly adds alternatives because someone read a headline. Governance has to come first. Update your IPS, refresh your processes, and show that decisions are thoughtful, not reactive. Regulators and courts will notice the difference.

My Bottom Line

This isn't Vegas, and 401(k) participants aren't high rollers with comped hotel rooms. The Trump-era changes don't mean it's open season for alternatives; they mean the government isn't standing in the way. That's an opportunity, but it's also a test. For plan providers, this is a chance to lead. You can show sponsors how to modernize governance, how to document prudence, and how to educate participants honestly. Do it right, and you'll help clients evaluate alternatives responsibly. Do it wrong, and you'll end up as a defendant in the next class action complaint. At the end of the day, ERISA isn't about chasing returns—it's about protecting participants. Alternatives like crypto and private equity may or may not belong in your clients' plans. But if they ever do, it won't be because Washington said yes; it'll be because you proved you did the hard work.

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