

United States Senate

WASHINGTON, DC 20510

October 28, 2025

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

The Honorable Paul S. Atkins
Chairman
Securities and Exchange Commission
100 F Street NE
Washington, DC 20549

Dear Secretary Chavez-DeRemer and Chair Atkins:

We write to you with serious concerns regarding President Trump's Executive Action that pushes risky assets, such as private market funds and cryptocurrencies, into defined-contribution plans.¹ As companies have largely moved away from traditional pension plans, most Americans use defined-contribution plans, such as 401(k)s and 403(b)s, as the primary vehicle to save for retirement.² The Executive Order exposes these hard-earned savings to volatile financial instruments, while attempting to rebrand them as "alternative assets," although they lack transparency and have exaggerated claims of high returns. This is dangerous and could lead to financial harm for millions of Americans as the cost of groceries, health care, and housing continues to skyrocket.

During the Biden Administration, the Department of Labor (DOL) issued separate guidance warning fiduciaries of risking retirees' savings in private equity funds and cryptocurrencies, citing the volatile and underregulated nature of these markets.³ Along with President Trump's recent Executive Order, the DOL rescinded both policies and is currently working to legitimize these financial products as safe investments to save for retirement.⁴ This reversal is troubling as American workers rely on their retirement savings to live in dignity and self-reliance as they age; thus, added protections are rightfully applied to retirement savings plans.

¹ President Donald J. Trump, "Democratizing Assets to Alternative Assets for 401(k) Investors," The White House, August 7, 2025, <https://www.whitehouse.gov/presidential-actions/2025/08/democratizing-access-to-alternative-assets-for-401k-investors/>.

² Federal Reserve Bank of St. Louis, "Pension or 401(k)? Retirement Plan Trends in the U.S. Workplace," Michael T. Owyang, Julie Bennett, Brooke Hathhorn, March 20, 2025, <https://www.stlouisfed.org/on-the-economy/2025/mar/pension-401k-retirement-plan-trends-us-workplace>.

³ U.S. Department of Labor, "401(k) Plan Investments in "Cryptocurrencies," press release, March 10, 2022, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>; U.S. Department of Labor, "US Department of Labor rescinds 2021 supplemental statement on alternative assets in 401(k) plans," press release, August 12, 2025.

⁴ U.S. Department of Labor, "US Department of Labor rescinds 2022 guidance on Cryptocurrency in 401(k) Plans," press release, May 28, 2025, <https://www.dol.gov/newsroom/releases/ebsa/ebsa20250528>; U.S. Department of Labor, "US Department of Labor rescinds 2021 supplemental statement on alternative assets in 401(k) plans," press release, August 12, 2025, <https://www.dol.gov/newsroom/releases/ebsa/ebsa20250812>

Private Markets

Participating in the private markets present a host of risks. Unlike the public markets, private investments have minimal oversight and disclosure requirements, meaning they lack the same investor protection regime afforded to investors in the public markets.

Pension funds—which have historically been able to pour their retirement funds into the private markets and have seen firsthand the consequences of risking retiree’s savings in private markets—have long called for stricter guardrails regarding these investments. The Institutional Limited Partners Association (ILPA), which represents many state pension plans for public workers, including teachers, firefighters, and other essential workers, previously wrote to former SEC Chair Gary Gensler asking him to address the lack of regulatory protections associated with private equity investments.⁵

In recent years, the SEC has issued risk alerts identifying significant compliance failures among private funds, primarily regarding conflicts of interest, fees and expenses, and policies and procedures relating to material non-public information.⁶ Among the most alarming problems identified were: practices that led to overbilling, including failure to follow stated valuation procedures; preferential treatment for certain clients at the expense of other clients; failure to establish or follow ethics rules; and repeatedly failing to disclose conflicts of interest.⁷ Recently, Moody’s Credit Rating released a report warning that private funds’ recent efforts to sell to individual investors “raise[s] questions about alignment, transparency and product integrity.”⁸ Private investments, including private equity, rely on long-term capital, and as a result, usually stipulate lengthy lock-up periods for investors. This of course makes these investments illiquid, meaning they are not easily sold to other investors or convertible into cash. This raises serious concerns during economic downturns when retirement savers are seeking to access their investments. Furthermore, while individuals aim to leave their retirement savings untouched, workers sometimes need to dip into their retirement funds to buy their first home, cover a medical emergency, provide for the birth of a child, or rebuild after a natural disaster. Their ability to do so will be unnecessarily compromised if their savings are tied up in illiquid, opaque investments.

There are also serious concerns regarding the valuation of private investments being marketed to workers and retail investors. Many retirement plans that buy into private funds would be doing so in the secondary market, that is buying from another investor, rather than transacting with a company directly. However, the SEC has expressed concern about “a lack of clearly defined

⁵ Letter from Institutional Limited Partners Association CEO Steve Nelson to SEC Chairman Gary Gensler, April 21, 2021, <https://ilpa.org/wp-content/uploads/2021/04/2021.4.20-ILPA-Welcome-Letter-to-Chairman-Gensler-Final.pdf>.

⁶ United States Securities and Exchange Commission, Office of Compliance Inspections and Examinations, “Observations from Examinations of Investment Advisers Managing Private Funds,” June 2020, pp. 1-7, https://www.sec.gov/files/Private%20Fund%20Risk%20Alert_0.pdf; United States Securities and Exchange Commission, Office of Compliance Inspections and Examinations, “Overview of the Most Frequent Advisory Fee and Expense Compliance Issues Identified in Examinations of Investment Advisers,” April 2018, pp. 1-4, <https://www.sec.gov/files/ocie-risk-alert-advisory-fee-expense-compliance.pdf>.

⁷ *Id.*

⁸ The Wall Street Journal, “Moody’s Sounds Alarm on Private Funds for Individuals,” Matt Wirz, June 10, 2025, <https://www.wsj.com/finance/investing/moodys-sounds-alarm-on-private-funds-for-individuals-8cd268c5>.

valuation procedures and protocols for mitigating the industry's innumerable conflicts of interest."⁹

For example, a trend has emerged whereby general partners—the fund manager—sell portfolio companies to a new fund called continuation funds to generate liquidity as many private companies have failed to go public or generate exit opportunities for investors. Not only is the general partner the buyer and the seller in this transaction, but it also shelters the fund from valuations in the public markets.¹⁰ Without a standardized approach for valuations, retail investors and retirement plans may overpay for assets and serve as a dumping ground for assets Wall Street wants to offload.

Private funds are also notorious for charging high fees. While mutual fund fees typically charge under one percent, private funds usually charge around a two percent fee, with the ability to take an even larger cut—around 20 percent—when gains exceed a certain amount.¹¹ High fees erode long-term returns for retirement savers. Absent explicit permission from the federal government, it is hard to imagine how plan sponsors think they could meet their fiduciary duty and justify that these high risk, high fee investments are in the best interests of their employees.

Yet, while extracting nearly a quarter trillion dollars in fees from the public pension system, an Oxford University study showed that private equity “funds have returned about the same as public equity indices since at least 2006.”¹² Moreover, “State Street’s private equity index ... delivered a 7.08[%] return last year, compared with a 25.02% total return for Wall Street’s blue-chip S&P 500 index.”¹³ Thus, despite murky investor protection standards, the illiquid and opaque nature of private investments, and high fees, the data shows that the private markets do not outperform publicly-traded stocks.

Institutional investors, including pension funds, are seeing the flashing red signs and pulling out of private markets. Yale University is attempting to offload up to \$6 billion in private equity and venture funds, responding to its endowment’s lackluster performance in recent years.¹⁴ As of April of this year, Harvard was also in the midst of selling approximately \$1 billion of their private equity interests from their endowment fund.¹⁵ Fundraising by private equity hit a seven year low in the second quarter of 2025.¹⁶

⁹ Financial Times, “Private equity has become hazardous terrain for investors,” John Plender, July 15, 2024, <https://www.ft.com/content/b5ab26ad-fe3e-483d-89b7-03edb06662fe>

¹⁰ *Id.*; Alternative Credit Investor, “CFA Institute highlights “conflicts of interest” amid rise of continuation funds,” September 23, 2025, <https://alternativecreditinvestor.com/2025/09/23/cfa-institute-highlights-conflicts-of-interest-amid-rise-of-continuation-funds/>.

¹¹ Jacobin, “Private Equity is Coming for Your 401(k) Savings,” Katya Schwenk, January 9, 2025, <https://jacobin.com/2025/01/private-equity-biden-trump-retirement>.

¹² University of Oxford, Said Business School, “An Inconvenient Fact: Private Equity Returns & The Billionaire Factory,” June 10, 2020, pp. 1-15, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3623820.

¹³ Financial Times, “Private market funds lag US stocks over short and long term,” Alexandra Heal, June 11, 2025, <https://www.ft.com/content/c21a5ca9-6175-498a-bf32-9c91e4366085>.

¹⁴ The New York Times, “Yale is Rushing to Sell Billions in Private Equity Investments,” Maureen Farrell and Lauren Hirsch, June 10, 2025, <https://www.nytimes.com/2025/06/10/business/yale-endowment-private-equity-trump.html>.

¹⁵ The Harvard Crimson, “HMC Plans \$1 Billion Sale of Private Equity Stakes,” Avani Rai, Saketh Sundar, April 25, 2025, <https://www.thecrimson.com/article/2025/4/25/private-equity-stake-sales/>.

Now general signs of economic troubles ahead—including inflationary pressures, and elevated unemployment numbers—stemming from this Administration’s on-again, off-again tariffs have further exacerbated the risks of investing in the private markets.

Digital Assets

As noted in a March 2023 Senate letter to DOL, cryptocurrencies are a highly volatile speculative asset class that poses extreme risk to the retirement savings of hardworking Americans.¹⁷ The DOL recognized this in its 2022 guidance, stating plan fiduciaries should exercise "*extreme* care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants."¹⁸

Now, the DOL has pulled that safety net out from under workers, reversing course on crypto protections abruptly and without clear reasoning. The Department claims it is merely taking its thumb off the scale of which investments are appropriate for investors.¹⁹

Notably, even upon rescinding its 2022 guidance the DOL reiterated that “investment decisions should be made by fiduciaries.”²⁰ In other words, these investments remain subject to the Employee Income Retirement Security Act of 1974’s (ERISA) fiduciary standards of prudence, loyalty, and diversification.

A Government Accountability Office (GAO) study stated that “crypto assets have uniquely high volatility—a measure of their riskiness to participants—and their returns can come with considerable risk.”²¹ Their analysis found that from 2021 to 2023, available crypto investments in 401(k) plans were significantly more volatile than the S&P 500—ranging from approximately four times more volatile for Bitcoin to twelve times more volatile for Solana.²²

Through conducting interviews with researchers and firms in the crypto industry, the GAO recognized that “there is no standard approach for projecting the potential future returns of crypto assets.”²³ This highlights the speculative nature of this asset class rather than it being income generating. As one retirement expert pointed out in example, “Bitcoin doesn’t produce any cash flow, so it doesn’t generate any returns for the investors. The only way investors can

¹⁶ Financial Times, “Private equity fundraising slides as sector’s downturn deepens,” Hannah Pedone, Antoine Gara, Ivan Levingston, August 24, 2025, <https://www.ft.com/content/f7387912-1079-43d4-a9a2-2308989400d4>.

¹⁷ Letter from Senators Richard Durbin, Sherrod Brown, Elizabeth Warren, & Tina Smith to Secretary Marty Walsh and Assistant Secretary Lisa Gomez, March 9, 2023, <https://www.durbin.senate.gov/imo/media/doc/030923%20Letter.pdf>.

¹⁸ United States Department of Labor, “Compliance Assistance Release No. 2025-01,” May 28, 2025, <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2025-01>.

¹⁹ United States Department of Labor, “US Department of Labor rescinds 2022 guidance on Cryptocurrency in 401(k) Plans,” press release, May 28, 2025, <https://www.dol.gov/newsroom/releases/ebsa/ebsa20250528>.

²⁰ *Id.*

²¹ Government Accountability Office, “Industry Data Show Low Participant Use of Crypto Assets Although DOL’s Data Limitations Persist,” November 2024, https://files.gao.gov/reports/GAO-25-106161/index.html?_gl=1*_ogvqf1*_ga*MzU4MTE2NzQyLjE3NTg2NDk1MDY.*_ga_V393SNS3SR*cZ3E3NTg2NTEzNjQkbzlkZzEkdDE3NTg2NTEzNjUkajU5JGwwJGgw.

²² *Id.*

²³ *Id.*

generate a profit is to sell it back for a higher price. It's much more like gambling than a productive investment."²⁴

Furthermore, this announcement is extremely concerning given the Administration is rife with conflicts of interest regarding the digital asset industry. According to the Wall Street Journal, in the last few months alone "the Trump family notched as much as \$5 billion in paper wealth... after its flagship crypto venture opened trading of a new digital currency."²⁵ In fact, the Journal reports that President Trump's crypto business has the potential to outstrip his real estate holdings as a wealth generator.²⁶ How can the American people trust the advice they get from an Administration that stands to potentially further profit by this move?

Conclusion

Given this extensive list of issues plaguing the private markets and cryptocurrencies, it is bewildering to see this Administration open the floodgates for these industries to gamble with almost \$31 trillion in retirement savings for millions of Americans.²⁷ The Trump Administration is using the rationale of democratizing finance to the masses as the reason for exposing retirement plans to these risky assets. But as one New York Times columnist recently noted, "Whenever access expands faster than safeguards, charlatans rush in and ordinary investors are often left holding the bag."²⁸

We are deeply concerned that this reckless executive order will jeopardize the retirement savings of millions of Americans. To help us fulfill our legislative responsibilities in ensuring that the SEC and DOL are doing their job to protect against this significant risk, we ask that you answer these questions by Monday, November 17th:

- 1) How will you ensure that plan sponsors maintain their fiduciary duty while allowing them to buy private market and cryptocurrency products?
- 2) Has the DOL or the SEC conducted a study on how much the private equity industry will profit by gaining access to retail investors?
- 3) Has the DOL conducted an investigation into how much the Trump family will profit off of any potential cryptocurrency investments in our nation's retirement plans?

²⁴ Center for Retirement Research at Boston College, "3 Reasons Why Bitcoin in Your 401(k) Is Still a Terrible Idea," Alicia H. Munnell, June 14, 2025, <https://crr.bc.edu/3-reasons-why-bitcoin-in-your-401k-is-still-a-terrible-idea/>.

²⁵ The Wall Street Journal, "Trump Family Amasses \$5 Billion Fortune After Crypto Launch," Angus Berwick, September 1, 2025, <https://www.wsj.com/finance/currencies/trump-family-amasses-6-billion-fortune-after-crypto-launch-567faec5>.

²⁶ *Id.*

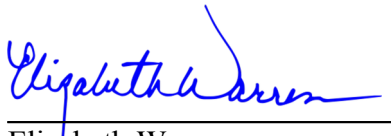
²⁷ Investment Company Institute, "Release: Quarterly Retirement Market Data," September 18, 2025, https://www.ici.org/statistical-report/ret_25_q2 (\$13 trillion in defined-contribution plans and \$18 trillion in IRAs).

²⁸ The New York Times Magazine, "The Rules of Investing Are Being Loosened. Could It Lead to the Next 1929?," Andrew Ross Sorkin, October 13, 2025, <https://www.nytimes.com/2025/10/13/magazine/investing-private-equity-crypto-crash-1929.html>.

- 4) Has the DOL conducted a study analyzing the risks of retail investors having access to the private markets and cryptocurrencies?
- 5) The Executive Order directs the DOL to propose rules that clarify the duties of a fiduciary. Does the DOL intend to write rules that lower the required due diligence for fiduciaries and curtail investors ability to hold fiduciaries accountable?
- 6) Which rule changes does the SEC and DOL plan to make to ensure better investor protection standards regarding private investments and cryptocurrencies?
- 7) What will the DOL and SEC do to increase transparency in the private markets and digital asset markets so workers who are investing their hard earned paychecks can safely save for retirement?
- 8) What long-term research, oversight and tracking will the DOL do in order to ensure that workers are not having decreased retirement savings by participating in private investments and cryptocurrencies in their retirement accounts?
- 9) How should a fiduciary account for the changing regulatory environment for digital assets when including them in a defined contribution plan?

We thank you for your attention to this matter.

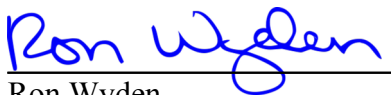
Sincerely,



Elizabeth Warren
Ranking Member
Committee on Banking,
Housing, and Urban Affairs



Bernard Sanders
United States Senator
Ranking Member, Committee
on Health, Education, Labor,
and Pensions



Ron Wyden
United States Senator
Ranking Member, Committee
on Finance



Richard J. Durbin
United States Senator
Ranking Member, Senate
Committee on the Judiciary

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Jeffrey A. Merkley
United States Senator
Ranking Member, Committee
on Budget

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Christopher S. Murphy
United States Senator

Handwritten signature of Tina Smith in blue ink, positioned above a horizontal line.

Tina Smith
United States Senator