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# Bill seeks fiduciary safeguards for crypto, other alternative assets

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Republican legislation introduced on Sept. 29 would amend ERISA to let plan fiduciaries offer investments from a list of specific asset classes — including digital assets, private equity (PE) and annuities — without any presumption of imprudence. Though the Retirement Savings Modernization Act ([S 4973](#), [HR 9066](#)) doesn't single out defined contribution (DC) plans, the bill signals growing Republican interest in countering recent Department of Labor (DOL) warnings about the prudence of cryptocurrency and PE investments in DC plans.

While DOL hasn't said cryptocurrency is inherently imprudent, the agency [cautioned](#) 401(k) plan fiduciaries to “exercise extreme care” when considering cryptocurrency as an investment option. In separate [guidance](#), DOL suggested that fiduciaries of “typical” DC plans lack the necessary expertise to evaluate PE investments. Bill supporters say DOL's stance is at odds with the need to let DC plan participants have access to the “full range” of potentially more lucrative (but riskier) investment strategies used by defined benefit (DB) plan managers.

DOL's guidance prompted some Senate Republicans to introduce another similar bill ([S 4147](#)) in May. The Financial Freedom Act would provide that ERISA doesn't limit DC plan fiduciaries' ability to select any particular types of investments, as long as participants can choose from broad range of investment options. However, none of the GOP bills to date would require that fiduciaries give plan participants access to specific asset classes or create a safe harbor from ERISA's fiduciary duties.

With Democrats still in control of Congress, the Retirement Savings Modernization Act is unlikely to pass this year. The Senate version is before the Committee on Health, Education, Labor, and Pensions and is sponsored by Sens. Pat Toomey, R-PA, Tim Scott, R-SC, and Cynthia Lummis, R-WY. Rep. Peter Meijer, R-MI, is sponsoring the House counterpart, which is pending with the Education and Labor Committee.

## Related resources

### Non-Mercer resources

- [S 4973](#), the Retirement Savings Modernization Act (Congress, Sept. 28, 2022)
- [Press release](#) (Sen. Tim Scott, Sept. 29, 2022)

### Mercer Law & Policy resources

- [GOP senators aim to reverse DOL positions on ESG, crypto investing](#) (Aug. 12, 2022)
- [DOL sends strong warning to 401\(k\) plan fiduciaries about cryptocurrency](#) (March 16, 2022)
- [DOL cautions DC plan fiduciaries about private equity offerings](#) (Jan. 28, 2022)

### Other Mercer resources

- [Digital assets](#)
- [Crypto in DC plans: A cautionary tale?](#) (April 29, 2022)

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