

DOL Rescinds its Prior Guidance on Cryptocurrency in 401(k) Plans

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PRACTICES Employee Benefits and Executive Compensation

On May 28, 2025, the DOL issued Compliance Assistance Release 2025-01 (the “**Release**”) announcing that it is rescinding its prior guidance regarding the use of cryptocurrency as an investment option under a 401(k) plan’s investment menu. As we previously reported [here](#), the DOL, in 2022 under the Biden administration (the “**2022 Guidance**”), cautioned that plan fiduciaries should exercise extreme care before adding cryptocurrency as a plan investment option.

In the Release, the DOL is now taking the position that the 2022 Guidance deviated from ERISA’s requirements and departed from the DOL’s historical neutral, principle-based approach to plan fiduciary investment decisions. Further, the Release provides that the DOL neither endorses nor disapproves of plan fiduciaries who conclude that the inclusion of cryptocurrency under a plan’s investment menu is appropriate.

Although the DOL is no longer taking a position on whether inclusion of cryptocurrency on an ERISA plan’s investment platform may or may not be a prudent fiduciary decision, the Release does not alter a plan fiduciary’s responsibility to provide prudent investment options to the plan’s participants and beneficiaries. The DOL has indicated that a plan fiduciary’s responsibilities do not change when crypto assets are offered under the plan as compared to other investments. Specifically, fiduciaries are responsible for overseeing the selection and monitoring of each investment option, with appropriate considerations regarding, among other things, risk, potential returns, and reasonableness of fees and must avoid engaging in prohibited transactions, regardless of whether crypto assets are offered as a plan investment option or not.

The Release is available [here](#).