

GAO Report on the Use of Crypto Assets in 401(k) Plans

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PRACTICES Employee Benefits and Executive Compensation

The Government Accountability Office (the “**GAO**”), the nonpartisan investigative arm of Congress, recently published a report concerning the use of crypto assets as an investment option in 401(k) plans (the “**GAO Crypto Report**”). The GAO was asked to review crypto assets in response to regulators and some in the retirement industry raising questions about investment firms offering crypto assets as plan investment options.

As background, 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. As we previously reported [here](#), the DOL also cautioned that plan fiduciaries should exercise extreme care before adding a crypto asset option to a 401(k) plan’s core investment lineup.

The GAO Crypto Report included the following conclusions:

- There is generally low participant use of crypto assets in retirement plans. However, the DOL does not have comprehensive industry data.
- Crypto assets have uniquely high volatility, and their returns can come with considerable risk for participants.
- Pursuant to ERISA, 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 also avoid engaging in prohibited transactions, regardless of whether crypto assets are offered as investment options.
- Congress should consider legislation to fill federal regulatory gaps over crypto assets.

The GAO Crypto Report is available [here](#).