Service Providers May Allow Investment in Cryptocurrency, but Plan Administrators Should Proceed with Extreme Caution

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Recently, one of the country's largest retirement plan providers announced they were adding a digital assets account to their retirement plan platform that would allow employers to make cryptocurrency, such as Bitcoin, a potential investment option for plan participants.

As we previously reported here, prior to that announcement, the DOL had issued guidance cautioning plan fiduciaries to "exercise extreme care" before adding a cryptocurrency option to a retirement plan's investment lineup or even through a plan's brokerage window. The DOL guidance went so far as to say that it expected to investigate plans that offer "participant investments in cryptocurrencies and related products, and to take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments." The DOL cautioned that plan fiduciaries who allowed cryptocurrency as a plan investment option "should expect to be questioned" about how their decisions to allow investments in cryptocurrency align with their duties of prudence and loyalty under ERISA in light of the risks inherent in cryptocurrency investments.

Following the service provider's announcement, the acting assistant secretary of the DOL's Employee Benefits Security Administration told the Wall Street Journal that it had "grave concerns" with what the service provider had done in providing a platform for retirement plan investments in cryptocurrency. Even though plan service providers may offer plans the capability to invest in cryptocurrency and related products, plan administrators should be aware that offering such investments may not satisfy ERISA's prudence requirement. Thus, plan sponsors should proceed with extreme caution and seek counsel before allowing any such plan investments.