

DOL Rescinds Guidance Discouraging Cryptocurrency Investments

EBIA Weekly (May 29, 2025)

DOL Compliance Assistance Release No. 2025-01, 401(k) Plan Investments in “Cryptocurrencies” (May 28, 2025)

Available at

<https://www.dol.gov/agencies/ebsa/key-topics/retirement-benefits/cryptocurrencies/compliance-assistance-release-2025-01>

The DOL has rescinded a 2022 compliance assistance release that discouraged 401(k) plan fiduciaries from including cryptocurrency among their plans’ investment options. The 2022 release expressed concern about the prudence of making cryptocurrency investments available to 401(k) plan participants, listing factors that contribute to the challenge and risk of offering cryptocurrency investments so early in their development. The release advised fiduciaries to use “extreme care” before adding a cryptocurrency investment option and stated that the DOL would investigate plans offering such investments and take other enforcement actions to protect participants.

In the new guidance, the DOL notes that the standard of “extreme care” is not found in ERISA and differs from ordinary fiduciary principles. Accordingly, the guidance restores the DOL’s historical approach of neither endorsing nor disapproving of particular investment types and strategies. Fiduciaries are advised to evaluate any particular investment type by considering all relevant facts and circumstances.

EBIA Comment: While this guidance specifically references “cryptocurrencies,” the same reasoning and principles also apply to a wide range of digital assets, including those marketed as tokens, coins, or crypto assets. Plan fiduciaries considering these types of investment options should evaluate them carefully, following a prudent review and decisionmaking process and documenting that process to demonstrate procedural prudence. For more information, see EBIA’s 401(k) Plans manual at Section XXV.D (“Selecting the Plan’s Investment Funds”).

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