



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

U.S. Department of Labor
Employee Benefits Security Administration
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On March 10, 2022, the Department of Labor (the Department) issued Compliance Assistance Release No. 2022-01 (the 2022 release) regarding 401(k) plan investments in cryptocurrencies.¹ This release memorializes the Department’s decision to rescind the guidance in full.

The 2022 release directed plan fiduciaries to exercise “extreme care before they consider adding a cryptocurrency option to a 401(k) plan’s investment menu for plan participants.” The standard of “extreme care” is not found in the Employee Retirement Income Security Act (ERISA) and differs from ordinary fiduciary principles thereunder.²

Prior to the 2022 release, the Department had usually articulated a neutral approach to particular investment types and strategies. Today’s release restores the Department’s historical approach by neither endorsing, nor disapproving of, plan fiduciaries who conclude that the inclusion of cryptocurrency in a plan’s investment menu is appropriate. When evaluating any particular investment type, a plan fiduciary’s decision should consider all relevant facts and circumstances and will “necessarily be context specific.” *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 425 (2014).

¹ Although this release specifically references “cryptocurrencies,” the same reasoning and principles also apply to a wide range of “digital assets” including those marketed as “tokens,” “coins,” “crypto assets,” and any derivatives thereof.

² ERISA itself requires that a fiduciary curate a plan’s investment menu “with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims” for the “exclusive purpose” of maximizing risk-adjusted financial returns to the plan’s participants and beneficiaries. 29 U.S.C. § 1104(a)(1). See *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409 (2014).