

Publications

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DOL Rescinds 2022 Guidance Concerning Cryptocurrency Investments in 401(k) Plans

On May 28, 2025, the Department of Labor (DOL) rescinded its 2022 guidance that cautioned retirement plan fiduciaries to exercise “extreme care” in permitting cryptocurrency and other digital asset investments in retirement plans. This rescission signals the DOL will take a more neutral approach to such investments, but plan fiduciaries should continue to evaluate and monitor plan investment options in accordance with their general fiduciary duties under ERISA.

Background on Prior Guidance

In 2022, under the Biden administration, the DOL released guidance reminding plan fiduciaries that “fiduciaries must act solely in the financial interests of plan participants and adhere to an exacting standard of professional care” and advising plan fiduciaries to exercise “extreme care” before including a cryptocurrency option in a retirement plan’s investment menu.

The DOL looked at the following characteristics of cryptocurrency when it issued its 2022 guidance:

- Extreme price volatility resulting from fictitious trade reporting and speculative valuation methodologies;
- Increased vulnerability due to lower security for cryptocurrency accounts, resulting in an increased risk of hacking and theft; and
- Uncertainty in the regulatory environment regarding cryptocurrencies, which could result in the 401(k) plan engaging in unlawful trading.

Impact of 2025 Recission

The 2025 guidance no longer advises plan fiduciaries to exercise “extreme care” before including a cryptocurrency option in a retirement plan’s investment menu, but does emphasize that a plan fiduciary’s decision should be context-specific and consider all relevant facts and circumstances. What has not changed is that plan fiduciaries are still required to act with care, skill, prudence and diligence in both the initial selection and continuous monitoring of investment options, including digital assets. As such, we may

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begin to see more cryptocurrency-based investment options, especially if plan participants demand them and plan fiduciaries can get comfortable with such offerings.

Plan fiduciaries should continue to thoroughly review investment selections and diligently document their decision-making process. If you have questions about meeting your fiduciary standards while offering cryptocurrency-based investments in your 401(k) plan, contact the authors listed above or another member of Polsinelli's Employee Benefits & Executive Compensation team.