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Fiduciary Red Flags: Navigating the DOL's Guidance on Crypto Assets

With digital assets and cryptocurrencies on the rise among individual investors, some retirement plan sponsors are wondering whether crypto has a place in 401(k) investment lineups. Recently, the Department of Labor issued a new release on plan investments in cryptocurrency.

Previous DOL Guidance: In March 2022, the DOL released Compliance Assistance Release No. 2022-01, expressing serious concerns regarding the “prudence of a fiduciary’s decision to expose 401(k) participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies.” The DOL advised that the speculative and volatile nature of cryptocurrencies, related custodial and recordkeeping concerns, and evolving regulatory environments contributed to the risks of fraud, theft, and loss for participant retirement accounts. As a result, the Department urged plan fiduciaries to exercise “extreme care” before adding a cryptocurrency option to 401(k) investment menus for plan participants.

What’s Changed in the New Guidance? In May, the DOL released updated guidance on this issue in Compliance Release No. 2025-01, which rescinds Compliance Assistance Release No. 2022-01 and returns to the DOL’s previously neutral stance on cryptocurrency investments in retirement plans. Under the new guidance, the Department neither endorses, nor disapproves of, plan fiduciaries choosing to include cryptocurrency in a plan’s investment menu. Plan fiduciaries are directed to consider all relevant facts and circumstances and be context specific when evaluating and making decisions on any particular investment type.

Next Steps: As advisors, you play a critical role in educating plan sponsors on investment risks and regulatory developments. If your clients inquire about cryptocurrency investments, consider engaging them in meaningful conversations about crypto-specific risks, based on your prudent assessment of cryptocurrency investment options and participant needs.



Reminders:

- August 15, 2025: Deadline 401(k) and other participant investment directed retirement accounts to provide quarterly fee information and benefit statements to participants.
- August 31, 2025: Form 5500 deadline for plan years ended January 31.
- September 15, 2025: Deadline for calendar year defined benefit plans to credit excess balances to offset 2024 minimum required contributions.

by **Jesse St. Cyr**, Partner, Poyner Spruill