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DOL Rescinds 2022 Guidance Cautioning Against 401(k) Plan Investments in Cryptocurrencies

Employee Benefits & Executive Compensation on **May 29, 2025**

On May 28, 2025, the Department of Labor ("DOL") issued Compliance Assistance Release No. 2025-01 which rescinds the DOL's prior Compliance Assistance Release No. 2022-1 which had warned 401(k) plan fiduciaries against adding cryptocurrencies as direct investment options under their plans.

The 2022 guidance (described in more detail here) cautioned 401(k) plan fiduciaries to exercise "extreme care" when considering offering direct investments in cryptocurrencies, digital assets or other similar products to a defined contribution plan's investment lineup. In the 2022 guidance, the DOL noted that these types of investments "present significant risks and challenges to participants' retirement accounts, including significant risks of fraud, theft, and loss" due to (among other things) the evolving regulatory environment surrounding these investments, their speculative nature, valuation concerns, and the likely inability of the average participant to be able to sufficiently understand the investment and make an informed decision.

In rescinding the 2022 guidance, the DOL takes a more neutral stance towards cryptocurrencies by reverting to its historical approach of neither endorsing nor disapproving of offering cryptocurrency investments in 401(k) plans.

Takeaways for Plan Fiduciaries: The 2025 guidance does not change a plan fiduciary's duties of prudence, loyalty and diversification when considering whether to add an investment option (cryptocurrency-related or otherwise) to their plan's investment lineup. Notwithstanding the seemingly warmer approach towards allowing cryptocurrency investments in 401(k) plans, without a safe harbor protecting plan fiduciaries who offer such an investment option, it remains to be seen whether this guidance will actually impact the offering of cryptocurrency in defined contribution plans.

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