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Benefit Plan Audit Specialists

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US Department of Labor Rescinds 2022 Guidance on Cryptocurrency in 401(k) Plans



In [Compliance Assistance Release No. 2025-01](#), the U.S. Department of Labor's Employee Benefits Security Administration has [rescinded a 2022 compliance release](#) that

previously discouraged fiduciaries from including cryptocurrency options in 401(k) retirement plans.

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 [Compliance Assistance Release No. 2025-01](#) release memorializes the Department's decision to rescind the guidance in full regarding cryptocurrency in 401(k) plans.

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. According to the Department, [Compliance Assistance Release No. 2025-01](#) 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).



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Who We Are

Torrillo & Associates, LLC specializes in employee benefit plan audits including 401k audits, 403b audits, pension plan audits, and other retirement plan audits. We are licensed in 10 states including Pennsylvania, New Jersey, Delaware, New York and Florida. We are also able to practice in additional

states that have passed firm mobility.

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