

Vigilance for Seniors and Their Families

Would you be happy if cryptocurrency became an investment option in your company's 401(k) plan?

One possible roadblock to keep the 401(k) option from becoming reality was removed after the Department of Labor's Employee Benefits Security Administration (EBSA) issued Compliance Assistance Release No. 2025-01 in late May (tinyurl.com/3wh7zarx).

The new release rescinded a 2022 communication (Compliance Assistance Release No. 2022-01) that cautioned retirement plan fiduciaries "to exercise extreme care before they consider adding a cryptocurrency option to a 401(k) plan's investment menu for plan participants" (tinyurl.com/3atpk3jc).

The 2025 release states that the standard of "extreme care" is "not found in the Employee Retirement Income Security Act (ERISA) and differs from ordinary fiduciary principles thereunder."

What is the ERISA standard? As noted in a footnote in the 2025 release, the requirement is 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."

By rescinding the 2022 guidance, the Labor Department "reaffirms its neutral stance, neither endorsing, nor disapproving of, plan fiduciaries who conclude that the inclusion of cryptocurrency in a plan's investment menu is appropriate" (tinyurl.com/edwvc5f7). U.S. Secretary of Labor Lori Chavez-DeRemer added in the press release that the department was "making it clear that investment decisions should be made by fiduciaries, not D.C. bureaucrats."

This shift comes at a time when prices of cryptocurrencies have climbed.

As an example, on June 3, 2023, bitcoin closed at \$27,075.13. Two years later to the day, bitcoin closed at \$105,432.47 (tinyurl.com/3w5j6rpv) -- an increase of 289%.

Notwithstanding, should cryptocurrency be viewed the same as an S&P 500 Index fund? The answer is a firm "no."

Why? "Crypto assets have experienced higher levels of volatility relative to more traditional investment assets, meaning that price swings -- and any investment value -- may go up and down dramatically and unpredictably, and the risk of losing all of your investment is significant," says FINRA's "Crypto Assets." Read FINRA's articles "Bitcoin Basics" (tinyurl.com/4ydfc4pp) and "Crypto Assets" (tinyurl.com/rd2jn67k). FINRA (the Financial Industry Regulation Authority) regulates member brokerage firms doing business in the U.S.

A U.S. Government Accountability Office report released to the public in December of 2024 found that available industry data and stakeholder interviews suggested that "crypto assets are a small part of the 401(k) market." It also cautioned that "GAO's analysis of investment returns indicates crypto assets have uniquely high volatility -- a measure of their riskiness to participants -- and their returns can come with considerable risks" (tinyurl.com/5n9yd7nw).

The 2022 EBSA guidance on cryptocurrency said that "[c]ryptocurrencies are often promoted as innovative investments that offer investors unique potential for outsized profits. These investments can all too easily attract investments from inexperienced plan participants with great expectations of high returns and little appreciation of the risks the investments pose to their retirement investments."

When I wrote about digital currencies possibly being part of 401(k) accounts in August 2021, I recommended thinking about priorities:

"Priority No. 1: Save for your retirement.

"Priority No. 2: Invest for growth over the long term.

"... Priority No. 100: Speculate only after meeting priorities 1-99. Bitcoin falls into the speculation category, as do other cryptocurrencies."

Has that view changed? Before guessing my answer, imagine someone putting 100% of his 401(k) into bitcoin.

Speaking of 401(k)s, National 401(k) Champion Day[®] launches for the first time on June 15 (tinyurl.com/58e78zjy). It celebrates the award I founded and sponsor in my pro bono role as an advocate of financial literacy education.

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Seasoned investment counsel (tinyurl.com/52nus8hz) and award-winning columnist and author, Julie Jason, JD, LLM, promotes financial literacy and investor protection. Read her latest book, "The Discerning Investor: Personal Portfolio Management in Retirement for Lawyers (and Their Clients)" (tinyurl.com/4u7h9pjs), published by the American Bar Association. Write to Julie at readers@juliejason.com. While all questions cannot be answered, each email is read and reviewed and can lead to discussion in a future column.