



SLEVIN & HART, P.C.

Benefits Update

DOL Cautions Against 401(k) Investments in Cryptocurrencies

March 30, 2022

On March 10, 2022, the Department of Labor (“DOL”) issued Compliance Assistance Release No. 2022-01 (the “Release”) instructing 401(k) plan fiduciaries to exercise “extreme care” before adding a cryptocurrency investment option to the plan’s investment options available to participants. The Release, which is not a regulation and does not have the force and effect of law, provides guidance on the DOL’s position regarding cryptocurrencies and reiterates that under the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), plan fiduciaries must act solely in the interest of participants and adhere to a strict standard of professional care, and must review the prudence of all investment options on an ongoing basis.

Although it does not prohibit a 401(k) plan from offering investments in cryptocurrency, the Release explains that the DOL currently has “serious concerns” about the prudence of a decision to expose a 401(k) plan’s participants to either direct investments in cryptocurrencies or investments in other products whose value is linked to cryptocurrencies. The DOL believes that cryptocurrency investments present significant risks to participants’ retirement accounts for several reasons, including price volatility and the uncertainties associated with valuing the assets. In addition, the DOL notes that participants are less likely to have sufficient knowledge about cryptocurrency investments as compared to traditional investments, and that the evolving state of the rules and regulations governing cryptocurrency markets may create risk for participants and plan fiduciaries.

The Release advises that the DOL expects to conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products. Further, the DOL expects to take “appropriate action” to protect the interests of plan participants and beneficiaries with respect to cryptocurrency investments. The Release warns that fiduciaries responsible for overseeing cryptocurrency investment options, or who allow such investments through brokerage windows, should expect to be questioned about how they are satisfying their duties of prudence and loyalty in light of the risks described in the Release.

Please contact Slevin & Hart for more information about how the Release may affect your plan.

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