Crypto no longer requires ‘extreme care’ from plan sponsors: DOL

By Editorial Staff *Thu, May 29, 2025*

'The Biden administration’s Department of Labor made a choice to put their thumb on the scale,' said U.S. Secretary of Labor Lori Chavez-DeRemer in a May 28 release. 'We’re rolling back this overreach and making it clear that investment decisions should be made by fiduciaries, not DC bureaucrats.'

The Trump Department of Labor has revoked a 2022 Biden-era compliance notice in which DOL’s Employee Benefits Security Administration (EBSA) advised 401(k) plan fiduciaries to exercise “extreme care” when considering the addition of cryptocurrency to their plans’ investment line-ups.

In a May 28 release, the DOL said that it would instead revert to its historically neutral stance toward cryptocurrency. The announcement didn’t endorse cryptocurrency but was primarily derisive of what it called the Biden DOL’s regulatory “overreach.”

“The Biden administration’s Department of Labor made a choice to put their thumb on the scale,” said U.S. Secretary of Labor Lori Chavez-DeRemer in last week’s release. “We’re rolling back this overreach and making it clear that investment decisions should be made by fiduciaries, not DC bureaucrats.

“Prior to the 2022 release, the Department had usually articulated a neutral approach to particular investment types and strategies. Today’s release 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.”

The DOL’s March 10, 2022 **guidance** said:

> “In recent months, the Department of Labor has become aware of firms marketing investments in cryptocurrencies to 401(k) plans as potential investment options for plan participants.[1] The Department cautions 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 DOL’s May 28, 2025 release said:

> “This language deviated from the requirements of the Employee Retirement Income Security Act and marked a departure from the department’s historically neutral, principles-based approach to fiduciary investment decisions.”

'That's on you'

One attorney specializing in pension law downplayed the impact of the new directive. Barry Salkin of Wagner Law Group told *RIJ* that the Trump DOL is not signaling an endorsement of crypto, and that plan sponsors shouldn't expect the DOL to provide them with legal cover if they bring crypto into their plans.

"The DOL is merely saying that, 'If you're the plan fiduciary, and you put crypto in your plan and you get sued, that's on you,'" Salkin said. "And the possibility that it will be a bad decision will still dissuade most plan fiduciaries from using it.

"Will you see a lot of crypto on 401(k) platforms in the future? No. As a plan fiduciary, if you're already concerned about lifetime annuities, you won't put crypto on your plan," he added. In other words, if annuities are tough to sell to plan sponsors, crypto will be even tougher.

"Most plan fiduciaries are simply interested in compliance," Salkin said. Consistency in DOL policy matters more to them than the policy itself. "It's not fair to them to go back and forth every time you change administrations. You can't operate in this fashion.

On May 29, the Wagner Law Group added this:

> "On the heels of the Department of Labor's announcement that it is rescinding the Biden Administration DOL guidance cautioning 401(k) plan sponsors from offering cryptocurrency investment options to plan participants, the Trump Administration has indicated that it will also take action to rescind the final rule issued by the DOL in 2022 providing that fiduciaries can consider environmental, social and governance (ESG) factors, as well as other collateral benefits in making retirement plan investment decisions."

From the PSCA

On January 25, 2025, the Plan Sponsor Council of America posted this report on its website:

President Donald Trump issued an executive order on Thursday ordering the federal bureaucracy to facilitate the growth of the crypto industry and to provide regulatory clarity for crypto.

"It is therefore the policy of my Administration to support the responsible growth and use of digital assets, blockchain technology, and related technologies across all sectors of the economy," the order read.

Agencies of the federal government are to provide "regulatory clarity and certainty built on technology-neutral regulations, frameworks that account for emerging technologies, transparent decision making, and well-defined jurisdictional regulatory boundaries."

The crypto industry has long bemoaned what it has called "regulation by enforcement" and what the Securities and Exchange Commission (SEC) has described as ordinary law enforcement. Crypto supporters in Congress have pushed for legislation to deregulate crypto and to shift authority over cryptocurrencies away from SEC and toward the Commodity Futures Trading Commission (CFTC).

The executive order will create a working group on digital assets, and will include the Attorney General, Secretaries of the Treasury and Commerce, and the Chair of the CFTC, among other officials.

This working group will issue a report in six months which will "propose a Federal regulatory framework governing the issuance and operation of digital assets," and "shall evaluate the potential creation and maintenance of a national digital asset stockpile and propose criteria for establishing such a stockpile, potentially derived from cryptocurrencies lawfully seized by the Federal Government through its law enforcement efforts."

$Trump crypto

The DOL's May 28 announcement did not mention President Trump's well-publicized personal ventures into the cryptocurrency business. He has implicitly and explicitly endorsed the crypto industry—and benefited from crypto industry campaign funding—at a time when he's in an ideal, but conflicted, position to stimulate its growth.

Last January 22, Senator Elizabeth Warren (D-MA) and Rep. Jake Auchinloss (D-MA) wrote a letter to officials at SEC, Treasury, CFTC, and the Office of Government ethics after the president and First Lady Melania Trump launched two meme coins, in which they have an 80% interest.

The creation of these coins and their resulting sale "has massively enriched Trump personally, enabled a mechanism for the crypto industry to funnel cash to him, and created a volatile financial asset that allows anyone in the world to financially speculate on Trump's political fortunes," the letter said.

The letter added that “Nearly overnight, President Trump and his wife’s net worth skyrocketed to $58 billion. Anyone, including the leaders of hostile nations, can covertly buy these coins.

“The Trump organization made an estimated $58 million in trading fees alone by Monday, without selling a single coin. Recent reporting indicates that the Trump meme coin now accounts for a whopping 89% of Trump’s net worth.”