

401(k) Climate Change and Crypto Considerations: DOL Nurtures the Former but Clips Crypto at the Roots

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Department of Labor notices in 2020 and 2021 lumped “climate change” with other environmental, social, and corporate governance concerns that the DOL initially said should generally not be considered when selecting retirement plan investment offerings (see “[DOL to Plan Sponsors: ‘It’s All About the Benjamins!’](#)”), but then clarified should only be considered if they might have an impact on investment returns (see “[DOL to Plan Sponsors: ‘It’s Mostly All About the Benjamins!’](#)”).

However, the DOL is now considering climate change as a stand-alone issue. The following are a few of the more than 20 questions exclusively concerning the effect of climate change on retirement plan investments from a [request for information](#) that the DOL issued on February 14, 2022:

- What should the DOL do to protect retirement plan and pension balances from the threats of climate change?
- What are the most significant climate-related financial risks to retirement savings?
- What data on climate-related financial risk should the DOL consider, and should it collect such information by adding questions to the Form 5500 Annual Return?
- Might guaranteed annuities help mitigate climate-related financial risk?

Responses are requested by May 16, 2022.

While clearly looking to devote more time to climate change concerns, the DOL may have “weeded out” crypto in its compliance assistance release titled “[401\(k\) Plan Investments in](#)

‘Cryptocurrencies’” issued on March 10, 2022. Characterizing cryptos as “speculative” investments that most retirement plan participants are ill-prepared to scrutinize properly, and that pose significant complications to retirement plan administration, the DOL expressed “serious concerns about the prudence of a fiduciary’s decision to expose a 401(k) plan’s participants to direct investments in cryptocurrencies, or other products whose value is tied to cryptocurrencies.”

The release closes with the DOL’s intention to locate (and perhaps fumigate) retirement plans allowing crypto investment, even if it is only permitted through a brokerage window, and “take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments.”

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