



June 1, 2026

Via electronic submission: <http://www.regulations.gov>

The Honorable Daniel Aronowitz, Assistant Secretary
Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor
200 Constitution Avenue N.W., Room N-5655
Washington, DC 20210

Re: Fiduciary Duties in Selecting Designated Investment Alternatives (RIN 1210-AC38)

Dear Assistant Secretary Aronowitz:

The Blockchain Association respectfully submits this letter in support of the Department of Labor's Notice of Proposed Rulemaking concerning fiduciary duties under section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974 ("ERISA") in the selection of designated investment alternatives, including asset allocation funds that include alternative assets.¹

The Association is the leading nonprofit membership organization dedicated to promoting a pro-innovation policy environment for the digital asset industry. The Association endeavors to achieve regulatory clarity and to educate policymakers, regulators, courts, and the public about how blockchain technology can create a more secure, competitive, and consumer-friendly digital marketplace. The Association represents more than 100 member companies reflecting the wide range of participants in the blockchain industry, including software developers, exchanges, custodians, investors, and others supporting the public blockchain ecosystem.

The Blockchain Association strongly supports the Department's proposal. The proposed rule faithfully implements the President's Executive Order 14330, *Democratizing Access to Alternative Assets for 401(k) Investors*, and reaffirms the Department's longstanding view that ERISA is neutral as to investment categories.² The proposed rule rightly gives American workers the same opportunity

¹ Fiduciary Duties in Selecting Designated Investment Alternatives, 91 Fed. Reg. 16,088 (Mar. 31, 2026), <https://tinyurl.com/57vn7enf>.

² Exec. Order No. 14330, *Democratizing Access to Alternative Assets for 401(k) Investors*, 90 Fed. Reg. 38,921 (Aug. 12, 2025), <https://tinyurl.com/mv4z7xus>.

as institutional and professional investors to gain exposure to the digital-asset economy when the plan fiduciary determines that such exposure is appropriate. In doing so, the proposal furthers this Administration’s effort to embrace the digital-asset industry as a driver of American innovation and economic leadership and to dismantle the prior administration’s policy of regulatory hostility to digital assets.

I. Retirement Investors, Like Other Investors, Should Have the Option of Exposure to the Digital Asset Economy

ERISA plan participants should have the ability to invest in a wide range of asset classes, just like other investors, so long as plan fiduciaries take prudent steps to consider the investment options they make available. As the Department rightly recognizes, there is no reason to require plan fiduciaries to treat investment options with exposure to the digital asset industry differently than investment options for other industries and asset classes. The digital asset industry is one of the fastest-growing sectors of the U.S. economy, with an increasingly mature regulatory framework, and experienced investors routinely invest in digital assets as part of a balanced, long-term investment strategy. Ordinary American workers saving for retirement should not be uniquely barred from obtaining exposure to this transformative industry.

Although the prior administration treated digital assets as a fringe, disfavored asset class, the current Administration has radically changed course. The President has recognized that “the digital asset industry plays a crucial role in innovation and economic development in the United States” and has directed the federal government to “provid[e] regulatory clarity and certainty built on technology-neutral regulations.”³ The SEC, CFTC, and federal banking regulators have responded by rescinding their prior anti-crypto guidance, dropping unlawful enforcement actions against crypto companies, and clarifying how federal securities, commodities, and banking laws apply to digital assets.⁴ In the past year, Congress has enacted the GENIUS Act—a comprehensive federal statutory framework for payment stablecoins—and is actively working on bipartisan market-structure legislation.⁵

³ Exec. Order No. 14178, *Strengthening American Leadership in Digital Financial Technology*, 90 Fed. Reg. 8,647 (Jan. 31, 2025) § 1.

⁴ See, e.g., SEC, Press Release, *SEC Clarifies the Application of Federal Securities Laws to Crypto Assets* (Mar. 17, 2026), <https://tinyurl.com/36vz6a5u>; CFTC, Press Release No. 9198-26, *CFTC Joins SEC to Clarify the Application of Federal Securities Laws to Crypto Assets* (Mar. 17, 2026), <https://tinyurl.com/3zfwz8pr>; Bd. of Governors of the Fed. Reserve Sys., Press Release, *Federal Reserve Board Announces That Reputational Risk Will No Longer Be a Component of Examination Programs in Its Supervision of Banks* (June 23, 2025), <https://tinyurl.com/253wwztz>.

⁵ Guiding and Establishing National Innovation for U.S. Stablecoins Act, Pub. L. No. 119-27, 139 Stat. 419 (2025); Press Release, U.S. Senate Comm. on Banking, Hous. & Urb. Affs., Chairman Scott, *Senate Banking Committee Advance Clarity Act in Historic Bipartisan Vote* (May 14, 2026), <https://tinyurl.com/58wmtu7s>.

Due in part to this enhanced regulatory clarity, institutional and professional investors increasingly recognize that digital assets are an important component of a balanced, long-term investment portfolio. Numerous crypto-backed exchange-traded products have now been approved by the SEC and offered by traditional finance firms like BlackRock and Fidelity and digital-asset-focused firms like Grayscale, with Bitcoin-backed exchange-traded products alone attracting well over \$100 billion in investment.⁶ And major wealth managers, public pension funds, university endowments, and Fortune 500 companies are increasingly seeking exposure to digital assets.⁷ American workers should have the same opportunities to obtain exposure to digital assets as part of a diversified retirement portfolio.

The digital asset industry also offers retirement investors significant opportunities to grow their wealth. From 2014 through 2024, Bitcoin was the best-performing major asset class by a wide margin—averaging an annualized return of approximately 54%.⁸ Retirement investors should have the option to obtain exposure to investment options that include exposure to such high-growth assets. Past performance, of course, is no guarantee of future returns, and digital assets remain volatile—but the same is true of many other asset classes that retirement plans routinely make available. Individual technology stocks, for example, routinely experience significant annualized volatility.⁹ As the proposal rightly recognizes, ERISA plan fiduciaries can account for the volatility of digital assets (and other assets), among other factors, when considering which specific investment options to offer plan participants who seek exposure to the growth potential of this emerging asset class.

⁶ See Jack Kubinec, *Morgan Stanley's Bitcoin ETF Began Trading. An Analyst Put It in the Top 1% of ETF Launches*, Fortune (Apr. 8, 2026), <https://tinyurl.com/4zetz28>.

⁷ See, e.g., Hugh Son, *Morgan Stanley Tells Wealth Advisors They Can Pitch Bitcoin ETFs in a First for a Big Bank*, CNBC (Aug. 2, 2024), <https://tinyurl.com/2u6hkshh>; Vismaya V, *Michigan State Pension Triples Bitcoin ETF Exposure, Latest Filing Shows*, Yahoo! Finance (Aug. 6, 2025), <https://tinyurl.com/4ft7pc4x>; Harvard Mgmt. Co., SEC Form 13F-HR (May 15, 2026) (disclosing 3,044,612 shares of the iShares Bitcoin Trust ETF valued at around \$117 million as of March 31, 2026), <https://tinyurl.com/4rvvr3y7>; James Van Straten, *Tesla Made No Changes to Bitcoin Holdings in Q4*, CoinDesk (Jan. 28, 2026) (“The company’s bitcoin stack remained at 11,509 coins, worth about \$1 billion....”), <https://tinyurl.com/jdhf37dz>.

⁸ BlackRock, *Bitcoin Volatility Guide: Trends & Insights for Investors* (July 11, 2024), <https://tinyurl.com/4rs498dc>.

⁹ See, e.g., Christopher Carrano, *Quantifying the Magnificence of the Magnificent 7*, Venn (July 28, 2025), <https://tinyurl.com/4knrsyrh>.

II. The Department’s Asset-Neutral, Process-Based Framework Faithfully Reflects ERISA and Aligns with the Administration’s Priorities

The Blockchain Association supports the Department’s reaffirmation that ERISA Section 404(a)(1)(B) “does not require or restrict any specific type of designated investment alternative,” including digital assets.¹⁰ As the proposed rule correctly recognizes, there are no “favored or disfavored” assets under ERISA.¹¹ The text of section 404(a)(1)(B) is “plainly neutral to types or classes of designated investment alternatives,” and the duty of prudence is “largely a process-based inquiry.”¹² Congress crafted ERISA to give plan fiduciaries the discretion and flexibility to tailor investment menus to the needs of their participants so long as fiduciaries follow a prudent process. Congress did not put a thumb on the scale in favor of or against certain asset classes.

The proposed rule is also consistent with this Administration’s efforts to promote evenhanded, principles-based regulation of digital assets. Executive Order 14330 declared as the policy of the United States that “every American preparing for retirement should have access to funds that include investments in alternative assets,” including digital assets.¹³ Section 3(c) of the Order directed the Department to propose calibrated safe harbors clarifying ERISA fiduciary responsibilities in connection with alternative-asset offerings. The proposed rule faithfully responds to that directive.

In doing so, the proposed rule rightly rejects the Department’s hostility to digital assets under the prior administration. The starkest example of that hostility was Compliance Assistance Release No. 2022-01, which had instructed plan fiduciaries to “exercise extreme care” before considering cryptocurrency investment options.¹⁴ When the Department rescinded that guidance in May 2025, it correctly acknowledged that the “extreme care” standard “is not found in ... ERISA” and “differs from” the law’s ordinary fiduciary principles.¹⁵ The prior administration’s approach, as the Secretary explained, was a deliberate decision to “put [a] thumb on the scale” against a politically disfavored asset class.¹⁶ That position was of a piece with a broader pattern of hostility to the digital asset industry during the prior administration. The current Administration has worked methodically to

¹⁰ 91 Fed. Reg. at 16,094 (quotation marks omitted), *supra* note 1.

¹¹ *Id.* at 16,093.

¹² *Id.* at 16,090, 16,094 (quoting *Smith v. CommonSpirit Health*, 37 F.4th 1160, 1166 (6th Cir. 2022)).

¹³ Exec. Order No. 14330, *supra* note 2, § 2.

¹⁴ EBSA, Compliance Assistance Release No. 2022-01 (Mar. 10, 2022), <https://tinyurl.com/5n6zx5jw>.

¹⁵ EBSA, Compliance Assistance Release No. 2025-01 (May 28, 2025), <https://tinyurl.com/5n7nw6v2>.

¹⁶ Press Release, U.S. Dep’t of Labor, *U.S. Department of Labor Rescinds 2022 Guidance on Cryptocurrency in 401(k) Plans* (May 28, 2025) (statement of Sec’y Lori Chavez-DeRemer), <https://tinyurl.com/5n99w4c9>.

dismantle that posture across the federal government, and the proposed rule is consistent with that effort.

Conclusion

The Blockchain Association strongly supports the proposed rule's recognition that ERISA imposes asset-neutral standards on plan fiduciaries and authorizes Americans to obtain exposure to digital assets as part of a balanced retirement portfolio, consistent with the judgments of plan fiduciaries. We would be pleased to meet with Employee Benefits Security Administration staff to discuss the Association's position on the proposed rule.

Respectfully submitted,

/s/ Ashok Pinto

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