

# United States Senate

WASHINGTON, DC 20510

March 9, 2023

The Honorable Marty Walsh  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

The Honorable Lisa M. Gomez  
Assistant Secretary  
Employee Benefits Security Administration  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, D.C. 20210

Dear Secretary Walsh and Assistant Secretary Gomez,

On March 10, 2022, the Department of Labor (the Department) issued guidance related to 401(k) plan investments in cryptocurrencies (crypto). At that time, the Department expressed “serious concerns about the prudence of a fiduciary's decision to expose a 401(k) plan's participants to direct investments in cryptocurrencies.” The Department went on to state “these investments present significant risks and challenges to participants' retirement accounts, including significant risks of fraud, theft, and loss.” The Department cautioned plan fiduciaries to “exercise extreme care” before considering the inclusion of crypto in 401(k) plans.

We applaud the Department's March 2022 guidance. Millions of Americans rely on their 401(k) investments to retire with dignity. Crypto is an unstable and unregulated speculative asset that is subject to extreme price volatility. It has no place in the retirement savings of hardworking Americans. In the last year, the digital asset industry has grown even more volatile, tumultuous, and chaotic. The value of Bitcoin alone dropped more than 60 percent in 2022. The inclusion of crypto in retirement accounts exposes plan participants to unnecessary risk and could have devastating impacts.

It is deeply troubling that despite the extreme price volatility, well-trusted and respected providers of retirement services have chosen to offer exposure to crypto in 401(k) plans. Given the severity of the risks associated with crypto, this ill-advised decision is dangerous and irresponsible. It also begs the question how plan fiduciaries—subject to prudence and loyalty obligations—can justify allowing such investments.

As we approach one year since the Department of Labor released its guidance on the inclusion of cryptocurrencies in 401(k) plans, we strongly urge the Department to expeditiously act on the announcement that it “expects to conduct an investigative program aimed at plans that offer participant investments in cryptocurrencies and related products, and to take appropriate action to protect the interests of plan participants and beneficiaries with respect to these investments.” Following completion of the investigation, we also request a detailed report outlining any actions and/or policy recommendations that are needed to further protect plan participants from the risks of crypto. Time is of the essence. The financial future and stability of millions of Americans is on the line.

We commend the Department's commitment to protect the interests of hardworking Americans who have saved for years to retire in dignity. These families deserve better than to have their life savings subjected to the uncertainty and extreme volatility of crypto.

Thank you for your attention to this timely and important issue. We look forward to your response.

Sincerely,



Richard J. Durbin  
United States Senator



Sherrod Brown  
United States Senator



Elizabeth Warren  
United States Senator



Tina Smith  
United States Senator