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## 2Q | 2025 The 457(b) Plan Fiduciary Advisor Newsletter

### **DOL Rescinds Guidance Discouraging Plan Fiduciaries from Considering Cryptocurrencies**

“On May 28, 2025, the US Department of Labor (the “Labor Department”) issued Compliance Assistance Release No. 2025-01: 401(k) Plan Investments in “Cryptocurrencies” (the “2025 Release”), which rescinds the Labor Department’s prior guidance on retirement plan investments in cryptocurrencies and other digital assets set forth in Compliance Release No. 2022-01: 401(k) Plan Investments in “Cryptocurrencies” (the “2022 Release”). The 2022 Release discouraged plan fiduciaries from offering cryptocurrencies in their 401(k) plans and further directed plan fiduciaries to “exercise extreme care” prior to adding a cryptocurrency option to its plan. The 2025 Release explained that, by rescinding the 2022 Release, the Labor Department was returning to its historical approach of taking a neutral standard toward particular investment types and strategies by “neither endorsing, or disapproving of, plan fiduciaries who conclude the inclusion of cryptocurrency in a plan’s investment menu is appropriate.” [Read more here.](#)<sup>1</sup>

### **SEC Pulls Back More Than a Dozen Gensler-Era Proposals**

“The Securities and Exchange Commission (the “SEC”) announced that it is withdrawing 14 rule proposals on June 13. All of the rule proposals had been made during the tenure of former SEC Chair Gary Gensler during the Biden administration.

Some of the more noteworthy withdrawals include rules governing: predictive data analytics and conflicts of interest; the safeguarding proposal; cybersecurity and risk management; ESG strategy disclosure; adviser outsourcing; Regulation Best Execution; and the order competition rule.” [Read more here.](#)<sup>2</sup>

### **Labor Department to Craft New Retirement Plan ESG Rule**

“On May 28, the Labor Department filed a status report in the 5<sup>th</sup> Circuit of Appeals in *Utah et al. v. Micone*, informing the court that it will no longer defend the Biden-era rule in *Utah et al. v. Micone*. Instead, the Labor Department intends to craft a new rule regarding how retirement plan fiduciaries consider ESG factors in their plan investment decisions as part of the Labor Department’s Spring Regulatory AgendaT. “This rulemaking will appear on the Labor Department’s Spring Regulatory Agenda, and the Labor Department intends to move through the rulemaking process as expeditiously as possible.”” [Read more here.](#)<sup>3</sup>

## **Private Equity Is Coming to 401(k) Plans, Industry Leader Says**

“Private equity’s presence will “absolutely” grow in defined contribution plans, Edmund Murphy III, the president and CEO of Empower, argued at the Employee Benefit Research Institute’s (EBRI) Retirement Symposium held March 11 in Washington, DC.

Republican leadership this Congress is expected to pursue policies that would expand investment opportunities in private offerings, and this has been a key priority for some time.

Murphy noted that private equity is already present in traditional pensions, so it is odd and unfair that it would be unavailable to those in DC plans. “How can we not give investors more access to that asset class?” Murphy asked, pointing to both the performance of private assets, as well as the proliferation of private company issuers which would provide additional opportunities for diversification.” [Read more here.](#)<sup>4</sup>

## **Concern About More Litigation Follows Supreme Court’s Cornell Decision**

“The U.S. Supreme Court’s unanimous decision in *Cunningham et al. v. Cornell University et al.* has left many in the industry worried about a new wave of litigation, as workers’ mere claim that a “prohibited transaction” occurred alone was deemed sufficient to survive a motion to dismiss.

On April 17, the Supreme Court issued a unanimous decision finding that plaintiffs are only required to plausibly allege that a prohibited transaction under ERISA occurred, and that the burden of asserting that an exemption to the prohibited transaction rules exists that would provide relief with respect to such transaction falls to the defendants to assert as an affirmative defense.

The decision means that the case against Cornell may continue at the district court level. The decision will likely result in a barrage of new ERISA litigation targeting plan sponsors and fiduciaries, subjecting the private retirement plan system to enormous litigation exposure.” [Read more here.](#)<sup>5</sup>

## **NAGDCA: New Governance Guide Released**

“The NAGDCA Governance Best Practices Guide is now available! This comprehensive resource is designed to help public sector defined contribution (DC) plan sponsors navigate fiduciary responsibilities and governance structures effectively.

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This guide provides essential best practices to help plan sponsors manage their plans in compliance with the Internal Revenue Code and other applicable requirements.” [Read more here.](#)<sup>6</sup>

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<sup>1</sup> Source: June 13, 2025, Mayer Brown: “A Return to Investment Neutrality? DOL Rescinds Guidance Discouraging Plan Fiduciaries from Considering Cryptocurrencies”

<sup>2</sup> Source: June 13, 2025, The National Association of Plan Advisors: “SEC Pulls Back More Than a Dozen Gensler-Era Guidance Proposals”

<sup>3</sup> Source: May 29, 2025, Pensions & Investments: “DOL to craft new retirement plan ESG rule”

<sup>4</sup> Source: March 12, 2025, The National Association of Plan Advisors: “Private Equity Is Coming to 401(k) Plans, Industry Leader Says”

<sup>5</sup> Source: April 23, 2025, PLANADVISER: “Concern About More Litigation Follows Supreme Court’s Cornell Decision”

<sup>6</sup> Source: March 11, 2025, NAGDCA: “Governance Best Practices Guide”

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