



Federal Legislative & Regulatory Report

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Senators question Fidelity's crypto offering

On May 4, Sens. Elizabeth Warren (D-MA) and Tina Smith (D-MN) [sent](#) a letter to Fidelity about the appropriateness of the company's decision to add Bitcoin to its 401(k) investment plan menu and the actions the company will take to address the risks of fraud, theft and loss posed by these assets.

In April, Fidelity [announced](#) the launch of an offering that will enable individuals to have a portion of their retirement savings allocated to bitcoin through the core 401(k) plan investment lineup.

In March, the DOL issued [Compliance Assistance Release No. 2022-01](#), saying in part, "The Department has 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."

Senator seeks to overturn DOL's crypto guidance

In response to the crypto guidance, on May 5, Sen. Tommy Tuberville (R-AL) [introduced](#) the Financial Freedom Act to prohibit the DOL from issuing a regulation or guidance that limits the type of investments that self-directed 401(k) account investors can choose through a brokerage window.

The legislation also prohibits the DOL from favoring or disfavoring any plan investment option except on the basis of the investment's "risk-return characteristics." This appears directed at the consideration of environmental, social and governance factors.

On April 12, 11 trade associations sent a letter to the DOL expressing concern about the crypto guidance — in particular, the assertion that plan fiduciaries are responsible for overseeing cryptocurrency and related investment options or allowing such investments through brokerage windows.

Senators introduce bill to expand use of 529 plans

On May 2, Sens. Maggie Hassan (D-NH) and Susan Collins (R-ME) introduced the [Helping Parents Save for College Act](#). The bill would help parents save for college. The bill would encourage families to invest in a 529 account by:

- Expanding the federal Saver's Tax Credit to provide low- and middle-income parents with a tax credit for contributions to 529 education savings accounts. The credit would be worth up to 50%, or \$4,000, of 529 account contributions made by low- and middle-income families.
- Offering a retirement rollover option, allowing 529 account plan beneficiaries to move excess funds into their Roth individual retirement account (IRA) without penalty. The goal of this provision is to ease concerns about excess funds in cases where a child does not go to college. Under this provision, a beneficiary would need to wait 10 years to roll over funds.

Senators introduce retirement plan legislation

On May 5, Sens. John Hickenlooper (D-CO) and Susan Collins (R-ME) [introduced](#) the Simplifying Small Business Retirement Savings Act, which would modify PEPs and Groups of Plans, both of which are designed to make providing retirement plans easier and more affordable for small businesses.

The bill would allow companies administering Pooled Employer Plans to have the option of using Directed Trustees, an industry standard for large companies, as well as Discretionary Trustees. For Groups of Plans, the bill would eliminate a trust-level audit required by the DOL which has limited the impact of the SECURE Act provision letting certain Groups of Plans file a single Form 5500.

Sen. Hickenlooper also introduced a [second bill](#) that would give small businesses a tax credit for retirement plan contributions made on behalf of employees. Both bills are under consideration for inclusion in the Senate version of SECURE 2.0, which is expected to materialize late Q2/early Q3.

Lawmakers seek to limit forced arbitration under ERISA

On May 12, Rep. Mark DeSaulnier (D-CA) and Sen. Tina Smith (D-MN) [introduced](#) S 4219/HR 7740, the Employee and Retiree Access to Justice Act, to limit the use of forced arbitration and class-action waiver provisions under ERISA.

Specifically, the bill would deem forced arbitration clauses, class-action waivers, representative waivers, and discretionary clauses unenforceable with respect to ERISA and common law claims relating to benefits; prohibit the inclusion of such provisions in plan documents; and prohibit retaliations against individuals who decline to enter into forced arbitration agreements. Without bipartisan support, the bill is unlikely to become law.

DOL finalizes limited Form 5500 revisions; other changes remain under review

On April 20, the EBSA, the IRS and the PBGC [released](#) final revisions to the Form 5500 Annual Return/Report of Employee Benefit Plan and Form 5500-SF Short Form Annual Return/Report of Employee Benefit Plan, and related instructions, that apply beginning with 2022 plan year reports.

The final revisions primarily implement reporting changes for defined benefit (DB) plans, but they also add new plan characteristic codes and make certain clarifications in the instructions for multiple employer plans (MEPs).

The newly released revisions account for only a portion of the revisions to Form 5500 that the agencies proposed in September 2021, as the agencies are “still evaluating public comments.”

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References and source material used in this publication

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Warren-Smith letter to the CEO of Fidelity

Investments <https://www.barrasso.senate.gov/public/index.cfm/news-releases?ID=88811C15-FBD8-4E8C-8041-F8DD46E39105BILL>

<https://s.wsj.net/public/resources/documents/Warren%20letter.pdf>

Fidelity Investments Advances Leading Position as Digital Assets Provider With Launch of Industry's First-of-Its-Kind Bitcoin Offering for 401(k) Core Investment Lineup (press release)

<http://fidelityinvestments2020news.q4web.com/press-releases/news-details/2022/Fidelity-Investments-Advances-Leading-Position-as-Digital-Assets-Provider-With-Launch-of-Industrys-First-of-Its-Kind-Bitcoin-Offering-for-401k-Core-Investment-Lineup/default.aspx>

Compliance Assistance Release No. 2022-01: 401(k) Plan Investments in "Cryptocurrencies"

<https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/compliance-assistance-releases/2022-01>

New Tuberville Legislation Promotes Financial Freedom for 401(k) Investors (press release)

<https://www.tuberville.senate.gov/newsroom/press-releases/new-tuberville-legislation-promotes-financial-freedom-for-401k-investors/>

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Senators Collins, Hassan Introduce Bipartisan Legislation to Help Families More Easily Save for College (press release)

<https://www.collins.senate.gov/newsroom/senators-collins-hassan-introduce-bipartisan-legislation-to-help-families-more-easily-save-for-college>

Hickenlooper, Collins Introduce Bill to Cut Red Tape For Small Business Employee Retirement Plans (press release)

https://www.hickenlooper.senate.gov/press_releases/hickenlooper-collins-introduce-bill-to-cut-red-tape-for-small-business-employee-retirement-plans/

Text of Senate Bill 4153, "Incentivizing Small Business Retirement Savings Act"

<https://www.govinfo.gov/content/pkg/BILLS-117s4153is/pdf/BILLS-117s4153is.pdf>

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Rep. DeSaulnier, Sen. Smith introduce legislation to improve workers' access to secure retirement and health care (press release)

<https://desaulnier.house.gov/media-center/press-releases/rep-desaulnier-sen-smith-introduce-legislation-improve-workers-access>

Department of Labor Releases Final Rule on Changes for the 2022 Form 5500 Series Annual Return/Report (press release)

<https://www.dol.gov/newsroom/releases/ebsa/ebsa20220520>

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Keeping watch

You can find the most recent information on issues affecting governmental defined contribution plans, plan sponsors and plan participants on the Employer page of our plan website, NRSforu.com/plansponsor.

About this report

BOB BEASLEY, CRC, Communications Consultant, edits this report. Beasley brings more than 30 years of financial services communications experience to your plan. He has contributed to past editions of the *Governmental 457(b) Guidebook*, edits countless newsletters and plan sponsor communications, and in 2001 authored “What you should know about the Economic Growth and Tax Relief Reconciliation Act of 2001.” He often voices Nationwide’s online presentations.

Beasley has served on the Education and Communication Committee for the Plan Sponsor Council of America and as a member of the National Association of Government Defined Contribution Administrators.

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