

May 28, 2026

Submitted via www.regulations.gov

Office of Regulations and Interpretations
Employee Benefits Security Administration
U.S. Department of Labor, Room N-5655
200 Constitution Avenue NW
Washington, DC 20210

Re: Comment Regarding “Fiduciary Duties in Selecting Designated Investment Alternatives” Proposed Rule, Docket No. EBSA-2026-0166, RIN 1210-AC38, 91 Fed. Reg. 16088 (Mar. 31, 2026)

Dear Assistant Secretary Aronowitz:

Governing for Impact (GFI) submits this comment on a proposed rule, “Fiduciary Duties in Selecting Designated Investment Alternatives” (Proposed Rule), issued by the Employee Benefits Security Administration (EBSA) within the Department of Labor (DOL).¹ GFI is a regulatory policy organization dedicated to ensuring that the federal government operates more effectively for everyday working Americans.²

The Proposed Rule would attempt to insulate fiduciaries from liability for failures to meet their duty of prudence under the Employee Retirement Income Security Act of 1974 (ERISA) in connection with selecting designated investment alternatives for participant-directed individual account plans. This includes cryptocurrency-exposed holdings.³ If finalized, therefore, the Proposed Rule would facilitate an increase of cryptocurrency-exposed holdings in defined-contribution retirement accounts. Given the President’s and his associates’ extensive personal financial interests in the cryptocurrency industry, and the fact that the Proposed Rule was directed by the White House, our comment addresses the administration’s potential conflicts of interest with respect to cryptocurrency and considers how they could give rise to concerns under the Administrative Procedure Act. We request that DOL rescind the Proposed Rule or, at the very least, discuss potential conflicts of interest and how the administration is mitigating them in any final rule. Our comment concludes by reminding the agency of its obligations to disclose any use of artificial intelligence in this rulemaking.

I. The Proposed Rule would ease the introduction of cryptocurrency-related investments in defined-contribution retirement accounts, potentially creating windfalls for existing cryptocurrency investors.

The Proposed Rule states that it is a part of the administration’s effort to carry out President Trump’s Executive Order 14330, “Democratizing Access to Alternative Assets for 401(k)

¹ 91 Fed. Reg. 16088 (Mar. 31, 2026).

² www.governingforimpact.org.

³ 91 Fed. Reg. 16088.

Investors.”⁴ That order sought to ensure that the “more than 90 million Americans [who] participate in employer-sponsored defined-contribution plans” have greater access to invest in “alternative asset investments,” which include “holdings in actively managed investment vehicles that are investing in digital assets.”⁵ The Proposed Rule acknowledged that “[d]igital assets includ[e] cryptocurrencies such as Bitcoin and other tokens.”⁶

The Proposed Rule aims to ease the path for cryptocurrency-exposed investments in retirement plans by reducing “litigation risks” associated with plans’ potential inclusion of these assets and by “[r]emoving stigma against” alternative asset investments, including cryptocurrency.⁷

These steps could increase the share of the \$14.2 trillion in 401(k) plans that are available to buy cryptocurrency-related investments.⁸ Even a modest reallocation of that money toward cryptocurrency-exposed investment vehicles would substantially increase demand in the digital asset market.⁹ As in all markets, more demand creates higher prices, which inure to the benefit of those holding and selling the assets in the first place. The President and his associates are among those who could directly benefit.

II. The President, his associates, and the Assistant Secretary for EBSA appear likely to benefit personally from the Proposed Rule.

After first warning in 2021 that cryptocurrencies “may be fake,” might be a “scam,” and that investing in them was “potentially a disaster waiting to happen,”¹⁰ President Trump has since reportedly developed substantial and direct personal financial interests in the cryptocurrency market while simultaneously vowing to make the United States “the crypto capital of the world.”¹¹ In January 2025, President Trump launched the \$TRUMP memecoin, a speculative digital token, of which 80 percent are owned by the Trump Organization and its affiliates.¹² The First Lady launched \$MELANIA, a similar memecoin.¹³

⁴ *Id.*

⁵ 91 Fed. Reg. 16093, 90 Fed. Reg. 38921.

⁶ 91 Fed. Reg. 16093.

⁷ *Id.* at 16111, 11616.

⁸ Tara Siegel Bernard, *Private Assets May Be Coming to Your 401(k). You Should Know the Risks*, N.Y. Times (Apr. 23, 2026), <https://www.nytimes.com/2026/04/23/your-money/401ks-and-similar-plans/401k-private-credit-crypto.html>.

⁹ Pedro Solimano, *Bitcoin ETFs enter 2026. Here’s why analysts expect over \$180bn in investment*, Yahoo! Finance (Dec. 29, 2025), <https://finance.yahoo.com/news/bitcoin-etfs-enter-2026-why-082234383.html?guccounter=1> (noting that the entry of cryptocurrency ETFs into 401(k) is one component of demand increase).

¹⁰ Talia Kaplan, *Trump warns crypto ‘potentially a disaster waiting to happen’*, Fox News (Aug. 31, 2021), <https://www.foxbusiness.com/politics/crypto-potentially-a-disaster-waiting-to-happen-trump>.

¹¹ The White House, *Crypto*, <https://www.whitehouse.gov/crypto/> [<https://perma.cc/ZH9M-UVHN>] (last visited May 5, 2026).

¹² MacKenzie Sigalos, *Trump’s crypto-frenzied inauguration weekend makes first family billions of dollars richer*, CNBC (Jan. 20, 2025), <https://www.cnbc.com/2025/01/20/trump-crypto-fueled-inauguration-makes-family-billions-of-dollars.html>.

¹³ *Id.*

Perhaps the President’s most significant cryptocurrency association is that as “Co-Founder Emeritus” of World Liberty Financial (WLFI).¹⁴ According to news reports, the Trump family receives up to 75 percent of WLFI’s crypto coin revenue after expenses, and separately holds equity entitling it to interest income from the reserve assets backing WLFI’s USD1 stablecoin.¹⁵ In total, a March 2026 analysis from Forbes estimated that the President still owns roughly \$570 million in cryptocurrency assets, in addition to his 38 percent stake in WLF’s business that is estimated to be worth \$240 million.¹⁶

Members of the Trump administration, including the leader of EBSA, likewise entered office with substantial cryptocurrency interests. David Sacks, the White House’s now-outgoing artificial intelligence and crypto czar,¹⁷ reportedly held Bitcoin, Ethereum, and Solana, stock in Coinbase and Robinhood, and limited partnership interests in the crypto venture funds Multicoïn Capital and Blockchain Capital before taking office.¹⁸ Although Sacks and his firm divested more than \$200 million in crypto-related holdings, the government granted him an ethics waiver permitting him to participate in digital asset policymaking while retaining residual crypto exposure.¹⁹ Commerce Secretary Howard Lutnick transferred control of his firm Cantor Fitzgerald—the primary banking partner for one of the world’s largest issuers of stablecoins—to his adult children, but was involved in crypto-related policymaking throughout the transfer process that lasted into October 2025.²⁰ All told, according to a December 2025 ProPublica report, President Trump nominated at least 216 political appointees who owned (either by themselves or with their spouses) cryptocurrency investments worth between \$175 million and \$340 million at the time of their nomination.²¹ And of particular relevance here, one such official is Assistant Secretary for EBSA, Daniel Aronowitz, who in Spring 2025 reported owning between \$100,000 and \$250,000 worth of Bitcoin.²² As of December 2025—which is within the six month period prescribed by the President to EBSA to

¹⁴ World Liberty Gold Paper, 10 (last visited May 5, 2026), <https://static.worldlibertyfinancial.com/docs/gold-paper.pdf>.

¹⁵ MacKenzie Sigalos, *Trump family gets 75% of crypto coin revenue, has no liability, new document reveals*, CNBC (Oct. 17, 2024), <https://www.cnbc.com/2024/10/17/trump-crypto-project-allows-ex-president-family-to-make-75percent-of-revenue.html>; Tom Bergin, *How Reuters tallied the Trump Organization’s crypto income*, Reuters (Oct. 28, 2025), <https://www.reuters.com/investigations/how-reuters-tallied-trump-organizations-crypto-income-2025-10-28/>.

¹⁶ Luisa Kroll & Giacomo Tognini, *Here’s How Much Donald Trump Is Worth*, Forbes (Mar. 10, 2026), <https://www.forbes.com/sites/luisakroll/2026/03/10/heres-how-much-donald-trump-is-worth/>.

¹⁷ Reuters, *White House AI czar Sacks to step down, moves to advisory role* (Mar. 26, 2026), <https://www.reuters.com/world/us/white-house-ai-czar-sacks-step-down-moves-advisory-role-2026-03-27/>.

¹⁸ Ben Weiss, *U.S. crypto czar’s \$200 million portfolio held Bitcoin, Coinbase, and Robinhood*, Fortune (Mar. 14, 2025), <https://fortune.com/crypto/2025/03/14/david-sacks-bitcoin-coinbase-robinhood-200-million-divestments-crypto-portfolio/>.

¹⁹ *Id.* See also, David A. Warrington, Memorandum for David O. Sacks, Special Advisory for A.I. and Crypto, Limited Waiver Pursuant to 18 U.S.C. § 208(b)(1) (March 25, 20225), <https://www.whitehouse.gov/wp-content/uploads/2025/03/Memo-David-Sacks-3.5.2025-1.pdf> [<https://perma.cc/6LTA-A765>].

²⁰ Corey Johnson & Al Shaw, *Top DOJ Official Shut Down Enforcement Against Crypto Companies While Holding More Than \$150,000 in Crypto Investments*, ProPublica (Dec. 22, 2025), <https://www.propublica.org/article/todd-blanche-crypto-doj-trump>.

²¹ *Id.*

²² Daniel Aronowitz Financial Disclosure (Form 278e), Other Assets and Income, line 19.1, available at <https://projects.propublica.org/trump-team-financial-disclosures/appointees/aronowitz-daniel/>.

issue a regulation like the Proposed Rule²³—Aronowitz had not reported selling his Bitcoin holdings.²⁴

III. DOL should explain how its rulemaking process is insulated from the financial interests of the President and his associates to avoid violating the Administrative Procedure Act.

The White House maintains that “[n]either the President nor his family have ever engaged, or will ever engage, in conflicts of interest.”²⁵ However, given the President’s crypto-related holdings and business interests, and those of others in his administration—including, in particular, Assistant Secretary Aronowitz—in any final rule DOL should disclose any involvement by Trump administration officials with crypto holdings, and explain how DOL adhered to conflict of interest rules in the policymaking process.

A. Failure to disclose or mitigate potential conflicts of interest could render a final rule invalid.

Undisclosed or unmitigated conflicts of interests in a rulemaking could run afoul of the APA’s prohibition against agency action that is “not in accordance with law” or that is “without observance of procedure required by law.”²⁶ DOL is constrained by overlapping statutes, regulations, and policies that prohibit conflicts of interest and direct employees to avoid the appearance of bias.²⁷ Absent a waiver and subject to certain exemptions, 18 U.S.C. § 208 and the regulations that implement it prohibit federal employees from participating in any matter that would have a direct and predictable effect on their financial interests.²⁸ The U.S. Office of Government Ethics issued a legal advisory in 2022 explaining why various *de minimis* exemptions to § 208 do not apply to cryptocurrency holdings.²⁹ (And, even if such exceptions did apply to cryptocurrency holdings, the *de minimis* cap for “matters of general applicability, such as a rulemaking,” is \$50,000—far less than many administration officials hold in cryptocurrency.³⁰) And federal employees must otherwise comply with the “[b]asic obligation[s] of public service” and “[g]overnment ethics responsibilities of employees,” which include the responsibility to “endeavor to act at all times in the public’s interest,

²³ Executive Order 14330 § 3(c), “Democratizing Access to Alternative Assets for 401(k) Investors,” 90 Fed. Reg. 38921 (Aug. 12, 2025).

²⁴ Daniel Aronowitz Financial Disclosure (Form 278e), Transactions, available at

<https://projects.propublica.org/trump-team-financial-disclosures/appointees/aronowitz-daniel/>.

²⁵ Brian Slodysko, *How a Trump business deal with a crypto firm exposes potential conflicts of interest*, PBS (Dec. 16, 2025),

<https://www.pbs.org/newshour/politics/how-a-trump-business-deal-with-a-crypto-firm-exposes-potential-conflicts-of-interest>.

²⁶ 5 U.S.C. § 706(2)(A), (D).

²⁷ Dep’t of Labor, Solicitor’s Office, Office of Legal Counsel, *Ethics Guide: How to Keep Out of Trouble* 1, 4 (Accessed: May 12, 2026),

<https://www.dol.gov/sites/dolgov/files/SOL/files/2025%20-%20How%20to%20Keep%20Out%20Of%20Trouble.pdf>.

²⁸ See 5 C.F.R. § 2635.402(a).

²⁹ U.S. Office of Gov’t Ethics, LA-22-04 Application of the Securities and Mutual Fund Exemptions to Cryptocurrency, Stablecoins, and Related Investments (Jul. 5, 2022),

[https://www.oge.gov/web/oge.nsf/News+Releases/E116F1FD24F94BB3852588770058A0FA/\\$FILE/LA-22-04.pdf](https://www.oge.gov/web/oge.nsf/News+Releases/E116F1FD24F94BB3852588770058A0FA/$FILE/LA-22-04.pdf).

³⁰ 5 C.F.R. § 2640.202(c).

avoid losing impartiality or appearing to lose impartiality in carrying out official duties, refrain from misusing their offices for private gain” and “refrain from participating in particular matters in which they have financial interests.”³¹ If those statutory or regulatory provisions were violated in this rulemaking, a final rule could be contrary to law under the APA.³²

B. Failure to disclose or mitigate potential conflicts of interest could render a final rule arbitrary and capricious.

The APA also requires agencies to engage in “reasoned decisionmaking.”³³ Among other things, this standard requires that an agency not “rel[y] on factors which Congress has not intended it to consider,”³⁴ provide a pretextual justification for its decision,³⁵ or “fail[] to consider an important aspect of the problem.”³⁶ All three of these requirements may be violated if this rulemaking is affected by undisclosed or unmitigated potential conflicts of interests.

1. Policy decisions made for individuals’ financial benefit unlawfully rely on prohibited “factors.”

While agencies have “considerable discretion” in weighing permissible factors,³⁷ the D.C. Circuit has explained that “it is an entirely different matter to prioritize non-statutory objectives to the exclusion of the statutory purpose.”³⁸

Congress enacted ERISA’s fiduciary duty provisions for the sole benefit of plan participants and their beneficiaries.³⁹ The personal financial enrichment of the President or anyone in his family or administration is not a factor Congress meant for DOL to consider. Nor is “[r]emoving the stigma against certain asset classes.”⁴⁰ If the Proposed Rule was shaped, even in part, by the personal financial interests of the President or his associates, or by an intent to enhance the reputation of certain asset classes, then it was premised on impermissible factors. And if those considerations predominated over statutory considerations, a resulting final rule will be arbitrary and capricious.

³¹ 5 C.F.R. § 2638.102; *see also* 5 C.F.R. § 2635.101(b).

³² *Cf. United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267-68 (1954) (holding agency action invalid where the decisionmaker failed to “exercise its own discretion, contrary to existing valid regulations”). The APA’s review of agency actions’ compliance with substantive and procedural rules is not limited to those that bind only the agency; rather, it extends to rules that bind individual agency officials. *See, e.g., Sierra Club v. Costle*, 657 F.2d 298, 396 (D.C. Cir. 1981) (analyzing whether agency officials’ nondisclosure of *ex parte* contacts complied with the Clean Air Act’s requirement that agency action follow procedure “required by law”—a requirement identical to that found in the APA at 5 U.S.C. § 706(2)(D)).

³³ *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 52 (1983).

³⁴ *Id.* at 43.

³⁵ *Dep’t of Com. v. New York*, 588 U.S. 752, 782, 784 (2019).

³⁶ *State Farm*, 463 U.S. at 43.

³⁷ *Sinclair Wyoming Ref. Co. LLC v. EPA*, 101 F.4th 871, 887 (D.C. Cir. 2024).

³⁸ *Gresham v. Azar*, 950 F.3d 93, 104 (D.C. Cir. 2020), *vacated and remanded sub nom. Becerra v. Gresham*, 142 S. Ct. 1665 (2022).

³⁹ 29 U.S.C. § 1104(a)(1).

⁴⁰ 91 Fed. Reg. 16116.

2. The agency’s stated rationale may be pretextual.

“The reasoned explanation requirement of administrative law ... is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.”⁴¹ Where an agency’s stated rationale “played an insignificant role in the decisionmaking process” or where a rationale is “contrived,” the agency has violated the APA.⁴²

The financial interests documented above raise serious questions about whether DOL’s stated reasons for the Proposed Rule are pretextual. DOL asserts that it seeks to improve “the ability of American workers to achieve ... competitive returns and asset diversification necessary to secure a dignified and comfortable retirement.”⁴³ But the financial interests of the President and his associates indicate that the rulemaking may instead be aimed at promoting the financial interests of those directing the administration’s approach. If so, any resulting rule would be based on pretextual justifications and violate the APA.

3. Failing to address these well-known personal financial interests ignores “an important aspect of the problem.”

Even where an agency’s reasoning is not pretextual, the APA requires an agency to have “examine[d] the relevant data” and addressed all “important aspect[s] of the problem.”⁴⁴ An agency’s silence on an obvious consideration that speaks to the integrity of the entire rulemaking is a “danger signal[]”⁴⁵ that the agency’s policy may be arbitrary and capricious, independent of any pretext claim.

The potential conflicts of interest summarized above bear directly on the important question of whether the Proposed Rule was designed to serve plan participants or to serve the financial interests of the President and those in his family and administration. The President’s, the Assistant Secretary’s, and others’ significant personal stakes in the cryptocurrency industry are matters of public record that hang over every crypto industry-friendly policy this administration implements.⁴⁶

C. In any final rule, DOL should disclose and discuss any potential conflicts of interest.

If DOL chooses to finalize the Proposed Rule, it should provide a discussion of the relevant potential conflicts of interest that includes answers to the following questions, because “awareness is not itself an explanation.”⁴⁷

⁴¹ *New York*, 588 U.S. at 785.

⁴² *Id.* at 782, 784.

⁴³ 91 Fed. Reg. 16088.

⁴⁴ *State Farm*, 463 U.S. at 43.

⁴⁵ *Greater Bos. Television Corp. v. FCC*, 444 F.2d 841, 851 (D.C. Cir. 1970).

⁴⁶ See, e.g., Americans for Financial Reform, *We’ll All Pay the Cost for Crypto Corruption* (Mar. 5, 2026), <https://ourfinancialsecurity.org/resources/we-pay-the-cost-for-crypto-corruption/>; Brian Slodysko, *How a Trump Media deal with a crypto firm exposes potential conflicts of interest*, AP (Dec. 16, 2025), <https://www.ap.org/news-highlights/spotlights/2025/how-a-trump-media-deal-with-a-crypto-firm-exposes-potential-conflicts-of-interest/>.

⁴⁷ *Ohio v. EPA*, 603 U.S. 279, 295 (2024).

- Approximately how much do President Trump and his associates, including those at DOL, stand to gain financially if the Proposed Rule is finalized?
- What measures, if any, did DOL take to ensure that conflicts of interest laws and policies were followed, and that the rulemaking was insulated from the personal financial interests of White House or DOL officials? Specifically, were any ethics waivers granted concerning this rulemaking?
- Did any official—whether in the White House or at DOL—with a role in developing this policy recuse themselves from any aspect of the process? If so, at what stage and on what basis?
- Did EBSA’s Designated Agency Ethics Official review Assistant Secretary Aronowitz’s Bitcoin holdings in connection with this rulemaking, and did the Official determine whether 5 C.F.R. part 2640 or OGE Legal Advisory LA-22-04 required his disqualification or recusal?
- If DOL is of the view that the personal financial interests detailed above and documented in the public record are irrelevant to this rulemaking, why?

IV. Any use of artificial intelligence in this rulemaking must be disclosed.

Finally, DOL must disclose information related to any use of artificial intelligence as part of this rulemaking and, to the extent such use is significant, provide an additional opportunity for public comment.⁴⁸ Under the APA’s reasoned-decisionmaking requirement, “[w]hen an agency uses a computer model, it must explain the assumptions and methodology used in preparing the model.”⁴⁹ Moreover, the public must have notice of, and an opportunity to comment on, agencies’ uses of models and data, AI-enhanced and otherwise, to regulate.⁵⁰ Such disclosures are “[t]he safety valves in the use of ... sophisticated methodology.”⁵¹

Beyond being legally required, disclosure of AI usage is prudent policy. Administrative agencies should uphold the values of transparency and public participation.⁵² In particular, the Administrative Conference of the United States has recognized that “[a]gencies’ efforts to ensure transparency in connection with their AI systems can serve many valuable goals,” and it therefore recommends that “agencies might prioritize transparency in the service of legitimizing its AI systems, facilitating internal or external review of its AI-based decision making, or coordinating its AI-based activities.”⁵³ Among other things, disclosure of AI usage allows the public to confirm that agencies are adhering to relevant laws, apply technical expertise to improve agencies’ use of technology, assess the risk that

⁴⁸ We adopt the definition of artificial intelligence at Pub. L. 115-232 § 238(g), 132 Stat. 1697–98.

⁴⁹ *Owner-Operator Ind. Drivers Ass’n, Inc. v. Fed. Motor Carrier Safety Admin.*, 494 F.3d 188, 204 (D.C. Cir. 2007) (quotation omitted).

⁵⁰ *See Am. Radio Relay League v. FCC*, 524 F.3d 227, 236 (D.C. Cir. 2008); *Air Transp. Ass’n v. FAA*, 169 F.3d 1, 7 (D.C. Cir. 1999).

⁵¹ *Castle*, 657 F.2d at 334.

⁵² *See* Attorney General’s Manual on the Administrative Procedure Act 9 (1947) (describing the APA’s purposes to include “requir[ing] agencies to keep the public currently informed of their organization, procedures, and rules” and “provid[ing] for public participation in the rule making process”).

⁵³ Admin. Conf. of the U.S., Statement #20, Agency Use of Artificial Intelligence, 86 Fed. Reg. 6612, 6616 (Jan. 22, 2021).

federal policies might be influenced by biased or otherwise faulty methods or products, and learn about an emerging and important field of technology. Indeed, the Office of Management and Budget has recognized that the government, in using AI, must “provide improved services to the public, while maintaining strong safeguards for civil rights, civil liberties, and privacy.”⁵⁴

Consistent with these requirements and principles, DOL must disclose, first, whether it has used or plans to use AI as part of this rulemaking, including to develop substantive policy, produce supporting analysis, or respond to public comments. If so, DOL must disclose the particular AI product it has used and why it was selected, how that product was procured, whether the product was fine-tuned, what prompts or inputs the agency used to elicit responses from the product, and the responses the product produced. DOL must also disclose how agency staff used AI-produced information, including any quality control, peer review, or other validation performed. And DOL must disclose what measures it took to ensure that its use of AI complied with applicable data security and privacy requirements. To that end, it must disclose whether and to what extent any persons and entities not employed by the agency developed, modified, provided access to, or used AI in the course of the agency’s decisionmaking process. To the extent the disclosed use of AI is significant, DOL must provide an additional opportunity for public comment.

V. Conclusion

The President and his associates stand to gain financially if DOL makes Americans’ retirement savings more easily available to invest in cryptocurrency assets. These potential conflicts of interest are well-known and much-discussed. DOL’s failure to acknowledge them and to assure plan participants that its policy choices are based only on promoting ERISA’s statutory objectives may render any resulting final rule contrary to law or arbitrary and capricious under the APA. We respectfully request that DOL withdraw the Proposed Rule or, at the very least, respond to the questions raised above.

Sincerely,

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⁵⁴ Memorandum for the Heads of Executive Departments and Agencies from Russell T. Vought, Director, Office of Management & Budget 1, M-25-21 (Apr. 3, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/02/M-25-21-Accelerating-Federal-Use-of-AI-through-Innovation-Governance-and-Public-Trust.pdf> [<https://perma.cc/7N7G-LWPG>].