



May 29, 2026

The Honorable Daniel Aronowitz  
Assistant Secretary  
Employee Benefits Security Administration  
United States Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210

cc: Fred Wong, Office of Regulations and Interpretations  
Jeff Turner, Office of Regulations and Interpretations

Re: *Fiduciary Duties in Selecting Designated Investment Alternatives (RIN 1210-AC38)*  
(91 Fed. Reg. 16088)

Dear Assistant Secretary Aronowitz:

Democracy Defenders Fund (DDF) respectfully submits this comment on the Employee Benefits Security Administration's (EBSA) proposed rule entitled "Fiduciary Duties in Selecting Designated Investment Alternatives" (Proposed Rule). DDF is a nonpartisan, non-profit section 501(c)(3) organization committed to defending and strengthening democracy while ensuring that all Americans can freely exercise their fundamental civil rights by defending the rule of law, fighting corruption, and protecting elections.

DDF is submitting this comment to raise concerns about the impact of the President's personal financial conflicts of interest on the Department of Labor's proposal to loosen the prudent investor standard and establish a non-statutory safe harbor to "assist"<sup>1</sup> (if not encourage) plan fiduciaries operating plans covered by the Employee Retirement Income Security Act of 1974 (ERISA) to invest in, *inter alia*, digital assets.

The President and his family are deeply invested in the digital assets market. *Forbes* recently estimated that around \$1.8B of President Trump's approximate \$6.5B net worth is tied to digital assets or companies in the digital asset industry.<sup>2</sup> At the same time, President Trump has made it clear through Executive Order 14330, *Democratizing Access to Alternative Assets for 401(k) Investors*—mere months after presidentially-aligned World Liberty Financial, Inc. launched its stablecoin USD1—that the Trump Administration policy is to "relieve the regulatory burdens"

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<sup>1</sup> 91 Fed. Reg. 16088, 16092 (Mar. 31, 2026).

<sup>2</sup> Dan Alexander & Kyle Khan-Mullins, Here's How Much Donald Trump Is Worth, *Forbes* (Mar. 25, 2026), <https://www.forbes.com/sites/danalexander/article/the-definitive-networth-of-donaldtrump/>.

that prevent retirement plans from investing in alternative investments including digital assets<sup>3</sup> under the guise of clarifying the prudent investor standard.<sup>4</sup>

The President has directed EBSA, through the Secretary of Labor, to engage in this rulemaking at the same time he has an immense personal stake in the decision. The President's financial interests are not, however, a proper factor to consider in a rulemaking and the structural constraints imposed by the President make it clear that EBSA cannot engage in the "reasoned decisionmaking" required under the Administrative Procedure Act (APA).<sup>5</sup> Agency action that is not based "on a consideration of the relevant factors"<sup>6</sup> is the very epitome of a decision that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>7</sup> For this reason, DDF believes that this rulemaking has been irrevocably tainted from the start.

## Background

### a. **President Trump's Financial Interest in the Proposed Rule**

President Trump has nearly two billion dollars tied to equity and revenue relationships with digital asset industry companies like World Liberty Financial, Inc., Trump Media and Technology Group (TMTG), and ALT5 Sigma, and in digital assets like \$TRUMP, \$WLFI, and USD1. President Trump holds these interests through a variety of investment vehicles, including World Liberty Financial, WLF Holdco LLC, DT Marks DeFi LLC, and CiC Digital.<sup>8</sup> Among other things, through DT Marks DeFi LLC President Trump and his family own 22.5 billion \$WLFI tokens, and DT Marks DeFi LLC has a right to receive 75% of \$WLFI token sale proceeds after expenses.<sup>9</sup>

As of December 1, 2025, US retirement assets totaled \$49.1 trillion.<sup>10</sup> ERISA does not prohibit plan fiduciaries from purchasing digital assets as part of a portfolio of a retirement plan's assets *so long as* doing so is prudent.<sup>11</sup> Many plan fiduciaries have, however, shied away from investing in alternative assets, like digital assets, because they are often deemed too risky, illiquid, or complex for traditional retirement accounts.<sup>12</sup>

The President has a clear financial interest in decreasing barriers to entry for plan fiduciaries to expand investment of digital assets in retirement plans. EBSA itself acknowledges the fact that

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<sup>3</sup> Exec. Order No. 14330, 90 Fed. Reg. 38921 (Aug. 7, 2025).

<sup>4</sup> See Edward A. Zelinsky, *Executive Order 14330: A Solution in Search of a Problem*, 2025 CARDOZO L. REV. DE NOVO 137, 139 (2025), <https://cardozolawreview.com/wp-content/uploads/2025/12/Zelinsky-Final-1.pdf>.

<sup>5</sup> *Michigan v. EPA*, 576 U.S. 743, 750 (2015).

<sup>6</sup> *Id.* (citing *Motor Vehicle Mfrs. Assn. of United States, Inc. v. State Farm Mut. Automobile Ins. Co.*, 463 U.S. 29, 43 (1983)).

<sup>7</sup> 5 U.S.C. § 706(2)(A).

<sup>8</sup> Donald Trump, Public Financial Disclosure Report (OGE Form 278e) (Jun. 13, 2025), <https://www.whitehouse.gov/wp-content/uploads/2025/06/President-Donald-J.-Trump.pdf>.

<sup>9</sup> See World Liberty Financial, Homepage (last visited May 27, 2026) <https://worldlibertyfinancial.com/>.

<sup>10</sup> Release: *Quarterly Retirement Market Data, Fourth Quarter 2025*, ICI (Mar. 26, 2026), [https://www.ici.org/statistical-report/ret\\_25\\_q4](https://www.ici.org/statistical-report/ret_25_q4).

<sup>11</sup> 29 U.S.C. § 1104(a)(1)(B).

<sup>12</sup> Peter Coy, *Why Employers May be Wary of Adding Crypto or Private Equity to 401(k)s*, N.Y. Times (Apr. 11, 2026), <https://www.nytimes.com/2026/04/11/business/dealbook/crypto-private-equity-401ks.html>.

digital asset companies stand to gain from the rulemaking, stating that “[s]ome private equity firms and hedge funds, as well as some firms that market investments related to digital assets, may also see increased investment in their products.”<sup>13</sup> *Coindesk* recently reported that “[i]f a large plan with tens of thousands of workers were to allocate just 1% of its portfolio to bitcoin, that would translate into millions of dollars flowing into crypto funds or tokens.”<sup>14</sup>

Not only does President Trump have a financial interest in seeking to increase access to digital assets as a new avenue for profits, but to protect the value of his existing investments. For example, TMTG recently announced that they had lost \$405 million in market cap, largely based on cryptocurrency losses.<sup>15</sup> By accessing new avenues for revenue, presidentially-aligned digital asset companies could offset losses in other parts of the market.

#### **b. President Trump’s Executive Orders Remove EBSA’s Discretion to Exclude Digital Assets**

Two executive orders signed by the President effectively remove the ability of the EBSA to independently engage in reasoned assessment of the merits and demerits of the proposed rule. Taken together, these executive orders strip EBSA of the ability to disregard the President’s financial motivations and interests when promulgating this proposed rule.

First, section 7 of Executive Order 14215, *Ensuring Accountability for All Agencies*, provides that “[n]o employee of the executive branch acting in their official capacity may advance an interpretation of the law as the position of the United States that contravenes the President or the Attorney General’s opinion on a matter of law...” In essence, the Executive Order provides the President with ultimate authority over all interpretation of law, which would include the Department of Labor’s proposed rule.

Second, Executive Order 14330 sets out the President’s crystallized view that “[m]y Administration *will* relieve the regulatory burdens” perceived to prevent plan fiduciaries from investing in alternative investments. The Executive Order establishes that “[i]t is 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.

### **Discussion**

The APA requires that the outcome of a rulemaking be based on a legitimate evaluation of *relevant* factors.<sup>16</sup> “Normally, an agency rule would be arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider.”<sup>17</sup> A rulemaking that flows not

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<sup>13</sup> 91 Fed. Reg. 16088, 16113.

<sup>14</sup> Helene Braun, *U.S. rule change may open trillions in 401(k) funds to crypto*, COINDESK (Mar. 30, 2026), <https://www.coindesk.com/policy/2026/03/30/u-s-rule-change-may-open-trillions-in-401-k-funds-to-crypto>.

<sup>15</sup> Yash Roy, *Trump Media posts \$405 million loss driven by crypto holdings*, FORTUNE (May 9, 2026), <https://fortune.com/2026/05/09/trump-media-truth-social-405-million-loss-crypto-holdings-bitcoin/>.

<sup>16</sup> *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

<sup>17</sup> *Id.*

from reasoned consideration of relevant facts<sup>18</sup> but arises because of extraneous, personal financial interests of a superior officer is inherently arbitrary.<sup>19</sup>

Even though EBSA formally retains the final say on the proposed rule, the reality is that the President's vast pecuniary stake in the outcome of the proposed rule, paired with his complete control over the interpretive process of the executive department and his predetermined policy position, suggest that the rulemaking is structurally compromised from the start. In this circumstance, the proposed rule is not the beginning of a reasoned analysis but the nascent fruit of a poisoned tree.

To be clear this is not a question of whether the President or White House can have "their contributions to policymaking considered."<sup>20</sup> Nor is this the run-of-the-mill case in which an agency "opens an inquiry into a matter which the President believes should be inquired into" and where the President has indicated that he "would be pleased if the agency ended its rulemaking by reducing the existing standard, and disappointed if it left the current rule in effect."<sup>21</sup> Nor is this even the case in which "underlying the President's belief that this rule should be reexamined, there lurked a desire to assist the [relevant] industry."<sup>22</sup> That is to say that this is not simply a situation in which the "the purity of reason has been distorted by politically derived value judgments."<sup>23</sup>

This is the rare case in which the President has structured the decision-making process in such a way that the EBSA is objectively not free to consider the ultimate merits of the issue and must regulate against the background of the President's massive financial interests in the digital asset industry and his incentives to protect that investment. That financial conflict of interest has so thoroughly permeated the rulemaking that the agency's judgment can no longer be trusted as impartial. With a foundation rooted not in the public interest but in the financial incentives of the President, the rulemaking is fatally compromised. A process built on such skewed motivations cannot yield a reasoned outcome based only on relevant factors, and is thus "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."<sup>24</sup>

## Conclusion

President Trump's vast financial stakes in the digital asset marketplace pose a unique challenge to the promulgation of the proposed rule. EBSA is charged with engaging in "reasoned decisionmaking" based on "relevant factors" when it undertakes informal rulemaking.<sup>25</sup> The

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<sup>18</sup> *Id. see also Michigan v. EPA*, 576 U.S. 743, 750 (2015) (requiring that agencies engage in "reasoned decisionmaking").

<sup>19</sup> See Daniel A. Farber, *An Age of Statutes or an Age of Executive Orders? Conflicting Judicial and Presidential Visions of Policymaking*, 77 U.C. Law J. 131, 155 (2025) (stating that a rule would be arbitrary if it is the result of "presidential policies completely unrelated to (or worse, contrary to) the statute itself").

<sup>20</sup> *Sierra Club v. Costle*, 657 F.2d 298, 408 (D.C. Cir. 1981).

<sup>21</sup> *Ctr. for Auto Safety v. Peck*, 751 F.2d 1336, 1369 (D.C. Cir. 1985); see also *Nat. Res. Def. Council, Inc. v. Hodel*, 865 F.2d 288, 315 (D.C. Cir. 1988) (stating that "an agency which *properly formulates* policies or makes decisions that accord with the President's wishes is acting in a permissible, even laudable fashion") (emphasis added).

<sup>22</sup> *Ctr. for Auto Safety v. Peck* at 1368.

<sup>23</sup> *Id.* at 1369.

<sup>24</sup> 5 U.S.C. § 706(2)(A).

<sup>25</sup> *Michigan v. EPA*, 576 U.S. 743, 750 (2015).

President has made that structurally impossible by retaining ultimate decisional authority over all legal interpretation in the executive branch while at the same time holding an immense interest in the digital asset sector. Because this rulemaking is based on an impermissible factor, it is arbitrary and capricious for purposes of the APA.

Sincerely,

/s/

Ambassador Norman L. Eisen  
(ret.)  
Executive Chair and Co-founder  
Democracy Defenders Fund

/s/

Virginia Canter  
Chief Counsel and Director for Ethics and  
Anticorruption  
Democracy Defenders Fund

/s/

Christopher Swartz  
Senior Ethics Counsel  
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