

U.S. Moves to Regulate Digital Currencies More Closely: Strongly Considers Establishing a U.S. Central Bank Digital Currency

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What: On March 9, 2022 President Biden signed an Executive Order (EO) on digital assets, including cryptocurrencies, and the possible creation of Central Bank Digital Currencies (CBDC) for a digital form of the country's sovereign currency. The EO describes a national policy for digital assets across six key priorities: consumer and investor protection; financial stability; illicit finance; U.S. leadership in the global financial system and economic competitiveness; financial inclusion; and, responsible innovation. The EO also directs Departments and Agencies to submit a variety of reports in the coming months to the President on topics like creating a CBDC, adopting digital assets into financial markets, enhancing law enforcement's ability to detect, investigate, and prosecute criminal activity related to digital assets, evaluating financial stability risks posed by types of digital assets, and mitigating risks associated with digital asset-related illicit actors.

All participants in the digital asset space should consider the impact of regulation and increased oversight, as federal agencies conduct their inquiries and develop recommendations for the President. Certain agencies, like the U.S. Department of the Treasury, have indicated that their work will be guided by consumer and investor protection groups, market participants, and leading experts giving the private sector an opportunity to weigh in on shaping U.S. digital asset policy as it is being created. There is no doubt that the agencies will also be considering economic competition and the ability to augment global opportunities for U.S. businesses in their analysis of digital currency regulation.

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Practice Areas

Digital Assets, Cryptocurrencies, and Blockchain

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What does it mean for industry? Financial services and payment companies as well as others dealing with digital currencies should closely watch these developments and contribute feedback as policies and new regulations are being developed. The EO comes during explosive growth in digital assets in recent years as more Americans use cryptocurrencies and more countries explore creating CBDC's. The EO is the first of a whole-of-government approach to regulate digital currencies to protect consumers, ensure financial stability, enhance national security, and address climate risks. The EO directs several federal agencies to develop policies and regulations on digital currencies and is seen as the White House's first step toward regulating cryptocurrency. The Treasury department will partner with its interagency colleagues to produce a report on the future of money and payment systems while weighing the risks associated with illicit financing through digital assets that is due back to the President in six months. The EO directs the Attorney General, in consultation with the Secretary of Treasury and the Chairman of the Federal Reserve, to provide the President with an assessment of whether legislative changes would be necessary to issue U.S. CBDC, and to thereafter work on a corresponding legislative proposal if deemed in the national interest.

Notably, the EO encourages the Chair of the Federal Trade Commission (FTC) and the Director of the Consumer Financial Protection Bureau (CFPB) to consider the extent to which privacy or consumer protection measures may be used to protect users of digital assets and whether additional measures may be needed. The EO also directs the Department of State to ensure that U.S. cryptocurrency laws align with U.S. allies.

The EO on digital assets comes among concerns that Russia may use cryptocurrencies to avoid U.S. sanctions for President Vladimir Putin's invasion of Ukraine. The EO also follows the announcement on March 2, 2022, by Attorney General Merrick B. Garland that DOJ is launching a new KleptoCapture Task Force to enforce recent U.S. financial sanctions and other economic countermeasures against Russia.

What does the EO on digital assets do?

The EO on digital assets outlines the U.S. government's first whole-of-government strategy on ensuring the responsible use of digital assets. The EO indicates that the rise in digital assets creates an opportunity to reinforce American leadership in the global financial system and technological frontier while acknowledging that digital assets also pose substantial implications for consumer protection, financial stability, national security, and climate risk. The EO's goal is to maintain U.S. technological leadership in this space and supporting innovation while mitigating risks. The EO also seeks a leading role for the U.S. in international engagement and global governance of digital assets consistent with democratic values and U.S. global competitiveness.

Specifically, the EO calls for measures to:

- **Protect U.S. Consumers, Investors, and Businesses.** The EO directs Treasury, with other agency partners, to assess and develop policy recommendations to address the growing digital asset sector and changes in the financial markets for consumers, investors, businesses, and equitable growth. The EO encourages regulators to ensure sufficient oversight and safeguards against systemic financial risks posed by digital assets.

- **Protect U.S. and Global Financial Stability and Mitigate Systemic Risk.** The EO encourages the Financial Stability Oversight Council to identify and mitigate economy-wide or systemic financial risks posed by digital assets and to develop policy recommendations to address any regulatory gaps.
- **Mitigate the Illicit Finance and National Security Risks Posed by the Illicit Use of Digital Assets.** The EO directs an unprecedented focus on coordinated actions across all relevant U.S. Departments and Agencies to mitigate the financial and national security risks the use of digital assets poses. The U.S. will also work with allies and partners to ensure international frameworks, capabilities, and partnerships are aligned with and responsive to these risks.
- **Promote U.S. Leadership in Technology and Economic Competitiveness to Reinforce U.S. Leadership in the Global Financial System.** The U.S. Department of Commerce is directed to work across the Government to establish a framework to drive U.S. competitiveness in and leadership of leveraging digital asset technologies. This framework will serve as a foundation for Departments and Agencies to integrate U.S. leadership into their approaches to digital assets.
- **Promote Equitable Access to Safe and Affordable Financial Services.** The Secretary of Treasury will produce a report on the future of money and payment systems which will include the implications for economic growth, financial growth and inclusion, national security, and the extent to which technological innovation may influence that future.
- **Support Technological Advances and Ensure Responsible Development and Use of Digital Assets.** The U.S. Government will take steps to support technological advances in the responsible development, design, and implementation of digital asset systems while prioritizing privacy, security, combatting illicit exploitation, and reducing negative climate impacts.
- **Explore a U.S. Central Bank Digital Currency (CBDC).** The U.S. will prioritize research and development of a potential U.S. CBDC as the U.S. assesses the technological infrastructure and capacity needed to protect American's interests. The EO prioritizes U.S. participation in a multi-country experiment and seeks to ensure U.S. leadership in promoting CBDC development consistent with U.S. priorities and democratic values.

Key Takeaways

The EO represents a substantial step towards comprehensive regulation of digital assets, including cryptocurrency. The reports the EO mandates will drive interagency consensus on digital asset exchanges and relevant regulations. Several key reports are due back to the President after relevant Departments and Agencies have completed various studies. Expect a flurry of regulative activity after those reports have been submitted.

Given the mandate to review whether legislative changes are needed to issue a U.S. CBDC, it is also likely that the U.S. will decide could decide to pilot a CBDC in conjunction with its international partners. These uncharted waters are likely to spur a period of more regulations being issued and enhanced efforts by the U.S. Government to combat the illicit use of various digital assets. While regulations are considered, the government will be looking at private sector practices, so all players in the space should consider how

additional government oversight may impact their operations and goals, and be prepared to respond to government requests for information, notices of potential rulemaking, or other similar notice and comment periods that the government – especially Treasury, CFPB, and FTC – provides. The private sector can also make their positions known via consumer and investor protection groups, trade associations, technical standards bodies (e.g., the National Institute of Standards & Technology), and other policy influencers.