

Biden Executive Order on Cryptocurrencies and Other Digital Assets Emphasizes Innovation and Regulation

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On March 9, 2022, President Joe Biden issued an executive order outlining a “whole-of-government” approach to examining a broad range of potential risks associated with the dramatic growth in digital assets, including cryptocurrencies. Importantly, the executive order states that the Biden administration is interested in promoting responsible financial innovation and US leadership globally, including in the development of global standards for digital assets. The executive order lays the groundwork for increased US regulation of digital assets. However, while it is a crucial first step to addressing currently fragmented regulation, the executive order stops short of establishing a single policy for digital assets. To further demonstrate the necessity of the executive order, Congress remains sharply divided on a path forward on digital currency legislation. The executive order also states that the Biden administration places the “highest urgency” on further research into a potential US central bank digital currency (CBDC).

The executive order requires coordination among, and actions to be taken by, numerous executive branch departments and agencies within specified timeframes. These actions include the submission of certain reports and regulatory and legislative proposals. It also encourages various US regulators to act within their respective jurisdictions. To that end, shortly after the announcement of the executive order, several agencies issued statements echoing positions in the order.

The executive order comes on the heels of other initiatives focused on digital assets, including the Department of Justice’s focus on cryptocurrency in both civil and criminal initiatives (such as its appointment of its first National Cryptocurrency Enforcement Team director), the Securities and Exchange Commission’s (SEC) continued regulation by enforcement in this area, and recent commentary from the Consumer Financial Protection Bureau (CFPB) on the broader adoption of digital assets in consumer markets.

Key policy priorities

The executive order outlines six key policy priorities.

1. **Protecting US consumers, investors and businesses:** The executive order expresses concern that the growing use of digital assets and firms providing digital asset services may present increased “risks of crimes such as fraud and theft, other statutory and regulatory violations, privacy and data breaches, unfair and abusive acts or practices, and other cyber incidents.” It further states that such risks may be heightened for less informed market participants.
2. **Protecting US and global financial stability and mitigating economywide financial risks:** The executive order states that digital asset issuers, exchanges and trading platforms, service providers, and other industry participants “may not be subject to or in compliance with appropriate regulations or supervision.” Industry participants that present risks to financial stability should “be subject to and in compliance with ... standards that govern traditional market infrastructures and financial firms,” although evolutionary changes to the current regulatory approach may be required. (In this regard, the executive order reinforces the Financial Stability Oversight Council’s role in assessing financial stability risks and regulatory gaps, and preparing recommendations for addressing such risks.)
3. **Mitigating money laundering, other illicit finance activity and national security risks:** The executive order recognizes that digital assets are used in cybercrime, including ransomware, and may present heightened risks of money laundering, sanctions evasion, terrorist and proliferation financing, fraud and theft schemes, and corruption.
4. **Reinforcing US leadership in the global financial system, and technological and economic competitiveness:** The executive order states that the US has an interest in ensuring the responsible development of payment innovations and digital assets, including those that underpin international capital

flows. It further expresses the view that the US can play a role in the global governance of digital assets and should seek to preserve US global competitiveness.

5. **Promoting equitable access to safe and affordable financial services:** The executive order states that digital assets could be used to reach underserved populations and to provide more cost-efficient access to financial services.
6. **Supporting technological advances that promote responsible development and use of digital assets:** The executive order states that innovation in digital assets and digital payments should support national goals by, for example, taking into account privacy and security interests, including controls to protect against illicit exploitation, and focusing on mitigating negative climate impacts.

Interagency coordination and international cooperation

The executive order seeks to establish a coordinated, national approach for digital assets. It directs and/or encourages key executive branch departments – including the departments of Justice, Treasury, State, Defense, Homeland Security and Commerce – and financial regulators (including the prudential bank regulators, the CFPB, the Federal Trade Commission, the SEC, and the Commodity Futures Trading Commission), among others, to take certain actions, such as preparing reports and regulatory and legislative proposals. **(We’ve provided a high-level summary of these actions in the chart below.)** The interagency process assigns the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy coordinating responsibility for the executive branch actions mandated under the executive order.

The executive order also emphasizes the importance of fostering international cooperation. Among other actions, the executive order directs the development of frameworks for strengthening international law enforcement of criminal activity involving digital assets, and engaging with international partners and in international forums – such as the G7, the G20, the Financial Action Task Force and the Financial Stability Board – on global principles and standards for digital assets and CBDC technologies.

US CBDC

The executive order directs additional efforts to evaluating the risks and benefits of issuing a CBDC, and for US participation and leadership in international CBDC discussions and projects. Among other things, it orders the Secretary of the Treasury, with other stakeholders, to prepare a report on “the future of money and payment systems.” The executive order also directs the Attorney General to lead an assessment of whether legislative change is necessary to issue a CBDC and encourages the Federal Reserve Board to continue its ongoing research into various aspects of a CBDC, including the optimal design for a CBDC and methods of implementation if a CBDC were to be introduced. The executive order indicates that the Biden administration sees development of a CBDC as potentially important to supporting “the continued centrality of the United States within the international financial system” and protecting the “unique role that the [US] dollar plays in global finance.”

Comments and outlook

The Biden administration’s efforts to study and address the potential risks posed by digital assets span a broad range of policy areas, including financial crime and national security, privacy and consumer protection, investor and market protection, and climate and energy policy, among others. The executive order does not implement any regulatory changes or detail regulatory changes to come. However, the actions that the executive order calls for signal that further regulation of digital assets and industry participants is possible, if not likely. The executive order also suggests that the Biden administration will continue to make it a priority to take action, through law enforcement and regulatory agencies, in response to violations of existing US law. (See, for example, these previous Cooley alerts: US Justice Department Appoints First National Cryptocurrency Enforcement Director and OFAC Issues Sanctions Compliance Guidance for Virtual Currency Industry.)

The interagency process established under the executive order indicates that the Biden administration believes effective regulation of digital assets can be accomplished through coordinated action among existing US regulatory agencies. In this respect, many of the actions ordered or encouraged in the executive order appear intended to reinforce initiatives already underway, such as the interim measures proposed in the report on stablecoins by the President’s Working Group on Financial Markets, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. While overall positive for its approach to understand and address risks in concert, the executive order does not resolve regulatory uncertainty for industry participants

where agency jurisdiction remains unclear.

In addition, the executive order is notable for its emphasis on supporting continued innovation, which the executive order suggests may be important to preserving US leadership in the global financial system and US global competitiveness. The executive order's focus on international cooperation is also important to addressing some of the primary challenges that US regulators have faced with respect to digital assets, including anti-money laundering, sanctions evasion, cybercrime and ransomware.

The actions and statements in the executive order regarding a potential CBDC suggest that the Biden administration is accelerating US efforts to explore a CBDC amid a growing number of initiatives by foreign countries to explore or pilot their own CBDCs. This is noteworthy because the Federal Reserve has previously stated that it would only pursue issuance of a CBDC with "clear support" from the executive branch and Congress.

Following the executive order, in the near term we expect:

- Federal financial regulators will continue to regulate by enforcement, and the Department of Justice and law enforcement agencies will continue to prioritize enforcement in the digital assets space.
- The Biden administration will increase its focus on US efforts to explore a CBDC.
- The reporting required by the executive order may result in additional oversight from the congressional committees of jurisdiction.
- The executive order is unlikely to result in significant legislation that can pass both houses of Congress and be signed into law.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
Policy and actions related to a US CBDC		
180 days	Secretary of the Treasury* Secretary of State Attorney General Secretary of Commerce Secretary of Homeland Security Director of the Office of Management and Budget Director of National Intelligence Heads of other relevant agencies	Submit a report to the president on the future of money and payment systems, including the impact of technological innovation and the conditions that drive the adoption of digital assets, including an analysis of whether foreign CBDCs could displace existing currencies and alter the payment system in ways that could undermine US financial centrality.
180 days	Attorney General* Secretary of the Treasury Chairman of the Board of Governors of the Federal Reserve	Provide an assessment of the needs for legislative changes necessary to issue a CBDC.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
210 days	Attorney General* Secretary of the Treasury Chairman of the Board of Governors of the Federal Reserve	Provide a corresponding legislative proposal to the president based on the Treasury secretary's report (described above) and any materials developed by the Federal Reserve with respect to a CBDC (described immediately below).
N/A	Chairman of the Board of Governors of the Federal Reserve*	The chairman is encouraged to continue to research a potential CBDC, and to develop a strategic plan for its potential implementation and launch.
Measures to protect consumers, investors and businesses		
180 days	Secretary of the Treasury* Secretary of Labor Federal Trade Commission Securities and Exchange Commission Commodity Futures Trading Commission Federal banking agencies Consumer Financial Protection Bureau Heads of other relevant agencies	Submit a report to the president on the implications of the adoption of digital assets and changes in financial market and payment systems for US consumers, investors, and businesses, including addressing the conditions that would drive mass adoption of different types of digital assets. The report shall contain policy recommendations that include potential regulatory and legislative actions to protect US persons.
180 days	Director of the Office of Science and Technology Policy* Chief Technology Officer of the United States* Secretary of the Treasury Chairman of the Board of Governors of the Federal Reserve Heads of other relevant agencies	Submit a technical evaluation of the technological infrastructure, capacity and expertise needed to introduce a CBDC, including how digital assets could impact the provision of government services.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
180 days	Attorney General* Secretary of the Treasury Secretary of Homeland Security	Submit a report to the president on the role of law enforcement agencies in detecting, investigating and prosecuting criminal activity relating to digital assets, as well as any legislative or regulatory recommendations.
180 days + update after one year	Director of the Office of Science and Technology Policy* Secretary of the Treasury Secretary of Energy Administrator of Environmental Protection Agency Chair of the Council of Economic Advisers Assistant to the President and National Climate Advisor Heads of other relevant agencies	Submit a report to the president on the connections between distributed ledger technology and short-, medium-, and long-term economic and energy transitions. The report should also address the effects of cryptocurrency on energy use and design tradeoffs.
N/A	Attorney General* Chair of the Federal Trade Commission* Director of the Consumer Financial Protection Bureau*	Each agency is encouraged to consider what effects the growth of digital assets could have on competition policy.
N/A	Chair of the Federal Trade Commission* Director of the Consumer Financial Protection Bureau*	Each agency is encouraged to consider how privacy and consumer protection measures within its jurisdictions can serve digital asset users.
N/A	Chair of the Securities and Exchange Commission* Chair of the Commodity Futures Trading Commission* Chairman of the Board of Governors of the Federal Reserve* Chairperson of the Board of Directors of the Federal Deposit Insurance Corporation* Comptroller of the Currency*	Each agency is encouraged to consider the extent to which investor and market protection measures within its respective jurisdiction may be used to address the risks of digital assets – and whether additional measures may be needed.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
Actions to promote financial stability, mitigate systemic risk and strengthen market integrity		
210 days	Secretary of the Treasury* Financial Stability Oversight Council	Produce a report to the president outlining specific financial stability risks and regulatory gaps posed by various types of digital assets, and providing recommendations to address such risks.
Actions to limit illicit finance and associated national security risks		
90 days following submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing	Secretary of the Treasury* Secretary of State* Attorney General* Secretary of Commerce* Secretary of Homeland Security* Director of Office of Management and Budget* Director of National Intelligence* Heads of other relevant agencies*	Each agency may submit to the president a supplemental annex to the national strategy offering additional views on illicit finance risks posed by digital assets.
120 days following submission to the Congress of the National Strategy for Combating Terrorist and Other Illicit Financing	Secretary of the Treasury* Secretary of State Attorney General Secretary of Commerce Secretary of Homeland Security Director of Office of Management and Budget Heads of other relevant agencies	Develop a coordinated action plan for mitigating the digital asset-related illicit finance and national security risks addressed in the updated strategy, including to address the role of law enforcement and measures to increase financial services providers' compliance with anti-money laundering/countering the financing of terrorism obligations related to digital asset activities.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
120 days following completion of the National Money Laundering Risk Assessment; the National Terrorist Financing Risk Assessment; the National Proliferation Financing Risk Assessment; and the updated National Strategy for Combating Terrorist and Other Illicit Financing	Secretary of the Treasury*	Notify relevant agencies on any pending, proposed or prospective rulemakings to address digital asset illicit finance risks. The secretary will consult with and consider the perspectives of relevant agencies in evaluating opportunities to mitigate such risks through regulation.
Policies and actions related to fostering international cooperation and US competitiveness		
120 days	Secretary of the Treasury* Secretary of State Secretary of Commerce Administrator of the United States Agency for International Development Heads of other relevant agencies	Establish a framework for interagency international engagement with foreign counterparts, and promote the development of digital asset and CBDC technologies consistent with US values and legal requirements. The framework should elevate US engagement on digital assets issues in technical standards bodies and other international forums.

Timeline	Department or Agency <i>* bold indicates directed to lead action</i>	Task(s)
One year from establishment of framework for international engagement	Secretary of the Treasury* Secretary of State Secretary of Commerce Administrator of the United States Agency for International Development Heads of other relevant agencies	Submit a report to the president on priority actions taken under the framework (described immediately above) and their effectiveness.
180 days	Secretary of Commerce* Secretary of State Secretary of the Treasury Heads of other relevant agencies	Establish a framework for enhancing US economic competitiveness in, and leveraging of, digital asset technologies.
90 days	Attorney General* Secretary of State Secretary of the Treasury Secretary of Homeland Security	Submit a report to the president on how to strengthen international law enforcement cooperation for detecting, investigating and prosecuting criminal activity related to digital assets.

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